

ESB RETIRED STAFF ASSOCIATION

ESTABLISHED 1974

NATIONAL EXECUTIVE COMMITTEE

T. COLLINS
CHAIR

M. MACNAMARA
SECRETARY

A. McCAFFERTY
TREASURER

J. NUGENT
VICE-CHAIR

LETTER TO ESB CHAIRMAN AND BOARD MEMBERS.

The ESB RSA is the only constituted and elected body representing the vast majority of 7,500 ESB retired and voluntary service staff.

The Association will be holding a protest outside ESB Head Office, ESB Pensions Office, ESB ESOT Offices and Government Offices to highlight their grievances at the lack of recognition and rights of pensioners. The protest will commence at 12.00pm outside ESB Head Office on Tuesday 3rd March 2015.

ESB Pensioners (majority stakeholders in Pension Fund) have contributed in full to their Pension Scheme for their pensions, as part of their conditions of employment for over 40 years and in some cases 45 years, yet have been ignored by Scheme Trustees, are excluded from negotiations and are allowed no input on issues affecting their Pension Scheme. When a person became a permanent employee in ESB it was a consequential condition of such permanent employment that such person be compulsorily covered by the employer by the terms and conditions of the Defined Benefit Pension Scheme.

A quote from Mr. P. J. Moriarity, a former ESB Chief Executive and Chairman, on 28th March 1984 shows the then prevailing attitude of the Company towards the ESB Pension Scheme and I quote *"the spirit in which the Superannuation Fund has operated since the foundation has been that ESB is the guarantor of last resort against any financial difficulty."*

A Cost and Competitive Review (CCR) was launched in February 1994. The then Chief Executive of ESB Mr. Joe Moran described the CCR as a *"unique"* initiative. *"The CCR"* said the Chief Executive, *"is worthy of this term. Nowhere in the world will you find Government representatives sitting down with management and unions as equal partners in a process to determine the future of a company which they own"* Prior to the ballot of trade union members in March 1996 Mr. Moran stated *"make no mistake - the very future of ESB is at stake in the CCR ballot."*

In order to underpin guarantees in relation to the Pension Scheme the Government enacted The Energy (Miscellaneous Provisions) Act 1995 which set out the ESB responsibility for the fund under TABLE in section 20. It states:

TABLE

1. **(b) provide (save as otherwise by this section) that every person entitled to superannuation benefits under the scheme shall pay contributions to the said fund and that the Board shall from time to time make to the said fund payments as are determined by the actuary to the scheme, and**
2. **(b) in such other manner as the trustees think proper;**

This makes the scheme a typical "Balance of Cost" scheme in Law, and requires ESB, solely to be responsible for any deficits that may arise from time to time. This legislation was never incorporated into the rules of the ESB Pension Scheme and apparently pensioners, staff, pension fund manager, fund actuary, fund trustees and Trade Unions were not aware of it despite negotiations taking place in relation to fund deficits in 2005 and 2010.

Under the ESB Pension Agreement 2010, pensions were effectively reduced as part of the solution to the deficit by breaking the link to staff salaries. In effect this agreement was done under false pretences because the Trade Unions were never informed about the existence of the 1995 legislation and indeed would not have made that agreement if they were aware of the legislation. It was 2013 before the Trade Unions became aware of the existence of the Act. It is now clear the ESB was in breach of its statutory responsibility under the Act to the detriment of pensioners. It should be noted that pre 1995 ESB staff have no entitlement to a state pension as a result of a cost saving exercise which resulted in an agreement between ESB and Government that the Company and staff would pay a modified rate of PRSI (Class D).

ESB are broadening their investment strategy and are investing nearly €2 billion in power station projects in the UK which will yield huge returns for the Company in future years and have contributed nearly €2 billion to the State Exchequer by way of dividends over the past ten years and yet they are ignoring their statutory responsibilities under the Energy (Miscellaneous Provisions) Act 1995 which was enacted by Government to give guarantees for the future financial security of ESB Defined Benefit Pension Scheme by making ESB liable for Fund deficits that may arise from time to time.

Notwithstanding all of the above, we suggest that a precedent that has been set recently in the Supreme Court decision in favour of Private Electrical Contractors is important for the Pensioners case, and I quote from a recent press release *"in their action against the Labour Court and the State, the contractors claimed the 1990 REA for the electrical industry was flawed because, they alleged, not all contractors were properly represented in negotiations at the Labour Court when the most recent terms and conditions were set"*. ESB RSA believe that this legal decision has direct similarities with the treatment of pensioners by ESB in that ESB and the ESB Group of Unions negotiated and finalised an agreement in 2010 on Pensions, which adversely affects all pensioners in ESB and this was done without any involvement of pensioner representatives in the process leading up to the Agreement.

ESB pensions have been frozen for over 6 years yet staff pensions are revalued annually by CPI + 1%. ESB RSA wrote to the ESB Pensions Manager requesting a meeting on 16th October 2014 but to date have not even had the courtesy of a response to our request. Pension Fund Trustees will not talk to ESB RSA Representatives and have refused to give answers to queries raised in correspondence with regard to Pension Scheme Governance and future Scheme funding.

The ESBRSA wrote to ESB's Chief Executive with queries in relation to special pension arrangements for a former Chief Executive and other senior executives as indicated in media reports. The ESBRSA are still awaiting a reply to this letter of 19th August 2014.

Whilst two of the Trustees to the Pension Fund are elected by the staff, after a selection process, and appointed by the Board, once they have taken up their positions they are prohibited from conversing with the ESBRSA by the Chairman of the Trustees. It has been the practice for a long number of years that a former Senior Executive of the Company becomes Chairman of the Trustees and the ESBRSA would contend that this creates a clear conflict of interest. Requests for meetings from ESBRSA with the Trustees have been denied and queries on pension issues have met with a response "*to read the Annual Report*". Similarly and as referred to earlier, members of the Superannuation Committee (five of whom are elected by the staff) are prohibited from having meetings with the ESBRSA and the latest request for such a meeting in a letter to the Pensions Manager on 16th October 2014 was not addressed in a letter from him dated 4th February 2015, and received on 16th February 2015. Is this the way to treat pensioners who have contributed hugely to the success of ESB over a long number of years? The Company promote "respect and dignity in the workplace" yet fail to apply such principles to the representatives of pensioners.

At present the Pension Scheme operate a Governance Forum of 9 people comprising the following:

- 1) Chairperson of Trustees
- 2) Chairperson of Superannuation Committee
- 3) ESB nominated Specialist Trustee
- 4) GoU nominated Specialist Trustee
- 5) Member of Superannuation Committee
- 6) ESB Management Representative x 2
- 7) GOU Representative x 2

Total = 9 persons

Yet this Forum does not include a retired member which leaves 7,500 pensioners not represented on this Forum.

ESB ESOT

The vast majority of the 10,000 ESOT beneficiaries are not directly represented on the Board of ESOT. 4 Trustees are nominated by the ESB GOU and 2 Trustees by ESB. There are no provisions in the Trust Deed of ESOT for any representation of pensioners. Requests to ESB and ESBGOU to address this situation have not been dealt with by either party. Requests for meetings with Board Trustees of ESOT have been denied. Similarly requests from the ESBRSA to be included in talks surrounding the issues associated with ESOT have also been refused.

Chairman, I would respectfully ask that you and the Board of the Company request the Management of the Company to constructively address the rights of the 7,500 Pensioners who have given such loyal and dedicated service over a long number of years in making ESB the premier semi state company that it is today.

Copy to all Trustees and members of the Superannuation Committee