



McCloud 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 changed that for a significant amount of officers; 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 now seeks to find a remedy and almost ten years later, the significant reform of public sector pensions is to be unravelled. The affected members are in general those with accrual before 1 April 2012 and after 1 April 2015. The schemes have until 1 October 2023 to introduce retrospective changes, with all members being treated consistently from 1 April 2022 onwards.

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 is the value that your pension would be given if you were able to transfer it.

Once the retrospective changes to the schemes have been introduced as a result of *McCloud* (October 2023 at the earliest), the CETV will be based upon these higher benefits.

However, until 2023, the CETV produced will not make any allowance for *McCloud*. As such, there will be many Police Officers who are set to receive a retrospective uplift to their pension, which will not be taken into account in the CETV disclosed upon Divorce. This creates 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.

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; both therefore faring better than once expected.

The PAG report & 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, it is now more likely than ever that there will need to be a joint instruction to a Pension on Divorce Expert ("PODE") at joint expense to prepare a pension report.

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Many PODEs are refusing to provide for the implications of McCloud in their independent actuarial reports and insist that a choice has to be made between having Pension Sharing Order calculations undertaken based on the CETV disclosed at present (which makes no provision for a possible McCloud uplift) or for parties to postpone dealing with pensions on Divorce until the CETV does take account of McCloud.

It is thought to be unlikely that spouses will be prepared to wait until at least 2023 to resolve the financial aspects of their divorce due to this uncertainty following McCloud.

The Pension Advisory Group have confirmed that their July 2019 report is to be reviewed and updated and as further announcements from the Government Actuary's Department and the Police Pension Scheme itself emerge, there will be greater certainty of the impact of McCloud.

It is essential if you are embarking on divorce, that the potential upcoming changes to the CETV are highlighted to your spouse's solicitor and/or the Court and we would advise that a PODE report is obtained to identify whether a CETV will or will not be affected by the McCloud ruling before financial claims upon Divorce are determined.

When going through a divorce, it is imperative that you seek advice from a divorce specialist experienced in dealing with Police Pensions.

Our expert family law solicitors offer tailored legal advice for you and your family's needs and we're specialist in all areas of police pensions and shift patterns. We've been advising and supporting officers for more than 60 years, providing straightforward guidance to help you move forward with clarity and confidence.

As a police federation member, you have access to a free initial consultation. To speak to one of our expert family lawyers, [please contact us on 0808 175 7710](tel:08081757710), and we'll be happy to help.

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.

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