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Public service pension schemes: changes to the transitional arrangements to the 2015 schemes: Firefighters' Pension (England) Scheme Advisory Board Response

The [Firefighters \(England\) Scheme Advisory Board](#) (the Board) submits its response to the HMT consultation on age discrimination as attached to this letter.

This response is submitted on behalf of the Board by the Local Government Association (LGA) who act as secretariat to the Board. Neither the Board nor LGA act in the capacity of [scheme manager](#) or Fire and Rescue Authority (FRA).

The purpose of the Board is to provide advice to scheme managers in relation to the effective and efficient administration and management of the Firefighters' Pension Schemes (FPS).

In order to consider the Board's response to the consultation, the Board held its own discussions and also consulted with Fire sector stakeholders in the form of a working group that had representatives from SAB, National Fire Chiefs Council (NFCC), FRAs, administrators, and software suppliers.

The response to the consultation is set out in five parts as follows;

- [Part One: The Firefighters' Pension Scheme Architecture](#)
- [Part Two: Response to the proposal that the default primary scheme will be the final salary scheme](#)
- [Part Three: Response to the Consultation](#)
- [Part Four: Areas of Clarity Requested](#)
- [Part Five: Financial Implications](#)

The Board have set out the response in this way, as the way the scheme is administered and the unique features of the Firefighters' Pension Scheme (FPS) are unreplicated elsewhere in the public sector and, as these challenges feature heavily throughout the response, it is fundamental to ensure this position is understood from the start.

The Board's response to which option, Immediate Choice or Deferred Choice Underpin (DCU) is preferable, is that DCU is the preferable option.

The Board identified that limiting risk was its strongest priority in its approach to considering the two options, and in that regard DCU was the option that provided the most mitigation to the risks that have been identified.

However, the likely administrative and cost implications of such a long-term remedy as it is currently proposed is undeniably challenging, particularly for the FPS which is evidenced in our response.

The proposal under DCU to default members to their former legacy scheme, is a significant issue for the FPS. The different contribution levels across the component schemes make this option significantly more difficult to administer than for other schemes and would lead to the need for many reimbursements to or from members (regardless of whether they have engaged with the exercise). We have commented in detail on those difficulties within the response.

To ease some of those challenges the Board proposes within [part two](#) of its response for an amendment to the DCU as follows:

- Different default for FPS 1992 and FPS 2006 members

The Board strongly believes there should be a different default under DCU for standard members of FPS 2006 and proposes these members should remain in the FPS 2015 for the remedy period, significantly reducing the cases that would have to be unwound at retirement.

- Indicative choice

While a default deals with many of the concerns, it would be preferable for the member to make their own indicative choice on which scheme to base benefits for the remedy period. The Board believes this would significantly remove the risk of amending benefits at retirement and removes the complications of communications throughout the period from remedy to retirement.

The Board has strong concerns over expected timescales, on which it comments in more detail in answer to [question seven](#). The architecture of the scheme and lack of central contract management will severely limit FRAs, and the Board seeks to explore further mitigations with HMT that might be put in place to ease this.

Of further concern to the Board are the HMT proposals for treatment of taper members. The Board recognises the challenges as set out in the consultation document with regards to age discrimination, but nevertheless is concerned about a proposal that seeks to remove accrued benefits from firefighters. We

believe that this will need to be considered in line with [Section 23 of the Public Services Pension Act 2013](#) which requires the consent of any scheme members that may be affected by retrospective provision. This appears to be the case under the proposals for tapering; there are some cases where an individual's position may be worsened.

The Board is offering a commitment to working with HMT and the Home Office as the responsible authority to avoid further unintended complications of an already complex area.

Mitigations

Within the response the Board identifies challenges, some that will be unique to the FPS and others that will be shared across the public sector pension schemes, as such the Board would propose more detailed conversations with HMT to discuss:

- Consideration be given centrally to ease timetable pressures such as a phased approach for individual schemes.
- Measures to avoid tax conflicts by allowing retrospective action and easing of the statutory timescales.

Funding the proposals

The Board accepts that Treasury Directions are needed for GAD to provide the calculations which are yet unavailable. Nevertheless, the Board wishes to be clear that the consultation has asked for comments on the two choice options without providing the underlying GAD estimates on the actuarial costs of these and the employer contributions that may fall due. Necessarily the Board has not been able to consider the cost of employer contributions within their response, nor the impact that might fall on other non-remedied members of the FPS by the interaction of these costs with the cost cap mechanism.

Similarly, there are significant financial burdens that would fall on employers to manage and administer either proposal which, due to the structure of the management of the scheme, are not all within the power of the FRA to control. These costs need to be recognised and clarity achieved as to how they will be dealt with. Details of these costs, and where they may fall are commented on in part five.

If you have any questions, please let me know.

Yours sincerely



Joanne Livingstone
Chair of the Firefighters' (England) Pension Scheme Advisory Board

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Part One: The Firefighters’ Pension Scheme architecture

1. This section sets out the architecture of the Firefighters’ Pension Schemes (FPS) as a locally administered unfunded public service pension scheme.
2. For clarity referral to the scheme(s) as the FPS encompasses the
 - Firefighters’ Pension Scheme 1992 (FPS 1992)
 - Firefighters’ Pension Scheme 2006 (FPS 2006) both standard and special¹ members
 - Firefighters’ Pension Scheme 2015 (FPS 2015)
3. More information on the pension administration market and complexity of the FPS was provided in a paper² submitted to the Board at their meeting 17 September 2020.
4. During 2020/2021 the Board will be surveying FRAs and other stakeholders to understand more about the provision of current contracts and hear views from stakeholders on what changes are necessary to adapt going forward.

Administration and Management

5. Under the regulations each of the 45 FRAs are responsible for the management and administration of their scheme and are defined in law as the scheme manager. This puts the responsibility to comply with over-riding pension legislation on each of the political bodies charged with governance of the Fire and Rescue Service (FRS), i.e. Combined Fire Authorities, Police and Fire Crime Commissioners (PFCCs), County Councils, Mayoral functions etc.
6. Each FRA is required to administer the pension scheme either in-house or through appointing a third-party administrator. There are currently 17 different pension administrators, which will drop to 16 next year. They are mostly not for profit organisations, with one known exception, and are often linked to LGPS administering authorities.

¹ FPS 2006 was amended in 2014 by [SI 2014/445](#) to introduce a new category of member called Special Members that reflected service for retained Firefighters prior to 5 April 2006. These members could accrue benefits in FPS 2006 under special terms that generally reflected the FPS 1992.

² <http://www.fpsboard.org/images/PDF/Meetings/17092020/Paper-2-Pension-administration-market-and-complexity.pdf>

7. Administrators do not make decisions on behalf of the FRA, the responsibility for decisions such as pensionable pay and ill-health remain the responsibility of the FRA.
8. It is the responsibility of each administrator to contract a software supplier that underpins their solution. The appointment of the software supplier and therefore the deliverability of software solutions is not within the control of the FRA.
9. There are two software suppliers who supply software for the FPS: CIVICA and Aquila Heywood.
10. [A list of FRAs, their administrators and software suppliers can be accessed here.](#)

Funding

11. The FPS is an unfunded, single employer scheme, which means each FRA is solely responsible for their individual scheme and the cost of running this must be paid from the operating account.
12. The top up grant from central government covers pension payments only. The 2016 valuation outcome saw an average **increase** of 12.6%³ to employer contributions, which will place a significant pressure on the FRA operating accounts from 2021.
13. Unlike other public sector pension schemes, the employer rate for the FPS is different per scheme⁴, so the pressure of increased employer contributions can differ per FRA depending on their cohort of members in the scheme.

Cost

14. In 2019 the Board undertook an [in-depth review](#) of how the framework of FPS administration and management, combined with the complexity of the scheme, impacted on its cost and effectiveness.
15. The current total annual fee charged by administrators was reported to be £1,855,120.00⁵. This is an average of £26.28 per firefighter member, however, only 35 of the 44 surveyed FRAs provided cost data.
16. The overall costs of managing and administering the scheme, including special projects was valued at £120.33 per firefighter member.

³ Para 1.5 - <http://www.fpsregs.org/images/Valuation/Valuation2016FV.pdf>

⁴ <http://www.fpsregs.org/images/Valuation/SSrates2016FV.pdf>

⁵ Appendix One - <http://www.fpsboard.org/images/PDF/Surveys/Aonreportfinal.pdf>

17. The gaps in the provision of information on scheme costs suggests this information is not readily available for all FRAs.
18. Within this response we have commented on the impact these proposals will have on the future cost of managing and administering the schemes.

Part Two: Response to the proposal that the default primary scheme will be the final salary scheme

19. The Board submits that the FPS is uniquely different to other public sector pension schemes, and that under DCU there should not be an automatic legacy default scheme, as the proposals for the default create significant difficulties for the FPS.
20. The difficulties of making the legacy scheme the default are most acute for FPS 2006 standard members, and the Board considers that this is for reasons that are not necessarily replicated in other public service pension schemes.
21. For the avoidance of doubt, special members⁶ of the FPS 2006 should be treated as FPS 1992 members for the purposes of a default.
22. For some members in FPS 2006 retiring early from active service, it is expected that they will receive considerably lower benefits in FPS 2006 compared to FPS 2015 due to less generous Early Retirement Factors (ERFs). The FPS 2006 contains a pronounced discontinuity in the amount of pension for those who retire 1 day short of their 60th birthday.
23. For other scenarios, such as retiring at the Normal Pension Age (NPA) or retiring from deferred status, there are fewer clear-cut differences between the expected benefits in FPS 2006 and FPS 2015. The most obvious difference is that one scheme is final salary in nature, whereas the other is career average, albeit revalued annually by Average Weekly Earnings (AWE)⁷ increases and not price inflation.
24. [Appendix One](#) shows an example where, if there is little career progression, an FPS 2006 member does not significantly benefit from a final salary link to the remedy period.
25. It is therefore likely, although cannot be guaranteed, that most members will choose to receive benefits for the remedy period in the reformed scheme.
26. Under current proposals returning members to the FPS 2006 for the remedy period will cause the following issues:

⁶ <https://www.legislation.gov.uk/ukxi/2014/445/schedule/paragraph/2/made>

⁷ AWE can be more volatile than other measures of revaluation. The impact of the COVID crisis is likely to be reflected in AWE as at September 2020

Issues raised by returning members to the FPS 2006 for the remedy period

Standard retained Firefighters

27. All standard retained firefighters employed before 31 March 2012 would be returned to the FPS 2006.
28. It is likely, although not guaranteed, that a standard retained firefighter is unlikely to benefit from a final salary scheme⁸, as their pay fluctuates greatly throughout their career in response to operational situations.
29. As such, a CARE scheme is more likely to be beneficial for these members.
30. The service history for a standard retained firefighter is created by dividing the actual pay received for the year by the reference pay for the scheme year⁹.
31. Under current proposals, the service history for the remedy period would immediately need to be re-created for all retained firefighters and this information would need to be supplied from payroll.

Maintaining records

32. If under the proposed DCU default members opted to return to the FPS 2015 at retirement, transfers, pension debits, added years which have been converted to final salary for the purpose of the default will require ongoing maintenance in order to convert back to FPS 2015 at retirement.
33. Maintenance of such data is more difficult due to the structures of the FPS leading to increased risk of error and inconsistencies.

Contributions

34. Unlike most other public service pension schemes, the FPS has different contribution levels¹⁰ for each scheme, for both employee and employer contributions.
35. FPS 2006 scheme contributions are lower than FPS 2015. Under the current proposals for default arrangements, this would give the member a refund of contributions in 2022 which, if they chose to receive FPS 2015 benefits at retirement, would mean they have underpaid and owe contributions

⁸ It should be noted that Special Retained Firefighters who have an accrual rate of 45ths, may be better treated as an FPS 2006 member for the remedy period. [[Part 2, Rule 2, Para 1A](#)]

⁹ Part 10, paragraph 6, sub paragraph 5 -

<https://www.legislation.gov.uk/ukxi/2006/3432/schedule/1/part/10/paragraph/6/made>

¹⁰ <http://www.fpsregs.org/images/Legal/Annual-updates/FPS-contribution-rates-2020-21.pdf>

36. This is illustrated below in the table using the pay scales for a competent firefighter:

37. Table 1. Example refund due on FPS 2015 contributions for remedy period for a competent firefighter

Year	Salary	EE%		ER%		2022(+)		At retirement (-)	
		2006	2015	2006	2015	EE	ER	EE	ER
2015	£29345	10.4	12.2	11.9	14.3	£528	£704	£528	£704
2016	£29638	10.4	12.5	11.9	14.3	£622	£711	£622	£711
2017	£29934	10.4	12.7	11.9	14.3	£688	£718	£688	£718
2018	£30533	10.4	12.9	11.9	14.3	£763	£733	£763	£733
2019	£31144	10.4	12.9	27.4	28.8	£779	£436	£779	£436
2020	£31767	10.4	12.9	27.4	28.8	£794	£445	£794	£445
2021	£31767	10.9	12.9	27.4	28.8	£634	£445	£634	£445
						+£4811	+£4192	+£4811	-£4192

38. In this example the member would receive a refund of contributions worth £4,811 in 2022, with the burden of knowing they had to repay this amount when they retire if they would wish to have reformed benefits for the remedy period.

39. It is not clear if the intention is that the employer would also have a refund of £4,192 at this time, which they would have to repay if the member chose reformed benefits at retirement, given that it is proposed that the employer cost of remedy is to be met through the cost cap mechanism.

40. This approach will also have a significant impact on accounting for the notional pension account, with payments made from the notional pension account and re-claimed via the top-up grant which may need to be unwound at retirement.

41. The information will need to be drawn from payroll at each FRA; some FRAs will have changed payroll during the remedy period and the information may be hard to obtain.

Tax and interest

42. The consultation proposes that if contributions were to be refunded in 2022, they would be taxed as income, reclaiming any tax relief the member claimed at the time of making the contributions.

43. At retirement, if the member chose to receive benefits under the reformed scheme, the contributions would again fall due, at which point the member could claim tax relief.

44. However, there are a number of difficulties with claiming tax relief that were brought to light during the FPS 2006 special members exercise, and HMRC have since clarified that pensioners or deferred members cannot claim tax relief through self-assessment or PAYE, so any tax relief claim at retirement would need to be settled through a government process.
45. The consultation proposes that the tax relief would be due at the time of making the contributions and would not be retrospectively applied based on the tax position at the time they would have ordinarily fallen due. This could result in firefighters receiving less tax relief than they would have had no discrimination taken place, even if the earnings have stayed level, as the tax relief would be paid on the aggregation of contributions against a single year of taxable income.
46. Retained firefighters are subject to a fluctuating income and this policy might advantage or disadvantage them.
47. The consultation further asks for comments on whether interest should be due on money owed. If the policy decision is to apply interest, these members would have interest due on the contributions at the point they are required to make them at retirement. It will be a challenge to explain the choice of any rate of interest proposed, as HMT will be aware, given challenges made to the interest rate used in roll ups for scheme pays mechanisms in other schemes.

Annual Benefit Statements

48. The current proposal suggests that members receive annual benefit statements and pension savings statement based on both the default scheme and the underpinned reform scheme for the remainder of their service until normal retirement age.
49. For many FPS 1992 members, this may be of little benefit, primarily since the members will be happy with the return to FPS 1992, and it may cause confusion to receive benefit statements on another basis. Furthermore, benefit statements cannot go into the different contingencies which might be the factors which cause members to make a different choice when they ultimately draw benefits, such as their family circumstances.
50. Nevertheless, under current proposals to return FPS 2006 members to the legacy scheme, a statement at that time confirming the benefits under FPS 2015 might be of value. The benefit statement may serve as a reminder that there will be contributions to pay and its tax and interest consequences.

Decision Making

51. The amount of contributions to pay may impact the members' decision making. While one scheme may provide a higher pension, the

corresponding higher contribution rate may mean that this higher pension does not provide the member with value for money.

The Board's Proposals

52. Scheme illustrations show that a significant number of FPS 2006 members would be better off in FPS 2015.
53. There would be significant administrative processes in 2022 to return the member to the legacy scheme that would all need to be undone at retirement if the member chose FPS 2015, as well as a member debt to settle that would have pension tax relief consequences and, depending on policy decisions, interest to pay.
54. The Board feel strongly that for all the reasons laid out above, there should be a different default for standard FPS 2006 members, who should be defaulted to remain in the FPS 2015.
55. A summary of the proposed default arrangements is set out below:

Different defaults for different members of the FPS

56. Members of the FPS 1992 and special members of FPS 2006 are defaulted into the appropriate legacy scheme for the remedy period; and
57. Members of FPS 2006 are defaulted to remain in FPS 2015 for benefits earned during the remedy period.
58. This would avoid a majority of FPS 2006 members building up an unnecessary contribution "debt" that needs to be addressed at retirement. This is beneficial to members and employers (from a cashflow planning point of view) and administrators (as this reduces the need to calculate and administer pension debits once members retire).
59. However, the Board recognises that there may be a limited number of former FPS 2006 members who may benefit from being treated as FPS 2006 members during the remedy period. To further limit reversal complications for these members at retirement, and to ensure members are communicated to effectively and efficiently, the Board would go further to suggest that members make an indicative and reversible choice in 2022 as to which scheme they wish to select for the remedy period.

Indicative choice

60. Rather than a default return to the legacy scheme with no initial member choice, the Board believes that the member should make an indicative choice on which scheme to base benefits for the remedy period.
61. The Board believes that this significantly reduces the risk for FPS 2006 members of having to unwind a default return to FPS 2006 at the point of making a choice upon crystallisation of benefits, i.e. death or retirement.
62. An indicative choice also means that the member would be communicated to via annual benefit statements and pension saving statements by the primary scheme of their choice, so the communication has a purpose and is valued. The communication can remind them that they do have an alternative choice, especially for those who did not make an indication and that further details are available on request.
63. This also avoids the administrative pressure of immediately having to create FPS 2006 service records for retained firefighters, if they choose to receive FPS 2015 benefits for the remedy period.
64. It is recognised that an indicative choice carries with it a communications exercise for members. However, this will help members to feel that the remedy is being actioned, and regardless of each option, members will need communications, to explain the remedy and how it might affect their eventual choice.

Mechanism

65. During the lead up to 2022, it is proposed to communicate to members the general merits of each scheme and the default scheme that would be applied, so that each member has a general understanding of the choice.
66. Under the default proposed above, it would be the intent that members would be moved to the appropriate default scheme for the period 1 April 2015 to 31 March 2022, unless they indicate they wish to be treated differently and make an indicative choice.
67. Any member who does not wish to take up the default would need to indicate which scheme they wish to be treated under for the remedy period within an appropriate timeframe.
68. The exact mechanisms and timescales of making that indication will need further discussion upon understanding more about the HMT expectations of delivering remedy at 2022.
69. The broad aims of the Board by offering an indicative choice will be to minimise additional administrative burden while allowing the member to make a meaningful decision.

70. Where possible it would be the intention to draw on existing processes such as benefit statements to provide the additional information that would be necessary for the member's choice.

Part Three: Consultation Questions

Question One. Do you have any views about the implication on the proposals set out in this consultation for people with protected characteristics as defined in section 149 of the equality act 2010? What evidence do you have on these matters? Is there anything that can be done to mitigate any impacts identified?

71. The Board believes there is an increased risk that the remedy for discrimination against people with protected characteristics such as age and gender is more likely to fail for immediate choice than for deferred choice.
72. This is because younger members will have more time between making an irrevocable choice and the outcome of that choice being brought into payment. This will lead to younger members facing more uncertainty and a wider variation in the benefits that may be available to them from their legacy and reformed scheme.
73. The challenge of maintaining fitness until age 60 may raise age and gender discrimination issues, for example early retirement factors will impact if firefighters cannot maintain fitness levels to age 60 and leave at age 55.
74. The legacy Firefighters' Schemes are complex, with caps on pensionable service and double accrual within FPS1992. This could mean that members of similar age and total service might receive very different benefits outcomes, for example from the way in which tapering is applied or the cut off dates for members to be eligible for remedy.

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

75. The history of legal challenge across the FPS and historic correction / remedies being applied retrospectively over many years is a complicating factor.
76. The impact of the proposals on workforce recruitment, retention and requirements will need to be understood for the purposes of workforce planning and the Board will work with stakeholders to establish what information and data is available in this regard.
77. A full, scheme-specific Equality Impact Assessment (EIA) should therefore be undertaken of the eventual proposed solution for remedy to minimise the risks of future challenges.
78. We understand that this will be conducted by the Home Office in due course and shared with the Board.

Question Three. 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?

79. The position of tapered members needs careful consideration and is made complex by the 30-year service cap and double accrual in the FPS 1992.
80. In the FPS 1992 members may by virtue of their age have not been protected, but still have achieved 30 years' service before being tapered into the FPS 2015. These members may have therefore accrued both a full FPS 1992 pension and currently be building up benefits in FPS 2015.
81. It is recognised that they had the right to retire at 30 years' service. However, it may be that due to their experience and skills it was beneficial to both the employee and employer to remain employed.
82. Under the proposals those taper members who have moved into the FPS 2015 and are still employed may now decide to retire leaving a skills and resource gap.
83. If the member wished to continue working, as we understand it the choice would be to either:
- 83.1. Choose legacy scheme benefits and continue paying FPS 1992 contributions even though full service may have been accrued.
Or
- 83.2. Choose reformed scheme benefits for the full remedy period and accept a decrease in their FPS 1992 pension value which would be calculated to 31 March 2015 only rather than the original taper date.
84. For example, consider a firefighter who had completed 28.25 years in FPS 1992 by 2015 and tapered after 2 years to FPS 2015.
85. They will have achieved 30 years' service and would have been able to retire in 2017, however, due to their skills and knowledge they continued working and accruing benefits in FPS 2015 for a further 5 years to 2022.
86. The choice under the consultation proposals now available to them for remedy period is:
- 86.1. Final salary 1.75 years of service to maximum of 30 years
Or
- 86.2. 7 years pension in FPS 2015
87. Both are less than they would have been expecting and conveyed to them by annual benefit statements and would appear to reduce the pension already accrued. They may claim that they would have retired in 2017 if they had known the choice that is now available to them.

88. Other anomalies may occur relative to members who have already taken benefits. For example, we are aware of an example where a retired taper member, in receipt of a full 30-year FPS 1992 pension has transferred their FPS 2015 pension into the civil service scheme and it is not clear what the policy intent of the consultation would have on member benefits in this case.
89. This issue continues to deepen in complexity because the transferring of individuals from their legacy scheme to FPS 2015 has continued since the tribunal interim order, and still continues despite this proposal, placing more scheme members in this position daily.
90. As we understand it, under proposals to move all members into the FPS 2015 at the end of the remedy period, unprotected members could achieve near 30 years' service just after 1 April 2022 and move into the FPS 2015, thereby achieving nearly a full FPS 1992 pension and still being allowed to accrue new benefits, which is a position that appears to have been taken away from taper members. An example of how this would be calculated has been included in [appendix three](#).
91. We believe that these proposals will need to be considered in line with [Section 23 of the Public Services Pension Act 2013](#) which requires the consent of any scheme members that may be affected by retrospective provision.
92. Whilst the taper has itself been deemed to be discriminatory, the Board believes that allowing members to take different decisions in respect of remedy for pre and post taper date is objectively justifiable to protect members' expectations and avoid the above anomalies.

Question Four. 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?

93. The Board has made clear that it supports DCU, rather than immediate choice, and comments on this section should be read with that in mind.
94. The Board is greatly concerned about the risk introduced with a default choice that is irreversible and believes that this could give rise to a subsequent legal challenge. Immediate choice is hugely dependent on, and will need to be supported by, accurate advice to enable members to feel comfortable to make their choice. If they feel the information afforded to them is not suitable and sufficient, it follows that a member will not be comfortable or confident enough to make their choice.
95. Younger firefighters may well be at a disadvantage due to their shorter service and less experience than older firefighters and will have to rely more heavily on variables, assumptions and projections much further into

the future. These members may well be more likely to subsequently challenge the default which has been allocated to them.

96. Whilst the Board acknowledges that a default would be required to cater for those who don't make a choice, the use of defaults is not without risk. Some members might claim they were not aware of the default and the presence of a default option may be seen as promoting a particular option.
97. In the event of an immediate choice policy decision taken, then the proposals to engage over a twelve-month period, with at least four attempts would appear to be reasonable.
98. Potentially an appeals process could smooth the approach of a default, with the member given a suitable period in which to appeal this.
99. While it would seem appropriate that the default should be the most evidently beneficial for the most numbers of members in each cohort, e.g. assuming the majority of FPS 1992 unprotected members would wish to receive legacy benefits, the delivery of the default will require careful consideration. For example, there are challenges with how to mandate the collection of contribution arrears or to deal with any tax charges if the member has not made a positive election.
100. The Board notes that separate consideration might be given to a different option for the default choice for taper members i.e. to use the reformed schemes. However, for FPS 1992 taper members this would see them defaulted to the FPS 2015 for the period 1 April 2015 to 31 March 2022.
101. The complexities outlined above of providing an irreversible default adds to the increased risk that the Board perceives in this option.

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

102. As noted above, the Board considers the risk associated with immediate choice outweighs potential advantages of administrative easement.
103. The consultation does not state this; however, the Board assumes that the choice would not be given until any cost cap recalculations and the resulting decisions that affect the value of benefits from 1 April 2019 have been finalised.
104. The Board considers that immediate choice would result in a higher expectation of further legal challenge, especially in the event where:
 - 104.1. A member refuses to make a choice and a default decision is made on their behalf.

- 104.2. A member makes a choice, but it transpires that the choice was informed by inaccurate information provided by the employer.
105. The complexity of the current schemes combined with the unknown elements of the future of the scheme, such as the volatility of AWE, means that members may find it hard to make decisions about their future and may make a choice that will later prove to be detrimental to them. [Appendix Two](#) provides a summary of how the schemes are complex.
106. It is unclear whether the effect of implementing the second special members' option exercise known as Matthews would affect the choice available to members.
107. The Board is concerned about what advice will be available to members in order to support decision making. FRAs and their administrators are not financial advisers and cannot provide advice to members. Financial advisers would require detailed knowledge of the FPS and may be in short supply. They are unlikely to be able to make a recommendation for risk management reasons.
108. In order to support the member's decision, the consultation points to tools being developed to project benefits at retirement for the member, but it is not clear how these tools will be developed to reflect the complexities of the scheme, nor who is responsible for arranging this. This will prove very challenging to develop for the FPS due to the complexity of the administration and management arrangements.
109. The FRAs do not have contract management of the software suppliers, this sits with the administrators. The scheme as it stands is unable to commission central tools to support this option.
110. As such, the process for commissioning these by each individual scheme manager may be more complicated and could result in additional cost.
111. Accessibility in accessing the tools and communications should also be considered. Guidance¹¹ on complying with the EU accessibility act makes clear that accessibility means more than putting things online and requires the content and design to be clear and simple enough. The Board has not seen tools that yet have the capability to do this and deal with the many complexities, such as the individual salary history, variable elements of pay, differing pay definitions and split pension provisions of the FPS.
112. The Board accepts that in most cases, particularly for FPS 1992 members, the choice might be straightforward. The significant concern on risk lies with the decisions of FPS 2006 members, and a small cohort of FPS 1992, such as taper members.

¹¹ <https://www.gov.uk/guidance/accessibility-requirements-for-public-sector-websites-and-apps>

113. The Fire sector is generally considered one of the most informed of public sector employees on pension issues and does not generally suffer from the lack of engagement issues that other schemes have.
114. However, that engagement can have its disadvantages, such as rumours and a reliance on colleagues or social media to inform, rather than scheme paperwork. As such there is a significant concern that members of FPS 2006 would be influenced by the decisions of FPS 1992 members.
115. The Board considered mitigations such as communications, projections, and technology, however, there would remain a residual risk of a member making a decision they later wished to reverse.
116. There was concern about immediate choice potentially discriminating against younger people whose choice would be based both on a higher level of assumption than older people who will have experiential information about their past service, and on the decisions of those older, longer serving firefighters.

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

117. In our response we have addressed four aspects of this:

- Reasons for support
- Challenges identified
- Timescales
- Mitigations proposed
 - Different defaults for different members of FPS 2006
 - Use of indicative choice to reduce administration

Reasons for support

118. The Board previously identified that limiting risk was its highest priority in its approach to considering the two options, and in that regard DCU was the proposal more likely to mitigate risk of further legal challenge.

119. In simple terms, the Board feels it is the safest option for all concerned, as it would:

- Reduce any future challenges on the grounds of incorrect choice
- Mean any choice is made on facts rather than assumptions
- Remove the potential age discrimination that immediate choice might indirectly cause to younger members.

120. The Board recognises that there are cost and administrative disadvantages, particularly with complicated reversal procedures at retirement, but believes that the advantages outweigh these.

Challenges Identified

121. A legacy scheme default for FPS 2006 members introduces significant difficulties in the record keeping where the decision is likely to be reversed at retirement. These are detailed in full under part two [Issues raised by returning members to the FPS 2006 for the remedy period](#) of the response, briefly set out below these are:

121.1. Maintaining records; If under the proposed DCU default members opted to return to the FPS 2015 at retirement, transfers, pension debits, added years which have been converted to final salary for the purpose of the default will require ongoing maintenance in order to convert back to FPS 2015 at retirement.

121.2. Contributions; FPS 2006 contributions are lower than FPS 2015, therefore there will be refunds to pay in 2022 which will need to be paid back at retirement if opting for reformed scheme benefits.

121.3. Annual benefit statements; This will be confusing to reflect properly in annual benefit statements and communications to members.

Timescales

122. Under the consultation proposals, returning members to their legacy scheme 'in 2022' will be a significant project and would be impossible to achieve without automated systems.

123. It would also require all the answers to questions currently outstanding under immediate detriment, i.e. how to convert transfers, added pension, divorce debits etc. in the FPS 2015 to final salary benefits.

124. It is unclear from the consultation, however, we believe that returning members under legislation to their legacy scheme would automatically trigger the recalculation of the pension input amount for each year of the remedy period, and, as a result, if there are annual allowance charges to pay it will trigger the tax clock for those payments to be made.

125. Under the current proposals it would also mean that current members in the FPS 2015 who were former members of FPS 2006 would be returned to their legacy scheme and contributions immediately refunded.

126. For retained firefighters defaulting from FPS 2015 to FPS 2006, administrators would have to calculate qualifying final salary service based on actual pay received during each year from 2015 to 2022 in relation to reference pay. This would place a considerable burden on organisations and would ultimately be redundant if the member later elected for reformed remedy benefits.
127. The timescale for DCU as proposed in the consultation is a significant concern and further clarity is needed with regards to the expectations. This is commented on further under question seven.

Mitigations

128. As per [part two](#) of the response, the Board proposes several options for dealing with some of the complexity that DCU offers.

Different defaults for different members of FPS 2006

129. The Board submits that the FPS is uniquely different to other public sector pension schemes, and that under DCU there should not be an automatic legacy default scheme, as the proposals for the default create significant difficulties for the FPS.
130. The difficulties of making the legacy scheme the default are most acute for FPS 2006 standard members, and the Board considers that this is for reasons that are not necessarily replicated in other public service pension schemes.
131. For the avoidance of doubt, special members¹² of the FPS 2006 should be treated as FPS 1992 members for the purposes of a default.

Use of indicative choice to reduce administration

132. Unlike the immediate option under the HMT proposals, DCU does not offer an indicative immediate choice for the remedy period, instead mandating that the member is deemed to have legacy scheme benefits until the point the benefits are crystallised when they can choose something else.
133. While this may suit many FPS 1992 members, as this may be their eventual deferred choice, it is considerably problematic for FPS 2006 and it would make sense to adopt the reformed scheme as their default choice.

¹² <https://www.legislation.gov.uk/ukxi/2014/445/schedule/paragraph/2/made>

134. The Board believes that longer-term administrative burdens might be reduced by notifying affected people of their default scheme at the end of the remedy period and offering the option to make a reversible immediate choice (or change of default scheme) if they are certain about plans for future service and retirement. It is considered that relatively few would need to subsequently change their choice thereby allowing administrators to process most retirements without the need to deal with complicated processes at retirement.

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

135. It should be noted that for the FPS, the challenge lies not just with the pension administrators. The structure of the FPS with each FRA acting as scheme manager, with overall responsibility for the scheme, means that the reforms will be hardest felt by those locally administered unfunded schemes, a position FPS shares only with the Police Pension Scheme.

136. The FRA as scheme manager will be heavily impacted by the resource needed at an officer level. The governance challenge of ensuring the right decisions are taken will also be keenly felt.

137. It will be for each of the 45 FRAs to individually project manage implementation of the remedy processes, unlike centrally managed schemes who have the resources and necessary powers of delegation to manage centrally, with a project management team designated just for remedy.

138. There is no central contract management to hold suppliers to account on cost and timeframe, as there is no power to contract centrally.

139. Early conversations with the software suppliers¹³ have confirmed that the software companies believe they cannot start the specifications needed for the change to systems until a decision has been made on whether immediate choice or DCU will be implemented, due to the different solutions that may be needed.

140. The consultation only consults on primary legislation changes and it is not clear when the secondary legislation consultation changes will be due or what timeframe draft secondary regulations could be produced in.

¹³ Aquila Heywood and CIVICA

141. After that the software companies may wish to defer to development until they have had at least sight of early draft regulations. They have previously indicated that it would take 12 to 18 months to develop the changes that will be needed to support remedy.
142. Once the changes have been programmed there will be a testing cycle that needs to be completed with clients before the roll out of the software.
143. As an indicative timetable within an ambitious timeframe for regulations it may take just under two years to deliver the software from the point of the decision on immediate or deferred choice. This timetable will be impacted at every stage by the timing of decisions and regulations.
144. As the consultation does not comment on when the secondary regulations and consultation on those would start with individual schemes, it is difficult to accurately illustrate the timetable. Nevertheless, we have made some estimates as illustrated in the timetable provided in [appendix three](#).
145. The consultation suggests that under DCU members are immediately moved back into legacy schemes in 2022; under the likely indicative timetables it would not be possible to establish the benefit records and deal with the tax and contribution adjustments within the timescale.
146. Also on the practical side it should be recognised that the administrators and the software providers who support the administration of the FPS will also be implementing remedy across the wider public sector, notably LGPS, but many also support the Police and Teachers' schemes, and some devolved government health schemes.
147. This means that the FPS will be facing competition to get the resource available from the administrators and software in order to implement the necessary changes to process. Within the UK, public sector administrators, software providers, employers, policy advisers, and government departments will all be looking to recruit at the same time from a relatively small pool of public sector pension experts.
148. It should be noted that for the FPS, the additional resource that will be needed is not just at administrator and software level, the FRA as scheme manager will be heavily impacted by the resource needed at an officer level. Some of this might be mitigated by a phased approach to mitigation.

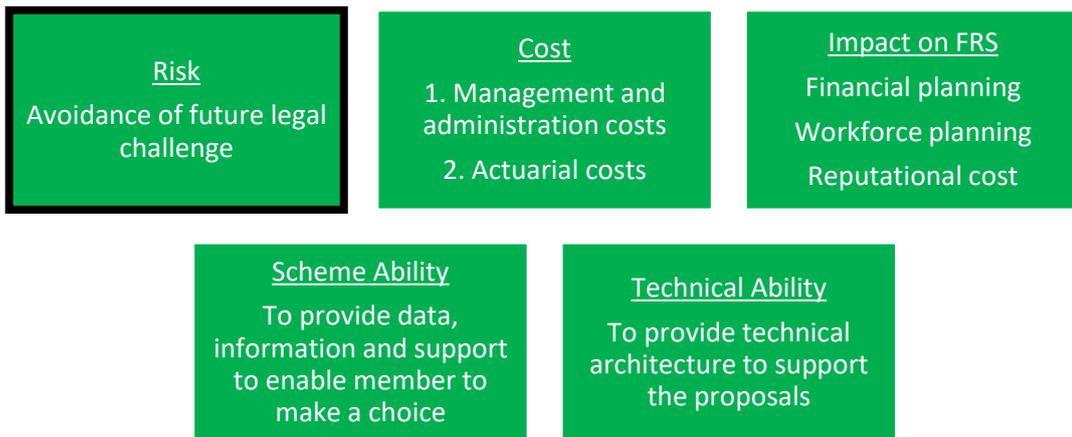
149. The impact of the second special members options exercise, known as Matthews¹⁴, at the same time as remedy cannot be underestimated. This project the first-time round was hugely significant in terms of resource required by officers of FRAs as opposed to the administrators, because as the employers they were responsible for contacting the employees and providing quotes. The resource available will be significantly impacted by workloads for remedy.
150. Any additional resource even if available will need funding.
151. Question seven only asks respondents to set out comments on the administrative impact, however there is also significant impact on workforce planning and financial planning, as well as potential for reputational risk.
152. There is significant concern over the workforce impact, with the remedy arrangements, regardless of which choice is implemented, having an impact on decisions taken by firefighters and may see firefighters retiring earlier than planned due to a lack of understanding of the planned reforms.
153. The Board would like to see the remedy measures finalised as soon as possible so that schemes can communicate them to members and provide certainty about the longer-term plans for the scheme.
154. Further evidence of the administrative tasks that will be required and the challenges this raises are included in [appendix four](#).

Question Eight. Which option, immediate choice or DCU, is preferable for removing the discrimination identified by the courts and why?

155. In its early response to HMT's initial informal consultation, the Board supported DCU and it does so again after intensive debate of the consultation proposals.
156. That response assessed each of the two options, immediate choice and deferred choice, within five key areas: risk, cost, employer implications, administrative feasibility, and technical ability to deliver.

¹⁴ https://en.wikipedia.org/wiki/Matthews_v_Kent_and_Medway_Towns_Fire_Authority

157. Picture 1: Five Key Areas



158. At that time, the Board identified that limiting risk was its highest priority.

159. The Board has carefully considered all these items again, and the limitation of risk remains its highest priority, and the risk identified with immediate choice is significant enough to outweigh any administrative advantages.

160. The Board held detailed discussions with the stakeholder group in forming this view and, while they accept that from a practical view, software and administrators response to this consultation will likely be in favour of immediate choice, the stakeholder group supported the view of the Board on limiting risk and thereby supported DCU.

161. When considering risk, the Board considered risk to the employers if it were to support irrevocable immediate choice. Taking into account the data, knowledge and calculations that would be necessary to support member decisions, it felt that for locally administered schemes the reputational risk was significant. The risks can be summarised as:

161.1. Resources: Available resources and knowledge to implement a complex choice system are likely to be lower than for a centrally administered and managed scheme.

161.2. Risk of inconsistency: The arrangements for responsibility and funding of the scheme mean that some FRAs have less resources and knowledge than others, which will likely lead to inconsistencies of approach with regards to the levels of technology and information members are given to support their decisions.

162. The Board consider that DCU is preferable for ensuring that discrimination is removed because this would ensure that benefits are

adjusted according to what is best for each member, given that the information used to inform the members' decisions, is factual and based on experience to the point of retirement.

163. With the immediate choice option, decisions necessarily must be based on speculative information about a member's employment experience, resulting in some risk that assumptions prove to be incorrect in relation to actual experience. There would be a consequential risk that some employees would consider inaccurate assumptions to be discriminatory with potential to bring about a legal challenge.

164. However, while the Board is firm in its support for DCU, under the current HMT proposals there is a significant administration burden that will not be met for the FPS in time for April 2022.

165. As set out in the introductory letter, the Board thinks that phased implementation will mitigate the risks of not delivering and would welcome more detail on HMT's expectations to deliver remedy in 2022.

Question Nine. 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?

166. As set out in answer to question one, the Board has commented that it would like to see an EIA for the firefighter workforce. The Board has also commented on the tapering provisions.

167. The closure of the legacy schemes does not in itself ensure equal treatment if the provisions of those schemes are deemed to be discriminatory.

168. The Board has already asked HMT to ensure that equality impact considerations are considered within the review of the cost cap mechanism.

169. Submissions to the consultation in a different capacity from the employee representative members of the Board will include strong opposition to the proposal to move all members into the reformed scheme. They will identify several categories of members where they believe further clarity is needed on the effect of these proposals, and whether they raise equality issues. The Board believes that consideration needs to be given to these issues/challenges.

170. It is not clear from the consultation whether the move to reformed schemes in 2022 will retain the transition benefits between FPS 1992 and FPS 2015 and keep the double accrual guarantee as illustrated in [appendix two](#).¹⁵ While the benefits in the FPS 2015 from 2022 remain unclarified, fear or a lack of knowledge may drive members to retire earlier than planned.

171. Such behavior may affect workforce retirement assumptions of FRS's and produce an evacuation of experience and knowledge from the sector.

172. Schemes will be able to provide detailed examples of how transitional retirements may work after 2022¹⁶, if the policy intent is clarified by HMT or the Home Office.

173. Another area that the Board wishes to raise is a potential concern regarding disability discrimination:

173.1. Eligibility for FPS 2015 lower tier ill-health requires the member to be disabled from the role of a firefighter until normal retirement age. Eligibility for higher tier ill-health requires the member to be permanently disabled from any regular employment until normal pension age.

173.2. These arrangements means that certain ill-health conditions, such as psychological ill-health where a diagnosis of permanency is not recommended for treatment, or degenerative diseases where symptoms are not stable can lead Independent Qualified Medical Practitioners (IQMPs) to make a more cautious approach, resulting in these disabilities not qualifying for ill-health under FPS 2015 compared to FPS 1992.

173.3. It may be that allowing an upward review of ill-health where circumstances change could mitigate this, nevertheless central guidance will be needed in this regard and the Board is offering a commitment to working with HMT and the Home Office as the responsible authority to avoid further unintended complications of an already complex area.

¹⁵ <https://www.legislation.gov.uk/ukxi/2015/589/schedule/3/paragraph/9/made>

¹⁶ <http://www.fpsregs.org/images/admin/1992transition300519.pdf>

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

174. The Board does not accept a position that past cases should be postponed until 2022 where it is possible to make payments now. Instead the Board has been supportive of being able to remedy past and present retirement cases and escalated a request for guidance on this in March 2020.
175. While the Board welcomed the provision of [guidance on immediate detriment](#), the guidance highlighted the difficulties in effecting solutions, and we understand that it will be rewritten to provide more direction.
176. For the FPS the most likely scenario is that members who have retired with FPS 2015 benefits during the remedy period wish to have these paid as FPS 1992 benefits.
177. It is important to ensure that there are no tax penalties for both the lump sum and pension arrears as a result of remedy.
178. Under the timing of payment rules [[FA 2004, Schedule 29, Part 1, Rule 1c](#)], a lump sum is a PCLS and therefore authorised if it is paid within 12 months of the day in which the member becomes entitled to it. Therefore, the meaning of the term '**becomes entitled to it**' is important to remedy.
179. If it is a new entitlement, i.e. one the person was not entitled to at retirement then there is a new twelve-month period in which to pay the lump sum.
180. The Board urges HMRC and HMT to clarify the meaning of 'becomes entitled to it', within the context of remedy.
181. The LGA have previously had correspondence¹⁷ with HMRC on correcting pensions in payment that had come about because of a retrospective change in pay that should have applied at retirement, and whether as a result of that they were unauthorised payments.

¹⁷ [HMRC query form dated 26 November 2019](#), [HMRC reply dated 10 January 2020](#), [HMRC query form dated 5 June 2020](#) and [HMRC reply dated 30 June 2020](#)

182. The points of principle from that correspondence were:

182.1. Payments made in error (i.e. payments that have been made, but were not due at all, or have been overpaid) can be authorised by virtue of [regulation 13 of SI 2009/1171](#)

182.2. Where the scheme pension entitlement arose at the time the original pension started means that arrears of underpaid scheme pension are already authorised and covered under normal pension rules, under [paragraph 2, schedule 28, FA 2004](#).

183. The Board would urge HMT to consider a working group to consider these complexities and to ensure the involvement of the Board's secretariat.

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

184. The consultation proposal where the member owes money in contributions allows the member to pay these upfront or over time.

185. Contributions owed will likely fall in the following categories:

185.1. Difference between FPS 2015 and FPS 1992 contributions for the remedy period.

185.2. Contributions on FPS 1992 terms of any temporary promotion to be treated as an [Additional Pension Benefit](#) (APB).

185.3. Difference between FPS 2015 and FPS 1992 contributions on any CPD payments in order to calculate the APB that will be payable under the legacy scheme.

186. In several cases the contributions schedule will need to be adjusted for the contribution holiday¹⁸ if the member would be eligible under the legacy scheme.

¹⁸ The Government introduced an employee contributions holiday for FPS 1992 members who accrue the maximum 30 years' pensionable service prior to age 50. This applies from the point of accruing maximum pensionable service in the scheme until the member's 50th birthday. This change was applied retrospectively to 1 December 2006.

187. The consultation does not comment on what arrangements would be made under either immediate choice or DCU to collect the additional employer contributions, nor whether this will be necessary given the proposed treatment of the remedy as a past service cost. This is specific to the Fire sector as the employer contributions differ across the component schemes.
188. The Board welcome the recent decision under the Immediate Detriment guidance that FRAs do not need to re-calculate and pay the employer contributions that would have been paid under the legacy scheme, and that these adjustments will be captured in the scheme valuation process and reflected in the future employer contribution rates going forward.
189. If any retrospective employer contributions were to be required it would be important to understand the mechanism that might be used to recover employer contributions, when the impact might be felt, and how these interact with the cost cap mechanism.
190. If FRAs must pay the old FPS 1992 rates and any retrospective / retired members contributions during 2022/2023, this will lead to significant funding pressures.
191. It would seem preferable that the employer contributions are recovered from the 2020 valuation calculation of employer contribution rates that will apply from 2023/2024 in a similar way to that agreed for employer contributions under immediate detriment.
192. The consultation does not confirm over what time period recovery would be considered. It would seem reasonable to suggest a ten-year period with any balance to be paid upon retirement, in a similar arrangement that was allowed for special members of the FPS 2006.
193. The proposals for DCU are made more complex by the proposal of a two-stage approach, particularly for FPS 2006 members who will build up a contribution liability if they later (as expected) elect for reformed benefits.
194. There are several practical questions that need to be considered regarding the collection of contributions:
- 194.1. How will the contribution collection be mandated for FPS 1992 members under a default proposal to move members back to the legacy scheme?
- 194.2. What legislation could be used to collect contributions from salary?

194.3. For deferred members, what are HMT proposals for collecting contributions arising from a default return to legacy schemes? Under the FPS 2006 special member exercise, collecting contributions via a direct debit from members has been a significant administrative exercise which involves rigorous auditing procedures.

195. Under the DCU proposals all members moved back into the FPS 2006 legacy scheme will have a refund that becomes payable but, as has already been noted, a significant portion will make a choice for FPS 2015 benefits at retirement, which leaves them with a known debt to pay on contributions that they have already paid and had refunded.

196. The sums involved are illustrated in the table below for a competent firefighter.

197. Table 2: Example refund due on FPS 2015 contributions for remedy period for a competent firefighter

Date	Salary	EE%		ER%		2022 (+)		Retirement (-)	
		2006	2015	2006	2015	EE	ER	EE	ER
2015	£29345	10.4	12.2	11.9	14.3	£528	£704	£528	704
2016	£29638	10.4	12.5	11.9	14.3	£622	£711	£622	711
2017	£29934	10.4	12.7	11.9	14.3	£688	£718	£688	718
2018	£30533	10.4	12.9	11.9	14.3	£763	£733	£763	733
2019	£31144	10.4	12.9	27.4	28.8	£779	£436	£779	436
2020	£31767	10.4	12.9	27.4	28.8	£794	£445	£794	445
2021	£31767	10.9	12.9	27.4	28.8	£634	£445	£634	445
						+£4811	+£4192	-£4811	-£4192

198. The information in order to calculate the contribution schedules will need to come from payroll, which means the data needs to be available.

199. Finding a lump sum of £4,811 at retirement from a competent firefighter's pay which is currently £31,767, for contributions that have already been paid, refunded and possibly spent would potentially cause financial distress.

200. The pension fund accounting effect on the notional pension fund will need to reflect these payments out, which will be collected from Treasury via the top-up grant, to be paid back again at retirement.

201. The Board's suggested proposal for a default or indicative choice would reduce the need for a refund of contributions as members will more likely to have paid the correct contributions for the remedy period.

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

202. The proposals need to consider both the basis for conversion and the practical side of implementation.

203. We would expect actuarial equivalence to be an important principle for conversion. The remedy will need to address the practical issues as well, some of which are described below.

203.1. In the FPS 2015 additional contributions can purchase [added pension](#), however, in the legacy scheme additional contributions purchase [added years](#).

203.2. There are different eligibility requirements to purchasing added pension to added years which might mean someone who purchased added pension in FPS 2015 would be restricted under the legacy schemes.

203.3. The conversion of added pension in FPS 2015 to added years in FPS 1992 or FPS 2006, particularly for special members could take someone over 30 years' service.

204. These questions have also been posed in relation to the immediate detriment guidance.

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

205. Under immediate choice, annual benefit statements and pension saving statements would continue based on the member's choice.

206. Under DCU this would require two sets of annual benefit statements and pension savings statements provided to the member each year, one based on the default legacy scheme basis and another on reformed benefits.

207. For most FPS 1992 members this would be a largely pointless exercise and potentially confusing to communicate.

208. For FPS 2006 members there may be value in showing the amount of the reformed benefits but knowing there would be contributions to pay could cause financial distress to members. Careful thought would need to be given to exactly how that is shown on the statement to differentiate a CARE underpin for the remedy period, to CARE growth from 2022. It is not clear how the unknown variation between the AWE link on the CARE underpin and the potential future growth in the final salary scheme would be illustrated. The statement is unlikely to be able to show the various contingencies in which benefits may be taken e.g. early retirement.
209. Hence the Board believes there should be no requirement to routinely provide statements for two sets of benefits on an annual basis. The Board believes that the information may not be particularly meaningful until a member is nearing retirement and needs an indication of likely income should they choose to take benefits.
210. The use of technology would of course be preferable. However, as outlined at the start, the arrangements for software sits with the administrator who is appointed by the FRA, so there is no central contract management on software solutions.
211. It is accepted that members may wish to make advance plans considering matters such as the ability to repay a mortgage at retirement. A requirement to provide benefit statements on request should be sufficient for FPS purposes.
212. It is unclear from the consultation what expectations are around the production of annual benefit statements at 31 August 2022, however, on the basis of estimated timescales it is very unlikely these would be available for 31 August 2022 and the Board would welcome a discussion on the easing of statutory timescales in that year.

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

213. The circumstance of people in ill health means that the Board would be particularly keen to see these benefits settled as soon as possible. The position is complicated because different definitions of ill health apply in FPS 2015 relative to FPS 1992.
214. The consultation does not appear to envisage the situation where there are multiple scheme managers and administrators who will be responsible

for operating the ill-health retirement criteria decisions and so setting the rules clearly within guidance will be key.

215. The consultation does not comment on the expectations for re-assessment of ill-health or reimbursement of IQMP charges. Direction may be needed from HMT on what the outcome should be if the health had deteriorated as a result of the delay between the original assessment and remedy.
216. The following factors for retirees in different situations need to be considered:
- 216.1. The enhancement to pension paid on the higher tier ill-health can mean in some cases that the pension per annum is higher under the FPS 2015 than it would be under FPS 1992.
- 216.2. Although the pension may be higher, the lump sum under FPS 2015 could be lower, so the member would need to consider the value of higher income/ survivors' pension over a bigger lump sum.
- 216.3. If the member was not married at the point of ill-health retirement but does have an unmarried partner, electing to retire under reformed scheme benefits would provide a partner's pension.
- 216.4. If the FPS 2015 pension was put into payment at the higher rate, and the member subsequently elects to have legacy benefits in order to receive a higher lump sum, would this result in overpayments from the pension scheme that would need to be repaid?
217. The Board welcomes the statement as set out in paragraph A.30 that government will work with schemes to seek to offer reformed scheme members undergoing ill-health retirement a choice of legacy or reformed scheme benefits at retirement, and would encourage HMT to consider a working group to consider these complexities and to ensure the involvement of the Board's secretariat.

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

218. Death cases are largely likely not to differ under the immediate choice or DCU approach. Naturally they will need to be handled sensitively.
219. The safeguards relating to probate and tax costs in paragraph A.41 are welcomed. However, there is no detail in the proposal to outline how this

communication exercise will be achieved and the Board would welcome some centralised guidance in this regard.

220. On a practical level the Board is keen to understand how the reimbursements referred to in A.41 will be administered.
221. For the FPS it will be important that care is taken to identify all survivors involved, particularly in relation to FPS 1992 which does not provide survivor pensions for unmarried partners but who would qualify for a survivor benefit if they elected for the FPS 2015 option.
222. There will be challenges in identifying who should be contacted, where there was no spouse/ civil partner and where death benefits may already have been paid to the estate rather than an unmarried partner.
223. In cases where it is not clear what might be legally achievable in terms of identifying the appropriate decision-maker, it is suggested that executors of the deceased's estate might be well placed (in law) to make the decision or, where no executors are appointed, the immediate next of kin would be the logical choice for making the decision (although the executor may also be the next of kin).
224. As the consultation itself suggests, it would not be reasonable to deny a choice to the surviving partners of FPS 1992 members regardless of their choice in 2006. Circumstances might have changed since and the choice made between the 1992 and 2006 schemes then is different from a choice between 1992 and 2015 scheme benefits now
225. It would appear sensible, to avoid further distress, that where the partner of a deceased FPS 1992 member has a partner's pension in payment from the reformed scheme and no dependent children, documentation provided to them should not offer a choice, as the choice would be to receive no pension from the FPS 1992. Nevertheless, it would be sensible that some contact should be made to reassure the partner that the benefits provided to them are reflective of the remedy and they are in receipt of the higher benefit.
226. On a practical level the Board is keen to understand how will the reimbursements referred to in A.41 will be administered?

Question Sixteen. 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?

227. The consultation proposes that decisions on whether to unwind a case, based on an argument that the member may have taken a different decision if they had known that continued membership of their legacy scheme was an option, should be taken on a case by case basis by the scheme.

228. It is not clear what is meant by the scheme in this case, whether it would that be on a case by case basis per FRA, or a decision of the responsible authority.

229. Such a process would be difficult to manage at the discretion of each of the 45 FRAs. Consistency on the decision would be difficult to achieve.

230. The Board would support a broad policy decision on who would be entitled to re-visit their decision, rather than on a case by case basis. However, the expectation is that it would be limited to opt-outs no further back than an appropriate point when the opt-out could be solely linked to the introduction of the reformed schemes. The Board would also expect a time limit on when cases could be presented, a period of twelve months would seem reasonable. Further scheme discussions may be necessary to agree the limitation date and time limit to present cases.

231. Naturally there are some technical complexities to be considered which the consultation does not mention. Scheme guidance will be needed on how these should be treated. This might include the following:

231.1. How would re-instatement of pension work for an opt-out? Currently members of the FPS 1992 who opt out are not allowed to re-join the FPS 1992, albeit the final salary link is re-instated.

231.2. Under the proposals addressed by question three, could taper members with 30 years' service but who stayed in the FPS 2015, argue, under the contingent decisions argument, that they would have retired at 30 years and should receive arrears of pension to the retrospective retirement date, with interest payable.

232. It is accepted that employee contributions would be due for the period of non-membership and that the sums involved will be significant. It would therefore be appropriate to allow for arrears to be paid over a period as addressed in question 10.

Question Seventeen. If the DCU is taken forward, should the deferred choice be bought forward to the date of transfer for Club transfers?

233. It would be administratively easier, and easier for the member, for the DCU date of choice to be brought forward. The argument for offering DCU is to allow a member to understand the value of their benefits at the date they make the choice. They would receive this information on leaving employment.

Question Eighteen. Where the receiving club scheme is one of the schemes in scope, should members then receive a choice in each scheme or a single choice that covers both schemes?

234. Potentially it could benefit a member to transfer out from one scheme under legacy or reformed benefits and transfer into the new club scheme on the opposite.

235. However, this would not be equitable with members who have not transferred and will not have an opportunity to 'mix and match' benefits.

236. It would be administratively more straightforward for a single choice to cover both schemes and would ensure that members do not benefit unduly from the transfer, which is the principle of the Club.

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

237. The Board cannot comment on the proposed guidance without a further understanding of the primary divorce law and the expectations on revaluing assets. The response below sets out the legal questions and some specific complexities relating to FPS.

238. Primarily it would appear that the over-riding law is divorce law. The Board wonders if central legal advice has been taken with regards to revaluing assets used in the divorce settlement at the time. The Board hopes that this might establish:

238.1. What precedent has been set in law, to revalue assets that have been set and awarded by a court?

238.2. Where a pension sharing order was not made but the CETV value used to assess assets at the time of divorce, what requirement would there be to revalue the CETV now?

239. Under the 2015 reforms as we understand it, the policy intent was that protection would not apply to the spouse, and therefore when calculating the corresponding divorce pension credit (the ex-spouse pension), this should be created in the FPS 2015.

240. However, the FPS rules were not drafted¹⁹ to allow the pension credit to be applied solely in the FPS 2015 and some administrators had applied corresponding pension credits in both parts of the scheme.

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

Question Twenty-One. Should interest be paid on amounts owed to members by schemes? If so, what rate would be appropriate?

Question Twenty-Two. 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?

241. The answers to these questions have been taken together below.

242. The Board believes that the question of interest should be dealt with in accordance with a few basic principles:

242.1. Interest should be paid out on amounts owed to members, given that they will have arisen from discrimination.

242.2. Whether interest should be due on amounts owed to the scheme depends on whether the repayment is being spread post remedy period or not. It would not feel appropriate to charge any interest for the period until which members are first able to make good any shortfall.

242.3. Thereafter interest might be appropriate, especially if the contributions are being deducted from a lump sum payable at retirement, albeit that it would be appropriate to adjust for any lost tax relief as well.

243. Some of the potential impact of interest on FPS members might be as follows:

¹⁹ Item 10.04.2018 5d, page 22 <http://www.fpsregs.org/images/Tech/Meeting-24/Action-summary-310120.pdf>

- 243.1. Under immediate choice, this is most likely to affect former FPS 1992 members who will make a choice for legacy benefits over the remedy period, and who will need to pay balancing contributions between the FPS 1992 rates and FPS 2015.
- 243.2. Under current proposals for DCU, which sees FPS 2006 members refunded contributions in 2022 and then asked to repay at the point of DCU choice if they choose reformed benefits, interest could potentially be applied to the repayment of contribution. If FPS 2006 members could default to stay in FPS 2015 under the DCU this scenario of being refunded and then asked to pay would not be a default occurrence.
- 243.3. If under question 16 a taper member successfully argued that they would have acted differently if it was not for the discrimination and retired during the remedy period and has their pension re-instated from that point, they would be able to claim interest on those payments under this proposal.
- 243.4. If a member has been in receipt of higher tier FPS 2015 ill-health benefits which pays a higher pension and opts to receive FPS 1992 benefits in favour of a higher lump sum there may be overpayments to recover.
244. If members are charged interest on their balancing payments, would employers be correspondingly be asked to do so? This would depend on the mechanism for recovery of employer contributions.
245. Charging interest on payments due at the DCU date could be very significant depending on the time period between 2022 and DCU, i.e. 20 years' worth of interest would be quite significant.
246. There is no scheme interest rate set for the FPS. Where interest rates have been set, they are usually for individual circumstances such as the special members exercise in FPS 2006.
247. It would seem open to challenge to apply different rates across public sector for the same purpose.
248. The SCAPE discount rate would be consistent with scheme financing but has been questioned by other services for use in scheme pays roll ups.

Question Twenty-Three. Please set out any comments on our proposed treatment of abatement?

249. The Board notes the proposals that where the remedy choice might result in an increase to pension in the legacy schemes which would ordinarily affect the level of abatement, that the abatement would not apply.
250. Abatement is common across the FPS²⁰ with a need to retain skills and knowledge, particularly during the current pandemic. Firefighters are often re-employed in skilled areas and pensions subjected to abatement.
251. Most retirements that commonly occur across the FPS will be for currently protected firefighters, therefore abatement when it applies, applies in full and is unlikely to be impacted by the remedy.
252. Reviews of abatement are common, either at a material change or annually. Reviews are often more frequent for retained firefighters whose pay is subject to fluctuation. The common procedure upon review is to adjust abatement going forward if necessary but not retrospectively.
253. Typically, members who have retired and been re-employed during the remedy period and have not been treated as FPS 1992 members will be taper members. This proposal may see a different treatment of abatement between protected and taper members.

Question Twenty-Four. Please set out any comments on the interaction of the proposals in this consultation with the tax system.

254. The Board believes that the general points of principle seem reasonable. It assumes that HMT has considered whether they raise equality issues for protected members who have been paying tax during the seven-year remedy period and who would not benefit from this policy decision.
255. While simplification on tax relief applied to repaid contributions is welcome, have equality issues been considered for retained firefighters who naturally have a fluctuating income, so that one tax year does not resemble another? They might be advantaged or disadvantaged by such an approach to apply tax relief at the time of payment.
256. The consultation does not comment on how government processes might work to compensate members who have retired or left employment

²⁰ [Factsheet on Abatement for FPS](#)

and are therefore ineligible for self-assessment or PAYE and what information a member might need to supply in order to be eligible.

257. The advantages of immediate choice are that the annual allowance adjustment is made at the point the individual makes their choice, and not in 2022 as proposed for DCU. As the immediate choice exercise is not expected to conclude until at least 12 months after implementation, this would help smooth some of the administration challenges.
258. Only those members who choose a different option at the immediate choice date will need to have the pension input amount re-calculated for all the pension input periods during remedy in order to determine whether there is a tax charge.
259. As acknowledged by both the consultation and this response, the administrative consequences of the tax effect under DCU is significant where the member is likely to make a different choice at retirement. This would appear to be a significant risk for the FPS, which is why the Board's proposals to ensure that as many people as possible have the right default return in 2022, are important to minimise this risk.
260. Unlike the immediate choice, where only those making a choice need the pension input amount re-calculated, **all** members returned to the legacy schemes in 2022 will need to have the pension input amount for all of the pension input periods during remedy re-calculated in order to determine whether there is a tax charge. The consultation does not currently comment on this.
261. This re-calculation needs to be done at the legislative date of return - the consultation says 'in 2022' not retrospectively from 2022. This is significant in terms of delivery as it would need to be supported by system changes which are unlikely to be completed in this timeframe.

Part Four: Areas of Clarity Requested

262. Throughout the response, the Board has commented where additional clarity is requested.
263. This section is provided for the purpose of convenience to draw those areas together, in order to reflect where additional conversations with HMT and Home Office will be necessary.
264. The Board welcomed the offer of an engagement session with HMT during the consultation process. Further engagement sessions during implementation will, in the Board's view, be necessary to ensure further complexity is not added to the already complex schemes.
265. The Board requests confirmation of the effect of the policy intent for taper members where a member has already taken retirement benefits from one scheme and transferred out the other.
266. For example, we are aware of an example where a retired taper member, in receipt of a full 30-year FPS 1992 pension has transferred their FPS 2015 pension into the civil service scheme and it is not clear what the policy intent of the consultation would have on member benefits in this case.
267. The consultation is not specific on how the pension input amounts are to be re-calculated for the remedy period. We believe that returning members under legislation to their legacy scheme would automatically trigger the recalculation of the pension input amount for each year of the remedy period, and, as a result, if there are annual allowance charges to pay it will trigger the tax clock for those payments to be made. Please can HMT comment on this?
268. Can HMT confirm that any choice exercise will not be able to proceed until any cost cap recalculations and the resulting decisions that affect the value of benefits from 1 April 2019 have been finalised?
269. In order to support the member's decision, the consultation points to tools being developed to project benefits at retirement for the member, but it is not clear how these tools will be developed to reflect the complexities of the scheme, nor who is responsible for arranging this? This will prove very challenging to develop for the FPS due to the complexity of the administration and management arrangements. It would be useful to discuss further with HMT to understand their thoughts on this and what

their expectations of the schemes would be to provide these tools, bearing in mind the limitations described.

270. The consultation does not comment on what arrangements would be made under either immediate choice or DCU to collect the additional employer contributions, nor whether this will be necessary given the proposed treatment of the remedy as a past service cost. The Board has been clear in its response that any attempt to recover employer contributions during 2022/2023 will lead to significant funding pressures and would welcome a decision similar to that for immediate detriment that the contributions are reflected in the future employer contribution rates going forward.
271. What time frame is proposed to collect employee contributions due?
272. How will the contribution collection be mandated for FPS 1992 members under a default proposal to move members back to the legacy scheme?
273. What legislation could be used to authorise the collection of contributions from salary?
274. For deferred members, what are HMT's proposals for collecting contributions arising from a default return to legacy schemes.? Under the FPS 2006 special member exercise, collecting contributions via a direct debit from members has been a significant administrative exercise which involves rigorous auditing procedures.
275. The consultation does not comment on the expectations for re-assessment on ill-health or reimbursement of IQMP charges. Direction may be needed from HMT on what the outcome should be if the health had deteriorated as a result of the delay between the original assessment and remedy.
276. If the FPS 2015 pension was put into payment at the higher rate, and the member subsequently elects to have legacy benefits in order to receive a higher lump sum, would this result in overpayments from the pension scheme that would need to be repaid?
277. Under question 16 with regards to allowing contingent decisions, the consultation proposes that "schemes would consider representations on a case by case basis". It is not clear what is meant by the 'scheme' in this case, does that refer to the FPS and the Home Office as the responsible authority would be responsible, or would that be on a scheme manager basis, in which case the decision would be needed by each FRA.? The

Board is very clear in its response that a case by case basis per FRA would be very difficult to achieve.

278. How would re-instatement of pension work for an opt-out? Currently members of the FPS 1992 who opt out are not allowed to re-join the FPS 1992, albeit the final salary link is re-instated.

279. Under the proposals addressed by question three, could taper members with 30 years' service but who stayed in the FPS 2015, argue under the contingent decisions argument that they would have retired at 30 years and should receive arrears of pension to the retrospective retirement date, with interest payable?

280. The Board cannot comment on the proposed guidance for divorce without a further understanding of the primary divorce law and the expectations on revaluing assets.

281. It is not clear from the consultation whether the move to reformed schemes in 2022 will retain the transition benefits between FPS 1992 and FPS 2015 and keep the double accrual guarantee as illustrated in [appendix two](#).²¹ While the benefits in the FPS 2015 from 2022 remain unclarified, fear or a lack of knowledge may drive members to retire earlier than planned. It would be helpful if HMT could clarify the post-2022 arrangements as soon as possible so that schemes can communicate the effect of this.

282. The Board is not clear from the consultation what the expectations of HMT are for schemes meeting statutory timescales for annual benefit statements and pension savings statements in 2022. From the estimated timetable it is unlikely the software will be in place and the Board will welcome a conversation with HMT on the expectations on this.

²¹ <https://www.legislation.gov.uk/ukxi/2015/589/schedule/3/paragraph/9/made>

Part Five: Financial Implications

283. The Board is keen to stress the impact of additional costs on the financial viability of the FRAs.

284. Unlike central schemes, where the administration cost is recognised by an employer levy, the entire cost of managing, governing and administering the scheme is met by each FRA operating account.

285. As a result, the financial implications of increased costs to deliver the pensions remedy will affect the operational costs of the scheme and may lead to decisions being made for the service that result in a loss of public sector services.

286. Unless it is intended to increase FRA funding accordingly, employers would bear the cost of both administering and managing the remedy from the operating account, and the cost of increased benefits through increased contribution rates.

Actuarial Costs

287. Actuarial costs can be described as

- Immediate costs which will be passed to the employer.
- Subsequent costs assessed at future valuations.
- Cost-cap implications.
- Impact of future scheme design in post-remedy period.

288. The impact that immediate or deferred choice might have on future valuations and the potential consequences for employer contributions has not been assessed as part of the consultation proposals.

289. The Board in their informal response requested that the impact of actuarial costs between immediate choice and DCU should be assessed immediately so that the information was available during the consultation.

290. The Board accept that Treasury Directions are needed for GAD to provide the calculations which are yet unavailable, and so this work was not possible for the Board to consider as part of the consultation.

291. Therefore, the Board wish to be clear that they have been unable to consider the cost of employer contributions within their response.

Operating Costs

292. The top up grant from central government covers pension payments only, it does not fund administration and management of the scheme. FRAs must fund pension costs arising from the administration and management of the scheme from their operating accounts.
293. The additional cost of remedy will mostly be in additional resource and software charges. Due to the fact the ownership of the relationship with software providers is not with the FRA, it is difficult to have detailed discussions with software suppliers on ballpark costs. **We must stress that it is difficult to know with any degree of accuracy, and the actual cost could be higher or lower than the Board's estimates.**
294. The Board commented on costs in their informal response in April, and these estimates have not changed, they have been re-produced below to illustrate the significance:
295. Appendix one of the [AON report](#) commissioned by the Board in 2019 indicated that the cost of administering the scheme was £77 per annum per member.
296. Additional costs will be incurred as a result of extra resource needed to undertake the work, and additional charges from software suppliers of administrative and payroll systems to re-programme the necessary software.
297. It is hard at this stage to accurately quantify the level of additional cost required, so for the purposes of illustration we modelled the additional requirements of immediate choice as being an added quarter, half and third of current costs.
298. Initial conversations with administrators and FRAs in January through to March based on the HMT informal proposals, indicated the additional new burden will be between 50% and 75% of current costs. The further information available in the consultation confirming the proposals for post-remedy have not changed those estimates.
299. The Board wanted to differentiate the cost between immediate choice and DCU and had many conversations about how this could be reflected. The analysis of costs shows that the bulk of the expenditure would arise at implementation and would therefore be incurred irrespective of immediate or deferred choice.

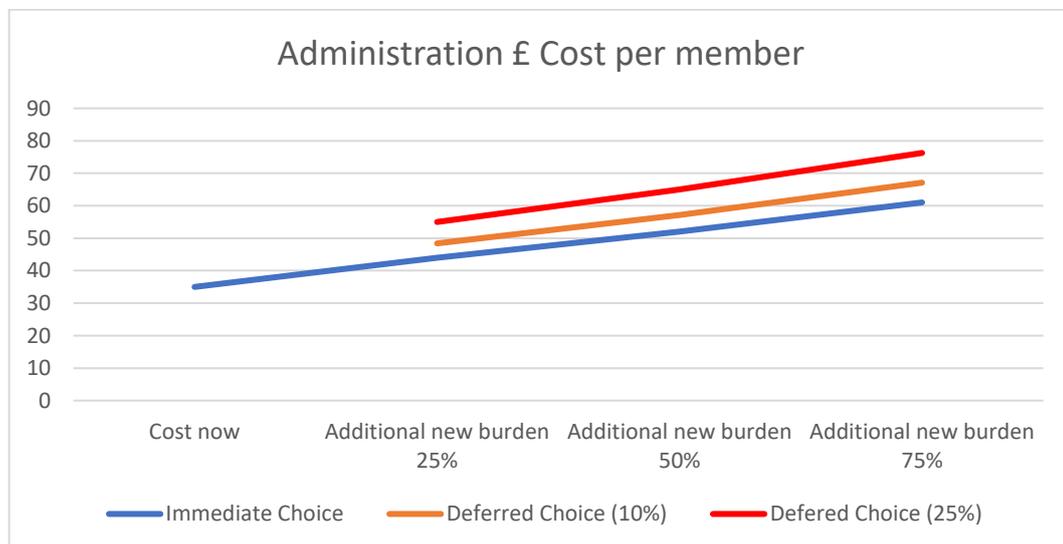
300. To analyse the additional cost of DCU, the Board considered that there are more opportunities to improve efficiency by managing the workload over a longer period and that the risk of assumptions and errors is significantly reduced, all of which contribute to lowering the cost.

301. However, the Board equally recognised the practical difficulties of a long-term remedy and the cost associated with changing processes and retaining knowledge and skills over an extended period. Therefore, the Board concluded that any additional cost incurred by DCU would reflect ongoing maintenance of solutions and processes.

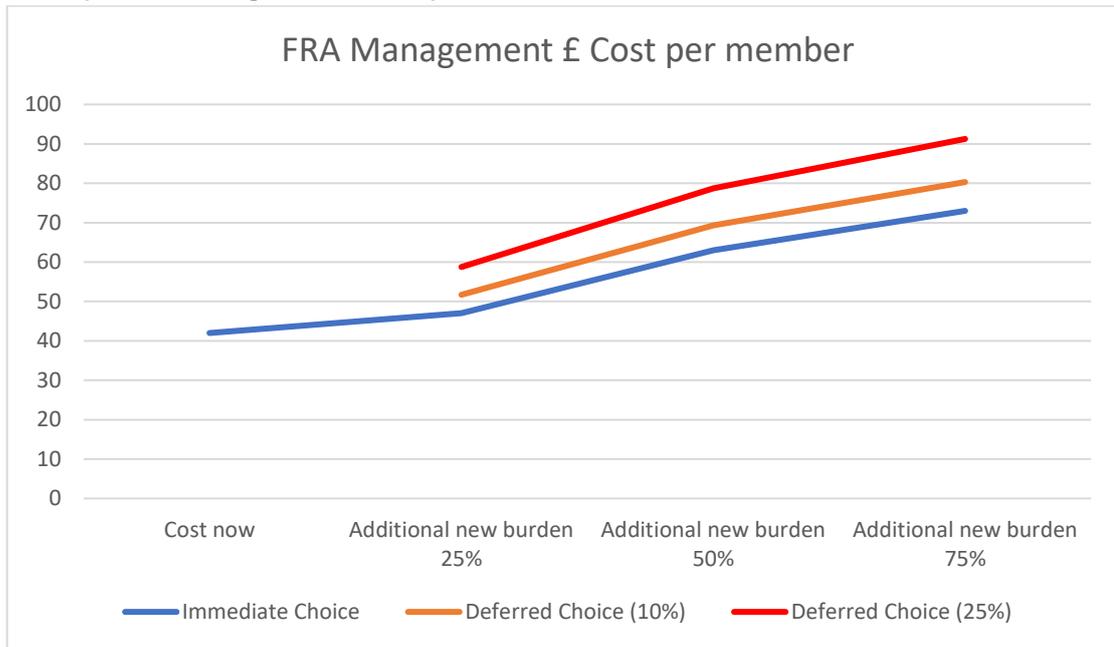
302. The Board accepts that DCU may generate higher costs and acknowledge that it is difficult to predict the quantum with any degree of accuracy. Therefore, **for the purposes of illustration only** we have modelled what the cost difference of DCU could be using an increase of additional cost between 10 to 25 percent.

303. The starting costs have been taken from appendix 1 of the [2019 Board report](#).

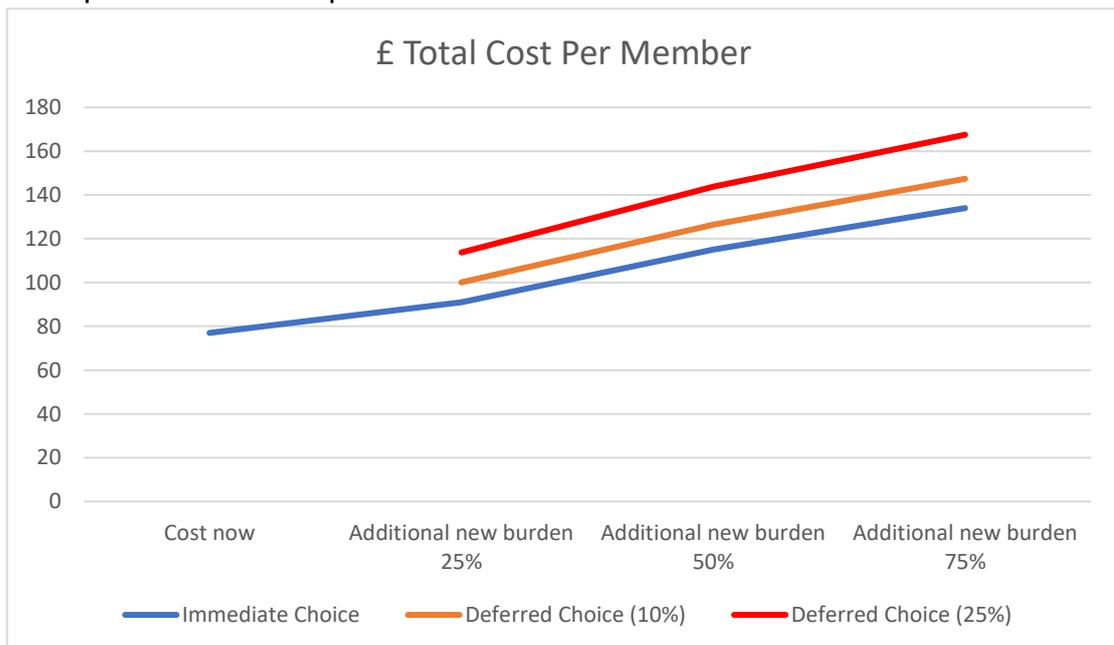
304. Graph 1. Administration cost per member in £s



305. Graph 2. Management cost per member in £s



306. Graph 3. Total costs per member in £s



307. These different assumptions are shown in the table below, **for illustration only** to show the potential new burdens of either option.

308. It is difficult to accurately benchmark these costs against other public sector schemes, as the FPS is a small scheme. However, this increase in costs will have a significant effect on budgeting for FRAs. The [2019 Board report](#) comments specifically on benchmarking on page 4.

309. Table 3: Potential costs

Option	Lowest	Highest
Current	£77 per member	
Immediate Choice	£91 per member	£134 per member
Deferred Choice (10%)	£100 per member	£147 per member
Deferred Choice (25%)	£114 per member	£168 per member

Appendices

Appendix One

Appendix One: FPS 2006 member example of the comparison of benefits for the remedy period.

1. FPS 2015 for the remedy period, based on a competent firefighter²²

Scheme Year Start Date	Scheme Year End Date	Opening Balance	CARE Pay	AWE	Adjusted opening balance	In year accrual	Closing Balance
01/04/2015	31/03/2016	£0.00	£29,345			£492	£492
01/04/2016	31/03/2017	£492	£29,638	2%	£501	£496	£998
01/04/2017	31/03/2018	£998	£29,934	2.6%	£1,024	£501	£1,525
01/04/2018	31/03/2019	£1,525	£30,533	3%	£1,571	£511	£2,082
01/04/2019	31/03/2020	£2,082	£31,144	2.8%	£2,141	£522	£2,662
01/04/2020	31/03/2021	£2,662	£31,767		£2,662	£532	£3,194
01/04/2021	31/03/2022	£3,194	£31,767		£3,194	£532	£3,727

2. FPS 2006 for the remedy period, based on a competent firefighter

01/04/2015 to 31/03/2022 = Seven Years

$7 \div 60 \times £31,767 = £3,706.15$ per annum

²² <http://www.fpsregs.org/index.php/member-area/firefighter-pay-scales>

Appendix Two: Example of a retirement after 1 April 2022

1. Member Details

Member would achieve 30 years' service at September 2022
 Date of Birth: 31 January 1972
 Date Joined FPS 1992: 25 September 1992
 Retirement age at 25 September 2022: 50 years 7 months
[Commutation factor](#) at 50 years 7 months: 23.7
 Pensionable Pay £30,000

2. FPS 1992 Calculation (as if no reform)

Had the FPS 2015 scheme never been introduced, the pension at 30 years would have been relatively easy to calculate using the formula of $[A \div 60 \times \text{Final Pensionable Pay}]$, the lump sum is calculated as a quarter of the pension multiplied by the relevant [commutation factor](#)

- A = the maximum 60ths you could have accrued, based on double accrual over 20 years, i.e. if you had 25 years you would accrue 30 60ths, as you would accrue 30 years you have the maximum 60ths of 40
- Final Pensionable pay = £30,000

The 30-year pension would have been calculated as $[40 \div 60 \times \text{Final Pensionable Pay}]$, with lump sum calculated by commuting a quarter of pension which would be multiplied by the commutation factor to provide the lump sum.

Pay	Pension	Lump Sum	Pension after lump sum
£30,000	$40 \div 60 \times \text{£}30,000 = \text{£}20,000$	$\text{£}20,000 \times 0.25 \times 23.7 = \text{£}118,500$	$\text{£}20,000 \times 0.75 = \text{£}15,000$

3. FPS 2015 (as at 31 March 2015 – discriminatory basis)

The formula to calculate the FPS 1992 benefits to 31 March 2015 (known as the date of transition) is set out in [regulations](#) as $[(A \div 60) \times (B \div C) \times \text{Final Pensionable Pay}]$.

- A = the maximum 60ths that could have been accrued, based on double accrual over 20 years
- B = 1992 service up until 31 March 2015 or the relevant taper date
- C = Total calendar year service in both FPS 1992 and FPS 2015
- Final Pensionable pay = £30,000

Examples of how to calculate this pension are available here in the [FPS 1992 transition guide](#).

- A = 40 [30 years doubled = maximum 60ths of 40]
- B = Assumed start date of 25 September 1992 to 31 March 2015 = 22 years and 188 days, which as a decimal figure = 22.51507
- C = Calendar years of FPS 1992 and FPS 2015 = 30

Pay	Pension	Lump Sum	Pension after lump sum
£30,000	$(40 \div 60) \times (22.51507 \div 30) \times £30,000 = £15,010.05$	$£15,010.05 \times 0.25 \times 23.7 = £88,934.52$	$£15,010.05 \times 0.75 = £11,257.53$

A CARE pension will have also accrued in the FPS 2015 scheme, which builds up at 1/59.7th of salary for each year and is revalued in line with the [revaluation orders](#). This continues for each year you are in the CARE scheme

The actual CARE pension is calculated based on your earnings for each scheme year, and at retirement a lump sum can be calculated based on commuting a quarter of the pension, which is multiplied by 12 to find the lump sum. If retirement is before age 55, the CARE pension is deferred and can be drawn at age 55, however these will be subject to [early retirement factors](#) on a deferred basis.

An example of how this is calculated is below

Start date	End date	Opening Balance	Salary	Revaluation rate applied	Revalued pension	Accrual	Closing Balance
01/04/2015	31/03/2015	£0.00	£30,000	2		$1 \div 59.7 * £30,000 = £502.51$	£502.51
01/04/2016	31/03/2017	£502.51	£31,500	2.6	$£502.51 * 1.02 = £515.58$	$1 \div 59.7 * £31,500 = £527.64$	$£515.58 + £527.64 = £1,043.21$

4. FPS 2015 (as at 31 March 2022 after remedy has been applied)

We expect the calculation of FPS 1992 benefits to remain the same as it is currently in the [regulations](#) as [(A ÷ 60) × (B ÷ C) × Final Pensionable Pay]. However, this is not confirmed in the consultation and may be subject to change.

The difference in the calculation under the remedied benefits would be to B, which is the years in the FPS 1992, which **would increase by seven years to 29 years and 188 days [29.51507]**

- A = 40
- B = Assumed start date of 25 September 1992, however you may have transfers in or added years which allow you to count 30 years at September 2022) to 31 March 2022 = 29 years and 188 days, which as a decimal figure = 29.51507
- C = Calendar years of FPS 1992 and FPS 2015 = 30

Pay	Pension	Lump Sum	Pension after lump sum
£30,000	$(40 \div 60) \times (29.51507 \div 30) \times £30,000 = £19,676.71$	$£19,676.71 \times 0.25 \times 23.7 = £116,584.50$	$£19,676.71 \times 0.75 = £14,757.53$

In this example a small CARE pension would also be accrued in the FPS 2015 scheme from 1 April 2022. Revaluation orders for each year as they are applied can be found [here](#)

Start date	End date	Opening Balance	Salary	Revaluation rate applied	Revalued pension	Accrual	Closing Balance
01/04/2022	24/09/2022	£0.00	£15,000 (only paid for six months)			$1 \div 59.7 \times £15,000 = £251.26$	£251.26

Appendix Three: Scheme Complexity

1. The complexity of the scheme was evidenced by the Board's work to determine cost and effectiveness in the [Aon report](#) dated 2019.
 - 1.1. 73% of administrators reported the scheme to be complex or very complex.²³
 - 1.2. 66% of FRAs found decision making difficult.²⁴
 - 1.3. Of the scheme members who responded to the member survey, 855 members (or 22.5%) indicated they do not understand the benefits the scheme offers with 1,515 members (39.43%) unsure.²⁵
2. Choice has been historically hard to implement and has invariably led to challenge. These Pension Ombudsman decisions illustrate the inevitable challenge that explaining and recording a choice will bring. Although the decisions relate to the Police scheme the same exercises were undertaken in the FPS.
 - 2.1. [PO-16555](#) - options exercise for 2006 Police scheme. The member passed away and an election to join the 2006 scheme had not been received, therefore no pension was due to the unmarried partner. TPO determined that all relevant information had been provided for the member to make an election. However, members do not always understand communications or that they need to act.
 - 2.2. [PO-23014](#) - uprating of widow's pension in Police scheme. Employer could not find record of election to pay increased contributions for a full half-rate pension as the query was raised 40 years after the event.
 - 2.3. [PO-22496](#) - election to join as a special member of FPS 2006 not submitted. The authority had exercised due diligence and reasonable endeavours in communications. TPO said the onus was on the individual to chase up.

²³ Page 18

²⁴ Page 40

²⁵ Page 49

Appendix Four: Illustrations of timescale and dependencies

1. Software requirements and impact on timetable

It should be noted that these are estimates only based on informal stakeholder meetings, software suppliers have not yet set down their timetables and limitations in writing.

This table illustrates the reliance on software to deliver solutions for the underlying main policy decisions, and comments on the dependencies that would be required.

Policy	Immediate Choice	Deferred Choice Underpin
All members moved to CARE scheme at 1 April 2022	While we cannot comment with certainty, it is understood this may be achievable by 2022, dependent on when the primary legislation drafts are available	While we cannot comment with certainty, it is understood this may be achievable by 2022, dependent on when the primary legislation drafts are available
When would the choice exercise be expected to start	Software may not be in place to support this until the end of 2022, see below with regards to timescales for starting work on this.	
The consultation comments on being returned to legacy schemes ‘in 2022’		Under the timescales set out below this would not be achievable to be automated until early 2023 at the earliest under an ambitious timeframe.

Automation required to return members to legacy schemes		Automation would be needed to return everyone as if they had been in the final salary scheme, it would require APB records being re-set, the pension input amount being recalculated and service records re-created, which would be likely to involve a series of automated processes that would need to be run in sequence. The issues raised in relation to immediate detriment would need to be resolved and legislated for. This is likely to be a substantive piece of work.
Position of annual benefit statements at 31 August 2022		If members were to be returned 'in 2022' benefit statements at 31 August 2022 would need to reflect all members being in the legacy scheme for the period to 31 March 2022, and under the current consultation proposals an underpinned statement based on being in the reformed schemes
Tax consequences of the tax clock starting from 1 April 2022		Does that mean that at 6 October 2022 all members would receive a pension savings statement based on a retrospective re-calculation of pension input amount, more people may have exceeded pension growth due to final salary accrual?

<p>The consultation references each scheme making available tools such as online calculators and models and developing online resources such as benefit calculators</p>	<p>Online web solutions are developed separately to the main development underpinning the software solutions, so the online web development would be dependent on the main developments, this could take another six months to programme.</p> <p>The software providers' clients are the administrators, not the FRAs, so how would the contract management of developing such tools be managed? FRAs would not have control of this development</p>	
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2. Estimated Timescales

It is currently unclear from the consultation exactly what the expectation on timescales and implementation is going to be. We have attempted to show the dependencies the FRAs will have at each stage, and what might be achievable in an extremely ambitious timescale.

	IC/DCU choice made	Draft regulations period	Software specifications	Software Programming	Underlying Processes and Guidance	Data Collection	Communication packages	Testing software	Software available
Timescale	January 2021	Ambitious timescale would be for early drafts to be available in May / June 2021, albeit most unlikely	It is not clear when these can start without draft regulations, it may delay the start of programming in earnest	Can start once specifications are agreed Estimated will run from June 2021 to June 2022?	June 2021 to June 2022	June 2021 to June 2022	June 2021 to June 2022	Three to four month period for testing June 2022 to October 2022	From November 2022

	IC/DCU choice made	Draft regulations period	Software specifications	Software Programming	Underlying Processes and Guidance	Data Collection	Communication packages	Testing software	Software available
Estimate caveats	Will be dependent on HMT timescales	Unknown presumably secondary legislation will need consulting. May / June 2021 is a VERY ambitious timescale	IC vs DCU will require different solutions so work <u>cannot</u> start as a minimum until that is known. May be dependent on draft regs	Estimates from software providers suggest 12 months will be needed to programme amendments needed	Can run at same time as software programming . Draft regulations will be needed before project work can start	Can run at same time as software programming . Draft regulations will be needed before project work can start	Can run at same time as software programming . Draft regulations will be needed before project work can start		

	IC/DC U choice made	Draft regulations period	Software specifications	Software Programming	Underlying Processes and Guidance	Data Collection	Communication packages	Testing software	Software available
Dependencies	HMT	HMT and Home Office	HO engagement will be necessary during this process to confirm expectations and liaise with HMT LGA	A final specification Draft regulations will be necessary in order to start programming	HO engagement will be necessary during this process to iron out technical difficulties	A data collection template will be required to instil consistency, to be drafted in conjunction with communications group organised by LGA	How and when members will be communicated to will need some thought. In consultation with communications group and possibly SAB as organised by LGA	Software clients only How will SAB or FRAs understand whether the solution reflects the regulations.	Roll out time, will be dependent on technology available, which may differ per software provider, usually rolled out on a three-month timescale May also be dependent on the rollout of software

									for other public sector schemes.
Resource availability		HMT Home Office	Software Home Office LGA Fire technical group	Software	Home Office LGA Administrators	LGA FRAs Administrators	LGA Administrators FRAs SAB	Administrators Software	

Appendix Five: Additional information to question seven to evidence the administrative challenge

1. The challenge for FPS does not just lie with the pension administrators, this section comments on some of the challenge that will be felt by officers of the FRA in their role of delegated scheme manager.
2. The administration of refunding and collecting contributions for the FPS 2006 members would need to be handled by the employer's payroll rather than administrators. And detailed processes will be needed in 2022 in order for these to be processed in the intervening years from 1 April 2022 to retirement.
3. If under the proposed DCU default members opted to return to the FPS 2015 at retirement, transfers, pension debits, added years which have been converted to final salary for the purpose of the default will require ongoing maintenance in order to convert back to FPS 2015 at retirement. Maintenance of such data is more difficult due to the structures of the FPS leading to increased risk of error and inconsistencies.
4. As a locally administered scheme it is the responsibility of each FRA to apply the rules of the pension scheme in accordance with their interpretation of the scheme and to obtain legal advice where they consider this is necessary. The Home Office as responsibility authority has responsibility for laying the regulations, as such they cannot interpret it.
5. This can result in 45 different legal opinions. The Board has access to some legal advice, but this can only be accessed when it is beneficial to the whole of the scheme, not when it affects a local decision only.
6. The Board would seek clarification on what escalation processes or methods of working would be in place to escalate technical issues, for example tax, final salary link applications, outstanding eligibility queries, where consensus cannot be reached.
7. During the implementation process, access to technical expertise at HMT / Home Office / GAD will be much in demand with resource implications for all parties.
8. The current proposals for refunding FPS 2006 contributions and reversing at retirement will complicate top-up grant arrangements significantly and

impact on Finance Directors and Treasurers at FRAs and will add a lot of uncertainty to long term and medium-term financial forecasting.