NPCC Police Pensions Update
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Abatement

Contingent decisions - Opt-Outs

Compensation

Contribution adjustments

What is Abatement?

It has been public sector policy to limit earnings of those pensioners who return to work after retirement, either as a member of the same pension scheme or, in some cases, for the same employer, by reducing or withdrawing pensions in payment.

Re-employment

Is a workforce decision.

These slides do not deal with the workforce decisions to re-employ such as retire and return or selection for ACC/DC/CC

These slides do not deal with any requirement for a gap in employment, either to protect the pension age or for employment law.

The Regulations

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PPS 1987 Withdrawal of Pension During Service as a Regular Policeman

- **K4 – (1)** *a police authority by whom a pension is payable under Part B of these Regulations or under Regulation E1 (adult dependent relative's special pension) may, in their discretion, withdraw the whole or any part of the pension for any period during which the pensioner is serving as a regular policeman in any police force (similar provision in Reg 52 of 2006 Regulations)*

Police Pension Fund Regulations 2007

- *(10) Where a police authority continues to pay a pension in whole or in part in a case where they have a discretion to withdraw the whole or any part of it under regulation K4 of the 1987 Regulations or regulation 52 of the 2006 Regulations, the police authority shall in a financial year transfer from the police fund into the police pension fund an amount equal to the amount of pension paid during that financial year to the regular police officer*

But

No abatement provision in the 2015 Scheme

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Previous Approaches to Abatement

- It is important to note that the previous 'schemes' were just agreements on how people could be re-employed and what scheme they might return to if they had already maxed out the 30 year service limit that applied to schemes at the time.

2002

30+ Scheme (pre-2007 funding Regulations)

- Under the 30+ Scheme it was agreed that participants in the scheme would be able to receive sufficient pension in addition to normal pay to restore earnings to their pre-retirement level – in general, compensated for loss of housing allowance

2007

NPIA 30+ Guidance issued 2007 to update 2002 Guidance

- All 30+ pension payments made from the force's pensions account must be reimbursed by the operating account. The cost of a 30+ officer to a force's operating account is therefore salary, National Insurance contributions and reimbursement to the force's pensions account for the pension paid to the officer.

Public Sector Flexible Retirement

- Civil Service
- Teachers
- NHS
- Fire Service

‘If your new salary and pension exceed your pre-retirement salary, we deduct the excess from your pension. This is known as abatement.’

- *This, and the earlier iteration of 30+, may have caused confusion –*
- ***There is no ‘flexible retirement’ in police schemes***.

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Police Pension Scheme:

Retire and Return addresses two primary issues:

Retention & Resilience

- In order to support Uplift and retain experienced officers who wanted to remain in policing but who might otherwise have left service simply to access their 1987 pension lump sum.

Differences between the retirement ages of the 1987 Scheme and the 2015 Scheme

- Following the introduction of the new 2015 police pension scheme, many members had membership of both the 1987 and 2015 schemes. Former members of the 1987 Scheme who achieve 30 years' pensionable service after 1 April 2022 and are aged under age 55 are currently now in a position where:
- If they retire with favourable commutation rates on 30 years' service, where this is under age 55, reformed scheme benefits are unavailable and are treated as deferred to State Pension Age (SPA).
- But:
- If they remain in service to access reformed scheme benefits as an 'active member' at age 55 when the reduction factor is calculated by reference to age 60, commutation rates in the legacy scheme may be lower than those available at 30 years' service.
- This has been characterised by staff associations as a 'Pensions Trap', however legal advice taken has shown that the impact of the retirement ages is not discriminatory

What to consider

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NPCC Guidance issued **July 2022** provided advice on retire and return and abatement:

1. Forces should have a policy on abatement
2. Scheme Managers have discretion to withdraw (abate) pension
3. An officer returning should receive pay only for the hours worked – not pay + pension. However:
4. Pension may be paid in addition to pay where there is strong justification e.g. skill shortage - and an amount equivalent to the pension would be paid from Operating Account to Pension Account

Rationale

Agreed with Staff Associations and Home Office

Cost effective for forces

Simple policy that applies equally to all

The decision whether to abate sits with the Scheme Manager paying the pension

Issues to take into account:

- Legislation
- Affordability/ cost/ value for money – where no abatement cost is salary + pension equivalent payment + NI + employer pension contributions
- Case-law – PO-25374 on decision making, cannot have a blanket policy
- Equality implications of abating some & not others
- Workforce benefits / challenges
- Home Office position – may change

Contingent decisions

- Only four contingent decisions
  - Opt-Out
  - Added Years
  - Honoraria
  - Transfers

- Cannot use a contingent decision to create pensionable service for a period the person was not employed for.
- There is no contingent decision to buy back service such as career break or parental leave.

Opt-Outs

Pre remedy – Opt back into 2006 scheme

During remedy (applies to taper members only)

Post remedy – Scheme manager discretion to allow opt-in.
Regulation 28

Opt-Out During Remedy

Initial position and in guidance as stands, a member who opted out during the remedy period (a taper member) can return to the 1987 scheme.

Changing position, is with legal advice Home Office has reconsidered the position and believe legislation doesn't support a return to the 1987 scheme.

Ongoing discussion with HMT about whether this position meets remedy principles and could invite litigation.

Compensation

Direct financial loss

- The compensation should compensate Pension Scheme members (or their beneficiaries) for direct financial losses they have suffered because of either the discriminatory transitional protections, or any provisions in the PSPJOA 2022 or The Police Pensions (Remediable Service) Regulations 2023.

Part 4 Tax Loss

- Paragraph 9 of section 23 sets out that a part 4 tax loss is a reference to incurring a charge or not being entitled to tax relief or less tax relief under Part 4 of the Finance Act 2004.

Compensation categories

Automatic, these do not require the member to make a claim, and eligible members will be compensated automatically.

- We expect these cases to be of higher volume and reportable as members who qualify for a compensation refund can easily be identified.

Anticipated claims – with evidence. These claims are more likely to be for something specific which is clearly identifiable and financial loss can be suitably evidenced.

- While this is not an exhaustive list, these are likely to be one or more of the following categories: –
- Need for accountancy services.
- Need for independent financial advice.
- Need for legal services.
- Direct financial loss.
- Part 4 Tax Loss.
- Within these claims, it is expected that there will be some claims that could be valid, but will be harder to evidence.

Not payable – These are claims that are not supported by the powers of the PSPJOA 2022 or the directions.

Anticipated claims with evidence

All claims will need to provide clear evidence of a direct financial loss (such as a receipt, invoice, or bank transaction) as well as justification as to how that loss is attributable to the discrimination identified by the McCloud judgment or its remedy.

Anticipated claims would fall into the following categories:

- Accountancy Services
- Independent financial advice
- Legal services
- Financial Loss
- Part 4 Tax Loss

This does not include a payment for information or services that, in the opinion of the decision maker , the applicant could have reasonably obtained from the Scheme Manager of the Police Pension Scheme without charge, such as the following documents:

- Factual information
- RSS
- Pensions Savings Statement (PSS)
- Information request from scheme manager for use with HMRC calculator

Scheme Manager Processes

- Communications to members
- Identifying a decision maker/s for the compensation decision
- Identifying IDRP decision makers – 1st and 2nd stage
- Appropriate segregation between decision makers
- Some forces may choose to use peers in adjoining forces.

Evidence

Evidence should include an explicit explanation of the financial loss incurred and the amount.

In order to validate the claim, scheme managers may need to instruct the services of an actuary or legal professional.

Direction 8, 1h requires a scheme manager to have regard to whether a person could have mitigated their loss:

All claims will need to provide clear evidence of a direct financial loss (such as a receipt, invoice, or bank transaction) as well as justification as to how that loss is attributable to one or all of the conditions set out by section 23 of the PSPJOA 2022.

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Decision Making

The PSPJOA 2022 and the directions require the scheme manager to make decisions about compensation claims, and to consider appeals.

On the matter of scheme manager discretion, in the Home Office consultation response, paragraph 6.172 Home Office said *"Scheme Managers need to be able to consider individual cases when making certain decisions, rather than a blanket set of rules applying"*

When exercising the power to pay amounts by way of compensation, the decision maker must act in accordance with direction 8 of the Treasury Directions.

A decision maker may request such further information from the applicant as they consider appropriate.

The relevant decision maker will always be a representative of the current scheme manager, who is the most recent employer of the member.

The scheme manager must hold a record of the claim and the decision, such that no member can be compensated more than once for any specific loss.

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Contribution adjustments

Well-known aspect of remedy, to be returned to the legacy scheme, the contributions have to be adjusted from those that were paid into the 2015 scheme during the remedy period to the legacy scheme.

- For the 1987 scheme this means paying more, and
- For the 2006 scheme this will mean a compensatory refund of overpaid contributions.

Contributions that are owed by the member

- +Will be increased by adding interest at the NS&I rate
- -And will be reduced by the application of tax relief for the additional contributions

Contributions that are owed to the member

- +Will be increased in value by adding interest at 8%
- -Will be reduced in value by deducting tax relief already claimed

Website updates

1. Member factsheet – Contribution adjustments
2. Animations – Contributions adjustments

Contribution adjustments

Established treasury policy from the start that interest would accrue on owed contributions from members and be paid on contributions owed to members.

The NPCC as part of SAB responded to the consultation both separately and as part of the SAB to say they didn't support interest being charged on contributions where they were owed by members.

The FAQs on the website cover the treasury policy on interest, and link to the treasury letters between GAD and treasury in setting the policy on interest.

NPCC took legal advice on the application of applying interest to the contributions, and the advice was that this is not discriminatory.

The policy position for repaying the contributions, is that members will have a three-month window from the date of the RSS to repay any contributions, if they want to, however they can also wait until they retire and pay these from the lump sum.

Estimated that if all active members paid contributions on receipt of first ABS-RSS this would be £100m

Further communications for members to help them understand their contribution choices

Includes modelling and an animation video.

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Chief-Super	Pension-able Pay	2015 Scheme Conts 13.78%	1987 Scheme Conts 15.05%	Difference Member owes to scheme	Net of tax relief @ 40%	Interest	Total
2015-16	£84,415	£11,632	£12,704	£1,072	£643	£3.54	£646.54
2016-17	£85,754	£11,817	£12,906	£1,089	£653	£8.27	£1,307.81
2017-18	£86,966	£11,984	£13,088	£1,104	£662	£12.97	£1,982.78
2018-19	£88,601	£12,209	£13,334	£1,125	£675	£22.62	£2,680.40
2019-20	£90,817	£12,515	£13,668	£1,153	£692	£30.26	£3,402.67
2020-21	£91,749	£12,643	£13,808	£1,165	£699	£24.23	£4,125.90
2021-22	£92,859	£12,796	£13,975	£1,179	£707	£10.83	£4,843.73
2022-23						£77.90	£4,921.63
2023- 24						£168.77	£5,090.40
2024-25						£77.42	**£5,167.82**

1987 Contribution adjustments

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Some 1987 members may ask to make a contribution adjustment within three months of receiving their statement in August.

Interest

- Interest is calculated to the date of payment in line with direction 15, paragraph 1.
- The reference to 28 days is only applicable on the payment of the benefits to a member based on the judgment rate which is paid to 28 days after the RSS.
- You would need to use the GAD calculator to calculate the interest to the date of payment were a member to choose to settle their contributions on receipt of the ABS-RSS.
- Interest is paid on the net contribution after deduction for tax relief, so we are discussing with HMT how interest would be applied. It is likely that the interest element will have to be a separate sum deducted from pay after tax.

Tax relief

- The directions [4(7bii)] direct forces to not reduce the liability for contributions by tax relief. Instead, tax relief for active members is given during the ordinary method, ie PAYE or self-assessment. Members must pay the contribution adjustment in one sum, [66(5)] so it is unlikely they will be able to use PAYE, they will have to self-assess to pay the tax.
- Our average figures calculate an average contribution payment for a PC for the full remedy period as £2,260.

Possible changes

- We understand that HMT may change the tax relief for active members to be treated the same as non-active members, we are pressing for urgent information on this.

2006 Contribution adjustments

Some 2006 members may ask to receive a compensatory refund within three months of receiving their statement in August.

Important that the decision is done on receipt of an RSS as 2015 benefits may be more beneficial in the future.

Interest

- Interest is calculated based on 8% judgment rate to 28 days within the RSS and NS&I thereafter.
- Interest is paid on the gross contribution return before the deduction of tax relief.

Tax relief

- Tax relief will have been paid on a higher rate of contributions so the refund is adjusted for this.

Previous pension chats

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- **Contribution Adjustments**
- Contribution adjustment – Policy on interest and repayment recap – 18 April 2024 – Slide 6 to 7
- Contribution adjustment tax relief mechanism recap – 28 March 2024 – Slides 3 & 4
- Added pension compensatable amounts –15 February 2024 – Slide 11
- Added Pension Compensatory Refunds – 18 January 2024
- GAD calculator FAQs - 26 October 2023 – Slides 8 to 12
- GAD calculator published - 14 September 2023 – Slide 6
- Home Office consultation - 10 March 2023 Slide 10 to 11
- Regulatory Contribution adjustments and GAD calculator - 17 August 2023 – Slides 4, 5 & 6
- 26 January 2023 – Application of treasury directions on interest – Slides 21 to 29
- 14 December 2022 – Slide 4, 6 & 8
- 24 February 2022 – Slide 11 & 16
- 16 December 2021 – Slide 8

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