



The Fire Brigades Union

General Secretary: Matt Wrack

Bradley House, 68 Coombe Road, Kingston-upon-Thames, Surrey, KT2 7AE

Telephone: 0208 541 1765

Facsimile: 0208 546 5187

E-mail: office@fbu.org.uk

Circular: 2015HOC0078MW

30 January 2015

TO: ALL MEMBERS

Dear Brother/Sister

THE GUARANTEE THAT'S NOT A GUARANTEE:
THE PICKLES/MORDAUNT SHAM EXPOSED

Since the Debate in Parliament on 15 December 2014 we have been very busy trying to either confirm that the Parliamentary guarantee was genuine and would be delivered at local level - or whether it was just an empty promise designed to mislead MPs and to force through the 2015 Firefighters' Pension Scheme legislation.

This is a detailed circular which explains the situation and how it has developed. It is important to explain it in this way so that all FBU members can see exactly what has happened. We will need to explain this to MPs as part of our continued campaigning.

It is important to remember that Penny Mordaunt and DCLG did not even want to have the debate on this issue. It was only through the tenacious lobbying of FBU members that these issues were even discussed in detail in Parliament. FBU members campaigned for EDM454 and the 'prayer' being sponsored by the opposition leader and the front-bench. A significant number of cross-party MPs (except Tories and UKIP) also supported the call for the legislation to be annulled.

It was obvious to anyone who followed the debate that Government were completely unable to present any coherent arguments in favour of their proposals. This was particularly the case over what emerged as the main point of debate: the question of what would happen to a firefighter who experienced a decline in fitness as a result of ageing. It was under pressure on this issue that Penny Mordaunt began to assure MPs that the risks identified by the FBU would be addressed and the threats facing firefighters would be removed.

Even before the main debate started the DCLG Fire Minister was under pressure to address concerns.

This extract from oral questions sets the scene:

Duncan Hames (Chippenham) (LD): I have read the ministerial statement that has been placed in the Library this afternoon. It sets out the requirement for local authorities to consider an authority-initiated retirement. Can my hon. Friend confirm that it is her intention that under these circumstances firefighters will be guaranteed an authority-initiated retirement?

Contd/2...

Penny Mordaunt: Absolutely. We are very clear in the ministerial statement that we have tabled today and in the guidance that will accompany it that that is what we expect to happen. In addition, because I recognise that firefighters need those safeguards, my Department will carry out an audit.

So even before the debate got underway the DCLG Minister was giving parliamentary guarantees to firefighters and to MPs who had asked questions on their behalf.

When the debate got underway this 'guarantee' was repeated several times

Duncan Hames (Chippenham) (LD): Can my hon. Friend confirm that it is her intention that under these circumstances firefighters will be guaranteed an authority-initiated retirement?

Penny Mordaunt: Absolutely. We are very clear in the ministerial statement that we have tabled today and in the guidance that will accompany it that that is what we expect to happen. In addition, because I recognise that firefighters need those safeguards, my Department will carry out an audit.

Richard Fuller (Bedford) (Con): We have a special responsibility today to get these regulations right. So, how are we doing? The answer must be: not very well... I say to my hon. Friend the Minister that she must make this guarantee a 'must', not a 'may be' or a 'trust me' but a 'must'. We must ensure that we give that guarantee to our firefighters to do them justice for their heroism on our behalf.

Penny Mordaunt: We are introducing a measure that will improve the current situation and ensure that if there is no operational role for someone to go into, they will get not just a pension but an unreduced pension.

These are clear guarantees which were designed to ensure the legislation was supported. Again this is evidenced further in the debate.

Peter Bone (Wellingborough) (Con): Turning to firefighters' pensions, there is one issue that seems to cut through all of this. I have spoken with the chief fire officer and the FBU representatives and seen firefighters on the picket line, and I went to see Green Watch in Wellingborough. In all these disputes, we should ignore the FBU and the employers and listen to the actual firefighters and what they tell us. The one problem is that firefighters are genuinely worried that when they get to 55 they might, through no fault of their own, lose their pension. If the Minister could give me an assurance that those firefighters would be redeployed or—

Penny Mordaunt: I am very happy to give those assurances—[Interruption.] We have done that.

Mr Deputy Speaker (Mr Lindsay Hoyle): Order. I want to hear the answer, and I am sure the rest of us will gain from what the Minister has to say.

Penny Mordaunt: If someone fails a fitness test through no fault of their own and they do not qualify for ill health retirement, they will get a redeployed role or an unreduced pension. That will be put on a statutory footing in the national framework—a full, unreduced pension, if not an alternative role.

Peter Bone: Having heard the words of the Minister, I think the whole House can now support the statutory instrument.

So clearly Peter Bone (along with others) was influenced by the Minister's assurances and suggested that it carried enough weight that the whole House could now support the legislation. This was reflected in the vote which saw some of the MPs who signed the EDM change their position and vote in favour of the legislation. Some of these reported back that it was the clear assurances from the Minister that changed their mind.

The Minister was not alone in providing a guarantee on this issue. The DCLG Secretary of State, Eric Pickles, reiterated these guarantees on 16 December at the Communities and Local Government Committee where the following exchange took place:

Q37 Simon Danczuk MP: This question is from the Fire Brigades Union: "As there are virtually no redeployment opportunities, surely this means, if firefighters fail a fitness test, they lose their job".

Mr Pickles: That is certainly not the case. We were very keen to ensure - and we went through a debate yesterday to ensure - that would not be the case. It is now very clear: if firefighters fail the test on the grounds that they are unwell, they will, of course, receive a full pension. The changes that took place yesterday mean that, if a firefighter is unfit, they have to go through a process of trying to get back into a fit condition to be able to fulfil their jobs. If they cannot, and they cannot be redeployed, the effect of yesterday's decision is that they will get a full pension. If I am being really blunt, I was very hacked off with the employers' side, who refused to make this concession for two years, and that is why we are putting it into a statutory instrument. It is a sign that I thought the firefighters had made a very reasonable point.

The Secretary of State was very clear that a *decision* had been made as a result of the debate and vote in Parliament and that this *decision* was that a firefighter in the circumstances described "*will get a full pension*".

Ensuring this Parliamentary guarantee was delivered

Clearly, many firefighters reasonably took this guarantee - given by Government Ministers in the House of Commons - at face value. However, in view of our own understanding of the real position, the union's task was to contact employers to ensure that it would be delivered at local level. We wrote to all Fire Authority Chairs in England and Wales asking them quite simply if they would deliver the guarantee as outlined by the Minister and the Secretary of State. FBU members were also provided with a template letter and encouraged to write asking the same question. Brigade officials also wrote to Chief Fire Officers. A similar letter was sent to the National Employers.

We have already received a number of responses which state that their Fire Authority **cannot** provide the assurance we asked for. Several of the responses received so far state that providing such an assurance would be **unlawful** under the present circumstances whereby they must consider certain criteria on each individual occasion.

An example of a response is copied below for your information:

I can advise you of the position of this Authority on the key issue you have raised. We are advised that the addendum to the National Framework, issued by DCLG in December 2014, continues to provide discretion over the award of an unreduced pension should a firefighter be in the position you have outlined.

*We are further advised that such discretion cannot be fettered, and that to provide the 'guarantee' you are seeking would be unlawful. Members would, I am certain, be sympathetic towards any firefighter who finds themselves in this position. However, it is impossible to predict the circumstances in each case, as well as the financial situation of the Fire Authority. These factors must be considered in exercising the discretion that the rules allow for. For these reasons, **we cannot provide the guarantee of an unreduced pension (our emphasis).***

This response is typical of the responses received.

Far from this being a new position, it is precisely the position we had expected. The fact is we have explained to the DCLG Minister and her team on numerous occasions that their route **would not** provide the guarantee required. We had suggested, on legal advice that the only route for the guarantee to be delivered was through the scheme regulations. This is the route that the Scottish Government have followed and the regulation is now in the Scottish Firefighters' Pension Scheme legislation.

Since the debate we have written two letters to the DCLG Fire Minister requesting a meeting to discuss this 'Parliamentary Guarantee' and we have suggested a tripartite meeting (including the employers) so that all parties can be absolutely clear about what it means. We also suggested that each party could bring its legal representative so that any issue around this could be clarified. Unfortunately to-date the Minister has refused to meet.

In Parliament the Minister stated clearly that there was a guarantee while in reality it seems that the situation was exactly as the FBU had consistently argued: any decision about payment of an unreduced pension relied on the discretion of the employer. Firefighters will be justifiably outraged that the assurances given by the Minister in Parliament which clearly influenced the debate and vote in Parliament were simply to win support for the legislation.

It seems that Parliament has been misled by the Minister and the assurances that were asked for during the debate were nothing more than hollow promises designed to deflect the pressure and ensure safe passage of the legislation. It appears to us that this must either be through the receipt by the Minister of faulty advice, a misunderstanding by the Minister of the real situation, or a deliberate attempt to mislead.

Our view of the situation is further evidenced in a response we received from London Fire Brigade on 28 January 2015. This reply was consistent with other responses in stating that the Authority could not give the guarantee we were seeking. However, it went further by stating that it had sought further legal advice which confirmed *earlier* legal advice that it was unable to provide this guarantee. It also confirmed that DCLG had been informed of this position on 9 December 2014 i.e. before the Minister gave her assurances to Parliament.

Once the vote was won and the legislation was passed the Minister changed her stance and has begun to state that the ultimate decision is down to the discretion of each Fire Authority although she **expects** a reasonable employer to be sympathetic. Firefighters know fully well that an **expectation** is not a **guarantee**. This is exactly the type of 'may be' or 'trust me' that the Minister assured Richard Fuller MP would not be the case.

Unfortunately this has been the pattern throughout the negotiations with DCLG in regard to the firefighter pension scheme and a key reason why firefighters in England remain extremely angry at the failure of Government to take proper account of the evidence available.

Next steps

This process has demonstrated clearly and unequivocally that the claims of a 'guarantee' are empty and meaningless. The issue is now being taken up again with MPs and FBU members will be back in Parliament next week to challenge this. The issue has already been raised with a number of MPs who have agreed to follow up the issue.

The Minister has two options to improve the situation - options which are deliverable:

1. She can change the law so the guarantee can be delivered.
2. She can admit to Parliament that she has misled them and be held accountable for her actions.

This is a serious situation and will be discussed by the Executive Council at its meeting on 3, 4 & 5 February. The union is also preparing for a special Conference to discuss pensions to be held on 10 February.

The Executive Council has already issued a draft Statement for Conference which members should be discussing. This Statement will almost certainly be amended to reflect this turn of events and decisions on a way forward will obviously be affected by this.

All Branches should discuss this situation to ensure the views of members are known to Brigade Committees. It is vital that as your delegates prepare to attend Conference that they are absolutely sure of your views on the pension campaign and the next step to be taken.

A short video will be issued shortly to address this issue. Please follow the FBU website for updates on the next steps in our campaign.

Best wishes.

Yours fraternally

A handwritten signature in black ink, appearing to read 'M. Wrack', with a stylized flourish at the end.

MATT WRACK
GENERAL SECRETARY

MW/sll