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9 October 2020

Dear Sir or Madam

**Public service pension schemes: changes to the transitional arrangements to the 2015 schemes: Local Government Association response**

Thank you for the Department's consultation on Public service pension schemes: changes to the transitional arrangements to the 2015 schemes, which commenced on 16 July 2020.

I respond on behalf of the Local Government Association (LGA). The LGA is a politically led, cross-party membership organisation which represents more than 330 councils of all types and 44 fire authorities across England. We work on behalf of our members to support, promote and improve local government.

The response has been drafted by the Pensions Team at the LGA. The team provide employer and administrator support to various public service pension schemes, including the Local Government Pension Scheme (LGPS), the Teachers' Pension Scheme (TPS), and the Firefighters' Pension Scheme (FPS).

The response deals specifically with considerations relating to the TPS and FPS as within scope of this consultation.

The FPS in England provides benefits to current and former firefighters and their dependants. It comprises the 1992 and 2006 final salary schemes (both special<sup>1</sup> and standard members) and 2015 career average scheme. The scheme is managed by 45 FRAs on behalf of over 89,000 members<sup>2</sup>. It is unfunded with expenses for running the scheme met by FRAs (i.e. the employers).

TPS is administered centrally by Teachers' Pensions on behalf of the Department for Education. The TPS Annual Accounts 2018/19<sup>3</sup> reports that there were 1,391,104 active and pensioner members in the TPS in 2018.

We are pleased to provide our responses to the consultation questions below.

Yours faithfully,



Jeff Houston

Head of Pensions

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<sup>1</sup> FPS 2006 was amended in 2014 by [SI 2014/445](#) to introduce a new category of member called Special Members that reflected service for retained Firefighters prior to 5 April 2006. These members could accrue benefits in FPS 2006 under special terms that generally reflected the FPS 1992.

<sup>2</sup> [From Fire Statistics Table 1304 2017/18 Firefighters' pension membership by membership type in England](#)

<sup>3</sup> [TPS Annual Accounts 2018/19](#)

**Question 1: Do you have any views about the implications of the proposals set out in this consultation for people with protected characteristics as defined in section 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?**

While we do not have specific views on the implications of the consultation proposals, we think that it would be appropriate for each scheme to be subject to an individual Equalities Impact Assessment (EIA) due to the differing public service workforces in scope of the proposals.

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

See answer to Question 1.

There is considerable history in schemes such as Fire and Police of legal challenge on a wide range of pensions issues (e.g. Milne v GAD; Ashcroft & Evans) and historic correction / remedies being applied retrospectively over many years.

A full, scheme-specific EIA should therefore be undertaken of the eventual proposed solution for remedy to minimise the risks of future challenges.

**Question 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?**

Although the treatment is technically correct in line with options given to other cohorts of members to ensure effective removal of age discrimination, some members of the Firefighters' Pension Scheme (FPS) may have been better off with tapering than a single choice covering the whole remedy period, for example those with a service cap in the legacy scheme who could have continued to accrue service in the reformed scheme. It is possible that FPS members may have made a different decision i.e. to retire or not retire and this may lead to the possibility of changing a contingent decision under paragraph A.43 of the consultation document.

It may also cause issues with retention of experienced employees and uncertainty for workforce planning.

We were assured prior to the consultation that no member would lose their accrued benefits under remedy. This does not appear to be the case under the proposals for tapering; there are some cases where an individual's position may be worsened.

**Question 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.**

We support the proposal in principal that any member who did not respond to an immediate choice exercise would be deemed to have chosen to accrue benefits in their existing scheme for the remedy period.

This would ensure that no adjustment of contributions is needed where rates differ between legacy and reformed schemes. Deduction of contribution arrears could be challenged where a member has not made a positive election.

Additionally, it is not clear that all members would be financially better off moving back to the relevant legacy scheme.

Paragraph 2.39 of the consultation document does not clearly set out a proposed treatment of tapered members. A decision will need to be made at scheme level and applied consistently to avoid risk of unintended future discrimination.

The operation of the choice exercise imposes a huge additional workload of connecting with active, deferred and pensioner members across a wide range of media. Although the consultation is proposing multiple efforts to contact members, we are concerned that a significant number of members would not respond to an immediate choice exercise.

For example, data for the Teachers' Pension Scheme (TPS) shows that many teachers are not engaged with their pension. The TPS communicates with members electronically, via email and articles on the TP website. Just over 60% of active and pensioner members are registered on My Pension Online (MPO), the member portal on the TPS website. The TPS Annual Accounts 2018/19<sup>4</sup> reports that there were 1,391,104 active and pensioner members in the TPS in 2018. Over 830,000 of those members are not registered on MPO.

While FPS members tend to be more engaged, we commonly find that there are misconceptions about the schemes and, anecdotally, an over-reliance on advice from colleagues who are perceived to be knowledgeable.

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<sup>4</sup> [TPS Annual Accounts 2018/19](#)

Our view is that there is a risk that in the future, that members who do not respond to an immediate choice exercise could claim they were not given the opportunity to make choice i.e. they did not receive the 'choice' correspondence from their scheme or at retirement, they could claim that they were not given enough information to make an informed decision. Or for FPS that they would deliberately not make a choice in order to make a future claim.

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

We have set out a number of considerations grouped under the headings below.

**Costs**

- Under the immediate choice exercise, there could be additional costs for some employers in respect of additional employer contributions. For example, under the TPS legacy scheme, part time employment with full time employment is not pensionable. For a member who elected to move from the legacy scheme to the reformed scheme for the remedy period, previously excluded employment would become pensionable. For some employers in the TPS, such as small schools, additional, unexpected employer contributions could impact on their budgets.
- Increased employer costs will be an issue for both immediate and deferred choice in FPS due to higher rates in 1992 legacy scheme. We have received clarification from one metropolitan Fire and Rescue Service that between £5m to £7m would be needed to make good all retrospective employer contributions for retired / current FPS members in 2021-22 to cover members going back into their legacy schemes with effect from 1 April 2015.
- For an immediate choice exercise to be successful, a separate IT system must be developed to record immediate choice. This would be a significant cost to schemes.
- There will need to be considerable software changes in order to cater for an underpin based on reformed scheme benefits. Initial costs will be in developing new processes. Revised or new data collection and processing tools will be required.
- In the short-term, manual calculations will be required. This will increase the amount of resource that is required. Immediate choice is likely to be a resource intensive project which could lead to temporary increases in the administrator workforce to deal with the workload. Any increase in administration costs will be passed down to the employers.

- There will be other substantial costs to schemes in the short term such as the development of tools/calculators to enable members to make an informed choice.

### **Timescale**

- Our understanding of the proposals in the consultation document is that software systems and tools/calculators would need to be in place by 2022. These developments are crucial to the success of immediate choice. If this timescale is correct, there is concern that there would not be enough software development time for schemes to successfully produce these. As an indicative timetable within an ambitious timeframe for regulations it may take just under two years to deliver the software from the point of the decision on immediate or deferred choice.
- New software systems must include a reconciliation process to ensure members' responses are accurately recorded and received.
- It should also be noted that many administrators and software providers deal with more than one public service scheme, and will be delivering remedy across them all, increasing the time pressure. We are aware that the LGPS would like to implement their remedy in advance of 2022 and we would welcome this to free up administration and software time for the unfunded schemes.

### **Advice for members**

- Members must be provided with information, including tools, to make an informed decision. Given the number of members impacted across public service pension schemes, it is likely that there will be insufficient independent advice available for members and many members will be totally reliant on scheme guidance. Tools such as calculators must be built to a very high standard to avoid future claims.
- For locally administered schemes, this will be particularly challenging where the employer does not have a direct relationship with the software suppliers, and there is a risk of inconsistent information being provided due to variances between employers such as available budget and resources.
- Immediate choice may be indirectly discriminatory to younger members who will need to make more assumptions on their career path, future indexation, and any personal circumstances/ events which may later affect their seven-year remedy period accrual. There is also uncertainty over the FPS CARE accrual rate from 2019 to 2023 while the cost-cap remains to be revalued.

- Employers are cognisant of reputational damage if they are unable to implement immediate choice effectively and are later subject to legal action from members.

**Question 6: Please set out any comments on the proposals set out above for a deferred choice underpin (DCU).**

We have set out a number of considerations grouped under the headings below.

**Costs**

- While there would be costs for schemes in the long term for DCU, in maintaining systems and data, there will also be major administrative activities for schemes to undertake in 2022.
- DCU proposes that members would be returned to the legacy scheme for the remedy period. This would be a significant exercise for schemes to undertake as schemes would have to review members' records to identify differences between the legacy and reformed schemes. It would be extremely challenging to achieve without automated systems which are unlikely to be available at that time.
- While the bulk of the cost will be in the set-up costs, there will be a requirement to document instructions and decisions made during the remedy period to ensure that those who are charged with administering the scheme in the future have the necessary understanding to process the benefits in accordance with the regulations.
- Uncertainty over which benefits members would elect for in the future would affect scheme valuation assumptions and make it more difficult for employers to budget for changes to contribution rates.

**Maintenance of data**

- Under DCU some members may not take their benefits for many years. Schemes would have to ensure that service data could be maintained for several decades. Whilst the DCU exercise would be an opportunity to raise members' awareness and for schemes to improve their data, it would be very difficult to resolve historic service queries in the future.

## **Voluntary contributions**

- For the TPS, placing members in the legacy scheme for the remedy period takes away members' choice on voluntary contributions made under the reformed scheme during the remedy period. Where a member, at the point of taking their benefits, chose the reformed scheme for the remedy period and chose to restore their original elections, there may be a financial impact on the member. For example, a TPS member makes an election in 2015 to buy out their actuarial reduction for 3 years. In 2022, the member is moved into the legacy scheme for the remedy period and is refunded the buy-out contributions. They are moved into the reformed scheme in 2022 when the member makes a fresh buy out election. When they take their benefits, would the total cost of the buy-out be more expensive for the member as the buy-out in 2022 would be based on different assumptions i.e. age and factors?

## **Governance**

- Under the FPS regulations, each of the 45 Fire and Rescue Authorities (FRAs) are responsible for the management and administration of their scheme and are defined in law as the scheme manager. There are also 45 separate Local Pension Boards. Consequently, there are already challenges to consistency in the interpretation and application of scheme rules. As the LGA we are looking for options to support improvement to administration and governance. It is possible that the longer implementation period necessary for DCU will extend the risk of ineffective governance.
- This is not perceived to be as much of a concern for centrally administered schemes, such as the TPS.

## **Timescale**

- Without the required software in place, it would be extremely challenging for schemes to return members to their legacy scheme in 2022 and carry out the required annual allowance recalculations in line with HMRC deadlines.
- In addition, under the current DCU proposals, benefit statements at 31 August 2022 would theoretically need to reflect accrual in the legacy scheme up to 31 March 2022 as well as the reformed scheme underpin.



- Early conversations with FPS software suppliers<sup>5</sup> have confirmed that the software companies believe they cannot start the specifications needed for the change to systems until a decision has been made on whether immediate choice or deferred choice will be implemented due to the different solutions that may be needed. Timescales for programming, development, testing, and delivery then need to be accounted for.
- As an indicative timetable within an ambitious timeframe for regulations it may take just under two years to deliver the software from the point of the decision on immediate or deferred choice.

### Administrative burden

- There is a considerable amount of administrative work to be done for some schemes in reverting members to their legacy schemes with the potential for it to be redundant if the member later elects for reformed benefits. For example, the FPS has different contribution rates across all schemes. These would need to be adjusted with tax relief for each member. Some members will owe money, and some will be owed money, in the knowledge that they are accruing a debt to be repaid at retirement.
- An example of the impact for a transitional FPS 2006/ FPS 2015 member is shown below

Date	Salary	EE%		ER%		2022 (+)		Retirement (-)	
		2006	2015	2006	2015	EE	ER	EE	ER
2015	£29345	10.4	12.2	11.9	14.3	£528	704	£528	704
2016	£29638	10.4	12.5	11.9	14.3	£622	711	£622	711
2017	£29934	10.4	12.7	11.9	14.3	£688	718	£688	718
2018	£30533	10.4	12.9	11.9	14.3	£763	733	£763	733
2019	£31144	10.4	12.9	27.4	28.8	£779	436	£779	436
2020	£31767	10.4	12.9	27.4	28.8	£794	445	£794	445
2021	£31767	10.9	12.9	27.4	28.8	£634	445	£634	445
Totals						+£4811	+£4192	-£4811	-£4192

- Where service details for part time members have not been recorded under the reformed scheme but are needed for the legacy scheme, these details will need to be obtained and backfilled. This will be particularly onerous for retained firefighters.

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<sup>5</sup> Aquila Heywood and Civica

## Proposal

- In order to mitigate some of the administrative challenges of DCU and uncertainty over costs in the long-term for the FPS, we would like to suggest two possible options:
  - Firstly, we would strongly recommend that individual schemes are given the option to choose which scheme members default into.
  - While a default deals with many of the concerns, it would be preferable for the member to make their own indicative choice on which scheme to base benefits for the remedy period. Offering members an indicative choice removes the risk of an irrevocable choice and lessens the potential complications of reversal at retirement.

## **Question 7: Please set out any comments on the administrative impacts of both options**

### Software/system development

- Both options would require schemes to develop complex software systems and guidance. DCU is administratively more complex and would impact more on employers as a result of systems/records/data to be maintained for a much longer period. It is set out in the consultation document that the expectation of the administration of an immediate choice exercise would be that it would be completed within a few years.
- Under the DCU option, it is proposed that benefit statements would record both legacy and reformed scheme benefits. This would be complex for schemes to administer as they would need to record all data e.g. pensionable pay, elections for both schemes for the remedy period, for a long period. See Question 13.
- New software systems would be essential to record a member's decision for immediate choice; this would not be required under DCU. There would put pressure on schemes to have in place complex systems and processes in 2022 for immediate choice.
- Modellers and calculators would need to be developed for both options. This guidance would be complex for schemes to develop and there would be additional pressure on schemes in respect of the immediate choice option as these tools would need to be available for members from 2022.

- In the FPS, employers have no direct contract with the software suppliers. This is managed by the administrator who is the client of the software provider. This could have implications for the development of modellers and calculators needed for members to make an informed choice. Online web solutions are developed separately to the main development underpinning the software solutions and would be dependent on and additional to the main development needed to implement remedy. The alternative would appear to be a spreadsheet calculator (provided by GAD), with all the limitations that entails – such as the inability to account for all of the features of a particular scheme and lack of accessibility.

### **Guidance**

- As well as modellers and calculators, new guidance on scheme websites, fact sheets and revised forms would need to be in place for members to make an immediate choice.
- Guidance would also be required to explain to members the different features of the reformed and legacy schemes and the possible impact on pensionable service i.e. reformed scheme flexibilities: buy out, faster accruals and pensionable pay differences.

### **Administration**

- Under immediate choice, reconciliation of members' choice would need to be completed to ensure as many members as possible made a choice. This would be resource intensive to schemes. All attempted contact with members would need to be recorded to avoid future claims. The schemes would need to have a process to record non-respondents i.e. where members remained in the 'default position' for the remedy period as proposed by the consultation.
- There would be complex administrative processes to set up and administer as a result of the immediate choice exercise. For TPS members choosing the legacy scheme for the remedy period, they would need to be refunded for any buy out elections and the conversion of faster accrual elections to additional pensions. There would also be pensionable pay differences between the legacy and reformed schemes to be administered which could result in complicated transfers, e.g. for the TPS it would be to the LGPS, for excluded employment or processing refunds. For TPS members choosing the reformed scheme, there could be additional member and employer contributions to be processed in respect of previously excluded employment.

- Under the DCU option, it is proposed that all members would be placed in the legacy scheme for the remedy period from 2022. This would be a significant administrative exercise for schemes both in terms of amending members' records and communicating changes to members. There would also be additional, complex changes to rectify differences between the reformed and legacy schemes: pensionable pay differences where some employment would not be eligible for the TPS under the legacy scheme and reviewing and administering flexibilities' elections that were not part of the legacy scheme e.g. refunds, conversions to additional pensions.
- Similar changes to members' benefits and administrative tasks could be required where a member chooses the reformed scheme for the remedy period when they take their benefits under DCU. Any transfers, pension debits, added years would all need to be reversed which is likely to be administratively difficult.
- Under both options, all members must be placed in the reformed schemes from 1 April 2022. We are concerned that there will not be enough time for software development and changes to be in place by 1 April 2022 and ask for clarification on this point.
- We understand that recruitment and retention of experienced pensions staff is already a problem for public service schemes, particularly the locally administered schemes. If we expect that more administrators are going to withdraw from the market in coming years (for FPS), it is possible that DCU presents a higher risk due to extended record-keeping, data transfer, and even fewer experts in field at the time options need to be explained to a member.
- Immediate choice avoids the refunding/ collecting of member contributions and issues for members who could accrue a contributions 'debt' at retirement under DCU. Under DCU, schemes would be required to provide dual calculations for annual benefit and pension saving statements for many years to come which would not be required under immediate choice. Therefore, immediate choice would remove one layer of administration, communication, and tax complexity arising from moving all members back to legacy scheme from 1 April 2015.

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

We would broadly support DCU as the preferred choice to mitigate member risk and allow for the deferral of administrative support. DCU is also recognised as reducing the reputational risk to employers of members making a decision that may later prove to be less beneficial and attract future legal challenge.

However, under the HMT proposals there is a significant administrative burden that might not be met in time for April 2022.

- As detailed under Question 4 there are a significant number of members that are not engaged with their pension; our concern is that some members would not respond to an immediate choice exercise, despite the measures suggested in the consultation document to engage with members. This could result in future claims.
- There is also a risk from members who responded to the immediate choice exercise. While the consultation document states that the decision is irrevocable, members could later claim that they had not been provided with adequate information to make an informed decision.

**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?**

Moving all members into the same scheme on the same date ensures equal treatment. However as detailed in Question 1, we would like to see scheme specific EIAs to support the proposal.

Protected members will have reached their NPA by this time and be able to retire if they do not wish to go into the reformed scheme, and all tapered members would have tapered by this date.

Final salary link for pensionable pay and other protections such as double accrual guarantee (for Fire and Police only) should be retained for members moving to the reformed schemes in 2022.

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

There will be many complexities to consider both on implementation issues and the member choice such as deaths and transfers. It is important that restrictions in existing legislation do not override the policy intention which we understand to be that members are as far as possible put back in the same position as if they were able to remain in their legacy schemes (until 2022) or choose the reformed scheme for service from 2015 onwards.

Clarification is needed over the tax position for amending benefits in payment e.g. whether they will be treated as authorised if they do not meet the timing of payment conditions<sup>6</sup>.

### **Actuarial factors**

- The consultation document proposes that the actuarial factors used in re-calculations should be the factors used at the time of retirement. This is consistent with retirements currently being recalculated in the TPS.
- In some cases, such as CETVs for members returning from FPS 2015 to FPS 1992, factors are not available as the scheme has been closed for some years.

### **Compensation under the TPS**

- Revisiting past cases could impact on mandatory and discretionary compensation paid under the TPS by employers. Where a pensioner member is placed in a different scheme during the remedy period, if they had been granted mandatory or discretionary compensation under the TPS at retirement, this would need to be reviewed by TP at this point.
- This could result in arrears of compensation owed by employers.

**Question 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.**

For immediate choice, the consultation proposal for a member owing contributions allows these to be paid upfront or over time. It does not 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. We would seek clarification on this point.

Nevertheless, the proposals for immediate choice appear to be straightforward.

The proposals for DCU are more complex by the proposal of a two-stage approach, particularly for members who will build up a contribution liability if they later elect for reformed benefits.

Under the DCU proposals all members moved back into the FPS 1992 legacy scheme would have an immediate debt to pay on contributions which will have to be managed.

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<sup>6</sup> [FA 2004, Schedule 29, Part 1, Rule 1c](#)

This will exacerbate the administrative burden and increase the potential for error. Consideration would also need to be given to how to record the adjustments and who would be responsible for doing this. FRAs frequently outsource their payroll services and concern has already been raised about change of providers during the remedy period; this is far more likely to occur during the 20-30 years that records will need to be retained for DCU purposes. This is also an issue for the TPS where an increasing number of maintained schools are outsourcing their payroll services from their local authority. Whilst the TPS is administered centrally with central records, it could be difficult to resolve historic queries.

As detailed under Question 6, the need for adjustment could be minimised by asking members to make an indicative choice under DCU or ensuring the most appropriate default scheme. As the issue of varying contribution rates is only applicable to the FPS, it seems reasonable that an adjustment could be made to the remedy solution. Another option would be for any contribution adjustment be made under either option simply at the point of leaving the scheme.

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

#### **Additional pensions**

- Additional pensions/ added years are a feature of both the legacy and reformed TPS and FPS schemes. We support the proposal in the consultation document that breaches of the limit of additional pensions would be ignored when converting additional pensions between the legacy and reformed schemes.
- There are different eligibility requirements to purchasing added pension to added years in the FPS which might mean someone who purchased added pension in FPS 2015 would be restricted under the legacy schemes.
- Additionally, the conversion of added pension in FPS 2015 to added years in FPS 1992 or FPS 2006, particularly for special members, could take someone over the 30-year service cap.
- A.15 states that additional benefits purchased during the remedy period could be converted to an equivalent value in the alternate scheme if the member elects for that scheme. However, it is not clear how this interacts with the proposal to revert all members to their legacy scheme under DCU and what would happen to the additional benefits before the actual choice is made.

### **Faster accrual (FA)**

- In the reformed scheme of the TPS, one of the voluntary member contributions is FA where a member can elect to pay a higher contribution rate, on an annual basis.
- In the case of DCU, FAs would be converted to additional pension for the remedy period. Where a member, when taking benefits, chose the reformed scheme for the remedy period, would the member be given the choice to convert the additional pension back to a FA?
- The administration of the conversion would be complicated, and guidance would be required for members. Additional administrative processes and records would be required to record conversions, this is particularly important for DCU where benefits will be taken in the future.

### **Buy out**

- The proposal in the consultation document is for a buy out election to be refunded under DCU. This could result in a complicated process for schemes to administer.
- The consultation document proposes that a refund will revoke the buy out election. Where a member makes a fresh buy out election when they return to the reformed scheme, in 1 April 2022, it is likely that the cost of the buy out would be more expensive for the member (due to increase in the member's age and actuarial factors).
- At the point of taking benefits, some members may wish to renew the buy out election that they originally took out for the remedy period.

### **Taking away member choice and flexibility**

- This adds another layer of complexity when providing options and communicating to members. Systems and processes, including member benefit statements, would need to be amended and developed to accurately record changes to voluntary member contributions as it may be difficult for members and future scheme administrators to understand. Schemes must be supported by GAD guidance.
- If the final remedy solution is DCU, it would be sensible for any adjustment to voluntary contributions to be performed once, at the point of leaving the scheme, rather than an interim adjustment to be made for the enforced return to the legacy scheme for the remedy period.



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

The proposal for DCU suggests that both legacy and reformed scheme benefits need to be reflected for the remedy period each year to retirement. This is likely to be time-consuming to implement and explain.

It might be relatively straightforward to extract and display figures but challenging for projections and total sum of benefits and potential commutation.

There is also the potential impact on data requirements for pension dashboards, adding extra complexity to the project.

For FPS, it would appear more appropriate for these dual statements to only be provided on request, and/ or technology developed to enable member access to the reformed scheme projections online. Again, this is not as much of a concern for centrally administered schemes such as TPS, as they currently only provide access to online benefit statements. However, it should be possible for different schemes to implement their own solutions, providing disclosure requirements and HMT Directions are satisfied.

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

This appears to be a short section of the consultation for such a complex area which has raised some questions:

- The consultation document does not comment on how a member would be re-assessed for ill-health at the time of remedy, for example if the scheme has changed medical providers and the previous case details and evidence are no longer available. Also, what the subsequent outcome would be if the member's health had deteriorated and/ or the new Independent Qualified Medical Practitioner (IQMP) did not agree with the original decision, as the current FPS does not allow for an uplift from lower to upper tier.
- Consideration should be given to the cost of obtaining a new IQMP opinion and who would be responsible for meeting this.
- It is unclear whether members electing for an alternative benefit, which provided a higher lump sum but lower annual pension, would be expected to repay any overpayment as in 2.26.

- The consultation does not seem to envisage the situation for locally administered schemes where there are many different managers and administrators who will be responsible for operating the ill health criteria decisions and the resulting potential for inconsistencies to arise. For example, the FPS has 18 administrators across 45 scheme managers.
- We are also aware that IQMPs can have substantially differing levels of knowledge of the requirements of the schemes.
- As we have outlined, revisiting ill-health cases may involve significant administrative difficulties. We believe it would be helpful if the expectations of the new IQMP making a backdated determination in respect of remedy were set out in legislation or statutory guidance.
- All of the considerations under Question 10 apply equally to ill-health retirement cases.

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

The revisiting of death cases in scope of the remedy is largely not likely to differ due to the immediate choice or DCU approach, but naturally will need to be handled sensitively.

There will be issues for scheme administrators on whom should be contacted, particularly if the death occurred in a scheme which does not provide survivor benefits to unmarried partners, such as FPS 1992, and death benefits may have been paid to the member's estate. Retrospective options may also affect children's pensions where there is no spouse / civil partner.

We agree with the proposals at A.36 and A.37 regarding the adjustment of child and survivor pensions dependent on whether they are part of the same household. We also agree that survivors should not be liable for tax charges or out of pocket expenses incurred (A.41). Survivors should not be unduly disadvantaged due to remedy.

It would appear sensible to avoid further distress that where the partner of a deceased member receives a partner's pension in payment from the reformed scheme and there are no dependent children, documentation provided to them should not offer a choice, as the choice would be to receive no pension from the legacy scheme (A.39). Although the consultation proposes that no contact be made, we would suggest that a courtesy letter is sent to reassure the partner, as they may be aware of the remedy exercise from the media or colleagues of the deceased.

However, we do not agree with the argument at A.38 for **not** offering a choice of benefits where members have previously been given an option to move to a scheme offering benefits to unmarried partners (FPS 1992 to FPS 2006). There were many other differences between the schemes in that scenario which made the new scheme less attractive than the old one. We consider that such an argument would doubtless be subject to challenge.

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

We have a number of comments on contingent decisions:

- It is not clear what is meant by ‘scheme’ in the context of A.44. In respect of a locally administered scheme such as the FPS, would decisions be made on a case by case basis per employer, or would that be a policy decision of the responsible authority, the Home Office in this case?
- A.45 states that members wishing to receive legacy benefits, under either immediate choice or DCU, would need to repay contributions before they are deemed to be eligible for remedy. It is not clear why contributions for those previously opted out would not equally need to be collected if the member wished to receive benefits in the reformed scheme (for immediate choice only as DCU will default to legacy).
- For the FPS, under current legislation and from 2006, members opting out of FPS 1992 were not allowed to re-join that scheme but were awarded deferred benefits with final salary link from age 60. We would seek clarification of the options available if they are now allowed to re-join and repay contributions; whether they would be given the option of FPS 2006 legacy benefits or be allowed access to FPS 1992. This could create unintended discrimination with members who have previously opted out and re-joined FPS 2006.
- We have concerns about the reliance of evidence from employers and possible administrative burden. In the case of a member who opted out of TPS, for example, it would be difficult for a LA employer to provide evidence of why, for instance, a member opted out as they do not have a close relationship with teachers in schools. Information would be held by the TPS in these circumstances as TPS members are invited to indicate why they are opting out of the TPS on the opt out form.

- We would reluctantly suggest that the best way forward in terms of allowing members retrospective access to the schemes and therefore eligibility to remedy would be a blanket decision across the public sector. The administrative challenge of individual cases being assessed on an evidence basis cannot be underestimated, but this is set against the highly probable risk of continuing legal challenge if members are refused access. One proposal to limit liability would be to offer a time-limited option to repurchase service, based on the effective date that the member opted out.
- Additionally, the scope of remedy must be limited to rectifying or reinstating entitlement to pension, rather than extending into other areas, such as cases where individuals claim that they left employment because of pension changes.
- We are concerned about employers meeting the cost of additional employer contributions where a member who had opted out of the remedy period was allowed to opt in. For TPS, the additional costs could put some small schools in financial difficulty. For FPS, the HMICFRS State of Fire report notes that some services are “operating in a very tight financial environment” which is having a “detrimental effect on the services they provide to their communities”<sup>7</sup>. We would be mindful of any additional pressure on operating budgets which could impact frontline services and request that schemes should treat employers sympathetically and allow repayment plans where requested.
- We do not support compound interest being charged to members or employers (A.45).
- If members are also allowed to revisit decisions of retiring/ not retiring, this will require complex adjustments of salary and/ or pension payments. There may have been overpayments, and there are likely to be tax consequences.

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

It would be administratively easier and easier for the member to understand for the DCU date of choice to be brought forward. The argument for offering DCU is to allow a member to understand the value of their benefits at the date they make the choice. They would receive this information on leaving employment.

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<sup>7</sup> [HMICFRS State of Fire and Rescue report](#) [Page 42]

**Question 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?**

A single choice covering both schemes is more equitable with members who have not transferred and will not have opportunity to 'mix and match' benefits. It would be administratively more straightforward, and members will not benefit unduly from the transfer – which is the aim of the Club.

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

We believe that public sector wide guidance should be provided on the treatment of divorce cases. We cannot comment further on the proposals without a further understanding of the primary divorce law and the expectations on revaluing assets. However, consideration should be given on exposure to the member on further costs, as some schemes levy charges for the provision of divorce CETVs and implementation of pension sharing arrangements.

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

We do not agree with compound interest being charged to members or employers.

To reduce the complexity and software changes required, we would support excluding interest payments on payments to and from members.

However, if the Government decided that interest is to be charged it should be the same for both payments. Otherwise the choice on schemes risks being influenced by whether an interest rate applies rather than the real value of the scheme. It could be charged at a rate that was set for all public service pension schemes, so that there was the same approach for all members.

It is likely that there would be financial implications for some employers meeting the cost of employer contributions retrospectively and for small employers, i.e. small schools; additional charges of interest could put them in financial difficulty with pressures on school budgets. Also see Question 16.

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.

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

It is recognised there is an argument for interest payments being made to the member, reflecting that they were deprived of access to those funds by application of the transitional arrangements and therefore need compensation.

However, it is considered that applying a different approach to interest owed to the scheme and interest owed to members may influence member choice and therefore it is preferable that interest is not charged to either the scheme or members.

As set out above, applying interest would add a further level of complexity to software changes which would extend the implementation period and increase the risk of error in the operation of pension administration.

If interest is charged, the calculation of interest payments needs to be as simple as possible to facilitate calculation and payment by administrators.

Please see the response to Question 22 for comments regarding the appropriate rate.

**Question 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?**

If applied, there should be a consistent approach in respect to interest across the schemes in relation to the proposals in the consultation; we would support a single rate of interest such as that used in the TPS.

This would avoid any conflict with schemes that may have different arrangements for interest.

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

Although administratively complex, abatement should be recalculated and charged if a member elects for legacy benefits and their final salary pension increases, as abatement would have applied if benefits had been paid 'correctly'. However, the adjustment should only be applied to pension payments from the date of recalculation and not retrospectively. This will ensure equity of treatment with protected members. Abatement is a significant factor for the FPS due to the need to retain skills and knowledge, and robust communication will be needed.

We seek clarification on the treatment of retired members receiving mandatory and discretionary compensation under the TPS and members who have paid for added years.

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

This is a very wide-ranging question for such a detailed annex of the consultation. However, the consultation sets out some general policy points which appear to be reasonable.

We would question the proposal to ask members to pay an annual allowance charge or incur liability under DCU when reverting to their legacy scheme at 2022 when they will have no option over this.

The consultation does not comment on how the government processes might work to compensate members who have retired or left employment and therefore ineligible for self-assessment or PAYE. It is important that those members are not disadvantaged through the retrospective choice of scheme under remedy.

We also have concern over the work involved in including calculations for a choice exercise, especially if required for all relevant pension input periods, and how members will be able to access professional advice given the niche market. We expect HMRC/HMT to recognise the lack of knowledge of both members and advisers of tax implications unique to public service schemes and provide appropriate advice.

HMRC should address why the deadlines for voluntary and mandatory scheme pays are different and seek to harmonise these going forward to streamline processes and assist in compliance.

As detailed previously, an indicative choice under DCU or ability to amend the default scheme for FPS would mitigate some of the complexity and administration work involved.