Under a McCloud?

Summary
- Remedying discrimination public sector pensions is set to cost £17 billion.
- Local government schemes face multiple challenges in complying with the McCloud ruling.
- Regulations are still unclear with some public sector workers threatening industrial action.

Following the McCloud ruling, Gill Wadsworth looks at the latest developments for public sector pensions

When Lord Hutton published his report on public sector pension reform, he made clear "special protections for members over a certain age should not be necessary. Age discrimination legislation also means that it is not possible in practice to provide protection from change for members who are already above a certain age".

However, following negotiations with trade unions in 2015, the government included a policy of transitional protection, meaning those within 10 years of retirement stayed in their legacy scheme as they had the least amount of time to prepare for the changes.

Just three years later, in 2018, the Court of Appeal found this policy to be discriminatory against younger members in some schemes; a decision known as the McCloud ruling that is set to cost the public purse £17 billion.

Following the ruling, the government said it would redress the balance by returning eligible members who were moved to the reformed pension scheme in 2015 back into their legacy pension scheme for the period between 1 April 2015 and 31 March 2022.

From 1 April this year, all members have been put back into the new scheme.

As members near retirement, they will be able to choose whether the benefits they receive from that eight-year period come from the legacy or the new career average revalued earnings (CARE) scheme. This is because some individuals will be better off under the old arrangements, while some profit from the allowances under the new plan.

Complications

This has created "complications at every turn", according to Aon head of public sector pensions, Alison Murray.

"Three and a half years on from the McCloud ruling, public service pension schemes are struggling to move on; it's important the discrimination is rectified but at every step complications seem to arise," Murray says.

Since the government is allowing members to choose from which scheme they accrue benefits over the period 2015 to 2022, Murray says those on the public sector pension scheme frontline have been left to manage millions of individual arrangements.

"Public service pension scheme managers not only find themselves clearing up someone else's mess but expanding copious amounts of time and resources in the process," she says.

Murray explains that in addition to giving members a choice of scheme, managers have to ask employers for data going back up to eight years – data she says no one expected would be needed – and recalculate benefits for members who have left employment over that period.

"Some will need to calculate historic member contributions, interest and tax and they need to communicate all of this in such a way that members can make an informed decision," she says.

Efforts to clear up the mess are progressing with various degrees of success.

Minutes from a National LGPS Technical Group held in March reveal some of the challenges local authority schemes face in collating and analysing data to help them comply with the McCloud ruling.

Essex County Council says: "There are a few employers where due to a change of payroll provider there is no way to obtain the data as contracts have ended and time limits have expired."

West Sussex County Council reports: "We have had a few employers/payroll providers tell us they would not give us the data in the way we requested as it was unreasonable. However, when we have pushed back, they have undertaken what was required."

To compound the workload, the government remedies overlap with the implementation of the pensions dashboard in what the LGPS sees as an unwelcome coincidence.

Minutes from the March meeting state: "The pensions dashboards timeline is too closely aligned with the timing of McCloud, which will hinder resourcing. Administering authorities are already struggling with resourcing for day-to-day administration without two major projects landing simultaneously."

According to Quilter NHS specialist, Graham Crossley, the difficulties are exacerbated by the government's decision not to enforce final regulations until October 2023.

Crossley says: "Members moved back to the reform scheme on 1 April but administrators have until October 2023 to put these mechanisms in place. So, while they might have moved back on paper schemes might not see any of the supporting information until well into next year."

In an effort to alert government to their struggle with compliance, this April the Local Government Association and Fire Brigades Union (FBU) wrote to the Home Office and HM Treasury.

Relating specifically to the Firefighters Pension Scheme (FPS), the letter makes clear their irritation at what they describe as a lack of government support: "We cannot express strongly enough our continued frustration at the government's failure, as expressed by HM Treasury and Home Office, to support Fire and Rescue Authorities in ensuring affected FPS members are placed in the position required by the Court of Appeal in December 2018 prior to implementation of remedy legislation."

The letter accuses government of reneging on arrangements made to help the FPS with the McCloud ruling, and says the Home Office has withdrawn guidance while HMT has opposed "any possible solution for scheme members other than waiting for final regulations in October 2023".

"This has left Fire and Rescue Authorities in a position of uncertainty and affected scheme members are actively preparing legal action once again," the letter states.

Costs

Schemes will also be expected to meet the cost of putting remedies in place. This March the government confirmed it will apply the cost of complying with the McCloud ruling to the public sector schemes' 2016 valuations.

Trade unions, including the Public and Commercial Services Union, the FBU, GMB, the Royal College of Nursing and Unite have filed for judicial review in a bid to overturn the changes.

Burke says: "In addition to the administrative complexities, industrial relations are under strain because the cost of any extra benefits due to McCloud assessed by the Government Actuary's Department means members will lose out on benefit improvements that would otherwise have been implemented via the cost control mechanism."

Last June a Public Accounts Committee (PAC) report revealed "evidence of public service pensions issues affecting delivery of frontline services, and independent schools opting out of pension schemes because of increasing costs".

PAC said there was "a danger of a perfect storm where some young people believe they cannot afford pension contributions because of high costs of living and retire with a reduced public sector pension as a result. Many younger workers will continue to pay rent in retirement because they cannot afford to buy a home and the cost of supporting this generation will fall on future taxpayers".

Burke says it is incumbent on schemes to ensure their workforces do not opt out of valuable workplace benefits despite the cost of covering the remedies.

"Effective communication is crucial. As the cost of living rises, scheme managers and employers must ensure public sector workers don't lose sight of the value of their pension and opt out or leave employment due to a lack of trust or understanding of pension issues," she says.

The possible negative impact on benefits – and the risk of opt-outs – may compound the expense some members paid out for advice on the tax advantages of switching from the new to the old scheme – or vice versa – much of which Crossley says is now obsolete.

"Understandably members are massively confused and a lot of them will be aggrieved because they have spent hundreds if not thousands of pounds over those seven years with tax advisers and accountants only to have to do it all again," he says.

Remedying discrimination in public sector pensions has already cost schemes and individual members dear, but as Burke concludes "with so much still unknown the end is still not in sight".

Written by Gill Wadsworth, a freelance journalist