



DEFENCE POLICE FEDERATION

Established by Act of Parliament

To All Members

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Circular 01/19

Pension Claim – Update for Members

Members will be aware that in 2016 the Federation filed over a thousand Employment Tribunal claims, alleging that the transitional arrangements made when the alpha pension scheme was introduced in 2015 are unlawful because they discriminate on the grounds of age, and in some cases on the grounds of sex and race as well. Those claims have been put on hold by the tribunals pending the outcome of similar claims made by firefighters and judges, whose pension schemes were changed in a similar manner with similar transitional arrangements.

I am pleased to say that the firefighters' and judges' cases were upheld in a judgment of the Court of Appeal shortly before Christmas.

The Government is seeking permission from the Supreme Court to make a further appeal. The outcome of their application for permission should be known within the next few months.

Our solicitors also act for the Fire Brigades Union in the firefighters' cases. In their view there is fair chance that the Government will get permission to appeal, but even if they do, their appeal is most unlikely to be successful, and the Court of Appeal's decision will stand.

What are the consequences?

It is important to recognise that what is under attack is the transitional arrangements, not the alpha scheme itself. When alpha was introduced, older members were permitted to remain in the Principal Civil Service Pension Scheme (that is, the pre-April 2015 pension scheme). Younger members had to transfer to alpha. There is a tapering arrangement in the middle so that members who were too young for full protection but too old to be transferred in April 2015 are or were permitted to remain in the old scheme for a little longer.

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It is these transitional arrangements which the Court of Appeal says are unlawful. BUT: it is a fundamental principle of law that if there is unlawful discrimination, the disadvantaged group must be put in the same (better) position as the advantaged group.

In other words, any members who had to transfer to alpha in April 2015, or who have had to transfer to alpha under the tapering arrangements, must be treated as if they had never transferred. They must now be treated as if they had never left the Principal Civil Service Pension Scheme.

What this ruling does not change:

- Members who joined the service on or after 1 April 2015 joined on the terms of the alpha scheme. We cannot use this ruling to get them put into the Principal Civil Service Pension Scheme.
- The ruling does not affect the increased contribution rates that have been introduced since 2015. They were made independently of the transitional arrangements and do not discriminate on the grounds of age (or sex or race).
- It is always possible that the Government will have another go at reforming the pension schemes. If and when they do, there is no way of knowing at this stage what new arrangements will be proposed. What we do know is that they cannot be worsened retrospectively.

What happens in the meanwhile?

It could take a year or more before the outcome of any appeal is known (if the Supreme Court gives permission for an appeal to be pursued at all).

Between now and then:

Members who reach retirement age between now and the outcome of any appeal

These members will not be affected in the interim. They are by definition older, and therefore benefit from the transitional arrangements – they are still actually in the Principal Civil Service Pension Scheme and will be entitled to retire on the terms of that scheme.

Members who leave the service over the age of 55

These members should be treated as if they were still members of the Principal Civil Service Pension Scheme. They should be treated as if their retirement age was still 60, and as if they were entitled to retire from the age of 55 with a reduced pension.

Members who leave the service for health reasons before the outcome of any appeal

This applies to any member who leaves the service or retires on the grounds of their health or fitness (whatever their age). If they would have been entitled to an ill-health pension under the old pension arrangements, they are still entitled to do so as a result of the Court of Appeal's ruling.

If you think that this applies to you, please contact your Federation representative urgently.

Conclusion

This is a tremendous result. I have no doubt that the Government will fight to save the 2015 changes as hard as they can, and if and when they lose the final round in court, they will have another go at introducing the 2015 changes all over again (but not retrospectively). But as matters stand, everyone who was in the Principal Civil Service Pension Scheme before 1 April 2015 is back in it.

We will keep you informed of developments. **In the meanwhile, if you think you need to leave the service because you have concerns about your health or fitness please let us know straightaway.**

**Eamon Keating
National Chairman**