

From **Major General Neil Marshall OBE**, Chief Executive



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18<sup>th</sup> May 2023

### **Armed Forces Pension Scheme: Retrospective Remedy**

Thank you for the opportunity to respond to the above-mentioned consultation. This is the official response from the Forces Pension Society (FPS). The FPS is an independent, not-for-profit membership organisation that provides guidance and support to its members, serving and retired, from across the Armed Forces Community. At the time of writing the Society has 65,695 members. Not all are affected by the decisions that will result from this consultation, but a significant number will be.

When considering our response to each question we have applied the following guiding principles:

- The intention of the retrospective remedy is to put a member in the same position they would have been in had the discrimination not occurred, such that it addresses the age discrimination contained in the 2015 Scheme's transitional arrangements.
- The remedy is to ensure that no one will be worse off and that those with accrued benefits will keep them.
- Members will have the opportunity to make timely and well-informed decisions.
- Our response is to represent the best interests of 'in-scope' FPS members and those affected in the wider Armed Forces community.

Whilst we have addressed the specific questions asked as part of the public consultation, where appropriate and relevant, we have expanded our responses to include additional points that you may wish to consider.

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Our full answers to this consultation follow below:

**Question 1:** Do you agree with or have any comment on the MOD decision not to combine the RSS and BIS?

**Given the complex but different nature of the information provided in each of these documents it makes sense to keep them separate. We acknowledge that there will be a need to consolidate this information (BIS and RSS) in the new Pension Dashboards in due course.**

**Question 2:** Do you think any further information is required in the RSS?

**We believe that the following additional information is required: (1) It is vital that the date of issue of the RSS is included within the statement; (2) comments and calculations regarding the impact of the election choices on divorce (in particular Pension Sharing Orders); (3) the potential tax implications for LTA and AA, acknowledging that this will need to be based on Armed Forces held data only; (4) potential impact on Armed Forces compensation awards and DWP benefits; (5) Explanation of the process for how active and deferred members can revoke an election choice including the timeline for resubmitting their election (6) Signposting to relevant information and organisations that can assist Eligible Decision Members (EDMs) to make an informed decision, given many are unlikely to have a good understanding of Armed Forces pension matters.**

**Question 3:** Do you agree with or have any comment on the policy approach being taken by the MOD in respect to the time limits specified for election periods?

**We feel that introducing different classes of deferred choice members with resulting different election periods makes an already complicated situation more complex. On the premise that final RSS' will be issued 6-12 months prior to a member's exit date, our view is that all members should be given an election period of 6 months from the date they receive the RSS to submit their election choice. We are especially wary of the proposals to limit the time frames for those that will be subject to a medical discharge. Care will be needed to ensure that members' existing rights to appeal are not compromised by the election limitations. More practically, we feel that policy needs to be finalised for SP leaving the Armed Forces from 1 October 2023 under Deferred Choice who may not have the opportunity to make their election choice before their immediate benefits are payable.**

**Question 4:** Do you agree or have any comment on the policy approach being taken by the MOD in respect to the latest point at which a deferred choice may be revoked?

**For reasons set out above (Q3) we do not agree with the qualification that says that people can only change their election choice if they have submitted their initial choice by the "standard deadline of 3 months before benefits are put into payment". Rather we believe that all classes of deferred beneficiary should be allowed to revoke their first decision up to one month before benefits are to be brought into payment. For active members that leave service before their election period has ended, we feel that decisions should be revokable during the election window, acknowledging that in some of these cases benefits will initially be brought into payment based upon the default legacy choice. It is recognised that once an election choice is in payment, it will be irrevocable. We agree the proposed policy approach in respect of deferred choice members that subsequently die before benefits are brought into payment.**

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**Question 5:** Do you have any comment on the MOD's policy approach to the default position when no election is made?

**It is recognised that there needs to be a default position should an election not be made by a member, and we agree that the legacy scheme should be the default. However, we feel that there may be circumstances where the 'default' may not be in the best interests of the member, an example being our response to Q11. In such cases the scheme administrator should be permitted to deviate from the default option and make a decision that is based on the best interests of the member. The decision should be recorded by the administrator with justification in the event of a subsequent appeal by the member once the benefit is in payment.**

**Question 6:** Do you have any comment on the MOD's policy approach for Commutation and Resettlement Commutation?

**On the basis that the remedy is intended to put a member in the same position they would have been had the discrimination not occurred, we disagree with the policy being proposed in respect to not allowing members to revisit commutation decisions. As the member will be presented with a new/different set of figures compared to those when they made their original commutation decision, it should not be pre-judged whether or not they may have opted for Resettlement Commutation, or any other form of commutation, at that time. We therefore believe that all members should have the option to revisit commutation decisions for all legacy schemes.**

**Question 7:** Do you agree with or have any comment on the proposed time limit of three months from date of issue of the RSS within which an eligible decision maker must make an election?

**Our view is that 'Deferred Choice' EDMs should have 6 months to make their election choice from the date of the RSS. Three months is a short timeline to make an informed decision and respond, especially for an EDM who potentially has no experience of Armed Forces pensions, and at a time that could be stressful for them. If a deferred or immediate choice EDM makes their election sooner, it is presumed that the benefits will come into payment, which provides incentive to the EDM to make their election choice at their earliest opportunity.**

**Question 8:** Do you agree with or have any comment on the policy relating to eligible decision makers?

**Agree. No additional comments.**

**Question 9:** Do you have any other comment on the approach to death benefits?

**In the event of a member's death after 1 October 2023, we think that there might be a case for MOD to have the right, but not the obligation, to investigate an EDM's decision especially if this seems to unfairly prejudice or favour a particular beneficiary or class of beneficiaries.**

**Question 10:** Do you agree or have any comments on the MOD's proposed policy approach towards the early payment of deferred pensions?

**As with our response to Q6, on the basis that the remedy is intended to put a member in the same position they would have been had the discrimination not occurred, we disagree with the policy being proposed in respect to not allowing members to revisit their decision**

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regarding early payment of deferred/preserved pensions. Because the member will be presented with a new/different set of figures compared to those when they made their original decision, it should not be pre-judged whether or not they may have opted for early payment or otherwise of a deferred/preserved pension. We therefore believe that all members should have the option to revisit decisions regarding early payment of deferred/preserved pensions for all schemes. Where a deferred member is considering early payment of benefits, they should be provided with a RSS that will allow them to see the impact of the actuarial reductions under either remedy choice, before they are committed to taking the pension early. The RSS so produced will be their one free RSS for the 12 months window.

**Question 11:** Do you agree or have any comments on the MOD's proposed policy approach that where an RFPS05 member may be eligible for a Tier 1 award, this should be an election point?

**Yes, agreed. Indeed, if no election is made then the more favourable terms (i.e. the payment of benefits under AFPS15) should be assumed as the default position.**

**Question 12:** Do you have any comment on the MoD's decision to use the midpoint date for the calculation of overpaid pension benefits?

**No additional comment.**

**Question 13:** Do you have any comments on the MOD's decision to pay compensation based on AFPS 15 pension contributions?

**We feel that payment of compensation along the lines suggested should be one of three options available. In addition, we believe that members should be allowed to maintain their added pension contributions and to enjoy the benefits initially contracted. Finally, we feel that a member should be able to have their added pension contribution recalibrated as an AVC under the relevant legacy scheme. There would be no need for compensation if this offer was chosen, rather the benefits would be exactly as if the discrimination had not occurred.**

**We don't agree that a member needs to provide evidence that they would have paid AVCs if they had remained on their legacy scheme. The fact is this ceased to be an option as a result of the discrimination being rectified. Members should therefore be given the opportunity to establish AVCs exactly as would have been available had they remained in their legacy plan. The contributions towards those AVCs should be set against the tax years (and with the available earnings limits/tax relief etc) that were in place in those earlier years. HMRC will be able to calculate the correct amounts of relief due in cases where this is not apparent from military records alone. The overarching principle must be to give members the same choices as if the discrimination had not occurred.**

**Question 14:** Do you agree with or have any comment on the approach the MOD has taken in opting for gross income to approximate tax relief amounts?

**Gross income for the years in question will be sufficient as a guide to levels of tax relief in many cases. However, HMRC should be able to quantify exactly the amounts due where the member has complex affairs (e.g. more than one set of earnings, AA tax bills etc).**

**Question 15:** Do you have any comment on the approach the MOD has taken to the AFPS05 MODO bonus scheme in respect of the retrospective remedy?

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The approach as currently planned can only work if enough information is provided to allow a member to make an informed decision in the context of their taxation obligations (including AA and income tax effects). We are not sure that an RSS will be able to cover this and specific cross reference to prior years Pension Savings Statements (PSS') may be required. Another possibility would be to make the payment of extra MODO bonus (as a result of rollback) an additional election point. If the member feels that it is likely they will eventually opt for reformed scheme then they simply return the extra MODO bonus payment (without the need for interest charges). In the event that when they leave service and they choose the legacy scheme, their MODO bonus can be restored (plus interest). We are aware of a possible challenge by the BMA regarding the legality of the MOD approach, which needs to be resolved before this aspect of the remedy can be finalised.

**Question 16:** Do you agree with or have any comment on the MOD's proposed policy for opted out service personnel to re-instate pensionable service in the AFPS?

We agree with the MOD's proposed policy with one exception. Our view is that if an EDM's application to have remedial service re-instated is successful, they should have 6 months to make their election choice from the date of the R-RSS. Three months is a short timeline to make an informed decision and respond, especially for an EDM who potentially has no experience of Armed Forces pensions. Detail also needs to be included as to how long an EDM will have to decide to opt back in. It is assumed this will be 12 months from the date of the scheme administrator's letter to make an application, the same as for pensioner, active and deferred members.

**Question 17:** Do you have any comments on the MOD's policy approach that the receipt of benefits under an Armed Forces redundancy scheme when service is terminated early should be an election point?

**Agreed. No additional comments.**

**Question 18:** Do you have any comment on the approach being taken in relation to pension transfers?

**No additional comments.**

**Question 19:** Do you have any comment on the MOD's approach to divorce policy and its application in respect of the retrospective remedy?

We think that the MOD's approach is, in the main, pragmatic and fair. In most cases, it allows Pension Debit Members (PDMs) to make the right election for themselves, unconstrained by the potential effect on their former partner. It also ensures that Pension Credit Members are not affected by their former partner's remedy election and will receive the highest value for their pension credit share.

One issue that appears to exist with the proposed approach concerns PDMs who were TP and with PSOs based on information provided before 1 October 2023. This is likely to apply to a very small number of members who had full accrual shortly after 1 April 2015; have had a period of marriage ending after this time but before the end of the remedy period; who served on until 31 March 2022; and choose the reformed benefits. It is our understanding that they would share all of the AFPS 15 benefits rather than a proportion of them based on the period of the marriage, if the PSO is submitted after 31 March 2022. This would normally have been calculated by the actuary had they have had the AFPS 15 CEV available. It appears their only option under the proposed approach would be either to obtain a revised

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**CEV (post 1 October 2023) and a further actuary report, or to postpone the PSO until after their election has been made and request a further actuary report at that stage.**

**Question 20:** Do you have any comment on the MOD's approach to re-joiners' policy and its application in respect of the retrospective remedy?

**We are content with the MOD's approach. Our only comment concerns AFPS75 transition members with continuity of service who on rollback will be returned to AFPS05 and will no longer be entitled to AFPS 75 benefits if the default position is applied to them, without adjustment. This will need to be made very clear to members on the RSS so that they do not make an erroneous and uninformed election choice.**

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.



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