

Police Federation
Of England and Wales



Ffederasiwn Heddlu
Lloegr a Chymru

Established by Act of Parliament

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NATIONAL SECRETARY'S OFFICE

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Sent via email to Bryony.Gee@homeoffice.gov.uk

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

Dear Home Secretary

Government's response to the consultation *Public service pension schemes: changes to the transitional arrangements to the 2015 schemes*

I write on behalf of the Police Federation of England and Wales ("PFEW") with regard to the Government's response to the public sector pensions consultation ("**Government Response**").

In the PFEW's response to the consultation ("**our Consultation Response**") we raised the impact of the proposals on a number of groups of members which we considered to be of particular concern.

Having considered the Government Response and the updated Equality Impact Assessment, we remain concerned about a number of matters. Two groups in particular appear not to have been considered by the Government in updating its Equality Impact Assessment, or in reaching its proposals on remedy. Insofar as they are considered, the justification analysis provided is insufficient. We write to implore the Government to address now the impact on these cohorts.

Those who joined the police scheme between 1 April 2012 and 31 March 2015.

We referred to these members as ‘Group 1’ in our Consultation Response at paragraphs 1.3.2-1.3.6, noting that they were ineligible for transitional protection regardless of age and so excluded from the *McCloud/Sargeant* remedy. The Government has confirmed that it does not intend to offer this cohort the ‘choice’ of scheme membership for the remedy period.

We noted in our Consultation Response that this class of member was likely to include greater numbers of younger, female and BAME officers. The Government accepted that differential impact as likely as a matter of fact (see paragraph 2.5 of the Government Response). We believe that the exclusion of this group amounts to an additional act of indirect discrimination.

However, the Government Response appeared to suggest a justification for this disparate impact as those members ‘ought reasonably to have known’ that they would cease to be members of the New Police Pension Scheme 2006 as of 1 April 2015. Quite surprisingly, the premise of this argument is that parliamentary activity was well publicised and there was ‘widespread media coverage’ of it, especially the Hutton Report and consequential white paper (see paragraph 2.7 of the Government Response).

That is, the Government does not appear to claim that the members ought to have known because *the Government* communicated it to members, but that members ought to have relied on the media to provide information about their occupational pension provision.

We noted in our Consultation Response that the Government has failed or refused to provide any material demonstrating that an explanation of their pension entitlements was provided to this cohort, despite numerous requests. To date, nothing has been provided. We infer now that nothing exists.

We vociferously deny that media coverage is capable of providing a legitimate basis upon which members can be expected to take a view on their occupational pension provision. The suggestion that media coverage would found a justification defence to claims of discrimination is in clear breach of the Government’s duty to demonstrate rigorous assessment and evidencing of equality matters.¹

The only other analysis the Government have provided regarding justification is to rely on the aim of ‘removing earlier discrimination in a manner which is affordable and respects the rationale for having transitional protection at all’: see paragraph 2.33 of the updated Equality Impact Assessment. We have serious concerns about this approach: it appears to demonstrate that the Government continues to rely on the original aims which the Court of Appeal has already determined not to amount to legitimate aims capable of justifying the discrimination.

¹ *R (Brown) v Secretary of State for Work and Pensions* [2008] EWHC 3158 at [90]-[95].

We are clear that the approach to justification regarding this disparate impact is unacceptable.

We invite the Government to reconsider, and to:

- 1. Identify the legitimate aim it relies upon, and detail the proportionality analysis it has undertaken, specifying which factors it has considered in that analysis;**
- 2. Confirm whether the reference in paragraph 2.33 of their updated Equality Impact Assessment to ‘administrative workload and financial cost’ was considered relevant to and/or determinative of the proportionality analysis, and provide evidence of the workload and cost; and**
- 3. Reply to PFEW’s point in paragraph 1.3.5 of our Consultation Response, namely that the failure to provide communications to members was a failure to comply with Regulation 6 of the Occupational and Personal Pensions (Disclosure of Information) Regulations 2013.**

Police pension scheme members who would have been eligible to accrue benefits in their legacy scheme until (up to) March 2027.

In our Consultation Response we referred to these members as ‘Group 2’ (see paragraphs 1.3.7 – 1.3.9 and 2.9.2). This group is comprised of the members who were aged 45 on 1 April 2012 and ‘late joining’ members of the Police Pension Scheme 1987. Those members would have received full transitional protection, but may not have reached their Compulsory Retirement Age until 31 March 2027.

The Government does not appear to acknowledge that this cohort exists. That may explain the current unsustainable approach the Government has taken of relying on a ‘reasonable expectation’ argument for those joining service after 2012 (our Group 1) whilst attempting to renege on long-running and clear promises to members about their protection up to retirement.

It may therefore assist for me to detail why we say that some members could remain protected beyond 2022. Rule A18 of the 1987 Scheme provides for a compulsory retirement age of 60 for constables, sergeants and inspectors. Paragraphs 9(1) and 11(2) of Schedule 4 to the 2015 Scheme (ie the transitional provisions) provide that somebody who was an active 1987 Scheme member on 31 March 2012 and 31 March 2015 and had reached 45 on 1 April 2012 would have full protection. A person (“**Person A**”) who joined the police on 1 January 2006 at the age of 39 would have joined the 1987 Scheme, and would have been 45 as at 31 March 2012. Assuming continued service to 2015, Person A would be subject to full protection. Person A would have just over 16 years’ pensionable service, and would be 55 years old, as at 31 March 2022. Their protection continues under paragraph 9(2) of Schedule 4 to the 2015 Scheme until they cease to be in pensionable service under the 1987 Scheme. No provision would force Person A to stop pensionable service in the 1987 Scheme on 31 March 2022, and so Person A could therefore

continue to accrue benefits in the 1987 Scheme until age 60, ie for another 5 years to 2027, without losing their full protection.

We invite the Government to explain why this analysis is incorrect, or proceed to set out its position on this group in the new understanding that there is no misapprehension as to their rights. In particular, we invite the Government to set out its position on the legal objective justification for the treatment of this group, and also the wider moral position the Government takes.

Beyond those key categories of member, we are also troubled by some of the detail of the current proposals.

First, we were pleased to see that the Government's response to the consultation concludes in favour of a Deferred Choice Underpin ("DCU") as opposed to Immediate Choice. However, we note that the DCU provides for a binary choice.

The Government intends to return members automatically to their relevant legacy scheme for remedy period accrual, and to provide a binary choice on retirement.

Tapered protection may have been more advantageous for some members than either the legacy or reformed scheme for remedy period accrual. We are concerned that the DCU may therefore remove or worsen accrued benefits of some members contrary to section 23 of the Public Service Pensions Act 2013.

In respect of the discriminatory element of this change, the Government appears to have concluded that it is justified because it has arisen by chance (see paragraph 2.39 of the Government Response). We do not consider that to be capable of amounting to a justification defence: quite the opposite, it is an inherent aspect of indirect discrimination.

The Government Response goes on to say that allowing a non-binary approach to this period would be 'extremely complicated' (paragraph 2.40), but, strikingly, there is no analysis provided of any investigation into its practicability.

Please either confirm that there is no tapered protection member in the police scheme who is better off retaining their tapered status, or alternatively;

We invite the Government to set out its justification in full and to detail why the Government does not consider this proposal to be in breach of section 23 of the Public Service Pensions Act 2013.

Second, we note that the Government has confirmed its intention to apply interest to underpaid pension contributions owed by members. We acknowledge the difficulty in this area. However, we could not detect any analysis of potential discriminatory impact of this decision in the updated Equality Impact Assessment.

We invite the Government to undertake an analysis of whether there would be a disproportionate impact on any group as a result of requiring interest to be paid and, if so, whether that is justifiable, in line with its public sector equality duty.

We welcome the Government seeking views on its proposals. Naturally we are concerned that the Government must do so in a transparent and comprehensive manner. It is not sufficient for the Government to fail to engage with significant potential issues, lest the risk appears of any consultation being treated merely as a 'tick box' exercise. We welcome continued constructive discussion.

It is to be hoped that by transparently setting out your position in full at this stage, particularly with regard to justification, we can jointly avoid the circumstances which are akin to those which led to the need for the current Remedy, and additionally allay the concerns of our membership.

Thank you for taking the time to consider these points. I look forward to your response.

Yours sincerely

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

ALEX DUNCAN
National Secretary