



Scottish Police Federation

5 Woodside Place Glasgow G3 7QF

JCC Circular 55 of 2019

Ref: CS/LS

27 November 2019

Attachments: SPPA Circular 7/2019

Dear Colleague

Police Pensions (employment tribunal) update – information

I refer to the above and attach for your information an entirely self-explanatory circular from the SPPA.

Yours sincerely

Calum Steele
General Secretary

**POLICE PENSION SCHEMES
2019/07**

WHO SHOULD READ: The Chief Constable of Police Scotland
Scottish Police Authority
Scheme members

ACTION: For information and circulation

SUBJECT: Pension Scheme Reform – Employment Tribunal

The purpose of this circular is to:

- Provide an update on the ongoing Employment Tribunal litigation relating to the transitional protections included in pension scheme reform in 2015

Background

1. Following the UK Government's Public Service Pensions Act 2013, all the main public service pension schemes, including the Final Salary Police schemes in Scotland, were reformed to provide defined benefits on a career-average basis from 1 April 2015. These schemes are called Career Average Revalued Earnings (CARE) schemes and were intended to make public service pensions more sustainable and fair.

2. In a Final Salary scheme, a member receives a proportion of their final salary based on their length of service, and in the 2006 scheme an automatic lump sum. In the 2015 CARE scheme, members build up pension each year based on a percentage of their pensionable earnings and this is added to their pension account. The pension account contains the pension built up in previous years and is revalued each year by the annual rate of increase in the Consumer Price Index plus 1.25%. At retirement, the total built up in the pension account is put into payment as an annual pension.

Transitional Protection

3. When the unfunded public service CARE schemes were introduced in 2015, those members within 10 years of their scheme retirement age at April 2012 were allowed to remain in their current scheme. Schemes also included an amount of 'tapered' transitional protection for those between 10 and either 13.5 or 14 years of retirement, meaning their date of moving or "transition" to the new 2015 scheme was delayed to some point before 31 March 2022.

Employment Tribunal – *McCloud* and *Sargeant*

4. Following the reforms, two claims were brought to the Employment Tribunal in London, one against the Judges' pension scheme (the *McCloud* case), the other against the Firefighters' pension scheme (the *Sargeant* case). Claimants argued that the transitional protection arrangements were discriminatory on the basis of age, sex and race. Similar claims have been brought by firefighters in Scotland and these are currently sisted pending

the outcome of the Central Tribunal. Claims were also brought by police officers in both Scotland and England and Wales and these were sisted behind the *McCloud* and *Sargeant* cases.

5. The *McCloud* and *Sargeant* claims were heard together at the Court of Appeal, which determined that the transitional protections gave rise to unlawful age discrimination in the Judges' and Firefighters' pension schemes. The UK Government sought permission to appeal to the Supreme Court, which was refused in June 2019, meaning that the Court of Appeal decision stands. The cases were then referred back to the Employment Tribunal for hearings on remedy.

6. On 15 July 2019 the UK Government announced that it accepted that the Court of Appeal judgment applies to all the main public service pension schemes, including the Police pension scheme.

Initial Case Management Hearing

7. Following the Supreme Court decision, a case management hearing for the Police claims brought by officers in England and Wales took place on 28 October 2019, with a view to setting out the next steps to implementing the Court of Appeal judgment.

8. This was an initial hearing only. Further substantive hearings will be scheduled. It is a matter for the Tribunal to agree timing and to make the final decision on how the discrimination should be addressed.

9. The remedy declared by the Tribunal can only be for claimants. However, both the UK and Scottish Governments will separately address the difference in treatment across all the main public service pension schemes through consultation and changes to scheme rules to ensure that for non-claimants, the effect on their pension is as if they had been a claimant.

10. At the Case Management hearing, the UK Government conceded that discrimination occurred due to the difference in treatment between members in the following broad categories:

- (1) Those individuals who were members of the existing public service schemes at 31 March 2012 and deemed eligible for transitional protections that entitled them to remain in that scheme after 1 April 2015, and
- (2) Those who were members of the existing schemes as at 31 March 2012 and were not treated as fully transitionally protected and moved to the new reformed arrangements after 1 April 2015.

11. In the light of this, the Tribunal gave an interim declaration that the claimants (who fall into the second category) are entitled to be treated as if they too had been given full transitional protection and had remained in their old scheme after 1 April 2015.

12. This interim declaration applies to claimants only. However, the UK Government made

clear that non-claimants who are in the same position as claimants will be treated equally to ensure they do not lose out. This will require making additional changes to the public service pension schemes to eliminate the discrimination.

13. It is also the case that many non-protected members across the public service could be better off in the new CARE arrangements than they would have been in the old pre-2015 pension schemes, and would suffer a detriment if they simply moved back to the old schemes. It is therefore the intention of the UK Government and Scottish Ministers to ensure that such persons do not suffer a detriment. However, implementing these changes will take time.

14. The Tribunal also granted the request of the police staff associations to be listed as an interested party to the police Tribunal hearings.

15. The claims brought by Scottish police officers are being dealt with by the Employment Tribunal in Scotland. The solicitors acting for the Scottish Ministers have now written to the Tribunal and the other parties to the claim to confirm that, in line with the UK Government position, they concede that the age discrimination claims must succeed.

Changes to the Police Pension Schemes

16. The difference in treatment will in due course be removed for all members with relevant service across all the main public service pension schemes – not just those who have lodged legal claims. Changes to the scheme to implement this will need to ensure that all members can keep the pensions they have earned to date. Some members are likely to have been better off remaining in their old scheme, while others may benefit more from the new scheme – that will depend on the individual circumstances of affected members. Any changes to the scheme must take account of this in order to ensure no member loses out.

17. Scottish Ministers will consult on changes to the schemes to ensure fairness for both claimants and non-claimants. Technical discussions will in due course be held with the Scottish Police Pensions Scheme Advisory Board (SAB). The SAB is comprised of member and employer representatives who provide advice to Scottish Ministers on the desirability of changes to the pension scheme. This will progress in parallel with the remedial action being decided by the Tribunal. These discussions will consider changes to the scheme necessary:

- to remove discriminatory provisions from the pension schemes for non-claimants; and
- to ensure individuals do not lose out as a result of changes needed to remove discrimination (for example if they would have been better off in the new scheme).

18. Further detail of the scope of these technical discussions will follow in 2020. Following these discussions, Scottish Ministers will formally consult on proposals, providing a further opportunity for members and other stakeholders to give their views.



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25 November 2019

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