**Circular: 2018HOC0541SS**

**8 November 2018**

**To: BRIGADE SECRETARIES**

Dear Brother/Sister,

**AGE DISCRIMINATION PENSION CASE COURT OF APPEAL UPDATE: DAY 3 – 7 NOVEMBER 2018**

# **Introduction**

The hearing deals with appeals concerning the judges’ pension schemes as well as the firefighters’, and much of today was taken up looking at the position of the judges. The risk to us is that the court will hold that the judges are in a different and special position, and they win and we lose as a result.

# **Day 3**

The position of the judges is different, and the differences were ticked off one by one by the senior judges’ QC. He went out of his way, however, to say that in his view, the firefighters’ case should succeed as well.

Those differences:

* The judges as a group are older – they start their career in their 50s. There is not possibility that they can make up their lost pension by taking up an alternative career.
* They are prevented by law from doing so anyway. Once they are appointed, they are forbidden from returning to their previous career as a barrister.
* Their losses come from two causes, one of which is unique to them. Their old scheme gave them a different tax status, and that was taken away when the changes were made. They lose much more than anyone else.
* Most of them gave up a better-paid job to become a judge. A big part of the reason for doing so was the comfort of a generous pension scheme.
* Their pension arrangements were changed in 2004 and they were told, at the time, that the changes made were a once-and-for-all-time settlement.

As a result, the Government’s argument that it wanted a consistent transitional arrangement across the public sector is doomed – they are not in the same position as everyone else.

The Government then had its opportunity to reply to the points made earlier in the day and yesterday. The points are not new, but the Government’s position shifted yet again. Previously they said that, because the issues raised are a matter of social policy, there is no real scope for the courts to interfere at all. Now they say that the courts can scrutinise the Government’s decision, but they should give great weight to the fact that the Government is better placed to make social policy decisions than the court.

There were some interesting exchanges with the court regarding the aim that the Government was trying to achieve. The Government reiterated that the aim was essentially moral – “it felt right thing to do.” The judges hearing the case asked – well why? The example was given of giving the over 60s free bus passes: most people would say that this is the right thing to do. But, replied one of the judges, you can explain why most people think that is right – it fills the buses, it gives pensioners the opportunity to keep mobile etc. Why is it right to protect older public servants but not for those that are younger? And if there is a reason, where is the evidence to back it up?

Tomorrow we will turn to the aspects of the case that have not really been touched on – the subsidiary race and sex discrimination claims.

Yours in Unity,



**SEAN STARBUCK**

**National Officer**

SS/kc