

The McCloud Judgement - Joint statement

Purpose

1. This statement provides members of public service pension schemes with an update on what has become known as the McCloud judgement. This statement has been agreed with Management Side and Trade Union Side at the Collective Consultation Working Group (CCWG). The CCWG, facilitated by NIC-ICTU (Northern Ireland Committee – Irish Congress of Trades Unions), is comprised of representatives for NI public service pension scheme members and employer representatives and is the recognised forum for engagement on public service pension policy.

Background

2. In December 2018 the Court of Appeal in England and Wales held that the transitional protection offered to members, in the Judges' and Firefighters' schemes, who were closer to retirement age, gave rise to unlawful discrimination against younger members who were not eligible for protection. On 27 June 2019 the Supreme Court refused permission for a further appeal on that ruling.
3. Transitional protection is the policy which allowed some older workers to stay in the old, unreformed pension schemes, instead of being moved to new career-average schemes with higher pension ages in 2015. In most schemes transitional protection meant that those within 10 years of their schemes' normal pension age as at 1 April 2012 retained membership of their pre-2015 scheme, the majority of which were final-salary schemes.
4. The cases were remitted to the Employment Tribunal to determine a remedy to members who suffered discrimination. In an announcement made on 15 July 2019, the Westminster Government confirmed that, as transitional protection was offered to members of all the main public service pension schemes, the government intends to address the difference in treatment across all schemes.

5. Consideration is now being given to the best way to implement this decision as part of the Court process.

Latest update

6. Case Management Discussions for the Firefighters' and Judges' cases, (and for Police and MOD Police), in England and Wales have now taken place. So far a final declaration has been agreed for the Judiciary and interim declarations have been agreed for the Police, MOD Police and Firefighters. This means claimants have an entitlement to be treated as members of the appropriate pre-2015 schemes.
7. The Government has confirmed that any necessary changes to pension arrangements will also apply to all public service scheme pension members with relevant service, not just those who have lodged legal claims. However, given that some members will be better off in the old schemes, and some better off in the new schemes, it is not as simple as putting everyone back in the old schemes. The solution will need to ensure members can keep their accrued rights. The same complexities exist in Northern Ireland schemes as those in England and Wales.

NI Position

8. The reformed public service schemes in Northern Ireland incorporate similar age-based transitional protections, therefore it is appropriate that this discrimination is removed from public service schemes made under the Public Service Pensions Act (Northern Ireland) 2014 from April 2015.
9. Both management and public service Trade Unions at CCWG are committed to working together to ensure a fair outcome for members of NI public service schemes in this process.
10. However, it will be for the Tribunal to agree the timing and make the final decision on remedy for the claimants which in turn will inform the changes required for non-claimants. Any changes to the schemes will be subject to

consultation with stakeholders to ensure that any scheme issues are properly understood and addressed alongside the remedy agreed by the Employment Tribunal for individual claimants.

11. Technical discussions are scheduled for late January and February at the CCWG forum to take initial views on proposals for required scheme changes. The scope of these discussions is intended to cover scheme changes addressing the discrimination dating back to 2015. They will allow member representatives to share their views at an early policy development stage helping to inform the proposals. A formal public consultation will then follow in due course. Although proposals to address the discrimination are at an early stage, it is confirmed that members who were subject to the discrimination will be within scope of changes made to public service schemes, whether they are deferred, pensioner or active members.
12. It is anticipated that it could take some time, to fully implement the commitment to remove the discrimination from all public service pension schemes, whilst also ensuring that members can keep benefits that they have earned to date. It will require changes in legislation and complex changes to administrative processes.
13. The Local Government Pension Scheme (Northern Ireland) contains different transitional protection provisions and is being considered separately.
14. Further updates will be issued to members when available.

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