



Police Federation for Northern Ireland

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Public Service Pensions,
Policy and Legislation Branch
Pensions Division
Department of Finance
Waterside House
75 Duke Street
Londonderry
BT47 6FP

By email only on 13th November 2020 to: DoFpensionspolicy@finance-ni.gov.uk

Dear Sir /Madam

On behalf of the Police Federation for Northern Ireland (PFNI) I attach responses to the questions set out in the consultation paper issued on 19th August 2020 entitled '**Public service pension schemes: changes to the transitional arrangements to the 2015 schemes.**'

The Police Federation for Northern Ireland (PFNI) is the statutory representative body for all federated rank officers employed by the Police Service of Northern Ireland (PSNI). The federated ranks comprise all police officers up to and including the rank of Chief Inspector.

As a starting point the PFNI maintains the position put forward by the Staff Side of the Police Negotiating Board at the time of the CARE pension scheme reforms, namely that police officers should be permitted to remain in their original pension schemes with the revised provisions applying only to those newly joining. The principles that PFNI believe must be held to in any Remedy design out-workings are: the existing discrimination must be removed; no further discrimination must be introduced; affected members should be put back into the position they would have been in had the discrimination not occurred, and no detriment should be caused to any members.

The projected costs associated with any remedy will clearly be additional to those that prevailed at the time the scheme was conceived. PFNI consider it would be grossly unfair to expect existing police pension scheme members to bear any financial costs that any remedy will place on the schemes. If costs are ultimately borne by the member then it should be recognised that this could drastically undermine both officer confidence and indeed continued participation by some in the reformed scheme.



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PFNI recognises that this consultation applies to all public sector workers and is not only directed at police officers. As outlined on Page 9 Paragraph 1.26 PFNI note that further scheme specific consultations will take place in respect of the final position for each scheme. To be truly responsive to the intricacies and nuances of the police schemes PFNI would advise caution against any such scheme specific consultations being prescriptively narrow in their design.

PFNI considers that the administrative and bureaucratic challenge in unpicking the decisions of the past to remedy the discrimination cannot be understated. The interdependencies between the proposals for remedy, the complexities of the associated tax system, the unpausing of the cost cap, as well as the unique features of the police schemes themselves make the specified target date of April 2022, in our view, not only aspirational but wholly unachievable. However, in the interim police scheme members should not continue to face uncertainty due to the complexities stemming from this. PFNI are deeply concerned that the additional complexities will place intolerable pressures on the PSNI Pension Scheme administrators (and due to their co-dependent relationship, PSNI payroll departments) and that significant additional resource will be urgently required to support and implement the required processes and achieve the overall policy aims.

One of the greatest challenges in responding to this consultation is that one of the key pieces of information required to inform the response is currently unavailable. There is a notable absence of any information about likely contribution rates and the knock on impact on the government's consultation proposals now the suspension of the cost cap mechanism has been lifted. PFNI are most concerned that the cost of remedying the discrimination will be factored into the calculation of future contributions for those who were unaffected by the discrimination and who will not benefit from any of the remedies proposed. This is grossly unfair and may also discriminate particularly against younger members and females. The unpausing of the cost cap mechanism and unknown nature of what the subsequently concluded exercise will actually look like is a significant impediment. This is further exacerbated with the associated indication that underlying Treasury assumptions (which are critical in the cost cap exercise) are also being reviewed. Therefore this response is qualified against this caveat.

Before addressing the individual questions the PFNI do not intend to duplicate each and every point already contained within the Police Pension Scheme Advisory Board Northern Ireland submission. You will note from that submission that all the police Staff Associations representing all police officer ranks have been involved in the technical working groups (both at local and national level) and were in broad consensus with the final content of that submission.



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Question 1: Do you have any views about the implications of the proposals set out in this consultation for people with protected characteristics as defined in section 75 of the Northern Ireland Act 1998? What evidence do you have on these matters? Is there anything that could be done to mitigate any impacts identified?

Question 2: Is there anything else you would like to add regarding the equalities impacts of the proposals set out in this consultation?

PFNI have chosen to answer questions 1 and 2 together.

This consultation clearly specifies that it only applies to those who were in service on or before 31 March 2012. The rationale provided is that those joining after this date would have known that the reformed schemes were coming into force and would not reasonably have expected to have been entitled under the legacy schemes (Page 17 Paragraph 2.16 and Screening Template Section A Paragraph (i)). PFNI have yet to be provided with any documentary evidence to support this assertion and consider that had it existed, the Department of Finance would have explicitly referenced it in this formal consultation. There is no clear indication from where such members would otherwise have derived this asserted knowledge. Consequently, we consider this approach could give rise to indirect discrimination by age as predominantly older members will be covered by the provisions of this consultation (and predominately younger members will be in the cadre of officers who joined between 2012 and 2015).

The consultation document and accompanying Screening template do not explain the legitimate aim excluding the 2012 cohort is seeking to deliver or how the exclusion is a proportionate means of achieving that legitimate aim. PFNI consider the provided reasoning of member awareness through (unspecified) communications to be exceptionally weak. PFNI consider this is all the more problematic as there is an acceptance that excluding members who were in service prior to 31 March 2012, but who took a qualifying break in service potentially covering the totality of the otherwise excluded April 2012 to March 2015 timeframe, could in itself be discriminatory. For the reasons laid out above and in light of the demographic issues raised we also consider the remedy could indirectly discriminate on the grounds of gender and ethnicity.

The current proposal to put all officers regardless of age into the 2015 Pension scheme in 2022 seemingly does not end the discrimination based on age as per Section 75 of the Northern Ireland Act 1998. The age of retirement within the 2015 scheme is based on a minimum age of 55 years old. This does not take any account of years of service. For example a 20 year old becomes a PSNI Constable in April 2002. As such they were initially in the 1988 Police Pension Scheme before being moved on to the 2015 Scheme. Their original expected retirement date was April 2032 this when they had completed 30 years service. However with the proposed changes it will now result in them having to work longer until they can obtain a full



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unreduced pension at the age of 60 (some 10 years longer). This is in the knowledge that other colleagues who joined on the same date who were aged 30 years and over at the time of joining who will not have to work any additional years to attain a full unreduced pension.

Therefore it appears that any officer who was aged younger than 29 years and 364 days old when joining the police scheme are still disadvantaged and potentially being discriminated against in the new proposed scheme as they will have to work the additional time and pay the additional contributions until they reach the normal pension age of 60. The option of leaving at 55 is also seemingly age discriminatory as again an officer will be required to be under the minimum age of 24 years and 364 days old when joining and they will be financially penalised for retiring prior to the normal retirement age (due to the actuarial reduction applied by retiring post the age of 55 but prior to the age of 60).

The consultation also asserts that all protected members would have reached their normal pension age (NPA) by 2022 (Page 31 Paragraph 3.12). Whilst this may be true in other schemes it is not true for members of the 1988 police pension scheme. Members of these schemes do not have an NPA – at best they have a notional NPA based on service, or a combination of age and service. PFNI notes this appears to be formally recognised at Footnote 1 on the bottom of Page 6. This is particularly relevant for members who were fully protected by virtue of being 45 or over, who were part-time and aged either 45 or over, or 38 and over with not less than 20 years of service, as well as members who have taken career breaks during the transition period. The vast majority of PSNI officers who are part-time workers and who take career breaks are female.

All members falling into these cohorts have been able to reasonably expect that the tapering provisions and accrual of rights under the provisions of the 2015 scheme regulations would apply. Government did legislate in such a manner as to give rise to that expectation. Therefore it is inevitable that there will have been reliance by members on the statutory nature of this protection. PFNI consider therefore that to deny these members the protection they were initially entitled to under the 2015 Regulations could amount to a breach of their legitimate expectations in law.

PFNI completely reject that (insofar as it applies to the police pension schemes) any such (perceived) advantage will have arisen by chance, in the sense that it is not something which the system of tapered protection deliberately set out to produce (Page 18 Paragraph 2.21). The specific impact of the transitional protections on the class of member detailed was subject to extensive discussion and negotiation between the Staff Side of the Police Negotiating Board and the Home Office at the time the new scheme was being designed. Therefore, and contrary to the accidental assertion relied upon, it is more likely the case that such examples were explicitly at the forefront of the design considerations.



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For the reasons outlined above, PFNI do not accept the Screening Template conclusions within Section A Paragraph (i) that the effects of Remedy on the various identified groupings are minor, incidental to the imperative to remove the discrimination and do not constitute adverse differential aspects. PFNI would therefore request that a full, police scheme-specific Equality Impact Assessment (EQIA) should be undertaken by the Department of Finance of the eventual proposed solution for Remedy to minimise the risk of future challenges. Such an EQIA should look beyond the Remedy itself covering the application of taxation, other connected matters such as recovery and payment of contributions, and the specific nuances of the police scheme. PFNI are aware that there will be bespoke consideration given to the Local Government Pensions Schemes (via the Department of Communities) and devolved judiciary schemes (via the Department of Justice), so we would seek an assurance that a bespoke EQIA for the police scheme is also sought. By way of comparison, the Scottish Government has already commissioned a scheme specific Equalities Impact Assessment on behalf of the Scottish Police Pension Scheme Advisory Board.

Question 3: Please set out any comments on our proposed treatment of members who originally received tapered protection. In particular, please comment on any potential adverse impacts. Is there anything that could be done to mitigate any such impacts identified?

PFNI would support scheme members having as free a choice as possible over which benefits they should be able to choose over the remedy period. That being said PFNI recognise that a hybrid system which could allow the choosing of different benefits at different times would add almost irreconcilable complications (and delay) into what is already a complex administrative fix. We therefore recognise that the binary choice between either legacy or reformed scheme benefits to be a pragmatic way of avoiding this.

PFNI asserts that anyone who will lose out by the proposed retrospective changes should retain their transitional protections or receive compensation for the loss of benefits. It may well be that such retrospective action could be deemed unfair and a breach of the legitimate expectation of those who suffer disadvantage as a result. Before taking this step, PFNI would assert that the relevant pension scheme administrator will also need to obtain the consent of those individuals who are adversely affected by virtue of Section 23 Public Service Pensions Act (Northern Ireland) 2014.

The consultation suggests (Page 18 Paragraph 2.21) that some members may face disadvantage regardless of which option the Department of Finance pursues. As outlined in our response to questions 1 and 2 we have identified a number of instances where disadvantage could be experienced. The consultation however does not elaborate on the type of members that must clearly have been in the Department's thinking when that paragraph was drafted. We would expect details of



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the specific classes of members that will be affected to be made known in the subsequent scheme specific consultation.

PFNI would query why it is not possible to provide an alternative system of tapered protection that is not age based (Page 18 Paragraph 2.21). No detail has been provided about the alternatives that were considered.

On a separate point which arises out of the binary choice that has to be made for the remedy period, is clarity on what is to be provided for those police officers who reach 30 years of service in their legacy scheme during the remedy period? Will they be able to make contributions into the reformed scheme for what remains of the remedy period and beyond April 2022?

Question 4: Please set out any comments on our proposed treatment of anyone who did not respond to an immediate choice exercise, including those who originally had tapered protection.

PFNI accept that the options exercise cannot be kept open indefinitely but we believe it is important to stress that the default option is itself not without its problems. It is arguable the most significant of these is that the pension administrators invariably will not have complete or accurate contact details for all retired members (outside of personal banking details).

The default position for officers in service is less problematic in that regard albeit the practicalities of being in a position to make an informed immediate choice remain. Whilst it will not resolve the issue of pensioners who have already 'dropped off the radar' we consider that forces could reduce and mitigate the risk of adding to those numbers by improved communications and record keeping to, and for, officers close to retirement.

Question 5: Please set out any comments on the proposals set out above for an immediate choice (IC) exercise

Under immediate choice members would be required to make a decision on hypothetical figures based on a number of unknowns. Furthermore, the mechanism for evaluating benefits accrued under the reformed scheme is not guaranteed as was reflected by the recent suspension of the cost control mechanism. With the exception of those members imminently due to retire, members will have to consider future career progression, Consumer Price Index (CPI) rates and taxation implications to even approach a realistic model on which to base their decision. The number of variables at play are, in our view, insurmountable to implementing the Remedy through immediate choice in a way which both mitigates the risk of further discrimination and provides the best member outcome in that regard. PFNI therefore do not support immediate choice as the preferred method of implementation for the Remedy.



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Question 6: Please set out any comments on the proposals set out above for a deferred choice underpin (DCU)

PFNI prefer the DCU option for Remedy implementation primarily because it allows members to make their decisions based on fact rather than projections. As previously highlighted the implications of the un-pausing of the cost cap are also a major factor at play in the decision-making process. Therefore PFNI would again stress that fully informed member choice cannot occur until that process is concluded. A key advantage of the DCU option is that (for most members) the outcome of the cost cap mechanism calculation in the 2016 Valuation will be known by the time they make their decision. Therefore any resulting changes to the accrual or contribution rate would be reflected in the information provided to inform their choice.

Question 7: Please set out any comments on the administrative impacts of both options

PFNI acknowledge that the administrative impacts will no doubt be best addressed by employer representatives. PFNI would stress that administrative difficulties or complexities must not be the overriding criteria that define the remedy. Also, as outlined in the opening comments, there are real concerns about the practicalities of implementing immediate choice within the time frame envisaged (that is at some point after 1 April 2022). It will undoubtedly be a complex logistical exercise. The deferred choice underpin is likely to provide a much longer lead in time which will facilitate many of the necessary administrative changes.

Question 8: Which option, immediate choice or DCU, is preferable for removing the discrimination identified by the Courts, and why?

As noted in our response to question 6 above, DCU remains our preferred method for Remedy implementation because it allows for members to make their choice according to actual, rather than estimated data.

PFNI considers that whilst either immediate choice or DCU may well deal with the discrimination identified by the courts, it does not automatically follow that either option removes all discrimination, or removes the potential for further legal challenge. We consider that the issue of legitimate expectation arises in some cases (for example those officers who had full protection by virtue of being aged 45 or over) and discrimination for part-time officers may arise as a consequence of the proposed approaches. The Department of Finance cannot replace one form of discrimination with another.

In general terms, it is our qualified view that DCU offers the least amount of uncertainty. The lack of ability to assess the actuarial impact for either option is of great concern. This is due to the inextricable link between the issue of remedying the



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discrimination and the unpausing of the cost cap mechanism. As the consultation identifies (Page 20 Paragraph 2.33) much of the information required to inform the decision making is at this time unknown. The DCU removes that variable, but as identified introduces its own complexities, not least the relationship with the tax system.

As such, immediate choice would appear to introduce a considerable element of risk in requiring a member to make a decision on their benefits which could consequently prove to be the less beneficial choice. Additionally, PFNI consider there to be a potential for further discrimination against members with protected characteristics if the immediate choice option were to proceed. This risk is mitigated by using DCU to remedy the discrimination.

Question 9: Does the proposal to close legacy schemes and move all active members who are not already in the reformed schemes into their respective reformed scheme from 1 April 2022 ensure equal treatment from that date onwards?

No. The rationale for the treatment of those who were protected by reason of age (45 or over in 2012) needs to be set out clearly alongside the impact on these members since, as a result of the 2022 changes, they will not now be able to accrue a 'full' 1988 pension. This may give rise to potential legal claims for discrimination on the grounds of age and/or gender and that therefore consideration should be given to identify an alternative outcome for these individuals.

In line with the consultation, all members will be automatically moved into the reformed schemes as of 1 April 2022 (see Page 17 Paragraph 2.12), thus denying these members the full transitional protection promised under the original legislation. As previously highlighted the assertion in the consultation document that all protected members would have reached their normal pension age is not correct for those in the police schemes. The groups affected will include those:

- a. who are fully protected members aged 45 or over on 31 March 2012 who will not have reached 30 years of full pensionable service under the 1988 scheme by the end of the Remedy Period on 1 April 2022 (As previously highlighted there is no normal pension age in the 1988 scheme).
- b. who are transitional or no protection members aged up to 44 on 31 March 2012 who will not have reached 30 years of full pensionable service under the 1988 scheme by the end of the Remedy Period on 1 April 2022 (As previously highlighted there is no normal pension age in the 1988 scheme).



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- c. who were part-time members aged 45 or over on 31 March 2012 and part-time members aged 38 or over with at least 20 years of service who will not have reached full pensionable service by 1 April 2022.
- d. who took career breaks while covered by the transitional protections who will not have reached full pensionable service in their legacy scheme by 1 April 2022.

The proposed end of the remedy period should be adjusted so that the potentially discriminatory impacts are removed and the legitimate expectations of those identified are satisfied. It is probable that compulsory transfer will deny some members benefiting from tapered protection rights which had been guaranteed under the initial proposals.

Question 10: Please set out any comments on our proposed method of revisiting past cases

In cases where interest is paid to the government by a member as part of a return to the legacy scheme and where this is reversed to the reformed scheme at the time when benefits are taken under DCU, not only should that interest be repaid, but interest on the repayment should be calculated by reference to the amount originally paid by the member (i.e. principal and interest).

The consequences of choices which could have been made had the member known they would be returned to a different scheme over the remedy period need to be factored in: for instance when electing for non-pensionable pay or honorarium, buying pension growth through additional contributions and time to pay.

PFNI consider that contributions made in later years should at the election of the member be capable of being carried back to the year in which the contribution would have been made had the member been in the correct scheme. In other words, relief should be given at the rate applicable in that tax year if elected for. This reflects the fact that relief in a later year may prove less valuable than relief in an earlier year, for instance because lower marginal rates apply in a later year. For instance, the individual may have left employment. It needs to be clear that the pension administrator can take these deductions into account in applying PAYE.

The availability of commuted cash is a very important issue for police officers, and our understanding of Page 32 Paragraph A.3 is that a member may make a choice which results in payment of an additional lump sum (whether optional or automatic) that triggers a tax charge. This issue seems most likely to arise where a member has transitioned into the reformed scheme during the remedy period and subsequently retired. Their maximum commuted lump sum from the legacy scheme will be lower than it would have been if they had remained in the legacy scheme throughout the



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remedy period. However, a second payment of commuted cash is likely to be an unauthorised payment under HMRC regulations. PFNI asserts the member should not be liable to pay any additional tax as a result of this additional payment.

Conversely, where a member makes a retrospective choice that means that they have received too big a commuted cash payment (for example where a previously fully protected member opts for reformed scheme benefits for the remedy period, perhaps because of survivor benefits), they will be prevented from repaying the excess lump sum and instead their pension for the remedy period will be reduced “on the usual terms”. This seems unfair. Why not allow members the choice of repayment either by lump sum or in instalments from the pension? If there is to be no repayment option, the conversion rate from the scheme the cash came from should be used to calculate the reduction in pension not the factor from the reformed scheme. We would however point out that a lifetime reduction in pension in payment could see considerably more of an eventual claw back than was ever due. Therefore we consider that clear and unambiguous system design and communication would be required to ensure any system carried the confidence of the member.

Question 11: Please provide any comments on the proposals set out above to ensure that correct member contributions are paid, in schemes where they differ between legacy and reformed schemes.

PFNI would assert that until clarity on the policy detail (including methods of payment, interest, and details of a ‘scheme pays’ type arrangement) is provided that it is difficult to respond in anything other than general terms.

Neither repayment nor taxation should lead to individual detriment. PFNI support the suggestion that the government allow pension schemes to agree individual repayment plans so that members can choose their preferred pension benefits regardless of financial circumstances. However, the proposal may have an adverse impact on older members who will have less time to make repayments before they retire. PFNI propose that any ‘payment plan’ that is to be deducted from a member’s pensionable income is also deducted for the purposes of calculating the members’ lifetime allowance liability.

Question 12: Please provide any comments on the proposed treatment of voluntary member contributions that individuals have already made

On the face of it the proposals in this regard seem reasonable. However, PFNI would expect there will be an inevitable increase in complexity for annual allowance calculations under Deferred Choice Underpin and Paragraphs A14 to A20 of the consultation paper unfortunately contains no detail on how scheme members, who are concerned about detrimental change to their pension, may buy additional years of pension to compensate. This needs to be clarified and members advised of the tax implications of their decisions.



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Question 13: Please set out any comments on our proposed treatment of annual benefit statements

PFNI recommend combining the annual benefit statement with a tax statement so that members receive a single document setting out their pension and tax position. This requirement should be set out in the reforming legislation for both prospective and retrospective annual benefit statements.

Members' annual benefit statements are only one of the many communication streams which will form an integral part of informing and engaging affected members in the implementation of the Remedy and the future pension provision. PFNI take the view that the Remedy provides an opportunity not just to engage with officers in understanding their pension arrangements, but to communicate the multitude of benefits of the 2015 CARE Scheme which we feel have not been promoted or valued sufficiently.

Question 14: Please set out any comments on our proposed treatment of cases involving ill-health retirement

The consultation specifically highlights several challenges posed by the Remedy implementation for cases involving ill-health retirement (IHR); (i.e. interaction with state benefits, difference in IHR provisions between schemes, member consent to re-assessment). However, regrettably it does not provide any answers or proposed solutions. As such this part of the consultation lacks the necessary detail and leads to concerns about an unsuccessful application of the Remedy to IHR cases. This could lead to an increase in the already disproportionately high number of cases being taken in relation to IHR.

PFNI were given sight of the Home Office document released on 21 August 2020 titled ***McCloud/Sargeant ruling – Guidance on treatment of 'Immediate Detriment' cases***. As pensions are devolved matters in Northern Ireland, PFNI were informed that the Department of Finance have currently only 'noted' this document. Notwithstanding that the Guidance was issued with the caveat that the Remedy is still under consultation, if it is to be applied in Northern Ireland the detail contained within is wholly relevant to this current question. Whilst cognisant of the challenges in implementing the Remedy for those who have recently retired, PFNI consider that recently retired members are among those who have suffered 'immediate detriment' and in that context it is disappointing that this cohort are seemingly not within scope of the Guidance. Further, the Guidance does not appear to be fit for purpose and we understand that it has currently not been adopted by all UK pension administrators. This is, in our view, a warning as to how a failed Remedy implementation may occur and gives rise to the question of whether affected members are then subject to further detriment.



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PFNI feel strongly that members who were ill-health retired during the Remedy Period and those currently going through the IHR process are prioritised in Remedy implementation. This position also supports our preference for the DCU option, where inevitably there will be more resource available to address immediate detriment cases than if immediate choice is implemented and all members in scope are required to make their choice within the same timescale.

Question 15: Please set out any comments on our proposed treatment of cases where members have died since 1 April 2015

PFNI welcome the concession that any tax charges arising due to the implementation of the Remedy will not be passed on to a deceased member's estate (or survivors), and that any out of pocket expenses will also be reimbursed. Additionally, we support the proposal in Page 40 Paragraph A.39 that survivors will not be contacted where a choice of benefits would result in someone continuing to receive their survivor's pension or receiving nothing, and that the scheme will continue to pay the survivor's pension on the same basis on which it commenced.

The consultation's proposals around the treatment of cases where members have died since 1 April 2015 identifies the potential issues and challenges rather than offering any solutions or mitigations. The provision of a choice is explored but some of the fundamental details about how this actually would work in practice are lacking. It is therefore imperative that the approach to these cases is clearly defined in terms of who is exercising the choice, the extent and scope of the information provided to survivors, and how any associated expenses can be covered/reimbursed.

We welcome the general commitment on the reimbursement of out of pocket expenses (Page 41 Paragraph A.41) but question whether these have been drawn in such a manner as to be prescriptively narrow. It is regrettable that the consultation provides no insight on how survivor members are to be in an informed position to navigate this complex area. However, PFNI simply cannot countenance that survivor members may have to incur expense in securing professional advice to assist them. PFNI feel they will invariably find themselves being called on to assist survivors in many cases. For the reasons detailed above it is more likely than not that the untangling of the personal circumstances of each survivor could take time, and require professional services to assist. As such PFNI would expect that the full cost of assisting all affected survivors would be reimbursed by the Department of Finance.

Question 16: Please set out any comments on our proposed treatment of individuals who would have acted differently had it not been for the discrimination identified by the Court.

A clear and comprehensive policy on contingent decisions is needed to ensure that these cohorts are dealt with appropriately when implementing the Remedy.



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It is noted that where members wished to argue that they would have taken a different course of action had they known that continued membership of their legacy scheme during the Remedy Period was an option, then schemes would consider representations on a case-by-case basis. The consultation document states that these will be dealt with on a 'case by case' basis, most probably by the Northern Ireland Policing Board as Scheme Manager.

A framework definition of 'contingent decisions' (Paragraphs A.46 and 47) is needed. If these decisions are also to be dealt with on a case by a case basis, without clear guidance, who would be responsible for them and for the costs involved? For example, an individual might argue that had the provision now offered by the Remedy been available at the time they would not have:

- a. 'Downsized' property
- b. Removed children from private schooling
- c. Decided to take an honorarium
- d. Left the police service
- e. Opted out

As a potential alternative to the stringent requirements proposed in the consultation, those who opted out could be given a limited time frame in which to opt back in, make up contributions and so be in a position to make a choice.

Question 17: If the DCU is taken forward, should the deferred choice be brought forward to the date of transfer for Club transfers?

The provision of deferred choice should be maintained until the member takes his or her benefits in the receiving scheme, ensuring equity of treatment of all members (those with Club transfers, and those without). If there were some worked examples provided by the Department of Finance it would assist in providing a common understanding of the circumstances which might arise.

Question 18: Where the receiving Club scheme is one of those schemes in scope, should members then receive a choice in each scheme or a single choice that covers both schemes?

The member's choice in the receiving Club scheme should be exercised when the member takes their benefits under that (the receiving) scheme, in accordance with the principle of deferred choice. As the member will no longer have any benefits within their previous, ceding scheme but will instead have chosen to transfer them into their new (receiving) scheme, it follows that their choice (in respect of their benefits during the Remedy Period) is also transferred accordingly. PFNI maintain that when a member makes their choice it will have effect over all of their benefits accrued during the Remedy Period under the receiving scheme, including those added by any transfers-in. If there were some worked examples provided by the



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Department of Finance it would assist in providing a common understanding of the circumstances which might arise.

Question 19: Please set out any comments on our proposed treatment of divorce cases

The Department of Finance need to provide clear public sector wide guidance on divorce cases. This should cover the range of outcomes including the impact of the Remedy decision on the former spouse with regard to refunds and additional contributions, and maintaining payments to the former spouse in the event of the member choosing a lower value payment. The guidance needs to address whether resultant recalculations will be charged to the scheme or the member, and the exposure to further costs (such as legal costs) arising from amending the member's pension. Again, PFNI would assert that no detriment or cost should fall to the individual member as they were not responsible for the discrimination that these proposals are seeking to remedy (in the same way that it is being offered to expenses incurred by those in receipt of survivor benefits).

Question 20: Should interest be charged on amounts owed to schemes (such as member contributions by members? If so, what rate would be appropriate?

No. Primarily because the delay in making any payment was not of the member's making and in most cases they had very limited or no choice at all. To latterly impose what amounts to a penalty in the form of interest charges on these members would be patently unjust.

Question 21: Should interest be paid on amounts owed to members by schemes? If so, what rate would be appropriate?

Yes. PFNI's view is that a fair, rational and consistent basis should be applied based on economic experience in the intervening period. Failure to at least meet inflationary increases during the period would represent a worsening of the members' positions and does not satisfy the principle of ensuring members are put back in the same position they would have been in had the discrimination not occurred. The Department of Finance should first clarify the application process keeping in mind the overarching principle and need for there to be no detriment to the member.

Question 22: If interest is applied, should existing scheme interest rates be used (where they exist) or would a single, consistent rate across schemes be more appropriate



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Since this is a multi-scheme public service Remedy process interest should be calculated on a single, common basis using an externally verified rate. PFNI considers there should be consistency across the public sector with the same application of interest across all schemes.

Question 23: Please set out any comments on our proposed treatment of abatement.

Abatement is seemingly not a significant factor in police schemes. However, both schemes and employers will want to minimise administration and calculations wherever possible. The preferred approach is that abatement is revisited only where the member would benefit from such a review (generally in cases where a member opts for reformed benefits, rather than legacy scheme benefits). Consistency is also important, which suggests limiting the discretion of administrators.

Question 24: Please set out any comments on the interaction of the proposals in this consultation with the tax system

As outlined previously police officers are not responsible for the discrimination these proposals are seeking to remedy. Due to the complexities of unpicking and producing a remedy for this it would be totally iniquitous if members were subsequently left to face punitive taxation penalties. It should be recognised that tax implications may take the form of changes to income tax, tax relief, Annual and Lifetime Allowance usage and charges.

In particular we are concerned that any refund of overpaid contributions, and/or any additional Pension Commencement Lump Sum payments arising from the member's Remedy choice should not constitute an unauthorised payment for HMRC purposes. The tax treatment of Remedy payments must be clearly stated within regulations to ensure administrators are empowered to provide all relevant information relating to the member's choice.

The position on whether interest is due on any tax debt should be made clear to members in their annual benefit statements (DCU choice only), documentation relating to their choice of benefits for the Remedy Period, and any general member communications about the Remedy.

Given the proposed retrospective application of the Remedy, we are of the view that changes to tax liabilities are dealt with as per the prevailing rules at that time. Further, the proposed commitments within the consultation to refund overpaid tax in respect of the entire Remedy Period, and reclaim underpaid tax in respect of four years only (being the current tax year and preceding three tax years) should be included within the wording of the legislation to mitigate any confusion or misapplication.



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Lifetime Allowance

PFNI note there is no assessment within the consultation document of the interaction between the proposed remedy and the lifetime allowance fixed protections (2016). Clarity is required and the Department of Finance will need to satisfy itself that there is no detriment caused by this interaction.

Annual allowance

Under either approach, collectively Police Staff Associations do not believe that an upwards revisiting of the Annual Allowance (AA) charge is sustainable. The complexity which this involves in terms of calculations and compliance is simply not something which the Department of Finance can expect individuals to be faced with and all the Police Staff Associations believe it is wrong that the Department of Finance place the responsibility for extremely complex taxation matters onto the individual.

Specific to the DCU option only, the consultation indicates that the additional AA charge will be waived where an individual draws benefits down and chooses to receive reformed scheme benefits rather than legacy scheme benefits in the remedy period. Para B.38 provides: *'The government is developing a process whereby the public service pension scheme can declare and pay the relevant AA charge relating to the reformed scheme benefits in the remedy period on the members behalf – they would not need to do anything'*. The consultation therefore appears to be actively encouraging members to join the reformed scheme.

It does not make sense that this proposal only works in one direction. The effect of this distinction is to potentially discriminate based on whether the member is deemed, prior to an election upon retirement, to have been accruing benefits under the reformed scheme or not. As this is a distinction based on when membership commenced, it is indirectly based on age (and potentially gender) and is therefore potentially discriminatory as a result. There does not appear to be any obvious justification for such a mismatch. Given that the operation of the AA charge when the past is retrospectively altered is going to cause substantial practical difficulties (including multiple years' calculations with the information required going back to 2012), the appropriate methodology is also to waive any additional AA charge for those members treated as moved into the legacy scheme on 1 April 2015.

In addition to the administrative difficulties at a governmental level, the new proposals more generally will inevitably give rise to increased expense at an individual level. In light of this expense in complying, it would seem particularly unfair to burden the individual with an additional AA charge liability. The fairer approach, as above, is to waive the additional annual AA charge arising in all circumstances with respect to a retrospective alteration of the past.



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Furthermore, where changes are made in arrears, the tax charge ought to be applied to the year in question and not all bundled together in the year of the change. In England and Wales, when previous pay negotiations had been protracted to cover more than two tax years, HMRC confirmed that any back-dated pay award would be apportioned to each tax year. It appears the pension tax manual has adopted the bundled approach, which would result in more AA tax being levied.

A potentially fairer and simpler approach would be to now change the AA tax rules to spread pension growth over the period from 2015 to the point of retirement (Y), i.e. the member's total allowance for growth would be the AA (£40k) x Y, with only the absolute excess subject to the same taxation rate as tax relief on contributions.

Honoraria

A significant issue stems from arrangements permitting members to ask for non-pensionable pay under the 1988 police legacy scheme only. This is beneficial in that it limits the contributions the member is required to pay but does not alter the final entitlement under the 1988 scheme as the benefit is calculated by reference to the final 3 years of service.

Younger unprotected or transitionally protected members taken back into legacy schemes for the remedy period will need to have the opportunity to revisit the question of suspending pension contributions. Decisions made on whether to suspend pensions contributions on promotion might have been made differently had it been known that a member might return to their legacy scheme over the remedy period.

Buying pension growth

As is acknowledged in the consultation document, all of the legacy schemes permit members to make additional contributions to enhance pension benefits. In the context of the 1988 police scheme, this effectively permitted additional years of service to be bought and was particularly relevant for people who had been on career breaks. Those people taken out of the 1988 scheme and now, under the present proposals, being put back in, must be offered the ability to exercise this option retrospectively and purchase additional years at the rates that would have applied had they remained in the 1988 scheme. The consultation document provides no detail on how this arrangement will operate, which is disadvantaging both this group and others identified in this response.

Discretionary power

The paragraphs above cover the issues that are immediately obvious in the operation of the DCU framework as proposed. There will inevitably be other injustices. The Department of Finance should be given the power to remedy any injustices or hardship stemming from the operation of the new rules by way of



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compensation. This should be a broadly drafted discretionary power so as to ensure that any injustice or hardship, whether envisaged at this stage or not, is capable of being remedied. It will otherwise be inevitable that injustices occur given the enormous complexity of what is being proposed. It is the Department of Finance and not members who have caused the need for retrospectively altering pension rights.

Time to pay arrangements

Time to pay arrangements need to cater for the possibility that, in reliance on the position as it was, funds may have been spent and cannot be refunded to the scheme until pension benefits crystallise.

Taxation & national insurance

The references in these representations to tax should be taken as including references to national insurance.

The decision to exercise the option under immediate choice must clearly be after accrual rates under the reformed scheme have been determined which presumably requires Cost Cap issues to have been resolved in advance. In any event it is not proposed that the immediate choice be immediate so a person may retire before the end of the time permitted to make the immediate choice. As a consequence, a lifetime allowance charge may have arisen. Only two brief paragraphs are devoted to the lifetime allowance (B.25 & B.29), but this is clearly a complicated subject and even more so where the lifetime allowance arises before the date chosen to exercise immediate choice. In particular we wish to see the following points dealt with:

1. Any lifetime allowance charge which could reasonably have been avoided had members been in the correct scheme at the time needs to be capable of mitigation and reduction.
2. Revised annual allowance charges which reduce the lifetime allowance charge through being dealt with by scheme pays need to be factored into the revised lifetime allowance charge. At present this would not be possible as the member would have left the pension scheme. Therefore, tax adjustments need to be capable of being made.
3. Any pension contributions deferred under a payment plan to reflect the move to a new scheme need to be taken into account in calculating the adjusted lifetime allowance charge.

PFNI would note that the Department of Finance Screening Template does not take into account tax, and specifically the huge complexity which younger members are being required to deal with as compared to those who remained in the legacy scheme throughout (with potentially very significant and punitive adverse consequences, if an error is made). At Page 16 Paragraph 2.10, the government



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accept the importance of providing members with “**appropriate information**”. PFNI think that help of a detailed nature must be provided by the Department of Finance which takes into account individual circumstances. A dedicated service and/or a financial compensation system need to be provided and funded by the Department of Finance to allow members to effectively and efficiently negotiate these complexities and provide them with the necessary and accurate information. Any self-help tools need to be capable of dealing clearly with the points made in these representations (for example the impact of honoraria, annual allowance and lifetime charges, the impact of contributions). It needs to do justice to the complexity of what is proposed so that members are not adversely affected by the retrospective alteration of their position. It is vitally important that the Department of Finance provide members with all the information they require about all the complexities so they are able to fully understand the information before they are required to make a choice under either option.

Scheme Pays and Tax relief on pension contributions

Scheme Pays appears to be only offered to those in who are active members of a pension scheme. To ensure fairness, these provisions will need to be expanded to enable pensioners or deferred members to access this option.

It is understood that tax relief on contributions can be applied only to active members and not to retired or deferred members. It is important that those members are not disadvantaged through the retrospective choice of scheme under the remedy arrangements. Hence dispensation should be obtained from HMRC to provide tax relief to deferred and retired members or to allow such members to make net pay contributions and for the scheme to receive any tax relief via HMRC (as operates with money purchase arrangements).



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In conclusion, PFNI have set out in this response some aspects that the Department of Finance should fully consider in order to redress this wrong and to avoid introducing further discrimination and unfairness. Urgent policy actions incumbent on the Department of Finance include conducting a specific police pension scheme Equality Impact Assessment; providing evidence in support of its policy positions (or reviewing these positions urgently); and addressing those aspects that seem to have attracted little consideration. The funding and resourcing infrastructure must be put in place as soon as possible to enable the PSNI to administer the Remedy. Finally, although it is not formally a part of this consultation, PFNI are compelled to reiterate that we remain deeply concerned about the un-pausing of the cost cap and the actions proposed to complete the cost cap mechanism element of the 2016 valuation. These actions are inextricably linked to the Remedy and we fear that officers could ultimately be unfairly penalised through no fault of their own.

Yours faithfully

L J KELLY
Secretary
Police Federation for Northern Ireland