

REPORT ON MCCLOUD AND SARGEANT AGE DISCRIMINATION CASE

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Report of the Director of Resources

1. Purpose of report

- 1.1 To update Fire Pension Board on the recent outcome of McCloud and Sargeant case in relation to pensions and age discrimination.

2. Recommendations

- 2.1 That the Fire Pension Board notes the case and that further updates will be provided to the Board once the remedy for the case is agreed.

3. Background

- 3.1 On 27 June 2019 the Supreme Court denied the Government's request for an appeal in the McCloud and Sargeant case in respect of age discrimination and pension protection.
- 3.2 The case concerns the transitional protections given to scheme members, who in 2012 were within 10 years of their normal retirement age, in the judges and firefighters schemes as part of public service pensions reform. Tapered protections were provided for those 3-4 years younger.
- 3.3 On 20 December 2018 the Court of Appeal found that these protections were unlawful on the grounds of age discrimination and could not be justified.
- 3.4 Now that the finding of the Court of Appeal stands, significant changes to public service pension schemes may be required. The matter will be referred back to the Employment Tribunal for a remedy hearing. This would normally involve the submission of detailed evidence and could take 12 months or longer to reach a hearing. Once a Tribunal makes a finding on remedy, 'compensation' of some sort will be awarded and the schemes amended as appropriate. Alternatively the parties might agree a remedy prior to any hearing. In either case we expect that the cost cap process will be re-run taking into account the remedy and any scheme amendments.

- 3.5 To date communications have been issued to all Firefighters as follows via an all station memo. Similar updates can also be found on the Intranet and LPP website.

On the 27th June the Supreme Court has denied the Government's request for an appeal on the 'McLeod case' in respect of age discrimination and pension protection. We are waiting for further details on the next steps and we cannot speculate on what impact this may have on pension benefits. Annual Benefit Statements and any estimates will remain based on the current regulations. We will keep you up to date as this progresses.

- 3.6 Further updates will be provided to the Board when the remedy is known and details set out about how this will be managed.

4. Financial Implications

- 4.1 Until the remedy for the case is established officers cannot speculate on what the financial implications for this case will be, but this could be significant.

5. Equalities Implications

- 5.1 Until the remedy for the case is established officers cannot speculate on what the equality implications may be, however the outcome of the case is likely to right any potential issues of age discrimination.