

Report of the Director, West Yorkshire Pension Fund, to the meeting of West Yorkshire Pension Fund Pension Board to be held on 22 September 2020

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Subject: McCloud – Effects on Local Government Pension Scheme (LGPS)

Summary statement:

In July 2020 the government released a long awaited consultation on applying the remedy to address the age discrimination inherent with the transitional protections that were adopted by the public service scheme in 2014.

Recommendation

The Local Pension Board note the report

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Portfolio

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Overview & Scrutiny Area

1. Background

- 1.1 In April 2014 a series of changes were made to the LGPS to reform the schemes benefits structure. These changes were implemented as part of a wider project across Government to reform public service pensions and put them on a more sustainable, affordable and fairer footing for the longer term.
- 1.2 In the LGPS these changes included:
 - Moving benefit from a final salary to a career average basis, and
 - Linking member's normal pension age with their State Pension age.
- 1.3 Transitional protections for members nearing retirement were implemented to ensure older workers would not be any worse off as a result of the reforms.
- 1.4 In the McCloud and Sargent court cases the Court of Appeal found these transition protections directly discriminated against younger members. As a result, Ministry of Housing, Communities and Local Government (MHCLG) have set out a consultation on amendments to the statutory underpin, to reflect the Courts findings, by extending the underpin to younger members.

2. MHCLG Consultation

- 2.1 MHCLG released a 12 week public consultation on proposals amending the LGPS to remove the unlawful age discrimination that arose from the protections associated with the introduction of the 2014 scheme reforms which were successfully challenged in the McCloud case.
- 2.2 The consultation document can be found at:
<https://www.lgpsregs.org/schemeregs/consultations.php>
- 2.3 The changes present a significant challenge to administering authorities and to employers, not least of which will be a data collection exercise to enable the final salary underpin to be calculated.
- 2.4 Benefits accruing from 1 April 2022 will be career average for all members. The new underpin will require 2008 scheme pay to be recorded for some members for the next 40 years.
- 2.5 The changes required to administrative systems, processes and communications, as well as the recalculation of leavers benefits represents an enormous task covering retirements, deferred leavers, deaths, transfers and trivial commutations.

3. Key Proposals

3.1 A summary of the key proposals set out in the consultation are:

- A new final salary underpin will apply to service between 1 April 2014 and 31 March 2022.
- The changes will affect active members of a public service scheme on 31 March 2012 who went on to have membership in the LGPS on or after 1 April 2014.
- Leavers since 1 April 2014 will fall into scope of the new underpin, meaning their benefits must be checked to see if the underpin applies retrospectively,
- Because early and late retirement adjustments will now be taken into account in the underpin comparison, the underpin check will need to take place on leaving active membership and on subsequent retirement
- Aggregations for qualifying members will be re opened for a twelve month period.

3.2 Underpin period

The underpin period will now be from 1 April 2014 to 31 March 2022 or date of leaving if earlier. CARE accrual will then apply to all members from 1 April 2022 however there will be a final salary link for qualifying members to their date of leaving.

3.3 Retrospective amendment of the LGPS regulations

The proposal is to change the regulations retrospectively from 1 April 2014. This will therefore mean members records/awarded benefits will need to be revisited, including members already protected who have left active membership, or reached their 2008 scheme Normal Pension Age (to allow for different NPA in 2008 and 2014 schemes), unprotected members who have retired, left with deferred benefits, died, transferred out, or trivially commuted their benefits. Transfers in from public sector schemes will also need to be recalculated.

3.4 Two stage underpin check

The proposal will require a two stage underpin check. One at the date of leaving and a further check at the date the benefits are paid. (For retirements and death cases this will be the same date).

3.5 Aggregations

Currently benefits do not need to be aggregated for the underpin, however the proposed new regulations require that a member must meet the underpin criteria in a single LGPS record.

Under normal circumstances a member must make an election to aggregate within 12 months of joining a new employer, therefore a 12 month window will be available for qualifying members to make an election to aggregate. If a member does not aggregate then a member would not qualify for underpin protection

3.6 Annual/Lifetime Allowance

Qualifying members who have crystallised benefits since April 2014 will need their Annual/Lifetime Allowance revisiting.

3.7 Changes in Employer costs

It is not expected that employer contribution rates set at 2019 valuation will be revisited, it may, however, have an effect on employer contributions at the 2022 valuation. In addition, HMT has announced it has 'unpaused' its cost cap review, which also may affect costs in the 2022 valuation.

3.8 Information required from employers

Employers will be required to provide details of any part time service or service breaks where this data is currently missing back to April 2014.

3.9 Members

An article about McCloud and the proposed regulations has been published on WYPF website to ensure members are kept up to date with the proposals.

4. Recommendations

The Local Pension Board note this report