

Committee: Police Pensions Board	Date: 9 October 2020
Subject: The City of London: Police Pension Scheme – McCloud Judgement update	Public
Report of: The Chamberlain	For Information
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Summary

Following the successful legal challenge to the 2015 reforms made to all main public sector pension schemes, known as the McCloud Judgement or McCloud, the Government confirmed that a remedy would be made across all affected schemes and Board Members asked to be kept appraised of the evolving situation.

On 16 July 2020, HM Treasury published a consultation setting out the government's proposals for remedying, in most public service pension schemes, the unlawful discrimination identified by the Court of Appeal in the McCloud case.

The consultation document allows relevant stakeholders, such as employers/administrators, software providers, scheme advisory boards and technical working groups, to comment on the proposals, consider potential issues that may arise and highlight which proposal would be their preferred choice for implementation. The final decision in respect of the remedy proposal to be used by Police Pension Scheme will be made by the Home Office.

The purpose of this report is to appraise Members of the current situation and to make them aware of the potential remedies that have been proposed.

Main Body

In 2015 all main public service pensions, including the Police Pension Scheme, were reformed. These reforms included ‘transitional protection’, for people closer to retirement. In December 2018, the Court of Appeal ruled that this directly discriminated against some younger pension scheme members – this is now referred to as the McCloud Judgement or McCloud.

On 15 July 2019 the government confirmed that, as ‘transitional protection’ was offered to members of all the main public service pension schemes, the difference in treatment would be remedied across all those schemes, including the Police Pension Scheme.

In addition, the government has confirmed that this will apply to all members with relevant service in affected public service schemes, including the Police Pension Scheme, and not just those who have lodged legal claims.

On 16 July 2020 the government published a consultation document that sets out options for how the government will remove the discrimination. The main points of the consultation are:

- Protections will be extended to cover all scheme members who were **in active scheme membership** on or before 31 March 2012 and on or after 1 April 2015,

including those with a qualifying break in service of less than 5 years , providing the right to be a member of a final salary scheme during the proposed Remedy period which runs from 1 April 2015 to 31 March 2022. This means that unprotected and tapered members have the same protection as protected members for that period. The choice will be an ‘all or nothing’ option – all 2015 – 2022 service will be either in the member’s legacy scheme or 2015. It is also proposed that protection will be backdated for qualifying members even if they have left the scheme since the start of the protected period.

- Equally, all fully protected members will be also given the choice to receive pension benefit accrued in the protected period on a CARE (Career Average Revalued Earnings) basis as an alternative to final salary benefits. The choice exercise will therefore also apply to formerly protected members, including retired members.
- There are two proposals being considered by the Home Office as to when the choice is to be made – immediate (officers will be asked to make a choice at the end of the remedy period) or deferred (officers will not need to make a decision until they retire and claim their benefits).
- Scheme members who joined from 1 April 2012 will have an initial period of membership of the 2006 scheme, followed by membership of the 2015 Pension Scheme. There will be no impact or changes for this group, or for post April 2015 entrants.
- Accrual in the final salary scheme for existing and new protected members will cease on 31 March 2022, with all active members placed into the 2015 Pension Scheme.
- The approach to the retrospective adjustments to pension contributions, PAYE and pension tax and the treatment of a number of member situations, including ill health retirement, opt out, pension sharing, death and transfers.

On 21 August 2020 the Home Office provided informal guidance to Police Forces on processing ‘immediate detriment’ cases in advance of a decision on the Government’s final approach to removing the age discrimination as found in the McCloud Judgement.

For the purposes of this informal guidance, ‘immediate detriment’ includes those scheme members who were in service on or before 31 March 2012 and on or after 1 April 2015, including those with a qualifying break in service of less than 5 years, and who did not benefit from full protection and were moved into the 2015 Scheme on or after 1 April 2015:

- who become eligible to retire with an ordinary pension and want to have all their benefits paid from their legacy scheme (i.e. do not accept deferred 2015 scheme benefits); OR
- who don’t qualify for lower-tier (and therefore higher-tier) ill-health pension under the single pot Ill-Health Retirement (IHR) arrangement BUT would do so under the IHR arrangements in their legacy scheme.

Attached at Appendix 1 is the consultation document as produced by HM Treasury and at Appendix 2 is the FAQs that accompanied the consultation document. Appendix 3 is the informal guidance provided by the Home Office in respect of Immediate Detriment cases.

Recommendation

Members are requested to note the Consultation Document at Appendix 1, the FAQs at Appendix 2 and the informal guidance at Appendix 3.

Appendices:

Appendix 1 – Public Services Pension Schemes Consultation

Appendix 2 – Public Services Pension Schemes Consultation FAQs

Appendix 3 – Home Office Guidance on treatment of 'Immediate Detriment' cases

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