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To: All Members

Dear Brother/Sister

Fire Brigades Union reaches settlement in injury to feelings claims

As members are aware the main remedy the Union sought in the age discrimination claims concerning the 2015 pension changes was transferring members subject to the transitional discrimination back into the 1992 pension scheme, and that has already been achieved (albeit that the Government has now closed it once and for all with effect from 31 March 2022).

There are two other aspects to these claims however, and that is obtaining compensation (a) for the anger, distress, anxiety etc. that the Claimants went through ("injury to feelings"), and (b) for any out-of-pocket losses that they suffered. The current position is outlined below.

Although the Government has conceded that all former members of the FPS 1992 should be permitted to be treated as members of the FPS 1992 when they retire, they have not yet acted upon this, and some members are already in the difficult position that they have retired under the 2015 Scheme rules and are receiving a smaller pension than they should be getting. The Union is fighting these cases under a separate legal initiative which will lead to proceedings in the High Court.

Injury to feelings

Following extensive legal negotiation the Government Legal Department have now made an offer to settle the claims being dealt with in the Tribunal in England and Wales:

1. They will pay £7,250 to the claimants with additional reasons for being aggrieved.

2. They will pay £3,750 to everyone else.

That is an offer that Andrew Short KC and Lydia Seymour, the barristers representing the Claimants, have no hesitation in recommending that the FBU Claimants accept.

This offer is made only to members who filed an ET claim. If a member did not fill in the FBU survey, no claim was (or could be) made on their behalf.

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On 20 May 2020 the Union issued a circular informing members who had filled in the questionnaire in 2015 that the legal process had already been started on their behalf. The circular also stated: *'However, some members may wish to make us aware of any particular circumstances that we need to put forward on their behalf. Members can do this by visiting the FBU website and following the relevant link which explains the issue in more detail and includes a form to submit if you have any information you wish us to be aware of.'*

If members did not take the opportunity to provide that information with additional reasons at that time but feel that something has changed since then, then please let us know.

At present the offer is made only to the Claimants who completed the original survey in 2015. That was time-limited because, at that stage, there was a risk that claims would become time-barred. The survey went up on the union website on 13 July 2015, and closed on 22 August. It was run a second time between January and June 2020 for members who missed the original cut-off date.

The cases of these second wave Claimants (the 2020 Claimants) have yet to be settled. The Government argues that these "later claimants" cannot have been seriously aggrieved: they filed their claims after the Government had already stated in public that they would rectify the discrimination for everyone. The Westminster Government's case is that they were just 'jumping on a bandwagon'. The FBU stress that this is the Westminster Government's position not the position of the FBU.

The Government Legal Department has offered to settle later claims for £2,075. This offer cannot be recommended, and further work will have to be done on these cases. We will publish another circular addressed to these members shortly.

At the moment the offer only applies to members in England and Wales. The Scottish and N Ireland claims remain stayed, and the stays will be lifted shortly. These devolved administrations are represented by different legal advisers, and they have said that they were waiting for the English/Welsh claims to be resolved first. But the same offer should be forthcoming.

Older members of the 2006 NFPS were not permitted to join the 2015 pension scheme but might have wished to do so. The 2015 Scheme is, in some respects, a better scheme.

We filed "reverse" claims, for members of the 2006 NFPS. These claims have not yet been discussed. Each Claimant will have to prove that they did in fact suffer some type of injury to feelings because they were not permitted to join the 2015 Scheme, and would in fact have done so if they had. Again, we will publish another circular addressed to these members shortly.

We have not filed any LGPS claims. That is because, in most if not all circumstances, the 2014 LGPS Scheme is a better scheme than its predecessor for moderate earners. If they were filed the Government would certainly argue that each Claimant has to prove that he or she would have preferred staying in the 1997 Scheme, and personally suffered some sort of injury to feelings. Again, we will publish another circular addressed to these members shortly.

Settlement amounts

The parallel claims for police officers (made without the support of the Police Federation) settled for £7,000 (higher tariff) and £3,600 (lower tariff). Whereas the police claimants had to pay legal fees from their settlement, FBU members will receive every single penny of their settlement.

The police changes are a very close parallel to fire. The Government Legal Department argued that the police Claimants had to pay their own legal costs, and originally offered the FBU Claimants £6,000 and £3,000, on the basis that net of these legal costs, firefighters would be better off than their police counterparts.

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That is an extraordinary position to take: why should firefighters accept less than the police because the FBU did the right thing? The Government Legal Department backed off, and offered *more* than the police settlement.

Financial loss

There are still the claims for out-of-pocket financial loss to be dealt with. The losses in question are, in the main, for financial advisers' fees, changed mortgage arrangements, continuing contributions after completing 30 years' service having joined at 18-20, and opting out altogether. They still need to be resolved.

Putting the settlement into effect

There is a considerable piece of work to be done in auditing the data we have collected from the surveys. Members may have moved house; they may have changed their names (on marriage); they have probably not changed their phone numbers or email addresses but some of them were not supplied in the first place. Ivan Walker (Walkers Solicitors) has already done a lot of work cleansing the data as initially supplied. We are discussing how best to update it and fill in any blanks. We will also need formal consent from Claimants to accept the offer, due to the number of Claimants (approx 9,000) this will not be a quick process. Once consents have been obtained, the formal settlement agreement can be made using the usual ACAS "COT3" settlement process.

Please bear in mind that there is a lot of work to be done before this settlement can be translated into actual payments.

Judging from other cases there will be a lot of questions from members who want to check if their claim was filed. That has already started. The audit work referred to above will supply the answer to the question.

There will be members who did not complete either survey, who now wish they had. The Union has decided not to run the survey for a third time.

Next Steps

A formal settlement agreement needs to be made, the Executive Council at its meeting 18 October agreed settlement of the 2015 claims and that work continues on the other claims and matters identified in this circular.

Each member's claim is a claim which he or she could decide to pursue despite the legal advice within this circular. Members can fight on individually if they are intent on doing so, but the Union will not support them as individual legal claims.

The Scottish and N Ireland claims, and the second wave claims will be fought to a conclusion. The Executive Council has authorised further consideration of the claims for LGPS and NFPS members.

The mechanism for getting payments made

The Government Legal Department's preference is to settle by writing one cheque, and leaving it to legal or the FBU to sort out individual payments. We have already told them that will not work.

They are checking with the FRAs if they are able to sort out individual payments. We have told them that if they cannot, our legal can sort it out using a third party managed account provider called Shieldpay.

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Conclusion

Although the offer made is a very good result for almost 9,000 Fire Brigades Union members there remains a lot to be done in relation to the other claimants and potential claimants identified and detailed in this circular.

The Union wishes to put on record its thanks to Ivan Walker (Walkers Solicitors) for the extensive work that he has personally undertaken to achieve this outcome, the Union also extends its thanks to Andrew Short KC and Lydia Seymour for the legal work they have both undertaken and continue to undertake in relation to these claims.

Yours in unity.

M. Wrack

Matt Wrack
General Secretary

MW/sll