



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

Our Ref: MW/sll

3 December 2013

Brandon Lewis MP
Parliamentary Under Secretary of State
Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU

Dear Brandon

Thank you for your letter dated 12 November 2013 in which you again suggest that the sole issue under dispute is that of fitness and capability. That is simply not the case. As you are aware and as we have discussed, the FBU trade dispute is made up of eight points, all of which are important to firefighters.

It is true that the fitness/capability issue is an extremely important one. It very effectively highlights why your pension changes are ill-conceived and have not taken account of the substantial evidence which has been presented over the past three years. It should be absolutely clear that it is not the only issue under discussion.

However, it is worth reminding ourselves of how this part of the debate has evolved.

Following an earlier stage of discussion in 2011 and early 2012, your predecessor agreed to establish a review to consider the issue of NPA for firefighters. This became the Williams Review. The FBU fully cooperated with Dr. Williams and submitted further evidence to his review.

However, before Dr. Williams had even reported, your Government changed the NPA. In relation to firefighters, you could not have taken any account of the evidence from Dr. Williams which your predecessor commissioned. It is this failure to take account of evidence, including from your own report, which has led to the current difficulties on the issue of fitness/capability.

The National Framework does not provide the necessary guarantees on No Job No Pension

You state that the English proposal has significant advantages over the Scottish fitness principles and suggest that procedures to deal with the No Job No Pension threat would be underpinned by the National Framework. We welcome the fact that you have acknowledged that a real problem exists. This follows the confirmation by the Fire Service Employers (during a tri-partite meeting) that a risk of dismissal did indeed exist. Until that point CLG officials had attempted to claim that no such risk even existed. The risk has now been confirmed very clearly by the Employers. It is welcome that you accept that.

Contd/2...

While this is welcome and is clear recognition that the FBU concerns around 'No Job No Pension' are real, we have received clear legal advice that the steps you suggest will not provide the guarantee we need to resolve this issue. As you know, we have been extremely clear with your officials and with yourself that firefighters expect a firm guarantee on this issue. We do not accept that guidance issued under the National Framework provides such a guarantee.

Our advice is clear that departmental guidance has no legal force at all unless there is a statutory requirement, contained in primary or secondary legislation, to pay regard to it.

We have already had experience of the view of the High Court and Court of Appeal in relation to departmental guidance as part of the *Marrion and Others* case in 2008.

In this case Lord Justice Rix said;

The question remains as to what regard should be had to the Department's guidance which I have reviewed above. The judge, who of course did not have the 2008 guidance before him, had himself reviewed much of the material discussed above, including the 2004 guidance and the 2006 guidance. He correctly stated (at para 67) that they are not binding, and briefly commented that he did not give any weight to them, understandably in the light of their inconsistent direction. For a similar reason, I would give no positive weight to them...

Such guidance should be considered and taken into account. Your acknowledgement of the issue is therefore welcomed but the measure you propose will not provide the guarantee that is necessary in isolation because:

1. The National Framework is only guidance and is not mandatory.
2. It provides high-level guidance and will still allow an individual employer the ability to decide how it will be implemented locally.

We are very clear that any guarantee must be robust and be able to stand the test of time. That cannot be said of National Framework priorities which may change with each change of Minister and with each change of Government. I am sure you will appreciate that the ability of any subsequent Minister to revoke any policy you set out would not provide the sort of robust protection we have discussed.

The legal advice we have taken and provided shows that the best way of ensuring this guarantee is to ensure it is incorporated into the 2015 pension scheme regulations. We have provided a draft regulation for consideration. The regulation would complement the policy set out in the National Framework but would also ensure that FBU members are fully protected against the threat of 'No Job No Pension.'

You mention that the proposal in Scotland does not include a scheme provision to support the guarantee that someone over the age of 55 facing a fitness-related dismissal will receive an immediate full and unreduced pension. I can confirm that this is already under discussion with representatives of the Scottish Government.

Year Three contribution increases

FBU members are extremely angry that you appear to have ignored our concerns and are proposing a further increase in employee contributions from 1 April 2014. In addition to this you have confirmed for the first time that members of the 2006 scheme could face a further increase of 2.2% when they are transferred into the 2015 scheme. This will mean that they will have seen an increase from 8.5% in 2011 to around 12.6% in 2015. NFPS members at that point would also have faced the fourth annual increase in employee contributions in consecutive years.

Firefighters are extremely concerned that they are simply being priced out of their schemes as your proposals make them less and less affordable.

You have been saying that the schemes are among the most generous in the public sector but you seem to overlook the fact that a firefighter in the FPS earning £29,766 will have to pay over £4,000 a year in pension contributions if your proposals are imposed.

Withdrawal of the 19 June proposal

You indicate that the FBU took a conscious decision to reject the 19 June position by going on strike for a second time. This does not take account of the real situation. The FBU have continuously informed you that the current proposals are unworkable and unaffordable but despite this you have not confirmed how these various issues will be addressed. The 19 June proposal around actuarial reductions did improve the position for some members but did not address the majority of issues. The FBU welcomed this improvement and were keen to negotiate towards a resolution. Your withdrawal of this provision will do nothing to assist a resolution.

We also postponed a strike to allow you to provide further improvement for members to consider. The postponement itself should be sufficient confirmation that the union is keen to avoid industrial action if possible. Unfortunately you have been unable to deliver the necessary guarantee or address our other concerns. Indeed we now face a further worsening of the situation as a result of the next proposed increase in employee contributions.

Walking away from negotiations

You have also publically accused the FBU of walking away from talks. Again, this is not remotely the case. We have continued to talk constructively with the National Fire Service Employers and have recently met again with representatives from the Scottish, Northern Ireland and Welsh Governments. We have also urged you to meet with us to allow real negotiations to take place.

Once again I urge you to come back to the table and resolve the issues between us.

Yours sincerely



**MATT WRACK
GENERAL SECRETARY**

cc: Lyn Brown MP, Shadow Minister for Communities and Local Government
John McDonnell MP, Secretary FBU Parliamentary Group