

LGPS Scotland McCloud prioritisation – initial policy

One of the issues raised in responses to our consultations on the McCloud remedy for the LGPS in Scotland was how cases affected by the McCloud remedy should be prioritised. As a wide variety of cases will need to be dealt with, some respondents requested certainty on the order in which they should be approached.

This is an important issue and in order to provide some consistency for administering authorities, we have agreed a protocol with the Department for Levelling-up, Housing and Communities and the Department for Communities, Northern Ireland. This note summarises our current views on how cases affected by the McCloud remedy should generally be prioritised. The content of this note will be considered further in discussions about statutory guidance relating to the McCloud remedy and we intend to issue updated text on prioritisation in any statutory guidance that we publish.

This note should be read alongside the Local Government Pension Scheme (Remediable Service) (Scotland) Regulations 2023 (SSI 2023/240, ‘the 2023 Regulations’) and the amended Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014 (SSI 2014/233, ‘the 2014 Regulations’). Terms used in this note have the meaning used in the 2014 and 2023 Regulations.

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| Group 1 | <p>New final underpin dates and deaths</p> <p>When an eligible member retires, they can rightly expect that the pension they will receive is accurate and complete. Efforts should be taken to ensure that when an eligible member retires on or after 1st October 2023, or otherwise has their final underpin date under regulation 4H of the 2014 Regulations, that the pension calculations undertaken by their administrator take into account their underpin rights, where applicable, straight away.</p> <p>The following situations should also be regarded as part of group 1:</p> <ul style="list-style-type: none"> • Deaths on or after 1 October 2023 of eligible members. • Trivial commutations calculated on or after 1st October 2023, where the final underpin date or date of member’s death was before that date. • Transfers out paid on or after 1st October 2023 where the guarantee date (or for cash transfer sums, the date of leaving) was before 1st October 2023. <p>Prioritising these cases will prevent the need for administrators to revisit these cases subsequently and potentially have to make retrospective amendments to calculated rights.</p> <p>We recognise that, on occasion, there may be circumstances in the period after the remedy comes into force which mean it will not be possible to fully take into account the 2023 Regulations straight away (for example, if the necessary data is unavailable from the employer). In such cases, administrators should clearly communicate that to affected members at the time and seek to rectify the situation as soon as they can afterwards.</p> |
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| Group 2 | <p>Cases falling under Part 3 of the 2023 Regulations</p> <p>The LGPS McCloud remedy has retrospective effect to 1st April 2015 and, for many eligible members, the underpin date or the final underpin date set out in the 2014 Regulations (as amended by the 2023 Regulations) will have already occurred. Part 3 of the 2023 Regulations sets out how the remedy should apply retrospectively for these eligible members, as well as in respect of eligible members who died before 1st October 2023.</p> <p>For these cases, administrators will need to review eligible members' entitlements and, where necessary, make additions to pensions or other benefits, including any applicable arrears.</p> <p>Within this group, cases should be considered in the following order:</p> <p>a) <u>Cases where a member or survivor pension is in payment</u></p> <ul style="list-style-type: none"> • These are cases where a member or survivor pension is currently being paid which includes membership in the underpin period. The fact that a pension is in payment means that a final underpin date under regulation 4H of the 2014 regulations has already taken place for the eligible member before 1st October 2023, or that the member has died before that date. • In these cases, the pension a member or survivor receives each month may not be accurate and it is important that administrators consider these cases promptly to ensure that the correct pension is paid as soon as possible in the future, including the payment of any arrears where applicable. • These cases fall under regulations 5 and 8 of Part 3 of the 2023 Regulations. <p>b) <u>Cases where payments have been made in the past but there is no ongoing liability</u></p> <ul style="list-style-type: none"> • These are cases where a member has had their final underpin date under regulation 4H before 1st October 2023, or has died, but the liability for the pension rights has otherwise been fully discharged by the administering authority. Cases in this group include: <ul style="list-style-type: none"> ○ Members and survivor pensions where a pension was in payment, but this is now no longer payable. ○ Cases where the liability was initially discharged through one of the following one-off payments: <ul style="list-style-type: none"> ▪ A transfer out ▪ A trivial commutation or small pot payment ▪ A death grant payment, where there is no related survivor pension • For the cases in this group, there will be no ongoing inaccurate payments, but it is possible past payments will have been inaccurate and administrators should make efforts to consider these cases promptly so that any underpayments can be rectified. • These cases fall under regulations 5, 6, 7, 8, 10 and 11 of Part 3 of the 2023 Regulations. |
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| | <p>c) <u>Cases where a member’s underpin date has taken place before or after 1st October 2023, but not their final underpin date</u></p> <ul style="list-style-type: none"> • These are cases where an eligible member has had their underpin date under regulation 4G of the 2014 Regulations – i.e. they leave active membership or reach their 2009 Scheme normal pension age (usually 65) - but they have not had their final underpin date. • For the purposes of this note, this group includes both: <ul style="list-style-type: none"> ○ eligible members who had their underpin date before 1st October 2023, and ○ eligible members who have their underpin date on or after 1st October 2023 but before the conclusion of the remedy project. • There will not have been any incorrect payments made for members in this group, but it will be possible for administrators to undertake the initial ‘underpin date’ calculation of benefits upon which final calculations will be based. These cases should be reviewed after the cases in groups 1, 2a and 2b. • Cases where a member’s underpin date was before 1st October 2023 fall under regulation 13 of Part 3 of the 2023 Regulations. |
| Group 3 | <p>All other cases</p> <ul style="list-style-type: none"> • Eligible members who do not fall within groups 1 or 2 are those who are in scope of McCloud remedy, but who remain in active membership and have not yet had their underpin date. • Members in this group will be of lower priority than members in group 1 and group 2. However, it is important that administrators take steps to update group 3 members’ records as soon as it is possible to do so and should have plans to achieve this in time for the first annual benefit statements including McCloud remedy details, expected to be 2024/25. • If a member in group 3 becomes a member in group 1 (for example, they retire) or a member in group 2c (they have their underpin date), their case should be considered in line with our guidance on those groups |

Within each group, administering authorities should consider using tools and analysis to help identify the members who are most likely to have an increased pension or benefit arising from our new underpin provisions, and who are therefore most in need of having their case reviewed promptly.

For all eligible members, remedy work should be concluded in time for the despatch of the first annual benefit statements that are required to include McCloud remedy details. This is expected to be the 2024/25 annual benefit statements and we intend to consult on this issue in early 2024.

General comments

We believe the approach outlined in this note is proportionate and reflects the relative urgency of different cases. The responsibility for administering the scheme lies with each administering authority and the administration of the McCloud remedy, which is complex and varied, should be approached flexibly. There may be circumstances where an authority feels it is right to deviate from the approach outlined above – for example, if it is more administratively efficient to take a different approach and members in a higher priority group would not be materially disadvantaged by doing this.

This may be the case if an authority is bulk processing cases, where a number of lower priority cases could be dealt with at one time, and where the same bulk processing could not be used for higher priority cases.

There may also be case specific factors which need to be considered – such as in respect of sensitive cases where special care should be given, for example, after a member’s death. Overall, where an authority does take a different approach to that we have outlined here, they should consider this decision carefully, and review that decision at appropriate intervals.

The McCloud remedy project is wide-ranging and this note is principally concerned with the payment of benefits relating to the McCloud remedy. There are important parts of the project which will need to be progressed in parallel with the payment of benefits. This includes, but is not limited to, the following:

- Collection and verification of additional data required to undertake the McCloud remedy calculations.
- Checks to verify which members are in scope of the McCloud remedy from previous pensionable service which has not been transferred in or aggregated to that LGPS fund. We intend to discuss the steps administering authorities should be taking to identify such members in the guidance working group.
- Any tax impacts of the McCloud remedy, including recalculations of past annual allowance calculations.
- Recalculation of inward Public Sector Transfer Club transfers to reflect the McCloud remedy.
- Divorce estimates and implementation of pension sharing orders for eligible members.

We expect that administering authorities will have an overall plan for delivering the McCloud remedy that considers these aspects of the project, and will be working with partners, including software suppliers, to ensure that local plans can be met. In general, local plans should support the prioritisation approach outlined in this note. We are aware that updated actuarial guidance is necessary for elements of the remedy and we have been liaising with GAD on this issue. They have confirmed that this work is a priority and they are seeking to issue guidance as soon as possible.