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30th June 2023

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By e-mail

Dear Sir or Madam,

‘McCloud’ remedy in the LGPS – supplementary issues and scheme regulations

Surrey County Council (Surrey) welcomes the opportunity to respond to this consultation on the supplementary issues and draft regulations in relation to the ‘McCloud’ remedy in the LGPS.

Surrey is the Administering Authority for the Surrey Pension Fund (the Fund) as part of the Local Government Pension Scheme (LGPS). The Fund has assets of £5 billion and has over 300 employers.

Question 1 – Do you agree with the rules about aggregation and underpin protection that we are proposing?

Yes, as this would seem a fair approach given the two groups of members identified from the 2020 consultation, that would not have been eligible to aggregate if an aggregation window was opened. Although this will be administratively complex, the previous proposal of opening an aggregation window would have been more labour intensive, likely to have been more complex, as well as queries arising from members.

Question 2 – Do you agree with our proposed approach regarding Club transfers?

Yes, as this appears to be in line with the proposal on aggregation as well as that taken by other public service pension schemes, although this is not something the LGPS has applied previously, as have the other public service pension schemes.

Whilst we agree with the proposal, this will be more administratively complex than the revised proposal on aggregation, as at least for LGPS service we have a starting point with the NI Database. Information from the member would be required, changes to the software systems would need to be made to ensure the information can be held, as well as ensuring this interacts for the underpin to apply.

Once the regulations are finalised we could start reaching out to members informing them this information is needed and why, but as just mentioned, if the system has not been updated to reflect this, it would need to be manually held, which then raises a further issue of, when the regulations come into force on 1 October 2023, we know that software systems won't be updated in time for this, do administrators manually intervene should a member leave who is eligible, and then duplicate work once the system has been updated to reflect this, or revisit the case at a later date. In addition to this there will be the requirement of writing to the former public service pension scheme to check the dates supplied by the member are correct, given that all public service pension schemes are affected by McCloud this is going to be hugely administrative for all concerned and delays may cause complaints.

Question 3 – Do you agree with our proposal to extend underpin protection to the period after flexible retirement, if it is in the underpin period?

Yes.

Question 4 – Do you agree with our proposal for multiple final underpin dates if a member takes 'partial' flexible retirement?

Yes, although very complex, guidance or examples would be a good idea.

Question 5 – Do you agree with our proposed method for calculating a CEV for a member with underpin protection?

Yes.

Question 6 – Do you agree with our proposal to remove pension debits from the calculation of the provisional assumed benefits and underpin amount?

Yes.

Question 7 – Do you have any comments on the approach being adopted for these members?

This is a hugely complex area as already mentioned in the consultation. It would appear that members will be given a 12-month window to elect to transfer the service back to the TPS once TPS have provided the member with a remedial service statement in relation to their full-time role. The co-ordination and work involved to enable this is enormous. This is a subject that Government are struggling to resolve, let alone administrating or a member understanding, enabling them to make an informed choice.

Regulations for the 'McCloud' remedy must be in force on 1 October 2023, yet this is still a grey area over which many decisions need to be made.

Whilst we understand excess service cannot be rolled back into the TPS legacy scheme, it would appear conflicting that for this excess service members are required to make a decision within 12 months of receiving the remedial service statement as opposed to the deferred choice, as per their full-time employment.

Statutory guidance to administer this, we believe, will be a necessity.

Question 8 – Are there any areas where specific scheme regulations regarding excess teacher service would be necessary or beneficial?

Teachers excess service is still yet to be covered under The Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) Regulations.

Question 9 – Do you have any comments on the government’s approach to compensation?

The proposal is for this to be for each administering authority to decide to award, where the qualifying criteria is met. As mentioned in the consultation document, this could lead to inconsistencies, not only from authorities but possibly advice from actuaries. Actuaries also charge for provision of information and so this may also affect the view/decision of the administering authority to seek advice. This could lead to complaints/IDRP. We therefore feel that statutory guidance is imperative.

Question 10 – Do you have any comments on the government’s approach to interest?

Within the consultation document, under paragraph 70 is a table setting out interest applicable. It is not clear if this relates to regulation 11 of Part 3, if so this appears to conflict for ‘Retrospective addition to a lump sum (including pension commencement lump sum, death grant and trivial commutation payment)’ and ‘Retrospective addition to a transfer out of the scheme’ as the table indicates the period applicable for interest is ‘from the date the original payment was made to the date of payment of the addition’. However, regulation 11 (5)(b) of Part 3 states the relevant date is ‘the day that falls half-way through the period beginning with the day on which the original payment was made and ending with the date on which payment is made’.

Question 11 – Do you agree with the approach we have proposed for injury allowance payments?

Yes.

Question 12 - Do you have any comments on our equality impact assessment?

No.

Question 13 – Are you aware of additional data sets that would help us assess the impacts of the LGPS McCloud remedy on the LGPS membership?

None that we are aware of.

Question 14 – Do you have any comments on the draft regulations?

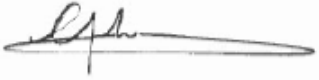
Amendment regulation 4A refers to regulations 4B to 4W, however those amending regulations appear to only go up to 4V.

Amendment regulation 4L(5) skips next to (7) (there is no 4L(6)).

Question 15 – Do you have any other comments you would like to make on McCloud remedy in the LGPS?

As already identified, the 'McCloud' remedy is very complex, with the regulations due to come into force on 1 October 2023. Once the final regulations are laid, the timing between that date and 1 October 2023 will not be enough for administrators to fully get to grips with the regulations and impacts. In addition to this, software providers are unable to make provisions within their systems to be able to deal with the 'McCloud' remedy until regulations are finalised, therefore the necessary updates will not be available from 1 October 2023. This leads to a risk for funds having to decide whether to undertake the onerous task of manually calculating benefits or transfers in line with the new regulations, or waiting until pensions software is updated and then having to revisit these cases, either way this will create additional work to that already anticipated.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Neil Mason', written over a light grey rectangular background.

Neil Mason

Assistant Director – LGPS Senior Officer