

LONDON BOROUGH OF SOUTHWARK PENSION FUND

McCloud judgement →

What it is, updates, the implications, the underpin explained and who it affects.





WHAT IS THE MCCLLOUD JUDGEMENT?

- When the Government reformed public service pension schemes in 2014 and 2015, they introduced protections for older members. In December 2018, the Court of Appeal ruled that younger members of the Judges' and Firefighters' Pension Schemes have been discriminated against because the protections do not apply to them.
- The Government has confirmed that there will be changes to all main public sector schemes, including the Local Government Pension Scheme (LGPS), to remove this age discrimination. This ruling is often called the 'McCloud judgment' after a member of the Judges' Pension Scheme involved in the case.





- July 2021 has seen a major step in the implementation of the ‘McCloud’ age discrimination remedy with the Public Service Pensions and Judicial Offices Bill laid before Parliament on 19 July. The Bill amends the Public Service Pensions Act and its equivalent in Northern Ireland, making provision to rectify unlawful discrimination in the way in which schemes were reformed in 2015 (2014 for the LGPS in England and Wales) and includes retrospective measures. As expected, it confirms the remedy period as covering membership from the date of reform (1 April 2014 or 2015) to 31 March 2022 for eligible members.
- For the LGPS (referred to as Chapter 3 schemes in the Bill), the Bill enables LGPS regulations to make provision for final salary benefits to be paid in respect of the remedy period (1 April 2014 to 31 March 2022), i.e. it is the enabling legislation which will allow the LGPS regulations to implement the McCloud remedy by extension of the underpin. Our understanding is that draft LGPS regulations are expected by the end of 2021 which we hope will enable progress to be made on upgrading administration systems to allow for the changes as well as help administering authorities plan their communication and rectification programmes.



WHAT ARE THE IMPLICATIONS ON THE LGPS?

- 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 'underpin'. When a protected member takes their pension, the benefits payable under the career average and final salary schemes are compared and the higher amount is paid.
- The Government will need to provide younger members with a protection equal to the underpin protection provided to older members in order to remove the discrimination. It recently consulted on the changes that need to be made to do this. The public consultation on the proposed changes closed on 8 October 2020. On 13 May 2021, the Government issued a statement confirming the key changes they will make to the LGPS to remove the age discrimination. We understand they will provide a full response to the consultation later this year.
- Under the LGPS regulations, employers and the administering authority for the Fund have different decisions to make that could affect member or dependants' pension benefits (First Instance Decisions).



WHAT IS THE UNDERPIN?

- When the scheme changed on 1 April 2014 an additional protection was put in place if you were within 10 years of your normal retirement age (in most cases age 65) on 1 April 2012. This is to ensure that you will get a pension at least equal to that which you would have received in the scheme had it not changed on 1 April 2014. This protection is known as the underpin.
- The underpin applies to you if you:
 - Were an active member on 31 March 2012;
 - Were within 10 years of your protected Normal Pension Age on 1 April 2012 (usually 65);
 - Haven't had a continuous break in active membership of a public service pension scheme of more than five years (after 31 March 2012); or
 - You haven't taken any benefits in the career average LGPS before the date the underpin calculation is performed - this is the earlier of the date you leave the scheme or your protected Normal Pension Age.
- The underpin can also apply if you were an active member of another public service pension scheme on 31 March 2012 and you then join the LGPS and transfer your pension benefits from the other public service pension scheme into the career average LGPS scheme and all or part of that transfer buys final salary benefits in the LGPS.
- The underpin will apply in these circumstances if:
 - There is a break of less than five years between you leaving the public service pension scheme from which the transfer is received and joining the LGPS;
 - You were within 10 years of age 65 on 1 April 2012;
 - You haven't had a continuous break in active membership of a public service pension scheme of more than five years (after 31 March 2012); or
 - You haven't taken any benefits in the career average LGPS scheme before the date the underpin calculation is performed - this is the earlier of the date you leave the scheme or age 65.

Your Pension Fund administrator will carry out this underpin check if you meet the criteria above.



THE UNDERPIN WILL NOT APPLY IN ANY OF THE BELOW CIRCUMSTANCES

- You leave without an immediate entitlement to benefits.
- If you elect to opt-out of the Scheme before your protected Normal Pension Age (age 65 for almost all).
- If you leave the Scheme with a deferred benefit and, at the date of leaving, you would have required your employer's consent to take payment of those benefits under the pre-1 April 2014 Scheme.
- If, other than flexible retirement, you voluntarily draw benefits from an age where you would have required your employer's consent to do so under the pre-1 April 2014 Scheme.





WHO DOES THE MCCLOUD JUDGEMENT AFFECT?

- ➔ The Government intend for the changes to apply to members who were in service on 31 March 2012 and also have service after 31 March 2014 (without a break of more than five years).
- ➔ If you left the Scheme before 1 April 2014 you built up benefits in the final salary Scheme only. These changes will not affect your pension.





IF THE JUDGEMENT APPLIES TO ME, WILL MY BENEFITS INCREASE?

- ➔ Most members are unlikely to see an increase to their pension, and where an increase is applied, it is likely to be small. This is because most members will build up a higher pension in the career average pension scheme (1/49th accrual rate) than they would have under the final salary scheme (1/60th accrual rate).





WHAT DO LGPS MEMBERS NEED TO DO?

- **You do not need to take any action.** The Government has confirmed that members who qualify for protection do not need to make a claim for the changes to apply to them.
- We do not expect any changes to be introduced before April 2023.





I HAVE ALREADY LEFT THE LGPS - WHAT DO I NEED TO DO?

- ➔ If you qualify for protection and have membership in the LGPS after 31 March 2014 the changes will apply to you, even if you have left the Scheme. You won't need to do anything; the pension team will review each case to see if any adjustments need to be made.
- ➔ To recap - the Government intend for the changes to apply to members who were in service on 31 March 2012 and who also have service after 31 March 2014 (without a break of more than five years).
- ➔ If you left the scheme before 1 April 2014 you built up benefits in the final salary scheme only. These changes will not affect your pension.





WHAT IF I AM ALREADY RECEIVING MY LGPS PENSION?

- If you qualify for protection and have membership in the LGPS after 31 March 2014 the changes will apply to you, even if you are receiving your pension from the LGPS.
- You will be contacted once everything is finalised and if applicable your benefits will be revised.





THANKS FOR WATCHING



For a helping hand, please contact us via:



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For the national Local Government Pension Scheme website, it's:
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