

# Briefing note

Employer communication: Response to McCloud consultation

As an employer participating in the LGPS, the outcome of the McCloud consultation will affect you. The key considerations are:

- Do you have the available data to support the proposed remedy?
- How will the increase in cost affect you?



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This communication has been prepared to support employers with their own responses to the [MHCLG consultation](#), released on 16 July, on the Local Government Pension Scheme (England and Wales). The consultation is seeking views on the proposals to remedy the age discrimination which was identified through the McCloud judgment.

Hymans Robertson have made available [our response to the consultation](#). As an employer who participates in the LGPS, you may wish to consider your own response. The key issues for an employer are:

- 1 The administrative burden of the corrective measures. Many employers will not have data available to support the additional calculations required to correctly determine an individual's pension based on the proposals in the consultation.
- 2 Increased cost through an increase in benefits and administrative expenses. This will be unknown until your relevant employees and ex-employees are identified and any potential benefit increases are calculated. Funds are likely to incur additional costs administering the remedy and this could ultimately lead to increases in employer contributions as well.

Many of the questions in the consultation are linked to the administrative aspects of applying the proposed remedy. The questions we believe are of most practical relevance to you as an employer are set out below, along with a proposed response:

**Question 5 – Do the draft regulations provide for a framework of protection which would work effectively for members, employers and administrators?**

The additional work required of employers to support this protection should not be underestimated.

Many employers will not be able to provide every piece of data that is required to calculate the underpin across all eligible members e.g. historic salary details for ex-employees. Employers will have to rely on Funds to make assumptions to fill in any gaps in the data, which could undermine the effectiveness of the regulations.

We would welcome guidance from MHCLG/SAB on how funds should account for any missing data required to calculate the underpin to ensure a consistent treatment across employers, particularly those that participate in multiple Funds. This treatment should be communicated with employers and impacted scheme members.

**Question 14 – Do you have any comments regarding the proposed approaches outlined above?**

The proposed process for Club Transfers places a significant onus on the member as it requires them to make a decision as to how their benefits will be treated in the receiving scheme. This will inevitably be a complex financial decision and one where the “correct” answer will not be known until retirement. This is an area where clear communication to members will be important. There may be an additional burden on employers to support individuals in the decision making process.

The proposed remedy will make it more difficult to calculate the cost of making members redundant when they are aged over 55 and entitled to receive their LGPS benefits immediately. Employers will need further help from funds to determine these costs before making workforce decisions, particularly public sector employers affected by the [£95,000 cap on exit payments](#).

**Question 23 – What principles should be adopted to help members and employers understand the implications of the proposals outlined in this paper?**

Communications with employers should focus on the practical requirements of providing the data required to operate the underpin and any assumptions being made where member data is missing. Employers also have an interest in members’ understanding of the issue, so communications to members should reassure them that the remedy will be applied automatically and can only improve their benefits.

**Question 24 – Do you have any comments to make on the administrative impacts of the proposals outlined in this paper?**

The underpin will likely not actually take effect for most members but a large number of members qualify for it and will therefore require some form of ongoing record maintenance by employers and Funds. Our initial analysis suggested there are 1.2 million qualifying LGPS members whose employers (or former employers) will have to supply additional data.

Obtaining this data may be challenging, particularly where it relates to ex-employees. There will inevitably be situations where employers will not be able to provide the required data due to historic payroll data not being retained.

### **Question 27 – What issues should be covered in administrative guidance issued by the Scheme Advisory Board, in particular regarding the potential additional data requirements that would apply to employers?**

One area where additional guidance is required is on the approach to be taken by Funds where an employer is not able to supply the required historic member data. Ideally, SAB should publish a set of guidelines that provide a framework for employers and administering authorities when making assumptions about service and salary history in the absence of complete information. This would ensure consistency of treatment across employers and particularly those that participate across multiple funds.

### **Question 29 – Do you have any comments regarding the potential costs of McCloud remedy and steps that should be taken to prevent increased costs being passed to local taxpayers?**

As the LGPS is a 'balance of cost' arrangement with fixed member contribution rates, the cost of the McCloud remedy will ultimately be met by employers. Most LGPS employers are ultimately funded by local taxpayers so it is difficult to see how the cost cannot be passed to them.

Funds will have control over the pace with which any increases in costs are met. While material changes in contribution rates are not expected as a result of the remedy, this cannot be guaranteed across all employers. The employer impact will depend on the membership profile of employees and ex-employees, and on the time horizon available to manage any increases.

While at whole fund level the impact is small (estimated to be a rise in typical primary contribution rates of 0.2% of pay until 2022 and a small change to secondary contribution rates of only 0.1% of pay), it may be more material at individual employer level. The cost impact is likely to be higher for employers with youthful membership profiles, as there is a greater likelihood of the underpin 'biting' for younger members. Our analysis suggests that some employers may see their total liabilities increase by as much as 5-10% (equivalent to at least a 1% of pay contribution rate increase), while other employers will see no impact at all. There is also the potential for one-off significant cost increases e.g. for a small employer with only one active member who is awarded a significant pay increase.

The inclusion of McCloud in the national cost management mechanism 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.

Finally, the additional costs of administering the remedy could lead to increased employer contributions, particularly for smaller funds where costs are spread over a smaller number of employers.

Please [get in touch](#) with me if you'd like any further information or have any questions.