

February 2019



Resources Directorate

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Dear Colleagues,

LGPS Cost Cap Mechanism

Further to my recent email concerning the above and the likely amendments to the LGPS benefit structure and contribution bands.

The Local Government Association has advised local authority pension funds of the interaction between the recent Court ruling and the Cost Cap Mechanism for the LGPS and other public service pension schemes.

Importantly, any proposed changes are now on hold pending the appeal by HM Government against the Court ruling in McCloud and Mostyn and others v The Lord Chancellor and Secretary of State for Justice.

Scheme Employers are urgently advised that the contribution bands previously advised are not to be used and the bandings to be used from 1 April 2019 are attached.

The Actuary to the Warwickshire Pension Fund (Hymans Robertson) has provided the following advice / notes:

- (a) The cost cap management process as it was proposed to affect LGPS benefits and member contributions from 1 April 2019;
- (b) The recent McCloud case, where in essence the Court found that the transitional arrangements set up by Government whilst reforming public service pension schemes were discriminatory (directly on grounds of age, and indirectly on other grounds);
- (c) The Government's statement today that it will appeal this McCloud case.

The upshot is that there is now great uncertainty on the horizon about if, when and how benefits and member contributions will be affected in the LGPS. This in turn impacts the 2019 valuations in England and Wales, which were to have allowed for (a) above. What we can say at this stage is:

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- In the absence of any clear messages from LGPS Scheme Advisory Board (SAB) and/or MHCLG, the 2019 valuations will proceed on the basis of the current benefit and member contribution structure, i.e. ignoring (a) for the meantime;
- As and when there are developments we will reflect how best to incorporate into the 2019 valuation contribution-setting process;
- We will liaise closely with LGA and SAB to keep you fully up to date on developments. We will also liaise with the other actuarial firms to ensure consistency across all LGPS Funds, as far as is practical, regardless of who their actuary is;
- Your administration colleagues will be understandably vexed by all this, to say the least. This may involve (for instance) retrospective changes next year back to 1 April 2019 for benefits and member contributions, not to mention the impact on those who are subject to the current transitional arrangements.

An important note for those employers in your Fund who have employees in the unfunded public service pension schemes (e.g. Teachers, NHS): the penultimate paragraph in the Government statement implies that the planned employer contribution rate increases for these schemes will still go ahead, irrespective of the above. We would suggest that those employers seek clarity from the relevant Scheme Advisory Board or Government department.

The note issued by the LGA is available below:

Dear colleague

The Government has today published a written statement which announces a pause in the cost cap process for public service pension schemes pending the outcome of the application to appeal the McCloud case to the Supreme Court. A copy of the judgement can be found here: <https://www.judiciary.uk/wp-content/uploads/2018/12/lord-chancellor-v-mcloud-and-ors-judgment.pdf>

The statement can be found here:

<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2019-01-30/HCWS1286/>

Although the statement gives no timescales for the outcome of this case we understand it could be late 2019 or early 2020 before we know.

The LGPS Advisory Board (SAB) will now consider whether, given this announcement, it should withdraw the benefit change recommendations made to MHCLG as a result of its own cost cap process.

We understand that the LGPS could, if McCloud is upheld, be required to make changes to the underpin and that such changes would need to be taken into account in a revised SAB cost cap result.

In taking a view, the SAB will be aware that delaying benefit changes to possibly 2020 while backdating them to April 2019 would constitute a significant administrative burden on administering authorities and employers. Although SAB will immediately start considering next steps it should be stated that even if the SAB wishes to press on any changes to benefits can only be made with the agreement of Government.

Therefore although administering authorities may wish to continue to prepare for the SAB recommended cost cap benefit changes (as set out in our email of the 21st December) they should not anticipate their implementation unless and until such time as MHCLG formally consult on them.

This email has been sent on behalf of the Scheme Advisory Board.

If you have any questions please do not hesitate to contact me.

Yours sincerely

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