



The Fire Brigades Union

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COPY OF LETTER SENT TO ALL MP'S

House of Commons
Westminster
London
SW1A 0AA

Dear

The DCLG Fire Minister, Penny Mordaunt, has once again written to all Coalition MPs in England regarding the current situation around the firefighters' pension dispute.

This response is to correct a number of inaccuracies in her letter. The suggestion that the Minister has somehow given firefighters protection and reassurance is misleading and will worsen the situation.

Various sections of the letter have been selected to highlight the inaccuracies and an FBU explanation has been added.

Penny Mordaunt: Working until 60 was part of the 2006 scheme, and no protections were put in place for older workers.

FBU: This is misleading and inaccurate. The 2006 scheme was imposed with a recognition that if a firefighter could not work until age 60 they would be redeployed. The FBU raised concerns about it at the time and have subsequently proved that, even if they existed at the time, such redeployment opportunities do not exist today.

*The most misleading claim here relates to protection arrangements. In 2006, all current firefighters were protected by ring-fencing. DCLG have ripped up the ring-fencing agreement and replaced it with a **reduced** protection arrangement which only covers firefighters who were within 10 years of their Normal Pension Age on 1 April 2012. This has removed protection for thousands of firefighters who were protected in 2006.*

Penny Mordaunt: What we have done is add to what was agreed then, with improved protection and better actuarial reduction rates for those who want to retire earlier.

FBU: The claim that protection has been improved when it has clearly been worsened will anger the thousands of FBU members affected. This claim turns reality on its head.

The actuarial reductions proposed by DCLG are still excessive and mean that a firefighter who is forced to retire at 55 will get a reduction of almost a quarter of

their pension while in Wales and Scotland a firefighter in the same situation will see a much lower reduction of around 9%. The FBU has tried to negotiate this for firefighters in England as we did in Wales and Scotland but DCLG have simply refused even though it is deliverable - even within the current cost restrictions imposed.

Penny Mordaunt: Despite Dr Williams finding that there is no reason why all firefighters could not remain operational until 60 and the fact that we already have 1,000 firefighters over 55 and haven't seen a single dismissal on fitness grounds, we decided to introduce further protections for older workers.

FBU: Again, this is inaccurate and misleading. What Dr Williams actually wrote was based on current practices of setting a standard of 42VO2 max but allowing firefighters to remain operational at 35VO2 max. It is therefore only by lowering standards that policy would ensure that 100% of firefighters who remain physically active will still be operational at age 60 assuming they remain free from injury and disease.

However the safe recommended standard for firefighting adopted by the majority of FRAs is 42VO2 max and individuals below this are usually selected for remedial training for a short period of time only. A recent report 'Enhancing the Health, fitness and performance of UK firefighters' from the Department for Health, University of Bath, identified that;

The general fitness standards within the UK FRS are a predicted VO2 max of 42 mL.kg-1.min-1, below which an individual may continue work but is advised to improve fitness; and 35 mL.kg-1.min-1, below which an individual is deemed unacceptable for work until they attain a suitable standard from remedial training...

The present study indicates that firefighters with an aerobic capacity below an occupational fitness standard of 42.3 mL kg-1.min-1 would not be guaranteed to be safe and effective in their ability to complete necessary roles within their occupation. Although this does not greatly differ from the current fitness standard of 42 mL.kg-1.min-1, it does indicate that the lower VO2 max standard of 35mL.kg-1.min-1 for continuation of work with remedial training amongst operational firefighters is potentially unsafe for the majority of firefighters.

This recent report indicates that allowing firefighters to remain operational below the safe recommended standard is potentially unsafe. The DCLG claim about all firefighters remaining operational until age 60 is based on these potentially unsafe levels. DCLG and the Minister are either unaware of the latest research on fitness issue - or they deliberately ignore it.

*The claim that there are 1,000 firefighters above the age of 55 is not relevant to the argument. The Minister does not give any details on the **roles** of these firefighters, or whether or not they are **tested** regularly. In fact Government's own figures show that data collected from four Fire Authorities showed that at age 55-60 years, 66% (70 of the 106) were below the recommended safe fitness standard. If this were consistent across the 1,000 firefighters that DCLG claim are working beyond age 55 it would mean that 660 of the 1,000 were actually below the recommended safe standard.*

Penny Mordaunt: We did this because without these assurances people might want to leave the Service early for fear that they would not be able to enjoy a full career. We want firefighters to be confident that their employers and the Government will support them to work to their Normal Pension Age.

FBU: Firefighters needed the guarantee that the Minister provided in Parliament. This clear and firm assurance influenced the vote and ensured the legislation was

supported. However, now it has passed the Minister has altered her position and states that employers still have the ultimate decision as to whether firefighters will receive an unreduced pension or face dismissal.

Penny Mordaunt: We looked at a range of ways of doing this with the FBU. Because there is no one fitness standard common to all Fire Services in England we could not employ exactly the same route used in Scotland - but we could amend the National Framework to require Fire and Rescue Authorities to have regard to the steps of providing support for firefighters to regain fitness, or to consider redeployment or the provision of an unreduced pension. This amendment to the National Framework came into force on 12 January and is now law. Part of the force of the protection is created by this: previously the FRA did not have to go through that process, now they must. The SI states they 'will'. It is not optional.

FBU: We have consistently told Government that the National Framework route would not provide the guarantee firefighters require. This was supported by our legal advice and was also the view of the National Employers. This was confirmed to DCLG on numerous occasions.

The FBU response to the consultation on the amended Framework highlighted this as did the response from the National Employers.

*The reality is that a Fire and Rescue Authority must **have regard** to the National Framework. This is confirmed in a letter from the Minister to coalition MPs dated 26 January 2015. Even if a Fire Authority decides to adhere to the Framework, the Framework itself is worded so that the FRA still has the **discretion** to award an unreduced pension or not. The National Employers and local employers have confirmed that they are unable to fetter this discretion and will consider each case on its own merit and will not be able to provide the guarantee suggested by the Fire Minister.*

*What is legally required is that each FRA must **have regard** to the Framework and must **consider** awarding an unreduced pension in the circumstances outlined. This is not the promise that was made by Penny Mordaunt in Parliament and not the guarantee that influenced the vote to support the 2015 pension legislation.*

Penny Mordaunt: The fitness principles themselves should ensure that firefighters who do not have an underlying ill-health condition, will remain in work until they are 60 and this should provide firefighters with greater confidence. However, in the unlikely event that a firefighter is not eligible for ill-health retirement and fails a fitness test, with no redeployment opportunities available, then the Secretary of State and I have been crystal clear - they should be offered an unreduced pension.

*FBU: The word to focus on here is 'should'. It is used to say that firefighters in this situation who do not qualify for ill-health retirements **should** feel more confident that they **should** be offered either a redeployment opportunity or an unreduced pension. MPs and firefighters were told in Parliament that they 'will' get an unreduced pension in this situation. The Minister's previous 'will' has become 'should'.*

Penny Mordaunt: The National Employers with, we expect, union input, need to devise what the process looks like for people in that position, and I am pleased to say that I have met with them, and they have agreed to start work on looking at the processes involved. They have seven years before the process needs to be in place, but we have stressed to them that the earlier this can be devised the better - firefighters need to see how this will happen. The National Employers have a meeting with my Department to talk through this in early March and I expect them to make swift progress after that. DCLG will audit compliance with the new fitness principles in the Framework and if we find fire and rescue authorities not complying, the Secretary of State has the powers to intervene. That process and the auditing of compliance completes the protections we have introduced.

FBU: This is a simple case of Government creating a huge problem and expecting someone else to resolve it.

The Employers have made it absolutely clear in writing that they are unable to provide the guarantee that Government have made. Government were made aware of this before the debate and before they made their promise - so they have no excuse.

The most accurate part of this whole letter is contained in this paragraph and is a point that we have been stressing for a considerable length of time. It is that firefighters need to be assured that the guarantee will be delivered now when many are making a decision for the future. Firefighters need to know if there is a guarantee or not. That should be straightforward but the Government is simply dodging the issue and saying that the Employers and the union need to devise a remedy. This is totally inappropriate. The Government is imposing the scheme, and has been made aware from both the Employers and the FBU that their assurances are undeliverable. However, the Minister and her officials are simply offloading the responsibility and attempting to confuse the issue completely. What is absolutely clear is that the Government 'guarantee' based on use of the Framework does not provide the assurance necessary to firefighters.

*The suggested audit is completely inadequate. All that any FRA has to do to comply with the Framework is to confirm that it **considered** awarding an unreduced pension in these circumstances - even if it then decided not to do so. The Secretary of State cannot enforce the so-called 'guarantee' of local employers because the legislation he introduced actually forces them to do the opposite of what he and his Minister have claimed.*

The Fire Authority concerned will be free to simply respond to any audit or intervention by simply saying that the rules of the scheme which have been introduced by Government mean that they cannot provide the guarantee that the Minister is saying - even if they wanted to. The rule which was introduced by DCLG means that no Fire Authority can provide a clear guarantee because they are directed by legislation to consider all factors including costs in each individual case. The relevant rule is copied below for your information. If the Minister had ever intended to honour any guarantee this rule would not have been included or would have been amended to reflect this position.

62.—(1) Where an active member who has attained the age of 55 or over but has not attained normal pension age is dismissed by an employer from a scheme employment by reason of business efficiency or whose employment is terminated by mutual consent on the grounds of business efficiency and the employer makes the determination in paragraph (2), that member's pension is calculated in accordance with regulation 59 (annual rate of retirement pension (active members)) without the early payment reduction.

(2) An employer may only pay a retirement pension of the amount mentioned in paragraph (1) in the circumstances mentioned in that 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.

This is a clear case of a Government Minister creating an impression that there is a clear Government guarantee in Parliament whilst knowingly putting forward legislation in the same debate that directly contradicts this very claim.

The FBU have written to the Minister concerned asking her to meet with us to explain the guarantee but she has refused. The FBU has also written to the Prime Minister highlighting this issue but he has not responded to our letter. Unless this is addressed, it will clearly appear to firefighters that the Government is willing

to mislead Parliament and do nothing to address the matter when concerns are raised.

Penny Mordaunt: The work of the fitness group itself, facilitated by the Chief Fire and Rescue Adviser, will also open up further avenues for consideration, including the fitness required for specific roles, as well as exploring the appetite amongst Fire and Rescue Authorities for a national fitness standard. In advance of that work we have no other option to create something different. If there were something further we could do now, we would have done it.

*FBU: The Government is imposing a scheme that is unworkable with a sham guarantee that depends on the appetite of local Fire and Rescue Authorities for any national fitness standard. It depends on them being good employers and the fact that they should **consider** awarding an unreduced pension if firefighters age 55 cannot maintain operational fitness or be redeployed.*

*The Secretary of State and his Minister are trying to offload responsibility by claiming that if they could do more they would. There clearly is more they could do and we have reminded them of this. Lord Hutton did not recommend **imposing** an NPA of 60; he recommended that Government should '**consider**' an NPA of 60. Throughout these discussions, Westminster Ministers have simply ignored the evidence put before them. In contrast to this, Ministers in Scotland, Wales and Northern Ireland have engaged in genuine dialogue and negotiation.*

Penny Mordaunt: We very much hope that the leadership of the Fire Brigades Union will call off their unnecessary and continuing industrial action, see sense, and engage with the process of implementing the pension regulations which come into force at the start of April.

FBU: Firefighters are keen to resolve this dispute but they have a number of genuine concerns that DCLG has refused to address. We are confident to stand by our case and we have challenged the Minister to answer any of our claims. The Government is currently refusing to meet us to discuss our concerns. We have demonstrated how Government has misled Parliament in relation to this issue. We have always opposed the NPA of 60 but have shown ways in which it could be mitigated.

The legislation that introduced the 2015 pension scheme for firefighters was supported following a guarantee given by the Minister that a firefighter facing a decline in fitness would be granted an unreduced pension or a redeployed role. We have demonstrated beyond doubt that this is a false claim. The Government has the power to amend the legislation at any time but is simply ignoring the overwhelming evidence we have provided. It is this which lies behind the huge anger among firefighters.

Firefighters want a negotiated resolution to this long-running dispute. The responsibility for the dispute and for the bad feeling in our Service lies entirely with the DCLG Fire Minister and with the Secretary of State.

Yours sincerely



MATT WRACK
GENERAL SECRETARY