



LOCAL PENSION BOARD – 8 FEBRUARY 2023
REPORT OF THE DIRECTOR OF CORPORATE RESOURCES
MCCLLOUD REMEDY PROGRESS REPORT

Purpose of the Report

1. The purpose of this report is to provide an update to the Local Pension Board regarding progress in respect of preparations for the implementation of the 'McCloud' Judgement for Leicestershire County Council Pension Fund. A previous report on this topic was presented to the Board on 17th August 2022.

Background

2. When the government reformed public service pension schemes in 2014 and 2015, they introduced protections for older members. In December 2018, the Court of Appeal ruled that younger members of the Judges' and Firefighters' Pension Schemes had been discriminated against because the protections do not apply to them.

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 Judgement' after a member of the Judges' Pension Scheme involved in the case.

When the LGPS changed from final salary to a career average pension scheme in 2014, members who were within ten years of their Normal Pension Age (usually 65) on 1st April 2012 were provided with a protection called the 'underpin'. When a protected member takes their pension, the benefits payable under the career average and final salary schemes are compared and the higher amount is paid.

The Government will need to provide younger members with a protection equal to the underpin protection provided to older members to remove the discrimination. To do this, member records will need to contain full details of service history between April 2012 and March 2022. This is not data that is currently held, so this needs to be requested from employers.

Whilst the ruling is not expected to affect the amount of many members' pension benefits, the process of collating and uploading the data to identify

these cases, much of it manual work, is extremely complex and time consuming.

The legislation that introduces the McCloud remedy is expected to come into force from 1st October 2023 and will be retrospectively applied back to 1st April 2014 in England and Wales.

Issues

3. As work progresses, several issues have been identified.

Interface Tool

The software suppliers, Heywood, have developed an interface tool specifically for the McCloud exercise.

Use of the original version of the interface did cause some existing data to be overwritten for a small number of records. Following urgent discussions with Heywood, a re-vamped version of the tool was created, along with a process built around the Heywood reporting tool, Insights.

However, there are still issues. The software had now been designed to load all data in respect of members chronologically within the same submission, starting with the oldest data first, but this is proving challenging to arrange. For example, where a scheme member changes employers multiple times, it would be extremely time consuming to collate this data into one load, without assessing every file (some of which have yet to be provided), to establish the order in which to load the files. Officers have already established that the correct order for one person may not be the correct order for another (A member moves from employer A to employer B – we would need to load employer A first. Another member moves from employer B to employer A – we would need to load employer B first).

This will mean that some rows will be inadvertently submitted out of sequence (newer lines going in before older lines) for some members, causing an error. Errors result in more data needing to be loaded manually.

There have also been other issues, already raised with Heywood, that have caused complications in the process.

Historic Policy Decision

4. In the 1980's, a decision was made by Officers that where scheme members held multiple employments concurrently with one employer, those members would only have one record created on Altair. Initially, this related to only a small number of cases, but as the scheme rules changed to allow more part-time employees to join the LGPS, this led to an increasing number of cases of this nature.

Following the introduction of i-Connect, employers were advised that any data relating to new scheme members with multiple positions, must be submitted to Altair separately to enable one record to be created per employment. This

means that some members with multiple jobs have a corresponding amount of records on Altair, but others (historic cases) have only one.

For the historic members, data supplied for this exercise would need to be combined. However, the data provided by many employers has been split out by employment for both categories of members, meaning that there is a need for Officers to identify which data can be posted directly to the member records and which data will need to be manually combined before posting.

Payroll Providers

5. Many employers have changed payroll providers since April 2014, adding to the complexity of collating the data for the whole of the period that is required.

In the case of the County Council, the move from the older version of the Oracle system to Oracle Fusion meant that two separate reports of hours changes needed to be supplied, one from either system. There has been an overlap in the data provided by both systems relating to the hours that were effective at the time of transferring systems. This resulted in two lines of duplicated data being supplied for most of the scheme members.

Officers may need to manually filter out the overlapping data to avoid superfluous data being posted, although an automated solution is currently being investigated. In addition, cases have been identified where the dates on the latest report appear to be incorrect and ultimately mean that the latest report will need to be re-run.

Schools

6. Although by April 2014 a large number of schools had become academies, many have since become part of a larger Multi Academy Trust. This has added an extra layer of complexity to the task of collating the data as where changes of employers, administrators and payroll providers have occurred, establishing where to obtain the data from has become increasingly complicated.

Payroll References

7. To enable employer data to be matched to an Altair record, it was expected that a combination of National Insurance numbers and payroll references could be used. Where a scheme member has retired, the payroll reference held on Altair has been updated to show their pensioner payroll reference and old payroll references have been overwritten, meaning that the payroll reference cannot be used as a field to match data to records for those members. As a result, matching must be based on National Insurance numbers, which will only work if there is only one record on Altair. For a significant number of scheme members this isn't the case.

Current Progress

8. The latest position is as follows:

Number of employers that have provided all required data and records have been updated:	21
Number of employers that have provided all required data and are currently being worked on:	14
Number of employers that provided all required data and are ready to be worked on:	23
Number of employers that provided all required data but has been returned to the employer:	65
Number of employers that have provided some of the data, or have not provided any data:	72
Employers with miscellaneous issues:	4

In addition, the number of data lines identified as of 13th January 2023 that are unsuitable for automatic loading are below. This data only relates to the 35 employers where all data has been provided and have either been completed or are work in progress. These figures are not the final amount and will increase as work progresses. However, we are unable to quantify the amount that these figures will increase by at this stage.

Employer	Lines identified to date	Lines dealt with	Lines remaining
Leicestershire County Council	Still to be assessed	-	-
Leicester City Council	15,958	7,540	8,418
Other Employers	4,702	2,555	2,147
Total	20,660	10,095	10,565

Next Steps

9. An action plan was included with the previous report outlining the approach to the project and the approach remains broadly unchanged apart from one minor change and the target dates. An updated version is included in Appendix A.

Officers continue to investigate ways to automate the upload of as much data as possible. For example, an issue has been identified in respect of members with multiple employments paid by East Midlands Shared Services (EMSS). Whilst the initial view is that this would greatly increase the number of cases that need to be looked at manually, possible automated solutions to the issue are currently being discussed with our Business Partner.

Reminders continue to be sent to employers who have yet to provide all the required data.

Other areas of the project that still need to be addressed are:

Aggregation of Records

10. It is possible that there will be further work to do with regards to scheme members who had previously had the opportunity to aggregate old deferred pension records with their new active pension record and declined to do so. It is expected that these members will be offered a further chance to aggregate those records before they are assessed for a possible underpin.

Teachers

11. There will also be a requirement to carry out work in respect of some members of the Teachers' Pension Scheme (TPS).

The implementation of the McCloud remedy in the Teachers' Pension Scheme (TPS) means that some teachers will be retrospectively eligible for the LGPS for the period 1st April 2015 to 31st March 2022.

This relates to historic legislation that stated where teachers who were members of the TPS final salary scheme and held both a part-time and full-time employment concurrently, the part-time employment was ineligible for the TPS but eligible for membership of the LGPS.

This will be another extremely challenging area for Funds and the work will involve:

- Identifying affected members;
- Adjusting employee and employer contributions;
- Obtaining data to create LGPS records;
- Adjustments where benefits are already in payment;
- Transfers back to the TPS after remedies are established

Details in respect of this element of the project are still being established and further information will be provided in a later report.

Tax Implications

12. HMRC recently concluded a consultation on how pension tax will apply to members protected by the McCloud remedy. The legislation is planned to take effect from 6th April 2023 and will cover all public sector pension schemes and not all will be relevant to the LGPS. The areas relevant to the LGPS include:
- How underpin increases are treated for annual allowance purposes;
 - Whether any additional payments made are authorised payments;
 - Whether additional amounts of death grants paid after the normal two year deadline are taxable payments

Once the legislation is confirmed an exercise will need to be undertaken to identify and assess the members that are impacted by this and take appropriate action, which again will impact on resources.

System Updates

13. Altair will need to be updated to allow remedy calculations to be done, and some initial work on this has begun. However, all elements will not be in place until the final regulations are signed off.

Once all updates are in place, Officers will need to test the system to ensure the calculations work as expected.

Calculations

14. Once the McCloud legislation comes into force then any member who is due to have their pension brought into payment will have their LGPS benefits assessed to establish whether they are eligible for a McCloud 'underpin' element to be added to their benefits.

In the event that the deadline is not met, officers will need to address records on a case-by-case basis at the point of retirement. If a member is in scope and hours are not updated then action will be taken. This will impact on the time taken to process a case.

Those scheme members who have already left employment and pension benefits have already been calculated will also need records assessed to establish entitlement to an underpin once their records have been updated.

Processes

15. Processes will need to be established for both 'Business as Usual' work, such as the upcoming retirements, but also the additional work required to re-visit those members who have already left including those members whose benefits are already in payment to enable payment of any arrears that are due. Whilst it is expected that the number of cases where arrears are due will be low, there will still be an impact on resources.

Audit

16. Internal Audit continue to be kept informed of the situation and this report has been shared with them in advance. Following the Internal Audit exercise that was undertaken and signed off in June 2022, a follow-up Audit will be conducted during 2023/24.

Resource

17. Two temporary Pensions Assistants joined the Pension Section in October 2022 (initially for six months) and they have been working solely on McCloud, in addition to Pension Officers who are also assisting with McCloud. It is expected that further resource will be needed to assist with the volume of data entry. The Pensions Manager continues to assess staffing levels required for the McCloud project.

Communication

18. Later this year, communication will need to be issued to members to provide up to date information once legislation has been introduced. It is expected that the wording of these documents will be agreed nationally.

Discussions regarding the McCloud exercise continue at each National LGPS Technical Group meeting whilst, due to the size and complexity of the task, the LGA collate all Fund progress each quarter.

Finally, a report will be taken to the Local Pensions Committee in March 2023 that will include the Pension Sections 23/24 Business Plan, detailing the key priorities in 2023. The report will confirm that McCloud will be the largest area of work outside of the regular 'Business as Usual' areas.

The expected October 2023 deadline is very challenging and currently will be extremely difficult to meet. McCloud remains on the Fund risk register and this continues to be monitored.

Officers continue to work on McCloud in preparation of the expected legislation and once received will then be better placed to work through the deadlines for each element of the McCloud remedy. The suggested deadlines in Appendix A are designed to provide an indication only at this stage.

Recommendation

19. It is recommended that the Board notes the report.

Equality and Human Rights Implications

20. None specific

Appendix

21. Updated Action Plan

Background Paper

Local Pension Board – 17 August 2022 – [McCloud Remedy Report](#)

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