

# Police Pension Scheme Advisory Board

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### **Consultation on police pension scheme retrospective remedy**

Please accept this response to the consultation on Police Pension Scheme prospective remedy on behalf of the Scheme Advisory Board for England and Wales. Please note that at this time Police Federation England and Wales are not participating in the SAB, and while they attend meetings informally as an observer, they do not officially endorse SAB views, therefore references to SAB in this document should not be taken to read PFEWs agreement.

In responding to this consultation, SAB considers that certainty for members to ensure there are no further ongoing issues is of utmost importance, and wish to ensure that all members are treated fairly to avoid future litigation.

SAB would use this opportunity to comment, that while it welcomed engagement with the Home Office in the period running from June to December 2022, the SAB was disappointed that these sessions were not used to demonstrate specific examples of how the regulations would apply to Police scheme scenarios only and concentrated instead on cascading policy intent from the over-riding primary legislation. It is the view therefore of SAB that the regulations have been drafted generically without specific Police scheme members in mind.

SAB are concerned that by passing powers from the PSPJO Act 2022 without a framework of how they should be applied will create a conflict of interest with scheme managers, who are also the employers.

Finally SAB would 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.

If you have any questions, please let me know.

Yours sincerely

A handwritten signature in black ink, appearing to be 'J. A.' followed by a long, sweeping horizontal line.

Julia Mulligan

**Chair of the Police England and Wales Scheme**

Copies to

Jeremy Vaughan, NPCC Pay and Conditions Lead

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## 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. 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. The SAB would like to see more certainty of that position in the regulations and in the consultation to ensure that no member is at risk of not being provided with their retirement choice from 1 October 2023 by the scheme manager.
3. The SAB are concerned that currently the drafting of the regulations [[Regulation 12](#)] would tie the member to having had to make their election 6 to 12 months before retirement, and do not adequately deal with a member who will retire immediately at or soon after 1 October 2023.
4. Furthermore, the timing and process for members with contingent decisions to make is not clear. Delays in establishing eligibility will have a knock-on effect on 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.
5. Finally, the SAB are concerned that the regulations put the requirement on the scheme manager to determine the form and manner in which a member makes an election, and are concerned that, that could create inequalities amongst members in the same situation.

### Question Three: DCU timing of RSS.

**Do you<sup>1</sup> 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?**

6. 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

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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.”*

7. 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. Discussion amongst SAB members showed that that three months would be more appropriate.
8. 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.

#### **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?**

9. 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.*

10. Given the level of concern about tax that might be owed by members, 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?
11. The timing of the RSS and the tax information is particularly important for members who have a contingent decision about honorarium. 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?**

12. The SAB do not understand the reasoning for the act to have treated transfers differently. Therefore, cannot comment on the policy intent and what purpose this achieves.
13. 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?**

14. The SABs preference would have been for members to have had the opportunity to convert added pension in the reformed scheme for added years in the legacy scheme, while they recognise that allowing a contingent decision after a refund, achieves a similar result, there is a risk that the member would be persuaded to keep the refund due to cost of living pressures. The SAB would want to see the objective justification in the EIA to ensure there is no discrimination.
15. The SAB would also comment that the consultation does not comment on any pension tax consequences of this approach.
16. The SAB would agree with the NPCC proposal that members who bought added years in the 2015 scheme should automatically qualify as sufficient evidence for a contingent decision that they would have bought added years.

### **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?**

17. The SAB agreed that parts of the policy about contributions appeared to be lacking, however there was a difference of opinion whether the current policy being pursued, and the lack of regulations were significant.
18. Nevertheless, the SAB did agree that processes for paying contributions for members should be as easy as possible and fair on members.
19. There was significant concern from SAB members about the effect of applying interest to contributions owed at retirement, and that this would be to the detriment of younger members. The individual members of SAB will each submit their own response to this question.

20. Finally, the SAB would note that the regulatory position taken to the adjustment of contributions, means that adjustment contributions for honoraria or opt-outs are not specifically referenced in the regulations.

### **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**

21. The SAB were content with regards to the arrangements for Ill-health, however, would note that the NPCC have commented in detail on the effect of the relevant period and SMP reviews and endorse their comments.

### **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?**

22. 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.
23. 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.

### **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?**

24. SAB would observe that terminology over contingent decisions has changed over time, originally it was used to extend to members who would have financial loss contingent decisions, and now this is captured by compensation arrangements. There are now only four allowed contingent decisions, and it is not clear what type of financial loss would be dealt with by the compensation scheme.
25. 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.
26. Without broad principles specific for the police scheme set by the regulations, and no information about funding, risks a conflict of interest between the scheme manager duty and the employer duty. 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.

27. On opt-outs, SAB would make the following comments.

- Reinstatement of Opt-Outs

28. 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 would assume that this would be smoothed and treated as being accrued evenly during the remedy period but require confirmation that is in accordance with the tax regulations.

29. There is no link to how contributions should be recovered. 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.

### **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?**

30. Yes, the SAB agrees with these proposals.

### **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?**

31. 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'.

32. Nevertheless, the provisions in the regulation for an eligible decision maker seem reasonable, and SAB 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.

33. The SAB would call on the wording of paragraph 9 in regulation 11 to change 'may' to 'must'. This is because this paragraph allows a scheme manager to put a pension immediately into payment for a beneficiary giving time for the beneficiary to understand the options they are given. The SAB feel that is the right thing to do, and there should be no discretion.

*(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.*

### **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
34. The SAB had expected the consultation document and regulations to work together as complementing documents. However, the SAB note that on occasion the draft regulations make no reference at all to subjects addressed in the consultation questions. As such any policy decision suggested in the consultation is meaningless unless it is clearly implemented by the draft regulations.
- Compensation
35. The regulations do not adequately set any framework for making compensation payments, it simply refers to wider powers in the act and direction.
36. While the Scheme Advisory Board can provide advice to scheme managers and pensions boards, 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 which could lead to different financial outcomes for members.
37. 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 and remove any conflict of interest where a force may be acting as an employer rather than as a scheme manager.
- Opt-outs of the legacy scheme
38. The SAB have previously discussed the effect of opting out of the scheme by police scheme members and note there is a different position for the police legacy schemes to other public sector scheme, where a member can opt back in within 5 years to the existing pension scheme. The SAB would like to see those same opportunities given to the police legacy schemes, so that members could opt-out to manage the effect of pension tax.
- Revisiting commutation decisions
39. 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

40. 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). It would be useful for the regulations to be clearer on intent for instructing actuarial advice, and whom it is envisaged should do this.

### **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?**

41. 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.
42. 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.
43. 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.