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Finance and Public Administration Committee
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25 March 2026

Dear Kenneth,

McCloud Remedy – contingent decisions

Following the Committee's recent engagement with the Scottish Public Pensions Agency (SPPA), I am writing to provide you with an update on one issue to which we have now identified a solution. This is in relation to how the interaction of primary and secondary legislation has been preventing a cohort of members of the police and firefighters' schemes from taking "contingent decisions" to allow them to receive the full McCloud remedy.

I have asked SPPA to take administrative action to enable eligible members to buy-back opted-out service during the remedy period in anticipation of amendments to legislation. I recommend that the next Scottish Government corrects the position through a Scottish Statutory Instrument as soon as parliamentary time allows.

Background

When the UK Government's reforms of public service pension schemes were introduced, with effect in Scotland from 2015, they provided 'transitional protections' allowing members who were closer to retirement age to remain in the previous 'legacy' schemes rather than move to the 'reformed' schemes. In December 2018, the Court of Appeal found that these protections in the judicial and firefighters' pension schemes gave rise to unlawful age discrimination (the McCloud and Sargeant cases). The UK Government subsequently accepted this applied to all the reformed public service pension schemes.

The Public Service Pensions and Judicial Offices Act 2022 (the Act) was enacted to remedy the discrimination identified by the courts. The remedy provides eligible members with a choice of pension benefits, between legacy or reformed schemes, for the "remedy period" the discrimination had effect between 1 April 2015 to 31 March 2022.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

The Act also provides affected members with an opportunity to reconsider certain decisions that they may have made differently had the discrimination not occurred, such as choosing to opt out of the pension scheme. However, for the police officers and firefighters who took that decision, there is an unintended consequence of the Act, as it specifies the relevant legacy scheme for members who have suffered discrimination. A cohort of these members currently do not have access to their last legacy scheme under the Act, so they have not been able to be offered a full remedy.

Proposed solution

To resolve this issue the next Scottish Government would need to use provisions for special cases set out in the Act to disapply sections 4(2) and 4(3) of the Act for any eligible member who had opted out due to the discrimination and now, under the terms of section 5 of the Act and the relevant schemes' secondary legislation, makes an election to buy-back all the opted-out service during the remedy period. This would need to be applied retrospectively so that all of the service within the remedy period can become remediable service in their correct legacy scheme.

I have sent a copy of this letter to the Convenor of the Public Audit Committee.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ivan McKee', with a long horizontal flourish extending to the right.

IVAN MCKEE