

Pension Fund Committee

Meeting to be held on Friday, 18 September 2020

Electoral Division affected: (All Divisions);
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McCloud Update

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Executive Summary

This report sets out an update on the on-going issues around the McCloud judgement and current consultation.

Recommendation

The Committee is asked to note the contents of the update and are invited to provide any comments to the Head of Fund for consideration as part of the current consultation.

Background and Advice

The Ministry of Housing, Communities and Local Government published its consultation on draft Regulations introducing amendments to the statutory underpin for the Local Government Pension Scheme (LGPS) in England and Wales on 16 July 2020.

The proposals look to remedy the unlawful discrimination, identified by the court judgement on the McCloud case, which ruled the protection of older members was discriminatory when this was introduced following the reforms of the LGPS in April 2014 when the current Career Average scheme was introduced. Effectively active members within ten years of their 2008 Scheme normal pension age on 31 March 2012 were granted transitional protection by means of a final salary underpin, i.e. a comparison of the benefits that could have been accrued under the previous final salary scheme.

The judgement affected all public sector schemes and the Government stated they would address discrimination for all affected members, not just those who made a claim.

As a consequence the draft regulations set out in the consultation for the LGPS in England and Wales will essentially remove the condition that requires a member to have been within ten years of their 2008 Scheme normal pension age on 1 April 2012 to be eligible for underpin protection.

Those affected are members of the LGPS who were active members of the LGPS on 31 March 2012 and who have since accrued membership in the 2014 LGPS scheme with no disqualifying break in service. The changes will also be retrospective, and so benefits for all qualifying leavers since 1 April 2014 will need to be revisited to determine whether the underpin calculation will produce a higher benefit.

The consultation closes on 8 October 2020.

Impact on Administration

It is clear that implementing the changes will create a significant administration burden as it has been estimated that up to a quarter of the total fund membership (active membership and leavers) will fall into scope of the proposed changes to the underpin resulting from the McCloud ruling. It is expected that the new regulations are likely to be in place from 1 April 2022.

The anticipated administration to carry out and implement the changes will involve:

- Increased process time on current caseload
- Backdated benefit reviews for past leavers in scope
- Member and employer communications
- System software updates

The Ministry of Housing, Communities and Local Government has stated that it doesn't envisage that many members will actually see an increase in benefits as a result of the new underpin. However as it is envisaged that around a third of active members will be in scope, the real issue from a Fund cost perspective is the scale of underpin calculations that will still need to be carried out for a large number of members, both on an ongoing basis and additionally as a retrospective exercise for leavers.

McCloud and update on cost cap process

Legislation requires HM Treasury and the Scheme Advisory Board to undertake periodic valuations to monitor the cost of the LGPS to ensure it remains sustainable and affordable. Earlier calculations for the 2016 process found that the cost "floor" had been breached, which meant that improvements to benefits or changes to member contributions would be required (with effect from 1 April 2019) to bring the cost of the LGPS back to the target level. However, the processes were paused pending the outcome of McCloud.

On 16 July 2020 the government announced that the cost cap process would now be restarted to take account of the changes brought in by McCloud in the cost assessment. As a result once the costs of the McCloud rectification are allowed for this may reduce or eliminate the need for any further cost/benefit changes.

Consultations

N/A

Implications:

This item has the following implications, as indicated:

Risk management

Implementing the changes will create a significant administration burden which will need to be resourced and costed appropriately.

Local Government (Access to Information) Act 1985 List of Background Papers

Paper	Date	Contact
HMT consultation on McCloud and update on cost cap process <u>a consultation on McCloud and an update on the cost cap process</u>	16/07/2020	C Smith, (01772) 534826,

MHCLG consultation on McCloud a consultation on changes to the LGPS

Reason for inclusion in Part II, if appropriate

N/A