

McCloud judgement - government consultation is now closed

On Thursday 16 July MHCLG published a consultation on proposed remedies for the LGPS to remove age discrimination. The period of the consultation ran from 16 July to 8 October 2020. We are now awaiting to see the outcome of the Consultations and the actions Pension Fund's and Employers will need to take to remove the age discrimination from the LGPS.

Reminder - what is the McCloud case?

When the LGPS changed from a final salary to a career average pension scheme in 2014, protections for **older** scheme members were introduced. Similar protections were provided in other public sector pension schemes.

However, the Court of Appeal ruled that **younger** members of the judges' and firefighters' pension schemes have been discriminated against because the protections do not apply to them.

Following this judgement, 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 judgment'.

What are the implications for the LGPS?

The judgement will seek to ensure that members who have been discriminated against are placed in an equivalent position to the protected members. The benefits of unprotected members will be raised rather than the benefits of protected members being reduced. The main elements of the judgement are: -

- Qualifying members would be protected by the application of a revised underpin
- Eligibility is restricted to members who were active in the LGPS on 31 March 2012 and have accrued benefits since 1 April 2014
- The extended underpin period applies between 1 April 2014 and 31 March 2022, but ceases when the member leaves active membership or dies in service
- The final salary for assessing which scheme an eligible member is better off under will be the final salary at the point the member leaves active status or reaches age 65
- The changes will be retrospective and will apply to anyone who has left, retired or died and who didn't meet the old underpin criteria but meets the new one. In some cases, this will mean retrospectively recalculating benefits for pensioners, and paying arrears and interest.
- Members must meet the qualifying criteria in a single membership for underpin protection to apply – so where a member has had a break in service or a period of concurrent employment, they must aggregate the benefits for the underpin to apply.

- Members who have previously chosen not to aggregate scheme employments will be given a further 12 months to reverse that decision where failure to aggregate would mean they would not meet the revised underpin qualification criteria Issued 11 August 2020
- Revised underpin protection will cease in respect of membership after 31st March 2022, however final salary protection will continue after that date in respect of membership before that date.
- Annual Benefit Statements should contain information on the potential impact of the revised underpin.

When would any changes to schemes be effective from?

It is anticipated that any remedy would be backdated to the commencement of the revised LGPS which was introduced on 1 April 2014. The government has confirmed that members who qualify for the protection do not need to make a claim for the changes. If members qualify for the protection it will apply automatically.

Employer actions

As previously advised, we require **all** employers to retain hour changes and salary details for all employees, past and present who were members of the LGPS on the 1 April 2014. This must include the contractual hours per week, the effective date and the pensionable earnings during that period. Employers will also be required to record breaks in service due to authorised unpaid absence.

At this stage we do not require employers to submit the additional information to the Fund. However, in the meantime you should identify where you will be able to obtain the required data going back to 1 April 2014, especially if your organisation has changed payroll providers during this period. If so, you should contact your former payroll provider about obtaining this data if you don't currently hold it.

Next steps

Both employers and the LGPS Funds should not underestimate the considerable work involved to rectify members records and the administration burden this will place on resources.

Key to a successful outcome of this exercise is that the Fund and employers work together closely and in partnership. The first step in this project is to establish key employer contacts for Fund officers to liaise with. This person would ideally be in position of responsibility from within your HR or Internal Payroll Team.

Please note: this is an employer responsibility and whilst you may delegate the collection of data to a third-party payroll provider. The key employer contact who we liaise with must be employed from within your organisation.

We would be grateful if you could nominate a person from within your organisation and provide the following details to pensions.comms@staffordshire.gov.uk

- name
- job title
- phone number and/or works mobile
- email address

Important - data uploading

We are currently working with our software provider to establish a solution to load the missing historic data to the Fund's administration system. We will therefore contact you again setting out details of how the data should be uploaded once these are available.

As mentioned earlier at this stage we do not require employers to submit this additional information to the Fund. However, it is vitally important all employers maintain the employee contractual hours history which will be required by the Fund in the very near future.

Further information

To further assist employers the following link takes you to the scheme advisory board website which contains [all the latest information on the McCloud judgement](#) including [questions and answers](#) outlining the possible outcomes as well as the consultation document.

We look forward to receiving the contact details of the representative from within your organisation. In the meantime, should you have any queries you can [contact us](#).