

Contingent Decisions: re-instatement of opted out service

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Background and issue

1. Under McCloud remedy, eligible members can make a Contingent Decision claim to reinstate opted out service. A Contingent Decision applies to a decision taken by the member which would have been different had it not been for the age discrimination identified by the courts. The decision must relate to their membership of the Police Pension Scheme (PPS) during the remedy period 1 April 2015 to 31 March 2022.
2. The Public Service Pensions & Judicial Offices Act 2022 (PSPJOA 2022) allows such a Contingent Decision claim to reinstate opted out service back into the ‘relevant chapter 1 legacy scheme’ and in the summer of 2024 it was determined that for the police scheme, this was the PPS 2006.
3. The reason why the PPS 2006 is the relevant scheme is because the PPS 1987 became closed to new entrants from 6 April 2006 when the PPS 2006 scheme was introduced. So, between 6 April 2006 and 31 March 2022, any PPS 1987 member that opted out has only ever been permitted to rejoin the PPS 2006 scheme.
4. Providing members who were in the PPS 1987 with information about their Contingent Decision claim for opted-out service during the remedy period has been paused since the summer of 2024. This was reported in a news item in [August 2024](#).
5. The pause was put in place, to protect the member, whilst The Home Office carried out a forensic review of legislation, sought legal advice and held discussions with HM Treasury to understand their powers and what mechanisms could be used to resolve the issue.

Which members are affected by this issue

6. As the PPS 2006 scheme is the only open scheme available for members to be reinstated into, this does mean that the members affected are those which are legacy PPS 1987 members who either:
 - a. Opted out between 12 March 2012 and 31 March 2015 or ([See para 7 & 8](#))
 - b. Opted out between 1 April 2015 and 31 March 2022 but also rejoined before 1 April 2022. ([See para 7 & 9](#))

Determining the relevant Chapter 1 legacy scheme

7. Under the PSPJOA 2022, the relevant scheme is defined within [Section 4\(1\)](#):
- Confirms that the relevant Chapter 1 legacy scheme is the last scheme that the member accrued pensionable service in.
 - This is subject to the rest of the criteria in section 4.

Members that opted out on or before 31 March 2015

8. [Section 4\(2\)](#) of the PSPJOA 2022 sets some criteria:
- 4(2)(a) If on or before 31 March 2015 the member opted out and
 - 4(2)(b) On 31 March 2015 the rules of the scheme that the member opted out of prohibited rejoining, and
 - 4(2)(c) On 31 March 2015 the rules of another scheme did not have that restriction, then
 - The relevant chapter 1 legacy scheme is the other scheme as in 4(2)(c)

Members that opted out after 31 March 2015

9. [Section 4\(3\)](#) of the PSPJOA 2022 sets some criteria:
- 4(3)(a) After 31 March 2015 the member opted out and
 - 4(3)(b) On or before 31 March 2022 the member rejoined the scheme and
 - 4(3)(c) At the date of rejoining, the rules of the scheme that the member opted out of prohibited rejoining, and
 - 4(3)(d) At the date of rejoining the rules of another scheme did not have that restriction, then
 - The relevant chapter 1 legacy scheme is the other scheme as in 4(3)(d)



Legislative position at point of pause – August 2024

How pension benefits are affected by reinstatement of opted out service

Legacy 2006 scheme

10. For members that have legacy PPS 2006 and have opted out service, their pension benefit structure is unaffected and any pensionable service they accrue up to 31 March 2022 will be PPS 2006.
11. Legacy PPS 2006 members are unaffected by this issue as their legacy scheme is PPS 2006 and any relevant Chapter 1 legacy scheme for these members will also be PPS 2006.

Legacy 1987 scheme

12. The position for legacy PPS 1987 members is dependent on when the opt out occurred and if a member rejoins and if so when that takes effect.

PPS 1987	Opted out between 12 March 2012 and 31 March 2015 (pre-remedy)	Opted out between 1 April 2015 and 31 March 2022 (during remedy)
Did not rejoin	Any pensionable service accrued up to 31 March 2022 will be a mix of PPS 1987 and PPS 2006	Any pensionable service accrued up to 31 March 2022 will be PPS 1987
Rejoined before 1 April 2022	Any pensionable service accrued up to 31 March 2022 will be a mix of PPS 1987 and PPS 2006	Any pensionable service accrued up to 31 March 2022 will be a mix of PPS 1987 and PPS 2006
Rejoined on or after 1 April 2022	Any pensionable service accrued up to 31 March 2022 will be a mix of PPS 1987 and PPS 2006	Any pensionable service accrued up to 31 March 2022 will be PPS 1987

13. There are four [member examples](#) in paras 14 to 21 which set out how the Chapter 1 legacy scheme is determined and what that means as far as which scheme the benefits are accrued in for which period.

Examples

Example 1 – opt out pre remedy (all scenarios)

14. What the regulations say:

Member details

- Joined PPS 1987
- Opted out 1 January 2015

Section 4(1)

- Last legacy scheme pensionable service accrued in was PPS 1987, but check:

Section 4(2)

- 4(2)(a) Opted out on or before 31 March 2015
- 4(2)(b) PPS 1987 was closed at that date
- 4(2)(c) PPS 2006 was open

Relevant Chapter 1 legacy scheme

- Therefore, relevant chapter 1 legacy scheme for any re-instated opted out service can **only** be PPS 2006 up to 31 March 2022.

15. What the members legacy pension benefit structure looks like if opted out service is re-instated:

Period	PPS 1987	PPS 2006	PPS 2015
Pre remedy Period	Up to 31 December 2014	1 January 2015 to 31 March 2015	N/A
Remedy Period	N/A	1 April 2015 to 31 March 2022	N/A
Post remedy period	N/A	N/A	1 April 2022 onwards

Example 2 – opt out during remedy period, no rejoin

16. What the regulations say:

- Member**
 - Joined PPS 1987
 - Opted out 1 April 2016
 - Did not rejoin
- Section 4(1)**
 - Last legacy scheme pensionable service accrued in was PPS 1987, but check:
- Section 4(2)**
 - Does not apply as opted out after closing date (31 March 2015)
- Section 4(3)**
 - Although opted out after 31 March 2015, this paragraph does not apply as did not rejoin in the remedy period
- Relevant Chapter 1 legacy scheme**
 - Therefore, relevant chapter 1 legacy scheme for any re-instated opted out service can be PPS 1987 up to 31 March 2022.

17. What the members legacy pension benefit structure looks like if opted out service is re-instated:

Period	PPS 1987	PPS 2006	PPS 2015
Pre remedy Period	Up to 31 March 2015	N/A	N/A
Remedy Period	1 April 2015 to 31 March 2022		N/A
Post remedy period	N/A	N/A	1 April 2022 onwards

Example 3 – opt out during and rejoin after remedy period

18. What the regulations say:

- Member**
 - Joined PPS 1987
 - Opted out 1 April 2016
 - Rejoined 1 May 2022
- Section 4(1)**
 - Last legacy scheme pensionable service accrued in was PPS 1987, but check:
- Section 4(2)**
 - Does not apply as opted out after closing date (31 March 2015)
- Section 4(3)**
 - Although opted out after 31 March 2015, this paragraph does not apply as did not rejoin in the remedy period
- Relevant Chapter 1 legacy scheme**
 - Therefore, relevant chapter 1 legacy scheme for any re-instated opted out service can be PPS 1987 up to 31 March 2022.

19. What the members legacy pension benefit structure looks like if opted out service is re-instated:

Period	PPS 1987	PPS 2006	PPS 2015
Pre remedy Period	Up to 31 March 2015	N/A	N/A
Remedy Period	1 April 2015 to 31 March 2022		N/A
Post remedy period	N/A	N/A	1 April 2022 onwards

Example 4 – opt out and rejoin during remedy period

20. What the regulations say:

Member

- Joined PPS 1987
- Opted out 1 April 2016
- Rejoined 1 April 2020

Section 4(1)

- Last legacy scheme pensionable service accrued in was PPS 1987, but check:

Section 4(2)

- Does not apply as opted out after closing date (31 March 2015)

Section 4(3)

- 4(3)(a) Opted out after 31 March 2015
- 4(3)(b) Rejoined 1 April 2020
- 4(3)(c) PPS 1987 was closed at that date
- 4(3)(d) PPS 2006 was open

Relevant Chapter 1 legacy scheme

- Therefore, relevant chapter 1 legacy scheme can only be
 - PPS 2006 for the rejoined service from 1 April 2020 (4(3) applies)
 - PPS 1987 for any reinstated opted out service between 1 April 2016 and 31 March 2020 (4(1) applies)

21. What the members legacy pension benefit structure looks like if opted out service is re-instated:

Period	PPS 1987	PPS 2006	PPS 2015
Pre remedy Period	Up to 31 March 2015	N/A	N/A
Remedy Period	1 April 2015 to 31 March 2020	1 April 2020 to 31 March 2022	N/A
Post remedy period	N/A	N/A	1 April 2022 onwards

Update at August 2025

22. The Home Office confirmed that following extensive engagement over the previous 12 months, a decision has been made by the Policing Minister about the Contingent Decision opt out issue.
23. The Minister recognises concerns that the current legislation does not fully deliver the intended remedy policy for all members and that there is a small cohort of affected members.
24. Specifically, it does not allow this cohort of affected members access to the scheme which they most recently accrued service in prior to opting out, which was the original policy intent.
25. The Home Office recognise the length of time it has taken to get to this point, and after lengthy discussions and legal advice, the outcome is that the desired position is not currently legally possible with the existing regulations nor is it possible to reopen the PSPJOA.

Next steps

26. The Home Office have initiated a “compensation evaluation” to establish if this issue can be addressed through a compensatory payment to affected members, by using the existing McCloud compensation framework.
27. This evaluation will consider what changes are needed to provide appropriate payments to affected members, what assumptions need to be considered, cost estimates, legal risks and importantly, deliverability for those affected members.
28. A range of stakeholders from across the sector, including NPCC, scheme managers, pension administrators and staff associations are involved in these engagement discussions which take place over a 6-week period during August and September 2025.
29. The outcome of these engagement discussions will help develop a final proposal, including whether any form of compensation payment is a viable option or not. Any final proposal will be subject to ministerial approval.
30. Until the Policing Minister has made their final decision, it will not be possible to provide affected members with confirmation of what their pension benefits are.
31. Further updates to this document will be made when more information is available.

Update at April 2026

32. The government has confirmed that new legislation will be introduced to fix an unintended issue in the remedy rules. This will allow some police officers who opted out because of age discrimination to have their service treated as if they had remained in their legacy pension scheme.
33. On 26 March 2026, the Policing Minister issued a Written Ministerial Statement (WMS – [HCWS1475](#)). This confirmed that the government will introduce new legislation, using section 22 of the Public Service Pensions and Judicial Offices Act 2022, to make a special change to the current rules.
34. This modification will allow some police officers who opted out of the pension scheme because of the age discrimination either in the period 12 March 2012 to 31 March 2015 or during the remedy period, to have both their opted out service in the remedy period and any rejoined service, treated as service in the correct legacy pension scheme, provided they make a contingent decision election to buy back all opted out service.
35. This follows work to resolve an unintended consequence in the current legislation which meant that some officers could not be placed back into the legacy scheme that they last accrued pension benefits in.
36. This modification addresses an unintended consequence in the existing legislation, which meant some officers could not be returned to the legacy scheme they last built up pension benefits in.

Timelines and next steps

37. The Home Office will begin drafting the Statutory Instrument (SI) during Spring 2026 and will carry out a technical consultation on the draft regulations. This is not a policy consultation, as the government has already consulted on the remedy.
38. The SI will be introduced as soon as possible. This will depend on parliamentary timetabling, feedback from the consultation and resolving any technical issues.
39. Forces are now able to progress eligible cases on the basis of the WMS, without waiting for the legislation to be introduced.
40. Pension administrators will issue a Contingent Decision – Remediable Service Statement (CD-RSS), which will show the cost of reinstating the opted-out service and the pension benefits that would be provided if the member proceeds.

What has changed in the WMS

41. The WMS confirms that the government will introduce a special modification that disapplies Sections 4(2) and 4(3) of the Act. These sections currently affect how a member's legacy scheme is determined during the remedy period.
42. In practical terms, this means that some members who would previously have had service treated as PPS 2006 may instead be able to have that service treated as PPS 1987.
43. A member will only be eligible for this modification if all of the following apply:
 - a. They make a contingent decision claim to reinstate opted out service due to the age discrimination, and
 - b. The scheme manager accepts the claim, and
 - c. They elect for the re-instatement of all opted out service within the remedy period. Any election is irrevocable and the member will need to pay for the opted out service contributions (see details of [how monies can be paid](#))
44. Only members that meet all the conditions above will be able to have these modifications applied to both the opted out service and rejoined service within the remedy period.

How monies for reinstatement of opted out service can be paid

45. Where a member elects to reinstate opted-out service in the remedy period, payment can be made in one of the following ways:
 - a. A single payment when the election is made, after receiving the CD-RSS
 - b. Annually, within three months of receipt of ABS-RSS
 - c. At retirement by deduction from pension benefits, or from own funds
 - d. Monthly instalments over 14 years
 - i. the interest rate is fixed at the date the election is made; and
 - ii. if the member retires before the end of the 14-year period, any outstanding balance can be deducted from pension benefits

How the WMS affects reinstatement of opted out service

46. Examples 1 and 4 below show how the position changes for eligible members following the WMS, compared with the existing legislation.

Example 1 – opt out pre remedy (all scenarios)

47. What the regulations say:

Member details

- Joined PPS 1987
- Opted out 1 January 2015

Section 4(1)

- Last legacy scheme pensionable service accrued in was PPS 1987, but check:

Section 4(2)

- is disapplied

Relevant Chapter 1 legacy scheme

- Therefore, relevant chapter 1 legacy scheme for re-instated opted out service in the remedy period can be PPS 1987 up to 31 March 2022.

48. What the members legacy pension benefit structure looks like if opted out service is re-instated:

Period	PPS 1987	PPS 2006	PPS 2015
Pre remedy Period	Up to 31 December 2014	N/A	N/A
Pre remedy opt out period	N/A	N/A	N/A
Remedy Period	1 April 2015 to 31 March 2022	N/A	N/A
Post remedy period	N/A	N/A	1 April 2022 onwards

49. Under both the existing legislation and the WMS:
- a. service opted out before 1 April 2015 cannot be reinstated; and
 - b. any opt-out before the remedy period will remain a permanent gap in pensionable service.

Example 4 – opt out and rejoin during remedy period

50. What the regulations say:

Member

- Joined PPS 1987
- Opted out 1 April 2016
- Rejoined 1 April 2020

Section 4(1)

- Last legacy scheme pensionable service accrued in was PPS 1987, but check:

Section 4(2)

- Does not apply as opted out after closing date (31 March 2015)

Section 4(3)

- is disapplied

Relevant Chapter 1 legacy scheme

- Therefore, relevant chapter 1 legacy scheme can be PPS 1987 for both the reinstated period from 1 April 2016 to 31 March 2020 and for the rejoined period from 1 April 2020 to 31 March 2022

51. What the members legacy pension benefit structure looks like if opted out service is re-instated:

Period	PPS 1987	PPS 2006	PPS 2015
Pre remedy Period	Up to 31 March 2015	N/A	N/A
Remedy Period	1 April 2015 to 31 March 2022	N/A	N/A
Post remedy period	N/A	N/A	1 April 2022 onwards

52. Under the existing legislation, reinstated service and rejoined service during the remedy period could be split across different schemes.
53. For eligible members only, the WMS allows both the reinstated service and the rejoined service during the remedy period to be treated as service in PPS 1987, provided all eligibility conditions are met.

Version control

Date	Author	Publication	Reason for change
31/08/2025	Claire Neale	V1	N/A
24/03/2026	Claire Neale	V2.0	<p>Amendment to tables in example 2 and 3 (para 17 and 19) to correct the current legislative position for a member who does not rejoin or rejoins after the remedy period.</p> <p>Adjusted the formatting and some of the of the headings after paragraph 9 (paragraphs 10 to 31</p> <p>Added the update for April 2026 (paragraphs 32 to 53) after the publication of the WMS</p>

Disclaimer

This factsheet has been prepared by NPCC using the regulations as they stand in April 2026, however they should be used only as an informal view of the interpretation of the Police Pension Scheme as only a court can provide a definitive interpretation of legislation.

This factsheet should not be interpreted as legal advice.