

FIREFIGHTERS' PENSION SCHEME ADVISORY BOARD FOR WALES

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Dear Sir/Madam

PUBLIC SERVICE PENSION SCHEMES : CHANGES TO THE TRANSITIONAL ARRANGEMENTS TO THE 2015 SCHEMES – CONSULTATION

Please find below the Firefighters' Pension Scheme Advisory Board for Wales response to the above consultation. Before responding to the specific questions, the Board wishes to make some broad points.

The deadline for implementing remedy in 2022 is very probably unachievable. The Board do not believe that enough consideration has been given to the amount of preparatory work that will be required both nationally and locally once the Treasury announces its final remedy solution and the Welsh Government publishes its detailed scheme amendments. Guidance on the detailed application of the new arrangements will be required for FRAs, and for scheme members, and new software systems will need to be designed and introduced before the changes can be fully implemented. Even if this work could be completed, without more time to prepare there would be serious risks of errors being made in the calculation of pensions and pension estimates. The Board believe that there should be clarity as soon as possible on the timing of the various elements of implementation, including the detailed guidance that employers and scheme members can expect to be made available to support delivery.

The Board believes particularly that there needs to be greater clarity and detailed national guidance on the tax implications of the final proposal. This is needed for both employers to provide consistent local application, and for scheme members to ensure that they are fully aware of the tax implications of their decisions. This needs to include the implications for pension contributions tax relief, any unauthorised tax issues, and annual allowance impacts.

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?

The Board agrees that immediate choice introduces a greater risk of discrimination against younger firefighters than deferred choice. Younger firefighters will be less able to make an accurate judgement in 2022 about whether they (or their survivors) would receive greater benefits under the 2015 or legacy scheme than those firefighters that are closer to retirement. Future career decisions, personal relationship choices, health and fitness, and plans for retirement are all far more difficult to predict over the longer term, and can significantly affect pension benefits, as can scheme valuations. Evidence from GAD indicates that most 1992 Scheme members will be better off remaining in that Scheme for the remedy period. However, the case for 2007 Scheme members is much less clear, with members' decisions on retirement age having a significant effect on which scheme would provide the greatest benefits. The workforce profile of FRAs means that female members tend to be younger, so there may also be a risk of indirect discrimination on grounds of gender.

Proposals to move everybody into the 2015 Scheme from 2022 appear to remove discrimination by placing all members in the same position. However, this approach will affect various groups differently (particularly those members who currently have full or tapered protection), and as such there was not universal agreement with this approach across Board members, with employee representatives believing that the impact assessment should have explored these issues.

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

The Board feel that it is important that an Equalities Impact Assessment is provided specifically with regard to the firefighter workforce. There are elements of the proposed remedy that will potentially affect the firefighter workforce more significantly than other workforces, including retirement age and fitness issues.

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?

Employer and employee member views differ on the fairness of the proposals to require taper members to choose benefits in either their legacy scheme or 2015 Scheme for the whole of the remedy period.

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.

For reasons set out in response to other questions, Immediate Choice is not the Board's preferred option. However, the Board's response to this specific question is as follows.

Which scheme provides a member with the greatest benefits is not cut and dried. The onus would be on employers to take reasonable steps to support members in their decision. Clear and consistent guidance on this matter would be required. However the complicated scenarios that a member would need to consider could easily lead them to making no choice in fear of making the wrong choice.

Defaulting members into their current scheme (which may not necessarily give them the best benefits) if they fail to make a choice would result in the risk of challenge at a later date. The potential for further discussion with individual responsible authorities about the possibility of changing the default scheme is welcomed but again one default option for each legacy scheme would work in some but not all instances.

One potential solution might be to introduce a specific appeals process, although this would add to the administrative burden on FRAs, and would undermine the purported benefits of immediate choice.

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

The Board recognise that an immediate choice exercise would provide clarity over future benefits and allow for longer term financial and workforce planning. It would also provide clarity for members on tax issues. Whilst there would be considerable upfront resource required to undertake an options exercise and transfer members to their scheme of choice for the remedy period, ongoing administration regarding record keeping, potential dual calculations for a lengthy period of time, and two sets of complicated contribution calculations required under deferred choice, would not be needed.

However immediate choice creates the following problems :-

- As already set out at question 1 above, there is significant risk that younger members would not be in a position to make an accurate judgement about which scheme would give them the greatest benefits. FRAs would need to provide a significant amount of detailed and complicated information to members, including estimates of future benefit entitlements for different career paths. Member behaviours and broader future financial impacts mean that FRAs would run the risk of these estimates being inaccurate. There is a real risk that immediate choice could create further discrimination against younger members on this basis.
- Timeframes between scheme rules being amended and expected implementation, and the resources required to deliver remedy in such a short period of time, are a significant concern.

- Both employer and employee representatives have significant concerns about providing appropriate and detailed advice to members. They are sceptical about whether many independent financial advisors have sufficient knowledge of the distinctive complexity of firefighters' pensions.

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

The Board also has concerns regarding the complexity of deferred choice underpin :-

- Tax complexities are significantly increased;
- It is more complex and a greater administrative burden for a far longer period than immediate choice;
- Longer term financial planning will be more complex.

The Board does, though, agree that this option is most effective at removing age discrimination. It reduces the risk of members receiving sub-optimal benefits, and of further legal challenge.

However, the Board does have reservations about the proposal to place all members in their legacy schemes for the remedy period until they make a final deferred choice at crystallisation. Whilst almost all 1992 Scheme members would be better off in that scheme, the position between the 2007 and 2015 pension schemes is much less clear. Many members would be likely to receive greater benefits under the 2015 scheme, particularly if they chose to retire before age 60. Because of the different contribution rates this would lead to two sets of contribution adjustments (and associated tax adjustments) being required for a group of members who appear likely to choose 2015 Scheme membership for the remedy period.

Employee representatives suggest members be given an indicative immediate choice, before making a final deferred choice at retirement. This would reduce the potential for adjusting contributions twice, but would increase the initial burden on employers and administrators.

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

It is important to recognise the circumstances for administering the firefighter schemes are not the same as those for some of the larger public sector schemes. Firefighter schemes in Wales (and England) are managed by individual FRAs. These are relatively small organisations whose resources are heavily focussed on front line services, with little provision for administrative functions. FRAs are among the smallest public bodies to manage their own pension schemes. Their ability to absorb substantial change and the associated costs is significantly less than larger public sector organisations. The same can also be said of the scheme administrators.

Employers therefore have clear concerns regarding the timing and cost of implementation including :-

- Adequate time being provided between the Treasury's final decision, the development and introduction of primary and supporting secondary legislation and actual implementation by FRAs, to allow for the development of software design, and advice and guidance to members. This is relevant to both IC and DCU.
- The complexity of having to reflect two sets of options in annual benefit statements both in terms of administrators having to provide the details and appropriate explanation to members and, in terms, of potential complexity adding to confusion for scheme members. Further comments are provided on this matter in Question 13 below.
- The need to maintain members' records for the remedy period for possibly the next 30 years.

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

The Board has identified DCU as its preferred choice for removing the discrimination identified by the Courts.

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?

Whilst moving all members into reformed schemes from 1 April 2022 appears to apply equal treatment to all members, employee members of the Board believe that consideration needs to be given to the unequal impact that this would have on some members, particularly those members that currently have full or tapered protection.

The Board does not believe that deadline for implementing remedy in 2022 is realistic or achievable. The Board does not believe that enough consideration has been given to the amount of preparatory work that will be required both nationally and locally to implement changes by that date.

One suggestion is that the date should be extended to 2023, to provide more time for the administrative changes that will be required to implement remedy to be put in place more effectively, reducing the risk of errors in advice and calculations.

The Board recognised the expectation that members suffering immediate detriment would be dealt with as a priority, and before that date.

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

Board members do not have an agreed position on this question.

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

The proposals and associated rationale are broadly supported.

Where there are monies owed, the repayment approach appears to be consistent with the approach applied to special members of the 2007 modified scheme introduced in 2014. Where members are required to make good underpayments they should be able to do so in instalments over a specified period of time.

The requirement to adjust member contributions twice under the DCU is an additional administrative requirement for both the scheme employer and the scheme administrators.

As previously referred to in question 6, employee representatives suggest a hybrid DCU model where a member makes an immediate indicative choice before a final choice at retirement. It is suggested that this will significantly reduce the need for 2 sets of member contribution calculations (as the majority, but not all members are likely to make the right choice regarding benefits immediately).

The contributions holiday that certain 1992 Scheme members (those who reach 30 years' service between age 48 and 50 are entitled to a contributions holiday until they reach age 50) are entitled to needs to be factored into any calculation of pension owed.

Further clarity is required on tax relief issues relating to member contributions.

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

The Board has no comments on this question.

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

Annual benefit statements under immediate choice do not create any particular issues.

Under DCU the proposal to include information on remedy benefits under both reformed and legacy scheme arrangements in annual benefits statements would significantly increase complexity both for employer/administrators and for the member. The Board agrees that it is not necessary to routinely report this

information to members, and that ABSs should include benefits relating to their default scheme only. It is suggested however that members should be able to access this information on request or through on-line tools.

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

There are likely to be complications with retrospective assessments for ill-health retirement. Scheme-specific work needs to be undertaken to develop solutions and to produce central guidance on dealing with retrospective ill-health retirement matters.

It should be noted that employee representatives strongly advocate the handling of ill-health cases as immediate detriment cases that should be dealt with before remedy is finalised in April 2022.

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

The Board generally agree with the treatment of survivors of members who have died since 2015. Some specific points are :-

- It is important to take care to identify all survivors involved, particularly within the 1992 Scheme which does not provide survivor pensions for unmarried partners. The Board agrees that these members should be given the choice of benefits under the 2015 scheme.
- The next of kin should be given as much information as possible to enable them to make the choice between the two options available, as if the member was still alive.
- The proposal suggests an argument against offering a choice that provides for unmarried partner benefits for members of FPS 1992 who in 2007 were given the option to move to FPS 2007 which does provide such benefits. However the Board does not agree with this position, as individuals' personal circumstances now may well bear no relation to those in 2007.
- The proposed safeguards relating to probate and tax costs are welcomed.

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.

The Board agrees that members who opted out of joining the 2015 Scheme should be given the opportunity to be treated as accruing benefits in their legacy scheme for the remedy period. Members may well have opted out because of concerns regarding fitness and retirement age and could have made different choices should they have continued to have access to their legacy scheme benefits for the remedy period. It is felt that this provision will reduce the risk of further legal challenge.

The Board does not however have an agreed position on the proposal to deal with the issue on a case by case basis.

The Board supports the proposal for the final salary link to be restored where relevant contributions are paid.

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

The Board does not have an agreed position on this matter.

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?

The Board does not have an agreed position on this matter.

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

The Board has no particular views on this matter. The proposed treatment of divorce cases appears to be in line with remedy.

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

The Board note that interest was applied to the payment of past contributions owed for those buying back service in the 2014 modified pension scheme for Retained Duty System firefighters.

However the Board does not have an agreed position on whether members should be charged interest on contributions owed in this case.

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

The Board agree that interest should be paid on amounts owed to members by schemes. It has been suggested that this should be based on the Bank of England Base 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?

There is no scheme interest rate for firefighters. The Board believe that common rates of interest should apply across the public sector.

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

The Board agree that any abatement amounts deducted should reflect the pension payable as a result of the individual's choice. Members will need detailed explanations of the impact before they make any choice.

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

Board members raise the following issues :-

- The tax implications for members are extremely complicated and will need to be explained carefully to scheme members as part of the choice mechanism.
- Agreement needs to be reached at a national level with HMRC on the tax elements of remedy, and consistent national guidance should be provided for use by FRAs and members to provide complete clarity, and avoid the need to deal with issues at a local level.
- Members will need to be able to get the support and advice required to understand all the implications of the various tax effects from lifetime allowance, annual allowance and tax relief anomalies, but members of the Board have significant concerns about the availability and quality of independent financial advice on these extremely complex issues in the firefighter schemes.
- Employee representatives point out that DCU with the indicative option would avoid many of the complications surrounding the underpayment and overpayment of contributions and associate tax implications.

Yours sincerely



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Firefighter Pension Scheme
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