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Consultation on changes to the Firefighters' Pension Scheme (England) 2006

The [Firefighters Pensions \(England\) Scheme Advisory Board](#) (the Board) submits its response to the Home Office consultation seeking views on the draft Firefighters' Pension Scheme 2006 (England) (Amendment) Order 2023. Thank you for the opportunity to provide this response.

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 in response to a request from the Secretary of State on the desirability of making changes to this scheme and any connected scheme and to provide advice to scheme managers and local pension boards in relation to the effective and efficient administration and management of this scheme and any connected scheme.

While not directly relevant to the consultation, we would like to provide some background and context to the administration and management of the scheme, which provide unique challenges to the implementation of Matthews.

Under the scheme regulations, each of the 44 Fire and Rescue Authorities (FRAs) are responsible for the management and administration of their scheme for their employees and are defined in law as the scheme manager. This puts the responsibility to comply with overriding pension legislation on each of the political bodies charged with governance of the Fire and Rescue Service (FRS), i.e., Combined Fire Authorities, PFCCs, County Councils, Mayoral functions etc.

Each FRA is required to administer the pension scheme either in-house or through appointing a third-party administrator. There are currently 12 different pension administrators in England, ranging from single client sites to the largest administrator with 23 FRA clients. They are mostly not for profit organisations, with one known exception,

and are often linked to LGPS administering authorities. This complex picture means that ensuring consistency between FRAs is difficult and this is especially relevant in the case of Matthews where there will have been different practices with regard to the employment of retained firefighters and to the retention of data.

The Board has been informed, on a number of occasions, that the management of this second options exercise has been informed by learning from the first. However, the Board notes that this second exercise is considerably more complex than the first, given the much longer historical timespan involved. Our responses to the questions raised by the consultation are contained in the attachment but more generally we believe that more thought and clarity is required in the following areas if the exercise is to be successfully and fairly administered for the affected members:

Eligibility

Whilst the consultation asks about whether the correct conditions are being applied for eligibility, we do not believe that sufficient consideration has been given as to how eligible individuals will be made aware of their eligibility. We note that take up was very low for the first exercise and that this may have been a function of both the communications used but also the potential for those communications to have been sent to out-of-date addresses. Another significant period of time has elapsed since the first exercise, and we note that existing deferred members and those never in the scheme are particularly unlikely to have kept their former employers or their administrators up to date with their addresses.

The Draft Regulations, prepared in accordance with the Memorandum of Understanding¹, require only that communications are sent to the last address on record. The Board is aware that many of the FRAs are nonetheless embarking on member tracing exercises and are, in some cases, sharing details with others on how to achieve this. We believe that this is a necessary action and hope that the Home Office will assist with the promotion, roll out and financing of such exercises to all the FRAs affected.

The Board was also made aware that membership groups and unions may also be able to help in making “lost” eligible individuals aware of the exercise and we hope that they will be able to do so. We would recommend that further thought is given to other measures, such as media coverage and advertising, that might be taken to reach former employees who may never have been deemed eligible to join and for whom their former employers may have removed all personal data. We think that the regulations might include specific flexibilities in the processing timetable for such individuals.

¹ As agreed between the Home Office, the Fire Brigades Union, the Fire and Rescue Services Association, and the LGA (on behalf of FRAs) in March 2022

Data

We have received presentations from the Government Actuary's Department (GAD) regarding the availability of data and note that pay information is not expected to be complete, especially for those with service dating back a number of decades before 2000. Whilst the data that has been shared by GAD from those able to supply it is broadly supportive of the assumption of an average pay rate of 25% of whole-time firefighters, we note that the evidence also shows considerable variation. Given this is the case, the Board considers that it is desirable, where at all possible, to use individual data. We are pleased to see that the process does allow for the person to provide the authority with relevant documentation. However, it would be desirable for the individual to be given the time and means to obtain this data where possible. It may be possible that individuals can request historic pay data from HMRC by means of form HMRC 07/18, although this process can be very lengthy. The regulations and processes should allow sufficient flexibility to allow a firefighter to have the time in the 18-month period to be able to request data from other parties, and to be able to submit any such improved data, even if obtained after the end of the 18-month period for use in the calculations of their past service benefits and costs.

Interaction with McCloud

We understand that subsequent to the consultation being launched, the Home Office has received advice that, under this exercise, members should only be able to purchase service up until 31 March 2015, with any further service up until 31 March 2022 being dealt with by means of additional regulations in the McCloud remedy. We understand that it is the intention to document explicitly the rights of eligible "Matthews" members to purchase such additional service in accordance with the McCloud terms. We look forward to receiving the additional regulations in this regard as soon as possible to ensure that there is a common understanding of the processing and contribution requirements. We hope that Home Office will work with the administrators on the processes which should be put in place when considering the payment of pensions and lump sums if Matthews service can be bought through McCloud,

Financing arrangements

The consultation document indicates at 5.69 that the deficit created by the Matthews remedy will be addressed through the actuarial valuation process and spread over a period of 15 years from the implementation date. We further note that FRA's pension cost pressures will be considered as part of wider funding agreements. We look forward to receiving more information in this regard. The Board is aware that different FRAs might have proportionately more members impacted by this exercise and would suggest that GAD be asked to prepare some analysis to consider the materiality of this and whether any special arrangements for the allocation of the employer element of the costs is necessary.

We note also that this second exercise will involve considerable FRA and administrator time which will form part of the cost pressures. The administrative challenges are considered further below.

Administration challenges

The Board notes that administering the options exercise is complex, may entail the creation of new processes between the FRAs and their administrators, and that resource is already expected to be stretched administering the McCloud remedy. It is for this reason that the Board is keen to promote sharing of solutions and information. Our suggestions in this regard would include ensuring that any data inputs which are not required for calculation purposes are minimised, that any guidance given by GAD over model use or creation of precedents is shared with model users as soon as possible and that model outputs are created to enable bulk inputs to the systems and administration interfaces being created.

Taxation

Tax relief for contributions

The Board notes the provisions of paragraph 5.25 to 5.28. We note that the individual is assumed to be a 20% rate taxpayer unless they can provide robust evidence to the contrary. We would note that the basic rate tax was considerably higher than 20% for many of the earliest years of service that the member might have. Hence, we believe that guidance needs to be given as to whether the “higher marginal tax rate” referred to in 5.27 would include such basic rate taxpayers. If this is the case it would be simplest all round for the GAD model to include the actual basic rate tax associated with the year in question.

Annual Allowance

Under 6.7 – 6.8 of the consultation, consideration is given to the impact on the annual allowance of purchasing additional service. The consultation suggests that the increase in pension will be taxed in accordance with when the contributions for it are made, rather than the tax rules at the time the pension would have been earned if the member had not received unfavourable treatment for being part time. It is not clear how accrual will be allocated to the individual tax years if periodic pension payments are made.

We note that individuals suffering financial detriment as a result of the annual allowance tax charges will be considered on a case-by-case basis, but it is not clear what the process for this would be and by whom the cases should be considered. Nor is it clear how it can be ensured that different decision makers take decisions on a consistent basis.

Contracting out

Section 6.6 of the consultation states that individuals who claim to have suffered financial detriments because of not being contracted out will be considered on a case-by-case basis. Establishing any such detriment will require comparison of the difference between the contracted out and contracted in member contributions paid versus the extra amount of State Pension secured through being contracted in. As for the Annual Allowance, it is not clear by whom and how such consideration will be made.

Other gaps in policy

We note that unresolved issues remain with regard to aggregation and that the Home Office is considering its response to claims in this regard. We would welcome further information on aggregation in due course.

In addition, the Board understands from discussions with the Home Office that there is the intention to allow members with the option to change the decision that they made during the first options exercise. We think that the final Regulations will need to cover this situation and look forward to receiving a draft as soon as possible to ensure that the FRAs are able to administer the changes.

If you have any questions, please let me know.

Yours sincerely,



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

Consultation questions

Question 1. Are the categories of individuals that have been identified as being eligible to join the modified scheme as part of the 2023 Options exercise appropriate?

1. The Board are in agreement that the correct categories of individuals have been identified as being eligible. However see our covering letter for comments on the distinction between identifying the members and ensuring that they are given an opportunity for inclusion in the exercise.

Question 2. Do the categories of individuals that have been identified as being eligible to join the modified scheme as part of the 2023 Options exercise include everyone who ought to be included?

2. The Board believes that this is the same question as question one, and are therefore in agreement that it does.
3. We are pleased that the exercise recognises those who were not given a reasonable opportunity to join, but should have been, in the first options exercise.
4. We would like clarity on 5.2, bullet point 4 in the consultation document, as to the expectation for providing individuals with their options. This part of the consultation document suggests that FRAs would only write to those who initially expressed an interest. The Board has concerns that if only those who have expressed an interest are written to, this would lead to FRAs having a group of individuals in the future who are in the same position as those in cohort 3 in this exercise, i.e. those not given their options in the first options exercise as they didn't express an interest.
5. We would also like clarity on 5.2, bullet point 3, as this suggests that those who were not notified by their FRA would have nine months from the date that the legislation comes into force to express their interest. The concern is that if they did not know about the exercise, because they were not notified by the FRA, then how could they express an interest. The Board would therefore like confirmation that this is not contradictory to 5.3 within the consultation document, which suggests that there will be provision for flexibility for those who were not identified by their FRA within the 18 month implementation window.

Question 3. Do the proposed amendments to the Firefighters' Pension Scheme (England) Order 2006 achieve the policy intention of ensuring all individuals in Cohort 1 can purchase any of their uninterrupted retained service in the modified scheme and place these members in the position they would have been had they been entitled to purchase their service at the time?

6. Whilst the proposed amendments enable individuals in Cohort 1 to purchase their uninterrupted retained service in the modified scheme we note the following:

- The members will only be in that position if they are able to hear about the exercise.
- The member will be paying contributions at a different point in time and are now subject to different pension taxes. Retrospective contracting out is also no longer possible.
- More data might have been available at the time of the first options exercise.
- The member may have taken actions in the meantime which are now potentially difficult to reverse. Examples would include paying for added years where the member would now breach the service cap if they purchased their uninterrupted retained service in the modified scheme, or if they previously took a trivial commutation where the benefits would now exceed the triviality limits if they purchased their uninterrupted retained service in the modified scheme.
- If service purchase is to be limited to 31 March 2015 then the dates in the regulations will need to reflect this.

Question 4. Do the proposed amendments to the Firefighters' Pension Scheme (England) Order 2006 achieve the policy intention of ensuring all individuals in Cohort 2 can purchase any of their uninterrupted retained service in the modified scheme and place these members in the position they would have been had they been entitled to purchase their service at the time?

7. See our comments under question 3

Question 5. Do the proposed amendments to the Firefighters' Pension Scheme (England) Order 2006 achieve the policy intention of ensuring all individuals in Cohort 3 can purchase any of their uninterrupted retained service in the modified scheme and place these members in the position they would have been had they been entitled to purchase their service at the time?

8. See our comments under question 3

Question 6. Are there any changes to the proposals required for those individuals who are entitled to both the Matthews remedy and McCloud/Sargeant remedy simultaneously?

9. We understand that the proposals have been changed. Our comments on this interaction with McCloud are set out in our covering letter.

10. Based on the above, under Schedule 2, Amendment of Part 1, under the definition of "extended limited period" d) would require amendment to 31 March 2015 if

firefighters are not able to buy their membership beyond that date.

Question 7. Do the proposed changes to the special death grant and additional death grant sufficiently address the scenario where the deceased member had pre-2000 service?

11. We understand that the Home Office has received actuarial advice on this matter from the Government Actuary's Department. Whilst GAD has shared some data, we have not been sighted on the detailed actuarial advice and we are aware that the theoretical lump sum equivalent to a spouse's pensions will depend both on the individual member's service and circumstances and on the actuarial assumptions used for assessment.

12. We note that the consultation document makes the following statements:

According to footnote one of point 5.36 of the consultation document:

"¹ In setting the level of these payments, Home Office has had regard to the range and net capital value of benefits that survivors could have received had the deceased individuals had access to modified scheme benefits. That is the broad range and capital value of survivor pensions net of member contributions eligible survivors would have received had the deceased individuals been members of the modified scheme and had pensionable service in that scheme to the extent allowed under the 2023 Options exercise."

And point footnote 2 of point 5.40 of the consultation document:

"² In setting the level of these payments, Home Office has had regard to the range and net capital value of benefits that survivors could have received had the deceased individuals had access to modified scheme benefits under the terms of the 2023 Options exercise rather than the 2014 Options exercise. That is the broad range and capital value of survivor pensions net of member contributions eligible survivors would have received had the deceased individuals been members of the modified scheme and had pensionable service in the scheme to the extent allowed under the 2023 Options exercise in addition to those received due to their election under the 2014 Options exercise"

As noted in 11, the Board feels that the Fire Sector would need both the data and actuarial assumptions to be able to respond to Question 7.

13. We would also like to highlight in amendment of Part 5:

13.1. Under “Death grant for extended limited period” 1B(2) and (3), a date of 30 September 2024 is given as the deadline date for a beneficiary to apply for the death grant. This date does not allow for cases where the FRA has been unsuccessful in contacting the individual in that timeframe.

13.2. Under “Additional death grant” in 1C(a), we believe that this date would be 7 April 2000 and not 1 July 2000.

13.3. Furthermore under 1C(c), it references that if someone has died before 31 March 2025 that under (2) and (3) they would be able to make an application up until 30 September 2024. This is an earlier date than the qualifying date and therefore we believe this needs to be amended to a date post 31 March 2025 and provision made for those beneficiaries who an FRA has been unable to trace.

14. We would also like clarity as to why the wording under 1C(5) is different to that under 1B(5), which also differs from the existing rule 1A(5) of Part 5. We would suggest that 1B(5) is amended to the existing wording for consistency with the other two:

“1C(5) The authority may request from the person making the application under paragraph (2) or (3) such information required to enable the authority to determine the deceased’s pensionable pay, or, where no information is provided, the authority may determine the amount of pensionable pay from their records.”

“1B(5) The authority may determine the amount of the deceased’s pensionable pay based on –

a) Information provided by the person making the application in response to a request by the authority, or

b) If no information is provided, the authority’s records.”

“1A(5) The authority shall request from the person making the application under paragraph (2) or (3) such information required to enable the authority to determine the deceased’s pensionable pay, or, where no information is provided, the authority shall determine the amount of pensionable pay from their records.”

Question 8. Are there any additional points not covered in this consultation paper that need to be considered as part of the proposed changes to the Firefighters’ Pension Scheme (England) Order 2006?

15. Our covering letter includes a number of areas where further consideration is

needed. Some of these are included in the list below which also details a number of the practical issues with the proposed changes to the regulations. We have not repeated the comments on tax matters as we assume that such matters will not go into the regulations themselves.

Definition of Reasonable Endeavours

16. The Board believes that it would be desirable to explore further what would constitute “reasonable endeavours” as stated in 5.2 of the consultation document in the context of the Matthews second options exercise. This will help those involved in the exercise to understand what measures they could and should take to identify individuals, for example whether reminder letters are necessary. The covering letter notes the importance of consistency, for example in whether fire authorities should undertake tracing exercises where addresses are not known.

Timeline for responses

17. The Board notes that the draft provisions give a timetable of when the exercise must be undertaken. We believe that this timetable does not give sufficient time for fire authorities to calculate the potential benefits which a firefighter may be able to purchase.

18. Note 5.2 of the consultation document states:

- Eligible persons would indicate their interest in joining the scheme by applying to the relevant FRA for a statement of service accompanied by certain information. This information would confirm their details of service during the extended limited period (as further explained at 5.16 below), and other relevant details such as any service purchased as part of the 2014 Options exercise (if applicable). This would take place within six months of receiving notification from the FRA.

19. We believe that as this stage only requires the firefighter to indicate an interest in the options exercise, then this period needs to be reduced to three months. Six months is too long for this initial stage.

20. Note 5.2 of the consultation document also states:

- FRAs would write to each eligible person who indicated an initial interest in joining the modified scheme within three months of the date of receiving their application. FRAs would set out the amount of special service that eligible individuals have entitlement to purchase during the extended limited

period and the associated costs of purchasing those past service rights.

21. The timeframe of providing each firefighter with the costs and details of special service within three months will be unachievable and the Board believes that this should be changed to six months. Given that fire authorities will be calculating benefits which we know through GAD's data collection go back to the 1960s and given that McCloud means that fire authorities are simultaneously having to enact the age discrimination remedy at the same time then the change to six months is absolutely necessary for the Matthews second options exercise to be completed. This is more likely also to give fire authorities time to deal with complex cases such as ill health retirements which, according to the regulations, will need referring to the Scheme Actuary. We note that if there is delay in processing of cases by the Scheme Actuary or more generally if the member wishes to obtain data from sources such as HMRC, then the timescales could easily be breached and we believe that the regulations should allow for this.
22. Additionally we are aware that firefighters will have the option to buy parts of their service and if firefighters request different scenarios then this will ultimately affect the time that the fire authorities need to complete the Matthews second options exercise.
23. We therefore believe that the timescales may need to be set aside if more data is awaited or if the member makes multiple data requests,
24. Note 5.2 of the consultation document also states:
- The eligible person would confirm to the appropriate FRA, within six months of receiving this information, that they wish to take up membership of the scheme and pay the required historic contributions. They would also be required to elect the date that they wish their service in the modified scheme to begin (the start date of the 'mandatory special period').
25. The Board believes that giving the firefighter six months to decide is too long and should be reduced to three months. Feedback from administrators has also raised the point that giving a person six months to respond increases the risk of non-replies. Giving a shorter timescale would be more appropriate. Note that the definition of receipt of information will need to be defined to cater for multiple data requests.

Differences between the first and second options exercises

26. As already noted, members may be in a different situation from when the first

exercise was carried out either due to changes in the pensions environment as a whole or to their own decisions

27. At the Scheme level, the Board understands that the individuals can no longer be retrospectively contracted out at the time of the Matthews second options exercise. We also understand that where individuals can prove that they will be detrimented as a consequence of this, that they can request that this is rectified. The Board would like clarification on the process that should be followed for these cases.

28. At an individual level we have identified issues such as trivial commutation and payment of added years (see our response to Question 3). The Board would like clarification as to how such cases should be treated.

Option to change 2014 retained exercise decision

29. The Board understands from discussions with the Home Office that there is the intention to allow members with the option to change the decision that they made during the first options exercise. As this is not covered in the regulations, we believe that these should be amended appropriately to reflect this policy intention.

Recommended Regulation amendments and queries

30. We understand that the LGA has provided a list of detailed Regulation amendments and queries. The Board has not sought legal advice for its own response and has therefore not included these points in its response. We trust that the Home Office will work through the suggestions and provide responses to LGA.

31. The draft amendment regulations refer to cases needing to be referred to the Scheme Actuary. The Board feels that clarity is needed in the regulations as to whether these references simply mean that fire authorities should refer to GAD guidance or whether specific scenarios do need individually referring to the Scheme Actuary. This clarification may assist fire authorities when planning how long a case may take to complete.

Question 9. The scheme will also provide an additional top up to the special death grant in respect of an individual's pre-7 April 2000 service. The Special death grant will provide eligible survivors with a single lump sum payment equal to 0.1 times the deceased member's pensionable pay for each full qualifying year of service that the deceased member had prior to 7 April 2000. Do you agree with this policy?

32. We are not clear how this question and Question 10 differ from the question 7. Therefore please see answer to question 7.

Question 10. Members who joined the modified scheme as part of the 2014 Options exercise and who have pre-July 2000 service but have subsequently died will receive an additional death grant in relation to such members' pre-July 2000 service. The additional death grant will provide eligible survivors with a single lump sum payment equal to 0.1 times the deceased member's pensionable pay for each full qualifying year of service that the deceased member had prior to 1 July 2000. Do you agree with this policy?

33. Please see our response to questions 7.

Question 11. It is proposed that where there is an absence of pay data for pre-July 2000 membership, FRAs can assume that the retained firefighter earns 25% of the pay of a WT firefighter, and that they will be employed at the rank of a firefighter. Do you agree with this policy?

34. We are glad that a default has been included but see our covering letter for our views on how data gaps could be addressed.

35. The Board would also like to highlight that it may not be possible to work this out for all firefighters. This is because firefighter pay scales do not exist for all relevant years.

Additionally where pay scales are available, the Board would like confirmation as to which elements of these pay scales should be used. The 1977 pay scales, for example, splits the firefighter role into Firefighter, Long service Firefighter, Leading Firefighter, Firefighter (age 18 years). This is to ensure consistency across the sector.