

## Guidance for members approaching retirement – the implications of the Government's proposed remedy to unlawful discrimination in the Scottish Teachers' Pension Scheme

Teachers' Pensions in Scotland are devolved to the Scottish Government, but the Scottish Government must receive Westminster Government approval for any decisions it takes about public service pension schemes in Scotland.

The Westminster Government has proposed a remedy to the unlawful discrimination which has been confirmed by the Supreme Court in the Scottish Teachers' Superannuation Scheme (STSS), the Scottish Teachers' Pension Scheme (STPS) and other public service pension schemes in Scotland. This legal decision is also known as the McCloud Judgment, with the Westminster Government's proposed remedy being known as the McCloud remedy. For the sake of simplicity, both Teachers' Pension Schemes in Scotland will be referred to as the STPS in this bulletin.

Further information about the Westminster Government's proposed remedy is available at: <https://www.nasuw.org.uk/advice/pay-pensions/pensions/scotland/mccloud-and-unlawful-discrimination.html>.

NASUWT Guidance on responding to the Westminster Government's consultation is available in the pensions bulletin section at: <https://www.nasuw.org.uk/advice/pay-pensions/pensions/scotland.html>.

The purpose of this pensions bulletin is to provide guidance for **members approaching retirement** on the implications of the McCloud remedy. The bulletin should be read alongside the NASUWT's previously published advice about the McCloud remedy.

The McCloud remedy applies to all teachers who fall within its scope, not solely those teachers who commenced legal proceedings in respect of the McCloud Judgment.

Assuming that the Westminster Government's proposals do not alter significantly, the McCloud remedy will take the form of providing teachers who started teaching before 1 April 2012 with the opportunity to accrue pension in an alternative STPS to the one in which they accrued pension from 1 April 2015 through to 31 March 2022 (the Westminster Government's proposed remedy period). If a teacher who started teaching before 1 April 2012 retired after 1 April 2015, they will be entitled to accrue their post-2015 service in an alternative pension scheme to the one in which they originally accrued the pension.

This will give some teachers with post-2015 service, including some teachers who are approaching retirement now, the entitlement to accrue pension in a scheme which gives them a higher level of benefit. This will particularly be the case for teachers who have retired between ages 55 and 60 and have post-2015 service in the career average scheme, but this would not be the only factor which determines the level of benefit.

The key current issues for NASUWT members approaching retirement are:

- **There is no need to take any action at this stage in response to the Westminster Government's proposals**

The NASUWT encourages members to respond to the Westminster Government's consultation on its proposed McCloud remedy, but, other than this, there is no need to take action at this stage. HM Treasury is likely to respond to the consultation towards the end of 2020 or in early 2021 and will confirm the remedy at this point. The remedy will be applied after the end of the remedy period, in all likelihood in 2023 at the earliest.

The remedy is likely to be applied to individual teacher pensioners first, because they will already have taken their pension. Assuming that a teacher exercises a choice which is in their best interests, they should either see no change to their pension in payment or will receive a higher pension and a backdated pension payment.

- **A teacher does not have to delay taking their pension until 2022 to receive the McCloud remedy**

A teacher will not have to remain in pensionable service through to 2022 to receive the benefits of the McCloud remedy. The remedy will be applied to all service between 1 April 2015 and 31 March 2022, irrespective of when the pensionable service ends.

- **There is no need to seek advice at this stage from the Scottish Public Pensions Agency (SPPA) or an independent financial advisor about the McCloud remedy**

There is no need to obtain advice about the impact of the remedy on your individual pension at this stage. After the remedy has been confirmed by HM Treasury, the SPPA will contact all affected pensioner STPS members and provide written information about the choice available to them and the implications of this. At this point, pensioner members will be in a position to take independent financial advice about their scheme choice option if they wish.

The NASUWT is meeting HM Treasury, the Scottish Government and the SPPA regularly to discuss the implementation of the McCloud remedy. These discussions include how pensioner members will be contacted with information about the McCloud remedy options and the information which they will receive. As soon as the McCloud remedy is known, and the Westminster Government provides greater clarity about how it will be applied, the Union will brief members on this. Specifically, the NASUWT will brief members approaching retirement and pensioner members with post-2015 service on the issues which are specific to these groups.

Please note that, even though the NASUWT is able to advise members about how the McCloud remedy process will operate once the final remedy is known, the Union is unable to provide individual financial or pensions advice. Members should contact the SPPA and the STPS administrator for information about their pension and should take independent financial advice if they need pensions or financial advice.

#### **Important information for members approaching retirement with tapered protection**

If you have tapered protection and are approaching retirement, you should read the NASUWT's advice on the potential impact of the McCloud remedy proposals for tapered protection members. You should consider responding to the Westminster Government's consultation and should read the guidance in the pensions bulletin section on the following NASUWT webpage about this: <https://www.nasuwt.org.uk/advice/pay-pensions/pensions/scotland.html>.

#### **Important information about ill-health retirement**

If you are subject to the McCloud remedy and have unsuccessfully applied for ill-health retirement because you could not demonstrate medical incapacity up to the higher pension age in the career average pension scheme, but you could have demonstrated medical incapacity up to the lower age in the final salary scheme, please contact your NASUWT caseworker for a discussion about the implications of McCloud for your case. If you do not have an NASUWT caseworker, please contact [rc-scotland@mail.nasuwt.org.uk](mailto:rc-scotland@mail.nasuwt.org.uk) for assistance with your case.

#### **Important information for teachers who opted out of the STPS**

If you are subject to the McCloud remedy and you opted out of the STPS because you were transitioned from the final salary STPS to the career average STPS, please contact [rc-scotland@mail.nasuwt.org.uk](mailto:rc-scotland@mail.nasuwt.org.uk) for a discussion about your case.

#### **Inaccurate record of pensionable service**

If your record of pensionable service held by the SPPA is inaccurate, please contact the SPPA and ask for the service record to be rectified. You should provide full details of all missing service to the SPPA and safely retain payslips which prove that pension contributions were deducted from your salary for the period of missing service.

The best method to contact the SPPA is online at: <https://pensions.gov.scot/teachers>.

You should not delay applying for your pension solely because your service record is inaccurate, as your pension will be adjusted and you will receive any back payments to which you are entitled when your service record is eventually corrected.

If the SPPA does not rectify your service record on request, please contact [rc-scotland@mail.nasuwt.org.uk](mailto:rc-scotland@mail.nasuwt.org.uk) for NASUWT assistance.

