

## Firefighters Pension Scheme

### (McCloud) Age Discrimination Remedy – Contingent Decisions

#### Background

A Contingent Decision (CD) is a decision taken by a member, relating to their membership of the Firefighters' Pension Scheme (FPS), that would have been different had it not been for the discrimination identified by the courts.

There are two categories of CD in the FPS for which specific provision has been made:

- A. **Opt-Outs:** A Member who would not have opted-out if they had been allowed to remain in the Legacy Scheme (FPS 1992/FPS 2006) beyond their transition date or if protected Members had been allowed to join the 2015 Reformed Scheme from 1 April 2015.
- B. **Additional Service:** Members argue they would have purchased (more) additional service if they were in the Legacy Scheme.

Where a member makes a CD, there will have to be an adjustment to benefits, which may involve the member paying extra contributions.

This document sets out the position about the process for WSF&RS CDs including timeframes for each stage, evidence requirements, scheme manager decisions, the Contingent Decision Remediable Service Statement (CD-RSS).

This document is based on guidance from the LGA.

This document is supplemented by *Age Discrimination Remedy – Contingent Decision Guidance for Members* which has been published here:

[Age discrimination remedy - Contingent Decisions guidance for members v1.1 \(fpsregs.org\)](https://www.fpsregs.org/age-discrimination-remedy-contingent-decisions-guidance-for-members-v1.1)

## Categories of CD <sup>1</sup>

### A – Opted Out Service

A member who would not have opted-out if they had been allowed to remain in the legacy scheme beyond their transition date or, if for a protected member, they had been allowed to join the 2015 reformed scheme from 1 April 2015.<sup>2</sup>

- If the member opted out at any point during the period from six months before they were due to transition to the 2015 scheme up to 31 March 2022, their Contingent Decision claim will be accepted. **No decision will be required. The individuals do not need to provide any additional evidence.**
- If the member opted out at any point during the period from 1 April 2012 up to six months before they were due to transition to the 2015 scheme, the Contingent Decision claim will be dependent on the evidence they can provide to support the claim that had the discrimination identified by the courts not occurred, they would have made a different decision. **This will be subject to a decision by the Scheme Manager (or in the case of WSCC the Chief Fire Officer in consultation with Director of Finance and Support Services) based on the evidence provided by the member.**

### B – Additional Service

A member who says that they would have purchased (more) additional service if they were in the legacy scheme.

If the member purchased added pension in the 2015 scheme, this can be counted as evidence that they would have purchased additional service in the legacy scheme. **This will be subject to a decision by the Scheme Manager (or in the case of WSCC the Chief Fire Officer in consultation with Director of Finance and Support Services) based on the evidence provided by the member.**

## Timescales

The timeframes for making a Contingent Decision are set in the regulations as twelve months after receipt of a Remedial Service Statement (RSS).

It is noted that some members will not receive an RSS until 31 March 2025.

An individual can consider making your claim and any subsequent election for a Contingent Decision at least six months prior to their retirement.

## Resourcing

There will potentially be an impact on resourcing for these cases.

The Chief Fire Officer in consultation with Director of Finance and Support Services is responsible for determining how the process for the Contingent Decision claim procedure will be communicated to members.

The process and decision-making arrangements will be managed in line with the WSCC Constitution i.e. the process should be agreed by the Chief Fire Officer in consultation with Director of Finance and Support Services, and the Chief Fire Officer in consultation with Director of Finance will agree individual cases as per the Constitution reference to discretions.

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<sup>1</sup> The Home Office have confirmed that there are no circumstances where a member would need to make a contingent decision.

<sup>2</sup> Arrangements to validate date being six months before transition to the 2015 Scheme to be confirmed

			Services
256	To take decisions relating to the exercise of all discretions and matters relating to individual officers under the currently published policy of discretions under the Fire Fighters' Pension Scheme, New Firefighters' Pension Scheme and Firefighters' Pension Scheme 2015.	Chief Fire Officer	In consultation with Director of Finance and Support Services

The Pension Advisory Board of the WSF&RS will be provided with the finalised process to assist the Scheme Manager to comply with the Regulations, any other legislation relating to the governance and administration of the Scheme.

The Scheme Manager for the most current employer will decide on a Contingent Decision claim where the member has been subject to an interbrigade transfer.

### **Notification**

Details of the process and a link to the Claim Form (which members should use) will be published on the intranet and internet web pages.

### **Evidence**

The LGA have provided the following as examples of evidence that can be provided by the member:

- Information provided by the member to the employer or the administrator in the years before or during the remedy period about their intention regarding their continued membership.
- Information provided by the member to the employer or the administrator in the years before or during the remedy period about their intention regarding their retirement intentions
- Information provided by the member to the employer or the administrator in the years before or during the remedy period about their intention regarding their request to leave or not join the scheme.
- Information provided by the member to confirm that they are a litigant in the injury to feelings claim in respect of the discrimination.
- A completed opt out form stating the reason for opting out.
- A statement from the member that they opted out due to the remedy and why

### **Process**

The agree process has been set out on the following pages.

Step	Action	Resource	Timescale	Responsibility
1	<p><b>Submission of Claim Form:</b> The Claim Form must be completed by individuals who will need to describe the reasons why they took the action they did and how this relates to the introduction of the reformed scheme. Members are expected to provide the scheme manager with evidence which supports the claim that they would not have opted out if the discrimination identified by the courts had not occurred. This form will be sent to WSF&amp;RS</p>			Member
2	<p><b>Acknowledge receipt of the CD claim form:</b> This should include the latest point when the individual will receive notification about whether their claim has been accepted. If claims are going to be held before they are reviewed it is recommended that the acknowledgement letter to the member includes the reason for any delay and details of when their case is expected to be reviewed.</p>		+ 10 WD	WSF&RS
3A	<p><b>Chief Fire Officer in consultation with Director of Finance and Support Services to review claim evidence, make decision and notify the member of the outcome:</b>  Except for where the member has opted out at any point during the period from six months before they were due to transition to the 2015 scheme up to 31 March 2022 the <b>Chief Fire Officer in consultation with Director of Finance and Support Services</b> will review all evidence provided by the member to ensure that evidence provided answers the key questions and provides confirmation of:</p> <ul style="list-style-type: none"> <li>a) The decision the member made.</li> <li>b) The reason(s) for that decision.</li> <li>c) What the member would have done differently had the discrimination identified by the courts not occurred.</li> </ul> <p>The decision should be documented on the claim form.</p> <p>If the CD is rejected the member should be notified with details on why their claim was turned down and the appeal route.</p> <p>If the CD is accepted the member should be notified and advised that a quote of benefits under the CD will be provided by the administrator.</p>		+ 2 Months	WSF&RS

3B	<p><b>Chief Fire Officer in consultation with Director of Finance and Support Services to review claim evidence, make decision and notify the member of the outcome:</b> Where the member has opted out at any point during the period from six months before they were due to transition to the 2015 scheme up to 31 March 2022 the claim will be considered to be approved, and no decision will be required. The member must be paying back contributions for the period they opted out.</p>			
4A	<p><b>For an Added Years send administrator the claim form and confirmation that the claim has been approved. Example text is below:</b></p> <p><b>Subject:</b> 03225984 Smith, Lee - Contingent Decision Member Claim - 2023-12-15</p> <p>Dear Pension Services</p> <p>Please see the attached Contingent Decision claim for the above member, which has been approved.</p> <p>The member is making a claim for Additional Service.</p>		+ 10 WD	WSF&RS
4B	<p><b>For an opt-out send request to Pension/Payroll to provide data to administrator:</b> Example text below:</p> <p><b>Subject:</b> 03225984 Smith, Lee - Contingent Decision Member Claim - 2023-12-15</p> <p>Dear Pension Services</p> <p>Please see the attached Contingent Decision claim for the above member, which has been approved.</p> <p>The member is making a claim for Additional Service.</p>		+ 10 WD + 2 Months	WSF&RS WS Payroll
5	<p><b>Collate, prepare and send data CD–RSS to member:</b> This must include information on the CD for both the relevant legacy and reformed scheme, including membership, contributions, tax and any adjustments which may be necessary.</p>		+ 30 Days	HPS
6A	<p><b>Election Received:</b> if a positive election from the member is received by HPS, HPS should send an acknowledgement.</p> <p>HPS will activate the record and complete additional adjustments to the member records, including issuing a final RSS.</p>		< 12 months from RSS (with reminder sent of time limit after 6 months)	HPS

6B	<p><b>Election Received:</b> WS Payroll will collect contributions.</p> <p>Deferred Choice Members can choose one of the following ways to pay the amount due:</p> <ul style="list-style-type: none"> <li>a) Pay by lump sum within three months of receiving the final DC-RSS which is sent after an election has been made.</li> <li>b) Pay by periodical contributions over a fixed term of fourteen years. i. Where the member would make a Section 10 election (Deferred Choice election) before the end of the fourteen year term, any balance can either be paid directly by the member or be deducted from pension benefits (including lump sum).</li> <li>c) Pay by lump sum within three months of receiving their annual DC-ABS/RSS.</li> <li>d) Pay by lump sum when the member makes a Section 10 election (Deferred Choice election) the balance can either be paid directly by the member or be deducted from pension benefits (including lump sum).</li> </ul> <p>If the member wishes to pay the amount due by option a), b) or c) and the member is still employed, the contributions must only have interest applied and not be adjusted for tax relief. In these cases, the member will have to apply directly to HMRC to obtain the tax relief that applies to them.</p> <p>Immediate Choice Members can:</p> <ul style="list-style-type: none"> <li>e) Pay by lump sum when the member makes a Section 6 election (Immediate Choice election) the balance can either be paid directly by the member or be deducted from pension benefits (including lump sum).</li> </ul>		< 12 months from RSS (with reminder sent of time limit after 6 months)	WS Payroll HPS
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7	<p><b>No Election Received:</b> HPS should assume the member does not wish to proceed with the claim. HPS to send a letter confirming the time limit has elapsed and the member record is updated.</p>		<p>&lt; 12 months from RSS (with reminder sent of time limit after 6 months)</p>	<p>HPS</p>
8	<p><b>Notification to the LPB:</b> Scheme managers are encouraged to report details of CD claims and their outcome to Local Pension Boards. Such information will also be requested periodically by the LGA.</p>			<p>WSF&amp;RS</p>

