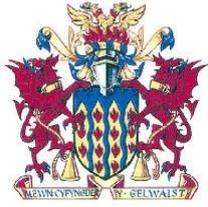


Report to	Executive Panel	
Date	19 June 2023	
Lead Officer	Helen MacArthur, Assistant Chief Fire Officer (Finance and Resources)	
Subject	Consultation on Remediating Age Discrimination in Firefighters' Pension Scheme Wales	

PURPOSE OF REPORT

- 1 To provide an update to members on the proposals for remedy in the Firefighters' Pension Scheme in Wales to address the age discrimination.
- 2 To seek approval from Members to submit the proposed response to the Welsh Government's consultation on providing remedy to eligible members affected by the age discrimination.

EXECUTIVE SUMMARY

- 3 The Welsh Government is currently consulting on proposed amendments to the pension regulations required to address the age discrimination associated with the firefighter pension schemes in Wales. This will require the implementation of a retrospective remedy, placing all members back into their legacy schemes for the period 2015-22 and offering members a choice of legacy scheme or 2015 scheme benefits, in line with the Public Sector Pensions and Judicial Offices Act 2022.
- 4 The consultation document can be accessed [here](#) and provides the principles that will underpin the draft regulations due to be laid before the Senedd. It is anticipated that the regulations will be implemented from 1 October 2023.
- 5 The proposed response to the consultation is contained within Appendix 1.

OBSERVATION FROM THE LOCAL PENSION BOARD

- 6 The proposed response to the consultation has been considered by members of the Local Pension Board with all comments incorporated.

RECOMMENDATIONS

- 7 Members are asked to:
 - (i) note the background to the consultation; and
 - (ii) approve the consultation response due by the 23 June 2023.

BACKGROUND

- 8 The Public Service Pensions Act 2013 (the 2012) introduced comprehensive reforms of public sector pensions across the UK. The overall aim was to reduce the cost of pensions to the public purse through the introduction of higher pension ages with pensions calculated on a Career Average Revalued Earnings basis (CARE), rather than the traditional final salary scheme. Transitional protection was contained within the legislation which was subsequently proved to be discriminatory on the grounds of age.
- 9 Since that time, the UK Government has confirmed that eligible members will be transferred back to their legacy schemes for the period of remedy which is 1 April 2015 – 31 March 2022. The Public Service Pensions and Judicial Offices Act 2022 is the primary legislation to implement the remedy and to empower responsible authorities.
- 10 As the firefighters' pension scheme is devolved in Wales, the Welsh Ministers have responsibility for drafting the underpinning regulations necessary to effect remedy.
- 11 The Welsh Government is currently consulting on proposed amendments to the pension regulations required to address the age discrimination associated with the firefighter pension schemes in Wales. This will require the implementation of a retrospective remedy, placing all members back into their legacy schemes for the period 2015-22 and offering members a choice of legacy scheme or 2015 scheme benefits, in line with the Public Sector Pensions and Judicial Offices Act 2022.
- 12 The consultation document can be accessed [here](#) and provides the principles that will underpin the draft regulations due to be laid before the Senedd. It is anticipated that the regulations will be implemented from 1 October 2023.
- 13 The proposed response on behalf of the North Wales Fire and Rescue Authority in its capacity of Scheme Manager is contained within Appendix 1.

IMPLICATIONS

Wellbeing Objectives	The pension arrangements promote long term stability in the workforce and the remedy addresses age discrimination.
Budget	The requirement to address remedy will impact financially on the Authority's financial position as pensions for those affected will be enhanced. The impact will be addressed via the valuation and setting of future employer contributions.
Legal	The Authority has a legal duty to address the age discrimination and comply with the scheme regulations.
Staffing	The provision of remedy will support staff in their retirement planning and support wellbeing.
Equalities/ Human Rights/Welsh Language	The remedy addresses previous inequalities.
Risks and Uncertainties	The provision of remedy is a complex area which unknown financial consequences.

Appendix 1

	Question	Response
	Scheme Membership	
1	How far do you agree with our proposal that, where an entitled member had multiple employment contracts during the remedy period with the same employer, all those contracts should be covered by the remedy, regardless of when they were entered into?	This would appear to be an equitable proposal - all members' "remediable service" being eligible to be put back into legacy schemes. It reflects that at the material date the employee was eligible for remedy and recognises the association between the contracts of employment (i.e. they all flow from the work of a firefighter)
2	How far do you agree with our proposal that all affected members who opted out of 2015 Scheme membership during the remedy period should be entitled to opt back in to their legacy schemes retrospectively, without having to show why they originally opted out?	The principle that a member who would have been eligible for remedy save for the opt out should be allowed to opt back in is reasonable. However, it is considered that restricting this to those members who opted out during the period of remedy (per para 38) requires further consideration as it appears too restrictive. An approach which allows Scheme Managers discretion to consider opt outs from an agreed date of knowledge may be more appropriate (e.g. 1 st April 2012 as set out in para 7(e)). This would, therefore, capture those eligible members who opted out of the scheme and made alternative provision earlier than the first day of remedy.
	Contributions	
3	How far do you agree with our proposal that scheme managers should be required to repay surpluses in contributions as a single lump sum only?	It is agreed that this is a reasonable approach and is manageable from the perspective of the Scheme Manager.
4	How far do you agree with our proposals that scheme members with a contribution's deficit should be allowed to choose whether to repay it as a lump sum or (if the deficit is at least £100) in instalments over a period of up to 10 years?	The approach is reasonable and can be administered by the Scheme Manager. However, unless the scheme member's contribution's deficit is substantial, they should be required to repay it sooner than 10 years. It would be helpful to understand what discretion individual Scheme Managers have to develop a scheme which deviates from the full 10 years. For example, would it be possible to develop a scheme whereby the monthly payment does not fall below that for a firefighter without any protection in 1992? That way, the recovery of relatively small amounts for those who benefited from taper protection are recovered in a timely fashion, thus reducing the administrative burden.

5	<p>How far do you agree with our proposals that scheme members who are entitled to a refund of remedy period contributions should be entitled to waive it, to avoid having to repay it on retirement?</p>	<p>The proposals set out in paragraph 59 appear reasonable and can be administered by the Scheme Manager (albeit requiring onerous communication with members). The principle of allowing those affected 12 months to confirm their indicative choice is again reasonable.</p>
<p>Choice Mechanisms</p>		
6	<p>How far do you agree with our proposals that immediate choice elections must be made in writing, and will be irrevocable?</p>	<p>The proposal is reasonable including the timescales within which those affected are required to make a decision. The provision that such choices are in writing and irrecoverable is supported.</p>
7	<p>How far do you agree with our proposals that deferred choice elections:</p> <ul style="list-style-type: none"> • must be made in writing; • must be made no later than the later of the date one year before benefits become payable, and the date the member gives notice of a claim for pension benefits; and • can be revoked and remade by the member before benefits come into payment? 	<p>The proposals appear fair although further consideration and clarity on the practical implications would be beneficial. It is not clear on the rationale for including a date of one year before taking benefits, as practically the date of notice of a claim for pension benefits is generally the date that a member submits their notice of retirement. At this stage it is anticipated that they will have received a pension forecast to enable the choice to be made in writing, but this is not always the case.</p> <p>The proposal to allow members to change their choice, presumably in writing, up to the point that the benefits come into payment needs further clarification. There will always be a period of elapsed time between the completion of the signed retirement documentation and the physical payment. Whilst it is accepted that the occasions where the decision is revoked may be limited, the administrative implications are significant and require processes to be overridden (e.g. intervening to cancel a BACS payment).</p> <p>It may be appropriate to consider the date that the pension comes into payment as the date on which the final documents are signed.</p>

8	How far do you agree with our proposals that deferred choice members who wish to retire shortly after 1 October 2023, and for whom the deadline for making a deferred choice has already passed on that date, should be able to retire on the basis that their remedy period service was in their legacy scheme; and that they should be able to make an immediate choice themselves following retirement?	This proposal is reasonable.
9	How far do you agree with our proposals that members who have multiple contracts with the same employer should make separate immediate or deferred choices in respect of each contract?	Within question 1 it was accepted that all multiple contracts would be in scope, irrespective of the date of commencement of those contracts. This effectively considers the contracts as a whole rather than as separate contracts at the date of commencement. Therefore, it would be reasonable to treat them similarly at the point of decision making. While each contract could be the subject of a separate choice by the member, it is reasonable to require the member to make those separate choices at the same time.
10	How far do you agree with our proposal that members or their survivors who do not make an immediate or deferred choice by the stipulated deadline should be deemed automatically to have chosen remedy period service in their legacy scheme?	This is a necessary and workable proposal and allows for the effective administration of the scheme. Presumably, this automatic choice of remedy period service in their legacy scheme will also be irrevocable, i.e., the member cannot choose differently after 12 months.
III Health Retirement		
11	How far do you agree with our proposal that entitled members who were granted IHR during the remedy period should be reassessed against the criteria of their legacy scheme or 2015 Scheme as the case may be, and offered an immediate choice between the entitlements that result; but that they cannot have an automatic right to be re-employed?	<p>It is fair and appropriate that those members who have been assessed and granted IHR during the remedy period are afforded the opportunity to consider their position under both the legacy and the 2015 regulations.</p> <p>The example in 98 (b) provides insight into the complexity of ill-health retirements within the regulations. In this example Firefighter J was fully protected and received a lower tier ill-health retirement. However, if assessed under the 2015 regulations and with the same presenting clinical circumstances could have either continued in employment as exemplified in para 102, or alternatively experienced either a voluntary resignation or dismissal on the grounds of medical capability as exemplified within para 104.</p>

		<p>Not affording an individual an automatic right to re-employment appears the right course of action given the associated complexities of the role including maintenance of fitness and competency. However, this example also highlights that further consideration may be necessary as outlined below to ensure that the individual does not remain disadvantaged by the original discrimination.</p> <p>Had Firefighter J been subject to the 2015 regulations at the material time they would have exhausted contractual sick pay within the two years of aggressive treatment, but still been protected under the Equality Act. Therefore, practically once ill-health was not granted the individual would be required to make a choice:</p> <ul style="list-style-type: none"> • Remain employed but on nil pay; or • Voluntarily resigned/dismissed and required to take up a non-firefighting role.
12	<p>How far do you agree with our proposal that scheme managers should not be required to re-examine cases where entitled members were not granted IHR and continued in employment?</p>	<p>This is a complex area and is considered that each case may turn on its own facts. The proposal would appear reasonable in the circumstance of Firefighter J being able to resume normal firefighting duties after two years and remain in that employment at the point of the remedy. However, the position is less clear had Firefighter J been able to remain in employment during the duration of the treatment but find themselves unable to sustain this in the longer term and seek retirement prior to normal pension age. For example, if Firefighter J resumed operational duties in 2022 but retired in 2024 the pension will be actuarially reduced and they may legitimately argue that they have been disadvantaged by the discrimination.</p>
13	<p>How far do you agree with our proposal that scheme managers should be required to:</p> <ul style="list-style-type: none"> • re-examine cases where affected members whose legacy scheme is the 1992 Scheme were not granted IHR but were dismissed on related grounds of poor fitness and/or attendance? and; • offer an immediate choice between a 1992 Scheme ill health pension and a deferred 2015 Scheme 	<p>The narrative in para 104 provides an example of an employee whose employment potentially ceases as a consequence of being of an ill-health retirement. Whilst the example outlines that this may be due to fitness it is considered that the example of Firefighter J in para 98 (b) perhaps provides a more likely example. In the event that Firefighter J was either dismissed or resigned following the outcome of the ill-health retirement assessment it would be appropriate to reconsider this.</p>

	<p>pension to any member who is found to have qualified for IHR under the former Scheme?</p>	<p>However, it is important to distinguish this case from those whereby a member was dismissed or resigned due to absence not considered appropriate for an ill-health retirement referral at that time. In these circumstances, it would appear reasonable to revisit the facts of the case to be assured that it did not meet the criteria for a referral to the IQMP under the legacy arrangements but an automatic right to an IQMP referral would not be considered advisable.</p>
<p>Survivors and survivor benefits</p>		
<p>14</p>	<p>How far do you agree with our proposal that, where an entitled scheme member dies without making an immediate or deferred choice:</p> <ul style="list-style-type: none"> • that choice should instead be made by an “eligible decision-maker” as defined in paragraph 111 above; and • that the 2015 Scheme criteria should be used in all cases to identify the eligible decision-maker 	<p>This is a difficult and sensitive area and the proposals set out in the relevant paragraphs are reasonable and workable. The proposals provide clarity for the Scheme Manager to address potentially difficult and conflicting situations.</p>
<p>15</p>	<p>How far do you agree with our proposals that:</p> <ul style="list-style-type: none"> • If there is no agreement on the identity of the eligible decision-maker, or if the eligible decision-maker fails to make a decision by the deadline, the scheme manager must deem that an election for remedy period service in the 2015 Scheme has been made; and • If a scheme member makes a valid immediate or deferred choice before s/he dies, that choice will be honoured and that no survivor would be entitled to revisit it. 	<ul style="list-style-type: none"> • It is noted that this proposal most likely places the beneficiaries in the best position and is, therefore, the preferred option. Will provision be made within the regulations for discretion to be applied where this choice is demonstrably detrimental to the beneficiaries? • The proposal not to revisit a valid choice by a scheme member would appear reasonable. Clarity on what would invalidate the choice would be helpful (for example, if the affected beneficiaries could demonstrate the member did not have sufficient mental capacity or information to make an informed choice at the time?)

16	<p>How far do you agree with our proposals that:</p> <ul style="list-style-type: none"> • Historic overpayments of survivor benefits to survivors who are eligible decision-makers should be recovered from them, but overpayments to other survivors should be written off; and • Only the eligible decision-maker would be eligible to receive a contributions surplus, or liable to repay a contributions deficit, arising from her or his choice. 	<p>The proposal to recover overpayments from eligible decision-makers is reasonable and the arrangements for other survivors appropriate. Similarly, the arrangements for contribution surplus or deficit are workable. Consideration of the payback period of historic overpayments should be made to avoid undue hardship.</p>
17	<p>How far do you agree with our proposals that:</p> <ul style="list-style-type: none"> • Death lump sums for members who died during the remedy period should be recalculated in line with the eligible decision-maker's choice, and any reduction in a lump sum paid to the eligible decisionmaker should be recovered from her or him; but • Surpluses in death lump sums that were paid to persons other than the eligible decision-maker, or to the deceased's estate, should be written off. • Where an affected member died during the remedy period leaving no-one entitled to a survivor's pension, but with a valid nominee for a 2015 Scheme death lump sum, the scheme manager should simply pay that sum without needing to offer the nominee a choice. 	<p>The administration of arrangements for deceased members is always sensitive and proposals set out are reasonable. It may be appropriate to consider the period over which reductions in lump sums should be recovered to avoid undue hardship.</p>
Added Pension		
18	<p>How far do you agree with our proposals that:</p> <ul style="list-style-type: none"> • Entitled members who purchased 2015 Scheme additional pension during the remedy period will be able to receive a refund of the cost of that, plus interest; but 	<p>This proposal is workable and supported.</p>

	<ul style="list-style-type: none"> Members who are to make an immediate choice will not receive that refund if they make an immediate choice in favour of the 2015 Scheme. 	
19	<p>How far do you agree with our proposals that:</p> <ul style="list-style-type: none"> Affected members would have a right retrospectively to purchase added pension benefits in their legacy schemes during the remedy period, on the same terms as applied to such purchase and with the cost of doing so adjusted for interest; and Any such choice must be made within one year of a member receiving her or his initial remediable service statement. 	<p>No comments are made on the specific proposal, although clarity on the arrangements for making good the contributions would be helpful (i.e. is the working assumption that the deficit will be made good over a period of up to 10 years correct).</p>
Divorce and dissolution		
20	<p>How far do you agree with our proposals for pension attachment orders, namely that:</p> <ul style="list-style-type: none"> Where a pension attachment order is already in force but the pension is not yet in payment, no action is to be taken; Where a pension attachment order is already in force and the pension is already in payment, the pension payable to the pension credit member may change as a result of the pension debit member's immediate choice, but that any historic overpayment of such pension arising from the choice is written off; For divorces and dissolutions taking place in the future but before the pension debit member has made a deferred choice, CETVs for remedy period service in the 2015 and legacy schemes 	<p>The proposals are reasonable and provide clarity. In terms of divorces/dissolutions in the future it is appropriate for the court to receive the CETV for both the legacy scheme and the 2015 scheme to enable it to make an informed decision.</p>

	should be calculated, and the court should use the higher of the two.	
21	<p>How far do you agree with our proposals for pension sharing orders already in place on 1 October 2023, namely that:</p> <ul style="list-style-type: none"> • Remediable service statements for entitled pension debit members include pension debits based on remedy period service in the legacy and 2015 Schemes (and immediate and deferred choices are made accordingly); • Scheme managers should recalculate CETVs at the point of divorce or dissolution based on the scheme of which the debit member was not a member at the time; and • If that CETV is higher than the one used by the court, then the pension credit member should receive a pension credit for the difference between them. 	The proposals are reasonable and provide clarity. In terms of divorces/dissolutions in the future it is appropriate for the court to receive the CETV for both the legacy scheme and the 2015 scheme to enable it to make an informed decision.
22	Do you favour such a pension credit being applied automatically to the pension credit member's benefits in whichever scheme had the higher CETV; or should such members be offered a choice about that?	The application of pension credits to the scheme with the higher CETV would appear be a practical solution.
23	<p>How far do you agree with our proposals for pension sharing orders that are made on or after 1 October 2023, namely that:</p> <ul style="list-style-type: none"> • For active and deferred members, the CETV provided to the court should be based on remedy period service in the legacy scheme. • Where such members then make a deferred choice for remedy period service in the 2015 Scheme, their pension debit is adjusted accordingly (but the 	These proposals appear fair and reasonable and it is agreed that for future divorces/dissolutions that the court receives a CETV for both the 2015 and legacy scheme benefits.

	<p>pension credit member's benefits do not change); and</p> <ul style="list-style-type: none"> For retired members who enter into a divorce or dissolution after making an immediate or deferred choice, the CETV provided to the court reflects that choice. 	
24	<p>How far do you agree with our proposals for pension offsetting arrangements, namely that:</p> <ul style="list-style-type: none"> Where offsetting arrangements are already in place when our regulations come into force, no action is taken; and For divorces and dissolutions taking place in the future but before the pension debit member has made a deferred choice, CETVs for remedy period service in the 2015 and legacy schemes should be calculated, and the court should use the higher of the two. 	<p>These proposals appear fair and reasonable and it is agreed that for future divorces/dissolutions that the court receives a CETV for both the 2015 and legacy scheme benefits.</p>
Transfers between schemes		
25	<p>How far do you agree with our proposals for club transfers during the remedy period, namely that:</p> <ul style="list-style-type: none"> The scheme manager for the sending scheme should calculate the alternative set of benefits for unprotected members based on legacy scheme service during the remedy period, and communicate that to the scheme manager for the receiving scheme, who should convert that into service in the relevant legacy scheme; The scheme manager for the sending scheme should calculate the alternative CARE scheme benefits for protected members and communicate that to the receiving scheme manager so that an 	<p>In broad terms the proposals appear reasonable although the rationale for not requiring payments between schemes other than for LGPS is not fully supported. Whilst it is recognised that such payments are bi-directional the value may be significant for senior staff, especially where there may have been a number of promotions during the remedy period and it is not known whether the transfers will balance out. Clarity would also be required on the responsibilities of the scheme manager for the sending scheme to provide details of backdated contributions due by the member. This will be especially important for members closest to retirement.</p>

	<p>alternative benefit amount can be created in the receiving scheme; but</p> <ul style="list-style-type: none"> • Other than for transfers to or from the LGPS, there is no need to amend the actual payment from the sending scheme to the receiving scheme. 	
26	<ul style="list-style-type: none"> • How far do you agree with our proposals for non-club / CETV transfers during the remedy period and up to 30 September 2023 namely that: <ul style="list-style-type: none"> • The scheme manager for the sending scheme should recalculate the CETV based on service during the remedy period in the scheme other than the one from which the member transferred. Any contributions deficit, net of tax, should be deducted from it, and any contributions surplus, net of tax, should be added to it. • If the result is higher than the CETV that was used at the time of transfer, the scheme manager should make a supplementary transfer payment for the difference, plus interest, to the scheme manager of the receiving scheme. • If the receiving scheme cannot accept such a payment, it should instead be made to the member directly, as compensation. 	The proposals set out appear reasonable and workable.
27	<p>How far do you agree with our proposals for transfers in the future, namely that:</p> <ul style="list-style-type: none"> • The scheme manager for the sending scheme should calculate two transfer values or CETVs, based on the member's remedy period service being in the 2015 Scheme and her or his legacy scheme. • For CETVs to schemes outside the public sector, if the member has not yet made good any 	These proposals appear reasonable and workable.

	<p>contributions deficit or received any contributions surplus, that should be subtracted from or added to the relevant value.</p> <ul style="list-style-type: none"> • The higher of the two values should then be used for the purposes of the transfer. 	
28	<p>How far do you agree with our proposals to allow affected members to revisit and reverse transfer decisions made during the remedy period, provided that both the sending and receiving scheme can permit a transfer to be retrospectively made or reversed?</p>	
Equalities impacts		
29	<p>We are interested in understanding whether the proposals in this consultation document will have an impact on people with protected characteristics. Protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation. Do you think that the proposals in this consultation will have any positive or negative impacts on people with protected characteristics? If so, which and why/why not?</p>	<p>The proposals set out in this document appear to consider those with protected characteristics.</p> <p>The ill-health retirement proposals address the differential benefits and assessment criteria between the two schemes and provide a workable framework. However, it is observed that those members who continued to work or were dismissed may consider that their detriment has not been fully assessed. It is acknowledged that this may not be possible to reasonably achieve within the framework of the regulations and that further compensatory payments may be required.</p> <p>The socio-economic duty is considered through the use of a repayment period extending up to 10 years for contributions due from members.</p> <p>The write off of monies due from beneficiaries other than the eligible decision maker appear to provide financial protection for those affected and are consistent with the principles of the socio-economic duty. However, the proposals for the recovery of money from eligible decision makers would benefit from further consideration to ensure that financial hardship is considered (e.g. what discretion will the</p>

		scheme manager have to write off such amounts or collect amounts due over an agreed period).
30	We would like to know your views on the effects that the above proposals would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?	The provision of the regulations in both English and Welsh ensures that all those affected have appropriate language choices.
31	Please also explain how you believe the proposed policy could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.	No further comments in this respect.
32	Do you have any other comments on our proposals which are not covered by the other questions in this consultation?	The proposals set out in the consultation document are very comprehensive and provide a workable framework for the provision of remedy.