

From: Chairman – Kent Pension Board  
Corporate Director of Finance

To: Kent Pension Board – 6 September 2023

Subject: McCloud Update

Classification: Unrestricted

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### **Summary:**

This report brings Members up to date with preparations being made by the team for the McCloud Remedy. The report outlines concern that Remedy information is still awaited from the Department of Levelling Up, Housing and Communities (DLUHC) and that manual calculations will be required until the Fund's platform provider updates the administration platform. These delays will create a backlog in cases (that cannot be resolved as formulaic data missing from DLUHC), which will affect future resource availability.

Data from the Fund's 680+ Employers is currently being sought at pace, currently impacting available resource due to the level of enquiries received and the complexity of the regulatory framework. The external supplier to be selected from the Data Rectification Procurement, will validate and upload the data being collected from scheme Employers.

Where member data cannot be provided by scheme Employers and decision-making is required, guidance will be sought from advice issued by the Scheme Advisory Board (SAB). Where scheme members disagree with assessments made, they will be asked to supply written evidence to the contrary. An escalation process will be established.

### **Recommendations:**

The Board is asked to note the report.

### **FOR INFORMATION**

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#### **1. Introduction - The McCloud Judgment**

- 1.1 When the LGPS changed from a final salary to a career average pension scheme in 2014, members who were within 10 years of their Normal Pension Age (usually age 65) on 1 April 2012 were provided with a protection called the 'Statutory Underpin'. When a protected member was due to take their pension, the benefits payable under the career average and final salary schemes were to be compared and the higher amount to be paid. Similar protections were to be provided in other public pension schemes.

- 1.2 In December 2018, the Court of Appeal ruled that younger members of the Judges' and Firefighters' Pension schemes had been discriminated against because the protections did not apply to them. The government decided that the general principles established would apply to all public sector pension schemes.
- 1.3 The new Regulations will provide younger members with a protection equal to the underpin protection provided to older members, to remove the discrimination.

## 2. End of Consultation Period

- 2.1 The latest consultation period closed on 30 June 2023 for some items not fully explored in the first McCloud Remedy Consultation. In their June consultation response, the Local Government Association (LGA) expressed concerns about timings, namely delays to the issue of information from DLUHC. These concerns about information delays from DLUHC are also shared by Officers of the Fund.
- 2.2 The consultation that closed on 30 June 2023 sought views on what the rules should be for applying the Remedy. Five areas were considered:
- **Aggregation** – Whether a member with multiple LGPS memberships has underpin protection in some or all of their memberships.
  - **Club Transfers** – Whether a member with previous membership of another public service pension scheme has underpin protection in respect of their LGPS membership.
  - **Flexible Retirement** – How the underpin should work in respect of Flexible Retirement, particularly for cases of 'partial' Flexible Retirement, where a member does not take all their accrued career average benefits.
  - **Divorce** – How the scheme's divorce and underpin calculations interact.
  - **Injury Allowances** – How a retrospective increase to a member's pension arising from McCloud remedy may impact any Injury Allowances payable.
- 2.3 The consultation also sought technical comments on:
- **Excess Teacher Service** – The retrospective admission to the LGPS of certain teachers who have multiple employments.
  - **Compensation** – The circumstances where a member may be paid compensation where they have suffered a loss relating to the age discrimination found in the McCloud case or the McCloud remedy.
  - **Interest** – The interest terms that will apply where payments are made later than would have been the case, due to the McCloud discrimination.
- 2.4 The Government intend to finalise the draft regulations and make these in early September 2023, based on the consultation feedback received on the above. DLUHC intend that the final regulations will come into force on **1 October 2023**.

### **3. The New Regulations**

- 3.1 It is the government's intention for the new legislation to be in place by October 2023, with the Regulations backdated to 1 April 2014.
- 3.2 The proposed changes mean that a revised underpin (period 1 April 2014 to the earlier of 31 March 2022, the 2008 Normal Pension Age or date of leaving) will apply to all members, regardless of their age, who:
- Were active on or before 31 March 2012.
  - Build up benefits in the 2014 Scheme.
  - Do not have a disqualifying break (without a break of more than five years).
- 3.3 A comparison of the member's 2014 Scheme benefits against the 2008 Scheme benefits they have accrued over the same period is performed, and if greater, the underpin will be automatically applied.

### **4. Awaiting Release of Legislation & Guidelines**

- 4.1 No guidelines on implementation have been released yet, or exact details on the legislation that will take effect from 1 Oct 2023. The implication is that Kent Pension Fund (or any other LGPS funds) cannot prepare calculations or start casework until received.
- 4.2 Officers in Kent Pension Fund have also been advised by Heywood's (provider of the Fund's administrative system) that functionality updates to the administrative system (Altair) will not be available until 2024. Consequently, any calculations will need to be undertaken manually until system updates are made by Heywood's, adding to the resource required to deal with queries.

### **5. Member Records & Liaison with Employers**

- 5.1 Officers have started the task of obtaining post 1 April 2014 hours and service break data from the 680+ scheme Employers in Kent Pension Fund. Given the nature of the McCloud Remedy, the data being sought relates to information from the last 10 years.
- 5.2 As per Table 1 below, '*Member Records & Employer Liaison*' is split into four distinct phases. The data has been requested from Employers since 30 June 2023, for return by 30 September 2023.
- 5.3 Whilst the eligible members are those that were active on or before 31 March 2012, the Scheme Advisory Board have recommended that all member data be collected for active members from 1 April 2014 onwards. This is because members may become in scope for the underpin in the future.
- 5.4 The approach currently being taken by Officers is therefore:

- Analysis of member data to identify all members who were active on or from 1 April 2014.
- All identified members part time hours and service breaks data requested from employers,
- Data upload into Altair
- Monitoring via a master log of requests issued, replies received, and chasers sent on Kent Pension Fund systems.

*Table 1: Member Records & Employer Liaison, project phases.*

Phase 1: Data Collection (in-house: June – Sept)
<ul style="list-style-type: none"> <li>• Analyse &amp; identify members.</li> <li>• Request data from employers</li> <li>• Chase employers for late / non submission</li> <li>• Recommend resolution for missing data in accordance with Scheme Advisory Board guidance and escalate for decision.</li> </ul>
Phase 2: Data Validation & Upload (with Data Rectification Supplier: from October 2023)
<ul style="list-style-type: none"> <li>• Data Quality verification</li> <li>• Query missing data / data anomalies with employers</li> <li>• Upload verified member data.</li> <li>• Escalate missing data / poor quality data for decision</li> </ul>
Phase 3: Adjust Affected Members (with Data Rectification Supplier: from October 2023)
<ul style="list-style-type: none"> <li>• Calculate extended underpin and record results.</li> <li>• Adjust affected members records and reimburse where necessary.</li> <li>• Manually process non automatic cases (e.g., aggregation)</li> </ul>
Phase 4: Ongoing Record Maintenance (in-house: ongoing)
<ul style="list-style-type: none"> <li>• Adjust processes to include collecting ongoing part-time and service break data.</li> <li>• Ensure ongoing Benefit Crystallisation Events – (i.e., when a pension is paid) and periodic calculations amended to incorporate new requirements.</li> <li>• Underpin included in 2025 Annual Benefit Illustration</li> </ul>

5.5 Some Employers have expressed concerns that they do not hold all the data that is being requested. Where data is not available the team will be making informed assessments based upon current processes, the information available and the guidance issued by the Scheme Advisory Board. Should scheme members disagree with the findings, they will be asked to provide

written evidence to the contrary. An escalation process will be established to deal with complaints.

## **6. Data Rectification Procurement**

- 6.1 Through July and August 2023 the team have progressed the Data Rectification Procurement. Proposals from potential suppliers have been received and reviewed, through liaison with KCC's Procurement Team.
- 6.2 Procurement was undertaken via the National LGPS Framework Agreement. Several responses to the Invitation to Tender were received from those on the Framework.
- 6.3 The team will be working with the new contracted supplier to validate the data required for the McCloud Remedy. They will also be working with the new supplier on a new Data Quality Plan.

## **7. Record Maintenance**

- 7.1 The new Regulations require an underpin calculation to be performed at the 2008 Scheme Normal Pension Age (NPA), as well as at leaving and at the Benefit Crystallisation Event date (the date benefits are brought into payment).
- 7.2 A report will need to be run periodically to identify those eligible members at their Normal Pension Age, so that pay data can be requested from their employer. Once received, an underpin calculation can be performed and the results stored.
- 7.3 All employers have been made aware that they must provide hour change and service break information going forwards. For employers using iConnect, employers will return this information monthly. The forthcoming iConnect release will task an employer to provide any 2008 Normal Pension Age pay information.

## **8. Messaging & Communication by Kent Pension Fund with Employers**

- 8.1 Active and Deferred Scheme Members have been informed via recent newsletters that there is no need for action from them as information is being provided by Employers in the Fund.
- 8.2 A McCloud article was included in the Employers Update in June 2023 and will be included in the September and December 2023 newsletters. The June 2023 Employer Forum also explained the plans for the data collection.
- 8.3 It will be important to simultaneously inform both employers and scheme members of any changes in the Regulations due to the consultation. It is

intended that information will be included in future Employer Updates and on the website. All Scheme Advisory Board and Local Government Association information materials will be used where applicable.

## **9. Governance & Training**

- 9.1 Weekly reporting is used to monitor the data received from scheme Employers. Queries are logged, together with any actions and responses to ensure timely and complete replies.
- 9.2 A detailed procedure will be developed for the handover of data to the supplier that wins the Data Rectification Procurement contract. It is intended that work with the new Data Rectification Supplier will commence in Autumn 2023.
- 9.3 A training plan has been prepared to update Officers working in the Pensions Section. The in-house training is due to take place from late September through to November and will cover the impacts and implications of the McCloud Remedy changes. The purpose of the training is to help the team respond to enquiries from scheme members and employers, and perform future underpin calculations.

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