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Forces Pension Society_20201007_McCloud_Public_Consultation_Response

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Public service pension schemes: changes to the transitional arrangements to the 2015 schemes
Public Consultation – Forces Pension Society response

This is the official response to the above-mentioned consultation from the Forces Pensions Society (FPS). The FPS is an independent, not-for-profit membership organisation that provides advice and support to its members, serving and retired, from across the Armed Forces (AF) Community. At the time of writing the Society has 59,627 members. Not all are affected by the decisions that will result from this consultation but a significant number will be, as will tens of thousands of serving and retired AF personnel, and we have engaged with many of them through this process. We have answered all 24 questions as they apply to the Armed Forces Pension Schemes (AFPS), fully cognisant of the broader pressures on the UK's public finances, particularly at this time.

In determining our approach to this consultation and proposed remedy, the FPS have applied the following three tests which have been shared with the Ministry of Defence previously. These are that the remedy:

(1) unequivocally addresses the discrimination contained in the 2015 Scheme's transitional arrangements;

(2) in relation to the remedy period, provides the member with the same unequivocal assurance that no one will be worse off and that those with accrued benefits will keep them;

(3) provides the member with the full understanding and opportunity to make informed decisions about their financial future.

Questions 8 and 9 of the consultation are central to achieving a satisfactory outcome. In deciding upon which option (Immediate Choice or Deferred Choice Underpin) is preferable for removing the discrimination identified by the courts, it is our firm conviction that **Deferred Choice Underpin** is the only option that meets the three tests above, will provide members with the opportunity to make fully informed decisions based on facts rather than assumptions, and is the right thing to do by our public servants. Regarding the plan to close the legacy schemes from 1 April 2022, we agree that this will ensure equal treatment for all members from that date onwards, albeit with a degree of angst felt by some. Our full answers follow below:

Question 1: Do you have any views about the implications of the proposals set out in this consultation for people with protected characteristics as defined in section 149 of the Equality Act 20109? What evidence do you have on these matters? Is there anything that could be done to mitigate any impacts identified?

We begin by acknowledging that the AF have unique characteristics that frequently cause our "dataset" to be rather different to that of the majority of members of other public service schemes. Having studied the consultation document we do not consider that the proposals, for the future pension provision (i.e. from April 2022 onwards) should result in unjustifiable differential impacts on individuals with the protected characteristics. We are less certain regarding the treatment of the remedy period although we feel that the following protected characteristics: disability, ethnicity, religion or belief, gender reassignment, pregnancy and maternity, sexual orientation and marriage/civil partnership will not suffer unjustifiable differential impacts. The protected characteristic that we have excluded from this list is age (see response to Q2 below).

Question 2: Is there anything else you would like to add regarding the equalities impacts of the proposals set out in this consultation?

Whilst we recognise the Equalities Impact Report comments regarding those joining after 31st March 2012, we are slightly concerned that the Government might yet be subject to further claims of indirect age discrimination from those, predominantly younger members of the AF (and other public services), that joined in the period 01/04/2012 and 31/03/2015. This group are seemingly less well served in terms of choice, than say someone that left the AF in 2011 and re-joined in 2016 who is now to be given a choice of scheme for the remedy period. We feel that perhaps the only way to overcome this is to offer everyone that joined pre April 2015, and who was therefore initially placed into a legacy scheme, a choice over their transition date to the reformed scheme (AFPS15) either 01/04/2015 or 01/04/2022.

Question 3: Please set out any comments on our proposed treatment of members who originally received tapered protection. In particular, please comment on any potential adverse impacts. Is there anything that could be done to mitigate any such impacts identified?

We have no view on this as the AF were not offered tapered protection.

Question 4: Please set out any comments on our proposed treatment of anyone who did not respond to an immediate choice exercise, including those who originally had tapered protection.

We make no comment regarding the tapered protection element of this question as it has no relevance for the AF. We are concerned at the default position of leaving personnel in their post 1st April 2015 scheme so as to "avoid the possibility of changing the benefits that members are currently entitled to without their express consent". Rather as the "Immediate Choice" option is not (for the majority) to be exercised until post April 2022, we recommend that the member be placed in the scheme that would appear to provide the higher benefits for the remedy period. Of course, this runs a risk that later career moves could mean that the alternative choice would have been correct with hindsight, but that is surely the risk inherent in the Immediate Choice option. Rather the Government be seen to be making the member's choice on what appears to be the best solution at the time, than to risk having knowingly left some in the "wrong scheme."

Question 5: Please set out any comments on the proposals set out above for an immediate choice exercise.

While we firmly believe Deferred Choice Underpin is the only appropriate solution to address the discrimination (see Question 8 below), the proposals appear reasonable if Immediate Choice is to be the way forward, but are highly likely to be challenged downstream. We are not convinced that the main advantage identified in point 2.44 "…gives all members clarity over scheme membership for the remedy

period relatively quickly" is in fact much of an advantage if a member is proven, with hindsight, to have made the wrong choice. We had a similar situation when members were asked to choose between two legacy schemes (AFPS75 and AFPS05) in 2005. We are still fielding complaints and concerns about the poor quality of information supplied at that time. There must be an avoidable risk that this will be repeated in 2022.

Question 6: Please set out any comments on the proposals set out above for a deferred choice underpin.

In the AF we have a unique benefit known as Early Departure Payments (EDP) and we would want reassurance that the benefits of EDP (which are calculated as percentage of AFPS15 pension benefits) would be based upon the AFPS15 benefits plus the underpinned legacy scheme benefits if the member ultimately chooses the reformed scheme under Deferred Choice Underpin. (So exactly as if they had remained on AFPS15 throughout the remedy period). This aside, these proposals seem reasonable to us.

Question 7: Please set out any comments on the administrative impacts of both options.

We have no comments to make here.

Question 8: Which option, immediate choice or DCU, is preferable for removing the discrimination identified by the Courts, and why?

FPS prefers the Deferred Choice Underpin option as we place the greatest emphasis on ensuring that our members can make their decision based on actual entitlement to benefits rather than having to do it based on assumptions. As the aim of this exercise is to remove discrimination, anything that reduces (the future perception of) material disadvantage reduces the chances of future legal action which might arise from an Immediate Choice decision.

Question 9: Does the proposal to close legacy schemes and move all active members who are not already in the reformed schemes into their respective reformed scheme from 1 April 2022 ensure equal treatment from that date onwards?

Yes, although we recognise that some, previously transitionally protected, members will feel short changed by this development.

Question 10: Please set out any comments on our proposed method of revisiting past cases

We are generally satisfied with the proposals but we would be wary of the second possible solution proposed at A3 concerning potential changes to pension commencement lump sums.

On the face of it the proposal seems to indicate that corrective adjustments to the reformed pension would be "at the usual rates" (presumably £1 pension taken for every £12 of lump sum already taken – this seems unduly harsh given the early retirement ages of most AF personnel).

Question 11: Please provide any comments on the proposals set out above to ensure that correct member contributions are paid, in schemes where they differ between legacy and reformed schemes

We offer no comment here as, unlike all other public schemes, members pay 0% in contributions each month. This aspect of the AFPS is a reciprocal element of the selfless commitment AF personnel have given their country throughout their military career.

Question 12: Please provide any comments on the proposed treatment of voluntary member contributions that individuals have already made.

We feel that there is a danger in only offering an Added Pension equivalent to members that revert from reformed to legacy scheme. We believe that an Added Years equivalent should also be offered as that is, after all, an integral part of the legacy scheme offering. Those transitionally protected members that had remained on legacy schemes would have continued to accrue Added Years and to prevent younger members that were transferred across from doing so on reversion to legacy scheme under these proposals surely risks further charges of age discrimination.

Question 13: Please set out any comments on our proposed treatment of annual benefit statements.

Whilst we acknowledge the additional work created by the DCU option in this area, we feel that the provision of regular information in a clear and understandable format should be a minimum expectation of the scheme administrators. The suggestion at para A22 that "If the government decides, as a result of this consultation, to pursue the immediate choice option then no changes to ABS contents would be required until after a member had exercised their choice. That would avoid any confusion for the member ahead of making their immediate choice", seems to imply that the existing arrangements are clear. In our experience this is far from the case.

We feel that the overhaul required to accommodate DCU option creates an opportunity to improve the ABS so as to facilitate better provision of facts **before** the member has to make their important scheme selections.

Question 14: Please set out any comments on our proposed treatment of cases involving ill-health retirement

We think that the consultation is a bit light on actual proposals for those cases of ill health retirement. For our part we are clear that exactly the same options must be extended to all members and where there are extra complexities (such as the examples highlighted), the full implications of the choices available must be made to each member (so a case by case approach is likely to be required).

Question 15: Please set out any comments on our proposed treatment of cases where members have died since 1 April 2015.

First, we applaud the recognition of the need for sensitivity in dealing with cases where the member has died since 1st April 2015. However, we offer the following observations for consideration as part of this process.

We would reject the argument proposed at para A38 that if a member had selected an option, whilst alive, which favoured a specific legacy scheme (resulting in lower death benefits), that the wish should be "respected". This seems to miss the point that most members would have made their choice on the basis of the legacy scheme that would provide the highest pension benefits assuming (unfortunately incorrectly in their case) that they would survive until retirement. Our view is that the choice is between the new reformed scheme and that which the member held immediately before 01/04/2015. The death benefit implications of change should be made so that an informed choice can be made by the survivors.

At A39 it is suggested "…it is therefore proposed that where no higher pension payment would be due to the survivor or to the deceased's estate, no contact should be made with the relevant parties." Whilst we understand the sentiment here, we feel it is important to contact the survivors of all affected members even if it is only to say "we have examined the case of xxx and have determined that the choices available to you now, as a result of the McCloud judgement, would not result in any higher payments being due, (see attached calculations) so we propose to continue as is – you are not required to do anything". This would reassure the survivors that they have not been overlooked in this process.

Otherwise we accept the proposals.

Question 16: Please set out any comments on our proposed treatment of individuals who would have acted differently had it not been for the discrimination identified by the Court.

We expect each case to be considered on its own merits and in the light of evidence provided. The proposals as stated seem reasonable.

Question 17: If the DCU is taken forward, should the deferred choice be brought forward to the date of transfer for Club transfers?

Question 18: Where the receiving Club scheme is one of those schemes in scope, should members then receive a choice in each scheme or a single choice that covers both schemes?

We are seldom involved with "Club transfers" so may be missing some of the finer points here, but intuitively we feel that a single choice that covers both schemes (and which more closely follows the situation had the member not transferred across) is most appropriate.

Question 19: Please set out any comments on our proposed treatment of divorce cases.

We think that cases where a Pension Sharing Order (PSO) has been agreed should not subsequently be adjusted to reflect possible CETV variance. The agreed percentage to be shared is based upon the snapshot valuation of all of the available assets at the time, not just pensions, and it is readily accepted that these values will change over time.

Moreover we feel that there should be only one CETV applicable at any one time and the percentage share will be agreed on that figure. If the Government adopts IC then the CETV will be on the current basis, if the Government chooses the DCU option then the CETV will be calculated upon the legacy scheme valuation.

As the PSO results in a new Pension Credit membership of the scheme, the subsequent choices made by the Pension Debit Member will, quite rightly have no impact upon the Pension Credit Member.

Question 20: Should interest be charged on amounts owed to schemes (such as member contributions) by members? If so, what rate would be appropriate?

Question 21: Should interest be paid on amounts owed to members by schemes? If so, what rate would be appropriate?

Question 22: If interest is applied, should existing scheme interest rates be used (where they exist), or would a single, consistent rate across schemes be more appropriate?

In considering our response to these questions, we acknowledge that the AFPS are non-contributory.

It seems, reasonable, that interest be charged on late payment of commitments either way and that the rate be common across all public service schemes, and in both directions. In most situations an interest rate linked to changes in the consumer price index (CPI) would seem a reasonable way to keep the real value of the late payments.

Question 23: Please set out any comments on our proposed treatment of abatement

We have issues with abatement in general, we feel that it is an outdated practice that fails to reflect the changing employment/retirement patterns of modern society. However, in relation to the needs of this piece of legislation we feel that the proposed treatment seems reasonable, except we wonder if there is not a risk that somebody that had stayed on a legacy scheme and had some of their pension abated would feel aggrieved if the abatement waiver offered in para A68 is available to those initially placed in the reformed scheme but reverted under either DCU or IC to the legacy scheme.

Question 24: Please set out any comments on the interaction of the proposals in this consultation with the tax system

We think that the proposals offer a "common sense" approach to the tax complications. Where "scheme pays" is selected to meet any resulting tax bills the rates used should not disadvantage the member.

FPS answers to the consultation question set ends.

Our final point, common to both options being considered and implicit in our answer to Question13, is that the remedy must be accompanied by a comprehensive, clear and timely communications package, expressed in language all members will understand, and must include appropriate tools (e.g. forecasting models) that enable members to make informed decisions. Without this, trust risks being further undermined just as the Government has undertaken to make good the errors made in the 2015 Scheme transitional arrangements.

I trust this provides a clear explanation of our position in this matter. Any follow up or clarification required should be addressed to the undersigned in the first instance.

Major General Neil Marshall OBE
Chief Executive
Forces Pension Society