

CLWYD PENSION FUND COMMITTEE

Date of Meeting	Wednesday, 7 October 2020
Report Subject	McCloud Update and Consultation Response
Report Author	Pensions Administration Manager

EXECUTIVE SUMMARY

MHCLG are currently consulting on changes to the LGPS due to a recent court case which found an element of age discrimination when the new LGPS career average pension scheme was introduced from 1 April 2014. The changes to resolve this age discrimination are often referred to as the McCloud remedy or reform and the MHCLG consultation is often referred to as the McCloud consultation.

A programme of works has commenced in Clwyd Pension Fund to implement the McCloud remedy. This is a significant amount of work expected to continue for at least two years into 2022. An update on the progress will be provided for each Committee meeting and the first of these updates is included with this report. The Committee is asked to consider the update and are invited to ask questions on the progress and plans.

It is proposed that a response will be submitted from Clwyd Pension Fund to MHCLG's consultation on the changes to the LGPS to introduce the McCloud remedy. The deadline for consultation responses is 8 October 2020. The draft consultation response is included with this report for the Committee's consideration and approval.

RECOMMENDATIONS

1	That the Committee consider the update and provide any comments.
2	That the Committee approve the proposed Clwyd Pension Fund response to the McCloud consultation.

REPORT DETAILS

1.00	Explaining the McCloud remedy and plans for delivery
1.01	<p><i>Background</i></p> <p>When the LGPS changed from a final salary to a career average pension scheme (known as the CARE scheme) in 2014, protections for older scheme members were introduced. Similar protections were provided in other public sector pension schemes. 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. 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' after one of the court cases (McCloud and Sargeant).</p>
1.02	<p>The Government will be making changes to remove the discrimination from the LGPS which will apply protection to a wider group of scheme members. A consultation was issued by MHCLG in July outlining the proposed changes including draft regulations. If scheme members qualify for this new protection it is proposed that it will automatically be applied and they do not need to claim.</p>
1.03	<p>The proposed protection takes the form of an 'underpin'; instead of having benefits based simply on CARE from 1 April 2014, affected members will have their benefits calculated as the higher of CARE and Final Salary until the cut-off date, 31 March 2022. The effect will be implemented retrospectively, meaning that benefits dating back to April 2014 will need to be recalculated for leavers. Older members (i.e. who were already given protection) may also be affected as changes are proposed to apply to the existing underpin protection that was originally introduced in the LGPS in April 2014.</p>
1.04	<p>From an administrative perspective the impact of the court case is expected to result in:</p> <ul style="list-style-type: none"> • a change to how benefits are calculated going forward and • the need to recalculate benefits for a large proportion of members who have left the scheme since 2014 (even though the new underpin is not actually expected to increase the benefits for the majority of those members). <p>Whilst the impact on members is not expected to be material, this is likely to significantly impact administration processes and systems as well as requiring a robust communication exercise with employers and scheme members. Initial analysis carried out in April 2020 indicates that approximately 12,000 members may fall in-scope of the CPF McCloud programme. The additional resource and administration budget requirements to implement the remedy are expected to be substantial.</p>
1.05	<p>Due to the significance of this work, CPF have established a formal programme to ensure it is delivered in line with the agreed success criteria. The structure of the programme to implement the McCloud remedy is laid out in a Roles and Responsibilities document and separately, the key principles of how the programme will be delivered (including the success</p>

	<p>criteria) are included in a Principles document. Both of these documents were approved under delegated powers and have previously been circulated to the Committee. Training on the McCloud remedy and the impact on the CPF was provided to Committee and Board members on 5 August 2020.</p>
1.06	<p><i>McCloud Programme Progress Update</i></p> <p>Throughout the programme, which is expected to last at least two years into 2022, the Committee and Board will be provided with updates on the progress being made. The first of these updates is included as Appendix 1. This shows that the programme has now moved beyond the initial set-up phase and good progress is being made in communicating with employers and scheme members. The Committee are asked to note the information in the update, ask any questions relating to it and provide comments including those on the format of the update.</p>
1.07	<p><i>MHCLG McCloud Reform Consultation</i></p> <p>MHCLG issued their consultation and draft regulations seeking views on the proposed changes to the LGPS statutory underpin protection to remove the unlawful discrimination found in the McCloud and Sargeant court cases. The consultation period ran from 16 July and closes on 8 October 2020. The consultation document is enclosed as Appendix 2. The following link provides additional information in relation to 'Equality analysis and impact' that the McCloud ruling could have on the LGPS and its members:</p> <p>https://www.gov.uk/government/consultations/local-government-pension-scheme-amendments-to-the-statutory-underpin</p>
1.08	<p>The draft consultation response for Clwyd Pension Fund is attached as Appendix 3 for consideration and approval by the Committee. The initial draft was developed by pensions officers, discussed with advisors, and agreed by the Programme Management Group. Further comments from the McCloud Steering Group were then discussed and incorporated. The Steering Group consists of:</p> <ul style="list-style-type: none"> • The Scheme Member Representative from the Pension Fund Committee • Clwyd Pension Board members, including the Chair • The Head of Clwyd Pension Fund • The Pensions Administration Manager.
1.09	<p>After incorporating changes from the Steering Group, the updated draft was circulated to Pension Fund Committee members on 14 September and comments were invited. This was done to assist in finalising the consultation given the deadline for submission is 8 October. No further comments were received and therefore the proposed consultation response at Appendix 3 is unchanged from that circulated to members on 14 September. Members are asked to consider, provide any final feedback and approve the consultation response.</p>

2.00	RESOURCE IMPLICATIONS
2.01	The resource implications on delivering McCloud reform are substantial, both in relation to the additional staffing required and the cost of consultancy support. A budget was previously approved under urgency delegations and the resourcing and budget will be kept under review throughout the programme.

3.00	CONSULTATIONS REQUIRED / CARRIED OUT
3.01	The draft consultation response was considered by the McCloud Steering Group as outlined in paragraph 1.09 before being shared with Committee members to provide them with advanced sight of the proposed response.

4.00	RISK MANAGEMENT
4.01	<p>The Fund's risk register has a number of risks that are currently higher than target due to the McCloud programme including:</p> <ul style="list-style-type: none"> • the impact of externally led influence and scheme change which could restrict our ability to meet our objectives and/or legal responsibilities • insufficient staff numbers meaning services are not delivered to meet legal and policy objectives • unexpected or big work increases due to external factors which could mean we are unable to meet legal and performance administration expectations • administration systems not being kept up to date/the need for inefficient processes which results in high administration costs or errors.
4.02	Furthermore the McCloud programme has a dedicated detailed risk log and the risks that are currently furthest from target are included in the update in Appendix 1.

5.00	APPENDICES
5.01	<p>Appendix 1 – McCloud programme update Appendix 2 – MHCLG consultation document Appendix 3 – Draft Clwyd Pension Fund McCloud consultation response.</p>

6.00	LIST OF ACCESSIBLE BACKGROUND DOCUMENTS
6.01	<p>No relevant background documents other than those referred to in the report.</p> <p>Contact Officer: Karen Williams, Pensions Administration Manager Telephone: 01352 702963 E-mail: karen.williams@flintshire.gov.uk</p>

7.00	GLOSSARY OF TERMS
7.01	<p>(a) CPF – Clwyd Pension Fund – The Pension Fund managed by Flintshire County Council for local authority employees in the region and employees of other employers with links to local government in the region.</p> <p>(b) Administering authority or scheme manager – Flintshire County Council is the administering authority and scheme manager for the Clwyd Pension Fund, which means it is responsible for the management and stewardship of the Fund.</p> <p>(c) Committee or PFC – Clwyd Pension Fund Committee - the Flintshire County Council committee responsible for the majority of decisions relating to the management of the Clwyd Pension Fund.</p> <p>(d) Board, LPB or PB – Local Pension Board or Pension Board – each LGPS Fund has an LPB. Their purpose is to assist the administering authority in ensuring compliance with the scheme regulations, TPR requirements and efficient and effective governance and administration of the Fund.</p> <p>(e) LGPS – Local Government Pension Scheme – the national scheme, which Clwyd Pension Fund is part of.</p> <p>(f) SAB – The national Scheme Advisory Board – the national body responsible for providing direction and advice to LGPS administering authorities and to MHCLG.</p> <p>(g) MHCLG – Ministry of Housing, Communities and Local Government – the government department responsible for the LGPS legislation.</p> <p>(h) JGC – Joint Governance Committee – the joint committee established for the Wales Pension Partnership asset pooling arrangement.</p>