

EVIDENCE TO THE FINANCE COMMITTEE ON BEHALF OF NIC ICTU

1. On behalf of the Northern Ireland Committee of the Irish Congress of Trade Unions and the Central Consultative Working Group (TUS) we first of all want to thank the Finance Committee for agreeing to meet with us regarding Public Sector Pensions particularly in light of what is commonly called the “McCloud judgement” and the proposals to remedy the discrimination found as part of the transitional protection arrangements when the 2015 Public Sector Schemes were introduced.
2. Attached to this short briefing is the NIC ICTU response to the Department of Finance consultation on the transitional protection arrangements. All of the trade union responses including the NIC ICTU response favoured the Deferred Choice Underpin. However in doing so there are some issues which are of concern to NIC ICTU:-
 - a. Resources across all public sector schemes to implement the Deferred Choice Underpin;
 - b. That the tax issues linked to the Deferred Choice underpin – who will pay for the tax advice – NIC ICTU firmly believe that this should be paid for by Government as the issue of the transitional protection arrangements was implemented by Government therefore no-one should be left to pay for tax advice;
 - c. The fact that the Finance Minister appears to be proposing that the way forward in relation to the legislative route is by way of a Legislative Consent Motion (LCM). NIC ICTU are of the view that given pensions is a devolved matter that these issues should be dealt with appropriately via primary legislation which lends itself to open, transparent and full scrutiny.
3. There are other issues of concern regarding how the transitional protection arrangements will be paid for. It appears that the Government is pausing the implementation of the 2016 valuation and now seeking as part of the revised valuation to make Scheme members pay for the discrimination implemented by Government. This is not fair, just or equitable. This issue is referred to as the Cap and Collar and NIC ICTU are content to expand on this further at the evidence session.
4. NIC ICTU look forward to engaging further with the Committee on this issue on 21 April 2021 and thereafter.

15 April 2021

Introduction

- This submission is from the NIC ICTU Public Service Pensions Group (referred here as TUS) and therefore deals with the cross cutting aspects of the consultation – “Public service pension schemes: changes to the transitional arrangements to the 2015 schemes”.
- Affiliates to NIC ICTU will have made submissions that whilst covering the core policy issues of the consultation will also have raised certain scheme specific aspects.
- Going forward regardless of which option is applied there will be ongoing need to consult via the CCWG on all common aspects of the applied option and via the normal scheme by scheme arrangements for TUS engagement on scheme specific aspects. There will also be a need to engage with both SABs and Scheme Pension Boards.
- Whilst in the main the 2014 Public Service Pensions Act (NI) mirrors Westminster legislation there are important significant differences which reflect that this is a devolved matter. As such it is inappropriate to slavishly follow the Westminster position and it is why TUS believes that it is necessary to give further and detailed consideration to the hybrid approach previously propositioned by TUS.
- TUS would again reiterate that it is wholly unjustified and unacceptable to bring the cost control mechanism into play as part of the remedy to the McCloud judgement. This is a significant breach of the 2016 Directions for the valuations and again demonstrates a fundamental move away from the statement made on behalf of the government by Danny Alexander of a 25 year commitment to the outcome of the Hutton reforms for public service pensions.
- The decision of the English/Welsh Court of Appeal have no legal application to Northern Ireland.

The comments which follow related to the structure of the consultation document.

Document

- 1.1 Not wholly accurate re Northern Ireland follows GB e.g. Act and Fire Service.
- 1.4 Not comparing like for like – DB v DC.
- 1.5 10 year lead in is in line with practice for state pension changes.
- 1.6 Outcome due to inadequate legal representation by Government legal team, the adverse outcome should not fall on the employees of the schemes.
- 1.7 Government acceptance of the Court Appeal as much to do with escaping from first cap/collar review outcomes.

- 1.8 Any CMD outcomes that differ from McCloud scheme remedy will need to be assessed.
- 1.14 Clarify extant legislation changes both primary and regulations.
- 1.17 Point re some better off in 2015 schemes need range of worked examples, the limited examples to date do not provide enough information.
- 1.21 The document fails to include hybrid option as proposed by TUS.
- 1.22 Affected numbers circa 130,000 – impact on them getting individual independent financial advice should immediate option be applied needs to be considered.
- 1.25 NI Judicial arrangements must come to CCWG to ensure judiciary get no more favourable treatment.

Question 1 - An issue arises as to the potential adverse impact on those who entered the schemes between 1 April 2012 and 31 March 2015.

Question 2 - There is a need to submit all schemes to full equality audits not limited to the McCloud judgement but also cases such as Brewster, Walker and the Goodwin case.

- 1.29 That being the case what is legal view of stayed NI tribunal cases being struck out?
- 2.4 Statement fails to take account of all issues such as legacy schemes lower NPA.
- 2.5 Protected moving to 2015 schemes need to value (if possible) benefits of losing lower NPA.
- 2.6 funding should be made available for independent financial advice via vouchers.

Example 1 states pay increases 1% over inflation with public sector pay restraints this is not realistic. Also what is being taken as inflation?

- 2.12 1/4/22 – can date be delivered?
- 2.17 What about career breaks and 5 year scheme break if employer could not place a return within the 5 year period?

Question 3 - Not all schemes had a taper provision and for those that did it was not a uniform application. The detailed arrangement for tapered members should be on a scheme by scheme basis.

- 2.25 What arrangements for repayment will be made and will repayments also have interest attached?

2.33 Deferred decision could assist with 130,000 affected being better able to get a more accurate assessment and financial advice.

2.34 Fails to factor in potential changes to public service pension schemes and pension taxation rules.

2.37 Problem of a 12 month window and 130,000 people accessing independent advice.

Question 4 - The immediate choice brings into play the default mechanism of the legacy scheme, which is avoided via DCU. It is likely a high proportion of scheme members would not respond to the immediate choice and/or be unable to do so due to the complexity of the matter with little or no prospect of obtaining independent financial advice therefore the DCU option avoids the imposition element as well as providing for more clarity at the decision making time.

2.41 Will schemes advise that certain options will trigger Annual Allowance charge?

2.49 How will this be achieved?

2.53 Any additional admin costs should not be assessed as ongoing scheme costs.

Question 5 - There is little evidence to support the use of immediate choice. Whilst it may remove long term administrative issues, it is unclear if schemes could conduct such an exercise without significant resource input which is liable to adversely impact on normal service delivery.

Question 6 - As referred to above the DCU is the lesser of the evils in that it will be easier for scheme members to deal with and provides scheme administrators with time to deal with priority issues such as ill-health and death in service cases.

Question 7 - Normally administrative costs are factored into scheme valuations, McCloud costs should be excluded.

Question 8 - Both provide the outcome sought by the Court in the round the DCU option is less problematic.

2.56 These costs must be met by Government as they are not the fault of members and the adverse impact on the first cap/collar valuations (£700m) is wholly unacceptable.

2.58 As above.

3.4 Life expectancy has reduced in recent years wrong to refer to it in the context of the paragraph.

- Question 9** - Whilst application of reformed scheme from 1/4/2022 would appear to provide greater equal treatment TUS remains opposed to the Hutton changes especially with regard to NPA linkage to SPA. Also TUS does not accept the inclusion of McCloud costs as employee benefits for the 2016 valuations.
- Question 10** - Many past cases issues will be scheme dependent and will require fully examination and engagement at scheme level.
- Question 11** - This is as per Question 10.
- Question 12** - This again raises scheme specific issues and in particular the Effective Pension Age provision in the Civil Service scheme. These issues are complex and will need detailed consideration and explaining to members.
- Question 13** - The ABS provision is a statutory requirement with a set timeline, it will be essential that Pension Boards are fully consulted on the ABS implications and that the process is introduced quickly and made as easy to understand as is possible.
- Question 14** - This is an immediate problem for those impacted by either ill-health approval or refusal since 1 April 2012 and will need to be examined in much greater detail at scheme level
- Question 15** - As with Question 14 and it will need sensitive handling. It is also liable to be the case that dependents are even less likely to be able to reach decisions on options and will require to be supported in obtaining independent financial advice.
- Question 16** - This is again likely to raise scheme specific issues that will require full engagement.
- Question 17 & 18** - Retention of the transfer club provisions are important, however it would be important to ensure such members are not advantaged to any degree over those not covered by club transfer provisions.
- Question 19** - There could be potential sex discrimination should a pension credit member be adversely impacted by a decision of the pension debit member.
- Question 20** - Members should not be disadvantaged by having to pay interest.
- Question 21** - Yes, there are options e.g. at SCAPE Discount rate or RPI.
- Question 22** - A single rate across schemes should be applied.
- Question 23** - This is liable to be a scheme specific issue.

Question 24 - Aspects of the tax implications were discussed at the CCWG on 30 October 2020, in particular the Q/A document to HMT questions 19/20. The responses of the HMT Official were helpful and TUS would wish to see assurances confirmed.