

Police Federation
Of England and Wales



Ffederasiwn Heddlu
Lloegr a Chymru

Established by Act of Parliament

Federation House, Highbury Drive, Leatherhead, Surrey, KT22 7UY
Telephone: 01372 352000 Fax: 01372 352078

NATIONAL SECRETARY'S OFFICE

BB CIRCULAR – 014-2020

16 December 2020

To: All Branch Board Chairs & Secretaries
Cc: National Board, National Board Info and Branch Council Admin

Dear Colleague,

CURRENT POSITION IN RELATION TO THE PROPOSED REMEDY TO THE UNLAWFUL DISCRIMINATION CAUSED BY THE TRANSITIONAL PROTECTIONS IN THE POLICE PENSION SCHEME 2015 (2015 CARE SCHEME)

Aim

The purpose of this Circular is to provide you with a summary of the progress towards the correction of the unlawful discrimination caused by the transitional protections introduced as part of the introduction of the 2015 CARE Scheme (the remedy). This incorporates background on why a remedy is necessary, what progress has been made to date (including the part PFEW has played), and what is likely to happen going forward - with anticipated timescales. We hope this will assist you in answering questions raised by members.

Background

The introduction of the 2015 CARE Scheme included transitional protections designed to apply to members who were closest to retirement. Those members who were within ten years of retirement were treated as being fully protected and were allowed to continue in membership of their existing scheme (PPS 1987 or NPPS 2006). Those members who were within four years of being fully protected qualified for tapered protection, which meant that they were allowed to

remain in their existing scheme for a limited period before moving into the 2015 CARE Scheme. The Government's justification for granting the transitional protections was that those closest to retirement had less time in which to adapt to the changes in pension provision. However, in the McCloud and Sargeant case the Court of Appeal found the transitional protections to be unlawfully age discriminatory, as the Government could not justify them as being a proportionate means of achieving a legitimate aim.

Following the decision of the Court of Appeal and its refusal to grant permission for an appeal to the Supreme Court, the Government conceded that it would need to construct and implement a remedy for all affected public service pension schemes, including the police schemes, in order to rectify the unlawful discrimination.

In January this year the Government issued a paper outlining its working proposals to remedy the unlawful discrimination and held a number of informal meetings with interested parties to invite comment on whether the outline proposals would remove the discrimination. PFEW took part in these technical working groups for the police scheme as a member of the Scheme Advisory Board (SAB) and a joint response on behalf of the SAB was submitted to HM Treasury (HMT).

Government Consultation

Subsequently, on 16 July this year HMT issued a formal consultation document entitled "Public service pension schemes; changes to the transitional arrangements to the 2015 schemes", the consultation period ran for 12 weeks until 11 October. PFEW obtained legal advice from Queen's Counsel, four separate legal experts in their fields (e.g. discrimination law, tax law, public law, pensions), and further advice from its actuaries in order to help frame its response and to ensure that it raised any pertinent legal issues.

A response was submitted on behalf of the SAB, which included input from PFEW as well as other members of that body. However, in order to adequately represent the interests of all of its membership, PFEW also submitted its own response to the consultation which is [available to read here](#).

Whilst the informal discussions and the formal consultation were taking place, the Employment Tribunal was hearing the Aarons' discrimination case brought by the legal challenge group in respect of the police scheme. The Tribunal agreed a declaration which confirmed that those members who had been excluded from receiving full protection (and thus continuous membership of their original scheme) for the period from 1 April 2015 (i.e. those with no protection and those with only tapered protection) would also need to be treated as being entitled to full protection. However, the declaration did not detail how this could or should be achieved in practical terms.

By contrast, the informal technical working groups and the formal consultation, both of which PFEW played a full and significant role in, did explore such matters in depth.

Summary of our consultation response

The consultation on the remedy defines the members affected as those who were an active member of a Police Pension Scheme on both 1 April 2012 and 1 April 2015 and whose membership in that period was continuous. This group of members are referred to in the consultation as 'in scope' (of the remedy) and the proposal is to offer them a choice of whether to accrue legacy (N/PPS) or reformed (CARE) scheme benefits between 1 April 2015 and 31 March 2022 (the remedy period). From 1 April 2022 the remedy period will cease, and all continuing members will accrue benefits in the 2015 CARE Scheme.

The consultation outlined two different methods by which members might be able to make this choice, and the paper contained twenty-four specific questions to which HMT were seeking a response. The questions covered all aspects of the proposal including; Immediate Choice (IC) versus Deferred Choice Underpin (DCU), correction of discrimination and any creation of new discrimination, administrative aspects of implementation, readjustment of both member contributions and tax payments, treatment of past ill-health retirements, death cases, the format of future annual benefit statements, and the implications for transfers and divorce cases.

The two possible methods of implementation are Immediate Choice or Deferred Choice, Underpin. The IC option would require all affected members to make their choice as soon as practically possible (1-2 years) after the end of the remedy period on 1 April 2022. Alternatively, the DCU option means that individual members will make their choice when they come to take their benefits (i.e. at retirement, for most members).

In our response to the consultation PFEW has expressed a clear preference for the DCU option. The primary reason for this is that in exercising a choice at the point benefits are taken, members will be doing so in full knowledge of the facts. By contrast, the IC option requires members to make judgements and assumptions about a number of unknown future variables (i.e. movements in CPI, potential changes to health and domestic circumstances, career path and pay) and leaves them at risk of making a choice which ultimately proves not be the most beneficial for them.

As well as providing answers to all twenty-four questions within the consultation, PFEW raised concerns over the treatment of a number of groups of members who are deemed by Government to be out of scope of the remedy, or for whom the proposal to move all members to the 2015 CARE Scheme from 1 April 2022 would mean that previous commitments are potentially not honoured. PFEW also raised concerns about the practicalities of implementation, not least the proposed implementation date for the remedy of 1 April 2022, which is a short timeframe in which to fully design and implement the remedy accurately and fairly, bearing in mind the complexities involved.

PFEW also utilised the consultation response to voice concerns about the impact of the unpausing of the cost cap mechanism, which was announced alongside the remedy consultation but does not strictly form part of the formal consultation. The cost cap mechanism was part of the actuarial valuation process for the police schemes and was paused following the McCloud/Sargeant ruling due to the unknown cost to the scheme of remedying the unlawful discrimination. The inclusion of the costs of the remedy (in the calculation of the reinstated cost cap mechanism) will have an impact on both the level of future member contributions and accrual

rate for members of the 2015 CARE Scheme. A separate consultation on the un-pausing of the cost cap is due to take place in the new year.

What happens next

The Government intends to issue its final public sector wide proposals for the remedy in spring or early summer next year. This will be followed by a further consultation on the specifics of the application of that remedy along with draft regulatory changes applicable to the police scheme. This is necessary because there are a number of unique features within the nature of the police schemes which are not echoed across the rest of the public sector with the exception, to some degree, of the Firefighters' scheme. This further consultation is likely to run for 12 weeks and PFEW will, having taken any necessary further legal and actuarial advice, once again, play a full role in responding and inputting to this consultation both as part of the SAB and in its individual capacity in order to represent the interests of all of its members. Further details about this ongoing process will be provided when they are available.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Alex Duncan', with a stylized, flowing script.

ALEX DUNCAN
National Secretary