



The Fire Brigades Union

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Circular: 2014HOC0691MW

2nd December 2014

TO: **ALL MEMBERS [England]**
CC: **Brigade Secretaries**

Dear Brother/Sister,

FBU RESPONSE TO DCLG FIRE MINISTER'S OPEN LETTER TO ENGLISH FIREFIGHTERS 24TH NOVEMBER 2014

The DCLG fire minister Penny Mordaunt wrote to all firefighters in England on 24 November. Unfortunately, her letter was misleading and inaccurate. As with a number of other 'Open Letters' we have added comments to this letter to try and give a more balanced and accurate assessment of the current situation

PM: Many of you have written to me regarding the reforms to the firefighters' pension scheme. These letters are tremendously helpful in identifying remaining areas of concern and one recurrent theme is working longer. In this letter I hope to be able to provide some clarity on these points. Since the introduction of the 2006 scheme, a normal pension age of 60 has been in place - and it remains so with the introduction of the 2015 scheme, which continues to hold a lower normal pension age for firefighters compared with non-uniformed public sector workers.

FBU: When the previous government introduced the New Firefighters' Pension Scheme (NFPS) with a normal pension age (NPA) of 60, the FBU said that the scheme was unworkable and did not reflect the occupational nature of the job. The government promised that there would be sufficient redeployment opportunities for firefighters that could not maintain operational fitness. Part of the FBU submission to the Williams' review included a four page report on redeployment opportunities in English FRAs. This report showed that in reality there were almost no redeployment opportunities at all. (This report is included for your information).

PM: A larger proportion of firefighters are protected from pension reform changes than in any other large public sector workforce and, for those who will see a change, existing earned benefits are fully protected and no firefighter will have to work beyond their current expected pension age until 2022. So we have over seven years in which to put in place protection, good practice and workforce management practices that will provide the assurances you need should you wish to have a full career in the service and work until your normal pension age.

FBU: In reality what government have done is reverse the previous governments' agreed position in 2006 that current members of the 1992 New Firefighters' Pension Scheme (FPS) would be ring-fenced and would be able to remain in their current scheme. Now they are trying to say that this is a good deal. Government have still not produced any evidence to show that large numbers of firefighters can maintain their operational fitness until age 60. Even the promise DCLG are making is flawed because a large number of FPS members who

are within 10 years of their own maximum pensionable service are not protected because the proposal only relates to age - not to length of service. The Westminster government have addressed this for the police and Scottish government has addressed it for firefighters, but DCLG are refusing to do so for firefighters in England. The FBU is currently preparing a legal challenge on this issue.

PM: 1) Stronger ill health retirement

If a person has a permanent medical condition preventing them undertaking their role, they would be eligible for ill health retirement. The scheme that is currently before Parliament provides greater ill-health and death benefits than the Fire Brigades Union's preferred approach. The further protections and good practice being examined are therefore centred on those firefighters who lose fitness through no fault of their own but who do not have a permanent medical condition which prevents them being a firefighter.

FBU: This is simply masking the point about being able to access a pension at age 55. The ill health provisions in the government's proposal are slightly better but if that is their only argument then they should have made it when they improved the 47.1% reduction to the 21.8% because that also worsened the ill health provision, because the accrual rate was worsened. The FBU has been trying to achieve an improved position for 55 year olds because all the evidence points towards the fact that people will not be able to work beyond that age in the numbers required. There is no point in having a better scheme for 60 year olds if the majority of pension scheme members simply cannot achieve that pension age and instead see their pension actuarially reduced at 55 with huge reductions.

The FBUs preferred approach is simply to get a fairer actuarial reduction for firefighters who have to face a choice at age 55. Our case suggests that the reduction should be around 9% instead of the 21.8% that DCLG is suggesting. The Scottish government has proposed this option already and the Welsh government is consulting on options including our suggested method. The simple comparison table below shows the difference between the DCLG proposal and the preferred proposals

Age retirement at	(1) England	(2) Scotland	(3) Ireland	(4) Wales
Accrual Rate	1/59.7 th	1/61.6 th	1/64.8 th	1/61.5 th
Reduction at 55	21.8%	9.0%	Nil	9.0%
55	£13,059	£14,728	£15,385	£14,751
56	£14,110	£15,457	£15,833	£15,482
57	£15,216	£16,203	£16,282	£16,229
58	£16,434	£16,965	£16,730	£16,993
59	£17,751	£17,745	£17,178	£17,774
60	£19,132	£18,542	£17,627	£18,573

(This table uses figures that are based on a firefighter joining the 2015 scheme age 20 joining on a salary of £21,799 before moving onto a competent rate of £29,054 after 5 years. This example uses similar figures that DCLG have used when they say a firefighter retiring at age 60 after 20 years will receive pension of around £19,000. While the figures may change, the case that options 2, 3 & 4 provide a better return at ages 55-58 and 4 also provides a better return at ages 55-59 remains constant).

The Welsh government consultation has included two options the DCLG proposal (21.8% reduction) and the FBU suggested proposal (9% reduction) and suggested that they have no preference. They are giving responders to the consultation the option of saying which one they prefer. This seems a much more reasonable approach. If DCLG were so keen to provide the best option they can (even within the cost ceiling) logically they should consider also giving this option.

PM: 2) Fitness principles on a statutory footing

Key to this is the consultation I launched at the time the pension regulations were laid in Parliament, to get fitness principles embedded in the National Framework, using a statutory instrument (SI). The consultation itself closes on 9th December. Fitness issues are a matter for fire and rescue authorities as employers and are not being changed by the 2015 pension reforms. Nevertheless, in response to the concerns you have raised, we are consulting on two proposals which would place wording into the statutory national framework to which fire

and rescue authorities must have regard. Both proposals require that each fire and rescue authority must:

- have a process of fitness assessment and development to ensure that operational personnel are enabled to maintain the standards of personal fitness required in order to perform their role safely;
- ensure that no individual will automatically face dismissal if they fall below the standards required and cannot be deployed operationally;
- ensure that all operational personnel will be provided with support to maintain their levels of fitness for the duration of their career;
- consider where operational personnel have fallen below the fitness standards required whether an individual is able to continue on full operational duties or should be stood down, taking into account the advice provided by the authority's occupational health provider. In making this decision, the safety and well-being of the individual will be the key issue;
- commit to providing a minimum of 6 months of development and support to enable individuals who have fallen below the required fitness standards to regain the necessary levels of fitness;
- refer an individual to occupational health where underlying medical reasons are identified that restrict/prevent someone from achieving the necessary fitness and that individual must receive the necessary support to facilitate a return to operational duties; and
- fully explore opportunities to enable the individual to remain in employment including through reasonable adjustment and redeployment in role where it appears the medical condition does not allow a return to operational duties.

The second proposal is the same as the first, but requires that if no underlying medical issues are identified and, following a programme of development and support, it becomes apparent that an individual will be unable to regain the necessary levels of fitness, then a fire authority will fully explore opportunities for reasonable adjustments and/or suitable alternative employment. In those circumstances where there are no opportunities for reasonable adjustments or suitable alternative employment, the fire authority will in the case of an employee aged at least 55 consider commencement of the authority initiated early retirement process for it to determine whether the individual should be retired with an authority initiated early retirement pension.

FBU: The FBU has prepared a response to this consultation outlining why this procedure simply doesn't work and will not provide any guarantee that firefighters will not be sacked as they lose their operational fitness as a result of the aging process. Neither of these two proposals are fit for purpose. (The full response is available shortly on the FBU website www.fbu.org.uk)

Both proposals suggest a method which requires an authority to have a fitness process, assessment method as well as a further development procedure designed to enable an individual to maintain their operational fitness for the duration of their career. It is very important to stress that although the National Framework wording stipulates what a fire authority 'must' and 'shall' this must all be considered in the context that that a fire authority must only '**have regard**' to the content of the National Framework. This means in real terms that a fire authority has clear discretion whether or not to adhere fully to the National Framework. Therefore the real problem remains one where the National Framework is guidance only and by allowing the discretion to ignore the guidance words like 'must' and 'shall' do not actually mean that the guidance has any mandatory status.

This means that when they suggest that it will ***ensure that no individual will automatically face dismissal if they fall below the standards required and cannot be deployed operationally***; it must be recognised that it simply cannot deliver in its present format.

This problem is highlighted further in this proposal by the phrase '***the fire authority will in the case of an employee aged at least 55 consider (our emphasis) commencement of the authority initiated early retirement process for it to determine whether the individual should be retired with an authority initiated early retirement pension***'.

DCLG's wording confirms beyond any doubt that the fire authority has at least two separate opportunities to exercise its discretion to award an unreduced pension when a firefighter can no longer maintain his/her operational fitness as a result of aging. The first

discretion occurs when the fire authority must simply 'have regard' to the National Framework and secondly when 'considering' whether it should commence a process to give a firefighter an authority initiated early retirement.

In summary, neither proposal delivers any guarantee that;

- A fire authority must ensure a firefighter who cannot maintain their operational fitness due to them getting older will not face dismissal.
- A firefighter in this situation will be redeployed within role or have any reasonable adjustment applied.
- A firefighter in this situation will be given an unreduced pension post age 55.

Without these three key points being addressed, the concerns we have raised consistently remain entirely valid and the risks to firefighters remain.

The FBU have consistently suggested that the only way of providing this guarantee is through the scheme rules and have previously submitted a form of words which would address the point. Despite previously suggesting that this route was deliverable, the fire minister has opted to revert to the National Framework route which is not appropriate.

PM: This differs slightly from the Scottish Government's proposal which has a pension regulation underpinning it. However, the Scottish approach still does not provide a guarantee because the authority needs to determine whether there are 'mitigating circumstances'. This means that there remains discretion in the process. While a pension regulation is possible where there is one authority and one service, and one agreed fitness approach, it is not possible in the case of England where there are 46 authorities, and a range of different tests and approaches agreed locally. We have to be fair to all firefighters who pay into the pension scheme, and ensure that all are being treated on an equal basis.

FBU: The Scottish government have clearly spelled out that they will not dismiss firefighters simply for losing fitness as they get older. The FBU has agreed a process that ensures a firefighter in Scotland will have the necessary support and in return takes the appropriate steps to maintain their operational fitness. The Scottish government have agreed to include a regulation in their legislation that does ***ensure that no individual will automatically face dismissal if they fall below the standards required and cannot be deployed operationally***. The DCLG fire minister is simply refusing to use the regulation as a way to provide the guarantee despite suggesting in other forums that she would.

In response to a question in Parliament on 10 November 2014 from Richard Fuller, MP for Bedford:

Given that the Minister has recognised that there remain severe reservations about the fitness test for firefighters, is she saying that she will pass regulations that will ensure that firefighters who fail the fitness test will not lose their jobs, because there are insufficient numbers of back-office jobs in the fire service to accommodate them?(our emphasis)

The Fire Minister replied:

Yes. *(Our emphasis) In addition to the protections that we are consulting on, we are the only nation that has set up a working group to ensure that there is best practice for fire authorities to follow so that their firefighters can maintain fitness.*

DCLG argue that the regulation won't work because every fire authority can adopt its own fitness standard. The FBU believes that wherever a firefighter works he/she has a national role map and has the potential to face the same role related risks. This lends weight to a fitness standard that reflects the occupation rather than standards which vary according to geography.

The Williams' report recognised this and recommended establishing 'minimum role-related standard(s) across the UK FRSs'. More recently, the interim 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.

To date these have both been ignored. Allowing each fire authority further discretion to impose their own local fitness standard(s) completely defeats the objectives and undermines the safety of the firefighters concerned.

PM: I believe that the approach we are using will achieve the same intended effect as the Scottish proposed regulation, but will be fairer on all, and will support those wishing to work longer - something absolutely essential if the firefighters' pension scheme is to remain sustainable.

I am prepared to consider any alternative suggestions for doing this that would further strengthen these principles.

You can view the consultation here:

<https://www.gov.uk/government/consultations/firefighter-fitness-standards-and-assessment>

FBU: We have provided a legal opinion outlining quite clearly why the National Framework approach does not provide the same outcome as the Scottish regulation. It is misleading of the minister to suggest she will consider any alternative suggestions when she is clearly only consulting on these two proposals and discounting the regulation approach.

PM: 3) An audit of FRS implementation of fitness principles.

As part of the package I have put forward, I have also included an independent review after three years to see how fire and rescue authorities are implementing the principles. This will provide a reassurance regarding how well the principles are being bedded in, and whether any further action is necessary. Given that no-one will be working beyond their current expected normal pension age until 2022, we are allowing a considerable period of time to ensure that fire and rescue authorities are getting the principles right in practice.

FBU: This is an unacceptable way to deal with firefighter fitness standards, pension arrangements or employment protection matters. DCLG are effectively saying 'it won't happen until 20122, so don't worry about it just now, we'll create a huge problem and let someone else sort it out in the future'.

PM: 4) A working group on fitness

The Chief Fire and Rescue Adviser, Peter Holland, met last week with the employers and the Fire Brigades Union to discuss the work he will facilitate on fitness. The work this group undertakes will be vitally important in establishing best practice which can support firefighters working to their normal pension age. I want it to look comprehensively at fitness issues, including how fitness is assessed, maintained and supported to enable firefighters to remain operational throughout their careers. This will be a substantial piece of work, and will be of significant benefit to the fire and rescue service.

FBU: The FBU has already raised concerns with the minister that her recent letters cloud the issues. The letters suggest a link between the role of the joint working party and an assurance against dismissal. The FBU were quite clear that the fitness joint working party was set up to look solely at fitness issues relating to the role of firefighters and how best it could support them to maintain their fitness health and well-being. We have asked for clarification on this.

PM: 5) Workforce management

Older workers are of tremendous value to the FRS, and it is the Government's policy to support people working later. A recurring theme when proposing that a person is offered a job or unreduced pension if unable to retain fitness is the lack of alternative roles to be redeployed into. Concerns are raised not just on the availability of such roles, but their nature as well, since clearly not everyone will aspire to a more office based role. I have

asked that the fitness working group look at these workforce management issues as part of its remit, with a view to assessing how existing roles might be adapted, or what new roles may well arise, and how we can prepare for them.

FBU: The suggestion of suitable alternative employment is equally problematic. A firefighter who is redeployed in role simply due to his/her failing a fitness test as a result of simply getting older would receive the same salary and remain eligible to remain in the firefighters pension scheme. Roles other than those specified as 'Grey Book' attract different rates of pay and have different conditions of service. A firefighter who is no longer employed in a 'Grey Book' role is not eligible to remain in the firefighters' pension scheme and becomes a deferred member. This has a serious detrimental effect on the pension benefits.

PM: 6) Mental health

A number of fire fighters have raised with me the issue of mental health and in particular Post Traumatic Stress Disorder (PTSD), and were concerned that a person could be dismissed from work on this basis and not have access to a pension as a consequence. PTSD is a diagnosable medical condition and therefore, depending upon severity, that person would be eligible for ill health retirement (and therefore payment of an unreduced pension).

This area is rightly being given considerable focus and you will note from previous correspondence the £4 million of the LIBOR fines fund made available to MIND, the mental health charity, and the £1 million given to the FireFighters' Charity, which continues to provide care and support in such cases. More details on how the money is being distributed can be found here:

<https://www.gov.uk/government/news/10m-libor-boost-to-support-emergency-services>

FBU: PTSD is a very serious condition and FBU officials have dealt with several pension appeals on behalf of members. It is often very difficult to ensure that members suffering with this are awarded the pension they deserve. These are more often than not the most difficult cases to deal with.

PM: 7) The particular challenges facing women on maintaining fitness.

The fitness working group will look at women's fitness issues. In addition, I have met with women's organisations in the service and will continue to do so. I have asked them to provide a checklist of policies and concerns they have with impact on these issues. I will be attending the Women in the Fire Service's National Executive Committee meeting in January to progress this.

In summary the proposals we have put forward in the consultation would mean that if a person lost fitness through no fault of their own, but did not qualify for ill health retirement then we would expect them to be offered an alternative role or an unreduced pension.

FBU: Officials from the FBU National Women's Committee met with the DCLG fire minister and raised several key concerns. Some of these related specifically to women firefighters. The minister listened and made notes on the concerns, but subsequently has not improved the proposal at all. The wording in the last paragraph on this point illustrates once again that there is no guarantee in the framework process. It now simply says that 'we would expect them to be offered an alternative role or an unreduced pension'.

PM: 8) What happens next?

Some firefighters have asked what is happening with the regulations. The regulations are before Parliament and MPs can choose to "pray" against them for 40 days and there may be a debate in the House of Commons. If after that time - early December in this case - the Commons has not rejected them they become law and the new scheme will come into force in April 2015.

FBU: This is very misleading and is consistent with some reports that senior managers in the fire service are saying that once the regulations are laid the strike action becomes unlawful. This is simply wrong and can be evidenced in the note supplied by Thompsons solicitors below:

FIREFIGHTERS PENSION SCHEME REGULATIONS 2015 - IMPACT ON TRADE DISPUTE

The Minister has placed before Parliament Regulations to introduce the 2015 Pension Scheme. This does not resolve the trade dispute which required relevant ministers to deliver on the eight points.

The dispute is with the ministers and under the Trade Union and Labour Relations (Consolidation) Act 1992 this is deemed to be a dispute with the fire service employers as it cannot be settled without the respective ministers exercising a power conferred on him by or under an enactment.

The 2015 Scheme is brought into force by the Minister exercising a power conferred by or under an enactment, i.e. Schedule 2, paragraph 6 of the Public Sector Pensions Act 2013

The position, therefore, is that the Minister has exercised a power conferred by or under an enactment but has not done so in such a way as to resolve the dispute which remains a lawful trade dispute under the 1992 Act. This contrasts with the position in relation to primary legislation such as the Public Sector Pensions Act itself. Any dispute requiring a change in primary legislation would be regarded as seeking a political solution delivered by Parliament and as such any resulting industrial action would be unlawful.

It is clear, therefore, that the trade dispute remains lawful and unresolved. As such industrial action pursuant to the mandate of the relevant ballots can continue as determined by the Union.

Doug Christie

Thompsons

November 2014

PM: I am sure there will continue to be much debate on these matters and that there will be many responses to the consultation on fitness. In my view what I have set out are the best ways of making progress on these issues. Industrial action has been detrimental to everyone's objectives, it is impacting on your take-home pay, and it will not achieve anything that cannot be secured through these democratic processes. I hope the FBU leadership will agree with me on that.

FBU - The FBU agrees that the negotiation route is the best one. We have already made progress elsewhere through negotiation. Firefighters in Northern Ireland have an improved position. Firefighters in Scotland have an improved position and Welsh government is consulting on an improved position. Unfortunately the only place that negotiations have failed is in England. DCLG has simply shut down the discussions and laid its regulations. They have effectively said 'we don't want to talk anymore, we will just impose it'. That's not the right approach.

PM: I will keep you informed on these issues and others, and if there are further issues you would like clarity on please do not hesitate to ask.

FBU: Please ensure that the information in the future is balanced and accurate.

Yours fraternally,



MATT WRACK
GENERAL SECRETARY



FBU Research
Redeployment.doc

Attachment

SS/EMH