

Report of the Managing Director, West Yorkshire Pension Fund to the meeting of Local Pension Board to be held on 13 December 2022.

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Subject: McCloud

Summary statement:

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

EQUALITY & DIVERSITY:

None

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Portfolio:
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Overview & Scrutiny Area: Corporate

1. SUMMARY

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

2. BACKGROUND

- 2.1 In April 2014 a series of changes were made to the LGPS to reform the scheme's 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.
- 2.2 In the LGPS these changes included:
- Moving benefits from a final salary to a career average basis, and
 - Linking members' normal pension age with their State Pension Age.
- 2.3 Transitional protections for members nearing retirement were implemented to ensure older workers would not be any worse off as a result of the reforms.
- 2.4 In the McCloud and Sargent court cases the Court of Appeal found these transitional protections directly discriminated against younger members. As a result, the Ministry of Housing, Communities and Local Government (MHCLG) consulted on amendments to the statutory underpin, to reflect the Court's findings, by extending the underpin to younger members.

3. MHCLG Consultation

- 3.1 MHCLG (now Department of Levelling up, Housing and Communities- DLUHC) undertook a 12-week public consultation on proposals amending the LGPS regulations 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. This consultation closed on 8 October 2020.
- 3.2 On 13 May 2021 Luke Hall, the Local Government Minister, made a written statement on McCloud and the LGPS. The statement confirms the key changes to scheme regulations that will be made to remove age discrimination from the LGPS.
- 3.3 On 19 July 2021 HM Treasury formally introduced to Parliament the Public Service Pensions and Judicial Offices Bill, which makes provision to rectify the unlawful age discrimination identified by the McCloud judgment.
- 3.4 For the LGPS, Chapter 3 of Part 1 confirms which members will be in scope and what service is 'remediable'. Enabling legislation will allow for scheme regulations to be changed to implement the McCloud remedy.

- 3.5 On 10 March 2022, the Public Service Pensions and Judicial Offices Act 2022 received Royal Assent. The main purpose of the Act is to give the relevant government departments the regulatory powers to resolve the discrimination identified in the McCloud judgment.
- 3.6 The long awaited DLUHC response to the 12-week consultation in 2020 was expected before summer recess in July 2022, however that was not received and is now expected towards the end of the year with draft regulations issued shortly afterwards.
- 3.7 The regulations will come into force by 1 October 2023 at the latest, however we do know that the regulations will be retrospective, and that the remedy period has already ended, meaning that the remedy will cover the period 1 April 2014 to 31 March 2022 (in England and Wales).

4. Underpin

- 4.1 Key Elements of the changes that will be made to the LGPS regulations are:
 - Underpin protection will apply to LGPS members who meet the revised qualifying criteria, principally that they were active in the scheme on 31st March 2012 and subsequently had membership of the career average scheme without a continuous break in service of more than five years.
 - The period of protection will apply from 1st April 2014 to 31st March 2022 but will cease earlier where a member leaves active membership or reaches their final salary scheme normal retirement age (normally 65) before 31st March 2022.
 - Where a member stays in active membership beyond 31st March 2022, the comparison of their benefits will be based on their final salary when they leave the LGPS, or when they reach their final salary scheme normal retirement age, if earlier.
 - Underpin protection will apply to qualifying members who leave active membership of the LGPS with an immediate or deferred entitlement to a pension.
 - A 'two stage process' will apply for assessing the underpin so that, where there is a gap between a member's last day of active membership and the date they take their pension, members can be assured they are getting the higher benefit.
 - Scheme regulations giving effect to the above changes will be retrospective to 1st April 2014.

5. Data Collection

- 5.1 The anticipated changes require the Fund to collect additional data from employers in respect of part time hours and breaks in service for the period 1 April 2014 to 31 March 2022. This additional data will enable the final salary underpin to be calculated. The Fund has undertaken an exercise to notify all employers with members who may be effected by the McCloud underpin calculation of the information we currently hold on our records and employers were asked to let the Fund know of any missing data.
- 5.2 Work has commenced on uploading this data on to the test system and the errors and warnings produced are being reviewed. It is anticipated that all data will have been uploaded onto the pensions administration system before the regulations

come into effect.

6. FINANCIAL & RESOURCE APPRAISAL

None

7. RISK MANAGEMENT AND GOVERNANCE ISSUES

None.

8. LEGAL APPRAISAL

None

9. OTHER IMPLICATIONS

9.1 SUSTAINABILITY IMPLICATIONS

None

9.2 GREENHOUSE GAS EMISSIONS IMPACTS

None.

9.3 COMMUNITY SAFETY IMPLICATIONS

None

9.4 HUMAN RIGHTS ACT

None

9.5 TRADE UNION

None

9.6 WARD IMPLICATIONS

None

**9.7 AREA COMMITTEE ACTION PLAN IMPLICATIONS
(for reports to Area Committees only)**

None.

9.8 IMPLICATIONS FOR CHILDREN AND YOUNG PEOPLE

None

9.9 ISSUES ARISING FROM PRIVACY IMPACT ASSESMENT

None.

10. NOT FOR PUBLICATION DOCUMENTS

None

11. OPTIONS

None

12. RECOMMENDATIONS

- It is recommended that the Local Pension Board note this update.