

## **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 mostly 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 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 announced that it accepted that the judgment applies to all the main public service pension schemes, including the Police pension scheme.

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?**

Following the Court of Appeal Judgment in McCloud/ Sargeant the Government conceded that discrimination occurred to members of the Police pension scheme who fell into the following categories:

- Those individuals who were members of 'old' public service schemes as at 31 March 2012 and were fully transitionally protected by remaining in that scheme after 1 April 2015 and,
- Those who were members of the old schemes as at 31 March 2012 and were not treated as fully transitionally protected and moved to new post-2015 arrangements after 1 April 2015.

In the light of this, the Tribunal in the Aarons case gave an interim declaration that the claimants 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. This interim declaration applies to claimants only.

However, the Government made clear that non-claimants who are in the same position as claimants will be treated fairly to ensure they do not lose out. This is likely to be by making additional changes to the public service pension schemes to eliminate the discrimination.

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. The changes to implement this will need to ensure that all members can keep the pensions they have earned to date.

The Government will consult on changes to the schemes to ensure fairness for both claimants and non-claimants 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 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'

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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.

Further detail of the scope of these technical discussions will be available once these are formally announced. 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 people on tapered protection and ill-health retirees?**

The position for these members on tapered protection and ill-health retirees will become clear as the tribunal process progresses.

### **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.