

CFO McGuirk  
Merseyside Fire Service  
Service Headquarters  
Bridle Road  
Bootle  
Merseyside  
L30 4YD

Date: Monday, 07 August 2006

Reference: Ballot for Strike Action - Merseyside.

Dear Mr. McGuirk,

Thank you for your letter dated 2<sup>nd</sup> August 2006, which I have been informed is available on the MF&RS website and whilst I usually do not respond to correspondence until I have received the hard copy, which I haven't, I feel your views within your correspondence require a response.

You state that at a recent fire authority meeting and again within the local joint secretariat I, on behalf of my Union, have commented that CFOA have concerns about the LLAR system. Once again I find myself having to correct a principal officer within MF&RS on the accuracy of a fundamental position adopted by the Fire Brigades Union and a position laid out in full and in detail to the relevant agents of the authority. I can only presume that you have again fundamentally misunderstood the point made and given that I have been informed by your managers that they are yet to review the CFOA document I have directly quoted from, that is entirely understandable.

For clarification, I have never stated that CFOA directly have concerns about the LLAR system, I have been very careful, given the gravity of the situation, to relay to the authority and the Service that the CFOA document - 'Working Patterns and Duty Systems - Options for Change' indicates to interested parties a number of points with regard to derogation issues contained within the Working Time Regulations. Mr Toase within his letter you have attached, helpfully clarifies the point presumably on behalf of your association, CFOA.

Mr Toase states within his correspondence *'The only difference with the LLAR system being that, instead of personnel living in housing close or adjacent to the station, the personnel live on the station itself. I appreciate this distinction does bring with it implications from the perspective of the Working Time Directive, but I understand these have been covered through derogation.'* Mr Toase is quite right in identifying the distinction between living on the station rather than living in housing close or adjacent to the station and correctly identifies that brings with it implications from the perspective of the Working Time Directive. Mr Toase goes on to state that he understands that these have been covered through derogation and again given Mr Toase's grasp of the legislation it is safe to assume that he has come to his understanding on information received which clearly is erroneous. Again I provide you the section of your own association's document which clarifies the point. Given the fact, as I understand it, the authority through the rate payer, pays your CFOA fees as it is declared to

be a professional body, I urge you to read the document as a matter of urgency. The matter is included at Section 5, Paragraph 5.1 of the CFOA document and states:

*'Timing of rest periods*

*There can generally be no derogation for firefighters and so no question of compensatory rest. They must be provided with 11 hours consecutive hours' rest in each 24 hour period and where this is permitted it should be taken immediately at the end of that period.*

*The only possible derogation is if there is a collective or workforce agreement. If this exists, compensatory rest must be given and will need to be taken at the end of the working time. It cannot be accumulated to be taken later.'*

Your point, repeatedly made, that the Union must be mistaken as the current shift system (2,2,4) does not maintain an 11 hour rest break is I have stated at the Policy and Finance Committee meeting recently, varied through collective agreement contained within the Grey Book.

The CFOA document effectively supports the ODPM document 'IRMP Guidance Note 6 - The Working Time Regulations 1998'.

You are aware that the shift system clearly breaches the TAP recommendations as no purpose built separate accommodation exists in any location within MF&RS.

Mr Toase disappointingly points to the FBU not following the dispute resolution processes agreed within the June 2003 Agreement, again I can only presume Mr Toase is unaware that the FBU requested this matter is processed to the NJC for resolution, a request you rejected.

Accordingly, the FBU cannot enter into a collective agreement as you suggest, that is both unlawful and breaches the TAP recommendations, but I do invite you to withdraw the implementation of this system and to enter, for the first time, into talks which may lead to resolution of this matter.

Please feel free to post this correspondence on the MF&RS website and I can confirm it will be posted on the Merseyside FBU website.

If you require any further information please do not hesitate to contact me.

Yours sincerely,

L Skarratts  
Brigade Secretary

cc M Wrack  
All members

attach

D Wright  
Clerk to the Authority  
Merseyside Fire and Rescue Service  
Service Headquarters  
Bridle Road  
Bootle  
Merseyside  
L30 4YD

Date: Tuesday, 04 July 2006

Ref: Reference to the Technical Advisory Panel - LLAR.

Dear Mr Wright,

Thank you for your letter dated 11<sup>th</sup> June 2006, regarding the above matter.

You make a number of points and I respond as follows:

1. Legal Opinion of Mr Goudie QC.

You state that Mr Goudies' opinion is legally privileged information and therefore falls within the definition of confidential information for the purposes of the Grey Book until and unless the Authority waive such privilege or confidentiality. Notwithstanding the point that it must be difficult to determine whether public money spent on Counsel Opinion can place that opinion in the realm of confidential and thus denied the public, there is no provision for confidential information to be denied the other party within the negotiation procedures of the Grey Book or the local agreement, as opposed to the consultation procedure you refer to. I look forward to your comments on that point.

For clarification, paragraph 4 states that 'all parties should have the requisite information needed to deal with any issue.' Evidently, MF&RS breached that element of the procedure and it simply became a matter of timing when the Service decided to reveal the opinion, in this case as late as disclosure. The FBU believe that both a Grey Book procedural failure occurred and a breach of the ethos of negotiating to resolution.

2. Meaningful Consultation.

You state within bullet point 3 that you confirm that the dispute procedures have been exhausted and provide me with a copy of Authority Report CFO/15/05 which has been agreed by the Authority. The report includes locally negotiated procedures and the TAP process is an integral and exclusive element of the negotiation procedure as opposed to the consultation procedure.

The fact that you point to the TAP process, and as such disputes process, being exhausted, is evidence that this matter was one of negotiation, a definition the Union view as both welcome and helpful. I refer to the issue of confidentiality aforementioned.

3. Dispute Procedures.

You indicate that you have decided to disregard your Counsel Opinion with respect to forwarding this matter to RAP/Joint Secretaries/ACAS.

MF&RS are also disregarding Counsel Opinion in that there are no purpose built separate accommodation currently prepared for any LLAR fire station location, and as such the duty shift system falls outwith your own legal advice.

You will no doubt be aware that Mr Goudie stated that:

*'In my opinion, the time spent at the living accommodation whilst not actually called out should not be regarded as constituting working time. This, however, in a difficult area, I do not regard as being more than just on the right side of the line.'*

Evidently then, in the absence of the separate living accommodation, your barrister places this shift system proposal as being firmly on the wrong side of the line. I have received a fax communication from DCFO Hagan which declares that MF&RS have decided to implement this system at Heswall from the 2<sup>nd</sup> July 2006. I presume that MF&CDA have now to rely on FBU members to waive their employment protection and opt out of the Working Time Regulations (WTR) and as such render that important piece of employment legislation intended to protect workers, effectively obsolete.

Could you also clarify reports I have received that members may be receiving a derogation payment for opting out of the WTR.

A further source of some grave concern for the FBU and our members is the matter of the opt out ability in the first instance. You will be aware of the 'ODPM Guidance Note 6 - the Working Time Regulations 1998', along with the Chief Fire Officers Association (CFOA) document '*Working Patterns and Duty Systems - Options for Change*'. Interestingly the aforementioned documents state that:

*'Timing of rest periods*

*There can generally be no derogation for firefighters and so no question of compensatory rest. They must be provided with 11 hours consecutive hours' rest in each 24 hour period and where this is permitted it should be taken immediately at the end of that period and where this is permitted it should be taken immediately at the end of that period of working time.*

*The only possible derogation is if there is a collective or workforce agreement. If this exists, compensatory rest must be given and will need to be taken at the end of the working time. It cannot be accumulated to be taken later.'*

The CFOA document also clearly advises that:

*'The regulations currently allow for individuals to opt to work long hours (except for 'timing of rest periods' - FBU) if they wish to sign a personal agreement to that effect, however, this should not become normal practise for reasons of health and safety. This is renewable on a year by year basis and may be removed.'*

Evidently MF&CDA have decided to disregard the ODPM Guidance Notes and the CFOA advice on this matter, I can assure you however, that the FBU will exhaust all avenues to ensure legislation and national advice is properly considered by the Service with specific regard to our members' shift systems.

#### 4. Implementation of Duty System.

You state that the Authority has sought a collective agreement with the FBU which reflects and includes all of the recommendations of TAP, but that you note that the FBU is not willing to accept such recommendations or enter into a Collective Agreement which incorporates such recommendations.

It was wholly predictable that you would focus on the recommendations in isolation from Professor Lewis's report. You will be fully aware that Mr Professor Lewis, in his report stated that:

*'In addition, a retained duty would apply to nights between 11am and 11pm, with staff living in purpose-built accommodation within the precincts of but separate from the station, unless they resided in a dwelling that allowed them to get to the station within 1.9 minutes. It is to be noted that the accommodation as described does not as yet exist at Heswall or at any other station.'*

There still is no purpose built accommodation within the precincts of but separate from the station at any location, despite planning permission sought and reportedly granted for the Heswall fire station. Accordingly the collective agreement offered the Union evidently breaches the TAP conclusion and as such cannot be considered under collective agreement.

Further, there is a paragraph within the collective agreement that refers to there being no compulsion to work day duty system/retained duty system. The FBU are aware that those members at Heswall and West Kirby fire station who do not wish to work the system have been posted to fire stations outside of the Wirral district despite vacancies existing within the Wirral area. In one instance a firefighter who lived within 400 yards of Heswall fire station was informed he was posted to Newton le Willows fire station, a round trip of 72 miles; for clarification there is no other fire station within the MF&RS area that the member could have been posted to which was further from his home address. Clearly there appears an undoubted punitive element to this and other postings and as such breaches paragraph 6 of the collective agreement offered the Union. Incidentally, given the extreme circumstances, that member had no alternative but to accept the contract to work on the LLAR system, a fact that MF&RS should not view with any pride whatsoever and an episode the FBU find shameful.

You mention that the Authority has set a budget which requires significant savings to be made, and the savings arising from implementation of the LLAR duty system are a significant part of the savings. You may be aware that the FBU have offered the Authority a financial alternative to which the Union have recently met CFO McGuirk with limited progress made at that meeting. To search for proper and constructive dialogue the Union have requested a meeting with the Chair and Group Leaders of the Fire Authority. One of the key areas where progress was made, however, was the identification of a significant fund of budget reserves that the Authority now hold, which may allay your fears on the real driver for attempting to implement a duty system that requires our members to work 96 hours continuous at a fire station, with 50% of that time attracting one fifth of a firefighters pay.

Given the points the FBU make within this correspondence, the Union believe that the LLAR system of work is potentially unlawful unless a collective agreement exists, there is no collective agreement at present.

You state that you look forward to receiving the co-operation of the FBU in achieving the implementation of the LLAR system, accordingly and to progress this matter and for the FBU to properly consider a collective agreement proposal, I seek your urgent confirmation that:

- a. MF&RS will comply with the TAP report in full and ensure that only those that live within 1.9 minutes of the station, and as such work the retained element from their home, are offered the contract.
- b. That you comply with the TAP report in full and ensure that those who live outside the 1.9 minute requirement are offered purpose built accommodation separate from the fire station in line with the proposal offered for negotiation and advertised as such, in effect the completion of the building of the premises that required planning permission.
- c. That there is no compulsion for any member to work this system of work and that those members who do not wish to work it will be offered suitable and alternative locations that are, as far as reasonably practicable, the nearest vacancy. The procedure to be scrutinised by the local joint secretaries with any failure to agree being referred to the Appeals Committee of the Fire Authority as an individual grievance, in line with current grievance arrangements.
- d. That any members who have suffered a detriment as being transferred outwith paragraph c above, be transferred in accord with paragraph c above with immediate effect.
- e. That any member who declares that he/she wishes to be removed from the LLAR system, to give agreed notice to be removed from the system and as such transferred to another station in line with paragraph c above, with no detriment to their contract of employment prior to transferring to Heswall fire station, including membership of the firefighters Pension Scheme (FPS), as opposed to the new Firefighters Pension Scheme (NFPS).

I look forward to your earliest response and if you require any further information please do not hesitate to contact me.

Yours sincerely

L Skarratts  
Brigade Secretary

cc M Wrack  
Prof Lewis  
Chair  
Elected Members  
DCFO  
ACO