

The logo for GMB Union, featuring the letters 'GMB' in white on an orange background, and the word 'UNION' in white on a dark grey background below it.

GMB

U N I O N

**GMB response to Public Sector Pension Schemes:
Changes to the Transitional Arrangements
Government Pension to the 2015 Schemes**

Written response from GMB

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To: PensionsRemedyProjectConsultation@hmtreasury.gov.uk

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The consultation will run for 12 weeks closing at midnight on Sunday 11 October.



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Introduction

GMB is one of the largest Trade Unions in the UK and Northern Ireland representing over 600,000 workers across the public and private sectors. Over 50% of our members are employed in Public Services and have thus been affected by all the Public Sector Pensions Reforms that led to the 2015 Pensions Schemes and the transition into them that have been the subject of the McCloud/Sergeant Judgement.

GMB took part in all discussions across all public sectors where changes were proposed. Therefore GMB, more so than any other UK Trade Union, are the only UK Trade Union that is represented on 3 Public Sector Pension Scheme Advisory Boards – the NHS, The Civil Service and the Local Government Pension Scheme (not covered by this consultation).

GMB strongly objected to the reforms. The consequence of working longer, paying more to get less, are key principles we will continue to challenge. GMB is adamant that pensions are our members' pay when they retire. They form a key part of our members' employment package and are as important as the wages our members receive now. Financial security and dignity in retirement are key priorities for GMB members; they benefit the individual, local economies and society as a whole via the multiplier.

We note that

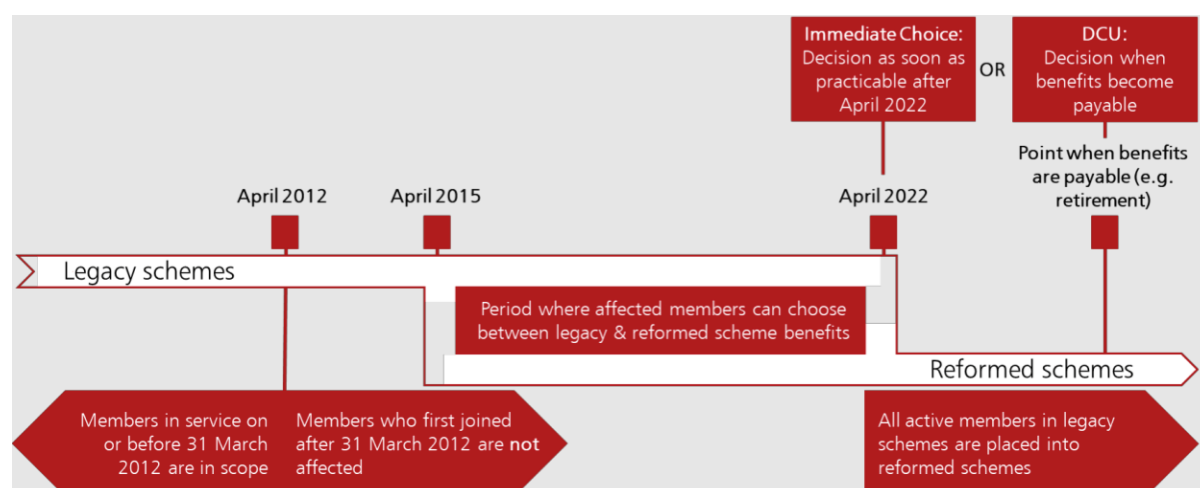
- The courts have recently ruled that the transitional protection arrangements for the 2015 reformed public sector schemes (like the NHS and Civil Service Schemes) were discriminatory on the grounds of age and that this consultation is about removing that discrimination.
- The proposals set out in this consultation will apply to all members who were in service on or before 31 March 2012 and on or after 1 April 2015, including those with a qualifying break in service of less than 5 years, across all affected public service schemes
- The remedy period runs from 1st April 2015 to 31st March 2022 for which period members will be notionally returned to their legacy schemes prior to moving into the 2015 schemes on 1st April 2022
- For this period of time only, members will be asked to choose between the benefits derived from their legacy arrangements (either the 1995 or 2008 sections of the scheme in the NHS; or the Nuvos, Premium, Classic or Classic Plus arrangements in the Civil Service) or the reformed arrangements (the 2015 schemes)
- The consultation is about WHEN this choice is to be offered – either “immediately” – as soon as practicable after 1st April 2022 - or a “deferred choice underpin (DCU)” - when they retire (until that deferred choice is made, all members would be deemed to have accrued benefits in the legacy scheme, rather than the reformed scheme, for the remedy period).
- Both approaches give members a choice whether to receive benefits from the legacy or reformed pension schemes in respect of their service during the remedy period, but they differ at the point in time at which the decision is made.



- Under either approach, those who have already retired and/or received a pension award will be asked to make their choice as soon as practicable after the changes are implemented. The position they choose would be applied retrospectively back to the date the award was made.
- There might in some cases be a need to adjust benefit payments, contributions and tax assessments with retrospective effect.
- There are implications on the cost ceiling calculations.
- All public servants in scope of this consultation will be placed in these pension schemes in respect of employment from 1 April 2022 onwards.

The process is represented in the diagram below and we express our concerns at the implications of McCloud/Sergeant in our replies to the consultation questions.

Figure 1: **Diagram** of the c choice and pension reform process¹



Scope and Reassurance

GMB further notes that:

- All individuals in scope will be able to receive the benefits to which they are entitled and that *“the government will also ensure that the discrimination is addressed for those who receive a pension award before the changes are implemented... All relevant payments will be backdated where necessary”*²
- That there are separate consultations for the Local Government Pension Scheme in England and Wales, the equivalent scheme in Scotland, the judiciary

¹ HM Treasury Consultation

² Ibid



and the Public service pension schemes managed by the Northern Ireland Executive

- That it is the government's intention to bring forward relevant legislation as soon as practicable that will take effect from April 2022, and that amendments required to scheme regulations, in order to implement these proposals, will be the subject of further public consultation on a scheme by scheme basis.
- The government's intention is that any action it takes to make changes to public service pension schemes will be consistent with any declaration of claimants' rights made by the Tribunals and that the proposals in the consultation will apply to those who have lodged legal claims and to those who have not.

Equalities impacts

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 2010? What evidence do you have on these matters? Is there anything that could be done to mitigate any impacts identified?

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

GMB Response

In respect of equalities, this consultation has set out a one size fits all approach to the entire public sector i.e. that all must comply with S149. This is a glib and facile approach that does not take into account the specific demographic makeup of individual public services.

For example, the NHS workforce is predominantly female (77%) whereas the Consultant demographic is older, whiter and male. The BAME community make up almost 21% of the NHS workforce.

In the Civil Service women are just over 50% of the workforce and just 12.7% of the Civil Service workforce are from BAME communities.

Given the distinct make up of just these two areas of public service the government should set out detailed sector specific approaches to addressing the equalities impact of its choice proposal.

Removing discrimination arising from transitional protection



GMB notes that the McCloud/Sargeant judgements require the removal of any discrimination and the establishment of equal treatment back to 1 April 2015. We recognise that the simplest way to achieve this would be to return all members back to their legacy schemes but recognise that may be detrimental as a significant number of members may be better off in the reformed schemes. We note the consultation proposal therefore to ensure equal treatment by offering relevant members a choice of which scheme benefits they want to have in respect of their service between 2015 and 2022 (the remedy period); either their legacy scheme benefits or the reformed scheme benefits - noting that the differences between the two, will not just be in terms of core pension but also in respect of a wide range of benefits such as:

- Special Class Status (NHS)
- Mental Health Officer Status (NHS)
- NPA 60
- Lump Sum Flexibilities
- Contribution Rates
- Ill Health Retirement
- Dependants Allowances/Survivor Benefits

Members place different values on these benefits and therefore it is not reasonable or practicable for anyone other than the scheme member to decide which set of scheme benefits they want to receive for the whole of the remedy period.

Post Remedy period

GMB notes that it is separately proposed that from 1 April 2022 all active members will be moved into the relevant reformed schemes.

Members in scope

GMB notes that the members in scope are those who were in service on 31 March 2012 and received full transitional protection and those who were in service then but did not receive full transitional protection (because they were more than ten years from NPA).

Further, we recognise that as those who first joined their scheme after 31 March 2012 were ineligible for transitional protection, they were not subject to the discrimination identified by the court and are therefore not in scope.

Finally, we recognise that individuals who were in service on or before 31 March 2012 but subsequently left and re-joined will be in scope provided their break in service was less than five years.

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?

GMB Response

GMB supports the approach of giving members a choice of receiving either the benefits of their legacy scheme or their reformed scheme *subject to members being given appropriate information and advice about the effect of choosing from the two options.*

Members who retire or receive pension benefits before the consultation changes are implemented

GMB notes that members who have already retired and received a pension award, from either their legacy or reformed scheme, will be given a choice between legacy and reformed scheme benefits as soon as practicable once the legislative changes are implemented and that any revised award will be backdated to the date their pension award was made.

Further, we note the government will work with schemes to seek to offer reformed scheme members undergoing ill health retirement a choice of legacy or reformed scheme benefits at retirement or as soon as practicable.

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.

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

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

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

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

GMB responds to Questions 4,5,6,7 & 8 as below

An immediate choice would provide relative certainty for members at an early stage, but it requires members to make decisions based on information they do not yet have. They would need to decide based on assumptions around possible future earnings, likely career paths, potential family circumstances, future retirement dates and life expectancy. No individual could make an informed or perfect choice in these circumstances, nor be given adequate financial advice. There is therefore a strong chance that they make a decision that does not turn out to be the most beneficial for them.



However, we do recognise that the immediate choice option may suit those who desire certainty, are approaching retirement or are confident and desirous of the benefits they may receive upon exercising this option.

This irrevocability of this option is also disadvantageous as is the treatment of those who do not respond to the immediate choice option in “*a reasonable period of time*”. Those who did not respond would permanently be denied any choice and their non-response could be due to a range of factors not in the members control e.g. accurate data of the administrator, change of name, address, workplace, working abroad i.e. the myriad of data cleansing issues faced on a continuous basis by administrative bodies.

Far better therefore to take no action until such time as the member has responded or the DCU option is available.

The Deferred Choice Underpin (DCU) reduces the reliance on assumptions and allows members to make a decision based on known benefit entitlements and it mirrors the proposed extended underpin currently being consulted upon in respect of the Local Government Pension Scheme which seems to be providing reassurance for LGPS members.

It is noted that delaying the choice until the point benefits are payable means that some members would not have certainty over which scheme benefits they would receive (in relation to service during the remedy period), we believe this potential disadvantage is:

- a) outweighed by the certainty that members will be able to make a fully informed choice; and
- b) mitigated (to some extent) by information that could be provided on their annual benefit statements which could be tailored to reflect both legacy and reformed scheme benefits.

GMB notes that there are administrative complexities and cost implications associated with both options. However, we do not believe these apparent complexities should determine the policy direction of the consultation. The administration must serve the policy not vice versa. Not forgetting that McCloud and Sargeant won their cases and it is inappropriate to seek to hamper the implementation of the remedy behind costs or administrative concerns. If there is a cost or an administrative hurdle in implementing the remedy then they must be paid or overcome, such is the consequence of ending unlawful discrimination and complying with the legal outcome.

And if the Government seeks to introduce new measures - such as the pensions dashboard or GMP measures – then it must also provide the resources required to implement them in addition to the costs and resources of implementing McCloud; we cannot delay the ending of unlawful discrimination because the government has chosen to limit resources.

In particular reference to Question 8, GMB notes the advantages and disadvantages associated with each in terms of inter alia, certainty, timing, technical matters and taxation but appreciates that each option, *and a third option of any time choice*, would be advantageous to members.



Anytime Choice

Regarding both immediate choice and DCU, GMB is of the view that neither provides an appropriate, universal solution.

Asking all members of all schemes to make a fundamental decision about their future in an over simplistic now-or-later time frame will create problems of lack of information, poor advice, irreversibility and all the other issues outlined above.

The GMB places great emphasis on pension freedoms and highly values the empowerment of members to make their own decisions subject to being appropriately informed. At such a point GMB members are entitled to be treated as adults and given control of their own decision making in order to exercise their judgement in a manner and time that they consider best for themselves and their families. We support them in doing so.

We can see that immediate choice will be advantageous to and desired by some. We can see that DCU will be advantageous to and desired by others.

However, we also see a position where a member who has foregone immediate choice because they did not have the information they required at the time, will eventually receive that information, either via an Annual Benefit Statement, other financial advice, a change in circumstances or simply by approaching retirement.

In this situation we see no rationale to delay till DCU. Our Anytime Choice option would allow members to exercise freedom of choice, obviate the complexities outlined in our response to Question 4 and ease the administrative burden associated with DCU.

GMB has run numerous workshops, webinars and online meetings and canvassed members in those meetings. When asked which approach they prefer; they have thus far responded:

- Immediate Choice 9%
- DCU 23%
- Anytime Choice 68%

GMB therefore supports a hybrid policy of immediate choice, as described above, DCU, as described above and an anytime choice whereby a member can make their choice anytime between 1st April 2022 and their retirement date.

Costs

GMB notes that the government estimates that removing unlawful discrimination across the public sector schemes back to 2015 will cost approximately £2.5 billion for each year of the remedy period in additional future pension payments to members of



those schemes in scope of this consultation. This equates to a total of approximately £17 billion for the remedy period.

However, no rationale or allocation between schemes for this figure is presented and GMB believes that a rationale should be provided and the savings expected of each scheme be presented. It is a nonsense to expect schemes to generate estimated savings that clearly must differ between them given their different sizes, benefits and contribution rates

GMB believes that the full cost of implementing McCloud must fall on the government. The government lost the McCloud/Sergeant cases in the court. It cannot expect the winners to pay the costs of the losers. That would be a perverse form of justice.

GMB notes that HM Treasury intends to categorise the cost of remedy as a 'member cost' and thus to it will be considered as part of the cost control element of the valuations process leading to either lower benefits or higher contributions for scheme members.

GMB emphatically rejects this categorisation. Members should not have to bear the cost of remedying government error. This is particularly true for those public sector workers who joined schemes after 1 April 2012 and are therefore out of scope of the remedy. Given, there is no increase in the value of the schemes to these members as a result of the remedy, it is impossible to see how it can be classed as a member cost.

Additionally, the government's decision to pause the valuation process has denied public sector workers improvements to their pensions and reductions to contribution rates that the process should have delivered from April 2019 as a result of the surpluses discovered by the valuations.

It should not be lost on the government that these surpluses derive from, inter alia, longevity predictions not being met.

Moreover, the original Treasury directions on the cost cap, which were amended in February 2019 when the government suspended the process, specifically excluded the cost of transitional protections from the calculations.

The government were wrong to have paused the cost control mechanism in 2015. It took a perverse view, prior to any legal consideration, that the excess funds generated by members in the schemes could be used to fund its defeat in the courts. GMB believes this is open to legal challenge.

The government must provide whatever additional funds are required to employers and scheme administrators to ensure the costs of removing discrimination do not fall on to the victims of the discrimination.

Future pension provision: The 2015 schemes



GMB notes that whilst the Courts found that transitional protection arrangements negotiated as part of the implementation of the 2015 schemes were found to be discriminatory, the reformed schemes in themselves have not been affected.

Members are aware of this and, thanks to extensive communications by the Trade Unions, are generally accepting of the new scheme designs although many remain resentful of a higher NPA, especially Ambulance Staff who consider themselves an emergency service just like the police and firefighters.

It is important that pensions remain high and there is a case for Pensions to be increased and extended in order to boost the spending power of the retired, thereby boosting local economies and reducing reliance on state benefits. Decent pensions are also a reward for public service which does not generate the high salaries associated with many private sector occupations.

This is not to say that Trade Unions are not aware of the need to control costs and we have worked in Partnership with all stakeholders at all times to ensure robust and affordable pensions for GMB members.

We therefore note the government's proposal to place all active members who joined before 1 April 2012, who are not already members of reformed schemes, into their respective reformed schemes from 1 April 2022 and close all legacy schemes for future service for all members on 31 March 2022. This will require primary legislation.

This would ensure that all active members are treated equally in respect of the pension scheme designs offered for future service and are all in the reformed schemes from this date. It would be unfair for some members, and not others, to be in the legacy scheme beyond this date.

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?

Yes, GMB believes so.

Annex A - Technical details Revisiting past cases

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



GMB notes and agrees with the proposal to give those currently in receipt of a pension a choice of benefits between the legacy and reformed schemes with respect to the remedy period. GMB believes appropriate financial information should be given to members in order to facilitate the choice and ensure that the pension was retrospectively corrected to the same level it would have been if the member had had access to it at retirement.

This may include a retrospective benefit change and/or a revisit of lump sum commutation both applied back to the date of retirement and appropriate financial adjustments made.

Members should also be made aware of any possible tax implications.

As these members are already in receipt of their benefit these cases should be dealt with immediately.

Member contributions

Question 11: Please provide any comments on the proposals set out above to ensure that correct member contributions are paid, in schemes where they differ between legacy and reformed schemes.

As above, the GMB supports the principle that pension contributions be retrospectively corrected to the levels they would have been if the member had made that decision at retirement - and necessary financial information should be made to the member.

Voluntary member contributions

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

GMB notes that in both immediate choice and deferred choice underpin – and in our Anytime Choice – options:

- All additional benefits purchased via voluntary member contributions in the remedy period could be converted to an equivalent value of AP in the scheme that the member is not currently in.
- That this equivalent value of AP would only be added to the member's pension where they chose to join the alternative scheme design for the remedy period.
- If a member's original scheme design was chosen, then they would keep the additional benefit originally purchased.
- Where the relevant limit was exceeded (possibly retrospectively) solely as a result of proposals to remedy the discrimination found in McCloud, then the government proposes that such breaches would be ignored.

Regarding the buy-out of some or all of the reduction to pension if benefits are taken before NPA, we note it would not be possible to convert it into an equivalent value of AP in the legacy scheme. We therefore support the proposal for those members who choose to return to their legacy schemes to receive a refund of their contributions to such arrangements and that refund would void the arrangement.



We consider all the above to be reasonable proposals

Annual benefit statements

Question 13: Please set out any comments on our proposed treatment of annual benefit statements.

The Public Service Pensions Act 2013 requires all schemes to provide benefit annual benefit to active scheme members that include information as set out in Treasury directions and other legislation.

Under the DCU option and our Anytime Choice option, we would want scheme administrators to produce ABSs containing information on remedy period benefits under both the reformed and legacy scheme designs (as well as legacy scheme benefits for years of service before 2015; and reformed scheme benefits after 2022).

This would be necessary to ensure members make an informed choice.

Ill health retirement (IHR)

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

There are several categories of IHR cases and due to differing scheme rules and eligibility requirements any member who was refused an IHR pension in one scheme may be eligible for IHR in their alternative scheme.

As noted in Para A26 - "In particular, the later pension age in the reformed schemes may have led to some members being refused IHR because medical advisers deemed the member able to recover and return to work in the extended time period to the later pension age. Conversely, the later pension age also means that IHR – where granted under the reformed scheme – can be more valuable because the enhancements in respect of potential lost service are calculated to a later age in the reformed schemes".

GMB supports the proposal that a member in scope who had already retired on ill health grounds would be able to retrospectively choose the benefits in the alternative scheme if they wished dependant on whether they would be accepted for IHR pension in the alternative scheme bearing in mind that *"a member who was accepted for IHR pension in the legacy scheme would not automatically be accepted under the reformed scheme"*.

If such a member was refused retirement on ill health grounds in the alternative scheme, their choice would be between their existing ill health benefit and the other pension benefit that would have been payable (at the age they retired) from the alternative scheme.

Members should be made aware of the tax and welfare benefit implications of such a course of action.

As these members are already in receipt of their benefit these cases should be dealt with immediately.



Cases where members have died since 1 April 2015

Question 15: Please set out any comments on our proposed treatment of cases where members have died since 1 April 2015.

GMB supports the proposal to revisit such cases to ensure that any increase to benefits can be paid in as timely a manner as possible either by paying the larger amount or offering a choice of available benefit packages especially noting the potential financial and emotional impact on spouses, civil partners, unmarried partners and dependent children.

We also support the view no contact should be made with the relevant parties where no higher pension payment would be due to the survivor or to the deceased's estate. We note the potential tax implications.

As these members are already in receipt of their benefit these cases should be dealt with immediately.

Contingent decisions

Question 16: Please set out any comments on our proposed treatment of individuals who would have acted differently had it not been for the discrimination identified by the Court.

GMB supports the adoption of case by case re-examination where a member argues that they would have taken a different course of action had they known that continued membership of their legacy scheme during the remedy period was an option. Members would need to be made aware of the appropriate scheme rules and financial consequences in order that their choice be facilitated.

Voluntary pension transfers (public sector transfer club and non-club)

Question 17: If the DCU is taken forward, should the deferred choice be brought forward to the date of transfer for Club transfers?

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?

Members situations should be made on a case by case basis upon application with a view to ensuring no detriment has been experienced.

Divorce cases

Question 19: Please set out any comments on our proposed treatment of divorce cases.

GMB agrees with the approach outlined i.e. any immediate, anytime or deferred choice would be exercised by the scheme member. The member will be awarded the percentage (as specified by the courts) of the higher CETV due under remedy and this



will not be changed to reflect any choice the scheme member makes, which would result in a lower pension amount.

Interest of under- or over-payments and refunds

Question 20: Should interest be charged on amounts owed to schemes (such as member contributions) by members? If so, what rate would be appropriate?

Question 21: Should interest be paid on amounts owed to members by schemes? If so, what rate would be appropriate?

Question 22: If interest is applied, should existing scheme interest rates be used (where they exist), or would a single, consistent rate across schemes be more appropriate?

Interest should be decided on a case-by-case basis in line with legacy and reformed scheme rules.

Abatement

Question 23: Please set out any comments on our proposed treatment of abatement.

GMB agrees with the proposed treatment of abatement i.e. where the DCU, anytime or immediate choice resulted in a retrospective increase to a pension then abatement would not apply or would not be increased retrospectively.

Where abatement applies in the legacy scheme and a pension award already taken had been abated, but the member chose to move to the reformed scheme for the remedy period, the abatement calculation would need to be reviewed and adjusted as necessary from 1 April 2015 or the date the pension was awarded, if later.

Annex B

Pensions tax relief: implications of the options to remove unlawful discrimination

Question 24: Please set out any comments on the interaction of the proposals in this consultation with the tax system

GMB makes no comment on this section of the consultation

