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Police Federation for Northern Ireland consultation response to draft Police Pension (Remediable Service) Regulations (Northern Ireland) 2023

This consultation response is submitted on behalf of the Police Federation for Northern Ireland (PFNI). PFNI is the statutory representative body for all police officers up to and including the rank of Chief Inspector in the Police Service of Northern Ireland. This correspondence should be treated as their formal response to the government consultation in respect of the draft Police Pension (Remediable Service) Regulations (Northern Ireland) 2023. PFNI trust this response is useful and would be happy to discuss further if required.

In responding to this consultation, PFNI considers of upmost importance that final clarity and certainty for members is required to ensure there are no further ongoing issues, and it is our hope that all scheme members will be treated both appropriately and fairly to avoid future litigation. PFNI welcomed and participated in national and local engagement with stakeholders, including the Home Office and Department of Justice, in the period running from June to December 2022. Some of the later collaboration sessions were delayed and held in 2023 and, unfortunately, it would appear that the discussions therein were never really a true opportunity to assist government officials in forming policy around police specific elements of the remedy, due to the timings between the sessions and the actual commencement of this consultation. We have therefore been left somewhat disappointed that these sessions were not used to demonstrate specific examples of how the regulations would apply to Police scheme scenarios only and appeared to concentrate instead on cascading policy intent from the over-riding primary legislation. Therefore, it is the PFNI view that the regulations have unfortunately been drafted generically without specific Police scheme members in mind.

PFNI are concerned that by passing powers from the Public Service Pensions and Judicial Offices Act 2022 without a framework of how they should be applied will potentially create a conflict of interest with the scheme manager. Fundamentally, the position of the regulations by not providing consistent outcomes to members and relying on individual interpretation will inevitably result in different financial outcomes to police members across the United Kingdom and members being treated inequitably. PFNI recognise the challenge all these issues present and would welcome the opportunity for continued, meaningful engagement on these important issues.

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The PFNI response to this consultation identifies several areas where the scheme manager has the power of discretion over the member's choice in respect of remedy. We are concerned that such powers will lead to disparate decisions across the United Kingdom. The correct outcome should be that all scheme managers make the same decision for different members who are in the same circumstances, but this will present a huge challenge in the absence of bespoke guidance.

From the outset, PFNI and our sister staff associations have advocated for an independent body to review cases which require the scheme manager to make a remedy choice on a member's behalf. Such an approach would not remove the powers inferred on the scheme manager but alternatively would provide a consistent approach and recommendation that would have the advantage of empowering the scheme manager and giving confidence to the member that their case has been considered fairly. In our view, this would also minimise any potential challenges from the member or their representative as to the outcome of any decision made by the scheme manager.

PFNI are deeply concerned that the plethora of discretionary powers placed in the hands of the scheme managers represent an attempt to abrogate the responsibility of government to comply with the Court of Appeal judgment in McCloud/Sargeant and take the necessary steps to adequately and effectively remedy the unlawful discrimination which they have caused. To be clear, this is not the responsibility of the scheme managers.

The application of interest, particularly where the member owes contributions to the scheme presents both moral and practical unease when considering the implementation of the retrospective phase of the remedy. Further, PFNI are concerned about potential legal issues with the proposed approach. In summary there is a considerable challenge in communicating financial information to members and the impact of decisions made as a result of this information – both on the Remediable Service Statement (RSS) and future Annual Benefit Statements (ABS). In particular, members must be made aware of how their underpayment will be calculated and could change depending on when they choose to repay owed contributions.

For moral reasons, PFNI have always held the view that charging interest on owed contributions is unfair, which is exacerbated by the fact that members could not have previously paid the correct level of contributions even if they had wished to, due to the operation of the transitional protections. Members have not had any influence over the timing of the remedy to the unlawfully discriminatory transitional protections, nor do they have any influence over when they receive their RSS and can only then decide

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about repayment. It is clearly and wholly unfair to apply interest to owed contributions at all, and if government are content to apply interest then it should be limited to the remedy period only.

Overall, PFNI consider that the proposed draft regulations do provide the legislative framework for the implementation of the retrospective phase of the remedy. However, there are elements which still require further clarification which have been detailed in the substantive body of this response.

1. 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?*

The draft regulations do not refer to eligibility. Eligibility to remedy appears to rely entirely on the 2022 Act. However, the members eligible for the Remedy are broadly determined by the McCloud / Sargeant judgment. It is noteworthy that the process and detail around contingent decision members remains high level and would have benefited from more clarity, which would ensure a more consistent approach during implementation.

As outlined in our previous consultation response and discussions with stakeholders, PFNI remain concerned about the exclusion of members who joined a legacy scheme between April 2012 and March 2015. In our view, a satisfactory explanation of the reason for their exclusion has never been provided, and our position stands that this cohort should be eligible for the remedy.

Previous explanations have maintained that:

• ***This cohort are out of scope as outlined in the McCloud / Sargeant judgment.*** Whilst this is factually correct, it is also the position that contingent decision members were not subjected to the unlawfully discriminatory transitional protections, yet they can apply to be in scope of the retrospective remedy through the contingent decisions process.

• ***This cohort would have been aware of the future changes to their pension arrangements when they joined*.** Absolutely no evidence of the provision of this information by those responsible for the governing of the scheme has ever been provided. There appears to have been no attempt to comply with the disclosure provisions. The government's seeming reliance on the media to inform the membership is nonsensical and a blatant disregard of their responsibilities to members.

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2. Deferred Choice Underpin (DCU) and Immediate Choice (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 to 31 March 2022), from 1 October 2023?***

Regrettably the draft regulations do not currently appear to 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 2022 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. PFNI 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.

PFNI are also concerned that currently the draft Regulation 12 would seemingly tie the member to having had to make their election 6 to 12 months before retirement and does not adequately deal with a member who will retire immediately at or soon after 1 October 2023.

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 PSNI have not been able to start communicating this to eligible members. This is elaborated on further in the response to question 10.

Finally, PFNI are concerned that the draft 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.

3. DCU timing of Remediable Service Statement (RSS): ***Do you think the policy proposals about the timing of when a scheme member can request a Remedial Service Statement (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?***

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The draft regulations outline that all members will receive an RSS in order to arrange payment of contributions or compensation constituting a de facto refund. PFNI request clarity on what the document members will receive is if this is not the case?

The proposed time period for a member to decide following receipt of an RSS seems sensible and allows enough time for a member to seek any advice necessary before making their election. However, there are caveats to PFNI's support of this proposal, which are outlined below.

The draft regulations state that a deferred choice must be made by the member within twelve weeks of receiving their Remediable Service Statement and choice package. However, as stipulated under "**Changing a choice**" reference is made to "*powers for active or deferred members who make a DC by the standard deadline of six calendar months before benefits are due to come into payment, may revoke up until the benefits come into payment*." This appears to contradict the timescales previously outlined. The logic does not follow that a member may receive their choice package and RSS six months prior to retirement, whilst also being required to make an election by the 'standard deadline' of six calendar months before retirement.

In addressing the remedy in relation to survivors and child pensions, the draft regulations refer to the "*deadline before which the eligible member or member representative must make a DC, and a default action if a choice is not made within the deadline*". PFNI assert it would be useful if it was clarified whether this is the twelve-week deadline referred to elsewhere in the consultation.

PFNI have great concern over the proposal to allow scheme managers to make decisions on behalf of members in certain circumstances. There is an obvious argument that to make such a decision may be, or arguably is likely to be, potentially detrimental to the member, without the scheme manager being able to give due regard to the member's individual financial circumstances. Indeed, this is acknowledged in the consultation document but the proposal which refers to "*an investigation will always be carried out*" does not provide sufficient detail and therefore any reassurance that this process will be applied consistently and fairly.

PFNI question whether undue risk is introduced by requiring the scheme manager to take on a fiduciary responsibility to act in the best interests of the member, and accept the potential legal consequences associated with that responsibility. Further, is there a potential that the policy position as proposed could arguably amount to the scheme manager providing financial advice to the member or their representative?

In light of the comments above, PFNI would again suggest that an independent body (such as a third-party trustee body) are engaged to provide recommendations to the scheme manager on cases requiring a discretionary decision. Acknowledging that such decisions will need to be made on a case-by-case basis, nonetheless this approach would further benefit from centralised guidance.

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In cases where a member fails to respond, there is again a question as to how exhaustive the process should be in attaining contact with the member, and what the process should be in order to determine definitively that a member has been given every opportunity to respond. Further, it is not clear what benefit there is for a scheme manager to decide on behalf of the member representative of a deceased member, as the benefits cannot be put into payment without the scheme manager obtaining the relevant bank details.

In considering the application of interest and its link to the date that the RSS is provided, PFNI consider that the proposals as they stand introduce a lottery approach as to individual implications for members. In acknowledging that the huge administrative burden caused by implementing remedy means that it is not possible to issue every RSS at the same time, it is, in our view, wholly unfair and immoral that the level of interest applied to overpaid and underpaid contributions, pensions and commutation amounts depends on where each individual member sits in the tranche of RSS prioritisation.

Consideration as to the treatment of taxation liabilities for IC members also presents a particular challenge, especially (but not limited to) how each individual's position is communicated on their RSS. PFNI notes that only active members are eligible for tax relief, but that former members will need to have the tax relief included in their calculation. This will need to be very carefully explained to affected members on their RSS and does not need to constitute tax advice – but should provide guidance on who to approach for next steps, if appropriate.

4. RSS: *Do you 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 DoF Directions?*

PFNI are disappointed that despite many collaboration sessions and discussions about the RSS between stakeholders and officials, there has been little clarity as to the exact content of the RSS itself. Whilst the associations were of the understanding that the 2022 Act gave powers to individual public sector pension schemes to design the requirements of their RSS specifically, this has not been borne out in reality.
It is a matter of concern that albeit the Position Definition Document and DOF directions state what should be included in the RSS, the detail has not been translated into regulations. Therefore, the position is not fixed and could be changed at any point without further legislative process.

In addressing the requirements for Immediate Choice (IC) members receiving their RSS, the draft regulations advise that calculations requiring the use of factors should refer to the factors in place at the original date of retirement. PFNI consider this a sensible and fair approach, however the paragraph goes on to state that the RSS "*will need to include information about when a benefit would become payable*". It would be useful to receive clarity on exactly what cohort of IC members this approach is

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intended to apply to. As the benefit is already in payment, does this approach refer solely to members who were previously given full transitional protection and will be given the choice to elect for reformed scheme benefits? If this is the case, the RSS will need to clearly explain the impact and effect of the reformed scheme benefits becoming deferred, should the member make an election to that effect.

It is our understanding that the proposals outlined refer to the commitment that members who originally received tapered protection will not be worse off as a result of remedy, on the basis that they will not be able to retain their mix of legacy and reformed scheme benefits for the remedy period (as per the 2022 Act). PFNI seek clarity on the sentence which refers to retired members in this position, specifically that "*there is a provision that maintains the monetary value of the benefits within certain parameters*." It is not clear what the '**certain parameters'** are and whether this leaves open the possibility that some members who originally received tapered protection will ultimately end up worse off financially. This is of particular concern in respect of members who have been ill-health retired.

PFNI have long sought a common and comprehensive approach to Annual Benefit Statements (ABS); in particular that the Scheme Pays debits (SP) for the payment of the Annual Allowance tax charge (AATC) are incorporated into the ABS. CPOSA's survey in December 2022 indicated a wide variation in reporting, with some ABS making no mention of SP whatsoever. Consequently, those members would be expecting the predicted pension in the ABS, only to be informed at the point of retirement that a number of SPs have to be deducted. Given the remedy will generate new AA tax charges (for all ranks from Chief Inspector) and associated SPs, PFNI share the view of our sister Staff Associations that the proposed approach for the RSS is insufficient.

By virtue of the Public Service Pensions (Exercise of Powers, Compensation and Information) Directions 2022, Direction 20 is only the legal minimum. It simply requires an explanation of tax issues and where such further details can be found. Given that the source of that additional information will be the same administrator creating the RSS, it would not be an onerous burden for the draft pension regulations to require all tax issues, including SP to form part of the RSS. The information should form an integral component and not require a separate stand-alone cross-referenced document, which may well even operate on a different time frame.

Finally, given that the employer has potentially already agreed to reimburse professional costs arising from reviewing a member's RSS, a comprehensive statement will obviously reduce those charges.

5. Transfers: *Do you think that the policy proposals that transfers that came into the 2015 reformed scheme will be help in the 2015 reformed scheme until the point of decision achieves the policy intention of preserving transfer rights?*

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PFNI are not convinced that the preservation of transfer rights is achieved through the current drafting of the proposed amendments to the pension regulations. The key issue arising relates to members for whom their transfer cannot (in full or part) be converted to legacy scheme benefits.

The 2023 draft regulations refer to compensation in lieu of the legacy scheme benefits that would have otherwise been accrued. PFNI are of the view that the correct and fair approach to the affected cohort of members would be to offer added pension if their transfer cannot be converted to legacy scheme benefits. This could potentially present a problem if the member has already attained maximum accrual in the legacy scheme and they have no pension in the reformed scheme. Compensation in lieu of the transfer benefits should only be payable to the member if the transfer cannot be attributed to existing benefits, and a partial compensation payment should be made if only some of the transfer can be converted to legacy scheme benefits due to restrictions arising from maximum accrual.

There are financial implications for the compensation which members receive in relation to their transfer, and the RSS will need to be clear as to the (in particular) taxation consequences for receiving such compensation.

Finally, the above response is given on the assumption that the government have confirmed with HMRC that compensation in lieu of transferred-in pension rights does not breach nor put members at risk of breaching existing HMRC legislation that governs pension transfers.

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

PFNI strongly disagrees that the policy proposals for added pension puts all eligible members in the same position. In the first instance this question is clumsily worded, as it is obvious that applying the same policy to all eligible members with added pension would result in those members being placed into the same position. However, we have grave concerns about a blanket policy position to compensate members who have purchased added pension. Members in this cohort will have decided to increase their benefits for retirement, and to implement a policy whereby the additional pension is removed is fundamentally wrong, even if they are compensated for that loss.

Further, to compensate members for their loss of any additional pension could present adverse tax consequences which have therefore been imposed without their consent. PFNI suggests that at the very least there should be a consent driven decision by the member as to the timing of any repayment of their additional pension contributions if they cannot otherwise use the contributions to purchase additional benefits. In our view, there should be a default position to allow for added pension to be converted to additional service in the legacy scheme. Where such a conversion would breach the maximum service in the legacy scheme, only the excess added pension should be

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automatically repaid to the member through compensation. It is also a notable concern that HMRC considerations have not been referenced in the consultation. PFNI would have much preferred to see evidence that HMRC implications had been fully considered and any problems mitigated. For example, it is not clear if members who receive compensation in lieu of their added pension and elect to apply for additional service through the contingent decisions process will be breaching any HMRC regulations governing the recycling of pension benefits.

7. Contributions: *Do you think the policy proposals in relation to scheme members contribution adjustments are in line with section 26 of the PSPJOA 2022 and DoF Directions?*

PFNI considers the contribution adjustments to be reasonably well understood. However, the impact that the application of interest rate(s) to be applied in respect of contribution adjustments needs to be very carefully and comprehensively communicated to members. In particular, Deferred Choice members will need to receive a very clear explanation as to how the payment of any underpaid or overpaid contributions will be impacted by interest, and how this impact varies up until retirement (where applicable).

Whilst overall PFNI support the ability of members having the option of retaining any overpaid contributions in the scheme until retirement (which will be of particular advantage to former members of the 2006 police pension scheme), it is unwelcome that, as we understand it, these contributions will attract interest at the applicable National Savings and Investments rate(s). Conversely, if a member were to receive a refund of those contributions the interest rate applied would be 8% per annum.

Further, for Deferred Choice members who receive compensation in lieu of their overpaid contributions at rollback, the consultation proposes that if a member subsequently elects for reformed scheme benefits at retirement, they will have their pension reduced with reference to the value of contributions subsequently owed to the scheme. PFNI seek clarity on whether the deduction from the pension in this circumstance will be a choice between deduction from any commuted lump sum, or through an actuarially neutral pension deduction which operates similarly to the existing Scheme Pays provisions. PFNI maintains that members should receive the choice of which option they wish to take, having been provided with figures for both.

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

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Primarily, it is disappointing that the consultation document only gives a very high-level overview of how ill-health retirement (IHR) cases will be dealt with for remedy. PFNI are of the view that whilst not all of the collaboration sessions with stakeholders and government officials were particularly useful, the session on how to address IHR cases was supported by a comprehensive Position Definition Document. It was apparent during discussions amongst Scheme Advisory Board members that there was general consensus as to the policy proposals contained within the paper. The remedy for IHR cases was acknowledged as being particularly sensitive and PFNI agreed that due regard had been given to this cohort, therefore it was surprising to note that the consultation did not include the level of detail or consideration to match the aforementioned document.

In keeping with other proposals within the consultation, the approach to the reassessment of IHR cases is again an area that would benefit from comprehensive guidance – both to the Scheme Manager and Selected Medical Practitioners (SMPs) to ensure consistency of application. Therefore, the provision of appropriate guidance is imperative in ensuring that no member suffers a financial detriment as a result of the remedy.

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

PFNI recognise that the issue of abatement in relation to remedy will impact very few members. 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.

Nevertheless, the general policy outlined in the consultation seem sensible and are in keeping with the overarching principle of offering members a choice over their benefits during the remedy period. One point of note regarding abatement is that where a member is affected, the financial impact and explanatory information should be included in the RSS to enable the member to make their choice having been provided with all relevant information in relation to their remedy benefits. In addition to the above, there is a particular challenge arising from the existing discretionary application of abatement. As the 2015 Police Pension Regulations does not allow for abatement, there is a specific requirement for bespoke communications to members affected by abatement, which will need to be carefully explained to those eligible for legacy scheme benefits for the remedy period where abatement can apply.

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10. Contingent Decisions: ***Do you think that the proposals with regards to contingent decisions give members opportunities to revisit pension benefit decisions take during the remedy period?***

PFNI notes that the 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 unfortunately it is still not clear what type of financial loss would be dealt with by the compensation scheme.

PFNI broadly agree that the proposals in the consultation do provide members the opportunity to revisit their pension benefit decisions taken during, or around, the remedy period. However, at this late stage the proposals are still regrettably relatively vague and, in our view, still lack a clear commitment to implement a process which is fair and consistent. For example, an opportunity has been missed to clearly outline the basic/initial information required from the member in their application through the contingent decision route. This presents a real danger that scheme managers across the United Kingdom will inadvertently implement the contingent decision process inconsistently, resulting in a 'postcode lottery' for contingent decision applicants.

Additionally, to further ensure a consistent process it would be advisable for the Department of Justice to produce a standard template for contingent decisions applications for members to use. This would be to the benefit not only of members, but also to scheme managers.

Further, the communications to members have yet again been given scant consideration. It is still unclear how members will be made aware of the application process and to whom, in the first instance, their application should be made to. Whilst it will fall to the scheme manager to decide, in the absence of clear and consistent communication it seems likely that undue pressure will be placed on scheme manager, PSNI and administrators to individually deal with queries as to the correct process(es) and point of contact.

Given the variety of circumstances under which members will be seeking to apply for reinstatement of their benefits through the contingent decisions process, PFNI restate their recommendation for an independent body to be engaged to review applications and make a recommendation to the scheme manager.

In reviewing the categories of contingent decisions cohorts PFNI suggest that a further category is included: members who purchased Additional Pension (AP) and wish to have the pension converted to additional service as part of the remedy. The consultation acknowledges those members who could have purchased Additional Service have a legitimate basis for applying through the contingent decisions process,

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therefore this option should also be available to those who could have done the same in the reformed scheme had they not been fully protected.

Additionally, PFNI strongly suggest that it is made clear to all members as part of their RSS that they are entitled to apply for the purchase of additional service through the contingent decisions route. It should be explained that this option is not available solely to those, for example, who opted out, or have periods of part-time service. For clarity, our reading of 'Additional Service' is that it is not limited to those who have already purchased some additional service – rather only that members are eligible to apply to purchase additional service whether they have already done so previously or not.

It is noted within the consultation that all members could have opted back into the reformed scheme from 1 April 2022. However, there is provision within the Police Pensions Regulations 2015 for a scheme manager to deem an election to opt in to be backdated. PFNI strongly suggest that this discretion is made clear to members who apply to reinstate their service during the remedy period, and to outline the implications of not retrospectively reinstating post remedy service – namely that their remedy period service will otherwise become deferred.

The communication requirements on this specific issue are two-fold. Firstly, scheme managers need to be made aware of their power to backdate an opt in application. Secondly, members must be fully informed as to the consequences of their opt in not being backdated to April 2022. Specifically, that if their benefit is deferred it is not payable (unreduced) until State Pension Age. Further, that the deferred benefit means that they lose entitlement to the benefits associated with Weighted Accrual and the Final Salary Link.

11. 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 calculations?*

PFNI agree that the policy proposals in relation to divorce and the requirement for the re-calculation of the CETV accurately address the impact of remedy. Further we support the proposal that any remedy choice made by the member will not negatively impact on the pension credit member. Communications on this aspect will need to be clear and carefully worded. This particular cohort of members require specific consideration, and it will be imperative to explain the impact (or lack thereof) to both the member and the pension credit member to avoid any confusion or misunderstanding.

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12. Bereavement and Child: *Do the proposed amendments to scheme regulations achieve the policy intention of ensuring that the resulting 'member representatives' can make an immediate choice or deferred choice in relation to the remedy period for a decreased member?*

PFNI consider that the government must ensure that the regulations achieve the policy intent. Regulations aside, PFNI fully supports the approach which ensures that no child's pension will be reduced as a part of remedy. In the instances where a member representative is making the Deferred Choice, the deadline for making this choice should be clearly defined as it is for other cohorts of members eligible for remedy.

In recognising the unique challenge that this cohort presents, PFNI suggests that a careful balance is struck between providing relevant information, whilst approaching the request sensitively. The circumstances of having to contact a member representative will be at an unquestionably difficult time, and the scheme manager should ensure they do all they can not to unduly burden those affected.

In summary, PFNI ultimately maintain the view that members should not be forced to be at a financial detriment because of the implementation of remedy, with reference to the difference in the death in service multiplier between the legacy and reformed schemes. Finally, PFNI would suggest an amendment 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. PFNI feel that is the right thing to do, and therefore there should be no discretion.

13. 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?*

It is noted within this consultation that the 2022 Act provides that "*schemes may decide whether to waive all or part of any such liabilities owed to the scheme*". This is another instance where guidance would be useful to ensure a consistent approach from all scheme managers.

PFNI had expected the consultation document and regulations to work together as complementing documents. However, PFNI 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.

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PFNI notes that Deferred Choice members will receive details on their Annual Benefit Statement (ABS) as to any underpaid contributions, including the amount due including interest. PFNI understands that members will be given the opportunity to repay any owed contributions at any point until they make their Deferred Choice and again reiterate that members should be given every option available to make this repayment – including in instalments (assuming the underpayment is not waived).

PFNI raise the effect of opting out of the pension scheme by police scheme members and note there is a different position for the police legacy schemes to other public sector schemes (where a member can opt back in within 5 years to the existing pension scheme). PFNI would like to see those same opportunities given to the police legacy schemes, so that members could opt-out to manage the effect of any associated pension tax.

Neither the regulations, nor this 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 therefore requested in the final legislation.

The lack of information in respect of the application of interest remains of great concern. In the absence of a fully comprehensive consultation, we have had to combine the wording within the consultation alongside information provided by the Government Actuary's Department to try and inform our view. In addition, it is clear that the implementation of the retrospective phase of the remedy presents a huge challenge not only technically, but also in communicating member's options to them. The application of interest brings this challenge into particular focus, as it will be necessary for the information accompanying and/or within the RSS to explain to members the impact of how they choose to deal with their overpaid or underpaid contributions.

It would be remiss not to refer to the lack of appetite within government to address what is colloquially known as the 'pensions trap'. PFNI again call for government to seriously consider taking the opportunity presented by the current amendments required to the pension regulations to resolve this problem and refer to the collective staff associations previously submitted letter of 17 July 2021 for full and further detail.

To reiterate the PFNI's position on those who are eligible for remedy, we refer to our response in Question 1 and request government to provide evidence as to how joiners

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from 2012 – 2015 were informed of their forthcoming changes to pension scheme membership and adequately advised as to the future changes to their pension accrual.

Finally, it is noted that the member or member representative's decision following receipt of their RSS is irrevocable. PFNI raise the potential risk associated with this policy position if the information provided to the member (or member representative) later turns out to be materially incorrect. In such a situation, members or their representative should have the right to change their decision (if required) should the information provided on their original RSS is found to be materially incorrect.

14. Equalities: *Do any of the proposed amendments unlawfully discriminate against a particular protected characteristic and those who do not, or fail to foster good relations between people who share a protected characteristics and those who do not?*

PFNI acknowledge the Equality Screening document, which determined (supported by Government Actuary Department analysis) that a full Equality Impact Assessment (EQIA) was not necessary. PFNI do not accept this conclusion. The fact that a scheme specific EQIA has not been compiled gives PFNI cause for concern that government are lacking in their commitment to ensure the remedy for police officers meets the requirements of the McCloud/Sargeant judgment. It is the government who introduced the discriminatory transitional protections and are therefore required to remedy their effect. It should not be incumbent on respondents to the consultation to seemingly have to perform an equality duty which lies solely with government authorities.

PFNI reiterate their concern that passing powers from the Public Service Pensions and Judicial Offices Act 2022 without a framework of how they should be applied will potentially create a conflict of interest with the scheme manager. Fundamentally, the position of the regulations by not providing consistent outcomes to members and relying on individual interpretation will inevitably result in different financial outcomes to police members across the United Kingdom and members being treated inequitably.

In ensuring the remedy fosters good relations between people who share a protected characteristic and those who do not, PFNI are compelled once again raise the issue of the '**pensions trap'**. The previously mentioned non scheme specific generic Equality Screening did not fully consider the interaction between different retirement ages within the police service and specifically the effect of the retirement date of the 2015 scheme on those members who would be entitled to retire before the age of 55. This principally affects younger members of the scheme who would have been able to

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retire upon reaching their consecutive service of 30 years before the age 55. This is not a new position and has been the case since the introduction of the 2015 scheme however, the movement of protected members into the 2015 scheme from 1st April 2022 further exacerbated this already existing condition, as under the terms of protection no member of the 2015 scheme could have reached 55 before 31st March 2022.

It is clear that government has no real appetite to address this problem, which calls into question how seriously the consideration of good relations is being included in policy proposals and decision making. In short, PFNI continue to question the legitimacy of the use of pension scheme provisions to effectively force officers who are both young joiners and long in service to remain in service for longer than they expected or wished to. This aspect needs to be included and fully considered within a police scheme specific EQIA.

Conclusion:

Considering the huge challenge posed by remedy, PFNI anticipate that issues and problems relating to the amended and new regulations will be identified. In that regard we respectfully suggest that a review should be undertaken one year after the amendments are enacted to consider any further changes required to these regulations. In this time, stakeholders will have been able to collect evidence of any problems with the regulations and/or their interpretation. This can be reviewed through the Scheme Advisory Board so that a solution can hopefully be found and implemented.

Please acknowledge receipt of this correspondence.

L J Kelly
Chairman
Police Pensions Lead
Police Federation for Northern Ireland

7th June 2023