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To: **All Members**

Dear Brother/Sister,

Cost Control Mechanism 2015 Scheme: FBU Issues Claim For Judicial Review Against HM Treasury And The Secretary Of State For The Home Department

The Fire Brigades Union claim (issued 29 October 2021) concerns firefighters who joined the Fire and Rescue Service on or after 1 April 2012. They are entitled to be members of the 2015 Scheme, and the parallel firefighters' pension schemes created by regulations made by the devolved administrations under section 2 of the PSPA.

The crux of their position is that the funding arrangements for the 2015 Scheme are not being observed and that the Government is seeking to impose the cost of remedying the Government's unlawful discrimination upon them.

Correcting the transitional protection discrimination for all pension schemes, not just firefighter pension schemes, according to the Government's latest estimate will cost £17bn. The Government proposes to pass the cost of **their** discrimination on to members of the pension schemes. This is a matter that affects all members of the 2015 Scheme.

The cost control mechanism allows for assessing the cost of providing pensions, and adjusting members' contributions or benefits if the cost, as assessed by the scheme actuary, diverges from the target cost by more than 2%. This 2% margin is symmetrical. If the assessed cost of the scheme is below the target cost by 2% or more, benefits must be improved or members contributions must be reduced (or a mixture of both). The cost control mechanism has always been presented as a fundamental aspect of the 2015 Scheme.

The most recent completed valuations of the 2015 schemes showed that they were considerably cheaper. In the case of the firefighters' schemes **the new scheme was 5.2% cheaper than anticipated**, which would lead to an increase in the accrual rate from 1/59.7 to 1/51.2 (in fact the Scheme Advisory Board [which the FBU has a seat on] recommended a smaller improvement in the accrual rate and an improvement in early retirement reductions making it more palatable to retire before age 60).

Whilst benefits and contribution changes were being negotiated, the *McCloud* and *Sargeant* judgment was handed down. The Government "paused" the cost control mechanism, on the basis that until the final outcome of the case was known (an appeal to the Supreme Court was still pending at that time) the cost of the 2015 schemes could not be known.

The Union issued judicial review proceedings to lift the pause and, once lifted, to require the improvements outlined above to be implemented. The detail of the case is complex, but it comes down to: (a) what costs the cost control mechanism measures (b) that the cost of correcting the discrimination is mainly related to the pre-2015 schemes – they have more members than the Government expected because a lot of members did not in fact transfer even if the Government thought that they did. The proceedings are now stayed. They were issued when the cost control mechanism was paused.

The pause has now been lifted, with the Government saying that they *will* try to pass the cost on to 2015 Scheme members through the cost control process. The way they are doing this is by not initiating improvements in benefits or a reduction in contributions for 2015 Scheme members; they want to use the overall savings in the remedy calculation.

Therefore, the Government are trying to use financial improvements that should rightfully provide improvements in benefits or reduction in contributions to our members to rectify the cost of the Governments discrimination.

The FBU have been clear to all parties though, that the cost of rectifying the Government's discrimination within the 2015 Scheme transitional protection arrangements <u>must not</u> be passed on to scheme members, but that the improved benefits and/or reduced contributions, as a result of the most recent valuations, <u>must be</u> passed on to scheme members.

The Treasury and Secretary of State have been asked to provide a response by 19 November 2021.

Yours in unity,

MARK ROWE
National Officer

MR/kc