



PENSIONS COMMITTEE

01 October 2020

Subject Heading:

**LOCAL GOVERNMENT PENSION
SCHEME CONSULTATION -
Amendments to Statutory Underpin
Jane West**

SLT Lead:

Report Author and contact details:

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Policy context:

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Local Government Scheme Benefits**

Financial summary:

**No direct cost implications for
responding to the consultation**

The subject matter of this report deals with the following Council Objectives

Communities making Havering	[X]
Places making Havering	[X]
Opportunities making Havering	[X]
Connections making Havering	[X]

SUMMARY

This report is to advise the Committee of the Ministry for Housing, Communities & Local Government (MHCLG) publication of the Local Government Pension Scheme (LGPS) – Amendment to Statutory Underpin Consultation issued in July 2020.

RECOMMENDATIONS

That the Committee:

1. Note the detail of the attached consultation as **Appendix A** and the response date being the **8 October 2020**.
2. Discuss/provide feedback for inclusion into the consultation responses, if required.
3. Agree to support the response submitted by the Funds Actuary at **Appendix B** and adopt the content for the Havering Pension Fund response.
4. If required, Members delegate the approval of response to the consultation to the S151 Officer and /or the Pensions Committee Chair.

REPORT DETAIL

1. Background

- 1.1. MHCLG is consulting on changes to the regulations governing LGPS.
- 1.2. This consultation outlines details of proposed changes to the benefits of the LGPS and is particularly aimed at LGPS administering authorities, scheme members, scheme employers and their representatives.
- 1.3. It is proposed to remove the condition that required a member to have been within ten years of their normal pension age on 1st April 2012 to be eligible for underpin protection. In removing the discrimination, they are proposing a number of supplementary changes to ensure the revised underpin works effectively and consistently for all members. This follows a successful legal challenge to transitional protection arrangements in the firefighters' and judicial pension schemes (otherwise referred to as McCloud and Sargeant).
- 1.4. MHCLG are inviting views on the consultation attached as **Appendix A**.
- 1.5. This consultation will last for 12 weeks from 16/07/2020 to 08/10/2020
- 1.6. The Scheme Advisory Board (SAB) has summarised the proposals as follows:

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- a) Qualifying members would be protected by the application of a revised underpin
- b) Qualifying members will be all who were active in 2008 scheme on 31st March 2012 and accrued benefits in the 2014 scheme without a disqualifying break
- c) Qualifying members who have already left the scheme will have the revised underpin applied retrospectively
- d) Unlike the current underpin qualifying members do not have to have an entitlement to an immediate benefit when they leave the scheme
- e) Members must meet the qualifying criteria in a single membership for underpin protection to apply – so where a member has had a break in service or a period of concurrent employment, they must aggregate the benefits for the underpin to apply
- f) Members who have previously chosen not to aggregate scheme employments will be given a further 12 months to reverse that decision where failure to aggregate would mean they would not meet the revised underpin qualification criteria in either or both unaggregated periods
- g) The revised underpin will take account of early/late retirement adjustments
- h) The revised underpin will apply to death in service and survivor benefits
- i) The revised underpin will be a two-stage process with an initial check done at the ‘underpin date’ which is the earlier of leaving the scheme, reaching Normal Pension Age or death
- j) A second check will be applied at the ‘underpin crystallisation date’ when the member takes their benefits which will take into account early/late retirement adjustments. At this point the revised underpin will, should it apply, increase the benefits payable to the member
- k) Revised underpin protection will cease in respect of membership after 31st March 2022, however final salary protection will continue after that date in respect of membership before that date
- l) Annual Benefit Statements should contain information on the potential impact of the revised underpin but only in respect of membership or benefits accrued to the earliest of the date of leaving, the end of the scheme year or 2008 (Normal Pension Age (NPA)).
- m) If the second underpin check results in an increase to the member’s benefits, this will be included for annual allowance purposes in the year of the ‘underpin crystallisation date’. Any underpin protection is not included in earlier years
- n) Any addition made as a result of the underpin checks will be included for Lifetime allowance purposes when the member takes their benefits.

1.7. Consultation Response - Due to the technical nature of the questions and the knowledge required to understand the impact of any responses, officers are proposing to endorse the consultation response submitted by the Fund’s Actuary (Hymans) to MHCLG. The questions and responses can be seen in **Appendix B**.

IMPLICATIONS AND RISKS

Financial implications and risks:

It is expected that the McCloud remedy will not have a significant cost impact for the Havering Fund. The SAB asked funds and actuaries to allow for McCloud costs at the 2019 valuation in England and Wales when setting funding strategies. Officers have discussed the impact of the regulation changes with the Fund's actuary and it will not be necessary to revisit the employer contribution rates until the next valuation in 2022.

Early analysis provided by the Fund's Administrators - Local Pensions Partnerships (LPP) which can be seen in the table below shows that 2,881 of members are likely to be in scope (15% based on reported membership at 31 March 2020):

Status	Number in scope	Approx. % expected to benefit	How to handle
Active	2277	30%	Expect software to carry out comparison at leaving
Deferred	418	5%	Expect software to carry out comparison at retirement
Pensioner	186	5%	Expect software to identify cases that require revision
Total	2881		

The current active and deferred members are of no immediate concern as the comparison of benefits will be carried out when they retire. The members already in receipt of pension will need to be reviewed once the final regulations have been published but LPP have advised that, based on their best estimate and current understanding of the recommended changes, only approximately 5% of the 186 pensioners that are in scope will actually require a revision under the new underpin protections. That is approximately 10 revisions to be manually calculated and arrears paid.

The administration of the McCloud changes will be aided by the fact that Havering have always maintained an accurate record of employees working hours for all Fund members, which are used in the calculation of final salary benefits. We are in a reasonable position to be able to implement the changes, without the need to review and update member records back to 2014, once the final Regulations are in place.

Whilst the cost remedy of the McCloud adjustments on the Havering Fund is not significant there will be a need for the Funds Administrator (LPP) to undertake implementation of the underpin which will result in high administrative workloads and increased costs and will require significant, upfront input and incur cost as a

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result of systems development, testing and implementation, as well as increased resources with appropriate skills and knowledge. It is anticipated that the Havering Fund may be required to contribute to these costs although these are not known at the time of writing this report.

There will be an impact on the pension accounting disclosures as an allowance has already been made for McCloud in most employers' disclosure reports (FRS102 or IAS19). This allowance, based on analysis by the Government Actuary's Department (GAD), assumed that everyone active in the scheme was eligible for the protections. However, the proposed McCloud remedy now limits eligibility to only members who were active at 31 March 2012. This will reduce the size of the allowance, and reduce the balance sheet liabilities, for a typical employer by more than half of the previously reported McCloud allowance.

Auditors may require this reduction to be reflected in the reports that have been prepared for the March 2020 accounting year end. This will result in additional work and extended timescales for employers to revise their accounts (and incur additional costs for the preparation of revised reports). This will mainly be a cost to the employers and not the Pension Fund

Legal implications and risks:

The proposals for changes to LGPS Regulations are subject to consultation. The MHCLG should take into consideration all consultees comments before finalising any changes and therefore if Members wish to make comments they should indicate what these are so that they can be submitted within the required deadlines.

Human Resources implications and risks:

The suggested change in regulations following the McCloud ruling means that for anyone that was an active scheme member of the scheme on 31st March 2012 and were still in the scheme on 1st April 2014 should receive a pension for the period 1st April 2014 to 31st March 2022 based on either the 2014 CARE scheme benefits or their Final Salary Scheme benefits, if this is better.

The changes will be retrospective and will apply to anyone who has left, retired or died and who didn't 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.

Equalities implications and risks:

The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have due regard to:

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- i. the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- ii. the need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- iii. foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are: age, sex, race, disability, sexual orientation, marriage and civil partnerships, religion or belief, pregnancy and maternity and gender reassignment/identity.

The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants

An EIA is not considered necessary regarding this matter as the protected groups are not directly or indirectly affected.

BACKGROUND PAPERS

None