

Important: Action required for Participating Employers

WMPF Briefing note: Possible impact of the McCloud judgement on LGPS members and administration

As you may be aware, a recent judgement in relation to possible discrimination in the implementation of transitional protections in public service pension schemes has occurred, consequently this may have an impact on how LGPS members pensions might be calculated dependant on their age. The Fund has previously provided briefings on the potential impact in terms of accounting standards and the 2019 actuarial valuation, however the focus of this note is on the possible impact on members and administration.

McCloud/Sargeant judgement – Background:

Two employment tribunal cases were brought against the Government in relation to possible discrimination in the implementation of transitional protection following the introduction of the reformed 2014/2015 public service pension schemes from 1 April 2014 (LGPS). Transitional protection enabled some LGPS members to remain in their pre-2014 scheme after 1 April 2014 until retirement or the end of a pre-determined tapered protection period. The claimants challenged the transitional protection arrangements on the grounds of direct age discrimination, equal pay and indirect gender and race discrimination.

The first case (McCloud) relating to the Judicial Pension Scheme was ruled in favour of the claimants, while the second case (Sargeant) in relation to the Fire scheme was ruled against the claimants. Both rulings were appealed and as the two cases were closely linked, the Court of Appeal decided to combine the two cases. In December 2018, the Court of Appeal ruled that the transitional protection offered to some members as part of the reforms amounts to unlawful discrimination.

What was the judgement:

On 27 June 2019 the Supreme Court denied the Government's request for an appeal in the case. This ruling has implications for the LGPS in as much as a new CARE benefit structure was introduced to the LGPS with effect from 1st April 2014. For members who were 10 years or less from Normal Retirement Age on 1st April 2012 an underpin was provided based on the existing final salary scheme. This is therefore a form of transitional provision which is age dependent. It is unclear at this stage what remedial action will be taken, to be either imposed by the Employment Tribunal or negotiated and applied to all public service schemes.

Consequently, at present we are still awaiting guidance regarding any potential changes within the LGPS which may be introduced as a result of the judgement.

Possible bespoke remedy for LGPS:

As stated above no decisions have yet been made on the form that any remedy will take, when it will be implemented and which LGPS members will be in scope. It is possible that the remedy will involve the extension of the 'underpin' to members who are not currently offered protection.

In order to perform an accurate underpin calculation for a member within the LGPS, a full history of part-time hour changes and service break information may be needed for members active before 1 April 2014, with a leaving date after 31 March 2014 (who are not covered by the current underpin).

Future requirements for WMPF employers/Payroll providers:

If the possible remedy does involve an extension of the underpin, a full history of part time hour changes and service break information from 1 April 2014 will therefore be needed in order to recreate final salary service records for members. Therefore, LGPS Employer/payroll providers will need to have appropriate measures in place in order to potentially provide information to the Fund to meet these requirements. The LGA bulletin 190: <http://lgpslibrary.org/assets/bulletins/2019/190.pdf> pages 6 – 7, provides further confirmation and a steer on the action required by employers. We would therefore request that where possible you retain as much information as possible. We would also appreciate your comments/feedback on any challenges in ensuring this information is available, when replying, please respond to WMPFEmployerLiaison2@wolverhampton.gov.uk using the subject title of your email: 'McCloud feedback'.

We will of course keep you updated with any further developments.