

(Annex added 12 December 2019) 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

Date: 27 November 2019 (Amended 12 December 2019)

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.

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.

Any Questions?

Please contact Iain.Coltman@gov.scot if you have any enquiries about this circular.

Iain Coltman
Senior Policy Manager

27 November 2019

Annex A - (Added 12 December 2019)

Frequently Asked Questions

It is appreciated that officers will have a number of questions, including a number specific to their individual circumstances. As it remains early in the litigation process, full answers cannot yet be provided, however further details on proposed changes and the process for consultation will be confirmed in due course. In the meantime, officers may find some of the following helpful:

Q: I did not qualify for protection and was moved to the 2015 scheme. The Employment Tribunal has said claimants should be treated as if I was entitled to remain in the old scheme after 2015. Will I automatically be moved back?

A: UK Government and employers are engaging with the litigants and the Employment Tribunal process to agree how the discrimination will be addressed. It is a matter of the Tribunal to agree timing and to make the final decision on remedy.

It is possible that some members would suffer detriment if they simply moved back to the old schemes. It is the aim of governments that individuals do not lose out as a result of changes needed to remove the discrimination. However considering and implementing these changes will take time.

Q: I was a tapered member and have already moved from the 1987/2006 scheme. Does this apply to me?

A: Yes. The transitional provisions introduced in 2015 gave rise to unlawful age discriminations. This includes members who were eligible for tapered protection.

Q: I was eligible for tapered protection and am due to move between now and 2022. Does this apply to me?

A: Yes. The transitional provisions introduced in 2015 gave rise to unlawful age discriminations. This includes members who were eligible for tapered protection.

Q: I was not protected. Will I still have to work extra service to get maximum pension benefits?

A: The interim declaration stated that claimants are entitled to be treated as members of their pre-2015 scheme since 1 April 2015. The same treatment will apply to all members. No further declaration has been made at the time of writing.

Q: I have been paying different level of contributions since I moved from the 1987/2006 scheme. What will happen to my contributions?

A: This is still to be decided.

Pension contributions are determined by a number of complex considerations including the value of the benefits accruing in the particular scheme.

Q: Will I be entitled to remain in my pre-2015 scheme until I retire?

A: The interim declaration stated that claimants are entitled to be treated as members of their pre-2015 scheme since 1 April 2015. The same treatment will apply to all members. No further declaration has been made at the time of writing.

The 2015 Scheme itself has not been challenged - discrimination has been found in respect of the transitional protections only.

Q: What does this mean for the longer term?

A: Occupational pensions policy, including that for public service pensions, is reserved to the UK Government.

Any changes to the schemes will be subject to consultation with stakeholders to ensure issues are properly understood and addressed alongside the remedy agreed by the Employment Tribunal.

Q: I opted out after moving into the 2015 scheme. Had I known I would be entitled to remain in my former scheme I would not have opted out. What does this mean for me?

A: This is still to be decided

Q: I have retired with an ill-health pension after being moved to the 2015 scheme. Will my benefits be reassessed?

A: The Employment Tribunal will oversee the process of agreeing a remedy for claimants. Further details on proposed changes will be confirmed in due course.

Q: I was a fully protected member. What does this mean for me - will the older schemes be reformed as a result of this?

A: As a fully protected member you were not subject to discrimination and are entitled to your existing benefits for as long as you remain a member of the scheme.