

### **What are the police pensions schemes?**

Police pensions have undergone a number of reforms since their introduction in the 19th century, the most recent of which was in 2015, when [The Police Pension Scheme 2015](#) was brought in.

The 2015 Scheme came into effect on 1 April 2015. This is a Career Average Revalued Earnings (CARE) scheme and brought about one of the biggest changes to police pensions in history. The introduction of the 2015 Scheme implemented the government's policy of moving public service pensions to CARE arrangements and away from final salary schemes like the 1987 and 2006 schemes. Primary legislation was used to avoid a "no worsening" provision contained in the Police Pensions Act 1976.

The coalition Government set in place the process to introduce CARE pensions following the independent (Hutton) review of public sector pensions. For the bulk of the public sector that process involved discussions with the Trades Union Congress (TUC). Police Staff Associations are not affiliated to the TUC. Necessary discussions with Police Staff Associations were coordinated through the Police Negotiating Board (PNB).

### **Why did the PFEW not challenge the government over the new 2015 CARE scheme?**

We had no right to negotiate over the introduction of the 2015 Scheme, so instead engaged in a consultation with the Government.

We were against the introduction of the CARE scheme, but **all the legal advice stated that the introduction of the scheme was lawful: and indeed, that fact has never been challenged by anyone. The introduction of the scheme, overall, is lawful. The government has the right to change public sector pensions.**

We therefore sought to minimise the impact and get the best deal for as many members as possible.

Our view was that the 2015 Scheme should only apply to new recruits. This was rejected, but we supported the use of transitional arrangements - as did the trade unions involved with other public service workers - to improve the position for as many of our members as we could. We obtained legal advice throughout the process.

When the new pension scheme was introduced, a group of officers (Pensions Challenge) decided to put in their own legal challenge to the transitional arrangements. **The Federation's legal advice strongly advised that a challenge was unlikely to be successful.**

### **Did you influence the 2015 scheme at all?**

Yes, we responded to the Home Secretary's consultation, attended meetings and engaged in discussions to help influence the scheme to the benefit of our members. We provided nearly 300 comments on the drafts of the scheme, and managed to gain significant advantages for members.

We ensured that:

- Officers have the ability to retire at 55 from the CARE scheme (with their pension actuarially reduced from age 60). By contrast, the State Pension Age is increasing for women from 60, and for men from 65, to 68 by around 2037.
- There was an extension of those covered by full transitional protections so that those within four years of full protection received tapered protection, therefore avoiding a "cliff edge" scenario. This enabled more members to be covered than was the case in the Home Secretary's initial proposal. The rationale, which the TUC and others supported, was that those closest to retirement had least opportunity to prepare financially, and should therefore be best protected.

### **Why have you not published your legal advice?**

We haven't, and will not, publish the actual legal advice because it is subject to legal privilege. We have commissioned that advice so we don't necessarily want other parties to see it – not because we have anything to hide but to try to prevent those working on behalf of other parties (i.e. other lawyers) being exposed to our position and gaining an advantage over ourselves. This is standard practice and standard practice among public sector organisations and unions who don't publish their legal advice on public websites, for instance.

Pensions and discrimination law are highly complex areas of law with many "grey areas". It should be remembered that the advice PFEW obtained was from highly qualified experts in these areas of law, but legal advice is just that – advice. It is never completely possible to say it will be the same answer given in court. There is no recourse available when the court judges differently.

### **Where can I find out more about the police pension schemes?**

Details on each scheme are available here:

- [2015 Scheme](#) (current scheme, for officers who joined the service on or after 1 April 2015 and for those who were moved across from the 1987 and 2006 schemes)
- [2006 Scheme](#)
- [1987 Scheme](#)

### **What protections/transitional arrangements were put in place?**

Two kinds of protection were given to those in service

1. accrued rights (given to all already in service) and
2. further transitional protections (full and tapered protection given to some)

**Full protection** - police scheme members with less than 10 years to retirement at 1 April 2012 stayed in their current scheme (full protection) <sup>1</sup>

**Tapered protection** - for the police schemes tapered protection for FOUR years was given (i.e. those within four years of qualifying for full protection get partial (tapered) protection, in that they stay in their old scheme for a short period: this ends 31 March 2022)

**Unprotected** - Other members of the police scheme had to move straight across to the new schemes (unprotected members)

### **How many members received full protection?**

More than 49,000 of our members at the time of the introduction of the 2015 Scheme on 1 April 2015 received full protection and remain in their original scheme, while a further 18,000 have tapered protection, which means that they have gradually been moved over or will be in the future from the 1987 or 2006 scheme to the 2015 scheme. Pension accrued in the 1987 or 2006 schemes before being moved over to the 2015 scheme are protected.

### **How many members were unprotected?**

More than 67,000 of our members went straight to the CARE 2015 scheme on 1 April 2015. Around 43,000 of whom were in the '87 scheme and around 23,000 in the 2006 scheme. Many of the 23,000 in the 2006 scheme are likely to have benefited rather than been disadvantaged by moving into the 2015 Scheme.

### **What has been the focus of the judges' and firefighters' challenges?**

Both the judges' and the firefighters' cases are about the transitional protections only, as is the police pension challenge.

---

<sup>1</sup> In all cases – full, tapered, and unprotected – the arrangements made for police officers were similar to those for the judges and firefighters, who have taken cases based on transitional protections. They are also similar to other public service schemes where no legal challenges have been taken, to our knowledge.

## **What was the Court of Appeal judgement in the firefighters' pensions appeals case?**

So far, the firefighters' claims have been through three separate stages: an Employment Tribunal (ET), and Employment Appeals Tribunal (EAT) and then on 20 December 2018, the Court of Appeal (CoA) handed down judgement in the firefighters' pension appeals case which held that the transitional protections introduced with the new pension scheme in 2015 were unlawfully discriminatory on grounds of age.

Following the judges' and firefighters' legal challenges around the transitional arrangements, the Court of Appeal ruled that this aspect **ONLY** of the changes to pensions were discriminatory on the grounds of age.

The Government then sought leave to appeal to the Supreme Court. On 27 June the Supreme Court denied the government leave to appeal the decision.

## **Can the police cases still go to court?**

We believe it is now *unlikely* that the police claims that have been taken, and stayed by Leigh Day, will ever go to court.

## **What happens now?**

A remedy must be found. The Court of Appeal did **NOT rule on the remedies** to be provided.

A resolution will have to be arrived at which addresses the legal ruling and removes the discrimination. As we said at National Council in March, without the ability to raise vast amounts of additional money, the conundrum now for the Treasury is finding a remedy that addresses the legal imperative, (the discrimination) and removes this by reassessing and redistributing existing notional "funds" while trying to avoid unintended consequences of introducing new discrimination.

Once PFEW has the details of how the Government intends to rectify the unlawful discrimination caused by the transitional arrangements it will take action so that that all those discriminated against as a result of the transitional arrangements are in receipt of an appropriate remedy, including taking any legal advice and actions necessary to achieve this.

Effectively the government has a number of choices now. Firstly, whilst it would seem to some that only those individuals who took a challenge will be subject to redress, we believe that, as this is a discrimination case, that option is **NOT** sufficient. That is, the discrimination, being an ongoing issue, will have to be addressed for all. An industrial resolution is one in which the issue is dealt with for all workers, whether they took legal challenge or not.

## Options

We therefore believe the following to be the **possible means of industrial resolution**:

1. Within the current scheme, the government could have a choice of either giving all public service workers the more generous benefits. This is what is meant by “levelling up”; or
2. removing generous benefits for the future from those who were protected by transitional arrangements. This is what is referred to as “levelling down”. (This would actually detriment members because those who did receive benefit of transitional arrangements wouldn’t be getting them any longer: but it is important to note that existing benefits, accrued up to this point, could not be removed.)
3. It is possible that – due to the difficulties of ensuring no discrimination, while balancing the books - the changes required will be so far reaching, that significant scheme redesign will be required, going way beyond a simple levelling up or down of the transitional protections.

## Is significant redesign likely?

Some indication of the direction of travel comes from the fact that, in light of the Court of Appeal judgement, in February, the government suspended action to rectify the public service cost cap breach. (This is a pension valuation mechanism, intended to ensure scheme stability and avoid volatility by testing whether the assets and liabilities of the pension schemes are at about the level intended).

At that point existing savings were to be used to benefit scheme members. We had agreed with the government through the Scheme Advisory Board (where pensions are discussed) that ALL officers in the 2015 scheme would gain an increased accrual rate, up from 1/55.3 to 1/47, or from 1<sup>st</sup> April 2019. This means that from that date, officers would have accrued 2.1% of their earnings each year, instead of 1.8%. (For an officer on £40,000 this would have been £840 per year, instead of £720).

Unfortunately, this was suspended pending the outcome of the firefighters’ and judges’ discrimination case, and although the government assure us this will not affect the overall value of public sector pensions, it does mean that scheme members will not now benefit from increased accrual. In other words, the government will change this aspect of the scheme to help balance the books.

## Who will be involved in deciding the resolution, and why?

The existing judges’ and firefighters’ cases could strictly speaking be remitted back to the ET. But for an industrial resolution, which we believe is likely across the public services, in England and Wales the UK Government holds all policy and legislative power for police pensions. That means that the Treasury is likely to take the lead. The Home Office will have to engage in discussions with the NPCC,

APCC, and staff associations in the joint meeting of the UK Police Pensions Consultative Forum and Scheme Advisory Board.

### **How long will this take?**

The government can change the regulations at any point. The legal ruling doesn't give a timescale for matters to be addressed, or a remedy put in place. Whilst there is uncertainty at the moment, which we recognise is unsettling, the longer this situation lasts the lesser will be the impact should the government choose to level down. That is because existing accrued rights cannot be removed for those on transitional protections. If levelling up were to occur instead, then it is also in members' interests for this to take time to resolve.

### **Will the cost of the 'Pensions Challenge' be covered by PFEW?**

No, we will not cover the costs of the group's legal challenge. The PFEW did not challenge this aspect of the scheme, believing that the age discrimination could - and would - be justified by the government. This challenge did not, therefore, meet our fund rules.

Having, therefore, in accordance with our governance process, decided not to fund a legal case, we were not involved in the private challenge that was taken by some officers. We were not involved in the decisions regarding how the case would be presented, nor what fees the lawyers would charge. It is not within fund rules for us to use all our members' fees to pay for these personal decisions, taken independently of the PFEW.

### **How many members interests do you represent nationally?**

We currently represent over 117,000 officers in England and Wales from the rank of constable to chief inspector.