



Northern Ireland  
Assembly

## Research and Information Service Briefing Paper

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# Public Service Pension Reform: Key Preliminary Considerations

**RaISe**

This Briefing Paper is prepared for the Committee for Finance, to facilitate its consideration of Public Service Pension Reform in Northern Ireland.

This information is provided to Members of the Legislative Assembly in support of their duties. It is not intended to address the specific circumstances of any particular individual. It should not be relied upon as professional legal advice, or as a substitute for it.

## Key Points

- In the United Kingdom (UK), there are 2 main types of pensions provided by government - namely the UK State Pension and Public Service Pensions (PSPs);
- PSPs are occupational pension schemes that are part of the overall remuneration package for staff in public sector employment;
- PSP schemes are classified as “funded” or “unfunded”.
- Funded schemes use contributions from employees and employers to invest in a pool of assets. The returns on these assets are then used to pay pensions as they fall due;
- Unfunded schemes use the contributions from members and employers to pay pensions to retired scheme members;
- Unfunded PSP schemes are also known as “pay-as-you-go” schemes.
- Her Majesty’s Treasury (HM Treasury) is the UK Government department responsible for PSPs policy and for monitoring costs to the taxpayer;
- HM Treasury make a balancing payment, if contributions are insufficient to cover pensions paid in any given year;
- In 2009, the UK National Audit Office (NAO) reported that employee contributions to the four largest UK unfunded PSP schemes were £4.4 billion (bn); a real-term increase of 56% since 2000s;
- Estimations by the UK Government Actuary’s Department (GAD) of future projected payments up to 2060 (expressed in terms of 2009 prices), showed payments rising to £79.1bn by 2060;
- Following the UK election in 2010, the then Coalition Government announced a package of measures in the UK Budget, which promised to deliver net savings of £11bn a year by 2014-15;
- Reforms included a full-scale review of PSPs; and a switching from the Retail Price Index (RPI) to the Consumer Price Index (CPI) for the annual indexation of benefits and pensions, including unfunded PSPs;
- The Independent Public Service Pensions Commission (IPSPC) conducted a structural review of PSP provision by Budget 2011 – commonly known as the “Hutton Review”;
- That Review produced two reports that established evidence that PSPs were unsustainable in terms of increasing costs to the taxpayer and government;
- Its recommendations included moving the normal pension age to the State Pension Age (SPA) and replacing the existing PSP schemes, based on final salary; with new schemes, whereby pension entitlement is based on career average earnings;

- Hutton also recommended that the Government should introduce cost controls in the form of a fixed cost ceiling set as a portion of pensionable pay that the Government is to contribute;
- The UK Government accepted the Hutton recommendations and began negotiations with trade unions to reform PSPs;
- Reformed PSP schemes - based on career average contributions - were introduced in 2014/2015;
- The UK Government agreed, following discussions with trade unions, to allow active members of pre-existing schemes (“legacy scheme”), who were close to retirement to remain in those schemes; rather than requiring them to start to accrue pension benefits in a new scheme;
- This became known as “transitional protection”;
- The UK Public Service Pensions Act 2013 and the Public Service Pensions Act (Northern Ireland) 2014 contained enabling powers to create new PSP schemes based on career average contributions;
- The legislation also contained provision with regard to the transitional protection measures and controlling PSP costs;
- The cost cap mechanism sets a target figure or “cap” for employer contributions based on a percentage of pensionable pay;
- The cost is set for each scheme at regular valuation dates, starting in 2016;
- However, provisional 2016 cost control results indicated a breach of the cost cap floor, meaning costs fell by more than two percentage points. That, added to the complexities surrounding the valuations in light of the legal challenges, meant that the valuations were put on hold;
- In 2018, following a judgment by the Court of Appeal, the transitional protection was found to be discriminatory in the schemes for judges and firefighters;
- The UK Government and the Executive consulted on remedy proposals to address the unlawful discrimination;
- All eligible members of PSP schemes were given a choice between legacy and new scheme benefits in respect of any pensionable service between 1 April 2015 and 31 March 2022;
- The key question included in the consultations was when that choice would be made;
- There were two different proposals:
  1. An Immediate Choice Exercise: The choice would be made by scheme members as soon as practicable; and,
  2. A Deferred Choice Underpin: In which scheme members would remain in, or be returned to, the old schemes for service between 2015 and 2022. At the point of retirement (or when benefits become payable) or as soon as practicable (for

members who have already had a pension award), members would be then able to choose to instead receive new scheme benefits for that period.

- The majority of respondents selected the “Deferred Choice Underpin”;
- In 2021, the UK Government introduced the Public Service Pensions and Judicial Offices Bill, to place the policy objectives emerging from the consultations on a legislative basis;
- In NI, the Department of Finance (DoF) brought forward a Legislative Consent Motion (LCM) to extend the noted provision to NI;
- A significant financial implication of the PSP reforms and the remedy options to address the unlawful discrimination is higher employee contributions;
- That may have an impact, particularly the low paid who cannot afford to pay more, and also younger employees who may be saving for a deposit for a house or have higher housing costs *via* rental or mortgage costs;
- Accordingly, there is a potential risk of these groups opting out of PSP schemes;
- The UK Government estimates that removing unlawful discrimination back to 2015 would annually cost on average around £2.5bn during the remedy period;
- In NI, that equates to £97 million (m) for each year of the remedy period, and a total cost of £680m.

## Introduction

This briefing paper is to support the Committee for Finance (the Committee), in its consideration and scrutiny of developments following the reform of public service pensions (PSPs) in the United Kingdom (UK). It includes consideration of the Court of Appeal decision, commonly referred to as “McCloud”, wherein the Court found the reform’s transitional arrangements amounted to unlawful age discrimination.

For context, the Paper first provides a brief overview of pensions and the case for reform presented primarily in the recommendation made by the UK National Audit Office (NAO) Review and the “Hutton Review”. Thereafter, it details the reforms, including subsequent transitional arrangements and the specified cost control mechanism. This is followed by: a summary of: relevant legal challenges concerning this matter – namely McCloud (concerning judges) and “Sargeant” (firefighters); and, a subsequent UK Government review exploring remedy options following McCloud *via* its 2020 public consultations, including identified financial implications that would arise from those options, if implemented. The Paper concludes drawing on the research findings stated earlier.

When relying on the Paper, the Committee should note that it should not be relied upon as professional legal advice or opinion, or as a substitute for either.

The Paper is structured as follows:

1. Overview of UK PSPs and the Case for Reform;
2. PSP Reforms and Transitional Arrangements;
3. Cost Control Mechanism;
4. McCloud Judgement and UK Government Remedy Options;
5. Potential Financial Implications Identified by UK Government; and,
6. Concluding Remarks.

# 1 Overview of UK PSPs and the Case for Reform

To contextualise subsequent sections, this section provides background information on PSPs and explains the then UK Coalition Government's underlying rationale for introducing such reforms.

## 1.1 UK Pension Context

In the UK, the following two main types of pensions are provided by the Government:

- UK State Pension; and,
- PSPs.

The UK State Pension is a benefit received by all adults on reaching State Pension Age (SPA); provided they have paid or been credited with sufficient National Insurance Contributions (NICs) over the course of their working life. PSPs are occupational pension schemes that are part of the overall remuneration package for staff in public sector employment, namely, central government, local authorities and other public bodies, including hospitals, schools and some public corporations.

### Funded Schemes

Generally speaking, PSP schemes are classified as “funded” or “unfunded”. Funded schemes use contributions from employees and employers to invest in a pool of assets. The returns on these assets are then used to pay pensions as they fall due.<sup>1</sup> In the UK, the Local Government Pension Scheme is the largest funded PSP scheme, with almost six million members in 2019.<sup>2</sup>

### Unfunded Schemes

In an unfunded scheme, only the contributions from (“active” or “deferred”)<sup>3</sup> members and employers are used to pay pensions to retired scheme members. Unfunded PSP schemes are also known as “pay-as-you-go” schemes. The four largest UK unfunded PSP schemes are as follows:

- Armed Forces Pension Scheme;
- Civil Service Pension Scheme;
- NHS Pension Scheme; and,
- Teachers' Pension Scheme.

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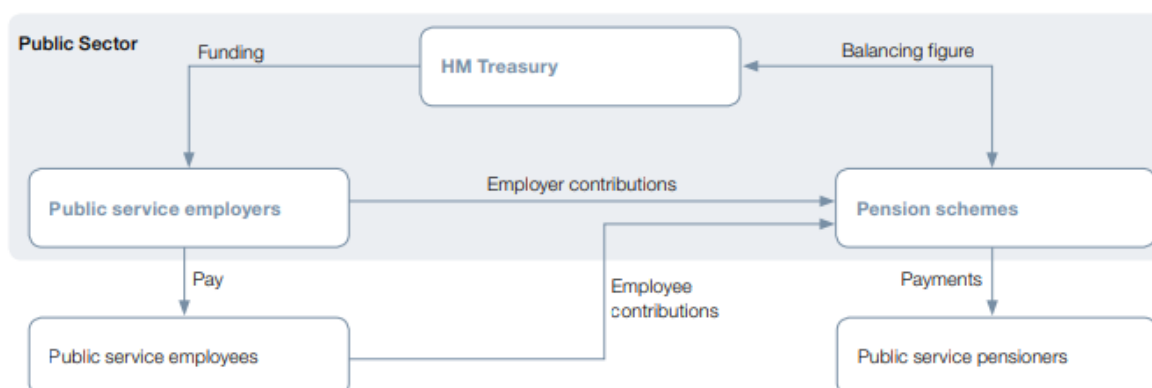
<sup>1</sup> NAO (2021) *Public Service Pensions* <https://www.nao.org.uk/wp-content/uploads/2021/03/Public-service-pensions.pdf>

<sup>2</sup> Ibid, Page 5.

<sup>3</sup> Current members of PSP schemes are often referred to as “active members”. Deferred Members are individuals who are no longer accruing benefits, usually because they have left their employer.

Figure 1 below shows the payments and contributions in unfunded or “pay-as-you-go” schemes:

**Figure 1: Payments and contributions in unfunded PSP schemes**



Source: NAO 2021

Her Majesty’s Treasury (HM Treasury) is the UK Government department responsible for PSPs policy and for monitoring costs to the taxpayer. As Figure 1 above shows, HM Treasury make a balancing payment, if contributions are insufficient to cover pensions paid in any given year. (More detail in this regard is provided in section 4 of this Paper.) The NAO explain this balancing of payments as follows: <sup>4</sup>

*Contributions are set to reflect pensions being earned by current employees, so are not designed to equal pensions in payment in any one year. The Treasury figure provides the balance required to meet pension payments. Contributions are generally less than payments over the long term in mature pension schemes, whether funded or pay-as-you-go.*

## 1.2 The Case for Reform: Costs of Unfunded PSPs

In 2009, the UK National Audit Office (NAO) published a report (the 2009 NAO report) on the cost of providing unfunded PSPs for the UK Government. With regard to payments over the previous ten years, the 2009 NAO report stated:<sup>5</sup>

*Total payments to the 2.13 million pensioners in the four largest UK public service pay-as-you-go pension schemes were £19.3 billion in 2008-09, which is a real-terms increase of 38 per cent since 1999-2000. Most of the increase is due to a 23 per cent rise in pensions in payment over the period. This is driven by more employees retiring each year, which is a substantially more significant factor than longer lifespans.*

<sup>4</sup> NAO (2010) *The Cost of Public Service Pensions*: <https://www.nao.org.uk/wp-content/uploads/2010/03/0910432.pdf> (page 5)

<sup>5</sup> Ibid.

Employee contributions to the four largest UK unfunded PSP schemes were £4.4 billion (bn) in 2009, a real-terms increase of 56% since 2000.<sup>6</sup> The NAO attributed the increase to higher contribution rates and more staff making contributions. With regard to the cost to the taxpayer, the 2009 NAO report also stated:

*The total cost to the UK taxpayer of the four largest UK public service pay-as-you-go pension schemes in 2009 was £14.9 billion, net of income from employee contributions, a real-terms increase of 33 per cent since 1999-2000. It was met through a combination of £12.5 billion in employer contributions generally paid by taxpayer funded organisations, such as NHS Trusts and government departments, as part of the normal cost of employing staff, and £2.5 billion directly from the Treasury (the two elements not adding exactly because of rounding).*

Furthermore, the 2009 NAO report presented estimations by the UK Government Actuary's Department (GAD) of future projected payments (expressed in terms of 2009 prices) up to 2060. Those included:<sup>7</sup>

- Payments rising to £79.1bn by 2060, from an estimated £25.4bn in 2010; and,
- Projected payments reaching a peak of £29.4bn between 2032 and 2034, before falling to £28.8bn by 2059-60.<sup>8</sup>

As a proportion of UK Gross Domestic Product (GDP), the 2009 NAO report states that, according to pension projections by the GAD and HM Treasury, the total cost of PSPs would rise from 1.7% of GDP in 2009, to 1.9% between 2019 and 2034; before falling back to 1.7%% in 2060.<sup>9</sup>

Following the UK election in 2010, the then Coalition Government took the first step to address the noted rising costs by announcing a package of measures in the UK Budget. Those measures promised to deliver net savings of £11bn a year by 2014-15.<sup>10</sup> Those included a full scale review of PSPs; and a switching from the Retail Price Index (RPI) to the Consumer Price Index (CPI) - for the annual indexation of benefits and pensions, including unfunded PSPs.<sup>11</sup>

### 1.3 Hutton Review

In October 2010, the then Coalition Government set up an independent body called the "Independent Public Service Pensions Commission" (IPSPC); chaired by former Labour Work and Pensions Secretary, Lord Hutton of Furness, to conduct a structural review of PSP provision by Budget 2011. That process became known as the "Hutton

<sup>6</sup> Ibid. Page 12.

<sup>7</sup> Ibid, Page 5.

<sup>8</sup> This is based on HM Treasury's assumption of 2% real-terms annual earnings growth across the economy as a whole

<sup>9</sup> NAO (2010) *The Cost of Public Service Pensions*: <https://www.nao.org.uk/wp-content/uploads/2010/03/0910432.pdf> Page. 21.

<sup>10</sup> HM Treasury (2010) UK Budget 2010:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/248096/0061.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/248096/0061.pdf)

<sup>11</sup> Indexation refers to the method used to match the value of PSP benefits in line with inflation.



Review”, and subsequently the IPSPC was tasked with producing two reports, i.e. an interim report reviewing short-term savings and a final report focussing on long-term structural reform of public service pensions.

### 1.3.1 IPSPC Interim Report

The IPSPC interim report was published in October 2010. That report noted previous reforms (conducted under the former UK Labour Government) had not gone far enough in responding to demographic change, and did not significantly reduce costs to taxpayers.<sup>12</sup> It stated:<sup>13</sup>

*The expected proportion of adult life spent in retirement has increased as people live longer. A male pensioner in the NHS scheme who retired at 60 today is expected to spend 41 per cent of their adult life in retirement compared to 28 per cent if they retired in 1955. This means the value of a public service pension in 2003-04 is expected to be around a third higher than it would have been if assumptions about life expectancy were the same as those in 1955.*

And:

*The increase in longevity also means that these pensions are now likely to be paid out for longer, increasing the overall costs. These extra costs, despite recent reforms, have not been equally split between employer and employees. Although the way costs are divided varies from scheme to scheme, the significant majority is met by the employer and by extension the taxpayer.*

The interim report also stated that the IPSPC considered the following range of options could provide short-term savings, if implemented:<sup>14</sup>

- Changing the benefits structure;
- Contracting PSP schemes into the State Second Pension; and,
- Increasing members’ contribution rates.

Of the three options, the interim report recommended increased members’ contributions as the most effective way to make short-term savings.<sup>15</sup> The interim report also recommended that structural reform over the long-term was needed because traditional final salary pensions could not deal with the following issues:<sup>16</sup>

<sup>12</sup> House of Commons Library (2020) *Public service pensions - 2015 reforms*. Page 23:  
<https://commonslibrary.parliament.uk/research-briefings/sn05768/>

<sup>13</sup> IPSPC (2010) *Independent Public Service Pensions Commission: Interim Report*: Page 11.  
[https://webarchive.nationalarchives.gov.uk/20130102175838/http://www.hm-treasury.gov.uk/d/hutton\\_pensionsinterim\\_071010.pdf](https://webarchive.nationalarchives.gov.uk/20130102175838/http://www.hm-treasury.gov.uk/d/hutton_pensionsinterim_071010.pdf)

<sup>14</sup> Ibid, page 15.

<sup>15</sup> Ibid, page 14.

<sup>16</sup> Ibid page 15.

- Rising benefits due to increasing longevity;
- Unequal treatment of members within the same profession;
- Unfair sharing of costs between the employee, the employer and taxpayers; and,
- Not realising the potential for plurality in the ways public services are provided.

### 1.3.2 IPSPC Final Report

The IPSPC's final report, published in March 2011,<sup>17</sup> considered options for long-term structural reform. It recommended replacing the existing PSP schemes, based on final salary, with new schemes basing pension eligibility entitlement on career average earnings. The IPSPC final report also recommended increases in the eligible pension age - i.e. linking the normal pension age to the State Pension Age (SPA). Recommendation 10 of the final report stated:<sup>18</sup>

*The Government should increase the member's Normal Pension Age in the new schemes so that it is in line with their State Pension Age. The link between the State Pension Age and Normal Pension Age should be regularly reviewed, to make sure it is still appropriate, with a preference for keeping the two pension ages linked*

In most of the new schemes introduced since that Recommendation, members' normal pension age would be linked to their SPA. However, for the "uniformed services" such as the armed forces, the IPSPC recommended a normal pension age of 60, and that this was to be kept under review by the Government.

#### Cost Control

A key aim of the final report was to design a PSPs' structure; one that would share the risks and costs between employees and government fairly. In that regard, the final report stated:<sup>19</sup>

*...for example, moving to [career average revalued earnings] from final salary removes much of the salary risk associated with public service pensions. Adjusting [normal pension age] in line with longevity increases through linking to [state pension age] will remove much of the risk to costs of future increases in longevity.*

Additionally, the final report recommended the use of an overriding mechanism to ensure PSPs would remain affordable and sustainable. That, if implemented, would act as a "safety valve in case costs within the new scheme increased due to factors not

<sup>17</sup> IPSPC (2010) *Independent Public Service Pensions Commission :Final Report*  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/207720/hutton\\_final\\_10\\_0311.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/207720/hutton_final_10_0311.pdf)

<sup>18</sup> Ibid, Page 12.

<sup>19</sup> Ibid. Page 96.

taken account of in the scheme design”. Recommendation 12 of the Final Report stated:<sup>20</sup>

*The Government on behalf of the taxpayer, should set out a fixed cost ceiling: the proportion of pensionable pay that they will contribute, on average, to employees’ pensions over the long-term. If this is exceeded, then there should be a consultation process to bring costs back within the ceiling, with an automatic default change if agreement cannot be reached.*

In summary, both the 2009 NAO report and the interim and final reports of the Hutton Review brought the growing costs of UK PSPs sharply into focus at a time of a global economic recession and put the case for reforming PSPs in terms of constraining future public spending.

In this regard, it is also noteworthy that in 2014 HM Treasury reported reform of PSP scheme design and the switch to using the CPI from the RPI would make estimated savings of £430bn by 2061-62.<sup>21</sup>

## 2 PSP Reforms and Transitional Arrangements

This section presents details of the UK Government pension reforms, including subsequent transitional arrangements to protect those close to retirement.

### 2.1 PSP Reforms

In November 2011, the UK Government published a Command Paper *Public Service Pensions: Good Pensions that Last*, setting out the Government’s framework for reform of the public service schemes.<sup>22</sup> The key reform elements that followed on from: the Hutton Review recommendations, namely a move to a career average scheme, a normal pension age linked to SPA (or 65, whichever is higher); and, pensions measured in line with the Consumer Prices Index (CPI).<sup>23</sup>

Consultations and discussions were undertaken with trade unions and each main workforce (namely local government, teachers, the NHS, the armed forces, firefighters, police, judiciary and civil service), to develop scheme design proposals that informed the reform package, and that package subsequently was agreed. In April 2015 (April 2014 in the case of the Local Government Pension Scheme in England and Wales), new schemes were introduced for each of the noted main workforces.

<sup>20</sup> Ibid. Page 13.

<sup>21</sup> HM Treasury (2014) *Public service pensions actuarial valuations and the employer cost cap mechanism*: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/289366/public\\_service\\_pensions\\_actuarial\\_valuations\\_130314.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/289366/public_service_pensions_actuarial_valuations_130314.pdf)

<sup>22</sup> HM Treasury (2011) *Public Service Pensions: good pensions that last* ([publishing.service.gov.uk](http://publishing.service.gov.uk))

<sup>23</sup> Ibid. Page 16.

### 2.1.1 NI and GB Legislative Basis for the reforms

The IPSPC final report recommended the following:

*The key design features should be part of a UK-wide policy framework that extends to Scotland, Wales and Northern Ireland, with limited adaptations of other features to meet local circumstances.*

Accordingly, the Westminster *Public Service Pensions Act 2013 (2013 UK Act)*<sup>24</sup> applies to the UK as a whole, including NI. For example, Section 1 of the 2013 UK Act makes provision for pensions for the armed forces and senior judiciary in respect of NI, as legislative competence for these pension schemes sits with Westminster.<sup>25</sup>

However, on 26 November 2012, the then NI Minister for Finance and Personnel announced in the Assembly that the Executive had not agreed to his recommendation for a Legislative Consent Motion (LCM) for PSP reform, and as a consequence NI would be bringing forward its own legislation to reform NI PSP schemes.<sup>26</sup>

Subsequently, new PSP schemes were introduced under provisions contained in the *Public Service Pensions Act (Northern Ireland) 2014 (2014 NI Act)*.<sup>27</sup>

Both the 2013 UK Act and the 2014 NI Act contained provisions allowing new PSP schemes to be introduced from 1 April 2015, with the exception of the new Local Government Pension Scheme for England and Wales (LGPS), which came into effect in April 2014.<sup>28</sup>

Key features of both Acts include:<sup>29</sup>

- Enabling powers to create new PSP schemes, providing pensions based on career average rather than final salary;
- Linking the normal pension age to the SPA, except in the schemes for the firefighters, police and armed forces, (which would have a normal pension age of 60);
- Providing transitional protection for those “closest to retirement”.
- Individuals within 10 years of pension age on 1 April 2012 would remain in the existing schemes; and,
- Those within a further 3-4 years of normal pension age may have the option of a delayed transition to the new scheme.

It is perhaps worth noting that during the passage of the 2013 UK Act and the 2014 NI Act, the link to the SPA age caused widespread concern among public sector unions, some of who launched a “68 is too late” campaign. An area of particular debate was

<sup>24</sup> <https://www.legislation.gov.uk/ukpga/2013/25/contents>

<sup>25</sup> [Public Service Pensions Act 2013 - Explanatory Notes \(legislation.gov.uk\)](https://www.legislation.gov.uk/public-service-pensions-act-2013/explanatory-notes)

<sup>26</sup> <http://web.archive.org/web/20140115150226/http://www.dfnri.gov.uk/statement-261112-public-service-pensions-proposal.pdf>

<sup>27</sup> <https://www.legislation.gov.uk/nia/2014/2/contents>

<sup>28</sup> In NI all LGPS(NI) members moved to the reformed scheme with pension age linked to SPA in 2015.

<sup>29</sup> House of Commons Library (2021) *Public service pensions: the cost control mechanism*: <https://researchbriefings.files.parliament.uk/documents/SN06971/SN06971.pdf> Page 10.

the impact on certain groups – such as paramedics, prison officers, MoD police and firefighters and Civil Nuclear Police – given the demands of those roles.

However, concern was also expressed with regard to a pension age of 60 for some members of the “uniformed services”. The Fire Brigades Union, for example, argued that any change should be dictated by the required age-profile of the service, rather than life-expectancy in retirement.<sup>30</sup>

## 2.2 Transitional Arrangements: Protecting those “close to retirement”

The IPSPC final report recommended maintaining the final salary link for accrued rights,<sup>31</sup> stating:<sup>32</sup>

*Protecting accrued rights is a prerequisite for reform both to build trust and confidence and to protect current workers from a sudden change in their pension benefits or pension age. It is also right that those closest to retirement will be least affected by any changes to scheme design*

Accordingly, Recommendation 4 of the IPSPC final report sought “Transitional” protection arrangements for those “closest to retirement” to remain in their existing final salary scheme either until retirement or for a limited period, depending on their age. It stated:

*The Government must honour in full the pension promises that have been accrued by scheme members: their accrued rights. In doing so, the Commission recommends maintaining the final salary link for past service for current members.*

Section 20 and Schedule 7 of the 2013 UK Act and the 2014 NI Act achieves this transitional protection by including provision for benefits built up in existing final salary schemes, to be calculated by reference to the member’s final salary at the point they retired or left pensionable service in the new scheme (rather than at the point at which the final salary scheme was closed).<sup>33</sup>

Sections 18 of the 2013 UK Act and the 2014 NI Act provide that no benefits could be provided under the existing schemes after 31 March 2015. Regulations could provide for exceptions for:

- (a) persons who were members of an existing scheme, or who were eligible to be members of such a scheme, immediately before 1 April 2012; and

<sup>30</sup> Ibid, Page 11.

<sup>31</sup> Accrued rights refers to benefits in an individual’s pension entitlement built up over the years by employee and employer contributions.

<sup>32</sup> IPSPC (2010) *Independent Public Service Pensions Commission: Final Report* (Page 9).

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/207720/hutton\\_final\\_100311.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/207720/hutton_final_100311.pdf)

<sup>33</sup> [Public Service Pensions Act 2013 - Explanatory Notes \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2013/22/section/18) Para 257.

- (b) such other persons as the regulations may specify, being persons who before that date had ceased to be members of an existing scheme or to be eligible for membership of such a scheme.

Most schemes offered two forms of transitional protection:<sup>34</sup>

- Full protection - active scheme members within ten years of normal pension age on 1 April 2012 could stay in their existing scheme until retirement; and,
- Tapered protection - those between 10 and 13.5 or 14 years of normal pension age on that date could stay in their existing schemes for a period ranging from a few months to several years after 2015.

The House of Commons (HoC) Library summarise the transitional arrangements as follows:<sup>35</sup>

*... the legacy schemes were required to close for future service from 1 April 2015, with exceptions to be provided for in regulations. In most schemes, this meant that members within 10 years of Normal Pension Age stayed in their existing schemes (known as “transitional protection”) and members between 10 and 13.5 or 14 years of Normal Pension Age could stay in their existing schemes for a period ranging from a few months to several years after 2015 (known as “tapered protection”).*

However, the provisions relating to transitional arrangements then became the basis for legal challenges in 2017 and 2018. (See section 5 below for more details.)

### 3 Cost Control Mechanism

This section summarises the process set up by the UK Government for controlling costs in PSP schemes.

#### 3.1 Cost Control Mechanism

As mentioned in Section 1 above, the IPSPC final report recommended that the UK Government establish a mechanism to control future spending on PSPs. In response to that recommendation, Section 12 of the UK 2013 Act and the 2014 NI Act made provision for an employer cost cap to protect against changes in scheme costs. HM Treasury described the (employer) cost cap as follows:<sup>36</sup>

*The cost cap will provide backstop protection to the taxpayer, to ensure that the risks of increased costs can be shared between scheme members and*

<sup>34</sup> House of Commons Library (2021) *Public service pensions: Response to McCloud*: Page 11.  
<https://researchbriefings.files.parliament.uk/documents/CBP-9177/CBP-9177.pdf>

<sup>35</sup> Ibid. Page 5.

<sup>36</sup> HM Treasury (2014) *Public Service Pensions: actuarial valuations and the employer cost cap mechanism* . Page 12:  
<https://www.gov.uk/government/publications/public-service-pensions-actuarial-valuations-and-the-employer-cost-cap-mechanism>

*public service employers. The cap arrangements will be symmetrical, so that if costs fall below a certain threshold, the savings will be used to the benefit of scheme members. Once the level of the employer cost cap has been calculated, this will be set out in scheme regulations, together with details of the procedure to be followed if the margins around the cap are breached.*

Put simply, the cost cap is the level (or threshold) at which the costs would be measured against at the time of the valuations (see below). This would be set for employers' contributions as a percentage of pensionable pay.

The cost control mechanism contains a two-percentage point margin above and below the cap.<sup>37</sup> The upper margin forms a "ceiling" on the employer contribution rate, with the lower margin forming a "floor". For example, if the employer cost cap is set at 14% of pensionable pay, the ceiling and floor is to be set at 16 and 12% respectively.

The GAD describe this process of cost control as follows:

*It assesses certain elements of the costs of each scheme. If these costs have changed from their original level by more than the 'corridor' of +/- 2% of pensionable pay, then member benefits within that scheme are changed to bring the assessed costs back to the original level. The mechanism is symmetrical so it can both increase and reduce member benefits.*

Before the cost control mechanism can be applied, each scheme must be measured and valued by the GAD, in order to establish a baseline. Accordingly, the GAD set out on a project of valuations for each scheme based on pre-reform data from 2012.

## 3.2 Valuations

Section 11 of the 2013 UK Act and the 2014 NI Act provide for costs to be measured via regular actuarial valuations of the PSP schemes. Additionally, Section 11 of the 2013 UK Act confers powers on HM Treasury to make Directions and Regulations specifying how the valuations are to be carried out and how a cost control mechanism is to operate.<sup>38</sup> And, Section 11 of the 2014 NI Act provides that devolved NI schemes must be actuarially valued in accordance with the then Department of Finance and Personnel – now DoF - directions.<sup>39</sup>

<sup>37</sup> [Establishing an employer cost cap in public service pension schemes \(publishing.service.gov.uk\)](https://publishing.service.gov.uk) Page 6.

<sup>38</sup> HM Treasury (2014) *Public service pensions actuarial valuations and the employer cost cap mechanism*: Page 5.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/289366/public\\_service\\_pensions\\_actuarial\\_valuations\\_130314.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/289366/public_service_pensions_actuarial_valuations_130314.pdf)

<sup>39</sup> <https://www.legislation.gov.uk/nia/2014/2/notes/division/5/4/1> Section 11 Valuations.

In 2014, the UK Government set out a policy paper, wherein it explained how the actuarial valuations (and the cost control mechanism) would operate. That paper stated:<sup>40</sup>

*Preliminary valuations of the schemes, valued “as at” 31 March 2012, will form the basis for the new cost control framework and will be used to set the cost cap.*

And:

*The preliminary valuation of the new schemes will calculate a cost cap based on the costs of providing the new scheme benefits from 2015-19, using assumptions relevant to that period.*

As set out in the Public Service Pensions (Valuations and Employer Cost Cap) Directions 2014 Regulations,<sup>41</sup> 2016 was to be the “first” valuation year in which the cost control mechanism could be used. However, provisional 2016 cost control results indicated a breach of the cost cap floor (a drop of more than 2 percentage points) in all schemes for which results were assessed.<sup>42</sup> HM Treasury offered the following explanation:

*The key drivers of the indicative floor breaches were a reduction in the assumed level of future pay increases and a reduction in assumed life expectancy. Neither of these reasons necessarily seem to fit the category of ‘extraordinary, unpredictable events’, raising the question of whether the cost control mechanism, as currently designed, is too volatile.*

As a consequence of this and the uncertainty surrounding legal challenges, the cost control mechanism was paused in March 2019.

## 4 McCloud Judgement and Remedy Options

This section presents a summary of the legal cases challenging the transitional arrangements designed to protect those close to retirement.

### 4.1 McCloud Judgement

As mentioned in Section 2 of this Paper, both the 2013 UK Act and the 2014 NI Act specified transitional arrangements that aimed to protect those individuals in PSPs who

<sup>40</sup> HM Treasury (2014) *Public service pensions actuarial valuations and the employer cost cap mechanism*: Page 12. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/289366/public\\_service\\_pensions\\_actuarial\\_valuations\\_130314.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/289366/public_service_pensions_actuarial_valuations_130314.pdf)

<sup>41</sup> [HMT Directions 9 Mar 2015.pdf \(publishing.service.gov.uk\)](#)

<sup>42</sup> HM Treasury (2021) *Public Service Pensions: cost control mechanism consultation Proposal to reform the mechanism*: Page 9. [Cost\\_control\\_mechanism\\_condoc\\_FINAL\\_VERSION.pdf \(publishing.service.gov.uk\)](#)



are close to retirement age. However, those provisions were subject to legal challenge since 2017.

In their individual Employment Tribunal claims, judges and firefighters - in McCloud<sup>43</sup> and Sargeant<sup>44</sup> respectively – challenged the specified transitional protective arrangements for older members, on the grounds that they constituted unjustified direct age discrimination and indirect race and sex discrimination. In particular, they argued younger members were treated less favourably than older members, who had been afforded transitional protection under the scheme.

### **Judges: McCloud Case**

With regard to the judges' UK PSP scheme, on 16 January 2017, the Employment Tribunal found that the transitional provisions contained in the 2014 UK Act treated younger judges less favourably than older judges and the UK Government had failed to demonstrate how such treatment provided a proportionate means for achieving the stated legitimate aim.<sup>45</sup>

The Lord Chancellor and the Ministry of Justice appealed the McCloud decision to the Employment Appeals Tribunal (EAT). (It is important to note that around the same time as the McCloud claim, there was an ongoing firefighters' claim challenging a similar scheme – i.e. "Sargeant", as explained in the next sub-section.)

Subsequently, in January 2018, the EAT dismissed the Chancellor and the Ministry's appeal of the Employment Tribunal decision in McCloud. The EAT found that the Employment Tribunal had not erred in law; upholding its decision. The EAT concluded that the Appellants – the Lord Chancellor and the Ministry of Justice - had failed to justify the discriminatory effect of the transitional provisions provided under the scheme (i.e. New Judicial Pension Scheme).<sup>46</sup> Put simply, the EAT established in McCloud that the transitional arrangements under the scheme were discriminatory.

The UK Government subsequently sought to appeal that EAT decision to the Court of Appeal. However, its appeal application was denied on 27 June 2019 by the Supreme Court.<sup>47</sup>

Thereafter, in July 2019, the Government accepted the decision and stated it would engage fully with the Employment Tribunal, to agree how the discriminatory effect of the judges' scheme could be remedied for younger judges who were not included in the provisions of the 2013 UK Act relating to transitional protection. It further explained that the discrimination identified in the court judgments in the cases of McCloud and

<sup>43</sup> <https://www.judiciary.uk/wp-content/uploads/2017/01/mccloud-v-moj.pdf>

<sup>44</sup>

[https://assets.publishing.service.gov.uk/media/58d11f9640f0b60683000012/Ms\\_R\\_Sargeant\\_and\\_others\\_v\\_London\\_Fire\\_and\\_Emergency\\_Planning\\_Authority\\_and\\_others\\_2202235-2015\\_full.pdf](https://assets.publishing.service.gov.uk/media/58d11f9640f0b60683000012/Ms_R_Sargeant_and_others_v_London_Fire_and_Emergency_Planning_Authority_and_others_2202235-2015_full.pdf)

<sup>45</sup> <https://www.judiciary.uk/wp-content/uploads/2017/01/mccloud-v-moj.pdf>

<sup>46</sup> Microsoft Word - 17\_0071\_rj\_fh\_OJ\_LA.doc (publishing.service.gov.uk)

<sup>47</sup> [Permission to Appeal \(PTA\) results - The Supreme Court](#)

Sargeant (see next sub-section for explanation of that case) would need to be addressed across all PSPs.<sup>48</sup>

### **Firefighters: Sargeant Case**

After the Employment Tribunal's decision in McCloud, there was a decision in another Employment Tribunal case challenging transitional provisions under the Firefighters Pension Scheme 2015. This was called the Sargeant case, which had claimed the disputed scheme was discriminatory on the grounds of age, sex and race. The Employment Tribunal found that the scheme's transitional arrangements **were** a proportionate means for achieving the stated legitimate aim. The Employment Tribunal therefore found that the claims of direct age discrimination and the claims of indirect discrimination on the grounds of sex and/or race both fell.<sup>49</sup>

The firefighters then appealed the Employment Tribunal decision in Sargeant to the EAT. In January 2018 (the same time as the EAT McCloud decision), the EAT decided to uphold the firefighters' appeal on the grounds that the Employment Tribunal **had** erred in applying the level of scrutiny described in European Court of Justice decisions to determine proportionality rather than the level applied in domestic case law.<sup>50</sup>

Thereafter, in July 2019 (as above in relation to McCloud), the Government stated its acceptance and fully engaged with the Employment Tribunal, to agree how the discriminatory effect of the firefighters' scheme could be remedied for younger firefighters who were not included in the provisions of the 2013 UK Act relating to transitional protection.<sup>51</sup>

## **4.2 UK Government Remedy Options**

As noted earlier, when the Supreme Court denied the UK Government's appeal in McCloud, the Government committed to addressing all PSPs.<sup>52</sup> The following sub-sections explain how the Government sought to do that:

- 4.2.1 UK Consultation: Changes to the transitional arrangements to the 2015 schemes; and,
- 4.2.2 NI Consultation: Changes to the transitional arrangements to the 2015 schemes.

<sup>48</sup> [Written statements - Written questions, answers and statements - UK Parliament](#)

<sup>49</sup>

[https://assets.publishing.service.gov.uk/media/58d11f9640f0b60683000012/Ms\\_R\\_Sargeant\\_and\\_others\\_v\\_London\\_Fire\\_and\\_Emergency\\_Planning\\_Authority\\_and\\_others\\_2202235-2015\\_full.pdf](https://assets.publishing.service.gov.uk/media/58d11f9640f0b60683000012/Ms_R_Sargeant_and_others_v_London_Fire_and_Emergency_Planning_Authority_and_others_2202235-2015_full.pdf)

<sup>50</sup> [Lord Chancellor -v-McCloud & others \(judiciary.uk\)](#)

<sup>51</sup> [Permission to Appeal \(PTA\) results - The Supreme Court](#)

<sup>52</sup> [Written statements - Written questions, answers and statements - UK Parliament](#)

#### 4.2.1 UK Consultation: Changes to the transitional arrangements to the 2015 schemes

In July 2020, the UK Government announced a public consultation containing options to address the unlawful discrimination. The consultation stated:<sup>53</sup>

*The government believes that the reformed schemes introduced in 2015 provide an appropriate level of pension provision. Public servants who first joined after 31 March 2012 are already members of such schemes. The government proposes 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, ensuring the equal treatment of all members.*

*This means bringing forward primary legislation to remove the transitional protection provisions and close legacy schemes completely for future service, for all members, from 1 April 2022. 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.*

The consultation also affirmed that the final salary link for members with prior service in final salary schemes would be retained. That meant benefits in the legacy final salary schemes would be based on pensionable pay on or near their retirement; rather than at the point they move to a reformed scheme.

The consultation asked respondents to make a choice whether to build up benefits in their legacy (final salary) or new (career average) for the remedy period, which was set at 1 April 2015 to 31 March 2022. The key question included in the consultation was when that choice would be made. There were two different proposals:

1. An Immediate Choice Exercise: The choice would be made by scheme members as soon as practicable; and,
2. A Deferred Choice Underpin: In which scheme members would remain in, or be returned to, the old schemes for service between 2015 and 2022. At the point of retirement (or when benefits become payable) or as soon as practicable (for members who have already had a pension award), members would be then able to choose to instead receive new scheme benefits for that period.

<sup>53</sup> HM Treasury (2020) *Public service pension schemes: changes to the transitional arrangements to the 2015 schemes: Consultation*: Page

34. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/900766/Public\\_Service\\_Pensions\\_Consultation.pdf#page=38](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/900766/Public_Service_Pensions_Consultation.pdf#page=38)

## UK Consultation Outcome

A majority of the consultation respondents expressed a preference for the “Deferred Choice Underpin” (DCU). The UK Government response to the consultation stated:

*...the DCU will provide greater certainty for members and is also the right approach for schemes and the government. It avoids the need for members to make assumptions around things such as their future public service career, and retirement age, which would increase the risk of making an incorrect decision, particularly for younger members. It also results in a more manageable administrative challenge for schemes as the overall task will be spread over decades rather than just a few years.*

Clearly, the certainty on individual's benefit entitlements at the point that they made the decision, offered by the DCU proved popular with scheme members. Accordingly, the UK Government decided to move forward with this remedy option. However, in its consultation response it recognised the considerable administrative challenge that would arise from that change for PSP schemes. It consequently gave them until October 2023, to fully deliver the retrospective changes needed for the remedy period, including resolving the cases of members who have retired or died since April 2015.<sup>54</sup>

### 4.2.2 NI Consultation: Changes to the transitional arrangements to the 2015 schemes

To address the unlawful discrimination found in McCloud, the Department of Finance (DoF) opened a consultation in August 2020 that encompassed devolved schemes for: Civil Servants; Teachers; Health Service Workers; Police: and, Firefighters. In its consultation document, the DoF outlined remedy proposals, which were identical to those contained in the UK consultation for equivalent schemes in GB. However, due to differences in the Local Government and Judicial Scheme arrangements, separate consultations were developed by the Department for Communities (DfC) and Department of Justice (DoJ), to address the unlawful discrimination raised by McCloud. In the case of both schemes the proposed remedy outcomes remained fundamentally identical to the measures proposed for the equivalent analogous schemes in GB.<sup>55</sup>

#### NI Consultation Outcome

The DoF published its response to the consultation in February 2021. That response reported a majority of the 443 respondents opted for the DCU. The DoF summarised those responses as follows:<sup>56</sup>

*The majority of respondents to the consultation who expressed an explicit preference supported the deferred choice underpin (DCU) option over the immediate choice underpin (IC). Most respondents felt DCU provided*

<sup>54</sup> Ibid Page 6

<sup>55</sup> [Legislative Consent Memorandum - Public Service Pensions and Judicial Offices Bill \(niassembly.gov.uk\)](https://niassembly.gov.uk/legislation/legislative-consent-memorandum-public-service-pensions-and-judicial-offices-bill)

<sup>56</sup> [Public-service-pension-schemes-changes-to-the-transitional-arrangements-to-the-2015-schemes-Response-to-Consultation.pdf \(finance-ni.gov.uk\)](https://www.finance-ni.gov.uk/public-service-pension-schemes-changes-to-the-transitional-arrangements-to-the-2015-schemes-response-to-consultation.pdf)

*eligible members with more certainty about their actual benefit entitlements based on factual information about earnings, personal circumstances and future plans, at their chosen point of retirement.*

Consequently, the DoF also recommended proceeding with the DCU, stating:<sup>57</sup>

*Having considered all the responses to the consultation the Department of Finance proposes to proceed with the DCU. This means that eligible members would make their decision on whether remedy period benefits are calculated under reformed or legacy scheme rules immediately before their chosen point of retirement, or when benefits are due to be paid from the scheme. Until that choice is made, members would be deemed technically to have accrued remedy period benefits in their legacy schemes, rather than reformed schemes, during the remedy period.*

Furthermore, in recommending the DCU option to scheme members, the DoF stated:<sup>58</sup>

*This choice will be available to all active, deferred or pensioner 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, in a public service scheme in scope of the consultation. This will also be irrespective of whether they have submitted a legal claim or not. Members who have already retired and/or received a pension award will be asked to make their choice as soon as is practicable and their choice will be applied retrospectively back to the date their original award was made.*

Similar to the UK, the DoF response to its consultation acknowledged the administrative burden that the changes would bring, if implemented; and offered devolved schemes the same timescale dispensation as their GB counterparts. The DoF's response stated:<sup>59</sup>

*In light of concerns on timescales for the most pressing legislative, technical, and administrative changes that are required, consideration is now being given to what flexibilities may be available for schemes within the main timescales set out previously in the consultation document. This will not change the dates of the remedy period. The remedy period will still end on 31 March 2022 in order to bring the existing discrimination to an end at that point, and all members will be in reformed schemes from 1 April 2022. However, to assist schemes in responding to the administrative challenges of installing new or revised processes and systems, and to complete communications to members, it is proposed to provide scope for the scheme changes to administer the remedy to be introduced retrospectively between 1 April 2022 and 1 October 2023. Should they*

<sup>57</sup> Ibid, Page 2.

<sup>58</sup> Ibid.

<sup>59</sup> Ibid, Page 20.

*require this flexibility schemes would need to specify the relevant date within this period in their scheme regulations.*

### 4.3 Remedy Options: Legislative Response

#### **The Public Service Pensions and Judicial Offices Bill**

In 2021, the UK Government set out to place the policy objectives emerging from the consultations on a legislative basis. Subsequently, the Public Service Pensions and Judicial Offices Bill was introduced in the House of Lords (HoL) on 19 July 2021.<sup>60</sup> The Bill received its second reading in the HoL on 7 September 2021. The Bill's Explanatory Notes explained that the Bill's provisions fell into five groups, which aimed to:<sup>61</sup>

- Address discrimination that arose when existing public service pension schemes were closed to certain members between 2014 and 2016;
- Deliver changes to public service pension schemes, to ensure that all eligible public service workers have access to high quality defined benefit schemes on a fair and equal basis;
- Ensure there are no reductions to members' benefits, following completion of the cost control element of the 2016 valuations;
- Improve the terms for judicial resourcing to support the effective functioning of the judiciary, to meet future demands; and,
- Confer powers upon Her Majesty's Treasury to establish a new UK Asset Resolution (UKAR) Limited pension scheme.

#### **NI: Legislative Consent Motion**

In NI, the DoF brought forward a Legislative Consent Motion (LCM) to extend the above-noted provisions to NI. The DoF explained:<sup>62</sup>

*An LCM for the provisions for devolved schemes to be included in the Westminster Bill represents the most practical, efficient approach to ensure the unlawful age discrimination is timeously removed for affected scheme members here. The LCM will also ensure the devolved judiciary receive the same entitlements as their courts colleagues, in relation to the reforms to retirement age and associated matters, and will enable the reforms to take effect for all judiciary here at the same time.*

<sup>60</sup> <https://bills.parliament.uk/bills/3032/stages/15674>

<sup>61</sup> [Public Service Pensions and Judicial Offices \(parliament.uk\)](https://www.parliament.uk/business/bills/public-service-pensions-and-judicial-offices-bill/)

<sup>62</sup> **Legislative Consent Memorandum Public Service Pensions and Judicial Offices Bill:** <http://www.niassembly.gov.uk/assembly-business/committees/2017-2022/finance/legislative-consent-memorandums2/legislative-consent-memorandums/legislative-consent-memorandum---public-service-pensions-and-judicial-offices-bill/>

Furthermore, the DoF recommended the use of the LCM for the following reasons:<sup>63</sup>

*...the main provisions in the devolved public service schemes are virtually identical to those in equivalent public service schemes in Britain. The remedy solution for devolved schemes also proposes an identical remedy response to that proposed by the Treasury for the analogous public service schemes in Britain. The remedy solution in the Bill reflects the shared policy objectives that emerged from both the Treasury and Department of Finance consultations to address unlawful discrimination by April 2022. An LCM for the provisions for devolved schemes to be included in the Westminster Bill represents the most practical, efficient approach to ensure the unlawful age discrimination is timeously removed for affected scheme members here. The LCM will also ensure the devolved judiciary receive the same entitlements as their courts colleagues, in relation to the reforms to retirement age and associated matters, and will enable the reforms to take effect for all judiciary here at the same time.*

And:<sup>64</sup>

*an Assembly Bill could be used to implement these changes. However, in context of the very close timescales now faced to implement the prospective remedy solution by 1 April 2022 a standalone Bill would exert an additional strain on existing Assembly legislative workloads for the remainder of the mandate. If such a Bill was not completed before dissolution for elections in March/April 2022, it would fall and the unlawful age discrimination for the affected scheme members will not be resolved in the same way as for the comparable schemes in Britain.*

The LCM was laid in the Assembly on 6 September 2021, under Standing Order 42A.

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<sup>63</sup> **Legislative Consent Memorandum Public Service Pensions and Judicial Offices Bill:**

<http://www.niassembly.gov.uk/assembly-business/committees/2017-2022/finance/legislative-consent-memorandums2/legislative-consent-memorandums/legislative-consent-memorandum---public-service-pensions-and-judicial-offices-bill/>

<sup>64</sup> **Legislative Consent Memorandum Public Service Pensions and Judicial Offices Bill:**

<http://www.niassembly.gov.uk/assembly-business/committees/2017-2022/finance/legislative-consent-memorandums2/legislative-consent-memorandums/legislative-consent-memorandum---public-service-pensions-and-judicial-offices-bill/>

## 5 Potential Financial Implications identified by UK Government

This section examines key potential financial impact of the PSP reforms and the remedy options outlined above, as identified by the UK Government.

### 5.1.1 Employee Costs and Participation rates

During a Public Accounts Committee (PAC) Oral evidence session in April 2021, a Member of Parliament (MP) asked a HM Treasury official the following question about UK pension reform:<sup>65</sup>

*How fair is it that public service employees, who are earning less now than they did 10 years ago in real terms, are now paying their highest pension contributions ever?*

In response the official stated:<sup>66</sup>

*If we go back to the commission's report in 2011, one of the reasons why it recommended member costs and employee contributions be increased was the conclusion that, overall, the taxpayer was paying a larger proportion of the overall costs. Following the reforms, we implemented a phased approach to increasing the employee contributions that were made by members. That was phased in, with an average of about 3%, over a period of time.*

With regard to the increased cost to employees of higher contributions, additional questions were asked during the PAC meeting regarding the flexibility of the reformed schemes for low paid workers. MPs also expressed concern over public sector employees opting out of the PSP scheme due to affordability issues. In response to this line of questioning, a HM Treasury official stated:<sup>67</sup>

*For all the four main schemes, participation is quite high and opt-out rates are relatively low. The same is true of the NHS. Over time, across all the "Agenda for Change" grades in particular, we have seen a much steadier level of participation. We are not seeing a difference there for more junior or younger people necessarily.*

With regard to equality considerations and available data on opt-out levels, a MP asked:<sup>68</sup>

*I want to look at the longer-term implications of people choosing to opt out of the employer schemes. [...] what information do you collect on*

<sup>65</sup> <https://committees.parliament.uk/oralevidence/2176/default/#page=25> Question 4

<sup>66</sup> Ibid.

<sup>67</sup> Ibid, Question 21.

<sup>68</sup> Ibid, Question 21.



*employees who choose to opt out? For example, are you able to identify whether particular age groups, salary levels or racial or ethnic groups are more or less likely to opt out of the scheme? Is that information that you collect?*

An official replied:<sup>69</sup>

*We do not as standard collect detailed opt-out rates in the Treasury, but the schemes do. The schemes provide quite detailed assessment of opt-out rates, where they have the evidence, as part of the information they provide to the public pay review bodies. We obviously take a very close interest in that.*

Clearly, it is too early to fully assess the impact of increasing employee contributions costs on participation rates in PSPs. However, questions arise in relation to increasing costs for members and participation rates.

**Consequently, if the Public Service Pensions and Judicial Offices Bill is enacted as introduced, the following issues arise for the DoF in relation to the LCM currently before the Assembly:**

1. How can the DoF mitigate against this rise to ensure that future participation rates are sufficient to cover the total costs of PSP schemes?
2. What measures does the DoF plan to develop and implement to monitor participation and /or opt-out rates for NI schemes?
3. Would those measures include special attention for low paid and other disadvantaged groups in NI, to ensure compliance with Section 75 and other equality and human rights related considerations?
4. Given that PSPs represent a large portion of the overall remuneration package for public sector workers in NI, what additional measures does the DoF plan to put in place, to ensure that the NI public sector attracts future recruits and retains existing staff?

### 5.1.2 Who will be liable for the cost of the remedy?

The UK Government estimates that removing unlawful discrimination back to 2015 would cost on average around £2.5 bn for each year of the remedy period, i.e. for the additional future pension payments to PSPs scheme members. That equates to approximately £17bn for the remedy period.<sup>70</sup> The HoC Library maintain that it is not yet clear as to what extent the schemes' members or the taxpayers would bear the cost

<sup>69</sup> Ibid, Question 21.

<sup>70</sup> [Public Service Pensions Consultation.pdf \(publishing.service.gov.uk\)](#)

of the remedy.<sup>71</sup> This view has also been expressed during the second reading the Bill in the HoL.<sup>72</sup>

*One significant additional issue which must be resolved is whether the cost of the remedy this Act sets out is to be met by the members. This is taken for granted by the Government; the members contest it. It is currently the subject of a legal process but it is crucially important. When considering the legislation, we must consider the effect of that issue. So, while this Bill is presented to us as a set of standalone measures, it is difficult to be confident that the solution, the remedy proposed here, is just and workable when all these other factors are still in play.*

In NI, with regard to the devolved schemes, the DoF stated:

*Removing unlawful discrimination back to 2015 in the devolved public service schemes here is currently estimated to cost on average around £97million for each year of the remedy period. This equates to approximately £680 million in total. In the funded Local Government Scheme the estimate is £7m per year (£49m in total). Costs for the devolved Judicial scheme are estimated at £0.9m for the complete remedy period. It is not anticipated that there will be any significant costs arising from reforms to retirement age for the devolved judiciary and associated matters.*

**Consequently, if the Public Service Pensions and Judicial Offices Bill is enacted as introduced, the following issues arise for the DoF in relation to the LCM currently before the Assembly:**

5. Can the DoF detail the financial impact that would arise from the remedy measure for PSPs members and employers in NI, if implemented?
6. Given that the Executive – as an employer under the schemes - would have to remove the discriminatory impact of current scheme provisions; what would be the impact of that on the Executive’s Budget, in both the short and medium term?

<sup>71</sup> House of Commons Library (2021) *Public service pensions: Response to McCloud*: Page 11.

<https://researchbriefings.files.parliament.uk/documents/CBP-9177/CBP-9177.pdf>

<sup>72</sup> [Public Service Pensions and Judicial Offices Bill \[HL\] - Tuesday 7 September 2021 - Hansard - UK Parliament](#)

## 6 Concluding Remarks

A decade ago, the NAO and Hutton Reviews collectively established a case for reform of the UK PSP system. PSPs were deemed unsustainable in terms of increasing costs to the taxpayer and government. Reform of PSPs was consulted on and agreed with by trade unions and scheme members alike.

Reformed PSP schemes, based on career average contributions, were introduced in 2014/2015 and the UK Government agreed, following discussions with trade unions, to allow active members of pre-existing schemes (“legacy scheme”) who were close to retirement to remain in those schemes; rather than requiring them to start to accrue pension benefits in a new scheme. This became known as “transitional protection”.

The subsequent reform legislation also contained provisions with regard to controlling PSP costs under the schemes. That cost cap mechanism was to allow HM Treasury to monitor the costs of employers’ contributions by setting a target figure in terms of pensionable pay. The target figure or “cap” was to be set for each scheme at regular valuation dates. The first valuation date was to be 2016. However, provisional 2016 cost control results indicated a breach of the cost cap floor. That meant that costs fell by more than 2 percentage points. That, added to the complexities surrounding the valuations in light of the legal challenges, meant that the valuations were put on hold by the UK Government.

In 2018, following a judgment by the Court of Appeal, transitional protection was found to be discriminatory in the schemes for judges and firefighters. Consequently, the UK Government and the Executive consulted on remedy proposals to enable all eligible members of PSP schemes to have a choice between legacy and new scheme benefits in respect of any pensionable service between 1 April 2015 and 31 March 2022, enabling them to opt for the benefits (new scheme or legacy scheme) of the greatest value to them.

Eligible active and deferred members of the PSP schemes would now be able to make this choice close to the time that their pension benefits are paid, when it is clearer which option is most beneficial for them. Some members with relevant service are already in receipt of pension benefits in relation to the affected period. That group would be able to choose which benefits they wish to receive in relation to their affected service, once the legislation comes into force and where there is a change in entitlement as a result; any change would apply retrospectively.

As a consequence of the PSP reforms, employee contribution costs have increased and questions have asked as to how this would affect future participation in PSP schemes. As employee contributions rise, perhaps more and more people would choose to opt-out in an attempt to increase their disposable income? This is a particular concern for young individual who tend to have much higher housing costs, for example, than older individuals. Furthermore, PSPs are considered to be an important

part of the total remuneration package, would increasing employee contribution rates impact on NI public sector's ability to attract and retain quality staff?