Actuaries for Lawyers

Note on the McCloud Judgement and Public Sector Pensions Remedy

The McCloud remedy and divorce – what do I need to know

If you or your spouse have pension benefits in a public service pension scheme your divorce may be affected by the public service pensions remedy (referred to as ‘remedy’).

Broadly speaking, if you or your spouse were in a public service pension scheme on 1 April 2012 and on 1 April 2015, and have some pensionable service between 1 April 2015 and 31 March 2022, you are likely to be affected.

What does it mean?

For anyone in scope, pensionable service for what is termed ‘the remedy period’, which is service between 1 April 2015 and 31 March 2022, will have been re-instated in (rolled-back to) the old public service pension scheme (‘legacy’ scheme) which applied before 2015.

On retirement, affected members will be offered a choice of benefits for remedy period service. This will be calculated by reference to the legacy scheme basis and separately on the new scheme (‘reformed’ scheme) basis and the member will be able to choose which benefits they want.

Those already in receipt of benefits will be given, or may have already been given, a similar choice. For those that have not made a choice yet there will be no change to the levels of their benefits in payment until that choice is made; however their remedy period benefits should be paid from the legacy scheme; whereas previously they may have been paid from the reformed scheme.

Members of the Local Government Pension Scheme (LGPS) and Judicial Schemes are covered by Remedy, but subject to slightly different provisions. In the LGPS the remedy period is a little longer, starting on 1 April 2014, and the same scheme was used for both legacy and reformed benefits so 'roll-back' is not a feature, but an underpin is provided. Members of the Judiciary were required to make an immediate choice on 1 April 2022 as to whether they wished to have their benefits for the remedy period based upon legacy or reformed scheme benefit structure.

When requesting a CEV for divorce purposes

If requesting a CEV for divorce purposes, your scheme administrator should take the remedy period benefit options into account and quote the value of the higher of legacy or reformed scheme benefits for remedy service. From our experience, this is typically now happening, although we are seeing some mistakes being made.

For a pension credit recipient, where the sharing order applies to a legacy scheme and includes remedy period service, the credit will be established using the higher value CEV, and based on legacy scheme terms. This latter point means that the shape of the benefits set up for the ex-spouse, in terms of the retirement age at which the benefits become payable, split of benefits between pension and retirement lump sum etc, will follow the default structure for ex-spouse members of the legacy scheme. This means that on an NHS case, for example, any share of benefits accrued prior to April 2022, that are impacted by McCloud, where pensionable service commenced before April 2008, will become payable at the later of age 60 or the current time for the ex-spouse and may provide a split between pension and lump sum benefits, consistent with the benefit entitlement of the pension scheme member.

Implementation of a pension sharing order

For public service scheme members with rights in both legacy and reformed schemes, a pension sharing order could be made on either of the schemes, or both. We are seeing some evidence that schemes may not be fully conversant with remedy when implementing orders.

The legislation on remedy and divorce is complex. For future sharing orders:

- any remedy service benefits (rights accrued between 1 April 2015 and 31 March 2022) will be included in the legacy scheme valuation and a sharing order on the legacy scheme will automatically include rights accrued between the above dates.

- for cases where the remedy choice has not been made, the pension credit member will receive a credit which takes into account the higher value (that is, the higher of legacy or reformed scheme benefits for remedy service) but as far as the shape of benefits granted to them is concerned, legacy terms will apply – there will be no subsequent choice of benefit for the pension credit member.
- for cases where the remedy choice has not been made, the debit member will however continue to have a choice at retirement of legacy benefits with a legacy scheme calculation of debit applied, or alternatively reformed scheme benefits with a reformed scheme debit applied for the remedy period.
- for cases where the remedy choice has been made (typically this will be retired members, but note at present most retired members have not made their choice yet) the pension credit member will receive a credit CEV which will be based on the choice made, but as far as the shape of benefits granted to them is concerned, legacy terms will apply – there will be no subsequent choice of benefit for the pension credit member.

Optional supplementary note if you want to know more about the background and consequences of McCloud remedy

Background

The ‘public service pension remedy’, commonly referred to as ‘McCloud remedy’, is about the problematic introduction of the reformed public services schemes in 2014/2015. Legal challenges were brought about the age discriminatory nature of certain aspects of the reforms and the Government lost. Owing to the length of time taken to clarify the legalities, and the challenges posed in designing an equitable remedy, those affected have up to seven years’ worth of pension accrual judged to be on a discriminatory basis and to be addressed by remedy. The Government’s remedy is to return these members to their prior pension schemes for this period, and then provide a choice of benefit for the period, to be based on either the old legacy scheme or new reformed scheme benefits.

Who is affected?

The numbers affected is in the millions. It includes almost all public service pension scheme members who were in pensionable service at 1 April 2012 and 1 April 2015 and who have some pensionable service in the period 1 April 2015 to 31 March 2022.

Not all of the affected members are impacted equally. Indeed very many will not see any change to their benefits. A minority will see a major impact and there will be some in between.

The key factors which influence the impact at an individual level include the following:

Which scheme – the original legal challenge was brought by members of the judiciary and the fire service, and members of these schemes, along with the police and armed forces schemes, are typically the most affected. This is because the reforms to these schemes introduced the largest benefit changes.

Circumstances of retirement. Public sector members retiring on ill-health grounds, or having such retirement refused, could be materially impacted here. The legacy and reformed schemes have differing eligibility terms, and for some members, considerable benefit differences. Most of the schemes have sought to prioritise those impacted.

Pay growth. Those with significant pay growth may find legacy scheme benefits are more favourable than the career average basis in the reformed schemes. Similarly, those with flat pay growth, may do better from the automatic benefit indexation in the reformed schemes.

Retirement plans. In general, those choosing to take advantage of the lower normal retirement ages under the legacy schemes, may find the legacy scheme benefits to be better, whilst those considering working later may well find the reformed scheme provides better benefits, given the higher accrual rate (that is higher pension fraction) used when calculating benefits in the latter case.

Other points to be aware of

Taper members. These are individuals who (on age grounds) were initially allowed to remain in their legacy scheme after April 2015, with their move across to the reformed schemes deferred. Under the terms of remedy, such individuals may not keep the benefits they originally accrued for the remedy period. Instead, like all other members, they are required to choose between all legacy or all reform benefits for the whole remedy period. In some cases, where benefits are already in payment, this will result in an overall reduction. Each scheme has the facility to waive the impact of such reductions, if circumstances warrant. The expectation is that retrospective overpayments may be written off, whereas prospectively pensions will be reduced as needed.

Pensions tax. Remedy requires a reopening of annual and lifetime allowance assessments for affected members. The public service schemes should have equipped those affected with the information needed by HMRC to deal with this. We are aware that has not been achieved in some cases. Whilst there are some provisions to waive past underpayments of tax, this is not always the case under remedy and higher earners expecting a significant increase in pension rights due to remedy, should be conscious of the tax liabilities which could arise consequent to this.

Differential contributions. The legacy scheme and the reformed scheme may have had different member contribution levels. As such there could be an adjustment requirement where the member chooses a remedy period benefit with a different level of member contributions to what they paid. This adjustment requirement could lead to the scheme requesting payment for the difference (if there is a shortfall) or there could be some payment due to the member (where surplus contributions were paid). In general we are not expecting such contribution differences to be large if any at all, but there could be individual circumstances where this may be material.

Important Caveat to note

Whilst the above note represents our best understanding of the Remedy proposals we should point out that we cannot provide any absolute guarantees that our interpretation will precisely follow the position taken by the individual public sector pension schemes in relation to implementing changes to their rules and regulations in practice. Actuaries for Lawyers can bear no responsibility for any losses that may occur as a result of acting upon information set out in this note.

Sue Vivian FIA C.Act

David Bor FIA C.Act

Paul Windle FIA C.Act

David Lockett MA(Oxon) Consultant

Actuaries for Lawyers 10 September 2026