



DEFENCE POLICE FEDERATION

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All Members

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PENSIONS: AGE DISCRIMINATION

You will be aware that the Employment Tribunal considered two cases last year concerning the transitional arrangements made in 2015 when pension arrangements across the public sector were revised. One case concerned the judiciary, and the other concerned the fire and rescue service. Two different tribunals considered the two cases, and the judges won but the firefighters lost.

I'm pleased to be able to let you know that the firefighters' Employment Tribunal's decision has now been overturned by the Employment Appeal Tribunal (EAT) and the judges' decision has been upheld. But the fight goes on.

The firefighters' case has been returned or 'remitted' to the Employment Tribunal, which will have to weigh up properly the Government's alleged need to implement the 2015 transitional arrangements against the damage that they did to firefighters who missed out on protection just because of their age. The EAT agreed with the argument that the Employment Tribunal had to conduct this balancing exercise and failed to do so.

In the judges' case, the Employment Tribunal *did* analyse the damage that the new arrangements did to younger judges and found that the balance did not justify the imposition of transitional arrangements. The EAT has upheld that decision.

Because the judges' Employment Tribunal had conducted the balancing exercise (and found against the Government), there is no need to remit their case to the Employment Tribunal.

The EAT also agreed with the argument in both cases that the transitional arrangements potentially discriminate on the grounds of sex and race because female and members from an ethnic minority background members are disproportionately likely to be younger.

That issue has been remitted to the Employment Tribunal in both cases, but as matters stand will not have to be fought out for the judges.

But the EAT did not agree with all of the judges' and firefighters' cases.

The claimants said that making transitional arrangements that favour members just because they are nearer to retirement can *never* be a legitimate aim and can *never* be justified – being 'nearer to retirement' is just another way of saying 'older' and that is what the law on age discrimination prohibits.

The judges won this point in the Employment Tribunal, but that part of their decision has now been overturned. So far as the judges are concerned that does not matter. They won overall because of the balancing issue mentioned above.

What this means is that, as matters stand, the firefighters would end up back in the Employment Tribunal on the basis that the Government is entitled to protect the position of older firefighters but not their younger co-workers, and any criticism of the Government's position would have to be limited to how the line is drawn.

Our advice is that the Government is not entitled to protect some firefighters or police officers and not others if the distinction comes down to age, no matter how the line is drawn.

In other words, the EAT's decision on this part of the decision is wrong.

The Government says it intends to appeal the firefighters' and the judges' cases. The firefighters are considering an appeal on the legitimate aim issue mentioned above because if they are right on that, there is no need to balance the Government's aims against the damage they caused to younger members at all.

The Government and the firefighters asked for permission to appeal and in both cases the EAT granted permission (although strictly speaking it said that the firefighters did not need permission – they won).

If the Government appeals the judges' decision which it lost outright the judges will cross-appeal the legitimate aim point.

The EAT ordered that the issues which might be remitted to the Employment Tribunal should remain 'stayed' or frozen until the Court of Appeal's decision has been made.

That is likely to take 18 months, if not longer.

Our legal advice is that it is a near certainty that if we asked Tribunal to lift the stay in the cases we have lodged the answer would be no. We are not too concerned about that.

We want the current position reversed before anyone who was in the pre-2015 scheme retires on the new and worse alpha terms, and anyone who retires in the next few years will still be in the old scheme (because they are protected from the changes).

This is sure to be a long hard fight, but rest assured we will continue to pursue this as long as we are advised that we have a case to push.

Whatever happens, improving the position of younger members will not worsen the position of older members unless the Government tries to reform the pension schemes all over again.

Even if it tries to do that, it could not do so retrospectively.

Yesterday's verdicts were a positive in most respects and these cases will continue. Hopefully we will have our opportunity to present our arguments before too long.

We will keep you up to date as news emerges about the appeals process.

Paul Hunter
Pension Sub-Committee Chair