

CHESHIRE FIRE AUTHORITY

MEETING OF: LOCAL PENSION BOARD – FIREFIGHTERS PENSION SCHEME
DATE: 15 MARCH 2021
REPORT OF: SOLICITOR – CHESHIRE FIRE AND RESCUE
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SUBJECT: SARGEANT/MCCLOUD JUDGEMENT - UPDATE

Purpose of Report

1. This paper provides an update to the Pension Board on the outcome of the Schedule 22 Appeal relating to the Sargeant/McCloud Judgement.

Recommended:

2. That the report be considered.

Background

3. At previous Board meetings, an overview of the Sargeant/McCloud case has been provided.
4. In summary, following the Hutton report in 2011, recommendations were implemented including a change in the Public Sector Pension Schemes so that, (a) benefits for future service were assessed not on a “final salary” basis but on a career average revalued earnings (or CARE) basis; and (b) there was an increase in normal pension age (“NPA”) in line with state pension age.
5. The Firefighters Pension Scheme was amended in 2015. As part of the changes, transitional provisions were introduced to protect the rights of all members within ten years of NPA, with tapering protections applied for those between 10 and 14 years from NPA.
6. Under the Equal Treatment Framework Directive, differences of treatment based on age are not discriminatory if they are objectively and reasonably justified by a legitimate aim. The directive has been transposed into English law by the Equality Act 2010, which provides that less favorable treatment because of age will not be direct age discrimination if it is a proportionate means of achieving a legitimate aim.
7. Employment Tribunal claims were issued by those Firefighters who were affected by the changes.

8. The cases ended up at the Court of Appeal, and it was held that transitional provisions were directly age discriminatory and were not objectively justified.
9. The Government was not given permission to appeal this judgment at the Supreme Court.
10. Most recently, the Fire and Rescue Services issued an Appeal. This Appeal focused on whether the Fire Services had a defence under paragraph 1(1) of Schedule 22 to the Equality Act 2010 in that the discriminatory transitional protection provisions were contained within a statutory instrument and they can no choice but to implement the changes.
11. The Employment Tribunal concluded that the Fire Services were not entitled to rely on Schedule 22 as a defence to the claims of age discrimination.
12. This decision was appealed to the Employment Appeal Tribunal (“EAT”) who heard the case on 16th December 2020 and handed down its judgement on 12th February 2021.

Information

13. The EAT held that the Employment Tribunal had not err in law in its construction of Section 61 of the Equality Act or its impact on the availability of the defence provided by paragraph 1(1) of Schedule 22.
14. The appeal was dismissed.
15. A date is awaited in relation to the Remedy Hearing.

Financial Implications

16. There are financial implications for CFRS.
17. These cannot be fully quantified at this time as further work is required to calculate the financial impact of the recent decision.

Legal Implications

18. These are detailed above.

Equality and Diversity Implications

19. There are no equality and diversity implications.

Environmental Implications

20. There are no environmental implications.

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