

McCloud - Frequently Asked Questions

The questions below provide information on the McCloud judgment and how it affects pension schemes and members. Note that these are generic questions and apply to all public sector pensions. Further scheme specific communications will be issued in due course for all military and MoD civilian personnel.

1. Why did the governments reforms to the main public service pension schemes lead to discrimination?

- Following negotiations with the Trade Unions, the 2015 public service pension schemes reforms included a policy of transitional protection that meant members closest to retirement stayed in their legacy scheme as they had the least amount of time to prepare for the changes.
- The Court of Appeal later found this policy to be discriminatory against younger members and so since then the government has been working to address the discrimination.

2. Do members need to submit a legal claim to receive any pension changes to address the discrimination identified by the courts?

- No, members do not need to submit a legal claim to receive any pension changes addressing the discrimination.
- The government has committed to applying any changes across the main public service pension schemes and so both claimants and non-claimants who are eligible members will receive the changes.

3. What steps has the government taken so far to address the discrimination?

- Since the judgment the government has been working on different methods to address the discrimination.
- The government set out two proposals in a public consultation in July 2020 to gather views on which proposal would be better to remove the discrimination.
- Since the public consultation closed in October 2020, the government has been working through all the responses and has published its response setting out its final policy decision to address the discrimination for members through a 'deferred choice' which will allow all members a choice of which pension scheme benefits they would prefer to take at the point at which they retire.

4. What is a deferred choice and why has the government chosen this approach?

- To address the discrimination identified by the courts, eligible members who were moved to the reformed (career average) pension scheme in 2015 (or later if they had taper protection) will be moved back into their legacy (final salary) pension for the period during which the discrimination occurred, between 1 April 2015 and 31 March 2022.
- When those members reach retirement, they will then receive a choice of which pension scheme benefits they would prefer to take for the period. This is called a 'deferred choice'.
- The choice will be between the members legacy (final salary) pension scheme and their reformed (career average) pension scheme.
- By deferring the choice until retirement, it allows individuals to make their choice of which pension scheme benefits are better for them, based on facts and known circumstances as opposed to assumptions. The value of both pension schemes will be known at retirement.

5. Why is the government asking members to choose between their legacy and reformed pension scheme? Aren't all members better off in the legacy schemes?

- The government cannot simply extend transitional protection to all members by placing all members into their legacy scheme without allowing them to access their reformed scheme benefits because some members are better off in the reformed schemes.
- The differences between the legacy and reformed pension schemes mean the set of benefits that is best for individuals depends on person circumstances. This is why the government is providing members with a choice, to ensure they can choose which scheme benefits are better for them.

6. What are the differences between the legacy and reformed schemes?

- All public service pension schemes have different arrangements, however, the main changes between the legacy and reformed schemes for most schemes included a change to career-average pension schemes from final salary and an increase in normal pension age.
- The change to career-average means member's pensions are now calculated on their average salary throughout their career as opposed to their final salary.
- The reformed schemes were designed to make public service pensions more affordable and sustainable for the future, while still ensuring public servants received appropriate pension provision at retirement. Many individuals also benefitted from the 2015 reforms, particularly lower earning members, as they are progressive and fairer.

7. Will the survivors of eligible members who have died since 1 April 2015 also be asked to make a choice between the different pension schemes?

- Where an eligible member has died since 1 April 2015, schemes will review these cases as a priority. Individual schemes will check whether a higher pension or lump sum amount would be due under the alternative scheme.
- In the case of any increase, schemes will inform surviving beneficiaries, and the higher amount will be paid with their agreement. If the highest amount is already in payment, the survivors will be notified of that.
- The choice between benefits will fall to the late member's surviving spouse or partner. If there are children also in receipt of a survivor pension, and the decision maker lives in a separate household to the child, any decision taken will not affect the child's pension. Where the child and decision maker live in the same household, the usual rules around total survivor benefits payable will apply.

8. What was the other proposal set out in the consultation and why didn't the government choose that approach?

- The other proposal set out the consultation was called an 'immediate choice' which would allow members to choose which pension scheme benefits they would prefer to take for the period in which the discrimination occurred between 2015 and 2022 soon after the point in which schemes implemented the changes. This would have likely to have been at some point after 2023.
- While this approach would have resolved the issue sooner and provided individuals with more certainty around pension benefits, it would have placed higher risk on the member. This is because they would be basing their choice around assumptions rather than the facts and known circumstances that will apply at the point of retirement.

9. Who is in scope of these pension changes and will receive the ‘deferred choice’?

- Public service pension scheme members who were in service on the 31 March 2012 and still in service on the 1 April 2015 are in scope of these changes.

10. Why is the period when members will be receiving a choice of which pension scheme benefits they would prefer only between 2015 and 2022?

- Members will receive a choice for the period between 2015 and 2022 because 1 April 2015 is the date when the reforms were introduced, and 31 March 2022 will be the point at which the legacy schemes will be permanently closed.

11. What pension scheme will individuals be a member of from 1 April 2022?

- From 1 April 2022, all those who continue in service will be eligible to do so as members of their respective reformed pension schemes (i.e. those introduced in 2015, of which many are already members), regardless of age. This includes members who were previously covered by ‘transitional protection’.
- This means that any pension benefits after that point will be earned within the reformed pension schemes, but any benefits earned before within the legacy schemes up until that point will be protected.

12. Why is the government moving all members into the reformed pension schemes from 1 April 2022?

- The reasons for the 2015 reforms still stand: public service pensions should be affordable and sustainable, whilst also providing an appropriate pension to members. The reforms aimed to achieve this, whilst also being fairer to lower and middle earners.
- The transitional protection policy, which gave rise to discrimination, will have been removed and addressed, so all active members will be members of the reformed schemes to ensure the aims of the 2015 reforms are still met.

13. Will these pension changes result in any tax changes for members?

- The majority of members will see no change to their tax liabilities.
- A minority of members may see changes, which could be reimbursement or tax charges.
- In some cases, individuals may pay higher AA charges, but typically only where their projected pension at retirement has increased.

14. In the WMS released on 20th March, it mentioned that it would be helpful for members to retain their tax paperwork for 2015/16, is this still the case?

- Yes, dependent on the eventual policy, the member may need the relevant paperwork to help them access appropriate compensation.
- Therefore, it would be helpful if people kept their paperwork related to tax from April 2015 onwards.
- This would include all self-assessment returns, P60s, the annual statements from your pension scheme administrator and documents relating to any other personal or occupational pension schemes.

15. When will the pension changes be implemented and introduced?

- Removing the discrimination will take time, but the government is committed to ensuring that all eligible members are treated equally and are able to choose to receive pension scheme benefits from either scheme. Any payments will be backdated to 2015 where necessary.
- Schemes will implement the processes and systems needed to offer a deferred choice for the majority of members by 2023, however, some individuals who have a particular need, for example, who has retired since 2015 with an ill-health pension will have their benefits amended sooner.

16. What are the next steps after the consultation response?

- Following the consultation response, the government will introduce new legislation when parliamentary time allows. Pension schemes will also run individual consultations on their specific scheme regulations. Once these steps are complete, implementation will begin, and the changes will then be introduced.

17. How has COVID-19 affected the project?

- COVID-19 has not caused any major delays to the project timeline.