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Circular: 2022HOC0026MR

Date: 22 December 2021

Date: 19 January 2022

To: All Members

Dear Brother/Sister

**Immediate Detriment MoU Update**

This circular is to update members on the current position regarding the settlement of so-called “immediate detriment” cases – that is, members who have already retired and who have been paid their pensions and lump sums under the terms of the 2015 Firefighters’ Pension Scheme when they should have been paid under the 1992 Scheme terms. It also covers members who will retire in the near future and who will find themselves in the same position.

As advised in All Members Circular 2021HOC0493MR the FBU and LGA reached an agreement last October which means that all immediate detriment cases could be dealt with now, without waiting until October 2023 which is what central government proposes.

That agreement was reached because we issued three test cases. These three cases were settled in accordance with the FBU/LGA agreement, the members concerned were paid their full correct entitlements and the FRAs have to pay the union’s legal costs. It is not the case that these three claims were withdrawn. The cases did not need to go to a full hearing because they were settled, so no formal judgment was published.

Following the agreement the union and the LGA began work to encourage all FRAs to adopt it. What then followed were two (in the union’s view political) interventions by central government. It is the union’s view that these interventions were designed to stop the FRAs resolving immediate detriment claims under the framework set out in the agreement.

The first intervention, only two weeks after the agreement was made, was in relation to tax. This issue was explained in detail in All Members Circular 2021HOC0565MR, but in short if a top-up commutation lump sum has to be paid more than 12 months after retirement, it is subject to tax at 55%. The Framework contains a provision that the FRA would pay the tax as compensation, which was agreed based on an understanding of the primary legislation that will implement the 2015 Remedy. HM Revenue and Customs then published a policy document indicating that from the date secondary legislation is enacted unauthorised payments would be classed as authorised payments meaning no tax would be due for payments made after those changes.

This led the Home Office to cast doubt on the agreement, indicating that FRAs may not be able to recover those compensation costs. At the time the Framework was agreed it was thought the payments would always be treated as unauthorised. The simple solution to this, put forward by the FBU, is for any payments made by FRAs to be retrospectively treated as authorised payments.

The FBU quickly met with the LGA and our respective legal teams, in order to seek a mechanism to resolve this issue raised by the Home Office. We were able to agree a joint FBU/LGA statement on 19 November 2021 (All Members Circular 2021HOC0565MR) which in relation to the Home Office position stated:

*‘This decision should not in general delay any FRAs decision to adopt the Framework’.*

It was therefore clear that the view of the FBU/LGA and all the legal representatives present was that the FRAs could continue to adopt the Framework.

The second intervention came from the Treasury on 29 November 2021, following the FBU/LGA joint statement. This was more serious and was reported to members in All Members Circular 2021HOC0582MR. In short, the Treasury said that immediate detriment cases cannot be processed before new legislation is in place “without considerable risk”. The Home Office withdrew its guidance on immediate detriment, with immediate effect. It said that:

*‘It is of course still up to schemes to choose to process cases or not based on their own assessment of the competing legal risks, but at this stage it is not possible to give any guarantees that the remedy and its tax consequences will work as intended for everyone, before the legislation is in place.’*

As a result the majority of FRAs have paused the adoption of the Framework developed by the FBU and LGA.

The FBU attended a meeting of the Scheme Advisory Board on 9 December 2021, which included a representative from the Home Office. At that meeting the FBU were clear and direct that in our view the interventions from the Home Office were purposefully designed to ‘scupper’ the immediate detriment agreement because it does not want the FBU settling our immediate detriment cases ahead of any other public sector body.

We will continue to meet with the LGA to see if these tax problems, which are not of the LGA’s and FRAs making, can be avoided. But we have made it clear that, if necessary, we will commence further legal claims to achieve our aims. Preparation of the next round of test cases is already underway.

The FBU understand the anger and frustration amongst members who have either retired and are being denied their full pension or those who are approaching retirement and are being informed that they will not receive their full legacy scheme pension. The FBU is fighting a government that has demonstrated on numerous occasions that they simply do not care that our members are suffering pensions detriment. The FBU will continue to fight so that members do not have to wait until October 2023 to receive the pension that the court ruled that they should be paid, a pension they are entitled to receive now.

Yours in unity,



**Mark Rowe**

**National Officer**

MR/jr