CHESHIRE PENSION FUND

McCLOUD REMEDY

Introduction

1. This report is to provide the Committee with an update on the Fund's progress with implementing the changes required as a result of the McCloud remedy, including the rectification plan.

Recommendation

2. The Committee is asked to note the position on the McCloud remedy and the Fund's plan for rectification.

Background

3. When the Government reformed public service pension schemes in 2014, for the Local Government Pension Scheme (LGPS), and 2015 for all other public services, transitional protections were introduced for older members.

4. In the LGPS the transitional protections are known as the underpin.

5. In December 2018, the Court of Appeal ruled that younger members of the judicial and firefighters' pension schemes had been unlawfully discriminated against because the protections did not apply to them.

6. This ruling is called the McCloud judgment, after a member of the Judicial Pension Scheme involved in the case. Because of the ruling, there will be changes to all public service pension schemes that provided transitional protection, including the LGPS.

7. The changes required as a result of the judgment are called the McCloud remedy and are intended to remove the age discrimination found in the McCloud court case.

8. On 8 September 2023 the Department for Levelling Up Housing and Communities (DLUHC) laid the Local Government Pension Scheme (Amendment) (No. 3) Regulations 2023.

9. The regulations implement the McCloud remedy and change the existing underpin to ensure it works effectively and consistently for qualifying members. The regulations took effect from 1 October 2023.

McCloud Remedy – Changes

10. In 2014 the LGPS changed from a final salary scheme (where a pension is based on your pay when you leave) to a career average scheme or CARE scheme (where a pension builds up based on what you earn each year).

11. Prior to the McCloud remedy, members who were within 10 years of retirement as at 31 March 2012 qualified for the transitional protection known as the underpin. The

underpin works by assessing the benefits a member would receive in both the final salary and care scheme, and the member receives the higher amount.

12. The McCloud remedy extends the underpin protection to all members who meet the qualifying criteria, regardless of age. The qualifying criteria is that the member:

- was a member of the LGPS or any other public sector scheme before 1 April 2012;
- was a member of the LGPS at any time between 1 April 2014 and 31 March 2022 and some or all of this was before the members final salary normal retirement age (usually 65);
- does not have a disqualifying gap (a continuous period of more than 5 years where they were not a member of a public service pension scheme).

- *If the member has more than one period of LGPS membership, they do not have to join up or 'aggregate' these memberships to qualify for the underpin protection.*
- *If the member has membership of another public service pension scheme before 1 April 2012, they do not have to transfer that membership to the LGPS to qualify for underpin protections.*

13. The remedy came into force with effect from 1 October 2023. All public sector schemes now need to apply the underpin to all affected members and revisit any benefits which were calculated since 1 April 2014 to check whether they require rectification.

14. Underpin protection only applies to pension build up in the remedy period, between 1 April 2014 and 31 March 2022. The underpin will have stopped earlier if the member left the scheme or reached their final salary normal retirement age (usually 65) before 31 March 2022. From 1 April 2022, there is no underpin protection. Pension built up after this date is based on the career average scheme only.

Impact

15. Implementing the McCloud remedy has been described as the biggest challenge to face the LGPS since the introduction of the CARE scheme in 2014. It is a multi-faceted project that will require considerable resource and it will take considerable time to complete the rectification work required as a result.

16. In order to enact the remedy, the Fund has to identify all qualifying members, including those who have left since 2014, and who did not qualify for the previous underpin, to recalculate their benefits.

17. The Fund will also have to revisit those members who did qualify for the original underpin to see whether they are affected. That is because the original underpin regulations were not detailed enough to ensure all protected members received a CARE benefit which was at least as good as the final salary benefits would have been. The new underpin regulations includes more detail to ensure it is consistently applied to all members.

18. The Fund will also need to include information about underpin protection for all qualifying members in Annual Benefit Statements (ABS) from 2025.

19. The Fund has undertaken an initial assessment of the number of qualifying members and has identified around 27,500 members who are 'in scope' of the remedy. That is, they meet the qualifying criteria set out in paragraph 12. Not all of these members will require rectification.

20. As the CARE scheme has an accrual rate of 1/49th, the majority of members are better off in this scheme, rather than the final salary scheme and therefore, the underpin will not apply.

21. The table below summarises the members who have been identified as being 'in scope' of the remedy. As Members can see 20,454 are active and deferred members who will need the new underpin applied to their future benefits. However, a significant number have already left the scheme and their benefits will need to be revisited.

Type of Member	**No. of Members**
Active	14,435
Deferred	6,019
Pensioner	5,988
Transfer Out	636
Deceased	412
Total	**27,490**

22. Excluded from this table are those members who may become eligible for the underpin due to aggregating with public sector service they may have built up in other roles.

Data

23. To be able to rectify any benefits for qualifying members the Fund has been required to obtain additional information from employers dating back to 1 April 2014, which was no longer required when CARE was introduced.

24. This data consists of part time hours worked and details of any service breaks for all employees covering the period 1 April 2014 to 31 March 2022. The McCloud remedy requires Funds to take into consideration previous LGPS and other public sector service. For that reason, we have been requesting data for all members, rather than simply those identified as being in scope of the remedy.

25. The Fund has managed to obtain the data from around 65% of employers. A number of employers have not provided the information required. For some this may be because they simply may not be able to provide the information. For instance, they may have ceased as an employer or may have changed payroll provider in recent years and no longer have access to previous data.

26. Therefore, for the remaining 35% the Fund has extracted the data currently held on the administration database and sent this to the employers for verification. That could mean there are gaps in the data held by the Fund and we require employers to check the data, fill in any gaps, then return this information to us.

27. To assist funds who have not been able to obtain the data, and for when the data is unsuitable, the Scheme Advisory Board (SAB) have produced guidance called 'Service data for the McCloud remedy'. The guidance has been produced to assist administering authorities to recreate a suitable history of the member's LGPS service for the McCloud remedy period.

28. Where the Fund cannot obtain the data, or has concerns about the quality of data held, the SAB guidance will be followed.

Administration Database Developments

29. The Fund is working with the administration database provider, Civica to implement functionality for the McCloud remedy. The developments broadly cover the following 4 areas:

- Identifying 'in scope' members
- Loading the part time hours and service breaks data into the database
- Implementing calculation of the new underpin for all new leavers
- Implementing bulk calculations to 'rectify' benefits already processed

30. As can be seen in paragraph 21, the Fund has been able to implement the flag into the database which now identifies each member that is 'in scope' of the remedy. That is that they meet the qualifying criteria. It does not mean that their benefits will require rectification.

31. Civica have also produced the functionality to load the part time hours and service breaks data into the system. This will be loaded into a new service history data view within the database. This allows the Fund to retain the original service history which will allow a comparison between the two in the event of a query.

32. The Fund have not yet loaded the data into the database, as we were working to maximise the data collection first before completing the data load. However, all data will be loaded into the database before the end of December 2023.

33. Civica have been focusing their development initially on being able to apply the new underpin to new members leaving the scheme. Some issues have been identified throughout the testing of this functionality which has meant that the implementation has been slightly delayed.

34. The implementation of the developments for the new underpin are nearing completion and the Fund will be undertaking user acceptance testing (UAT) of this functionality in December. That will mean that from January 2024 the Fund will be able to use the new underpin to process the following benefits for those members who are retiring:

- Ordinary retirement calculations for active members
- Redundancy retirement calculations for active members
- Ill-health retirement calculations for active members
- Ordinary retirement calculations for deferred members

35. The database development for all other areas of administration casework affected by McCloud will be phased in over the coming months. Civica are developing their timeline and plan for this further development.

36. It is expected that this development will include a basic calculation of the underpin and will automatically set up processes for these records to be rectified. This applies to deferred, pensioner and deceased members' records.

37. The Fund requires the timeline and plan from Civica to inform its own rectification plan for all benefits which were calculated for the period from 1 April 2014 to 31 December 2023.

Rectification Plan

38. The Fund is holding a series of workshops throughout November and December to develop the rectification plan.

39. To assist Funds in developing a rectification plan, on 12 October DLUHC issued a draft document entitled the McCloud Initial Prioritisation Policy. The final policy will be published in early 2024.

40. The policy suggests that Fund's should approach prioritisation in groups as outlined in the table below:

Group	**Headline Group**	**Detail**
Group 1	New final underpin dates and deaths	New retirements and deaths
Group 2	Cases falling under part 3 of the 2023 regulations	a) Cases where a member or survivors' benefit is in payment b) Cases where payments have been made in the past but there is no ongoing liability: • Deceased members • Transfers Out • Trivial commutation • Death grant (no survivor pension) c) Cases where members leave active membership but haven't reached their final underpin date
Group 3	All other cases	Anyone who does not fall in the scope of Group 1 or 2

41. Whilst DLUHC have outlined a prioritisation plan for Funds to follow they have also explained that where it is beneficial to switch the order, for instance if there are opportunities to rectify members in bulk, then they should be taken.

42. DLUHC also understand that it will take Funds many months to rectify all casework and they have not put an absolute deadline on when this work should be completed by.

43. On 15 November 2023, the Local Government Association (LGA) published the first instalment of their McCloud technical guide for administrators.

44. The guide explains how the underpin protection works in the LGPS as a result of changes made because of the McCloud case.

45. LGA are releasing the guide in instalments 'due to the breadth and complexity of the McCloud remedy project and because they are still waiting for guidance in some areas'.

46. The first instalment of the guidance includes an overview of which pension accounts qualify for underpin protection and how to perform provisional and final underpin calculations.

47. There are two sections of the guide (sections 6 and 7) which are not included in this first instalment. These relate to 'other types of calculations' and 'revisiting past calculations'. LGA aim to publish sections 6 and 7 'in early 2024'. Guidance on sections 6 and 7 will be required for the Fund to be able to develop its rectification plan.

48. There are a number of areas within the McCloud remedy where further clarity is required on how they can be implemented. They include cases where a member has previous membership of another public service pensions scheme on or before 31 March 2012 and those where a member has flexibly retired on or before 31 March 2012.

49. Officers will develop the initial rectification plan in December, for implementation from January 2024, and will keep both the Committee and Local Pension Board informed of progress.

Communications

50. The Fund's website has been updated to include the latest position on McCloud. The website also includes a link to further information available on the national lgpsmember.org website which includes an overview of McCloud, a summary of key dates, an interactive tool so members can check if they are affected as well as other guidance and FAQs.

51. As the changes brought about by the McCloud remedy constitute a material change to regulations the Fund will be writing to all members (active, deferred and pensioner) to inform them about the changes. The communication is being produced in line with

Disclosure Regulations which means we must inform members of the change within 3 months i.e. by 31 December 2023.

52. An important message within these communications to members is that they do not need to take any action and do not need to contact the Fund. Where members are affected, the Fund will contact them and will rectify any benefits.

53. As well as writing to members the Fund is also writing to employers to make them aware of the changes. We will also take this opportunity to remind them of the data requirements.

54. As members can see there is considerable work ongoing by the Fund to comply with the requirements of the McCloud remedy. However, there are also numerous complex areas where further information and guidance is required which will be pivotal to developing a clear rectification plan.

Summary

55. In summary, the immediate focus for the Fund is working with the database provider so that we can process all new retirements from January 2024 using the new underpin to ensure compliance with McCloud.

56. The next priority after that will be to review existing pensioner benefits to determine whether any uplift is required to their benefits due to McCloud.

57. As Members will understand, managing the work required to comply with McCloud will be a significant undertaking for the Fund and will inevitably have an impact on service levels and the Fund’s ability to meet existing priorities, such as clearing historic backlogs.

58. Members will recall that 3 posts were added to the Operations team in July 2022 to assist with McCloud and other regulatory changes. The Fund will continually assess the adequacy of the staffing resource as the McCloud project progresses and any impact on current service levels alongside the rectification plan.