

14 December 2023**Agenda Item: 5****REPORT OF SERVICE DIRECTOR – CUSTOMERS, GOVERNANCE, AND
EMPLOYEES.****LOCAL GOVERNMENT PENSION SCHEME – UPDATE ON THE PROGRESS
ON THE IMPACT OF THE MCCLOUD JUDGEMENT ON THE
ADMINISTRATION OF THE PENSION FUND****Purpose of the Report**

1. The purpose of the report is to update Pension Committee on the progress of the Pension Fund McCloud Project.

Information**Background**

2. The McCloud judgement came about when the Government reformed public service pension schemes in 2014 and 2015. At the time transitional protections were introduced for older members of the LGPS Pension scheme. In December 2018, the Court of Appeal ruled that younger members of the Judicial and Firefighters' pension schemes had been unlawfully discriminated against because the protections did not apply to them.
3. The ruling is called the McCloud judgement, after a member of the judicial pension scheme involved in the case.

Impact on Members Benefits

4. In 2014, the LGPS changed from final salary scheme to a career average scheme where a pension builds up based on what you earn each year.
5. Older pension fund members who are closer to retirement are protected from these changes. This means that a pension fund member who qualifies for protection is not impacted by the changes. This means that when a protected member takes their pension, the benefits payable under the career average scheme are compared with benefits they have been built up. Therefore, had the final salary scheme continued they receive the higher amount. This protection is called the underpin.
6. The new legislation removes the McCloud age discrimination, and therefore qualifying younger members will now receive the underpin protection as well. This change was

incorporated into Regulations on 1 October 2023. Underpin protection only applies to pension built up in the remedy period, between 1 April 2014 and 31 March 2022. The underpin will have stopped earlier if a member left the scheme or reached their final salary normal retirement age before 31 March 2022.

7. Analysis nationally has identified that the change in Regulations will mean that on average the members of the LGPS will see a slight improvement in their pensions as a result. However, this is not evenly spread, and the reality is that the average position consists of members seeing no change at all to their benefits, whilst other members will see material improvements in their retirement income.
8. It has also been estimated that younger members of the pension scheme with high pay growth could see up to an estimated 10% increase on their 8 years accrual from 2014 to 2022, when compared to what they could have expected from the current career average scheme.

What the Fund has done to Prepare for McCloud

9. As Pension Committee is aware the Pension Fund appointed a temporary Project Manager and Data analyst to undertake the preparatory work of collecting and checking data from all 290 + scheme employers to enable the evaluation of the impact of the changes on benefits for an estimated 29K members.
10. From December 2021 the Pension Fund has been preparing for the implementation of the new legislation by working with the scheme employers in collecting data.
11. The project team offered all scheme employers the opportunity to meet with them where a full explanation was given on the requirement of scheme employers to check and provide up dated information on their scheme members. Extensive documentation was also provided which explained methodology and requirements.
12. To help with the collection and checking of data the Fund provided all scheme employers with data relating to scheme members who were potentially impacted by the McCloud judgement. This was a significantly different methodology than other LGPS funds have used, but this has significantly helped scheme employers provide more accurate data. Scheme employers were given a deadline to respond.
13. Most scheme employers have returned their data to the project team. However there have been some scheme employers who have taken time to engage in the pension fund exercise which has required the project team to chase the data. However the Fund due to the work of the project team is in a position where it has data from all scheme employers that can be used as part of the McCloud project.

14. Where the fund has received the data a checking process is being undertaken prior to the fund loading the cleansed data back into the Pension Administration System in order that the Fund can apply the new Regulations to scheme members.
15. The validation of the data is taking longer than expected as the team identifies issues in the data that require further checks to be made with scheme employers or adjustments to the funds own data record. One of the reasons for this is that scheme employers have not completed their work to the required standard. Resource availability has also been a factor in the validating of data.
16. One of the difficulties that we have encountered issues is where members who are “unprocessed leavers” in UPM, are causing a disparity in the data, again this leads to more layers of analysis checking for the project team along with other complex administrative processes that impact the data analysis activity.
17. Other difficulties have been the constant delays and lack of clarity from the government around the actual remedy culminating in a very short timescale from the end of consultation to an implementation date of 1 October 2023.

The New Regulations

18. The Department for Levelling Up, Housing and Communities (DLUHC) announced the outcome of the consultation on supplementary McCloud issues and draft Regulations on 8 September 2023. It also laid the Local Government Pension Scheme (Amendment) (No. 3) Regulations 2023 which took effect from 1 October 2023.
19. The Regulations implement the McCloud remedy and amend the underpin rules to ensure they work correctly across the scheme. Part 2 of the Regulations replaces the underpin rules in the LGPS (transitional Provisions, Savings and Amendment) Regulations 2014. Part 3 requires administering authorities to check past calculations for events that happened between 1 April 2014 and 30 September 2023.
20. These Regulations require the administering authority to consider a range of McCloud-affected cases to include McCloud calculations on members retiring currently where they meet the criteria for McCloud. Along with deciding for those members who also meet the McCloud criteria who have retired and therefore need their benefit recalculating.
21. To ensure a consistent approach, a national implementation group has been set up to decide what other statutory guidance is needed across the LGPS.
22. To help with implementation DLUHC have issued an initial prioritization policy. This is attached in **appendix 1** and outlines the expectations on the implementation of the McCloud changes. Further advice is expected from DLUHC on implementation.
23. As part of the implementation certain transfers for members with underpin protection are on hold until actuarial guidance for transfers is updated for the McCloud remedy however DLUHC

has also issued guidance on the approach funds must take regarding interfund transfers for members with underpin protection.

24. Further support has been provided by the Local Government Association (LGA) pensions team in organizing communications for scheme members including fact sheet, and guidance along with some advice videos to help members understand if McCloud impacts them. Communications and advice factsheets. Please see appendix 2 which summarizes the McCloud judgement for scheme members.

Implementation of the McCloud Judgement

25. Currently as part of our implementation plan of the new regulations the fund is currently still checking data as previously explained above, this will then be loaded into the Pension Administration System once we are satisfied with the data.
26. With the change in the Regulations, new software has had to be developed by the Pension Fund Software provider. This has been ongoing for a significant period, since the start of the McCloud national project, which has been hindered by the late agreement of the new Regulations.
27. As part of the fund's implementation strategy, the fund loaded new software on 24 October 2023 which now requires testing to ensure the calculation will operate in the administration system. There have been issues identified in the software across all LGPS Civica users, and these are being addressed. Therefore, the fund is expecting further software updates at the beginning of December 2023 this will include rectification of software issues along with additional calculations relating to the new Regulations.
28. It is not expected that the administration system will be ready to use for calculating McCloud benefits until the middle of January 2024.
29. The LGPS nationally is awaiting further written guidance on the implementation of the Regulations. However, a public service pension remedy letter has been issued by HMRC. The newsletter introduces the calculate your public service pension adjustment service. This is for members who need to correct their tax position because of the McCloud remedy. The service will help members to:
- a. Work out any repayments that are due for a lifetime allowance or annual allowance charge they have previously paid.
 - b. Work out new, reduced, or extra lifetime allowance or annual allowance charges they may have to pay.
 - c. Submit information to HMRC to review.

The newsletter also provides some interactive guidance.

30. In addition to the HMRC information the LGA have created new areas on the LGPS member website dedicated to the McCloud remedy [The McCloud Remedy :: LGPS \(lgpsmember.org\)](https://www.lgpsmember.org/The-McCloud-Remedy) the new pages include:

- a. A short video
 - b. Frequently asked questions
 - c. An interactive tool to help members identify if they are affected.
 - d. Examples of types of cases
 - e. And detailed information about the remedy
31. The pension fund has updated the Nottinghamshire Pension Fund website to enable members to access information on the McCloud remedy. The fund is also amending and updating correspondence ahead of the fund's ability to undertake the required calculations for members benefits. However, this is a changing landscape as the funds are updated with guidance nationally.

Conclusion

32. The McCloud remedy project is wide-ranging, and this report covers what the Pension Fund is principally concerned with, which is the payment of benefits relating to the McCloud remedy. There are important parts of the project which continue to be required to be progressed in parallel with the progress of the payment of benefits. This includes, but is not limited to, the following:
- a. Collection and verification of additional data required to undertake the McCloud remedy calculations.
 - b. Checks to verify which members are in scope of the McCloud remedy from previous pensionable service which hasn't been transferred in or aggregated to the fund. To help, DLUHC intends to discuss the steps administering authorities should be taking to identify such members with the guidance working group.
 - c. Any tax impacts of the McCloud remedy, including recalculations of past annual allowance calculations.
 - d. Recalculation of inward Public Sector Transfer Club transfers to reflect the McCloud remedy.
 - e. Divorce estimates and implementation of pension sharing orders for eligible members.
33. The Pension Fund has an overall plan for delivering the McCloud remedy that considers the above aspects of the project, and will be working with our software provider, to ensure that the fund can meet the prioritisation approach outlined by DLUHC.
34. However, the implementation of the McCloud remedy cannot be completed until further national guidance is provided as this is a complex and challenging project for the Pension Fund.

Other Options Considered.

35. There are no other options as the fund is required under legislation to implement the McCloud Judgement.

Reasons for Recommendations

36. This is a significant project for the LGPS nationally and for the pension fund and has an impact on the pension fund in terms of time and resources.

Statutory and Policy Implications

37. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance, finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, safeguarding of children and adults at risk, service users, smarter working, sustainability, and the environment and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

Data Protection and Information Governance

38. The project, by its very nature, involves reconciliation, sharing and processing of personal and sensitive data. This is covered by existing arrangements and agreements with scheme employers and scheme members.

Financial Implications

39. The Financial implications of the impact of McCloud across the Pension Fund have been considered as part of the 2022 pension fund valuation.

RECOMMENDATIONS

It is recommended that the Pension Committee:

- 1) Notes the update on the implementation of the McCloud judgement.

Marjorie Toward

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For any enquiries about this report please contact:

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Constitutional Comments (KK)

40. The proposals in this report are within the remit of the Nottinghamshire Pension Committee.

Financial Comments (KP)

41. The financial implications are set out in the report.

Background Papers and Published Documents

The Local Government Regulations

[The Local Government Pension Scheme \(Amendment\) \(No. 3\) Regulations 2023 \(legislation.gov.uk\)](#)

H M R C has published the remedy newsletter

[Public service pensions remedy newsletter — October 2023 - GOV.UK \(www.gov.uk\)](#)

LGPS Member Website:

[The McCloud Remedy:: LGPS \(lgpsmember.org\)](#)

Electoral Division(s) and Member(s) Affected

- All