

POLICE PENSION CHANGES AND OPTIONS FOR POLICE OFFICERS - AN OVERVIEW

The Actions of the PFEW

Members will be aware that the PFEW has undertaken a detailed examination of the changes to Police Pensions made in April 2015.

You will have noted that although the PFEW does not support the changes that were introduced, it was able to consult and some valuable concessions for Police Officers which have not been made available to other Public Sector organisations who were also subject to radical changes.

In conducting its consultation with the Government, the PFEW had taken advice from its own lawyers and from leading counsel. Following the changes that were made, the PFEW reviewed the position again and has concluded that at this time it will not be challenging the introduction of the Police Pension Scheme 2015 and the transitional provisions.

The PFEW continues to monitor the situation and has stated that should circumstances change it will review the position on behalf of all the Police Officers.

The Actions of your Federation

In addition to the work of the PFEW, the Police Federations that make up Region 2 (North East) of the PFEW have commissioned a **wholly independent review** of the changes to Police Pensions and the conclusions of the PFEW.

We have, on your behalf, instructed a specialist pensions law firm and one of the leading Silks on Pensions Law in the UK to conduct that review. Our advisers have been examining the position in detail since March 2015 and we will be receiving a report with the conclusions of their review which **we will circulate to all our members over the next couple of weeks.**

Notwithstanding the above, we are aware that some law firms are actively targeting Police Officers to instruct them by publicising that a challenge to the pension changes for Police Officers may be possible.

The details of the basis of any challenge that those firms would make are not available but we understand that the claims, if made, will be through the Employment Tribunal and will be based on age discrimination and indirect race and sex discrimination.

As we have not seen the advice surrounding these possible claims, we are unable to provide a view as to whether or not such claims would be of any merit or successful.

Police Officers who provide their details to those firms promoting such claims may be offered Conditional Fee Arrangements (**CFAs**) together with a suggestion that they buy an accompanying policy of insurance to protect them from an adverse costs order in the event that the case was lost or a suggestion that they making a claim on any existing legal expenses insurance to facilitate a claim.

We understand that in the current circumstances many of you will be wondering what is the best course of action for you? In order to support our members with a fully unbiased and independent view and to avoid any prejudice and unnecessary expense for them, we have, in addition to commissioning the independent pension legal review noted above, instructed one of the leading Employment Silks in the UK to advise.

Instructions are currently being prepared for our Barrister and we hope to receive a written Opinion on the position **within the next 4 weeks**.

When this written Opinion is ready we will circulate the conclusions with you and the PFEW so that we are able to take co-ordinated actions and you are able to make an informed decision on the situation.

In the meantime, the remainder of this note has been prepared to assist officers who may be considering instructing a law firm and/or entering into a Conditional Fee Agreement before the independent pensions review and the independent conclusions of the leading employment Silk are available.

Conditional Fee Agreements (CFAs)

CFAs are complicated agreements often called "No Win, No Fee" agreements. However this term is misleading - "No win, no fee" does not necessarily mean "no win, no cost". They have historically been subject to criticism by the Legal Ombudsman and some consumer bodies but they are still popular as a means of funding litigation.

We have listed some common pros and cons of CFAs below but before entering into such an arrangement we would suggest you ask yourself the following two questions:

- Do I understand all the terms of the CFA?
- Is it necessary for me to instruct a firm and enter into a CFA now or can I wait to consider the conclusions of the independent pensions review and the independent employment review both of which have been prepared with the assistance of the leading barristers in the UK? If the advice to your Federation is that a claim on behalf of Police Officers would have any merit and a chance of success then we will pursue this with the PFEW for you.

The main Pros of a CFA are:

- if you do not win your case then usually you are not liable for your own solicitor's costs;
- It encourages the solicitor to work diligently on your case; and
- it enables some people to gain access to legal representation at an Employment Tribunal or the Courts if they cannot afford to fund such claims.

The main Cons of a CFA are that

- If you win, you will usually be charged a "success fee" by your solicitor. This will reduce the value of any award you may receive.
- You will probably be required to buy an accompanying policy of insurance to protect you from an adverse costs order in the event that your case was lost. The cost of this may not be recoverable.
- CFAs do not cover the cost of any tribunal fees or disbursements (e.g. external barrister's fees, travel etc.). These could be quite substantive.
- You do not have full conduct and control of your case in the same way as if you instructed a solicitor without entering into a CFA. The Solicitor and insurance company involved may make decisions on your behalf or require you to accept a settlement that you disagree with.

- The CFA may only cover the arrangements in relation to the initial claim at an Employment Tribunal. Even if you are successful, any decision may be challenged to a Higher Tribunal or Court.
- If you decide to end the CFA before your case is concluded, then your solicitor will probably require you to pay all of his fees and disbursements up to the date you ended the agreement. You will also continue to be liable to pay him the success fee if you win the case using a different solicitor.

Our Recommendation

We suggest that you wait and consider the conclusions of the two reports that we are having prepared and which should be ready for circulation within the next 4 weeks before you make a decision on whether or not to instruct your own legal adviser.

Please note:

- if you are considering leaving service in the near future (or have left service); or
- are leaving membership of the Care 2015 Scheme (or have left membership);

then strict time limits apply for making a claim to the Employment Tribunal (typically just shy of 3 months). If that is the case and you still wish to make a claim, then you should consider doing so without waiting for our additional reports.

M Richardson JBB Secretary
Cleveland Police Federation
Joint Branch Board.

P Brown Chairman
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Joint Branch Board

KEY FACTS

- Following a comprehensive review, the PFEW has concluded that it will not be challenging the introduction of the Police Pension Scheme 2015 and the transitional arrangements.
- The PFEW continues to monitor the situation and will review its decision should circumstances change.
- Together, the Police Federations comprising Region 2 (North East) have commissioned reviews of both the pension changes and the merits of making a claim to the Employment Tribunal for Police Officers.
- The reviews were commissioned earlier this year and are entirely independent of the PFEW. They are being carried out by two of the leading Silks in pensions and employment law in the UK.
- The reviews should be completed in the next 4 weeks and the results will be circulated to all Region 2 Federation members and the PFEW.
- Some law firms have stated that claims by Police officers to the Employment Tribunal based on age, race or sex discrimination could be made in the circumstances.
- Police Officers who provide their details to those firms may be offered Conditional Fee Arrangements (CFAs) together with a suggestion that they buy an accompanying policy of insurance to facilitate a claim and protect them against some costs in the event that their case is lost.
- We recommend that you consider the pros and cons of CFAs (details are in the accompanying note) before agreeing to instruct any law firm or enter into a CFA.
- We are urgently assessing on your behalf whether or not claims to the Employment Tribunal would have any merit or be successful. If there is any merit in such claims then we will be raising this directly with the PFEW on your behalf and we will seek to take co-ordinated action for us all.
- Before instructing any law firm on the matter, you should ask yourself
 - are there any time limits that apply to me (see note for details);
 - is it in my best interests; and
 - if so, is it also necessary for me to instruct a firm and enter into a CFA now or can I wait to consider the conclusions of the independent reviews that are being carried out on my behalf.