

ESB RETIRED STAFF ASSOCIATION

ESTABLISHED 1974

NATIONAL EXECUTIVE COMMITTEE

**T. COLLINS
CHAIR**

**M. MACNAMARA
SECRETARY**

**A. McCAFFERTY
TREASURER**

**J. NUGENT
VICE-CHAIR**

Mr. James O'Loughlin,
Group Pensions Manager,
43 Merrion Square,
Dublin 2.

Ebilou,
Loughlinstown,
Celbridge,
Co. Kildare

3rd March 2015

Re: Pension Increase

Dear James,

Your letter dated 4th February 2015 refers.

ESB Retired Staff Association (ESBRSA) wish to protest in the strongest possible way at the lack of progress to date on our claim for a pension increase. You have not responded to our request for a meeting with you and representatives of the ESB Superannuation Committee.

You have stated that pension increases are subject to a solvency test under the 2010 pensions Agreement and that the Actuary found in 2014 that the solvency test wasn't met. This is contrary to what the Actuary stated during a very public dispute with ESB group of Unions in December 2013. He stated during that dispute that ESB Pension Fund was solvent and "in balance" and this was accepted by all parties to the dispute. There was also a public statement by the then Minister for Energy, Communications & Natural Resources, Pat Rabbitte, that there were "no current difficulties with ESB Pension Fund and there was no deficit in the Fund".

With regard to pension increases for pensioners being conditional on the Pension Fund passing a solvency test, is the annual revaluation of pensions for current staff by CPI + 1% also subject to an annual solvency test?

ESBRSA believe that the vast majority of pensioners should not be subject at all to the 2010 Pensions Agreement with unions, in fact the very validity of this Agreement is questionable, as pointed out below. This Agreement was made long after most pensioners had retired from ESB. The conditions that should apply to most pensioners are those conditions that prevailed at the time of their retirement.

ESBRSA also believe that this agreement entered into by these two parties is detrimental to pensioners who were not party to the agreement and is unconstitutional as demonstrated in a previous Supreme Court Ruling in relation to REAs i.e. it is unconstitutional for two private parties to make an agreement which attempts to be binding on a third party when that third party was not party to the original agreement.

When the 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, and as a party to the Tripartite Agreement (CCR), the Government enacted The Energy (Miscellaneous Provisions) Act 1995 which set out the ESB responsibility for the Pension Fund in section 20. 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 its existence until December 2013.

In effect, the 2010 Pensions Agreement was done under false pretences because the Trade Unions were never informed about the existence of the legislation and indeed would not have made that agreement if they were aware of its existence. It is now clear that ESB was in breach of its statutory responsibility under the Act to the detriment of pensioners.

ESBRSA would like to meet with you and representatives of the Superannuation Committee to discuss the above.

Yours sincerely,

Michael MacNamara, Hon Secretary,

National Executive Committee,

ESB Retired Staff Association

Copies to all Trustees and members of the Superannuation Committee