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Circular: 2025HOC0245MR

Date: 17 July 2025

To: All Members

Dear Member

Retained Duty System (RDS) Pensions Employment Tribunal Claims

This circular provides a further detailed update and information in relation to RDS claims. The FBU accept that this is a lengthy circular, however it is required to be so in order to sufficiently update members on the significant progress has been made in relation to the current RDS employment tribunal claims. It should be noted that both the Fire Brigades Union and Thompsons Solicitors are subject to the legal timeframes detailed by Employment Tribunals and that we have no direct control over these timeframes. It is widely recognised that one of the key reasons for the backlog in scheduling and hearings of Employment Tribunal claims is a shortage of judicial resources. As a result, both claimants and employers, are facing long delays before cases are heard.

1. Introduction

These claims arose out of the denial of access of RDS members to membership of the Firefighters Pension Scheme 1992 ('the 1992 Scheme'). There was an interim settlement of the pensions aspects in 2015 in the 'First Options Exercise'. There was a further settlement of pensions aspects provided for in the Memorandum of Understanding ('MoU') between Home Office, the LGA and the FBU of 9 March 2022, which gave rise to the 'Second Options Exercise'.

During the negotiation of the MoU, it became apparent that there may be certain categories of members who would not receive adequate remedy through the First Options Exercise. In the main, this related to those who had transferred to wholetime and would have pension in both the1992 Scheme and the Firefighters' Pension Scheme 2006 ('the 2006 Scheme'). Further issues also emerged in relation to (i) tax relief on contributions in the First Options Exercise, (ii) pre-7 April 2000 transfers to wholetime; (iii) deceased members; and (v) further tax issues relating principally to backdated pension and lump sum payments in the Second Options exercise. The ongoing work is to resolve these issues and arrange for the withdrawal of claims.

Section 5 of this circular summarises the progress to date in resolving those issues which remain outstanding.

2. The Original Claims and the First Options Exercise

The FBU originally brought approximately 11,500 claims on behalf of RDS members in 2000. The claims were for less favourable treatment in relation to access to the 1992 Scheme under the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 ('PTWR'). The comparators were wholetime colleagues. Those claims were ultimately successful in the House of Lords, and on remission to the Employment Tribunal in 2007.

An initial settlement of the pensions aspects was achieved in 2015 through what was known as The First Options Exercise. At the time, the case law indicated that remedies for backdated pension under PTWR could not go back beyond 1 July 2000 (the date by which the UK had to implement the EU Part-Time Workers Directive). Membership of the 2006 Scheme was open to all RDS firefighters from 6 April 2006.

The First Options Exercise, which took place in 2015/2016, provided a right for all RDS firefighters with service between 1 July 2000 and 6 April 2006 to buy back their pension in respect of that service. That backdated pension was to be provided in a modified section of the 2006 Scheme ('the Modified Scheme') as opposed to the 1992 Scheme (which had by then closed).

However, by the time of the First Options Exercise, the O'Brien case was in front of the European Court of Justice on the issue of how far back a Claimant could backdate access to the pension scheme under Part-Time Workers Directive. Final resolution of the FBU claims was therefore stayed pending the determination of the O'Brien case.

3. The MoU and the Second Options Exercise

The O'Brien case was successful in the CJEU, meaning that successful Claimants in part-time worker discrimination cases were able to backdate pension to the start of their employment (assuming no interruption), provided that they were still employed as at 6 April 2000 (the date the Part-Time Workers Directive came into force).

We therefore entered into negotiations with Government Legal Department (GLD) to agree that individuals should be allowed to backdate their access to the Modified Scheme to the start of their employment. That was successful and led to the FBU initiated (and agreed) MoU of 8 March 2022. The MoU provided for a second options exercise to enable individuals to buy back service to the start of their employment. The MoU also recognised that the First Options Exercise should have allowed backdating to 6 April 2000.

The Second Options exercise was open to RDS firefighters with service between 6 April 2000 and 6 April 2006, as long as (in the main) they had uninterrupted pre-1 July 2000 service. This meant that eligible RDS firefighters would be able to buy back more service under the Second Options Exercise, whether they had taken part in the First Options Exercise or not. But firefighters who had only post 1 July 2000 service weren't allowed to take part in the Second Options Exercise because there was no additional benefit beyond what was available in the First Options Exercise. The principle was that they weren't allowed a second opportunity to purchase exactly the same service – unless they could prove that they hadn't been given the opportunity to take part in the First Options Exercise (we know for example that Surrey FRA never implemented the First Options Exercise).

The MoU and the Second Options Exercise provide appropriate remedy and resolution for all of the original FBU claims, except in the case of four limited Exceptional Circumstances, and one reservation

4. The Exceptional Circumstances and one reservation where claims are not yet fully resolved

4.1 Aggregation Claims

In the First Options Exercise, the period of service which members could buy back was relatively small – a maximum of 1 July 2000 to 6 April 2006. However, in the Second Options Exercise, members could buy back (uninterrupted) service going back to the start of their employment. In many cases this means service going back to the 1970s or 1980s.

The remedy under PTWR is to put the members into the position they would have been in if they hadn't been treated less favourably. That means, for periods of service prior to 6 April 2006, they should be provided with equivalent benefits to the 1992 Scheme. But they couldn't join the 1992 Scheme by the time of the First Options Exercise because it had closed to new entrants from 6 April 2006. The important differences between the benefit structures for the 1992 Scheme and the Modified Scheme are as follows:

1. The Modified Scheme provides for an accrual rate of 1/45 of pensionable pay per year of pensionable service. The 1992 Scheme provides for an ordinary accrual rate of 1/60 of pensionable pay per year of pensionable service and 'fast accrual' after 20 years' pensionable service – i.e. the annual accrual rate for each year after 20 years' pensionable service is 1/30. The Modified Scheme does not provide for fast accrual.

2. The 1992 Scheme nominally has a Normal Retirement Age (NRA) of 55. In fact members can take their pension from age 50 provided they have accrued 25 years' pensionable service, meaning that the NRA for each individual member is between age 50 and 55. The Modified Scheme has an NRA of 55.

It therefore became apparent, with the longer periods of service to be bought back under the Second Options Exercise, that there were likely to be some situations where membership of the Modified Scheme would not provide a complete remedy for the periods of RDS service where access to any pension scheme had been denied.

The category of member to whom this would most usually apply would be those RDS firefighters who transferred to wholetime without a break in service, and who then accrued at least 20 years' wholetime equivalent overall service. If they were to be treated in the same way as wholetime members, in respect of their RDS service, having completed 20 years' wholetime equivalent service subsequently anyway, their accrual rate would have to be in 1/30s. But the Modified Scheme only provides for accrual in 1/45s (which, in the ordinary course of events is advantageous to RDS members who do not transfer to wholetime). Instead of holding up the MoU and the 'Second Options Exercise', the MoU therefore recognised that this category of claim still required resolution.

4.2 Tax relief: consequential loss claims in relation to the First Options Exercise

Prior to the signing of the MoU, another issue had arisen from the First Options Exercise.

Members should have got tax relief on the backdated contributions they paid in the First Options Exercise at their marginal rate of income tax, equivalent to what they would have received if they hadn't been treated less favourably in the first place. It transpired that, in many cases, they had not. This meant that, for the purpose of their claims under PTWR, they were able to claim for consequential loss.

4.3 Pre-7 April 2000 transfers to wholetime

The MoU provides for eligibility for the Second Options Exercise for individuals 'employed' between 7 April 2000 and 5 April 2006. The group of original clams was not intended to capture those who had transferred to wholetime by 6 April 2000. Equally, the wording of the MoU was not intended to exclude those who had transferred to wholetime before 6 April 2000. However, up until very recently (see section 5.3 below), Government Legal Department (GLD), had adopted the position that eligibility for the Second Options Exercise was confined to those in RDS service (as opposed to any service) between 6 April 2000 and 6 April 2006.

4.4 Original Claimants who died after they retired, but before they could take part in the Second Options Exercise.

This is a new discrete outstanding issue that arose after the MoU. That is the situation of the unpaid additional pension attributable to a deceased Claimant's service during the extended limited period, and payable between the date of retirement and death.

To take an example: a Claimant who started employment on the Retained Duty System on 1 April 1990, who retired on 31 March 2014, and who then died on 31 March 2022. If they joined the 2006 Scheme from 6 April 2006, and elected to pay contributions in respect of the maximum permitted 'limited period' provided for under the First Options Exercise so as to entitle them to membership of the Modified Scheme, their pension payable from the date of retirement (31 March 2014) to their date of death (31 March 2022) would have been calculated on the basis of service from 1 July 2000 until 31 March 2014. But they should have been able to take part in the Second Options Exercise.

The Home Office committed to providing a remedy and published a consultation which closed on 17 February 2025, the FBU submitted our response.

4.5 Reservation: tax issues relating to the Second Options Exercise

We have identified unresolved tax issues, concerning issues such as payment of backdated lump sums and arrears of pension, which are potentially of universal application.

5. Progress on Exceptional Circumstances categories

5.1 Aggregation claims

Following the MoU in 2022, the FBU issued a circular to our members inviting members with potential aggregation claims (original Claimants and new Claimants) to come forward. 1047 such Claimants have come forward. Thompsons have filed new claims (554) for those who were not Original Claimants.

In a Position Statement served on 8 July 2025, GLD has said that:

(i) Category 1 claimants (i.e. those who, without a disqualifying break in service, changed from RDS to become wholetime firefighters at some stage between 7 April 2000 and 6 April 2006 and who joined the 1992 Scheme in respect of their wholetime service) will have a choice as to whether they aggregate their retained service under the Modified Scheme and their wholetime service under the 1992 Scheme. If they choose to aggregate, then GLD's position is that aggregation should be in the Modified Scheme.

(ii) Category 2 claimants (i.e. claimants who were retained firefighters who, without a disqualifying break in service, changed to become wholetime firefighters on or after 6 April 2006 and who joined the 2006 Scheme in respect of their wholetime service) have not been less favourably treated in relation to accrual because they would be members of the Modified scheme in respect of their retained service and can elect to remain in that scheme in respect of their wholetime service.

(iii) Their clients intend to amend the Modified Scheme so that, for claimants who choose not to aggregate, the move from retained service to wholetime service will be recognised as continuous service for the purposes of determining retirement age in the Modified Scheme. The purpose of doing so will be to ensure that any retained service does not become a deferred pension at age 60, unless the member leaves their wholetime employment before attaining age 55

(iv) Their clients do not accept that the difference between the NRA in the 1992 Scheme and the NRA in the Modified Scheme has resulted in any less favourable treatment. They say that a claimant would have to show that (a) they would have retired before age 55 if given the opportunity and (b) any loss they have suffered as a result has not been balanced out by the further accrual they would have earned by retiring later.

It appears that the proposals set out above may only apply to those firefighters who have (a) lodged employment tribunal claims and (b) who have informed Thompsons that they have an aggregation claim.

Thompsons are seeking some further information about and clarifications of these proposals and further advice will be provided to those claimants who have been identified as having aggregation claims in due course.

5.2 Consequential loss claims

We used a suite of guidance notes and questionnaires to gather information from claimants who wished to make consequential loss claims. The only viable claims for consequential loss concern non-availability of tax relief in the 'First Options Exercise'.

Thompsons then developed a spreadsheet calculator to enable us to quantify consequential loss claims. To date, as provided for in the MoU, we have notified GLD of 204 quantified consequential loss claims in England and Wales. The exercise has not yet been undertaken for Scotland and Northern

Ireland – which are not covered by the MoU, and where making tax relief available in the First Options Exercise is known to have been slightly different.

In the Position Statement served on 8 July 2025, GLD has said that:

(i) The Secretary of State intends to set up a formal compensation scheme to deal with consequential losses and aims for this to be operational later this year

(ii) Until the drafting of the compensation scheme has been completed, it is not possible to give an unlimited assurance that all tax issues will be addressed in it.

Thompsons will continue to press GLD on progressing this issue.

5.3 Pre-7 April 2000 transfers to wholetime

Following representations made by Thompsons, in the Position Statement served on 8 July 2025, GLD have said that their clients have reconsidered their position and now accept that, where Claimants' retained service ended before 7 April 2000 but they transferred to wholetime service and this period of service was uninterrupted and treated as continuous with no disqualifying break, then they are entitled to membership of the Modified scheme in relation to that service prior to 7 April 2000.

The directions made by the Tribunal, in relation to this issue, are set out at section 6 of this Circular.

5.4 Deceased Claimants

In the Position Statement served on 8 July 2025, GLD has said that the Secretary of State is currently drafting the consultation response.

Thompsons will continue to press GLD on progressing this issue.

5.5 Reservation: tax issues

In the Position Statement served on 8 July 2025, GLD has said that the compensation scheme (referred to at point 5.2 above) will also apply to tax issues arising for those taking part in the Second Options exercises.

Thompsons will continue to press GLD on progressing this issue.

6. Current situation of Employment Tribunal claims

The stay in the Original Claims and the New (aggregation) Claims in England and Wales was due to expire on 14 January 2025. On the FBU's instructions, Thompsons resisted GLD's request for a further stay for four months. The Employment Tribunal managing the cases (East Midlands) nonetheless granted GLD's request. The claims were stayed unto 14 May 2025.

The Employment Tribunal listed the claims in England and Wales for a case management hearing on 11 July 2025. The claims in Scotland and Northern Ireland have been stayed. The majority of the claims are in England and Wales and it is not appropriate to litigate the same issues in different UK jurisdictions at the same time.

As set out above, shortly before the case management hearing, GLD served a position statement, making significant concessions in relation to aggregation claims and the position of claimants who transferred from whole time to RDS service before 7 April 2000.

At the Preliminary Hearing on 11 July, there was a detailed discussion about those issues which have not yet been resolved and how these could be most effectively progressed. After having considered representations made by the parties' representatives, the Judge made directions that:

1. A 3 day preliminary hearing is to be listed in 2026 (dates to be confirmed) to consider the issue of those claimants who transferred from RDS to wholetime service before 7 April 2000. As the respondents have now effectively conceded this issue in their Position Statements, this hearing will be to consider only those cases where there is a dispute between the parties about whether or not there was a disqualifying break in service. The parties are required to work together to

identify any claimants in this category and to agree on suitable test cases. If the parties are able to resolve this issue through discussion, then this hearing will not go ahead.

2. The respondents argued that the preliminary hearing in 2026 should also be used to consider whether some claims have been lodged outside the statutory time limits but we were able to persuade the judge that this would not be appropriate. (The respondents contend that time limit of 3 months less 1 day runs from, at the latest, the end of a claimant’s service as a retained firefighter or on the claimant’s retirement. Our position is that the time limit runs from the date of retirement and that the employment tribunal has a discretion to extend time where it is just and equitable to do so.)

3. Another case management hearing will be listed in 2026 to review the position which the parties have reached through ongoing discussion about the outstanding issues and to make further directions.

4. A substantive hearing, with a time estimate of 10 days, is to be listed in 2027 or early 2028 (dates to be confirmed) to consider any remaining issues which remain unresolved.

5. The respondents raised the point that none of the employment tribunal claims have yet been withdrawn. We argued that it would not be appropriate to withdraw claims at this stage and the judge agreed, although he also indicated that this issue would be re-visited at the next case management hearing.

The Union recognises the frustration in relation to the length of time the current legal processes are taking to resolve the issues but these scheduling timeframes are beyond our control. Members should be reassured that the Union acts immediately when responding to developments in these matters and therefore the delay (as explained above) is not of the Unions making nor of our legal team.

Despite these difficulties, the Union is pleased to be able to report to members that significant progress has been made towards resolving those issues which remain in dispute in this complex matter.

Yours in solidarity,

Mark Rowe
National Officer