

Public Service Pension Scheme Consultation

Introduction

Hampshire Fire and Rescue Authority (HFRA) welcomes the opportunity to respond to the consultation and this response has been approved by the Firefighter's Pension Board.

Technical queries

There are a number of items which are either partially eluded to within the consultation or there is no mention of some items at all.

The consultation makes reference to online tools being made available to members, to enable them to run projections and different scenarios, this would be welcomed, but it does not expand on what they would look like, who would provide them, who would be responsible for their accuracy and keeping them up to date and where would they be located.

With regard to the Fire Pension Schemes there are a number of specific items which will need to be addressed and the position clarified.

1. Continued Professional Development (CPD) payments are made to firefighters and are pensionable across all schemes, but depending on which scheme the member is in when it is paid, depends on how it is treated. For members of the 1992 or 2006 Fire Pension Schemes, an Additional Pension Benefit (APB) is awarded; for members of the 2015 Fire Pension Scheme, it is added to their CARE pensionable pay. There is no mention in the consultation if a member chooses different benefits about what will happen with the CPD payments as APB's are not permissible in the 2015 Scheme.
2. Contribution holidays for 1992 Fire Pension Scheme members were brought in retrospectively to enable firefighters in this scheme to receive a contribution holiday where they were under the age of 50 and had achieved 30 years pensionable service. The consultation provides no mention about where members are returned to the 1992 scheme and meet this criteria whether the contribution holiday will be applied.
3. Temporary promotions for 1992 or 2006 Fire Pension Scheme members have been made pensionable by HFRA and the member is awarded an Additional Pension Benefit (ABP) in respect of the additional contributions paid on any temporarily increased pay. The consultation makes no mention about a member who in the 2015 Fire Pension Scheme has had a temporary promotion (which is treated as non pensionable) and then chooses legacy scheme benefits for the remedy period, whether the temporary promotion should therefore be treated as pensionable and an APB awarded.
4. Transfers in whilst a member of the 2015 scheme are credited as additional pension. If the member were to then choose legacy benefits specifically in the 1992 Fire Pension Scheme the consultation does not make it clear what would happen, as the 1992 Fire Pension Scheme has been closed for Transfers in since April 2006. In addition to this, if any transfer in is to be calculated there are no current factors for this and if the period credited is to

be as years and days service, there is no mention about what would happen if the member were to exceed 30 years service.

5. Additional pension is possible to be purchased in the 2015 scheme, but where a member has elected for this and then chooses to move to the legacy 1992 Fire Pension Scheme, the consultation does not make it clear how this would work. It is only possible for a Firefighter to purchase additional service within the 1992 Fire Pension Scheme if they cannot achieve 30 years by the time they are 55 and that they are under the age of 53. The consultation does not mention what would happen if the member exceeds these conditions.

Draft responses to questions in consultation

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 149 of the Equality Act 2010? What evidence do you have on these matters? Is there anything that could be done to mitigate any impacts identified?

No comment.

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

No comment.

Taper Protected Members (2.19)

3. Please set out any comments on our proposed treatment of members who originally received tapered protection. In particular, please comment on any potential adverse impacts. Is there anything that could be done to mitigate any such impacts identified?

The treatment of members who originally received tapered protection seems logical and fair and consistent with treatment of other members. It is only right that all members are given the same option of either all legacy benefits or all reformed benefits for the whole of the remedy period.

Default position for immediate choice – tapered (2.37)

4. Please set out any comments on our proposed treatment of anyone who did not respond to an immediate choice exercise, including those who originally had tapered protection.

Under Immediate choice, where a member does not reply to correspondence it would seem fair to set a default position that appears to be most beneficial for the member.

Members with full transitional protection should be deemed to be members of their legacy scheme as this is what they have had anyway.

For members with no transitional protection the default position is less clear and may be more dependent on which legacy scheme the member was part of. For 1992 Fire Pension Scheme members this is most likely to be their legacy scheme, but for 2006 Fire Pension Scheme members the member may be better off in the 2015 Fire Pension Scheme.

For tapered members the position may well be mixed for all legacy schemes and choosing a default position based on the most beneficial for the member is relying on either the Pension Administrator or the FRA to make a decision about the members benefits. The decision maker will not know what is important to the member or what their personal situation is and there is potential for the wrong decision to be made.

There could be some potential issues if as a result of moving the member to the default position there are member contribution arrears and or tax charges that arise. The member would need to agree to these before this could be actioned. In these cases, surely to ensure the status quo, the member should be left in the scheme that they are in, this would work for members that have no transitional protection, but a default position would still need to be reached for members with taper protection. This may well depend on what the member's legacy scheme is and how much transitional protection they were granted.

It is a sensible approach to have a standard default position as inevitably there will be some members that do not respond. However, the default position should depend on the legacy Fire Pension Scheme; a different default position should apply to each legacy scheme.

Immediate Choice (2.37)

5. Please set out any comments on the proposals set out above for an immediate choice exercise

In an immediate choice option, the member is going to have to make a choice based on partial information, i.e. where they are still many years from retirement, they will not know what path their career will take, or indeed what their personal, financial or family situation will be. What is important to a member at the immediate choice decision point, could very well be different at the point of retirement.

The proposals that have been laid out with regard to how the exercise would be carried out mean that it will be very labour intensive and will require a lot of resources, not only in actually dealing with the remedy calculations, but also in the communication of this to members. There will be a lot of complex information which will need to be carefully and thoroughly explained to members to enable them to make the right choice; and all in a relatively short space of time.

Some members may need access to an independent financial adviser to help advise them on the best option. This could prove problematic as there are very few financial advisers that have in depth knowledge of the Fire Pension Schemes.

Even with an immediate choice option, the timescales for implementing and completing the remedy will still be a period of years and it will be an exceptionally challenging time for members, FRAs and administrators to ensure that all members are contacted and remedied correctly, but it would also mean that after this, everyone would be remedied and everyone would know the exact position for the remedy period.

With an immediate choice option, the member will at least have made a decision and know exactly what his current pension entitlement is. It would mean that everything will be dealt with and the final position will be known.

Deferred Choice Underpin (DCU) (2.45)

6. Please set out any comments on the proposals set out above for a deferred choice underpin

In a deferred choice option, the member will be able to make their decision at the end of their career when benefit entitlements are known. This does mean that members would know be able to determine their precise pension benefits until they are near to retirement, this could cause some uncertainty.

There would be a considerable amount of work required in April 2022 to move everyone back to the legacy scheme for the duration of the remedy period. This would involve the recalculating of both employee and employer contributions, which for Fire schemes is not that easy as there are a number of issues around pensionable pay and allowances that differ not only between the schemes, but also will need to take into account items such as temporary promotions, Continued Professional Development payments and contribution holidays that may apply specifically to the 1992 Fire Pension Scheme.

There will be a requirement for the employer contributions to be corrected back to legacy schemes which is going to have a big impact on the required budget for the 2022/23 year.

The calculation of revised pension input amounts and annual allowance tax issues will be required for each of the seven years so that the position for each year can be understood. The member will be required to pay the difference in member contributions and any tax that occurred in the previous 4 years (since 6 April 2017).

The work required would then be ongoing until the member is entitled to receive the payment of their benefits and at this point, the member can choose whether they want legacy or reformed benefits. If the member chooses reformed benefits, then there will be additional work required to undo the position of them being put into the legacy scheme for the remedy period.

The DCU option leaves the member in an unknown position until retirement. Depending on their choice, there may well be items to be paid which could then impact the amount that they are expecting to receive.

Administration (2.53)

7. Please set out any comments on the administrative impacts of both options

Under immediate choice, there will be an enormous amount of resources required, specialists from payroll, pensions and finance will be required. Resources will be required in the form of additional staff, online tools, communication packs. Not to mention the need for adequate pensions software to be able to deal with the changes. There is the potential for members to make the incorrect choice or indeed not understand what the choice means. There will be members that cannot be reached for whatever reason, or those that simply do not respond to the need to make an election. In these cases, it will be necessary to have default positions and while for some it will be clear, for others that will not be the case. Therefore, we risk making the wrong decision for a member. Whilst members that make a choice do so with an irrevocable choice, where a default choice is made for a member, will they have the right to recourse later on?

Under the DCU option, there will be an enormous amount of resources required, but not only upfront to move all members back to their legacy schemes, but also ongoing for the next approx. 20 to 30 years. The challenges that will be required to restore all the records from 1 April 2015 should not be underestimated. Every year from end of remedy until the member retires, details of both sets of benefits will need to be presented on annual benefit statements; which means that every year, this will need to be explained in addition to what is already a very complex scheme.

The challenge required for adequate software to be developed and maintained to have the ability for it to record two sets of data and know what applies to each type should not be underestimated.

In either choice, the member will need to be provided with a lot of information in a clear way and communication will be key. Regardless of how well each option is explained, members are still going to have difficulty comprehending all of the factors that will need to be taken into account. A number of members may require independent financial advice to enable them to make a decision, but while the Fire Authority and the pension administrator can provide information to the member and answer some questions, they will not be able to provide advice. It is also unlikely that IFAs more generally are going to have the detailed knowledge and experience of Fire Pension Schemes to provide accurate and comprehensive advice.

8. Which option, immediate choice or DCU, is preferable for removing the discrimination identified by the Courts, and why?

Both options have issues and both options will involve a great deal of work. But overall, taking into account as much as possible, it would seem that immediate choice would be preferable. It means that cases would only have to be looked at once, rather than each year and then again at retirement under the DCU option. It would mean that the member and the administrator would be clear about what option and benefits the member has for the remedy period. There would be no need to provide and maintain complex software solutions for the next approx. 20

to 30 years that would be able to calculate remedy accurately. It would mean for any events (divorce, estimates, transfers etc) that occur after the member has made their choice would be able to be dealt with in a straightforward manner as the benefits for the remedy period would be known.

Firefighter's have been having this fight for a long time and many of them just want to get it resolved. For many, it will be a very clear choice and they just want to make it and move on.

If immediate choice is taken forward, then although there will be a lot of work to actually remedy all members, the final cost of the resources and the cost to the scheme will be known. Members and administrators will be able to understand the final position and pension estimates and annual benefit statements can accurately reflect the entitlements with no added complexity.

Closing the legacy schemes for all members and equalising future treatment (3.7)

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?

Yes

Revisiting past cases (A.1)

10. Please set out any comments on our proposed method of revisiting past cases.

Where members have previously retired and are subject to remedy, then it would be only be fair to allow them to change their original commutation decision. Although this would be more work administratively, it would seem the fair option for the member. It's possible, but not probable, that they would have made a different commutation decision and therefore allowing them to revisit that decision would seem logical.

One point which is not made clear is with regard to any Pension Commencement Lump Sum (PCLS) that is paid where the member retired more than 12 months prior to date of payment and that any additional payment of a PCLS would therefore be classed as an unauthorised payment and be subject to tax. This is an important point to clarify as this may largely affect any retrospective decisions that the member makes.

Where contributions are owed, these could be deducted from any additional lump sum that is paid to a member, but if the member choose to pay over time, what time period will be permitted for this? How will the member be granted tax relief on the member contributions?

Member Contributions (A.7)

11. Please provide any comments on the proposals set out above to ensure that correct member contributions are paid, in schemes where they differ between legacy and reformed schemes.

Under immediate choice, the member will know the position with regard to employee contributions and be able to factor it into any decision, but where contributions are owed they are almost definitely going to be in a position to pay over time rather than up front. If over time, then if deductions are made from pay then tax relief can be awarded at source, but the member could have the option of paying by DD outside of payroll. This would mean that tax relief would need to be claimed from HMRC on an annual basis. The balance of any outstanding contributions should be paid, either from the lump sum commutation or up front before any pension entitlement can be put into payment.

Under DCU, the member will be moved back to the legacy scheme and contributions owed can be paid up front or by instalments, so as above, either from pay or DD. There are similar questions around tax relief and how this will be obtained.

Legacy 2006 Fire Pension Scheme members are going to be adversely affected as initially they will receive a refund of contributions and then at retirement, if they choose reformed scheme benefits then they will have to pay the contributions back. This seems counter intuitive to refund monies and to then ask for them back many years later. Therefore under DCU, it would seem more sensible to enable members with legacy 2006 Fire Pension Scheme benefits to remain in the 2015 scheme for the remedy period.

Voluntary member contributions (A.14)

12. Please provide any comments on the proposed treatment of voluntary member contributions that individuals have already made

The proposed treatment of either additional years purchased in the legacy Fire Pension Schemes being converted to additional pension in the reformed scheme, or additional pension being purchased in the reformed scheme being converted to additional pension in the legacy schemes seems a fair way to treat any voluntary contributions.

What isn't clear from the consultation is whether this would be a one off amount to be calculated, or whether the relevant amounts would need to be calculated for each of the remedy scheme years; or how and when this amount would be increased.

Annual Benefit Statements (A.21)

13. Please set out any comments on our proposed treatment of annual benefit statements

Whilst it is important to ensure that members have the correct information with regard to remedy, providing two sets of figures and therefore making ABS' even more complicated does not seem like the sensible option. ABS' are widely misunderstood or not read and the Fire Pension Schemes are already very complex.

This is only going to be possible if accurate software can be implemented. This is going to be exceptionally complex to do as not only will the software need to be

able to hold all the relevant different bits of information but also to then use the relevant part for either the legacy or reformed calculations. The potential for errors and wrong information is high.

Under DCU all members are going to be moved to their legacy scheme and they will be deemed to be in the legacy scheme until their benefits are paid and then they will have the choice of legacy or reformed. Would it not make more sense to allow ABS to show only the legacy benefits, to keep them as straightforward as possible and then present the options only at the point of retirement? The ABS are just an illustration and are not guaranteed and if the member wanted more specific information then they would be able to contact the pension administrator to request a reformed scheme estimate.

Ill Health retirement (IHR) (A.25)

14. Please set out any comments on our proposed treatment of cases involving ill-health retirement.

The treatment of IH retirements seems fair.

Cases where members have died since 1 April 2015 (A.31)

15. Please set out any comments on our proposed treatment of cases where members have died since 1 April 2015

The administrator is clearly going to need to assess all death cases carefully before any potential contact is made with survivors or persons dealing with the estate. There will need to be a number of items looked at under both legacy and reformed schemes, any death grant payable, any benefits payable to survivors or children. The current position will also need to be understood as well as any potential impact of changes. Similar situations may also differ depending on whether the member was active deferred or a pensioner at the point of death.

It would seem right that the administrator would need to establish if there is any benefit to the survivors and if not, then the case should be closed and no contact made with the survivors.

In cases where a member has died in the legacy scheme and no survivors pension were paid as the member was not married, but did have a partner and the scheme did not permit the payment to unmarried partners. The consultation does not make it clear about what to do with cases where it's not possible to make contact with the partner e.g. they have moved from any last known address.

Contingent decisions (A.43)

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.

There are many members who have opted out as they did not wish to be a member in the reformed scheme and as more information about how benefits were linked, a number of them have regretted that decision.

To avoid any discrimination it would seem right that these members are all given the opportunity to have their opt out decision removed if they so wish, but in doing so, they will obviously need to pay the relevant amount of member contributions. If they are prepared to pay this, then they should have continuous membership of the scheme and therefore the option to have remedy applied. They should also be given the option to pay these contributions over a period of time.

**Voluntary pension transfers (public sector transfer club and non-club)
(A.48)**

17. If the DCU is taken forward, should the deferred choice be brought forward to the date of transfer for Club transfers?

No, this would not seem fair. As you would be asking the member to make an immediate choice, which would go against the DCU option.

This is exactly one of the many reasons why remedy should be dealt with as an immediate choice and not DCU.

18. Where the receiving Club scheme is one of those schemes in scope, should members then receive a choice in each scheme or a single choice that covers both schemes?

Where the member transfers to a different scheme within the Club arrangement, there the member should have a choice for each scheme. Although public sector schemes are broadly the same, there are differences, even the various Fire Pension Schemes differ. There will be different points that the member will want to consider in respect of each scheme and each transfer.

It would be exceptionally difficult to get two or more schemes to work together to provide one set of information to the member to enable them to make a choice. There could be issues around Data Protection and GDPR.

Divorce cases (A.58)

19. Please set out any comments on our proposed treatment of divorce cases.

Where a divorce has occurred within the remedy period, then clearly this may be impacted by any remedy option. Administrators will need to check Pension Sharing Orders to confirm whether the split was by amount or percentage. Where any split is by percentage then it could result in an increase in benefits awarded to the Pension Credit member, based on the option chosen by the scheme member. This would seem fair, and the Pension Credit member will not be penalised if the scheme member chooses a different option which would lower the value of the pension credit.

If DCU is taken forward the consultation does not make it clear whether such cases would be recalculated at this point, or whether it would only be reviewed at the point of retirement, and if so, then any CETV would need to be calculated 20 to 30 years in the future for a date 20 to 30 years in the past. The consultation

also does not make it clear about what would happen for cases where a divorce happens after 1 April 2022. What set of benefits will be used, how will the courts determine any Pension Sharing Order, how will the administrators deal with any potential pension debit or pension credit?

Divorce cases and the surrounding issues are another reason why immediate choice should be taken forward. It would mean that all calculations can be completed at the same time and all benefits rectified at the same time.

Interest of under or over payments and refunds (A.63)

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

Yes, interest should be charged on amounts owed to the scheme, there is already precedent for this in the Fire Pension Schemes. The recent 2006 Modified Fire Pension exercise allowed for the calculation of interest on the arrears of contributions, as did the 1992 Fire Pension Scheme contribution holidays refunds for those under 50 with 30 years' service and the Additional payments in respect of past commutations in the GAD v Milne case.

Interest should be set at the Bank of England base rate, but as this has changed a few times since 1 April 2015, it might make sense to fix it for the entire 7 years period, rather than change it each time it is amended. The average would be around 0.4%. If interest is charged at a rate for a specific period, then it will create even more complexity with regard to calculating the exact amount upon which interest is to be charged for any period. Having a fixed rate as either the median or average, would mean that everyone is going to be paying the same. It will also make it slightly easier to explain to members

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

Yes, interest should be applied to payments to the member from the scheme.

Interest should be set at the Bank of England base rate, but as this has changed a few times since 1 April 2015, it might make sense to fix it for the entire 7 years period, rather than change it each time it is amended. The average would be around 0.4%. If interest is charged at a rate for a specific period, then it will create even more complexity with regard to calculating the exact amount upon which interest is to be charged for any period. Having a fixed rate as either the median or average, would mean that everyone is going to be paying the same. It will also make it slightly easier to explain to members

22. If interest is applied, should existing scheme interest rates be used (where they exist), or would a single, consistent rate across schemes be more appropriate?

There should be a single consistent rate across all schemes at a fixed rate for the 7 year period.

Abatement (A.66)

23. Please set out any comments on our proposed treatment of abatement

The proposed treatment of abatement would seem to be advantageous to the member. It also confirms that FRA's and administrators will not need to assess all cases for abatement and only look at those where a member who has an abated pension chooses the reformed scheme in their choice.

Understanding the likely AA impacts on members (B.40)

24. Please set out any comments on the interaction of the proposals in this consultation with the tax system

Tax relief on contributions

Where a member is owed a refund of tax for member contributions, surely it would just be easier to deduct a straight 20% tax from the total amount. Rather than try and calculate what is due for the last 4 years and what is due prior to that. The date of the 4 years is surely going to depend on when the member makes their choice and this is going to make it different for members and more complex to administer.

Where members need to pay member contributions, tax relief is only going to be applied at source if the additional payments are deducted from pay, but this may not be possible in all cases. In these cases, it may be necessary to have a DD system in place and in which case contributions will need to be paid gross of tax and tax relief will need to be claimed back directly from HMRC. Will this also apply to members that are no longer active current members of the Fire Pension Schemes?

Annual Allowance

The Pension Input Amount and the Carry Forward for each year of the remedy period will need to be calculated under both legacy and reformed schemes to be able to establish whether there are any tax charges due. But then only those that have occurred within the last 4 years will be required to be paid by the member and only their Carry Forward will be able to be amended if it has differed in the last 4 years. As stated, this could mean that if under immediate choice a decision is made in June 2023, then only tax issues from 6 April 2019 onwards would be payable by the member. This will obviously be advantageous to some members who may have tax issues arise in earlier years.

However it is going to make it complicated in the fact that it depends on when the member makes their choice as to what 4 year period is included, and it also depends on whether the member is going to utilise Scheme Pays as to what their benefits are going to look like.

The relevant 4 year period would be different under the DCU option as all members would be moved back to their legacy scheme on 1 April 2022 and therefore any tax owed would be due from 6 April 2017. The DCU at least provides a clear 4 year period that will be the same for all members.