Unite
Public Sector Pensions Brief – August 2020

Age Discrimination

Public sector pensions reforms 'transitional protection' against age discrimination
In December 2018, the Court of Appeal ruled that the 'transitional protection' offered to some members as part of the 2015 public sector pension reforms amounts to unlawful age discrimination. At the time the government said it would seek permission to appeal this decision. However on the 27th June 2019 the government was denied leave to appeal the age discrimination ruling by the Supreme Court.

Government concedes age discrimination will need to be remedied across all public sector pension schemes
Interim declarations has been made by the Employment Tribunals in respect of the firefighters and judiciary, who made the original legal challenges. The declaration confirms that the claimants are entitled to be treated as members of their legacy pension scheme. For non-claimants, i.e. members in the NHS, LGPS or Civil Service public sector pension schemes the Chief Secretary to the Treasury set out in July 2019 that the discrimination identified by the Court of Appeal (that transitional protection gave rise to unlawful discrimination) will need to be removed from all public service pension schemes.

Deferred choice or immediate choice Treasury consultation
The Treasury launched a consultation on the 16th July 2020 seeking views on its proposed method of implementing changes to remedy the age discrimination identified in the McCloud court case. It has proposed offering affected members the choice of accruing benefits in either the new career average pension schemes or in the final salary legacy arrangements that members were moved from for the period between 1 April 2015 and 31 March 2022 (the remedy period).

It is also seeking views on how to offer members this choice. The government has proposed either offering affected members an 'immediate choice' or a 'deferred choice underpin' (DCU). The immediate choice would require affected members to make their decision "in the year or two" after the point of implementation in 2022. Alternatively, the DCU option would see a member's decision deferred until the point at which the member retires, or when the member takes their pension. Under the DCU option, all members would be deemed to have accrued benefits in the legacy scheme, rather than the reform scheme, for the remedy period, until the member makes their decision.

The government is also seeking views on its proposal to move all public sector workers in the scope of the consultation to the reformed respective career average schemes they had initially been moved into in April 2015, from 1 April 2022. The consultation will close on the 11th October 2020.

This consultation relates to the main public service pension schemes the UK Government is responsible for (the Civil Service Pension Scheme for England, Wales, Scotland and home civil servants in Northern Ireland, the Teachers' Pension Schemes in England and Wales, the National Health Service Pension Schemes in England and Wales, the UK Armed Forces Pension Schemes, the Police Pension Schemes in England and Wales, and the Firefighters Pension Schemes in England).

Scotland, Wales and Northern Ireland
The Welsh Government is the responsible authority for the Firefighters Pension Scheme in Wales and the Scottish Government is the responsible authority for the Teachers' Pension Schemes, the National Health Service Pension Schemes, the Police Pension Schemes and the Firefighters Pension Schemes in Scotland. This consultation relates to the public service pension schemes in Scotland and Wales listed above since the discrimination identified by the Courts applies to since pension scheme and new provisions should apply from 1st April 2022 onwards. Please note decisions regarding the details of how the discrimination identified by the Courts is addressed in those schemes are matters for Scottish and Welsh ministers. Furthermore, public service pension schemes managed by the Northern Ireland Executive are established under separate legislation to those in Great Britain. They will therefore be subject to separate consultation.

Unite is currently considering the consultation and will respond either individually and/or collective as is appropriate to do so on behalf of our membership. In addition the National Health Service (NHS) and Civil Service pension Scheme Advisory Boards (SAB), which have Unite representation on are beginning to consider these consultations. The Local Government Pensions Scheme (LGPS) is slightly different in that there is an underpin, which was written into the rules of the scheme at the time of the 'transitional protections'. This doesn't mean that there isn't anything for the LGPS to do on this, just that the process will be different. Unite also has SAB representation on the LGPS and will be looking to get better member outcomes in exactly same the way we will for the NHS and Civil Service. In addition, Unite and other Trade Unions are urgently seeking a meeting with HM Treasury officials to discuss further at a date yet to be agreed potentially in September.

Cost Cap

Cost cap floor breached

A cost cap mechanism is in place for public sector schemes, designed to ensure public service pension schemes remain affordable and sustainable for 25 years. In theory, employers pay no less than a fixed floor and no more than a fixed ceiling, and if costs exceed the ceiling then action is taken to bring it back in line with target cost. This is measured every four years in line with other public service valuations. For Public Sector schemes there is a 2% buffer either side of the employer future service contribution rates. Perhaps surprisingly given the general trend for increasing pension costs, on 6th September 2018 the Treasury announced the floor had been breached, which meant benefit improvements for members was required.

Scheme Advisory Boards (SAB) recommend member benefit improvements to government

Over a number of months Unite alongside other public sector trade unions and employer representatives on the individual SAB for the NHS, LGPS and Civil Service came up with different member improvements for each scheme to recommend to government.

Give with one hand and take with another

Whilst SAB's were busy trying to work out the member benefit improvements to put to government. The government brought forward the 'Valuations and Employer Cost Cap Review'. This review wasn't due until 2021 and proposed to reduce the discount rate used to set contribution rates for unfunded public service pension schemes at future valuations, which ultimately will make the cost of the schemes more expensive.

Government pause to valuations lifted

On the 30th January 2019 the government announced a pause to the valuations of public sector pension schemes, following the firefighters and judiciary age discrimination court ruling on part of the 2015 pension reforms. At the time the government said:

"…given the potentially significant but uncertain impact of the Court of Appeal judgment, it is not now possible to assess the value of the current public service pension arrangements with any certainty. The provisional estimate is that the potential impact of the judgment could cost the equivalent of around £4 billion per annum. It is therefore prudent to pause this part of the valuations until there is certainty about the value of pensions to employees from April 2015 onwards."

This didn't stop the government from pushing through with the increased employer contributions part of the valuation.

On the 16th July 2020 the Treasury published their consultation on options for McCloud remedies (as highlighted on page 1) alongside an announcement that the pause on the cost cap mechanism will be lifted and that the cost of the remedy will be included within that mechanism.

The Written Ministerial Statement and related documents can be found here:

https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2020-07-16/HCWS380/

https://www.gov.uk/government/consultations/public-service-pension-schemes-consultation-changes-to-the-transitional-arrangements-to-the-2015-schemes

Unite welcome the decision to re-start the cost cap mechanism. This process should already be delivering better pensions to hard-working public sector workers. But the government is wrong to try and use this process to load the costs of addressing the discrimination identified in the McCloud case onto public servants. Unite and other Trade Unions are urgently seeking a meeting with HM Treasury officials to discuss further at a date yet to be agreed potentially in September.

Exit payments £95k cap

Exit payment cap to start in 2020?

The Enterprise Act 2016 gave ministers the power to cap redundancy compensation for public sector workers at £95,000. Latest indications are that the cap itself might take effect sometime after parliaments recess from 1st September 2020, an actual implementation date has not been confirmed as of yet.

Unite oppose the change

Unite is strongly opposed to this regulatory change to cap public sector exit payments. These proposals are not based on evidence, may have unintended consequences and are part of a continued erosion of public sector terms and conditions. Unite have strongly argued that they should not be implemented.

These changes will not just impact the high paid, but could potentially impact long-serving public service workers earning annual salaries of less than £25,000 per year, when pension lump sums are included.

No equality impact assessment

It is striking that there is no Equalities Impact Assessment provided. These policies are likely to heavily impact on women that make up two thirds of the public sector workforce. Analysis of the intended change shows that many relatively low paid public sector staff (including in the NHS and local authorities) with long service, would be significantly disadvantaged by these changes due to the inclusion of pension’s provisions.

Pay floor and inflationary indexation needed

If the Government ignores Unites and others’ calls to drop the £95k exit payment cap then Unite believes that the Government should implement a pay floor protection for low to middle paid workers, so they are exempt from any exit payment cap. The £95K cap must also be indexed linked to RPI inflation to prevent the cap from shrinking in real terms over time.

Ultimately Unite believes that compensation schemes should be agreed through collective bargaining rather than arbitrary imposition from the Treasury.