



Report to Pension Fund Board

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Title: McCloud update

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Recommendation: The Board is asked to **NOTE** the current position regarding the McCloud remedy.

Executive summary

1.1 When the Local Government Pension Scheme (LGPS) changed from final salary to career average earnings accrual on 1 April 2014, an underpin to protect older scheme members was introduced. In some form, protections applied across all public sector pension schemes. Appeals were submitted in the judges and firefighter's schemes regarding their protections and on 20 December 2018, the Court of Appeal ruled that the protections were unlawful on the grounds of age discrimination. Although the ruling only applied to these two schemes, the government confirmed it would be applied to all public sector pension schemes.

The Ministry of Housing, Communities and Local Government (MHCLG) issued a consultation on 16 July 2020 with proposals for changes which would remove discrimination from the LGPS. The consultation closed on 8 October 2020.

On 13 May 2021, Luke Hall, Minister of State for Regional Growth and Local Government made a ministerial statement confirming that

- The age requirement for underpin protection will be removed
- A member will not need to leave with an immediate entitlement to benefits to qualify for underpin protection
- The remedy period will end on 31 March 2022
- The underpin calculation will be based on final pay at the underpin date, even if this is after 31 March 2022

- There will be two stages to the underpin calculation: the first on the underpin date which is the date of leaving or age 65 if earlier, the second when the benefits are paid
- The regulations will be retrospective to 1 April 2014.

MHCLG, now the Department for Levelling Up, Housing and Communities (DLUHC) were originally expected to issue a full response to the consultation and publish draft regulations by the end of 2021. DLUHC finally published their [full response](#) on 6 April 2023 confirming the above.

1.2 In addition to the full response, DLUHC announced a further consultation would follow, seeking general views on some areas and technical/implementation comments in others. The [consultation](#) along with draft regulations was issued on 30 May 2023 and closed on 30 June 2023. General views are sought on the following areas:

- *Aggregation – determining the rules applicable to decide whether a member with multiple LGPS memberships has underpin protection in some or all of these.* The original proposal was for the underpin to apply in a single pension account. This would have required giving members a second opportunity to aggregate, a huge administrative task. The revised proposal applies the underpin protection if the member was in the LGPS on or before 31 March 2012 and does not have a continuous break in active membership of a public service pension scheme of more than 5 years. This is regardless of whether the underpin period is in a different LGPS membership which has not been aggregated with the membership they were in on or before 31 March 2012.
- *Club transfers – determining the rules applicable to decide whether a member with previous membership of another public service pension scheme has underpin protection in respect of their LGPS membership.* Currently the underpin regulations require a member to transfer their previous public service pension scheme into the LGPS to qualify for underpin protection if the previous membership included active service on 31 March 2012 but the LGPS service did not. The revised proposal does not require a member to transfer their previous membership into the LGPS to qualify for underpin protection. Providing there has not been a continuous break in active membership of a public service pension scheme of more than 5 years, the underpin will apply. This will increase the administrative burden as administrators would need to know if members had previous public service pension scheme membership on or before 31 March 2012.
- *Flexible retirement – how the underpin should work in respect of flexible retirement, particularly for partial flexible retirement where a member does not take all of their CARE benefits.* The original proposal was for underpin protection to stop when a member took flexible retirement after 31 March 2014. This would

have resulted in flexible retirement members having less protection than members who had not flexibly retired. The revised proposal is for a member to have a second protected underpin date if they took flexible retirement between 1 April 2014 and 31 March 2022 and continued to build up pension in the underpin period after they retired and before they reached their final salary pension age. Various provisions for partial flexible retirement have also been proposed.

- *Divorce – how the scheme’s divorce and underpin calculations interact. Pensioner and deferred members have an underpin date so any amount will be included in the Cash Equivalent Value (CEV).* For an active member, the CEV will be calculated as if the date of calculation was the last day of service and any underpin at that date will be included. Pension debits applied to a member will be disregarded for the purposes of assumed benefits and underpin amounts.
- *Injury allowances – how a retrospective increase to a member’s pension arising from the McCloud remedy may affect any injury allowances payable.* The effect of this will be negligible as injury allowances are rare.

Technical/implementation comments are sought on the following areas:

- *Excess teacher service – the retrospective admission to the LGPS of certain teachers who have multiple employments.* Where a teacher has a full time and a part time employment, the part time employment is referred to as ‘excess teacher service.’ On 1 October, under the Teachers’ Pension Scheme’s (TPS) McCloud remedy, members in the reformed TPS will have their reformed scheme service rolled back into the TPS legacy scheme. Where they have a full and part time contract, the excess teacher service in respect of the part time contract cannot be pensionable in the TPS legacy scheme and is instead pensionable in the LGPS.
- *Compensation – the circumstances where a member may be paid compensation where they have suffered a loss relating to the age discrimination found in the McCloud case/remedy.* Payment may be made where members have suffered direct financial loss as a result of the identified discrimination or a tax loss where annual allowance or lifetime allowance charges have been overpaid. Decision making will be at local level but SAB guidance to apply nationally may be considered.
- *Interest – the interest terms that will apply where payments are made later than would have been the case, due to the McCloud discrimination.* A standard approach will be applied across the public sector depending on the type of payment that was paid late.

- 1.3 There are 379 employers/payroll providers who are required to provide hours and service break data for the underpin period. All requests for historical data have been issued. To date, 318 employers have returned their data template (83.91%). Some employers/payroll providers may not be able to provide the data. The Local Government Association (LGA) have issued guidance for steps to be taken where data is not provided and this is currently being reviewed.
- 1.4 The data matching issues raised with our system provider have now been resolved and we have received data verification tools. Data has been uploaded for 276 employers/payroll providers. Phase 1 of data verification is validating the data provided and this has been actioned for 15 employers. Phase 2 of data verification is data comparison which will begin shortly. Phase 2 will require transition of the additional McCloud resource from the Benefit Administration Team.

Next steps and review

- 1.5 Project management software will be required to track the progress of the McCloud project. Buckinghamshire Council use Service Now PPM. A demonstration of this has been arranged and if suitable, licences will be purchased for this.
- 1.6 The next update will be provided at the December 2023 Board meeting.

