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Circular: 2022HOC0144MR

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To: All Members

Dear Brother/Sister

RDS Employment Tribunal Pension Claims
(Matthews and others v Kent and Medway Towns Fire Authority and others)

All Members Circular **2021HOC0445MR** 23 August 2021 (relevant section reproduced as appendix) provided an update on the negotiations with the Home Office and the FRAs nationally to bring final settlement to the pensions aspects of the Employment Tribunal claims brought on behalf of Retained Duty System (RDS) Members under the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 ('PTWR').

1. Successful conclusion of negotiations

Those negotiations have now been concluded successfully. A Memorandum of Understanding has been agreed between the Fire Brigades Union, the Home Office and FRA employers nationally, which will form the basis of changes to the pension scheme regulations.

The FBU can therefore confirm as follows:

- (a) It has been agreed with the Home Office and FRAs that Members' claims will be resolved via a second options exercise, pursuant to legislation; and
- (b) A detailed explanation of the terms of the **second options exercise** will be provided once the required legislation has been produced by the Home Office in draft.

This means that, once the necessary amendments have been made to the pension scheme regulations, there will be a second options exercise open to those with relevant RDS service which began before 6 April 2006, regardless of whether the RDS firefighter presented a claim to the Employment Tribunal or not. With one exception (below), this will apply to those with service as an RDS firefighter between 7 April 2000 and 5 April 2006, regardless of whether they declined an offer of membership of the NFPS under the first options exercise.

The exception will be RDS firefighters with exclusively post 1 July 2000 service because the offer they would receive under the second options exercise would not include any service in excess of that which should have been included in the offer under the first options exercise. If the FRA is able to prove that such RDS firefighters were given an opportunity to take part in the first options exercise, they will not be entitled to take part in the second options exercise.

It will take 18 months for the necessary legislation to amend the pension regulations to be prepared and passed through parliament. The second options exercise will start once that legislation has been passed.

For the time being, the Memorandum of Understanding applies only to those employed in England. However, previous agreements have subsequently been applied to Scotland, Wales and Northern Ireland.

2. Unresolved issue: transfers from RDS to wholetime

There is, however, an area under further consideration in relation to transfers from RDS to wholetime employment. This is likely to apply in the main to members who transferred from RDS to wholetime employment before 6 April 2006. But it could also arise for those who transferred from RDS to wholetime employment after that date. This issue will be the subject of a further Circular, to follow shortly, which will invite members to submit details via an online questionnaire.

Members who will be invited to submit details via the online questionnaire will be as follows:

1. Members who were previously employed on the Retained Duty System who transferred to wholetime employment before 6 April 2006 (without a break), and joined the FPS, and for whom:

the sum of (a) RDS service expressed as a proportion of wholetime service* and (b) wholetime service, will reach at least 20 years before the member reaches age 55; and

2. Members who were previously employed on the RDS who transferred to wholetime service after 6 April 2006 (without a break), and who joined the NFPS in respect of their wholetime employment and who also took up membership of the NFPS in respect of their RDS employment under the first options exercise and for whom:

the sum of (a) RDS service expressed as a proportion of wholetime employment* and (b) wholetime employment, will reach at least 20 years before the member reaches age 55.

In the case of both categories, members do not need to have reached 20 years' employment in respect of aggregated RDS and wholetime employment already. Members to be invited to come forward will be those who will reach 20 years' aggregated RDS and wholetime employment by the time they reach age 55.

Further details of the online questionnaire exercise will follow shortly. In the meantime, members who may be affected by this issue are asked to have ready the following information:

1. Name of employer:
2. Date of start of RDS service:
3. Gross pay as an RDS firefighter per year:
4. Date of transfer to wholetime service:
5. Whether the member took up membership of the NFPS for RDS service under the first options exercise.

Members in either category will also be asked to have available, so far as possible, their pension statements and pay slips covering their wholetime and RDS employment. If members took part in the first options exercise, they will be asked to have available the pensions statement they will have received at the time from their FRS setting out the benefits to which they would be entitled. Please do not send these documents to us at this stage. We will ask you for them when they are needed.

Yours in unity,

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

Mark Rowe
National Officer

MR/jr

**RDS Employment Tribunal Pension Claims
(Matthews and others v Kent and Medway Towns Fire Authority and others)**

Negotiations have been taking place with the Home Office and the FRAs nationally to bring final settlement to the pension's aspects of the Employment Tribunal claims brought on behalf of RDS members under the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 ('PTWR').

Membership of the Modified Section of the NFPS was opened to RDS firefighters in respect of service between 1 July 2000 and 5 April 2006 (with the NFPS permitting membership for RDS firefighters from 6 April 2006 anyway). All individuals with service between these dates (regardless of whether they had lodged an Employment Tribunal claim, or whether they remained in service) were to have been given the opportunity to take part in an 'options exercise'. Individuals should have received information in 2014/15 to explain what they could expect to receive in benefits if they chose to take up the option of membership for such periods of service, what they would have to pay in contributions and the steps they needed to take if they wished to take up the option. This was the 'first options exercise'. We know that at least one Authority did not fulfil its duties in this regard.

The 'first options exercise' only permitted service going as far back as 1 July 2000 to be taken into account for membership of the Modified Section of the NFPS. It remained legally uncertain whether previous service could be taken into account. For this reason, the Employment Tribunal claims were stayed pending resolution of that issue.

The issue was effectively resolved in another case in November 2018, meaning that service going back to the start of employment could be taken into account for the purpose of a claim under PTWR. The Home Office having accepted that the same principles should be applied to the RDS pension claims. The agreement with the Union seeks to resolve these outstanding issues in the RDS Employment Tribunal claims through a 'second options exercise'.

Eligibility to take part in the second options exercise will apply to those with relevant RDS service which began before 6 April 2006, regardless of whether the RDS firefighter presented a claim to an Employment Tribunal or not.

The position is different for RDS firefighters with exclusively post 1 July 2000 service because the offer they would receive under the second options exercise would not include any service in excess of that which should have been included in their offer under the first options exercise. The logic pursued by the Home Office and the FRAs is that RDS firefighters in this category would be getting a chance to go back on the decision they originally took under the first options exercise. Whilst that argument has force where the first options exercise was properly carried out, it is also the case that at least some FRAs failed to carry out the first options exercise.

The Union and our legal advisors have made the argument throughout that the simplest thing to do would be to re-run the first options exercise for all RDS firefighters. We are hopeful that an agreement will be reached on this issue.

Implementation of the second options exercise will need to take place via statutory instrument amending the NFPS. The Home Office will commit to introducing the legislation 'as soon as reasonably practicable'. The second options exercise will start as soon as reasonably practicable after the legislation comes into force, and will run for 18 months.

RDS firefighters who decided to take up the offer of membership under the second options exercise will be required to pay relevant employee contributions. Those who have already retired will have interest added to their backdated pension arrears. Those RDS firefighters who take up the offer of membership under the second options exercise who are unable to obtain tax relief through self-assessment will have the costs of purchasing past service reduced to reflect the tax relief that should have been available on their contributions.

Although the requirement to pay arrears of contributions will not be welcome, the value of the extra pension will vastly exceed the value of the contributions due. Members will be given an opportunity to pay over a reasonable period of time, and to pay any outstanding balance out of their additional pension lump sum when they retire. Members will be provided with specific detail and advice following the conclusion of current negotiations.