

ESB RETIRED STAFF ASSOCIATION
ESTABLISHED 1974
NATIONAL EXECUTIVE COMMITTEE

T. COLLINS	JIM DEVLIN	M.KELLY	A. McCafferty	PETER LYNCH	TOM O'BRIEN
CHAIR	SECRETARY	ASST.SEC	TREASURER	VICE-CHAIRS	

Newsletter October 2019

The ESBRSA executive has been in communication with ESB, relevant government Ministers and TDs, and the Medical Provident Fund in an effort to progress issues of concern to members. The main issues of concern are as follows:

- Pension Increase
- Recourse to Workplace Relations Commission (WRC) for arbitration of grievances
- Pension scheme governance issues
- Lack of recognition for pensioners in respect of rights of representation
- Pension scheme funding and implications of Minimum Funding Standard (MFS)
- Reform of Pension Scheme Rules for appointments to the Superannuation Committee
- Medical Provident Fund's excessive reserve

In pursuing its objectives, the National Executive Committee meets quarterly and the General Purposes Committee meets monthly (with the exception of August). All GPC meetings since the last newsletter were well attended with an average attendance of 8 members, with a minimum attendance of 7, out of a maximum of 9.

ESBRSA / ESB Forum

The 'Forum' is the formal arrangement for meetings between ESB and ESBRSA. There were three meetings of the forum in 2018 and three in 2019, with a fourth meeting scheduled for December 2019. The meetings are chaired by an independent facilitator (Elaine McCarthy of Crest Consulting). ESBRSA is represented by its executive (Tony Collins, Ann McCafferty, Jim Devlin, Matt Kelly and by John Nugent (up to his retirement as Vice-Chair in early 2019). ESB is represented by Jason Bane & Joyce Farrell, with ESB Managers attending from time to time to make presentations on topics of interest. The scheme's actuary, Liam Quigley attended the meeting on 1st May 2019 and members of the superannuation committee have attended on one occasion in 2018.

Pension Increase

Prior to 2010, ESB traditionally approved pension increases in line with increases in employee salaries as a matter of government and company *policy*. In 2010 ESB ended that policy as a permanent solution to a temporary financial crisis - to the detriment of all members of the Scheme in the 2010 Pension Agreement with the Group of Unions. The

Group represented only active (employee) members of the Scheme while pensioners were excluded from the process and were never a party to the Agreement. Nonetheless the terms of the agreement have been imposed on all members of the Scheme including those retired prior to the Agreement.

ESB employees received 3 annual increases aggregating to a 7.5% increase in salary in the period 2015 - 2017 and have just concluded another agreement for a further 7.5% increase over the next 3 years. In contrast, after 10 years of a pension freeze, pensioners received a paltry 0.2% cost of living increase in 2018. Even increases in the state pension exceed this. Since 2010 the State Contributory Pension has increased by 6.6% to 2017 and 8.8% to 2018.

A report commissioned by ESBRSa from Trident Consulting reviewed the Scheme's ability to support pension increases, and clearly indicated that pension increases were affordable & appropriate. The report together with a letter dated 26th Feb 2019, which outlined a number of issues of concern was handed in on the day of ESBRSa's protest of that date at ESB Head Office.

ESBRSa has sought an increase in pensions through communication with ESB, both in writing and in Forum meetings and with the pension fund trustees. ESB has indicated that pension increases will be strictly in accordance with the 2010 agreement negotiated with the group of unions. ESB has stated in successive Annual Reports that it does not intend to make any further contributions to the pension fund, other than the normal on-going contributions on behalf of serving staff and the balance of monies committed to under the 2010 Pensions Agreement.

In reply to ESBRSa most recent letter of 29th August 2019 to ESB Chief Executive and Board members, ESB referred the issues to Executive Director Geraldine Heavey for consideration and response on their behalf. Ms. Heavey replied on 7th Oct adhering to the 2010 Agreement and inviting our input to ESB's governance review body.

No Recourse to Workplace Relations Commission (WRC)

The Association would welcome an opportunity to refer their case for a pension increase and other grievances to the Workplace Relations Commission (WRC). However, since pensioners are not workers as defined in law, and our association is not a trade union, we have no recourse to the WRC for dispute resolution. ESBRSa wrote to Regina Doherty, Minister for Employment Affairs and Social Protection, on April 2019 requesting a change in legislation in this regard. In the letter of reply of 30th May 2019, the Minister indicated that changes in legislation were not being considered. It would appear that the minister believes that pensioners (retirees) should be denied a basic right of access to fair procedures of representation and arbitration, whether it be with their former employers or with the Trustees of their Pension Schemes. The Minister for Business, Enterprise & Innovation had earlier emphatically closed the door for pensioners (retirees) on access to representation & arbitration through amendments to Industrial Relations legislation.

Pension Scheme Governance

The DB Pension Scheme is administered by a Committee and a Trustee Board. The Committee decides on pension increases with the consent of the Trustees and of ESB. The

Committee consists of 5 ESB nominees who are there, according to the rules of the Scheme, “to represent ESB” and of 5 elected active (employee) members who can only be nominated by active (employee) members and only active (employee) members can vote. These elected active (employee) members are there, according to the rules of the Scheme, “to represent General Employees” only.

It is the view of ESBRSA that the composition of the superannuation committee is now acutely unrepresentative as it is drawn from ESB employees, who account for only 29% of the members of the pension fund. This position will become ever more unrepresentative as the number of active (employee) members falls through future retirements. In reply to questions raised at the most recent Forum meeting, regarding the rules that only employees were eligible to serve on the superannuation committee, ESB pointed out that members of the committee had a fiduciary duty which superseded all other interests. ESB consider the unrepresentative composition of the superannuation committee to be irrelevant.

While the association would like to have the rules for the composition of the superannuation committee changed in time for the next election in June 2020, ESB have indicated that internal governance of the scheme is being reviewed but no change is intended until after Government legislates to implement the requirements of EU Directive “IORP II”. This legislation was to have been implemented by mid-January 2019 but is not now expected to be implemented before Q1 2020 at the earliest. The composition of Trustees will also be looked at, as will the skill sets of trustees with a view to identifying gaps in trustee skills.

- IORP II (Institutions for Occupational Retirement Provision IORP II) – an EU Directive.

Pension Scheme Funding

ESBRSA is of the opinion that ESB has an obligation to continue to contribute to the pension fund to maintain benefits for its stakeholders (e.g. existing and future pensioners). This is because

- (1) the primary legislation governing the Scheme denotes that it is a typical “balance of cost” Scheme and
- (2) ESB (not the pension scheme) are liable for first tier pension provision as a result of the exclusion of members from “full membership of social welfare scheme” up to full state pension level in the event that the scheme defaults.

These, and other issues, have been conveyed to ESB by Group of Unions’ solicitors, Byrne Wallace in a 2014 letter to ESB Board members.

A Minimum Funding Standard proposal which was due to expire at end 2018, was on track until the last few months of 2018 when investment values fell sharply. Investment values have since recovered significantly in 2019. A new funding proposal will have to be submitted to the Pensions Authority no later than December 2019.

ESB Retired Staff Association (ESBRSA) is concerned that the new funding proposal will not meet the statutory funding requirements without additional contributions from ESB. The requirements to meet the MFS are even more stringent now, given that a 10% Risk Reserve has been added, thereby making it an even more onerous task than before to meet the funding standard.

ESBRSA believe that ESB's liabilities and their statutory obligation to the Pension Scheme should be fully recognised under any new funding proposals submitted by ESB and the Scheme Trustees to the Pensions Authority in 2019 and are seeking an open and transparent process in the development of any proposals and the involvement of representatives of all scheme members.

The Scheme Actuary has stated that the failure of the Pension Fund to meet the Minimum Funding Standard (MFS) is the main obstacle to pensioners getting a pension increase. The Minimum Funding Standard is a regulatory requirement and assesses the ability of a Pension Fund to meet its liabilities should it wind up immediately. ESB DB Pension Fund is a statutory scheme and contains no provision for wind-up. When the Unions threatened strike action in 2013 both ESB and Government stated they had no intention of winding up the scheme.

The Trustees have been urged to pursue ESB, as Scheme sponsor, to fulfil its statutory obligation to fund deficits in the Pension fund. This obligation arises due to the 1995 amendment of the 1942 Superannuation Act, i.e. the Energy (Miscellaneous provisions) Act 1995.

Forum Meetings

While the Forum which the Board established was intended as a channel of communication between ESB and retired members of the Scheme, it has proved to be ineffective in addressing any of the issues of greatest concern to pensioners. The meetings have been structured in such a way as to give priority to matters which ESB wish to promote. ESB representatives have stated their role is to listen to our concerns and report these to their senior management. The substantive issues which ESBRSA would like to have resolved are not being dealt with. In essence the forum provides a one-way communication. It is not dialogue.

At the most recent forum meeting on 4th September 2019, for example, Roma Burke of Lane Clark and Peacock (LCP – a firm of actuarial consultants), speaking at the behest of ESB gave an update on pension developments. The implementation of IORP II directive will significantly change how the Pension Authority supervises occupational pension schemes. IORPS II will impact on governance obligations of all schemes. Risk assessment and management will be particularly prominent in DB schemes. Trustees will need to have a better understanding of risks and quantitative analysis of risks. To meet the increased cost of supervision, the Pension Authority will need to increase its fee income in future.

In future, pension schemes will be subject to more vigilant scrutiny. The health of ESB scheme is likely to be tested under (1) normal and (2) stressed environments. Solvency of the fund will be the primary consideration.

ESB introduced the Executive Director Enterprise Services, Geraldine Heavy who attended the meeting for the first time since her assignment in Oct 2018 to the role of representing the Board, previously occupied by Executive Director Jim Dollard.

A few months ago ESB Payroll advised our Branch Treasurers that deduction at source of RSA subscriptions would cease from 1st Oct. Since then ESB confirmed at the Forum (Ms.

Heavey) that deductions at source would continue as before. We also advised her of our Branch Treasurers' difficulties concerning how little information is being provided on payment to RSA branches of members' subscriptions. Ms. Heavey surmised this may be due to GDPR issues but undertook to check this out. We have yet to receive clarification.

Public Protests

There have been two public protests, one at ESB Head Office on 26th Feb 2019 and the second outside the Dáil on 27th March 2019. Both protests were well attended. It should be noted that despite the Dáil protest and several letters to/from Ministers, none of ESBRSA's concerns have been addressed in any way by Government. The most recent protest was held on 23rd October at Dáil Eireann. While the attendance was down on previous protests it was successful in that it highlighted the lack of response from Government to our representation & arbitration issues. There were a number of RSA speakers, including John Nugent, Tom O'Brien & Tony Collins. There were a number of TD's in attendance, most notably Brid Smith of People before Profit, John Brassil, FF Kerry and Michael Healy Rae & Danny Healy Rae from Kerry. Brid Smith & John Brassil also spoke at the protest. Those TD's in attendance committed to raising our issues in the Dáil.

Support for National Federation of Pensioner Association (NFPA) protest

The NFPA organised a protest outside the Dáil on 2nd October 2019, which was well attended despite the inclement weather. A number of ESBRSA members were present to support the NFPA and Tony Collins, chair of the ESBRSA delivered an address to the gathering. A number of TD's were present, notably Brid Smith, People before Profit (PBP), who also spoke in support of the protest.

Pension Fund Trustees meetings with Scheme Members

Trustees met with members in the Aviva Stadium on 9th Oct 2018 and at Thomond Stadium on 11th Oct 2018, with a good attendance in both locations. Further Trustee meetings were held at two venues (1) Dublin and (2) Athlone in October 2019.

Communications with ICTU

Tony Collins, Chairman ESBRSA wrote to Patricia King, ICTU outlining the concerns of ESB pensioners and seeking the support of congress, particularly on the issue of ESB's financial responsibility to support the new MFS Funding Proposal which will be submitted to the Pensions Authority later this year.

Communications with Government Ministers

Tony Collins, Chairman of ESBRSA wrote to Regina Doherty pointing out that The Social Welfare, Pensions and Civil Registration Bill published in May 2017 does not provide any meaningful protection for pensioners. In a letter of 25th April, he emphasised that there must be financial consequences for Employers who renege on responsibility for their Pension Schemes and fail to make contributions to resolving Pension Fund deficits. The "Debt on the Employer concept for the amount of the unresolved Pension Fund deficit needs to be enshrined in Irish Law as part of any new legislation if effective protection is to be provided.

Vice Chairman

John Nugent stepped down as vice Chairman early in 2019. Following an election at the AGM on 27th June, the vice Chairman position was filled jointly by Peter Lynch, head office branch and Tom O'Brien, Tralee branch.

Retired Semi-State Staff Association (RSSA)

The RSSA comprises members of a number of semi-state retired staff associations including RTE, CIE and Dublin Port. ESB RSA are represented by Matt Kelly and Peter Lynch on this group. The group has met in October 2018 and in January 2019 and a letter from this group went to the Oireachtas committee. At an Oireachtas committee hearing, three representatives of RSSA (including Matt Kelly of ESB RSA) made representations on behalf of semi-state pensioners to the committee and TD's who attended. The event was televised on Oireachtas TV. RSSA delivered an audio/visual presentation at Dáil Eireann on 22nd October. Tony Collins of ESB RSA gave the presentation, which focused on representation and arbitration procedures for pensioners.

Medical Provident Fund Reserve

The Medical Provident Fund (MPF) as a Restricted Membership Scheme is subject to community rating (subscription cost not related to age) but is excluded from the Levy/Credit system which severely disadvantages the MPF given its membership age profile. As a Restricted Membership Scheme it is not regulated by the Central Bank as is the case for Open Membership Insurers such as VHI and the level of reserves, if any, is a matter at the discretion of its Trustees. At the end of 2018 the MPF reserve had risen to €42.3 million.

ESB RSA wrote to MPF pointing out that the reserve was created by its member's subscriptions to MPF over the 60+ years of the Fund's existence and requested that the reserve fund be utilised to subsidise reduced members' subscriptions for an initial period of 3 years. The MPF have not acceded to this request. The Trustees are currently carrying out a review of MPF operations which will include the price plans and how the reserves will be utilised. A recent query to the MPF revealed that their review is unlikely to be completed this year.

'Flu Vaccination

The seasonal Flu Vaccination is available now. For more information and your free Boots flu vaccination voucher, please contact ESB Customer Support Centre: Phone 01 702 6699 option 3 or email onehr@esb.ie with your full name, staff number, phone number and the address to where you want the vouchers to be sent. Those over 70 years have free access through having a full medical card or a free GP visit card.