

# Consultation: MPs' pensions and the McCloud judgement

March 2021

IPSA

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## Background to the consultation

1. In 2015, the Government implemented changes to public sector pension schemes such that they changed from providing benefits on a basis related to the beneficiary's final salary (FS), to benefits related to 'career average revalued earnings' (CARE). Provision was made for those closest to retirement to stay in the final salary scheme, and for a further group closer to retirement to transition in later phases after the date on which other members moved across to the CARE scheme to 'protect' those closer to retirement when the CARE scheme was introduced from unanticipated changes to pension benefits. IPSA implemented analogous changes to the MPs' pension scheme in 2015, as part of its review of MPs' overall remuneration. Our objective in making the change from FS to CARE was to ensure that MPs' pension arrangements, which had grown increasingly expensive to provide in the preceding years, were put on a more sustainable basis.
2. The McCloud judgement subsequently found that those transitional arrangements put in place in some other public sector schemes, but not the CARE scheme itself, constituted unlawful age discrimination under the Equalities Act 2010. In the light of that judgement the Government has consulted on and proposed changes<sup>1</sup> to various public sector schemes in order to move to a position where all scheme members are treated in the same way regardless of proximity to retirement and to address the position of those who were subject to transitional provisions that the court found to be unlawful.
3. The legal arrangements for the MPs' scheme differ in a number of respects from those for the public sector schemes about which the Government has consulted. This means that it is for IPSA to determine whether changes are needed to the MPs' scheme in the light of McCloud and, if so, what those should be. In line with our principles for MPs' remuneration more broadly, we have approached this principally as a matter of fairness, both to MPs and taxpayers. We have considered the tests set out in the Equality Act 2010 to arrive at our view of whether changes are needed, and in considering how to make changes we have reflected on the approach taken by the Government in relation to other public sector schemes, and also on where the specific characteristics of the MPs' scheme need to be taken into account.
4. In brief, our conclusion is that when the Equality Act tests are applied there were some members who were treated unfairly relative to others during the transition to the CARE scheme. We explain further below how we arrived at that view and what action we think is needed to address this unfairness. The approach we are proposing would follow the government's approach for other schemes in giving those who were unfairly treated the choice of whether to be treated as a member of the former FS scheme or the CARE scheme for a period at the end of which the FS scheme would close to future accruals. We are seeking feedback on some

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<sup>1</sup> See HM Treasury, *Public service pension schemes: changes to the transitional arrangements to the 2015 schemes*, CP373, February 2021. Separate consultations were also held on particular schemes with distinct characteristics.

of the key choices we will need to make in finalising plans for implementation. We would then expect to consult again later in 2020 on the detail of proposed changes to the scheme.

5. In the meantime, we expect to work closely with impacted stakeholders, in particular the PCPF Trustees, to plan for as painless an implementation as possible of proposed changes for those scheme members directly impacted. The proposed changes would directly affect less than half of current MPs, and some former MPs who were first elected before 2015 and re-elected at least once since May 2015.

## How to respond

6. Please use our quick and easy online survey to submit your response. You can find it here: <https://www.smartsurvey.co.uk/s/McCloud2021/>. Please do not send us responses by post.
7. We will summarise the responses we receive when we publish our decisions. In doing so, we may refer to individual respondents and the content of their responses. We may also publish a list of who responded. If you would like your response to be treated as confidential, please say so clearly in your response. We will not quote from confidential responses or attribute the views in them to any particular respondent. Whether your response is confidential or not, we will not publish your email address or any other contact details, in line with our compliance with data protection law and the General Data Protection Regulation (GDPR). For more information about what we do with personal data, please see our [privacy notice](#).
8. **Please send us your response by 11:59 pm on Thursday 13 May 2021.**

## Is a response to McCloud needed?

9. We have followed the approach taken in the Equality Act, by considering first whether MPs who were members of the scheme were treated differently as a result of their age and, if so, whether there was an objective justification for doing so. We then considered what unfairness might have resulted to different groups of MPs to work out where a remedy might be needed.

### *a. Were MPs treated differently on the basis of their age?*

Yes: although entitlement to ‘transitional protection’ was intended to reflect proximity to retirement, in practice as in the other public sector schemes, the arrangements differentiated between those who were:

- over 55 - ‘fully protected members’ (‘FPMs’) who stayed in the FS scheme
- between 51.5 and 55 – ‘partially protected members’ (‘PPMs’) who transitioned after different periods, depending on age, into the CARE scheme, and
- under 51.5 – who transferred immediately into the CARE scheme.

*b. Was there an objective justification for the difference of treatment?*

The Equality Act allows for differentiation by age where this is a proportionate means of achieving a legitimate aim. We would need to be able to demonstrate that in pursuit of an objective which was not in itself discriminatory, or purely because it was cheaper, we needed to distinguish by age and could not have taken alternative measures without too much difficulty that would not have done so. However, alternative measures are relatively easy to identify. We could have chosen not to introduce transitional provisions (there are none in the ministerial scheme), or we could have chosen to allow all sitting MPs to remain in the FS scheme until a specified date, or we could have targeted the salary increase awarded at the same time as the pension change at those joining the CARE scheme to mitigate the impact of the differentiation for those who were not protected. We therefore do not propose to rely on having an objective justification within the meaning of the Act.

*c. Did some MPs lose out as a result?*

The Act envisages that discrimination is suffered where a person 'A' loses out relative to a comparator 'B' because they are treated differently according to the protected characteristic, in this case age.

For the MPs' scheme it is relatively easy to establish that members received higher benefits under the FS Scheme than the CARE scheme because (among other things):

- FS members can choose a higher or lower accrual rate, but pay 9.75% for 1/50 accrual compared to 11.09% for 1/51 in the CARE scheme;
- The age at which pension benefits can be taken is higher under the CARE scheme.

This view is consistent with the policy objective for the changes to the Scheme, which was to make pension provision less generous and hence more sustainable in the context of a re-balancing of MPs' overall remuneration package, including the one-off 10% salary increase made in 2015.

Although an individual's situation will depend in part on their other tax liabilities, including the potential for a charge in relation to breaches of the annual or lifetime allowances, we think that the distinction in terms of benefits is sufficiently clear to indicate that a group of members is likely to have lost out as a result of the differential treatment. Within this group would be PPMs and those who were members at the relevant time and received no transitional protection ('unprotected members').

In this regard, the MPs' scheme differs from other public sector schemes where the question of whether an individual is better off under one or other scheme may also depend on their career

profile and evolution of grade, salary and working pattern. There is much less variety in the MPs' scheme because all MPs are paid the same basic salary for any given period as an MP.

At the Trustees' request, we consulted in 2018 on whether 'fully protected' members should be allowed to transfer from the FS to the CARE scheme. We concluded that this would only be beneficial for those Members who had already reached the maximum permitted number of years of accrual under the FS section and that the existing protection was already sufficiently generous so we would not allow them to do so. While this may also leave some individuals less well-off we do not propose to treat this group as having been unfairly treated during the transition. This is because there is no comparator group in relation to which this group is worse-off, and the decision taken in 2018 was not on the basis of age, but of limiting the maximum achievable pension benefit in the interest of affordability.

10. In the light of the above, we consider that a policy response to the McCloud case is warranted to address the potential for unfair treatment of partially protected and unprotected scheme members, but not fully protected members. We explain further in paragraph 15 below who is and is not impacted by our proposed response to McCloud.

### **Question 1: Do you agree that changes are needed to the MPs' pension scheme in the light of the McCloud judgement?**

#### **Our proposed response: overall approach**

11. We considered our overall principles for MPs' remuneration (see Annex 1), particularly those relating to fairness for MPs and taxpayers, and reflecting the experience of constituents, in considering the shape of a policy response.
12. We also reflected on the Government's approach in other schemes. Broadly speaking, this involved identifying the group of impacted scheme members and giving them the option to be treated either as members of the original FS scheme or of the reformed CARE scheme for a defined period. The period began on the date at which a difference of treatment was introduced and would end at a future date from which all members would be treated in the same way. This equality of treatment would be achieved by closing the FS schemes to future accruals and moving all active members to the CARE scheme for future accrual from that date. The Government also consulted on whether members should be asked to choose the scheme applicable to them at an early date ('immediate choice') or at the point of retirement ('deferred choice') and different schemes are opting for different approaches on this point.

13. We also considered the need to ensure that any response reflects the specific circumstances of the MPs' scheme.<sup>2</sup> In this regard it is important to note several points on which the MPs' scheme differs from at least some of the schemes on which the government has consulted:
- a. The MPs' scheme is a funded, not an unfunded scheme;
  - b. The PCPF, which administers the MPs' scheme and the Ministerial scheme, has relatively few members and a much smaller administrative apparatus than the largest public sector schemes;
  - c. Unlike members of some other public service schemes (e.g. civil servants) MPs are all paid the same basic salary for each year, so the extent to which they benefit or lose out from a CARE structure is less dependent than in other schemes on individual career structure;
  - d. Unlike the original and proposed judicial scheme,<sup>3</sup> but in common with most other public service schemes, the MPs' scheme is recognised for tax purposes, meaning that members are subject to annual and lifetime allowances on contributions, and exceeding these limits means an individual may incur a tax charge;
  - e. Members typically join the scheme, and also change from being 'active' to 'deferred' members at general elections, with less turnover at other times than might be the case in other schemes.
14. We therefore propose the following approach:
- a. In line with the government's approach to other public sector schemes, all scheme members at the relevant dates who received partial or no transitional protection and have not opted out of the scheme altogether would be given the choice as to whether to stay in the CARE scheme or revert to the FS scheme for a defined period;
  - b. Any impacted member who chose to return to the FS scheme would do so at the same accrual rate they paid previously.<sup>4</sup> For most people impacted, this would be the 1/40 accrual rate. These members would need to pay additional contributions, because the associated contribution rate is higher than the rate they have been paying in the CARE scheme. Meanwhile those with 1/50 or 1/60 accruals would be due a contribution refund. We would need to ensure that an arrangement could be found to ensure that the additional contributions due were received before any increased benefits started to be paid;

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<sup>2</sup>The importance of doing this is underlined in the McCloud judgment, which supports the Employment Tribunal's view that the Government's preference for treating public sector schemes consistently was not sufficient justification for treating judges in the same manner as others given the specificities of the judges' situation.

<sup>3</sup>See Ministry of Justice, [Judicial Pensions: Response to McCloud, Response to Consultation](#), 25 February 2021.

<sup>4</sup> The FS scheme has three accrual rates: 1/40, 1/50 and 1/60 with different contribution rates. Once chosen, the accrual rate cannot be changed. Most people chose the 1/40 accrual rate.

- c. We would indicate a default option which would apply to any impacted member who did not choose another available option within the specified period (we discuss further below what the default option could be);
- d. In line with the government’s approach, we would define an end date for accruals to the FS scheme (we discuss further below factors affecting the choice of end date). From this date all active members would transfer to the CARE scheme for future accruals. The date on which this happened would also be the end date for the period, starting on 8 May 2015, in relation to which impacted members would need to choose whether to be part of the FS or CARE Schemes. We refer to this as the ‘relevant period’ for the remainder of the document;
- e. In line with the Ministry of Justice, although not the wider government approach for other schemes, we would take an ‘immediate choice’ approach under which impacted members would decide which option to take within the next couple of years, rather than taking a ‘deferred choice’ approach under which members wait until they are at the point of taking their pension benefits to make a retrospective choice. This would provide early certainty for members, reduce the potential for difficult cases to arise in the meantime (for example, where the member is deceased), reduce the complexity of determining the tax implications over a long period for both members and the Scheme, and avoid the cost and complexity of a protracted implementation period for the PCPF Trustees and administrators. We consider that this approach is suitable for the MPs’ scheme because, as described above, the question as to which scheme is more beneficial is not impacted by subsequent career profile in the way that many other public sector schemes are which have chosen a ‘deferred choice’ approach.<sup>5</sup>

## Question 2: do you agree with the proposed overall approach to McCloud?

### Which scheme members are affected by the proposed changes and what do they need to do?

15. Some MPs and former MPs who are members of the MPs’ scheme are not affected at all by the proposed changes. Not everyone who is affected is impacted in the same way. This section sets out the different groups and explains who will be impacted and how.
- a. *Who is affected by the closure of the FS scheme to future accrual?*
    - i. This change would affect only those people who were ‘fully protected’ in 2015, and are still MPs, and have not opted out of the scheme, and who will remain active members of the

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<sup>5</sup> See HM Treasury, [Public Service Pensions: changes to transitional arrangements to 2015 schemes – Updated Equality Impact Assessment](#), February 2021. Paragraphs 2.77, 2.78, 2.84 and 2.85 explain that a factor in the government’s ‘deferred choice’ approach in a number of schemes is that women and men have different profiles in relation to part time working and salary progression. As office holders, MPs are in a different situation because they are all paid the same basic salary and do not have the option to reduce their hours or salary.

pension scheme after the date chosen for closure to future accruals. Currently there are around 70 such individuals and there may be fewer after the next election;

- ii. This change would not affect anyone who is a deferred or pensioner member of the FS scheme, or any benefits which active members have already accrued under the FS scheme;
- iii. In the rest of this document we refer to those affected by the closure of the FS scheme to future accrual as ‘active FS members’.

*b. Who will need to choose between the FS and CARE schemes for the period between May 2015 and the date on which the FS Scheme closes?*

- i. Only people who were ‘PPMs’ or ‘unprotected members’ when the CARE scheme was introduced and have been an active member of the CARE scheme for any period since the 2015 election, and who has not opted out of the MPs’ scheme, will need to make a choice;
- ii. To be a PPM or unprotected member, an individual would need to have a birth date on or after 2 April 1958, have been an MP and active member of the Scheme on both 1 April 2013 and immediately before the 2015 election, or have become an MP and active member of the Scheme between 1 April 2013 and the 2015 election. They would also need to have been re-elected at least once since 7 May 2015, in either the 2015, 2017 or 2019 election;
- iii. In the rest of this document, we refer to PPMs and ‘unprotected members’ collectively as ‘impacted members’. Some impacted members are still MPs and active members of the scheme, while others are deferred or pensioner members. There are around 300 impacted individuals and this figure is not affected by whether those individuals are re-elected at the next election.

*c. Who is not personally affected?*

- i. Any MP who was first elected on or after 8 May 2015 is not personally affected by these changes. This means that around 370 of the 650 current MPs are not affected in any way by the McCloud changes.
- ii. Any former MP who left parliament before 8 May 2015 is not personally affected.

16. Anyone, whether personally affected or not, is welcome to respond to this consultation. Those who may be personally affected may also find this paper useful in starting to prepare for decisions they will be asked to make in the future. However, we are not using this consultation to seek decisions about any individual’s future position. Impacted members will be asked individually to communicate a decision about their pension choice at a later date. We discuss the possible timing of this process in a later section of this paper.



## Implementing the changes: practical questions

17. In this section we consider practical aspects of implementing the changes where we will need to make choices. We are keen to get stakeholder input now and ensure that any potential difficulties are identified and addressed where possible before we prepare detailed changes to the scheme for consultation. This section therefore covers:
- a. End date for future accruals into the FS scheme
  - b. Tax implications
  - c. The 'default option'
  - d. Timing of the preference exercise and implementation of changes
  - e. Cost cap valuation

### End date for future accruals into the FS scheme

18. In order to put an end to the unfairness experienced by some members in relation to the transition, we need to move to a situation where all active members are treated in the same way regardless of age. This will mean setting a date after which no further accruals can be made into the FS scheme, with all active members moving to the CARE scheme from that date. This change will not affect any benefits which members have already built up under the FS scheme.
19. We will need to set a date for when this change should take place. The date we choose will also be the end date for the period in relation to which impacted members will choose whether to be treated as members of the FS or CARE scheme, ie the end of the 'relevant period'. This means that while only active FS members will be directly impacted by the end of the future accruals to the FS scheme (deferred and pensioner members of the FS scheme will not be affected) the date is also relevant for other impacted members.
20. It is important to note that the date on which future accruals to the FS scheme ends need not be the same as the date by which impacted members need to make the choice about which scheme to be members of for the relevant period, or when that choice is implemented. We discuss the timing of those decisions separately in paragraphs 43 to 47 below.
21. In principle we would like to bring an end to the unfairness as soon as possible. Determining what is possible means considering not only how long we need to put in place the necessary changes to the scheme itself, but also the practicalities of implementation.
22. In reaching a decision we will need to consider the following factors: fairness to the active FS scheme members who are impacted by the change; the impact on the funding requirement for the scheme, which is

an important component of fairness to taxpayers, and the ease and efficiency of administration, which can affect both members' experience and the associated cost.

23. With those considerations in mind, we have considered three possible dates for the end of future accruals to the FS scheme: April 2022, April 2023, and the date of the next general election.
24. Our assessment is that April 2022 is likely to be too soon to make the change given lack of clarity for active FS scheme members until this consultation has been concluded. April 2023 would be a realistic timeline and coincides with all FPMs reaching age 65, which is the normal retirement age under the FS scheme.
25. Making the change at the next general election would be likely to further reduce the number of active FS Scheme members and hence the number of individuals directly affected as some may not return to the next parliament. This in turn may bring some administrative benefits in a few cases. However, aligning to the date of the election<sup>6</sup> would make implementation timelines more uncertain and potentially extend the period of uncertainty for a much greater number of impacted members. It could also increase the likelihood of difficult situations arising for impacted members or their families, for example where an impacted member dies in the interim. Furthermore, the delay would increase the cost to the taxpayer significantly, potentially by £4.7m if a general election did not take place until mid-December 2024.
26. We do not think that the additional cost and uncertainty is warranted, and so on balance our proposal is that future accruals to the final salary scheme should end on 1 April 2023, which would also be the end date for the period in relation to which impacted members would be asked to choose between participating in the FS and CARE schemes.

**Question 3: do you agree that the date on which future accruals to the FS Scheme cease should be 1 April 2023?**

### Tax implications

27. The proposals under consideration have two main implications for the tax affairs of impacted individuals. This section explains what they are, how we have taken them into account in the proposals, and how they would be addressed under the proposals.
28. Like most public sector schemes, the MPs' scheme is registered for tax purposes. That means contributions to the Scheme count towards members' annual and lifetime tax allowances.<sup>7</sup> Each person's overall financial

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<sup>6</sup> Under the Fixed Term Parliament Act 2011, the next UK General Election is due to take place on 2 May 2024. However, since the Passage of the Act, Parliament has twice voted to allow general elections on other dates. Furthermore, the government has published a draft Bill which would repeal the Fixed Term Parliament Act. If enacted, the draft Bill would provide for parliament to be dissolved five years after it first met. The draft Bill is currently being considered by a Joint Committee of the House of Commons and House of Lords.

<sup>7</sup> The [annual allowance](#) sets a cap on the amount of pension saving an individual can make in a given year before having to pay tax. The [lifetime allowance](#) is the total amount of pension benefit an individual can accumulate before having to pay tax.

situation determines whether they exceed the threshold and hence pay a charge. However, changing between the Final Salary and CARE Schemes would affect the value of the pension benefit for the purpose of calculating how much of the allowance had been used. This change might, in turn, lead to some members needing to pay a bigger charge, or to pay a charge where they would not otherwise need to do so.

29. Even where there is no impact on a member's annual or lifetime tax allowances, changing scheme could impact their tax liability for the years in question. This is because pension contributions are, within certain parameters, not taxable and there are different contribution rates for the FS and CARE schemes. If a member moves from a scheme where higher contributions were paid to one where lower contributions are due, they would have a tax liability on any refunded contributions, and where a member moves from a scheme where they paid lower contributions to a scheme where higher contributions are due, their tax liability would reduce. Most impacted members would be in the latter group, because they were previously accruing benefits at the 1/40 rate in the FS scheme and so would need to pay higher contributions if they wished to change scheme.
30. HM Treasury made clear in its consultation that HMRC would expect corrections to be made to the last four tax years where an individual's situation changes. In our proposals we are aiming to ensure that impacted individuals have the information they need to make any necessary adjustments to their tax payments for those years. However, individuals will remain responsible for their own tax affairs and for taking any necessary advice. We are not proposing to provide tax advice to impacted individuals. We will, however, explore whether there are any ways to simplify the administration of any necessary action for impacted individuals. We are aware that the PCPF Trustees have already extended the scope of the 'Scheme Pays'<sup>8</sup> arrangements available beyond the statutory minimum and this may be useful for impacted members.
31. We have also considered the tax implications in determining the appropriate 'default' option for impacted individuals, discussed further below.

#### The 'default' option

32. As noted above, impacted members will have a choice of whether to be treated as members of the FS scheme or of the CARE scheme for the relevant period. Where they opt for the FS scheme, this would be at the same rate of accrual as when they were in the scheme previously.
33. We would expect this to be implemented through a preference exercise in which each impacted member was contacted and asked to make a choice by an indicated deadline.
34. However, we think it is sensible to consider setting a 'default' option which would apply to each impacted member unless they explicitly opted out through the preference exercise. This would simplify the process for all impacted members and the PCPF Trustees and administrators. It would also provide certainty about what

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<sup>8</sup> Under 'Scheme Pays', a member who needs to pay a tax charge can request that the charge is paid by the scheme and deducted from the pension benefits the member will receive. The individual therefore still ultimately pays the tax.

to do in any case where no reply was received from an impacted member. In considering whether to implement a default option, and if so what that option should be, we have taken the following additional factors into account. HM Treasury's equality assessment<sup>9</sup> in relation to other public sector schemes notes that in those schemes it is not clear cut whether members in general are better off under the FS scheme or the CARE scheme, because it may depend on the individual's career profile, such as the timing of promotions or periods of part-time work. This distinction is less relevant for the MPs' scheme because all serving MPs are paid the same basic salary, meaning there are less likely to be situations where an individual would benefit from a CARE arrangement. The benefits available under the FS scheme are also more generous in a number of respects than those available under the CARE scheme. For example, the normal retirement age is higher under the CARE scheme. This suggests that impacted MPs are generally likely to be better-off in the FS scheme. However, consideration needs to be given to the impact of the different accrual rates permitted under the FS Scheme.

35. Most impacted members were previously on the 1/40th accrual rate in the FS Scheme. Those impacted members would need to pay additional contributions if they wished to re-join the FS scheme for the relevant period, but because of the higher accrual rate (and other features of the FS Scheme) would also get higher benefits than under the CARE Scheme. Those on the 1/50th accrual rate would gain increased benefits relative to the CARE Scheme and would also be due a refund of contributions. For those on 1/60th accruals although the accrual rate is lower than CARE it would be applied the final salary on retirement rather than the salary at the end of the relevant period and other FS benefits such as a lower pension age would still be available, with a reduction in contributions meaning that a refund of contributions would also be due for those who changed schemes.
36. As discussed above, members who re-join the FS scheme may find that they incur a tax charge if they breach the annual and/or lifetime allowance. There are also therefore some costs which impacted members on each accrual rate will need to be prepared to bear in order to access the benefits of the FS Scheme.
37. In the light of these factors we have considered three alternatives for the 'default option' for impacted members:
  - a. All impacted members by default revert to the FS Scheme for the relevant period at their previous accrual rate;
  - b. Those impacted members who were previously on the 1/50th and 1/60<sup>th</sup> accrual rates by default revert to the FS Scheme for the relevant period at their previous accrual rate, but those who were previously on the 1/40th would by default stay in CARE;
  - c. All impacted members would by default stay in the CARE Scheme.

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<sup>9</sup> See footnote 5.

38. Our assessment is that it would not be appropriate to have a default option under which all impacted members remain in the CARE scheme because for some of those members not only are the benefits clearly better under the FS scheme, but there is no direct cost to the impacted member of accessing them. It would therefore be hard to conclude that a default which left them in the CARE scheme would be in their best interest and we therefore propose that the default option for members previously on the 1/50<sup>th</sup> and 1/60<sup>th</sup> accrual should be that they revert to the FS scheme for the relevant period at their previous accrual rate. For those who had been in the FS scheme with 1/40 accrual rate, there would be a direct cost to access the additional benefits. This cost is likely to be of the order of £17000 in extra contributions payable for someone who has paid CARE contributions for the period 2015-2023. Setting a default option in which these impacted members moved to the FS scheme would effectively oblige those members to incur this additional cost. For some, this may come on top of an unexpected tax charge for doing so if they breach annual or lifetime allowances as a result. Because of this additional cost, we propose that the default for these impacted members to be that they should remain in the CARE scheme.

**Question 4: Do you agree that the ‘default’ should be that impacted members who were previously on the 1/50<sup>th</sup> and 1/60<sup>th</sup> accrual rates would revert to the FS scheme for the relevant period at their previous accrual rate, while those who were previously on the 1/40<sup>th</sup> would by default stay in CARE?**

#### Cost cap valuation

39. When reforms were made to public sector pension schemes in 2015 a ‘cost cap’ mechanism was included to ensure that the cost of providing the pensions remains affordable. We incorporated a version of the ‘cost cap’ mechanism in the MPs’ scheme. It provides for an actuarial valuation every three years to determine whether the cost of funding the scheme has deviated more than a specified percentage from the original ‘cost cap cost’ and, if it has, for member contributions to be adjusted from April the following year. The 2017 valuation was paused pending decisions about McCloud, in line with the Government’s approach to public sector schemes, as the outcome was likely to have a material effect. In its statement on the outcome of the McCloud consultation, HM Treasury stated that the Government was reviewing the cost cap mechanism to determine whether it was working as intended, but in the meantime would not enforce any breach of the cost cap ‘ceiling’ due to including the costs arising from McCloud. We need to determine what approach to take in relation to the MPs’ scheme.

40. We think it is appropriate for the Government Actuary’s Department (GAD) to finalise the 2017 consultation, making an appropriate allowance for estimated costs of the response to McCloud. This would provide transparency on the sharing of costs between the Exchequer and scheme members and scheme affordability as originally envisaged. However, we think it would be premature to reach a conclusion now on whether to apply the changes resulting from any breach in the ceiling. We note, however, that were we to do so scheme members could incur an increase in both their future contributions and in contributions due from 1 April 2018 to the present. Any proposal not to apply the ceiling would require a change to the existing scheme.

41. Under the existing Scheme, the next cost cap valuation was due to be carried out in 2020, with changes to member benefits implemented in April 2021. Given that HM Treasury is preparing revised directions on the underpinning assumptions, which would be needed to carry out the valuation, and the fact that the 2017 valuation is not yet concluded, the 2020 valuation will not be implemented by April 2021. We are therefore taking the opportunity to reflect on whether the timing of this valuation remains appropriate. There could be some benefit in either amending the reference date, and/or in deferring the implementation of any resultant changes. Deferring the reference date would enable us to de-couple the timing of the cost cap and triennial valuations, enabling any cost cap impacts to be reflected in the subsequent valuation. Deferring the implementation date of any change could reduce the need for retrospective changes to member contributions. However, we would need to consider carefully the potential wider impacts of either change for proposing any change to the current scheme. Even if we make no changes to the timing, we do expect to need to update the Scheme to refer to the latest applicable HM Treasury directions on the assumptions to be used in carrying out the valuation.
42. **Question 5: do you have any comments on the approach we should take to the 2017 or 2020 cost cap valuations?**

Timing of the preference exercise and implementation of changes

43. We want to consider now when the preference exercise would be held in which impacted members would choose which scheme to be part of for the relevant period and how it would work in practice. Even though we may not need to specify all these matters in the scheme, this will help us take decisions on matters such as the end date for the relevant period and when impacted members' preferences will be implemented in a way that minimises unforeseen problems.
44. We have considered a range of factors in relation to the timing of the decision-making process and its implementation. Impacted members need to be given sufficient time to reflect before making a decision and be provided with appropriate information on which to do so. However, there are also advantages in giving impacted members an early opportunity to make their choice. For example, this would give those approaching retirement greater certainty about the applicable pension benefits and reduce the likelihood of bereaved dependents needing to make decisions on behalf of a deceased member. For the reasons discussed previously, we also expect the decisions to be more clear-cut for members of the MPs' scheme than they might be for members of some other public sector schemes. We also expect that many impacted members will welcome early certainty about their tax position. We are also aware that some impacted members may need to pay additional contributions and time to adjust their affairs to do so. There are potentially some benefits in aligning the implementation of changes with the next general election as this is the time when typically active members choose to retire or may become deferred members if they do not stand or are not re-elected. However, this would create significant uncertainty as to timescales and would not be possible if an election took place before April 2023, as waiting up to five more years for the next one would be too long.

45. We have identified the following options for the time-period within which impacted members would be asked to choose which scheme to join for the relevant period. These options assume that the end of relevant period would be 1 April 2023. If that date changed, we would need to adjust the timing for the expression of choices and implementation.
- a. *Between the entry into effect of the new scheme and April 2023*: this would allow for the possibility that the change could also be implemented from April 2023. However, because the choice would be made before the end of the relevant period it is possible that some aspect of the impacted member's situation could change before the end of the relevant period which might affect their choice. We would be interested in feedback on how likely that is to occur in practice. Under this option we would expect that individual impacted members would have more time between receiving the request and accompanying information and the decision as allowing this time need not delay implementation. Implementation could in principle then take place in April 2023, at a later fixed date, or at the next election.
  - b. *Between April 2023 and next election*: impacted members would then make their choice after the end of the relevant period. However, while this might in principle allow for implementation at the next election, in practice it would be very difficult to be sure of being able to do so given the uncertainty as to the timing of the election. We might need to give members a shorter time period within which to respond to reduce the risk of not having completed the exercise before the election.
  - c. *Between April 2023 and April 2024*: this would also have the benefit of allowing impacted members to make their choice after the end of the relevant period and avoid the uncertainty of linking the date to the election. However, it would be make it highly likely that the changes could only be implemented from April 2024, meaning three further years of delay for impacted individuals.
46. Our initial assessment is that it would be preferable to ask impacted members to make their choice before April 2023. This would give impacted members earlier clarity on their individual position and potentially allow for implementation of the choice from April 2023. Clearly we would need to ensure that impacted members had appropriate information on which to base a decision and would welcome feedback on any specific difficulties which could arise in this regard.
47. Whichever of the above is chosen, we think there is a case for considering whether there are circumstances in which individual cases should be treated as higher priority and determined sooner, for example if a member died or wished to take benefits. We would welcome feedback on which if any cases could be treated as priority and any practical considerations to be taken into account in doing so.

**Question 6: do you agree that impacted members should be asked to make their choice of scheme for the relevant period before April 2023?**

**Question 7: which, if any, cases should be treated as priority cases?**

## **Further consultation on McCloud**

48. As noted above we plan to consult again later in the year on the specific changes to the Scheme building on and will continue to consider the detailed technical arrangements in the meantime. We would welcome feedback on any other matters which need to be addressed in finalizing the changes to the scheme.

**Question 8: are there any other matters which need to be addressed in our final proposals for Scheme changes related to McCloud?**

## **Further consideration of MPs' pension arrangements**

49. We will keep under review the wider landscape for pensions and the appropriateness of MPs' overall remuneration, of which pensions currently form a significant part, and may propose further changes to the pension arrangements specifically in future. However, our priority for this year is to implement the changes to the MPs' Scheme needed to respond to the McCloud judgement.



## Annex 1: Outcomes and guiding principles for our review of MPs’ remuneration

1. During the review which concluded in 2015, we consulted on guiding principles for how we would make decisions about MPs’ pay. We found these helpful in guiding our approach and explaining our thinking. For this review, we take a similar approach.
2. The outcomes we wish to achieve aim to capture the goals that underpin the Act of Parliament which created IPSA, and recognise explicitly that the office of MP is one which anyone not subject to a statutory disqualification is entitled to hold, if they are chosen by the electorate. Making this point explicit will help us to consider the equalities impact of our work and to reduce the possibility that there are any inadvertent barriers to diversity in the remuneration scheme we decide.
3. Taken together, these principles help us to ensure that our decisions are fair both to MPs, given the nature of the office they hold, and to the taxpayers who fund MPs’ pay. We start with a strong presumption that this principle of fairness means all MPs should be paid the same, with additional payments made only to those who hold specified, additional parliamentary roles, such as chairs of select committees, which bring extra responsibilities.

**Table 1: Outcomes and guiding principles for IPSA’s review of MPs’ pay**

Outcomes: what MPs’ remuneration arrangements are designed to achieve	
R1	The structure and level of MPs’ overall reward:
R1A	<ul style="list-style-type: none"> <li>enables MPs to fully and effectively carry out Parliamentary duties</li> </ul>
R1B	<ul style="list-style-type: none"> <li>is fair for all MPs given the diversity of MPs who may be elected by voters</li> </ul>
R2	The determination and its implementation provide appropriate assurance that good value is obtained from public funds
Guiding principles: criteria we apply to ensure the remuneration arrangements deliver the outcomes	
P1	MPs should be fairly remunerated for the work they do and the total cost to the taxpayer should be affordable and fair
P2	MPs’ overall remuneration should be considered as a whole package
P3	The package should have a clear rationale linked to the intended outcomes, and be cost-effective and efficient to administer
P4	The package should be sustainable in the medium term without the need for frequent, major changes
P5	As far as is practicable MPs’ remuneration and reward should reflect the experience of other working citizens