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Circular: 2024HOC0264MR

Date: 19 June 2024

To: All Members

Dear Brother/Sister

IMPORTANT: Retained Duty System (RDS) Employment Tribunal Pension Claims

This circular provides an update on the RDS pension claims, which include claims for aggregation and consequential loss, as well as issues concerning pre 6 April 2000 transfers to wholetime and Claimants who are deceased.

1. **Final letters to Claimants**

Final letters were sent in March by Thompsons to all those Claimants who brought Employment Tribunal claims in 2000, and who had not yet responded. The claims were that, by treating RDS firefighters less favourably when it came to pensions (and other things), RDS firefighters were discriminated against as part-time workers. Further details of the background to the claims, and the settlement reached with the Home Office and Fire Service employers, is contained in Circular 2022HOCO144MR.

2. **Second Options Exercise: Legislation now in force**

Legislation is in force in England, Wales, Scotland and Northern Ireland to make provision for the Second Options Exercise, which the FBU considers provides an effective remedy for the vast majority of claims brought in 2000. The only exceptions to this – where the regulations do not go far enough - are for: 1) those who bought back pension in the first options exercise in 2015/2016, but did not get appropriate tax relief on contributions (‘consequential loss claims’); 2) those whose aggregate pro rata RDS service and any wholetime service exceeds 20 years by age 55 (‘aggregation claims’); 3) those who transferred to wholetime employment on or before 6 April 2000; and 4) deceased Claimants.

3. **Second Options Exercise: Eligibility**

Yor are eligible to buy back pension in the Second Options Exercise if your employment as an RDS firefighter:

1) started before 1 July 2000, and continued without interruption after that date; OR
2) started on or after 1 July 2000, but you were not given the opportunity to buy back pension in the First Options Exercise.

Eligible current and former RDS firefighters will be able to buy back, and count towards their pension, uninterrupted service before 1 July 2000. You do not need to have brought an Employment Tribunal claim in order to be able to take part in the Second Options Exercise. Further details of the Second Options Exercise are contained in Circulars 2023HOCO466MR and 2023HOCO552MR.

4. The Second Options Exercise: Process

The responsibility for doing this, and for taking the necessary steps, rests with members and neither we nor Thompsons are able to take any of the steps for you. If you wish to take part in the Second Options Exercise, it is very important that you comply with relevant timescales which, for the initial stages, are set out below.

1) Fire Authorities: Notification of Entitlement

In England, Wales, Scotland and Northern Ireland, Fire Authorities were required to use their reasonable endeavours to give affected RDS firefighters notification of entitlement to take up backdated pension.

England: 31 December 2023	Wales: 30 April 2024	Scotland: 17 June 2024	Northern Ireland: 30 January 2024

You should already have been sent notification of entitlement to take up your backdated pension. You will have six months from the date of that notification to apply to the Fire Authority for a statement of service in respect of which you can claim backdated pension, and the contributions (plus interest) you will be required to pay.

By the same dates, Fire Authorities were also required to notify any firefighters who started employment on or after 1 July 2000 of any determination that they had been given the opportunity to buy back pension previously, with appeals to be submitted within 28 days.

2) If you have not received notification of entitlement from your Fire Authority

If you think that you are eligible, and you have not already received notification of entitlement from your Fire Authority, you should apply to your Fire Authority as soon as possible to request a statement of service and contributions. You must do this by:

England: 30 June 2024	Wales:30 November 2024	Scotland: 17 December 2024	Northern Ireland: 30 July 2024

Applications must be in writing, and must contain certain information. A specimen form showing the information to be provided can be found at: https://www.fbu.org.uk/circulars/2023hoc0552mr/rds-second-options-exercise-form-submit-fra

Fire Authorities have three months from the date of receipt of your application to provide you with a statement of service, contributions and pensionable pay.

5. Next steps

Lists of those Original Claimants from 2000 who are pursuing consequential loss claims in England and Wales, or aggregation claims in England, Scotland, Wales or Northern Ireland, have been sent to Government lawyers by the deadline of 30 April. Lists of other Claimants pursuing aggregation claims have also been sent to Government lawyers. Details of consequential loss claims in Scotland and Northern Ireland are being compiled. Thompsons will begin the process for withdrawal of original claims from 2000 where agreement has been given by the Claimant, and will cease to represent other Claimants who are not pursuing claims under one of the four exceptional circumstances described above.

<u>If you have any questions concerning the Second Options exercise, and how to take up your entitlement to a backdated pension, please direct these to your Fire Authority</u>. Thompsons will not be able to assist with how to take part in the Second Options exercise.

GENERAL UPDATE

1. Aggregation issue

The aggregation issue relates in the main to members who transferred from RDS employment to wholetime employment, and who either have accrued, or expect to accrue, at least 20 years' uninterrupted wholetime equivalent employment. For them, the second options exercise as it stands may not provide an effective remedy for their exclusion from the FPS – essentially because, if they had been members of the FPS all along, their overall pension benefits may have been better in the FPS than by having some in the FPS (or the NFPS), and some in the modified section of the NFPS.

There are two main categories of affected members:

(1) those who transferred to wholetime employment before 5 April 2006 (and who therefore were able to join the FPS for their wholetime employment); and

(2) those who transferred to wholetime employment on or after 5 April 2006 (and who therefore joined the NFPS for their wholetime service).

Affected members may be either (1) 'Original Claimants' who brought Employment Tribunal claims in the original Matthews claims in 2000; or (2) 'New Claimants' who responded to the FBU's circular of September 2022 inviting affected members to come forward (or who have come forward subsequently), and in respect of whom we have lodged Employment Tribunal claims.

We have received instructions from 452 Original Claimants potentially affected by the aggregation issue, and have, so far, issued 550 Employment Tribunal claims on behalf of New Claimants. Lists of these Claimants were submitted to Government lawyers on 1 May 2024. The original Employment Tribunal claims from 2000 (which include the 452 Claimants affected by the aggregation issue) are now case managed by the Employment Tribunal alongside the claims brought by the New Claimants. Those Employment Tribunal proceedings are currently stayed until 15 January 2025 to enable narrowing of the issues, and discussion towards resolution of the issues.

The next stage is for Government lawyers to consider the aggregation claims we have notified, and respond further.

2. Consequential loss claims

Consequential loss claims have been presented from those who are Original Claimants from 2000, who took part in the First Options Exercise, and who were not given appropriate tax relief on their contributions. Preparation and presentation of claims depends on information being provided by members, and this has been sought on a number of occasions. Legal have devised a spreadsheet calculator to calculate estimated losses. We presented 174 claims for consequential loss to Government lawyers in England and Wales by the agreed deadline of 30 April. We will be doing the same exercise for a similar number of claims for consequential loss in Scotland and Northern Ireland. It is worth pointing out that only the FBU is pursuing consequential loss claims.

3. Other issues

We are also in correspondence with Government lawyers concerning the issue of deceased Claimants who had retired, and whether their estates should be able to claim the increased pension which would have resulted from the second options exercise. We are also gathering Claimants who have transferred to wholetime before April 2000, and who are not currently eligible for the second options exercise. We are also preparing to withdraw Original Claimants' claims where they have agreed that none of the aggregation/pre-April 2000 whole time transfer issues apply, and to come off the record for other claims as required by the MoU. This is a mammoth task given the 10,500 Original Claimants from 2000 (from amongst whom we have been seeking aggregation and consequential loss claims), and the changes of address in the meantime. We are finding that each time we send out a mass communication, we generate over 1000 enquiries by email and phone. These are dealt with by Thompsons, membership services and the national officer with the pensions remit.

Yours in unity,

Mark Rowe
National Officer

MR/jr