

## Appendix B

### Public Service Pension Schemes: Changes to the transitional arrangements of the 2015 schemes.

The service acknowledges that there is currently a legal process for the claimants in the Sargeant case, for which FBU acts on behalf of the claimants, and the Fire and Rescue Authorities (FRAs) are the respondents in that case together with the respective UK governments. This response should not prejudice any decisions made in those on-going legal proceedings.

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?

No response.

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

No response.

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?

The proposal that members can choose legacy scheme benefits or reformed scheme benefits for the whole remedy period is supported. This option avoids perpetuating or extending discrimination and is the least administratively burdensome option in the context of a choice-based system.

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.

As noted in the consultation, this is something relevant schemes should consult on directly with their stakeholders following the government's response to this consultation. This would be best administered by the relevant scheme advisory board.

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

This proposal would provide clarity for employers relatively quickly and would be preferable in terms of allowing them to more accurately forecast pensions costs and workforce planning assumptions.

The service supports the Scheme Advisory Board's view that "under immediate choice we assume GAD's valuations would be undertaken in a similar way to the current approach with only one set of assumptions required." (2, p.18). This contrasts with the situation under DCU (see Question 6).

Immediate choice would also provide more certainty than DCU for the valuation of pension fund liabilities in accordance with accounting standard IAS19 (Employee Benefits).

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

This proposal would make it much harder for employers to forecast costs and future workforce plans. However, the service acknowledges the view of the Scheme Advisory Board that "deferred choice was the only proposal to mitigate risk of further legal challenge" (2, p.2).

As noted by the Scheme Advisory Board “Deferred choice would require several assumptions, both options would have to be valued and we imagine that the highest cost would be used for each valuation period. Although uncertainty would reduce over time and with each valuation, there is a clear risk that deferred choice will add volatility to the valuation process and have consequent implications for contribution rates and member benefits.” (2, p.18).

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

Although the immediate choice proposal is less of an administrative burden, both proposals will generate significant additional costs for employers. According to the Scheme Advisory Board “Initial conversations with administrators and FRAs indicate that the additional new burden will be between 50% and 75% of current costs.” (2, p.16). The Government must fully fund these additional costs to mitigate potential impacts on the service we deliver to the public.

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

No response.

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?

No response.

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

In line with the immediate choice proposal, members will need to be given a reasonable amount of time to make their decision. This should be dealt with as a discrete exercise, separate from the routine pension top-up grant claims.

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

Experience of issues such as the Norman case (3) have demonstrated this proposal will place a large burden on services that have to manage repayment plans for members. It will be especially difficult where members have moved employers or move employers before fully repaying contributions owed. The DCU option is especially burdensome, with contributions having to be amended twice.

It would be preferable for employee contributions to be adjusted at the point of retirement.

There is also no mention of how employer contributions would be adjusted. The Government must consult on proposals for this aspect before arriving at any decision.

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

No response.

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

As noted in the consultation, the DCU proposal would require significant changes and take years to implement and test. The immediate choice would remove some of the complexity and administrative burden.

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

In line with the immediate choice proposal, members will need to be given a reasonable amount of time to make their decision. This should be dealt with as a discrete exercise, separate from the routine pension top-up grant claims. There is an immediate need for guidance on processing immediate cases.

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

The service agrees that these cases will need to be handled sensitively. Any additional costs e.g. not reducing a dependent child's pension (1, para. A.36) must be funded by Government, not the individual fire and rescue services. There is an immediate need for guidance on processing immediate cases.

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.

In line with the immediate choice proposal, members will need to be given a reasonable amount of time to make their decision. This should be dealt with as a discrete exercise, separate from the routine pension top-up grant claims.

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

This would be preferable to avoid maintaining dual records.

Question 18: Where the receiving Club scheme is one of those schemes in scope, should members then receive a choice in each scheme or a single choice that covers both schemes?

A single choice simplifies the situation and is closer to the situation of a member who did not change employment

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

Any additional costs e.g. pension credit member awarded the percentage of the higher cash equivalent transfer value (CETV) due under remedy (1, para. A.62) must be funded by Government, not the individual fire and rescue services.

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

If interest is charged/paid any net cost to employers must be funded by Government.

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

Interest should not be charged to avoid having to revisit immediate detriment cases. If interest is charged/paid any net cost to employers must be funded by Government.

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?

No response.

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

The proposal that where the DCU or immediate choice results in a retrospective increase to a pension then abatement would not apply or would not be increased retrospectively is supported as it provides certainty for the member and avoids an additional administrative burden on the employer.

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

This will add additional complexity to an already complex system. The Government will need to provide clear guidance on the implications of each choice to enable scheme members to make an informed choice, and to ensure employers are treating cases correctly and consistently.

Other Comments

Although the consultation document provides information on costs (1, paras. 2.58-2.60) it is disappointing there is no specific question(s) relating to the issue.

When the 2015 Scheme was introduced fire and rescue services had their funding reduced to reflect the lower cost of employer contributions in the new scheme. Therefore, when future employer contributions inevitably increase as a result of these proposals, services must be fully funded for this additional burden.

This view is supported by the Scheme Advisory Board, who stated that “there are significant financial burdens that would fall on employers to manage and administrate either proposal, and the Board calls on the Government to meet those FRA costs in full.” (2, p.3).

## References

- (1) United Kingdom. HM Treasury. Public service pension schemes: changes to the transitional arrangements to the 2015 schemes Consultation. ISBN 978-1-913635-37-4, 2973, CP 253. 2020. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/900766/Public\\_Service\\_Pensions\\_Consultation.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/900766/Public_Service_Pensions_Consultation.pdf) (Accessed: 18 August 2020).
- (2) Eastwood, M. Addressing unjustified age discrimination in transitional arrangements to the 2015 pension schemes – working proposals: Firefighters’ Pensions England Scheme Advisory Board Response. Letter to Amar Pannu (Head of Police and Firefighters’ Pensions). 2 April 2020. Available at: <http://fpsregs.org/images/Age-discrimination/SAB-response-to-informal-HMT-remedy-propsals-2-April-2020.pdf> (Accessed: 18 August 2020).
- (3) Norman v Cheshire Fire & Rescue Service [2011] EWHC 3305 (QB). 14 December 2011. Available at: [http://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/QB/2011/3305.html&query=2011.+EWHC+3305+\(QB\)](http://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/QB/2011/3305.html&query=2011.+EWHC+3305+(QB)) (Accessed: 18 August 2020).