



Business Services
Organisation

The McCloud Remedy & What it means for HSC Pension Scheme Members



Background to the McCloud Judgement

In 2015, the government introduced reforms to most public service pension schemes, which included the 2015 HSC Pension Scheme. Members that were closest to retirement at the time were protected from moving to the reformed schemes, and could therefore remain in their legacy schemes. In the HSC, the legacy schemes refer to the 1995 and the 2008 Sections of the scheme. Members with full protection did not have to move to the 2015 Scheme at all, and members with tapered protection were permitted to remain in their legacy scheme for longer, with their move to the reformed scheme delayed beyond 1 April 2015.



In December 2018, the Court of Appeal found these protections to be discriminatory against younger members. This has become known as the 'McCloud judgment'.

The government has been working on developing legislation on implementing a remedy to remove this discrimination and ensure equal treatment going forward.

What is the McCloud Remedy?

The McCloud Remedy is a legal measure to remove the age discrimination that occurred in Public Sector Pension Schemes including the HSC Pension Scheme. The discrimination resulted from allowing older members to remain in their legacy schemes rather than being moved to the new scheme which was introduced in 2015. The remedy will offer all affected members the choice to take benefits accrued between April 2015 and March 2022 (the remedy period) from either the legacy scheme or the new scheme.

Which Members are affected by the Remedy?

Members who joined the HSC Pension Scheme on or before 31 March 2012 and who were still members of the scheme on 1 April 2015 are eligible for the remedy, regardless of whether they previously received full, tapered or no protection.

This includes current members of staff, those that have already retired or no longer work for the HSC and those that have passed away. Staff that joined the scheme on or after 1 April 2012 are not affected.



What does this mean for Members?

The McCloud Remedy is made up of 2 parts:

1. To ensure equal treatment from 1 April 2022, all active members of the HSC Pension Scheme are now in the 2015 Scheme.
2. To address the inequality that has already occurred, affected members will be offered a choice about their pension benefits for the period over which the inequality occurred i.e. the remedy period.

McCloud Remedy Part 1 - All active members of the HSC Pension Scheme are now in the 2015 Scheme

The 1995 and 2008 Sections of the HSC Pension Scheme closed on 31 March 2022 and all staff that were contributing to those schemes on that date were automatically moved to the 2015 Scheme on 1 April 2022. Members will keep all pension that they have earned in the 1995/2008 Sections before 1 April 2022, and the calculation of these benefits will still be linked to the member's final salary.

Members can continue to access these 1995/2008 pension benefits in line with the existing rules for each section of the scheme.

Moving members to the 2015 Scheme means that many individuals will have built up pension in more than one section of the HSC Pension Scheme over their career. At retirement, pension pots are therefore likely to be made up of more than one set of benefits. Each section of the scheme has different rules about how pension benefits from that section are calculated and when they can be claimed.

McCloud Remedy Part 2 - Affected Members will be offered a choice about their pension benefits for the remedy period

To address the discrimination that has already occurred, affected members will be asked to make a choice about whether they would like to receive 1995/2008 Section benefits or 2015 Scheme benefits for the period between 1 April 2015 to 31 March 2022. This is the period over which members were treated differently according to their age, and is known as the remedy period.



Members that have already Retired

Affected members that have already retired before the remedy is implemented will do so according to the existing rules and their pension will be paid based on their current membership situation. This is because the legislation that is needed to be able to offer members their choice before they retire was not in place.

Once the relevant legislation is in place, HSC Pension Service will contact these members directly and offer them a retrospective choice, along with personalised information to help them make this choice.

If a member chooses to keep their existing benefits, no changes will be needed. If a member chooses to receive different pension benefits for the remedy period, adjustments will be made to their pension payments accordingly. Any changes will be backdated to the date of retirement.

A retrospective choice will also be offered to members that have taken ill health retirement and to the families of members that have died during the remedy period.

Members that will retire after the Remedy Legislation is implemented

Members retiring after the legislation has been implemented will be offered the same choice of receiving either 1995/2008 Section or 2015 Scheme benefits for the remedy period. However, as the legislation is expected to be in place, members should be offered their choice as part of the normal retirement process, before any pension payments have been made.

HSC Pension Service will provide personalised information setting out the two options to help members make the best decision for their individual circumstances.

Special Class Status Members

After 1 April 2022, staff with Special Class or Mental Health Officer status are able to take any pension earned in the 1995 Section of the scheme without reduction from age 55, providing that they continue to meet the eligibility criteria.

Benefits accrued in the 2015 Scheme can be claimed from age 55 but an actuarial reduction will be applied if claimed before State Pension Age.

Pension Tax Considerations

For the majority of scheme members, the remedy will not have an impact on their pension tax position.

However, some members will be required to reassess their pension tax position for the seven-year remedy period, particularly in relation to the annual allowance due to a change in the value of their benefits over this period.

All affected members will be returned to their legacy scheme for the remedy period. HSC Pension Service will recalculate all members' Annual Allowance for the remedy period based on their legacy 1995/2008 scheme membership and will upload their revised Annual Allowance figures to the Member Self Service Portal.

This will have implications on historic annual allowance taxation and members will need to review their annual allowance liability for the remedy period. Most members will see no changes to their tax position as a result of the remedy; if a member has overpaid tax, they will receive a refund for in scope tax years and compensation for out of scope years.

In the instances where a member's tax liability does increase, in the vast majority of cases this will reflect an increase in the value of their pension benefits.

HMRC will continue to work through and with the McCloud Remedy Legislation to minimise the administrative burden on members affected by changes to their HSC Pension Scheme Annual Allowance. As further information on HMRC taxation processes becomes available HSC Pension Service will share with members and stakeholders.



Other Pension Issues impacted by The McCloud Remedy

Election for retrospective provision to apply to opted-out service

A member who opted-out of the HSC Pension Scheme and meets the remedy eligibility criteria, or who would have met the eligibility criteria but for the opted-out service, will be able to apply to make an election to have the opted-out service during the remedy period reinstated in the legacy scheme. Only service within the remedy period can be reinstated.





Purchase of Additional Pension During the Remedy Period

Unprotected members and taper protected members who have not yet retired and who took out an election to buy 2015 scheme additional pension during the remedy period will, in the first instance, also move back to the member's remedy section of the legacy scheme. The contributions paid for the extra benefits will be treated as if they had been paid to the member's remedy section of the legacy scheme in the year that they were paid to the 2015 scheme.

The additional pension under the member's remedy section of the legacy scheme will be costed for payment at normal pension age 60 if the member's remedy section of the legacy scheme is the 1995 section and normal pension age 65 if the member's remedy section of the legacy scheme is the 2008 section.


Early retirement buy-out contributions (ERRBO)

Members of the 2015 scheme have an option to pay additional contributions to buy out the actuarial reduction that would normally apply on early retirement between age 65 and State Pension age (SPA). This is known as an ERRBO agreement.

All affected members who paid ERRBO contributions are entitled to be paid a compensation payment equal to the ERRBO contributions the member paid during the remedy period, reduced by an amount representing tax relief.

If the member chooses legacy scheme equivalent benefits for the remedy period, then compensation will become payable for ERRBO contributions paid by the member during the remedy period. A member who is entitled to an ERRBO compensation payment will have an option to defer the payment of that compensation until they make their deferred choice election about which set of main scheme benefits to receive in respect of their remediable service.

If the member chooses 2015 scheme equivalent benefits for the remedy period and the ERRBO contributions would add value to those benefits either because an actuarial reduction would otherwise apply, or the benefits would be increased for retirement after SPA, the member may choose to forego compensation and instead become entitled to a benefit from the legacy section of an equivalent value to that which the ERRBO contributions would have attracted in the 2015 scheme.



Pension Sharing Orders (Pension on Divorce)

Pension benefits can be one of the most valuable assets that individuals have. Consequently, the value of any pension benefits must be considered as part of a divorce settlement or on the dissolution of a civil partnership. A valuation of the pension benefits is calculated using a cash equivalent transfer value. Once pension assets have been identified and valued, the parties must agree, with the assistance of the court, how to use this value in any financial settlement.

As a result of the remedy, it is possible that the valuation of the pension benefits, calculated on the 'transfer day', (the effective date of the relevant pension sharing order) might have been different had the member's remediable service always been in the alternate scheme. This means that the pension credit member might have been given a different amount of pension credit.

For the purposes of the McCloud remedy, only pension sharing orders with an effective date after 1 April 2015 are affected. The 2022 act does not give schemes the power to amend pension sharing orders, the sealed order is final, instead what the 2022 act does is give schemes the power in their regulations to adjust the pension debit and pension credit as a consequence of the McCloud remedy.

Transfers of Benefits – Non HSC/NHS

Unprotected members or taper protected members who transferred benefits into the 2015 scheme during the remedy period in circumstances where club terms did not apply.

As a result of the transfer payment the member will have been credited with transfer rights of an earnings credit in the 2015 scheme. On rollback of the member's remediable service to the member's legacy scheme, the member's transfer rights in the 2015 scheme are extinguished. The transfer payment must be treated as if it had been received by the member's remedy section of the legacy scheme and the member will receive either a service credit or an earnings credit (if the member is a practitioner) in that section.

Where the member subsequently makes a deferred choice election to have 2015 scheme equivalent benefits paid for their remediable service, the member's transfer rights are amended so that they are of an equivalent value to the rights the member would have secured if the transfer had been made to the 2015 scheme.

Transfer of Benefits from other and corresponding Health Service Schemes

If a period of remediable service in the Health Service Scheme for Scotland or England & Wales is transferred to the HSC Pension Scheme for Northern Ireland, it will be treated as a period of remediable service in the scheme for Northern

Ireland. For such service that was transferred to the 2015 scheme, this will mean the service will roll back to the member's legacy scheme along with any other remedial service.

Do Members need to do anything at Present?

No. Members do not need to do anything at present. HSC Pension Service will roll back all affected member records to reflect service in the legacy scheme for the remedy period. They will contact all affected retired members with their Choice relating to benefit accrual in the legacy or new scheme, perform all Annual Allowance revision calculations and update the member self-service portal.

As more information becomes available HSC Pension Service will continue to inform members through our communication mediums of the Scheme Website, Member and Employer Newsletters and bespoke Pension Workshops.

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