

The Local Government Pension Scheme Advisory Board

McCloud

- **15th November 2019 - McCloud judgment update**

The Scheme Advisory Board's website provides background information on the McCloud judgment as well as a Q&A for administering authorities. This update is provided in addition to that material and sets out our understanding of the latest position.

Next steps for the LGPS

We understand that the LGPS will be treated separately from the rest of the public sector in respect of the McCloud remedy.

It is likely that the remedy will involve the extension of some form of underpin to members in scope who are not currently offered protection. Therefore, a full history of part time hour changes and service break information from 1 April 2014 will be needed in order to recreate final salary service. We recommended that administering authorities make Scheme employers aware of this.

It is also likely that, in order to ensure reverse discrimination does not occur, all leavers since 2014 will need to be checked against a new underpin.

We have had discussions with GAD (in their role as an adviser to the SAB) around the mechanics of how a remedy might work in the LGPS including the range of potential issues (both retrospective and ongoing) which could arise from the application of some form of underpin to a wider membership.

We expect decisions relating to members in scope, the extent of final salary service protection, the requirement for retrospection and the inclusion of ancillary benefits (transfers, survivors etc) to be determined centrally.

We don't expect to see any remedy implemented before the end of financial year 2020/21. Therefore, issues around FRS102 and audit will once again need to be addressed.

Tax implications

We expect pension tax issues be decided centrally. We anticipate that a notional underpin may need to be taken into account in annual allowance

calculations for active members going forward and that revisions to previous years' calculations for all members may be necessary.

Cost cap

We understand that cost cap calculations will be re-run once the McCloud remedy has been agreed ie McCloud costs will be fed into the cost cap calculations.

Administration issues

We do not underestimate the challenges and concerns around administration and scheme complexity. However, decisions on the scope, extent and nature of the remedy will be largely driven by the views of government lawyers. They will seek to ensure that any agreed remedy removes, as far as possible, the risk of challenge.

Other public service pension schemes

We understand that there will be one high level policy consultation for the other public service pension schemes (apart from the Judges' pension scheme).

Following the McCloud judgment the judges and firefighter cases were referred back to Employment Tribunals for remedy. The police case (Aaron and others), which was previously stayed pending the outcome of the McCloud judgment, was also referred for remedy.

Case management hearings have now taken place in respect of the judges and police cases; the case management hearing for the firefighter case is due to take place on 18 December 2019.

Both tribunals issued interim declarations providing that claimants who were active members on 31 March 2012 are entitled to be treated as having met the conditions for full transitional protection i.e. as if they had remained in their final salary scheme after 1 April 2015. Government have confirmed that non litigants in both the judges and police schemes will be treated in the same way, as will members of all other public service pension schemes. There are however many issues and questions to be dealt with before any final decision on a remedy can be arrived at.

Extract from LGPS Scheme Advisory Board website:

<https://www.lgpsboard.org/index.php/structure-reform/mccloud-page>

(extracted 10.01.2020)