

02 March 2023

Agenda Item: 5

## **REPORT OF SERVICE DIRECTOR – CUSTOMERS, GOVERNANCE, AND EMPLOYEES.**

### **LOCAL GOVERNMENT PENSION SCHEME – UPDATE ON THE PROGRESS 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 McCloud Project following the 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. The report also explains the progress so far on the project and requests funding to extend the temporary Project Manager role for a further two years, to ensure the implementation of the remedy of the McCloud judgement due to be proposed by the Government in Autumn 2023.

#### **Information**

##### **Background**

3. When the Local Government Pension Scheme (LGPS) changed from a final salary scheme to a career average pension scheme in April 2014, protections for older scheme members only were introduced.
4. Members of the Judges and Firefighters Pension schemes brought a case to the Court of Appeal. In December 2018, a Court of Appeal ruled that younger members of the Judges' and Firefighters' Pension schemes were discriminated against because the protections did not apply to them.
5. This ruling is often called the McCloud judgement.

##### **Removing unlawful age discrimination**

6. Following the Court's decision, the L G P S rules need to be changed to automatically provide eligible younger members with protection equal to that provided to older members.

7. In May 2021 an updated written Ministerial Statement on McCloud and the LGPS was released stating that a full Government response on the consultation, will be published later that year.
8. On July 19th, 2021, a Bill to make provision about public service pension schemes, including retrospective provision to rectify unlawful discrimination in the way in which existing schemes were restricted, had its first reading in the House of Lords.
9. Most recently, on 10<sup>th</sup> March 2022, following agreement by both Houses on the text of the Bill, it received Royal Assent. This means the Bill is now an Act of Parliament (law)
10. The government is expected to confirm the changes to be made to the LGPS Regulations by the Autumn of 2023. This will provide LGPS Pension funds with a remedy to apply to members affected by the McCloud Judgement. It is expected that only a small number of scheme members will be affected.

### **Practical Application of the Protection**

11. 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 and pays the higher. This protection is called the underpin.

### **Data Collection & Validation**

12. To perform the underpin calculation and to apply the McCloud remedy once this is agreed, the Pension fund requires additional data about hours worked and service breaks.
13. This data is needed for all members of the LGPS who meet the qualifying criteria, principally that they were active in the scheme on 31st March 2012 and subsequently had membership of the career average scheme (1st April 2014) without a continuous break in service of more than five years.
14. The collection of this historical data is known, within this context, as the McCloud data collection and validation exercise.
15. The initial data collection phase of the project has been completed and the data captured. The McCloud Project Team has been working towards the validation phase, this has included planning, preparation of data into standardised spreadsheets for the employer to use, pilot testing, employer communications, workshops with scheme employers, and discussing data validations with scheme employers.
16. It is the responsibility for all scheme employers to validate the data requested by the Pension Fund, making any amendments as necessary, and returning the validated information back to the fund.

### **Current Position of the Project – Validation Phase**

17. The current position is as follows:

- Roll out of Data and Validation Phase to approx. 450 employers both active and closed with approximately 45000 lines of member record Data to validate.
- 337 Employers have been contacted and 228 have attended workshops, the files to complete the exercise have been prepared and sent or are ready to send once they have attended a workshop.
- Employer completed files received back (so far): approximately 50 however 1st Qtr. 2023 will be the employers' deadlines.

## **The Next stages of the Project**

18. The next stages of the project are as follows, and the timelines are estimates due to a number of factors and depending on the confirmation of the agreed remedy, and its addition to the LGPS pension Regulations.

- By the end of March 2023 all pension workshops with scheme employers will be completed and most scheme employers will have submitted their data.
- Draft Regulations are expected sometime this year, Autumn, and will be subject to a further consultation, which will include compensation and rates of interest. Statutory guidance will also be issued on the implementation of the remedy.
- Once the Pension Fund has received the data from the scheme employers, the fund will be analysing all the data, and checking for mistakes against the 45,000 lines of data. This work will begin in April.
- June / September 2023 - the Fund will be preparing the data for uploading into the Pension Administration System.
- October 2023 onwards - the fund will be working with the Civica, the Pension Fund software provider, on evaluating the calculations once the Government has provided the remedy and the revised Regulations.

## **Review of Resource Requirements**

19. In terms of estimating the amount of work and resources required, as described in the report the fund is collecting 45000 lines of data which will be reviewed, along with the recalculation of members' benefits and communicating with members and scheme employers.

20. As has previously been reported to the Pensions Committee, this work cannot be completed with the current resources in the Pension Administration Team whilst maintaining the current service level and progressing other statutory projects. Therefore, to complete this work, it was previously agreed to the establishment and recruitment of a temporary project team to focus on this area of work.

21. The Pensions Committee approved the establishment of a temporary Project Manager post for a period of two years, at Band B up to £39,492 a year subject to pay awards, at a total cost of £52,860 per annum.

22. The Pension Administration Team are seeking funding from Pensions Committee to extend this post for a further two years given the expectation that the project will extend to April 2025 and the work that is required to manage the scheme data, and the implementation of the remedy once agreed by the Government. The current post holder will also be managing other national projects that the Fund is required to undertake, including pension dashboards, monthly returns, along with other Fund activity.

### **Other Options Considered**

23. The Pension Fund is following the Scheme Advisory Board, and the Local Government Association (LGA) advice, engaging with the Scheme Actuary to ensure that Nottinghamshire is following the best advice.
24. 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.
25. The McCloud project work could be absorbed into the existing work of the administration team however, this is not considered to be a feasible option. It 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**

26. This is a significant project for the Pension Fund which requires project management and additional resources to ensure that the fund fulfils the statutory requirements of the McCloud judgement.
27. 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 mechanism.

### **Statutory and Policy Implications**

28. 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**

29. 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**

30. The costs of extending the Project Manager post are estimated at £52,860 per annum and these costs will be charged to the pension fund.

## **RECOMMENDATIONS**

It is recommended that the Nottinghamshire Pension Fund Committee:

- 1) Notes the progress and implications of the McCloud case to date.
- 2) Agrees to extend the funding for the Temporary Project Manager role until 31 March 2025.
- 3) Agrees to receive further update reports as the project progresses and on the implementation of the national proposals.

**Marjorie Toward**

**Service Director – Customers, Governance and Employees**

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

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### **Constitutional Comments (KK 20.02.23)**

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

### **Financial Comments (KP 16.02.23)**

32. The financial implications are set out in the report with any costs a legitimate charge to the pension fund.

### **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.

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

- All