

LOCAL PENSION COMMITTEE – 11 SEPTEMBER 2020

REPORT OF THE DIRECTOR OF CORPORATE RESOURCES

McCLOUD/SARGEANT – AMENDMENTS TO THE STATUTORY UNDERPIN

Purpose of the Report

1. The purpose of this report is to seek the Local Pension Committee's approval of the Fund's draft reply to the Ministry of Housing Communities and Local Government (MHCLG) consultation, on the amendments to the statutory underpin.

Background

2. When the Local Government Pension Scheme (LGPS) changed from a final salary to a career average (CARE) pension scheme in April 2014, protections for older scheme members were introduced by the creation of a statutory underpin. Similar protections were provided in other public sector pension schemes. In December 2018 the Court of Appeal ruled that younger members of the Judges' and Firefighters' Pension schemes were discriminated against because the protections did not apply to them.
3. The Government has confirmed that there will be changes to all main public sector schemes, including the LGPS, to remove this age discrimination. This ruling is often called the 'McCloud/Sargeant judgment'.

Consultation

4. [The Government is consulting on the proposed changes to remove unlawful discrimination found by the Courts from 16th July to 8th October 2020.](#)
5. Officers have prepared a reply to the 29 questions raised in the consultation. The proposed reply is attached as Appendix A.

Implementation

6. Whilst the decision on the consultation is still due, it is widely expected the remedy will require the Fund's employers to provide the Administering Authority scheme member's hour changes and service breaks for the period 1 April 2014 to 31 March 2022. The Pensions Manager has written to all the Fund's employers to make them aware of the remedy, and will provide a national template and notes, to assist employers provide the required data. Hymans, the Fund's Actuary has provided a very useful summary of the consultation, and this is included as Appendix B.
7. If changes to the regulations are approved, each scheme member's personal data will be loaded into their own pension record and their benefits will be recalculated. If the final salary benefits with the new data now included, are higher than the CARE benefits, the revised benefits will be paid.
8. The consultation document includes some simplified working examples on how the underpin applies. These are found in Annex D on pages 61 to 69.

9. Until all the required data has been received, loaded onto the pensions administration system and benefits compared, officers feel it is hard to identify how many members will be affected, however it is understood that nationally the proposals suggest some scheme members will see a very slight improvement in their pension as a result. However, this is not evenly spread and the reality is that many members will see no change to their original benefits. Some members will not know if the underpin is beneficial to them until they retire. This is because the age they retire could attract actuarial reduction or increase factors, only applied at retirement. If the actuarial reduction factors reduce the CARE benefits by more than the protected final salary benefits, the underpin can then apply.
- 10 It has been estimated that younger members of the scheme with relatively high pay growth could see more significant increases on their eight years accrual from 1 April 2014 to 31 March 2022, compared to what they would have expected from the CARE scheme for the same period. This is because younger members have a greater period of time (compared to older members), for their higher salary growth to catch up and overtake their CARE benefits. However, there are a number of variables in this calculation including CPI, salary growth, a member's normal retirement date, and when a member retires.
- 11 The consultation also proposes the Administering Authority write to scheme members who may have decided not to transfer in (aggregate) previous Local Government Pension Scheme Benefits into the Leicestershire Fund. These members will be given a further opportunity to aggregate to enable them to have one underpin protection applied to their benefits. The communications are being prepared nationally for all Administering Authorities.
- 12 Scheme members may have correctly decided previously, not to aggregate their benefits (e.g. lower pay with their current employer, compared to their previous employer). Whilst the second opportunity to aggregate resolves the underpin issue, this generates the risk that members could make a bad decision based upon their perceived benefits of McCloud. The communications must be very clear to members, otherwise this could lead to future complaints and appeals.

Costs of McCloud/Sargeant

- 13 The increased McCloud/Sargeant costs will also impact on the cost cap, a mechanism that is used to ensure that the costs of a pension scheme remain affordable and sustainable in the long term. When the cost cap breach took place in 2016 it was on the "low" side, so members benefits expected to improve. Then McCloud/Sargeant "overtook" the cost cap work, causing it to be paused.
- 14 The McCloud/Sargeant costs are to be included in the "member costs" so effectively the cost cap will be recalculated. At this stage it is unknown how much of a cost McCloud/Sargeant will have on the cost cap level, but it certainly means costs will rise and the expected improvements to members benefits will reduce. However, by how much is unknown currently.
- 15 The Pensions Manager has proposed a change to the Pensions Team structure to assist with the McCloud/Sargeant work. Officers are also working on a priority order, to deal with the most likely cases that need revised benefits.

Recommendation

- 16 It is recommended the Committee approves the Fund's reply to the consultation.

17 None specific

Appendices

Appendix A – The Leicestershire Fund’s proposed reply on the McCloud Consultation

Appendix B – Hymans Briefing note on Government’s McCloud Consultation

Background Papers

[Ministry of Housing, Communities and Local Government – Consultation on McCloud Remedy.](#)

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