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Police Retrospective Remedy Consultation
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23 May 2023

Consultation on police pension scheme retrospective remedy

Please accept this response to the consultation on Police Pension Scheme prospective remedy on behalf of National Police Chiefs Council (NPCC) in respect of the Police Pension Scheme (PPS).

Chief Constables have the role of scheme manager for the PPS¹ and NPCC is the national body representing Chiefs in their role as scheme manager. NPCC look to ensure that there is Co-ordination, Collaboration and Communication between the 43 forces in England and Wales.

In responding to this consultation, NPCC wants to achieve certainty that the regulations have been drafted to ensure there are no further ongoing issues. NPCC consider that to achieve certainty, two main objectives are needed from the regulations, which are;

1. Consistency of outcome to scheme members
2. Limited risk of further litigation/challenges because of the remedial legislation

Consistency is different to flexibility which allows a scheme manager to consider specific circumstances of a member. Consistency allows the scheme to ensure that all members in the same position receive the same outcome.

NPCC recognise that running from June to December 2022, Home Office ran a series of engagement sessions in advance of the regulations being drafted and appreciate that it was the intent of the Home Office to gain views from stakeholders on the regulations and to achieve a 'no surprises' approach to the consultation. However, the engagement sessions mainly concentrated on cascading policy intent from the over-riding primary legislation rather than focussing on application of policy to Police Pensions using Police specific examples. The overwhelming voice from those sessions was about the importance of consistency needed to ensure that the policy could be applied equally across a framework of 43 scheme managers, 13 administrators and 3 software suppliers, and Police specific examples to build that consistency were requested but not provided.

¹ Recognising that the PCC is the scheme manager for the Chief Constable and represented by APCC.



It is the view of NPCC that the regulations have been drafted without consistency of member outcome in mind and that the powers from the PSPJO Act 2022 have been simply passed down to scheme managers, who are also the employers without consideration of how they would gain certainty or remain objective when making scheme manager decisions as employers. This has been commented on within part one of our consultation response, and is particularly evident in the policy decisions that have been made about [contributions](#), [contingent decisions](#) and [compensation](#).

The response to the consultation is set out in four parts as follows.

- Part one: Key concerns arising from the consultation.
- Part two: Response to the consultation questions.
- Part three: Detailed observations on the draft regulations
- Part four: Financial Implications.

We have also taken legal advice, which is appended to this letter, as an open note to support the NPCC consultation response.

We would also use this opportunity to comment on timings of the consultation. We understand that Home Office have had limited control over HMT finalising policy, however, finalising the regulations only months before the 1 October 2023 when Chapter 1 comes into force presents an extremely challenging implementation timetable when policy decisions that affect building processes have only just been made. We also note at this stage that there is still outstanding tax legislation to be laid, including confirmation of whether certain remedy years will be out of scope for tax charges.

In addition, while we understand that some of the consultation was dependent on policy from HMT still being defined, there were other areas that were not, such as contributions and ill-health in which the policy has been determined since the act was published in 2022, and we would question why this took so long and why when it was published there were errors in the regulations such as ill-health. We are concerned that adequate time was not given to reviewing the drafting of the regulations, where errors would have been picked up before publication.

The effect of these delays to the consultation will significantly affect scheme managers' ability to deliver remedy. While work has been ongoing as much as possible it is impossible to build process without the policy being determined. The effect of this on members is critical, forces are unable to provide with certainty information to members, such as how they will repay contributions, pay tax, and receive their benefits. This has been evident in the approach to immediate detriment, guidance was issued, changed, and then withdrawn, and with tax legislation subsequently introduced still not in place until 1 October 2023.

We note that the consultation calls for responses on issues on equality, but not does provide an EIA. Fundamentally, the position of the regulations not providing consistent outcomes to members and relying on individual interpretations will result in different financial outcomes to members and members being treated inequitably.

We recognise the challenge all these issues present and welcome every opportunity for continued, meaningful engagement on these important issues. We maintain and value close contact into the Home Office police workforce team on these issues, and they are copied in our response. If you have any questions, please let me know.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jeremy Vaughan', written in a cursive style.

Jeremy Vaughan
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Julia Mulligan, Chair of the Police England and Wales Scheme Advisory Board

Appended documents: NPCC response to HO retrospective remedy consultation. Legal advice

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Part One: Key concerns arising from the consultation.

1. In our covering letter, we have commented that NPCC wish to achieve certainty that the regulations have been drafted to ensure there are no further ongoing issues and have listed the need for consistency in outcome to Police Officers as the major objective to achieve from the remedial exercise.
2. You will know that the locally administered framework of the Police Scheme sees 43 Chief Constables, who are also the employer, tasked individually with the role of scheme manager. NPCC have taken steps to help the scheme managers achieve collaboration and co-ordination in that role by forming a small pensions team and creating a Scheme Manager Steering Group to represent scheme managers from each of the nine NPCC regions and differentiate from the employer role. Nevertheless, even with this support, the regulations as they are drafted create a varying level of treatment of individuals across the 43 forces, where we feel more direction could have been given, and as a result will open challenge from members.
3. Neither do the regulations recognise that the Chief Constable is both the scheme manager and the employer and as a member of the scheme² has a vested interest in the provisions of the scheme, and that without specific guidance or confirmation of funding, there is a risk of conflict that the force would make decisions as an employer rather than as scheme manager.
4. The Act provides a loose description of desired outcome, with discretions for specific circumstances placed on Scheme Managers. We understand that the intention of the act to place discretion on scheme managers was to differentiate between the types of public sector scheme, rather than suggest it is an agreeable outcome to government that each of the 43 Police Scheme Managers in England and Wales could determine a different financial outcome for police officers. The decision to pass the discretion to individual scheme managers does not consider the impact of multiple decision makers on what has proven to be a highly litigious membership.
5. As a matter of general public law, the principle of not fettering discretion does not prevent bodies upon whom a discretionary power has been conferred from guiding the implementation of that discretion by means of a policy made within the scope of its conferred powers. The provision of guidance for the exercise of a discretion is regarded as essential to securing the coherent and consistent performance of administrative functions, and it is desirable that a body should openly state any general principles by which it intends to be guided in the exercise of its discretion. The no-fetter principle relates to the attitude of the decision-maker, preventing them from rigidly excluding the possibility of any exception to that policy in a deserving case.³

² Albeit the PCC is the scheme manager in the Chief Constables case

³ Paragraph 8 of the attached legal advice note

6. The ability of local scheme managers to make policy decisions about the scheme should not be compared with central scheme managers. Central scheme managers have access to and sufficient influence with HMT to ensure they are operating within appropriate boundaries. Local scheme managers are left open to individual challenge by members, and even guidance from the scheme advisory board or NPCC does not overcome the right of a member to challenge the scheme manager on their decisions. The approach taken in the regulations to pass down powers from the act direct to the scheme manager, puts the scheme manager in the position of creating policy not implementing it.
7. This position puts scheme managers in a difficult position and open to further legal challenge. In the EAT judgment of Sir Alan Wilkie on 12 February 2021⁴, the judge found that⁵ Fire and Rescue Authorities are the scheme manager for the purposes of section 62 of the equality act and have vested in them the power to make non-discriminatory alteration. That means that scheme managers of the Police Pension Scheme can equally be liable for discrimination even though they are not responsible for the legislation and impact of the regulations on members.
8. Forces have told us that their key concerns about implementation of remedy is consistency and timeliness. Forces have reported widespread concern about implementation of novel processes, such as contingent decisions, waivers, compensation claims and complex tax recalculations and the effect on members. These are likely to take a considerable amount of time and resource for each force to establish and operate.
9. We consider this risk for inconsistency in member outcomes leading to challenge to be mainly illustrated across four key areas of remedy, to which we have provided more detail below.
 - Member choice and timings
 - Adjustments and processes
 - Contingent decisions
 - Compensation

1. Member choice and timings

- Deferred Choice Decision Timing

10. The act creates two different types of members,

Immediate choice members who have had benefits put into payment before 1 October 2023 and need to make an immediate choice to change them for something else, and

Deferred choice members who do not have benefits in payment before 1 October 2023, these members are automatically defaulted to the legacy scheme for the remedy period, should

⁴ [UKEAT/0137/17/LA](#)

⁵ [Paragraph 140](#)

receive the first RSS within 18 months of 1 October 2023 and will make their choice at retirement on provision of a DC-RSS,

11. But there is a third group of members who we are calling 'Immediate Deferred Choice'. These members are in the Deferred Choice category as they do not have benefits in payment before 1 October 2023, but will retire on or after 1 October 2023 without having previously received an RSS, the question is what benefits they are legally entitled to and what choice should be offered to them.
12. Overarchingly, we have two comments to make on the timings of decision making for Deferred Choice members, and Immediate Deferred Choice members, where we do not think the current drafting deals with these issues adequately.
 - Deferred Choice
13. We understand that the act prevents someone from making a choice more than 12 months before the expected retirement date, which is sensible. However, the policy intent being pursued in these draft regulations is not clear, and we do not understand the benefit of restricting officers to a timeframe to make their election and what benefit that may bring to either the scheme member, the scheme manager, or the employer.
14. However, were a timeframe needed, then typically officers will give between three to one months' notice of intent to retire, and it would not seem sensible to ask someone to decide about their benefits between 6 to 12 months in advance of retiring, particularly given that there could still be moving parts at that timeframe, such as pay increases and opportunity for (or lack of) promotion. Consultation with scheme managers has shown that three months would be more appropriate.
15. It is noted that the regulations allow some scheme manager discretion about the time period [\[12\(2b\)\]](#). While it is expected that a scheme manager could use the discretion in specific individual circumstances, such as an ill-health retirement, it would not be reasonable to expect the scheme manager to use that power broadly across all retirements and could lead to challenge.
 - Immediate Deferred Choice
16. This is the group of members, who will be retiring from 1 October 2023 and will not have received an RSS before retirement. While it is recognised that the timings are challenging, the act has always required these members to be offered the choice of retirement under both the legacy and reformed schemes immediately from 1 October 2023, and we expect administrators to treat each case individually and explain to the member that quotes provided before 1 October 2023 are reliant on draft regulations not changing.

17. We are concerned that currently the drafting of the regulations [[Regulation 12](#)] appears to tie the member to having had to make their election 6 to 12 months before retirement, and in any case cannot make an election after the day before their benefits become payable, therefore do not adequately deal with a member who will retire immediately at or soon after 1 October 2023.
18. We are conscious that some other devolved administrations are treating this differently and are ensuring that members can retire immediately after 1 October 2023 on legacy terms with a reformed choice to follow. [[Paragraphs 82 to 84](#) of the Welsh Fire consultation, and [draft regulation 20](#)] provide for transitional arrangements. While we do not advocate for extending the options exercise any further, we do need to ensure the regulations do not prevent a member from receiving the options they are entitled to immediately after retirement, because they have not made an election before the regulations came into force.
19. The lack of clarity about this, could lead to some forces to interpret the regulations differently, leaving members without appropriate choices.
 - Rollback
20. The consultation document provides a definition of the term 'Rollback', it is not clear what the purpose of defining this term is, since it doesn't appear in the regulations. The contributions policy then also refers to this term, presumably erroneously, because our understanding is that the point of contribution adjustment is linked to receipt of an RSS.
 - Choice package
21. The consultation document refers to members making their choice by receiving an RSS and a 'Choice package'. It is not clear what is meant by a choice package, and whether this is any different from an RSS. If it is different to an RSS then clarity about what the Home Office expectation is about providing member choices is needed.
 - Types of RSS
22. The consultation and resulting regulations, only refer to an RSS as an umbrella term. We think it would be preferable for the regulations to be specific about the different types of RSS that may be provided at different lifecycles of a member. That will help build the right instruction and direction to design the RSS statements so that members can make informed choices. This would include;
 - IC-RSS
 - Pensioner members who retired between 1 April 2015 and 30 September 2023
 - Beneficiaries of deceased members who died between 1 April 2015 and 30 September 2023

- ABS-RSS – Provided annually
 - Active members from 1 October 2023
 - Deferred members from 1 October 2023
- DC-RSS
 - Active and deferred members who retire after 1 October 2023
 - Active and deferred members who die after 1 October 2023
- CD-RSS
 - Contingent decision members RSS
- TV-RSS
 - Members with transfer choices to make.

2. Adjustments

▪ Contribution Adjustments

23. We know that for active and deferred members, the single most important question of remedy is “When will I have to pay any contributions?”
24. Every single eligible police scheme member has a contribution adjustment as part of remedy. This has been an established fact since HMT first informally consulted SABs in December 2019 on the proposed options, and consulted in August 2020 under question 11⁶, which was responded to by both the NPCC and the Police SAB responses, acknowledging that the policy for collecting those contributions needed to be clear and not lead to further detriment for the member. Commenting that “Payroll and tax relief / taxation implications will bring significant administrative burden to calculating, deducting and repaying contributions and the parameters around these must be made clear”.
25. Home Office took the lead in producing the contributions PDD that was discussed with the cross Whitehall sessions established with HMT, and during that process Police stakeholders raised multiple queries about how the contributions would be adjusted and escalated the risk in a delay of policy effecting the process to allow adjustments to contributions.
26. A GAD calculator has been promised, yet there is no visible sight of what the inputs required are for the calculator or what the outputs would be. That means no discussion can take place about who provides the information for the calculator or where the outputs are stored on the administrator’s system to be reflected in the RSS. These issues have been raised on the risk register and the project management documents between NPCC and Home Office due to the lack of visibility over this.

⁶ [Public Service Pensions Consultation.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

27. The effect that the drafters have taken in the regulations, by relying solely on the powers of the act to adjust contributions, which say only that the contributions must be adjusted, not how, is that each individual scheme manager will need to consider how they adjust contributions which will leave them open for member challenge. A position where 43 forces could choose to adjust contributions differently would not only be administratively onerous and difficult for the software to support, but importantly it would lead to different financial outcomes for members.
28. The regulatory position aside, the broad policy itself, to provide for a contributions adjustment record, with adjustments to contributions by lump sum is supported by scheme managers. Albeit there is a preference for adjustments to be made once only at the point of election for benefits. We have previously been clear that periodical contributions, particularly for deferred members would be unwieldy to administrate, impossible to audit and come at significant cost.
29. We agree that it must be easy and fair on members to repay contributions. We consider that for that to happen, the same prescribed set of conditions should apply across the forces, allowing simple and easy to understand communication to members.
30. However, the consultation document is currently not clear enough defining how a contributions adjustment record would work in practice. For example, on the first adjustment it refers to rollback which is on 1 October 2023, which is not practical to adjust contributions before the RSS has been issued to the member. We think this should be amended in regulations for the opportunity to pay by lump sum to be aligned with the receipt of an RSS. Therefore, providing three options for adjustments.
- i. Provision of first RSS by 31 March 2025
 - ii. Annually on receipt of ABS-RSS
 - iii. At retirement on receipt of DC-RSS
31. We make further comments on the effect of the legislation as it stands under [question 7](#).
32. Finally, we cannot overstate how disappointing and significantly concerning that the regulations only months away from remedy do not actually provide for specific regulations and rely on the Act only, which allow for adjustment of contributions very broadly and at the discretion of each individual scheme manager. This position introduces critical risk on the delivery of remedy to members.
- Tax Adjustments
33. As expected, the consultation does not refer to the required adjustments for pensions tax. Nevertheless, we would use this opportunity to comment on the lack of progress on the expected HMRC calculator that would allow schemes to build processes about how members will be expected to understand any tax adjustments that will be required.

34. Like the contribution calculator, we remain unsighted on the expected inputs into the HMRC calculator or the outputs, that means we cannot ensure the correct development of software and processes to support members make their tax adjustments.

3. Contingent decisions

35. NPCC accept that there should be flexibility for schemes to deal with individual circumstances, but the policy decision should not lead to potential different outcomes for members in the same position. That creates an inequality in the scheme. The regulations should set broad framework principles about the threshold of evidence.
36. There is no commentary in the consultation document on what direction Home Office expect to take on the threshold of evidence required, including no information on reporting requirements for the AME grant arrangements. The lack of information about this prevents schemes from starting to communicate contingent decision choices to eligible members.
37. Without broad principles specific for the police scheme set by the regulations, and no information about funding, scheme managers risk making decisions as employers based on cost alone. For example, the consultation is not specific about employer contributions for opt-outs and how these are paid and risks employers setting a high threshold of evidence which leads to challenge.
38. We note that there are four contingent decisions, three of which require some form of contribution adjustment /payment by the member, and the other the availability of another public sector pension scheme to transfer. Given the need for the member to make an investment of time and money to make a positive change in their benefits, and little value gained to the scheme by refusing requests, we would propose an administratively simple approach and allow members to make a contingent decision on the basis of self-certification that they would have taken a different action if it were not for reform.
- Opt-Outs
39. The draft regulations do not specifically allow for contribution adjustment on the re-instatement of opted out service. Our understanding of regulation 5, is that an election for reinstatement once made is irrevocable and the service is immediately accrued as remedy service and therefore contributions immediately due under sections 15 to 17 of the act.
40. It is not clear how the immediate accrual of service should be dealt with for tax purposes. The [tax guidance](#) issued alongside the Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) Regulations 2023, puts opt-outs out of scope of that guidance and implies further guidance is to follow. It remains unconfirmed how the treatment of reinstated

service arriving at the time of election would be treated for the purposes of calculating the Pension Input. We would assume that this would be smoothed and treated as being accrued evenly during the remedy period and this approach has been acknowledged in conversations with HMT officials. However, we require confirmation that this approach will be reflected in the tax regulations.

41. There is no link to how contributions should be recovered and how a force might enforce deduction from benefits at retirement. Given the much larger sums involved for payment of opt-out contributions, we would think it sensible to offer a payment plan for recovery of opt-out contributions. Leaving collection of opt-out contributions to the decision of each of the 43 scheme managers creates the risk of further litigation and unequal approaches.
42. Similarly, the consultation document does not make any reference to employer contributions for reinstated opt-out members. NPCC have assumed that employer contributions will be reflected in the employer rate calculated by the 2024 valuation, however clarity on this position is requested.

4. Compensation

43. The regulations do not adequately set any framework for making compensation payments, referring simply to wider powers in the act and directions.
44. While NPCC, or even the Scheme Advisory Board, can issue informal guidance to scheme managers, without a regulatory framework to set boundaries on how the principles of the act apply to police scheme members, forces will not be bound to follow guidance and this will create opportunities for challenge by members and their representatives, leading to different financial outcomes for members.
45. Legal advice taken on this matter states that it is possible for a framework to be designed for the provision of compensation that gives guidance to scheme managers to apply the principles in a consistent and open way, provided that the framework permits the managers to retain the ability to exercise their discretion differently in individual cases.
46. In the accounting and finance paper shared with the XWH project management group, of which NPCC are part of representing scheme managers, it indicates that compensation payments will be funded through the department grants, albeit there is no note of how that works for locally administered schemes. We understand that HMT are yet to provide further clarity on the final status of that paper, which in turn affects the Home Office funding team's ability to provide guidance on the mechanisms for funding. As a result, this means that forces cannot consider what their processes will be without understanding how they will be funded, and the evidence level that will be needed to submit forecasts.
47. The current position potentially puts the employer into conflict against their scheme manager role to assess compensation claims based on cost. Clear funding guidance is needed

immediately so that schemes can consider their processes for assessing claims against the conditions set in the act.

Part Two: Consultation Questions

Question One: In and Out of Scope

Do the proposed amendments to scheme regulations clearly define which members of the police pension schemes meet the criteria to be eligible for the remedy?

1. The Home Office regulations do not refer to eligibility. Eligibility to remedy appears to rely entirely on the act.

Question Two: DCU and IC

Are there any other areas which you think should be addressed in these regulations in order to ensure that all eligible members receive a choice of pension benefits at their point of retirement, for the period for which the discrimination existed (1 April 2015 - 31 March 2022), from 1 October 2023?

2. The regulations do not currently recognise a group of members who will retire on or shortly after 1 October 2023 and will not have received an RSS before the coming into force of the regulations. While it is recognised that the timings are challenging, the act has always required these members to be offered the choice of retirement under both the legacy and reformed schemes immediately from 1 October 2023, and we expect administrators to treat each case individually and explain to the member that quotes provided before 1 October 2023 are reliant on draft regulations not changing.
3. We are concerned that currently the drafting of the regulations [[Regulation 12](#)] appears to tie the member to having had to make their election 6 to 12 months before retirement, and in any case cannot make an election after the day before their benefits become payable, and therefore do not adequately deal with a member who will retire immediately at or soon after 1 October 2023.
4. We are conscious that some other devolved administrations are treating this differently and are providing a transitional 'safety catch' to ensure that members can retire immediately after 1 October 2023 on legacy terms with a reformed choice to follow. [[Paragraphs 82 to 84](#) of the Welsh Fire consultation, and [draft regulation 20](#)] provide for transitional arrangements. While we do not advocate for extending the options exercise any further, we do need to ensure the regulations do not prevent a member from receiving the options they are entitled to immediately after retirement.
5. We would like to see Home Office considering this matter further, as to how to allow members to make choices in a short time-frame, and does not rely on scheme manager discretion which may be applied differently.

6. The timing and process for members with contingent decisions to make is not clear. Delays in establishing eligibility will have a knock-on effect to decision making leading to potentially less time to consider options. As mentioned above there is no agreed process for contingent decisions and forces have not been able to start communicating this to eligible members.
7. Further information about the application of regulation 12 has been considered in the legal advice attached to this response. Paragraphs 39 to 45 apply.

Question Three: DCU timing of RSS.

Do you⁷ the policy proposals about the timing of when a scheme member can request an RSS in anticipation of retirement strike the right balance between a suitable period to make a decision, proximity to retirement date and any administrative considerations?

8. We understand that the act prevents someone from making a choice more than 12 months before the expected retirement date, which is sensible. However, the policy intent being pursued in these draft regulations under Regulation 12, Paragraph 2 is not clear.

“(2) M must notify the scheme manager in a form and manner determined by the scheme manager that M intends to claim benefits in relation to M’s remediable police service—

(a) during the period between 12 and 6 months before the date M intends such benefits to become payable, or

(b) during such other period that the scheme manager considers reasonable in all the circumstances.”

9. Typically, officers will give between three to one months’ notice of intent to retire. It would not seem sensible to ask someone to decide about their benefits between 12 and 6 months in advance of retiring. Consultation with scheme managers has shown that three months would be more appropriate.
10. While it is expected that a scheme manager could use the discretion given for a reasonable period in specific individual circumstances, such as an ill-health retirement, it does not seem clear how they could fetter that discretion to applying it so broadly.
11. We have been asked to comment on the ability to revoke an election. While we are more concerned about a reasonable timeframe to make an election than to evoke it, we can see that it may be reasonable to set a time limit on revocation to within 10 working days before benefits become payable, and we agree that would be reasonable.

⁷ Sic

Question Four: RSS

Do think the policy proposals in relation to scheme members receiving an RSS achieves what is in Section 29 of the PSPJOA and Direction 20 of Treasury Directions?

12. Paragraph 5.17 of the consultation states that Home Office is working with the sector to ensure that immediate choice cases are processed as soon as reasonably possible. Is that a reference to endorsing the NPCC guidance?
13. Draft regulation 3, sub paragraph 2bii provides that an RSS should be provided for a deferred member within three months of request. Given that deferred members receive an Annual Benefit Statement, we think deferred members should receive an annual RSS-ABS.
14. We note that [direction 20](#) of the directions, paragraphs f & g set out how to reference pensions tax on the RSS. However, it stops short of specifying how exactly that should take place.

(f) an explanation that there may be changes in relation to tax liabilities in relation to the member as a result of the operation of section 2(1) of PSPJOA 2022 and as a result of any election under section 5, 6 or 10 of PSPJOA 2022, and an explanation of where further information may be obtained in relation to this;

(g) a reference to the pension savings statement that may be provided in relation to the member, and an explanation of where further information may be obtained in relation to this.

15. Given the level of concern about tax that might be owed, does Home Office think the police regulations should specify how that information should be supplied in an RSS for a member of the police pension scheme?
16. The timing of the RSS and the tax information is particularly important for members who have a contingent decision about honoraria and temporary promotion. These members will be given the unique opportunity of hindsight, and the RSS will therefore need to clearly display any tax consequences of receiving either honoraria or pensionable pay.

Question Five: Transfers

Do you think that the policy proposals that transfers that came into the 2015 reformed scheme will be held in the 2015 reformed scheme until the point of decision achieves the policy intention of preserving transfer rights?

17. We do not understand the reasoning for the act to have treated transfers differently. Therefore, we cannot comment on the policy intent and what purpose this achieves.

18. We would note that the original immediate detriment guidance published in August 2020 appeared to suggest transfers should be converted, and that was not amended until June 2021 before the guidance was withdrawn in November 2021. How does Home Office propose forces treat any transfers that were converted and paid under immediate detriment between August 2020 and June 2021 based on their guidance?
19. Nevertheless, the proposed policy on how to treat transfers appears to work. When will GAD guidance be available to apply the appropriate methodology to converting any pension to a compensatory form in the 1987 scheme?

Question Six: Added Pension

Do you think the policy proposals in relation to scheme members with added pension puts all eligible members in the same position?

20. We are content that members who chose to buy added pension during the remedy period should receive this amount as a compensatory refund, subject to the 8% interest rate of the directions. However, we note that along with honoraria refunds, the regulations rely entirely on the powers of the act and directions to make these payments. We assume that the GAD calculator will calculate the tax and interest that apply to these refunds, but we have had no confirmation of that.
21. However, we note that any member who purchased added pension during the remedy period, would have done so intentionally as part of retirement planning. We would therefore have preferred members to be offered the opportunity to convert added pension to added years in the legacy scheme. While we recognise that any member who receives a refund for added pension, could under contingent decisions apply to purchase added years in the 1987 scheme for the remedy period, which achieves the same result, this does have a risk that a member is influenced by the idea of cash now, rather than pension later due to additional austerity pressures.
22. We would propose that the fact that they did buy added pension in the 2015 scheme should automatically qualify as sufficient evidence for a contingent decision that they would have bought added years.
23. We want to see clarity that buying added pension as a contingent decision, puts someone in the same position as if they had bought added years at the time.

Question Seven: Contributions

Do you think the policy proposals in relation to scheme members contribution adjustments is in line with section 26 of the PSPJOA 2022 and HM Treasury Directions?

24. We have significant concerns about how the policy for contribution adjustments is being pursued, we have made specific observations in [part one](#) about disappointment on such an important issue for the Police scheme having arrived in this unsatisfactory position only months before implementation when this was identified to be an issue as far back as February 2020.
25. We have also relayed concerns on the effect of relying solely on the powers of the act, leading to a position where 43 forces could adjust contributions differently would lead to inconsistent financial outcomes for members.
26. We would also note that there is no mention in the regulations about how contributions already paid by an immediate detriment member during the period the guidance was endorsed by the Home Office would now be adjusted for tax and interest.
27. The regulatory position aside, the broad policy itself, to provide for a contributions adjustment record, with adjustments to contributions by lump sum, is supported by scheme managers. Albeit there is a preference for adjustments to be made only once at the point of election for benefits. We have previously been clear that periodical contributions, particularly for deferred members would be unwieldy to administrate, impossible to audit and come at significant cost.
28. However, the consultation document is currently not clear enough in defining how a contributions adjustment record would work in practice. For example, on the first adjustment it refers to rollback which is on 1 October 2023, which is not practical to adjust contributions before the RSS has been issued to the member. We think this should be amended in regulations for the opportunity to pay by lump sum to be aligned with the receipt of an RSS. Therefore, providing three options for adjustments.
 - i. Provision of first RSS by 31 March 2025
 - ii. Annually on receipt of ABS-RSS
 - iii. At retirement on receipt of DC-RSS
29. Importantly, while we support the broad policy of contribution adjustment, we have concerns about the powers of the regulations as they currently stand to allow deducting a net liability at retirement. These relate to how the powers of regulation 64 relate to wider legislation.
 - a. Firstly, we do not see that regulation 64 extends the limitation period, and therefore recovery after the limitation period might be barred.

- b. Secondly, even where recovery is allowable how does this provision to deduct from the benefits at retirement work with the protection of section 91, subsection 5 of the Pensions Act 1995 to prevent a set off being exercised against the occupational pension.
30. Further information about the current regulatory position for contributions has been provided in the legal advice attached to this response. Paragraphs 10 to 28 apply.
31. Finally, we note that the rectification for an honoraria contingent decision is to refund contributions paid with interest, which is the same rectification offered for added pension. The regulations do not specifically deal with paying a compensatory refund, and it is not clear whether the GAD calculator will calculate the amount to be refunded. This lack of information again delays building processes around these provisions.

Question Eight: Ill-Health Retirement

Do you think the proposed arrangements for members that qualify for ill-health retirement during the remedy period (1 April 2015 – 31 March 2022) may cause any adverse impacts?

32. We were surprised on receipt of the consultation to observe that the drafted regulations for Ill-health appeared to be generic and did not match the Home Office's own guidance document that had been shared with the SAB engagement group and which we had shared wider with stakeholders.
33. Our observations lie with regulation 51 and how they allow for
- a. The five-year review
 - b. SMP examinations
 - Five-year review / Relevant period
34. Our understanding is that due to an existing right in the 2015 scheme⁸ to be reviewed again for eligibility of the higher tier within 5 years of retirement, this review should also be applied retrospectively when testing against eligibility for remedy purposes. We understand that the remedy regulations deal with that by referring to a 'relevant period.'
35. We have three questions about the effect of the following paragraphs in regulation 51 and how this affects the review of the relevant period.
- Paragraph 2a says "whether M was, at time of the original decision or at any time during

⁸ Regulation [112](#) and [113](#)

the relevant period, medically unfit for engaging in any regular employment”, and

- Paragraph 5a says “(5) For the purpose of deciding the questions in paragraph (2)— (a) the selected medical practitioner may only have regard to information that was available or could have been produced at the time of the original decision;”.
- Paragraph 7 defines the relevant period “relevant period” means the period— (a) beginning with the time of the original decision, and (b) ending on the earlier of— (i) five years after the time of the original decision; (ii) 1st April 2022.

36. When the SMP should perform a ‘relevant period’ review

We had been expecting the regulations to require an assessment at the time of the original decision OR, if they did not qualify, a five-year review. However, the wording of paragraph 2a can be read to imply that, even if the member meets the criteria at the time of the original decision, they should be reviewed within the relevant period to see if they still meet it, i.e. health has improved. Please can you confirm at what points the SMP should review the member’s health and whether they need to do a further ‘relevant period’ review if the member meets the criteria at the time of the original assessment?

We note that the Home Office have confirmed informally during the consultation period that “the way the provisions are drafted is that the member need only meet the criteria at any point in the relevant period. If they did meet the criteria at any point, that’s the end of the question - there is no subsequent reassessment.” We would ask that is made clear as part of the consultation response.

37. What information should the SMP take into account for a ‘relevant period’ review?

Paragraph 5a says “(5) For the purpose of deciding the questions in paragraph (2)— (a) the selected medical practitioner may only have regard to information that was available or could have been produced at the time of the original decision;”.

How can a relevant period review up to five years after retirement be undertaken based on information available at the time of the decision?

We note that the Home Office have confirmed that “We agree that the provisions should be amended to allow information that could have been produced at any time during the relevant period to be taken into account.” We look forward to seeing that amendment in the final regulations.

38. Progressive medical conditions

The provisions of the 2015 scheme allow for no time limit being set where someone’s

health has worsened due to a progressive medical condition. However, the regulations as currently written do not allow for this.

Home Office have confirmed during the consultation period that “We agree that the relevant period should be adjusted in a number of ways, including by removing the end date where a progressive condition means the member is unable to work. In addition, the 1st of April 2022 cutoff should be removed, and the relevant period should also end on NPA under the reformed scheme, and when an immediate or deferred choice decision is made in respect of the member under the McCloud remedy regs.” We look forward to seeing the amended regulations on this basis.

- SMP examination

39. Paragraph 3, sub paragraph a says “The selected medical practitioner must— (a) examine or interview M as the selected medical practitioner thinks appropriate”. While we agree that there is no need for that to be face-to-face and can be virtual, it does, however, make a clear stipulation that the member must be examined or interviewed and leaves no room for interpretation of a paper-based review. However, the previously issued guidance said “Even where a SMP opinion is required, that will not necessarily mean that the SMP will have to see every individual – some cases may be able to be processed on the basis of the existing opinion and relevant papers. There may also be sensitive cases (e.g. terminal illnesses) where the outcome is “obvious” and in the usual management of ill-health are often processed using an expedited route.”
40. This wording of the regulations is unfortunate and leaves little room for SMP discretion. Left unamended, it is likely that SMPs would not consider paper-based reviews, which may increase costs. Home Office have confirmed during the consultation period that, “We think the effect of the drafting is to allow the SMP to interview or examine a member if they think it is appropriate - i.e. they don't have to if they don't think it's appropriate. But we accept this could be clearer, so will tweak the drafting.” We look forward to seeing the amended regulations that allow for paper-based reviews.
41. If those regulations are amended as we have been instructed that they will be, then NPCC would agree the regulations allow 1987 members the right to receive their remedy choice based on the tier of the 2015 benefits they are entitled to.
42. However, we would observe that the delay in consulting on draft regs and then errors in the draft regs has led to some forces delaying making any assessment in advance of 1 October 2023. Clarity on the expected approach of forces to have commenced reviews in advance of 1 October 2023 would have been useful in the consultation document and would have endorsed the NPCC guidance to forces to commence those reviews.
43. Finally, while we agree that the only way to offer these members the right tier of benefit

in the 2015 scheme was to assess them on it, we would observe that re-assessments with a group of vulnerable members is a difficult task and has a significant cost attached to it.

Question Nine: Abatement

Do you think the policy proposals in relation to scheme members abatement achieves the correct position the member would have been in had they not transitioned to the reformed scheme?

44. Neither the draft regulations nor the 2022 Directions refer to abatement specifically, therefore it is unclear what policy specifically is being referred to in the consultation question. As such, without clearly referring to regulations, the proposals are too vague to assess whether they achieve the correct position.
45. Nevertheless, the general policy proposals that put a member in the position they would have been in had they retired from the right scheme at the right time are fair and reasonable.
46. Forces may find they need to correct the application of abatement from a retrospective position and will need guidance to do so.

Question Ten: Contingent Decisions

Do you think that the proposals with regards to contingent decisions give members opportunities to revisit pension benefit decisions taken during the remedy period?

48. In our comments in [part one](#), we have commented that the position in the regulations which does not set broad framework principles for the police scheme about the threshold of evidence to accept for contingent decisions will lead to potential different outcomes for members in the same position as that creates inequality in the scheme. That is different to providing flexibility to scheme managers to deal with ad hoc individual circumstances.
49. As such we would recommend that members should be allowed to make a contingent decision based on self-certification that they would have taken a different action if it were not for reform. This is based on the principle that as members need to make an investment of time and money to make a positive change in their benefits, little value could be gained to the scheme by refusing requests.
50. Without broad principles specific for the police scheme set by the regulations, and no information about funding, risks scheme managers making decisions as employers based on cost alone. For example the consultation is not specific about employer contributions for opt-outs and how these are paid and risks employers setting a high threshold of evidence which leads to challenge.

51. The timescales for making contingent decisions and how these impact on the provision of an RSS is not set out in the consultation document of the draft legislation. There is no defined election period, and there does not appear to be any timescales for how long a scheme manager may take to decide about any such election. If the contingent decision claim is accepted, then there appears to be no timescales for the provision of an appropriate RSS in relation to the contingent decision.
52. We have made further specific comments on some of the contingent decisions being offered.
- Honoraria
53. We note that the consultation deals with honoraria in two places in paragraphs 5.66 and 5.92, however the regulations do not explicitly deal with honoraria. The consultation says that rectification would be dealt with as a contribution adjustment and refers to paragraph 5.49 which is about paying compensatory refunds. We have commented on this under question 7 and the regulations should be clearer about how contribution adjustments should be made to rectify contingent decisions, such as opt-outs and honoraria. Additionally we have noted in response to question 4, that the tax information provided in the RSS will be particularly important to these members.
- Additional service
54. As per our earlier comment under question 5, we would request that a member should automatically be offered an additional service contingent decision, where they receive a refund of added years, without the need to apply. This is because there is no doubt that the member intended to boost their pension.
- Reinstatement of Opt-Outs
55. We have requested clarity on the meaning of some of the regulations relating to opt-outs in [part three](#).
56. Paragraph 5.84 of the consultation says that schemes can use provisions in existing scheme rules to opt in in respect of reinstating any pre or post remedy period service. We understand for post remedy service that the provisions referred to are in the 2015 scheme⁹, but to our knowledge there are no provisions in the 1987 or 2006 scheme that allow a scheme manager discretion to allow a decision to opt back in before 1 April 2015.
57. In addition, how does the Home Office propose the scheme manager use the provision in regulation 28(b) without fettering their discretion.¹⁰

⁹ [Regulation 28](#)

¹⁰ [\[TPO-25374 Paragraph 88\]](#)

58. The draft regulations do not specifically allow for contribution adjustment on the re-instatement of opted out service. Our understanding of regulation 5, is that an election for reinstatement once made is irrevocable and the service is immediately accrued as remedy service and therefore contributions immediately due under sections 15 to 17 of the act.
59. It is not clear how the immediate accrual of service should be dealt with for tax purposes. The [tax guidance](#) issued alongside the Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) Regulations 2023, puts opt-outs out of scope of that guidance and implies further guidance is to follow. How would the treatment of reinstated service arriving at the time of election be treated for the purposes of calculating the Pension Input Amount? We assume that this would be smoothed and treated as being accrued evenly during the remedy period, but require confirmation that position will be reflected in the tax regulations.
60. There is no link to how contributions should be recovered and how a force might enforce deduction from benefits at retirement. Given the much larger sums involved for payment of opt-out contributions, other routes could be considered for recovery of opt-out contributions. Leaving collection of opt-out contributions to the decision of each of the 43 scheme managers creates the risk of further litigation and unequal approaches.
61. Recovery of the contributions is particularly important as any election made to re-instate the opted out service period is irrevocable as set out in [Section 5\(3\)\(c\) of Chapter 1](#) of the PSPJOA 2022 so the member would need to know when and how they would be expected to pay the relevant amount so that they can make an informed decision.
62. Similarly, the consultation document does not make any reference to employer contributions for reinstated opt-out members. NPCC have assumed that employer contributions will be reflected in the employer rate calculated by the 2024 valuation, however clarity on this position is necessary as NPCC are aware that some scheme managers might otherwise make decisions based on the value of the employer contributions to reinstate service for the whole remedy period.
63. Further information about the current regulatory position for opt-outs has been provided in the legal advice attached to this response. Paragraphs 29 to 38 apply.

Question Eleven: Divorce

Do think the policy proposals in relation to the calculation/recalculation of CETV figures to be used with pension sharing orders members achieve an outcome that recognises the impact of remedy on such calculations?

64. Yes, the NPCC agrees that the general policy proposals that treat the recalculation of the CETV as if the divorce had occurred in the right scheme at the right time are fair and reasonable.

Question Twelve: Bereavement and Child Pensions

Do the proposed amendments to scheme regulations achieve the policy intention of ensuring that the resulting ‘member representative’ can make an immediate choice or deferred choice in relation to the remedy period service of a deceased member?

65. The consultation refers to a ‘member representative’, but the regulations do not use that term, instead they refer to ‘Eligible decision-makers for deceased members’.
66. Nevertheless, the provisions in the regulation for an eligible decision maker seem reasonable and agree that the regulations ensure that an eligible decision maker can make an immediate choice, deferred choice, or opted-out decision in relation to the remedy period service of a deceased member.
67. NPCC welcome paragraph 9 of regulation 11, that allow a scheme manager to immediately make a payment of the lesser of reformed or legacy benefits to ensure a beneficiary is in receipt of pension from the date of death, allowing the beneficiary more time to process their choice. However, note that the consultation does not give any guidance on how they might expect a scheme manager to exercise this discretion, and what reasons there might be to not do that. It is the NPCCs view that ensuring a beneficiary is immediately in receipt of pension in an ordinary timeframe, while being given time to process their options is the right thing to do, and would suggest this should be must, rather than may.

(9) Where M is deceased, the scheme manager may, before a deferred choice decision is made or a section 10 election is deemed to have been made in relation to M’s remediable police service, pay to any person (“the beneficiary”) who is, or is to be, entitled to receive death benefits in relation to M’s pensionable service the lesser of— (a) such benefits (whether by way of lump sum or otherwise) to which the beneficiary would be entitled if a section 10 election is made, or deemed to be made, in relation to M’s remediable police service, or (b) such benefits (whether by way of lump sum or otherwise) to which the beneficiary would be entitled if no section 10 election is made, or deemed to be made, in relation to M’s remediable police service.

68. NPCC welcomes the policy decision that children’s pensions will not be reduced because of decisions made by the member.

Question Thirteen: Additional changes

Are there any additional points not covered in this consultation paper that need to be considered as part of the McCloud Remedy proposed amendments to scheme regulations?

- Approach to consultation and regulations
69. We had expected the consultation document and regulations to work together as complementary documents. We would have expected the consultation document to act as a plain English translation of the regulations. However, on occasion the draft regulations make no reference at all to some of the subjects addressed in the consultation questions. As such any policy decision suggested in the consultation, such as the approach to contributions, is meaningless unless it is clearly implemented by the draft regulations.
- Compensation
70. The regulations do not adequately set any framework for making compensation payments, it simply refers to wider powers in the act and direction.
71. While NPCC, or even the Scheme Advisory Board, can issue informal guidance to scheme managers, without a regulatory framework to set boundaries on how the principles of the act applies to police scheme members, forces will not be bound to follow guidance and this will create opportunities for challenge by members and their representatives, leading to different financial outcomes for members.
72. The current position potentially puts the employer into conflict against their scheme manager role to assess compensation claims based on cost. Clear funding guidance is needed immediately so that schemes can consider their processes for assessing claims against the conditions set in the act.
73. Legal advice taken and as attached confirms that it is possible for a framework to be designed for the provision of compensation that gives guidance to scheme managers to apply the principles in a consistent and open way, provided that the framework permits the managers to retain the ability to exercise their discretion differently in individual cases. Paragraphs 5 to 9 of the attached note apply.
- Amendment regulations to allow for underpin to be paid from legacy schemes
47. The principles of the act mean that where someone is returned to the legacy scheme for the remedy period, and later choose to receive reformed benefits, those benefits are paid as an underpin from the legacy scheme rather than being paid from the 2015 scheme itself.

48. Neither the legacy schemes or the reformed scheme have been amended to refer to remedy, relying entirely on this new legislation, while that position may be satisfactory while remedy is current, how will that position be determined and read from the regulations in 10/20 years' time? We would have expected the principles of remedy to be embedded by changing the 2015 scheme rules to reflect the remedy period from 1 April 2015 to 31 March 2022.

- Revisiting commutation decisions

49. Neither the regulations, nor the consultation reference revisiting a commutation decision or paying an additional unauthorised lump sum for an immediate choice member, who retired under the legislation in place prior to 1 October 2023. This will affect many immediate choice members, and clarity is requested in the final legislation.

- References to the scheme actuary

50. In several places there are references to the scheme manager referring to the scheme actuary. It is assumed this is a reference to the Government Actuarial Department (GAD). The scheme manager does not have a contractual relationship with GAD and cannot instruct them to provide advice to the scheme. It would be useful for the regulations to be clearer on intent for instructing actuarial advice.

Question Fourteen: Equalities

Do any of the proposed amendments unlawfully discriminate against a particular protected characteristic, fail to advance equality of opportunity between those who share a protected characteristic and those who do not, or fail to foster good relations between people who share a protected characteristic and those who do not?

51. We note that no EIA has been produced alongside the consultation to consider equalities. We would expect the EIA to confirm that the position of applying interest to contributions has been considered by the Home Office and is not discriminatory.

52. It is considered that the position of the scheme manager also being the employer has not been properly considered to avoid any conflict in decision making by the force leading to potential unequal outcomes for members.

53. The effect of passing powers directly from the PSPJO Act 2022 without any police scheme specific direction means that forces are at risk of treating members who are in the same position unequally.

Part Three: Detailed comments on regulations

In this section we have laid out comments on specific regulations, including legal advice obtained on specific aspects of the scheme.

Regulation commentary

1. Part 3 Chapter 1, Regulation 5 – Election in relation to opted-out service

- Paragraph 3

“(3) Where a person other than M is the opted-out service decision maker, an opted out service election may only be made after the scheme manager determines an application which is –

- (a) Made by or behalf of M,
- (b) In a form and manner determined by the scheme manager,
- (c) Received by the scheme manager during the period beginning on 1 October 2023 and ending on 30 September 2024, and
- (d) Accompanied by such information -
 - (i) Which is information within the persons possession, or
 - (ii) Which the person may reasonably be expected to obtain, that the scheme manager may by written notice require the person to provide in relation to the decision which caused the service in question to become opted out service.”

- (i) What is the relevance of paragraph (3)(a) for M if it is concerned with a person other than M? Is this a drafting error?
- (ii) Why does a person other than M only have 12 months from 1 October 2023 to make an application for opted out service? This is not mentioned anywhere within the consultation.

- Paragraph 5

“(5) The scheme manager must refuse an application where **either** of the following conditions are not met—

- (a) the decision by virtue of which M’s service became opted-out service was communicated to the scheme manager on or after **12th March 2012**;
- (b) the decision by virtue of which M’s service became opted-out service was made pursuant to a relevant breach of a non-discrimination rule(a).”

- iii. What is the relevance of the 12 March 2012, is this a drafting error?

iv. This regulation appears to state that either of the two conditions should be met when a scheme manager decides if they are able to refuse an application. Further clarity is sought on the meaning of this regulation.

- **Paragraph 6**

(6) But the scheme manager must not refuse an application where the decision by virtue of which M's service became opted-out service was communicated to the scheme manager during the period—

(a) beginning on the day six months before M would have (but for the opt-out decision) become a member of the reformed scheme, and

(b) ending at the end of 28th February 2022.

v. It is not clear why the date quoted here is 28 February 2022, should this be 31 March 2022.

- **Paragraph 8**

“(8) An opted-out service election to be made by—

(a) a person other than the scheme manager is made when the person confirms that an opted-out service election is to be made following receipt of the notification mentioned in paragraph (4)(b);

(b) the scheme manager is made at the time determined by the scheme manager.”

vi. The instructions in sub paragraph b do not appear clear, is this a typo? This is repeated again in regulation 7, paragraph 3b.

2. Part 3, Chapter 3, Regulation 11, Deferred choice decision for reformed scheme or legacy scheme benefits: general

- **Paragraph 3**

(3) A deferred choice decision—

(a) to be made by a person other than the scheme manager is made when it is received by the scheme manager in a form and manner determined by the scheme manager;

(b) to be made by the scheme manager is made at a time determined by the scheme manager

vii. The instructions in sub paragraph b are not clear. Is this a typo?

- **Paragraph 10b**

(10) Where, at the operative time—

(a) the aggregate of the lump sum or pension benefits that have been paid pursuant to paragraph (9) to a beneficiary, is less than

(b) the aggregate of the lump sum or pension benefits to which (after taking into account the effect, if any, of paragraph (6) of this regulation or section 10(4) of PSPJOA 2022) the beneficiary is entitled under a police- March - April - May - beyond pension scheme in respect of M's pensionable service,

viii. This is a typo created when amending the original typo which had referenced the Teachers Pension Scheme and should read 'Police pension scheme'

3. Part 7, Chapter 2, Regulation 51, Deciding whether a 1987 IHR member is entitled to an upper tier award.

• **Paragraph 2**

(2) The police pension authority must refer the following questions to a selected medical practitioner—

(a) whether M was, at time of the original decision or at any time during the relevant period, medically unfit for engaging in any regular employment, and

(b) whether that medical unfitness was likely to be permanent.

ix. The intent in sub paragraph a is not clear. It should be made clearer that the only need to consider the relevant period is if the member does not meet the criteria at the date of the original decision.

• **Paragraph 3**

(3) The selected medical practitioner must—

(a) examine or interview M as the selected medical practitioner thinks appropriate,

(b) decide the questions referred to the selected medication practitioner under paragraph (2), and

(c) give the police pension authority and M a report containing a decision on those questions.

x. The regulation should be amended to make clear that a paper review is also sufficient and the SMP does not need to engage with the member.

• **Paragraph 5**

(5) For the purpose of deciding the questions in paragraph (2)—

(a) the selected medical practitioner may only have regard to information that was available or could have been produced at the time of the original decision;

(b) the following provisions of the 2015 Regulations apply as they apply for the purpose of deciding a question under Part 6 of those Regulations—

(i) regulation 75(2) to (4) (receipt of appropriate medical treatment); 30

(ii) regulation 76(3)(c) and (d) (criteria for deciding whether a member is permanently medically unfit for engaging in any regular employment).

xi. This regulation does not allow the SMP to consider information for the relevant period.

- **Paragraph 7**

In this regulation—

.....

“relevant period” means the period—

(a) beginning with the time of the original decision, and

(b) ending on the earlier of—

(i) five years after the time of the original decision;

(ii) 1st April 2022.

iv. This regulation does not consider where the member may have a progressive medical condition.

4. Part 9, Chapter 4, Regulation 63 Payments of amounts owed to the scheme manager

- **Paragraph 2c**

*(c) where the net liability calculated by reference to an amount by way of **compensation under section 16(3) of PSPJOA 2022**, an explanation of the agreement that may be made under regulation 61,*

v. This regulation refers to an agreement under regulation 61, where the liability is *calculated by reference to an amount by way of compensation under s.16(3)*. However, compensation under [s.16\(3\)](#) of the Act is payable to the member by the scheme manager, whereas reg.63 applies where contributions are owed by the member to the scheme manager.

Legal advice

Please see the attached legal advice note which looks at the following issues in more detail.

Please note the advice has been supplied with the express purpose of publishing alongside this consultation.

- (i) the absence of any framework for the provision of compensation by scheme managers to members who had suffered discrimination during the remediable service period;
- (ii) concerns arising out of the proposals to adjust contributions payable following the choice made by active and deferred members as to the benefits they wish to be provided with during the remediable service period;
- (iii) the contributions payable by members who opted out of the Scheme and who will be permitted to have their remediable service reinstated into the Scheme;
- (iv) the treatment of members who will retire on or shortly after 1 October 2023 but before the remediable service statement (“RSS”) process has been implemented (“the immediate deferred choice members”).

Part Four: Cost implications

We have taken the opportunity to provide further information in this section about the processes that will need to be built by scheme managers to implement remedy and any cost implication of that. In particular we have commented where the consultation and regulations directly affect this.

- Increased implementation costs due to the lateness of the regulations.
1. The result of a late consultation will have specific cost implications and we have taken the opportunity to provide more information here.
 2. The locally administered structure of Police Schemes means that each force has responsibility for selecting their own administrator who in turn can select a suitable software supplier. This position has led to engagement by NPCC on delivery of Remedy with 3 different software suppliers and 13 different administrators on their approach to the remedy, each of which has a different commercial implication. The legislative timeline and pre-existing contracts left insufficient time to seek alternative suppliers to deliver remedy which created a captive market and therefore there have been very little ability to influence the costs of remedy quoted by the incumbent suppliers.
 3. We have always been clear that automated processes were the most effective way to reduce risk. The short legislative timeline was a significant challenge for software suppliers and administrators to be able to design and build a solution to be available by 1st October 2023. However, the delay in issuing clear regulatory requirements is delaying development and thus preventing automated solutions being available, with the likelihood that costs will increase, as many processes will require manual calculations to be performed by administrators.
 4. The total costs remain difficult to estimate accurately, but forces are already seeing significant costs incurred in relation to Remedy. In addition to software and administration costs, forces have increased resourcing to manage the additional workloads of reviewing seven years of workforce data and reassessing ill health cases. Forces are also seeing an increase in legal costs related to ongoing discrimination claims. These costs will undoubtedly increase as we approach implementation and are sensitive to any further delays. The current estimated costs are summarised in the table below:

Software	£6,000,000
Legal Costs	£1,000,000
Remedy Administrative costs	£24,000,000
Associated staffing costs	£4,500,000
Total Costs	£35,500,000

5. There has been very little government support for costs resulting from implementing Remedy. This adds further pressure to forces' operational budgets, requiring forces to balance the costs of remedy against operational priorities. We maintain the position that all costs incurred should be underwritten by government.
- Cost of contribution adjustment processes
6. The processes that need to be built to adjust contributions will carry significant cost. The delay in providing policy on the recovery of contributions and the eventual lack of regulations has significantly delayed these processes.
7. Current processes require only that employers deduct contributions from regular pay of scheme members and provide an annual total of contributions to administrators at year end for inclusion in annual benefit statements.
8. Remedy introduces a requirement to make retrospective adjustments to contributions of all eligible members. Unlike other schemes, contribution rate differences apply to all Remedy eligible members of the police and fire schemes for the whole of the 7-year Remedy Period.
9. This is a novel, complex and demanding process, involving a number of hand-offs of data between payroll and pension administrators in each force and between forces in the case of transferees, performance of new calculations, creation and maintenance of a contribution record and a record of interest due to the member or the scheme, with regular updating of values to members via either ABS RSS or, for those retiring, an IC RSS.
10. Initially, payroll departments will have to assemble detailed records of member contributions and the member's tax position from 7 years' P60s. They will then have to use this data to populate a (as yet incomplete and untested) calculator due to be supplied by the Government Actuary to identify contributions paid and payable in the alternate scheme, then net off the contributions due or owed, taking account of the tax relief the member would have received had they paid the contributions in the alternate scheme at the time.
11. Where members have transferred, details will need to be passed between forces and administrators to obtain a comprehensive record. Administrators will then need to maintain a dynamic record of contributions payable / owed to provide members with accurate annual figures. Interest will have to be applied to the amount due/owed over the Remedy period up to the point where the member is notified of the position and elects to pay off the amount due. As noted elsewhere, there is potential for differences in approach between forces, which will impact on members transferring to or re-joining in another force.

12. The difference in contributions, total amount due/owed and interest due/payable will need to be provided to each member on an annual ABS-RSS.
13. The member may pay off the amount owed and discharge the debt. This is a process which is entirely new and has not yet been designed, since the main communication will be between the member and the pension administrator, but the transaction and payment will need to take place between the force and the member. Where the member owes contributions, the administrator will need confirmation of payment from the force before authorising payment of any benefits. Such transactions rarely happen currently, but these may now occur on a massive scale across multiple employers.
14. All this activity is additionality over and above current processes. The delay in confirming the adjustment policy, has resulted in an inability to discuss all the above with stakeholders, without knowing what options would be provided for recovery. The current position that it will be left to forces to adjust contributions using the powers under the act, could result in multiple options for adjusting contributions. This will add to the costs of administration, potentially over the next 20 – 40 years.
 - Business as Usual Post 1 October 2023
15. The communication of benefits with members has historically been through an Annual Benefit Statement (ABS) which is a legal requirement, and a retirement estimate prior to retirement.
16. The consultation proposes a ‘universal’ Remediable Service Statement (RSS) communication as the main means of communicating Remedy benefits to eligible members.
17. For those members, who the act treats as a deferred choice member, retiring immediately at or close after 1 October 2023, they will not have received an ABS-RSS before receiving their DC-RSS for the first time, and they may not be aware of the options available to them or the complexity of interaction between pension ages of their legacy and reformed scheme benefits.
18. This introduces more complexity to the presentation and communication of benefit options and is likely to involve greater interaction between members and administrators than hitherto.
19. NPCC are looking to work with a communication consultant to consider the design of the multiple RSSs, to ensure they provide the statutory information to members. However, this is likely to need an iterative approach as members and forces adjust to post remedy business as usual.

- Ill-Health Re-assessments

20. Finally, we would also refer to the cost of Ill-health assessments. This is a significant cost to police forces, and we maintain this is a remedy cost and should be underwritten by the government.