

WEST MIDLANDS FIRE AND RESCUE AUTHORITY

5 OCTOBER 2020

1. RESPONSE TO THE GOVERNMENT CONSULTATION ON REMOVING AGE DISCRIMINATION FROM PUBLIC SECTOR PENSION SCHEMES

Report of the Chief Fire Officer.

RECOMMENDED

THAT The Fire Authority approve the response to the Government Consultation on “Changes to the transitional arrangements to the 2015 schemes”

2. PURPOSE OF REPORT

This report is submitted to seek approval of the response to the Government’s Consultation.

3. BACKGROUND

- 3.1 As a result of the Hutton Report into Public Service Pensions the Government introduced new Pension Schemes in 2015.
- 3.2 As part of the introduction of these schemes, protection was offered to some existing members under transitional arrangements.
- 3.3 Following the introduction of the new schemes, Unions, representing Judges and Firefighters, took Court action against the Government claiming that the transitional arrangements were discriminatory on grounds of age.
- 3.4 In December 2018 the Court of Appeal ruled in favour of the Unions.
- 3.5 In July this year the Government published a Consultation on their proposals for removing the discrimination from all Public Sector Pension schemes. The Consultation closes on

11th October.

4. **EQUALITY IMPACT ASSESSMENT**

In preparing this report an initial Equality Impact Assessment is not required and has not been carried out.

5. **LEGAL IMPLICATIONS**

The course of action recommended in this report does not raise issues which should be drawn to the attention of the Authority's Monitoring Officer.

6. **FINANCIAL IMPLICATIONS**

Removing the discrimination from the Firefighters' Pension Schemes will have financial implications for the Fire Authority in respect of increased administration costs and additional employer contributions. Until a decision has been made on the timing and methodology to be used, it is not possible to accurately estimate the level of these costs.

BACKGROUND PAPERS

Public service pension schemes: changes to the transitional arrangements to the 2015 schemes Consultation

The contact name for this report is Mike Griffiths, Strategic Enabler Finance and Resources, telephone number 0121 380 6919.

PHIL LOACH
CHIEF FIRE OFFICER

Response to the Government consultation Public service pension schemes: changes to the transitional arrangements to the 2015 schemes

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 2019? What evidence do you have on these matters? Is there anything that could be done to mitigate any impacts identified?

Answer

We have reviewed the proposal and can find no issues affecting individuals with protected characteristics as defined in the 2019 Act.

Question 2:

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

Answer

We would highlight the fact that how the policy is finally implemented may have a differing impact across different areas of the public sector. Within the Fire Service, any proposals will affect more men than women. This will however be very different in the NHS where the workforce is predominantly female.

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?

Answer

Our own experience indicates that a reasonable number of employees at senior management level or just below are affected by this issue. Whilst we acknowledge that the tapering system provided an unintended benefit for this group, most of them have made plans based on the ability to accrue between up to 30 years in the 1992 scheme before becoming able to then begin to increase their pension by moving into the 2015 scheme. These members have made plans for their future, including remaining in post beyond the date at which they may have retired under the legacy schemes. The proposed changes may make these members reassess their position and could lead to an increase in retirements between now and 31st March 2022. This would lead to a loss of experienced officers.

The impact to the members themselves should also not be underestimated. Some of those affected have remained in employment and scheme membership for several years although they are accruing no further benefits because they anticipated being able to join the 2015 scheme in the future.

One possible method of limiting the impact of the changes on this group may be to extend the current payment holiday arrangements in the 1992 scheme to anyone who reaches 30 years' service during the remedy period.

As an alternative we would like to see members being given protection based on the level of benefits that would accrue under the tapering arrangements.

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.

Answer

In most cases we would accept that defaulting to the legacy scheme will be in the member's best interest. However, there will be situations, specifically when dealing with members of the 2006 Firefighters Pension scheme, where this will not necessarily be the case.

If a member does not respond, under an immediate choice exercise, there will still be the opportunity for the member to make a decision at the point at which benefits come into payment.

At this time the member would be required to make a commitment, otherwise benefits could not be put into payment. We would prefer a system where this option was the fallback position.

Question 5

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

Answer

An immediate choice exercise will mean members making a decision anything up to 32 years before benefits will come into payment. The potential for this choice not to be in their best interests could potentially be high. The number of members at the maximum of the 32 year period is likely to be small but we would still expect a reasonable number of current members to be retiring between 20 and 25 years after the end of the remedy period. Each member who is in the position could raise a case, under IDRPs arrangements, if the choice they made in 2022 turns out not to have been in their best interests. These cases could be taken up by the Unions but there is also the opportunity for private law firms to take cases on behalf of scheme members as happened in the 80's and 90's miss-selling cases.

Question 6

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

Answer

A deferred choice option would ensure that members are able to make decisions in the full knowledge of what their benefits will be. Set against this is the need for schemes to maintain records and knowledge over a long period. Whilst this will provide major administrative challenges, administrators are already working with a requirement from the Pension Regulator to keep detailed and accurate records. The extra requirement is simply an extension to the ones that exist.

The need to run two sets of benefit design will also increase complexity for schemes but Fire Authority Pension Administrators are already dealing with four separate schemes, so again the work to deliver a deferred choice is simply an extension of the current position.

Question 7

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

Answer

The changes necessary as a result of the Court Case were always going to have a major administrative impact. The work required is technically detailed but is not different to that currently being done. Administrators are already dealing with different levels of contributions, multiple schemes and the impact of taxation on a member's benefits. Currently though, schemes may have different staff dealing with different elements or there may be limited numbers of administrators who deal with specific issues. This is likely to affect the taxation elements of the proposals. Remedy will result in a need for more staff to have the widest possible level of knowledge to enable the increased workloads to be better shared across teams. Some services may therefore need to increase the pay of some of

their staff to account for working at a higher level. Consideration also needs to be given to the training of staff to ensure that the new rules are fully understood. All of these things will incur costs which will fall to the employers of the scheme administrators to pick up.

Whichever option is chosen as a result of this consultation, the additional work to ensure delivery is going to fall on the scheme administrators. Both choices will result in an increased workload for a group of staff who have specialist skills and unless the impact is carefully managed some of these may choose to leave employment. Given that all public sector schemes will be looking for appropriately skilled staff during this period, replacing those that leave may prove to be difficult. Whilst this may not have a major impact on day to day operations in Local Government Pension Funds or in the large centrally administered schemes such as the NHS, the impact of the loss of a single pension administrator from a Fire Authority would be keenly felt.

As well as considering the issue of staffing, attention needs to be paid to the storage and location of payroll records. Accurately processing the proposed solution will require the analysis of an individual's payroll record for the whole of the remedy period, 1st April 2015 to 31st March 2022. In a number of cases the Payroll teams and Pension Administrators may not be in the same location or even work for the same employer. The work involved could be complicated further if the member moves between scheme employers during the remedy period. Take for example a Firefighter born in 1992, who joins the 2006 Firefighters Scheme on taking up employment on 1st February 2012. They move into the 2015 scheme on 1st April 2015 and transfer from Fire Authority A to Fire Authority B on 1st May 2016. They then move again three years later, before joining Fire Authority D on 27th March 2022. The member then retires in 2042 having been working for Fire Authority E since 2032. The member would be offered the choice of being a member of the 2006 or 2015 schemes for the remedy period and if they chose the 2006 scheme they would be due a refund of contributions. This refund of contributions would be made by Fire Authority E although the member was not employed by them at any point during the remedy period. The refund itself could only be calculated if the latest employing authority had a full record of the pay and contributions, information which it would need to obtain by contacting Authorities A, B, C, and D.

Having considered the position of employee contributions, a further question then arises with regard to the employer contributions. If an employee chooses legacy benefits and is required to pay additional contributions to receive this, will the employer also have to make additional payments? If this is to happen in the case outlined above where a member has moved between Authorities, will the final employer be responsible for the additional payment across the whole period or will each Authority need to pay their own share?

Question 8

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

Answer

Both options remove the discrimination but immediate choice may result in further claims at a later date. On this basis we feel that DCU best delivers the requirements of the Court.

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?

Answer

We feel that closing the legacy schemes and moving all active members who are not already in the reformed schemes into their respective reformed scheme from 1 April 2022 does ensure equal treatment from that date onwards.

Question 10

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

Answer

Whilst we find the arrangements for revisiting past cases acceptable, we would highlight our concerns regarding the potential tax impacts of implementation. A Firefighter who chooses to have their pension retrospectively based on the 1992 scheme will be eligible for an increased pension from retirement. They will also have the opportunity to increase the amount of pension commuted to provide a lump sum. If the additional lump sum is paid more than 12 months after the original retirement date then it will be deemed to be unauthorised and a 40% tax charge, payable by the member, will arise. If we assume that authorities process past cases in reverse chronological order of retirement date some members will not be caught as the extra payment will still be within the relevant payment window. Any member retiring before 1st April 2021 will certainly be caught. In addition to the Unauthorised Payment Tax Charge, a Scheme Sanction charge of 15% will also be payable. This charge will fall to the scheme. In the case of GAD V Milne the additional tax charges were paid by the Government and the Scheme Sanction charges were waived. We would wish to see similar consideration given to these payments in this case.

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.

Answer

As outlined in our earlier answer, movement of a scheme member between scheme employers may make it difficult to collect the information required to accurately assess the contributions due. This could be exacerbated by the length of time between the end of the remedy period and final retirement. We would prefer to see a two stage approach to the problem but not as outlined in the proposal. We are of the opinion that most members of the 1992 Firefighters Pension scheme, when faced with the decision regarding benefits, will choose to have the remedy period treated as legacy membership. In these cases, arrears of contributions will need to be calculated and repaid by the member. We would wish to undertake the relevant calculations and begin the recovery of overpaid amounts at the earliest opportunity following the end of the remedy period. The details of the underpaid sums could be easily passed between scheme employers in the form of a certificate detailing the breakdown. If at retirement the member does choose reformed benefits, then a refund of the contributions could be easily made. Taking this approach would mean that contributions arrears along with tax relief could be dealt with through salaries and the member would not have a large debt to pay at retirement.

Question 12

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

Answer

As the 1992 Firefighters Pension scheme does not have an Additional Voluntary Contribution option, the scheme rules will need to be altered to enable this and the proposal indicates that this would be done. Doing this enables a member, who was moved to the 2015 scheme and chose to pay additional contributions, to have additional pension in the 1992 scheme. Will a fully protected member of the 1992 scheme be offered the opportunity of paying additional contributions at the point of retirement, as by not allowing this there may be the potential for claims of discrimination as the fully protected members are older? To avoid this occurring and for simplicity we would prefer any Additional Voluntary

Contributions paid to be unaffected by the remedy arrangements and left in the scheme to which they were paid.

Question 13

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

Answer

We understand the proposed treatment of Annual Benefit Statements and believe that this is the correct approach to take. It may however be extremely difficult for Fire Authorities to implement in the short term.

We assume that, until the outcome of the consultation is known and revised scheme regulations are published, statements will continue to be issued under the current arrangements, with a large caveat stating that the figures provided do not take any account of the proposed changes. For most members the figures provided will be understated but for members with taper protection there is a high risk of overstatement. Will it be left to individual schemes to decide how these cases should be dealt with?

For the Annual Benefit Statements due by 31st August 2022 the new arrangements would be expected to apply. To enable these statements to be produced to a reasonable level of accuracy, it will be necessary for administrators to have collected pay data related to the reformed schemes for the period from 1st April 2015 to 31st March 2022 for all members where this data was not previously collected. It is possible that this data is in payroll systems now but even if it is, the task of collecting and verifying it will be time consuming. Where members have moved between employers this will further complicate the task. It is also quite possible that accurate data does not exist in payroll systems. In these cases, the Pension Administrator will need to discuss with the Payroll provider how the correct data can be obtained. Where there are no direct links between the two teams it will be the responsibility of the employer to make the arrangements.

We would believe that in most cases collating, validating, and entering the data required will not be achievable in time to enable the 2022 Annual Benefit Statements to be published in the format proposed in line with a deadline of 31st August. A range of alternatives to deal with this problem exist.

- A. Provide Annual Benefit Statements on the same basis as we do now but highlight that these do not include the impact of the changes.
- B. As the legacy scheme is deemed to be the default scheme for the remedy period, publish Annual Benefit Statements showing current value of benefits only as at 31st March 2022 and do not include projections. The figures would be on legacy scheme pension only and no future CARE benefits would be included.
- C. As option B but with an estimate to the schemes normal retirement age based on reformed scheme benefits from 1st April 2022.
- D. Delay the issuing of benefit statements until schemes are able to issue them in the required format.
- E. Do not provide benefit statements at all for the year in question.

It would be our preference to choose option C above as this most closely meets the terms of the proposal and is potentially achievable within the given timeframes.

It should be noted that the task of producing Annual Benefit Statements is time consuming and during the year in question will place a major strain on Pension Administrators who will be heavily involved in dealing with changes within the normal processing arrangements. We expect that employing organisations will need to recruit additional staff during the period whether immediate or deferred choice is the final option chosen. The costs of recruitment will need to be met from within already reducing local authority budgets and this could have implications for front line services.

Question 14

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

Answer

We have no comments to make on the proposed treatment of ill health cases.

Question 15

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

Answer

The issue of revisiting cases where death or survivor benefits have been paid since 2015, is as outlined, going to need sensitive handling. We welcome the approach that in cases where a benefit is available under reformed arrangements but no benefit exists under the legacy scheme, it is not necessary to make contact and also note the writing off of any overpaid children's benefits where the reformed scheme introduces a new adult survivor pension.

It is possible, in a small number of some cases, that it will not be possible to trace individuals. It would be helpful if the final solution included guidance on handling these 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.

Answer

As a Fire Authority we would expect cases under this area to be dealt with under the Internal Dispute Resolution Procedure. If this is to be the case then different employers may take a different approach to the issue, which is less than ideal. The potential number of cases may also be large. It would not be unreasonable to foresee a position where these cases progressed through all internal stages without resolution and then became a matter for the Pension Ombudsman.

To ensure that all members are treated equally, and to avoid a progression of complaints winding up with the Ombudsman, we would request that the Responsible Authority for each specific scheme provided scheme employers with instructions on how to handle these cases.

Question 17

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

Answer

As members to who this situation applies will have earned a deferred benefit entitlement in the transferring scheme we would support deferred choice being brought forward to the date of transfer.

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?

Answer

We would support the option of a member being given a single choice that covers both schemes.

Question 19

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

Answer

We have no additional comments to be made on the proposed treatment of divorce cases.

Question 20

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

Answer

It is normal practice for interest to be charged in the circumstances outlined and we would expect this to apply in this case. We feel that this should be paid at the Bank of England base rate applicable at the time the arrears of contributions arose.

Question 21

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

Answer

It is normal practice for interest to be charged in the circumstances outlined and we would expect this to apply in this case. We feel that this should be paid at the Bank of England base rate applicable at the time underpayment occurred.

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?

Answer

Where interest rates already exist it would be sensible to use these in respect of the issues raised in questions 21 and 22. Where scheme rules do not specify a rate then the Bank of England base rate should be used.

Question 23

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

Answer

We are concerned that the proposed treatment of abatement may lead to further discrimination cases. Take the case of a fully protected member of the 1992 Firefighters Pension scheme who retires at 58 on a pension of £20,000 and is reemployed in a part time role on a salary of £22,000. Their earnings before retirement were £40,000. Abatement is applied to the pension reducing it to £18,000.

A taper protected member retires 18 months later at age 55. They have a pension of £18,000 from the 1992 scheme and a pension of £1,200 from the 2015 scheme. They also have a salary of £22,000. As the 2015 Pension is disregarded, abatement is not applied. Whilst the second member is receiving a higher total income now, this is not open to challenge as the pensions are coming from different schemes with differing rules. Under deferred choice, the member opts for their legacy benefits so the 1992 scheme pension is retrospectively increased to £20,000 and the 2015 scheme pension is cancelled.

In this case the younger member would have a total income of £42,000 but the older one would be worse off. We would be concerned that this could generate additional age discrimination cases.

To remove the potential for claims in these situations we would wish to see abatement applied from the point at which the remedy was applied but any retrospective overpayment should not be recovered.

Question 24

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

Answer

The interaction of this proposal with the tax system is complex and the full range of potential issues and their impact may not be known until many years after remedy. The situation will be different for all members and the choice between immediate and deferred choice will also alter the effects.

We welcome the government statement that any Annual Allowance charges generated at retirement where a member takes reformed scheme benefits instead of the legacy scheme would be paid by the scheme and not the member. We do however have some concerns about how easy it would be to split out the effects of changing to reformed scheme benefits from any pension growth as a result of a pay increase in the final year.