## Scheme Changes

The Pension Committee's Business Plan includes an item on responding to Scheme changes. When the Committee met on 22 July, the Director of Finance and Support Services Resource Services and the Fund Actuary drew attention to some recent developments. Further information has been provided below:

### McCloud

In June 2019, the Supreme Court rejected the Government's appeal against a ruling which found that the transitional protection introduced to the firefighters' and judges' pension schemes in 2015 amounted to age discrimination for younger workers.

MHCLG have now set out proposals to remove the unlawful age discrimination identified in the McCloud judgment from the Local Government Pension Scheme. Similar proposals have been set out by HM Treasury for unfunded public service pension schemes (NHS in England and Wales, NHS Scotland, Teachers in England and Wales, Teachers in Scotland, Fire in England, Fire in Wales, Fire in Scotland, Police in England and Wales, Police in Scotland, Civil Service in Great Britain, UK Armed Forces, and the Civil Service (Others)).

The remedy extends the 'transitional protections' underpin that was promised to active members in 2012 who were within 10 years of normal retirement age to all other active members, regardless of age. This underpin gives a member the better of Career Average Revalued Earnings (CARE) or final salary benefits for the eligible period of service.

- Eligibility is restricted to members who were active in the LGPS on 31 March 2012 and who went on to have membership of the CARE scheme (from 1 April 2014), without a break in service of 5 years.
- The 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 comparison purposes applies at the point that the member leaves active status or reaches age 65 therefore preserving the final salary link beyond 2022 as long as they are accruing benefits.

The changes will be retrospective and will apply to anyone who has left, retired or died and who did not 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.

The changes present a significant challenge to administering authorities and to employers, not least of which will be a major data collection exercise to enable the final salary underpin to be calculated. Whilst benefits accruing from 1 April 2022 will be career average for all members, the new underpin will require 2008 scheme pay to be recorded for some members for the next 40 years. As well as changes to ongoing administrative systems, processes and communications, the recalculation of leavers' benefits represents an enormous task, covering retirements, deferred leavers, deaths, transfers and trivial commutations.

In respect of contribution rates, the Scheme Advisory Board asked Funds and actuaries to allow for McCloud costs at the 2019 valuation in England and Wales when setting funding strategies. Within the West Sussex Scheme the Fund Actuary based contribution rates on slightly more prudent measures – rather than adding on an explicit 'McCloud margin' to the contributions themselves. At whole fund level, the Fund Actuary does not expect the McCloud remedy to have a significant impact on liabilities or contributions rates - based on typical LGPS funding assumptions, they estimated that total liabilities might increase by around 0.2% (or by 0.6% of active liabilities), equivalent to around £0.5bn across the whole of the English & Welsh LGPS which will have a small impact on contributions.

This estimate is significantly less than the £2.5bn quoted in the LGPS consultation. This will be due to a combination of factors, with the pay growth assumption being a crucial one (the Government estimate uses CPI +2.2% pa which is significantly higher than that used by a typical LGPS fund (which might only be around CPI + 0.7% pa)). The sensitivity to pay growth assumptions is also reflected in the impact across employers ie. employers with younger members will be impacted more as their membership has a longer period of salary increases compared to older members (especially once promotional increases are considered, which tend to be higher at younger ages).

The Consultation closes on 8 October 2020**.**

Further Information

- Consultation - https://www.gov.uk/government/consultations/local-government-pension-scheme-amendments-to-the-statutory-underpin

**Cost Control Mechanism**

The HMT Cost Control Mechanism is the process introduced across public sector Schemes where the benefit structure (including member contributions) is revisited from time to time to ensure that the cost of benefits remains within a 'cost cap envelope'.

Alongside the consultation, the Government has confirmed that:

- the pause of the cost control mechanism will be lifted and the cost control element of the 2016* valuations process will be completed
- the costs of addressing the discrimination identified in the McCloud judgment will be fully reflected in this process

The inclusion of McCloud in the cost envelope will reduce, or possibly even wipe out completely, the proposed package of benefit improvements that had been due to take effect from 1 April 2019 in the LGPS in England and Wales.

The Scheme Advisory Board (England and Wales) will also reconsider its position on the SAB employer cost cap process (which feeds into the HMT Cost Control Mechanism).

**Restricting Exit Payments**

The government published a consultation on 10 April 2019 seeking views on regulations implementing a £95,000 cap on exit payments in the public sector. The consultation closed on 3 July 2019.

The government has now published its response to the April 2019 consultation on restricting exit payments in the public sector introducing a £95,000 cap on public sector exit payments.[1] Importantly early retirement strain costs are included within the £95,000 cap.

MHCLG will be consulting on changes to LGPS regulations 'shortly' but HMT are aiming for Regulations to be in force by end of this calendar year.[2]

Further Information

- Scheme Advisory Board - https://lgpsboard.org/index.php/structure-reform/public-sector-exit-payments

**Goodwin**

The Employment Tribunal has determined that providing for a survivor's pension which is less favourable for a widower or surviving male civil partner than would be the case for a widow or surviving female civil partner is discriminatory.

Although the determination relates to the Teachers Scheme, it is expected that it could also impact the LGPS and potentially other public sector Schemes (although this is to be confirmed). Similar to McCloud, the expected remedy will have a short term impact on administration to identify, correct the pensions of and compensate survivors.

[1] https://www.gov.uk/government/consultations/restricting-exit-payments-in-the-public-sector
[2] https://www.legislation.gov.uk/ukdsi/2020/9780348210170