

Meeting of the Board 10 December 2020

## Immediate Detriment Data

### Introduction

1. At their meeting on 17 September 2020 under [item 5.4](#), the Board were asked to consider immediate detriment and their expectations of FRAs to utilise the [guidance issued by Home Office](#).
2. The Board were briefed on a range of technical issues that the guidance did not cover. While the Board understood that these technical issues might impede payment of immediate detriment cases, the numbers of members impacted by these issues was not clear.
3. There was a clear appetite from the Board to support immediate detriment payments.
4. The Board agreed that more information should be sought on the quantum of members impacted by the issues raised in the paper.

### The information requested

5. It is for FRAs to determine for themselves what powers they have to make immediate detriment payments under the current regulations, and whether those powers are different based on whether the member is a claimant for whom the interim order made by the Employment Tribunal on 18 December 2019 is in place, or a non-claimant.
6. [FPS Bulletin 37 - Sept 2020](#) asked FRAs to return a [data request](#) providing details on the numbers of members expected to fall into the immediate detriment categories before 31 March 2022.
7. The data request asked FRAs to note the numbers of members, split between claimant and non-claimant cohorts, and asked if any of those eligible members had any of the following on their records:
  - CETV
  - Divorce
  - Final Salary Data
  - Added Pension

## **CETVs (Cash Equivalent Transfer Values), otherwise known as transfers-in**

8. The position in the Home Office guidance suggested that transfers-in should be re-calculated under FPS 1992 terms. However, the FPS 1992 regulations limit transfers to being accepted within 12 months of employment only and are restricted to buy a maximum of 30 years' service. There are also no current GAD factors for transfers-in for FPS 1992 as the scheme has been closed since 2006.
9. When the FPS 2015 was introduced and members were automatically moved into this scheme, it opened a new window with no timing restrictions for transfers-in, and several members transferred pensions into the FPS 2015.
10. Under immediate detriment it is unclear whether those transfers should now be treated as FPS 1992 benefits, even though under the FPS 1992 rules they would not have been eligible due to timing, and/ or it might put members over the 30-year service cap.
11. In order to understand how much of an issue this could be for FRAs considering immediate detriment payments more information has been sought from FRAs.

## **Divorce**

12. When a member divorces the value of their pension can be considered by the court as part of the financial settlement and they may determine that a pension share order (PSO) can be awarded to the ex-spouse/civil partner.
13. A PSO on the record creates a pension debit for the member and a pension credit for the ex-spouse, these are calculated in accordance with GAD factors.
14. When the 2015 reforms were introduced, we understand that the policy intent was that only the member would benefit from any protection and that all pension credit members would receive pension under the terms of the FPS 2015 only. However, that position was not finalised in the secondary legislation, and it is for the court to determine which scheme the pension credit should sit in for the pension credit member.
15. This means that for some members who divorced after 2015 they will have a pension debit that applies to both portions of pension built up in the legacy scheme and the reformed scheme.
16. For members who wish to receive benefits as if they have never been in the FPS 2015, a question arises as to how any pension debit that applies to the FPS 2015 should be treated.

17. A policy decision by HMT is needed in order to know how to treat members with a divorce. Paragraphs A.58 to A.62 of the [HMT consultation](#) cover their comments on this.
18. As such the Home Office immediate detriment note did not comment on divorce cases for immediate detriment members.
19. In order to understand how much of an issue this could be for FRAs considering immediate detriment payments more information has been sought from FRAs.

## **Final salary data**

20. For the FRA to calculate the benefits that would have been paid under legacy terms, information needs to be available on final salary entitlements.
21. The immediate detriment note did not comment on the information that would be required to calculate final salary entitlements under:
  - 21.1. Additional Pension Benefits (APBs). Under the final salary schemes, certain pensionable payments such as continuous professional development (CPD), and temporary promotions are pensionable under an APB. To calculate these APB entitlements under legacy scheme terms, the FRA would need to identify where these payments had been made to the member.
  - 21.2. Two pension entitlement. As a final salary scheme, to protect against a drop in pay, the regulations provide for the pension to be split into two elements, the first calculated at the highest pay and the second based on pay at retirement. To calculate pension under final salary terms, an FRA would need to identify if there had been any drop in pay that occurred after 2015 that would trigger a two-pension entitlement.

## **Added pension**

22. Under the FPS 2015 a member can pay contributions to purchase additional pension.
23. In order to make up for what they considered to be a loss in pension by moving to the FPS 2015 some firefighters chose to buy added pension with the additional contributions they would have paid under the FPS 1992. This can also be attractive to retained firefighters in order to build pension in a public sector scheme, depending on their employment elsewhere.

24. It is not clear how added pension paid for under FPS 2015 should be treated under the legacy schemes, which provide for added years of service. Some members who bought added pension in the FPS 2015 would not have been eligible for added years in the legacy scheme or this would put them over the maximum service allowable.
25. It is not known how many members with an immediate detriment claim might have bought added years.

## Results

26. 33 of 45 FRAs responded to the data request. It would appear from the data received that this information was not readily available and/ or they did not understand the request.
27. Many FRAs were unable to identify claimants from non-claimants.
28. Where claimants have been identified these have been based on the original claims made in 2015 only and may not include recent claims or claims made on behalf of FOA members.
29. Some FRAs have included the same member under different categories.
30. Some FRAs have included transfers and divorces that were on the record before 2015 and are therefore not relevant to this request.

## Ill-Health

31. There are currently 17 members for whom no pension is in payment because the FPS 2015 ill-health criteria were not met. Eight of these members are claimants.
32. None of these members have been identified to have any technical issues that might prevent calculation of benefits under final salary terms.
33. The data request did not explore further what action was being taken with regards to these members, and whether benefits might be paid.
34. The [LGA information note](#) in paragraph 34 sets out an expectation that FRAs should seek an IQMP assessment under both the FPS 2015 (if not already done so) and the FPS 1992 to establish whether there is entitlement under the FPS 1992.
35. It is then for the FRA to consider whether their powers allow them to make immediate detriment payments to these members.

**Immediate retirements**

36. The categories of members who might be entitled to retire before 31 March 2022 included:

- Those who will reach age 55 with less than 30 years' service before 31 March 2022. It is considered these members will nearly all be exclusively protected members.
- Those who will reach 30 years' service before 31 March 2022. This cohort is likely to include protected, tapered and non-protected members.
- Those who will reach 25 years plus service and over age 50 by 31 March 2022. This cohort is likely to include tapered and non-protected members.

37. FRAs identified a total of 3452 members who meet these criteria before 31 March 2022, of which 1253 are claimants and 2199 are non-claimants.

38. These are split between the categories shown below

	Claimants	Non-Claimants	Total
55 with less than 30 years before 31 March 2022	321	557	878
30 years' service before 31 March 2022	356	591	947
25 years + service and age 50 before 31 March 2022	576	1051	1627
<b>Total members</b>	<b>1253</b>	<b>2199</b>	<b>3452</b>

39. Of the 3452 members, 196 (nearly 6%) were identified to have a technical issue listed above on their record. It is not clear whether members may have multiple issues that apply to them.

CETVs	94
Divorce	39
Final salary data unidentified or unavailable	41
Added Pension	22
<b>Total</b>	<b>196</b>

40. The technical issues split between the categories above apply mostly to members who will reach 25 years' service and over age 50 by 31 March 2022.

	CETVs	Divorce	Final Salary Data	Added Pension
55 with less than 30 years' service	11	8	7	16
30 years	24	6	15	0
25+ years and over 50	59	25	19	6
<b>Total</b>	<b>94</b>	<b>39</b>	<b>41</b>	<b>22</b>

41. The highest category where issues might be found appear to be CETVs. However, as noted above, it is not clear that these CETVs all relate to post-2015 transfers only.

### Summary

42. The information gathered is useful, but the issues encountered by FRAs in gathering it casts doubt on its validity.
43. That doubt might evidence that FRAs do not sufficiently understand the data or the issues raised by remedy.
44. Further work is being done on providing more information on remedy data, what will be needed, and how to collate it.

### Non-responses

45. To date the following FRAs have not responded to this request for data:

Buckinghamshire and Milton Keynes  
 Cheshire  
 Cleveland  
 Gloucestershire  
 Greater Manchester  
 Isle of Wight  
 Lancashire  
 Leicestershire  
 Northumberland  
 Warwickshire  
 West Midlands  
 West Sussex

## **Board action**

46. For the board to discuss.

Board Secretary  
December 2020