



**The Professional Trades Union for Prison,
Correctional & Secure Psychiatric Workers**

National Chair: Mark Fairhurst
General Secretary: Steve Gillan

Headquarters:
Cronin House
245 Church St.
Edmonton
London N9 9HW
t. 020 8803 0255
f. 020 8803 1761
e. general@poauk.org.uk
w. www.poauk.org.uk

North Regional Office
1 Linden House
Sardinia St.
Leeds
LS10 1BH
t. 01132 428833
f. 01132 429075
e. adminnro@poauk.org.uk

Northern Ireland
Castell House
116 Ballywalter Rd.
Millisle Co Down
BT22 2HS
t. 02891 861928
f. 02891 861839
e. adminni@poauk.org.uk

Scotland
21 Calder Rd.
Edinburgh
Scotland
EH11 3 PF
t. 0131 443 8105
f. 0131 444 0657
e. adminscot@poauk.org.uk

POA Circular 031/2020

Action		Information	
England/Wales	<input type="checkbox"/>	England/Wales	<input checked="" type="checkbox"/>
Scotland	<input type="checkbox"/>	Scotland	<input checked="" type="checkbox"/>
Northern Ireland	<input type="checkbox"/>	Northern Ireland	<input checked="" type="checkbox"/>
Special Hospitals	<input type="checkbox"/>	Special Hospitals	<input checked="" type="checkbox"/>
Private Sector	<input type="checkbox"/>	Private Sector	<input checked="" type="checkbox"/>
IRC	<input type="checkbox"/>	IRC	<input checked="" type="checkbox"/>

18th March 2020

Dear Colleagues

Please read this if you were a member of the Principal Civil Service Pension Scheme (PCSPS) or the NHS Pension Scheme (NHSPS) on or before 31 March 2012.

You will be aware that our solicitors filed claims in the Employment Tribunal for members of the PCSPS or the NHSPS who were required to transfer to the 2015 civil service pension scheme (called “alpha”) or the 2015 NHSPS following the pension changes made by the Government in 2015. In the claims it was alleged that these changes discriminated on the grounds of age. That is because older members were permitted to remain in their former pension scheme (until they retire in some cases, on a temporary basis in others). Younger members were required to transfer to the 2015 Scheme which, for most if not all members, is inferior.

Our claims were put on hold (“stayed”) pending the outcome of parallel claims made by judges and firefighters. I am very pleased to inform you that the stay has been lifted in the case of our prison officer claims, and should be lifted in the case of our NHS claims in the near future. An Order has been made which provides the core remedy which we are seeking. This Circular explains the implications of the Order, and the further steps that we are now going to take. Claims for compensation are still ongoing.

The Order for a Declaration

A Declaration is a formal Order from a court or tribunal which states what the law requires. If the regulations that govern the scheme say otherwise, the Declaration takes precedence.

A Declaration has now been made by the Employment Tribunal in these terms:

The Claimants are entitled, pursuant to section 61 of the Equality Act 2010, to be treated as satisfying paragraph 12(2)(b) (read with paragraph 9(1)) of Schedule 2 to the Public Service (Civil Servants and Others) Pensions Regulations 2014 from 1 April 2015.

The Equality Act says that there is an implied rule in any pension scheme, that says it will not be operated in a discriminatory manner. The paragraphs of the alpha regulations set out in the Declaration are the paragraphs that say younger members not permitted to remain in the PCSPS.

The effect of the Declaration is that, if you were a member of the PCSPS before 1 April 2012, you are now entitled to be treated as if you never left it.

This Declaration was made by consent. A similar Declaration will be made in the NHSPS claims we have filed. The Government is already making changes to the administration of the NHSPS. If you were in the 1995 Section or the 2008 Section of the pre-2015 NHSPS before 1 April 2012, you should now be treated as if you had never left it.

The consequences are outlined in more detail below.

This Declaration is not the end of the matter. The Government is shortly going to start a consultation process as to how this age discrimination should be rectified. It accepts that some members would be better off in the 2015 schemes, and where that is the case, these members should be treated as members of the relevant 2015 schemes. In other words, all of the members who joined before 1 April 2012 should be given the "better of both".

The Government is considering two ways of achieving that. Either it will ask the affected members to make a choice now as to which scheme they want to be in, or it will allow members to make that choice later when they come to retire or leave the service. We believe that the choice should be made later, when it is clear which is the better scheme, rather than choose now at the risk of getting it wrong because your career plans do not go as intended. We will seek a further Declaration to the effect that members must be allowed to choose later. If that is not agreed, a further hearing will be held in October to decide the issue.

What this means

For most members this is not an immediate issue. They are still some way away from retiring. But it means that the benefits you have earned since 1 April 2015 are on the previous scale, and are payable from the same age.

There are some exceptions where there is an immediate issue:

Some members have already ill-health retired, on the terms of the alpha scheme or the 2015 NHSPS, when they should have been retired on the terms of their previous scheme. As a result they may be getting a smaller pension than they should be getting.

The Government is going to have to revisit all of these cases. It accepts that it must do so. It is treating this as an immediate priority, but it will inevitably take a little time to go through every case.

Some members will be going through the ill-health retirement process now. They should be assessed under the terms of their old scheme as well as the terms of the 2015 scheme, and they should be treated according to whichever provides the better outcome.

We are discussing how the relevant medical forms should be designed to ensure that that is what happens. Again, the Government accepts that this is the correct position and is treating this as a priority issue.

Some members may have reached the age when they could have retired under their old scheme, and are now unable to do so (except with a reduced pension) because the pension age in their new scheme is higher. We think this is particularly the case for NHSPS members who have mental health officer status or special category status.

If you think this applies to you, and if you do want to retire now with an unreduced pension, you should take this up with your local management. If you do not get a satisfactory answer, please contact your local POA representative.

Who does this apply to?

This applies to anyone who was a member of the PCSPS or the NHSPS before 1 April 2012.

It cannot apply to members who joined after that. That's because the challenge is based on the transitional arrangements that were made when the 2015 schemes were introduced. To be protected from the 2015 changes you had to be (a) in service on 31 March 2012 and (b) within a fixed number of years away from your normal pension age. This second criterion is discriminatory and has been struck down. The first – being in service on 31 March 2012 – applied to everyone regardless of their age and is not unlawful.

However, we believe that the benefits of the 2015 schemes must be improved for all 2015 scheme members. That will be the subject of a separate legal challenge which we will issue shortly. I will send another circular when we do.

Some members did not complete the survey when it was on the POA website in 2017, and so a claim has not been filed for them. Some members are not sure if they did or didn't.

What is said above whether or not a claim was filed on your behalf. If you were in the PCSPS or the NHSPS on 31 March 2012, you are now entitled to be treated as if you never left (or stay in the 2015 scheme if that is better for you).

It does make a difference, if you want to claim additional compensation. We can claim compensation for injury to feelings or to compensate you for any additional expenditure you incurred, but only if a tribunal claim is filed in your name. These compensation claims are the subject of a second circular, which also outlines how you can make a claim now (or check if a claim has been made for you). I would urge you to read that circular too.

Members employed in HMP Birmingham are in an unusual position. They were in the PCSPS, then a G4S pension scheme, and then transferred back to the PCSPS. The age discrimination issues outlined above do apply in this instance, but which scheme provides better benefits is less clear. We are pursuing that and will provide a further update shortly.

Yours sincerely



STEVE GILLAN
General Secretary