

## McCloud judgement - Government Consultation Published

The Government have published a consultation on proposed change to the Local Government Pension Scheme (LGPS) to remove age discrimination following what has become known as the McCloud judgement.

### What is the McCloud judgement?

When the LGPS changed from a final salary to a Career Average Revaluated Earning (CARE) scheme on 1 April 2014, additional protection was put in place for members who were within ten years of their normal retirement age on 1 April 2012. This protection is known as the underpin. Protected members currently receive the better of their CARE pension or one calculated under the previous scheme rules. Similar protections were provided in other public sector pension schemes.

The McCloud judgement refers to the Court of Appeal's ruling that the public sector pension reforms unlawfully treated existing members differently based upon their age on the 1 April 2012. In light of the McCloud judgement, the government has confirmed there will be changes to all main public sector schemes, including the LGPS, to remove this age discrimination.

### What is in the consultation?

There are two separate consultations, one for the LGPS and one for the other, unfunded public pension schemes (NHS, teachers, civil service, firefighters, police etc). This briefing note focuses on the consultation on the LGPS.

The proposals seek to ensure that members who have been discriminated against are placed in an equivalent position to the protected members. The benefits of unprotected members will be raised rather than the benefits of protected members being reduced.

The main elements of the LGPS consultation are: -

- Qualifying members would be protected by the application of a revised underpin
- Eligibility is restricted to members who were active in the LGPS on 31 March 2012 and have accrued benefits since 1 April 2014
- The extended underpin period applies between 1 April 2014 and 31 March 2022, but ceases when the member leaves active membership or dies in service
- The final salary for assessing which scheme an eligible member is better off under will be the final salary at the point the member leaves active status or reaches age 65
- The changes will be retrospective and will apply to anyone who has left, retired or died and who didn't meet the old underpin criteria but meets the new one. In some cases, this will mean retrospectively recalculating benefits for pensioners, and paying arrears and interest
- Members must meet the qualifying criteria in a single membership for underpin protection to apply – so where a member has had a break in service or a period of concurrent employment, they must aggregate the benefits for the underpin to apply
- Members who have previously chosen not to aggregate scheme employments will be given a further 12 months to reverse that decision where failure to aggregate would mean they would not meet the revised underpin qualification criteria

- Revised underpin protection will cease in respect of membership after 31st March 2022, however final salary protection will continue after that date in respect of membership before that date.
- Annual Benefit Statements should contain information on the potential impact of the revised underpin.

## When would any changes to the LGPS be effective from?

The remedy would be backdated to the commencement of the revised LGPS which was introduced on 1 April 2014. This may mean the recalculation of some benefits already paid.

**Please note: The Government has confirmed that members who qualify for the protection do not need to make a claim for the changes.**

If members qualify for the protection it will apply automatically.

The consultation runs **until 8 October 2020** after which the nature and timing of the primary legislation necessary to implement changes to the schemes will be developed. It is government's intention for this legislation to be in place by April 2022.

The LGPS consultation documents can be found here:

- <https://www.gov.uk/government/consultations/local-government-pension-scheme-amendments-to-the-statutory-underpin>

The Administering Authority and its advisers are assessing the impact the consultation will have on Cheshire Pension Fund members and employers. We will issue a response to the consultation by 8 October 2020 which will be published on our website and shared with employers and other key stakeholders.

Employers may also want to assess the impact the changes will have on their own organisation and consider submitting their own written response to the consultation.

## Data Required from Employers

Implementing the remedy means that we will need to hold information on hours worked and salary details for all eligible employees to assess which scheme they are better off under. Since the scheme changed in 2014 we have not required employers to provide this information. However, we will now need to collect this information dating back to 1 April 2014.

**It is vitally important that employers retain contractual hours history and salary details for all employees, past and present who were members of the LGPS on 1 April 2014.**

Data required includes contractual hours per week, effective dates and the pensionable earnings during that period. Employers will also be required to record breaks in service due to authorised unpaid absence.

Please don't destroy any of this data. If you've changed your payroll provider since 1 April 2014, you must make sure you still have access to this information.

We will issue employers with an Excel Spreadsheet template containing a list of employees and ex-employees who qualify for the protection. Employers will then be required to provide the Fund with the additional information set out in the template.

Separate communications and an FAQ about this additional data capture will be issued to support employers through this exercise. These are being developed and are expected to be available within the next few weeks.

## Next steps for the Cheshire Pension Fund

The proposed remedy will require a significant amount of administration and communication, both to employers and members. We will provide a dedicated 'McCloud' area of the Fund's website with regular updates.

We will set up a dedicated McCloud project team.

We will respond to the consultation having taken on board the views of the Pension Fund Committee and the Local Pension Board.

As well as the obvious impact on administration workload, the remedy may have an impact on valuations and accounting disclosures, and these will also have to be worked through and communicated to employers.

Government has confirmed that the national cost cap mechanism, paused due to the uncertainty caused by the McCloud case will recommence. The cost cap mechanism aims to ensure the costs of a pension scheme remain affordable and sustainable in the long term.

We will keep employers informed with a regular series of briefings as we work through this complicated multi-faceted project.

## Further information and questions and answers

More information can be found on the LGPS Scheme Advisory Board web page:  
<https://www.lgpsboard.org/index.php/structure-reform/mccloud-page>