

## FBU Legal challenge on pensions: age discrimination issues

### Briefing for members

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The FBU has started the process of making a legal challenge to an important aspect of the Government's proposals for the 2015 Firefighters' Pension Scheme. Thompsons (our solicitors) have sent a formal letter of claim, and if a satisfactory response is not received within the specified timescale we will initiate judicial review proceedings.

#### What the claim is about

The FBU is very strongly opposed to a number of aspects of the proposed 2015 Scheme.

- For example we believe that the increases to member contributions are unfair, unaffordable and threaten the future of the Scheme.
- We believe that the proposed commutation arrangements are unjustifiable.
- Most importantly, however, we believe that the proposed scheme is totally unrealistic in the way it would treat members who are age 55 or more and who either want to retire, or need to retire because they are not able to continue working.

The vast amount of evidence shows that the majority of firefighters will be unable to perform front-line duties beyond age 55. We have shown that there are no non-operational roles available to redeploy firefighters into so a member who is unable to continue in a front-line role faces the stark choice of losing their job and not receive a pension or taking a hugely reduced pension.

This legal claim is about the position of members who are between the ages of 55 and 60 who want to retire or have to retire, and want to receive their pension, but who do not qualify for an ill-health pension. As matters stand, a member in this position would be entitled to draw their pension, but it will be reduced.

The reductions proposed by the Westminster Government for England and Wales are savage, and particularly unfair to members who are aged 55 or 56. For 55 and 56 year old members, the amount of the reduction depends on what their State pension age is. At the moment State pension age for men is 65 and for women it is 60, but for women it is increasing to become the same as the age for men, and for both it is increasing in stages to age 68.

The reductions proposed by the Government are set out in the table below:

Age at retirement	Reduction to be applied
59	4.8%
58	9.5%

57	13.9%
56	44.5% (if State pension age is age 67) 47.8% (if State pension age is age 68)
55	47.1% (if State pension age is age 67) 50.3% (if State pension age is age 68)

The table shows that there is a sudden and enormous jump between age 56 and 57. Our legal advice is that this jump discriminates on the grounds of age, and is therefore unlawful.

More than that, the proposed scheme design treats working firefighters in the same way as former firefighters who have left the fire and rescue service for reasons of their own. A firefighter might leave for any number of reasons and take up other employment. But they are not in the same position as a firefighter who is still employed in the service and who has no real option but to retire.

The legal advice that we have received is that treating active contributing members who want to retire at the age of 55 or more, in the same way as members who have already left for reasons of their own, is unlawful.

### **What we are aiming to achieve**

Our actuarial advisers have informed us that if the reduction factors did not discriminate unlawfully, and did not treat contributing members as if they had left and gone to work elsewhere, the reductions could look more like this:

Age at retirement	Reduction to be applied
59	2.7%
58	5.3%
57	7.9%
56	10.4%
55	12.8%

### **What this claim cannot affect**

The Government insists that the total cost of the 2015 Scheme has to be kept within an overall cost ceiling dictated by the Treasury. We do not accept that or the arguments for it. Increasing the total amount of resources available to the scheme, and whether they should be funded by the members or the fire and rescue authorities, remains a core part of our campaign.

Nevertheless, this legal challenge has to be made on the basis that the Treasury ceiling applies. If it does, improving the early retirement terms makes the 2015 scheme more expensive and something else has to give. The challenge can change the reductions in the tables above, but not the amount of the pension the reduction is applied to.

If our legal claim succeeds, the reductions might be improved but the total amount of money will not. This legal challenge cannot do that and other means would need to be identified.

This legal challenge will not change the contribution proposals either, and will not change the fact that for everyone, the Government's proposals will mean that you have to work longer, pay more, and get less. It is not the answer to all of our problems but would, if successful, address one element of it.

### **Next steps**

The Government has been asked for a full response by 23 June. If the answer we get does not meet our legal demands, we intend to proceed with a judicial review application.