

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 Board on the impact of the McCloud and Sargeant Court of Appeal ruling that the Government's 2015 public sector pension reforms unlawfully treated existing public sector employees differently based on members ages on 1 April 2012.
2. To provide the Pension Board with a copy of the response to the Government Consultation on the proposed changes to the Local Government Pension Scheme Regulations relating to the McCloud Judgement
3. The report also explains what activities the Pension Fund will be required to undertake to implement the potential remedy that is being proposed through a current consultation process.

Information**Background**

4. The case came about when R Sargeant , a firefighter employed by the London Fire Brigade, was 44 years old or more on April 1 2015, she would have been entitled to remain in the Firefighters' Pension Scheme – a final salary pension fund that has a normal pension age between 50 and 55, a deferred pension age of 60 and an accrual rate of 1/60.
5. Because she was younger, Ms Sargeant was moved to the new Firefighters' Pension Scheme 2015, which is a career average revalued earnings scheme.
6. After a legal battle that saw firefighters and judges joining forces to claim discrimination on the grounds of age, Ms Sargeant and her peers were granted their claim by the Court of Appeal in 2018. And in June 2019, the Supreme Court refused the government's application to appeal the court case, by then known as McCloud, which marked the end of the legal process.

7. The case through the Courts identified unjustified age discrimination in transitional protection arrangements in the Judicial and Firefighters' Pension Schemes. However, in relation to the Local Government Pension Scheme (LGPS), this difference in treatment exists between two groups of LGPS members:
- those who were in service on 31st March 2012 and were within ten years of Normal Pension Age (NPA) on 1st April 2012, therefore benefiting from underpin protection and 'better off' than the second group; and,
 - those who were in service on 31st March 2012 and were more than ten years from NPA, were not eligible for underpin protection and therefore 'worse off' than the protected members (as they were not guaranteed a pension of at least the level they would have received in the final salary scheme).

The Proposals

8. On 16 July 2020 various consultations were issued by the Government proposing solutions to providing a remedy across many of the public service pension schemes, a copy of the consultation document for the LGPS is attached for information and provides an in-depth explanation of the position and consultation. The Consultation runs until 8 October 2020 and the Pension Fund will be responding to the consultation.
9. The consultation sets out how Ministry of Housing Communities and Local Government (MHCLG) propose to amend the statutory underpin to reflect the Courts' findings in the McCloud and Sargeant cases. Primarily, the proposals are to remove the age requirements from the underpin qualification criteria. However, there are additional proposals to ensure that the underpin works effectively and consistently for all qualifying members following the extension of the underpin to younger members. From April 2022, it is proposed that the period of underpin protection will cease and all active LGPS members will accrue benefits in the career average scheme, without a continuing final salary underpin.
10. In the LGPS, the protection compares the benefits payable under the current career average scheme with the benefits that would have been paid if the Scheme had not changed from a final salary scheme in 2014 (2015 Scotland and Northern Ireland) and pays the higher. This protection is called the underpin.
11. Currently, the underpin applies automatically to protected older members. The Government is proposing to change the scheme rules so that the underpin will automatically be extended to eligible younger members.
12. The Pension Fund responded to the consultation and a copy of the response is attached in appendix A.

Impact on Members Benefits

13. Analysis nationally has identified that the proposals 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 consists of members seeing no change at

all to their benefits, whilst other members will see material improvements in their retirement income.

14. It has also been estimated that younger members of the pension scheme with relatively 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.

Impact on Employers within the LGPS

15. The higher than average benefits will need to be paid for, by the scheme employers. There are approaching 20,000 employers nationally, and it is estimated on average each employer will only see a small impact as a result of the proposed changes. Analysis, by our fund actuary has indicated that at the whole scheme level the increase in liabilities could be in the order of 0.3% or around £0.9bn. This will depend on several factors, namely assumed salary growth and withdrawal assumptions. This is lower than the estimate made by Government Actuary's Department (GAD). This is largely because salary growth assumption made by GAD is CPI plus 2.2% which is materially higher than the Actuary's assumptions for the 2019 valuation which was CPI plus 1% p.a.
16. The impact of the remedy might be to increase average primary contributions by around 0.2% - 0.3% p.a. of pay and secondary contributions by around the same (with more variability at individual employer level). However, in the case of the Fund the Actuary has already allowed for McCloud in the 2019 valuation calculations through various mechanisms, such as increased prudence in the discount rate or an explicit asset reserve. The actuary does not intend to revisit the 2019 valuation results. Any further differences will be captured at the 2022 and other subsequent valuations. Details of the Fund's allowance for McCloud can be found in the Funding Strategy Statement.
17. Although the impact on the fund is likely to be small at whole fund level it could be significant at individual employer level.
18. For many employers in the LGPS with mature workforce, like councils, there is likely to be minimal impact. Although promotional increases could result in a material cost for certain members as the final salary scheme pension could exceed the career average scheme pension as where salary increases are higher, the underpin is more likely to have an impact.
19. Smaller employers may also be more affected. The change in an individual member's benefits may increase a significant proportion of their liabilities and therefore the impact on smaller employers is likely to be more volatile.
20. It is known that some employers are much more likely to be impacted than others, i.e. those with younger membership profiles and more concentrated on active employees, such as academy schools and leisure centres, and therefore it is estimated that they could see a contribution rate increase of 1% or more (but this estimate relies heavily on future salary growth).

Impact on the Administration of The Fund

21. In terms of what is being proposed, this will have a major impact on the Administration Team for various reasons:
- a. Pension Processes will require to be reviewed and updated in line with the McCloud underpin protections.
 - b. The Pension Fund will be required to collect hours and service break data for eligible members and scheme employers will have a statutory obligation to provide this data to the Fund back to 2014.
 - c. Retrospective calculations performed on all eligible pensioners which may result in backdated pension adjustments being determined and require putting into payment.
 - d. McCloud underpin protections being determined and applied to eligible members.
22. This will need to be undertaken for an estimated 24,000 member records within the Nottinghamshire pension fund across all members who have a current underpin
23. It will be important given the scale of the task, that the fund starts to plan to get ready for implementation. In addition the Scheme Advisory Board will be producing some guidance and consistency across the LGPS. Work is also ongoing in respect of administration software providers to update the administration systems to deal with the complexities of the changes in calculations.
24. Communication to employers and members will be essential. The key focus for members will be for them to know that the underpin will be applied to them without the need for any action on their behalf, but also understand when their benefits will be reviewed. Employers will also need to understand the requirement to provide historic and ongoing data to enable the 2008 Scheme benefits to be calculated, and the Scheme Advisory Board have an implementation group to help provide documents to pension funds.
25. The Fund will be required to collect data regarding hours changes and service breaks to enable the calculations for qualifying members since the 1 April 2014 to be undertaken.. This will include not only additional members covered by the underpin, but those who were previously covered as well. Retired members may also be affected, and arrears may be payable, which may also bring several pension tax complications to consider and communicate.

Review of Resource Requirements

26. In terms of estimating the amount of work and resources required, the fund has estimated that there may be around 24,000 records that may need to be reviewed, several recalculations of members benefits, communicating to members, scheme employers, along with collecting and checking data. This work cannot be completed with the current resources in the Pension Administration Team, and maintain the current service level, as well as progress several other statutory required projects. Therefore, in order to complete this work, there will need to be a temporary project team established to focus on this area of work.

27. Approval has been agreed by the Pension Committee to the establishment of a temporary Project Manager post for a period of two years, or less if the project is able to finish earlier, at Band B up to £35,934 per annum subject to pay awards, at a total cost of £71,868.
28. It will be the responsibility of the Project Manager to scope the details of the project and the additional resource that will be required to meet the Fund obligations as part of the McCloud judgement.
29. Consideration will be given to seconding some experienced staff from the Pension Administration Team to the project with appropriate back fill arrangements implemented.
30. In order to support the project, it may also be prudent to engage some additional support from the scheme actuary, who will be able offer advice and support to the project manager on preparing for the project, fund resources and other issues raised in the report.
31. Once the Project Manager is appointed it is proposed to undertake further work on the requirements of the project and to present a separate report on what resources will be required considering, current and future work activities of the Administration Team.

Other Options Considered

32. The Pension Fund is following, the Scheme Advisory Board, and the Local Government Association (LGA) advice, along with engaging with the Scheme Actuary, as well as using normal LGPS funds to ensure that Nottinghamshire is following the best advice.
33. The Pension Fund has a legal requirement to ensure that the McCloud judgment is correctly applied to all eligible pensioners and members of the Nottinghamshire Pension Fund.
34. Absorb the McCloud project work into the existing work of the administration team. However, this is not considered to be a feasible option as this would have very significant implications and disruption for the delivery of the current business as usual, as well as the legal obligation to deliver the McCloud project.

Reasons for Recommendations

35. This will be a significant project for the Pension Fund which will require project management and additional resources to ensure that the Fund fulfils the requirements of the McCloud judgement.
36. Advice and support from the Scheme Actuary and their extensive knowledge and understanding of the LGPS regulations and the McCloud judgement will provide the Nottinghamshire Pension Fund McCloud project with a quality assurance role to the project.

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

RECOMMENDATIONS

It is recommended that the Board:

- 1) That the Pension Board consider the implications of the McCloud case, and agree to receive further update reports as the project becomes clearer following the consultation on the national proposals.
- 2) The Pension Board consider the Consultation response in appendix A.

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For any enquiries about this report please contact:

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Constitutional Comments (KK30/11/ 2020)

39. The proposals in this report are within the remit of the Nottinghamshire Pension Board.

Financial Comments (KP 30/11/2020)

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

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

Link to the Government Consultation Document:

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<https://www.gov.uk/government/consultations/local-government-pension-scheme-amendments-to-the-statutory-underpin>

Electoral Division(s) and Member(s) Affected

- All