# WRITTEN STATEMENT

# BY

# THE WELSH GOVERNMENT

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| **TITLE** | **Outcome of court case on firefighters’ pensions** |
| **DATE** | **23 July 2019** |
| **BY** | **Hannah Blythyn AM, Deputy Minister for Housing and Local Government** |

In 2013, the UK Government extensively reformed pensions for all public sector workers in the UK. The aims were to make such schemes less costly to the public purse, and thus to increase the costs and reduce the benefits to public sector workers themselves. For all pension schemes, retirement ages were increased and pensions calculated on the basis of career average earnings rather than final salary. The UK-wide Public Service Pensions Act 2013 required new schemes on these terms to be in place by 1 April 2015.

As part of those reforms, the UK Government also agreed with the TUC that public sector workers closest to retirement would be allowed to remain in their current pension schemes, by giving them so-called “transitional protection”. That meant such workers could still retire when planned, with the pension they had expected.

Pensions are generally not a devolved matter; we have executive functions relating to pensions for firefighters but not for any other group of employees. We agreed with granting transitional protection to older firefighters, not least because otherwise many of them would have faced a sudden increase in their pension age from 50 to 60. Imposing such a requirement abruptly would have been harsh and would have frustrated the plans for retirement which many firefighters would no doubt already have made. It would also have required them to meet the Fire Service’s stringent fitness standard into their late fifties, or face dismissal. Accordingly, our 2015 pension scheme grants transitional protection to all firefighters who were in service and aged at least 45 on 1 April 2012. The schemes for firefighters in England and Scotland include identical provisions.

Nonetheless, in 2015 the Fire Brigades Union (FBU) began a legal challenge to these arrangements against us, the Scottish and UK Governments and the employing Fire and Rescue Authorities, and on behalf of a representative group of its members. The FBU alleged that age-based protection discriminated unlawfully on grounds of age, while we believed that any such discrimination was a reasonable means of preserving the legitimate expectations of older firefighters.

We were successful in the Employment Tribunal hearing in January 2017. That, though was partly overturned by an Employment Appeal Tribunal in 2018, and fully overturned by the Court of Appeal just before Christmas. The Court held that protecting the pensions of older firefighters was not a legitimate aim, on the basis that they stood to lose least in financial terms from the reforms. Last month, the Supreme Court refused us permission to appeal against that judgment.

This means that the age-based protection is not lawful. While we will of course respect that, we are disappointed with the overall outcome. Our only aim was to allow older firefighters to retire as planned. Indeed, the FBU argued strongly that age-based protection should be extended when we were developing the scheme in 2014-15.

The outcome also means that unprotected younger firefighters are entitled to a remedy. That will be decided by an Employment Tribunal in due course, based on representations from us, the Home Office and the FBU. However, I should like to reassure older firefighters that I would not support simply removing the protection they enjoy. Many have already retired and claimed their pensions in good faith, and we cannot sensibly, or fairly, reverse that. Nor would doing so provide any real remedy for their younger colleagues.

The Chief Secretary to the Treasury has confirmed that as ‘transitional protection’ was offered to members of all the main public service pension schemes, the UK Government believes the difference in treatment will need to be remedied across all those schemes. The UK Government is responsible for all employee pensions schemes in Wales, except those for firefighters, but employers’ contributions to pensions for NHS staff, local government staff, teachers and relevant civil servants are paid from devolved budgets. If costs arise from the UK Government applying this judgment more widely, for example, increased employer contributions, in line with the Statement of Funding Policy we expect it to accept responsibility for that and to fully fund the related costs to devolved public bodies.

This statement is being issued during recess in order to keep members informed. Should members wish me to make a further statement or to answer questions on this when the Assembly returns I would be happy to do so.