

# AGE DISCRIMINATION IN 2015 NHS PENSION SCHEME TRANSITIONAL PROTECTION ARRANGEMENTS



Access to good quality, stable and sustainable pension provision has been a long-standing aim for the RCN. It is a key tenet of the RCN's member pay strategy and a priority area for the RCN Trade Union Committee

This briefing provides an update the UK Government's [public consultation](#) published in July 2020 in response to the Court of Appeal's ruling on the McCloud/Sargeant age discrimination case in December 2018.

For background information on the McCloud case and its impact on the NHS pension scheme please see the [online briefing](#)

For information on the consultation (now closed) please see this [online briefing](#).

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## Age Discrimination in the NHS Pension Scheme - Summary

Recent legal cases ruled that the way in which members of the Firefighters and the Judiciary Pension Schemes were moved to the new 2015 Pensions Schemes was discriminatory on grounds of age.

This discriminatory effect now must be removed and Government have committed to applying the same principle to all public service pension schemes, including the NHS Pension.

Eligible scheme members who are "in scope" of this remedy proposal are those who were in the NHS Pension Scheme on or before 31/3/12 AND on or after 1/4/15 (including some members who took a break in membership under scheme rules).

Such members will be able to choose how they want their pension to be calculated for the period 1 April 2015 to 31 March 2022.

The choice will be between benefits calculated under the rules of the scheme they were in immediately before April 2015 (their "legacy scheme") or under the 2015 Scheme rules (the "reformed scheme").

There are a number of key differences to these schemes, most notably retirement age and the rate at which benefits accrue.

For the NHS Pension Scheme the "legacy scheme" is the 1995/2008 Scheme and means the section that the scheme member was a member of before they moved into the reformed scheme on or after 1/4/15.

HM Government recently ran a public consultation to ask WHEN scheme members should be asked to make this choice.

The two options were

- 1) “Immediate choice” – in the 12-24 months from April 2022
- Or
- 2) “Deferred choice (with underpin)” – when the scheme member retires.

The RCN’s response supported Deferred Choice and can be found [here](#)

At the time of writing we are awaiting the Government to respond to consultation feedback and state which of the choice options they will offer to eligible scheme members.

It is our understanding that the same option will be chosen for all public service schemes.

**No-one is being asked to, or is able to, make this choice yet**

We expect Government’s response to the consultation – stating which option for delivering choice will be used by mid-2021 and will provide further guidance and information as soon as we can after that.

The consultation also stated that it is Government intention that all legacy schemes will close on 1/4/22. This means that ALL active scheme members will transfer to the 2015 arrangements on that day for any and all of their future service irrespective of whether they have made a remedy choice or not, or whether they had “full” or “tapered” protection back in 2015.

This will mean that someone’s pension membership will look like this..



No one will lose their legacy scheme benefits, but they will not be able to contribute to that scheme from 1/4/22.

## Frequently Asked Questions

*I was in the 1995 scheme with Special Class Status (SCS) before I was transitioned to the 2015 scheme under tapered protection. I'm not going to be 55 until after April 2022, what will happen to my SCS?*

There is no Special Class Status in the reformed 2015 NHS Pension Scheme so this will not apply to the benefits you accrue from 1/4/22 onwards. At age 55, if you meet all the other eligibility criteria for SCS, you will be able to claim your legacy pension under what is currently known as "preserved rights". You need not claim your 2015 benefits at the same time but if you do, they will be reduced to take account that you are claiming them before your normal pension age for that Scheme.

*What if I'm due to retire before April 2022?*

You can claim your pension as usual and it will be calculated according to the scheme rules at that time. Your benefits will be reassessed as soon as possible after April 2022 and your period of membership from 1<sup>st</sup> April 2015 to retirement will be paid at whatever is the higher amount of either legacy benefits or reformed benefits.

*I lost the ability to retire at 60 when I was transitioned to the 2015 scheme 3 years ago but now I find I may be treated as if I was in my old scheme after all. Can I make a retrospective application now?*

You can apply now but your benefits will be calculated according to the scheme rules at the time of retirement. Your claim cannot be backdated and your benefits will be reassessed after April 2022. If your pension would be reduced now because you are claiming it "early" under your current scheme rules, yet the legacy rules would have allowed for full benefits, this will be addressed when your situation is reassessed.

*Can RCN staff/representatives provide financial advice in regard to my pension or any choice which I may take in the future?*

No – RCN staff/representatives are not licensed to provide financial advice but we will make advice guides available to help you in your considerations.

*Who can provide RCN members with financial advice/support?*

As part of your membership benefits, [Lighthouse Financial Advice](#) can provide professional financial advice to RCN members.

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