

# McCloud and the Cost Cap

## Introduction

Members employed in the public sector may be aware that the arrangements by which they moved into the new Public Sector Pension Schemes were declared discriminatory on the grounds of age in a December 2018 Court of Appeal ruling known as the McCloud Judgement.

Yesterday, in response to the ruling and under pressure from the GMB, the government published a consultation document detailing proposals to address and remove that discrimination

The consultation also sets out the government's intention to move all affected staff into 2015 schemes from 1 April 2022.

Secondly, and again in response to pressure from the GMB, the government announced the lifting of the pause of redistribution of surplus monies found in the pension fund as a consequence of the cost cap mechanism. However, the government has also stated that it is looking to recalculate the size of the surplus after incorporating the costs of implementing the McCloud judgement. GMB is going to challenge this where we can.

## The Consultation Proposal

The government sets out two possible mechanisms for eliminating the discrimination: an immediate choice exercise or a deferred choice underpin.

Each will enable affected members to decide whether to take **either** the benefits of the pension scheme they were originally a member of (their 'legacy' scheme) **or** of the 2015 scheme *for the period 1 April 2015 to 31 March 2022 only*.

The immediate choice would be made straight away after 31 March 2022; the deferred choice would be made at the point at which a member takes their pension benefits and until that deferred choice is made members would be treated as having been in their legacy scheme between 1 April 2015 and 31 March 2022.

Where members are already in receipt of their pension, they would get the choice as soon as practicable after the policy is implemented.

These proposals apply to all members in a relevant public service pension scheme managed by the UK Government, Welsh Government and Scottish Government. **They do not** apply to the Local Government Pension Scheme in England and Wales (and the equivalent scheme in Scotland) nor the public service pension schemes in Northern Ireland which will be consulted on separately.

## **Future pension provision**

From 1 April 2022, all members will be placed into the 2015 pension schemes.

## **The Cost Cap – What is it?**

The 2015 public sector pension schemes work within cost parameters that have a ceiling and a floor – when costs increase above the ceiling or fall below the floor member benefits are adjusted to meet the target cost.

The 2016 Actuarial Valuations found that the NHS, Civil Service and LGPS schemes breached the cost floor i.e. they realised surpluses. In accordance with the cost cap mechanism these surpluses were to be redistributed to members by way of increased benefits and reduced contributions for members.

However, following the McCloud judgment, the government paused the redistribution of the surplus. The GMB considered the pause to be a breach of the regulations (which state that surpluses “must” be redistributed) and we funded a Judicial Review of the government’s decision.

Yesterday the government announced the unpausing of the pause but also said it would revisit the 2016 valuations in order to incorporate the costs of McCloud.

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**GMB**

**PROTECTING  
PENSIONS**

We consider this a very underhand act by the government that will serve as a detriment to members. We are currently considering the position as we do believe that the costs of McCloud shouldn't be met by ordinary pension scheme members.

**George Georgiou – GMB National Pensions Officer**