



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

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# POA Circular 024/2021

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Dear Colleagues

## **PENSION CHALLENGE – UPDATE**

I am writing to advise members with regard to the steps we are taking to give effect to the Employment Tribunal remedy we have won in the pension age discrimination claims filed for members.

You may recall that the Employment Tribunal has made a formal declaration to the effect that younger prison officer members of the Civil Service Pension Scheme who were required to transfer to the 2015 alpha pension scheme are entitled to be treated as if they had never left their “legacy scheme”, i.e., the Classic, Classic Plus, Premium or Nuvos sections of the Principal Civil Service Pension Scheme. A parallel declaration has been made for secure psychiatric nurses working in the special hospitals who had to leave the 1995 or 2008 NHS pension schemes and transfer to the 2015 NHS scheme.

Some progress is being made to give effect to these declarations, but it is proving to be a painfully slow process. We are taking steps to speed it up.

### **“Immediate detriment cases”**

This refers to members who have already retired under the terms of the “wrong” scheme. Typically, they are members who have retired early on the grounds of ill-health.

### **Civil Service members with taper protection**

Civil Service Pensions are doing what they can to stop the group of “immediate detriment” cases getting any larger. They have looked for members who did not transfer to the 2015 alpha pension scheme from the outset, but who transferred or will have to transfer later – that is, members who had so-called taper protection. They have stopped any more tapered members transferring to alpha, and where they can identify them, they have reversed the transfer of taper protection members to alpha. The result is that anyone who had tapered protection has or will be transferred back to their legacy scheme.

If these members find themselves going through the ill-health retirement process now, their cases should be dealt with under the terms of their legacy scheme. If they are awarded an ill-health early retirement pension it will be on the terms of the Classic, Classic Plus, Premium or Nuvos sections of the Principal Civil Service Pension Scheme, depending on which section they were in before they transferred.

Like everyone else, their cases will be re-examined once the scheme regulations have been amended to deal with the age discrimination. If it turns out that they would be better off if they retired on ill-health grounds under the terms of the alpha scheme, they will be offered the opportunity to take back-dated alpha ill-health retirement terms instead. In other words, they will be offered the best of both worlds.

It is usually, but not inevitably the case that legacy scheme terms are better. There are some exceptions, particularly for members who could retire with an upper tier ill-health retirement pension under the alpha scheme – in some cases the enhancement that is added under the alpha rules is larger than the legacy scheme enhancement. Former members of the Classic Section should note that if they are married or have a registered civil partner when they die, a pension will be paid to their widow/er or civil partner, but the Classic section does not provide a pension for an unmarried partner. Alpha does. All cases will be reconsidered once the regulations are amended but if you are awarded a legacy scheme ill-health pension and think you might be better off with an alpha ill-health pension then please let us know.

### **Unprotected members**

This refers to members who were required to transfer to the alpha scheme immediately when the changes were first imposed on 1 April 2015. They will now be in alpha, and if they retire early on ill-health grounds, they will only be offered alpha terms. Their cases will be revisited, and a comparison will be made between the benefits they granted under the alpha rules and the benefits they would have received if they were treated as a member of their legacy scheme. But it seems likely that that will not happen until the regulations are amended, which might not happen until October 2023.

Civil Service Pensions is trying to stop this group getting any larger too. They told us last June that they were implementing a solution so that if anyone finds themselves going through the ill-health retirement process now, their case will be assessed under the rules of their legacy scheme as well as under the alpha rules. That solution has still not been delivered.

### **Members who have already retired**

Both of the measures described above are designed to prevent the position getting any worse. They do nothing for members who have already retired and are living on a pension which is too small. Their position will not be remedied until the new regulations are in place, and that might not be until October 2023. Our lawyers have told theirs that this is totally unacceptable. We have identified some test cases and we are taking steps to issue further court

proceedings. The government's position is indefensible, and we will take the steps required to have these cases remedied now.

### **NHS Pension Scheme members**

Everything said above applies equally to members in the secure hospitals, but so far as we are aware nothing is being done to prevent the situation worsening.

There may be another category of 1995 NHS Pension Scheme members who are suffering an immediate detriment. These are members, particularly with mental health officer status who have now reached the age when they could have retired under their legacy scheme with an ordinary pension because they had reached their normal retirement age, but who find themselves unable to retire because they are being treated as a member of the 2015 NHS Scheme. We are not aware of any member who is in this position, but if this applies to you and if you would like to retire now on the terms of the 1995 NHS Scheme then please let us know. We are looking for test cases.

### **Claims for compensation**

As previously advised, members who have made a claim in the Employment Tribunal can also claim compensation for the frustration, anger, anxiety etc. that they have been caused. Each case needs to be assessed on its own merits. With thousands of claims issued, you will appreciate that dealing with all cases individually presents an enormous task.

Our lawyers have made an agreement with the Government Legal Department to identify some typical benchmark cases. The details that members have sent us demonstrate that there are a number of similar fact-patterns. Members who have had to change their mortgage arrangements for instance; or members whose health has suffered; or members whose family life has suffered because they are living on a reduced income or because they are working substantially more overtime. A total of 18 categories has been identified.

Our lawyers have spoken to a number of individual members who could represent these typical cases and are in the process of agreeing some test cases to get a ruling on what the appropriate level of compensation is. These benchmarks can then be used to negotiate a settlement for all other claimants.

Settling these cases is going to take a long time. The Employment Tribunal Service is in a little disarray because of the pandemic, and the process leading up to arranging a hearing will take time. We are unlikely to get a hearing date before the end of the year or early next year.

Fortunately, the same process of identifying benchmark cases is being undertaken in the parallel claims for judges, Firefighters and Police Officers. Some of their benchmark claims will be heard before ours (the first will be heard in May) and their outcome may be sufficient to allow us to proceed with settlement negotiations without a hearing.

## **Contributions**

A number of members have asked us what arrangements are being made to refund the contributions that they have paid since April 2015, and the position needs to be clarified.

Two separate steps were taken by the government in 2012-2015 to reduce the cost to the government of all of the public sector pension schemes. The first was to introduce the new schemes, which we now know was done in an unlawful manner. The second was to increase members' contributions.

So far as the contributions increase is concerned, the Treasury said that the overall contribution rate had to go up by 3.2%. It was left to the design of individual schemes as to how that increase should be made. In the civil service and NHS schemes, different contribution rates were imposed for different groups of members according to their earnings. But the same increases were made in the new schemes and also in the legacy schemes. The contribution rates in the Classic, Classic Plus, Premium and Nuvos sections of the Principal Civil Service Pension Scheme are and always have been the same as the contribution rates in the alpha scheme. The contribution rates in the 1995, 2008 and 2015 NHS schemes are and always have been the same.

There is therefore no basis for saying that the increases were discriminatory, on the grounds of age or on any other grounds. The increases were not unlawful, and we cannot demand that they are returned.

Some members pay *additional voluntary contributions* to reduce the impact of having to move to the 2015 schemes, effectively buying out the reduction that would be made to their pension if they choose to retire at what would have been their normal pension age under their legacy scheme. The government accepts that they might not have done so if their pension age had not been increased, and they are considering how or in what circumstances these voluntary contributions should be returned. But I regret to say that the ordinary contributions will not be reduced as a result of these tribunal claims, either retrospectively or going forwards.

I will keep you informed of the progress that we make with the "immediate detriment" test cases and the injury to feelings claims.

Yours sincerely



**STEVE GILLAN**  
General Secretary