



Open Report on behalf of Andrew Crookham, Executive Director - Resources

Report to:	LGPS Local Pension Board
Date:	17 March 2022
Subject:	The McCloud Ruling – Effects on the Local Government Pension Scheme

Summary:

In July 2020 the government released a long awaited consultation for applying a remedy to address the age discrimination inherent in the transitional protections that were adopted by the public service pension schemes from 2014.

The remedy is anticipated to be passed into law by April 2022 and is expected to be effective retrospectively to 1 April 2014. This report details work undertaken to date in anticipation of the regulations being made.

Recommendation(s):

That the Board note the report and presentation.

Background

- 1.1 In April 2014 a series of changes were made to the LGPS to reform the scheme's benefits structure. These changes were implemented as part of a wider project across Government to reform public service pensions, and put them on a more sustainable, affordable and fairer footing for the longer term.
- 1.2 In the LGPS these changes included:
 - Moving benefits from a final salary to a career average basis, and
 - Linking members normal pension age with their State Pension age (SPA).
- 1.3 Transitional protections for members nearing retirement were implemented to ensure older workers would not be any worse off as a result of the reforms.
- 1.4 In the McCloud and Sergeant court cases the Court of Appeal found these transition protections directly discriminated against younger members. As a result, the Ministry of Housing, Communities and Local Government (MHCLG), known now a Department for Levelling Up, Housing and Communities (DLUHC), have consulted on amendments to the

statutory underpin, to reflect the Courts findings, by extending the underpin to younger members.

2.0 DLUHC Consultation

- 2.1 DLUHC undertook a 12-week public consultation on proposals amending the LGPS to remove the unlawful age discrimination that arose from the protections associated with the introduction of the 2014 scheme reforms which were successfully challenged in the McCloud case.
- 2.3 The anticipated changes present a significant challenge to administering authorities and to employers, not least of which will be a data collection exercise to enable the final salary underpin to be calculated.
- 2.4 Benefits accruing from 1 April 2022 will be career average for all members. The new underpin will require 2008 scheme pay to be recorded for some members for the next 40 years or more.

3.0 WYPF Actions

- 3.1 The final regulations have not yet been made, however a Project Group was set up to prepare for the work involved with the McCloud exercise. This is now well underway as preparation is made to begin the next phase of the project, which is implementation.
- 3.2 In the LGPS, the Government is proposing to provide eligible younger members with a protection equal to the protection provided to older members when the scheme was changed in 2014. To enable us to do this we have been collecting extra data (hours worked and service breaks) from employers for all eligible members for the last 18 months. This data is needed from the date the LGPS changed on 1 April 2014 up to 31 March 2022 (or earlier if the member left active membership of the scheme or reached their 2008 Scheme Normal Pension Age before that date).
- 3.3 The proposal is to change the regulations retrospectively from 1 April 2014, and will mean members records and benefits already awarded to eligible members will need to be revisited. This will include members already protected who have left active membership, or reached their 2008 scheme Normal Pension Age (NPA), age 65, and 2014 scheme Normal Retirement Age (NRA), which is SPA, unprotected members who have retired, left with deferred benefits, died, transferred out, or trivially commuted their benefits. Transfers in from public sector schemes will also need to be recalculated.
- 3.4 Initial indications suggest we will require additional data for approximately 14,000 Lincolnshire Pension Fund members. Once we have received all the data, it is anticipated that over 6,000 member benefits, which have already been awarded, will have to be checked against the new underpin requirements.

Lincolnshire Pension Fund Membership	Number of Scheme Members (approx.)
Active scheme members	7,369

Deferred scheme members	2,841
Deaths	155
Pensioner scheme members	3,106
Pensioner Deferred scheme members	2
Transfers Out	220
Leaver Options Pending (awaiting leaver forms)	111
Total non-active records requiring underpin check	6,435

- 3.5 WYPF has been contacting employers over the last 18 months to share a data capture template to provide new or updated scheme member information. The template has been based on the DLUHC template and was developed by our software provider.
- 3.6 Communication with employers will continue past the 1 April 2022 and throughout the implementation period, with regular updates being placed on the WYPF and LCC websites for employers.

Conclusion

The McCloud Remedy will become a statutory obligation of the LGPS.

Consultation

a) Risks and Impact Analysis

The Pension Fund has a Risk Register which can be obtained by contacting the Head of Pensions.

Background Papers

No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

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