



Scottish Police Federation

5 Woodside Place Glasgow G3 7QF

JCC Circular 1 of 2017

Ref: CS/LS

17 January 2017

Dear Colleague

Judges Employment Tribunal Pension Changes - Information

As you know, all decisions taken by the SPF (and other UK Police Federations) relative to pension changes have been taken on the basis of legal advice. Given the size of the public sector workforce and the implications of pension changes for over 5 million workers, it is not unreasonable to assume the same conclusions were reached by the legal advisors to the unions (with the notable exception of the FBU).

Like all issues that could have an impact on our members, we will examine this latest tribunal judgement. It is however important to note that there is an expectation the Ministry of Justice will challenge this Employment Tribunal decision and that the outcome is far from concluded. There is no need to undertake any act at this time as the proceedings will run their course.

If there is a relevant finding that could impact on police officers, this will be fully explored. It is important to note that whilst legal advice concluded little prospect of success, this does not result in a bar to relevant findings being applicable to others. If we look at the activities of the Government Actuaries department in respect of adjusting actuarial tables as an example, we see that action pursued by the Police Federation had a corresponding beneficial knock on for firefighters (who did not instigate legal proceedings). Similarly when firefighters took a further case to the pension's ombudsman, this also had a corresponding beneficial impact for police officers (who did not take parallel action).

It is understandable that members will look at the headlines and feel this may impact on them. It is however important to note that the arguments advanced at the Employment Tribunal were heavily based on the changes to the Judicial Pension Scheme being "uniquely different" to the other public sector schemes. That is not to say the conclusions from the tribunal may not be relevant for police officers but it is worthy of consideration as to why this argument was advanced in the first instance. In the ruling Judge S.J. Williams found at paragraph 92;

"The transitional provisions constitute one of the very few respects in which the NJPS [New Judicial Pension Scheme] is consistent with the other reformed public service pension schemes; the benefits and accrual rate are very different, and some schemes retain different retirement ages; and, as far as has been noted above, both Mr Gray and Mr Olive recognised, there were unique factors to the judiciary which meant that consistency

between the schemes was scarcely attainable. In my judgement that must detract significantly from the argument that in this one respect, namely transitional protection, it was an important objective that the NJPS should be consistent with those other schemes"

Further at paragraph 94;

*"... I accept that in implementing their pension reforms, the respondents and the government as a whole were entitled in principle to pursue the aim of consistency, and that such consistency could, in a properly evidenced case, be conducive to a social policy objective. However, in my judgement, the respondents have failed to demonstrate beyond the level of 'mere generalisations' how consistency in the matter of transitional protection was capable of contributing to their social policy objective, especially since so much else in the JPS was inconsistent with other reformed pension schemes. I find accordingly that it has not been shown **in this case** {emphasis added} that the aim of consistency is capable of justifying derogation from the principle of non-discrimination on the grounds of age: ..."*

The full judgement can be viewed here <https://www.judiciary.gov.uk/wp-content/uploads/2017/01/mccloud-v-moj.pdf> and it is inevitable members will take greater solace from some sections than others. The simple fact is that at this time it is too early to conclude if this ruling has any relevance, either positive or negative for police officers. Needless to say if the SPF finds opportunity to pursue actions to benefit our members, we will as we have always done, do so.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Calum Steele', with a horizontal line drawn through the middle of the signature.

Calum Steele
General Secretary