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Threats to collective bargaining in the Fire and Rescue Service: An analysis

by Daniel Blackburn

ISBN 978-1-906703-52-3

October 2021

Published by the Institute of
Employment Rights

4th Floor, Jack Jones
House, 1 Islington,
Liverpool, L3 8EG

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office@ier.org.uk
www.ier.org.uk

Layout by
Kavita Graphics (TU)
www.kavitagraphics.co.uk

Printed by Rap Spiderweb
(www.rapspiderweb.com)

£5 for trade unions
and students
£10 others

The analysis contained in this report is presented as a contribution to the discussion on proposed changes to the bargaining arrangements within the fire service.

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PREFACE Frances O’Grady	4
FOREWORD Matt Wrack	5
CHAPTER ONE	
Introduction: the HMCIFRS proposals from the <i>State of Fire and Rescue</i> report	6
CHAPTER TWO	
The National Joint Council for Local Authority Fire and Rescue Services (NJC)	11
CHAPTER THREE	
The ILO framework	16
Application to firefighters: Convention 98	17
The obligation to ‘encourage and promote’ bargaining	18
Bargaining level: purely a matter for the parties	18
Dispute resolution in essential services	19
CHAPTER FOUR	
The European Convention on Human Rights	21
Application to firefighters	21
Obligation to promote collective bargaining	22
CHAPTER FIVE	
The European Social Charter of 1961	23
Application to firefighters	23
Obligation to promote bargaining	24
Dispute resolution	25
CHAPTER SIX	
Domestic law	26
Public law	26
Trade Union and Labour Relations (Consolidation) Act, 1992	28
The UK / EU Trade and Cooperation Agreement	29
CHAPTER SEVEN	
Summary and Conclusions	31
CHAPTER EIGHT	
Recommendations	32
For the UK Government	32
For HMCIFRS	32
For Firefighter employers	33
For the FBU	33



by Frances O'Grady, General Secretary, TUC

The Fire Brigades Union is a fighting union with a proud history of defending members against attacks. The Westminster government is orchestrating yet another assault on firefighters, by threatening to abolish their collective bargaining body, the NJC, where the FBU has secured many good deals for members over the years. The TUC stands with the FBU as it fights back against this unnecessary, unfair and unjust proposal.

As this excellent publication makes clear, workers have a right to be represented by a collective bargaining body. The experts at the IER demonstrate how the government is clearly in breach of its own legal obligations, making this a fascinating - but shocking - read.

Collective bargaining is how firefighters and millions of other workers secure a fair deal at work. And evidence abounds that there is a strong correlation between more union membership and collective bargaining coverage on one hand, and less income inequality on the other. After a decade of cruel austerity and rising insecurity at work, the UK is more unequal than at any time in modern history. More than ever, workers need union representation and voice to maintain basic rights and secure decent pay. Standing together in unity is the only way workers can win fairness and justice from employers and government.

The TUC is right behind the FBU in its fight to protect collective bargaining arrangements that benefit members. The FBU never sits back when working people are threatened - and neither do we.

// Workers have a right to be represented by a collective bargaining body. The experts at the IER demonstrate how the government is clearly in breach of its own legal obligations, making this a fascinating - but shocking - read //



by Matt Wrack, General Secretary, FBU

This latest threat from the Westminster government, to merge the governance of fire with policing, to introduce so called ‘operational independence’ for Chief Fire Officers and to “consider the need for an independent pay review body and the future of the ‘Grey Book’” is merely the most recent in a long line of attacks on trade unions in the UK. It is also an obvious threat to the functioning and democratic accountability of the Fire and Rescue service in England.

Collective bargaining is a means for an organised workers’ voice to have a seat at the table when terms, conditions and pay are discussed with employers i.e. to bargain over the terms on which work is undertaken. As explained in this report, it is proven to be an effective means of protecting workers’ rights. Consequently, a succession of governments have sought to undermine or abolish collective bargaining structures in different sectors. In 1997, 37% of all employees, in the public and private sector, were covered by collective bargaining. By 2019, when the latest ONS figures on this were published, only 27% of all UK workers were covered by it. This is no accident.

Within the fire and rescue service collective bargaining takes place on a UK-wide basis through the National Joint Council for Local Authority Fire and Rescue Services (NJC). The FBU is seeking to defend the NJC because it has worked well for decades, earning it praise from the employers’ side too. It therefore makes no sense for the chief fire inspector for England, Tom Winsor, to have questioned in his March 2021 report “whether the current pay negotiation machinery requires fundamental reform” but although I was disappointed, I was not surprised. The FBU has queried the independence of Winsor from government. We have also questioned the autonomy of the “independent pay review bodies” he promotes, because of the experience of other sectors when one has been imposed. Pay review bodies increase the powers of central government and reduce those of workers.

We ask that our allies in the labour movement stand alongside firefighters as they face this threat. The IER has produced in this report unequivocal evidence that what is being considered by the government is problematic for a number of legal and political reasons, and I thank Daniel Blackburn for putting together this powerful document, which sets out clearly the evidence on the issue and the case against these proposals.

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Introduction

Proposals for reform of the Fire and Rescue Service, emanating from Her Majesty's Chief Inspector of Fire and Rescue Services (HMCIFRS), with the apparent support of the British Government, unfairly take aim at Fire and Rescue Service collective bargaining machinery that has functioned effectively for the past 70 years, and which retains the support of both the union and Fire and Rescue Service employers. The proposals strike at the heart of the British voluntary tradition of workplace relations and ignore the wishes of the union and employers, both of whom have expressed support for the existing machinery. The intervention into bargaining that is proposed is also thoroughly incompatible with the UK's commitments under the ILO's Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and contrary to both the European Convention on Human Rights and the Social Charter.

The changes recommended to the Fire and Rescue Service are set out in *State of Fire and Rescue – The Annual Assessment of Fire and Rescue Services in England 2020*, published in January 2021 by Her Majesty's Chief Inspector of Fire and Rescue Services (HMCIFRS)². The Recommendations are:

- Recommendation 1: As soon as is practicable the Home Office, National Fire Chiefs Council and Local Government Association, in consultation with the Fire Standards Board and Association of Police and Crime Commissioners, should establish a programme of work that will result in consistency in the four priority areas³.
- Recommendation 2: As part of the next Spending Review, the Home Office in consultation with the Fire and Rescue Sector should address the deficit in the fire sector's national capacity and capability to support change.
- Recommendation 3: The Home Office, in consultation with the fire and rescue sector, should review and with precision determine the roles of: (a) fire and rescue services; and (b) those who work in them.
- Recommendation 4: The Home Office, the Local Government Association, the National Fire Chiefs Council and trade unions should consider whether the current pay negotiation machinery requires fundamental reform. If so, this should include the need for an independent pay review body and the future of the 'Grey Book'.
- Recommendation 5: The Home Office should consider the case for legislating to give chief fire officers operational independence. In the meantime, it should issue clear guidance, possibly through an amendment to the Fire and Rescue National Framework for England, on the demarcation between those responsible for governance and operational decision making by the chief fire officer.
- Recommendation 6: The National Fire Chiefs Council, with the Local Government Association, should produce a code of ethics for fire and rescue services. The code should be adopted by every service in England and considered as part of each employee's progression and annual performance appraisal.

This paper is concerned primarily with the implications of Recommendation 4, which proposes reform to the National Joint Council for Local Authority Fire and Rescue Services (NJC), the body responsible for conditions of service of fire and rescue services.

The Government, Employers, Chief Fire Officers and the Union are advised to 'consider whether' to change the bargaining system if it 'requires fundamental reform'; to consider the supposed 'need' for a pay review body; and to consider also 'the future of the 'Grey Book''. The innocuous tone belies an underlying objective, which is made clear in the body of the main report, to dismantle the NJC, and therefore degrade or remove firefighter bargaining rights; to change or abandon the extant collective agreements collated in the Grey Book; and to replace this well-respected and long-established machinery, either with the mechanism of a pay review body or no mechanism. Such proposals are rejected outright by the firefighters' union. Employer

representatives have confirmed also that they would prefer to maintain the existing machinery. The proposed intervention thus manages at once to ignore: the wishes of the parties; the success of the NJC framework over more than half a century; the essential voluntarism that is fundamental to the British industrial relations system, and the requirements of international treaties on labour and human rights which have been ratified by the UK and are binding on it.

There are, further, and quite apart from the factors set out above, domestic law procedural obstacles that mean that the only way to implement the significant re-structuring of Fire and Rescue Service industrial relations, such as are proposed, will be through primary legislation. Specifically legislation will be required to repeal a discretionary obligation arising under the Fire and Rescue Services Act 2004, while the recently adopted UK-EU Trade and Cooperation Agreement, ratified 30 April 2021, provides a new emphasis for the international law obligations of the ILO and the European Social Charter. The commitment, under Article 399(7) to ‘protect and promote social dialogue on labour matters among workers and employers’ appears to contradict the proposal to abolish the machinery of social dialogue which the NJC comprises.

The following analysis presents an overview of the existing bargaining structures and their development, and examines the recent position statements issued by the Fire Brigades Union and by the Chair of the Employers negotiating body. It proceeds to look at how each of the major areas of concern are dealt with under international labour and human rights law by examining decisions of the supervisory bodies of the ILO and the Social Charter, and by referencing case law of the European Court of Human Rights. There is consistently strong support in international law for three basic principles, which affirm that:

- workers’ and, in particular, firefighters’ bargaining rights are protected under international law
- the State is legally required to refrain from unwanted interference with established voluntary bargaining arrangements

The report from Her Majesty’s Chief Inspector of Fire and Rescue Services (HMCIFRS) *State of Fire and Rescue – The Annual Assessment of Fire and Rescue Services in England 2020*, sets out its stall from the outset, stating bluntly that ‘the National Joint Council (NJC) (the mechanism for agreeing pay and workforce terms and conditions) is failing firefighters and the public, and is in urgent need of reform’⁴. No evidence is offered for these dramatic claims, which do not correspond with the position statements put forward by either the Fire Brigades Union, or by the Fire and Rescue Service Employers, nor is any statistical information presented, and nor are survey reports of public opinion provided. The claims seem to be no more than the opinions of the Report’s author, offered as a compounding conclusion to the various more specific opinions he presents in the Report, in which he expresses the following concerns:

- ‘Consideration also needs to be given as to whether it is right that these arrangements cover the whole of the UK. Fire is a devolved matter. I am unconvinced that a UK-wide body can provide the flexibility needed to protect the best interests of staff and services across the UK’⁵.
- ‘The ‘Grey Book’ (the document that lists firefighters’ terms and conditions) has not been updated since 2009. Terms and conditions are rigid, leaving little room for services to adapt quickly and provide firefighters with necessary flexibility. They also inhibit firefighters from providing additional support to their communities in ways they think necessary’⁶.
- ‘Role maps were originally created to list general areas of competence. They are now being used as an exclusive list of what firefighters and control room staff can do’⁷. And that ‘the activities associated with each firefighter role are listed in the role maps. Their prescriptive nature isn’t helpful. Chief fire officers face resistance to varying degrees when asking their firefighters to undertake other tasks’⁸.
- ‘During the pandemic, chiefs couldn’t require firefighters to do something to protect their communities if it wasn’t listed in the role maps. This necessitated the tripartite agreement, which I

discuss later. This was a source of frustration for the many public-spirited firefighters who wanted to provide support to the communities they serve at a time of great need⁹.

- 'The basic pay structure, in which firefighters can only move between 'trainee' and 'competent' in most roles, leaves no room to recognise performance. It offers limited opportunities to link pay to progression. The rationale of NJC decisions on roles, especially those about pay, are opaque and should be open for all to see and understand¹⁰.
- 'In these ways and others, the Grey Book, and the way it is interpreted and applied, is a barrier to change and improvement. A national approach is needed to find a model that provides appropriate terms and conditions. It must also allow for local variation and flexibility¹¹.

These conclusions express the author's opinions as to what he considers beneficial and, as noted, are offered without supporting evidence or explanation. The author does not descend to consider the merits of evidence to support any views contrary to his own.

Yet in his Report, the author goes on to say 'I know there are some who believe that the current arrangements are effective. But these views are in the minority'¹². No explanation is offered as to whom he is referring here, but presumably he means the Fire Brigades Union and the Fire and Rescue Service Employers, as both have expressed this view. Neither is any explanation offered as to why the two sides of the Service might be said only to constitute a 'minority' of opinion. The suggestion is particularly puzzling as the FBU clearly represents the majority of people involved in the provision of the Fire and Rescue Service.

As noted, the author does not trouble to record the evidence or basis on which both employers and union 'believe that the current arrangements are effective' and should be retained. The inference is that he never inquired.

Discussing the pandemic, the Report seems conflicted between acknowledging that much worked well and a contrary narrative implying failure, through the comments bulleted above, and vague remarks such as 'the sector's response to the pandemic has been affected by structural problems already addressed by our national recommendations'¹³. And yet the Report also acknowledges that 'we saw services rise to the challenge, adapting to respond to emergency calls and providing additional support to their communities', and that 'in general, the continuity measures put in place worked'¹⁴. The praise continues, 'throughout the pandemic, fire staff worked exceptionally hard to help their communities in different ways'; and further that 'every staff group – whether whole-time firefighters, on-call firefighters, prevention and protection teams or non-operational staff – did valuable extra work. I pay particular tribute to all fire staff who did this'¹⁵; and the existing bargaining machinery is actually praised by the author as having worked efficiently at a time of crisis, 'for firefighters, the tripartite agreement – signed by the NFCC, National Employers and the Fire Brigades Union – helped achieve this in part. This national agreement allowed firefighters to undertake additional roles outside their normal responsibilities'¹⁶.

Despite this, the Report's author seems preoccupied with finding fault, and finally seizes upon one, noting that 'in December 2020, a further agreement was reached, but this time without the NFCC. The agreement was solely between National Employers and the Fire Brigades Union under the NJC'¹⁷. This action, according to the Report's author 'strengthened the Fire Brigades Union's hold on the sector, and made it more difficult for the NFCC to ensure that operational factors were fully considered in relation to additional pandemic activities'¹⁸. 'In some services, deployment decisions were influenced by other factors, including the Fire Brigades Union holding them back'¹⁹. But concerning the original tripartite agreement for the pandemic response, the Report seems either cautiously positive or ambivalent:

The tripartite agreement was a pragmatic way to get additional work agreed during the pandemic, considering the significant impediments that the current industrial relations apparatus suffers from. In some services, it got more work done. But in others, it became a hindrance²⁰.

The author then reveals his ideological standpoint:

I question why, in a public health emergency, a contract of this kind was even necessary. The sector had capacity to help, and strong systems in place to protect staff and enable them to take action. This should have been enough.²¹

The argument seems to be that it ought to have been possible simply to order firefighters to undertake any work considered appropriate by the employers, regardless of the contractual restraints they had agreed, as if firefighters were conscripts operating under a forced labour regime.

The author seems to be affronted by the very idea that firefighters should have any say either in the work they are to perform under their contracts of employment or in the terms and conditions under which they do it. The fact that the contracts agreed between firefighters and employers identify the scope of the work, the terms and conditions under which it is to be done, and the mechanism by which either may be varied appears to be irrelevant.

At the heart of this Report is the denigration of the National Joint Council for Local Authority Fire and Rescue Services (NJC) with a view to its abolition, notwithstanding that those views are unsupported by facts, or evidence, or by those responsible for implementing the Fire and Rescue Service, or who work within it. The Report gives the impression of an ideologically-driven project, based on the largely unsubstantiated musings of an individual but backed, it seems, by the government and its advisors. The author gives an appearance of being a devotee of Hayek and the neo-liberal school of economists which considers that trade union insistence on collective bargaining distorts the working of a free market in labour which should be left exclusively to the laws of supply and demand free from any such distorting interference. It is true that the author offers no view on the survival of collective bargaining at Brigade or more local level but if national level collective bargaining is not to be permitted, he does not give any indication of support for its continuation at regional or lower levels.

The abolition of the NJC is not supported either by the union, nor the employers. As noted, any imposition of the author's objectives set out above would be contrary to the fundamental principles of British industrial relations traditions, and to international legal obligations, including under the European Convention on Human Rights and the Conventions of the International Labour Organisation. These are considerations which the author has ignored.

The level, scope and implementation of collective bargaining is a matter that, according to international treaty obligations, should be exclusively within the competence of the workers and the employers. State regulation of this process is unusual in the British context (even in the private sector, where the limited model of 'statutory recognition' introduced in 1999 remains the vehicle only for a small minority of the UK's trade union recognition and bargaining arrangements)²². It is even more unusual in the public sector, where large-scale voluntary bargaining councils (NJC's) remain common (see chapter II of this report). Indeed 'voluntarism' in industrial relations has always been at the centre of the British tradition since at least 1918, with direct Government intervention in bargaining running contrary to this principle. And it is a clear and settled matter of international law that State policy should support and promote the principle of free, voluntary collective bargaining, not override it. The expansion of the State's regulatory power such as to override the interests of both sides of the service, therefore manifestly conflicts with both settled British tradition and the UK's international obligations.

It should be noted that Her Majesty's Chief Inspector of Fire and Rescue Services, Sir Thomas Winsor, was a partner in a major firm of solicitors in the City of London specialising in commercial law. Between 1999 and 2004, without any background in the railway industry, he served as the Rail Regulator in the Office of Rail Regulation. Between 2010 and 2012 he carried out a controversial review of the pay and conditions of service of police officers and staff in England and Wales that led to the abolition of collective bargaining in the police service and the introduction of a Pay Review Body for the police. In October 2012 he was appointed as HM Chief Inspector of Constabulary, the first to come from a non-policing background. In July 2017, he was appointed as the first ever HM Chief Inspector of Fire & Rescue Services, having no background in the Fire and Rescue Service either.

In summary his proposals:

- ignore the wishes of the parties – both the FBU and the Employers have refuted the need for abolition of the existing arrangements.
- represent a dramatic intervention in the long-established practices within the Fire and Rescue Service (the NJC has been the focus for national collective bargaining between the Fire Brigades Union and the Employers since 1947).
- strike at the very heart of the British industrial relations system by disregarding the principles of voluntarism that have long been its hall-mark.
- appear to be based upon ideological objectives and are proposed apparently without supporting evidence as to why they would be beneficial
- violate the UK's obligations under the European Convention on Human Rights
- violate the UK's obligations under the European Social Charter
- violate the UK's obligations under ILO Convention No. 98, and potentially also ILO Convention No. 87²³

In order to support the FBU's response to the proposed attacks on their bargaining structures, this paper will examine:

- The National Joint Council for Local Authority Fire and Rescue Services (NJC)

The paper will then examine relevant features of international, European, and domestic law, considering specifically:

- The ILO framework
- The European Convention on Human Rights
- The European Social Charter of 1961
- Domestic law

The paper concludes with a summary of findings, which indicate that the FBU will have strong grounds to resist the proposals.

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The National Joint Council for Local Authority Fire and Rescue Services (NJC) is a robust and long-established vehicle for discussion, negotiation and agreement. The NJC has stood the test of time, retains the support of employers and unions, and proved its worth and efficacy during the pandemic. The NJC exists on the basis of a voluntary agreement, and is not dependant on government or legislative support. It cannot be 'repealed', and the Government has limited options to interfere with such a private agreement, short of radical action that would be an affront to both fundamental legal concepts about the freedom of contract, and to the voluntary traditions of the British industrial relations system.

While ultimately the Government might seek to proceed with such a radical intrusion, it would be required to justify this action under international law, as the union would almost certainly mount a challenge. Several international treaties place powerful negative obligations on the State to refrain from interference in existing bargaining arrangements, particularly where these demonstrate the effectiveness, continuity, stability and support of the Fire and Rescue Service NJC.

There are also matters of domestic law that will present procedural barriers to any attempt at significant re-structuring of Fire and Rescue Service industrial relations, such as are proposed. Primary legislation will be required to repeal a power arising under the Fire and Rescue Service Act 2004, that obligates the Secretary of State to keep under consideration the establishment of 'negotiating bodies' (PRBs will not meet this standard).

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