

McCloud Update with additional guidance

Background

1. The Independent Public Services Pensions Commission Final Report of 10 March 2011 recommended changes to Public Service Pension Schemes in order to place public sector pension schemes on a more sustainable footing. One of the recommendations was to adopt Career Average Revalued Earnings (CARE) schemes. The Government accepted most recommendations as a basis for consultation and new schemes were introduced in April 2015 (2014 for local government in England and Wales).
2. During consultation the coalition government agreed that members who were within 10 years of their Normal Pension Age and in service on 31 March 2012 did not have to move to the new pension schemes. This was known as transitional protection.
3. Employment Tribunal claims were brought subsequently by members of the judges (McCloud) and firefighters (Sargeant) pension schemes, who argued that the transitional protection arrangements were discriminatory on the grounds of age. The Court of Appeal found that the transitional provisions in those schemes were discriminatory on the grounds of age and the Supreme Court refused the Government permission to appeal. On 15 July 2019 the Government announced that the difference in treatment would need to be addressed across all the main public service pension schemes and for all affected members, regardless of whether they have submitted a claim.
4. Initial Case Management hearings have now been held for the cases involving Judges, Police, Ministry of Defence Police and Firefighters and interim or final declarations have been made by the Employment Tribunals. The effect of these declarations is that, the claimants are entitled to be treated as having remained members of the pre-2015 pension schemes from 1 April 2015.
5. The government has confirmed that changes will also be made for non-claimants who have suffered discrimination, who will therefore also be entitled to have service accrued post 1 April 2015 in the old schemes. However, it is not as simple as putting all members back in pre-2015 pension schemes as some members will be better off in the old schemes, and others better off in the new schemes. The government has commenced pre-consultation technical discussions with a range of interested parties on possible changes to remove the discrimination identified by the courts and to allow members to keep the benefits they have accrued in the new schemes instead if they so prefer. Service personnel will be able to keep the pensions they have earned to date, irrespective of the pension scheme they are in or the outcome of the Employment Tribunal.

Technical Discussion

6. On 6 February 2020 Ministry of Defence held initial discussions with key Armed Forces Pension Scheme stakeholders, both internal and external to the

Department, to gain initial views on a preferred option for addressing the difference in treatment. Feedback from these discussions will help to inform a public consultation on a preferred option later in the year.

Next steps

7. All members with relevant service will be eligible for changes to their pension entitlements to address the discrimination. This will take time to process, but we are committed to ensuring that all members are treated equally and are able to choose to receive benefits from either their old/legacy scheme (Armed Forces Pension Scheme (AFPS) 75, AFPS 05, FTRS 97, RFPS 2005 or NRPS) or new/reformed (AFPS 15) scheme. In order to do this, we need to ensure that interested parties are appropriately consulted, changes are carefully developed and implemented, and that the steps we ultimately take are adequate. Legislation will be required before the changes can be made, and new administrative processes will need to be developed and put in place. Service personnel will be kept informed of developments as they progress.

8. For members of Civil Service Pension Schemes further information can be found on the [Civil Service Pension Schemes website](#).

Additional guidance

Q: Why is there not more information on the impact of McCloud on the Armed Forces Pension Scheme?

A: Initial Case Management hearings have been held for the cases involving Judges, Police, Ministry of Defence Police, Police and Firefighters. In the meantime, we are working with HM Treasury and Other Government Departments on proposals to address the discrimination across the Public Service Pension Schemes.

Q: What is the latest information on the Employment Tribunal hearings?

A: The Tribunals are considering cases for Police, Ministry of Defence Police, Judges and Firefighters with some hearings listed for this year. The Employment Tribunal's role is to agree remedy for the claimants. Changes will be required to Pension Schemes to ensure that both claimants and non-claimants, who are in the same position, are treated fairly and may keep any pension rights already accrued. It is not as simple as putting everyone back into their legacy pension scheme as some members will be better off under the Armed Forces Pension Scheme 2015.

Q: I joined up in 2013 on the Armed Forces Pension Scheme 05 and was compulsorily moved into Armed Forces Pension Scheme 15. Does the McCloud judgment affect me?

A: No. The discrimination found by the Court of Appeal is between those in service on 31 March 2012 who were subsequently moved over into the new scheme on 1 April 2015 (non-protected members) and those members who were closest to retirement at the time the new pension schemes were introduced and were permitted to remain in their legacy schemes. Changes are needed to remove this difference in treatment. Personnel who do not fulfil those criteria are not in scope and will not be subject to any pension scheme changes.

Q: I am in the same position as those in McCloud and Sargeant and was compulsorily moved onto the Armed Forces Pension Scheme 15. The claimants wish to be treated as members of their legacy pension scheme since April 2015. If that is the remedy, will it be applied to me?

A: In terms of accrual of post 1 April 2015 service, claimants and those members who are in the same position as the claimants will be treated in the same manner. However, it is not as simple as moving everyone in scope back into their legacy pension scheme as some members (and claimants) will be better off under the 2015 scheme. We will need to ensure that every eligible member is treated fairly and equally.

Q: I am leaving the Armed Forces in June 2020. Will I have any changes applied to my pension before I leave?

A: If you were in service on 31 March 2012 and 31 March 2015 you will be in scope for having any discrimination addressed. Any correcting of pension entitlement will take time and will probably not be resolved before you leave. You will be contacted once the process has progressed further so as to ensure that your pension entitlement is corrected as soon as possible.

Q: I was given a medical discharge in 2017 and have part Armed Forces Pension Scheme 75 and part Armed Forces Pension Scheme 15 medical discharge benefits. Will my pension entitlement be reviewed?

A: If you were in service on 31 March 2012 and in service on 31 March 2015, you have relevant service and will be reviewed.