Cambridgeshire Pension Fund

Agenda Item No:14

Pension Fund Board

6th November 2020

Report by: Head of Pensions

Subject:	Age Discrimination Remedy in the LGPS (McCloud) and Cost Cap Mechanism (update)
Purpose of the Report	To provide the Pension Fund Board 1) the background to and an update on the age discrimination remedy in the LGPS as a result of the legal case brought by McCloud; and 2) an update on the paused cost control mechanism
Recommendations	That the Pension Fund Board notes the content of the report.
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1. Background

1.1 The McCloud case concerns the transitional protections given to scheme members of the Judges and Firefighters' Pension Scheme, who in 2012 were within 10 years of their normal retirement age. The protections were introduced as part of the public service pension schemes reform.

1.2 On 20th December 2018 the Court of Appeal found that these protections were unlawful on the grounds of age discrimination and couldn't be justified. The Supreme Court denied the government permission to appeal on 27th June 2019.

1.3 On 15th July 2019 a statement from the Chief Secretary to the Treasury confirmed that as protections were applied to all members within 10 years of retirement in all other public service pension schemes (such as the LGPS) that the principals of the outcome would apply to all public service pension schemes.

1.4 In the LGPS the protection compares the benefits payable under current rules with benefits that would have been paid if the scheme had not changed in 2014 and pays the higher.

1.5 Members who have been discriminated against would need to be offered appropriate remedies to ensure they are placed in an equivalent position to the protected members. Such remedies would need to ensure that the benefits of unprotected members would need to be raised rather than the benefits of protected members being reduced.

2. McCloud remedy – MHCLG consultation

2.1 On 16 July 2020 MHCLG published a consultation on the proposed remedies for the LGPS to remove age discrimination.

2.2 The consultation proposes that:

2.2.1 Qualifying members would be protected by the application of a revised underpin.

2.2.2 Qualifying members are those that were active in the 2008 scheme on 31 March 2012 and accrued benefits in the 2014 scheme without a disqualifying break of more than 5 years.

2.2.3 Qualifying members who have already left the scheme will have the revised underpin applied retrospectively.

2.2.4 Unlike the current underpin qualifying members do not have to have an entitlement to an immediate benefit when they leave the scheme.

2.2.5 Members must meet the qualifying criteria in a single membership for underpin protection to apply (where a member has had a break in service or a period of concurrent employment, they must aggregate their benefits for the underpin to apply).

2.2.6 Members who have previously chosen not to aggregate scheme employments will be given a further 12 months to reverse that decision.

2.2.7 The revised underpin will take into account early/late retirement adjustments and apply to death in service and survivor benefits.

2.2.8 The revised underpin will be a two-stage process with an initial check done at the 'underpin date' (the earlier of leaving the scheme, reaching normal pension age or death). The second check will 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.

2.2.9 Revised underpin protection will cease in respect of membership after 31 March 2022, however final salary protection will continue after that date in respect of membership before that date.

2.2.10 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 date of leaving, the end of the scheme year or 2008 normal pension age.

2.2.11 Officers have submitted a response to this consultation as approved by the Chairman and Vice Chairman of the Pension Fund Committee. The response on behalf of the administering authority was circulated to members of the Pension Fund Committee by email shortly before this meeting, alongside the government consultation document.

3. Potential impact on Cambridgeshire Pension Fund

3.1 Aon, the Fund's benefits and governance consultant were commissioned to undertake a high level initial analysis of the likely impact on scheme members as a result of the likely remedy (prior to the release of the consultation).

3.2 The analysis shows that the following amount of members will be impacted by the remedy in some way:

Type of record	Total in scheme	Total requiring remedy
Active member	27,000	8,000
Deferred member	29,500	4,500
Pensioner member	17,500	2,500
Other types of member (deceased, transferred out)		2,500
Total	74,000	17,500 24% of scheme membership

3.3 The following table shows a breakdown of which scheme employer these members belong to:

Scheme Employer	McCloud members (to the nearest 500)
Cambridgeshire County Council	3,000
Peterborough City Council	1,000
Cambridgeshire Chief Constable	1,000
Other employers (of which there are in excess of 250)	12,500
Total	17,500

3.4 The administrative impact of applying the remedy to what is expected to be a minimum of 17,500 scheme members in the Cambridgeshire Pension Fund is a concern shared by all administering authorities and recognised by the Scheme Advisory Board.

3.5 The first and most pressing concern is to establish whether accurate data is held for scheme members in terms of hours of employment and service breaks in order to accurately calculate the underpins. This information needs to be held correctly for the period 1 April 2014 up to 31 March 2022 for members who were active in the scheme from 31 March 2012.

3.6 The Cambridgeshire Pension Fund is in a fortunate position of having not stopped collecting and recording this information when it was not essential to be recorded when the LGPS changed from a final salary to a CARE scheme on 1 April 2014. However, with the reliance on scheme employers to report changes in hours of employment and service breaks it cannot be guaranteed that the data held is completely correct for every member. It is also no longer possible, under a CARE scheme, to be able to judge if a change in hours or a break in service has not been notified.

3.7 At the time of writing this report, officers are planning the necessary communications and methods of verifying and where necessary collecting additional data from scheme employers so that the data is in place in good time for when rectification of members benefits is due.

3.8 Besides the verification and collection of data, there are many other aspects that need to be considered to undertake this significant exercise. These aspects have been detailed in Appendix 1 and cover governance, member communication and employer engagement, staff training, administration system requirements, ongoing administration and specialist areas.

3.9 As detailed in appendix 1 and as per the Business Plan, the Pension Fund Board will continue to be updated as to the progress of these matters.

4. Cost control mechanism

4.1 The Independent Public Services Pensions Commission recommended in 2011 that the new public service pension schemes should include an employer cost control mechanism to protect the taxpayer from unforeseen increases in scheme costs. The government accepted this and made provisions for such a mechanism in the Public Service Pension Schemes Act 2013. The final mechanism both protects the taxpayer from increased costs and also maintains the value of pensions to members when costs fall.

4.2 Preliminary valuations of new schemes established ‘employer cost caps’ in each public service scheme expressed as a percentage of pay. The cost of the scheme would then at future valuations be compared to the employer cost cap. This process measures changes in the value of the scheme to members. Only member costs (costs that affect the value of the scheme to members) are therefore taken into account.

4.3 Treasury regulations specify that there will be a 2% margin point above (‘ceiling’) and below (‘floor’) the employer cost cap. Where the cost of the scheme has gone beyond those margins, pension benefits or member contributions must be adjusted to bring costs back to the target. In the LGPS the cost cap was set at 19.5% of which 13.5% of pay represents the employer cost and 6.5% of pay is the scheme member cost.

4.4 The cost of the schemes was expected to be calculated for the first time following the 2016 valuations. In fact, the Scheme Advisory Board who have their own cost cap mechanism for the LGPS (based on different attributes to that of HM Treasury) did calculate that the cost of the scheme had fallen below the ‘floor’ meaning that the scheme benefits needed to be redesigned to bring the cost back up to 19.5%.

4.5 However, following the Court of Appeal’s judgement in the McCloud case the government announced a pause to the cost control element of the 2016 valuations in January 2019. The pause was necessary due to the uncertainty around member benefits arising from the court judgements making it impossible to assess the value of the schemes to members with any certainty.

4.6 Now that government has been working to address the unlawful discrimination identified by the courts and a remedy has reached consultation stage there is less uncertainty as to the value of the schemes to members so the cost control mechanism pause has been lifted. The government is now preparing to complete the cost control element of the 2016 valuations and HM Treasury plan for the process to be completed next year. Employer contributions will not be changed before the next valuation process in 2022.

4.7 As addressing the discrimination identified in the McCloud case involves increasing the value of scheme to members, the costs associated with this therefore fall into the ‘member cost’ category and so will be included in the cost control element of the valuation process.

4.8 The Pension Fund Board will continue to be updated with information on the cost control mechanism through the Governance and Compliance report.

5. Relevant Pension Fund Objectives

To have robust governance arrangements in place, to facilitate informed decision making, supported by appropriate advice, policies and strategies, whilst ensuring compliance with appropriate legislation and statutory guidance. *Objective 1*
To manage the Fund in a fair and equitable manner, having regard to what is in the best interest of the Fund's stakeholders, particularly the scheme members and employers. *Objective 2*
To ensure that the relevant stakeholders responsible for managing, governing and administering the Fund, understand their roles and responsibilities and have the appropriate skills and knowledge to ensure those attributes are maintained in a changing environment. *Objective 3*
To continually monitor and manage risk, ensuring the relevant stakeholders are able to mitigate risk where appropriate. *Objective 5*

6. Risk Management

6.1 The Pension Fund Board are required to have the appropriate skills and knowledge to effectively carry out their duties. This report ensures that the Pension Fund Committee is up to date with:

- New or amending legislation affecting the LGPS;
- Relevant activities of the LGPS Scheme Advisory Board and the Pensions Regulator that concern the governance of the (LGPS) on a national and local basis; and
- Skills and knowledge opportunities.

6.2 The risks associated with the Pension Fund Board not having the required level of knowledge and understanding have been captured in the Fund's risk register as detailed below.

Risk No	Risk	Residual risk rating
8	Those charged with governance of the Fund and Scheme are unable to fulfil their responsibilities effectively.	Green
14	Failure to administer the scheme in line with regulations and guidance.	Green
17	Failure to provide relevant information to the Pension Fund Committee/Pension Board to enable informed decision making.	Green

6.3 The Fund's risk register can be found on the LGSS Pensions website at the following link: https://pensions.cambridgeshire.gov.uk/app/upl7oads/2019/10/RiskRegisterCPF.pdf

7. Finance & Resources Implications

7.1 There are no financial or resource implications connected to the contents of this report is for information only.

8. Communication Implications

Training	All staff involved in the administration of the LGPS are aware of the new legislation and the impact on the calculation and payment of benefits from the scheme.

9. Legal Implications

9.1 There are no legal implications connected to the contents of this report as this report is for information only.

10. Consultation with Key Advisers

10.1 There has been no requirement to consult with advisers over the content of this report.

11. Alternative Options Considered

11.1 There are no alternative options to be considered.

12. Background Papers

12.1 Not applicable.

13. Appendices

13.1 Appendix 1 - McCloud remedy implementation plan considerations and dependencies

Checklist of Key Approvals	
Has this report been cleared by Head of Pensions?	Mark Whitby – 21st October 2020