



Prospect submission on amendments to the civil service pension scheme to implement the 2015 remedy program and set member contributions for 2022/23

Submission by Prospect to the Cabinet Office

December 2021

www.prospect.org.uk

Introduction

1. This is Prospect's submission to the Cabinet Office consultation on the draft provisions made in the Public Service –(Civil Servants and others) Pension (Amendment) Regulations 2022. Those members who will be moving to the reformed scheme Alpha from 1st April 2022 as a result of the McCloud remedy, and those who transferred in from a New Fair Deal employer. These draft regulations also cover proposed member contributions for the period 1 April 2022 to 31 March 2023.
2. Prospect is nationally recognised for collective bargaining in the Civil Service and is responding to this consultation on behalf of our members.

Background

3. The court of appeal ruled that the Judicial and Firefighter pension schemes discriminated against pension scheme members based upon their ages (McCloud and Sargent judgement). This government conceded this ruling set a precedent for all the public sector pension schemes with the same arrangements, which includes the civil service.
4. This was as a result of older workers being allowed to remain in the existing legacy scheme whilst younger members were required to leave it and join the new CARE scheme that was set up with effect from 1 April 2015.
5. The government wishes to impose the cost of rectifying the discrimination onto members of the 2015 scheme via the cost control mechanism. This cost control mechanism currently adjusts pension contribution rates or member benefits if the actual cost of the pension scheme changes from a set target by 2% or more. This will include some members who have already been discriminated against and will be moved to the 2015 scheme with effect from 1 April 2022, when the PCSPS sections are closed to future accrual.
6. When the cost control mechanism was originally established, it was agreed that it would consider any costs that affect the value of the scheme to members as a 'member cost'. The costs of the scheme were expected to be calculated for the first time in the 2016 valuations however this did not happen as noted above as a result of the McCloud judgement.
7. In order to address the discrimination identified in the McCloud judgement, these costs have been considered as 'member costs'. The government has announced that the pause of the cost control mechanism will now be lifted, and the cost control element of the 2016 valuation process will be completed. The costs associated with addressing the discrimination identified in the McCloud judgement will also be included as part of this process and passed onto members through the cost control process.
8. Member contributions are usually set for a four-year period following a scheme valuation and assessment of scheme costs against the employer cost cap as part of this valuation process called the cost control mechanism. The cost control element of the 2016 valuation was paused in January 2019 as a result of the McCloud judgement. As a result of this pause member contributions were not set for the 4 years after 2018/19 as they can only be changed as a result of the cost control mechanism. Contribution rates therefore set initially were extended for a one year period to 31 March 2020 from the 2018/19 rates.
9. The cabinet office consulted in 2020 on another rolling over of member contribution rates for the 2020/21 period. This included an amendment to the salary threshold on which the contribution rates are applied, to exclude any back pay, which prevented a member being unfairly moved into a higher contribution tier.

10. In December 2020 the Cabinet Office indicated a further rolling over of member contribution rates which would apply from 1 April 2021. Under these proposals the completion of the 2016 valuation process would mean that the contribution rates would only be set for the final year 2022 to 2023 rather than the whole 4 year period that should have been covered.
11. The Cabinet office have indicated in the latest consultation that they propose a further roll over of the 2021/22 contribution rates and salary thresholds to be applied for Alpha members for the forthcoming year 2022/23.

Amendments

12. Prospect is not in agreement with the Cabinet Offices proposal for a further rollover of member contribution rates for a 4th year
13. Prospect negotiated reforms to Civil Service pensions with the Cabinet Office and recommended that our members accept the agreement in a ballot. Our members voted in favour of the deal based upon what had been agreed and communicated to them. The circumventing of the agreed process to set member contribution rates for another year is unacceptable and is a continued violation of the original agreement we reached.
14. Prospect are calling on HM Treasury to publish the outcome of their 2016 valuation results, and for clear guidance on how any changes to the contribution structure will be implemented.
15. The repeated delays to the agreed process for setting member contribution rates is enormously unsatisfactory. We demand a clear timeframe for the completion of the 2016 and 2020 valuations.

Prospective Changes for 2015 Remedy:

Question 1: please comment on whether the draft regulations are sufficient for the purposes of implementing the prospective remedy?

16. The draft regulations state that those members who are already in receipt of pension will be given a choice as soon as possible after the new legislation has been implemented.
17. Prospect are opposed to the exclusion of a time frame for the removal of discrimination in which these sensitive cases will be dealt with. Prospect entreat a 90 day time limit is set during which these cases are redressed.

Question 2: the ill-health retirement amendment reflects the unique position of the group being moved to alpha and will ensure that a member who applies for ill health retirement before 31 March, and where the application is successful, is treated no less favourably than if the application had been determined on that date. Do you have any views on this proposal, in particular, whether there are any adverse impacts about which you are concerned?

18. Prospect agrees that a process is required for ill health retirement applicants who've been unable to complete process before the 1 April 2022.
19. Additionally, we would like members who apply for ill health retirement up to the 1 April 2022, to be automatically given the option of having a dual ill health retirement assessment applied.
20. Prolonged delays to the payment of any underpin for those who benefits are calculated under the reformed scheme before the completion of a check under the legacy scheme is unsatisfactory.

21. We demand that these checks are completed at the time the ill health award is granted and there is no delay to the payment of the full pension, regardless of which calculation would be more favourable.
22. Prospect are opposed to the calculation of Spouse benefits under Alpha only. If a member receives an underpin top up to their Alpha benefits, we request the survivor benefits be calculated according to the same terms to ensure they too do not receive an award that is less favourable. A survivor should not be any worse off following the members death.
23. Prospect does not accept that any excess benefits already paid in the event of an ill health award be recovered. In order to mitigate this, we are calling for a dual assessment of all ill health award when addressing the member choice under the retrospective remedy provisions.

Question 3: are there any other areas which you think should be addressed in these regulations in order to ensure that all members are successfully moved to alpha from 1 April 2022?

24. There is no mention of members already in receipt of an ill health retirement pension prior to 01/04/2021, and the urgency that needs to be applied when addressing the remedy period and corresponding benefits for these individuals. Prospect entreat a 90 day time limit is set during which these cases are redressed.
25. Prospect request confirmation of how those who are retired on the grounds of ill health due to reduced life expectancy will be assessed. We propose that these members should be given the highest priority and dealt with immediately the legislation is implemented. We are asking for published confirmation to this point.

Question 4: Are there any further considerations and evidence that you think Cabinet Office should take into account when assessing any equality issues arising as a result of the proposed amendments? Any comments should be made after reading the accompanying Equality Impact Assessment in Annex B.

26. We do not envisage any equalities impacts from the proposed reforms. We believe that these reforms will improve the intergenerational fairness of the mechanism, and all members will be treated equally in respect of their membership of the Alpha scheme, once the discrimination has been addressed.

Member Contributions 2022/23:

Question 5: Given that the results of the cost cap valuation are not yet known and that schemes must set a lawful basis for collecting member contributions at this time so that it is effective from 1 April 2022, do you agree the current proposals meet these policy objectives?

27. Prospect negotiated reforms to Civil Service pensions with the Cabinet Office and recommended that our members accept the agreement in a ballot. Our members voted in favour of the deal based upon what had been agreed and communicated to them. The circumventing of the agreed process to set member contribution rates for another year is unacceptable and is a continued violation of the original agreement we reached.
28. The valuations and the cost sharing mechanism were a key part of this agreement, for the mechanism to fairly judge the scheme value between valuation cycles, and with a fair process for agreeing changes to benefits and or contributions in the event that the valuation results were above or below the target contribution rate by more than 2%.
29. Prospect understand that the Government will now try to pass the cost under the McCloud judgement for the discriminatory remedy onto scheme members through the cost control process. This is not on the basis of improving member

benefits or as a result of a reduction in member contribution rates. Prospect have been clear that the cost of rectifying this discrimination must not be passed onto our members, but the improved benefits and or reduced contributions as a result of positive valuation results and the lifting of the pause, should be a prerequisite where a breach of the margins either side of the cost cap re reached.

Question 6: Do you agree that the amendments referenced in [3.3] are correct and are you aware of any adverse impacts on members or the scheme that will result from them?

30. Prospect are not aware of any adverse effects on members from these amendments. Prospect and Unite sent a joint letter to HM Treasury relating to McCloud for members who re-joined the CSPS under New Fair Deal. We welcome the confirmation that those members re-entering CSPS are now in scope to be included in the remedy program for the period 01/04/2015 to 31/03/2022.

Summary

31. We are opposed to the continued rolling forward of scheme contribution rates. Prospect does not agree that this should happen. This delays the setting of contribution rates for the fourth and final year those that should have been set following the 2016 valuation. Furthermore, this contradicts the process agreeing to set member contribution rates resultant in the Public Sector pension reforms.
32. We demand a clear deadline date for the completion of the 2016 and 2020 valuations as well as a guarantee that priority will be given to ensuring that member contributions will not increase in the future as a consequence of the continued rollover on completion of the 2016 valuation.