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Circular: 2023HOC049MR

Date: 30 January 2023

To: All Members

Dear Brother/Sister,

Fire Brigades Union & Others Cost Cap 2015 Pension Scheme Judicial Review

Judicial review proceedings commenced by six trade unions, relating to changes made by the government to public sector pensions, will be heard in the High Court today, with the trial due to last until Friday 3 February. The unions are the Fire Brigades Union, GMB, PCS, the Prison Officers Association, the Royal College of Nursing and Unite.

The government's own estimate of the amount at stake is £17bn.

The case concerns the government's botched reforms of the pension schemes for firefighters the NHS, teachers, civil servants, local government, the armed forces, police officers and others in 2015. In 2018 the reforms, challenged by the Fire Brigades Union were held by the Court of Appeal to be unlawful, because the way they were implemented discriminated against younger members. The government accepted that they had to be reversed.

In a separate development, it transpired that the cost of the new schemes was substantially less than had been anticipated when they were assessed by the government actuary in 2019. Under the applicable legislation, younger members' benefits should have been improved, or their contributions should have been reduced, by up to 4.9%. That is because the schemes contain an arrangement, called the "cost control mechanism", whereby if the schemes turn out to be more expensive than anticipated the members have to pay (in the form of reduced pensions or increased contributions) but if they turn out to be cheaper the position is reversed and pensions go up or contributions go down.

The government wants to avoid this result by imposing the cost of its own discriminatory conduct on the schemes, effectively making members of the new schemes pay.

The unions maintain that this treatment is unlawful because:

- adding the cost of the discrimination into the cost control mechanism flouts the purposes that Parliament intended when the cost control mechanism was set up – the government has tried to make this change by "directions" issued by the Treasury without Parliamentary control or consultation with members
- it also flouts promises made to scheme members when the schemes were reformed in 2015, in an attempt to defuse a bitter dispute
- it is once again discriminatory – only younger members will have to pay

The cost control mechanism has since been reformed, and is unlikely to result in increases or reductions in pensions or contributions in the future, but the government's actions have effectively denied members a contribution reduction of up to 4.9% or the equivalent in terms of pension improvements. That should have taken effect in April 2019, and was due to last until March this year.

Yours in unity,

A handwritten signature in black ink, appearing to read 'Mark Rowe', with a stylized, cursive script.

Mark Rowe
National Officer

MR/jr