

ESB RETIRED STAFF ASSOCIATION

NEWSLETTER AUGUST 2020

CONTENTS

Section 1 ESB DB Pension Scheme - a State Occupational Pension Scheme

Section 2 ESB DB Pension Scheme Governance

- 2.1 Selecting Member Trustees by Election
- 2.2 Superannuation Committee Election
- 2.3 Governance Reform

Section 3 The Minimum Funding Standard

- 3.1 MFS Funding Proposal 2012
- 3.2 MFS Funding Proposal 2020

Section 4 Consumer Price Index, Pensions & Pay

Section 5 Political Lobbying

Section 6 ESB RSA and ESB Forum

Section 7 Financial Loss due to loss of traditional indexation.

Section 8 ESB RSA & Covid 19 and Other News

Section 1

ESB DB Pension Scheme - a State Occupational Pension Scheme

ESB DB Pension Scheme is a funded scheme which is regulated as if it were a purely private scheme, whereas it is a statutory state occupational pension scheme which has characteristics quite unlike any private pension scheme.

It is expressly provided for by statute; its rules cannot be changed without ministerial approval; its contribution rates require ministerial approval; and its annual report is only issued after ministerial approval; its members employed prior to April 1995 were

required to pay the public service PRSI contribution.

As ESB employees, in common with public service employees, we were not permitted access to the state pension given that we already had a state sponsored occupational pension (employees first employed prior to April 6th 1995) indexed to salary increases, as a matter of public policy. This was not an ESB decision.

Government directed ESB to apply pension increases in line with salary increases in 1971/72. ESB General Employees Superannuation Fund Report for Year Ended 31st March 1972 under the heading "Pension Increases", records that "The Minister for Transport and Power authorised ESB pensions

to be related to the salary scales existing in the Electricity Supply Board on 1st Jan 1972”.

This public policy continued uninterrupted until 2010. The last national wage agreement pay round was a 3% increase to employees and pensioners on 1st Jan 2009.

In the Public Service, Government stopped non-mandatory traditional indexing at the time of the financial crisis but has re-established that indexing in recent times.

Our Scheme was entirely analogous to the Public Service except that it was funded.

**Government Circular DPE100-002-2017
29 Jan 2018**

instructs a return to the non-statutory, pay-linked method of pension adjustment which prevailed until the onset of the financial emergency.

From 1981 onwards, contribution rates were established such as to take account of indexing in line with salary increases (confirmed in a 1996 written report “History and Development of ESB Superannuation Scheme” prepared by a trustee cum executive director of ESB at the request of ESB’s Chief Executive.

In the light of the above facts we continue to call for the re-instatement of traditional indexing as in the Public Service and in line with the terms and conditions of our contract of employment with ESB based as they were on public policy throughout our working lives and paid for by our pension contributions from 1981 onwards.

Section 2

ESB DB Pension Scheme Governance

2.1 Selecting Member Trustees by Election

Currently 2 members are elected as member trustees – one is drawn from the ranks of

employee members and one from the ranks of pensioner members. In the recent election the employee member trustee vacancy on the Trustee Board was filled by **Tony Walsh** after a 15th July count. Other candidates were John Cronin, Martin Hand and Pat Hennessey. All 4 nominated candidates passed the pre-selection process. Congratulations to Tony Walsh on his election. His appointment is until next June 30th as the normal 5 yearly election will take place next May/June.

Under the Pension Act Regulations (SI376/1996) a valid candidate is a properly nominated candidate who accepts the nomination. Since the 2010 Pension Agreement, a pre-selection process has been used to disqualify some valid candidates from appearing on the ballot paper. This contradicts the relevant statutory instrument SI376/1996 which states that the regulations over-ride where necessary provisions made in the trust deed and rules of the scheme for selecting and appointing trustees. In the case of ESB DB Scheme the rules (as out in SI18/2014) are silent on the issue of selecting and appointing trustees.

SI376/1996 also requires an equal number of nominated trustees and member (elected) trustees be appointed, i.e. 4 nominated and 4 elected. This requirement has been ignored by ESB DB Scheme in Jan 2011 when Mr. Van Dessel and Mr. Kelly were nominated and appointed as trustees, and in the subsequent 2 elections. Twice our queries on this issue to ESB Pensions and Insurance Manager have been ignored.

We have written to the Pensions Authority about these apparent failures to comply with the Pension Act Regulations and await developments.

2.2 Superann. Committee Election 2020

The 10 person Superannuation Committee consists of 5 company nominees and 5 elected employee members who are elected by employee members only. By rule of the Scheme *all 10 must be employee members* of the Scheme. Pensioners are excluded. Following the election count date of 15th July 2020, our query to ESB Pensions Office seeking the names of those elected brought the reply *“Following a nomination process the 5 outgoing elected candidates stood again and as there were no other candidates no election was required.”*

ESB held this election process in full knowledge of our strenuous opposition to the continuing complete exclusion of pensioners from the election process including voting and Committee membership, even though employee members number less than 29% of the membership (2018 figure). RSA has brought this matter to the attention of the Pensions Authority which has recently replied that it has no power to direct ESB to change the composition of the Committee.

ESB has refused to move on revising the rules of the scheme, even though it has admitted that reform of the governance arrangements is required, on the pretext that Government has not yet legislated to transpose EU Directive IORP II into Irish legislation. The end-date for transposing the Directive was Jan 2019.

At a Society of Actuaries In Ireland event on 12 June 2020, the Pensions Regulator, Brendan Kennedy, stated *“The Department of Employment Affairs and Social Protection is working with the Office of Parliamentary Counsel on the IORP II transposition regulation. This work is high priority and has continued through the Covid-19 disruption, but I do not have an expected completion date.”*

In the ESB/RSA Forum Ms. Roma Burke, actuary and partner of Lane Clarke Peacock Ireland (a firm of financial, actuarial and business consultants) in a presentation on IORP II stated that the IORP II Directive had nothing to say about the composition of Governance bodies such as ESB Scheme’s Superannuation Committee. This makes ESB’s delay pending legislation appear as a pretext for avoiding change.

2.3 Governance Reform

Mr. James O’Loughlin, Manager Pensions and Insurance, is currently leading a governance review body. RSA made a presentation to that body last November. ESB has stated that the work of that body will not be completed until after Government transposes IORP II directive into Irish law. Even then, we have been given no indication as to how long completing its work will take nor a timescale as to how long it may be before governance reform is achieved.

Section 3

The Minimum Funding Standard

3.1 The Minimum Funding Standard 2012

The Trustees with the agreement of ESB made a MFS Funding Proposal in Dec 2011 co-signed by both parties. The Pensions Authority did not approve that proposal and the Trustees with the agreement of ESB modified their Proposal through “additional measures”. Among these measures were:

- The €591m special employer contribution committed to in the 2010 Pension Agreement should be paid to the Scheme *in full by end 2018*.
- Reversing the priority order for pension increases versus de-risking contrary to the terms of the 2010 Agreement

- Drastically de-risking the fund far beyond the level of de-risking set out in the 2010 Agreement, contrary to the terms of that Agreement.

ESB made no contribution to resolving the MFS deficit in 2012.

Only pensioners suffered loss - in this case their loss was of the meagre increases which the 2010 agreement should have delivered had surpluses not been diverted into de-risking far beyond the figure given in the 2010 Agreement. At the same time employees' pensions grew unconditionally at CPI+1% leading to employees who retired in 2018 retiring with pensions more than 8% higher than if they had retired with the same service prior to CARE commencement.

3.2 The MFS Proposal 2020

You will recall that last February James O'Loughlin, ESB Pensions and Insurance Manager, wrote to all members of the Scheme advising of a recommendation from the Pensions Implementation Forum (consisting of representatives of Trustees, ESB, Superannuation Committee and Group of Unions) to vary the rules of the Scheme to make early retirements between age 60 and State Retirement Age subject to the discretion of the Superannuation Committee as a way to eliminate the MFS deficit.

ESB Board approved this Proposal and has requested Ministerial approval for a necessary rule change and the MFS Proposal itself. On 25th August, ESB Pensions Office has confirmed to us that the necessary approval for the rule change remains under consideration with no approval granted yet.

Again, ESB is not contributing to the elimination of the MFS deficit.

The 2012 MFS Funding Proposal approved by the Pension Authority was in part based on the

payment by ESB of the special €591 million contribution (2010 value) *by end 2018*. It is now past mid-2020 and a €287 million (current value) balance is still outstanding. Recently ESB has proposed in the Implementation Forum to pay €240 million to the Scheme and to divert €47 million to another legal entity, another Trust, not yet established, to the benefit only of employee members of the our DB Scheme. RSA has written (15th July) to the Trustees requesting their reassurance that they will not accept that proposal which would be to the detriment of all members of the Scheme, pensioners, deferred members and employees. As yet (27st August), no reply has been received from the Trustees. As ESB's proposal violates the Funding Proposal 2012 approved by the Pension Authority, we have written (7th August) to the Authority about this and await its reply.

Section 4

Consumer Price Index, Pensions & Pay

From 1st Jan 2010 until end Dec 2019 CPI has grown by 7.6%. In that period your pension has grown by 0.2% (at 1st Jan 2018) without accounting for the government levy and now by minus 1% after the government levy. The purchasing power of your pension has fallen accordingly.

Over the same period employee members have had 5 pay rounds commencing 20th April 2015. To the end of 2019

- their pay rate has grown by 12.9%
- the cash value of these 5 increases compound one on top of the next to give a total cash sum equal to 31% of their March 2015 annual salary.

By the end of this year, 2020, employee members will have had 6 pay rounds. To the end of 2020

- their pay rate will have grown by 15.7%
- the cash value of these 6 increases compound one on top of the next to give a total cash sum equal to 44% of their March 2015 annual salary

That 6th pay round covers a 15 months period to end 2021 by which time the cash value of those 6 pay rounds will be equal to 60% of their annual salary at March 2015.

Section 5

Political Lobbying.

Our Chairman Tony Collins and Vice Chairman Tom O'Brien had a useful meeting with a senior politician concerning our pension scheme and the treatment of pensioners by ESB/ESB Pension Scheme. We will continue to lobby. *We also urge you to raise our treatment as pensioners with your elected representatives.*

Section 6

ESB and ESBRSA Forum

ESB provided the Forum as a place where ESBRSA and ESB management could meet and give RSA an opportunity to articulate the issues and concerns of pensioners to management. ESB provided 2 permanent senior representatives who informed us that they were there to listen and would convey our concerns and issues to their senior management. They described themselves as "messengers and not decision makers". Others attended by invitation, e.g. Manager Pensions and Insurance, Executive Director Enterprise Services, the Superannuation Committee (once). The Trustees absolutely refused to attend.

Both in the Forum and in direct correspondence to ESB Chairman, Chief Executive and Board members, RSA has

explained the issues and concerns of pensioners to the point of exhaustion of both the subject and our ability to explain it.

Pensioners have had no tangible benefit from RSA's engagement with ESB and have suffered an outcome far worse than anything ever envisaged in the 2010 Pension Agreement.

It has never been the intention of RSA to walk away from the Forum but any committee/forum/body established for a limited purpose can only decay into irrelevance once that purpose has been served.

If the Forum is not to fall apart it needs renewal which must provide equality of esteem for all members of the scheme irrespective of constituency; should be consistent with the facts that (1) the scheme has been closed to new entrants since 1st Jan 2011; (2) recognise that active members are a diminishing minority (28.6% of membership at end of 2018); (3) that the scheme will eventually have zero active members; and must end the preferential treatment of active members as represented by the Unions, to be achieved by extending to pensioners and their representatives the same rights as employees and their Unions in all matters connected with the Scheme.

The Forum's original mandate was set out by ESB Senior Management and we have called on them to expand its scope and purpose but ESB has so far refused to depart from the Forum's very limited mandate as a place for consultation (their word). In all matters pertaining to the pension scheme ESB will engage, consult and negotiate with the trade unions on behalf of employee members including deciding on outcomes but will not consult with RSA *before* decisions are made. The most recent example is the MFS Proposal requiring a rule change. "Consultation" after

the fact/decision is not consultation. At best, it is briefing.

In the light of experience where pensioners have not benefited in any tangible way from our participation in the forum, we have stepped back from it for now. No meetings have taken place this year and not just because of Covid19. It remains available should we chose to request that it meet.

After over 4 years in the Forum we consider the purpose of our participation in it to have been met in full with no tangible benefit to retired members.

Further participation in the Forum under the current terms of engagement appears to be pointless at this time.

Section 7

Financial Loss due to non-application of traditional indexation.

Lost Cash Value per Calendar Year for a Pensioner on a Pension of €26,000 / year due to refusal of traditional indexation in line with salary increases from 20/04/2015	
2015	€ 363
2016	€ 1,067
2017	€ 1,562
2018	€ 2,156
2019	€ 2,808
2020	€ 3,528
2021	€ 4,078
Total Loss to end 2021	€ 15,561

On a Pension of €26,000 the total amount lost over the periods:

2015-2019 = € 7,955 = 30.6% of 2015 pension

2015-2020 = €11,483 = 44.2% of 2015 pension

2015-2021 = €15,561 = 59.9% of 2015 pension.

Section 8

ESBRSA & Covid19

Our most recent monthly committee (GPC) meeting was on 5th March last. Our AGM, due toward end June last, is postponed until a date and place to be determined when public health measures for covid19 permit. Just now, such measures do not even permit our monthly GPC meetings.

https://www.citizensinformation.ie/en/health/covid19/public_health_measures_for_covid19.html

Other news:

One pensioner has informed us he made a formal complaint to the Pensions Ombudsman concerning his financial loss as a result of the 2010 Pension Agreement. The Ombudsman's Office engaged ESB in a mediation process which offered no resolution. The pensioner accepted that the Ombudsman proceed further by way of a more formal investigation and adjudication procedure which is expected to take many months.

Our thoughts and sympathy are with all who have suffered illness or bereavement from Covid19 or other cause.

Keep well and stay safe.

RSA Executive.

28th August 2020