

# LANCASHIRE COMBINED FIRE AUTHORITY

## RESOURCES COMMITTEE

Meeting to be held on 23 September 2020

### FIREFIGHTER PENSION SCHEME TRANSITION PROTECTION CONSULTATION

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#### **Executive Summary**

The Home Office has issued a consultation document on proposals to address the adverse discriminatory finding by the High Court in respect of the Firefighters pension schemes. The consultation includes a number of unfunded schemes and is not limited to the firefighter schemes (Police, Teachers and NHS schemes are included but LGPS is subject to a separate consultation).

The consultation period ends on 11 October 2020. The proposals provide a suggested remedy to the detriment suffered by employees following the High Court decision and is far reaching in its scope. LPP as our pension administrators will be responding in respect of their position. As will the Director of People and Development (DoPD) as the designated Pension Scheme Manager for Lancashire Fire & Rescue Service in respect of the consultation covering the detailed questions. Members are asked to consider if they wish to respond to any of the points in the consultation.

#### **Recommendation**

The Resources Committee is asked to consider the report and:

- 1) Determine if they wish to respond
- 2) Determine the points they wish to respond on
- 3) If a response is desired delegate the Chairman to agree a draft prepared following this discussion.

#### **Information**

In April 2015 a new firefighters pension scheme commenced replacing the 1992 and 2006 schemes. The Government's original proposals were to address the rising cost of the legacy schemes to the public purse, ensuring sustainability whilst still providing appropriate pensions. The main changes were an alteration from a final salary to a career average scheme with an increased normal pension age and the introduction of a cost control mechanism.

It was always clear that the structure of the 1992 scheme was superior to the 2015 scheme, although the contribution rates were higher.

As part of the 2015 reforms, those within 10 years of retirement remained in the legacy scheme with tapered protection being given for individuals within a further 4 years of their retirement date. The protection was given following negotiations with the FBU and was intended to give protection and certainty to people who were close

to retirement. After introduction the FBU undertook court proceedings arguing that the transition protection was age discriminatory.

In December 2018 the Court of Appeal found that the transition protection unlawfully discriminated against younger members of the judicial (who also undertook court action) and firefighters. The Courts required that this unlawful discrimination be remedied by the Government. The Government extended their remedy proposals to include all public sector schemes and employees

The consultation document sets out the Governments proposals for remedy.

## **Scope**

The proposals apply to all members of the 2015 scheme who were in employment before 31 March 2012 and also on or after 1 April 2015 including those with a qualifying break in service of less than 5 years. An individual would not be required to submit a legal claim. Any new entrant after 31 March 2012 is excluded. Until the 2015 scheme was live they were placed in 2006 scheme.

The Government proposes that all eligible members would be given the choice of which set of scheme benefits is better for them for the period 1/4/2015 to 31/3/2022.

The basis for this option is that depending on an individual's personal circumstances (in particular their earnings progression), overall in the public sector many members are likely to be better off in the reformed schemes. The Government is proposing to therefore allow individuals to have a choice rather than move everyone back into their legacy scheme. In Fire Service terms except in very unusual circumstances, it is highly unlikely that the 2015 benefits are better than their 1992 benefits over this period, but it becomes more likely comparing the 2006 with 2015 scheme benefits.

## **Documents**

Appendix A - Briefing note provided by HM treasury to individuals - - [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)

Appendix B - the consultation questions - <http://fpsregs.org/images/Age-discrimination/Public-Service-Pensions-Consultation-questions.pdf>

## **Commentary on Proposals**

The Home Office have issued a single consultation document covering a number of pension schemes whereas in reality the implications for the Police and Fire schemes are significantly different and in many instances more clear cut than other schemes.

The consultation requests comments on 24 questions, many of which are detailed in application. This is why it is suggested that the DoPD also replies to cover these points.

Extending the transitional protection arrangements until 1/4/2022 to all staff seems the logical and sensible route. The caveat to this is that the necessary ICT solutions and other administrative activity might not be completed by then.

The key questions are:

1. Funding of the remedy
2. Which option - Immediate / deferred choice
3. Potential additional discrimination being created
4. Taxation
5. Communication of the impacts and options available

### **Funding of the Remedy**

Although comments are not requested on this aspect it is felt that the following points should be made:-

The costs associated with this remedy will be significant, and will include system development, additional pension administration (out with any existing contractual arrangement) and considerable in house service guidance and administration. This is on top of an ever increasing administrative burden driven by pension regulation.

The need for a remedy was the Government concluding with the FBU a transition commitment which gave rise to the discriminatory effect. In effect the new schemes were a government initiative which we had to implement. As Pension Scheme Manager - The CFA had no choice but to administer the scheme in accordance with the statutory instruments. The LGA currently has a hearing listed at the Court of Appeal arguing that the Government should be liable for any costs arising from and this is not a burden that should fall on the Fire Authorities.

In short "How will the costs of remedy be covered?"

### **Immediate / deferred choice**

The main question posed in the consultation is should individuals make an immediate choice (asap after April 2022) or be allowed to make their choice when they retire.

In this context removing the discrimination is achieved by allowing every individual the same time frame for protection and then removing the protection hence April 2022 (and is accepted by the government as the need). A more contentious alternative would have been to withdraw the protection when the outcome of the court case was known or the claim made. The Government's wish not to allow an individual to be disadvantaged by being withdrawn from a better scheme is also accepted.

But the proposal seems overly complicated and risk averse and will cause greater problems than the alternative of making an option soon after 1/4/22 as to which scheme is considered appropriate.

Whilst the workload associated with the pension options should not be underestimated, this would need to be undertaken at some point but an organisation can plan to resource it as a one off rather than over 30+ years. So whilst making a

single choice will peak that workload, the alternative of allowing a deferred option is far greater in extent requiring repeated complicated calculations on “what ifs” and gives rise to other issues and complications, such as the retention of knowledge. An immediate choice would put the issue to bed and provide certainty going forward and is in line with other pension issues and allow appropriate contributions to be collected and appropriate tax obligations to be met. It would also make the Authority’s task of workforce planning more straightforward.

Currently if an employee joins an organisation then they have 12 months to decide whether to transfer in pension benefits. Sometime later in their career individuals sometimes request to review that decision as their circumstances have changed and the informed decision they made on entry is no longer the right one for them. Inevitably by the nature of the situation this would increase the cost to the pension fund and are normally declined. This proposal would therefore cause resentment with other employees. As would the ongoing requirement for recalculations would be an extra obligation.

Similarly individuals can take advantage of the situation and opt to remain in the “cheaper” fund and make their real election at retirement, this will require significant adjustments in retrospective contributions to be made and after a 4 year period income tax to the revenue account would be lost and if overpaid contributions have been made the proposals suggest the employer i.e. LFRS would pay interest but not if the individuals has underpaid (this will give rise to claims of unfair treatment). Especially, as almost all 1992 employees should opt for a return to the legacy scheme.

In this respect it should be noted that different definitions of pensionable pay and contribution rates exist across the schemes.

Similarly it is suggested that those that have withdrawn from the pension schemes should be allowed to re-join and it is felt that this should only be allowed when justification is advanced.

Calculating tapering retrospectively will also be especially difficult.

The proposal to allow an individual to make the choice at the end of their career is providing an unfair advantage over other individuals and no justification can be seen for this approach except to prevent any challenge by allowing the use of hindsight, which seems unfair to other employees and depending on the outcome will impact on the cost control mechanism and the viability of the schemes as a whole.

A deferred option will mean these issues will continue for 30 + years, with the maintenance of two pension records for those effected.

In summary an immediate option should be nominated.

### **Potential additional discrimination being created**

Within the documentation seen is a suggestion that any person with “tapering” protection should have this maintained beyond 2022. This would appear to be extending the discrimination that has caused the problem in the first place and far from reducing the scope for claims it will create new claims in the mistaken belief

that discrimination will occur if you change the offer, ignoring that it is the High Court that has deemed the protection offered as unlawful and has to be removed.

Currently in the 1992 scheme an individual's pension entitlement is limited to 30 years' service and if you achieve this before age 50 you are given a contributions holiday but after 50 have to recommence payment. The proposal is to allow staff to opt for 1992 scheme until 30 years and then join the 2015 scheme. Not only is this proposal flawed if implemented it would give rise to more claims of mal-administration.

Other examples exist and it is felt should be included in at least one of the two proposed responses.

### **CFA Response**

It is proposed that the CFA response highlight that whilst we want fairness to the remedy, the approach adopted is not fair in some areas.

### **Taxation**

The consultation proposes that if a deferred option is adopted then the Government will meet the tax obligation and any tax owed over the four year timeframe will be lost, this is not the case under the immediate option which will give rise to grievances if not claims.

The issue of annual allowance will also be fundamentally different if you remain in the reformed scheme until retirement and then opt for 1992 as opposed to reverting to the 1992 scheme immediately. Scheme pay obligations will also arise differently and if used will impact on an individual's final pension. Taxation issues also arise in respect of tapering. It is however suggested that this detail is picked up in the DoPD response to the consultation,

### **Communications**

Pension entitlements have become more complicated by the existence of multiple schemes and also Government changes (such as taxation, minimum and normal retirement ages, annual allowance and other changes effecting individuals, irrespective of the transition issue. Appropriate consistent and simplified communications is therefore a key imperative.

One of these legal pension requirements is to provide clear accurate annual benefit statements. If an individual has had an option in 2022 then this task although more challenging than before is manageable but if each year the calculation has to be undertaken for two scenarios and included in a statement, conveying the import will be not only administratively challenging but providing clear information will also be difficult. This will in turn encourage claims for being misled. Experience shows that even the current requirement causes confusion. Often it is necessary to assist individuals in understanding what their options are, in the current situation this can be done within the confines of not providing advice, these proposals make that more difficult and officers would probably need to err on the side of caution.

Clear consistent pension advice and documentation is needed to prevent misunderstandings.

## **Financial Implications**

None directly arising from this report, however whatever remedy that applies will have a significant impact on the Service.

1. The Authority's employer contributions may increase and be backdated from 1/4/2015 until 1/4/2022.
2. Any recalculation of benefits will increase the Authority's liability.
3. The proposal indicates an intent not to charge employee interest but provide interest payments to employees if overpaid will negatively impact the Authority.
4. Additional costs will be incurred by our pension administrator that will be outside the contractual arrangement and will have to be funded.
5. The complex nature of the remedy will require revised technical solutions that will need to be funded within the sector (or by pension administrators) increasing our costs. The technical providers are stating that until decisions are made they cannot progress solutions, which might jeopardise the 1/4/22 date.
6. The cost of future administration both within the Human Resources function and through our pension administrator will increase significantly.
7. The developments in the pension field limit the options for provision of a cost effective administrative service.

## **Human Resource Implications**

Pension arrangements are a fundamental part of the contractual arrangements that have become more specialised. The complexities of the proposals and extent adds to the demands on the Human Resources function and if the deferred option is selected by Government this would continue for 30 years. Maintaining the required knowledge and expertise would be very problematic.

The complexity will result in considerable more questions over pension entitlement and uncertainty from employees and will negatively impact on morale.

The retrospective nature of the proposals and the need for complicated administration moving forward is likely to result in administrative errors (maybe significant).

The proposals will increase individual's tax liability and exposure to scheme pays which is not normally seen as positive by the individual.

The sum total of activity and lack of a technical solution means that timelines are extremely tight and must be considered a risk.

The revised pension arrangements will maintain firefighter pension provision as excellent which is beneficial in workforce terms.

## **Equality and Diversity Implications**

The discriminatory effect would be resolved by returning everybody into the legacy scheme until 1/4/22 (the Government confirms this in its consultation document) but

the government believes this is unfair and has proposed a series of measures. The measures proposed however establish new grounds for discriminatory impact and should be avoided as outlined in the body of the report.

### **Business Risk Implications**

The proposals are or verge on undeliverable which will cause reputational damage. Whilst it is accepted that the court determined discrimination needs to be removed, the practical and cost implications of some of the proposal will further undermine the viability of the pension schemes especially if the deferred option is selected

### **Environmental Impact**

None

### **Local Government (Access to Information) Act 1985 List of Background Papers**

Paper	Date	Contact
None		
Reason for inclusion in Part II, if appropriate:		