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Circular: 2025HOC0027MR

Date: 27th January 2025

To: All Members

Dear Brother/Sister

Current Legislation on Reversing Pension Opt-Outs

This circular provides an update on the legislative framework and policy developments around Contingent Decisions opt-outs as part of the McCloud remedy. This update includes critical information about reversing opt-out decisions in the context of the McCloud remedy, and next steps.

Important: This matter is still under legal discussion, so this is the factual position as it currently stands. As soon as the full outcome is known guidance will be updated accordingly.

Key Legislative Provisions

Under Section 5(1) of the **Public Service Pensions and Judicial Offices Act 2022 (PSPJOA 2022)**, scheme regulations must enable members to make elections to reverse pension opt-outs. This requirement is reflected in **Regulation 6 of the Firefighters' Pensions (Remediable Service) Regulations 2023**.

- Members who opted out of their pension schemes can now make an “opted-out service election” if they demonstrate their decision was influenced by a breach of non-discrimination rules under the PSPJOA.

Simplified Process via the Deeming Provision

The regulations include a **deeming provision** under Regulation 6(6), which streamlines the process for many affected members. Those who communicated their opt out decision to the scheme manager between the period:

- Beginning on the day six months before the member would have (but for the opt-out decision) become a member of the reformed scheme (‘their transition date’) and
- Ending at the end of **February 28 2022**, are presumed to have opted out due to the discriminatory impact of the reforms. These individuals are not required to provide additional proof of causation.

Addressing Exceptions

For members outside the deeming provision—such as those who opted out more than six months before their transition date—there is still a pathway to reverse the opt-out. However, they must provide robust evidence to the scheme manager that their decision was directly caused by the discrimination.

Important Distinctions in Membership

The closing date for all of the legacy fire pension schemes is 31st March 2015 (see section 18(4)(b) of the Public Service Pensions Act 2013). This is also the closing date for the purposes of the PSPJOA – see section 1(8)(a).

- Members who opted out **on or before March 31, 2015**, and did not rejoin during the remedy period currently cannot return to the older 1992 legacy schemes and their relevant legacy scheme is 2006 scheme.
- Members who opted out **after the closing date** but rejoined before the remedy period's end currently cannot return to the older 1992 legacy schemes and their relevant legacy scheme is 2006 scheme.
- Members who opted out **after the closing date** and did not rejoin during the remedy period currently their relevant legacy scheme is the older 1992 legacy schemes.

Whilst this is the current factual position it does not follow that the FBU agrees with all of these points. The FBU continues to raise our belief that opt-outs should be able to rejoin their relevant legacy scheme. The government is reviewing the current legislation. We will update as soon as those reviews are concluded.

Next Steps and Collaboration

The **McCloud remedy** is a significant step forward in addressing past discrimination. However, as with any complex policy, challenges remain. The government recognises the importance of collaboration with stakeholders to resolve these issues effectively.

Temporary Pause on Some Cases

While the **Home Office** has not formally requested a pause, it supports any **recommendation** for a temporary halt in processing effected cases if a scheme manager decides to do so. This pause is practical as:

- The government reviews the legislation.
- Avoiding premature processing prevents potential rework or unintended consequences.

Yours in unity

A handwritten signature in black ink, appearing to read 'Mark Rowe', written in a cursive style.

Mark Rowe
National Officer