

A decorative graphic in the top left corner consists of a series of overlapping, semi-transparent hexagonal shapes in shades of blue and red, creating a geometric pattern.

# NPCC Police Pensions Update Financial Loss Compensation Mechanism

Clair Alcock

NPCC Head of Police Pensions

# Compensation

## Direct financial loss

- The compensation should compensate Pension Scheme members (or their beneficiaries) for direct financial losses they have suffered because of either the discriminatory transitional protections, or any provisions in the PSPJOA 2022 or [The Police Pensions \(Remediable Service\) Regulations 2023](#).

## Part 4 Tax Loss

- Paragraph 9 of [section 23](#) sets out that a part 4 tax loss is a reference to incurring a charge or not being entitled to tax relief or less tax relief under [Part 4 of the Finance Act 2004](#).

# Compensation Powers – The Act

Section 23 of the PSPJOA 2022 provides a permissive power for scheme managers to pay compensation in respect of compensatable losses incurred by members because of the discrimination, or as a result of putting members in the same pension position they would have been in but for the discrimination.

Losses are compensatable if they meet the description set out in the Public Service Pensions (Exercise of Powers, Compensation and Information) Directions 2022 and **one** of the following applies:

- i. The loss is attributable to the breach of the non-discrimination rule that arose from the application of an exception to Section 18(1) of the Public Service Pensions Act 2014 (i.e. the transitional protections which were found to be unlawfully discriminatory through the [McCloud judgment](#)) [(23(4))]
- ii. The loss is attributable to the application of any provision of, or made under, Chapter 1 of the PSPJOA 2022 (i.e. the application of the remedy as required by the Act) or [Scheme Regulations](#) which implement the remedy set out by the act. [(23(5))]
- iii. A Part 4 tax loss (a specific tax loss where HMRC's statutory time limits do not allow for correction of the amount of tax paid). [(23(6))]

# Compensation Powers – The Directions

Treasury Directions (8 to 11) provide principles and detail about the scenarios in which scheme managers may pay compensation using section 23.

- There is no discretion in the PSPJOA 2022 for scheme managers to compensate for McCloud-related losses outside the scope provided in the Treasury Directions.

There are five relevant directions for compensation, which are:

- Direction 8 – Sets out the power to pay compensation and sets out 10 principles.
- Direction 9 – Describes a compensatable loss as being either a direct financial loss or a specified part 4 tax loss. The directions refer to specific compensatable tax loss scenarios, but no specific scenarios of compensatable direct financial losses are provided.
- Section 10 – Indirect compensation.
- Direction 11 – Indirect compensatable losses.
- Direction 18 – Sets out the process to apply for a compensation claim.

# The principles

## Claims have to meet the 10 principles in Treasury Direction 8

1. Have regard to the purpose of the compensation
2. Comply with the principle of regularity
3. Comply with the principle of propriety
4. Comply with the principle of value for money
5. Have regard to the particular circumstances of the member (or 'person' as referred to by HMT Directions – if different i.e. nominated person, estate).
6. Have regard to whether there is sufficient evidence available to establish (i) whether any of conditions set out in paragraph 1 are met, (ii) whether the loss is of a nature described in the Treasury Directions (see below), and (iii) the quantum of the compensatable loss.
7. Have regard to whether such a claim would be awarded if brought in litigation and if so the likely amount to be awarded.
8. In determining the amount to be awarded, whether and to what extent the member has, or should have, taken reasonable steps to mitigate the loss.
9. Ensure any payment of compensation is reasonable and proportionate to the loss incurred by the member (or their personal representative).
10. Not make a payment that gives an unreasonable financial advantage compared to what would have happened had the discrimination not occurred.

# Compensation categories

**Automatic**, these do not require the member to make a claim, and eligible members will be compensated automatically.

- We expect these cases to be of higher volume and reportable as members who qualify for a compensation refund can easily be identified.

**Anticipated claims – with evidence.** It is anticipated that these claims are more likely to be for something specific which is clearly identifiable and will be expected to be paid where the member has provided suitable evidence of a financial loss that satisfies the Scheme Manager that such a loss should be compensated for. While this is not an exhaustive list, these are likely to be one or more of the following categories: –

- Need for accountancy services.
- Need for independent financial advice.
- Need for legal services.
- Direct financial loss.
- Part 4 Tax Loss.
- Within these claims, it is expected that there will be some claims that could be valid, but will be harder to evidence.

**Not payable** – These are claims that are not supported by the powers of the PSPJOA 2022 or the directions.

# Automatic

**Compensatable refunds** – To remain an authorised payment, situations where a refund of contributions is necessary to rectify the discrimination are to be treated as compensation.

- 2006 transition members who are returned to the 2006 legacy scheme will receive a refund of overpaid 2015 contributions.
- Transitional members of the 2015 scheme who paid added pension in the 2015 scheme during the remedy period will receive a refund of 2015 added pension contributions that they paid during the remedy period.
- 1987 legacy scheme members who choose 2015 benefits when they make their Section 6 (Immediate Choice members) or Section 10 election (Deferred Choice members) will receive a refund of 1987 overpaid contributions.
- A protected or taper protected member who commenced a contract to pay legacy scheme added years contributions during the remedy period, but later chooses reformed scheme benefits at retirement will receive a refund of any added years contributions.
- Tax relief for non-active members – All non-active contributions, excluding opted-out service reinstatement pre and post remedy.

# Anticipated claims with evidence



All claims will need to provide clear evidence of a direct financial loss (such as a receipt, invoice, or bank transaction) as well as justification as to how that loss is attributable to the discrimination identified by the McCloud judgment or its remedy.



Anticipated claims would fall into the following categories:

- Accountancy Services
- Independent financial advice
- Legal services
- Financial Loss
- Part 4 Tax Loss



This does not include a payment for information or services that, in the opinion of the decision maker, the applicant could have reasonably obtained from the Scheme Manager of the Police Pension Scheme without charge, such as the following documents:

- Factual information
- RSS
- Pensions Savings Statement (PSS)
- Information request from scheme manager for use with HMRC calculator



# Evidence

Decision makers should have regard to the Home Office consultation response, paragraph 6.172 that 'Scheme Managers need to be able to consider individual cases when making certain decisions, rather than a blanket set of rules applying.

Evidence should include an explicit explanation of the financial loss incurred and the amount.

In order to validate the claim, scheme managers may need to instruct the services of an actuary or legal professional.

Direction 8, 1h requires a scheme manager to have regard to whether a person could have mitigated their loss:

Direction 18(2) confirms how to evidence a Part 4 tax loss:

All claims will need to provide clear evidence of a direct financial loss (such as a receipt, invoice, or bank transaction) as well as justification as to how that loss is attributable to one or all of the conditions set out by section 23 of the PSPJOA 2022.

# Decision Making

The PSPJOA 2022 and the directions require the scheme manager to make decisions about compensation claims, and to consider appeals.

On the matter of scheme manager discretion, in the Home Office consultation response, paragraph 6.172 Home Office said *“Scheme Managers need to be able to consider individual cases when making certain decisions, rather than a blanket set of rules applying”*

When exercising the power to pay amounts by way of compensation, the decision maker must act in accordance with direction 8 of the Treasury Directions.

A decision maker may request such further information from the applicant as they consider appropriate.

The relevant decision maker will always be a representative of the current scheme manager, who is the most recent employer of the member.

The scheme manager must hold a record of the claim and the decision, such that no member can be compensated more than once for any specific loss.

# Disclaimer

---

The information contained in these slides are the authors interpretation of the current regulations.

---

Readers should take their own legal advice on the interpretation of any particular piece of legislation.

---

No responsibility whatsoever will be assumed by NPCC for any direct or consequential loss, financial or otherwise, damage or inconvenience, or any other obligation or liability incurred by readers relying on information contained in these slides.