

Cumbria Fire and Rescue Service response to the HMT public service pension schemes: changes to the transitional arrangements to the 2015 schemes consultation

This response is provided by Cumbria Fire and Rescue Service (CFRS) part of Cumbria County Council and is an employer response.

Whilst CFRS understands the need to implement a Remedy to the identified age discrimination in public sector pension schemes, we are concerned about the additional costs associated with the proposed Remedy. It is disappointing that, whilst these are noted in the consultation at approximately £17bn across the period of the Remedy there is no proposals as to how this would be funded. Additionally, the £17bn quoted in the consultation document only relates to the increase in scheme costs arising from increased scheme member benefits and does not include any recognition of the cost of additional administration related to the Remedy.

As the Government created the discrimination, it is reasonable to expect that the Government will fund the cost of the Remedy through enhanced grant funding rather than pass that cost on to Employers.

Additionally we would suggest that a central Government resourced team be set up to support fire authorities and their administrators with documentation, guidance, advice and procedures etc to try and ensure a consistent national approach rather than these being developed on a local basis which could cause inconsistencies and duplicated effort.

Q1. 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?

Response:

No

Q2. Is there anything else you would like to add regarding the equalities impacts of the proposals set out in this consultation?

Response:

The following points should be considered:

1. 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. It is unclear from the consultation how this will be managed and greater clarity should be provided by Her Majesty's Treasury (HMT).

2. Choice of Immediate / Deferred Choice Underpin (DCU) has an element of indirect discrimination. For example, 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.

3. 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.

4. Members on taper arrangement could argue discrimination if taper is not honoured up to the date offered at outset.

Q3. 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?

Response:

Unlike the 'normal' accrual schemes, some Fire scheme members who reach their 30 years whilst on taper protection may wish to retain their protection to a set date i.e. retain their legacy benefits until the members attains 30 years and then move into the CARE scheme, so they benefit from paying into the scheme beyond 30 years service.

Q4. 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.

Response:

The default to leave non-responders in their 'current' scheme (be that legacy or reformed) could be challenged at a later date if it could be argued there are extenuating circumstances – e.g. ill-health or disability. The default will require high administrative workloads and increased costs in attempting to contact all members (active, deferred, pensioner, deceased). A standardised approach and outcome will be required that all scheme administrators apply consistently to avoid future challenge.

It should also be clarified how any scheme members will be treated where the pensions administrator does not hold a current address (these will generally be deferred members) and consequently cannot respond to an Immediate Choice exercise. For example, would employers be permitted to extend the timeframe for this option under their discretions policy?

Q5. Please set out any comments on the proposals set out above for an immediate choice exercise.

Response:

CFRS support the option to implement an Immediate Choice exercise to enable FRAs to draw the Resolution to a conclusion as swiftly as possible giving clarity to scheme members on their pension benefits, clarity to employers on the additional costs of the Resolution and mitigate the risk of having to retain staff over the long term with the experience and knowledge to address the Resolution.

With either the immediate or DCU choice, there will be the need for a significant increase in pension scheme administration resource. It is recognised that the Immediate Choice option will concentrate this demand over the period on which the Immediate Choice is implemented, but it is considered that this is preferable to the DCU option which would require pensions administrators to be undertaking Resolution calculations until the last in-scope scheme member opted to draw their pension – potentially many years into the future.

Under either option, dependency on software providers to develop systems and software to facilitate the calculations required to enable the members to make an informed choice will be key. If this is not available in time for implementation the workloads imposed on administrators will be even higher and consequently administration costs would increase. In addition, there would be higher risk of inaccuracies due to human error.

Appendix 6

HMT should liaise with software developers to understand the timescales to revise systems to calculate Resolutions.

Population and validation of member data going back over a 7-year period and systems / processes to deal with the provision and collection of this data, and also with issues of contributions and tax calculations will add to workloads and would need to be addressed prior to the Remedy being implemented.

There will be major communication challenges in providing information to members in a way that is understood and engaging and is consistent across all fire authorities across the country. Consequently it is recommended that a central Government resourced team is set up to support fire authorities and their administrators with documentation, guidance, advice and procedures etc to try and ensure a consistent national approach rather than these being developed on a local basis which could cause inconsistencies and duplicated effort.

Q6. Please set out any comments on the proposals set out above for a deferred choice underpin.

Response:

The option for a Deferred Choice Underpin is not supported by CFRS as an employer.

It is recognised that the DCU will be of benefit to scheme members as they would be able to determine the most financially advantageous option at their date of retirement. This option would also spread the administrative burden on pension administrators across many more years than the Immediate Choice option.

However, the DCU option will give lack of clarity to scheme employers on the ongoing cost of the pension scheme and require administrators to ensure they had sufficient staff with experience and knowledge to address the Resolution for many years into the future.

DCU still involves a very heavy workload for administrators reverting pensioners, deferred, deceased etc. members to legacy or reformed scheme membership, dealing with issues such as tax and contribution rate changes across a huge number of members over a relatively short period of time.

Although DCU is not the preferred choice for the employer. The scheme member representatives of Cumbria's Local Fire Pension Board would prefer DCU. The option of deferred choice having similarities (from a scheme administration perspective) to the requirement to look if a member would benefit from a split pension on retirement. They do however acknowledge that this will place an additional burden on the administration of the scheme and are in agreement that the costs of this (together with development of software etc.) should not fall on individual Fire & Rescue Authorities.

Q7. Please set out any comments on the administrative impacts of both options

Response:

Both options require significant, upfront input and incur cost as a result of systems development, testing and implementation, as well as increased resources for both the service and our administrator with appropriate skills and knowledge. A very significant communication exercise across a very diverse group of members, deferred members and pensioners with a requirement for them to respond for the Immediate Choice whereas the Deferred Choice will require significant scheme knowledge and data collection/retention for many years to come.

Appendix 6

Implementing the Remedy from 2022 alongside business as usual will have significant challenges. It is disappointing that the additional costs of pensions administration or how these will be financed has not been addressed with the consultation. It is the view of the CFRS that the cost of any Remedy proposed by central Government should be specifically funded by central Government.

Q8. Which option, immediate choice or DCU, is preferable for removing the discrimination identified by the Courts, and why?

Response:

The Immediate Choice option would be the preference for Cumbria Fire and Rescue Service to allow the matter to be resolved quicker rather than extending into what could potentially be decades.

Immediate Choice would allow Fire Authorities to plan better in terms of both financial and human resource. Furthermore it would allow our current employees and pension administrators who have the knowledge of the schemes and associated issues to manage and resolve this rather than expecting our future workforce to have an in depth knowledge of the current/legacy issues.

The DCU would be prolonged and difficult to administer and manage for the reasons stated above. It is noted that employees, in the many different pension schemes available in the UK, have to make choices regarding their future pension e.g. to transfer a pension in to a scheme, or to aggregate existing pension records when starting a new role. These decisions all would impact their future pension and they do not get the opportunity to review this at the point of their retirement therefore why should this be any different.

Although DCU would allow members to base their choices on actual data at the point it is drawn which could be argued is less risky. Both options still have an element of risk regarding future legal challenge so this argument should not be used when determining which approach to proceed with.

Both options will have astronomical impact on all fire services and their pension administrators and we would ask the Government to consider providing fire authorities with additional finances to help manage this additional burden.

Q9. 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?

Response:

Some protected fire members would potentially want to remain in the legacy schemes where they have protection based on age but could only get full 30 years' service by working beyond age 55, as they would have remained in the legacy scheme prior to Remedy.

There is the possibility that the Remedy will not have been completed by 1/4/2022 and therefore there is an argument for members to be allowed to accrue further service in the legacy scheme until the Remedy has been fully delivered to all the affected cohort.

Q10. Please set out any comments on our proposed method of revisiting past cases.

Response:

Appendix 6

Paying arrears of pension as a lump sum could result in members paying more tax than they would have over the years since retirement. There is the potential for lump sums to be classed as unauthorised payments and therefore incur tax charges, that wouldn't have been due if paid at retirement.

Some firefighters scheme members who had tapered protection into the 2015 scheme would either lose the 2015 benefits, and if they had already built up 30 years in 1992 scheme, receive no added pension and be asked to pay added pension contributions. If we could allow members to retain taper this would avoid this challenge.

Members should not suffer detriment as a result of Remedy, whether directly in terms of benefits or indirectly as a result of taxation.

Q11. 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.

Response:

With the DCU option, members are being charged twice under the two stage proposal which could be deemed unfair compared to the immediate option. In addition, 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.

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.

It is understood that tax relief on contributions can be applied only to active members - not to retired or deferred members. It is important that those members are not disadvantaged through the retrospective choice of scheme under Remedy. Hence dispensation should be obtained from HMRC to provide tax relief to deferred and retired members, or to allow such members to make net pay contributions and for the scheme to receive any tax relief via HMRC (as operates with money purchase arrangements).

Q12. Please provide any comments on the proposed treatment of voluntary member contributions that individuals have already made.

Response:

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 convert this back as Added Pension in the 2006/old schemes. It is unclear as to what would happen for those members who were not able to purchase added pension in old schemes, as they could attain 30 years' service at age 55. It is unclear if this would result in a refund of the contributions paid.

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.

Q13. Please set out any comments on our proposed treatment of annual benefit statements.

Response:

Making Annual Benefit Statements (ABS) and pension saving statements more complex than they already are serves no purpose other than to confuse and potentially mislead members. As members will be moved into one scheme for the Remedy period it would seem more appropriate to quote the figures associated with this scheme on the ABS.

The outcome provided for members should be paramount rather than the complexities imposed by the Remedy and consequently documentation provided to members needs to be clear, consistent and not misleading.

Q14. Please set out any comments on our proposed treatment of cases involving ill-health retirement.

Response:

The consequence of the Remedy should not disadvantage members who are already in receipt of IHR, benefits should be adjusted going forward, not retrospectively. The proposal does not consider how members on IHR, who also have an injury pension, will be affected. Further clarity is required in this area.

Q15. Please set out any comments on our proposed treatment of cases where members have died since 1 April 2015.

Response:

Amendments to death grants or survivor pensions could cause distress. Communication will need to be sensitive and the complexities of those communications of alternate benefits to survivors or executors or representatives should not be underestimated, and will be time-consuming.

Consideration should be given to only contacting families where additional benefits would be payable. However, the pension administrators will not be in a position to advise on tax implications or any impact on state benefits that individuals may be in receipt of, therefore the administrators may deem this work to be outside their remit.

Q16. 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.

Response:

CFRS is concerned that this proposed treatment may be open to abuse. The proposals are lacking any detail on eligibility and proof that an individual would have acted differently, stating they should be considered on a case by case basis. Unless there are criteria to be met this will lead to inconsistencies and the potential for another discrimination claim.

Q17. If the DCU is taken forward, should the deferred choice be brought forward to the date of transfer for Club transfers?

Response:

As the member has made their choice to transfer then this should be the decision point and which the Remedy is applied.

Q18. 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?

Response:

A single choice to cover both schemes would be the most equitable solution and would not differ from those members who transfer benefits outside the public sector scheme.

Q19. Please set out any comments on our proposed treatment of divorce cases.

Response:

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 from HMT is required on whether this is enforceable.

Q20. Should interest be charged on amounts owed to schemes (such as member contributions) by members? If so, what rate would be appropriate?

Response:

No. Where the amount owed by members is solely due to the Remedy it does not seem fair to charge the member interest.

Q21. Should interest be paid on amounts owed to members by schemes? If so, what rate would be appropriate?

Response:

Since the members will have suffered a loss through not receiving money due to them or by paying more than they should have in contributions or other payments it is only fair that interest should be paid on those amounts.

Conversely, where the member has overpaid (as in the case of 2015 membership reverting to 2006 scheme membership), interest payments should be made to the member, reflecting that they were deprived of access to those funds by application of the transitional arrangements and therefore need compensation.

CFRS consider that an interest rate of Bank Rate +1% would be appropriate.

Q22. 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?

Response:

Yes, interest should be paid as a single consistent rate across all schemes.

Q23. Please set out any comments on our proposed treatment of abatement.

Response:

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 may 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.

Q24. Please set out any comments on the interaction of the proposals in this consultation with the tax system

Response:

The proposed tax treatment of Remedy does not 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.

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.

Due to the fast accrual in the 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 significant (much larger than other public sector schemes) proportion 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

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 and not the Immediate Choice option. If it is right to meet tax charges in one scenario, why not across all scenarios?

It is understood that tax relief on contributions can be obtained only by active scheme members. In the light of the Remedy, this needs to be made available to deferred and retired members.

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.

The amount of work required to administer these proposals needs to be factored into the agreements with pension administrators. 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.