

# FIREFIGHTERS



FIRE BRIGADES UNION CENTENARY 1918-2018

**Matt Wrack** General Secretary

## Fire Brigades Union

Bradley House, 68 Coombe Road,  
Kingston-upon-Thames, Surrey KT2 7AE  
fbu.org.uk | @fbunational  
020 8541 1765 | office@fbu.org.uk

«NameLine1» «RegionBrigade» «StationCode»  
«OtherName»  
«Address1»  
«Address2»  
«Address3»  
«Address4»  
«Address6»

Circular: **2018HOC0632MW**

21 December 2018

TO: **All Members**

Dear Brother / Sister

### **Legal victory on pension transitional protection**

I am very pleased to confirm that the FBU has been successful in our legal case against the government concerning transitional pension protection.

During the relevant legal hearings in November, FBU members received daily summaries setting out the arguments presented in relation to age discrimination and other issues. We mentioned throughout that time that we remained confident in our arguments and that the legal team presented them very well. The last of these reports suggested that a decision was due in early spring 2019.

Surprisingly, the judgement was made much earlier than expected. We are very pleased to report that we have been successful.

We set out below a brief explanation of the immediate position. Please be aware however, that there will be a great deal of discussion needed in the near future. Members will receive a more detailed appraisal in the near future, but for now we should celebrate what is a decisive win and recognise that the FBU and its members have been rewarded for refusing to accept the government's imposed pension scheme or imposed transition protection arrangements. The FBU is the only trade union to have taken up this case through the courts.

### **Summary**

It is important to note that the case relates to the transitional protection arrangements introduced following the imposition of the new 2015 firefighters' pension schemes. It does not address the introduction of that scheme itself. The launch of the case followed extensive research and considerable legal advice and discussion.

For government to prove its case – justifying the transitional protection arrangements - it had to overcome two hurdles.

- Did it have a 'legitimate aim' in introducing the transitional protection as it did?
- Were the means to achieve this appropriate and reasonably necessary?

The court has determined that there is only one possible answer to the question as to whether the government was pursuing a 'legitimate aim' when it introduced the transitional protections. On the evidence produced by the government, the answer is, "No".

Because we won on this first question, the court determined it did not need to go into the second question.

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The Court of Appeal has remitted the race discrimination and equal pay cases to the Employment Tribunal to consider those factual issues, but in the expectation that it will never need to be argued because we have won on the principal age discrimination case.

The government has asked for permission to appeal to the Supreme Court. This is not an automatic right and they would need permission either from the Court of Appeal or from the Supreme Court to do so. To get permission they would need to show that there is an arguable point of law of general public importance.

The court also ruled that the other side (government) should pay our legal costs, which is an additional victory.

### **Next steps**

The case now returns to the Employment Tribunal to consider only the question of remedy. In our view, the only plausible remedy is to put all younger members back in the 1992 FPS, and that should come down to negotiations with the Home Office. The negotiations should be about *how* not *whether* to put them back. There should now be no doubt that they should be put back.

So, this outcome should mean that everyone who was in the fire and rescue service on 31 March 2015 should return to their former scheme. How this is achieved and administered would be subject to further discussions

Nevertheless, it is important to remember at all times that we face the opposition of central government, who are likely to be examining ways to undermine the successes we have achieved. They have huge resources at their disposal, funded by the taxpayer. So we should not underestimate the challenges we face, especially as this case relates to transitional protection, not the new scheme itself.

Please be aware that we are still examining the judgement and have not yet had chance to discuss it in detail with our legal advisors.

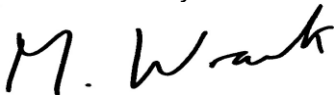
Inevitably, in relation to legal processes, things move slowly and can be complex. Nevertheless, the government approached this case in extreme – and misplaced – confidence and we can be very pleased that we have been successful. On behalf of all members, I would like to thank the legal team who have worked on this case for many months. On behalf of the Executive Council, I would like to thank all members for their patience and determination through the process so far.

We have said throughout, that we will never give up the campaign for pension justice and for an occupational pension scheme which properly reflects the work our members do. We will continue that campaign.

Further information will be issued as soon as possible.

Best wishes.

Yours fraternally

A handwritten signature in black ink, appearing to read 'M. Wrack', with a stylized flourish at the end.

**MATT WRACK**  
General Secretary

MW/jh