

# **UCU response to consultation on public sector (Teacher's Pension Scheme) age discrimination remedy choice**

## **Introduction**

UCU represents members in teaching roles in post '92 universities and in further education across the UK. They are members of the England and Wales Teacher's Pension Scheme, Scottish Teacher's Superannuation Scheme and the Northern Ireland Teacher's Pension Scheme. These members like other public sector workers were affected by the changes to the public sector schemes in 2015 which, while aiming to protect those nearer pension age introduced age discrimination into the scheme.

UCU members were consulted via circulars and a webinar. Those who expressed a view are concerned about the remedy of choice, in regard to when they will make this choice and what information and advice will be available to make an informed decision. UCU consider deferred choice to be the option that is likely to suit most members both active and deferred.

UCU understand that the government's remedy is for a specific period of service 2015-2022 or could that be longer. This uncertainty could in itself cause a problem for those wishing to retire at the end of the remedy period.

## **General comments**

Alongside this consultation the government published a policy note 'update on the cost control element of the 2016 valuations'. This note makes clear that HM Treasury intends to categorise the cost of addressing the discrimination identified in the McCloud and Sargeant judgments as a 'member cost'. As a 'member cost', it will be considered as part of the cost control element of the valuations process, resulting in either lower benefits or higher contributions for scheme members.

Members should not have to bear the cost of remedying the age discrimination introduced into public service pensions by the government. This is particularly true for public sector workers who joined schemes after 1 April 2012 and are therefore out of scope of the remedy. There is no increase in the value of the schemes to these members as a result of the remedy, so it is difficult to see how it can be classed as a member cost.

Forcing members many such as those in further education who have faced a drop of income in real terms to bear the cost of fixing the government's mistake through lower pensions or higher employee contributions will be demoralising. Indeed members of Teacher's pensions in all the nations were expecting, had been promised an improvement in benefits and now may end up paying the price of the governments mistake in higher contributions and this may possibly lead to higher opt out rates or a large number of retirees at the same time.

Moreover, the original treasury directions on the cost cap, which were amended in February 2019 when the government suspended the process, excluded the cost of transitional protections from the calculations. Under this guidance the number of members entitled to transitional protection is irrelevant as the valuations were to be carried out as if 0% of members were protected.

**Question 1: Do you have any views about the implications of the proposals set out in this consultation for people with protected characteristics as defined in section 149 of the Equality Act 2019? What evidence do you have on these matters? Is there anything that could be done to mitigate any impacts identified?**

We would expect an equality impact assessment on a scheme by scheme basis to identify and indicate action to remedy any such impact.

**Question 2: Is there anything else you would like to add regarding the equalities impacts of the proposals set out in this consultation?**

Younger teachers with mainly post 2012 service, may be disadvantaged which could leave the government open to further legal action over age discrimination. The changing demographics of the public sector workforce suggest these workers are more likely to be from black and ethnic minority backgrounds than employees with pre-2012 service are. This may also be true for Teachers.

**Question 3: Please set out any comments on our proposed treatment of members who originally received tapered protection. In particular, please comment on any potential adverse impacts. Is there anything that could be done to mitigate any such impacts identified?**

An important principle for trade unions is that no workers should lose out as a result of the McCloud remedy. The consultation identifies the possibility that some individuals who originally received tapered protection would be worse off as a result of moving to either legacy scheme benefits or new scheme benefits for the whole remedy period. UCU supports the TUC who is seeking a guarantee from HM Treasury that the small number of public sector workers who are in this position have the option of retaining their tapered protection so that they will not see their pensions reduced.

**Question 4: Please set out any comments on our proposed treatment of anyone who did not respond to an immediate choice exercise, including those who originally had tapered protection.**

The difficulty in getting responses from all 3 million scheme members in scope of the remedy is one of several reasons that the immediate choice option is impractical. The proposal to default members who do not respond in time into either legacy or new schemes ignores the fact that if there is no indication when they wish to retire they could be worse off as indicated above.

**Question 5: Please set out any comments on the proposals set out above for an immediate choice exercise.**

UCU members can see why immediate choice initially appears attractive, it offers certainty and many members have firm plans for retirement. However, for many people, particularly in times of uncertainty redundancy, ill health, caring responsibilities and other life events mean that these plans can change. Immediate choice then offers the risk that many public sector workers will make decisions that are not in their best interest because of a lack of advice, inadequate data, life events as described.

The consultation document sets out the administrative challenge schemes would face in contacting 3 mill members, providing the information and tools required to make an informed decision, and processing these decisions over a short period, at the same time as they carry out other significant data projects.

Many individuals will also need to take independent financial advice before making their decision, and there is currently nowhere near enough capacity in the advice market to provide this on the scale required. Nor is it clear who would pay for this advice if there was such capacity

Requiring people to make decisions that will affect their level of benefits in retirement based on partial and potentially inaccurate information and without access to suitable advice is clearly not in their interests. It also a recipe for further litigation by individuals in future.

**Question 6: Please set out any comments on the proposals set out above for a deferred choice underpin.**

As noted in the consultation this option will make the decision easier for scheme members as they will have significantly more information on the benefits they would receive under each scheme at the point they are asked to choose. As the consultation also makes clear, however it will still be impossible for some members to know at the point of retirement which benefit structure would deliver the highest value for them. Members will still require significant levels of support at and leading up to retirement to make an informed decision.

**Question 7: Please set out any comments on the administrative impacts of both options**

Both options will introduce extra administrative requirements, but from the perspective of schemes, the deferred choice underpin is considerably more manageable. The consultation is right to recognise the additional resource intensiveness and time pressure the immediate choice option would introduce and the increased risk of errors resulting from the need to rapidly develop new software systems.

**Question 8: Which option, immediate choice or DCU, is preferable for removing the discrimination identified by the Courts, and why?**

Out of the two options put forward in the consultation the deferred choice option is clearly preferable for the reasons outlined above. It will give members the greatest chance of making an informed decision about their benefits and is the most manageable administrative task for schemes.

**Question 9: Does the proposal to close legacy schemes and move all active members who are not already in the reformed schemes into their respective reformed scheme from 1 April 2022 ensure equal treatment from that date onwards?**

**Question 10: Please set out any comments on our proposed method of revisiting past cases.**

**Question 12: Please provide any comments on the proposed treatment of voluntary member contributions that individuals have already made.**

**Question 14: Please set out any comments on our proposed treatment of cases involving ill-health retirement. Seems practical**

**Question 18: Where the receiving Club scheme is one of those schemes in scope, should members then receive a choice in each scheme or a single choice that covers both schemes?**

Single choice for simplicity

University College Union  
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