The Fire Brigades Union

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Rt Hon David Cameron MP
Prime Minister
10 Downing Street
London, SW1A 2AA

Dear Prime Minister

WHY ARE YOU ALLOWING YOUR MINISTERS TO MISLEAD PARLIAMENT AND FIREFIGHTERS OVER PENSION CHANGES?

I know that you will have been following the long-running firefighter's dispute in relation to your Government's pension proposals. Throughout all our discussions firefighters have opposed these proposals. We have done so on the basis of a thorough examination of all the available evidence and detailed testing and challenge of Government proposals at every stage. We have fully engaged with the process at every stage and have attempted to discuss this matter honourably with the three Ministers who have been responsible for fire service policy during your term of office.

The recent lobbying of MPs that resulted in the debate and vote in Parliament on 15 December 2014 was yet another example of the resolve of firefighters on this matter. Many firefighters attended the debate and many, many more watched the debate on television.

While several key areas of concern to the FBU remain unaddressed, the debate did consider a crucial issue that we have been trying to seek clarity on; the question of what would happen should a firefighter fail a fitness test through no fault of his or her own.

During the debate your Fire Minister, Penny Mordaunt gave repeated guarantees to Parliament in relation to firefighters receiving unreduced pensions in the circumstances we have outlined and when they could no longer maintain operational fitness. She subsequently also wrote to me and confirmed that a decision had been taken in Parliament that should a firefighter fail a fitness test through no fault of his or her own, the Fire & Rescue Authority should consider suitable alternative employment, and if that is not possible and the employee is at least age 55, commence an Authority-initiated retirement and pay an unreduced pension.

Her letter was consistent with the debate. I have copied extracts from the debate where she clarified this on several occasions, including these ones to Duncan Hames MP, Richard Fuller MP and Peter Bone MP:

> ***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?*
>
> ***Response****: 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.*

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> ***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.*
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> ***Response****: 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.*
>
> ***Peter Bone*** *(Wellingborough) (Con): 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 –*
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> ***Response****: I am very happy to give those assurances. We have done that. 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.*

Your DCLG Secretary of State Eric Pickles reiterated these guarantees on 16 December at the Communities and Local Government Committee where, in response to a question, he replied:

> *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*".

Firefighters and Members of Parliament were left in no doubt that your Government Ministers had given a Parliamentary guarantee in relation to this issue. It was clear from the debate that this was enough to ensure that the legislation was supported through the House of Commons.

<u>The application of the Government guarantee</u>

Firefighters welcomed this guarantee which on the face of it resolved one important aspect of our dispute. However, we had to be clear that this guarantee was deliverable with employers both nationally and locally.

We have written three letters to the DCLG Fire Minister requesting a meeting to discuss how the guarantee will be delivered and we have suggested a tri-partite meeting (including the employers) so that all parties can be absolutely clear about what the guarantee 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.

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We have also written to all Fire Authority Chairs in England and Wales asking them how they will be implementing the guarantee and asking them to share any process they have in place to ensure it will be delivered as promised by your Fire Minister and the Secretary of State.

The letters were designed to be unambiguous and relate to the following circumstances:

- A firefighter is unable to pass a fitness test through no fault of his/her own and following a period of rehabilitation this remains the case;
- The firefighter is at least 55 years of age;
- He/she does not qualify for ill-health retirement; and
- The employer is unable to redeploy the firefighter within his/her role.

The letter also explained that, although we fully appreciate that the Authority will do everything possible to avoid such circumstances, clarity is needed about what would happen should they arise.

We have asked every Authority to:

1. Confirm that there is a guarantee that in such circumstances a firefighter will not be dismissed and that instead will they be awarded an unreduced pension as outlined by the Secretary of State and the DCLG Fire Minister.

2. Provide the policy whereby this is being introduced into the Service.

We have subsequently received numerous responses which state that the Fire Authority cannot provide the assurance we asked for. The responses received so far say that providing such an assurance would be unlawful under the present circumstances whereby they must consider certain other criteria on each 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)****.*

On the 6 February the National Employers also responded after taking legal advice. Their response again confirms that *'employers would be unable to provide any blanket guarantee'*.

Far from this being a new position, it is precisely the position as understood by the union and that which we have explained to your Ministers on numerous occasions.

In Parliament the Minister stated clearly that there was a guarantee while in reality the situation was exactly as the FBU had consistently argued and any decision about payment of a pension relied on the discretion of the employer.

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I must draw your attention to one particular 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 your Minister gave assurances to Parliament on behalf of your Government.

This suggests a clear case of Parliament being misled by your Minister.

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. We have secured improvements in other parts of the UK which have meant that strike action has not been called. Those improvements are within the HM Treasury cost restrictions placed on the schemes. However we have not been able to make any such progress with your Government. To add insult to injury your Government seems to have chosen to mislead Parliament, firefighters and the public with worthless guarantees while having the clear prior knowledge that the promises you make will not be delivered.

Firefighters are committed to resolving this issue through negotiations. This can be evidenced by the position in Wales, Scotland and Northern Ireland. Firefighters do not deserve to be misled in respect of such an important issue to them.

I am aware that normal practice would be for this matter to be referred to the Department responsible. However, this has now become a matter not simply of policy but of trust and confidence in the Parliamentary procedure and your stewardship of the same.

We are, of course happy to meet to discuss this at any time.

Yours sincerely



MATT WRACK
GENERAL SECRETARY

cc: Rt Hon John Bercow MP – Speaker of the House of Commons
Rt Hon Hilary Benn MP
Lyn Brown MP
John McDonnell MP