



The Government proposes remedy for age discrimination in the Teachers' Pension Scheme

Teachers' Pensions in Wales continues to be reserved to the Westminster Government. The Westminster Government has published, for public consultation, its proposal to remedy the age discrimination arising from its 2015 reforms to the Teachers' Pension Scheme (TPS) and other public service pension schemes. The Government has had to propose this because a key legal case (known as McCloud/Sargeant) resulted in a Judgment by the Court of Appeal that the 2015 reformed public service pension schemes were discriminatory on grounds of age.

The NASUWT refused to agree the 2015 reforms to the TPS because the teachers' pension age was equalised with the state pension age, meaning that teachers could see their pension age increase by up to eight years. Younger teachers had a higher pension age than older teachers under the Government's reforms.

The Government's proposal to address this age discrimination would allow teachers who began teaching on or before 31 March 2012, and who continued teaching after 1 April 2015, to decide whether their pension accrual from 1 April 2015 through to 31 March 2022 (known as the 'remedy period') should be in the final salary pension scheme or in the 2015 career average pension scheme.

The significance of having a choice of pension scheme for this period of time is that, for teachers who did not benefit from the Government's transitional protection arrangements, they would have the option to have pension accrual in a scheme with a lower pension age, meaning that they could take more (or all) of their pension without actuarial reduction. This will benefit many teachers, but some teachers may receive a higher pension if their accrual is in the career average scheme, particularly those teachers who had a final salary scheme pension age of 65. Therefore, teachers will have to be able to exercise a choice over their pension accrual from 2015 to 2022 to ensure that they receive the highest level of pension benefits.

The Government is consulting over whether teachers will have to make a choice in 2022/23 about which pension scheme to be in from 2015 to 2022 or whether they should be able to defer their choice until just before they take their pension if they wish.

Under the Government's proposals, all teachers will move into the career average pension scheme on 1 April 2022, with the higher pension age.

The NASUWT's view

The NASUWT National Executive has given detailed consideration to the Government's proposals leading up to the launch of the public consultation. The NASUWT recognises that some teachers will benefit from the Government's proposed remedy. However, the NASUWT regards the proposals as too limited and considers that they do not address the overarching age discrimination in the TPS. The NASUWT's concerns include:

- the teachers' pension age will not be permanently lowered by the Government's proposals;
- younger teachers will still have a higher pension age than older teachers, because their state pension age will be higher;
- it is unfair to exclude teachers who began teaching after 1 April 2012 from the remedy – again this will perpetuate age discrimination;
- the remedy period is too short. The NASUWT has argued for a remedy period which is the remainder of the pensionable service for teachers who fall within its scope.

Furthermore, the Government has, also announced that the cost of implementing the McCloud remedy will be a scheme member cost – in other words, that teachers will have to pay for the cost of implementing a remedy to legal action that the Government lost. The NASUWT believes that the Government should meet the cost of addressing the discrimination arising from its own reforms.

The NASUWT has made its position very clear to the Department for Education (DfE) and HM Treasury. The NASUWT will continue to work within the TUC to seek to achieve its objectives alongside other public service unions. In addition, the NASUWT will be responding in detail to the Government's public consultation.

Action for members to take

There is no need for members to take any action at this stage. Teachers' Pensions has provided information about the Government's proposals on its website at: https://www.teacherspensions.co.uk/members/faqs/mccloud.aspx?utm_source=Communicator&utm_medium=Email&utm_content=Link55&utm_campaign=8495447.

The NASUWT will be providing advice for members on responding to the Government's public consultation and advises that any members who wish to respond delay doing so until they have received further NASUWT advice. The consultation ends on 11 October 2020.

Following the close of the consultation and the final confirmation of the McCloud remedy, the NASUWT will provide further information to members about any steps which they need to take. The confirmation of the remedy will be towards the end of 2020 or in early 2021.

In anticipation of the McCloud remedy not addressing the discrimination that some of our members have been subjected to, the NASUWT has lodged several members' claims with the Employment Tribunal. The purpose of pursuing such litigation is to protect NASUWT members' legal position, as being unilaterally moved onto the current Teachers' Pension Scheme may be proven to have caused a detriment which will not be remedied by the Government in response to the McCloud Judgment. Current cases are being considered from England, Scotland and Wales, and the NASUWT anticipates the remedy in McCloud to be instrumental as to whether the claims need to be pursued through to a full Employment Tribunal hearing to adequately compensate those members.

The NASUWT will continue to liaise with Teachers' Pensions, the DfE, the TUC and HM Treasury over the implementation of the McCloud remedy, including how teachers will receive the information they need to make a decision about the most beneficial option for them.

Most importantly, there is no need for any teacher to incur any expenditure in connection with financial, pensions or legal advice in connection with the Government's public consultation on changes to the transitional arrangements to the 2015 public service pension schemes.



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