
This bulletin from the Staffordshire Pension Fund, focuses on current issues that you should be aware of relating to the Local Government Pension Scheme (LGPS)

Issue August 2020

McCloud Judgement Update

In last month's edition we notified Employers of the latest developments in the McCloud case, which included a link to the Government's consultation on the proposed remedies for the LGPS to remove age discrimination. The consultation will last 12 weeks from 16 July 2020 to 8 October 2020.

Fund Officers are assessing the impact the consultation will have on the LGPS in Staffordshire and will issue a response to the consultation by 8 October.

In summary the consultation proposes that:

- The protections will apply to active scheme members on or before 31 March 2012, who continued their active membership into the new LGPS scheme on 1 April 2014.
- The underpin will apply retrospectively to leavers (including retirements, deferred members, deaths, transfers out and trivial commutations) meaning benefits will need to be recalculated for leavers since April 2014.
- Survivors' benefits will take account of the underpin.
- Annual benefit statements must show the forecast impact of the underpin.
- All members will accrue CARE benefits only under the 2014 Scheme from 1 April 2022. Although membership prior to April 2014 and membership up to April 2022, if subject to "McCloud underpin" protection, will continue to be linked to Final Salary up to the member's date of leaving the scheme.



Further information and questions and answers

To further assist Employers, the Scheme Advisory Board has updated their website with all the [latest information on the McCloud judgement](#) including [questions and answers](#) outlining the possible outcomes.

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 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.

Next Steps Fund Officers have established a McCloud Project Team which is currently developing a Project Plan. This will include:

- The provision of a dedicated area on the Fund's website containing data collection guidelines, questions and answers plus links to all the latest information
- The assurance that all member communication contains appropriate wording in relation to McCloud.
- Once the format has been agreed with the Fund's software providers, a McCloud Excel data collection template, which will be issued to all Employers, containing a list of members for whom the Fund will require additional membership information.



Public Sector Exit Payment Cap – Update

On 21 July 2020, Her Majesty's Treasury (HMT) published the Government response to the consultation in restricting exit payments in the public sector

<https://www.gov.uk/government/consultations/restricting-exit-payments-in-the-public-sector>

This was followed by the publication of draft regulations for capping public sector exit payments on 22 July 2020.

<https://www.legislation.gov.uk/ukdsi/2020/9780348210170>

In summary the Government's response to the consultation includes information on:

Who is covered?

The cap will apply to all public sector employers. A schedule listing all public sector bodies covered by the cap has been published alongside the regulations.

What is covered?

The exit payment cap is set at a total of £95,000 with no provision for this amount to be index-linked. Exit payments include redundancy payments (including statutory redundancy payments), severance payments, pension strain costs – which arise when an LGPS pension is paid unreduced before a member's normal pension age – and other payments made because of termination of employment.

The cap applies to all exit payments that arise within a 28-day period and the regulations cover the process to follow if an individual has multiple exits from public sector employment within 28 days.

What isn't covered?

Payments related to death in service or ill health retirement, pay in lieu of holiday, payments made in compliance with an order made by a court or tribunal and payments in lieu of notice that do not exceed a quarter of a person's salary are not exit payments for the purposes of these regulations.

Although statutory redundancy is included as an exit payment it cannot be reduced. If the cap is exceeded, other elements that make up the exit payment must be reduced to achieve an exit payment of £95,000 or less.

Will the cap be indexed?

There is no intention to index the amount of the cap, although the response states that it will be kept under review.



When will the cap come into force?

Regulations provide for the cap to come into force 21 days after they are made. However, the regulations are subject to the affirmative procedure, so will need to be approved by both Houses of Parliament before they can be made. We understand that it is the intention for the cap to be in force by the end of the 2020 calendar year.

Applying the cap in the LGPS*

The major impact of the regulations will be on LGPS members aged 55 or over, who currently qualify for an unreduced pension because of redundancy or efficiency retirement, as well as a severance payment under The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006. We understand that changes to the regulations will prevent the payment of severance in addition to a pension strain cost. Not only will a severance payment no longer be payable but if a pension strain payment cannot be made in full because of the cap, then the member would be faced with having to take a reduced pension.

The proposals do raise serious questions around the inequity of lack of choice due to there being different strain costs amongst LGPS Funds, resulting in different reductions being made for the same length of service and pay (currently strain cost is calculated at a local level based on the demographic make-up of the members in each Fund). It also appears to be the intention to provide a facility for the member to buy out any reduction.

We understand that the Ministry of Housing Communities and Local Government (MHCLG) is looking at options to introduce choice for members, to take a deferred benefit rather than a reduced pension, together with guidance on the calculation of standardised strain costs and the option to purchase the shortfall. Any changes to LGPS regulations would be subject to a further consultation.

Relaxing the cap

There are circumstances, as set out in draft HMT Directions, when the cap must be, or may be, relaxed by a minister, or the Authority. However, most 'discretions' are subject to consent by HM Treasury even if passed by Full Council. Employers are required to record and publish information about any decisions made to relax the cap.

Employee and Employer responsibilities

A person who receives an exit payment must inform any other public body covered by the regulations that employs them about that payment. An Employer must ensure that any exit payment does not exceed the cap (unless permitted by the relaxation directions) and, where a non-compliant payment is made, recover any overpayment subject to a value for money assessment.



Next Steps

We need to understand when the revised legislation and guidance will be issued. We are led to believe that MHCLG may publish proposals for related amendments required to the LGPS regulations within the next few weeks and we will then be able to work through how this might affect the calculation of strain costs and award of early leaver benefits in future.

The Fund will issue further information to Employers as soon as it is available.

**If you require any further information or clarification, please do not hesitate to contact Martin Griffiths, Communication Officer
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