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Circular: 2026HOC075BS

Date: 19 June 2026

To: All Members

Dear Brother / Sister,

Retained Duty System Pensions Employment Tribunal Claims

Claims arose out of the denial of access of retained firefighters to membership of the Firefighters Pension Scheme 1992 ('the 1992 Scheme'). There was an interim settlement of the pensions aspects in 2015 in the 'First Options Exercise'. There was a further settlement of pensions aspects provided for in the Memorandum of Understanding ('MoU') between Home Office, the LGA and the FBU of 9 March 2022, which gave rise to the 'Second Options Exercise'.

During the negotiation of the MoU, it became apparent that there may be certain categories of members who would not receive adequate remedy through the First Options Exercise. In the main, this related to those who had transferred to wholetime and would have pension in both the 1992 Scheme and the Firefighters' Pension Scheme 2006 (the 2006 Scheme). Further issues also emerged in relation to (i) tax relief on contributions in the First Options Exercise further tax issues relating principally to backdated pension and lump sum payments in the Second Options exercise. (ii) pre-7 April 2000 transfers to wholetime; (iii) deceased members; and (iv) The ongoing work is to resolve these issues and arrange for the withdrawal of claims.

This circular summarises the progress to date in resolving those issues which remain outstanding.

The Original Claims and the First Options Exercise

The FBU originally brought approximately 11,500 claims on behalf of retained members in 2000. The claims were for less favourable treatment in relation to access to the 1992 Scheme under the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (PTWR). The comparators were wholetime colleagues. Those claims were ultimately successful in the House of Lords, and on remission to the Employment Tribunal in 2007.

An initial settlement of the pensions aspects was achieved in 2015 through what was known as The First Options Exercise. At the time, the case law indicated that remedies for backdated pension under PTWR could not go back beyond 1 July 2000 (the date by which the UK had to implement the EU Part-Time Workers Directive). Membership of the 2006 Scheme was open to all retained firefighters from 6 April 2006.

The First Options Exercise, which took place in 2015/2016, provided a right for all retained firefighters with service between 1 July 2000 and 6 April 2006 to buy back their pension in respect of that period of service. That backdated pension was to be provided in a modified section of the 2006 Scheme (the Modified 2006 Scheme) as opposed to the 1992 Scheme (which had by then closed).

However, by the time of the First Options Exercise, the O'Brien case was in front of the European Court of Justice on the issue of how far back a Claimant could backdate access to the pension scheme under Part-Time Workers Directive. Final resolution of the FBU claims was therefore stayed pending the determination of the O'Brien case.

The MoU and the Second Options Exercise

The O'Brien case was successful in the CJEU, meaning that successful Claimants in part-time worker discrimination cases were able to backdate pension to the start of their employment (assuming no interruption), provided that they were still employed as at 6 April 2000 (the date the Part-Time Workers Directive came into force).

The FBU therefore entered into negotiations with Government Legal Department (GLD) to agree that individuals should be allowed to backdate their access to the Modified 2006 Scheme to the start of their employment. That was successful and led to the FBU initiated (and agreed) MoU of 8 March 2022. The MoU provided for a second options exercise to enable individuals to buy back service to the start of their employment. The MoU also recognised that the First Options Exercise should have allowed backdating to 6 April 2000.

The Second Options exercise was open to retained firefighters with service between 6 April 2000 and 6 April 2006, as long as (in the main) they had uninterrupted pre-1 July 2000 service. This meant that eligible retained firefighters would be able to buy back more service under the Second Options Exercise, whether they had taken part in the First Options Exercise or not. But firefighters who had only post 1 July 2000 service weren't allowed to take part in the Second Options Exercise because there was no additional benefit beyond what was available in the First Options Exercise. The principle was that they weren't allowed a second opportunity to purchase exactly the same service – unless they could prove that they hadn't been given the opportunity to take part in the First Options Exercise (we know for example that Surrey FRA never implemented the First Options Exercise).

The MoU and the Second Options Exercise provide appropriate remedy and resolution for all of the original FBU claims, except in the case of four limited Exceptional Circumstances, and one reservation

The Exceptional Circumstances and one reservation where claims are not yet fully resolved

Aggregation Claims

In the First Options Exercise, the period of service which members could buy back was relatively small – a maximum of 1 July 2000 to 6 April 2006. However, in the Second Options Exercise, members could buy back (uninterrupted) service going back to the start of their employment. In many cases this means service going back to the 1970s or 1980s.

The remedy under PTWR is to put the members in the position they would have been in if they hadn't been treated less favourably. That means, for periods of service prior to 6 April 2006, they should be provided with equivalent benefits to the 1992 Scheme. But they couldn't join the 1992 Scheme by the time of the First Options Exercise because it was closed to new entrants from 6 April 2006. The important differences between the benefit structures for the 1992 Scheme and the Modified 2006 Scheme are as follows:

1. The Modified 2006 Scheme provides for an accrual rate of 1/45 of pensionable pay per year of pensionable service. The 1992 Scheme provides for an ordinary accrual rate of 1/60 of pensionable pay per year of pensionable service and 'double accrual' after 20 years' pensionable service – i.e. the annual accrual rate for each year after 20 years' pensionable service is 1/30. The Modified 2006 Scheme does not provide for double accrual.

2. The 1992 Scheme nominally has a Normal Retirement Age (NRA) of 55. However, members can take their pension from age 50 provided they have accrued 25 years' pensionable service, meaning that an individual member can retire before their NPA provided they hit the rule of 75. (A minimum of 50 years old + 25 pensionable service = 75). The Modified 2006 Scheme has an NRA of 55, the 'Rule of 75' does not apply.

It therefore became apparent, with the longer periods of service to be bought back under the Second Options Exercise, that there were likely to be some situations where membership of the Modified 2006 Scheme would not provide a complete remedy for the periods of retained service where access to any pension scheme had been denied.

The category of member to whom this would most usually apply would be those retained firefighters who transferred to wholetime without a break in service, and who have accrued at least 20 years' wholetime equivalent overall service. If they were to be treated in the same way as wholetime members, in respect of their retained service, having completed 20 years' wholetime equivalent service subsequently anyway, their accrual rate would have to be in 1/30s. But the Modified 2006 Scheme only provides for accrual in 1/45s (which, in the ordinary course of events, is advantageous to retained members who do not transfer to wholetime). Instead of holding up the MoU and the 'Second Options Exercise', the MoU therefore recognised that this category of claim still required resolution.

Tax relief: consequential loss claims in relation to the First Options Exercise

Prior to the signing of the MoU, another issue had arisen from the First Options Exercise.

Members should have got tax relief on the backdated contributions they paid in the First Options Exercise at their marginal rate of income tax, equivalent to what they would have received if they hadn't been treated less favourably in the first place. It transpired that, in many cases, they had not. This meant that, for the purpose of their claims under PTWR, they were able to claim for consequential loss.

The FBU have also identified unresolved tax issues affecting the second options exercise, concerning issues such as payment of backdated lump sums and arrears of pension.

Pre-7 April 2000 transfers to wholetime

The MoU provides for eligibility for the Second Options Exercise for individuals 'employed' between 7 April 2000 and 5 April 2006. The wording of the MoU was not intended to exclude those who had transferred to wholetime before 6 April 2000. However, up until July 2025 (see section 5.3 below), Government Legal Department (GLD), adopted the position that eligibility for the Second Options Exercise was confined to those in retained service (as opposed to any service) between 6 April 2000 and 6 April 2006.

Original Claimants who died after they retired, but before they could take part in the First or Second Options Exercise.

Sadly, some retired firefighters have died before being able to exercise the option to buy back pension in the Modified 2006 scheme.

If they had been able to exercise the option to buy back pension before their death, then they would have been entitled to receive higher pension payments.

Progress on Exceptional Circumstances categories

Aggregation claims

Following the MoU in 2022, the FBU issued a circular inviting members with potential aggregation claims (Original Claimants and new Claimants) to come forward. Approximately 1,000 such Claimants have come forward. Thompsons have filed new claims (approximately 550) for those who were not Original Claimants.

In a Position Statement served on 8 July 2025, GLD said that claimants with wholetime service in the 1992 Scheme would have a choice as to whether nor not they aggregate their retained service under the Modified 2006 Scheme and their wholetime service under the 1992 Scheme. If they choose to aggregate, then GLD's position is that aggregation should be in the Modified 2006 Scheme. More detail about this position statement is set out in the FBU Circular dated July 2025 - 2025HOC0245MR.

It appeared that the proposals may only apply to those firefighters who have (a) lodged employment tribunal claims and (b) who have informed Thompsons that they have an aggregation claim.

Thompsons have been pressing GLD on this point and on the Rule of 75 issue. In March 2026:

(i) GLD accepted that the option to aggregate service in the Modified 2006 Scheme will be open to all individuals who are eligible (i.e. not just claimants) subject to consultation and the final scheme design.
(ii) However, GLD maintained the position that individuals who choose to aggregate their 1992 Scheme service in the Modified 2006 Scheme would not be able to benefit from the Rule of 75, due to scheme design and tax constraints.

The FBU's position remains that retained firefighters who were denied access to the 1992 Scheme should be properly compensated for losses they suffered as a consequence of that less favourable treatment, including losses relating to the operation of the Rule of 75.

Therefore, the aggregation issue is partly resolved but the Rule of 75 issue is still in dispute. The FBU remains open to further discussion with GLD and the Fire Authorities on this issue. If no agreement is reached, then the issue will fall to be considered by the Employment Tribunal at the substantive hearing in September 2027.

Consequential loss claims

Thompsons gathered information from claimants who wished to make consequential loss claims. The only viable claims for consequential loss in the 'First Options Exercise' concern non-availability of tax relief.

Thompsons developed a spreadsheet calculator to enable them to quantify consequential loss claims. To date, Thompsons have notified GLD of approximately 200 quantified consequential loss claims in England and Wales. The exercise has not yet been undertaken for Scotland and Northern Ireland – which are not covered by the MoU, and where making tax relief available in the First Options Exercise is known to have been slightly different.

In the Position Statement served on 8 July 2025, GLD said that:

(i) The Secretary of State intended to set up a formal compensation scheme to deal with consequential losses and aimed for this to be operational later in 2025.
(ii) Until the drafting of the compensation scheme had been completed, it was not possible to give an unlimited assurance that all tax issues would be addressed in it.

In March 2026, the Secretary of State said that the Framework for the compensation scheme had been drafted and is currently with HM Treasury for clearance.
Thompsons and the FBU will continue to press GLD on progressing this issue.

Pre-7 April 2000 transfers to wholetime

Following representations made by Thompsons, in July 2025, GLD said that their clients had reconsidered their position and now accepted that, where Claimants' retained service ended before 7 April 2000 but they transferred to wholetime service and this period of service was uninterrupted and treated as continuous with no disqualifying break, then they are entitled to membership of the Modified 2006 scheme in relation to that service prior to 7 April 2000.

The directions made by the Tribunal, in relation to this issue, are set out at section 6 of this Circular.

The issue is resolved, except in the case of a small number of claimants who have a break between finishing their retained service and starting their wholetime service. There is a dispute over whether or not a break in service should prevent claimants from being able to acquire pension rights under the options exercises. There is a scheduled tribunal which shall consider the cases of 5 test claimants.

Deceased Claimants

Thompsons have continued to press GLD on progressing this issue.

On 1 April 2026, The Firefighters' Pension Scheme (England) (Amendment) Order 2026 came into force. The Order makes provision for:

(i) Payment of a Missed Pension Lump Sum Grant to eligible survivors to reflect the pension lost as a consequence of the firefighter not being able to buy back pension in the Modified 2006 Scheme
(ii) Payment of an Additional Death Grant in certain cases where the firefighter began their retained service before 5 April 2006
(iii) Payment of a Survivor's Missed Pension Lump Sum Grant in certain cases where the survivor is not eligible for an additional death grant

Fire Authorities are required to use reasonable endeavours to notify eligible survivors by June 2026. FAQs for Fire Authorities were published on the Firefighters Pension Scheme website on 28 April 2024 (https://www.fpsregs.org/index.php/modified-2006-scheme-resources/second-options-exercise).

Eligible survivors are required to make an application to the relevant Fire Authority, as soon as reasonably practicable and by no later than 1 April 2027.

Thompsons will be writing to the survivors of those claimants, who are known to have died, to provide more information about the next steps.

Current situation of Employment Tribunal the claims

The stay in the Employment Tribunal claim in England and Wales was due to expire on 14 January 2025. On the FBU's instructions, Thompsons resisted GLD's request for a further stay for four months. The Employment Tribunal managing the cases (East Midlands) nonetheless granted GLD's request. The claims were stayed until 14 May 2025.

The claims in Scotland and Northern Ireland remain stayed. The majority of the claims are in England and Wales, and it is not appropriate to litigate the same issues in different UK jurisdictions at the same time.

The Employment Tribunal listed the claims in England and Wales for a case management hearing on 11 July 2025. Shortly before the case management hearing (as set out above), GLD served a position statement, making significant concessions in relation to aggregation claims and the position of claimants who transferred from whole time to retained service before 7 April 2000.

At the Preliminary Hearing on 11 July, there was a detailed discussion about those issues which have not yet been resolved and how these could be most effectively progressed. After hearing representations made by the parties' representatives, the Judge ordered that there should be:

1. A 3-day preliminary hearing is to be listed from 6-8 July 2026 to consider the issue of those claimants who transferred from retained to wholetime service before 7 April 2000 where there is a dispute between the parties about whether or not a break in service should prevent claimants from being able to acquire pension rights under the options exercises. The parties were required to work together to identify any claimants in this category and to agree on suitable test cases. The parties have identified 45 claimants known to be in this category and the cases of 5 test claimants will be considered at the hearing.

2. A provisional substantive hearing, with a time estimate of 10 days, on 13 – 24 September 2027, to consider any remaining issues which remain unresolved.

The Union is pleased to be able to report to members that, whilst there are still some issues which remain in dispute, progress continues to be made towards resolving the remaining issues in this complex matter.

Yours in Unity,

Ben Selby
Assistant General Secretary