The McCloud Case (Public Service Pensions Remedy).



The McCloud Case found that the transition of members into 2015 public sector pension schemes, including the 2015 NHS Pension scheme, breached age discrimination rules. Following a consultation, it has been decided that:

- Members will be treated as if they had been a member of their legacy scheme from 1 April 2015 to 31 March 2022 (the remedy period). Your legacy scheme is the scheme you were a member of prior to 1 April 2015. This is called roll back and this has taken place.
- All members transferred to the 2015 scheme on 1 April 2022.
- On retirement you will be presented with the benefits available should you have been a member under each of the two different schemes during the remedy period. You will then decide which of the two schemes to choose for that period. This is the **deferred choice**.

For members rolled back to their legacy scheme during the remedy period, these changes could lead to immediate financial and tax consequences relating to pension contributions and annual allowance tax charges.

Immediate financial and tax consequences re the roll back

With respect to the roll back, if pension contributions during the remedy period have been overpaid, the pension scheme will compensate the member for overpaid contributions adjusted for excess tax relief claimed on those contributions.

If pension contributions are insufficient, the member will need to pay the difference either in instalments or as a lump sum. Active members should receive tax relief in the usual way.

Pension annual allowance charges will need to be recalculated. If annual allowance charges reduce, compensation will be issued for the 2015/16 to 2018/19 tax years and a refund will be issued for the 2019/20 to 2021/22 tax years.

If pension annual allowance charges increase for the 2019/20 to 2021/22 tax years, HMRC will collect underpaid tax. However, the earlier years (2015/16 to 2018/19) are out of time so no extra tax will be collected.

HMRC are currently developing a service which can be used to report tax changes for the remedy period.

NHS Pensions are due to issue revised statements to members who have previously received an annual allowance statement by 6 October 2024. These are called Remediable Pension Savings Statement (RPSS).

If you receive a revised annual allowance statement (RPSS) please do forward it to PEM as soon as possible.

There should be an opportunity to seek compensation where there has been financial and taxation loss.

What you need to do

If you need to correct your tax position due to the remedy, you will be sent a Remediable Pension Savings Statement (RPSS).

When you receive your RPSS please send it to PEM and we will calculate if you have over or underpaid tax for any of the remedy period tax years.

Contingent decisions

A contingent decision is a decision you made or did not make because of actual or perceived implications of the 2015 Scheme reforms. In other words, you would have acted differently if you knew you'd be remaining in the legacy scheme for the remedy period. For example, a decision to opt out of the Scheme because you were not able to remain in the legacy scheme for the remedy period.

You may be able to reinstate remedy period service if you opted out of the NHS Pension Scheme because of the discrimination identified in the McCloud judgement.

Cost Claim Back Scheme

You can apply to claim back the costs of professional services or other financial losses that are due to the discrimination or application of the remedy.

For example, these could be costs incurred where you employed an accountant for advice about the effect of rollback on your tax position once you've received your remediable pension savings statement (RPSS).

Use a separate Cost Claim Back form for direct financial losses incurred from different providers. A claim for accountancy services used to complete an application via the HMRC Digital Service, is limited to £1,000 including VAT, per piece of advice.

A claim for IFA services to help you make your decision about your choice of pension benefits for the remedy period, is limited to £500 including VAT, per piece of advice.

If there's a reason not linked to the Remedy which means you owe money to the pension scheme and an agreement is made to reduce what you owe, you can still apply to claim back costs covered by the Cost Claim Back Scheme.

If you have any questions regarding any of the points raised above, please do get in touch with your usual PEM contact.

PEM
Salisbury House
Station Road
Cambridge CB1 2LA

t. 01223 728222
e. pem@pem.co.uk

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