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Circular: 2022HOC0326MR

Date: 4 July 2022

To: **All Members**

Dear Brother/Sister,

Permission granted to challenge the Government: Judicial Review Cost-Cap 2015 Scheme

Permission has been granted today (4 July) to the Fire Brigades Union (and others) to challenge the Government's reduction in the value of new pension schemes for firefighters. The FBU and its members are the claimant's in this challenge.

The Fire Brigades Union claim (issued 29 October 2021, detailed in circular (**2021HOC0540MR**) 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 our 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.

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).

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 must not be passed on to scheme members, but that the improved benefits and/or reduced contributions, as a result of the most recent valuations, must be passed on to scheme members.

The Treasury and Secretary of State provided a response to our claim. As expected, they dispute our claim. Our legal team, on behalf of the union, issued formal pleadings to the court.

The FBU (and two named FBU members) are the claimants in the claim with GMB, PCS, POA, RCN and Unite named as interested parties.

The 2015 Scheme states that any improvement in benefits as a result of the cost-cap mechanism within the scheme must be passed on to scheme members. The Government have moved the goalposts: the McCloud remedy cost must be included as a member cost just because the Treasury says so, according to the new directions. That is plainly unfair and the FBU has a right to challenge that.

We argue that there is a legitimate expectation for members to be paid what members were promised in 2012 before the 2015 Scheme was created. We also argue that improving the benefits of older members (by moving them back into their old scheme) at the expense of members of the 2015 Scheme is discriminatory on the grounds of age. 1992 scheme members are older; 2015 scheme members and 2006 scheme members are younger. 1992 scheme members will see their benefits improved as a consequence of the McCloud remedy; members of the 2006 and particularly members of the 2015 scheme are being asked to pay for it.

We now await the Court to provide the date for the Judicial Review to take place.

Yours in unity,

MARK ROWE
National Officer

MR/jr