

## London Borough of Hammersmith & Fulham

**Report to:** Pensions Sub Committee

**Date:** 29/09/2020

**Subject:** Local Government Pension Scheme McCloud Consultation – Amendments to the Statutory Underpin

**Report of:** Phil Triggs, Director of Treasury and Pensions

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### Summary

- 1.1 The Ministry of Housing, Communities and Local Government (MHCLG) has issued a consultation on proposals to remove age discrimination from the Local Government Pension Scheme (LGPS). This was caused by the transitional protections introduced at the time of LGPS Scheme reform on 1 April 2014, which are now considered unlawful.
- 1.2 The proposals extend the protection to cover further members and amend how the protection works, requiring the benefits of those previously covered to be reviewed. Applying the remedy will be a significant exercise.
- 1.3 It will require additional administration resources, result in additional cost and increase the Fund's liabilities. The consultation closes on 8 October 2020. It is currently anticipated that revised Regulations will not be in place before 2022/2023.
- 1.4 The consultation now issued and attached as Appendix 1 sets out the proposals for addressing the issue in the LGPS.

### Recommendations

1. The Sub-Committee is requested to note the report and the anticipation that further staff resources will be required in due course, with progress updates brought to future meetings.
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## LBHF Priorities

Please state how the outcome will contribute to our priorities

Our Priorities	Summary of how this report aligns to the LBHF priorities
<ul style="list-style-type: none"><li>• Being ruthlessly financially efficient</li></ul>	Ensuring good governance for the Pension Fund should ultimately lead to better financial performance in the long run for the Council and taxpayer.

## Legal Implications

*None*

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## Contact Officer(s):

Name: Phil Triggs  
Position: Director of Treasury and Pensions  
Telephone: 020 7641 4136  
Email: [p.triggs@westminster.gov.uk](mailto:p.triggs@westminster.gov.uk)

Verified by Phil Triggs

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## Background Papers Used in Preparing This Report

*None*

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## **DETAILED ANALYSIS**

### **1. Background**

- 1.1. At the time of the Lord Hutton report and public service pension scheme reform in 2014 (LGPS) and 2015 (the remaining public service schemes), transitional protections were introduced to protect those deemed to be within ten years of retirement on 1 April 2012.
- 1.2. Following tribunal cases brought by McCloud (Judges' Scheme) and Sargeant (Firefighters' Scheme) and subsequent court appeals, the Court of Appeal ruled that the protections within those schemes were found to be unlawful on grounds of age discrimination.
- 1.3. The government chose not to seek leave to appeal to the Supreme Court and, instead, undertook to address the issue across all public service schemes. This has been a long and complicated exercise.
- 1.4. Unlike the other schemes, the LGPS had retained its active members in one scheme, providing a final salary link for service to 31 March 2014 and a career average revalued earnings (CARE) scheme for membership from 1 April 2014. Active members who were in service on 31 March 2012 and within ten years of retirement on 1 April 2012 were protected by a statutory underpin.
- 1.5. Assuming a retiring officer continues to meet basic criteria, this ensured that the officer, with the right to immediate payment of benefits, would receive the better of the CARE scheme benefits or the benefits they would have received had the final salary scheme continued beyond 1 April 2014. This is calculated by the pensions administration system.
- 1.6. The consultation now issued and attached as Appendix 1 sets out the proposals for addressing the age discrimination issue in the LGPS scheme.

### **2. Consultation Proposals**

- 2.1. The proposed solution extends the statutory underpin to cover all members active on 1 April 2012, irrespective of years remaining to retirement, who accrue benefits in the 2014 Scheme and who do not have a disqualifying break in service.
- 2.2. It also amends the operation of the underpin to ensure that it works consistently and effectively for all members, extending its reach to include active members who left or leave without immediate entitlement to benefits and taking account of adjustments to benefits at retirement such as early retirement reductions.
- 2.3. As a result, an exercise to review the benefit calculations of all qualifying active members who have left since 1 April 2014, including those who were covered by the current underpin, will be required.

- 2.4. The proposed revised underpin will require up to two calculations, the first upon the earlier of leaving active membership or reaching the 2008 Scheme normal pension age, and the second upon crystallisation of the benefits into payment. Benefits will only be increased to meet the underpin, if necessary, upon payment.
- 2.5. Detailed proposals are provided for other events such as transfers and the payment of survivor benefits.
- 2.6. In order to clarify the position of members who did not aggregate previous deferred membership with their current membership, a 12-month aggregation window is proposed. Following this, only aggregated service will be covered by the underpin. This will require a dedicated one-off exercise.
- 2.7. It is proposed that protection should apply to membership to April 2022, but that members' final salary at the first underpin date be used within the underpin calculation. This will mean that the protection continues to be a feature of calculations for decades to come.
- 2.8. It is expected that more members will benefit from the proposals than under the current arrangements. Protection will be automatic and members do not need to apply. Members who joined the scheme after 31 March 2012 are not covered by the proposals.
- 2.9. At the same time, the Government also announced the unpausing of the 2016 cost cap process and that the review of the operation of the cost cap will complete prior to the 2020 cost cap process. This will enable the cost of the proposed remedy to be taken into account within the 2016 cost cap process.
- 2.10. The cost cap process is carried out by the Government Actuary Department (GAD) to measure the cost of the LGPS scheme and ensure it remains within the boundary of the original cost envelope.
- 2.11. If the cost is deemed to be out of those bounds, changes need to be made to the scheme benefits or contributions to bring the cost back into line with the cost envelope. It is separate from this consultation but may be impacted by it.

### **3. Key issues**

- 3.1. Applying the remedy in practice will not be straightforward. It will add further complications to the administration of the Scheme and will require additional specialist resources. This cannot be fully quantified until the administration system providers can confirm how much of the processes can be automated.
- 3.2. They, in turn, are involved in discussions with their clients and with the Local Government Association (LGA) who are providing central preparation support for the LGPS in England and Wales.

- 3.3. The availability of specialist resources is limited. Planning will take place to establish how the required work can best be delivered alongside day to day work, and suitable resources secured. Initial discussions have taken place with Barnett Waddingham, the Fund's Actuary, regarding potential support available.
- 3.4. Exercises are or are expected to be required to:
- Communicate with members to inform them of the proposal and in due course the outcomes, to manage expectations of when their record will be reviewed and to include underpin information on annual benefit statements as proposed in the consultation.
  - Communicate with participating employers to acquire final salary and service break details since 1 April 2014, and update member records. This detail is no longer required by the current CARE Scheme but is required to operate the final salary underpin calculation. It is anticipated that issues will arise in obtaining data from historic payrolls and central guidance is awaited as to how such cases should be treated.
  - Inform members of the 12-month aggregation window and process the resulting transfers.
  - Review all leaver records for members who ceased active membership since 1 April 2014, applying the new underpin tests and retrospectively amending benefits and paying arrears where the underpin benefits apply.
  - Update processes and train staff to carry out the underpin tests for future leavers.
  - Calculate and prepare communications on member pensions tax issues.
- 3.5. Fund liabilities are anticipated to increase, with provision for remedy being made at the 2019 Fund valuation. At Fund level, it is anticipated that the effect of the proposals will not make a further material difference. However, the effect at individual employer level will depend on membership profiles and may vary. This will be further explored with the Fund Actuary as the proposals develop.

## **4. Regulations**

- 4.1. The consultation includes the draft LGPS Regulations to give effect to the proposals. However, Her Majesty's Treasury may require final regulations to wait for the unfunded pension schemes solution to be finalised. They may, therefore, not be effective until 2022/2023. In the intervening period, records can be updated and preparations made.

## **5. Equality Implications**

- 5.1. The consultation proposals are designed to address discrimination in the LGPS. The document notes that MHCLG has analysed the proposals to fulfil the requirements of the Public Sector Equality Duty (PSED) as set out in Section 149 of the Equality Act 2010. In doing so, an equalities impact report prepared by the Government's Actuary Department, has been considered.
- 5.2. The consultation seeks views from stakeholders and notes that the matter will be kept under review. A further equalities impact assessment will be undertaken following the consultation.

## **6. Risk Management Implications**

- 6.1. None

## **7. Other Implications**

- 7.1. None

### **List of Appendices:**

**Appendix 1: MHCLG Consultation: LGPS (England & Wales) – Amendments to the statutory underpin**