Dear Sir,

I am writing with reference to the LCM on Public Service Pensions and Judicial Offices Bill currently with the Committee of Finance. I would like to inform you about some of the various issues that are still outstanding with the bill.

1. That the cost cap mechanism case is currently before the courts. The government are attempting to make the pension membership pay for their mistake by taking money out of the pension scheme to correct their error. The cost cap was breached, briefly more money was found to be going into the pension scheme than expected so the arrangement was that benefits would increase such as an increase in the value of pension contributions, death benefits or a reduction in contributions. The government 'paused' this mechanism in an attempt to take this money to pay for its error in the McCloud judgement. This case is very likely to be won so whatever arrangements the government are currently proposing are probably going to have to be scraped. There is also the morally bankrupt approach of taking money from the ALPHA scheme which is paid into by and large younger members (people who joined after 2012/2015) to pay for people on the classic scheme many of whom are retired/approaching retirement.
2. The amount of responses to the consultation represent a huge amount of workers and their manifold issues raised were ignored by a predisposed consultation and not deal with the cause of the public pension changes court case. One example from the consultation response would be:

   *2.12 A view was also expressed that the proposal to remedy the discrimination by moving all members to the reformed schemes for future service was itself as discriminatory on grounds of age as the original protections had been. "The age discrimination within this new proposed remedy exactly mirrors the unlawful age discrimination within the transitional protections, and in many ways is more objectively clear, as it lacks even the veneer of justification that was present in the transitional protections case". – CTU*
   The consultation response fails to address the key issue of the McCloud judgement in that the decision to move people from one pension to another on a set date was discriminatory on the grounds of age. The government is planning to move everyone to a new pension scheme on the 1st April 2022 which again with disproportionately affects the young. Various trade unions and representative bodies have tried to warn the government that going down this pathway will lead to future court cases yet the government presses on with their plan.
3. The changes planned with specific reference to Northern Ireland are based on information which I can demonstrate is not true. It was stated in the DoF Northern Ireland consultation that people joining after the 1st April 2012 would reasonably have known they would be moving to the ALPHA scheme. I quote below from the Community trade union response:

   a. Within the consultation it states, "**As members who first joined their scheme after 31 March 2012 were ineligible for transitional protection regardless of their age, they were not subject to the discrimination identified by the Courts.**" This glaringly ignores the reason for the discrimination in the first place. These people joined schemes and signed up to their terms and conditions and then were unreasonably and unfairly moved into another scheme which the courts found the Government had done unlawfully. The DoF and wider HM Government is holding a fig leaf up to defend themselves saying that these officers were outside the remedy period and as such are not

due the same protections. Paragraph 2.6 of the consultation states, "**The proposed introduction of the reformed schemes was well publicised at the time. Anyone joining after 31 March 2012 would, therefore, reasonably be expected to have known that they would join or be moved to the reformed schemes.**" This was NOT the case in Northern Ireland. The DoF borrows from the main England and Wales consultation in this regard unfairly which we will detail in 6.4, 6.5, 6.6 and 6.7 below.

6.4 The Public Service Pensions Bill was proposed on the 26th November 2012 by the Minister of Finance and Personnel. This is some months after the 31st March 2012, how could a citizen of Northern Ireland have known what the outcome of this bill would be on the 31st March 2012 when the bill was only proposed some 8 months later?

6.5 The consultation on the said bill in paragraph 6.4 started on the 21st January 2013 and concluded on the 15th April 2013. This is over a year after the 31st March 2012. How again could a citizen of Northern Ireland have reasonably known what the consultations terms of reference, its contents were on the 31st March 2012? How on the 31st March 2012 would a citizen in Northern Ireland have been able to exercise their democratic right to partake in the consultation a year into the future? How on the 31st March 2012 would a person living in Northern Ireland known what the outcome of giving their view would be after the consultations end on the 15th April 2013?

6.6 The Department of Finance and Personnel published an official response to the consultation on the 21st May 2013. This is noted in an Employee Pension Notice of the same date. Again how would a person on the 31st March 2012 reasonably known of this? The next stage was introduction into the Assembly on the 17th June 2013 with a second stage debate on the 25th June 2013. How could a person in Northern Ireland who wanted to use their democratic mandate and have their MLA ask questions for them in the Assembly about the proposed changes be reasonably expected to know on the 31st March 2012 of the changes? After this it goes on to the committee stage where various bodies give evidence. On the 24th September 2013 the committee extended the stage to take in further views – clearly things are not finalised – things are not complete – proposals are still being looked into yet according to the consultation on the 31st March 2012 a person in Northern Ireland was reasonably aware of all the things at this stage the committee had not even met with to discuss.

6.7 Various bodies gave evidence to the committee they included on the 2nd October 2013 the Northern Ireland Human Rights Commission, on the 9th October 2013 the Irish Congress of Trade Unions, Fire Brigades Union and National Association of Schoolmasters Union of Women Teachers gave evidence. On the 16th October 2013 the Nevin Economic Research Unit, British Medical Association, Northern Ireland Local Government Association and the Department of Finance and Personnel gave evidence. On the 23rd October 2013 the Department of Finance and Personnel again gave evidence and again they gave evidence on the 6th November 2013 and again they gave evidence on the 13th November 2013. The committee then after all these bodies had gave evidence did a section by section consideration of the Act on the 20th November 2013 and gave their report on the 27th November 2013. It then moved onto the consideration stage in the Assembly on the 14th January 2014 and had a further consideration stage on the 27th January 2014. Its final stage was then on the 4th February 2014 and was given Royal Assent on the 18th March 2014. We put it in the *strongest terms* that is was not reasonable for a person in Northern Ireland on the

31st March 2012 to have reasonably known of the changes that were going to come into effect as the changes themselves were not even known for almost two years after the 31st March 2012.

6.8 As such we believe that those who joined prior to the 18th March 2014, and in the interests of fairness this should be extended to those joining prior to the 1st April 2015, be offered the choice being given to those who joined prior to the 31st March 2012.

**If LCM going before committee at the moment passes it will set the precedent that anything announced in Westminster has already passed in Northern Ireland before the legislative body has even had the opportunity to glance at it.**

4. The changes have disproportionately affected front line services in terms of their Normal Pension Age changing on entering into the ALPHA scheme. The changes callously ignore the service given and the reduction in life expectancy from years of frontline service. I quote from the NI consultation response:

   3.11 Individual comments from members of the emergency response services expressed continued opposition to how the original 2015 reforms had restricted a concessionary approach on NPA to Police and Fire Service workforces, and advocated their own NPA should be similarly aligned: "As a paramedic my life expectancy is reduced. This is a fact. Night working shift workers research etc. clearly states this as well as the stress and other factors associated with psychological trauma. It's a disgrace we aren't treated similarly to 27 other emergency services when we are called upon more than our counterparts". - Individual response

Finally I attach the Community trade union consultation response which I would ask you to review as the points raised in it are clearly not dealt with by the bill and ignored by the government response.

Thank you for your time,

Mr S Robinson

12th October 2030

Public Service Pensions,
Pensions Division,
Department of Finance,
Waterside House,
75 Duke Street,
Londonderry,
BT47 6FP

Dear Ma'am / Sir,

Community Trade Union Pension Challenge Administration Team Response to Department of Finance Consultation on Public Service Pension Schemes: Changes to the transitional arrangements to the 2015 schemes.

We are responding to DoF Consultation on Public Service Pension Schemes on behalf of the Community trade union Pension Challenge Administration Team.

1. Introduction

1.1 The Pension Challenge Administration Team is comprised of various prison officers from the Northern Ireland Prison Service.

1.2 We represent a significant percentage of officers from various sectors in the Northern Ireland Prison Service.

1.3 Turning to the consultation, the RT HON Steve Barclay MP stated "When reforms to the main public service schemes were introduced in 2015 they had several objectives, including greater fairness between lower and higher earners, future sustainability and affordability. These objectives are just as important today as they were then." We do not disagree with these objectives and agree in principal that Career Average Related Earnings (CARE) pensions, while perhaps not as generous to some, are generally fairer, both to the wider membership of the pension scheme, and the taxpayer.

1.4 We note Mr Barclay also states, "**The issues we are facing here are complex and affect large numbers of people in different ways, so final decisions will need to take full and careful account of the views of all stakeholders**". We agree and are pleased HM Government intend taking this approach.

1.5 We note "**This consultation seeks to explore the differing impacts, potential mitigations, and other relevant issues for each option. Views are invited on the viability and desirability of both approaches.**" We welcome the opportunity to respond to the changes but the consultations two approaches methodology predisposes an outcome we will go on to show is flawed.

1.6 Notwithstanding "**It is proposed that all active scheme members will be placed in these pension schemes in respect of employment from 1 April 2022 onwards.** ", our position is the proposed remedy clearly DOES NOT take into account the hugely detrimental financial impact transferring to the CARE Scheme pension in 2022 will have on the a significant percentage of serving prison officers, or satisfactorily considers the nuances of prison officer retirement age for their pensions. Furthermore, the proposed remedy, if implemented, would

treat the a significant percentage of serving prison officers in a discriminatory and / or unfair manner.

2. Purpose and Scope of our Response

2.1 The consultation explains their proposal to 'level-up' all those public sector pension schemes members, by allowing them to return to their original scheme until 31st March 2022 (should they wish). This will essentially afford all scheme members 10 years pension protection, prior to transferring to the 2015 CARE Scheme, "**As part of the 2015 reforms, those within 10 years of retirement remained in their legacy pension schemes. This transitional protection was provided following consultation with member representatives and was intended to protect and provide certainty for people who were close to retirement. Following legal cases taken by some members of the firefighters' and judicial schemes in Great Britain (the McCloud/Sargeant cases) in December 2018 the Court of Appeal found that this part of the reforms unlawfully discriminated against younger members of those schemes as transitional protection was only offered to older scheme members1. The Courts require that this unlawful discrimination be remedied.**"

2.2 In addition the Public Services Pension Leaflet states: "**What's happening after the remedy period? The remedy period ends on 31 March 2022. After that all active members will be placed into their 2015 scheme.**"

2.3 It is our intention to demonstrate, in relation to prison officer pensions, while the proposed remedy DOES end the discrimination identified by the courts, within the transitional PROTECTIONS, it DOES NOT do so in a fair and non-discriminatory manner as both age discrimination and unfairness still exist within the wider transitional ARRANGEMENTS.

2.4 Moreover, nor will the proposed remedy avoid uncertainty or other problems. Likewise, nor does placing everyone into the 2015 reformed pension schemes from 1 April 2022, regardless of when they joined in any way provide equality of treatment.

2.5 We are grateful for the opportunity to respond and will address **Questions 1, 2, 9, 16, 20 and 21** of the consultation, as specifically outlined in our conclusion.

3. Fundamental Discrimination and Unfairness within the Proposed Remedy

3.1 As stated at 2.3 and 2.4 in 'Purpose and Scope of our Response' above, we believe the proposed remedy does remove the discrimination caused by the transitional protections, but does NOT remove discrimination and / or unfair treatment to prison officers within the wider transnational arrangements. There are three main reasons for this: –

- Direct Age Discrimination

– Transferring from a pension scheme with a Normal Pension Age (NPA) based on age (60 years for classic scheme and 65 for the NUVOS Scheme) to an pension scheme with a NPA based on the state pension age (SPA) (67/68 and to likely increase in future), and by maintaining the link between the two, it is inevitable that significant disparity between existing scheme members will occur, depending on the age at which they joined their original schemes.

– Were the proposed remedy to be introduced, prison officers who joined the classic Scheme under a certain age and those who joined the NUVOS Scheme under a certain age will have two individual pensions, the provisions of which actively work against each other.

– No-one can be literally ‘forced’ to pay into a pension scheme, but when there is a clear absence of any other reasonable alternative, and the financial penalties for failing to do so severe, it is fair to say officers are being indeed being forced to pay into the 2015 CARE Scheme to retain the accrued benefits of their original scheme. As such, we believe this places an ENHANCED duty on HM Government to ensure officers are not being discriminated against and / or unfairly treated.

- Reasonable Expectation

– Officers cannot retire at the NPA of their original pension to realise the maximum accrued benefit, while simultaneously working longer on the CARE pension scheme to avoid the penalties involved for retiring before the NPA of that scheme.

– Should this proposed remedy be implemented, both older officers, who have now lost the protection they were afforded beyond April 2022 and younger officers who will now be transferred to CARE only briefly before they retire, will now have a case in terms of ‘reasonable expectation’ that they are being unfairly treated.

- Proportionality

– Prison officers working ages, in comparison to other public sector areas, are bearing a disproportionate burden in HM Government’s endeavour to ensure public sector pensions are sustainable for future generations. The stresses and strains of the role could not be maintained by working past the age of 60 for the vast majority of officers.

3.2 Before we expand on each of these areas in greater detail and explain our rationale, it may be worthwhile clarifying our understanding on some important issues surrounding pension reform, to avoid any potential confusion with, or misinterpretation of, our submission: –

- We perfectly understand that HM Government can quite lawfully change pension provision ‘mid-scheme’ (provided it is done legally and fairly of course).

- We are aware that the Employment Tribunal and courts only ruled that the transitional protections were discriminatory. This is simply because that was the only area that was challenged, NOT because the 2015 CARE Scheme, and other elements of the wider transitional arrangements, were given a ‘clean bill of health’. While the discrimination we will highlight was already present, these are new proposals and we, along with others who challenged the unlawful transitional protections, could not have known how HM Government would respond to try and remedy their error.

- We believe the 2015 CARE Scheme pension is most likely fair and legal, and do not challenge the validity of that scheme for prison officers who join it voluntarily, and where it is not linked to previous pension with different terms and conditions and NPA.

- We fully understand that age discrimination can be lawful if it is used as a proportionate means to achieve a legitimate aim.

## 5. <u>Direct Age Discrimination</u>

5.1 HM Government, and various unions / federations, contended the transitional protections, i.e. protecting older officers and those closest to retirement, were a proportionate means to achieve a legitimate aim. HM Government also expressed the view that it was ”MORALLY the right thing to do” to protect older officers and those closest to retirement, when in fact it was younger officers,

with less accrued pension benefits in their existing pension schemes, who LEGALLY required greater protection.

5.2 That said, justifiable age discrimination will always be somewhat subjective, and we don't disagree there was at least a moral case for protecting older officers. However, the court rightly held it was not sufficient justification for age discrimination. The age discrimination within this new proposed remedy exactly mirrors the unlawful age discrimination within the transitional protections, and in many ways is more objectively clear, as it lacks even the veneer of justification that was present in the transitional protections case.

5.3 Using DIRECT COMPARATORS, that is to say officers who joined their respective pension schemes, under the same terms and conditions and working the same length of time, the following true life scenarios highlight the crux of the issue: –

1. An officer joins the classic Scheme in 1991 aged 30 and her colleague joins classic also at the age of 30 but in 2001. The officer joining in 2001 reverts to CARE are per HM Government's proposed remedy in 2022. One retires in 2021 after 30 years service, the NPA for that scheme. The other retires in 2031 also after 30 years service but with a NPA having been moved to ALPHA of 68. Both officers collect a similar pension but the older officer gets a lump sum over double of the younger officer. Also the younger officer has their terms and conditions changed without them having a choice in the matter from their legacy scheme, which they joined up to, to a new scheme which they did not.

5.4 As stated in the consultation in paragraph 3.4 "**As life expectancy has increased since the introduction of the legacy schemes, people should expect to have longer working lives. Most of the reformed schemes have a Normal Pension Age (NPA) linked to the member's State Pension age (the age at which a State Pension can be received). There are exceptions for the police and firefighters, where the NPA is now set at 60 for those retiring from active police service and 55 for firefighters. Scheme members can choose to retire at a younger age than their NPA, as long as they have reached their Minimum Pension Age and their pension is adjusted to allow for payment before NPA. They can also choose to work beyond their NPA and receive a bigger pension**." Stating that officers can simply work longer to get a bigger pension is not a comparable that in any way equalises the age discrimination as older officers can already to this.

5.5 We also take exception to this as it further places the burden on younger officers to work more overtime and work longer years into their retirement.

5.6 In the scenario where an officer works to the new normal pension age of 68,whereas officers previously in the same scheme who were not required to move scheme and they got to retire at 60, is told that their pension is enhanced demonstrates the huge burden of achieving pension affordability on the younger officer. The officer can never get those eight years back and the difference in pension in no way makes up for the loss of their retirement years.

5.7 It is simply not a credible argument to suggest, for the following reasons, that as the younger officer will likely live longer, that in some way justifies those huge losses: –

• That argument was never advanced by HM Government in an attempt to justify the unlawful age discrimination within the transitional protections, as it would not have succeeded, as individual life expectancy cannot be guaranteed. Survivor pensions are also a consideration here.

• The above example uses a direct comparator – officers who accepted the same terms and conditions of the then pension scheme. Although (as stated above) there can be no guarantees, the likelihood is younger officers will benefit from their pensions for longer than older officers, that was accepted by both the older and younger officer. Pensions can change (for both officers), pensions can become less 'generous' (for both officers), but the principal has to be that the burden of any financial reduction must be shared equitably and fairly between both older and younger officers. The older officer cannot be favoured, as is massively the case in the proposed remedy.

• Officers aged as young as 18, or 19 joined prison service with their pension schemes, working 24/7 shift patterns, accepting curtailment of their early adulthood freedoms, as well as off duty restrictions on their private life – all the while believing they would benefit from retiring at a younger age at the other end. There was never any guarantee they would remain on the same scheme throughout, or with the same benefits as their predecessors, (unbeknown to most, it should be said, as they were informed 'Section 2' meant pensions could not be changed), but these younger officers rightly expecting parity of treatment with the older officers they joined with. This proposed remedy (inadvertently we can only hope) essentially devalues, certainly in terms of pension remuneration, that young service and 'wipes out' those early financial contributions. As the RT HON Mr Barclay points out in his foreword in the main consultation, public pensions are more than simply a financial product and "ensure those who dedicate their working lives to public service are rewarded appropriately in retirement". It is likely unintentional, but none the less insulting, that younger officers are having this early service devalued by this proposed remedy.

5.8 It is disingenuous of the DoF to claim that benefits accrued on original schemes are "protected", while knowingly leaving officers with no realistic financial option but to continue working, paying into a new scheme and unable to access those "protected accrued benefits" – 'protected' benefits that increasingly erode on a monthly basis after NPA – quite simply these benefits are not protected.

5.9 The majority of officers will not be able to afford to retire at the NPA of their original pension scheme because of the significant penalties for doing so within the 2015 CARE Scheme. Younger officers retiring as planned at NPA face significant detriment to their original scheme if they work longer, but significant detriment to their 2015 CARE Scheme pension if they retire early.

5.10 The DoF's proposal seems to imply that prison officers can simultaneously retire at the NPA of their original scheme to gain the maximum benefit AND continue to work to make up the losses and avoid the penalties of retiring before the age of 60 on the 2015 CARE Scheme – clearly this is impossible. This issue clearly demonstrates it is this 'forced link' between two pensions with differing NPAs that creates the issue.

5.11 Moving on to the DoFs Policy Screening Template it states, "**Applying the retrospective proposals only to those in service on 31 March 2012 may have an age-related impact.**" and, "**The Department's view is that these age-based effects are minor, incidental to the imperative to remove unlawful age-based discrimination and do not constitute an adverse differential impact.**"

5.12 Clearly, on the contrary, the proposed remedy DOES result in unjustifiable differential impacts on individuals with the following protected characteristics – age. We are also surprised to read that by applying the proposed remedy, "**Under the policy revision all members with eligible service in the remedy period will be treated equally and afforded the same choices** ", the DoF believe that this action in some way ensures fairness. Equality comes from treating people as individuals, not by treating everyone in the same manner. Such a 'broad brush' remedy to such a complex set of circumstances is bound to create massive disparity (as demonstrated above) between officers of different ages. This seems to be a glaring error on behalf of DoF and appears to ignore the discrimination and does this by solely focusing on the remedy period. By applying this methodology throughout the consultation the DoF and more widely HM Government ignores the fundamental issue of the discrimination of moving people based on their age with no justified reason ever given in the courts from one date of 1st April 2015 to a new date of 1st April 2022 with their proposed changes.

5.13 Furthermore in Section A) part G) and in section D) the DoF require, firstly, to recognise that by treating everyone the same they actually create massive disparities in outcomes and, secondly, to ensure "equality", they require to apply an alternative FAIR and EQUITABLE remedy to this self-inflicted situation.

## 6 Reasonable Expectation for Younger Officers

6.1 This new date of 2022 leaves a much larger cohort of officers on the 2015 CARE Scheme for a very short period of time. Indeed, in April 2022 some officers who originally received no tapering whatsoever will be very close to retiring with the classic scheme.

6.2 Due to this proposed new date for transitioning from the original pension schemes to the 2015 CARE Scheme, a significantly larger number of officers will now only be in the CARE scheme for a very short period of time. In reality no-one would join a pension scheme for such a short period of time, potentially only weeks for some, particularly one where the benefits cannot be realised (without significant penalty) for many years AFTER that person retires. As such, DoF should be concerned that a legal a challenge under 'reasonable expectation' could be brought.

6.3 Within the consultation it states, "**As members who first joined their scheme after 31 March 2012 were ineligible for transitional protection regardless of their age, they were not subject to the discrimination identified by the Courts.**" This glaringly ignores the reason for the discrimination in the first place. These people joined schemes and signed up to their terms and conditions and then were unreasonably and unfairly moved into another scheme which the courts found the Government had done unlawfully. The DoF and wider HM Government is holding a fig leaf up to defend themselves saying that these officers were outside the remedy period and as such are not due the same protections. Paragraph 2.6 of the consultation states, "**The proposed introduction of the reformed schemes was well publicised at the time. Anyone joining after 31 March 2012 would, therefore, reasonably be expected to have known that they would join or be moved to the reformed schemes.**" This was NOT the case in Northern Ireland. The DoF borrows from the main England and Wales consultation in this regard unfairly which we will detail in 6.4, 6.5, 6.6 and 6.7 below.

6.4 The Public Service Pensions Bill was proposed on the 26th November 2012 by the Minister of Finance and Personnel. This is some months after the 31st March 2012, how could a citizen of Northern Ireland have known what the outcome of this bill would be on the 31st March 2012 when the bill was only proposed some 8 months later?

6.5 The consultation on the said bill in paragraph 6.4 started on the 21st January 2013 and concluded on the 15th April 2013. This is over a year after the 31st March 2012. How again could a citizen of Northern Ireland have reasonably known what the consultations terms of reference, its contents were on the 31st March 2012? How on the 31st March 2012 would a citizen in Northern Ireland have been able to exercise their democratic right to partake in the consultation a year into the future? How on the 31st March 2012 would a person living in Northern Ireland known what the outcome of giving their view would be after the consultations end on the 15th April 2013?

6.6 The Department of Finance and Personnel published an official response to the consultation on the 21st May 2013. This is noted in an Employee Pension Notice of the same date. Again how would a person on the 31st March 2012 reasonably known of this? The next stage was introduction into the Assembly on the 17th June 2013 with a second stage debate on the 25th June 2013. How could a person in Northern Ireland who wanted to use their democratic mandate and have their MLA ask questions for them in the Assembly about the proposed changes be reasonably expected to know on the 31st March 2012 of the changes? After this it goes on to the committee stage where various bodies give evidence. On the 24th September 2013 the committee extended the stage to take in further views – clearly things are not finalised – things are not complete – proposals are still being looked into yet according to the consultation on the 31st March 2012 a person in Northern Ireland was reasonably aware of all the things at this stage the committee had not even met with to discuss.

6.7 Various bodies gave evidence to the committee they included on the 2nd October 2013 the Northern Ireland Human Rights Commission, on the 9th October 2013 the Irish Congress of Trade Unions, Fire Brigades Union and National Association of Schoolmasters Union of Women Teachers gave evidence. On the 16th October 2013 the Nevin Economic Research Unit, British Medical Association, Northern Ireland Local Government Association and the Department of Finance and Personnel gave evidence. On the 23rd October 2013 the Department of Finance and Personnel again gave evidence and again they gave evidence on the 6th November 2013 and again they gave evidence on the 13th November 2013. The committee then after all these bodies had gave evidence did a section by section consideration of the Act on the 20th November 2013 and gave their report on the 27th November 2013. It then moved onto the consideration stage in the Assembly on the 14th January 2014 and had a further consideration stage on the 27th January 2014. Its final stage was then on the 4th February 2014 and was given Royal Assent on the 18th March 2014. We put it in the *strongest terms* that is was not reasonable for a person in Northern Ireland on the 31st March 2012 to have reasonably known of the changes that were going to come into effect as the changes themselves were not even known for almost two years after the 31st March 2012.

6.8 As such we believe that those who joined prior to the 18th March 2014, and in the interests of fairness this should be extended to those joining prior to the 1st April 2015, be offered the choice being given to those who joined prior to the 31st March 2012.

## 7 Reasonable Expectation for Older Officers

7.1 Also of concern is the sentence in 3.10 of the consultation relating to, "**Taking 1 April 2022 as the date allows sufficient time to consult on the proposals and, subject to decisions taken following the consultation, introduce the necessary legislation. Members of the legacy schemes will have more than 20 months' notice of these plans and will be able to participate in the reformed schemes in relation to any eligible employment from 1 April 2022 onwards.**" of a change to their pension scheme. During the legal process, HM Government consistently put forward the case that protecting officers within 10 years of retirement was "morally the right thing to do". They lost the LEGAL argument that the age discrimination was a proportionate way to achieve a legitimate aim (by not including younger officers), but at no time did they lose the MORAL argument, that changing officers pension provisions so closely to their date of retirement was wrong. We appreciate that heavily tapered officers were already in this bracket (paying into the 2015 CARE scheme for a very short period of time), but they had a significantly longer notice period. That number has now increased massively, with a significantly shortened notice period.

7.2 We can only conclude that by going against the statement they made in open court, HM Government are now knowingly proposing to act immorally, to the detriment of older officers who have lost previous protections.

8. <u>Proportionality for Prison Pensions</u>

8.1 Throughout the consultation document the DoF is understandably at pains to stress that many public sector pension contributors will be better off during the remedy period and / or better off overall by remaining on / transferring to the 2015 CARE Scheme. Undoubtedly this is true for many. A factor we have not seen mentioned is the disproportionate effect on prison officers having to work past 60 and with a NPA correlated to the SPA this could see younger officers with a SPA in their 70's. The stresses and risks involved take a cumulative toll over the years and a retirement age of 60 takes this into account for a life of public service. Changing the NPA for officers utterly ignores the entirely foreseeable inability to conduct the role at such an age.

9 <u>Proposed Alternatives</u>

9.1 We recognise HM Government's legitimate aim to ensure all public sector pensions contributors transfer to the 2015 CARE scheme by 1st April 2022. We do not feel this is an unreasonable aim. We accept generally that people are living longer, although caveat that by pointing out that rate of increase has slowed in recent years (and has reversed in some areas). We are also yet to learn the long term impact of Covid-19 on life expectancy.

9.2 We also recognise there are many positives contained within the 2015 CARE Scheme pension, specifically lower paid workers are generally better off, standardising pensions should be beneficial to the employee in terms of ease of transference between public sector agencies, all of which will presumably lead to a reduction in overall administration costs. We also support the principle of the deferred choice underpin (DCU), allowing scheme members to decide at NPA whether they would have been better off within the 2015 CARE Scheme during the remedy period, or their original scheme.

9.3 In short, we recognise that for the vast majority of public sector workers these proposals will be acceptable, as they seem fair and proportionate.

9.4 We are open to discussion on ways forward but believe some options could be:

• Allow officers to choose to remain in their legacy pension schemes if they so wish.

• Allow officers to obtain the accrued portion of their original pension when it matures at NPA (60), but continue to work and pay into the 2015 CARE Scheme, should they choose.

• Allow officers to realise the CARE portion of their pension immediately on retirement without any actuarial penalty, regardless of age of retirement on reaching 60.

• Allow a change of the contribution rate in ALPHA to allow for larger contributions for a retirement age of 60 and and Earliest Pension Age of 55 in-line with legacy reduction percentages.

9.5 The above alternatives could ensure parity and fairness between older and younger direct comparators. It would also limit the loss of overall value of prison pensions and bring those losses in line with other public sector pension schemes – all the while ensuring HM Government achieve their legitimate aim of having all public sector pension contributors under the 2015 CARE Scheme from 1st April 2022.

10 <u>Conclusion</u>

10.1 We are concerned regarding the timescales between the consultation closing on 18th November 2020 and the Employment Tribunal considering proposed remedies in November 2020. We believe our response will be one of many and significant issues (beyond what we have highlighted), will be brought to DoF and also HM Government's attention. As such, we question if that is really enough time to consider the likely numerous issues raised, by the likely numerous responses received, on what is clearly a very emotive subject.

10.2 We note 1.21 of DoF's consultation states, "**Earlier this year technical discussions were held with stakeholders at the central forum for engagement with employer and employee representatives for the main devolved NI public service schemes - the Collective Consultation Working Group (CCWG) - to inform policy development at an early stage. These discussions made an extremely helpful contribution to the formation of the proposals contained in this document. The constructive engagement of all who participated is appreciated.** ' It concerns us greatly that none of these bodies have noticed what appears to us to be clear age discrimination and unfair treatment towards younger officers. Nor have they appeared to consider the case under 'reasonable expectation' for older officers

10.3 In summary, please consider our foregoing comments as a response to:

Question 1: Do you have any views about the implications of the proposals set out in this consultation for people with protected characteristics as defined in section 75 of the Northern Ireland Act 19981 ? What evidence do you have on these matters? Is there anything that could be done to mitigate any impacts identified?

Question 2: Is there anything else you would like to add regarding the equalities impacts of the proposals set out in this consultation?

Question 9: Does the proposal to close legacy schemes and move all active members who are not already in the reformed schemes into their respective reformed scheme from 1 April 2022 ensure equal treatment from that date onwards?

10.4 For the remaining questions we advised we would address at 2.5 of our response: –

Question 16: Please set out any comments on our proposed treatment of individuals who would have acted differently had it not been for the discrimination identified by the Court.

We strongly believe that all officers, who withdrew from existing schemes (as a result of HM Government's unlawful action), should be allowed to re-enter their original scheme, without penalty. A mechanism should be devised to allow them to fairly repay the contributions (including interest). This should not be done on a "case by case basis", but should be a blanket offer to officers who chose to leave their original scheme.

Question 20: Should interest be charged on amounts owed to schemes (such as member contributions) by members? If so, what rate would be appropriate?

No. Clearly parity and fairness are important to us and we believe it is fair that those who 'underpaid' should make these increased contributions. It was the unlawful actions of HM Government that created this situation and officers should not be required to pay for that error by also having to pay the interest on these additional contributions.

Question 21: Should interest be paid on amounts owed to members by schemes? If so, what rate would be appropriate?

Yes, it is through no fault of these officers that they 'overpaid' (while on the 2015 CARE Scheme). It was the unlawful actions of HM Government that created this situation and officers should not be worse off as a result. These officers should receive the interest as an immediate one off payment.

10.5 Another unforeseen consequence of this proposed remedy the DoF may wish to consider, is on their commitment to recruit more prison officers. Due to the almost hopeless situation some officers will find themselves in, having to pay into an essentially worthless 2015 CARE Scheme for perhaps only a few years, increasingly more are likely to avail themselves of the opportunity of retiring at aged 60 or 55 with early retirement deductions. Losing these officers from service early will make the Northern Ireland Prison Service's commitments more difficult to achieve especially when those with such significant service are need more than ever during the COVID-19 crisis.

10.6 Finally, we sincerely believe we have showed reasonableness in our response by recognising the benefits of pension reform and offering sensible counter proposals, to negate discrimination and unfairness being brought upon prison officers. However, for the avoidance of any doubt, we are strongly of the view that LEGALLY, ETHICALLY or MORALLY the DoF has no justification for imposing this proposed remedy on members of the legacy pension schemes.

Thank you for your consideration,

Community Pension Challenge Administration Team