

Employers' Secretary, Naomi Cooke
18 Smith Square, London, SW1P 3HZ
Telephone 020 7187 7335
e-mail: firequeries@local.gov.uk

FIRE & RESCUE SERVICES National Employers

Direct Dial
020 7187 7335

E-mail: firequeries@local.gov.uk
website: www.local.gov.uk/

**To: Chief Fire Officers
Chief Executives/Clerks to Fire Authorities
Chairs of Fire Authorities
Directors of Human Resources**

Members of the Employers' Side of the NJC

18 December 2019

CIRCULAR EMP/8/19

Dear Sir/Madam,

TRANSITIONAL PROTECTIONS PENSIONS CLAIMS INTERIM ORDER ON REMEDY

This circular concerns the interim order on remedy (the Order) for the above claims, which was made by the Employment Tribunal at today's preliminary hearing. A copy of that Order is attached (it is in draft format as the final version has not yet been sent out by the Tribunal).

Background

As a reminder these claims concern the issue of whether the transitional protections in the 2015 Fire Pension Scheme (FPS), which provide protections based on age allowing older members to remain in their former final salary scheme, are age discriminatory (other claims were made but it is the age discrimination claim which is the primary one). As they were named as respondents in the case, Fire and Rescue Authorities (FRAs) had to submit a defence to the legal challenge. This defence has been managed collectively on behalf of the FRAs by the LGA under the auspices of the National Employers and decisions have been taken by a central steering group made up of a number of FRA representatives.

In December 2018 the Court of Appeal found that the transitional protections unlawfully discriminated on age and the case has therefore returned to the Employment Tribunal for it to determine remedy.

The Employment Tribunal Order

The Order is only an interim order and does not bind the parties beyond the limited interim period before the final declaration. It was agreed by all parties and the main points of it and considerations for FRAs are as follows.

Paragraph 2 of the Order in effect provides that pending the final determination of all of the remedy issues, those that brought claims in England and Wales (the claimants) are entitled to be treated as if they remained in the in 1992 FPS. The

Order anticipates that the final determination on that remedy issue in regards to membership of the 1992 FPS should be resolved around mid-July 2020, although it should be noted that even when we have a final determination on that issue it may be some time before this part of the remedy can be put into effect for all claimants. Further there may be other issues relating to remedies to be resolved, for example in regards to claims for injury to feelings.

So that FRAs can implement this provision of the Order we are pushing the Home Office to quickly issue guidance on implementation which should amongst other factors cover the following points:

- Dealing with ill-health retirements, including on the IQMP process
- Backdated employee contributions (the current contribution rates for the various FPS are available here - <http://www.fpsboard.org/images/PDF/Bulletin18/Appendix2.pdf>)
- Taper members due to taper into the 1992 scheme from 21 January 2020
- Immediate normal retirements from age 50 with over 25 years of service¹

Pending that guidance, FRAs should take no immediate steps save that if they are dealing with ill-health retirements, to avoid delay, they should ask the IQMP to assess the applicant under both the 1992 FPS and 2015 FPS rules. They should also identify all applications for ill-health retirements on the 2015 FPS since 1 April 2015, so they are in a position to take steps once we have Home Office guidance. Please be aware also that a small working group of software providers and administrators, working alongside the Home Office and the LGA, are looking at practical issues with regards to effecting remedy.

The Order also covers other remedy issues, such as any potential claims for injury to feelings.

The Order only covers the existing claimants in England and Wales, all of whom were in the 1992 FPS (your authority's Nominated Contact should have a list of your claimants). It does not cover those who did not bring claims (non-claimants). However, discussions are taking place on how to provide a remedy for those non-claimants as appropriate. It is also anticipated that in due course remedy will also be put in place in Scotland and Northern Ireland.

Finally, the wording in the Order protects the FRAs' appeal on the Schedule 22 issue, which is currently with the Employment Appeal Tribunal (EAT). In summary, the Schedule 22 is our defence in the age discrimination claim that we were obliged by legislation to act as we did in implementing the pension transitional arrangements, and so we should not be liable. That appeal is currently stayed and any further stay of that appeal will be considered shortly.

Yours faithfully,



Gill Gittins

¹ <http://www.fpsregs.org/images/admin/RetirementFPS2015v1.pdf>

Case Nos: 2202235/2015

1303751/2015

1401812/2015

1601172/2016

1601173/2016

IN THE LONDON CENTRAL EMPLOYMENT TRIBUNAL

BETWEEN:

RACHEAL SARGEANT & Others

Claimants

-v-

- (1) LONDON FIRE AND EMERGENCY PLANNING AUTHORITY**
- (2) WEST MIDLANDS FIRE AND RESCUE AUTHORITY**
- (3) CORNWALL FIRE AND RESCUE AUTHORITY**
- (4) SOUTH WALES FIRE AND RESCUE AUTHORITY**
- (5) THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**
- (6) THE WELSH MINISTERS**

Respondents

DRAFT AGREED DIRECTIONS

1. The current stay be lifted only in respect of the claims for age discrimination and to the extent of the following orders and directions. Save to that extent, all current and new claims remain stayed.

2. The proposed interim declaration as follows be made:

Pending the final determination of the issues of remedy, all existing Claimants who, by reason of their age would not satisfy paragraphs 12(2)(c), 12(3)(c), 13(e) or 14(e) of Schedule 2 to

the 2014 English Regulations or the 2015 Welsh Regulations from 31st March 2015 are entitled to be treated as satisfying those paragraphs from that date.

3. For the avoidance of doubt, the adoption of the interim declaration at paragraph 2 above is:-
 - a. without prejudice to any argument that may be raised by any party as to the proper wording of the final declaration;
 - b. without prejudice to the outstanding appeal by the 1st, 2nd, 3rd and 4th respondents in relation to the decision of the Employment Tribunal dated 22 June 2016.
4. The Claimants and the Respondents will send to each other and the Tribunal the wording of any final declaration that they seek in these cases by (*6th March 2020*).
5. No later than (*27th March 2020*) the Claimants and the Respondents will confirm to each other and to the Tribunal whether they agree the wording of the final declaration proposed or, if not, explaining why they do not agree and confirming or revising their own wording as appropriate.
6. The Claimants shall provide the following information by (*12th June 2020*):
 - i. The identity of any of the Claimants who are claiming an award for injury to feelings;
 - ii. The *Vento* band in respect of which each such Claimant claims injury to feelings;
 - iii. Whether that Claimant also claims damages for personal injury and/or aggravated damages;
 - iv. The basis for their claims for non-pecuniary loss.

7. The Respondents shall provide a response by (*4th September 2020*). If it is suggested that no compensation can or should be awarded as a matter of principle, the basis for this suggestion is to be set out.
8. As for claims for other financial losses, the Claimants are to provide by (*12th June 2020*):
 - i The identity of any of the Claimants who claims an award for financial losses;
 - ii For any such Claimant, details of the heads of loss and the sum under each head of loss claimed;
9. The Respondents to provide a response to this information by (*4th September 2020*), including:
 - i. Which heads of loss they accept should be remedied and their proposals in that regard; and
 - ii. Which, if any, heads of loss they say should not, as a matter of principle, be remedied and why not.
10. By (*18th September 2020*), the Claimants and the Respondents shall seek to agree 8 to 12 sample claims in respect of injury to feelings to be considered at a hearing.
11. A telephone case management hearing shall be listed for 18th March 2020 to review progress and give further case management directions.
12. A further hearing be listed for 1 day on 17th July 2020 with a view to determining the final form of declaration and, if appropriate, any other outstanding directions on remedy issues. This hearing will be listed as a Final Hearing of part of the issues and the parties consent to this being before a judge sitting alone. Any requirement for this consent to be in writing is waived. For the avoidance of doubt the parties do not consent to any issue as

to injury to feelings being heard by a judge sitting alone and such a hearing will be listed before a full Tribunal with members.

13. Skeletons to be exchanged and lodged 3 days prior to the hearing on 17th July 2020 i.e. by 4pm on 13th July 2020.
14. Further directions in respect of all stayed cases and claims to be given at the hearing on 17th July 2020.
15. Any application to lift the stay in any case must be made in writing on at least 14 days' notice to all other parties.
16. Liberty to all Claimants to apply to vary the said directions.