

Information

Age discrimination remedy – Contingent Decisions Guidance for Members

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Introduction

This document is intended to help members and eligible decision makers¹ under the process for Contingent Decisions (CDs).

A Contingent Decision (CD) is a decision taken by a member, relating to their membership of the Firefighters' Pension Scheme (FPS), that would have been different had it not been for the discrimination identified by the courts.

If a member has died, the Firefighters' Pensions (Remediable Service) Regulations 2023 confirms that an eligible decision maker can make an election. This person is determined in accordance with [Schedule Eligible decision-makers for deceased members](#).

The decision will relate to their membership of the Firefighters' Pension Scheme (FPS) during the Remedy Period (1 April 2015 to 31 March 2022).

There are two categories of CD in the FPS for which specific provision has been made:

1. **Opt-Outs:** A Member who would not have opted-out if they had been allowed to remain in the Legacy Scheme (FPS 1992/FPS 2006 (Standard and Special section)) beyond their transition date or if protected Members had been allowed to join the 2015 Reformed Scheme from 1 April 2015.
2. **Additional Service:** Members argue they would have purchased (more) additional service if they were in the Legacy Scheme.

Where a member makes a contingent decision, there will need to be an adjustment to your benefits, which may involve you paying extra contributions.

This document sets out the general position about the process for contingent decisions including high level timeframes, evidence requirements, scheme manager decisions, the Contingent Decision Remediable Service Statement (CD-RSS), and elections.

Opt outs

You can make a Contingent Decision claim for opted-out Service if you opted out between 12 March 2012 and 28 February 2022 providing that the reason for opting out was because of the pension reforms. This also includes opting out because you were deemed a fully protected member and could not join FPS 2015.

Only opted-out service during the remedy period (1 April 2015 to 31 March 2022) can be reinstated. This is because this was the period where the unlawful age discrimination identified by the McCloud and Sargeant judgments occurred.

Members with FPS 1992 service

The legislation that provides the remedy is the Public Service Pensions and Judicial Offices Act 2022. Its purpose is to ensure that individuals who were subject to age discrimination are, as far as possible, restored to the position they would have been in had that discrimination not occurred.

¹ The Firefighters' Pensions (Remediable Service) Regulations 2023 confirms that an eligible decision maker can make an election. This person is determined in accordance with [Schedule Eligible decision-makers for deceased members](#).

An issue has arisen for members who opted out during this period and whose legacy scheme is the FPS 1992. Due to how the legislation is currently worded, some of these members cannot reinstate their opted-out service into the FPS 1992, meaning they do not receive the full remedy. To fix this, the government plans to amend the regulations so that eligible members can treat the opted-out service during the remedy period as pensionable service in the FPS 1992. The government will carry out a consultation for this change shortly and bring forward regulations as soon as possible.

As noted above, only the period of opted-out service during the remedy period can be reinstated. Any opted-out service prior to 1 April 2015 will be treated as non-pensionable service and will therefore not count towards any service entitlement i.e. 30 years' service.

If you are affected by this issue and are nearing retirement, please liaise with your Fire and Rescue Service about what options are available to you prior to the legislation becoming available.

Service after 1 April 2022

If you have any opted-out Service after 1 April 2022, your FRAs Scheme Manager does have discretionary powers to allow you to re-instate your membership to FPS 2015 from 1 April 2022.

Additional Service

You can make a Contingent Decision claim for additional service if immediately before 1 April 2022 you were either an Unprotected or Tapered Member of FPS 1992 or FPS 2006.

If your Legacy Scheme is FPS 1992 / FPS 2006(Special) you will need to meet the necessary conditions for purchase of additional 60ths in that Scheme with the key point being that you could not achieve 30 years by the normal pension age for your role.

If your Legacy Scheme is FPS 2006(Standard) you will need to meet the necessary conditions for the purchase of Added Years in that Scheme with the key point being that you could not achieve 40 years by your normal pension age (60). A Contingent Decision election for additional service can take effect from your first birthday within the Remedy Period, however you can choose a later birthday providing that you still meet the conditions required at that date.

Process

There are various timeframes for when you can make a Contingent Decision claim. During the remedy implementation, pension administrators will be issuing Remediable Service Statements (RSS) to all active, deferred, pensioner and beneficiary members who have relevant membership in the Remedy Period.

The information and remedy choices provided to you in the RSS will be affected by any Contingent Decision claim that you intend to make.

Your fire and rescue service will publish their own information about the Contingent Decision process and specify when they would like members to make claims, but in effect the following deadlines will apply:

- You can make a Contingent Decision claim at any point before you receive your RSS.
- Where possible, you should consider making your claim and any subsequent election for a Contingent Decision at least six months prior to your retirement to ensure that there are minimal delays with processing your benefits.

- For Opt-Out and additional service Contingent Decision claims, these must be made no later than twelve months after receipt of your RSS.

To make a Contingent Decision claim you will need to complete the [Contingent Decision Claim form](#) and send it to the Scheme Manager for your fire and rescue service.

For all additional service Contingent Decision claims and opt-out contingent decisions claims, where a member opted out between 1 April 2012 and up to six months before they were due to transition to FPS 2015, you will also have to provide supporting evidence. In all cases, this will be a short, written statement in your own words clearly explaining why you took the action you did, and, in some cases, you may need to provide some additional evidence.

Evidence

In all cases, you must provide a short statement in your own words to confirm the decision that was made, the reasons for the decision, and what you would have done differently had the discrimination identified by the courts not occurred.

Evidence should be something that you can reasonably obtain.

*Examples of evidence that you can provide:

Opt outs

- a. Information you provided your employer or pension administrator in the years before or during the remedy period about your intention regarding your continued membership of the Scheme.
- b. Information you provided to your employer or pension administrator in the years before or during the remedy period about your intention regarding your retirement intentions.
- c. Information you provided to your employer or pension administrator in the years before or during the remedy period about your intention regarding your request to leave or not join the scheme.
- d. Information you provided to confirm that you are a litigant in the injury to feelings claim in respect of the discrimination.
- e. A completed opt out form stating the reason for opting out.
- f. A statement from you that you opted out due to the remedy and why.

Additional Service

- a. An added pension account in FPS 2015.
- b. Information you provided to your employer or pensions administrator in the years before or during the remedy period about your intention regarding paying additional contributions to increase benefits.
- c. Information you provided to confirm that you are a litigant in the injury to feelings claim in respect of the discrimination.
- d. A statement from you that you would have bought Additional Service in the Legacy Scheme but didn't due to the discrimination and why.

*Please note, the list above is not exhaustive. Scheme managers should consider **all** evidence presented by the member and use their discretion to decide whether the evidence is appropriate and sufficient.

Contingent Decision - Remediable Service Statement

Once the Scheme Manager has received your claim and supporting evidence it will be assessed and you will be notified of the outcome. If your claim is accepted, you will be sent a Contingent Decision Remediable Service Statement (CD-RSS) by the Pension Administrator relating to your specific claim.

You will be sent a CD-RSS which will contain details of:

- The additional pension contributions that you will have to pay. They will be adjusted for tax relief (except for active members who make an Additional Service Contingent Decision claim). Opted out service claims will have interest applied. For additional service claims, interest may be applied at the discretion of the Scheme Manager.
- Information about any associated pension benefits so you can see the impact of any Contingent Decision election. Both the Legacy Scheme and Reformed Scheme Remedy choices will be shown.
- A notional Pensions Savings Statement will also be included so you can see any impact of Pensions Tax regarding your Annual Allowance.
- Details of how and when you will need to make any payments.

In some cases, you may need to go back to the Pension Administrator to request further information. They will inform you how you can do this when they send you the CD-RSS.

Election

You will have twelve months after the date of issue of the CD-RSS to make your election. You should complete the election form and return it directly to the administrator.

If you make no election in the twelve-month period after issuing the CD-RSS, then the administrator will assume that you do not wish to proceed with your claim.

If your Contingent Decision claim is accepted and you elect to have your opted-out service reinstated, this decision is irrevocable. This means that even if your personal circumstances change in the future, you will have to pay the missing contributions at some point before your pension benefits are brought into payment.

As you will not be able to change your mind, before deciding you should consider the information that is provided to you carefully, and where necessary seek independent financial advice. The information you will be provided will include how much it will cost as well as how and when you will need to pay the required amount.

Paying Contributions

There are a variety of ways that the additional contributions you owe can be paid. These will be dependent on what status of member you are and the type of Contingent Decision claim that you are making.

Your pension administrator will provide more information about any payments that are due and how these can be paid in the CD-RSS.

Appeals

If you have not received any communication to advise you of a delay, or you are expecting to hear and the timescales set out have passed, you should in the first instance, contact the scheme manager for your Fire and Rescue Service to ask about your claim.

If your Contingent Decision claim is declined and you wish to dispute this, you will be provided with details of how to raise a dispute through the Internal Dispute Resolution Procedure (IDRP). Your Fire and Rescue Service should have an IDRP policy, which will set out the process and who to contact at each stage.

Your case will be heard by a delegated person at your fire and rescue service.

You will also have the right of appeal to the [Pensions Ombudsman](#).