

STAKEHOLDER UPDATE ON EMPLOYMENT TRIBUNAL CONSIDERATION OF PUBLIC SERVICE PENSION SCHEME TRANSITIONAL PROTECTION CASES

- On 20 December 2018, the Court of Appeal in Lord Chancellor v McCloud (and others) held that in relation to the judicial and firefighters' pension schemes, transitional provisions introduced in 2015 gave rise to unlawful age discrimination. The matter has been referred to Employment Tribunals to determine a remedy for claimants.
- Respondent departments and employers are engaging with the Employment Tribunals and claimants to reach agreement on the steps that will be taken to remedy the discrimination identified by the Courts.
- On 15 July 2019 the Chief Secretary to the Treasury 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. The statement set out that government, alongside Employment Tribunal discussions, 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.
- The purpose of this note is to set out the outcome of initial Case Management Discussions in the Employment Tribunals and to confirm next steps.
- Case management discussions (CMDs) have been held in respect of the judiciary, police and Ministry of Defence police. Further CMDs will shortly be taking place in relation to claims made by firefighters and NHS employees. A CMD for firefighters is scheduled for the 18 December 2019. Others will be scheduled in due course.
- The discrimination that has been identified in the public service schemes arises between the different treatment between members in these categories:
 - those individuals who were members of pre-2015 public service schemes as at 31 March 2012 and were fully transitionally protected by remaining in that scheme after 1 April 2015 (as a result of being 10 years within their normal pension age); and
 - those who were members of the pre-2015 schemes as at 31 March 2012 and were not treated as fully transitionally protected and moved to new post-2015 arrangements on or after 1 April 2015).
- The relevant Employment Tribunal will oversee the process of agreeing a remedy for claimants. The government has previously confirmed that the discrimination will also need to be removed for all other members of public service pension schemes who have relevant service.
- The local government pension scheme in England and Wales contains different transitional provisions and will be considered separately by MHCLG.
- The government has agreed an interim declaration with claimants in the case management discussions for the judicial, police and MoD police claimants. The declarations mean that the

claimants are entitled to be treated as members of the appropriate pre-2015 schemes. 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.

- However, this is not straightforward as simply returning all relevant members to the pre-2015 schemes would cause detriment for some members of public service pension schemes as there are hundreds of thousands of individuals who were in post as at the 31 March 2012 that are expected to be better off in the new schemes.
- Changes to legislation will be necessary to deliver the commitment to remove the discrimination from all public service pension schemes whilst ensuring that members can instead keep the benefits that they have earned to date.
- Any changes to the schemes will be subject to consultation with stakeholders to ensure that any issues are properly understood and addressed alongside the remedy agreed by the Employment Tribunal for individual claimants.
- Further details on proposed changes and the process for consultation will be confirmed shortly.