



# Scottish Police Federation

5 Woodside Place Glasgow G3 7QF

## JCC Circular 18 of 2019

Ref: CS/LS

5 July 2019

Dear Colleague

### **Changes to the Police Pension Schemes etc.**

I was the Deputy Staff Side Secretary at the time the changes to Public Sector Pensions were introduced. Here are the facts.

The coalition Government set in place the process to introduce CARE pensions for all of the 5.5 million plus, UK public sector workers following the independent 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 discussion with Police Staff Associations were coordinated through the Police Negotiating Board (PNB).

It is important to lay out the constitutional position here also as this is relevant for all parts of the UK.

In England and Wales the UK Government holds all policy and legislative power for police pensions; in Scotland policy is reserved to Westminster but the legislative obligations fall on Holyrood. For Northern Ireland both are devolved to Stormont but for longstanding constitutional reasons Northern Ireland follows the common UK policy approach. In short this meant that the overall shape and design of the police pension schemes would be similar albeit the devolved administrations could, provided they did not exceed the overall policy costs, tweak certain elements if they wished.

From the get go it was apparent that the Government was not prepared to consider the police service as a separate case. In fact, and aside the vagaries of the bespoke schemes, the overall scheme shape and structures were in all aspects discussed with the TUC before they made their way to the PNB.

This was the case with the protections offered and the manner in which tapering was designed. The Staff Side recognised from the off that there were many complexities to be addressed. These have been described at length in lengthy updates that were provided at the time and do not need to be rehashed here. It is however notable that these other areas were not subject to legal challenge.

Staff Side engaged with lawyers and actuaries throughout and the professional opinions garnered from them helped inform the eventual Staff Side approach.

It is also important to be clear that the discussions within Staff Side were exceptionally heated at times. The anger in some quarters was palpable, and professional (and occasionally less so) differing opinions were common. That being said, all members of the Staff Side recognised that we had to find common ground and try to shape a better scheme than that which was originally proposed. On a personal level I am impacted by the pension changes and made sure that the impact on those not in receipt of protections, or limited protections was a consideration throughout.

It has been suggested by some that “the Federation” maybe didn’t get the wrong advice but maybe asked the wrong question. This is completely baseless. The Federations of the police forces in England & Wales, Scotland, and Northern Ireland have a long and proud track record of raising legal challenge to protect the rights of police officers. As just one example from the countless in each jurisdiction; PFEW brought a case that improved lump sums for tens of thousands of police officers, PFNI have been successful in claims for hearing loss for thousands of officers, and the SPF is currently fighting one of the most significant privacy cases for every police officer ever to have come before the courts. Any suggestion the Federations shy away from a fight doesn’t withstand a shred of scrutiny.

The nature of legal challenge is there is always a winner and always a loser. In the courtroom someone’s starting opinion and argument is always found to be wrong. That is a fact of life. However Federations have an absolute and unavoidable fiduciary obligation in terms of the funds they manage. I have never seen any Federation ask a closed question in order to “get the answer it wants” on any occasion they have had to refer to legal counsel. Beyond that the solicitors and counsel utilised by the federations are amongst the very best that money can buy. They have to be. Records will show that all our Federations have taken and continue to take on all our Governments, and win.

Every opinion that Federations secure lay out the strengths and weakness of any matter under consideration. Regardless of whether some like it or not, making legal opinion public would be an act of folly for those reasons alone. Even now when the remedy has still to be decided, giving your opponents access to your weaknesses would be an act of utter recklessness.

The area of greatest controversy in the pension changes was clearly that of age discrimination. The Staff Side was aware that transitional protections had been offered to the TUC and sought similar. The period of transition offered to the TUC was extended (to four years) and after initial reluctance to deliver the same to the police, the Staff Side persuaded Government that it should.

At this point it is worth pausing to reflect on the reality that faced Staff Side.

The transitional nature of the protections offered was recognised as being discriminatory on the basis of age. We all knew this. Our extensive opinions supported the view that Government could justify this and therefore not be found in breach of the law. Both these positions (discrimination and justification) were widely communicated at the time.

The question Staff Side faced was a simple one. Do we pursue some improvements for some or do we not? It has been argued that we should have not and every officer should have been treated the same. That position deserves some exploration and I do so now.

Had that occurred the police schemes would have been significantly different to others. That in its own right would not have been a problem and every officer would have transferred to CARE in April 2015. Had that happened the following would now be true;

The basis for a legal challenge (regardless of the opinions secured by Staff Side) would not have presented itself. It is possible other avenues for challenge could have been identified but given the tribunal found the transitional protections were not justified, it is an inherently logical conclusion that lack of transitional protections could not give rise to challenge them. The only certainty that would have prevailed is that far more officers would be in the same position or worse than those claiming loss now.

It is also important to note that at no time has the legality of the CARE scheme itself been questioned. In fact it is notable that despite this being part a key tenet of the critics' arguments, this was eventually abandoned in favour of sole emphasis on the transitional arrangements.

Who honestly believes that knowing what we now know, police officers would be sitting quietly watching with a degree of contentment that we aren't in the mix for remedy because we didn't seek to be included in the transitional arrangements? This may be an ironic observation but is one which nonetheless deserves to be made.

Whether you accept it or not, the Federations and Staff Side, like every other trade union faced an impossible choice. Whatever options were progressed, a significant cohort would be affected.

It is often forgotten that when it comes to pensions there is no such thing as a staff association veto. The changes could simply have been imposed. The changes secured by the Staff Side did deliver improvements on the initial police scheme the Government could simply have put in place.

No other public sector union has a veto on pensions either. Yes it is true they could choose to pursue industrial action but they did not. All we can do is speculate on why. In reality and beyond not being privy to the discussions with the TUC, the police staff associations were in no stronger or weaker a position than any other union during the pension changes. This is perhaps best illustrated by the fact that EVERY SINGLE SECTOR saw their pensions change in April 2015.

I now turn to the here and now. It is a fact of life that individuals can and do change the law. Legal rulings impact on us all. The law does not require every individual to argue the same case over the same set of circumstances. If we look at one of the examples previously cited – a former principal official of the PFEW was the lead claimant that led to universal improvements to retired police officer (and firefighter) lump sums. A firefighter subsequently led another claim and secured benefits for firefighters and police officers. On each occasion no other police officer (or firefighter) had to make the same arguments once the principle was settled.

I am aware that employment tribunals as a rule are slightly different but it remains the fact that individual tribunal rulings have also changed the law for all without the need for mass litigation after the facts have been settled. The Holiday Pay cases are recent and real

examples of where the law has been changed without the need for each individual employee in every conceivable sector to traipse to tribunal to argue the same points.

We now await the Government's response. We can speculate but will not know either what that will be or what actions (if any) we need to take until that time comes.

The following three bullet points are the ONLY absolute facts at this time. Anyone who claims that more than this is true, at this time, is being disingenuous.

- The CARE scheme has not been found to be unlawful.
- The transitional protections have been found to be unlawful and a remedy will need to be applied.
- That remedy has to be agreeable to the employment tribunal.

For the reasons laid out above it is considered highly likely the Government will apply an industrial remedy to the tribunal decision. That means the Government is likely to look at a whole public sector "fix" and not one solely for Judges and Firefighters.

That "fix," if it is to be applied will inevitably require the involvement of all of the public sector trade unions (including police staff associations).

The need for a remedy does not mean the pensions will be re-negotiated. The 1987 and 2006 pension schemes are closed and there is no indication they will be reopened. Similarly there is no indication the other public sector pension schemes will be renegotiated either.

I am aware that some are claiming deals have been done and attempts to undermine the negotiating positions are afoot. Again this is completely baseless. The simple fact is that no one knows what is happening until such time as the Government makes its statement.

Whilst I am sure some take comfort from quarters claiming that they will fight for "nothing less than full reinstatement of original pensions," or words to that effect, there is no obvious indication that this is even going to be a consideration as part of the remedy. It may be, but again no one will know until the Government makes its statement. In the simplest of terms, whilst any remedy is almost certainly going to need some form of acceptance from trade unions (and ultimately the tribunal itself) this does not mean the Government will be negotiating on anything other than remedy.

Whilst the Government has to report to the tribunal within three months it is a racing certainty that the actual remedy for the masses will not be effective immediately. By that I mean that given the complexity of whatever lies ahead that it could take a significant period of time before the actual "fix" is put in place. This will however have no bearing on its date of actual application.

The Federations have not left others to do the heavy lifting on this. It is true that our opinions did not support the likelihood of a successful outcome but we asked the questions in good faith and took the answers on a similar basis. We simply did what any sensible organisation (including it appears every other public sector trade union) did – we watched the legal process as it unfolded and continued to ensure that any significant developments would be considered as they arose. Quite simply there was no need for the Federation's to lodge tribunal claims at any stage during the ongoing process. I appreciate that like much of

this communication, some of you will vehemently disagree. There is nothing I can do about that.

The subject of pensions has also raised questions over the general efficacy of Police Federations during the period of austerity. The following is true. Bar some of the very lowest paid;

Every single worker in the public sector was subject to pension contribution increases from 2011-2014, without increases to benefits.

Every single worker in the public sector was subject to a two year pay freeze.

Every single worker in the public sector was then subject to years of the public sector pay policy which resulted in meagre and below inflation pay increases.

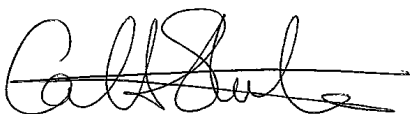
Every single worker in the public sector has seen their wages lose considerable value in real terms as a consequence.

Every single sector in the public sector has faced the reality of austerity and cuts resulting in pressures on service delivery and impacting on worker wellbeing.

Not one public sectors trade union, even with their abilities to pursue industrial action was able to prevent any of this.

Our Federations have hard working dedicated people doing their best for all of our colleagues. We will continue to update you on developments and actions as they unfold but cannot and will not be drawn into commentary on speculation or rumour. It does no one any good and distracts from the ongoing demands our organisations face (and that includes getting the best possible outcome from the events before us right now).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Calum Steele', with a horizontal line drawn through the middle of the signature.

**Calum Steele**

General Secretary

Deputy Staff Side Secretary PNB 2008-2014