

## The Government's remedy for age discrimination in the Scottish Teachers' Pension Scheme

On 4 February 2021, the Westminster Government published its response to its consultation on changes to transitional protections in public service pension schemes, including the Scottish Teachers' Pension Scheme (STPS). Teachers' Pensions is devolved to the Scottish Government, but any changes to STPS design must be approved by HM Treasury. The response to the consultation is available at: <https://www.gov.uk/government/consultations/public-service-pension-schemes-consultation-changes-to-the-transitional-arrangements-to-the-2015-schemes>.

The Westminster Government was obliged to consult on changes to the transitional protections because the Court of Appeal determined that the transitional protections in the reformed 2015 public service pension schemes were discriminatory on grounds of age. This is known as the McCloud Judgment. Information about the McCloud Judgment and the Westminster Government's remedy for this is on the NASUWT website at: <https://www.nasuwt.org.uk/advice/pay-pensions/pensions/scotland/mccloud-and-unlawful-discrimination.html>.

### The Westminster Government's remedy

The Westminster Government's final remedy to the unlawful discrimination identified by the courts is largely identical to the proposals which were subject to consultation, except that the Government has decided when millions of teachers and other public servants will have to exercise a personal choice about their pension accrual.

The Westminster Government's remedy applies to all teachers who began teaching before 1 April 2012 and have service in the STPS between 1 April 2015 and 31 March 2022 (known as the remedy period). These teachers will be able to choose between their pension accrual from 1 April 2015 through to 31 March 2022 being in the final salary Scottish Teachers' Superannuation Scheme (STSS) or the 2015 career average STPS. The significance of this choice is that accrual in the final salary STSS is in a pension scheme with a lower pension age, so that the accrued pension can be taken earlier without actuarial reduction. **There is no need for teachers to take individual legal action to receive the remedy or to pay for pensions advice to receive the remedy.**

However, not all teachers subject to the remedy will receive higher benefits if their pension accrual during the remedy period is in the final salary STSS, as this depends on their teachers' career history and other personal circumstances before they take their pension, hence the need to exercise a choice about which scheme the teacher is a member of during the remedy period. The NASUWT strongly argued that it is unfair to ask teachers to exercise the choice of pension scheme when they have remaining pensionable service, as teachers cannot predict the future and therefore may choose the less favourable pension scheme option if they make their choice before the point at which they retire.

The Westminster Government has accepted the NASUWT's argument and all teachers and other public servants subject to the remedy will have to exercise a choice about their pension accrual during the remedy period just before they take their pension. This is known as the deferred choice underpin (DCU). If teachers do not exercise a choice at all, they will be treated as having their pension in the final salary scheme during the remedy period.

On 1 April 2022, all teachers will move to the 2015 career average STPS and all accrual will be in this scheme.

*continued overleaf*

## **The NASUWT's response to the remedy**

The NASUWT is not in agreement with the remedy, because it excludes teachers who began teaching on or after 1 April 2012 and because all teachers will be moved into the 2015 career average STPS with the higher pension age on 1 April 2022. The NASUWT therefore believes that the Westminster Government continues to discriminate against younger teachers who have a higher pension age because the pension age in the 2015 career average STPS is the state pension age, which is higher for younger teachers. In addition, the pension age in the career average STPS is too high for all teachers.

However, the NASUWT wishes to see all members benefit to the maximum extent from the McCloud remedy and is liaising with the Scottish Public Pensions Agency (SPPA) to ensure that teachers will receive the personal pensions information they require during their career to enable them to plan for retirement at the age they wish to retire and also to receive the highest benefits possible when they do retire.

## **What action do NASUWT members need to take?**

The overwhelming majority of NASUWT members do not need to take any action in response to the McCloud remedy. They will be exercising a choice under the remedy at the point of retirement on the basis of information provided to them by the SPPA so there is no need to take any action at this stage. There is no need to contact the NASUWT to discuss the remedy.

NASUWT members who have retired with the post-2015 STPS service will be the first group of teachers to be contacted by the SPPA to be given an opportunity to choose accrual in a different STPS. The NASUWT is working with the SPPA over the communication process for these members and contact with retired teachers in this category will take place from April 2021 onwards.

Any NASUWT member who applied for an ill-health pension which was refused because they could demonstrate permanent incapacity up to their pension age in the final salary STSS, but not to their pension age in the 2015 career average STPS, should contact the SPPA to explore whether their case should be re-opened.

The NASUWT will hold briefings for groups of members on the implications of McCloud for them and is also working with the SPPA on its McCloud remedy communications strategy to members. The SPPA's bulletin on McCloud is available at: <https://www.pensions.gov.scot/teachers/scheme-governance-and-legislation/circulars>.

**There is no need for teachers to pay for legal or financial advice to receive information about the McCloud remedy.**



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