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Circular: 2024HOC0322MR

Date: 31 July 2024

To: All Members

Dear Brother/Sister

Pensions Update: Contingent Decisions

The Public Service Pensions and Judicial Offices Act 2022 (PSPJOA 2022) legislates how Public Service Pension Schemes will remove the discrimination identified by the courts in the way that the 2015 reforms were introduced for some members.

PSPJOA 2022 Section 4 states:

‘Meaning of “the relevant Chapter 1 legacy scheme” etc

- (1) In this Chapter “the relevant Chapter 1 legacy scheme”, in relation to a person’s remediable service in an employment or office, means the Chapter 1 legacy scheme for people in that employment, or holders of that office, under which (disregarding section 2(1)) the person most recently accrued pensionable service.’

In the case of original members of FPS 1992 who opted out as a direct consequence of the introduction of FPS 2015 and the changes it brought about on 1 April 2015, they were informed that their decision could be retrospectively reconsidered under a Contingent Decision. It was originally thought that individuals who had opted out on or after 1 April 2015 could return to their original legacy scheme i.e. FPS 1992, and some members were initially informed by their FRS that this would be the case.

Unfortunately, due to receiving further legal clarity on Section 4 of the PSPJOA 2022, this is **not** possible. The issue arises because FPS 1992 is a closed scheme, it closed upon the introduction of the FPS 2006 on 6 April 2006. Detailed guidance on Contingent Decisions can be found on here: <https://fpsmember.org/remedy/contingent-decisions>.

We understand that members who were originally misinformed have since been contacted by their FRS and have since been told that the only scheme they can be reinstated to is FPS 2006. The FBU make no criticism of the individual FRS’ and/or pensions providers who provided this information in good faith, the only option open to them now is to act within the parameters of the current legislation.

The purpose of remedy is to put members back in the pensionable position they would have been in should the discrimination not of occurred. The FBU believe that putting members who opted out of the FPS 1992 into the FPS 2006 defies the general principle of remedy.

The FBU believe this to be potentially discriminatory, and that therefore the PSPJO Act 2022 requires urgent amendment to rectify this. The Union will not at this stage rule out a legal challenge and we are currently actively discussing this with our legal team. We have already identified a number of test cases who, following discussion with our legal team, may be contacted.

Members are not required to contact the Union at this point regarding this matter. An additional update in relation to this matter will be provided as and when further information is available.

Yours in unity,

A handwritten signature in black ink, appearing to read 'Mark Rowe', with a large, stylized 'M' and 'R'.

Mark Rowe
National Officer

MR/rs