



PDA Union response to the public service pension schemes: Changes to the transitional arrangements to the 2015 schemes

About us

The Pharmacists' Defence Association (PDA) is a not-for profit defence association and trade union for pharmacists. It is the only organisation that exclusively looks after the interests of employee and locum pharmacists across all sectors of pharmacy, currently with a membership of more than 32,000, the PDA is the largest representative membership body for pharmacists and only independent trade union exclusively for pharmacists in the UK.

The primary aims of the PDA are to:

- Support pharmacists in their legal, practice and employment needs
- Represent the individual or collective concerns of pharmacists in the most appropriate manner
- Proactively seek to influence the professional, practice and employment agenda to support members
- Lead and support initiatives designed to improve the knowledge and skills of pharmacists in managing risk and safe practices, so improving patient care
- Work with like-minded organisations to further improve the membership benefits to individual pharmacists
- Arrange insurance cover for individual pharmacists to safeguard and defend their reputation.

We welcome the opportunity to respond to this consultation.

General points

The PDA Union recognises that many of the questions are of a technical nature and we believe these are more appropriately answered by the NHS BSA, the NHS Pension Board, and the Scheme Advisory Board. We have therefore concentrated on those questions of direct and significant relevance to PDA Union members who are currently deferred or active members of one or more of the NHS pension schemes or sections of these schemes.

Throughout our response to the individual questions we have tried to emphasise the need to ensure solutions to the problems created by the McCloud ruling are those that are understood by scheme members and do not result in unnecessary further actual or perceived complexity. Many members already have pension benefits accruing in a final salary section of the original scheme and a Career Average Revalued Scheme. It is essential scheme members continue to have confidence in the scheme, accrue benefits they can understand and are asked to make decisions they can realistically make based on readily available evidence.

We therefore urge that the decisions made following this consultation meet the need to eradicate the discrimination identified by McCloud, are easily understood by scheme members and can be administered efficiently without additional pension costs being taken from frontline services.

With this in mind, we have comments on the following questions.

Answers to specific questions

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

The PDA Union welcomes the suggestion in the consultation document that the default position would be discussed on a scheme by scheme basis. In the case of the NHS this would be with the Scheme Advisory Board. We believe it is far from clear that members have been discriminated against on the grounds of age in the NHS scheme and therefore careful consideration will need to be given for a scheme specific default position that takes this into account for the NHS as best as is practicable.

Question 5: Please set out any comments on the proposals set out above for an immediate choice exercise.

The PDA Union believes that in the case of the NHS Pension arrangements immediate choice is not an option. Members will be expected to decide on whether a Career Average Revalued Earnings Scheme benefits are preferable to those in a final Salary scheme.

Individuals are not able to make this decision without making significant assumptions about pay growth, career development and inflation over the rest of their working life. It is not possible to predict with any certainty any of these factors and therefore immediate choice can offer no realistic remedy and cannot ensure scheme members will not be discriminated against.

If scheme members are expected to make an immediate choice there is every possibility they could make the wrong choice which could potentially raise issues around increased complaints by members and a general loss of confidence in the scheme, not only by scheme members but also employers.

Members will also need access to detailed advice and guidance from their employer which, inevitably, will make the scheme more costly to administer both centrally and at local Trust level.

Question 6: Please set out any comments on the proposals set out above for a deferred choice underpin.

The PDA Union favours this approach. In contrast to our comments above, the only point at which members can make a realistic choice between benefits accrued under CARE or Final Salary rules is when the benefit crystallises, either at retirement, whether early on ill health grounds or normally on reaching the relevant age, or on the death of a scheme members.

Scheme members, or their next of kin, will only have the information to make that decision at this point.

The PDA Union believes it is crucial for these beneficiaries to be given the deferred option choice. This will ensure they are able to make a meaningful choice, will be able to understand how the choice works, will continue to have confidence in the scheme and be able to make the choice that best suits their retirement needs.

For the reasons given above we also believe this approach will ensure the scheme can be administered efficiently, cost effectively and correctly.

Question 7: Please set out any comments on the administrative impacts of both options

Others will answer this question in more detail, but our view is that the deferred choice option not only gives scheme members a real choice but, as a result, will be much easier to administer. Immediate choice will generate questions from scheme members who will direct them either to their employer or to the NHS BSA, who will not be able to answer them with any degree of certainty. This in turn will lead to greater numbers of complaints to the Internal Disputes Resolution process and potentially the Pensions Ombudsmen. The potential for further litigation involving the scheme is therefore not removed, even if this approach did remove any further discrimination on the grounds of age.

Employers will also be under some obligation to provide more detailed information and arrange for their employees to receive advice even though this will still not enable members to predict their benefits from the CARE rules with accuracy or certainty.

All of this will add considerably to the cost of administering the scheme, money that generally must come from NHS budgets and therefore frontline services.

Contrary to some impressions immediate choice will continue to have ongoing costs of this type as members seek to overturn their original choice as they understand better how the CARE arrangements work. We are therefore firmly of the view that deferred choice not only allows for a realistic choice for members but will be far less burdensome to administer, although some extra resources will need to be made available in the initial period to communicate what deferred choice is for members.

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

For the reasons given above DCU is the only option that can remove with certainty discrimination. Immediate choice can only be based on assumptions about the future which, if they turn out to be incorrect, will lead to choices being made that could turn out to reinforce discrimination rather than remove it, albeit in hindsight.

Deferred choice is the only option that allows a choice between two actual outcomes and is therefore the only option that allows members to exercise a meaningful choice in a way that ensures they are not subject to worse treatment than their colleagues.

Question 9: 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?

This proposal does in theory achieve equal treatment, but the PDA Union questions whether this approach is fair, necessary in law and straightforward for members should a new reformed scheme be introduced in the NHS. Our preferred approach would be for the 2015 scheme to be the reformed scheme and allow deferred choice at the point of retirement between the benefits payable from that and the legacy scheme.

We believe this achieves the overriding objective of compliance with the law but does so in the least complex way and thus the less burdensome way for employers and administrators.

Question 13: Please set out any comments on our proposed treatment of annual benefit statements.

The PDA Union supports deferred choice and therefore supports the proposal to provide two sets of benefits on the Annual Benefit Statements. We are confident this can be produced and do not share the view expressed in the consultation document that this would have to require significant system changes and years to implement.

We do however believe it would require significant additional resources initially to ensure members understand their statement, why it shows two sets of figures, the assumptions used in preparing the figures and how effectively they can choose which of the two figures they prefer when they retire normally or on ill health or should they die.

Question 14: Please set out any comments on our proposed treatment of cases involving ill-health retirement.

The PDA Union supports the proposal in the consultation document to allow schemes to develop scheme specific solutions. For the NHS this should be the role of the Scheme Advisory Board.

As a general point though ill- health retirement is a point at which benefits crystallise so is the point at which a choice should be offered. This choice would take fully into account differences in benefit levels and eligibility criteria as referred to in the consultation document.

Question 24: Please set out any comments on the interaction of the proposals in this consultation with the tax system.

The PDA union recognises this is a complex situation caused by the way tax policy has, sometime inadvertently, adversely impacted on pension arrangements and indeed employment arrangements in the NHS.

Detailed thought needs to be given to this, but our general principle is that taxation policy should not be applied retrospectively to deferred choice. If deferred choice results in an individual choosing to take benefits from their legacy scheme and being required to pay more tax this should be waived and the tax payable should be that paid using the reformed scheme benefit structure.

Further information

Should you wish to contact us further about our responses, please email: enquiries@pda-union.org