

Pensions Remedy Project Team

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### [Public service pension schemes: changes to the transitional arrangements to the 2015 schemes](#)

With a membership of 450,000 registered nurses, midwives, health visitors, nursing students, health care assistants and nurse cadets, the Royal College of Nursing (RCN) is the voice of nursing across the UK and the largest professional union of nursing staff in the world. RCN members work in a variety of hospital and community settings in the NHS and the independent sector. The RCN promotes patient and nursing interests on a wide range of issues by working closely with the Government, the UK parliaments and other national and European political institutions, trade unions, professional bodies and voluntary organisations.

Access to good quality, stable and sustainable pension provision for nursing staff has been a long-standing aim for the RCN. It's value for our members is not just that of a secure income in retirement. It is also an important part of their total reward package which in turn is key to their recruitment and retention. In compiling this response, the RCN has engaged with its membership via webinars and online briefings.

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The RCN represents nurses and nursing, promotes  
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The majority of our members in public service are in the NHS Pension scheme, so our response focuses on these schemes in particular. However, we also represent nursing staff in other areas, e.g. local government, and our comments are relevant to all schemes our members have access to.

In summary -

- The RCN acknowledges the importance for Government addressing the discrimination found by the Courts. However, we are concerned that, in so doing, schemes are not put at additional risk of claims – either of discrimination or maladministration.
- The RCN supports offering a Deferred Choice with Underpin as this provides greatest certainty for our members and supports them in their life choices.
- As a matter of principle, the RCN believes that no member – active or otherwise – should experience any loss of pension benefits as a result of this remedy proposal.
- We are concerned about the proposal not to include post 1/4/12 members in the scope of remedy. We do not feel that remedy ought to be constrained by the particulars of the legal cases when a more holistic approach would be beneficial and give certainty that no one is disadvantaged as a result.
- Whilst recognising that this consultation spans the whole public service, we urge Government to allow the Scheme managers for the NHS Pension schemes to adopt flexible retirement provisions in legacy schemes (1995 section) and make permanent the removal of restrictions on returning to work after retirement thus supporting the retention of staff.
- The RCN notes the extreme complexity of pensions taxation and is concerned about the impact remedy may have on the tax arrangements of some higher earning scheme members. We therefore appeal to Government to simplify the system at the earliest opportunity

Our response supports and endorses those of the NHS Pension Board and Scheme Advisory Board (England and Wales) and shares their concerns about the administrative and communications burden enacting remedy will impose on scheme administrators and the potential confusion and lack of confidence in pension provision it may generate in scheme members themselves.

The RCN also shares the concerns raised to us by employers about the timescale of this remedy proposal and their fears for the impact it will have on workforce supply – especially the retirement of nursing staff.

The RCN would welcome the opportunity to work with the Scheme Administrators, through its seats on the Advisory and Pension Boards, to pre-empt and mitigate any unintended consequences that would have a negative impact on members and the scheme, to ensure

that the communications of this important issue are appropriate for our membership and to develop options to support flexible retirement for nursing staff.

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**Question 1** (page 12): 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?

We have some concern regarding members who joined the scheme between 1 April 2012 and 31 March 2015 and whether there is a risk of not including those members in the scope of the remedy. The equalities impact highlights that those outside of the proposal remedy are more likely to be younger, women and/or from ethnic minority groups.

We understand HMT's position is that those joining the scheme after 1 April 2012 were not discriminated against however we strongly suggest that the reasons for this are clearly set out for members and employers, who will inevitably receive queries from their staff in this group. We would appreciate assurance that legal advice has been sought on this issue and there remains no residual risk of future legal challenge from this cohort of the membership.

**Question 2** (page 12): Is there anything else you would like to add regarding the equalities impacts of the proposals set out in this consultation?

Under the immediate choice approach, there is greater future uncertainty for younger members than older members due to the longer timeframe between the end of the remedy period and the end of their active membership. Also, younger members are more likely to be women and/or from ethnic minority groups, as referenced within the equality impact assessment.

This leads to greater risk of younger members making the least beneficial immediate choice, recognising in hindsight that they would have been better off making the alternative choice.

The equalities impact acknowledges this and that members would need support with, for example, online models and calculators. However, many members are likely to find online models difficult to use and understand without substantial support and some members may be unable to access such support at all. Independent financial advice will be essential in order to make a fully informed decision and Trade Unions are not regulated to provide such advice so our ability to advise members will be limited.

**Question 3** (page 22): 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?

This situation would occur under Immediate Choice – which we do not support. However, if that route is chosen we feel that ceasing the transition of taper protected members to the reformed scheme as soon as is reasonably practical would be preferable to leaving a situation to progress where members will build up benefits in the remedy period across two schemes which, ultimately, will have to be unwound.

**Question 4** (page 25): Please set out any comments on the proposed treatment of anyone who did not respond to an immediate choice exercise, including those who originally had tapered protection.

We are concerned with the concept of a default position for those not engaging with a choice exercise, as assumptions will be made about members that could potentially be challenged in the future. This is a particular concern as previous take up of choice exercises has been low.

**Question 5** (page 31): Please set out any comments on the proposals set out for an immediate choice exercise.

We do not support this option as we believe it is unreasonable to expect members to make such an important decision on so many unknown elements and assumptions. There is a real risk that members would choose the wrong option.

Additionally, RCN members reported a concern that the time frame estimated to deliver choice to all members would mean delay for some that could add to confusion.

We are also concerned about the enormous administrative burden this option would place on the Scheme Administrators who would be expected to recalculate all pension events that have occurred since 1/4/15 at the same time as running the choice exercise.

**Question 6** (page 31): Please set out any comments on the proposals set out for a deferred choice underpin.

This is the RCN's preferred option as it will give our members the greatest certainty about their pension membership in the shortest time frame. For those with 1995 section membership this was extremely important as it confirmed their Normal Pension Age (NPA) for the remedy period, which was as much of a priority as the actual benefits accrued. Clarity about retirement options is essential for our members especially those reaching the end of their working lives. Knowing with certainty which scheme rules apply during the remedy period allows them to make informed choices about retirement.

Accurate and clear benefits statements will be key to the success of this option, especially for those who are further from retirement, and will need to describe clearly what benefits are available at what age. Detailing the impact on reformed scheme benefits of taking all benefits at legacy NPA will be essential.

**Question 7** (page 31): Please set out any comments on the administrative impacts of both options.

We understand that the Scheme Administrators for the NHS pension schemes preference is for Deferred Choice with underpin, and we support their position.

We would appreciate some reassurance that sufficient resource will be available at NHS BSA to handle immediate detriment cases and provide the necessary support up to and soon after the end of the remedy period, and beyond if deferred choice underpin is the chosen approach.

**Question 8** (page 31): Which option, immediate choice or DCU, is preferable for removing the discrimination identified by the Courts, and why?

As detailed above, the RCN supports Deferred Choice with Underpin. This was felt to be the most sensible safe option as members will be able to select remedy period benefits with the benefit of hindsight, rather than having to make significant assumptions about their future career and retirement plans which may not be borne out in reality. This would seem to mitigate the residual risk of members unwittingly making mistaken choices.

However, the principle of remedying the discrimination identified is to put the Claimants into the financial position they would have been but for the unlawful discrimination and only the Employment Tribunals that will determine remedy in these cases are in a definitive position to declare what the appropriate remedy should be. We trust the Government will consider those remedy decisions along with the responses to this consultation before it proceeds.

**Question 9** (page 35): 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?

We understand that all previous protections will be removed from 1<sup>st</sup> April 2022, with the intention that active members are transferred to the reformed schemes as they currently are laid out in regulations. It is possible that there may be changes to these schemes before that and accordingly, are unable to confirm whether equal treatment will apply from that date onwards. We reserve our position until further clarity is available.

In the meantime, the RCN expects Government to have taken legal advice on this issue.

One area of concern is that members with Mental Health Officer (“MHO”) status earn ‘double accrual’ after 20 years’ pensionable service. There could potentially be some members with MHO status who are expecting to receive ‘doubling’ beyond 1 April 2022 but with being moved to the reformed scheme will miss out on their expected benefits. Clear and accurate information about uniform accrual and preserved rights will be of great importance to these members.

**Question 10** (page 37): Please set out any comments on the proposed method of revisiting past cases.

Whilst we understand completely the need to revisit cases where members have had a pension “event” during the remedy period, we expect that a clear process is articulated about the timeframe and method of prioritising cases.

As a matter of principle, the RCN believes that no member – active or otherwise – should experience any loss of pension benefits as a result of this remedy proposal. People who are already in receipt of benefits will have adjusted their lifestyle to their benefit payments and any recalculation may cause concern, anxiety and distress. We would appreciate early engagement on the communications that will need to be developed to deal with these cases.

**Question 11** (page 39): Please provide any comments on the proposals set out to ensure that correct member contributions are paid, in schemes where they differ between legacy and reformed schemes.

No comment as not applicable in NHS Schemes

**Question 12** (page 40): Please provide any comments on the proposed treatment of voluntary member contributions that individuals have already made.

We agree that the value of additional pension contracts, including Early Retirement Reduction Buy Out, should be retained by members.

Where a member ends up in the alternative scheme during the remedy period, we agree that the additional pension should be converted into a cost-neutral benefit payable under the alternative scheme. We welcome that any retrospective breaches of the relevant limits would be ignored.

**Question 13** (page 41): Please set out any comments on the proposed treatment of annual benefit statements.

The provision of accurate, timely and clear statements that meet the needs of scheme members in understanding their pension entitlements is of paramount importance. This must be done to assist member understanding of their benefits and to enable them to make choices about their life, not just to meet statutory targets. A combined statement showing all membership would be preferable to

different statements for different sets of membership but must be clear on the impact on reformed benefits of taking all pension benefits at legacy NPA.

**Question 14** (page 42): Please set out any comments on the proposed treatment of cases involving ill-health retirement.

As a matter of principle, the RCN believes that no member – active or otherwise – should experience any loss of pension benefits as a result of this remedy proposal.

We support in its entirety the response of the NHS Pension Scheme Advisory Board for England and Wales on this matter which states –

*“Ill-health retirements which have already been awarded during the remedy period and ill-health retirements to be assessed between now and the end of the remedy period need to be treated with great sensitivity but also as a priority.*

*Although the eligibility for ill-health retirement differs between the legacy and reformed schemes, NHS BSA would still be able to calculate benefits as at the date ill-health retirements were awarded assuming that the member would still be eligible under the terms of the alternative scheme.*

*We would like to raise an area for consideration. Where the ill-health benefits already awarded are higher than those which would be (subject to eligibility) awarded under the alternative scheme then we consider it reasonable to contact the member to tell them no further action would be taken unless the member specifically wants to investigate further.*

*Where the ill-health benefits already awarded are lower than those which could be awarded under the alternative scheme then the member should be contacted with the possibility of further medical evidence required to fulfil the eligibility criteria needed.*

*However, we recognise that the lump sum already awarded, either as an automatic lump sum or exchanging pension for cash, may make it difficult to assess which benefit is higher.*

*Members who were rejected for ill-health retirement may, retrospectively, meet the eligibility criteria for the award. Additional medical evidence will likely to be required in such cases where the member wishes to pursue the application.*

*Members with tapered protection will, again, be a specific issue. For example, where such members had already transitioned to the reformed scheme then they would have been assessed under that scheme. Also, under the proposals such members will also have their benefits adjusted as they cannot have a mix of legacy and reformed scheme benefits within the remedy period.*

*Affected members should be given clear information about the consequences of retrospectively changing their benefits – in particular, the impact on their personal tax position and on state benefits.”*

**Question 15** (page 45): Please set out any comments on the proposed treatment of cases where members have died since 1 April 2015.

As a matter of principle, the RCN believes that no-one, including the families of deceased members should experience any loss of pension benefits as a result of this remedy proposal. Potentially recalculating benefits after someone has died is an extremely delicate matter that will need handling with the utmost sensitivity as it may cause significant anxiety and distress for family members.

**Question 16** (page 45): Please set out any comments on the proposed treatment of individuals who would have acted differently had it not been for the discrimination identified by the Court.

We would appreciate early confirmation of the process for contingent decision cases and clarity regarding responsibility of the scheme and/or employer to manage it.

We recognise that contributions would be required retrospectively to buy-back lost periods of pensionable service. However, whereas a member may wish to buy back pensionable service this would not necessarily be fair on employers suddenly having to find additional pension contributions from existing budgets. Rather than levy the cost of employers, these unexpected costs should be met centrally.

Clear communications will be necessary to alert (past) members to this possibility and it would be preferable to have a list of situations/issues that may be taken into account rather than leaving it to individuals to guess whether their case may be included or not. It is preferable that clear rules are set out in the scheme regulations to provide consistency of decision making and to reduce the risk of challenge.

**Question 17** (page 47): If the DCU is taken forward, should the deferred choice be brought forward to the date of transfer for Club transfers?

The RCN does not support this approach and instead suggests that choice should be offered at the time of retirement.

**Question 18** (page 47): 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?

The RCN would expect choice to be offered for each individual scheme.

**Question 19** (page 48): Please set out any comments on the proposed treatment of divorce cases.



The RCN agrees that the choice should be made by the scheme member themselves.

**Question 20** (page 49): Should interest be charged on amounts owed to schemes (such as member contributions) by members? If so, what rate would be appropriate?

As a matter of principle, the RCN believes that no member – active or otherwise – should experience any loss of pension benefits as a result of this remedy proposal. This extends to other financial detriment such as interest charges. Where contributions are owed (and this would not apply in the NHS Schemes) they should be paid at the rate in operation at the time they relate to.

**Question 21** (page 49): Should interest be paid on amounts owed to members by schemes? If so, what rate would be appropriate?

Where schemes owe monies to members, we feel it is sensible that this rate should be set at the SCAPE discount rate over the time the amounts owing were incurred.

**Question 22** (page 49): 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?

As above, harmonising rates (upwards) would seem to be a sensible approach.

**Question 23** (page 50): Please set out any comments on the proposed treatment of abatement.

As a matter of principle, the RCN believes that no member – active or otherwise – should experience any loss of pension benefits as a result of this remedy proposal.

**Question 24** (page 58): Please set out any comments on the interaction of the proposals in the consultation with the tax system.

As a matter of principle, the RCN believes that no member – active or otherwise – should experience any loss of pension benefits as a result of this remedy proposal.

The RCN notes the extreme complexity of pensions taxation and appeals to Government to simplify the system at the earliest opportunity. Members will need expert advice and support to navigate this issue and the endorsement of competent and knowledgeable advice would be desirable.