McCloud Judgement Briefing Paper

Background

The McCloud/Sargeant case concerned the transitional protections provided to older members of the judges (McCloud) and firefighter (Sargeant) pension schemes following their reform in 2015 as part of the Public Service Pension Scheme (PSPS) changes. In December 2018, the Court of Appeal found the transitional protections to be unlawful on the grounds of age discrimination and the Supreme Court subsequently denied the Government's request for an appeal and as such the case was returned to an Employment Tribunal for remedy. In July 2019, it was announced that 'the government believed that the difference in treatment will need to be remedied across all PSPS, including the LGPS. On 16 July 2020, MHCLG published a consultation on amendments to the statutory underpin which are designed to remove age discrimination from the LGPS and are expected to be implemented from 1 April 2022.

The MHCLG Consultation Proposals

The consultation proposes that:-

- qualifying members, all who were active in the 2008 scheme on 31st March 2012 and accrued benefits in the 2014 scheme without a disqualifying break, would be protected by the application of a revised underpin which will be applied retrospectively for those who have already left the scheme.
- unlike the current underpin, qualifying members do not have to have an entitlement to an immediate benefit when they leave the scheme.
- the revised underpin will
  - continue to compare the benefits payable under the 2008 scheme against the benefits payable under the 2014 scheme and, where the 2008 scheme benefits are higher, apply an underpin addition equal to the difference in benefits.
  - become a two-stage process with an initial check being carried out at the 'underpin date', which is the earlier of leaving the scheme, reaching Normal Pension Age or death. A second check will then be applied at the 'underpin crystallisation date' when the member takes their benefits. At this point the revised underpin will, should it apply, increase the benefits payable to the member
  - take account of early/late retirement adjustments
  - apply to death in service and survivor benefits
- 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.
- 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, As such, members who have previously chosen not to aggregate scheme employments will be given a further 12 months to reverse that decision.
- Annual Benefit Statements should contain information on the potential impact of the revised underpin.
- if the second underpin check results in an increase to the member's benefits, this will be included for both annual allowance and lifetime allowance purposes in the year of the 'underpin crystallisation date'.

Analysis

In July, we carried out some initial analysis on our membership and identified 24,808 members who qualify for their benefits to be tested against the revised underpin.

Of those 24,808 members, 12,815 remained active members of the scheme, which, providing pension administration software systems can be updated before the new regulations come into force, the method of testing their benefits against the revised underpin, when they eventually leave or reach their Normal Pension Age, should be automatically carried out by the system and as such require no manual intervention or rectification work to be carried out.

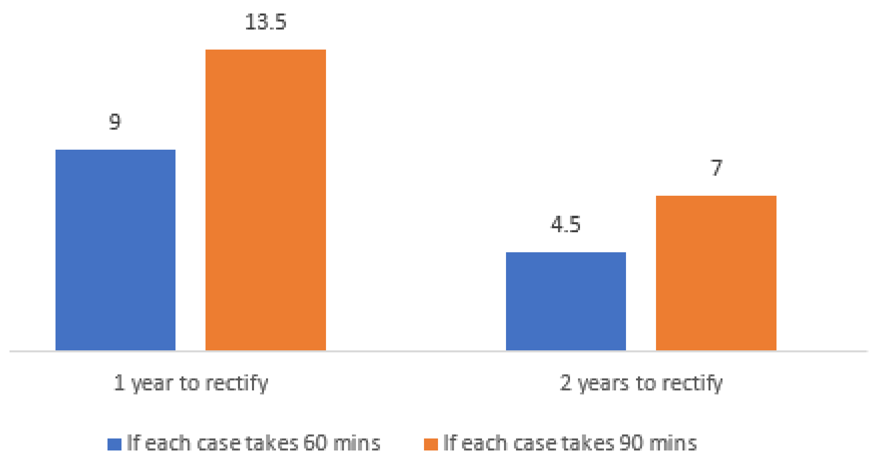
However, the remaining 11,993 members identified as already having left the scheme will require for us to carry out a review of the benefits awarded and the subsequent adjustment of benefits where applicable. These members fall into the following categories:-

Retired	5,494
Deferred	5,940
Transferred Out	278
Died	258
Trivially Commuted Benefits	23

It is important to note that between now and the date of implementation of the remedy, some of the initial 12,815 members identified as continuing in active membership will leave and as such move into the category requiring review.

Consideration of Resources for Rectification Exercise

At this moment in time, it is not known how long schemes will be given to carry out the rectification work for those members who have already left the scheme or how long each case will take to rectify. Therefore, we have estimated the possible additional FTE members of staff that will be required assuming the rectification is to be completed over a period of either 1 or 2 years, assuming that each case will take either 60 mins or 90 mins to complete, and will need to processed manually, it also assumes 80% productivity and 220 days a year worked.



As you will see from the above table, we will need anywhere between 4.5 and 13.5 additional FTE members of staff.

Impact on Administration

There is no doubt that the implementation of the remedy will have a significant impact on the administration section. Our immediate priority will be to carry out a large data gathering exercise to obtain hour change and service break data, from our employers, going back to 1 April 2014, and then uploading this information into our pensions administration system. Changes to existing processes will also be required to ensure that employers provide us with the necessary information going forward for all members in scope of the remedy.

Once the final remedy is determined and the date for implementation is known, we will be require to undertake a significant amount of benefit recalculation work as well as opening up the aggregation window for those members who chose not to combine their benefits, for a period of 12 months, which will result in an increase in aggregation and interfund calculations requiring processing.

Significant changes will be required to pensions administration systems which, depending on the timing and degree of success of these changes, could make a big difference to the level of resource required for this exercise. As the LGPS does not require changes to primary legislation, as the other PSPS do, MHCLG are hopeful that they can publish the amendment regulations early in 2021 giving software providers the best opportunity to implement changes for April 2022.

Along the way, there will need to be a whole programme of communications developed for members and employers, as well as the need to carry out a full review of the member and employer websites, scheme guides and letters in order to ensure that they are updated with any amendments in preparation for the implementation date.

One final point to note is that whilst this briefing paper covers the proposed remedy for the LGPS, Avon Pension Fund are also administrators for the Fire Schemes on behalf of Avon Fire Authority and as such we will additionally be involved in the administration side of the rectification exercise for the Fire Schemes also.

Options Available

There are a number of options available when it comes to dealing with this, however, either way this will require a significant amount of additional budget to be made available. The options are as follows:-

1. Carry out the work entirely inhouse
2. Carry out some of the work inhouse with some support coming from an external provider
3. Fully outsource this exercise to an external provider

There are numerous providers offering external support with this, ranging from help with initial planning and training for funds intending to deliver the programme mainly in-house, to full programme delivery for those who do not have the resources to do the work themselves. Support can be provided in any of the following areas:-

Programme management	Data collection support
McCloud oversight/assurance	Identification of in-scope members
Retrospective benefits review	Interactive workshops
McCloud Training – Board, Committee, etc.	Member and employer communication
Changes to ongoing administration	Compliance

The following table outlines some of the pros and cons of each approach:-

	Pros	**Cons**
Inhouse Administration	- Likely to be cheaper - Retain full control and oversight of the project and its progress - Knowledge of internal operations	- We will require existing highly experienced staff to work on this and will struggle to recruit staff with any experience to replace them and so a lot of training will be necessary - The risk of losing staff due to the additional pressures this would bring
External Support	- Reduces the need to recruit and train new staff - Takes the pressure off of staff who are already feeling the strain - They are likely to have access to more resources with the necessary experience	- Likely to be more expensive - Could lose control and oversight of the project and its progress - Lack of knowledge if internal operations - Possible GDPR implications due to data sharing

The Fund will explore the various options available to determine its approach as part of the project plan. In the meantime, officers are engaging with colleagues from other South West funds in order to draft a consistent response to the consultation.