



**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 120/2018

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

6th November 2018

Dear Colleagues

PENSIONS UPDATE

This update is in two parts:

We have mentioned before that other claims have been made by firefighters and judges which raise the same issues that arise in your claims. In practical terms, these other cases are likely to determine the outcome in all similar cases. We outline the judges' and firefighters' present position below.

We have filed 2,622 claims for POA members to date.

There are other claims to be filed and we still need lead claimants.

THE JUDGES AND FIREFIGHTERS

It is important to remember that all these cases deal only with the transitional arrangements that were made when the new pension schemes were introduced in 2015: the argument that has been made is that these arrangements discriminated on the grounds of age (with subsidiary arguments that they discriminated on the grounds of sex and race as well). If they succeed, the claimants will return to the schemes from which they were excluded in 2015. The net effect is that anyone who was in service on 1st April 2015 will be treated as if they were still members of the older, better schemes.

In the previous EAT's for the judges and firefighters all the parties in both cases have appealed the points that they did not win.

The appeals have now been listed for a hearing in the Court of Appeal, and the appeal will be heard between the 5th and 9th November 2018.

Who appealed which points is not important (and complex), but the actual issues are important.

The Government admitted that the transitional arrangements discriminated on the grounds of age, and the live issues concern the Government's defence: it says that, although the arrangements are discriminatory they are not unlawful because they were made with a view to achieving a legitimate aim, and the transitional arrangements are a reasonable and proportionate means of achieving it.

That defence can be broken down into two parts:

1. What was the aim, and was it legitimate?
2. If so, were the transitional arrangements a proportionate and reasonably necessary means of achieving it?

The importance of separating out the two parts is that if the Government loses on 'legitimate aim' it loses altogether. There is no need to go further and examine the exact impact of the changes on individual members or whole workforces.

If it wins on legitimate aim, however, arguments about proportionality will be specific to each workforce.

The judges won on legitimate aim in the Employment Tribunal, but the firefighters lost. The appeals will be heard in the Court of Appeal.

Our legal providers have explained why Counsel think the Court is likely to find in favour of the judges and firefighters on the question of legitimate aim.

The Government's stated aim was to protect those who were closest to retirement from the effects of pension changes. That is just another way of saying that the aim was to protect older members which is, of course, precisely what the legislation prohibits.

Following the POA's claims being submitted and the appeals being filed nothing has changed our legal providers and or Counsels' view.

The legitimate aim in question is the same for all public service pension scheme members.

If the judges and firefighters win on this issue in the Court of Appeal, there will be no need to fight it out again in the claims made by our members, they would be bound to succeed.

If the Government's aim *was* legitimate, we must go on to examine whether the means of achieving it were 'proportionate and reasonably necessary'. That question is specific to the workforces in question.

For instance, in the judges' case the issue turns on the tax effects of being moved from one scheme to another. In the firefighters' it turns on the financial effects of being moved (in terms of the enormous additional savings that a firefighter would have to make to replace the lost benefits) and the practicality of moving to a new scheme with a higher pension age.

If the Court of Appeal decides the legitimate aim issue in favour of the judges and firefighters there will be no need to deal with it again in our cases. If they lose, we will need to examine the precise effects of the changes for our members. That is a factual argument rather than a legal one. Our argument will probably match the firefighters in respect of how much our members have lost; and is it realistic to expect them to work on until age 66, 67 or 68?

For completeness, we should mention the other parallel claims that have been presented in the Employment Tribunal. Approximately 1,000 members of the Ministry of Defence Police, who are also members of the Civil Service Pension Schemes, have made claims. An unknown number of Home Office police officers have done so too, we understand that the number is in excess of 20,000. These cases have all been put on hold ('stayed').

THE POA CLAIMS

We have explained previously why it is not possible to file all claims on a single claims form.

Two claimants can use the same claim form only if their cases arise from the same facts: but men and women have different claims; as do, BME members; and members of different schemes have different claims to make.

(i) Civil service

1. The largest group claim is for the members of the pre-2008 Sections of the Civil Service Pension Scheme who work in England or Wales. Their claims have been filed, separately for men, women and BME members. Their claims have been stayed pending the outcome of the judges' and firefighters' cases. That is where we want them to be.
2. The second largest is for members of the pre-2008 Sections of the Civil Service Pension Schemes who work in Scotland. The claim for men has been filed. It has not yet been stayed, but we are sure it will be.

The claim for female members has not been filed, as we do not have a lead claimant. We have found a potential candidate and are waiting for her to confirm that she is willing to take on the role. There are no BME claimants in this group.

If you have submitted a claim and wish to be considered as a lead claimant, please contact Glyn Travis secretary to the POA legal Aid Committee by email legal@poauk.org.uk

3. There is a group claim for members who work for Sodexo. Their claims have been filed separately for men, women and the single BME member of the group. Although it was filed some time ago (and the Tribunal has acknowledged receipt), so far as we are aware it has not yet been served on the Government or Sodexo, we do know that the Government is aware of it. The Government Legal Department has confirmed that they are negotiating the terms of an indemnity to be given by the Government to Sodexo.
4. We do not yet have lead claimants for members working in Northern Ireland.

So far as the Civil Service is concerned, the missing classes are female Scottish claimants, and Northern Irish claimants.

We hope to have a Scottish female lead claimant within the next day or two. Our legal providers have already drafted her claim.

Looking for another Scottish female lead is relatively straightforward if required as there are only 11 possibilities, there are 60 members in Northern Ireland so if you are one of these and wish to be considered as a lead claimant again, please contact Glyn Travis secretary to the POA legal Aid Committee by email legal@poauk.org.uk

(ii) NHS

The NHS membership is where we have greater problems.

There are three relevant categories of NHS Scheme members: pre-2008 members, post-2008 members and mental health officers.

We only have one lead claimant who is a Scottish mental health officer.

Our legal providers have dealt with the ACAS early conciliation process for him and we are just about to file a claim for his class (of whom there are five). Doing so would cause logistical problems: his would be the first NHS claim and if it is filed in Scotland it is likely that all of the NHS claims will end up being dealt with in the Scottish Tribunal. It would be preferable to deal with the NHS claims in England (in the Central London Employment Tribunal which is dealing with all other parallel claims) and stay the Scottish claims; but unless we get a lead claimant from Broadmoor, Rampton or Ashworth we will have no choice. Therefore, if you have submitted a claim please contact Glyn Travis and put yourself down as a lead claimant.

(iii) Civil service and NHS: post-2008 joiners

Members who joined the Civil Service and NHS schemes after April 2008 joined a different pension scheme from pre-2008 joiners. These 2008 schemes are worse than the earlier schemes, but only marginally so.

We have identified a male post-2008 Civil Service Scheme member. We do not have a lead claimant for any other post-2008 class.

At this stage we don't think that is very important. If the legitimate aim issue is decided in favour of the judges and firefighters, it will effectively be decided in favour of these members too. If it isn't, and we have to fight on the question of proportionality, the case will come down to the differences between the post-2008 schemes and the 2015 schemes. Those differences are not major. It would be difficult to win on that basis.

CONCLUSION

It is likely that the judges' and firefighters' claims will determine all of the issues. They should win on the question of legitimate expectation. If they don't, but win on proportionality, we will have to deal with the specific issues that arise in the Prison Service (probably on a test case basis, as happened with the firefighters).

If the judges' and firefighters' case is won on the legitimate aim issue it will not matter that we are still missing lead claimants. Otherwise it will.

We know that Branch Officials and the Executive have made numerous attempts to get lead claimants without success in some areas, but we do need lead claimants in the areas identified above.

Please circulate this circular to all members and encourage members in the areas identified to identify themselves as lead claimants, remember this is your pension.

Thanking you in anticipation of your support and co-operation.

Yours Sincerely



STEVE GILLAN
General Secretary