



McCloud Update, PAG2 and Treatment of Police Pensions upon Divorce

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For many Police Officers, their pension has often been the most valuable asset upon Divorce. The Government's pension reforms to public sector pensions in the early 2010s changed that for a significant amount of officers; members were transferred from the "old" schemes to "new" ones that replaced them and from 1 April 2015, many of those affected were not only paying more into their pensions but were also retiring later, resulting in the projected value of their pension being lower than once expected.

However, in recent years, the pension reforms to public sector pensions have been deemed to breach age discrimination legislation. The Court of Appeal ruled in the cases of McCloud (pensions of Judges) and Sargeant (pensions of firefighters) that pension scheme members were being treated differently, depending on age and that the Government failed to demonstrate that the transitional protection arrangements were based on a legitimate aim.

The Government sought to find a remedy and the significant reform of public sector pensions is being unravelled. The affected members are those who were active in the "old" schemes as of 1 April 2012 and had pensionable service during the "remedy period", being 1 April 2015 to 31 March 2022 for most schemes. Such members are potentially eligible for retrospective changes to service built up in the scheme during the remedy period, due to the McCloud judgement, with all members being treated consistently from 1 April 2022 onwards.

The first part of the remedy (closure of all of the "old" schemes on 31 March 2022 to any further benefit accrual and transfer of all active members to the "new" schemes on 1 April 2022) is complete.

The deadline for the second part of the remedy was 1 October 2023, named "McCloud implementation day" and from this date, the transitional protections were removed and there was a "rollback" of pensionable service during the remedy period from the "new"

schemes back into the "old" schemes, together with a "choice election" or "remedy election" to receive "old" scheme benefits or "new" scheme benefits, payable from the "old" scheme.

The impact of McCloud on the CETV

In order to determine whether there will need to be a Pension Sharing Order of your Police Pension upon Divorce and as part of your duty to provide full and frank financial disclosure, you will be required to disclose the value of your pension. This is known as your Cash Equivalent Transfer Value ("CETV") and it is the value that your pension would be given if you were able to transfer it.

On 1 October 2023, the retrospective changes to public sector schemes were introduced as a result of McCloud, and from this date onwards, the CETV made allowance for the McCloud reform on benefits accrued from 1 April 2015 to 31 March 2022 and was calculated on the higher valued benefits.

However, there has been a considerable delay in obtaining CETVs calculated with the new requirements, in line with the new legislation and some Police Pension Scheme CETVs made no allowance for the McCloud remedy, despite being provided after 1 October 2023.

As such, there have been many Police Officers who are set to receive a retrospective uplift to their pension, which have not been taken into account in the CETV disclosed upon Divorce. This has created uncertainty over the accrued pension benefits at the point of Divorce and thus the appropriate Pension Sharing Order or offsetting of the pension claim upon Divorce, as a result. The guidance provided is that where a public sector pension is being shared upon Divorce, a McCloud compliant CETV will be required.

Regional entities administer the pension benefits for Police Pension Scheme members and thus it will depend on who is responsible for the administration for a particular force, as to whether McCloud compliant CETVs are being produced. The positive news is that

we are now starting to see compliant CETVs being produced for members of the Police Pension Scheme.

For Pension Sharing Orders already implemented post-Divorce, it is understood that both the spouse who has received the benefit of the Pension Sharing Order and the spouse who has shared their pension, may receive an uplift to their pension benefits if affected by the McCloud remedy; both therefore faring better than once expected.

The PAG Report, PAG2 & The PODE report

Following the guidance in the report of The Pension Advisory Group ("PAG"), "a Guide to the Treatment of Pensions on Divorce" published in July 2019, in the majority of cases, before a claim to a Pension Sharing Order can be determined, there will need to be a joint instruction to a Pension on Divorce Expert ("PODE") at joint expense to prepare a pension report.

Many pension reports have been delayed until McCloud compliant CETVs have been provided by pension administrators, resulting in the postponement of parties being able to deal with pensions on Divorce as part of their financial settlement.

The Pension Advisory Group reviewed and updated their July 2019 report and in January 2024 a second edition of "A Guide to the Treatment of Pensions on Divorce", also known as "PAG2", was published.

The guidance from PAG2 is that:

- Defined Benefit pension schemes will often involve CETVs of £100,000s or even £millions. The financial cost of making an uneducated guess about the pensions with a view to avoiding the relatively modest cost of a PODE report and so getting it wrong, can be immense for either party (pension-holder or pension claimant). Advice is usually to get a PODE report.
- the date of cohabitation is taken as the date of marriage for the purpose of the pension claim;
- in medium to long marriage "needs-based" cases, where the pension assets form a substantial part of the total assets, the timing and source of the

accrual of pension entitlement is unlikely to be relevant. Therefore "apportionment" or the ringfencing of pension accrued prior to cohabitation is not necessary in such cases; "needs" come first and pension accrued prior to cohabitation can be invaded.

- A difference is created with a short marriage, where apportionment/ringfencing of pension may be appropriate and it is more difficult to violate pre-marital pensions.
- In a "needs-based" case, a fair outcome will often be to divide the pensions separately from other assets, based on an equalisation of incomes approach, as opposed to equalising CETVs, requiring PODE input.
- There are inherent limitations with the CETV figures obtained as representing the valuation of pensions for Divorce purposes and what the benefits are worth to the parties or might cost to replace, can be very different. A PODE should be instructed to identify the true value of pension to produce a fair result.
- PODE input is required to consider offsetting of a Pension Sharing Order claim. Offsetting is the complex process by which the right to receive a present or future pension benefit is traded for capital or money now. It allows one party to retain their pension rights and, in lieu, the other party has a disproportionate amount of non-pension assets, e.g. property or cash, achieved by a lump sum or property adjustment order. The difficulty lies in comparing very different types of assets, e.g. a pension as a future whole-of-life income stream against cash, housing or other non-pension assets.

It is essential if you are embarking on Divorce, that you seek advice from a Divorce specialist experienced in dealing with Police Pensions and that the changes to CETVs as a result of McCloud are highlighted to your spouse's solicitor and/or the Court.

We advise that a McCloud compliant CETV is obtained and a PODE report is considered, before financial claims upon Divorce are determined.

If you're looking for advice, contact us on 0808 175 7710 or visit our website to speak in confidence with a specialist family lawyer who will help guide you through your options and choose your next steps with confidence.