

WIRRAL COUNCIL

PENSION COMMITTEE

4 NOVEMBER 2019

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| SUBJECT: | LGPS UPDATE |
| WARD/S AFFECTED: | NONE |
| REPORT OF: | DIRECTOR OF PENSIONS |
| KEY DECISION? | NO |

1.0 EXECUTIVE SUMMARY

- 1.1 This report provides an update on the 'McCloud Case', which relates to the transitional protections awarded to members who were closest to retirement age when the Judges' and Firefighter pension schemes were reformed in 2015.
- 1.2 In addition, it updates Members on the Scheme Advisory Board's (SAB) review of LGPS Governance models and the proposed changes to Equitable Life policies, the legacy Additional Voluntary Contributions (AVC) provider for Merseyside Pension Fund.

2.0 BACKGROUND AND KEY ISSUES

- 2.1 Members were informed at the Committee meeting dated 25 March 2019 (minute 4 refers) of the Court of Appeal's decision, known as the 'McCloud Case'. The court ruled that the transitional protection afforded to older members of public service pension schemes was unlawful on the grounds of age discrimination.
- 2.2 On the 27 June 2019, the Supreme Court denied the Government's leave to appeal, which means that the Court of Appeal's decision will be upheld, and the case will be returned to an employment tribunal for a detailed decision.

Implications for the LGPS

- 2.3 Thereafter, on 15 July 2019, the Chief Secretary to the Treasury announced in a written statement that "the government believes that the difference in treatment will need to be remedied across all public sector schemes; including the NHS, civil service, local government, teachers, police, armed forces, judiciary and fire and rescue workers."

- 2.4 As the remedy will involve “levelling up” member benefits, it is expected that any agreed outcome will increase the cost of LGPS pensions. However, there is no certainty on the level of the increased cost.

Reasons for the uncertainty of cost

- 2.5 The uncertainty around cost stems from the fact that the form and detail of any proposed remedy to be applied to the LGPS is unknown. The most obvious solution would be to apply the current protections, offered to those within 10 years of retirement at 2012, to all members in the LGPS.

However, decisions need to be made around areas such as:

- **Eligibility** – would it only apply to scheme members who were active in 2012 or conversely to all those active when the scheme changed at 31 March 2014?
- **Operating period of the underpin** – will the underpin only apply to service accrued up to 2022 i.e. 10 years after 2012, or will it apply for all service accrued from 1 April 2014 until retirement?
- **Retrospection**- how will the benefits for members who have left service since 2014 be rectified?
- **Administration** – any remedy needs to be relatively easy to administer to avoid further complexity and exponential resource cost. What may seem an obvious remedy may be very complex to operate with disproportionate administration costs.

- 2.6 Each decision about the form of remedy is likely to have a material impact on the overall cost of the benefit structure and administration requirements. Consequently, it is difficult to anticipate the definitive cost of the McCloud case on both future and past service benefits.

Impact on Triennial Valuation

- 2.7 As the LGPS is in the middle of the 2019 Triennial Valuation and with no sight of a proposed remedy, the SAB has issued a directive to Administering Authorities to calculate the valuation position as per the current LGPS benefit structure. It has been clear in its message management that the uncertainty and risk associated with the McCloud case should be considered locally when setting employer contribution rates.
- 2.8 The Fund is currently working with both the Fund Actuary and the Merseyside Finance Director Group to analyse the potential ongoing risk to the Fund and employers in setting its funding policy, contribution rates and managing the uncertainty associated with McCloud.

- 2.9 Once the McCloud case is remedied, Funds must revisit employer contribution rates to ensure they remain appropriate in considering any additional costs.
- 2.10 The SAB website provides an overview of the case along with FAQ and can be accessed from the following link:

<https://www.lgpsboard.org/index.php/structure-reform/mccloud-page>

Good Governance Report

- 2.11 Members considered the scope of the SAB's review of governance models for the LGPS at its last meeting on 16 July 2019 (minute 22 refers) and further to the completion of Hymans Robertson's analysis and fact finding exercise, the SAB published its 'Good Governance Report' at the end of July.
- 2.12 To progress the project forward, two stakeholder working groups, supported by Hymans Robertson, have been established to focus on;
- defining good outcomes and the guidance needed to accomplish successful governance structures through clear strategies and policies.
 - Options for the independent assessment of outcomes and mechanisms to improve the delivery of those outcomes.
- 2.13 The aim is for an options report to be considered by the SAB in November. Any proposals agreed by the Board would be subject to a stakeholder consultation before being presented to MHCLG.
- 2.14 A copy of the Good Governance Report is available from the following link:

<https://lgpsboard.org/images/PDF/GGreport.pdf>

Equitable Life – Overview of Events

- 2.15 LGPS administering authorities are required by statute to provide an Additional Voluntary Contribution (AVC) arrangement to complement scheme members' retirement savings and to facilitate early access to higher pension benefits.
- 2.16 MPF has a legacy AVC arrangement with Equitable Life.
- 378 active and deferred members have an Equitable Life AVC, with 178 of those invested in With Profits funds.

- 2.17 Committee may be aware of the well documented problems which commenced in 1999 when the Equitable Life Society launched court proceedings to enable it to force policyholders to accept bonus cuts.
- 2.18 The Society won the first stage of the action, but the proposals were subsequently overturned by the House of Lords. Consequently, in December 2000, a decision was taken by the Society to not write any new business and to operate in a 'run-off status'.

The Proposal – Transfer to Utmost Life and Pensions

2.19 In June 2018, Equitable Life announced that it had entered into an agreement to transfer its business to 'Utmost Life and Pensions'.

2.20 The proposal is made up of two main parts:

1. The Scheme

- increasing with-profits investments with an immediate one-off 'Uplift'
- removing any investment guarantees,
- converting with-profits policies to unit-linked investments

2. The Transfer

- to transfer all business of Equitable Life to Utmost Life and Pensions except for certain excluded policies.

2.21 In August 2019, Equitable Life wrote to all the LGPS administering authorities affected by the transfer to advise them that as both 'Scheme Policy Holders' and 'Eligible Members' they are able to vote:

1) to approve the 'Scheme'

2) to 'Change the Articles' which would make Utmost Life and Pensions the Equitable Life's only Member

2.22 The deadline for the receipt of postal and online votes is 10am on 30 October 2019.

2.23 If enough Scheme Policyholders support the proposals, Equitable Life intends to return to the High Court on 22 November 2019 to ask it to approve the Scheme and the Transfer.

2.24 If the Proposal does not become effective, no Scheme Policyholder would receive any uplift and Equitable life would continue to run as it does currently.

It is likely that they would try to find a different solution to the challenges faced by the business.

2.25 The Fund together with its advisors is currently in the process of considering the members' projected fund values, uplifts and financial assumptions to assess the impact of the proposal on members' investments. However, it is important to note that AVC's are separate from the main scheme benefits and these investments are held with Equitable and are not assets of the Fund.

3.0 Relevant Risks

3.1 The outline risks are covered within the body of the report.

4.0 Other Options Considered

Not relevant for this report.

5.0 Consultation

5.1 Not relevant for this report

6.0 Outstanding previously approved actions

6.1 None associated with the subject matter.

7.0 Implications For voluntary, community And Faith Groups

7.1 There are none arising from this report.

8.0 Resource Implications: Financial: IT; Staffing and Assets

8.1 As part of the external audit of the Pension Fund accounts, the potential impact of McCloud was estimated at £78m at whole fund level. The cost will vary across the employer base depending on the membership and liability profiles for each organisation.

9.0 Legal Implications

9.1 The Local Government Association has sought advice from Leading Counsel in relation to Administering Authorities' rights and duties in relation to the Equitable Life vote. The advice confirms that Administering Authorities have fiduciary duties to employers and members to secure that the value of additional benefits from AVCs is reasonable.

9.2 Leading Counsel's advice also addresses several other points regarding voting and concludes "it is for Administering Authorities as policyholders to determine how they exercise their votes and they should not abdicate their responsibility in this regard".

10.0 Equalities Implications

10.1 Has the potential impact of your proposal(s) been reviewed with regard to equality?

No, because MHCLG undertake equality impact assessments with regard to the statutory reform of the LGPS.

11.0 Carbon Reduction and Environmental Implications

11.1 There are none arising from this report

12.0 Planning And Community Safety Implications

12.1 There are none arising from this report

13.0 Recommendation

13.1 That Committee Members:

- a) note that the administering authority gave due regard to Leading Counsel's advice and the requirement to act reasonably in determining its vote on the proposed Equitable Life Scheme and Change to Articles as outlined at paragraph 2.21
- b) note the national developments relating to the McCloud Case and the SAB governance review.

14.0 Reason/s for Recommendations

14.1 There is a requirement for Members of the Pension Committee to be kept up to date with legislative developments as part of their decision-making role.

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