

Contingent decisions

“Relevant Chapter 1 legacy scheme”



Purpose of remedy

To put members back into the position they would have been in if the discrimination had not happened.

PSPJOA 2022



Retrospectively

- Immediate choice
- Deferred choice
- **Contingent decisions**

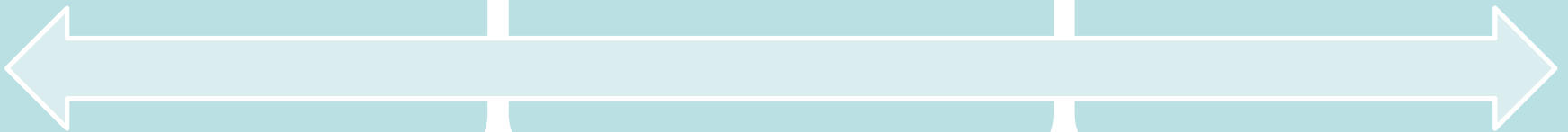


Overarching framework to allow public service pension schemes to remedy the impact of unlawful age discrimination.



Prospectively

- All members treated equally going forward i.e. All active members in FPS 2015 from 1 April 2022



What is a contingent decision?

A contingent decision is a decision taken by a member, relating to their membership of the firefighters' pension scheme, that would have been different had it not been for the discrimination identified by the courts.

Three categories identified... now two

Opt-out

Transfers

Additional
Service

PSPJOA – Primary legislation

Section 5 - Election for retrospective provision to apply to opted-out service

- Scheme regulations for a Chapter 1 legacy scheme must make provision so that a retrospective election may be made in relation to relevant opted-out service.
- Allows for remedy period service to be reinstated but does not provide the power to reinstate any service pre/post remedy period.

Section 4 - Meaning of “the relevant Chapter 1 legacy scheme”

- “the relevant Chapter 1 legacy scheme”, in relation to a person’s remediable service, means the *Chapter 1 legacy scheme for people in that employment, or holders of that office, under which the person most recently accrued pensionable service.
 - *Subject to subsections

Firefighter' Pensions (Remediable service) regulations 2023 – Secondary legislation

Contingent Decision provisions

- A member would not have opted-out if they had been allowed to remain in the legacy scheme beyond their transition date **or** if protected members had been allowed to join the reformed scheme from 1 April 2015.
- Members who made an election to opt out relating to the pension reforms prior to their transition date will be able to make a CD claim.
- [Section 5 of the PSPJOA](#) allows remedy period service to be reinstated but does not provide the power to reinstate any service pre or post the remedy period.
 - Where a member can demonstrate to the scheme manager that they had a compelling and reasonable case to do this, schemes managers will need to use provisions in the **existing scheme rules**, if available, to allow reinstated service in respect of any pre- or post-remedy period service.

Existing scheme rules

- FPS 1992: Once a member opts out, they cannot opt back in. If they want to re-join then they re-join FPS 2006.
- FPS 2015: [Scheme manager discretion](#).

LGAs original position

Opted out before remedy period

- The correct Chapter one legacy scheme for reinstatement of service is **FPS 2006** (regardless of whether they were originally a member of FPS 1992 or FPS 2006).

Opted out during remedy period

- The correct Chapter one legacy scheme for reinstatement of service is their **original legacy scheme** (either FPS 1992 or FPS 2006).

Remained opted out after remedy period

- These can be treated using scheme manager discretion under FPS 2015 ([Regulation 12](#)). The discretion allows a scheme manager to determine when the opt-in can take place and **does not** prevent the opt-in period to be retrospectively applied (subject to payment relevant contributions).

PSPJOA - Section 4

Meaning of “the relevant Chapter one legacy scheme”

- [s.4\(1\)](#) most recently accrued pensionable service
 - Subject to subsections 2 to 8
- [s.4\(2\)](#)
 - (a) on or before closing date (1 April 2015) the person opted out, and
 - (b) on the closing date the rules of that scheme **prohibited** a person from becoming an active member, and
 - (c) on that date, the rules of another Chapter one legacy scheme **did not** include such prohibition,
 - The correct Chapter one legacy scheme is the one mentioned in (c)
- [s.4\(3\)](#)
 - (a) any time after the closing date the person opted out, and
 - (b) any time before 1 April 2022 the person opted that their service should become pensionable again, and
 - (c) at that date the rules of that scheme mentioned in subsection (1) **prohibited** a person from becoming an active member, and
 - (d) at that time the rules of another Chapter one legacy scheme **did not** include such prohibition,
 - The correct Chapter one legacy scheme is the one mentioned in (d)

Effect of FPS 2006 on FPS 1992

On the 6 April 2006 the government introduced a new pension scheme for Firefighters in England

[The Firefighters' Pension Scheme \(England\) Order 2006 \(FPS 2006\)](#).

The introduction of FPS 2006 saw the 'closure' of the [Firemen's Pension Scheme Order 1992 \(FPS 1992\)](#)

In general, the FPS 1992 continued to have effect for persons who were already members / entitled to awards, but thereafter **did not** have effect for persons who took up employment with a fire and rescue authority thereafter. This was given effect by the 2006 Regulations at [article 3](#).

FPS 1992 Regulations were also [amended](#)

The FPS 1992 rules themselves provided that it should cease to apply to members who had elected to opt-out of contributions under [rule G3 \(election not to pay pension contributions\)](#) and then also cancelled that election on or after 6 April 2006.

This meaning if that if any individual who made an election under [rule G3](#) chose to withdraw their request and elect to recommence payment of pension contributions, then they would do so under FPS 2006, **not** FPS 1992.

LGAs revised position

Opted out before remedy period – **No Change**

- The correct Chapter one legacy scheme for reinstatement of service is **FPS 2006** (regardless of whether they were originally a member of FPS 1992 or FPS 2006).

Opted out during remedy period

- The correct Chapter one legacy scheme for reinstatement of service is **FPS 2006** (regardless of whether they were originally a member of FPS 1992 or FPS 2006).

Remained opted out after remedy period – **No Change**

- These can be treated using scheme manager discretion under FPS 2015 ([Regulation 12](#)). The discretion allows a scheme manager to determine when the opt-in can take place and **does not** prevent the opt-in period to be retrospectively applied (subject to payment relevant contributions).

What happens next?

LGA to review CD guidance

- Amendments are needed to reflect the correct legislative position

LGA to liaise with FBU over member communications

- We ask for discretion on this topic until communications have been agreed.

FRAs/Administrators to contact LGA re any ongoing cases

- LGA to support messaging to individuals who have been offered rights to the incorrect scheme.

LGA in discussions with Home Office and HMT re the impact of this

- Does this position meet the remedy principles?
- Will this position invite litigation?
 - Can anything be done to rectify this i.e. amendments to the PSPJOA or secondary legislation.

Any questions



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Thank you for listening!

claire.johnson@local.gov.uk

bluelightpensions@local.gov.uk