HOUSE OF COMMONS
LONDON SW1A 0AA

Matt Wrack
General Secretary, The Fire Brigades Union
Bradley House
68 Coombe Road
Kingston Upon Thames
Surrey
KT2 7AE

Our ref: LB/DH

27 March 2015

Dear Matt,

Can I first of all pay tribute to the dedicated work firefighters do and to the bravery they show. It has been a great privilege to work with you and your members in opposing the Government's pension changes. As you know, the Labour Party secured a full debate in the House of Commons and we voted against the regulations.

It is a matter of deep regret that this Government has neglected firefighters' concerns, shown itself to be unwilling to negotiate, and has failed to resolve the damaging dispute over firefighters' pensions. After 49 periods of FBU strike action across England, the Fire Minister's disregard of legitimate concerns over the planned 2015 scheme and the laying of regulations which fail to address these has understandably dealt a blow to morale across the Service.

In addition, the Minister has issued a so-called "guarantee" to Parliament and to firefighters across the country, that those who, through no fault of their own, are unable to maintain fitness into their later years will be offered either a redeployed role or a full, unreduced pension. Labour has repeatedly pointed out the flaws in the Minister's and the Secretary of State's claims surrounding the changes to the Fire and Rescue National Framework. In my view, their continued insistence that their statements bear scrutiny is, to say the least, disingenuous.

You will be aware that the Minister recently challenged me to outline the circumstances in which a firefighter may risk the possibility of losing their job as a result of losing fitness, despite this Government's shallow "guarantee". I have done so, and I enclose my written response to her which I invite you to distribute as you see fit. I will send you a copy of the Minister's reply when I receive it.

I am very conscious that this Government's statements in the House and elsewhere, especially on the "guarantee" have caused unease and anxiety across the workforce. I wanted to take this opportunity, therefore, to write to your members about Labour's stance on the pensions dispute and our wider vision for the Fire and Rescue Service, should we be in Government after May.

With regard to pensions, the bottom line for Labour has always been that a deal should be found which is fair to firefighters and the taxpayer alike within the cost envelope set by the Treasury. On this basis, you will recall that when we pushed the Government to a full Parliamentary debate in December, we highlighted the contrast between the offers in Scotland and Wales and that imposed by DCLG in England. Based on the evidence around firefighter fitness, and the clear risks to public and firefighter safety, we argued that a better deal for those unable to maintain their fitness was achievable, affordable and necessary.

In particular, we argued that the Government should look again at the reduction for firefighters taking early retirement from age 55. The Government's own calculations showed that a reduction of 12.8% at 55, rather than the unduly punitive 21.8% stipulated by the Minister's regulations, was equally affordable within the cost envelope, accommodated by an adjustment in the accrual rate. We simply do not understand why the Government did not take this deal when it was initially put forward in June 2013, and it is something a Labour Government will consider within the cost envelope available. We know there are also concerns around protections for members of existing schemes. Again, these are issues that we will look at provided it is also within the current cost envelope.

Of course, all considerations will need to take into account that the scheme will have already come into force by the time a new Government accedes to power. It is important therefore that we fully understand the implications of any future or retrospective changes to the regulations for the scheme and its members.

We will always seek to negotiate in good faith and we will not make promises we are unable to keep, as this Government has repeatedly done over the past five years.

As you know, Labour has also begun an open and frank conversation with firefighters and Fire and Rescue Authorities about the future shape of the Service. We have offered up a range of potential options for discussion and we remain genuinely open-minded about the way forward and would welcome your views. Importantly, we have been clear that our number one priority will be to protect the frontline within tough financial constraints.

We have given further important reassurances. Under Labour, Fire and Rescue Authorities will not be subsumed under Police and Crime Commissioners, as Theresa May has hinted she would like to see. We will scrap PPCs altogether. They are wasteful and unaccountable and they are not the right way to govern our Fire and Rescue Services.

I know that some firefighters will be worried about the prospect of privatisation. Labour has been firm and unequivocal: there will be no privatisation of the Fire and Rescue Service. We are also opposed to allowing privatisation through the back door by mutualisation, as we have shown in opposing the Tory-led Government's

plans in the Parliament. Our Fire and Rescue Service is a critical emergency resource and under a Labour Government, public safety, not private profit, will drive development and innovation.

We have also announced that we will introduce a statutory duty for Fire and Rescue Services to respond to flooding incidents, with the express purpose of providing clarity and increasing safety.

A Labour Government will invest the leadership to oversee not just a smarter use of public money, but an opportunity to position the Fire and Rescue Service for the sustainable long-term. Firefighters are all aware of the stark financial challenge ahead, but a Labour Government will not have a slash-and-burn approach to public services and will not leave our Fire and Rescue Services to sink or swim. Instead we will provide the leadership, support, and partnership you are so long overdue to move forward together.

Yours sincerely

Lyn Brown
Shadow Fire and Communities Minister
Member of Parliament for West Ham

Enc: Letter to Penny Mordaunt MP, 27 March 2015

HOUSE OF COMMONS

LONDON SW1A 0AA

Penny Mordaunt MP
Parliamentary Under Secretary of State
Department for Communities and Local Government
Fry Building
2 Marsham Street
London
SW1P 4DF

Our ref: LB/DH

27 March 2015

Dear Penny

At last week's Communities and Local Government Questions, you suggested that I write to you to help you understand the circumstances in which a firefighter could lose their job for fitness reasons, following the laying of the regulations and the changes to the National Framework.

I am sure you will have been inundated, as I have, with correspondence from firefighters over past days, setting out the precise scenario in which they could face dismissal. They make a very powerful case, in which it is clear that your protections are wholly insufficient.

I did find your answers to the House last week rather disingenuous. It would appear that you are receiving advice that your guarantee of a job or a full pension for firefighters who, through no fault of their own, cannot maintain fitness into their late 50s, can be achieved by the regulations you have laid and the changes you have introduced to the National Framework.

As you should know, the Fire and Rescue National Framework represents guidance only; it is not underpinned by a legal requirement for a Fire and Rescue Authority to follow each of its recommendations. By contrast, Fire and Rescue Authorities must only ***"have regard"*** to the Framework, and whether or not an Authority chooses to adhere to its provisions and commence authority initiated retirement remains entirely at their legal discretion.

Even the premise of your own challenge to me last Monday implies a recognition that following the Framework is the individual choice of each Fire and Rescue Authority. If I may quote you at some length, "*If she [Lyn Brown] is still unsatisfied, I offer her this challenge: to write to me and outline a circumstance in which a firefighter would face losing their job for losing fitness and would not be protected **if** the fire authorities were following the national framework principles.*"

Over past weeks, you have repeatedly stated that, *"If a fire authority does not comply, the Secretary of State will intervene."* If you mean thereby that Fire and Rescue Authorities will have no choice but to follow each of the provisions of the National Framework, then surely you will recognise that this fetters the discretion currently afforded to Fire and Rescue Authorities, which they have said would be ***"unlawful."*** I should be grateful to understand from you whether you now intend to change the law to remove this discretion. Should that not be your intention, what other remedial measures will you enact?

In response to my recent Parliamentary Question, you confirmed that the powers of intervention afforded to the Secretary of State in relation to the National Framework have not been used since the Fire and Rescue Services Act came into force in 2004. You should be aware that there is a strict process of intervention, outlined in the 'Protocol on government intervention action on fire and rescue authorities in England' document, most recently published by your Department in May 2013.

This protocol provides that there is a first stage of intervention in which, *"...the Local Government Association will work with the authority to help them address the issues and improve."* At the second stage, the Secretary of State can commission a corporate governance investigation or an investigation by the Chief Fire and Rescue Adviser, *"...if, following a sustained and determined attempt to resolve problems through sector-led improvement, an issue cannot be resolved."*

If a statutory intervention under section 22 of the Act is still then considered necessary, *"...the Secretary of State will consult both the authority concerned and the Local Government Association...before exercising his powers."* Statutory intervention would, therefore, only follow a lengthy process of other measures, with the key involvement of the LGA. Incidentally, as I am sure you are aware, the LGA has made clear its position that Fire and Rescue Authorities cannot provide the guarantee of an unreduced pension. In a circular dated 24 September 2014, they stated, *"The FBU position appears to remain that they seek a guarantee that such discretion will result in application of a non-actuarially reduced pension.* ***In that regard, you will recall the QC opinion commissioned by the LGA which is clear that it would be unlawful for either the National Employers on behalf of all FRAs or an individual FRA to agree such a position."*** It seems highly questionable whether they would agree with the Secretary of State.

There appears to be good reason, as a consequence, why the powers of intervention have not been used, given the extent of the protocol that must be followed in such an event. The idea that the National Framework could be used to intervene in individual employment cases is frankly preposterous. Your repeated assurances to Parliament and to firefighters that the Government will intervene to ensure compliance so that no firefighter will face the possibility of losing their job clearly have little basis. Firefighters will rightly worry that you are unable to deliver the guarantee you promised.

When considering payment of authority initiated retirement, Fire and Rescue Authorities will have to comply with Regulation 62 of the new Firefighters' Pension Scheme Regulations, regarding employer initiated retirement which says that: ***"An employer may only pay a retirement pension of the amount mentioned in paragraph (1) in the circumstances mentioned in the paragraph where the employer determines that a retirement pension awarded on that basis would assist the economical, effective and efficient management of its functions having taken account of the costs likely to be incurred in the particular case."*** Given that payment of a full, unreduced (authority initiated) pension would incur a significant cost to Fire and Rescue Authorities at a time when they are already being asked to meet challenging budget reductions, your own regulations provide a clear disincentive to employer initiated retirement.

This is the clearest evidence that your guarantee does not stand up to scrutiny. Firefighters understand, as you should, that consideration of the economic implications of authority initiated retirement are a legal requirement for every Fire and Rescue Authority. This is not best practice guidance; it is the provisions of your own regulations under the proposed 2015 pension scheme. Indeed, Fire and Rescue Authorities must determine that such a decision would be economically efficient. It is hard to conceive of circumstances in which this could be found to be the case, and you should stop trying to pull the wool over the eyes of firefighters and the public by repeating the guarantee of a job or a full pension.

You should be aware that provision of a full, unreduced pension is at the legal discretion of each individual Fire and Rescue Authority. In response to a recent FBU survey, many Fire and Rescue Authorities have said that they are unable to substantiate the 'guarantee' you gave the House, when the new regulations were debated in December.

As you will be aware, the London Fire Brigade has taken legal advice, confirming this is the case. They further stated that, ***"It is clear that as the regulations currently stand the Authority is unable to give any guarantee except that it will commence consideration of an employer initiated early retirement...and make a determination."*** One Fire and Rescue authority stated that to provide such a guarantee would fetter their discretion, and that to do so would be ***"unlawful."***

The Addendum to the Framework, published by your Department last year, clearly outlines the flexibility enjoyed by Fire and Rescue Authorities in cases where firefighters in their late 50s are unable to regain or maintain operational fitness.

Should a Fire and Rescue Authority choose to follow the stipulations of the Framework, they would be committed to undertaking six months of remedial training in an effort to regain fitness. This would protect firefighters from being dismissed the moment they fall below the necessary fitness levels, but it provides no protection beyond this initial six-month period; thus firefighters aged 55-59 still face the risk of losing their job. This is underlined by the second point in the Framework, which requires that each Fire and Rescue Authority must, ***"ensure that no individual will***

automatically face dismissal if they fall below the standards required and cannot be deployed operationally."

Should a firefighter be unable to regain appropriate fitness levels through remedial training, the Framework merely requires Fire and Rescue Authorities merely to ***"fully explore"*** opportunities for redeployment. It does not guarantee a firefighter an alternative role.

The Framework asks only that Fire and Rescue Authorities ***"consider"*** commencement of the authority initiated retirement process for those firefighters ineligible for ill-health retirement, unable to regain fitness, and for whom there are no available alternative roles, into which they may be for redeployed. Again, this does not constitute a 100% guarantee of a full, unreduced pension.

Whilst it is true that the fitness principles within the National Framework are on a statutory footing, this does not mean it is a statutory requirement for Fire and Rescue Authorities to follow each of its stipulations. As I have said, section 21 of the Fire and Rescue Services Act 2004 requires only that, ***"fire and rescue authorities have regard to the Framework in carrying out their functions."***

The introduction to the current National Framework document, published in July 2012, underlines its non-prescriptive status. Your predecessor but one, the former Tory Fire Minister, Bob Neill, stated, ***"The Framework sets out high level expectations. It does not prescribe operational matters. These are best determined locally by fire and rescue authorities, working in partnership with their communities; local citizens, businesses, civil society organisations and others."*** As you should know, the Framework itself is at best non-binding guidance for Fire and Rescue Authorities.

Taking the above into account, it is little wonder that I, and firefighters across the country, feel you have not provided the guarantee you promised, despite your assurances to Parliament. With regard to the regulations you have laid, and the provisions you have outlined in the changes to the Fire and Rescue National Framework, I would hope that you now understand fully that a firefighter faces the distinct and present risk of possible dismissal or an actuarially reduced pension at early retirement. Furthermore, I would expect you to know that the guarantee you offered of an alternative role, or entitlement to an unreduced pension, is clearly not underpinned by the legal framework of the new pension scheme.

In response to my colleague, the Hon Member for West Lancashire (Rosie Cooper MP), who asked how many redeployment opportunities exist, you answered that you, ***"do not hold that information at departmental level."*** This is a question that firefighters across the country have asked me and which I know they will have asked you. It is disappointing, to say the least, that three months after the question was posed during December's debate, you still have not undertaken to collect this information.

Your response continued, *"I think that the shape of the fire and rescue service in the future and the many new things that firefighters will be doing will mean that there will be roles that are more suitable for those who are not fit enough to perform all the roles that a firefighter might."* Firefighters have been undertaking a number of additional non-emergency duties, particularly since the introduction of Home Fire Safety Checks in 2004, but budget reductions since 2010 have understandably led to worries that such redeployment opportunities will be hard to find. As you will know, there will likely be further significant cuts yet to come, and I can only presume the DCLG will carry at least, if not more than, the financial burden it has had over the last Parliament. Given your answer last week, I should be grateful to understand what further new roles you anticipate and how many redeployment opportunities you assess will be created.

Firefighters are among our bravest public servants and they deserve our support. It is deeply regrettable that this Government has chosen to ignore their concerns and lay regulations regardless. On taking up your role as Fire Minister last summer, you said that resolving this deeply damaging dispute was your priority. I know this was welcomed by firefighters across the country. Little did they realise that your idea of resolution was simply to lay regulations and ask firefighters to accept at face value the guarantees you gave; guarantees which this letter and many other letters have shown to be baseless. Firefighters feel unheard and let down by your repeated broken promises. You have failed to negotiate and failed to bring an end to this dispute. Moreover, you continue to repeat the guarantee of an alternative role or a full, unreduced pension, despite the considerable evidence to the contrary from your own regulations and your changes to the National Framework.

I look forward to reading your considered response, which I hope and trust will be one that covers each of the points raised in this letter. I further look forward to hearing your understanding of how you will seek to ensure your guarantee is reflected in the legal basis of the new pension scheme provisions. I, but more importantly firefighters across the country, need to know how your guarantee has a real basis in law. Currently, this is not the case.

I will publish this letter to demonstrate that I have risen to the challenge you posed. I will also publish your response, which I hope to receive soon.

Yours sincerely

Lyn Brown
Shadow Fire and Communities Minister
Member of Parliament for West Ham

[cc]: Rosie Cooper MP
Rt Hon John Bercow MP, Speaker of the House of Commons