

**REPORT OF SERVICE DIRECTOR – CUSTOMERS, GOVERNANCE, AND  
EMPLOYEES****STAFFING RESOURCES FOR THE MCCLOUD JUDGEMENT PROJECT****Purpose of the Report**

1. The purpose of the report is to seek approval from Personnel Committee for additional resources required within the Pension Administration Team in order to comply with the Court of Appeal McCloud judgement.

**Information****Background**

2. Nottinghamshire County Council is the administering authority for the Nottinghamshire Local Government Pension Fund. There are currently 494 Scheme Employers and a total membership of 142,832. Membership is comprised of active members, deferred members and pensioners. The Pension Administration Team delivers a full range of pension administration activities to all its membership including the processing of estimate, retirements into payment, death if scheme members and divorce sharing orders. This team also provides support and guidance to all Scheme Employers.
3. The LGPS is a statutory scheme with regulations made under the Superannuation Act 1972 and the Public Service Pensions Act 2013. The LGPS is a defined benefits scheme based, since 1 April 2014, on 'Career Average Revaluated Earnings' (CARE). Prior to the move to CARE in 2014 the LGPS was a final salary scheme.

**Background to the Court of Appeal McCloud judgement**

4. The case came about when R Sargeant, a firefighter employed by the London Fire Brigade, was 44 years old or more on 1 April 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 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 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).

### **Impact on LGPS Members Benefits**

8. 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.
9. 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**

10. Although the impact on the fund is likely to be small at whole fund level it could be significant at individual employer level.
11. 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.
12. 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.
13. 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 centers, 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**

14. 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.
15. 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.
16. 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.
17. 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.
18. 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**

19. 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 benefit, 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.

20. It is proposed to seek approval from Personnel 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 at a current cost per annum of up to £36,922 plus oncosts.
21. It will be the responsibility of the Project Manager to scope the details of the project and the additional administration resource that will be required to meet the fund obligations as part of the McCloud judgement.
22. Consideration will be given to seconding some experienced staff from the Pension Administration Team to the project with appropriate back fill arrangements implemented.
23. 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.
24. 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 to Personnel and Pension Committee on what resources will be required considering, current and future work activities of the Administration Team.

### **Other Options Considered**

25. The Pension Fund is following the Scheme Advisory Board, and the 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.
26. 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.
27. 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**

28. 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.
29. 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.

## **Statutory and Policy Implications**

30. 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**

31. 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**

32. It is estimated that the costs of the temporary post of Project Manager, Band B for a period of two years will be approximately £36,922 per annum plus oncosts. Pension Committee approved the funding for this post from the Pension Fund at the meeting on 10 September 2020.

33. Once appointed the Project Manager will determine the additional pension administration resource required to complete the McCloud project. This will be the subject of separate reports to both Pension and Personnel Committee.

## **Human Recourse Implications**

34. Appointment to the temporary Project Manager post will be through the Council's agreed recruitment and selection procedures.

## **RECOMMENDATIONS**

It is recommended that:

- 1) Members approve the establishment of a temporary post of Project Manager, Band B for a period of two years following approval by Pension Committee at its meeting on 10<sup>th</sup> September that the costs will be funded by the Pension Fund.
- 2) Agree to receive a further report on the proposed resource requirements of a McCloud project team.

**Marjorie Toward**

**Service Director – Customers, Governance and Employees**  
**Chief Executives Department**

**For any enquiries about this report please contact:**

Sarah Stevenson, Group Manager, Business Services Centre on 0115 9775740 or  
sarah.stevenson@nottsgov.uk

**Constitutional Comments (KK 01/09/2020)**

35. The proposals set out in the report are within the remit of Personnel Committee.

**Financial Comments (KRP 28/08/2020)**

36. The financial implications are as noted in the report with the costs being a legitimate charge to the Pension Fund. Additional resources will be required but these will be the subject of a separate report.

**HR Comments (JP 28/08/2020)**

37. The temporary post will be recruited to as set out at paragraph 34.

**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.

- None

**Electoral Division(s) and Member(s) Affected**

- All