Brent	**Pension Board** 5 August 2020
	Report from the Director of Finance

LGPS Update

Wards Affected:	ALL
Key or Non-Key Decision:	Non-Key
Open or Part/Fully Exempt: (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)	Open
No. of Appendices:	Seven 1. McCloud Consultation 2. Public Sector exit payments Consultation response 3. LGPC Bulletin – March 2020 4. LGPC Bulletin – Mid March 2020 5. LGPC Bulletin – April 2020 6. LGPC Bulletin – May 2020 7. LGPC Bulletin – June 2020
Background Papers:	▪ N/A
Contact Officer(s): (Name, Title, Contact Details)	Minesh Patel, Director of Finance Ravinder Jassar, Head of Finance Sawan Shah, Senior Finance Analyst Saagar Raithatha, Finance Analyst

1.0 Purpose of the Report

1.1 The purpose of this report is to update the committee on recent developments within the LGPS regulatory environment and any recent consultations issued by the Ministry of Housing, Communities and Local Government (MHCLG) which have would have a significant impact on the Fund.

2.0 Recommendation(s)

2.1 The Committee is asked to note the recent developments in the LGPS.

3.0 Detail

McCloud Case

3.1 On 21 December 2018, it was reported that the Court of Appeal ruled that transitional protections that protected older judges and firefighters from the public sector pension scheme changes in 2015, were unlawfully discriminatory. This case is known as the 'McCloud case'.

3.2 The Supreme Court denied the Government leave to appeal the McCloud and other associated cases on 27 June 2019 confirming that as 'transitional protection' was offered to members of all the main public service pension schemes, the difference in treatment will need to be remedied across all those schemes including LGPS. As the remedy will involve 'levelling up' member benefits, it has been widely expected that any agreed outcome will increase the cost of LGPS pensions.

3.3 Given that no remedy had been agreed by 31st August 2019, Funds had been left to consider locally how best to manage the uncertainty and risk. During this period, the Fund Actuary acted in line with SAB's advice and valued all member benefits in line with the current LGPS Regulations. The Fund had also elected to make an approximate allowance for the potential impact of McCloud in the 2019 valuation in the assessment of employer contribution rates by including a slightly higher required likelihood of reaching funding target. Further information on the background of McCloud case has been provided in previous LGPS updates to the committee.

3.4 On Thursday 16th July, MHCLG published a consultation set out in Appendix 1 on the proposed remedies for the LGPS to remove age discrimination. It is government's intention for legislation to be in place by April 2022. The proposed remedy will require a significant amount of administration and communication. Early analysis indicates that around 1.2 million members across LGPS, equivalent to roughly a quarter of all members, may be affected. Officers will be working together with the Fund's actuary, Hymans Robertson and the Fund's admin provider LPP to further work through the details of the consultation before preparing a response. At this stage, this is likely to be a large piece of work to be conducted and will likely require further admin resource in order to understand exact costs to the pension scheme.

3.5 In summary, the remedy extends the 'transitional protections' underpin (that was promised to active members in 2012 who were within 10 years of normal retirement age) to all other active members, regardless of age. The underpin gives the member the better of career average revalued earnings (CARE) or final salary benefits for the eligible period of service. In summary, the key features of the underpin are as follows:

- Eligibility is restricted to members who were active in the LGPS on 31 March 2012 and have accrued benefits since 1 April 2014;

- The underpin period applies between 1 April 2014 and 31 March 2022, but ceases when the member leaves active membership or dies in service;
- The final salary for comparison purposes applies at the point that the member leaves active status or reaches age 65.

3.6 Members who meet the criteria will have an “underpin date” and an “underpin crystallisation date” (Appendix 1 - paragraph 61).

3.7 The purpose of the underpin date would be to provide for a provisional assessment of the underpin, broadly comparing the qualifying member’s 2014 Scheme benefits in a relevant scheme membership against the 2008 Scheme benefits they would have accrued over the same period, in respect of the same membership. The underpin date would take place at the earliest of the date the qualifying member:

(i) leaves active service in a relevant scheme membership,
(ii) reaches their 2008 Scheme Normal Pension Age (NPA), or
(iii) dies.

Regardless of the outcome of this provisional comparison, there would be no adjustment to a member’s pension at their underpin date. The purpose of the comparison at a member’s underpin date would primarily be so that the member has early information on how the underpin may apply to them. This recognises that there may be many years between a qualifying member’s underpin date and their underpin crystallisation date, when the final comparison is due to take place.

3.8 The purpose of the underpin crystallisation date would be to provide a final check at the point the qualifying member’s benefits from the scheme are ‘crystallised’ (when the member takes their pension from the scheme). The check would be designed to ensure that qualifying members always receive at least the higher of the pension they would have been due from the 2014 Scheme and the 2008 Scheme, taking into account the impact of factors such as early/ late retirement adjustments. The test will be based on the member’s final salary at leaving/retirement, thus preserving the final salary link beyond 2022 as long as they are accruing benefits (Appendix 1 - paragraph 65).

3.9 Alongside the changes outlined to remedy the discrimination found by the Courts, it has also been proposed to make some changes to underpin provisions in order to ensure that the underpin works effectively and consistently for all members (Appendix 1 – paragraphs 42 to 59).

(i) Early Leavers - The existing protection only applied if a member left with immediate entitlement to benefits, which will be much less likely to be the case with the extended membership coverage. Therefore, the proposals extend eligibility to those leaving with deferred benefits.

(ii) Death in service and Survivors benefits - An underpin calculation will now be required for death in service and survivor benefits, which was not previously the case.

(iii) Breaks in service - To address existing issues surrounding breaks in service, the new regulations will require that a member must meet the underpin criteria in a single LGPS record. This means that the member would need to aggregate both periods of membership in order to apply for underpin protection. If the service was not aggregated, the member would lose their underpin protection.

3.10 Key questions outlined on the consultation document are as follows:

- Question 1 – Do you agree with our proposal to remove the discrimination found in the McCloud and Sargeant cases by extending the underpin to younger scheme members?
- Question 2 – Do you agree that the underpin period should end in March 2022?
- Question 12 – Do you have any comments on the proposed amendments described in paragraphs 56 to 59?
- Question 13 – Do you agree with the two-stage underpin process proposed?

3.11 Next steps to be conducted by officers in coordination with the Fund's actuary and admin provider will be to analyse the membership of the Fund in order to identify those affected. In addition to this, a dedicated McCloud project is to be set up to agree workstreams and identify the resource required ahead of responding to the consultation.

3.12 The closing date of this consultation will be on 8 October 2020. Comments from any member of the Board regarding the consultation should be sent to Rav Jassar ahead of the closing date.

4.0 Exit Payments Cap

4.1 The government first announced plans to cap exit payments in the public sector in 2015. On 10 April 2019, HM Treasury (HMT) launched a consultation on draft regulations, guidance and directions to implement the cap. The consultation closed on 3 July 2019 and received around 600 responses.

4.2 In the consultation, the exit payment cap is set at £95,000 and redundancy payments (including statutory redundancy payments), severance payments, pension strain costs – which arise when a Local Government Pension Scheme (LGPS) pension is paid unreduced before a member's normal pension age – and other payments made as a consequence of termination of employment are included in the cap.

4.3 The cap applies where two or more relevant public sector exits occur in respect of the same person within any period of 28 consecutive days. The total amount of all exit payments made to that person must not exceed £95,000.

4.4 Following the consultation, the LGA prepared a response following the proposed draft regulations and have raised concerns on the feasibility and consequences of implementing the Policy in the manner set out in HM Treasury's Consultation Document.

4.5 From the response, the LGA noted that the scope of the cap set out in the consultation could cover local government workers who have decades of service and earn less than £23,500 a year while an absence of reviews to the £95,000 cap limit would mean that over time, more people with salaries below the UK Average would be affected.

4.6 The LGA had also noted that due to the volume of consequential regulation changes required and the substantial changes needed to administrative systems, a minimum of nine months from the date the regulations are passed would be required for the necessary reforms to the Local Government Pension Scheme to be introduced and the actuaries, payroll providers and others to respond accordingly.

4.7 On Thursday 16th July HM Treasury published an update on the employer cost cap process set out in Appendix 2, alongside the consultation on proposals to rectify McCloud age discrimination in the LGPS. The employer cost cap process, applicable to all public service pension schemes including the LGPS was currently paused but will now be restarted. The objective would be to complete the process by next year, taking into account the cost of the proposals to remedy age discrimination as set out in the McCloud consultations.

4.8 Following consultation, the government has decided to no longer implement the cap in two stages and will instead capture the whole public sector as soon as possible, with few exceptions. The final schedule listing all public sector bodies the cap will apply to is contained within the regulations.

4.9 As part of the update, regarding the types of payments in scope, the government noted that it was far to include all payments related to exit within scope of the cap.

4.10 The government has expressed its expectation that pension schemes, employment contracts, and compensation schemes will be amended to reflect the introduction of the cap. The exit payment cap legislation will allow relevant employers and authorities to pay the pension scheme member an equivalent sum if the pension scheme has not been amended to reflect the introduction of the cap. Any further changes should be taken forward by the relevant scheme.

4.11 In addition, the government commented that the waiver process is designed to ensure that the cap can be relaxed in exceptional circumstances where it is necessary or desirable. The government is committed to making the process for considering waivers efficient in order to not cause any unnecessary delays for public sector employers and employees, whilst ensuring that cases receive sufficient and appropriate scrutiny.

4.12 In response to the concerns that there was no provision to update the £95,000 figure over time, the update mentioned that primary legislation allows the government to change the level of the cap through further secondary legislation. It has not been proposed to change the level of the cap at this stage, however the level of the cap will be kept under review in order to allow for a flexible approach to make decisions on the level of the cap with reference to full contextual factors.

4.13 The government is to publish updated regulations and guidance documents alongside the regulations coming into force. These documents will take into account the detailed responses provided by stakeholders as part of the consultation process. Further details on this update are set out in Appendix 2.

5.0 Financial Implications

7.1 This report is for noting, so there are no direct financial implications. However, the outcome of the consultations could have financial implications for the Fund, in particular the exit cap and the McCloud consultation. Further work will be done with the Fund's actuary and admin provider to analyse the implications of the consultation and report back to the committee.

6.0 Legal Implications

6.1 Not applicable.

7.0 Equality Implications

7.1 Not applicable.

8.0 Consultation with Ward Members and Stakeholders

8.1 Not applicable.

9.0 Human Resources

9.1 Not applicable.

<u>Report sign off:</u>

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Director of Finance