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The McCloud Remedy and Impact for NHS Professionals



Following the Budget in March 2023, and with the new regulations having come in from 1st October 2023, under the new “rollback” regulations, for those working in the public sector in the UK, there are options to engage with your Pension; including rejoining and recouping “lost” pension, with potentially lower Annual Allowance charges and lower Lifetime Allowance charges.

Background

What is the “McCloud Remedy”?

On 10 March 2022, the Public Service Pensions and Judicial Offices Act 2022 (‘the 2022 act’) gained Royal Assent. The 2022 act put in place a legal framework to rectify the unlawful discrimination identified by the McCloud judgment, in which the Court of Appeal found that the transitional protections provided when reformed public service pension schemes were introduced in 2015 were discriminatory due to age.

These transitional protections allowed older workers to continue building pension benefits in legacy public service pension schemes, whereas younger workers without protection were moved into the reformed schemes.

The Remedy for this discrimination, known as the ‘McCloud Remedy’, has two parts.

The first and prospective part:

- Closure of the legacy public service pension schemes on 31 March 2022
- ensured equal treatment for all public service pension scheme members by moving all active members into the reformed public service pension schemes on 1 April 2022



The second and retrospective part of the Remedy will remove the effect of the transitional protections.

For NHS Pension Scheme members impacted by the discrimination, the retrospective Remedy primarily:

- Returns members who moved to the 2015 scheme back into the legacy scheme for their pensionable service ('remediable service') effected by the discrimination during the Remedy period, from 1 April 2015 to 31 March 2022, which in this consultation is referred to as 'rollback'.
- Offers a choice of whether to receive, legacy scheme benefits or 2015 scheme benefits for their remediable service.

How will this impact me?

Remedial Service Statements (RSS)

Affected members will receive a remediable service statement within 18 months of the date of rollback (1st October 2023). It will detail the benefits you have built up during the Remedy Period (April 2015 to April 2022).

For active members of the scheme i.e. those still working, this statement will be produced annually. No immediate choice is required, until such time as you choose to commence your benefits.

For those members who have already commenced their benefits, you will have a period of one year from when the remediable service statement is provided to make a decision regarding your benefits.

Deferred Members

Deferred members (those no longer in the scheme) will only need to be provided with a remediable service statement when requested, this can only be requested once a year.

Pension Saving Statement

A revised statement detailing the revised pension input amounts during the Remedy period will be issued to individuals who have previously received one, or new individuals where it has been identified that you may have exceeded the Annual Allowance.

A Pension Saving Statement will not be available for the tax year 2023/2024 (though the deadline for submitting this amount is extended to 31st January 2025, rather than 31st January 2024).

The revised statement will detail your revised pension input amounts for the affected tax years and are due to detail up to 11 years' worth of information and will be provided/issue by SPPA.

The deadline for this document is 6th October 2024, which remains a tight deadline for any self-assessment elections for the following January (31st January 2025).

Scheme Pays (where the Pension Scheme pays the Annual Allowance Tax charge) may be available for these impacted years. Further detail to follow.

Compensation

If you have previously had either, or both a Lifetime Allowance or an Annual Allowance charge between and including the tax years 2015 to 2016 and 2018 to 2019, this may have changed in value as a result of the McCloud Remedy.

Where the charge has reduced, you will be able to apply for compensation.

For amendments for the 2019 to 2020 up to 2022 to 2023 tax years an amendment can be made through your usual self-assessment. Where you have underpaid an Annual Allowance tax charge in the tax years prior to these tax years, as it is more than 4 tax years in the past, it may be outside of the scope and therefore you may not have a charge to pay, however, it is highly recommended to speak to your financial professional for advice on this.

If you opted out of your pension

If you had opted out of your pension during the Remedy period, you could apply to opt back into the legacy scheme. If you opted out, you could potentially see an advantage in exploring a request to the scheme to opt back in.

- You can raise a “contingent decision”.
- The conditions for this process will be set out by scheme regulations and is to be confirmed by SPPA.
- You will have to make contributions to the scheme to re-build these benefits.
- There is potentially the option to opt back in for only part of the 7 years.
- These contributions could be sizeable, though an instalment plan may be available.

Further resources

HMRC - <https://www.gov.uk/government/collections/how-the-public-service-pension-remedy-affects-your-pension>

Scottish Public Pensions Agency - <https://pensions.gov.scot/>



Options for Consideration

Commenced some, or all, of your benefits?

Immediate choice:

- You will be provided with a remediable service statement within 18 months of the date of rollback. The statement will provide you, with details of the benefits during the Remedy period (April 2015 - April 2022) calculated on the basis of both the legacy and new schemes.
- You will have a period of one year from when the remediable service statement is provided to elect for benefits to be paid on the new scheme basis.
- As a result of your immediate choice, the legacy scheme may need to reduce or increase your benefits.

Lifetime Allowance (LTA)

As a result of your "Immediate Choice" a lifetime allowance excess lump sum charge may change as a result of the immediate choice.

Annual Allowance (AA)

As a result of the "Rollback" into your legacy scheme or your "Immediate Choice" any annual allowance excess charge may change.

Where, as a result of the Remedy, you have a new or additional annual allowance or lifetime allowance charge, you must report this on the "Accounting for Tax" return and pay the charge, more details of which can be found at HMRC website or through Self-Assessment.



Compensation

If you have previously had either, or both a Lifetime Allowance or an Annual Allowance charge between and including the tax years 2015 to 2016 and 2018 to 2019, this may have changed in value as a result of the McCloud Remedy.

You will not be able to receive a refund of those overpaid charges. Where the charge has reduced, you will be able to apply for compensation.

For amendments for the 2019 to 2020 up to 2022 to 2023 tax years an amendment can be made through your usual self-assessment.

Where you've been overpaid

If, as a result of your 'immediate choice', the amount of pension you are entitled to is reduced, it is the scheme administrator's decision whether to recover overpaid pension from you. If they choose to recover the overpaid pension by deducting this from future pension payments, this deduction will be made after tax has been calculated and deducted from the pension payment.

Where you've been underpaid

If, because of your immediate choice, the amount of pension you are entitled to is increased, the scheme administrator should pay you extra pension. It is an "authorised payment" and tax will be deducted from the pension payment under the PAYE system. The payment will be taxable in the year you receive it. If, because of the arrears being paid as lump sum you pay more tax than was due, you can reclaim the overpaid tax.



About to make a decision?

Partial retirement

Partial retirement allows active scheme members who have reached minimum pension age to take all or part of their pension whilst continuing to work.

- You must reduce your pensionable pay by at least 10% for a minimum of 12 months to take partial retirement.
- This was previously restricted for members who had benefits in the 1995 section of the scheme. Unlike normal retirement or Retire and Return ("24 hour rule") you do not need to leave your post.
- You can take from 20% to 100% of your pension.
- You can claim your pension benefits up to 2 occasions before fully retiring.
- This also allows you to protect your entitlement to Sick Pay and Annual Leave. Please speak with your HR/Payroll department to explore this further.

Still working?

If you are continuing to work for the NHS you do not need to make any immediate decisions.

- You will receive a remediable service statement from SPPA within 18 months of the date of rollback (1st October 2023) and then annually whilst you remain an active member.
- This will detail the benefits you have built between April 2015 and April 2022, giving you an indication of your benefits when you do decide to stop working.
- This will be updated annually, whilst you are an active member, to help you plan for life after work.

One of the main changes that will impact you is the contributions you make to the scheme. This has taken effect from 1 October 2023. There will be a further change to contribution percentage rates from 1 October 2024. The contribution percentage rates applicable from 1 October 2024 can be found from your HR/Payroll department.

Next Steps

Managing pensions, and retirement planning is not always straightforward, and this McCloud Remedy, does not affect everyone, however for some, it can have a significant impact and is worth looking into further.

Depending on your personal circumstances, it is worth looking into this further if affected in anyway, this could involve speaking with your internal HR and Payroll department. Consultation with an experienced accountant, and financial advisor is highly recommended.

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Sources

Scottish Public Pensions Agency - <https://pensions.gov.scot/>

HMRC - <https://www.gov.uk/government/collections/how-the-public-service-pension-remedy-affects-your-pension>

Annual Allowance

This is the maximum amount of money you can put into your pension funds in a given tax year, and still claim tax relief.

Compliance Statement

The information is based on our understanding of current legislation, which is subject to change. The content in this publication does not constitute advice.



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