

The National Probation Service (NPS) and Community Rehabilitation Companies (CRC) were established in June 2014, the outcome of Chris Grayling's "Transforming Rehabilitation (TR) Revolution". Ever since, the probation service has been beset with pension administration difficulties. The complexity of transferring thousands of staff into the civil service or new privately run companies whilst remaining members of the Local Government Pension Scheme (LGPS); and then meeting the obligations to staff under the LGPS were never accepted by the MoJ, despite repeated union warnings. Additional complexity comes from seeking to integrate LGPS membership into an outsourced HR and PAYE system, where a core assumption is shared membership of the fundamentally different civil service pension and compensation schemes.

In recent months, we have witnessed a systematic functional breakdown of the pension scheme across the NPS. The NPS have repeatedly failed to address this, in some cases their actions compounding the problems. We've also seen significant pension issues arise in relation to some CRC contracts. The most significant problems impact upon the most vulnerable employees - those being award Ill-Health Early Retirement (IHER), often on grounds of stress, depression and workplace injury.

In the last 12 months, Napo has had to register two formal complaints with Pension Regulators against the National Probation Service for collective, systematic failure to meet their responsibilities under the LGPS. We have also registered a formal internal dispute about their systematic failure to manage ill health early retirement in accordance with scheme rules and regulations. The scale of these problems and the lack of engagement from the employer, and resultant lack of progress, means we are now seeking the direct intervention of Ministers.

Our view is that senior leaders have lost the trust and confidence of their staff and their Government's leaders. The Treasury refuse to allow negotiations about probation pay reform because they do not trust their own leaders to negotiate competently with unions. The Treasury are also continually pouring additional funding into badly structured and unsustainable CRC contracts. Many of the key players were TR's Chief Engineers. Consequently, they are in a defensive panic, with avoiding responsibility for their failure being prioritised over finding honest and systematic solutions to these problems.

Napo are therefore asking Ministers to:

- a) Facilitate direct negotiations with unions to address these structural, systematic pension failures – as well as allowing negotiations for pay reform.
- b) Accept the existing probation model isn't sustainable without recognising and addressing these fundamental flaws;
- c) If necessary, find new engineers to establish sustainable systems that safeguard the rights of probation staff, who have been keeping the service functioning despite chaotic systems and senior leadership incompetence.

**PENSION CHAOS – examples:**

- Systematic failure to accurately calculate and collect pension contributions for LGPS members, especially those whose pay changes – for example due to taking maternity leave, being on sick pay,

or reduced hours. In 2017, more than 3000 staff had no contributions collected for up to 7 months. Difficulties in correcting these errors have compounded problems for those in the process of seeking IHER, especially in obtaining accurate pension calculations.

- Consequently, additional tax and PAYE errors, compounding the original error, as pension contributions are subject to tax and NI adjustments.
- Additional errors in relation to tax, PAYE and pension contributions from wrongly applying civil service pension scheme rules to LGPS members – for example in relation to back dated pay awards, overtime pay and related holiday pay. These especially impact on lower paid staff working irregular hours, for example in Approved Premises, and those who retired in-year. Between 2014 and 2016, the NPS did not keep a list of staff who retired or left the service in year.
- Taking an average of 6 months to progress an IHER application when the expectation is up to 12 weeks, leading to unnecessary loss of income for staff by prolonging sickness absence. Reasons for these delays include the computer issuing the wrong advice (by directing them to the civil service rules) and/or forms to managers so the process stalls or elements have to be repeated;
- Additional delays in starting IHER application processes even where it is obvious of the need to do so. In one case, where a member had a massive stroke their husband was initially told by the line manager to sort it out themselves as “we don’t do IHER any more”. It took more than 12 months from her stroke to secure IHER and even now we don’t know if her payments are accurate;
- People qualifying for IHER but employers not actioning the release of their pension for months, causing additional distress, financial hardship and confusion – in one case the NPS has not actioned release of the pension for more than 12 months!
- People qualifying for IHER but only being notified of their dismissal four months later.
- People qualifying for IHER with immediate access to their pension but still being paid for more than four months as the NPS couldn’t process their timely retirement, in breach of scheme regulations. Such errors further confuse those trying to accurately calculate the pension, as the scheme member is continuing to contribute after they have been retired.
- People being given the wrong advice around appealing an IHER outcome – in several cases being told they couldn’t appeal until they accepted the outcome, a tautological nonsense that can have serious implications where the person has a stress and anxiety related disability.
- People being asked to sign away unrelated statutory rights before they can access their pension – in breach of pension regulations. This is the cause of several delayed payment cases.
- In recognition of these difficulties, senior managers have offered compensation payments based upon civil service scheme regulations but have then had to withdraw them, resulting in complex and expensive legal action and reputational damage to the NPS.

- The NPS seeking to change contractual notice pay rules to reduce the difference between the schemes but doing so without agreement, potentially leading to numerous individual breach of contract cases and a collective dispute.
- Additional enrolment challenges for staff joining the NPS. A small number have been wrongly enrolled in the civil service scheme, leading to difficulties recovering contributions and transferring these into the LGPS. In 2017, 350 staff joining the NPS were not paid at all for up to 3 months, with some having subsequent difficulties joining the LGPS in a timely manner.
- Members transferring between the NPS and CRCs not being supported to remain in the LGPS, in breach of the National Staff Transfer Agreement established to support TR.
- Other LGPS members transferring into the CRCs as a result of TR (e.g. ex-SERCO staff in London CRC) seemingly being lost as the MoJ failed to notify their new owner of their rights to remain in the scheme. We believe this may have led to some being wrongly enrolled in the Royal London scheme, denying them access to any IHER rights, without consultation or notification.
- Additional stress for all parties arising from liaison with the outsourced Shared Service Centre. Staff there admit they have so little confidence in the computer's calculations relating to probation that they assume a need to auto-correct, even when the computer is correct – further compounding problems.
- Line managers losing faith in any advice given and so avoiding being proactive on behalf of their staff.
- Calls to the Shared Service Centre being charged at a premium rate of up to 88p a minute – meaning people trying to sort out these problems (including vulnerable staff on reduced or zero pay) running up significant phone bills or the taxpayer being charged to phone the Government's own HR department!

## **SOLUTIONS**

Napo believe that the only credible long term solution will involve probation staff either being taken out of the Shared Service Centre completely or processes being re-constituted so that the NPS is treated as a separate entity from the rest of the MoJ. This already happens with Cafcass (an MoJ agency where employees are in the LGPS but who do not use the Shared Service Centre) or the Valuation Agency (a separate department where employees are LGPS members who do use the Shared Service Centre).

There are political objections to this from the TR engineers, as it would frustrate their ambitions to absorb probation into the prison service – however, this could never happen safely without probation staff transferring into the civil service scheme and the Government absorbing the huge pension liabilities.

In recognising this, the Government should also accept this systematic structural crack in the foundation of the TR model shows the model to be unsustainable and unsafe. They should start to develop a better, safer model now, in partnership with unions and other stakeholders. This should involve reunified delivery of core probation services; with commissioning devolved for greater local accountability and wider local engagement.

In the meantime, emergency action and investment needs to be put in place to identify all of the existing pension and associated PAYE and tax errors and compensate those impacted in full. This will involve handing responsibility for pension management over to independent experts in the LGPS – however embarrassing this is for a nationalised government service. This support should be extended, free of charge, to CRC's - giving them the support they should have had from the MoJ when the MoJ let the contracts.

***FOR MORE INFORMATION OR IF YOU HAVE ANY QUESTIONS PLEASE CONTACT:***

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