

Home Office - McCloud/Sargeant fact sheet

Background

CARE Schemes

In 2014 or 2015 all main public service pensions, including the Police scheme, were reformed to provide defined benefits on a career average basis.

In a career average 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 – in the 2015 police scheme by the annual rate of increase in the Consumer Price Index at September plus 1.25%. When a member retires, the total built up in their pension account is received as an annual pension. This is called Career Average Revalued Earnings (CARE).

Reforms were made that reflected the recommendations of Lord Hutton's Independent Public Service Pensions Commission, which produced its final report in March 2011, and were intended to make public sector pensions affordable and sustainable in the long term.

Transitional Protection

In all the main public service CARE schemes introduced in 2015, those closest to their scheme's Normal Pension Age, which is when a member could choose to retire with an unreduced pension, were given 'full' transitional protection. In practical terms this meant that those within 10 years of their NPA as at April 2012 were allowed to remain in their current scheme.

In most of these schemes those who were between 10 and 14 years from normal retirement age were given 'tapered' transitional protection, meaning they did move to the new 2015 scheme, but at a later date than those members who were not afforded transitional protection.

McCloud/Sargeant

Two claims were brought, one against the judges' pension scheme (the McCloud case), the other against the firefighters' pension scheme (the Sargeant case) claiming that transitional arrangements were discriminatory on the basis of age, sex and race. The claims were heard together.

The Court of Appeal determined, amongst other things that transitional protection gave rise to unlawful age discrimination in the judges' and firefighters' pension schemes. The Supreme Court refused the Government's application for permission to appeal, meaning that the Court of Appeal decision stands.

On 15 July 2019 the Government made a written ministerial statement (HCWS1725) confirming that, as 'transitional protection' was offered to members of all the main public service pension schemes, the government believes that the difference in treatment will need to be remedied across all those schemes, including the Police pension scheme. The statement set out that government, alongside the Employment Tribunal process, will also engage with employer and member representatives, and the devolved administrations, to help inform proposals to the Tribunal and in respect of the other public service pension schemes.

Claims against the Police pension scheme (the *Aarons* case) had previously been stayed behind the McCloud/Sargeant judgment. The stay was lifted following the Supreme Court decision, and a case management hearing was scheduled for 28 October 2019, with a view to setting out the procedural steps to appropriately implement the Court of Appeal decision.

1. What happened at the Police case management hearing on the 28 October?

The Court of Appeal determined in its judgment in McCloud/Sargeant that the transitional provisions in the judges' and firefighters' pension schemes resulted in direct age discrimination between:

- a) those who were members of the 'old' scheme and were fully transitionally protected by remaining in that Scheme after 31st March 2015 as a result of being an active member under the old scheme on 31st March 2012, and
- b) those who were members of the old scheme as at 31st March 2012 and were not treated as fully transitionally protected and moved to new post-2015 arrangements after 31st March 2015.

In the light of this, the Tribunal in the *Aarons* case gave an interim declaration that the claimants (who all fell in within category (b)) are entitled to be treated as if they had been given full transitional protection and had remained in their current scheme after 1 April 2015.

The Government intends to extend the same treatment to all members of the public service pension schemes (whether claimants or not) who are in the same legal and factual position as the claimants.

The Government is also aware that many non-protected members may be better off in the new career average pension 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 government's intention to ensure that such persons do not suffer a detriment and implementing these changes will take time.

Finally, staff associations were granted their request to be listed as an interested party to the police remedy hearings.

A further hearing has been scheduled for 17 February 2020.

2. Changes to the Police Pension Schemes

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. Any solution will need to ensure that all members can instead keep the pensions they have earned to date.

The Government will be launching a public consultation on changes to the schemes and before that will hold a series of technical discussions with stakeholders. This will progress in parallel with the remedy decided by the Tribunals in the *Aarons* case.

For the Police pension scheme, 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

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individual circumstances of affected members. Any changes to the scheme must take account of this in order to ensure no member loses out.

Technical discussions will be held with the Police Pensions Scheme Advisory Board (SAB). The SAB comprises members of the Police Federation of England and Wales, the Superintendents' Association, CPOSA and the National Association of Retired Police Officers (NARPO) plus scheme managers and Police and Crime Commissioners representatives.

These discussions will consider changes to the scheme which are necessary:

- in order to remove discriminatory provisions from the public service 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.

Following these discussions, the Government will formally consult on its proposals, providing a further opportunity for those affected to give their views.

3. What about ill-health retirees and those who have already retired?

The Government is committed to urgently addressing the position of scheme members who have been ill-health retired or have already retired from the 2015 scheme. Changes of this nature require time to implement and the Home Office will provide further detail in due course. Please contact your Force if you are an affected claimant.

4. Does the McCloud/Sargeant judgment increase the costs of public service pensions? Will this lead to future reform?

Initial estimates suggest removing the discrimination will add around £4bn per annum to scheme liabilities across the public services from 2015.

The underlying aims of the 2015 reforms remain: public service pensions are and will continue to be a significant cost for the taxpayer. The McCloud/Sargeant judgment does not alter the government's commitment to ensuring that the cost of public service pensions is both affordable for taxpayers and sustainable for the long term.

5. Will the cost cap remain paused?

On 30 January 2019 the then Chief Secretary to the Treasury announced a pause to the cost control part of the valuations of public service pension schemes following the Court of Appeal judgment in McCloud/Sargeant. As the court proceedings are ongoing, the value of the schemes to members cannot be assessed with any certainty and the pause will continue.