



Subject:	Response to Department of Communities consultation on the draft statutory guidance on the McCloud Remedy in the Local Government Pension Scheme (Northern Ireland)
Date:	24 th January 2025
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Restricted Reports	
Is this report restricted?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Please indicate the description, as listed in Schedule 6, of the exempt information by virtue of which the council has deemed this report restricted.	
Insert number <input type="checkbox"/>	
<ol style="list-style-type: none">1. Information relating to any individual2. Information likely to reveal the identity of an individual3. Information relating to the financial or business affairs of any particular person (including the council holding that information)4. Information in connection with any labour relations matter5. Information in relation to which a claim to legal professional privilege could be maintained6. Information showing that the council proposes to (a) to give a notice imposing restrictions on a person; or (b) to make an order or direction7. Information on any action in relation to the prevention, investigation or prosecution of crime	
If Yes, when will the report become unrestricted?	
After Committee Decision	<input type="checkbox"/>
After Council Decision	<input type="checkbox"/>
Sometime in the future	<input type="checkbox"/>
Never	<input type="checkbox"/>

Call-in	
Is the decision eligible for Call-in?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

1.0	Purpose of Report or Summary of main Issues
1.1	The purpose of this report is to make Members aware of the Department of Communities consultation on the draft statutory guidance on the McCloud Remedy in the Local Government Pension Scheme (Northern Ireland) and to seek Members' approval of the Council's draft response.
2.0	Recommendations
2.1	Members are asked to consider the draft response and approve its submission to the Department of Communities (DfC), subject to any comments or amendment provided.
3.0	Main report
3.1	<p><u>Key Issues</u></p> <p>After reforming public service pension schemes in 2014 and 2015, the Government introduced transitional protections for older members. However, in December 2018, the Court of Appeal ruled that younger members of the judicial and firefighters' pension schemes had been unlawfully discriminated against because the protections did not apply to them.</p> <p>3.2 This ruling is called the 'McCloud judgment'. As a result of the ruling, changes have been made to the Local Government Pension Scheme(LGPS) to remove the age discrimination. These changes are known as the 'McCloud remedy'.</p> <p>3.3 In 2015, the LGPS in NI changed from a final salary scheme to a career average scheme. Older members who were closer to retirement were protected from these changes. Members were protected if they met these conditions:</p> <ul style="list-style-type: none"> • born before 1 April 1957 • joined the LGPS before 1 April 2012 (or another <u>public service pension scheme</u>) • under age 65 and an active member between 1 April 2014 and 31 March 2022 • took their pension straight away when they left the LGPS. <p>3.4 When a protected member retired, their pension fund compared the career average pension they built up before age 65 with the pension they would have built up in the final salary scheme. If the final salary pension was higher, the difference was added to their pension. This protection is called the underpin.</p> <p>3.5 The LGPS rules changed from 1 October 2023 because of the McCloud remedy. The changes are backdated to 1 April 2015, when the career average scheme started. If a</p>

	<p>member qualified for underpin protection, they will be protected even if they have already left the LGPS or taken their pension.</p>
3.6	<p>The McCloud remedy means two main changes for LGPS members:</p> <ol style="list-style-type: none"> 1. Qualifying younger members are now protected by the underpin too. This removes the discrimination found in the McCloud judgment. 2. The new underpin rules are much more detailed. This means that the underpin works fairly and consistently for all protected members. If you were protected by the 'old' underpin rules when you took your pension before 1 October 2023, your pension might increase under the 'new' rules.
3.7	<p>In 2020/21 and 2023 DfC consulted on proposals to remove unlawful discrimination found by the courts in the "McCloud" case.</p>
3.8	<p>Members are advised that on 11th December 2024 DfC issued a further consultation and are now seeking further views on draft statutory guidance to implement the McCloud remedy in LGPS (NI). It outlines the topics the draft statutory guidance should cover.</p>
3.9	<p>Members should note that the closing date for responses is 19th February 2025. A copy of the draft response to the consultation is attached as appendix 1 and a summary of the key issues are outlined below.</p> <p>A Link to the Consultation is detailed below.</p> <p>https://www.communities-ni.gov.uk/consultations/consultation-draft-statutory-guidance-implementation-mccloud-remedy-local-government-pension-scheme-northern-ireland</p>
3.10	<p>DfC are seeking consultees' comments on the content of the guidance, but in particular on the following points:</p> <ul style="list-style-type: none"> • Whether you agree with the approaches proposed • Whether the guidance is clear and contains sufficient information on each topic • Whether there are any other topics that should be covered in the guidance
3.11	<p>In summary the key areas are:</p> <ol style="list-style-type: none"> 1. Overall Approach to McCloud Remedy 2. Technical Matters 3. Compensation
3.12	<p>The draft guidance is intended to support the Scheme Manager in the implementation of the LPGA (NI) McCloud remedy in the following ways:</p>

	<ul style="list-style-type: none"> • By providing the Department's view on the approach that should be taken for a number of key issues in order to achieve a consistent application of the remedy across the LGPS(NI). • By providing additional guidance on how certain technical issues that may arise should be approached. • By providing an overview of the legal framework for McCloud compensation.
3.13	<p>The Key issues identified in the draft guidance cover the following areas:</p> <ul style="list-style-type: none"> • Governance • Data Collection and verification • Identifying members in scope • Qualifying scenarios • Case prioritisation
3.14	<p>In relation to the technical issues, these have been identified as:</p> <ul style="list-style-type: none"> • Transfers – Issues regarding retrospection • Multiple sets of underpin figures • Unpaid additional pension contributions • Deaths of beneficiaries before payment made
3.15	<p>In relation to Compensation</p> <ul style="list-style-type: none"> • Identifying the conditions that must be met for direct or indirect compensation to be possible • examples of where compensation may be payable in the context of the LGPS(NI)
3.16	<p>Members are asked to consider the draft response in Appendix 1 and approve its submission to the Department for Communities.</p>
	<p>Financial & Resource Implications</p>
3.17	<p>There are no implications associated with this report</p>
	<p>Equality or Good Relations Implications / Rural Needs Assessment</p>
3.18	<p>There are no implications associated with this report.</p>
3.19	<p>Members are advised that DfC have undertaken an equality screening assessment on the proposed guidance and this is available on their website.</p>
4.0	<p>Appendices – Documents Attached</p>
	<p>Appendix 1 - Draft consultation response</p>