

Police Federation  
Of England and Wales



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Established by Act of Parliament

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NATIONAL SECRETARY'S OFFICE

19/03/2021

Frances Clark  
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2 Marsham Street  
London  
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Sent via email to: [Frances.Clark@homeoffice.gov.uk](mailto:Frances.Clark@homeoffice.gov.uk)

Dear Frances

**TAX IMPLICATIONS OF THE REMEDY TO THE UNLAWFULLY DISCRIMINATORY TRANSITIONAL PROTECTIONS IN THE 2015 CARE SCHEME**

I write further to the publication (on 4 February 2021) of the Government's response to the consultation on the Remedy, and subsequent meeting of Scheme Advisory Board members in the technical working group held on 10 February 2021.

During the February meeting, members were invited to send you any specific comments or questions regarding taxation implications relating to the implementation of the Remedy. PFEW's current observations and queries are detailed below. The paragraph references used refer to the Government's response to the consultation unless otherwise stated. Please note that the list is not exhaustive as we are taking legal advice on this subject.

1. The proposal for members who owe additional contributions, and their resulting change in tax relief is complex in nature, but not highly detailed in the Government's response (¶. 2.94). It is acknowledged in the response that members may be better off if the tax relief is apportioned according to the relevant tax year in which the contribution would have been paid had the discrimination not occurred (rather than the year in which the adjustment is made), but the solution offered is that members will be able to apply for the tax relief to be calculated in this way if they wish to do so. A similar suggestion is made in respect of the tax applied to the payment of underpaid pensions (¶. 2.105), which will be paid as a lump sum and taxed in the year they are paid, unless the member proactively requests otherwise. PFEW have concerns about both of these suggestions. Firstly, this seems to operate on a basis that is contrary to the principle of placing members back in the position they would have been had they not been subject to the unlawful discrimination, and would also appear to allow administrative considerations to stifle the application of this principle. Secondly, this proposal places the emphasis on the members to take action, which to us seems wholly inappropriate as they are not the authors of the need for Remedy. Further, if this approach is to be adopted, then:
  - a. How are members to be informed that they are in a position to request a re-calculation of their tax position?
  - b. What will be the timescales and processes involved?
  - c. Is this process accommodated within existing legislation, or will new/amending legislation be required?
  
2. The consultation on the Remedy to the discrimination published in July 2020 references the HM Revenue and Customs (HMRC) time limits for recovering underpaid tax, in relation to members who will be due a refund of contributions (July 2020 Consultation ¶. B.30). The Government's response to the consultation confirms that it intends to deviate from its original intention and rather than deducting tax in line with the statutory HMRC time limits, all refunds of overpaid contributions will be subject to a deduction in respect of the tax owed over the Remedy Period (¶. 2.95).
  - a. How will the revised proposed approach circumvent the existing statutory HMRC time limit on collecting underpaid tax? (The potential retrospective nature of this imposition gives rise to concerns about its validity.)
  - b. Why is it necessary to recover underpaid tax outside of the existing HMRC time limit?
  - c. Where a deduction is made from a member's refund of contributions in respect of underpaid tax outside of the existing HMRC time limit, what is the intended destination of these funds, and what will they be utilised for if they are not legally owed to HMRC?

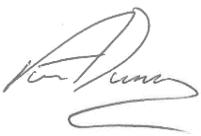
3. We welcome the commitment in the Government's response to the consultation that the Remedy for retired members will ensure that any re-calculation of commuted lump sums will be conducted with reference to the actuarial factors in place at the original date of retirement (¶. A.11). Please confirm that the factors used will be from the scheme the member has chosen to accrue benefits in during the Remedy Period? (PFEW originally raised this question in its response to the consultation, but the Government's response fails to answer our query.)

Further, PFEW's response to the consultation specifically sought confirmation that any additional Pension Commencement Lump Sum (PCLS) arising from Remedy will be treated as a correction to the original payment, and not an unauthorised payment under HMRC tax rules. (This query was also in our response to the consultation, and has not been addressed in the Government's response.)

4. Comparable to (3) above, and also referenced in our consultation response, what is the status of refunds due to members as a result of their overpaying contributions during the Remedy Period? As these will not be a 'true' refund of contributions in the context of normal pension scheme administration, we seek the same confirmation requested above, namely that any refund of overpaid contributions arising from the Remedy will not be treated as an unauthorised payment under HMRC tax rules?

We look forward to receiving appropriate answers and information from yourselves or HMRC colleagues to the points raised above.

Yours sincerely



**ALEX DUNCAN**  
**National Secretary**