

Age discrimination remedy – Contingent Decisions Guidance for Scheme Managers

Contents

Introduction	2
Process.....	2
Evidence and Scheme Manager Discretion	4
Contingent Decision – Remediable Service Statement (CD-RSS)	5
Election	5
Annex A: Opt-outs.....	7
Legislation	7
Eligibility Criteria	7
Example Scenarios.....	9
Evidence	13
Providing Contingent Decision Remediable Service Statements (CD-RSS).....	15
Election	15
Paying contributions	16
Annex B: Additional Service.....	18
Legislation	18
Eligibility Criteria	18
Evidence	19
Providing contingent decision remediable service statements (CD-RSS).....	19
Election.....	20
Paying contributions	20

Introduction

1. This document is intended to be used as a guidance tool for scheme managers and their pension administrators to provide clarity about the process for Contingent Decisions (CDs).
2. A Contingent Decision (CD) is a decision taken by a member or their eligible decision maker¹, 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.
3. There are two categories of CD in the FPS for which specific provision has been made:
 - A. 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)) beyond their transition date or if protected Members had been allowed to join the 2015 Reformed Scheme from 1 April 2015.
 - B. Additional Service: Members argue they would have purchased (more) additional service if they were in the Legacy Scheme.
4. Where a member makes a CD, there will have to be an adjustment to benefits, which may involve the member paying extra contributions.
5. This document sets out the general position about the process for CDs including timeframes for each stage, evidence requirements, scheme manager decisions, the Contingent Decision Remediable Service Statement (CD-RSS), and elections, before going into each of the two specific CD areas in more detail.
6. Scheme managers and administrators are strongly encouraged to follow this guidance to help ensure consistency both locally and nationally.

Process

7. The timeframes for making a CD are set in the regulations and operate from receipt of the first Remedial Service Statement (RSS), however some members will not receive an RSS until 31 March 2025, at which point the regulations allow them twelve months in which to make their election after receipt of the CD-RSS. Further information about the relevant regulations that apply for each CD is covered within the 'Legislation Section' of each Annex.
8. Due to the lengthy process and timescales expected for CDs, scheme managers may wish to adopt a date at their discretion for receiving claims.
9. Scheme managers should mutually agree any setting of target dates with their administrator as there will be a significant impact on resourcing for these cases. There will be a need to remain flexible for receipt of these cases, the only firm deadline that can be set is twelve months after receipt of an RSS.

¹[Part 1, Regulation 6.\(2\)\(b\)](#) of 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](#).

10. It is the scheme manager responsibility to determine how the process for the CD claim procedure will be communicated to members. Due to the work and timescales involved it is recommended that scheme managers are proactive with targeted communications. This may include for example:
 - a. Identifying members who are in scope for CD and writing to them directly to invite them to make a claim.
 - b. Publishing details of the process and a link to the claim form on both intranet and internet web pages.
 - c. Using social media to publicise the process.
11. The member must make a claim using the specific [CD claim form](#). In all cases, the member will be required to provide a few sentences, in their own words, that describe the reasons why they took the action they did and how this relates to the introduction of the reformed scheme.
12. In cases whereby the member has been subject to an interbrigade transfer it would be the scheme manager for the most current employer who decides on the CD.

Step one: Acknowledge receipt of the CD claim form – Ten working days

13. It is recommended that scheme managers should acknowledge receipt of the CD claim form within ten working days. The acknowledgement should confirm to the member the latest point when they will receive notification about whether their claim has been accepted.
14. It is acknowledged that scheme managers and administrators may need to delay processing any CD claims due to resourcing pressures and may require more flexibility with the CD process timescales. If claims are going to be held before they are reviewed it is recommended that the acknowledgement letter to the member includes the reason for any delay and details of when their case is expected to be reviewed. This information will be very important should any cases be appealed via the Internal Dispute Resolution Procedure (IDRP) and subsequently referred to the Pensions Ombudsman.

Step two: Review CD claim evidence, make decision and notify the member of the outcome – Two months

15. It is recommended that within two months of receiving a CD claim or if the reviewing process was previously delayed, by the delayed date, the scheme manager should review the claim form as well as any supplementary evidence provided and decide on the outcome.
16. Where the scheme manager decides that the CD claim cannot be accepted, the member should be notified accordingly. The member should be provided with details on why their claim was turned down as well as information on their right to appeal (i.e. IDRP) should they wish to dispute this.
17. Prior to publicising the CD claim process, it is recommended that scheme managers should consider whether their current IDRP processes are sufficient. Consideration should be given to the fact that, under the IDRP, the scheme manager may be asked to reconsider a decision which they previously made under the CD process. FRAs are encouraged to consider whether this seems fair and reasonable, if it is deemed not to be then FRAs should consider who is the most appropriate person to hear each stage of the IDRP.

18. Where the scheme manager decides that the CD claim is accepted, the member or eligible decision maker should be notified accordingly and advised that a quote of benefits under the CD will be provided by the administrator. Clear timeframes on when the member or eligible decision maker can expect to receive the quotation should be provided in the acknowledgement letter.

Step three: Send request to Pension/Payroll to provide data to administrator – Ten working days

19. It is recommended that within ten working days of notifying the member or eligible decision maker the scheme manager should send details of the request to the Pension/Payroll team so that they can collate the necessary data for the quote.

Step four: Collate, prepare and send data to administrator – Two months

20. It is recommended that within two months of receiving a request from the scheme manager the Pension/Payroll team should provide all necessary data to the administrator.

Step five: Collate, prepare and send data CD–RSS to member – Timeframe to be mutually agreed by scheme manager and administrator

21. The administrator will then be required to produce a CD-RSS. This should be sent to the member within the mutually agreed timeframe. The CD-RSS must include information on the CD for both the relevant Legacy and Reformed Schemes, including membership, contributions, tax, and any adjustments that may be necessary.

22. On receipt of a positive election from the member or eligible decision maker the administrator should send an acknowledgement. The administrator will activate the record and complete any necessary additional adjustments to any other pension records that they hold for the Member or eligible decision maker, this will also include issuing a final RSS.

23. Details of any contributions owed by / refunded to the member or eligible decision maker should also be provided. The scheme manager and the administrator will need to work together to ensure that this process is clear for all parties.

Evidence and Scheme Manager Discretion

24. In all cases, the member or eligible decision maker must provide a short statement in their own words to confirm the decision that was made, the reasons for the decision, and what they would have done differently had the discrimination identified by the courts not occurred.

25. Evidence should be something that the member can be reasonably expected to obtain. It is not desirable to inadvertently prevent a member from qualifying due to their personal circumstances.

26. Further examples of evidence for the specific CDs are listed in the supplementary annexes. However, it is worth noting that the evidence examples provided are not exhaustive, there may be cases where evidence is provided which is not included in this document.

27. The scheme manager should review all evidence provided by the member or eligible decision maker to ensure that evidence provided answers the key questions and provides confirmation of:
- a. The decision the member made.
 - b. The reason(s) for that decision.
 - c. What the member would have done differently had the discrimination identified by the courts not occurred.
28. Scheme managers should ensure that their decision is documented for all cases. There is a section at the end of the CD claim form to record the decision and some key notes. Scheme managers will need to keep a separate record of cases, along with their decisions so that decisions can be auditable and transparent. To ensure good governance and oversight of decision making, scheme managers are encouraged to report details of CD claims and their outcome to Local Pension Boards. Such information will also be requested periodically by the LGA to provide clear oversight of the national picture.

Contingent Decision – Remediable Service Statement (CD-RSS)

29. When a CD claim is accepted, there is a requirement to provide the member or eligible decision maker with a Contingent Decision Remediable Service Statement (CD-RSS). The CD-RSS will give them all the information they need to decide about whether to make a CD election.
30. If the administrator does not already hold the data necessary for the CD-RSS the scheme manager will need to ensure that the request for the relevant data capture is sent to the Pension/Payroll Team.
31. The administrator will need information about the CD and should include details for both the relevant Legacy and Reformed Scheme, including membership, contributions, pay and any other financial data needed for both the data collection template and the contributions adjustment calculator.
32. Within the mutually agreed timeframes the administrator should produce the CD-RSS and provide it to the member or eligible decision maker. Along with information about the associated pension benefits, the CD-RSS will also contain details of the amount of contributions, less tax relief, plus interest due to the Legacy Scheme that the member or eligible decision maker will be required to pay and how they can pay this.
33. The [CD-RSS template](#) is published within the [Age Discrimination Remedy – Remediable Service Statement](#) section of the [FPS regulations and guidance](#) website.

Election

34. The member or eligible decision maker has twelve months after the date of issue of the CD-RSS to make their election.

35. The member or eligible decision maker should complete the [election form](#) and return it directly to the administrator.
36. If no election is received after the first six months, it is recommended that the administrator sends a reminder to the member or eligible decision maker informing them of the time limits which apply.
37. If no election is received in the twelve-month period after issuing the CD-RSS, then the administrator should assume that the member or eligible decision maker does not wish to proceed with their claim. It is recommended that a letter is sent to the member or eligible decision maker confirming that the time limit has now elapsed. The administrator will need to ensure that the members record is updated accordingly, and that data is kept in line with normal retention schedules.
38. It is recommended that all outcomes should be reported to the scheme manager and Local Pension Board as part of the administrators usual reporting process.
39. For members or eligible decision maker where there has been, or there is likely to be a significant delay in paying any Immediate Choice or Deferred Choice pension benefits due to a CD then the scheme manager may consider it appropriate to use [Regulation 12\(8\)](#) of The Firefighters' Pensions (Remediable Service) Regulations 2023. This allows the Legacy Scheme only benefits to be paid to the member or eligible decision maker until such time as an Immediate Choice or Deferred Choice can be made.

Annex A: Opt-outs

Legislation

40. The re-instatement of Opted-Out Service is covered by three sets of regulations:

1. [The Public Service Pensions and Judicial Offices Act 2022](#) (PSPJOA 2022)
 - Meaning of Opted-Out Service - [Section 36 of Chapter 1](#)
 - Meaning of 'the relevant Chapter one legacy scheme' - [Section 4 of Chapter 1](#)
 - Election for retrospective provision to apply for Opted-Out Service - [Section 5 of Chapter 1](#)
2. [The Public Service Pensions \(Exercise of Powers, Compensation and Information\) Directions 2022](#) (The Directions)
 - Application of interest - [Directions 13 to 19 of Chapter 3 of Part 1](#)
3. [The Firefighters' Pensions \(Remediable Service\) Regulations 2023](#) (Firefighters' Scheme Remediable Regulations)
 - Opted-Out Service Elections - [Chapter 1 of Part 3](#)
 - Liabilities and Payment - [Part 9](#)
 - Eligible Decision Maker – [Schedule](#)

Eligibility Criteria

41. The meaning of Opted-Out Service is defined in [Section 36 of Chapter 1](#) of the PSPJOA 2022. This confirms that the first, third and fourth conditions of eligibility must be met, and that the second condition of eligibility would have been met if it were not for the Opted-Out Service.

42. The four conditions of eligibility are defined in [Section 1 of Chapter 1](#) of the PSPJOA 2022 as:

- a. Condition 1 – is that the service is during the period 1 April 2015 to 31 March 2022.
- b. Condition 2 – is that the service is pensionable under a Chapter 1 Legacy Scheme or would have been pensionable under the Legacy Scheme if the discrimination had not occurred.
- c. Condition 3 – is that the person was on or before 31 March 2012, in service in any employment or office that is pensionable service under a Chapter 1 Legacy Scheme.
- d. Condition 4 – is that there is no disqualifying gap in service falling within the period. This condition requires that the individual should not have a gap in service of five years or more i.e., between 31 March 2012 or, if earlier, the date they left service, and the date of re-joining.

43. This confirms that Opted-Out Service during the remedy period (1 April 2015 to 31 March 2022) can be considered for retrospective remedy if the member was in the Pension Scheme on or before 31 March 2012 (with no disqualifying gap).

44. Members who made a choice to opt out directly relating to the pension reforms prior to their transition date will be or their eligible decision maker will be able to make a [CD claim](#). Members will fall into one of two categories, which will largely depend on when the member opted out:
- a. Group 1: This group of members will have opted out during the period up to six months prior to their transition to the 2015 Scheme and ending on 28 February 2022².
 - b. Group 2: This group of members will have opted out on or after 12 March 2012³ and do not meet Group 1 conditions.
45. Members or eligible decision maker will not be eligible to make a CD claim for Opted-Out Service if they:
- a. Opted out before 12 March 2012, or
 - b. Opted out more than six months prior to transition to FPS 2015, **and** did not opt out because of pension reform, or
 - c. Opted out after 28 February 2022, or
 - d. Did not opt out because of the pension reforms. This does not apply to members within Group 1.
46. The scheme manager has discretion with the decision making of whether to accept a claim, but it should be noted that [Regulation 6\(6\) of Chapter 1, Part 3](#) of the Firefighters' Pensions (Remediable Service) Regulations 2023 states that the scheme manager cannot refuse an application that falls into [Group 1](#).
47. [Group 2](#) members will have to provide evidence to support the application. These cases have scheme manager discretion to determine if the claim can be accepted.
48. Under the Firefighters' Pensions (Remediable Service) Regulations 2023, only service within the remediable period 1 April 2015 to 31 March 2022 can be considered for re-instatement to the relevant Legacy Scheme via a remedy CD. Opted-Out Service that occurs prior to 1 April 2015⁴ or after 31 March 2022 cannot be considered as part of a CD and any such periods are subject to the regulations in force at that time.
- a. The introduction of FPS 2006 saw the 'closure' of 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](#).
- The FPS 1992 rules themselves were amended to provided that it should cease to apply to members who had elected to opt-out of contributions under [rule G3](#)

² This is because an opt-out can only take effect from the end of the month. So, an opt-out at 28 February 2022 would take place by 31 March 2022.

³ This is the date the pension reforms were finally announced, via a PCSPS WMS on 12 March - [Principal Civil Service Pension Scheme - Hansard - UK Parliament](#)

⁴ An opt-out dated 31 March 2015 would not take effect until 1 April 2015

[\(election not to pay pension contributions\)](#) and then also cancelled that election on or after 6 April 2006.

This meaning 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.

- b. If an individual was within the FPS 2006 and opted out, then they are re-instated to their relevant Legacy Scheme.
- c. FPS 2015 provides for scheme manager discretion in when the opt-in can take place⁵. If the Member had remained opted out after 31 March 2022, the scheme manager can use their discretion to allow the opt-in period to be retrospectively applied from 1 April 2022.

49. In the event that a member has died, [Part 1, Regulation 6.\(2\)\(b\)](#) of 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](#).

Example Scenarios

To assist FRAs with the interpretation of the regulations please find eleven scenarios below which confirm in the first instance if the CD claim is valid and provides clarity on whether any additional evidence is required from the member or eligible decision maker before the Scheme Manager considers the claim.

Scenario one – Member opted out prior to 12 March 2012

[Regulation 6\(5a\)](#) of the Firefighters' Pensions (Remediable Service) Regulations 2023 confirm that only opt out cases which happened on or after 12 March 2012, but before 28 February 2022 can be considered under the terms of a contingent decision.

In this scenario the member's claim should automatically be rejected.

Scenario two – Member opted out after 28 February 2022

[Regulation 6\(5a\)](#) of the Firefighters' Pensions (Remediable Service) Regulations 2023 confirm that only opt out cases which happened on or after 12 March 2012, but before 28 February 2022 can be considered under the terms of a contingent decision.

In this scenario the member's claim should automatically be rejected.

Scenario three – Member opted out on or after 12 March 2012 and more than six months before their transition date into FPS 2015. For unprotected members this would be on or before 30 September 2014, taper protected members will need to be assessed on a case-by-case basis.

⁵ Regulation 12 - [The Firefighters' Pension Scheme \(England\) Regulations 2014 \(legislation.gov.uk\)](#)

Regulations do permit these cases to be considered as a contingent decision.

Members are expected to provide the scheme manager with evidence which supports the claim that they would not have opted out if the discrimination identified by the courts had not occurred.

Regardless of the members original legacy scheme the only legacy scheme which the member is permitted to access is FPS 2006. This means that if the members original benefits were under FPS 1992 any deferred benefit entitlement remains deferred, however, should the member elect to re-join, and the gap be less than five years then the FPS 1992 deferred benefits will retain a final salary link. If the members original benefits were under FPS 2006 and providing the gap in service is less than five years, the FPS 2006 deferred benefits are cancelled, the original record is reactivated, and following input of the appropriate service break benefit accrual is resumed.

Although a contingent decision may have been identified to have taken place prior to remedy period the regulations do not support the reinstatement of service before 1 April 2015. This therefore means that should the member elect for the contingent decision active service should resume on 1 April 2015.

Scenario four – Unprotected member opted out on or after 1 October 2014 but before 31 March 2015

Regulations do permit these cases to be considered as a contingent decision.

As the opt out occurred in the six-month window immediately before the remedy period there is no requirement for members to provide any supplementary evidence -This position is supported by [regulation 6\(6a\)](#).

Regardless of the members original legacy scheme the only legacy scheme which the member is permitted to access is FPS 2006. This means that if the members original benefits were under FPS 1992 any deferred benefit entitlement remains deferred, however, should the member elect to re-join, and the gap be less than five years then the FPS 1992 deferred benefits will retain a final salary link. If the members original benefits were under FPS 2006 and providing the gap in service is less than five years, the FPS 2006 deferred benefits are cancelled, the original record is reactivated, and following input of the appropriate service break benefit accrual is resumed.

Although a contingent decision may have been identified to have taken place prior to remedy period the regulations do not support the reinstatement of service before 1 April 2015. This therefore means that should the member elect for the contingent decision active service should resume on 1 April 2015.

Scenario five – Taper protected member opted out within the six-month window before transition and before 31 March 2015

Regulations do permit these cases to be considered as a contingent decision.

As the opt out occurred in the six-month window immediately before transition into FPS 2015 there is no requirement for members to provide any supplementary evidence -This position is supported by [regulation 6\(6a\)](#).

Regardless of the members original legacy scheme the only legacy scheme which the member is permitted to access is FPS 2006. This means that if the members original benefits were under FPS 1992 any deferred benefit entitlement remains deferred, however, should the member elect to re-join, and the gap be less than five years then the FPS 1992 deferred benefits will retain a final salary link. If the members original benefits were under FPS 2006 and providing the gap in service is less than five years, the FPS 2006 deferred benefits are cancelled, the original record is reactivated, and following input of the appropriate service break benefit accrual is resumed.

Although a contingent decision may have been identified to have taken place prior to remedy period the regulations do not support the reinstatement of service before 1 April 2015. This therefore means that should the member elect for the contingent decision active service should resume on 1 April 2015.

Scenario six – Unprotected member opted out on or after 1 April 2015 and did not opt back in before 31 March 2022.

Regulations do permit these cases to be considered as a contingent decision.

As the opt out occurred during the remedy period there is no requirement for members to provide any supplementary evidence -This position is supported by [regulation 6\(6a\)](#).

Regardless of the members original legacy scheme the only legacy scheme which the member is permitted to access is FPS 2006. This means that if the members original benefits were under FPS 1992 any deferred benefit entitlement remains deferred, however, should the member elect to re-join, and the gap be less than five years then the FPS 1992 deferred benefits will retain a final salary link. If the members original benefits were under FPS 2006 and providing the gap in service is less than five years, the FPS 2006 deferred benefits are cancelled, the original record is reactivated, and following input of the appropriate service break benefit accrual is resumed.

Scenario seven – Taper protected member opted out on or after 1 April 2015, but within six months of their transition date to FPS 2015 and did not opt back in before 31 March 2022.

Regulations do permit these cases to be considered as a contingent decision.

As the opt out occurred during the remedy period and within six months before the members transition date to FPS 2015, there is no requirement for members to provide any supplementary evidence -This position is supported by [regulation 6\(6a\)](#).

Regardless of the members original legacy scheme the only legacy scheme which the member is permitted to access is FPS 2006. This means that if the members original benefits were under FPS 1992 any deferred benefit entitlement remains deferred, however, should the member elect to re-join, and the gap be less than five years then the FPS 1992 deferred benefits will retain a final salary link. If the members original benefits were under FPS 2006 and providing the gap in service is less than five years, the FPS 2006 deferred benefits are cancelled, the original record is reactivated, and following input of the appropriate service break benefit accrual is resumed.

Scenario eight – Taper protected member opted out on or after 1 April 2015, but more than six months before their transition date to FPS 2015 and did not opt back in before 31 March 2022.

Regulations do permit these cases to be considered as a contingent decision.

Members are expected to provide the scheme manager with evidence which supports the claim that they would not have opted out if the discrimination identified by the courts had not occurred.

Regardless of the members original legacy scheme the only legacy scheme which the member is permitted to access is FPS 2006. This means that if the members original benefits were under FPS 1992 any deferred benefit entitlement remains deferred, however, should the member elect to re-join, and the gap be less than five years then the FPS 1992 deferred benefits will retain a final salary link. If the members original benefits were under FPS 2006 and providing the gap in service is less than five years, the FPS 2006 deferred benefits are cancelled, the original record is reactivated, and following input of the appropriate service break benefit accrual is resumed.

Scenario nine – Unprotected member opted out on or after 1 April 2015 and opted back in before 31 March 2022.

Regulations do permit these cases to be considered as a contingent decision.

As the opt out occurred during the remedy period there is no requirement for members to provide any supplementary evidence -This position is supported by [regulation 6\(6a\)](#).

In this case, the member has opted out during the remedy period.

The member has already opted back into the FPS at some point during the remedy period. Dependant on the members age they would have been enrolled into either FPS 2006 or FPS 2015. This means that as well as having an active record in either FPS 2006 or FPS 2015 the member may also have a deferred benefit, possibly in FPS 1992.

Regardless of the members original legacy scheme the only legacy scheme which the member is permitted to access is FPS 2006. This means that if the members original benefits were under FPS 1992 any deferred benefit entitlement remains deferred, however, if the gap is less than five years the FPS 1992 deferred benefits will retain a final salary link. If the members original benefits were under FPS 2006 and providing the gap in service is less than five years, the FPS 2006 deferred benefits are cancelled, the original record is reactivated, and following input of the appropriate service break benefit accrual is resumed.

Scenario ten – Taper protected member opted out on or after 1 April 2015, but within six months of their transition date to FPS 2015 and opted back in before 31 March 2022.

Regulations do permit these cases to be considered as a contingent decision.

As the opt out occurred during the remedy period and within six months before the members transition date to FPS 2015, there is no requirement for members to provide any supplementary evidence -This position is supported by [regulation 6\(6a\)](#).

In this scenario the member has opted out during the remedy period.

The member has already opted back into the FPS at some point during the remedy period. Dependant on the members age they would have been enrolled into either FPS 2006 or FPS 2015. This means that as well as having an active record in either FPS 2006 or FPS 2015 the member may also have a deferred benefit, possibly in FPS 1992.

Regardless of the members original legacy scheme the only legacy scheme which the member is permitted to access is FPS 2006. This means that if the members original benefits were under FPS 1992 any deferred benefit entitlement remains deferred, however, if the gap is less than five years the FPS 1992 deferred benefits will retain a final salary link. If the members original benefits were under FPS 2006 and providing the gap in service is less than five years, the FPS 2006 deferred benefits are cancelled, the original record is reactivated, and following input of the appropriate service break benefit accrual is resumed.

Scenario eleven – Taper protected member opted out on or after 1 April 2015, but more than six months before their transition date to FPS 2015 and opted back in before 31 March 2022.

Regulations do permit these cases to be considered as a contingent decision.

Members are expected to provide the scheme manager with evidence which supports the claim that they would not have opted out if the discrimination identified by the courts had not occurred.

In this scenario the member has opted out during the remedy period.

The member has already opted back into the FPS at some point during the remedy period. Dependant on the members age they would have been enrolled into either FPS 2006 or FPS 2015. This means that as well as having an active record in either FPS 2006 or FPS 2015 the member may also have a deferred benefit, possibly in FPS 1992.

Regardless of the members original legacy scheme the only legacy scheme which the member is permitted to access is FPS 2006. This means that if the members original benefits were under FPS 1992 any deferred benefit entitlement remains deferred, however, if the gap is less than five years the FPS 1992 deferred benefits will retain a final salary link. If the members original benefits were under FPS 2006 and providing the gap in service is less than five years, the FPS 2006 deferred benefits are cancelled, the original record is reactivated, and following input of the appropriate service break benefit accrual is resumed.

Evidence

50. The scheme manager must first assess whether the member falls into [Group 1](#) or [Group 2](#) as this determines whether evidence is needed for the claim.

51. To assess which Group the claim falls into, the scheme manager may need to obtain some verification of the transition date, Legacy Scheme and opt out date from the Pension/Payroll Team and or the Pension Administrator.

52. Members that fall into [Group 1](#) **do not** need to provide any additional evidence.

53. Members that fall into [Group 2](#) **do** need to provide other evidence which supports their claim.

54. *Examples of evidence that can be provided by the member:

- a. Information provided by the member to the employer or the administrator in the years before or during the remedy period about their intention regarding their continued membership.
- b. Information provided by the member to the employer or the administrator in the years before or during the remedy period about their intention regarding their retirement intentions.
- c. Information provided by the member to the employer or the administrator in the years before or during the remedy period about their intention regarding their request to leave or not join the scheme.
- d. Information provided by the member to confirm that they 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 the member that they opted out due to the remedy 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.

55. [Group 1](#) members should be automatically accepted.

56. For [Group 2](#) members, the scheme manager will need to review the statement and the additional evidence provided. If, in the scheme manager's opinion, the member has given evidence to support their claim, then this can be relied on, and their claim should be accepted.

57. Within two months of receiving a claim form, the scheme manager should review the form and all evidence provided, and make their decision:

- a. Where the member is a [Group 1](#) member, the scheme manager must not refuse the claim [Regulation 6\(6\)](#) (as set out in [Paragraph 9\(a\)](#) above).
- b. Where the member is a [Group 2](#) member, the scheme manager must give due consideration to the written statement and the additional supporting evidence and determine if the member has made a valid claim.

Providing Contingent Decision Remediabile Service Statements (CD-RSS)

58. Information about the Opted-Out Service should include all details for both the relevant Legacy and Reformed Schemes, including membership, contributions, pay and any other financial data needed for both the data collection template and the contributions adjustment calculator.
59. The administrator will need to create a pension record for the Opted-Out Service, and they will need to upload all the data to the record to hold the position for both the Legacy and Reformed Schemes for the period of Opted-Out Service.
60. The administrator will produce the CD-RSS and provide it to the member. The CD-RSS will need to show the options to the member about how any re-instatement of Opted-Out Service would affect any existing pension entitlements.
61. Along with information about the associated pension benefits, the CD-RSS will also contain details of the amount of contributions, less tax relief, plus interest due to the Legacy Scheme that the member will be required to pay and how they can pay this. More details can be found in the Paying contributions section of the document.

Election

62. The member has twelve months after the date of issue of the CD-RSS to make their election. The member should complete the [election form](#) and return it to the administrator.
63. The election to have their Opted-Out Service reinstated is deemed to have taken effect at that date of election and is irrevocable. This is set out in [Section 5\(3\) of Chapter 1](#) of the PSPJOA 2022.
64. When the election is received from the member, the administrator will need to “activate” the Opted-Out Service record. They will also need to take account of any other pension arrangements that the member has and where necessary amalgamate these and arrange to send the member a final version of the DC-RSS or IC-RSS.
65. HMRC have confirmed that for the purposes of Annual Allowance, the purchase by the member of previously Opted-Out Service is not dependent on the timing of the payment of employee contributions. The re-purchase of a member’s service is retrospective, and the Annual Allowance position follows from this, i.e., Pension Input Amounts will fall into the relevant past tax years.
66. This position is confirmed in [Section 5\(2\)\(b\) of Chapter 1](#) and [Section 2\(1\)\(b\) of Chapter 1](#) of the PSPJOA 2022. When taken together, this means that where an election in relation to Opted-Out Service is made, [Section 2\(1\)\(b\) of Chapter 1](#) applies and therefore the service is treated as being, and always having been, pensionable service under the relevant Chapter 1 Legacy Scheme.

67. The administrator will need to note if the member has elected to pay the arrears of contributions and interest by an initial lump sum or by periodical instalments, if either of these options have been selected, then arrangements will need to be made to collect the payments and details of how the member will make payment will need to be communicated to the member. Further information is included below in the [paying contributions](#) section of the document.
68. If no election is received in the election period, then the administrator can assume that the member does not wish to proceed with their claim. The administrator will need to ensure that the record is updated accordingly, and data is kept in line with normal retention schedules. It is recommended that this should be reported to the scheme manager and Local Pension Board as part of a administrators usual reporting process.

Paying contributions

69. If the member has made an election, they will need to pay the contributions that would have made, plus interest, as set out in the [PSPJOA](#) and [HM Treasury Directions](#) for reinstatement of Opted-Out Service that occurs within the remedy period.
70. Employer contributions will be picked up through future valuations.
71. Deferred Choice Members can choose one of the following ways to pay the amount due:
- a. Pay by lump sum within three months of receiving the final DC-RSS which is sent after an election has been made.
 - b. Pay by periodical contributions over a fixed term of fourteen years.
 - i. Where the member would make a [Section 10](#) election (Deferred Choice election) before the end of the fourteen year term, any balance can either be paid directly by the member or be deducted from pension benefits (including lump sum).
 - c. Pay by lump sum within three months of receiving their annual DC-ABS/RSS.
 - d. Pay by lump sum when the member makes a [Section 10](#) election (Deferred Choice election) the balance can either be paid directly by the member or be deducted from pension benefits (including lump sum).
72. If the member wishes to pay the amount due by option a), b) or c) above and the member is still employed, the contributions must only have interest applied and not be adjusted for tax relief. In these cases, the member will have to apply directly to HMRC to obtain the tax relief that applies to them.
73. Immediate Choice Members can:
- a. Pay by lump sum when the member makes a [Section 6](#) election (Immediate Choice election) the balance can either be paid directly by the member or be deducted from pension benefits (including lump sum).
74. Where a member elects to pay by periodical payments, the scheme manager will need to set up a Direct Debit/Standing Order Mandate for the specified monthly amount. The scheme manager will need to arrange for the receipt of payments to be recorded on a remittance schedule and ensure that all contributions are collected.

75. Where a member defaults on periodic payments, normal debt recovery processes should be put in place. Alternatively, [Regulation 66\(10\) of Chapter 4, Part 9](#) of the Firefighters' Pensions (Remediable Service) Regulations 2023 gives the specific power to enable scheme managers to deduct any outstanding liabilities from any pension benefits that are paid to the member from the FPS.
76. The scheme manager and the administrator will need to liaise with each other when a member makes a [Section 10](#) election if this is prior to the completion of the periodical contributions. Arrangements will need to be put in place to either obtain payment of any outstanding balance or confirmation provided of the amount to be deducted from the pension benefits.
77. Where a scheme manager uses their discretion to allow a member to opt in beyond 1 April 2022 they are:
- a. allowing the opt in date to be retrospectively applied and the normal contribution rules apply i.e. the member pays their share and the employer pays theirs.
78. The difference between this and a CD claim within the remedy period is that the member must pay interest (this is governed by the PSPJOA) and the scheme manager does not pay any contributions upfront as this will be captured through future valuations.

Annex B: Additional Service Legislation

79. The remediable arrangements to pay voluntary contributions to the Legacy Scheme is covered by three sets of regulations:
1. [The Public Service Pensions and Judicial Offices Act 2022](#) (PSPJOA 2022)
 - Remediable arrangements to pay voluntary contributions to legacy schemes - [Section 25 of Chapter 1](#)
 2. [The Public Service Pensions \(Exercise of Powers, Compensation and Information\) Directions 2022](#) (The Directions)
 - Remedial arrangements to pay voluntary contributions to legacy schemes - [Direction 12\(2\) to \(7\) of Chapter 2 of Part 1](#)
 - Application of interest - [Directions 13 to 19 of Chapter 3 of Part 1](#)
 4. [The Firefighters' Pensions \(Remediable Service\) Regulations 2023](#) (Firefighters' Scheme Remediable Regulations)
 - Voluntary Contributions - [Regulation 29 of Part 5](#)
 - Liabilities and Payment - [Part 9](#)

Eligibility Criteria

80. The remediable arrangements to pay voluntary contributions to secure Legacy Scheme added years is set out in [Regulation 29 of Part 5](#) of The Firefighters' Pensions (Remediable Service) Regulations 2023.
81. [Regulation 29\(1\)](#) sets out the initial criteria, which confirms that:
- a. The member must not be a deceased member and,
 - b. The member was, immediately before 1st April 2022, not a full protection member of FPS 1992 or FPS 2006 i.e. they were either an unprotected or tapered member.
82. [Regulation 29\(4\)\(b\)\(ii\)](#) confirms that in connection with making an election to pay voluntary contributions for added benefits:
- a. A FPS 1992 Legacy scheme member will still need to comply with any requirement imposed by [regulation G5 of The Firefighters' Pension Scheme Order 1992](#), or
 - b. A FPS 2006 Legacy scheme member will still need to comply with [Part 11, Chapter 2, Paragraph 5 of The Firefighters' Pension Scheme \(England\) Order 2006](#).
83. Members who meet the eligibility criteria will be able to make a CD claim to retrospectively pay voluntary contributions to the legacy scheme to buy added years.

Evidence

84. [Regulation 29\(3\)](#) confirms that a member may only enter a remediable arrangement in respect of a period of service in the remedy period (1 April 2015 to 31 March 2022) where sufficient evidence is provided to satisfy the scheme manager that were it not for the discrimination, the member would have been more likely than not to have entered a similar arrangement.
85. Members will have to provide evidence to support the application and these cases have scheme manager discretion to determine if the claim can be accepted or if it will be refused.
86. *Examples of evidence that can be provided by the member to support their claim:
- a. An added pension account in the 2015 scheme.
 - b. Information provided by the member to the employer or the administrator in the years before or during the remedy period about their intention regarding paying additional contributions to increase benefits.
 - c. Information provided by the member to confirm that they are a litigant in the injury to feelings claim in respect of the discrimination.
 - d. A statement from the member that they 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.

87. Within two months of receiving a claim form, the scheme manager should review the form and all evidence provided and make their decision.
- a. It is recommended that if a member did pay added pension into the 2015 scheme and has an entitlement to receive a compensation payment under [Regulation 27](#) of The Firefighters' Pensions (Remediable Service) Regulations 2023 that the CD claim should be automatically accepted. This is supported by the Home Office in the [consultation response](#) paragraph 6.56.

Providing contingent decision remediable service statements (CD-RSS)

88. The administrator will need to create a pension record for either Additional 60ths or Added Years in the relevant Legacy Scheme and upload all the necessary data to the record.
89. The administrator will also need to adjust the contributions record accordingly to show the arrears of the additional contributions due, with adjustments for tax relief and interest.
90. The administrator will produce the CD-RSS and provide it to the member. The CD-RSS will need to show the options to the member about how any election to purchase Additional Service in the Legacy Scheme would affect any existing pension entitlements.

91. It is suggested that in all cases, information is provided as if the Member elects for Additional Service from the date of their first birthday which falls in the Remedy Period, unless the member has specified a later birthday on their CD claim form.
92. Along with information about the associated pension benefits, the CD-RSS will also contain details of the amount of arrears of additional contributions, less tax relief, plus interest due to the Legacy Scheme that the member will be required to pay and how they can pay this. It will also need to show what the ongoing gross monthly deductions will be from the members pay. More details can be found in the [Paying contributions](#) section of the document.

Election

93. The member has twelve months after the date of issue of the CD-RSS to make their election. The member should complete the [election form](#) and return it to the administrator.
94. The member can elect to start paying contributions from the date of their first birthday in the Remedy Period, or any subsequent birthday in the Remedy Period. Therefore, the earliest date the additional contributions can commence is 1 April 2015 and the latest date is 31 March 2022.
95. The administrator should use the [relevant factors](#) which were in force at the time the member has provided evidence to say they would have made their election. [Schedule 8 Part 1 \(3\) \(1\)](#) of FPS 1992 sets out how the administrator should calculate the purchase of additional benefits.
96. Administrators should note that interest is only due on the arrears caused by remedy, if there is any circumstance whereby the member has future contributions to pay, these should be treated in the usual way i.e. deducted from the members salary, tax relief applied using PAYE and not interest is payable.
97. When the administrator issues a final RSS to the member, this will need to include an updated amount in respect of the arrears as these will be due from the date that the member elects for the additional contributions to commence up to either:
- a. If the member is not an active member of the scheme - the date the contract would have ceased, or the date of retirement if this is earlier.
 - b. If the member is an active member of the Scheme – the end of the payroll period before the ongoing contributions will be deducted from pay.
98. If no election is received in the election period, then the administrator can assume that the member does not wish to proceed with their claim. The administrator will need to ensure that the record is marked accordingly, and data is kept in line with normal retention schedules.

Paying contributions

99. If the member has made an election to purchase Additional Service in their Legacy Scheme, they will need to pay the additional contributions that are due plus interest as set

out in the PSPJOA, HM Treasury Directions and The Firefighters' Pensions (remediable Service) Regulations 2023. The relevant Regulations are set out in the [Legislation](#) section of the document.

100. Deferred Choice members can choose one of the following ways to pay the arrears that are due:
- a. Pay by lump sum within three months of receiving the final DC-RSS which is sent after an election has been made.
 - b. Pay by lump sum within three months of receiving the annual DC-ABS/RSS.
 - c. Pay by lump sum payment when the member makes a [Section 10](#) election (Deferred Choice election) the balance can either be paid directly by the member or be deducted from pension benefits (including lump sum).
101. If the member wishes to pay the amount due by option a) or b) above and the member is still employed, the contributions must only have interest applied and not be adjusted for tax relief. In these cases, the member will have to apply directly to HMRC to obtain the tax relief that applies to them.
102. Where a member is still an active member of the scheme, they will have ongoing monthly additional contributions which will be due until their Normal Pension Age. Ongoing additional contributions are not subject to interest, and therefore the administrator will need to arrange with the FRA for them to be collected from the members pay in the usual way. This will ensure that any ongoing contributions attract the right amount of tax relief for the member via PAYE.
103. Immediate Choice members can:
- a. Pay by lump sum when the member makes a [Section 6](#) election (Immediate Choice election) the balance can either be paid directly by the member or be deducted from pension benefits (including lump sum).