

2. The present statutory schemes governing pensions for police officers.

2.1. The Police Pensions Act 1976 (“PPA 1976”) sets up a statutory duty on the Secretary of State to make Regulations which set out one or more police pension schemes. S1(1) of the PPA 1976 provides:

“Regulations to be made by the Secretary of State, with the consent of the Minister for the Civil Service and after consultation with the appropriate advisory or negotiating body, shall make provision—

- (a) as to the pensions which are to be paid to and in respect of members of police forces, whether as of right or otherwise;
- (b) as to the contributions in respect of pension rights which are to be made by members of police forces; and
- (c) as to the times at which and the circumstances in which members of police forces are or may be required to retire otherwise than on the ground of misconduct”

2.2. The “appropriate advisory or negotiating body” is the “Police Advisory Board for England and Wales”, which replaced the previous body, the Police Negotiating Board¹. S1(2) PPA 1976 states that the police pension regulations made by the Secretary of State must contain a series of features. It provides:

“Without prejudice to the generality of the provisions of subsection (1) above, any such regulations shall provide for the payment subject to the regulations—

- (a) of pensions to and in respect of persons who cease to be members of a police force after having served for such period as may be prescribed by the regulations;
- (b) of pensions to and in respect of persons who cease to be members of a police force after such shorter period as may be prescribed by the regulations by reason of infirmity of mind or body;

¹ See <https://www.gov.uk/government/organisations/police-negotiating-board>

(c) of pensions to and in respect of persons who cease to be members of a police force by reason of injury received in the execution of their duty;

(d) of pensions to and in respect of persons who cease to be members of a police force on the ground of age; and

(e) of pensions in respect of persons who die while serving as members of police forces”

2.3. In general, where a statute uses the word “must” it imposes a statutory obligation on a public official, in this case the Secretary of State, to do something or to refrain from doing something. Where the statute uses the word “may” it gives the public official the legal power to do something but does not impose a duty on the official to do so. The official has a statutory discretion to decide whether to exercise the power or not. It follows that the Secretary of State has a duty to make Regulations which provide for the pensions set out above.

2.4. There were, of course, police pensions including police injury pensions, in existence prior to 1976². Hence these provisions described the provisions existing in the pension schemes then in existence as much as describing features for the future. Transitional provisions provided for existing pension arrangements to continue³. However the Secretary of State is entitled to consult on changes to the police pension provisions and then, following consultation, to bring in new pension provisions.

2.5. Section 1(5) of the PPA 1976 provides:

“Regulations made under this section may be framed so as to have effect as from a date earlier than the making of the regulations”

The current schemes made in Regulations for police pensions.

2.6. Successive governments have used the powers in PPA 1976 to make pension scheme regulations for police officers. In broad terms, as life expectancy for retired police

² Made under the Police Pensions Act 1948 and/or the Superannuation Act 1972.

³ See s12 PPA 1976.

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officers has risen and hence the costs of paying pensions to retired police officers has escalated, so the contributions required by both police officers and Forces have increased and the value of the package of benefits delivered by a police pension has decreased. Nonetheless, the value of a police pension remains a very significant part of the remuneration packages offered to police officers.

2.7. There are 3 current police pension schemes:

- a) The scheme brought in by the Police Pension Regulations 1987 (“**the 1987 Regulations**”) which is referred to in this document as the “**1987 Scheme**”;
- b) The scheme brought in by the Police Pension Regulations 2006 (“**the 2006 Regulations**”) which is referred to in this document as the “**2006 Scheme**” also known as the New Police Pension Scheme or the “**NPPS**”; and
- c) The scheme brought in by the Police Pension Regulations 2015 (“**the 2015 Regulations**”) which is referred to in this document as the “**2015 Scheme**”.

2.8. Each scheme constitutes a self-contained statutory framework which defines the rights of members and the circumstances in which those rights can be reduced or forfeited. Unless there is a specific statutory provision permitting this, the rights of pension scheme members do not read across from one scheme to another. Hence, by way of example, a Force acted unlawfully when it attempted to use provisions in the 2006 Scheme to deny an officer an ill-health pension under the 1987 scheme on the grounds that the officer was facing disciplinary proceedings. Provisions in the 2006 scheme do not “read across” to rights of officers or former officers under the 1987 scheme.

The legal problem of transitional provisions and age discrimination.

2.9. The 1987 Scheme closed to new entrants in April 2006 but existing members of the 1987 Scheme stayed as members of the Scheme and continued to accrue future

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pension rights for themselves under the 1987 Scheme after April 2006. Thus all police officers who joined the 1987 scheme and commenced their service prior to 6 April 2006 remain entitled to pension rights defined by the 1987 scheme until at least April 2015 (when some 1987 scheme members were automatically and (probably) unlawfully transferred to the 2015 Scheme as set out below). If an officer has had his pension rights prejudiced by an automatic transfer to the 2015 scheme, that officer may have a right claim damages against the Secretary of State (and possibly the Chief Constable) for any loss on the basis that the forced transfer amounted to unlawful age discrimination against the officer.

2.10. Police officers who joined the police services after April 2006 but before the 2015 scheme commenced in April 2015 could not join the 1987 scheme but had the opportunity to become members of the 2006 Scheme. Officers were, in theory, entitled to transfer from the 1987 scheme to the 2006 scheme but, in practice, few did so because the benefits under the 2006 scheme were less extensive than the benefits under the 1987 scheme. Thus serving officers who commenced their period of service prior to April 2015⁴ will have started as either members of the 1987 scheme or the 2006 scheme⁵.

2.11. Finally, the third scheme was introduced in 2015. As with previous schemes, those joining after the relevant date could only join the new scheme. Hence police officers starting their police service on or after 1st April 2015 can only join the 2015 Scheme. But a different approach was taken by the government of the time to transitional arrangements compared to the approach taken in 2006. In order to deliver the financial savings anticipated by the changes to the cost of police pensions as a result of the introduction of the 2015 scheme, some existing members of the 1987 scheme or 2006 scheme were prevented from continuing to acquire pension rights under their existing scheme after April 2015. They were entitled to transfer to the 2015 scheme and to accrue additional pension rights under the new scheme but officers who were

⁴ Other than those small minority of officers who opted out of the pension scheme altogether.

⁵ There are exceptions such as officers who have periods of service before and after 2006, who will have accrued rights under both schemes and thus, in effect, be paid 2 separate pensions.

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not given protected status could not carry on accumulating pension rights under the 1987 or 2006 schemes. However this bar on acquiring new rights under the 1987 schemes or 2006 schemes did not apply to all 1987 and 2006 scheme members and therein, as it transpired, lay the problem.

2.12. Members of the 1987 scheme and 2006 scheme were divided into:

- “*Protected Members*”, who continued to be able to accrue future rights under the 1987 schemes or 2006 schemes,
- “*Tapered Members*”, who were only able to continue to acquire rights under their existing schemes for a defined period and
- “*Unprotected Members*”, who were unable to acquire any future rights under the 1987 or 2006 schemes.

2.13. The 2015 Regulations provided that unprotected members of the 1987 or 2006 schemes automatically became members of the 2015 scheme (unless they opted out of the police pension scheme altogether). That meant that these automatically transferred officers could only acquire new pension rights for any period of police service after April 2015 under the 2015 scheme. That means that, for example, their right to an ordinary or deferred pension for the years when they were in service after 2015 would not be based on their eventual final salary alone but on combination of their final salary, based on accumulated rights up to 2015 and on a of a Career Average Revalued Earnings Scheme (“**CARE**”)⁶ for any period of service after 2015.

2.14. Unprotected members of the 1987 and 2006 Final Salary Schemes⁷ were thus moved automatically into the 2015 Scheme on 1 April 2015. Fully protected members of the 1987 and 2006 schemes stayed in their existing scheme for the remainder of their careers and tapered members moved into the 2015 Scheme when their period of protection ceased.

⁶ Although their rights under the 1987 or 2006 scheme to a pension based on their “final salary” were preserved and thus the final pension was calculated by a complex formula in accordance with the relevant transition provisions.

⁷ And tapered members after the expiry of the taper period.

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The problem of age discrimination.

2.15. The transitional arrangements gave rise to problems of age discrimination. Allowing some members of the 1987 or 2006 Schemes to remain within their existing Schemes and thus allowing them to continue to accrue benefits under the 1987 or 2006 Scheme, but requiring other former members of the 1987 or 2006 Schemes to move to the 2015 Scheme so that future benefits for those officers could only be accrued under the 2015 Scheme was disadvantageous to younger police officers who were forced to transfer to the 2015 scheme in comparison to older officers who continued to acquire new rights under the earlier schemes. The government did not have to adopt an approach which treated officers differently. It would have been lawful to allow all members of the 1987 and 2006 schemes to have stayed in their existing schemes for the remainder of their careers (as happened in 2006). It may also have been lawful to wind up the 1987 schemes or 2006 schemes completely as at April 2015, by making that an end date on the ability of officers to acquire new rights under the 1987 schemes or 2006 schemes. A partial approach which differentiated between officers may have been politically attractive but it created a legal minefield.

2.16. The core problem for the government was that the 2015 schemes across a number of public service areas were primarily introduced to make savings to the public purse on the future costs of public sector pensions. Allowing public sector workers, including police officers, to remain in their existing schemes would have substantially deferred the time when police forces would have made real savings from introducing the pension new rules, and the government wanted those savings as soon as possible. However it seems to have been politically unacceptable stop officers continuing as members of their existing pension schemes when they only had a few years to serve before retirement. Instead of grasping that political nettle and saying everyone had to leave their existing schemes, and facing the wrath of older Judges, NHS workers and police officers, the government negotiated a “fudge” which allowed those nearest to retirement to stay in their existing schemes and forced younger public sector workers to move to the new (and less beneficial schemes). This “deal” left the unions, including the Police Federation, in a difficult position because they had negotiated the deal which divided up workers into different categories of workers. It may have been

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the best deal that the unions could negotiate at the time but, as is so often the case, yesterday's negotiated deal produces tomorrow's legal nightmare⁸.

2.17. Similar arrangements in respect of existing public sector pension scheme members were imposed as a result of changes to other public sector pension schemes, including those relating to Judges and firefighters. The lawfulness of these types of arrangement were challenged in a series of test cases, with the case of *McCloud and others v Ministry of Justice* being designated as the lead case. On 20 December 2018 the Court of Appeal ruled⁹ that the provisions in the judicial and fire-fighters' pension schemes were unlawful because they constituted unlawful age discrimination. The key finding in that case was that there was no rational explanation put forward by the government to justify consciously treating a group of those who were closest to retirement, and who were the least adversely affected, more favourably than those who were further from retirement and thus were more affected by the changes. Thus¹⁰, as there was no basis for the justification in difference in treatment, the policy could not be justified and was unlawful age discrimination.

2.18. The same arguments about age discrimination apply to police officers who were required to join the 2015 scheme instead of remaining as members of the 1987 or 2006 schemes. A large number of police officers¹¹ challenged the transfer in Employment Tribunal Proceedings. Those who were members of this group litigation may be able to secure damages for any losses they can prove. It may well be too late for officers to commence a new action but, as the government did not want to encourage multiple litigation across all affected pension schemes, assurances have now been given that any reforms would apply to all relevant public sector pension schemes.

⁸ As for example local authorities found to their cost when equal pay audits revealed that the negotiated deals ended up paying male workers more than female workers for jobs of objectively equal worth. That has cost local authorities £billions in equal pay claims.

⁹ See <https://www.bailii.org/ew/cases/EWCA/Civ/2018/2844.html#Order> Permission to appeal this decision to the Supreme Court was refused and thus this is a final determination of the issues.

¹⁰ This is a one line summary which does not do justice to a complex set of legal arguments.

¹¹ The publicly available material suggests about 13,000 officers joined this group action.

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2.19. On 25th March 2020 the Economic Secretary to the Treasury, John Glen, finally made a Written Ministerial Statement which included the following text:

“On 15 July 2019, the government announced it would take steps to remove this discrimination retrospectively (HCWS1725). It confirmed that this would apply to pension scheme members with relevant service across all those public service pension schemes that were introduced in 2014 and 2015, regardless of whether individuals had made a claim. This is a complex undertaking, and it is important to get it right. Since February 2020 relevant pension schemes have been conducting technical discussions with member and employer representatives to seek initial views on the government’s high-level proposals for removing the discrimination.

I am grateful for the constructive engagement of trade unions, staff associations, public service employers and other stakeholders in these discussions. The government is considering the initial views of stakeholders and continuing to work through the details of the technical design elements of the proposals. Detailed proposals will be published later in the year and will be subject to public consultation. The government will welcome views on these proposals.

For the avoidance of doubt, members of public service pension schemes with relevant service will not need to make a claim in order for the eventual changes to apply to them.

I would like to reassure members that their pension entitlements are safe. **The proposals the government is considering would allow relevant members to make a choice as to whether they accrued service in the legacy or reformed schemes for periods of relevant service, depending on what is better for them.** The government will provide more detail later in the year, but if an individual’s pension circumstances change as a result, the government may also need to consider whether previous tax years back to 2015-16 should be re-opened in relation to their pension.

The government will also set out its proposal to remove the discrimination for future service in the forthcoming consultation”

2.20. This was thus an interim statement which gave more details as to how the government would change the rules but did not publish the precise rules. The 2015 Scheme for police officers is a “*public sector scheme*” which comes within the terms of

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this written ministerial statement. This statement (and the July 2019 statement preceding it) as well as statements made by the government to the Employment Tribunal which is considering the pensions age discrimination claim for police officers appears to be a commitment to allow 1987 and 2006 unprotected members the right to make a choice as to whether they wish to continue to accrue rights under the 1987 or 2006 Schemes or to accrue rights under the 2015 schemes.

2.21. Thus, subject to seeing the detail in documents which may be published later this year, the government appears to be proposing to offering police officers who had their pension existing or future rights reduced by reason of being forced to transfer from the 1087 or 2006 Schemes to the 2015 Scheme the chance to re-join the 1987 or 2006 schemes and thus secure the pension rights they would have had if they had stayed members of the 1987 or 2006 scheme all along. It is not be possible to express any view on whether younger police officers were forced to change from the 1987 or 2006 schemes to the 2015 Scheme will be properly compensated for having been required to leave a pension scheme until the full amending Regulations are published. No date has yet been given for the publication of the new Regulations.

2.22. This document will be updated once the way forward is clear but, in the light of the government's commitments, the schemes will be described separately and there will be no analysis of the consequences for officers of being forced to change from the 2006 Scheme to the 2015 Scheme as, in principle, the government has given a commitment to reverse that decision. In the meantime, officers who find that payment to them have been reduced or their rights have been diminished as a result of being forced to transfer from the 1987 scheme to the 2015 should seek legal advice as quickly as possible.

Should Chief Constables make changes now to remove any unlawful discrimination in the 2015 Regulations?

2.23. It may well be that Chief Constables cannot sit back and wait for the government to publish new Regulations but have to take action now to allow officers to re-join the

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1987 or 2006 schemes, despite the fact that the 2015 Regulations says that they are not permitted to do so. This strange situation arises because the police pension schemes are each an “*occupational pension scheme*” for the purposes of the Equality Act 2010 (“EA”) and the PPA is the “manager” of the scheme. Section 61(1) to (3) EA provide:

“(1) An occupational pension scheme must be taken to include a non-discrimination rule.

(2) A non-discrimination rule is a provision by virtue of which a responsible person (A)—

(a) must not discriminate against another person (B) in carrying out any of A's functions in relation to the scheme;

(b) must not, in relation to the scheme, harass B;

(c) must not, in relation to the scheme, victimise B.

(3) The provisions of an occupational pension scheme have effect subject to the non-discrimination rule.”

2.24. Hence, in operating the police pension scheme, the PPA is under a statutory duty not to discriminate or to operate any rule of a pension scheme which is discriminatory. Clearly any provisions in a pension scheme which provide that pensions will only be payable when members reach specified ages could be argued to be unlawful because such rules constitute age discrimination. However, in a statutory scheme, the PPA can rely on s61(8) which provides:

“It is not a breach of a non-discrimination rule for the employer or the trustees or managers of a scheme to maintain or use in relation to the scheme rules, practices, actions or decisions relating to age which are of a description specified by order by a Minister of the Crown”

2.25. Whilst s61(8) covers “*actions or decisions relating to age which are of a description specified by order by a Minister of the Crown*”, that cannot extend to indirect

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discrimination where the discriminatory effect is not by referable to a provision which is related to age but by referable to another factor¹².

2.26. As the police pension scheme under the 2015 Regulations is an “occupational pension scheme” for the purposes of the EA, it follows that the PPA, as the scheme manager, is required to give effect to the rules of the pension scheme “*subject to the non-discrimination rule*”. Thus, unless an exemption applies, the non-discrimination rule must take effect in preference to any discriminatory rules within the scheme. There are a series of exemptions for specified provisions within pension schemes which are permitted, notwithstanding the potential discriminatory effect of the provision: see the Equality Act (Age Exceptions for Pension Schemes) Order 2010. However none of these exemptions appear to be open to a PPA to justify enforcing discriminatory rules in a police pension scheme.

2.27. S62 EA covers a situation where the scheme manager does not have power under the terms of the scheme to make changes to the rules of an occupational pension scheme. That is the position with the police pension scheme since the PPA normally has no power to take any decision which departs from the terms of the statutory scheme laid down in Regulations. The remainder of s62 EA then gives powers to the scheme managers, i.e. the PPA, to change provisions in the pension scheme so as to give effect to the non-discrimination rule. It provides:

“Non-discrimination alterations

(1) This section applies if the trustees or managers of an occupational pension scheme do not have power to make non-discrimination alterations to the scheme.

(2) This section also applies if the trustees or managers of an occupational pension scheme have power to make non-discrimination alterations to the scheme but the procedure for doing so—

(a) is liable to be unduly complex or protracted, or

¹² This is shown by the fact that s61(8) was not referred to in the *McCloud* judgment: see §32.

(b) involves obtaining consents which cannot be obtained or which can be obtained only with undue delay or difficulty.

(3) The trustees or managers may by resolution make non-discrimination alterations to the scheme.

(4) Non-discrimination alterations may have effect in relation to a period before the date on which they are made.

(5) Non-discrimination alterations to an occupational pension scheme are such alterations to the scheme as may be required for the provisions of the scheme to have the effect that they have in consequence of section 61(3)”

2.28. This is a powerful provision which is contained in primary legislation. Thus, in principle, it can (and thus must) be used by a PPA to re-write the rules of the police pension scheme to remove any unlawful discrimination.

2.29. The broad effect of the *McCloud* decision was that permitting older Judges to remain in the old pension scheme (with the considerable financial benefits that they had from being in such a scheme) treated younger judges less favourably than older judges because of their age and that the Secretary of State had failed to show the difference in treatment was designed to achieve a legitimate aim. The Court of Appeal also found that, even if they were wrong and that the transitional provisions did seek to achieve a legitimate aim, the Employment Judge was entitled to reach the conclusion that these provisions failed the proportionality test and were therefore unlawful. The Government has accepted that the same arguments apply to the provisions which prevented younger police officers from remaining members of the 1987 or 2006 schemes when older officers were permitted to do so.

2.30. Thus leaves Chief Constables in a very difficult position. On the one hand, they are obliged to operate the police pension schemes in a non-discriminatory way and thus are not entitled to enforce scheme provisions which amount to unlawful discrimination. On the other hand, Chief Constables are required to operate pension schemes in accordance with the terms of the relevant Regulations and do not normally have any discretion about whether to follow the rules laid down in those

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Regulations or not. But, in this particular case, there is no dispute that rules which prevented 1987 and 2006 scheme members from being able to continue in those schemes were unlawful, because the Secretary of State has accepted that these rules were unlawful. It is therefore necessary for police officers and Chief Constables to determine whether the obligation to comply with the wording of the 2015 Regulations or the obligation to operate the scheme in a non-discriminatory way takes precedence.

2.31. Where there are conflicts between specific statutory duties and obligations under the EA not to discriminate, the usual arrangement is that a person cannot rely on equality provisions to override a public body's duty to comply with statutory rules. Thus, a person who is required to act in a particular way in order to comply with their obligations under a statutory scheme is generally not acting unlawfully under the EA even if that act would otherwise constitute unlawful discrimination. This exemption is set out in a combination of section 191 EA and Schedule 22. Paragraph 1(1) of Schedule 22 provides:

"A person (P) does not contravene a provision specified in the first column of the table, so far as relating to the protected characteristic specified in the second column in respect of that provision, if P does anything P must do pursuant to a requirement specified in the third column"

2.32. Accordingly, if a Chief Constable could bring himself within the provisions of this Schedule, he would be entitled to enforce the terms of an occupational pension scheme made under current regulations even though the enforcement of those rules constituted unlawful discrimination. But there is a problem for Chief Constables in relying on these rules because, for age discrimination, the rules have not been brought into effect by the government.

2.33. The relevant table is in paragraph 1 of Schedule 22. It includes the following:

"Specified provision Protected characteristic Requirement

Parts 3 to 7	Age	A requirement of an enactment"
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2.34. Accordingly, if that provision were brought into effect, it would allow a Chief Constable to rely on the provisions of the 2015 Regulations to take precedence over any duty on the Chief Constable to re-write the rules of the police pension scheme under s62. However the relevant commencement provisions for this part of the EA were the Equality Act 2010 (Commencement No 4, Savings, Consequential, Transitional, Transitory and Incidental Provisions and Revocation) Order 2010 (“**the 2010 Order**”). Article 2(5) of the 2010 Order provided that sections 61 to 77 came into force. Article 2(14) then provided that Schedule 22 came into force but it provided:

“Schedule 22 except so far as it applies to the protected characteristic of age in Parts 3 and 7 of the 2010 Act”

2.35. S62 EA is included in Part 5 of the EA. Accordingly, the position appears to be that a person is not able to set up a defence of statutory obligation in a case where the relevant protected characteristic is age and the rules in s61 and s62 are engaged. Age was, of course, one of the relevant protected characteristics relied upon in the *McCloud* case and was the ground on which the case succeeded.

2.36. It follows that, although this may appear to be surprising, if a claim is made against a Chief Constable that the enforcement of any of the rules of the police pension scheme constitutes unlawful age discrimination, the Chief Constable is not entitled to assert that her obligation to comply with the 2015 Regulations overrides her duty to operate the police pension scheme in a non-discriminatory manner. Further, the Chief Constable has both a power and a duty under s61 and s62 to make changes to any parts the statutory provisions of the police pension scheme which offend against the overriding duty on the Chief Constable to operate the pension scheme in a non-discriminatory manner.

The main features of the 1987 Scheme.

2.37. The types of pension to which a police officer is entitled under the 1987 Regulations:

- a) An “ordinary pension”;

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- b) A deferred pension;
- c) An ill health-pension¹³.

2.38. Regulation B1 provides that a police officer who is over the age of 50 and has 25 years pensionable service is entitled to an ordinary pension on retirement¹⁴. The amount of the pension is calculated in accordance with Part I of Schedule B, subject however to Parts VII and VIII of that Schedule. Subject to a maximum of 2/3rds of Average Pensionable Pay (“**APP**”)¹⁵, the amount of an ordinary pension is:

“The amount of the annual pension shall be half of the policeman's average pensionable pay with the addition of an amount equal to two sixtieths of that pay, multiplied by the period in years by which his pensionable service exceeds 25 years”

Hence, a police officer with 25 years’ service who had an APP of £40,000 is entitled to an ordinary pension of £20,000 per year. If the same officer worked for a further 3 years making a total service of 28 years, he would be entitled to an increased pension of six sixtieths of £40,000, namely an additional £4,000 per year, taking his pension up to £24,000 per year, index linked from retirement. Full details of the members benefit under the 1987 Scheme are set out in the government guide to the 1987 scheme¹⁶ which is known as the “**PPS**” or the Police Pension Scheme.

2.39. This is broadly a “60th scheme” meaning that the officer gets 1/60th of his Average Pensionable Pay (“**APP**”) for every year of service. APP is a defined term in the 1987 Regulations. Regulation G1 provides for rules to calculate APP. In broad terms, the average of an officer’s final year’s salary is used to calculate your pension but the best salary from the previous three years also applies, so if for any reason an officer had a

¹³ Injury pensions were originally included under the 1987 Regulations but are now in separate Regulations.

¹⁴ Subject to various provisions in Regulation B1 which are not looked at in detail here.

¹⁵ See paragraph 5 of Schedule B1.

¹⁶ See

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/658050/PPS_Members_Guide.pdf

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higher salary in either of the 2 preceding years that is the figure that will be used. A year is calculated from the date of retirement backwards in blocks of 365 days.

- 2.40. If an officer has less than 2 years' service, his pension contributions will be returned less an adjustment for tax and National Insurance. If an officer has between 2 and 25 years' service (but has not reached age 55), then he gets a Deferred Pension which becomes payable at age 60 (includes pensions increases). If an officer has between 25 and 30 years' service (but has not yet reached age 55 at retirement) the officer receives a lump sum (pension x 2.25) which is payable when the officer reaches aged 50. If the officer has more than 2 years' service and is aged 55 or more, he is entitled to immediate payment including maximum commutation.
- 2.41. The limit was 30 years under the PPS. Hence, officers who started their police career at aged 20 could retire and claim a pension from aged 50. If an officer continued working after completing 30 years, the officer would continue to receive a salary but did not accrue additional pension entitlements for any years worked over after 30 years.
- 2.42. The 1987 Regulations contains a comprehensive code dealing with ill-health pensions. This is considered in detail below since it has common features across all 3 pension schemes. The 1987 Regulations originally contained provisions relating to police injury pensions, namely additional pensions payable to police officers who become permanently disabled as a result of an injury suffered in the execution of duties.
- 2.43. However, as part of the changes brought about when the NPPS came into effect as a result of the 2006 Regulations, provisions relating to injury pensions were taken out of the 1987 Regulations and set out (in largely but not completely identical form¹⁷) in a new set of Regulations, namely the Police (Injury Benefit) Regulations 2006 ("**PIBR**").

¹⁷ Hence, for example, an appeal under the 1987 Regulations was to a single Home Office appointed "Medical Referee". Appeals under PIBR are to a panel of medical referees known as the Police Medical Appeal Board or PMAB.

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2.44. The purpose of taking the provisions relating to injury pensions out of the 1987 Regulations and putting them into a separate set of Regulations appears to have been to create a single injury pension scheme to operate for all police officers, regardless as to which pension scheme applied to them.

2.45. That approach was continued when the 2015 scheme came into effect. As a result, the 2015 Regulations also require injury pensions to be considered under PIBR. Injury pensions are a source of considerable litigation largely because, unlike other police pensions which are funded centrally by the Home Office, the costs of injury pensions are paid by individual Forces. Thus each pound spent on paying an injury pension to a retired police officer is a pound that the Chief Constable does not have available to fund services in her own Force.

2.46. That tension can cause a considerable conflict of interest for a Chief Constable because he or she can be a decision maker on matters relating to injury pensions (such as whether to refer a case to the SMP or under Regulation 33) but is also the person who is in control of the budget out of which pensions are paid. The scheme relating to Injury Pensions is set out in detail below but that potential conflict of interest can give rise to considerable legal difficulties.

The main features of the 2006 Scheme.

2.47. Full details of the rights of scheme members under the 2006 Scheme are set out in the Members Guide¹⁸. The 2006 scheme known as the “NPPS” or the “New Police Pension Scheme” which came into effect on 6 April 2006. The primary features of the scheme¹⁹ are:

- Each year of pensionable service gives an officer an entitlement to a pension of 1/70 of final pay, up to a limit of 35/70;

¹⁸ See

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/658041/NPPS_Members_Guide.pdf

¹⁹ See

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/117730/npps-members-guide-mar-09.pdf

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- The earliest date that a pension can be paid is 55;
- 35 years' service is needed for a maximum pension;
- A maximum pension is an annual payment of half of final pay, plus an automatic tax-free lump sum of four times the annual pension;
- Final pay can take account of pay in up to 10 years prior to retirement, if this would give a bigger pension; and
- There were transitional provisions for officers who were members of the 1987 scheme.

2.48. The 2006 Regulations substantially retained the definitions of “*permanent disablement*” for police officers found in the 1987 Regulations for officers who were unable to continue to serve due to ill-health. However, the ill-health pension became payable at 2 levels under Regulation 29 of the 2006 Regulations, namely a “standard” ill-health pension and an enhanced ill-health pension for a police officer who, at the time of retirement, was permanently disabled from “*engaging in any regular employment otherwise than as a regular police officer*”.

2.49. “Regular employment” is defined in Schedule 1 to mean “*employment for an annual average of at least 30 hours per week*”. Ill-health pensions can then be reviewed by the PPA applying the provisions in Regulation 51 of the 2006 Regulations.

The main features of the 2015 Scheme.

2.50. The benefits for members in the 2015 Scheme are set out in detail in the Members Guide published by the government²⁰. It is a Career Average Revalued Earnings (“**CARE**”) scheme as opposed to a final salary scheme. The wording of officers who can be required to retire on the grounds of injury or illness has changed from “permanent disablement” to “medical unfitness²¹”, which is probably a more accurate description. The main features are:

²⁰ See

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/658720/PPS_2015_Members_Guide.pdf

²¹ See Regulation 74 of the 2015 Regulations.

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- For each year an officer is an Active Member, the officer will receive $1/55.3$ of his or her earnings as a life long pension. Hence for every £10,000 earned in a year, the officer accrues £180.31 per year in annual pension payments (revalued by inflation to the year of retirement).
- Full-time and part-time officers accrue pension rights in the same way.
- The Normal Pension Age (NPA) is 60 and the Normal Minimum Pension Age (NMPA) is 55.
- Officers can remain Active Members of the 2015 Scheme for as long as they wish because there is no maximum period of service.

2.51. There are transitional provisions which required some members of the 1987 and 2006 schemes to transfer to the 2015 scheme. However these provisions have been accepted by the government to be unlawful for the reasons explained above, and Regulations are awaited to give affected police officers the right to transfer back to their original schemes, unless the schemes are changed in the meantime by Chief Constables.

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