

Police Federation
Of England and Wales



Ffederasiwn Heddlu
Lloegr a Chymru

Established by Act of Parliament

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NATIONAL SECRETARY'S OFFICE

16th July 2021

The Rt Hon Priti Patel MP
2 Marsham Street
London
SW1P 4DF

Dear Home Secretary

**CONSULTATIONS ON THE IMPLEMENTATION OF THE REMEDY TO THE DISCRIMINATORY
TRANSITIONAL PROTECTIONS IN THE 2015 CARE POLICE PENSION SCHEME**

This letter follows a recent meeting between Dan Murphy of the Police Superintendents' Association (PSA) and yourself, during which you asked for details of the concessions government might make in implementing the Remedy to the discrimination in the 2015 CARE police pension scheme ("the Remedy") in order to mitigate the perceived injustices and concerns of the staff associations and their membership.

The concerns outlined below impact not only officers represented by the Police Federation of England and Wales (PFEW) or PSA, and this letter is therefore sent on behalf of the seven UK police staff associations ("the staff associations") who appear as signatories to this letter.

Consultation

As you are no doubt aware, the English and Welsh staff associations are members of the Scheme Advisory Board (SAB). The Scottish and Northern Irish staff associations have a clear interest given that the approach taken in England and Wales will heavily influence the outcome for their respective members. The SAB meetings should provide an opportunity for meaningful engagement and discussion, but this is increasingly proving not to be the case. Further, we have serious concerns that the SAB is not fulfilling its function to provide advice (on request) to the Minister, due to the fact that the SAB is simply not asked to provide advice.

The lack of meaningful engagement is, in our view, a problem that reflects the overarching approach to remedying the discriminatory transitional protections - where we have struggled to obtain clarity or meaningful responses on a number of concerns raised with both the Home Office (HO) and HM Treasury (HMT), such as promises made to legacy scheme members in respect of continued membership, or potential taxation implications. Increasingly we are told that items cannot be discussed at SAB where there is ongoing litigation. We are left to wonder if any conversation on Remedy can happen at all if that is the case, given that the need for Remedy itself arose from litigation, which in the Employment Tribunal case of Aarons' is still ongoing.

The issue of consultation is a recurring one. The consultation alleged to be the basis for the decision to transfer all legacy scheme members into their CARE schemes as of 1 April 2022 is currently subject to judicial review proceedings. This letter concerns the adequacy of consultation since that decision was made.

Firstly, we do not consider it appropriate to consult with the staff associations solely through the SAB. Whilst SAB members can and do reach a consensus in some areas, inevitably this cannot always be the case. The staff associations consider that proper consultation on issues affecting officers' pensions should be undertaken with both the SAB and the staff associations – we do not consider that government's duty to consult is completely fulfilled by consulting exclusively through the SAB.

Secondly, we have received no assurances that the primary legislation (on which neither the SAB nor the staff associations are to be consulted) to implement the prospective Remedy will be broad enough to allow scheme-specific elements to be satisfactorily addressed in secondary legislation. Nor have we received any confirmation of the ambit of new police pensions regulations. We seek assurances on both points and on the following:

- Whether staff associations will be consulted on the relevant sections of the Finance Bill which will affect the tax treatment of our members subject to the Remedy.
- Whether there is an intention to fully consult on the proposals to disapply Section 23 of the Public Service Pensions Act 2013 which would otherwise require consent to make retrospective benefit changes.
- Whether SAB members will be fully consulted on the new police pension scheme regulations.

A further stumbling block to any meaningful discussion revolves around the fact that much of the relevant policy is driven by and derived from HMT, rather than the Home Office. Despite repeated requests, HMT have refused to engage in any meaningful way with the SAB or the staff associations, failed to answer legitimate questions that have been raised and appear to use the Home Office staff as a form of “human shield” to avoid having to do so. This is extremely frustrating and worrying, and sadly many of our concerns seem to be borne out by the findings and recommendations of the House of Commons Committee of Public Accounts’ Report on Public Sector Pensions dated 7 June 2021.

In addition, detailed below are some key issues which provoke the most ill-feeling amongst the staff associations’ membership. If these issues could be resolved it would contribute greatly to addressing the perception that government’s treatment of one of the most important elements of officer’s remuneration is inadequate and dismissive. Please note the list below is not exhaustive nor in any order of priority:

Financial Advice

One of the original suggestions made in response (by SAB, and separately by the staff associations) to the government’s consultation on the Remedy in 2020 was for affected members to be provided with or compensated for financial advice they will require in making their Remedy choice. The staff associations hold the view that all members should be afforded the relevant assurances about their Remedy choice, which will need to incorporate each individual’s personal and financial circumstances. Such assurances are plainly only available from independent and appropriately qualified financial advisors.

The issue of advice becomes even more stark for those officers who have or will incur new or adjusted Annual Allowance charges as a result of Remedy. In some cases this will require not just reviewing Annual Allowance usage for the Remedy Period (1 April 2015 – 31 March 2022), but also the three years prior to the Remedy Period in order to correctly calculate the carry

forward of any unused allowance which is then relevant for the officer's Annual Allowance 'starting point' at the beginning of the Remedy Period. This level of calculation is not just complex, but also has important and tangible financial implications.

Whilst we may be able to justify to our membership why a pension administrator cannot provide the level of detail, information and advice that is available from a financial advisor, we are at a loss to explain why members will be expected to pay (from their own personal funds) for financial advice that would not have been required were it not for the discriminatory transitional protections and subsequent requirement for Remedy.

The staff associations are adamant that government should design an appropriate process to mitigate the problems noted above. This is an opportunity to address an important and potentially significant issue before it directly affects the membership.

Commutation Cap

Discussions around the removal of the commutation cap in the Police Pension Scheme 1987 (PPS) have been ongoing in some form for over a decade. It is inexplicable as to why the impasse on progress persists, despite both staff and employer sides being in agreement as to the need for the removal of the cap.

This problem concerns those officers who are retiring from PPS with more than 25 but less than 30 years' pensionable service. The commutation available to this cohort is capped at 2.25 times their initial annual pension, instead of the unrestricted commutation of 25% of the pension value for those retiring with 30 years' service.

It is well understood that commutation is the same benefit (as pension) but in a different form, and the use of actuarial factors ensures that commutation of pension is calculated on an actuarially neutral basis. Further, the initial restriction was required to enforce HMRC limits at the time - limits which were removed and replaced by Government from April 2006, and following which the vast majority of occupational pension schemes adopted the increased flexibility to allow for commutation of up to a quarter of a member's pension. HMT (via requests made to the Home Office) have consistently blocked our requests for the removal of this unfair restriction within the PPS, citing cash flow issues as the excuse, and instead proposing a Chief Constable discretion to remove the restriction in individual cases, subject to the difference in the commuted lump sums being funded from the force's budget. In our view this constitutes an open invitation to the creation of discriminatory practices. Despite, in the

now withdrawn Exit Cap documents, the Home Office clearly identified all commutations (irrespective of service) as pension charges.

This intransigence in not allowing a cohort of police officers the same flexibility available to other members of occupational pension schemes, along with the insistence that a benefit that is not an additional benefit but rather one that has already been paid for should be funded for a second time by the employer is, in our view, at best unfair and unreasonable, and at worst cynical and bordering on immoral. We have repeatedly requested confirmation at SAB as to which legal powers grant the Home Secretary the authority to provide for the discretion extended to Chief Constables on this issue. but have never received an answer. In our view, there is no justification for continuing to place restrictions which have the practical effect of maintaining the commutation cap.

The staff associations request that the commutation cap is removed immediately and for the costs to be assigned to the pension fund.

Actuarial Reductions (2015 CARE Scheme)

A further issue requiring urgent attention concerns officers who have accrued pension in the Police Pension (PPS) Scheme 1987 and who will need to continue as members of the 2015 CARE Scheme after 31 March 2022 in order to complete 30 years' combined membership across the schemes and thus access the unrestricted, maximum commutation lump sum from their PPS pension. A disproportionate number of these officers are likely to be women who worked part-time or took career breaks during their earlier years of service, although they, like their male counterparts, had received assurances that they could remain in their legacy scheme until they retired. The proposed transfer date is both contrary to their legitimate expectation and discriminatory. This letter focusses on a narrower point that concerns male as well as female officers.

The problem arises when an officer reaches 30 years' combined membership and retires before age 55, as their 2015 CARE pension is then deferred and payable from age 55 with a reduction from State Pension Age, as opposed to the reduction from Normal Pension Age which applies to officers retiring from active membership aged 55 or over.

As part of PFEW's work to promote understanding of the Remedy amongst our membership, they are currently undertaking a round of pensions sessions with forces. The issue highlighted in the attached illustration is the single most commonly raised query by members in these sessions, who question the fairness of this approach and whether it constitutes age

discrimination. The principle behind the application of actuarial reductions in the form of early retirement factors is generally understood and accepted by our membership. What we are at a loss to explain and in any way justify is the disparity in the application of such reductions in respect of two officers with identical membership profiles apart from the age at which they joined the force and commenced pensionable service.

The attached illustration demonstrates the disparity and unfairness of treatment between those members reaching 30 years' combined membership before reaching age 55, compared to those who have reached age 55 years on the completion of 30 years' combined membership. Both officers will have joined the service and the pension scheme at the same time, and at that time both reasonably anticipated retiring with a 'full' pension upon completion of 30 years' service. It seems counter-intuitive to treat one as being a retired member in respect of both schemes, and the other as being a retired member under one scheme and as a deferred member under the other scheme, at the point they both attain 30 years' service, again based seemingly solely on their age.

Whilst accepting that technically the PPS and the 2015 CARE Scheme are separate legal entities, in practice they do not operate in that way. Those parts of the transitional arrangements which were not deemed unlawful by the Court of Appeal's decision in the McCloud case, such as combined scheme membership counting towards access to PPS benefits and the Final Salary Link, establish an indisputable connection between the two schemes. In addition, the fact that the police schemes are valued together also clearly establishes the principle governing the concept that the three police schemes are undeniably linked.

Having contemplated how this issue may be resolved to the satisfaction of all stakeholders, and having further considered several potential approaches, we have reached the conclusion that the fairest, most realistic solution is as described below:

- Where a former PPS member aged under 55 reaches 30 years' combined membership whilst a member of the 2015 CARE Scheme they should be treated as being entitled to a normal/ordinary pension from both schemes. In effect, this would allow the member to put their PPS pension into payment immediately based on their final salary at that point (with the option of accessing up to a quarter of that pension as a commuted lump sum based on the age-related factors under PPS applicable at that age).
- The member would cease payment of contributions and further accrual of 2015 CARE Scheme pension, and annual increases would apply on the basis of CPI rather than CPI + 1.25% until the member reached age 55, when the 2015 CARE Scheme pension could be

put into payment, subject to an actuarial reduction for payment prior to the scheme's Normal Pension Age of 60.

- Alternatively, if the member wished they could wait to take payment of their 2015 CARE pension until age 60, at which point no actuarial reduction would be applied.

The above suggested approach has the advantage that it does not breach the application of the minimum age for access to pension under the 2015 CARE Scheme (age 55) whilst ensuring that receipt of the 2015 CARE Scheme pension does not give rise to the unfair and disproportionate application of early retirement factors with reference to State Pension Age. Doing that creates a stark and penal 12-year delay after the earliest date of access to the 2015 CARE Scheme pension, and at least 7 years after the scheme's Normal Pension Age, solely as a result of the member's age at retirement.

Our suggestion also reflects the original intention behind the principle of completing a 30-year career in policing in order to retire and access pension. There is also something of a precedent for our suggested approach which is currently in operation under the PPS. We refer to the circumstances where a PPS member leaves service having completed at least 25 years' pensionable service, but before reaching age 50. They cannot access their pension immediately but instead it is treated as an ordinary (not deferred) pension and so they are eligible to put their benefits into payment at age 50.

In following the aforementioned principle, former members of PPS who become entitled to ordinary pensions under that scheme are also being effectively retired under the 2015 CARE Scheme, and so the same principles should be extended to those former PPS members who complete 25 years' combined pensionable service across the schemes. Such members would be entitled to an ordinary pension from the PPS once they reach age 50 (subject currently to the commutation cap (see above request for removal), 2015 CARE Scheme accrual would cease and the member would pay no further contributions. Annual inflationary increases to the 2015 CARE Pension would be based on CPI only until it comes into payment (no earlier than age 55) with actuarial reductions applicable for payment prior to the scheme's Normal Pension Age of 60.

Conclusion

We wish to avoid the need for resorting to the exploration of legal means by which to seek meaningful consultation to achieve a mutually agreeable Remedy outcome. Therefore, we would welcome the opportunity to discuss with you the opportunities available to solve, or at

least mitigate, the problems which are perceived as being unfair by officers represented by the seven UK staff associations.

As noted at the beginning of this letter, the seven UK staff associations have real concerns that the consultation process is lacking meaningful engagement. This position cannot be justified to our membership, and in the absence of government fulfilling their duties to consult properly, it is regrettable that litigation inevitably follows. The request for consultation with staff associations outside of the SAB is not a 'nice to have', but instead is necessary to evidence the legitimacy of the Home Secretary's duties to consult fully and transparently on matters affecting police officer's pensions.

Finally, the staff associations have reached a consensus not to attend future SAB meetings unless and until our concerns are fully and adequately addressed. It is untenable for our ongoing attendance in any way to give the false impression that the SAB is functioning as required by law, and in any way implies our agreement or acquiescence to all that is being proposed by government by way of Remedy. We cannot and will not support a continuation of the current position, and the need for urgent attention to this matter cannot be understated.

We look forward to receiving your response and to discussing this matter with you further.

A copy of this letter has also been sent to the following recipients:

Kit Malthouse, Policing Minister
Peter Spreadbury, Home Office
Frances Clark, Home Office
Julia Mulligan, Scheme Advisory Board Chair

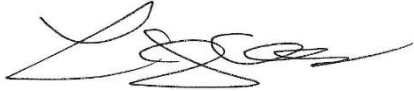
Yours sincerely

A handwritten signature in black ink, appearing to read 'Alex Duncan', with a stylized flourish at the end.

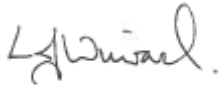
ALEX DUNCAN
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LIAM KELLY
Secretary, Police Federation for Northern Ireland



LISA WINWARD
Negotiating Secretary, Chief Police Officers Staff Association



CRAIG SUTTIE
General Secretary, Association of Scottish Police Superintendents



CALUM STEELE
General Secretary, Scottish Police Federation

A handwritten signature in black ink, appearing to read "Ewan Anderson". The signature is fluid and cursive, with the first name "Ewan" being more prominent than the last name "Anderson".

EWAN ANDERSON
President, SANI

Enc. Illustration