

Age discrimination remedy data collection - Guidance for administrators and FRAs

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Background

1. On 16 July 2020, HM Treasury (HMT) published a [consultation on changes to the reformed 2015 public service pension schemes](#) in order to remove the unlawful age discrimination found by the Courts in relation to the 'transitional protection' arrangements. The consultation closed on 11 October 2020.

2. The main change proposed to rectify retrospective discrimination gives members a choice of receiving final salary (legacy) benefits or CARE (reformed) benefits for the period 1 April 2015 to 31 March 2022, or their date of leaving if earlier. This period will be known as the remedy period.

3. HMT consulted on two options as to when a member would be asked to make a choice, either within 12-18 months of 2022 (immediate choice) or at date of leaving the scheme (deferred choice underpin - DCU).
4. The [outcome of the consultation](#) as confirmed on 4 February 2021 was DCU.
5. Under DCU, all eligible FPS 2015 members will be returned to their original legacy scheme for the remedy period in 2022. This includes taper members regardless of their taper date.
6. The second part of the remedy is to remove future discrimination from the schemes by providing that all members will move to the reformed scheme (FPS 2015) from 1 April 2022.
7. All eligible members will be automatically entitled to remedy without having to make a claim. To be eligible, the member must have been in service on or before 31 March 2012 **and** on or after 1 April 2015.
8. A full background to the scheme reforms, Court processes, and documents relating to the consultation can be found on the [age discrimination remedy webpage](#).
9. In order to return members to their original legacy scheme administrators will need additional data from Fire and Rescue Authorities (FRAs) to rebuild the final salary record. For example, an unprotected member who transitioned to FPS 2015 from FPS 1992 on 1 April 2015 and remains in employment will need a final salary record creating for the full seven-year period.
10. To assist administrators and FRAs with the process of collecting data and ensure consistency where possible, we intend to provide a template of data items that will be required for each cohort of member. This will be dependent on collaboration with the software companies to agree the required data fields and formats. In the meantime, we have written this supporting documentation which will complement the eventual template.
11. The documents have been created in conjunction with the Fire Communications Working Group (FCWG).

Identifying affected members

12. FRAs should work with their administrators to identify all eligible members.
13. Eligible members are those who were in scope for transitional protection under the original reformed schemes and includes members (or those eligible to be a member) who were in service on or before 31 March 2012 and on or after 1 April 2015, including those who had a qualifying break in service of less than five years.
14. This also includes members who have left employment since 1 April 2015.
15. The consultation also suggests that [members who opted out](#) as a consequence of the scheme reforms may be eligible to repay contributions in order to qualify for remedy. Therefore, these members should also be identified.

Identify data requirements

Pay Data	Service Records	Benefit entitlements
<ul style="list-style-type: none">• Final Salary Pay for Remedy Period• Pay that is pensionable under final salary definitions that is not pensionable under CARE• Include any temporary promotion not pensionable in FPS 2015	<ul style="list-style-type: none">• Final Salary Service Record will need re-creating<ul style="list-style-type: none">• Maternity Leave• Paternity Leave• Parental Leave• Authorised Absence• Have contributions been repaid to establish service?• Changes to hours are recorded• For retained this will be actual pay and full time equivalent pay to establish service records• CETVs and Added Pension	<ul style="list-style-type: none">• Two pension Entitlement: Would entitlement to two pensions have been established by a drop in pay?• Additional Pension Benefits (APBs):<ul style="list-style-type: none">• Temporary Promotion in FPS 2015 would be treated as APB in Final salary if appropriate discretion is in place• CPD payments in FPS 2015 will need to be treated as APB in final salary scheme• Pension Debits due to divorce or scheme pays

Pay

16. The final salary pensionable pay for the remedy period will require final salary actual pensionable pay for the period 1 April 2015 to 31 March 2022 or date of leaving.

17. The year-end final salary pay used for the final salary link will be stored on the member record.

18. However, consideration will need to be given to the definition of [pensionable pay](#) under the final salary scheme and whether pay under the definition of the FPS 2015 would be pensionable under the FPS 1992 or FPS 2006.

19. This will include any temporary promotion not pensionable in FPS 2015.

Final salary service record

20. As the legacy schemes are based on salary and service, all changes in hours for regular firefighters need to be correct and up to date on pension records. This is full-time to part-time, part-time to full-time, and changes as a part-time member, but isn't required for retained firefighters.

21. Additionally, any breaks in service due to periods of absence need to be recorded including:

22. Maternity, paternity, and adoption leave.

23. Authorised absence.

24. Industrial action.

25. Software suppliers have indicated that this element of work could be completed now, as facility is available within the legacy scheme records to update the hours and service break data.

26. For retained firefighters, actual and full-time equivalent reference pay will be needed to establish service records.

27. Any cash equivalent transfer values (CETVs) transferred into the FPS 2015 will need to be considered how this is converted to additional service in the legacy scheme. Schemes should now actively analyse the data to understand how many CETVs were received during the remedy period that will need converting.

28. Added pension bought during the remedy period may need to be converted to a final salary equivalent. Schemes should now actively analyse their data to understand how many members purchased added pension during the remedy period.

Benefit entitlements

Two pension awards

29. If a member has had a drop in pay since transitioning to FPS 2015, FRAs will need to establish whether they will have an entitlement to a [two-pension award](#).

30. Pay protection is available in FPS 2015 so the administrator may already have been informed depending on current processes in place. If not, then all affected members will need to be identified.

Additional Pension Benefits (APBs)

31. Any FRA who treats temporary promotion as pensionable in the final salary scheme will need to identify members with a temporary promotion since transition to FPS 2015.

32. They will need to assess the notional pension contributions which apply to this additional temporary pay so that the pensions administrator can calculate the APB to be awarded to these members.

33. Members of FPS 2015 who have been receiving Continual Professional Development (CPD) as part of their CARE pay will also need an assessment of notional pension contributions so that the pensions administrator can calculate the CPD APB due.

Pension Debits

34. Any debits on the pension record for the remedy period, such as scheme pays or divorce, which will affect the value of the benefit at entitlement will need to be re-calculated as a debit to the final salary pension.

35. Schemes should now actively analyse their data to understand how many members have a pension debit for the remedy period on their record.

Optant outs

36. The HMT consultation response indicates that members who can evidence that they opted out as a direct consequence of scheme reform may be able to repay contributions in order to qualify for remedy.

37. The SAB recommended in their response that any option to re-join is time-limited and is based on the effective date of the opt-out, rather than a member needing to provide evidence. The [election to opt-out form](#) has a section to complete on reason for opting out with transfer to FPS 2015 as an option, but this is not believed to be widely completed.

38. The government has committed to undertaking further work with schemes to agree central guidance on handling cases, however, we believe that this will be relatively high level and decision making is likely to remain with individual schemes. We cannot therefore comment on a prospective date range with any degree of certainty and the suggestions given below are purely indicative.

39. As a starting point, we suggest that initially FRAs collate opt-out data between 1 April 2015 to date, and disregard any who have opted out as part of auto-enrolment or re-enrolment exercises. This will capture any members who were due to taper into FPS 2015 after 1 April 2015 but opted out instead.

40. While tapering continues in the absence of amending legislation, opt outs should continue to be monitored and recorded.

41. There is an argument to suggest that the starting point should be retrospective to 1 April 2012, as this is the qualifying date for eligibility to remedy. We recommend that FRAs agree a date based on their resource and capacity for risk and communicate this date to their administrator.

42. It is important to note that whatever date is agreed, whether that is centrally or locally, individuals may be asked to provide some form of evidence or confirmation that they opted out as a direct consequence of scheme reform, and in all cases payment of backdated contributions (with interest) will be due.

Contributions schedule

43. The contributions schedule will include arrears for FPS 1992 or FPS 2006 special members as the contributions due for these members are higher than those paid while a member of FPS 2015:

44. Difference between main scheme contributions.

45. Additional contributions to treat service breaks as pensionable. (Difference between reformed and legacy scheme).

46. Additional payments for temporary promotion to be treated as an APB.

47. Additional payments for CPD APBs (difference between reformed and legacy scheme).

48. Adjustments if member is eligible for a [contributions holiday](#).
49. Members reverting from FPS 2015 to FPS 2006 as a standard member will be owed a contribution refund.
50. It is not yet known how HMT plan to manage these contribution adjustments.
51. It is recommended that the data required to correct the contribution position is requested now from payroll departments so that FRAs and administrators are in a strong position to implement remedy from 2022 and beyond.

Contributions holiday

52. There may be members who will become eligible for a contributions holiday under legacy scheme rules upon reverting back to FPS 1992 for the remedy period. This affects members of FPS 1992 who attain 30 years' pensionable service before age 50. For the period between 30 years and age 50 their service counts in full but they don't pay employee pension contributions. The employer contributions will be paid as normal.
53. FRAs will need to calculate the amount of the contribution refund.
54. Further information and resources can be found on the password-protected [contributions holiday webpage](#). Please email bluelight.pensions@local.gov.uk for log-in details.
55. Schemes should now actively analyse their data, in order to establish a list of members who will potentially be affected.

FAQs for employers

Why is the data collection exercise necessary?

56. The government has confirmed that changes will be made to all public service pension schemes to remove the unlawful age discrimination identified by the Courts.

57. The government has confirmed that under the DCU, effective by October 2023, all eligible members must be retrospectively returned to legacy schemes for the period from 1 April 2015 to 31 March 2022, or the date they left the scheme.

58. To maintain those final salary records for the remedy period, the administrator will need additional data.

Do I have to provide the data?

59. The data will be needed to comply with legislative changes that will be made to the FPS. You are required to provide your administrator with the information they need to calculate member's benefits.

How do I submit the data?

60. You should use the data collection template to help you collate the required data. Please check with your administrator whether data such as CARE pay needs to be in a certain format. Once you have collected all the required information, submit the completed return to your administrator via your usual means.

Do I have to submit data for employees who have left?

61. If the individual has membership from 1 April 2015, data will need to be submitted for them to make a choice, even if they are no longer employed.

Is there a deadline for submitting the data?

62. As remedy period data will be needed up to 31 March 2022, we propose that data is collated up to 31 March 2021 by each FRA and submitted after this date. A reasonable deadline for submission would be 30 September 2021.

63. FRAs could then submit data for the remaining 12 months at the end of that scheme year in line with annual postings, or each month where monthly postings are in operation.

64. These timescales are however dependent on timely provision of the standard data collection template.

What happens if I cannot supply the data?

65. Please contact your administrator if you are having difficulties obtaining the required data.

Challenges and recommendations

66. Additional resourcing may be required to implement remedy. Some FRAs have a project team in place already including finance, HR, payroll and pension colleagues, and are holding working group meetings.

67. It is suggested that each FRA nominate a remedy lead as the main point of contact for their administrator and the LGA during this time.

68. Some data elements will inevitably be more challenging to collect than others and may be held in varying ways and by different parties, requiring additional collaboration. Some items, such as pensionable pay, may require analysis and judgement-based decision making. FRAs are therefore likely to be heavily reliant on internal processes in collating the required data, and responsibility for data collection and submission should be clearly defined in advance.

69. It is possible that there will be an order of priority for retrospective cases to be addressed. Membership could be further split into cohorts for collating data if this would be helpful e.g. active, deferred, pensioner.

70. The requirement to keep payroll records is six years plus current. If an FRA has changed payroll provider since 1 April 2015 it will need to be established if data has been retained or can be recovered. Data retention may have been agreed as part of the transfer.

71. If a member has transferred from another service, the current FRA will need to contact the previous FRA to request the relevant data. FRAs should check that data can be shared inter-brigade under data protection rules.

72. Central assumptions may need to be agreed for where data cannot be obtained. However, an FRA will need to robustly evidence where they are unable to obtain data required.

73. While it would be helpful to prepare data in a format that can be validated for upload, current validations in place may reject data for members who are no longer active. Administrators will need to be mindful of this and make any adjustments necessary.