



## **PENSIONS COMMITTEE**

**11 DECEMBER 2023**

<b>REPORT TITLE:</b>	<b>LOCAL GOVERNMENT PENSION SCHEME (LGPS) UPDATE - THE MCCLOUD REMEDY</b>
<b>REPORT OF:</b>	<b>DIRECTOR OF PENSIONS</b>

### **REPORT SUMMARY**

This report provides an update on legislation related to the 'McCloud Remedy', and the guidance that has been published to support implementation by the Fund's Administration Team.

### **RECOMMENDATION/S**

That the Pensions Committee be recommended to note the legislative change to remove the age discrimination from the Local Government Pension Scheme (LGPS), and that implementation of the revised regulations is a major resource intensive project to ensure the Fund's continued compliance in delivering the 'McCloud Remedy'.

## **SUPPORTING INFORMATION**

### **1.0 REASON FOR RECOMMENDATION**

- 1.1 There is a requirement for the Pensions Committee to be fully informed of national directives and legislative developments to ensure the appropriate governance and stewardship of the Fund in their capacity as Scheme Manager.

### **2.0 OTHER OPTIONS CONSIDERED**

- 2.1 This is the most appropriate option for informing Pension Committee of legislative developments.

### **3.0 BACKGROUND INFORMATION**

#### **Consultation outcome and issuance of Regulations**

- 3.1 The 'McCloud Case' arose as a consequence of the wider reform of the public service pension schemes, when all contributing members were moved across from a "final salary" to a "career average" benefit structure in 2014 and 2015.
- 3.2 Transitional "grandfathering" protections were extended to those members closest to retirement as part of the reforms. The protection in the LGPS takes the form of a statutory underpin where members receive the better of benefits calculated on the new career average basis or the old final salary basis during the period of 1 April 2014 to 31 March 2022.
- 3.3 In December 2018, the Court of Appeal ruled that younger members of the Judges' and Firefighters' pension schemes had been discriminated against based on age because the protections did not apply to them. The government accepted that the Court's ruling had implications across all public service pension schemes with similar transitional protections.
- 3.4 The ruling is called the McCloud judgment and consequently all public service pension schemes that provided protection, including the LGPS, have been changed by virtue of the 'McCloud Remedy' which extends the statutory underpin to those who,
- were a member of the LGPS or another public service pension scheme before 1 April 2012, and
  - were a member of the LGPS any time between the remedy period of 1 April 2014 and 31 March 2022, without a continuous gap of more than five years membership of a public service pension scheme.

## **The Legislative Framework**

- 3.5 The Public Service Pensions and Judicial Offices Act 2022 provides the enabling provisions to make regulations for protected members to receive an automatic uplift to their benefits for the remedy period.
- 3.6 On 8 September 2023, following a number of statutory consultations on the proposed remedy, the Department for Levelling Up, Housing and Communities (DLUHC) laid the Local Government Pension Scheme (Amendment) (No.3) Regulations 2023, under the enabling provisions of the 2022 Act which take effect from 1 October 2023.
- 3.7 The amendment regulations implement the 'McCloud Remedy' for the LGPS, extending the underpin rules to all members who meet the criteria regardless of age.
- 3.8 The statutory instrument also makes a number of related changes to the underpin to ensure it works in line with the government's policy intent for aggregation, transfers, flexible retirement and divorce case work. The legislation provides scope to enable administering authorities to check past benefit calculations for events that happened between 1 April 2014 and 30 September 2023.

## **Statutory Guidance for Administering Authorities.**

- 3.9 As the regulations are now in force, administering authorities will need to consider a range of McCloud affected cases. In supporting Funds to take a broadly consistent approach DLUHC has issued initial statutory guidance on how authorities should prioritise this work.
- 3.10 DLUHC is also in the process of setting up a McCloud implementation group to decide what other statutory guidance is needed for Funds to administer the remedy and the Government Actuary's Department is updating actuarial guidance to reflect the changes for publication as soon as it is available.

## **Communication Materials for Members and Employers**

- 3.11 The Local Government Association in conjunction with the Communications Working Group (on which the Fund has representation) has created materials to explain the impact of McCloud on members' pension entitlements which can be accessed on the Fund website here: <https://mpfund.uk/mccloud>
- 3.12 The resources include:
- A short video
  - Frequently asked questions
  - An interactive 'Am I affected?' tool
  - Examples of how members might be affected
  - Detailed information about how the remedy will affect different types of members
  - Factsheet summarising the McCloud Remedy

- 3.13 The factsheet advises members that they do not need to do anything to be assessed for the underpin. If they qualify for underpin protection and are either an active or deferred member, they will receive an estimate of the underpin amount in their 2025 benefit statement.
- 3.14 Members already in receipt of their pension benefits will receive any increase due, including arrears of pension, following a review of pensions in payment. This process will extend over a long period of time due to the material volume of records to review.
- 3.15 It is noteworthy that despite the substantial task of implementing the McCloud remedy, most members will not see an increase in benefits. This is because the pension they built up in the career average scheme during the protection period was higher than the pension they would have built up in the final salary scheme. Where there is an increase to a member's benefits, it is likely that this will be a small amount.

#### **4.0 FINANCIAL IMPLICATIONS**

- 4.1 The cumulative cost of McCloud across employers participating in the Fund has been assessed by the actuary to be in the region of £100 million, representing 1% of the total Fund liabilities of £10.3 billion, as calculated at the 31 March 2022 triennial valuation. The costs have been incorporated within the results of the employers' balance sheet and have been reflected in contribution schedules for the period 1 April 2023 to 31 March 2026.
- 4.2 Whilst the valuation allowance will not precisely reflect the final implemented position, for most employers it is expected to substantially cover the cost of the McCloud remedy. Overall, the differences coming through at 31 March 2025 valuation and in subsequent contribution rates are not expected to be material, although individual employer impacts will vary.
- 4.3 The Fund has implemented a service delivery review to consider the capacity of the Administration team. Whilst this took the form of a holistic assessment, the additional requirements of delivering the McCloud remedy was a key consideration in increasing staff resources.
- 4.4 The business case for additional resources was approved by the Director of Pensions and agreed by Wirral Corporate HR, and a recruitment exercise is underway.
- 4.5 The overall increase to the establishment cost of the Administration Team was £233,577 per annum, but this also related to other changes necessary to meet service demands, including the modernisation of the service, and national initiatives including McCloud and the national Pensions Dashboard Programme.

#### **5.0 LEGAL IMPLICATIONS**

- 5.1 The administering authority solicitor, acting for the Fund, provides advice as to the implementation and interpretation of legislative and governance requirements.
- 5.2 Failure to comply with regulations may lead to sanction by the Pensions Regulator, including the possibility of financial penalties and reputational damage.

## **6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS**

- 6.1 Given the complexity of the 'McCloud Remedy' and the material volume of additional work that will need to be undertaken, the statutory guidance will be key to ensuring the new regulations are implemented on a consistent basis across all Funds.
- 6.2 As the regulations present additional administrative challenges linked to policies on aggregation and determining membership in other public service pension schemes, the national McCloud implementation group will be vital in ensuring the views of administering authorities, and software suppliers are reflected in the final guidance.
- 6.3 It is noteworthy that the Judicial review in relation to McCloud and the cost management process will be heard in February 2024. There is potential that the outcome will result in further benefit improvements for LGPS members with associated additional employer costs and administration implications for Funds.
- 6.4 The administrative requirements of the McCloud remedy have required the system supplier to incorporate changes to the Funds administration system. Costs incurred to date have been £25,000 with a further £6,000 anticipated for completion of works.

## **7.0 RELEVANT RISKS**

- 7.1 There is a risk of miscommunication and incorrect payment of pension benefits to members if the legislative changes are not implemented in accordance with the revised regulations with an associated impact on employer costs.
- 7.2 Failure to comply with regulations may lead to sanction by the Pensions Regulator, including the possibility of financial penalties and reputational damage.

## **8.0 ENGAGEMENT/CONSULTATION**

- 8.1 The changes to administration and governance of the LGPS are consulted on at national level by the relevant government department.

## **9.0 EQUALITY IMPLICATIONS**

- 9.1 Department for Levelling Up, Housing and Communities (DLUHC) and the Pensions Regulator undertake equality impact assessments regarding the provisions of the LGPS Regulations and the administration and governance of public service pension schemes.
- 9.2 The Equality Statement published on the introduction of the Local Government Pension Scheme 2014 can be viewed at: <https://mpfund.uk/lgpsequalitystatement>
- 9.3 DLUHC and HM Treasury undertake equality impact assessments with regard to the statutory reform of the public sector pension schemes and LGPS.

## **10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS**

10.1 The Fund continues with its digital strategy across all operational areas and communications with stakeholders, with the aim to improve service delivery and to reduce its internal carbon footprint.

## 11.0 COMMUNITY WEALTH IMPLICATIONS

11.1 There are none directly arising from this report.

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## BACKGROUND PAPERS

**Scheme Developments -Scheme Advisory Board Website**  
<https://lgpsboard.org/index.php/structure-reform/mccloud-page>

**The McCloud Remedy Factsheet**  
[https://mpfmembers.org.uk/pdf/LGPS\\_McCloud\\_Factsheet\\_EW\\_5p.pdf](https://mpfmembers.org.uk/pdf/LGPS_McCloud_Factsheet_EW_5p.pdf)

## TERMS OF REFERENCE

This report is being considered by the Pensions Committee in accordance with Section D of its Terms of Reference:

(d) To monitor the Local Government Pension Scheme including the benefit regulations and payment of pensions and their day to day administration and to be responsible for any policy decisions relating to the administration of the scheme.

## SUBJECT HISTORY (last 3 years)

<b>Council Meeting</b>	<b>Date</b>
<b>Standing Agenda Item</b>	<b>26 September 2023</b>