

The issue at hand relates to the age at which officers can access their 2015 CARE benefits; in particular where two officers have accrued 30 years' pensionable service but due to differences in age one can access their 2015 CARE benefits whilst the other cannot.

The key issue at hand is not the service/accrual point that the officer has reached, but their age. Actuarial reductions are necessary to 'rebalance' the pension if it is taken early from the 2015 CARE pension scheme, as the period of time over which it was expected to be paid has increased.

One of the other issues relates to the fact that an officer retiring at age 55+ has their CARE pension reduced from age 60, whereas an officer under age 55 will have to wait until at least age 55 to access the CARE pension, and the reduction applied will be made with reference to their State Pension Age (SPA). The reference to age 55 in the 2015 CARE Scheme is in line with the current Normal Minimum Pension Age of 55, which is the earliest age at which HMRC permit pensions to be put into payment (except in cases of ill health). PPS 87 is one of the very few schemes which allow members to retire before age 55, and this rare provision is intrinsically linked to the way in which the scheme was designed (i.e. that there is a 'maximum service/pension' rule). This style of scheme is different to the design of the vast majority of other occupational pension schemes, including the 2015 CARE Scheme (for example there is no maximum service/maximum pension in the 2015 CARE Scheme), and whilst members may have benefits in both schemes it must be borne in mind that ultimately they are separate schemes governed by different regulations.

This difference in treatment with regards to the actuarial reductions is (at least in part) because the normal pension age differs between the two circumstances. A pension scheme valuation uses assumptions such as date of/age at retirement and so if the pension is put into payment at a different point in time then it must be adjusted to ensure that the total amount paid is equivalent (actuarially neutral). This is also why it is not true that an officer is devaluing their overall pension remuneration by continuing to serve and pay into the 2015 CARE Scheme. Any actuarial reduction to CARE benefits is to ensure that the overall value of the pension paid will remain the same.

#### Age Discrimination

PFEW have always, and continue to maintain that only joiners from 1 April 2015 should join the 2015 CARE Scheme. This was an argument not accepted by Government, but that does not mean that PFEW's opinion has changed on that point. That said, for PFEW to now ask for the transitional protections to be extended to a certain cohort (i.e. late joiners to PPS 87) we would be requesting the continuation of the discrimination identified by the courts. Even if Government were to allow some (but not all) members to remain in their legacy scheme (PPS 87 or NPPS 2006) after 1 April 2022 they would be perpetuating the same type of discrimination which was originally ruled as unlawful.

There is also a fundamental problem with pursuing an age discrimination claim in the circumstances you have outlined. Firstly, age discrimination cannot be challenged until it has occurred, therefore any claim could not be made until the relevant regulations have been put in place to enact it into law. Secondly, there must be a comparator in similar circumstances – save for age. From 1 April 2022 there will be no members accruing benefits in PPS 87 or NPPS 2006 and therefore there is no comparator against which a claim of age discrimination could be demonstrated.

#### Unfairness in pension provision

I understand the concern that there are officers who have (or will have) benefits accrued in both a final salary (N/PPS) and the CARE Scheme, which is somewhat problematic due to the final salary

schemes being based on a 'maximum service' model, whereas the CARE Scheme does not have any maximum service/maximum pension restrictions. Ultimately, whilst the schemes are connected, each is governed by a separate set of regulations and so are not designed to necessarily complement each other. That said, we are aware of the complications between the PPS commutation rates (more generous the younger you are) and the 2015 CARE Scheme actuarial reductions (reduction is lower the older you are) and this is something on which we are seeking clarity/explanation on from the Home Office.

#### Legitimate Expectation

As noted in the 'age discrimination' section above, there are fundamental problems with requesting continued transitional protections for a specific cohort of members. A couple of points on this subject:

- It is a general principle of pensions law that members' accrued pension rights are guaranteed; and cannot be reduced without explicit member consent (e.g. remedy choice)
- Future pension accrual is not guaranteed and can be changed, regardless of legitimate expectation based on past experience/provision. This is a principle of pensions law and Government policy, which is also confirmed in legal advice we have received.

However, PFEW have sought government's evidence that they have considered the impacts on this cohort, and can justify any potential discrimination (albeit the legal advice received to date strongly suggests that government's actions are justified due to the fact they are legally bound to remove the discrimination identified by the courts).

#### Sex Discrimination

This is an issue which was raised when the transitional protections were originally introduced, the conclusion of which was that police (not pensionable service) was used to calculate eligibility for transitional protections. PFEW had argued that officers with some part time service and/or a career break should have a pro-rata extension to remain in their existing scheme if they were tapered (rather than fully) protected. However, this argument was not accepted.

PFEW recently sought legal advice as to the prospects of an indirect sexual discrimination claim relating to the remedy. In summary, whilst it could be argued that the impact of the remedy gave rise to indirect sex discrimination, it was highly likely to be justified by the legitimate aim of the Government's requirement to remove the discriminatory transitional protections.

#### Unrealistic financial expectation

My comments in the section above *Legitimate Expectation* also apply here. Ultimately the 2015 CARE Scheme offers more flexibility for members than a final salary scheme – the notion that younger officers will work longer is based on a comparison against the pension accrued by officers born many decades before them, who have been in service for longer and who have paid more contributions (to date) than their counterparts who joined service (in some cases) decades later.

The threshold to prove a breach of realistic expectations is very high, and it is also worth noting that neither the introduction of nor the 2015 CARE Scheme itself has been challenged – by members of the police or any other public sector pension scheme. Government is entitled and legally able to change future pension provision (whether State or public sector) through Primary Legislation – such as that introduced to enable the 2015 changes.

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Finally, I wanted to address the question around how PFEW reaches a position on (pension) policy. You will be aware that we sought advice from Queen's Counsel (QC) on a number of issues at the time that the 2015 CARE Scheme was due to be introduced. We have subsequently sought advice on the Government's proposed remedy to the McCloud/Sargeant judgement (i.e. the Remedy), and Government's response following their consultation in 2020.

We have consistently been advised that the prospects of challenging Government's changes to police pension provision are low. There are a couple of points that should be borne in mind:

- Legal advice is just that, advice – Counsel's opinion is an informed one but ultimately they cannot predict the precise outcome of legal proceedings
- Legal challenges such as those proposed in this query are subject to the same criteria as any other potential claim made on behalf of PFEW - if the prospects of success do not meet our requirements then the claim will not be funded. It would be irresponsible for us to spend members' subscription fees in a way which does not meet the test used against all other potential legal proceedings.