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| <p>Non-Executive Report of the:</p> <p>Pensions Board</p> <p>23 SEPTEMBER 2020</p> |  |
| <p>Report of Neville Murton, Corporate Director, Resources</p> | <p>Classification: Unrestricted</p> |
| <p>McCloud Consultation</p> | |

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| Originating Officer(s) | Miriam Adams, Pensions & Investments Manager |
| Wards affected | All wards |

Summary

This report sets out the key changes to the scheme proposed by the Government in their recent consultation document in response to the McCloud judgement concerning age discrimination.

The Courts determined that the protections afforded to some members of the Local Government Pension Scheme (LGPS) and other public service pension schemes, following the review by Lord Hutton and introduced in 2014 (for the LGPS and 2015 for other schemes), were age discriminatory and unlawful.

The Government accepted the findings of the Court and has issued a consultation as to how best to amend the LGPS regulations.

Recommendations

The Board is asked:

- To comment and review the draft (Appendix A); and
- Note the potential effects on pensions administration workload.

1. REASONS FOR THE DECISION

- 1.1 Resulting legislation will have significant administrative burden for the administration of the Council's pension scheme.

2. ALTERNATIVE OPTION

- 2.1 There are no alternative options.

3. DETAILS OF REPORT

- 3.1 The new CARE scheme was introduced for the LGPS in England and Wales on 1 April 2014, all active members in the LGPS started to accrue benefits on a Career Average (CARE) basis, but members within ten years of their 2008 Scheme normal pension age on 31 March 2012 are granted transitional protection by means of a final salary underpin. Similar protections were provided when the other public service pension scheme were reformed in April 2015.
- 3.2 In December 2018, in what became known as McCloud and Argent judgements, the Court of Appeal found that protections introduced to the judges and firefighters' pension schemes were unlawful. The Government confirmed in July 2019 that the judgements had implications for all public service pension schemes (including the LGPS) and that they would address discrimination for all affected members, not just those who made a claim.
- 3.3 The Ministry of Housing, Communities and Local Government (MHCLG) published its consultation on draft Regulations introducing amendments to the statutory underpin for the LGPS in England and Wales on 16 July 2020. The proposals are designed to remedy the unlawful discrimination caused by the protection of older members when the scheme was reformed in April 2014. The consultation is estimated to affect around 1.2 million members of the LGPS by extending the underpin to all qualifying members, regardless of their age. The consultation period ends on 8 October 2020.

Consultation Proposals

- 3.4 The consultation 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. The underpin gives the member the better of CARE or final salary benefits for the eligible period of service.
- 3.5 The new underpin calculation also includes the difference in when the benefits are payable without reduction. This was not in the original underpin. Benefits under the final salary scheme are payable from age 65 without reduction, whereas under the CARE scheme they are linked to State Pension Age. If a member takes early retirement, the impact of actuarial reductions may lead to their final salary benefit being higher.
- 3.6 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 original intention of the underpin was for it to apply on service from 1 April 2014 to the earlier of 31 March 2022 or the member's date of leaving.

- 3.7 The draft regulations state that Members who meet the criteria will have an “underpin date” and an “underpin crystallisation date”. The underpin test will be applied:
- a) On an indicative basis (without actually changing the member’s benefits) at “the underpin date”, being the date at which the member dies, leaves or reaches their 2008 Scheme Normal Pension Age (normally 65), whichever is earlier.
 - b) On a finalised basis at the “underpin crystallisation date”, which is when the member retires.
- 3.8 The test will be based on the member’s final salary at leaving/retirement, thus preserving the final salary link beyond 2022, for so long as they are accruing benefits.
- Where a member retires from active service (whether on an early, normal or ill health basis) the underpin date and underpin crystallisation date will be the same. The underpin test will be applied and if the underpin calculation results in an increase in benefits, the member will receive an underpin addition.

A copy of the full consultation document can be found at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/901173/Condoc - amendments to LGPS underpin - FOR PUBLICATION.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/901173/Condoc_-_amendments_to_LGPS_underpin_-_FOR_PUBLICATION.pdf)

- 3.9 Appendix 1 provides a copy of the consultation questions and responses which Hymans Robertson have drafted. This has along with the LGA consultation response has been used as the basis of Tower Hamlets draft response to the consultation.

Implications for Tower Hamlets Pension Fund

- 3.10 The consultation proposes some significant changes to the administration of the Fund. It does not just extend the underpin calculation to all members that were active before March 2012. It also changes the basis of the calculation.

This means that all retirement and transfers of benefit calculations which have occurred since 2014 will need to be recalculated to ensure that the correct amount of benefits have been paid. This is a far greater task than had been originally envisaged.

The recalculation is not envisaged to significantly increase the cost of benefits, so the overall effects on the cost of the scheme is not likely to materially change. When the Committee set contribution rates for the three years starting April 2020, a higher probability threshold was set to ensure that contribution rates were slightly higher to allow for the potential effects of the McCloud remedy. This was also reflected in the Funding Strategy Statement.

- 3.11 it should be noted that the suggestion to extend the final salary protections to all eligible active members beyond 2022, and until they leave active service,

does prolong the final salary scheme and may result in potentially higher cost of benefits. This again further complicates the administration of the Fund.

Since 2014, the data requirements from employers has been geared towards the CARE scheme. Only those eligible for the original underpin needed data concerning the changes in the numbers of hours that they worked. This does require additional data from scheme employers in order that Pensions staff are able to undertake these calculations in the future. This will be raised with the scheme employers at the employers Forum scheduled for 22 October 2020.

- 3.12 In July 2020, the Pensions Committee and Board were presented with a summary of the key tasks involved in the planning for this project and once the final timescales for implementation have been confirmed, both the Committee and Board will be updated on when this will be achieved. This may require additional resources in order to complete this work.

- 3.13 It is imperative that the Administering Authority responds to the consultation.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 Although the Scheme Actuary made an allowance in the assumptions used in determining the results of the 2019 triennial valuation of the Tower Hamlets Pension Fund, the costs will vary by employer. Proposed amendments are retrospective to 2014 there will therefore be additional administrative costs in calculating the benefit entitlement for retired and dependent members, early leavers with preserved entitlement and members who have transferred their entitlement to other pension schemes

5. LEGAL COMMENTS

- 5.1 The Council as administering authority of the pension fund must ensure that it complies with its statutory duties in relation to the proper management of the pension funds. The administering authority must take steps to implement the changes to fund members entitlements as a result of the judgement in the McCloud case and the resulting regulations once they come into force. This report sets out the changes to be implemented and the implications for the pension fund.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 The employer's contribution is a significant element of the Council's budget and consequently any improvement in investment performance will reduce the contribution and increase the funds available for other corporate priorities.

7. BEST VALUE (BV) IMPLICATIONS

- 7.1 There is no direct best value implication arising from this report.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 There is no Sustainable Action for a Greener Environment implication arising from this report.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 There are no direct no immediate risk management implications arising from this report. The Funding Strategy Statement made provision for claims which may arise from McCloud underpin. There are risks associated with employers failure to provide necessary data.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 10.1 There are no crime and disorder reduction implications arising from this report.
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Linked Reports, Appendices and Background Documents

Linked Report

- None

Appendices

- Tower Hamlets Pension Fund Draft Consultation response (Appendix A)

Local Government Act, 1972 Section 100D (As amended)

List of “Background Papers” used in the preparation of this report

- Consultation

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/901173/Condoc - amendments to LGPS underpin - FOR PUBLICATION.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/901173/Condoc_-_amendments_to_LGPS_underpin_-_FOR_PUBLICATION.pdf)

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