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Pensions Remedy Project Team  
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9 October 2020

Dear Sir,

**PUBLIC SERVICE PENSION SCHEMES: CHANGES TO THE TRANSITIONAL  
ARRANGEMENTS TO THE 2015 SCHEMES: FIREFIGHTERS' PENSIONS  
ENGLAND SCHEME ADVISORY BOARD RESPONSE**

Please find attached the Cleveland Fire Authority's (CFAs) response to the HMT consultation on remedying age discrimination that was published within the 'Public Service Pension Schemes: Changes to the Transitional Arrangements to the 2015 Scheme' document.

Under the regulations the Fire Authority (FA) is responsible for the management and administration of their Scheme and are defined in law as the 'Scheme Manager'. Consequently, the FA is charged with the responsibility of ensuring the effective and efficient administration and management of the Firefighters Pension Schemes (FPS).

The proposals are in two parts:

- The first is to rectify the retrospective effect of the current age discriminatory regulations by allowing members to be returned to their former legacy schemes or to allow a choice to receive benefits based on the current Career Average Revalued Earnings (CARE) scheme if it is better to do so. The choice applies to the seven-year "remedy period" of 1 April 2015 to 31 March 2022.
- The second part of the HMT proposals are to rectify the age discrimination going forward and move all members into the reformed CARE schemes with effect of 1 April 2022.

The part one proposals consult on two options on when the member might make the choice, this could be:

- Immediate Choice: The choice will be made during a twelve-month period following the end of the remedy period, this will be the same time right across public sector.

Or

- Deferred Choice Underpin (DCU): All members will be returned to the legacy scheme at 1 April 2022 and the member can make a choice at retirement whether they wish to choose benefits from the reformed scheme.

Each of those options have pros and cons, therefore in setting out its response, the CFA assessed the tabled HMT remedy proposals against a risk framework which considered the key areas: risk (the avoidance of future discrimination and legal challenge); costs (management and administration); Service implications (financial and workforce planning); administrative feasibility (provision of support to scheme membership); and technical ability (provision of technical architecture to support the proposals).

The consultation recognises that both the Immediate Choice (IC) and Deferred Choice Underpin (DCU) represent an administrative challenge, however, in addition the CFA consider that future legal risks and additional costs present the most significant challenges in regard to the two options. While the initial analysis shows that the DCU is the preferred option to mitigate the risk of future legal challenge it does present a financial risk due to the long-term nature of the remedy. The IC has the opposite challenges.

As the CFA have prioritised the risk of future legal challenge above the significant financial burden, the CFA response, to which option, Immediate Choice or Deferred Choice Underpin is preferable, is that **Deferred Choice Underpin is preferable.**

That said, the CFA would wish to highlight that the FPS is an unfunded, single employer scheme, which means each FRA is solely responsible for their individual scheme and the cost of running this has to be paid from the operating account. Currently, the top up grant from central government covers pension payments only. The 2016 valuation outcome saw an average increase of 12.8% to employer contributions, which will place a significant pressure on the FRA operating accounts from 2021. The CFA have a major concern that the costs associated with the proposed remedy will create unplanned pension expenditure that would undoubtedly create undue pressure on service provision for Cleveland Fire Authority.

To mitigate the CFA's significant financial concerns, we seek confirmation and assurances that it can be reasonably expected that the **total costs of the Remedy** will be funded by the Government rather than reside either directly and/or indirectly with the Authority.

The Cleveland Fire Authority response to the consultation is set out in **Appendix A.**

## CONSULTATION QUESTIONS

- 1 **Question One. Do you have any views about the implication on 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 can be done to mitigate any impacts identified?**
  - 1.1 The NFCC believe there is an increased risk that the remedy for discrimination against people with protected characteristics such as age, disability and gender is more likely to fail for immediate choice than for deferred choice.
  - 1.2 In addition to endorsing the comments in the submission of the Firefighters (England) Scheme Advisory Board (SAB), the Cleveland Fire Authority would make the following additional points:
  - 1.3 The CFA agrees that potential differential impacts based on protected characteristics will be minimised by offering all eligible pension scheme members the choice of whether to receive benefits based on the legacy schemes or reformed schemes for the period 1 April 2015-31 March 2022. The CFA also believes potential differential impacts will be minimised by allowing scheme members to choose between legacy and reformed scheme at the point they retire i.e. deferred choice underpin, in particular (as the consultation EIA states) immediate choice could have an adverse impact on younger scheme members as they are further from retirement, and so are more likely than older scheme members to choose a scheme that would ultimately turn out not to be most beneficial to them.
  - 1.4 The CFA also believes that the proposal to move all active members into the reformed schemes on 1 April 2022 with a good quality cost effective pension provision will not represent discrimination based on protected characteristics.
  - 1.5 Throughout the paper the CFA have identified potential equality issues and we believe there is an increased risk, especially prevalent in the Immediate Choice, that the remedy for discrimination against people with protected characteristics such as age, disability and gender is more likely to fail. For example, the CFA would raise the following points:
    - Where a member chooses an option resulting in a pension debit, this could be discriminatory as it is applied for the lifetime of the benefit and some members may pay more contributions than they owe. Other members may die before they have paid the contributions owed. Few will have paid exactly what is owed.
    - Annual Allowance (AA) limit – How will this be dealt with if the member exceeds the allowance due to the Remedy – and wouldn't otherwise have done so?
    - By HMRC going back only four years, a member subject to Remedy may pay a lower level of taxation in relation to Annual Allowance than a fully protected member, in the same position, paid during the whole Remedy Period.

- The Consultation suggests tax on reformed benefits taken under DCU will be met by Government – does not seem to suggest the same for Immediate?
- Choice of Immediate/DCU not without discrimination. Assumptions v Actual. Also it is easier for older members, closer to pension age, to frame a choice of Remedy Period benefits and how they link to overall pension benefits than it is for younger members with e.g. 10 years' service and a potential of 30 years to normal pension age.
- Members who opted out in 2015 due to being given no choice other than the CARE scheme could claim to be discriminated against unless they are now given the choice to rejoin the legacy scheme. Some may be deemed outside the 5 years.
- Members in Police & Fire on taper arrangement could argue discrimination if taper is not honoured up to the date offered at outset.

1.6 Consequently, the NFCC urge the government to produce a full scheme-specific People Impact Assessment (PIA) on the proposed Remedy solution to ensure that assurance all potential risks of future discrimination and legal challenge are appropriately addressed.

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

- 2.1 With regard to the scope of the proposed Remedy, as applied to those active members pre April 2012, we find that the additional adverse impacts may arise:
- 2.2 Members could argue discrimination if the tapering protections are removed entirely from members who are currently entitled to an element of tapering up to the date offered at offset. Some active members could be currently close to their 30-year service date at the point of transition therefore disregarding tapering altogether would put someone in the position now of being unable to achieve the maximum benefit at 30 years, or well over it (with the treatment of any excess beyond the 30 years currently unclear).
- 2.3 All active employees, from 2022, who are being considered for ill-health retirement will be subject to the 'one pot' rule. This means the permanency test will be based on the period up to age 60. This is particularly relevant for members who were previously protected in the 1992 scheme who wish to remain in employment beyond April 2022.
- 2.4 The consultation proposes that a child's pension, that would otherwise be detrimentally affected by a newly entitled partner now benefiting from a pension (by regarding a deceased member as being in the reformed scheme post-remedy), will be unaffected in cases where the child and the partner live in separate households. This may represent discriminatory treatment against similar cases where all beneficiaries live together.

**3 Question Three. 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?**

- 3.1 Taper protected members were those members who were able to stay in the scheme for longer than those who were completely unprotected based on their age and the [taper table](#) in the regulations.
- 3.2 The consultation comments that the effect of the McCloud case is that tapered protection was discriminatory.
- 3.3 The consultation proposals are that the members are given the choice to choose legacy scheme benefits or reformed benefits for the whole remedy period. They will not be given the choice to have legacy benefits for some of the period and reformed benefits for the rest.
- 3.4 Unlike the 'normal' accrual schemes NHS, Teachers, Civil Service schemes, some Fire scheme members who reach their 30 years whilst on taper protection may wish to retain protection to a set date IE keep legacy benefits until attain 30 years and then move into the CARE scheme, so they benefit from paying into the scheme beyond 30 years service.
- 3.5 For scheme members they won't attain 30 years' service during this time as the protection was – (with at least 16 years' service and less than 20 years' service or between age 41 and 45 on 1 April 2012). These members may not want to choose between legacy or reform scheme for the whole period.

- 3.6 Whilst the taper has itself been deemed to be discriminatory, the NFCC support the position that allowing members to take different decisions in respect of remedy for pre and post taper date is objectively justifiable to protect members' expectations and avoid future legal challenges.

**4 Question Four: 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.**

- 4.1 The CFA believe that a default choice that is irreversible represents a significant risk and believe that could give rise to a legal challenge where the member did not engage with the consultation and does not make a choice. Hence, in the event of a default being imposed, this potentially lends itself to be challenged further down the line if any individual feels that they are adversely affected by what in effect is a government imposed default position.
- 4.2 The consultation proposes under immediate choice that multiple efforts be made to engage with members into making the choice and propose at least four attempts in a 12-month period. However, after that engagement, for any member who does not respond, the consultation proposes a default choice based on the members current protected status. That 'default' choice for currently protected members would be the legacy (final salary) scheme, however, for unprotected members it would be the reformed scheme (FPS 2015).
- 4.3 For tapering members, the CFA believe that there is a significant risk if there is to be a default remedy option for immediate choice, that the member is placed in the scheme that is not the most beneficial for them. There is precedent for this as many possible joiners of the Modified FPS 2006 scheme, which was introduced as a result of the Matthews v Kent & Medway Towns court case, did not respond, quoting either they did not receive the letter, or did not understand it. The issue is more challenging for deferred members, as we authorities will rely on up-to-date relevant information.
- 4.4 These issues, if repeated for remedying the Sargeant case, could lead to further legal challenges in the future. Consequently, regulations need to be explicit about the extent FRAs should go to demonstrate reasonableness re: engagement with individual scheme members.
- 4.5 For non-tapered members, the NFCC support the HMT approach. The default option would need to be made clear in the regulations as this would give the FRA and administrator some legal backing should this decision be challenged in the future, i.e. the FRA was simply following overarching legislation.
- 4.6 For transitional members, individual public sector schemes should enter into consultation, and get the backing of their respective Scheme Advisory Boards, because different sectors, with very different legacy schemes, will have different views as to which scheme should be regarded as the default. This should mitigate future claims.
- 4.7 An option for the default choice for taper members would be the reformed schemes, however, for FPS 1992 taper members this would see them defaulted to the FPS 2015 for the period 1 April 2015 to 31 March 2022.

- 4.8 The consultation notes the possibility of schemes consulting directly on which default would be appropriate. The CFA support this approach.
- 4.9 The CFA questions that, while it would seem appropriate that the default should be the most evidently beneficial for the most numbers of members in each cohort, e.g. you may assume that all FPS 1992 unprotected members would wish to receive legacy benefits, how would you mandate the collection of contribution arrears or deal with any tax charges if the member has not made a positive election?
- 4.10 The CFA support an appeal process to the default, i.e. the default applied, and the member given a suitable period in which to appeal this, such as six months or longer with scheme manager discretion.
- 4.11 The CFA believes that the enormous administrative impact of implementing remedy, whether immediate choice or DCU, on authorities and potentially service provision cannot be overstated.

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

- 5.1 Under the immediate choice proposals, the member would make an irrevocable decision on the benefits for the remedy period. The choice applies only to a 7-year period, by the time of making the choice all members will have been moved into the reformed scheme, so if they die or retire on ill-health will retire on FPS 2015 terms, this is not therefore impacted by the choice the member makes.
- 5.2 For the FPS in the most part, the choice will affect the value of their pension and will be largely be impacted by what final salary the member expects to have at retirement.
- 5.3 Members would be given some time to make the choice, most likely twelve months from when they are first contacted, although the consultation does not comment on how soon they would expect that to be after 1 April 2022. The member's decision at this point would be based on various assumptions such as future earnings, career aspirations and earnings indexation.
- 5.4 The CFA are concerned about what advice will be available to members in order to support decision making. FRAs and their administrators are not financial advisers and cannot provide advice to members. Financial advisers would require detailed knowledge of the FPS and may be in short supply. They are unlikely to be able to make a recommendation for risk management reasons.
- 5.5 In order to support the members decision, the consultation points to tools being developed to project benefits at retirement for the member. This will prove very challenging to develop for the FPS due to the complexity of the administration and management arrangements.
- 5.6 In addition, the FRAs do not have contract management of the software suppliers, this sits with the administrators. The scheme as it stands is unable to commission central tools to support this option. As such, these tools would need to be commissioned by each individual scheme manager, which would likely incur significant cost.
- 5.7 While the CFA acknowledge that, the benefit of immediate choice is that FRAs would have certainty over the retirement age of the chosen scheme in order to plan for recruitment, and it would have a degree of certainty over the top-up grant process as the contribution rate/level of benefit would be known we also recognise that although the deferred choice underpin would be considered the best option for members due to their circumstances being fulfilled at the point they make their choice, it comes with significant administrative and financial burden.



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

- 6.1 The consultation proposes a default choice to be made if a member cannot make an immediate choice which could be set on a scheme by scheme basis. The CFA support the default under DCU on a same scheme by scheme basis, which potentially gives the option to keep FPS 2006 transition members in the reformed scheme.
- 6.2 The consultation proposes that 'in 2022' eligible members will be returned to their legacy scheme for the remedy period. This will be a significant undertaking and would be impossible to achieve without automated systems. It would also require all the answers to questions currently outstanding under immediate detriment, i.e. how to convert transfers, added pension, divorce debits etc in the FPS 2015 to final salary benefits.
- 6.3 It would also automatically trigger the recalculation of the pension input amount for each year of the pension input period, and as a result if there are annual allowance charges to pay it will trigger the tax clock for those payments to be made.
- 6.4 Under the current proposals it would also mean that current members in the FPS 2015 who were former members of FPS 2006 would be returned to their legacy scheme and contributions refunded.
- 6.5 At retirement the member would then be offered a choice to receive FPS 2015 benefits for the reform period if better. However, because that would be done at retirement it would be based on known benefit entitlements. For FPS 2006 members that could mean they then have to pay back the additional contributions they were refunded in 2022.
- 6.6 For retained firefighters defaulting from FPS 2015 to FPS 2006, administrators would have to calculate qualifying final salary service based on actual pay received during each year from 2015 to 2022 in relation to reference pay. This would place a considerable burden on organisations and would ultimately be redundant if the member later elected for reformed remedy benefits.
- 6.7 The consultation proposes that members receive annual benefit statements and pension saving statements based on both the defaulted legacy scheme and underpinned reform scheme annually until they retire.
- 6.8 The consultation comments that it will be more complicated to administer the DCU, there would be a significant administrative burden immediately in 2022 and to then administer over the long term.
- 6.9 The CFA believe that the Deferred Choice Underpin (DCU) offers the best option to mitigate the risk of future legal challenge as it would: prevent any future challenges on the grounds of incorrect choice; mean any member choice is made on known facts rather than predictive assumptions; and remove the potential age discrimination that immediate choice suggests by younger members making decisions.
- 6.10 The CFA has also highlighted the considerable cost and administrative disadvantages (see Question Seven).

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

- 7.1 Both IC and DCU require significant, upfront input and incur additional financial costs as a result of the requirement for system development, testing and implementation of any online software tools, as well as the increased human resources with appropriate knowledge, skills and understanding. Undoubtedly a significant communication exercise across a very diverse group of active scheme members, deferred members and pensioners is critical, whether to facilitate a short term requirement to respond for the IC option or for the DCU option the development of significant scheme knowledge aligned with a long-term administrative burden
- 7.2 While the consultation recognises that both options represent an administrative challenge, it should be noted that for the FPS, each FRA, acting as scheme manager, with overall responsibility for the locally administered unfunded scheme, will be the hardest felt by the reforms, a position shared only with the Police Pension Scheme.
- 7.3 It is not confirmed in the consultation when the immediate choice option would start, the consultation references sometime after 2022. It appears that the immediate choice option does not require immediate action in 2022, which could help lessen the administrative burden. Nevertheless, the consultation references each scheme making available tools such as online calculators and models and developing online resources such as benefit calculators.
- 7.4 The CFA seek clarity on who would commission and develop the FPS online tools?
- 7.5 In addition to the administrative impact, there is also significant impact on workforce planning and financial planning, as well as potential for reputational risk. The CFA would highlight a significant concern over the workforce impact, with the remedy arrangements regardless of which choice is implemented having an impact on decisions taken by Firefighters and may see Firefighters retiring earlier than planned due to a lack of understanding of the planned reforms.

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

- 8.1 Each of IC and DCU options have pros and cons, therefore in setting out its response, the NFCC assessed the tabled HMT remedy proposals against a risk framework which considered the key areas: risk (the avoidance of future discrimination and legal challenge); costs (management and administration); Service implications (financial and workforce planning); administrative feasibility (provision of support to scheme membership); and technical ability (provision of technical architecture to support the proposals).
- 8.2 The consultation recognises that both the Immediate Choice (IC) and Deferred Choice Underpin (DCU) represent an administrative challenge, however, in addition the NFCC consider that future legal risks and additional costs present the most significant challenges in regard to the two options. While the initial analysis shows that the DCU is the preferred option to mitigate the risk of future legal challenge it does present a financial risk due to the long-term nature of the remedy. The IC has the opposite challenges.
- 8.3 As the CFA have prioritised the risk of future legal challenge above the significant financial burden, the CFA response, to which option, Immediate Choice or Deferred Choice Underpin is preferable, is that Deferred Choice Underpin is preferable.
- 8.4 That said, the CFA would wish to highlight that the FPS is an unfunded, single employer scheme, which means each FRA is solely responsible for their individual scheme and the cost of running this has to be paid from the operating account. Currently, the top up grant from central government covers pension payments only. The 2016 valuation outcome saw an average increase of 12.8% to employer contributions, which will place a significant pressure on the FRA operating accounts from 2021. The CFA have a major concern that the costs associated with the proposed remedy will create unplanned pension expenditure that would undoubtedly create undue pressure on service provision for Cleveland Fire Authority.
- 8.5 To mitigate the CFA's significant financial concerns, we seek confirmation and assurances that it can be reasonably expected that the total costs of the Remedy will be funded by the Government rather than reside either directly and/or indirectly with the Authority.

**9 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?**

- 9.1 As set out in answer to question one, The NFCC have commented that they would like to see a full scheme-specific PIA to identify any potential discriminatory issues for the entire workforce. The NFCC have also commented on the tapering provisions.

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

- 10.1 The CFA do not accept a position that past cases should be postponed until 2022 where it is possible to make payments now. Instead the Board have been supportive of being able to remedy past and present retirement cases, and would welcome the provision of formal legally-defensible guidance on immediate detriment.
- 10.2 The CFA supports the view that where a member's benefits retrospectively change, they should be permitted to revisit the lump sum commutation decision they made at retirement subject to the scheme rules in force at the time, and this choice should not be artificially circumscribed. Those who have retired should be given the full range of choices they would have had at the time of retirement based on the scheme they choose for the remedy period.

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

11.1 The consultation proposal where the member owes money in contributions allows the member to pay these upfront or over time.

11.2 Contributions owed will likely fall in the following categories:

- Difference between FPS 2015 and FPS 1992 contributions for the remedy period.
- Contributions on FPS 1992 terms of any temporary promotion to be treated as an APB.
- Difference between FPS 2015 and FPS 1992 contributions on any CPD payments in order to calculate the APB that will be payable under the legacy scheme.

11.3 For immediate choice, the consultation proposal where the member owes money in contributions allows the member to pay these upfront or over time.

11.4 It doesn't state over what period they would be allowed to repay and does not appear to comment on the tax relief position of paying over a period of time. Nevertheless, the proposals for immediate choice appear to be straight forward.

11.5 Whereas the proposals for DCU are more complex by the proposal of a two-stage approach, particularly for FPS 2006 members who will build up a contribution liability if they later (as expected) elect for reformed benefits. This may be deemed to be unfair compared to IC with the two stage proposal, we could pay refunds to members at the end of the Remedy period knowing that they were incurring a debt for when they leave.

11.6 The CFA consider the application of interest on payments due from members is unfair. The member did not choose the scheme into which they were enrolled and should not now suffer a detriment because they were unable to maintain membership of the more favourable scheme. They should pay no more in contributions than a member who retained membership for the period.

11.7 Under the DCU proposals all members moved back into the FPS 1992 legacy scheme will have an immediate debt to pay on contributions which will have to be managed by the FRA's payroll. The consultation does not comment on what arrangements would be made under either immediate choice or deferred choice to collect the additional employer contributions. However, If FRAs have to pay the old FPS 92 rates and any retrospective / retired members contributions during 2022/2023, this will lead to significant funding pressures.

11.8 The CFA preference is that the employer contributions are recovered from the calculation of the employer contributions from 2023/2024. This issue is reflected in the current query on employer contributions under immediate detriment.

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

- 12.1 The proposed treatment of voluntary contributions requires more clarification. Where the member has elected to purchase added pension in the 2015 scheme, we would need a way to covert this back as Added Pension in the 2006/old schemes. APB could be a possibility for fire schemes, but not applicable in police.
- 12.2 What would happen for members who weren't able to purchase added pension in old schemes, as they could attain 30 years' service at age 55. Would this result in a refund of the contributions paid?
- 12.3 It would seem sensible to provide choice for members whether to retain any added pension in the reformed scheme (since they will have membership of that scheme post 2022) or to apply reformed scheme added pension to legacy scheme added years or added pension arrangements.

**13 Question Thirteen. Please set out any comments on our proposed treatment of annual benefit statements?**

- 13.1 Under immediate choice, annual benefit statements and pension saving statements would continue based on the member's choice.
- 13.2 Under DCU this would require two sets of annual benefit statements and pension savings statements provided to the member each year, one based on the default legacy scheme basis and another on reformed benefits.
- 13.3 For the majority of FPS 1992 members this would be a largely pointless exercise and potentially confusing to communicate.
- 13.4 For FPS 2006 members there may be value in showing the value of the reformed benefits but knowing there would be contributions to pay could cause financial distress to members.
- 13.5 Making ABS and pension saving statements more complex serves no purpose and would only confuse and potentially mislead members. It would appear more appropriate for these statements to only be provided on request, and or technology developed to enable member access to the reformed scheme projections online.

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

- 14.1 The NFCC supports the proposal that those who have been ill-health retired during the remedy period should be given the option of choosing the relevant benefits in the alternative scheme, but must satisfy the IHR criteria in the elected scheme to be awarded the relevant IHR benefits. Equally those who were rejected for IHR in the remedy period, and those in the legacy scheme who were not considered for IHR solely on the basis that they were older than the legacy scheme NPA, should be eligible for an IHR re-assessment under the criteria of the elected scheme, and to choose the relevant scheme IHR benefits.

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

- 15.1 Death cases are largely likely not to differ due to the immediate choice or deferred choice underpin approach, but naturally any amendments to death grants or survivor pensions could cause distress and will therefore need to be handled sensitively, especially in regard to the issue of communication which cannot be over-stated.
- 15.2 The CFA support the general principle that payments arising from the death of scheme members since 1 April 2015 should be revisited with a view to putting into payment the most beneficial set of benefits and/or to provide beneficiaries with a choice where there are advantages and disadvantages to the different options.
- 15.3 The proposal appears to suggest there is an argument against offering a choice that provides for unmarried partner benefits for members of FPS 1992 who in 2006 were given the option to move to FPS 2006 in order to take advantage of more modern family benefits, however, circumstances would have changed since and it would not seem defensible to argue that they would make a different choice now.
- 15.4 It would appear sensible to avoid further distress that where the partner of a deceased member has a partner's pension in payment from the reformed scheme and no dependent children, documentation provided to them should not offer a choice, as the choice would be to receive no pension from the FPS 1992. Nevertheless, it would be sensible that some contact should be made to reassure the partner.

**16 Question Sixteen. 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?**

16.1 The consultation proposes that decisions on whether to unwind a case based on an argument that the member may have taken a different decision if they had known that continued membership of their legacy scheme was an option should be taken on a case by case basis by the scheme.

16.2 It is not clear what is meant by the scheme in this case, would that be on a case by case basis per FRA, or would that be a decision of the responsible authority. The CFA seek clarity on this matter and issues, such as eligibility criteria, to ensure consistency in decision-making and application.

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

17.1 The CFA support the view that As the member has made their choice to transfer then this should be the decision point and the Remedy applied.

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

18.1 Potentially it could benefit a member to transfer out from one scheme under legacy or reformed benefits and transfer into the new club scheme on the opposite. However, this would not be equitable with members who have not transferred and will not have an opportunity to 'mix and match' benefits.

18.2 It would be administratively more straightforward for a single choice to cover both schemes and would ensure that members do not benefit unduly from the transfer, which is the principle of the Club.

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

19.1 Any reconsideration of divorce settlements could be costly and it is unclear who will bear these costs. The court order as set at the time of the divorce should remain unchanged which could result in a higher or lower pension benefit. Where the benefit reduces, this could result in challenge from the ex-spouse and clarification is required on whether this is enforceable.



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

- 20.1 Where the member owes a debt to the scheme, such as repaying member contributions, or as in the ill-health cases highlighted under question 14 it could be where overpayments are recovered based on higher tier FPS 2015 ill-health, the consultation asks is it right to ask members to pay interest where they owe money to the scheme as a result of their choice?
- 20.2 This is currently reflected in the immediate detriment guidance that interest might later be owed. Under immediate choice, this is most likely to affect former FPS 1992 members who will make a choice for legacy benefits over the remedy period, and who will need to pay balancing contributions between the FPS 1992 rates and FPS 2015 rates.
- 20.3 Under current proposals for DCU, which sees FPS 2006 members refunded contributions in 2022 and then asked to repay at the point of DCU choice if they choose reformed benefits, interest could then potentially be applied to the repayment of contribution. If FPS 2006 members were allowed to default to stay in FPS 2015 under the DCU this scenario of being refunded and then asked to pay would not occur.
- 20.4 Charging interest on payments due at the DCU date could be very significant depending on the time period between 2022 and DCU, i.e. 20 years' worth of interest would be quite significant.
- 20.5 Given that the consultation accepts that monies owed to the member will be interest inflated it would seem in principle that fairness and equity would dictate that the same interest rate would be applied to amounts owed by scheme members, however the creation of amounts owing to the scheme is as a result of the remedy applied by Government and not of the members making.

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

- 21.1 The consultation proposes that interest would be paid to members if owed. Para. 20.5 covers this matter.

**22 Question Twenty Two. 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?**

- 22.1 There is no scheme interest rate set for the FPS. Where interest rates have been set they are usually for individual circumstances such as the special members exercise in FPS 2006.
- 22.2 While benefit / contribution rates may differ across the public sector, these questions relate to interest on money owed or refunded and do not reflect the rate of the benefit in payment.
- 22.3 It would seem open to challenge to apply different rates across public sector for the same purpose.

**23 Question Twenty Three. Please set out any comments on our proposed treatment of abatement?**

- 23.1 Abatement is a public sector policy that applies to the legacy schemes intended to protect the public sector purse from paying both pension and salary to an individual where combined leads to an income higher than on salary alone.
- 23.2 Abatement is common across the Firefighters pension scheme, with a need to retain skills and knowledge, particularly post-Grenfell and during the current pandemic, Firefighters are often re-employed in skilled areas and pensions subject to abatement.
- 23.3 The CFA believe that adjusting abatement to include service now treated as legacy scheme and therefore impacting the pension without giving the member the choice to have reduced their pay or grade would seem likely to attract a legal challenge. Such abatement cases should be recalculated from an agreed date in the future to enable the member to adjust their re-employment as needed.

## **24 Question Twenty Four. Please set out any comments on the interaction of the proposals in this consultation with the tax system?**

24.1 The consultation sets out some general policy points which appear to be reasonable, these are:

- HMRC can only collect tax where it is owed to HMRC for current year and four tax years preceding.
- Where tax is owed to the individual government will compensate for all the years of the remedy period.

24.2 The CFA generally support the proposals under the immediate choice and deferred choice underpin for both tax relief and annual allowance however we would support the viewpoints that the proposed tax treatment of Remedy does not overtly appear to align with the principle of placing members in no more or less favourable position than they would have been in had the transition not occurred. For example, by going back only four years, a member subject to Remedy may pay a lower level of taxation in relation to Annual Allowance than a fully-protected member in the same position paid during the whole Remedy Period. If scheme pays was applied, this will impact permanently on the member's pension.

24.3 In addition, due to the fast accrual in the police and fire schemes there will be more members affected than in the other public sector schemes. Account needs to be made for:

- The Annual Allowance (AA) adjustments for the fast accrual schemes would be a large (much larger than other public sector schemes) portion of scheme members
- Many of these AA tax charges will be significantly higher than if the member had been in the legacy scheme since 2015
- Where double accrual applies, a pension increase of as little as £2,000 will result in the member exceeding AA
- All members with a high ranking position and those who receive a promotion will be impacted for AA
- Many fast accrual members will attract reoccurring AA tax charges
- Some members who had tapered into the 2015 scheme, but elect to remain in the legacy scheme and had AA tax charges - HMRC will owe the member/FRA an element of the tax charge on the AA previously paid

- 24.4 It is proposed that the Government / HMT meet taxation on reformed benefits taken under DCU. It is not clear why this is restricted to reformed benefits under DCU. If it is right to meet tax charges in one scenario, why not across all scenarios?
- 24.5 It is understood that tax relief on contributions can be obtained only by active scheme members. In the light of the Remedy, should this arrangement be made available to deferred and retired members.
- 24.6 It is possible that tax relief may be paid on backdated contributions at a different rate to that which would have applied had the contribution been paid at the time it was due. There should be a mechanism to ensure members are neither advantaged nor disadvantaged through this application of tax rates.
- 24.7 The CFA cannot understate the requirement for as many people as possible to have the right default return in 2022 if we are to minimise the effect of the tax implications.
- 24.8 As acknowledged by both the consultation and this response, the administrative consequences of the tax effect under DCU is significant where the member is likely to make a different choice at retirement. This would appear to be a significant risk for the Firefighters Pension Scheme which does not exist elsewhere. There is a major dependency on the development and capability of HMRC systems for reconciling payments and in particular the payment of refunds due to scheme pays no longer being required and the re-payment or collection of tax following Remedy.

END