

Public Service Pension Schemes: Changes to the transitional arrangements to the 2015 schemes consultation

Context

In June 2019, the Supreme Court refused the Government permission to appeal the Court of Appeal's December 2018 judgment in the McCloud and Sargeant cases. The judgement found that both the judges and firefighters pension schemes were age-discriminatory to some of their members. By extrapolation, this judgement applied to all public sector pension schemes in scope, including the NI Teachers' Pension Scheme (NITPS). The Government (through Department of Finance DoF) has accepted this and is now seeking a fix (or Remedy).

When the career average (CARE) pension scheme was introduced in 2015, 'transition protection' was provided to some ASCL members. Transitional protection allowed those within 10 years of retirement to April 2022 to stay in the old legacy pension schemes, (Final Salary) instead of being moved to the new CARE scheme with the higher normal pension age (NPA) in 2015. So those within 10 years of their Normal Pension Age on 1 April 2012 remained in their pre-2015 Final Salary (FS) legacy scheme, with either NPA 60 or 65.

The remedy period being addressed is 1 April 2015 to 31 March 2022. The changes will apply to all members who were in post on the 31 March 2012 and still in post on 1 April 2015.

The Government is consulting on two options, "remedies", to remove the discrimination caused by transitional protection arrangements over the remedy period. Both options ask ASCL members in scope to make a choice of receiving either their old or new scheme benefits for the remedy period.

From 1 April 2022, everyone will be in the new CARE Scheme.

The consultation outlines two possible approaches:

- i.) an immediate choice (IC); or
- ii.) a deferred choice underpin (DCU)

Under IC, members would make an irrevocable decision within a year after the point of implementation, likely 1 April 2022. For many members, this will be some years prior to retirement, and at a time when there is still some uncertainty over the precise benefits that would accrue to them in the alternative scheme. Such assumptions may lead them to choose a scheme that is less beneficial. However, this would address the issue promptly, giving certainty to members as to their pension arrangements.

Under DCU, this decision would be deferred until the point at which the pension becomes payable. Until that DC is made, all members would be deemed to have accrued benefits in the legacy scheme, rather than the reformed scheme, for the duration of the Remedy Period. This decision would be based on known entitlement where members could compare the benefits of both schemes. The TPA would be required to produce annual benefit statements containing information on the Remedy Period under both schemes. Whilst more complicated (and therefore, with a greater margin for error), the DCU will be a better choice.

In both cases, members can keep or choose benefits in the CARE scheme (over the Remedy Period) if they wish. This would mean those who did not have transitional protection (and so moved to the CARE schemes in 2015) could choose to keep those benefits they have accrued in the CARE scheme, and those who did have transitional protection (and so did not originally have access to the CARE schemes) could switch back w.e.f. 2015 to the CARE Scheme.

Both options have possible retrospective contribution implications, whereby some members could argue they would have stayed in their legacy scheme, had they known it was an option. Payment of the correct employer/employee contributions would be made retrospectively (with interest). This is unlikely to be the case as contribution rates in the TPS are harmonised between schemes. More likely are tax implications where Annual Allowance is more likely to be/to have been exceeded in the CARE scheme (due to higher accrual). The proposal is that if a member ends up being owed tax, this will be compensated for the Remedy Period. However, if there is a liability, this will be limited to the previous 4 full years from decision point.

The Government will decide on which option, either IC or DCU for the entire public sector.

One major concern is that even though it is the Government that lost the case, the cost of the remedy is intended to lie with the scheme, impacting on contributions.

For ASCL members such as Business Leaders who are in the Local Government Pension Scheme (LGPSNI), there is a separate consultation.

Separate consultation

The LGPS implemented the transitional protections for older members by introducing an underpin, rather than allowing members to remain in the "legacy" scheme. The key difference between the TPS proposals and the LGPS proposals is that members will not be offered a choice. Instead the proposal is to extend the underpin to members who did not previously qualify for it on 31 March 2012. This two-part revised underpin will apply to all members who meet the criteria for protection regardless of their age in 2012. As with the TPS, Government proposes that all members will accrue benefits on the reformed benefit structure (with no underpin) from 1 April 2022 onwards.

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Response of the Association of School and College Leaders

1 The Association of School and College Leaders (ASCL) represents more than 20,000 education system leaders, heads, principals, deputies, vice-principals, assistant heads, business managers and other senior staff of state-funded and independent schools and colleges throughout the UK. ASCL members are responsible for the education of more than four million young people in more than 90 per cent of the secondary and tertiary phases, and in an increasing proportion of the primary phase. This places the association in a strong position to consider this issue from the viewpoint of the leaders of schools and colleges of all types.

2 ASCL welcomes the opportunity to make a written response to the proposals to remedy the transitional arrangements to the 2015 public sector schemes, following the Court of Appeal's ruling in the McCloud and Sargeant case.

3 This response primarily relates to the Teachers' Pension Scheme (TPS), as this is the scheme to which the majority of ASCL members belong.

4 ASCL is concerned that the cost of the remedy will be incurred by the TPS, and therefore ultimately funded by member and/or employee contributions. The scheme (administrators, members, employers) is not at fault and should not incur costs to fund a remedy to an illegality not of its making. This leads to real concern about cost pressures within the independent sector further incentivising seeking alternatives to the scheme.

With reference to your specific questions

1 Do you have any views about the implications of the proposals set out in this consultation for people with protected characteristics as defined in section 75 of the Northern Ireland Act 1998? What evidence do you have on these matters? Is there anything that could be done to mitigate any impacts identified?

As it has been presented, we have not identified any specific issues. However, considering the complexity of the remedy we reserve the right to highlight any concerns should they become apparent.

2 Is there anything else you would like to add regarding the equalities impacts of the proposals set out in this consultation?

As it has been presented, we have not identified any specific issues. However, considering the complexity of the remedy we reserve the right to highlight any concerns should they become apparent.

3 Please set out any comments on our proposed treatment of members who originally received tapered protection. In particular, please comment on any potential adverse impacts. Is there anything that could be done to mitigate any such impacts identified?

We are broadly in agreement with the approach taken, with the caveat that no ASCL member should suffer detriment as a consequence of lost tapering protection in being necessitated to opt for exclusively either the legacy or CARE scheme during the remedy period (as in 2.21).

4 Please set out any comments on our proposed treatment of anyone who did not respond to an immediate choice exercise, including those who originally had tapered protection.

The IC default option is to place members who do not respond after four quarterly reminders into the legacy scheme. ASCL understands that a decision needs to be made by deadline. However, this may not be beneficial for some members. DCU option would mitigate this.

5 Please set out any comments on the proposals set out above for an immediate choice exercise.

This would address the issue promptly, giving certainty to members as to their pension arrangements. However, for many members, this will be some years prior to retirement, and at a time when there is still much uncertainty over the precise benefits they would accrue in the alternative scheme. Such assumptions may lead them to choose a scheme that is less beneficial (although based on correct information and online calculators at the time). There may also be unintended tax consequences. There would be an unprecedented demand not just in the TPS, but across all public sector workers, for access to IFAs.

6 Please set out any comments on the proposals set out above for a deferred choice underpin.

Members are making their decision when the benefit is due for payment on known benefit entitlements, with far greater certainty. Members could compare the benefits of both schemes. This approach obviously takes longer to resolve, being more complex and consequently having a greater margin for error. However, the element of surety definitely makes this ASCL's preferred approach.

7 Please set out any comments on the administrative impacts of both options

IC: This would be a huge exercise. It would impact immediately and create a peak demand for information to be provided in a short time after the legislation is ASCL Page 3 of 5

passed. Training materials, information and calculators to allow members to produce their own forecasts would need to be up and running well in advance.

DCU: This option allows more time to deal with member requests for information. It also creates complexities in managing retrospective contribution errors alongside adjusting tax for tax relief on contributions and tax charges where necessary. As this choice would be available well into the future, scrupulous records would need to be kept to refer back to.

8 Which option, immediate choice or DCU, is preferable for removing the discrimination identified by the Courts, and why?

DCU is by far our preferred option. Whilst more complex in the long run, it is less of a 'big bang' approach. It would be a systematic ongoing process building cumulative knowledge and absorbing case law as it happens. Members are more likely to make the best choice for their circumstance with fewer regrets or errors. It would more effectively absorb circumstances such as ill-health, pension sharing orders and additional pension and buyout.

9 Does the proposal to close legacy schemes and move all active members who are not already in the reformed schemes into their respective reformed scheme from 1 April 2022 ensure equal treatment from that date onwards?

This appears to address the identified discrimination.

10 *Please set out any comments on our proposed method of revisiting past cases.*

These are appropriate, and necessarily administratively very complex. Recompense needs to be available for members to secure indemnified financial advice. Complexities include the accurate collection of over/underpayments (unlikely in TPS) and taxation. Decisions surrounding the death of a member may result in reopening of probate to ascertain benefits. ASCL agrees that these cases should be prioritised.

11 *Please provide any comments on the proposals set out above to ensure that correct member contributions are paid, in schemes where they differ between legacy and reformed schemes.*

ASCL would support an option to pay this over an appropriate time, if due. This is unlikely to be the case as contribution rates are harmonised between schemes.

12 *Please provide any comments on the proposed treatment of voluntary member contributions that individuals have already made.*

This is a sensible approach, both for additional pension and buyout, moving toward synchronising both sets of schemes. ASCL welcomes the decision to ignore limit breaches of Additional Pension due to the remedy judgement.

13 *Please set out any comments on our proposed treatment of annual benefit statements.*

ASCL supports this. Accuracy is essential as decisions are irrevocable.

14 *Please set out any comments on our proposed treatment of cases involving ill-health retirement.*

ASCL supports this approach of retrospective choice.

15 *Please set out any comments on our proposed treatment of cases where members have died since 1 April 2015.*

ASCL supports the prioritisation of these cases. Cases will need to ensure that any increases to benefits arising can be paid. ASCL welcomes the proposal to reimburse expenses and the proposal that any tax charges arising solely from the remedy do not fall on survivors.

16 *Please set out any comments on our proposed treatment of individuals who would have acted differently had it not been for the discrimination identified by the Court.*

ASCL supports the approach taken in the consultation. Contingent decisions could be argued where a member suggests they would have taken different retrospective action had they known the options that were available at the time. This will necessitate representation on a case by case basis. Some members subject to remedy may have made decisions, such as opting out of the TPS, because they were transitioned to CARE with a higher pension age. ASCL believes that these teachers should be able to revisit and reverse decisions which they would not have made if they were not transitioned to the 2015 CARE scheme.

17 *If the DCU is taken forward, should the deferred choice be brought forward to the date of transfer for Club transfers?*

Yes. ASCL supports the potential for choice to be made at point of transfer.

18 *Where the receiving Club scheme is one of those schemes in scope, should members then receive a choice in each scheme or a single choice that covers both schemes?*

Single choice. As above, the process is simplified by giving the member a single choice that covers their pension accrued in both schemes.

19 *Please set out any comments on our proposed treatment of divorce cases.*

ASCL agrees with the proposed approach. The Pension Credit Member is the individual that has been affected by the discrimination during the remedy period.

20 *Should interest be charged on amounts owed to schemes (such as member contributions) by members? If so, what rate would be appropriate?*

No. This is unlikely to impact on ASCL members, but members should not be penalised as a consequence of a ruling of discrimination against them.

21 *Should interest be paid on amounts owed to members by schemes? If so, what rate would be appropriate?*

Yes. Further work would need to be done to model the benefits of differing approaches.

22 *If interest is applied, should existing scheme interest rates be used (where they exist), or would a single, consistent rate across schemes be more appropriate?*

Yes. Further work would need to be done to model the benefits of differing approaches.

23 *Please set out any comments on our proposed treatment of abatement.*

This would form part of the overall decision made by a member under DCU.

24 *Please set out any comments on the interaction of the proposals in this consultation with the tax system*

There are likely to be tax implications for some members, especially under DCU. DCU makes the tax implications far more transparent and beneficial to members. ASCL supports the proposal that a four-year statutory time limit for reassessment of tax would operate to limit recovery of underpaid tax to the four tax years after the relevant benefits accrued (with the option of Scheme Pays). ASCL supports the proposal to compensate individuals for tax charges incurred as a consequence of the design of the remedy's solution. ASCL supports the proposal to compensate members where they would have had excess unused carry forward for an Annual Allowance charge.

We hope that this is of value to your consultation, ASCL is willing to be further consulted and to assist in any way that it can.

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