

		Impact					
		Negligible	Minor	Moderate	Major	Catastrophic	
		1	2	3	4	5	
Likelihood	Rare	1	1	2	3	4	5
	Unlikely	2	2	4	6	8	10
	Possible	3	3	6	9	12	15
	Likely	4	4	8	12	16	20
	Almost certain	5	5	10	15	20	25

Risk Register for Fire Pensions

Risk number	Date identified	Risk area	Risk description	Likelihood	Impact	Risk score	Control measure / mitigation	Likelihood after mitigation	Impact after mitigation	Risk score after mitigation	Risk owner
1	12/05/2017	Operations	Failure to administer the pension scheme in a proper and effective manner	2	3	6	a) Liaison with employer b) End of Year c) Employer hub (UPM access) d) Fire Employer Group & Pensions Admin Group e) Fire Pension Board f) Management oversight and escalation to Chief Finance Officer for HIWFRA or Standard's & Governance Committee or Director of Operations as appropriate g) Diversification – we run a Shared Services arrangement h) Ability to call in temporary staff for peak workloads i) Business continuity plan	1	3	3	Scheme Manager
2	12/05/2017	Financial	Failure to pay the right amounts on time and in line with legislation	3	3	9	Pensions Services: - a) Testing software b) Internal and External Audits c) Standardisation of systems and processes d) All processes and calculation have a "doer" and a separate "checker" e) Monthly mortality screening for pensions in payment f) Declaration of Entitlement forms annually to pensioners and beneficiaries living overseas or upon mail being returned g) Participation in National Fraud Initiative reporting	2	3	6	Pension Administrator
3	12/05/2017	Funding	Failure to adequately account for fund pension contributions	2	4	8	a) Strong financial plan for HIWFRA b) Planned budget c) Aim to complete all Home Office returns on time	1	4	4	Scheme Manager
4	12/05/2017	Regulatory and Compliance	Failure to identify and interpret and implement legislation correctly	3	4	12	a) Scheme Advisory Board b) Local Government Association (LGA) c) Regional Fire Pension Officer Group d) Fire Technical Group e) Fire Communication Working Group f) Fire Pension Board g) Employer Pension Manager as a dedicated resource liaising between - Fire Employer Group & Pensions Admin Group, pulling together - Key Accountabilities for IBC Pensions Admin Team, HR and Hampshire Pension Services	1	4	4	Scheme Manager
5	08/10/2020	McCloud	Failure to successfully implement the McCloud remedy to all affected members within the timescales prescribed	4	4	16	a) Communications are developed in a timely manner b) Project is managed effectively with robust plans, reporting and escalation c) Key involvement from the Employer Pension Manager with the Cross Whitehall Project Management Group and the Home Office Technical Working Group as well as the Fire Technical Group and the Fire Communications Working Group to ensure all information is received d) Work across departments to be co-ordinated from the McCloud Remedy Working Group	2	4	8	Scheme Manager
6	25/03/2022	Matthews	Failure to obtain all relevant information from IoW Council or to successfully implement the Matthews remedy for HIWFRA to all affected members within the timescales prescribed.	3	3	9	a) Liaison with IoW Council, IBC Pensions Admin Team and Hampshire Pension Services b) Communications are developed in a timely manner c) Project is managed effectively with robust plans, reporting and escalation d) Key involvement from the Employer Pension Manager with the Matthews Technical Working Group as well as the Fire Technical Group and the Fire Communications Working Group to ensure all information is received e) Work across departments to be co-ordinated from the Fire Employer Group	2	2	4	Scheme Manager
7	31/01/2023	Staffing	Failure to adequately resource the pension administration team for the upcoming McCloud and Matthews remedy implementations as well as Pensions Dashboards	3	3	9	a) Staff recruited specifically for McCloud tasks or to backfill positions so more experienced staff can be released for project b) Job adverts revised to attract more staff to work in Hampshire Pension Services c) Training programmes put in place for staff to aid retention and to build skills, experience and knowledge	2	2	4	Pension Administrator
8	21/03/2023	Changes to Shared Services	Changes to the Shared Services partnership mean that HIWFRA is withdrawing from some strategic services, including HR. There is a risk that changes could negatively impact on the employer pension management shared function which sits within HR.	3	4	12	This risk is not mitigated due to the uncertainty of future arrangements, some mitigation may be found by:- a) Liaison with HIOWC and HCC to have input to help determine the structure of the HR teams and what pension expertise is required b) Continue to make a case for access to specialist services c) Maintain good relationships with Hampshire Pension Services who are unaffected by the changes to the Shared Services Partnership	3	4	12	Scheme Manager

BEFORE MITIGATION		Impact				
		Negligible	Minor	Moderate	Major	Catastrophic
		1	2	3	4	5
Likelihood	Rare	1				
	Unlikely	2			Risk 1	Risk 3
	Possible	3			Risk 2, 6 & 7	Risk 4 & 8
	Likely	4				Risk 5
	Almost certain	5				

AFTER MITIGATION		Impact				
		Negligible	Minor	Moderate	Major	Catastrophic
		1	2	3	4	5
Likelihood	Rare	1		Risk 1	Risk 3 & 4	
	Unlikely	2		Risk 6 & 7	Risk 2	Risk 5
	Possible	3			Risk 8	
	Likely	4				
	Almost certain	5				

Retained Firefighters' Pensions:
Proposed Changes to The Firefighters' Pension Scheme (England) 2006
Matthews / Second Options Exercise consultation 2023

Introduction

1. Hampshire and Isle of Wight Fire and Rescue Authority (HIWFRA) welcomes the opportunity to respond to the Government consultation on the proposed changes to the Firefighters' Pension Scheme (England) 2006 for retained firefighter pensions and this response has been approved by the Hampshire and Isle of Wight Firefighter's Pension Board and the Scheme Manager.
2. We have provided a response in two parts, with the first part being some additional comments on the consultation document and draft regulations that are not covered in the consultation questions. The second part is our response to the consultation questions.

Additional comments

Timeline

3. We appreciate that the Home Office has provided an indicative timeline, but we have some concerns about some of the suggested timeframes. We agree that FRAs should contact those in scope within 3 months, but we are of the opinion that members would only need 2 months rather than 6 months to provide an expression of interest. There will be no commitment at this stage, but simply the member saying that they want more information so we do not believe that they would need 6 months to do this.
4. We would like to see the period allocated to FRAs to provide a statement of service and costs, increased from 3 months to 7 months. We believe that this is necessary as the FRA needs time to prepare the individual statements that will be sent to members. Some FRAs may also not have been able to obtain the relevant pay data prior to 1 October 2023 and will therefore need to utilise this time to collect the data as well as send information to the member.

Reasonable Endeavours

5. We note that both the consultation document and the draft regulations state that the FRA must use reasonable endeavours to notify members that may be entitled to join the scheme and purchase service. But we also note that there is no further clarification on exactly what reasonable endeavours means.
6. We would like to see some additional guidance from the Home Office on the steps and actions that they would expect an FRA to take. Even where an FRA holds an address for a member, this could be 20 years out of date, therefore many FRAs are likely to need to

engage some kind of tracing agency to contact these members. If the Home Office agrees that this is using reasonable endeavours, then the Home Office must acknowledge that this will be an additional cost to FRAs and we would like to see some commitment to additional funding for this exercise.

Compensation deduction

7. We know and appreciate the difficulties that members from the first options exercise experienced with obtaining tax relief on their backdated pension contributions from HMRC. Therefore, we do agree with the position that a compensation deduction should be made from contributions due for the mandatory special period.
8. We note that in paragraph 5.26 the consultation document confirms that the assumed marginal tax rate will be 20% and that this is reflected in the draft regulations. However, we are concerned about members that will require a higher rate of tax relief.
9. The consultation document in paragraph 5.27 states that the member will need to provide robust evidence to support a higher marginal rate, and the draft regulations 6D(4)(a) state:

(a) 'Where a member establishes, with such supporting evidence as the authority may reasonably require, that the rate of tax relief which would have applied to him in the compensation scenario is greater than 20% that rate must be applied for the purposes of calculating the compensation deduction, or'

This appears to leave it entirely open to each authority to determine what evidence they will or will not accept and does not appear to reflect the consultation document which states that robust evidence will be required. This is left open to interpretation and could potentially lead to inconsistent decisions being made not only locally, but also nationally.

10. We would also ask that the Home Office considers the use of the word '*him*' in this regulation, we understand that gender use language is in keeping with the rest of the 2006 Fire Pension Scheme regulations, but where possible we would like to see gender neutral language used in any amendments and this is the only mention of a gender specific term in these draft regulations. We would suggest that '*him*' is replaced with '*the member*'.
11. We also note that 6D(5) of the draft regulations state that

'(5) in order to be entitled to the compensation deduction, the special member must provide a statement to the authority that the special member will not claim tax relief in respect of the mandatory special period contributions.'

Whilst we understand that a statement is important to ensure that the member does not receive tax relief twice, but it has not been made clear who will be providing the wording for any such statement, are scheme managers expected to create their own

version? It also does not explain what the authority is expected to do with this statement, nor does it explain what would actually stop the member approaching HMRC directly, unless this is intended to be some sort of legal statement.

Pre July 2000 service

12. We agree with the proposal set out in the consultation that for service pre July 2000 that the member is able to pay this over a 20 year period if they choose periodical contributions. But we also think that 20 years is a long commitment for a member to make and for the FRA to maintain the payments and to account for them on a monthly basis.
13. We understand that members have the option of paying by an upfront lump sum, but not all members will be able to afford this; and that where a member retires before the end of any periodical payments that the balance can be deducted from the lump sum.
14. We would like to know if the Home Office has considered that some members may prefer to pay the entire amount by periodical payments over the same term? We would suggest that offering a member to pay for the pre July 2000 service as one of three options, a lump sum, over a 10 year period or over a 20 year period may provide the member with better choices, especially for those that do not have a lot of membership pre July 2000.
15. In addition we would like some clarification about whether the member can make different choices for their pre and post July 2000 service, for example, it is not clear if a member could choose to pay for one part by lump sum and another part by periodical payments? Or if they choose lump sum then that applies to both parts and the same for periodical payments, albeit there are different payment terms for each part.
16. We understand that the member can choose a later start date for the mandatory special service period than the date their employment started. We would like to see this restricted to either the start date of their employment or the 1 April each year. This is because the pay data that will be collected, other than for the first and last year of employment, will be for each scheme year (1 April to 31 March). It will therefore make it much easier for FRAs to amend any calculation and to provide revised figures without the need to have to go back through payroll data.

Conversion decisions made during the 2014 Options exercise

17. Paragraphs 5.48 to 5.52 of the consultation document provides the Home Office policy intention for members who elected to join the scheme during the 2014 Options exercise and made a conversion decision about their membership. Where these members have pre 1 July 2000 membership it is confirmed that they will be able to revisit that decision.

18. What is concerning at this stage is that paragraph 5.52 states that the Home Office is still considering the detail of this policy and that there are no draft regulations for this.
19. There are some points of clarification that we would like to see. We are unclear why this policy only applies to those that have pre 1 July 2000 service and we would like to understand why those with only post July 2000 membership are excluded from this policy.
20. We assume that for a member to revisit their conversion election, they would have to elect to purchase some or all of their service pre 1 July 2000 and that the revisitation of the conversion decision cannot be made without that election.
21. Where a member elected not to convert previously, but now wishes to, we would like confirmation that conversion will be based on interest at the time and the repayment will be by lump sum or by periodical payments over a 10 year period. In other words, it will cost the same now as it would have done at the time, or would the interest be greater now as more time has passed? If it will now cost more, this could put the member in an unfavourable position when considering how poor the communication of the 2014 options exercise was.
22. There will also be some members who elected to convert their membership and pay by periodical contributions, but those contributions were ceased before the due date and the member did not pay the balance by lump sum. For these cases, as the conversion was not considered complete until all the payments had been made, these members effectively are in the same position as those that elected not to convert.
23. The issue of a member being able to undo an election to convert their membership is certainly more complex, but in the interests of equality and fairness we agree that this needs to be offered. We think that it is unlikely that any members would amend their decision, but it is certainly a possibility.
24. For any members that wish to undo their conversion election from the 2014 Options exercise there are several questions that we would like answered as the policy intention does not appear to go into detail. The overarching question is about the process of how this would be achieved if members are to be given the opportunity to undo their conversion election to either a) keep their benefits as separate pension arrangements or to b) choose a different conversion election.
25. There are questions around the contributions that have been paid so far and how these would be paid back to the member as compensation. Including also, where a member was or is an active member and has some membership within the McCloud remedy period, when rollback occurs this will be to their respective legacy scheme, which will now potentially be a different scheme.
26. How will the undoing of a conversion decision, be dealt with where there are also contribution adjustments for the McCloud remedy? How will members who have not yet completed their payment by periodical instalments have their contributions treated?

Where the member may be entitled to a compensation payment equivalent to the contributions they have paid, will this be adjusted for tax relief and interest and if so at what rates? And how should those that have already received tax relief from HMRC be treated? And how would an FRA know if the member has already received tax relief?

27. For members that have completed their payments, there is the administrative complication to separate out the records and the need to potentially rebuild them, which may require obtaining revised or amended payroll data. Although this complication should not prevent a member from making a different decision, the administration challenges should not be underestimated.
28. There are also a large group of members who will have made a conversion decision and now have pension benefits in payment. Unpicking these records will be more complex due to the assessment of the amount of under or over payments that have occurred, not to mention issues with PAYE tax on those pension benefits. How would these be corrected when the payments could go back several years? Will there be interest that will need to be applied to any amounts due and if so, how will this be calculated?
29. Fundamentally, how would a member know that undoing their conversion election would be the right thing to do? They can only make that decision if they are properly informed about the different sets of benefits that could be achieved from any amendment. How does the Home Office intend for this to be communicated to members?
30. Providing any of these options to members would be extremely complex and it is unlikely that either FRAs or administrators will have the resources to calculate the many permutations that a member could make. Perhaps instead, if the Home Office is intent on providing these options to members, then any cases where the member indicates that they may wish to undo their previous conversion election, these should be referred to the Scheme Actuary for them to carry out the necessary calculations. We would consider that these scenarios are as complex, if not more so, as the recalculation of the retrospective ill health cases.

Retrospective ill health awards

31. We note that the consultation document and the draft regulations state that where a member will require a recalculation of their retrospective ill health award that these cases will need to be referred to the Scheme Actuary as they will be complex recalculations.
32. However, neither document provides any detail about the process of referral of such cases or confirming what information will need to be provided, exactly where the information will be sent and how it will be sent to GAD. There is also no information about the timescales that GAD will need to carry out the necessary recalculations. This last part is especially important as communications will need to be provided to the member.

Guaranteed Minimum Pensions (GMP)

33. Paragraphs 6.2 to 6.6 of the consultation document covers the policy intention about GMPs and that it is not possible to unwind GMPs for members who elect to buy service which falls in the period 6 April 1978 to 5 April 1997.
34. We note that the Home Office proposes to leave the Contracted Out status of the modified scheme unchanged at 1 July 2000 and that members can make a claim if they have suffered financial detriment as a result of not being Contracted Out and that claims will be considered on a case by case basis.
35. We are unsure how a member would even know if they have suffered this financial detriment. It is also unclear what information or evidence the member would need to provide to support any such claim.
36. The Home Office has also not provided any insight into how these cases will be assessed or who will be responsible for their consideration. Nor have they indicated what that means in terms of any financial compensation should the claim be successful.

Tax

37. Paragraphs 6.7 to 6.10 of the consultation document covers the policy about Tax and specifically the Annual Allowance tax charges. We note that members that pay for their contributions by lump sum means that the full pension entitlement is accrued in one tax year, which may mean that the member exceeds their Annual Allowance and becomes subject to a tax charge. Where this occurs, members can make a claim if they suffer a financial detriment, these cases will be considered on a case by case basis.
38. Where a member suffers a financial detriment, they will be able to make a claim, but it is unclear what information or evidence the member would need to provide to support any such claim. It is also unclear about how HMRC would view any such tax charge and whether penalties may apply for late notification by the member via self assessment.
39. The Home Office has also not provided any insight into how these cases will be assessed or who will be responsible for their consideration. Nor have they indicated what that means in terms of any financial compensation should the claim be successful.

Consultation questions:

Question 1: Are the categories of individuals that have been identified as being eligible to join the modified scheme as part of the 2023 Options exercise appropriate?

Yes

40. Members will fall into one of three categories depending on their dates of employment. This will provide members the opportunity to buy all of their uninterrupted service.

Question 2: Do the categories of individuals that have been identified as being eligible to join the modified scheme as part of the 2023 Options exercise include everyone who ought to be included?

Yes

41. There are no other members that ought to be included with the 2023 Options exercise and this provides an opportunity for those that were not given the option to join during the first options exercise to also be included.

Question 3: Do the proposed amendments to the Firefighters' Pensions Scheme (England) Order 2006 achieve the policy intention of ensuring all individuals in Cohort 1 can purchase any of their uninterrupted retained service in the modified scheme and place these members in the position they would have been had they been entitled to purchase their service at the time?

Yes

42. The definition of the extended limited period makes it clear that the period begins on the date on which the person was first employed as a retained firefighter and that it ends on the earliest of four dates depending on which is applicable.

Question 4: Do the proposed amendments to the Firefighter's Pension Scheme (England) Order 2006 achieve the policy intention of ensuring all individuals in Cohort 2 can purchase any of their uninterrupted retained service in the modified scheme and place these members in the position they would have been had they been entitled to purchase their service at the time?

Yes

43. The definition of the extended limited period makes it clear that the period begins on the date on which the person was first employed as a retained firefighter and that it ends on the earliest of four dates depending on which is applicable.

44. The conditions for purchase of service during the extended limited period are covered in the draft regulation 5B(2), with regulation 5B(3) also confirming that where an FRA

notified the individual in the first options exercise that they are not eligible for the second options exercise to purchase their post 1 July 2000 service.

Question 5: Do the proposed amendments to the Firefighter’s Pension Scheme (England) Order 2006 achieve the policy intention of ensuring all individuals in Cohort 3 can purchase any of their uninterrupted retained service in the modified scheme and place these members in the position they would have been had they been entitled to purchase their service at the time?

Yes

45. The definition of the extended limited period makes it clear that the period begins on the date on which the person was first employed as a retained firefighter and that it ends on the earliest of four dates depending on which is applicable.
46. The conditions for purchase of service during the extended limited period are covered in the draft regulation 5B(2), with regulation 5B(3) also confirming that where an FRA notified the individual in the first options exercise that they are not eligible for the second options exercise.

Question 6: Are there any changes to the proposals required for those individuals who are entitled to both the Matthews remedy and McCloud / Sargeant remedy simultaneously?

Yes

47. If the purchase was limited to 31 March 2015, this would make Matthews and McCloud much more complex for the member. The member would have to make a contingent decision claim for opted out service for the McCloud remedy period, there is no guarantee that a member would be able to make a successful contingent decision claim for this period as this would be a Scheme Manager decision.
48. They will need to make decisions about Matthews and McCloud separately and different conditions / timings will be applied to the re-payment of contributions. Any pre July 2000 membership will be paid for over 20 years, the period between 1 July 2000 and 31 March 2015 would be payable over 10 years and then under McCloud, the remedy period will be paid for separately.
49. In the consultation document paragraph 6.15 sets out four categories of members that may be affected by both remedies. A Group IV member is entitled to purchase all of their service up to when they joined the 2015 scheme. If therefore they only joined the 2015 scheme on 1 April 2022, they will be permitted to buy all service to that date. But a Group II member can only buy service up to 31 March 2015. This does not appear to be treating all members in the same way or providing the same options. This will be very confusing to administer and to explain to the members.
50. If the service was permitted to be purchased up to 31 March 2022, this would be much simpler for the member as all their service will be in the 2006 Modified Scheme, but

amendments may be required for the McCloud remedy period to ensure that the member is not worse off or better off than a member who is not subject to the Matthews remedy but does have opted out service in the McCloud remedy period. The timings for paying the contributions and interest applied would therefore need to match the McCloud remedy for the period 1 April 2015 to 31 March 2022.

51. It may well be less complex from a legislative point of view to end the Matthews remedy as at 31 March 2015, but complexity should not be a reason to not do something that is in the best interests of the member. We therefore believe that under the Matthews remedy, members should be permitted to purchase all service up to 31 March 2022 in the 2006 Modified Pension Scheme, or such an earlier date as set out in the definition of the extended limited period in the draft legislation 1(b).

Question 7: Do the proposed changes to the special death grant and additional death grant sufficiently address the scenario where the deceased member had pre-2000 service?

Yes

52. The policy and the draft regulations appear to make it clear depending on what service a member has as to what they are entitled to.

Question 8: Are there any additional points not covered in this consultation paper that need to be considered as part of the proposed changes to the Firefighters' Pension Scheme (England) Order 2006?

Yes

53. We know that as a special member of the 2006 Scheme, the pensionable service must not exceed 30 years. But the consultation does not appear to address the potential problem of a member who joined in the 2014 Options exercise and also elected to purchase the maximum amount of additional service, is still an active member and will now have the option to purchase their pre July 2000 service. Any members in this position may be at risk of exceeding the service cap, but they might not have been if they had not purchased the additional service.
54. The cost to purchase additional service is likely to have cost more than buying back their special service, and it is possible that if a member had known that there would be a further option to backdate membership, then they might not have purchased any or as much additional service. We would be interested to know how the Home Office intends to deal with any such members.

Question 9: The scheme will also provide an additional top up to the special death grant in respect of an individual's pre-7 April 2000 service. The special death grant will provide eligible survivors with a single lump sum payment equal to 0.1 times the deceased member's pensionable pay for each full qualifying year of service that the deceased member had prior to 7 April 2000. Do you agree with this policy?

Yes

55. It is fair and right that the survivors of the deceased member are paid a lump sum, which is based on their pensionable pay and years of service prior to 7 April 2000.
56. However, we note that the draft regulations state that only a spouse, civil partner or child can make an application and receive the payments, we believe that this should also be extended to include co-habiting partner.
57. We are also unclear why a deadline of 30 September 2024 has been set for applications and how survivors would therefore be able to make an application where a member dies between 1 October 2024 and 31 March 2025.

Question 10: Members who joined the modified scheme as part of the 2014 Options exercise and who have pre-July 2000 service but have subsequently died will receive an additional death grant in relation to such members' pre-July 2000 service. The additional death grant will provide eligible survivors with a single lump sum payment equal to 0.1 times the deceased member's pensionable pay for each full qualifying year of service that the deceased member had prior to 1 July 2000. Do you agree with this policy?

Yes

58. It is fair and right that the survivors of the deceased member are paid a lump sum, which is based on their pensionable pay and years of service prior to 1 July 2000.
59. However, we note that the draft regulations state that only a spouse, civil partner or child can make an application and receive the payments, we believe that this should also be extended to include co-habiting partner.
60. We are also unclear why a deadline of 30 September 2024 has been set for applications and how survivors would therefore be able to make an application where a member dies between 1 October 2024 and 31 March 2025.

Question 11: It is proposed that where there is an absence of pay data for pre-July 2000 membership. FRAs can assume that the retained firefighter earns 25% of the pay of a WT firefighter, and that they will be employed at the rank of a firefighter. Do you agree with this policy?

No

61. We agree that assumptions will be necessary as pay data will not be available for all the relevant years. We also agree that using a rank of firefighter for pay purposes where this is not known is sensible, but we do not agree with a blanket 25% of the reference pay of a wholetime firefighter to be used for service and contribution calculations.

62. We note that 5A(9) of the Firefighters Pension Scheme (England) (amendment) Order 2014 for the first options exercise and for post July 2000 service states:

(9) where an authority are not able to determine the period of the person's service during the limited period and the authority does not hold records of that person's pay for the that period, and the person cannot provide the authority with the necessary documents, the authority may estimate the person's pensionable pay for that period from the records which they hold and may in particular estimate this on the basis of the average of recent pay data for retained firefighters at the same station or stations as that at which the person was based for the relevant period.

We are concerned that FRAs will need to use two different assumptions for the different periods and we would like to understand how the Home Office has arrived at a blanket 25% for the pre July 2000 period; our experience shows that this is more likely to be around 33%.

63. We would there like to see the same assumptions used for both pre and post July 2000 service as we think that this will be easier for members to understand, easier for FRAs to calculate and overall is likely to incur less disputes from members.
64. Perhaps where the member has no evidence, and the FRA has no credible evidence about working patterns for some or all of the pre July 2000 period then an assumption of 25% would be reasonable.
65. In addition, we note that the Local Government Association only has pay scale information going back to 1977, we would therefore like clarification of what pay assumptions to use for pay periods that occur between 15 February 1971 and the 1977 pay awards. We would also like clarification about what pay assumptions we should use for periods prior to 15 February 1971, which was when decimalisation took effect.
66. Where an assumption of the grade of FF is to be used, we would like clarification over what pay step should be used, this is because all pay grades have more than one step, depending on years of service or competency, but it is unclear what an FRA should use where this information is not known or available.

Public Service Pensions: Firefighters Pension (Remediable Service) Regulations 2023

McCloud / Sargeant remedy: Phase two (retrospective) consultation

Introduction

1. Hampshire and Isle of Wight Fire and Rescue Authority (HIWFRA) welcomes the opportunity to respond to the Firefighters Pension Scheme Retrospective Remedy consultation and this response has been approved by the Hampshire and Isle of Wight Firefighter's Pension Board and the Scheme Manager.

Consultation questions:

Question 1 In and out of scope:

Do the proposed amendments to the Scheme Regulations clearly define which members of the Firefighters' Pension Schemes meet the criteria to be eligible for remedy?

No

2. The draft Firefighter's Pensions (Remediable Service) Regulations 2023 are not amendment Scheme regulations, but regulations that stand alone in their own right and as such they do not define eligibility themselves and rely entirely on the Public Service Pension and Judicial Offices Act (PSPJOA) 2022 for the definition of eligibility.
3. We are concerned therefore that in years to come, that it will not be known how these regulations are linked to the Fire Pension Scheme regulations, as there does not appear to be anything to connect the Scheme regulations to these remedy regulations. We would therefore have expected for there to be some amendment to the 2015 Scheme to reference the principles of remedy.
4. We do however agree that the eligibility criteria for the retrospective remedy is set out in Section 1 of the PSPJOA 2022 – 'Meaning of remediable service', but the draft regulations themselves do not clearly define which members of the Firefighters' Pension Schemes meet the criteria to be eligible for remedy.
5. Part 1, 2(1) contains the interpretations used in the draft regulations and has the following interpretation:

"remediable service as a firefighter" means, in relation to a member, the member's remediable service in an employment or office that is pensionable service under a firefighters' pension scheme;

We think it may be helpful to include 'as defined in Section 1 of PSPJOA 2022' under this interpretation.

Question 2 Deferred Choice Underpin (DCU) timing of Remediable Service Statements (RSS):

Do the policy proposals about the timing of when a scheme member can request an RSS in anticipation of retirement strike the right balance between a suitable period to make a decision, proximity to retirement date and any administrative considerations?

No

6. We note that Regulation 8 of the draft legislation states that no benefits can be paid to the member unless a Deferred Choice election has been made. And that Regulation 12 of the draft legislation is concerned with when that Deferred Choice decision is to be made.
7. Regulation 12(3)(b) states that a Deferred Choice election can only be made within the 12 week period after receiving the RSS. And Regulation 12(2)(a) sets out that a member must inform the scheme manager of their intention to retire and claim benefits during the period 12 and 6 months before the benefits are intended to become payable and is therefore requesting an RSS.
8. These draft regulations would seem to suggest that a member has a limited and strict timeframe when they are able to request an RSS for their retirement, we do not believe that this is helpful to members. Members should only have a restriction on the earliest that they can request this prior to retirement. We believe that providing an RSS no earlier than 12 months prior to the intended retirement date is sensible, particularly given that there could well be changes in that timeframe such as pay increases.
9. Under the current draft legislation and the strict timeframes for requesting an RSS we would like clarification on how to treat members that are intending to retire within the first 6 months after 1 October 2023 as they will have already passed the required time limit, currently these members do not appear to have been adequately provided for.
10. As the draft regulations stand, it means that a member could request an RSS 12 months prior to their intended retirement, and if they do not make an election within the prescribed 12 week period, or they make an election but revoke this prior to retirement, then the member will have to be sent a new RSS at retirement to enable them to make their election. This will put undue pressure on the pension administration teams, especially during the 18 month remedy implementation period from 1 October 2023.
11. There would be a requirement for the pension administrators to record the date any election package was sent and to then record any subsequent election made within the 12 week timeframe and to hold this on file until such time as the member retires, or revokes their election. Whilst this may seem purely administrative, it is worth noting that pension administrators will need to build this into their processes.

12. It is not clear what information should be provided to members during the period which falls after they have made an election, but before they have retired, clarity is needed about whether any annual RSS is to be issued and if so, whether it should continue to show both sets of information, just the chosen package, and / or a statement confirming that an election has been made.
13. Regulation 3(2)(b)(ii) of Part 2 states that an RSS must be issued to a deferred member within three months of receipt of a written request by the member. We believe that this will cause an unnecessary increase of work for pension administrators and that they will be in a constant cycle of production of these RSS'.
14. As Regulation 4(1) of Part 15 of The Firefighters' Pension Scheme (England) Order 2006 and Regulation 183(1) of The Firefighters' Pension Scheme (England) Regulations 2014 requires the Scheme Manager to provide an annual benefit statement to deferred members, we believe that as part of this annual production, an RSS could easily be issued alongside the deferred annual benefit statement, just as it will be for active members. We would like to see the legislation amended to this effect.

Question 3 Ill-health Retirement:

Do you think the proposed arrangements for members that qualify for Ill Health Retirement during the remedy period (1 April 2015 – 31 March 2022) may cause any adverse impacts?

Yes

15. We have some concerns about the Ill Health Retirement (IHR) parts of the consultation and draft legislation.

Reassessment

16. On the topic of reassessment, paragraph 5.68 of the consultation states:

'Reassessment is only needed for IC IHR cases. This means a retrospective ill-health assessment will only be needed for cases where a member (who has remedy period service) has been ill-health retired or dismissed on capability grounds during the remedy period, be that from the legacy scheme or the 2015 reformed pension scheme depending on their circumstances.'

17. We note that this paragraph specifically mentions members who have been dismissed on capability grounds, these members will not have received an IHR pension and will only have an entitlement to a deferred pension.

18. Part 7, Chapter 2, Regulation 49(1)(a), (b) and (c) of the draft legislation states:

49 (1) This chapter applies in relation to an immediate choice member (“M”) who during the period beginning on 1st April 2015 and ending on 31st March 2022, became entitled to –

- a) an ill health award under regulation B3(a) of the 1992 Order;*
- b) an ill health pension under rule 2 of part 3 of paragraph 1 of Schedule 1 to the 2006 Order;*
- c) an ill health pension under regulation 65 of the 2015 Regulations.*

19. This draft legislation seems therefore to only apply to members who are already in receipt of an IHR pension. It does not appear to apply to those that have been dismissed on capability grounds. We would ask therefore, that clarification is provided and if necessary, the legislation is amended to reflect this group of members.

IQMP reassessment

20. We do however have some concerns over the wording used in Part 7, Chapter 2, 51(3) of the draft legislation which is concerned with ‘Deciding whether a 1992 IHR member is entitled to a lower tier or higher tier award.’

(3) The IQMP must -

- a) examine or interview M as the IQMP thinks appropriate,*
- b) decide the questions referred to the IQMP under paragraph (2), and*
- c) give the authority and M a written opinion containing a decision on those questions.*

21. It is noted that the IQMP is required to carry out a re-assessment of IHR entitlement by way of examination or interview of the member. This appears to leave no room for a paper assessment which we expect to be suitable for most cases where there is sufficient evidence on file to carry out any re-assessment. If the IQMP is required to examine or interview the member, then this will lead to increased costs for the Fire and Rescue Authority as additional resources and or expenses would be incurred.

22. It is our opinion that for most cases any reassessment could be carried out by the IQMP as a paper exercise, and we would therefore welcome that this addition is made to the legislation so that the IQMP can make their decision by the most appropriate method for each case.

5 year review

23. We also note that in Part 7, Chapter 2, 51(7) (b)(i) the draft legislation seems to imply that there should have been a 5 year review after the original ill health decision. The Fire Pension Schemes do not have this requirement and we would therefore welcome clarification on this matter.

Question 4 Added pension:

Do you think the policy proposals in relation to the scheme members with added pension puts all eligible members in the same position?

Yes

24. We note that you have decided to refund these contributions to the member by way of compensation rather than to utilise the Additional Pension Benefits (APB) as a way of adjustment for these cases. APBs apply in the all the Fire legacy schemes and is how it was determined that temporary promotions that were deemed pensionable would be treated from 1 July 2013 when the legislation was amended.

25. We believe that the APB is a missed opportunity to utilise a framework that is already in existence and is understood by pension administrators and members. We would ask you to consider again if it were possible to convert the additional benefits purchased by an actuarial adjustment.

Question 5 Transfers:

Do you think that the policy proposals that transfers that came into the 2015 reformed pension scheme will be held in the 2015 reformed pension scheme until the point of decision achieves the policy intention of preserving transfer rights?

Yes

26. Whilst we do agree that transfer rights are preserved by retaining them in the 2015 scheme until the point of decision, it is the application of what happens to them after the decision that we have concerns with.

27. The last bullet point in paragraph 5.44 of the consultation document states:

'If the current rules at the time would not allow all the transfer or loses part of the transfer value due to breaching the pensionable service cap in the legacy scheme and has no 2015 reformed pension scheme service, a member will be paid equivalent value in the legacy scheme benefits as an adjustment of contributions accordingly based on an actuarial calculation'

28. Yet in Part 6 of the draft regulations there does not appear to be anything about how the compensation will be achieved, in what form this will be or indeed at what point and what factors will be the calculation decision points. Whilst we appreciate that this area will need to be supported by GAD guidance, it would be helpful if the regulations referred to this and set out some general principles.

29. Regulation 30(2)(b)(ii) states:

Where the member does not have relevant reformed scheme service, the right to payment of an amount by way of compensation equal to the value of rights to reformed scheme benefits if the remaining portion of the remediable value had been transferred into that scheme.

30. We would therefore appreciate some clarity over the compensation element and how the equal value will be achieved.

31. We also note that you have decided not to utilise the Additional Pension Benefits as a way of adjustment for these cases. These apply in the all the fire legacy schemes and is how it was determined that temporary promotions that were deemed pensionable, would be treated from 1 July 2013 when the legislation was amended.

32. We believe that the Additional Pension Benefits is a missed opportunity to utilise a framework that is already in existence and is understood by pension administrators and members. If the “compensation” due to members that choose legacy schemes, is to be paid in the form of pension benefits, then we think that this could easily be achieved by an actuarial adjustment.

Question 6 Bereavement:

Do the proposed amendments to scheme regulation achieve the policy intention of ensuring that the resulting ‘member representative’ can make an immediate choice or deferred choice in relation to the remedy period service of a deceased member?

Yes

33. Within the Schedule for the eligible decision makers for deceased members, there is reference to M’s personal representative, yet this term does not appear to be included within the Interpretation of Paragraph 1. We would consider that for clarity and consistency that a definition of this term should be included, just as you have provided such a definition within the consultation document.

Question 7 Contingent decisions:

Do you think the proposals with regards to contingent decisions give members opportunities to revisit pension benefit decision taken during the remedy period?

Yes

34. There is a footnote (a) which is in respect of Part 3, Chapter 1, Regulation 4(1) which is incorrect as it quotes a Police legacy scheme not a Fire legacy scheme. The footnote states:

(a) See sections 5(7) (read with section 4) and 36 of the PSPJOA 2022 for the meaning of relevant opted-out service in relation to a Chapter 1 legacy scheme (such as the 1987 and 2006 schemes).

The part in brackets at the end should say *(such as the 1992 and 2006 schemes)*

Contingent decision process

35. The process for contingent decisions does not appear to be clear in either the consultation document of the draft legislation. There is no defined election period, and there does not appear to be any timescales for how long a scheme manager may take to decide about any such election. If the contingent decision claim is accepted, then there appears to be no timescales for the provision of an appropriate RSS in relation to the contingent decision. And then how long and what options apply to the member to make the contributions necessary for any contingent decision.
36. It would be helpful if, scheme managers were all working to the same prescribed timeframes and had the same process to follow, as this will help to ensure consistency both locally and nationally. We would welcome any additions to the legislation or at the least a confirmation of the policy intention.
37. We believe that there is sufficient information in the draft legislation and consultation document to outline the policy intention of what evidence would be acceptable for opted out service. However, the same cannot be said for the other contingent decisions. There does not appear to be the same level of detail about what evidence is required and relies heavily on scheme manager decisions, which without proper process, risks inconsistent decisions being made.
38. Each Fire and Rescue Authority has its own scheme manager with each able to make their own decisions. Additional guidance or legislation which sets out the criteria and parameters of which contingent decision claim cases can be accepted is required to ensure that there is consistent decision making both locally and nationally.
39. We understand that the member will need to invest time and money in any such claim and subsequent election. Therefore, we wonder whether simply allowing members to make a contingent decision claim based on self certification stating that they would have taken a different action if it were not for reform, may be administratively less complex, for all concerned.
40. There also appears to be no information about funding for these cases, which risks scheme managers making decisions based on cost alone. For example, there is no

information about employer contributions for opt outs and how these will be paid. Scheme managers will want assurance about funding for these costs or there will be significant risk for unfair and inconsistent decisions being made.

Opted Out Service election

41. We have some concerns about some of the draft regulations about the elections in relation to opted out service.
42. Regulation 5(3)(c) of Chapter 1 of Part 3 states:
- (3) Where a person other than M is the opted out service decision maker, an opted out service election may only be made after the scheme manager determines an application which is –*
- (a) Made by or behalf of M,*
- (b) in a form and manner determined by the scheme manager,*
- (c) received by the scheme manager during the period beginning on 1 October 2023 and ending on 30 September 2024*
43. We would like the Home Office to provide clarification of the relevance of paragraph (3)(a) where it states ‘Made by...’ if the paragraph is concerned with a person other than M being the decision maker.
44. Whilst we understand that members have 12 months to make an election once they have received their RSS with their re-instated service, we do not understand where someone other than the member is the decision maker, that they only have 12 months from the date of implementation of remedy to make a claim for opted out service re-instatement.
45. Regulation 5(5)(a) of Chapter 1 of Part 3 states:
- (5) The scheme manager must refuse an application where either of the following conditions are not met –*
- (a) The decision by virtue of which M’s service became opted- out service was communicated to the scheme manager on or after 12 March 2012;*
- (b) The decision by virtue of which M’s service became opted out service was made pursuant to a relevant breach of a non-discrimination rule(a)*

We would like clarity with regard to the word ‘either’ being used especially in relation to paragraph (5)(a) which states that an application must be refused if it is made on or after 12 March 2012. We do not agree with the wording of this paragraph as it appears to mean that the scheme manager would not approve any claim. We believe that there either there should be an end date for the period or at least a ‘subject to paragraph 6’ reference which clearly states the period where a scheme manager must not refuse an application.

46. During the remedy period, there have been two or three rounds of auto re-enrolment. We know that the member must meet the eligibility criteria to be able to make a successful application for opted out service. For Firefighter's they may have chosen to never be in the pension scheme, but where they were in service on or before 31 March 2012, they will be in scope if their employment could have been pensionable.
47. Where these individuals were auto re-enrolled into the 2015 scheme within the remedy period and subsequently opted out, we would like clarification from the Home Office about whether this makes them in scope for an opted out contingent decision claim, and if so, whether they would then be able to re-instate all of their service in that employment within the remedy period.
48. Regulation 5(6)(a) of Chapter 1 of Part 3 states

(6)(a) beginning on the day six months before M would have (but for the opt out decision) become a member of the reformed scheme, and...

We believe that further clarity around this point would be helpful as scheme managers may be left to interpret when someone became a member of the reformed scheme. Some may argue that they all became members of the reformed scheme on 1 April 2015 and that members were afforded varying amounts of transitional protections. Whilst others may argue that members only became a member of the reformed scheme upon their individual transition date.

49. Furthermore, as members will be required to pay any missing contributions for opted out service, we wonder whether simply permitting members to make a contingent decision claim for reinstatement of any opted out service within the remedy period, regardless of their transition date, may be a less discriminatory approach.
50. We also have questions about the date in Regulation 6(6)(b) of Chapter 1 of Part 3 which states:

(6) But the scheme manager must not refuse an application where the decision by virtue of which M's service became opted out service was communicated to the scheme manager during the period –
(a) beginning on the day six months before M would have (but for the opt out decision) become a member of the reformed scheme, and
(b) ending at the end of 28 February 2022

We believe that the end date in 6(b) should be 31 March 2022 and ask that the Home Office provides clarification of this.

Opted Out Service

51. Neither the consultation document nor the draft legislation appears to provide any timescales for when a member would be required to pay the contributions for the opted out period of membership. In the interest of clarity, it would be helpful if the timings and the method for the purchase of any re-instated service were outlined.
52. This outline is particularly important as any election made to re-instate the opted out service period is irrevocable as set out in Section 5(3)(c) of Chapter 1 of the PSPJOA 2022 so the member would need to know when and how they would be expected to pay the relevant amount so that they can make an informed decision.
53. We are concerned that a member may make a decision to elect for re-instatement of opted out service, which due to life events may mean that in the future they are no longer in a position to pay for the opted out service or may have only paid for some of it. We would like to see some clarity over these situations and how these cases should be dealt with. And whether for example, the member should be allowed to pay for and receive a pro-rata amount of benefits.
54. It would also be helpful to understand the details of how any re-instated opted out service might interact with any future Deferred Choice election, especially as the re-instated period may not be for the entire remedy period, and the member may already have some membership of the scheme.
55. If the intention is that the member would have the same options as a Deferred Choice member, that is to not make the necessary payments until their benefit crystallisation date, then information about the member, their opted out period, associated benefits and a contribution adjustment record would have to be maintained for an indefinite period of time.
56. Where the opted out service has been elected for, but the reinstatement contributions have not yet been paid to the scheme, we would like clarification about how the Home Office proposes that these records would be held where this “joins up” with other membership. For example, where a member has a deferred pension and then elects to reinstate their opted out service, will pension administrators be expected to amalgamate the records, potentially undoing a deferred record and either recalculating it or making the record active? There is nothing in the draft legislation about how to treat such service.
57. The consultation document and the draft legislation also are silent on how this elected for opted out service accrues each year or whether it accrues all in one lump, if the latter then how will this affect Annual Allowance. It would also be helpful to have clarification about how it is treated once an election is made, in other words does the member then become treated as an IC or DC member as appropriate. Details of the

timescales for the issuing / re-issuing of any IC-RSS or DC-RSS after any election for opted out service is made should also be provided.

Question 8:

Are there any other areas which you think should be addressed in these regulations in order to ensure that all eligible members receive a choice of pension benefits at their point of retirement, for the period for which the discrimination existed (1 April 2015 – 31 March 2022) on 1 October 2023?

No

Question 9:

Are there any additional points not covered in this consultation paper that need to be considered as part of the proposed amendments to scheme regulations?

Yes

Contributions

Payment of amounts to scheme manager

58. Regulation 63(5) of Chapter 4, Part 9 in the draft legislation which is concerned with 'Payment of amounts owed to the scheme manager.'

(5) P and the scheme manager may agree that the net liability is to be paid in part or in full by way of deductions from any benefits (including a lump sum benefit) to which P is entitled under a firefighters' pension scheme.

It could be argued that a firefighter does not have any entitlement to a lump sum benefit as the Fire Pension Schemes only provide an entitlement to an annual pension. The member must make an election to commute some of the pension to achieve a lump sum.

59. If a member chooses not to commute any part of the pension, then any net liability would have to be deducted from the annual pension. Where this occurs, it should be made clear that as the annual pension payment due is subject to PAYE income tax, then the deduction of the net liability would have to be deducted as a post-tax deduction.

60. It perhaps therefore may prove useful to set out the order of benefits which deductions for the net liability may take place. This may seem obvious, but we know from the first options exercise for the special members of the 2006 Fire Pension Scheme, that when deductions of arrears of pension contributions were deducted from the arrears of annual pension that were due, that not every case was treated correctly for income tax purposes and that some of those deductions occurred on the pre-tax amount.

61. Alternatively, and what may prove to be a better solution is to ensure that there is a legislative requirement for the net liability to be deducted from the lump sum and therefore the member would be required to commute the minimum amount necessary to pay off the net liability.

62. We are also concerned that this paragraph states that the Scheme Manager may agree to the net liability being deducted from any benefit. This does not provide clarity to the Scheme Manager or the member and could leave an individual Scheme Manager to make a different decision. We believe that it may be better to have paragraph 5 worded slightly differently, a suggestion is:

'(5) Where any net liability has not previously been paid, P and the scheme manager ~~may~~ will agree that the net liability is to be paid ~~in part or in full~~ by way of deductions from any benefits (including a lump sum benefit) to which P is entitled under a firefighters' pension scheme.'

63. Paragraph 6 of Regulation 63 of Chapter 4, Part 9 of the draft legislation already states that P and the scheme manager may vary any agreement in paragraph 5 so we believe that this in itself provides enough discretion where necessary.

64. We are rather concerned to note that in the consultation on remedying the age discrimination in Firefighters' Pensions in Wales, published by the Welsh Government on 31 March 2023, that they appear to be proposing a different option altogether for members to have their contributions adjusted.

65. The Welsh Government proposes to provide the same options that existed for the first options exercise for the special members of the 2006 Fire Pension Scheme. These options are that members will either be able to pay an upfront lump sum amount or by instalments, over a period not exceeding ten years.

66. This policy is very different to what is being offered to Firefighters in England, the difference could be deemed to be unfair and inconsistent considering that Firefighters are all members of the Fire Pension Scheme. We agree that the member should have the option to have any net liability deducted from their commutation lump sum, so we would not want to see a departure from this.

67. Whilst we do appreciate that each Government is free to make its own Policy and Regulations, we would like some clarity about what would happen to a Firefighter's contribution adjustment where they move between an English and Welsh Fire and Rescue Authority (FRA).

68. For example, a Firefighter with an English FRA, will have the assumption that they will be able to have the contribution adjustment deducted from their commutation lump sum at the point of retirement. But it will be helpful to understand how the members contribution adjustment would be treated, if before they retire, they move to a Welsh FRA.
69. There is also the reverse position, where a Firefighter with a Welsh FRA starts paying their contribution adjustment by instalments, but before the end of that term, they move to an English FRA. It would be helpful to clarify how these members would be treated, and whether that same arrangement would need to continue, or whether they would be able to have any balance deducted from their commutation lump sum at retirement.
70. We also note that there is no mention in the draft regulations or the consultation document about how contributions already paid by an Immediate Detriment member would now be adjusted for tax and interest. There are two distinct periods, that need clarification; the first is during the period the guidance was endorsed by the Home Office between 21 August 2020 and 28 November 2021; the second is after the guidance was withdrawn from 29 November 2021.
71. There is also the added complication that there was a Memorandum of Understanding (MoU) and an Immediate Detriment framework agreed between the LGA and the FBU which was signed on 8 October 2021, with many FRAs choosing to adopt this framework to either continue to or to start to process Immediate Detriment cases.
72. We would welcome clarification on how the Home Office proposes that we deal with any outstanding aspects of remedy for cases that have been processed either under the Immediate Detriment informal guidance of the Home Office or under the framework of the MoU.

Contributions adjustment record

73. Whilst we completely agree that there is a need for a contribution adjustment record to be created and held and this would need to be utilised by the pension administrator so that the information can be populated within the Remediable Service statement, but the legislation itself does not create the contribution adjustment record, nor does there appear to be any framework to enable this to be created and maintained.
74. As many contribution adjustment records will be in place for several years to come, it will be necessary for the detailed information about how the contribution adjustment has been calculated to be available, both for audit purposes and to provide evidence should any future claims or appeals be made to Fire and Rescue Authorities about the calculations. We would like to see legislation or least some policy intentions of how this is achieved and what framework will be in place to ensure that the correct information is

stored and used, and where applicable is transferred to any future pension administrator.

75. We also note that there does not appear to be any options provided for within the legislation to determine at what points the member may choose to settle their contribution adjustment record. We note that the member will have the option after the initial RSS and that for Deferred Choice members they will have this option at retirement, but some members may want to settle this amount before retirement to avoid more interest being accrued. We would like to see included in the legislation, the option to settle this account on an annual basis within 12 weeks of the issuing the RSS.

Tax relief and Interest

76. The process for the calculation of the adjustment of tax relief and the addition of interest on contributions is still unclear. It appears to be completely reliant on a calculator tool which is being developed by the Government Actuary Department. This tool is a critical part of being able to provide remedy and RSS' to members. It is also critical that information can be input, extracted and uploaded to the relevant pension software systems in a coherent useful way.
77. We are also unclear about how and when any future interest accrual will be calculated and whether this will need to be calculated within the software system. For the process to work it all needs to be linked up. Neither Pension Administrators nor Payroll will have the time or the capacity to calculate these amounts manually if the systems are not in place to automate this.
78. We would also like to see some clarity over what the process should be if after an RSS is issued the interest rates change before the election is made, this may be particularly relevant for the annual issue of RSS'. We would like confirmation that where an interest rate changes after the issue of an RSS but before an election is made that the amount is guaranteed for 12 weeks, just as a Cash Equivalent Transfer Value is guaranteed for three months.

The term "roll back"

79. In addition, we have some concerns with the policy intention within the consultation document in the section about contributions, paragraphs 5.53 and 5.54:

'5.53 Members can have any compensation due to them at the point of roll back or they can keep the adjustment on record, but this must be paid to a member or a member representative at the point of benefit crystallisation.'

'5.54 Members can pay any monies owed at the point of roll back or they can keep the adjustment record, but this must be paid by a member or a member representative at the point of benefit crystallisation and deducted from the pension benefits.'

The term roll back is not a legislative term and in fact roll back occurs when section 2(1) of the PSPJOA 2022 comes into force on 1 October 2023. But at roll back, members will not know what compensation they are due or what monies they may owe, this information will not be available to members until they receive their first RSS which will be by 1 April 2025. We would be grateful if the Home Office could clarify this position.

80. We cannot overstate how disappointing and significantly concerning it is that we are months away from remedy and that we do not have specific regulations for contribution adjustments. Instead, it appears that we are heavily reliant on the PSPJOA 2022 to allow for these adjustments only very broadly and at the discretion of each individual scheme manager. This position introduces critical risk on the delivery of remedy to members.

Abatement

81. The subject of abatement is covered in paragraphs 5.69 to 5.75 of the consultation and whilst we agree that this sets out the policy intention, we note that there is nothing in the draft legislation about this. Paragraph 5.73 states:

'5.73 Where a fire and rescue authority exercised their discretion not to apply abatement, they will need to retrospectively recalculate the amount that they are required to pay into their local pension fund account.'

82. Where this has been applied by a Fire and Rescue Authority and an amount has to be repaid it is unclear if this should also include interest as we note that in paragraph 5.74 which refers to any under or over payments incurred by the member will have interest applied. Paragraph 5.75 states:

'5.75 when presented with their choice, the member will need to consider how their decision will impact each aspect of the abatement calculation. Remediable Service statements (RSS) will detail how abatement rules would apply under both schemes.'

83. We are unclear where the instruction for the RSS' to detail how abatement rules would apply under both schemes sits and indeed what this should include. We would welcome clarification of this issue.

Immediate Choice elections

84. We are keen that all Immediate Choice members make a positive Section 6 election within the allotted 12 month period after receipt of their Immediate Choice RSS, but we do not believe that the draft Regulations go far enough in this respect. The process set out appears to be that an RSS is issued to these members, they have 12 months to make their election and if they do not make an election, then the Scheme Manager can choose the default position for them.

85. We believe that as Pension Administrators communicate with their pensioner members in a variety of ways, that it would be helpful if the legislation stated that *'reasonable*

endeavours' are used to gain a positive Section 6 election from these members, which may obviously mean contacting the member more than once in that 12 month period or/and or in different ways. This principle has also been used in the latest draft legislation in respect of the Matthews remedy and the Second Options Exercise.

86. We believe that this will be a useful addition to the legislation as default elections that have to be determined by the Scheme Manager may well lead to cases being heard by the Pension Ombudsman, and we believe it would be helpful in preventing this.

Default Choice elections

87. Whilst we agree that any choice to be made is very much a personal choice to the member and that while legacy scheme benefits as a default choice may be right for some members, it may not be appropriate for others who fail to make a choice within the election period.
88. The key is going to be communication to members to ensure that we receive as many positive elections as possible to safeguard against the scheme manager having to make a decision. Having said that, it is almost inevitable that some Scheme Manager decisions will be required as it is very unlikely that there will be 100% of elections received.
89. We would therefore like to see more clarity and information around what information would need to be collated and what investigations should be carried out to enable that determination to be made. We would also like to understand what the process would look like as the draft regulations state that the Scheme Manager would consult with the scheme actuary.
90. This could end up being a very time-consuming, labour-intensive part of remedy and yet there are no timescales about when this would need to be rectified by as this 'process', whatever this looks like, can only start once the end of the election period has passed.

Question 10:

Do any of the proposed amendments unlawfully discriminate against a particular protected characteristic, fail to advance the equality of opportunity between those who share a protected characteristic and those who do not, or fail to foster good relations between people who share a protected characteristic and those who do not?

91. We are unable to answer this question as we note that no EIA has been supplied alongside the consultation to consider equalities.
92. There are some amendments that require objective justification, for example we would expect the EIA to confirm that the position of applying interest to contributions has been considered by the Home Office and is not discriminatory. We therefore look forward to viewing the EIA as soon as possible.