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**Circular:** 2016HOC0676MW

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**To: All Members**

Dear Brother/Sister

## **FBU LEGAL CHALLENGE ON AGE DISCRIMINATION OVER TRANSITIONAL PROTECTION: END OF YEAR UPDATE AND NEXT STEPS**

We have previously explained that the FBU is challenging the government over the transitional protection put in place as part of the imposition of new pension arrangements. We have issued various circulars, bulletins and short films on the issue.

You may be aware that a similar case involving the judges' pension scheme has already been heard and we are currently awaiting a decision on this case. This decision is expected in early to mid-January 2017. It will not automatically influence our own challenge but the judges' case does have several similarities with our own.

Our own case is listed to be heard between 9 and 24 January 2017 in London. The FBU legal team is currently compiling the final skeleton argument for submission on behalf of 5 test cases.

The respondents to these test cases are;

- London Fire and Emergency Planning Authority
- West Midlands Fire And Rescue Authority
- Cornwall Fire and Rescue Authority
- South Wales Fire and Rescue Authority
- Secretary of State for The Home Department
- The Welsh Ministers

In brief, the FBU case is that since 1 April 2015 the claimants have been paid less than their older colleagues based solely on grounds of age. They are currently receiving less favourable pension rights than their protected colleagues irrespective of when they were appointed. The case also looks at areas of age discrimination including, in some cases, breaches of equal pay, sex or race discrimination.

The FBU challenge also raises concerns about the imposed normal pension age of 60 and why this is an important consideration in relation to the physically demanding role firefighters perform and the related issues of fitness and fitness standards.

The respondents will have to demonstrate a justification for the protection arrangements in that they have a legitimate aim in putting them in place. They will also have to show that the impact on the affected members is proportional to the respondents achieving this legitimate aim. i.e. is the objective sufficiently important to justify the impact on the affected member.

## **LEGITIMATE AIM**

The burden for establishing these two points is down to the respondents and the justification cannot be solely be based on cost savings. The justification must link directly to a social need and must be necessary. It will also look at any social need compared to the detriment to the disadvantaged individuals.

In challenging the current protection arrangements, the FBU case points out that there is no basis to assume that those nearest retirement will be more affected by the changes. In fact, more often than not those outside of protection will suffer the biggest impact of the pension changes.

## **THE PROPORTIONAL IMPACT ON THE AFFECTED MEMBERS**

A central point of the government's explanation for the protection arrangements is the suggestion that the younger members (i.e. those furthest from retirement) could simply save more and make necessary lifestyle changes. This is very misleading and is being challenged by a detailed examination of the real facts and the real position facing the test cases.

The union has provided detailed evidence to illustrate that in the case of the five claimants (test cases) and other generic examples the additional amounts that they would need to save in order to receive the same benefits as the older protected members are very substantial. Our submission also challenges figures submitted by the Government Actuaries Department whose own figures still highlight the fact that very substantial amounts would be necessary.

Part of the FBU argument focuses upon the disproportionate impact that the changes to the firefighters' pension scheme when compared to the pension changes across the public sector. These touch on the requirement of a firefighter to work until 60 to receive an unreduced pension and their ability to do so considering the physical demands of the role.

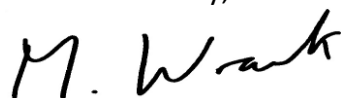
## **NEXT STEPS**

We will continue to await the ruling in the Judges case which also looks at the issues of legitimate aims and proportionality.

We have already submitted several witness statements and evidence in support of our case and final preparations are being made. The hearing starts on the 9 January. Members will receive further updates as this issue develops.

Best wishes.

Yours fraternally,



**MATT WRACK**  
General Secretary

MW/jr