

'Injury to feelings' compensation claim follows UK Supreme Court ruling

PENSIONS LEGAL ACTION LAUNCHED

NIPSA's solicitor John McShane and General Secretary Carmel Gates, pictured at the McCartan-Turkington-Breen offices in Belfast

McCartan
Turkington
Breen



NIPSA's solicitors McCartan-Turkington-Breen (MTB) are lodging 'injury to feelings' compensation claims on behalf of each of the union's 40,000 members.

It comes after the UK Supreme Court recently denied a Government application to appeal a 2018 Court of Appeal judgment over changes to judicial and firefighter pension schemes which it deemed was discriminatory.

The McCloud/Sargeant case, brought by the Fire Brigades Union and the Local Government Association, argued that changes introduced by the Government in 2015 were unlawful in that they gave greater protection to older workers.

The changes, which came out of the 2011 Hutton Report into public service pensions, basically ended final salary schemes and replaced them with career-average alternatives.

Built into the 2015 changes, however, were "transitional arrangements" that gave greater protections to older workers nearing retirement. It is these arrangements that have been found to be discriminatory to younger workers.

MTB's John McShane pointed out that though age discrimination can be a justification defence in law, the Government's argument that the pensions were "outrageously expensive and we can't afford it... ultimately lost".

He told *NIPSA Report*: "When the UK Supreme Court declined their [Government's] application to appeal the judgment, the default position was that the Court of Appeal judgment became the binding decision."

John said the Government realised its pensions policy had become "an

By **NIPSA NEWS** Reporter

horrific mess" and in a bid to try and fix the situation was offering public sector workers the choice of returning to the pre-2015 scheme or going on to the new scheme.

"For some it makes better sense to go on to the new scheme, but for others it is better to go on the old scheme. What they are NOT doing is compensating people for the actual act of discrimination."

That is why NIPSA is now seeking redress by lodging 'injury to feelings' compensation claims on

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Fighting in your corner

"NIPSA is fighting in your corner" is the simple take-home message from Deputy General Secretary Maria Morgan after it was revealed NIPSA is pursuing an 'injury to feelings' compensation claim, through its solicitors, on behalf of members.

Maria pointed out that the union had "acted robustly" in the past in response to Government-imposed pension changes that had discriminated against those workers not close to retirement. She told NIPSA

Report: "Taking this legal case is our way of saying to our members that we're working closely with our lawyers to address these acts of discrimination.

"This is another fight we are taking forward and is a reminder to members that NIPSA is fighting in their corner and for their interests.

"This sends a message about how important it is to be a member of NIPSA."

Please ensure that you...

1 Claimant details
Before entering your response, you are required to input the case reference number, or form sent to you. In any subsequent contact that you have with the office you should quote t

Case Reference Number

Claimant's name

Respondent's name (as on the claim form)

2 Respondent's details
If this response includes more than one respondent, please provide the same

2.1* Name of individual, company or organisation

Contact name

...is different from

PENSIONS ACTION

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behalf of its members.

"As for as I'm aware," John said, "NIPSA is the only union in Northern Ireland proactively lodging proceedings on behalf of its members."

He continued: "Our case is that Hutton in his report stated explicitly what constituted age discrimination. Despite this the UK Government decided to plough ahead anyway. 'Injury to feelings' compensates you for the discriminatory act that has happened.

"The solicitor and two barristers [acting for NIPSA] have agreed that essentially there's a clear case for

compensation for injury to feelings by the very act of discrimination that happened."

Claims will be lodged individually on behalf of members against some 370 employers. John is quick to point that though this is a class action – there won't be 40,000 odd forms to fill out – it still represents a "substantial amount of work".

"We're going through a process of getting the early conciliation certificates from the Labour Relations Agency which we have to obtain before we launch proceedings. We're hoping to lodge these proceedings at the Office of the Industrial Tribunals and the Fair Employment Tribunal in May," he said.



Industrial Tribunals and the Fair Employment Tribunal

Northern Ireland

LANDMARK PAYOUT

'Truly courageous member of the union' secures £1.25 million settlement

VINDICATION:
Dr Tamara Bronckaers following the £1.25m settlement
Picture: MTB

NIPSA has welcomed the awarding of a £1.25 million payout to Dr Tamara Bronckaers, a former member of the union, as a "tremendous outcome" after an industrial tribunal found she had been constructively dismissed from her job as a government vet following a whistle-blowing complaint.

Dr Bronckaers, who resigned in February 2018 after 19 years in the job, also received an "unreserved" apology for "hurt and distress caused" from the Department of Agriculture, Environment & Rural Affairs (DAERA).

She had raised continuing concerns to colleagues about animal welfare and failures in traceability in the meat supply chain. Rather than acting on

and probing her claims, the tribunal found that Dr Bronckaers had instead been ignored, undermined and excluded.

Dr Bronckaers had initially sought the backing of her union in lodging a complaint to the Industrial Tribunal and the initial case management hearings.

NIPSA supported her case through its solicitors, McCartan, Turkington & Breen (MTB). Dr Bronckaers later decided to have MTB's John McShane represent her throughout the legal process.

Dooley Harte, the NIPSA HQ Official at the time, described the payout as a "tremendous outcome" that had vindicated a "truly courageous member of the union". He said: "In the



face of the might of the NICS, Tamara stood up for what she knew to be true and would to not let herself be brow-beaten. We know of too many members who have suffered in this way with little recourse to justice.

"NIPSA supported her in the initial stages of her case before she engaged our solicitors. This case is evidence that with union support, you

can fight and you can win."

And it was a sentiment echoed by Dr Bronckaers' solicitor John McShane. He told NIPSA Report: "Tamara was a member of NIPSA and was assisted by the union initially before instructing the MTB privately. It really shows the benefits of trade union membership to be able to get such assistance available at the start."