



**Synopsis of Responses and Departmental
Response to the consultation on the McCloud
Remedy in the Local Government Pension Scheme
(NI) – Supplementary Issues and Scheme
Regulations**



the underpin has been the means through which transitional protection was provided to older members.

4. All LGPS (NI) members were moved to the reformed, career average scheme in April 2015, but for protected members, the pension payable was underpinned against what they would have built up in the legacy final salary scheme. At a member's final salary normal pension age (usually 65) or at their date of leaving, if earlier, the scheme manager, the Northern Ireland Local Government Officers' Superannuation Committee ("NILGOSC"), would compare their career average pension against their final salary pension, and award them an addition, if the final salary pension would have been higher.
5. The Department conducted its first consultation on its proposed changes to address the McCloud judgment in the LGPS (NI) from 11 November 2020, closing 31 January 2021.
6. In May 2021, the Minister for Levelling up, Housing and Communities made a written ministerial statement³ which was laid before Parliament confirming how the McCloud Remedy would be taken forward in the LGPS (England & Wales).
7. On 1 November 2021, the Assembly approved a legislative consent motion⁴ tabled by the then Minister of Finance, Mr Conor Murphy, requesting that the Assembly endorse the extension to Northern Ireland of provisions to implement the remedy solution for age discrimination in public service pension schemes (amongst other matters) in the Public Service Pensions and Judicial Offices Bill as introduced in the House of Lords on 19 July 2021. The Public Service Pensions and Judicial Offices Act 2022⁵ (the 2022 Act) received Royal Assent in March 2022 and provides the framework within which the McCloud judgment will be addressed.

³[Written statements - Written questions, answers and statements - UK Parliament](#)

⁴[Motion: Legislative Consent Motion: Public Service Pensions and Judicial Offices Bill \(niassembly.gov.uk\)](#)

⁵[Public Service Pensions and Judicial Offices Act 2022 \(legislation.gov.uk\)](#)



8. Building on its first consultation, the Department conducted its second consultation on its proposed changes to address the McCloud judgment in the LGPS (NI) from 28 July 2023, closing 1 September 2023. In this consultation the Department sought further views on supplementary issues and scheme regulations.
9. The consultation also sought comments on minor amendments which were unrelated to the McCloud Remedy.
10. The policy matters on which the Department sought general views were as follows:
 - Aggregation – Determining the rules applicable to decide whether a member with multiple LGPS (NI) memberships has underpin protection in some or all of these.
 - Club transfers – Determining the rules applicable to decide whether a member with previous membership of another public service pension scheme has underpin protection in respect of their LGPS (NI) membership.
 - Flexible retirement – How the underpin should work in respect of flexible retirement, particularly for cases of ‘partial’ flexible retirement, where a member does not take all their accrued benefits.
 - Divorce – How the scheme’s divorce and underpin calculations interact.
11. The technical matters on which the Department sought implementation comments were:
 - Compensation – The circumstances where a member may become entitled to compensation where they have suffered a loss relating to the McCloud judgment.



- Interest – The interest terms that will apply where payments are made later than they would have been due to the McCloud discrimination.

Consultation responses

12. The Department received a total of 9 responses. The breakdown was as follows.

NUMBER	CATEGORY
5	Employing Authorities
1	Individual
1	Scheme Manager
1	Scheme Software Provider
1	Representative Body

Next Steps

13. The Department is now taking steps towards making the regulations to address the McCloud discrimination. These will come into operation on 1 October 2023 and enable the scheme manager to continue their detailed and important work on the remedy. The Department is mindful that a significant amount of work lies ahead to implement the McCloud remedy and is grateful for the engagement of the sector. In particular, the Department is grateful for the collaborative approach adopted by colleagues in the Department for Levelling up, Housing and Communities (DLUHC), who have developed the detailed policy for the McCloud Remedy in the LGPS.
14. In the period after the regulations come into operation, a range of McCloud-affected cases will need to be considered by the scheme manager. To encourage a consistent approach from the start, the Department will be developing initial guidance, along with our colleagues in DLUHC on how McCloud cases should be prioritised. The scheme manager should consider this in determining how to take forward their McCloud work. This guidance on prioritisation will be issued on a statutory basis.



Guidance

15. In the course of the work on the remedy, a number of issues on which guidance could be helpful have been identified. DLUHC have established a national guidance working group to consider McCloud guidance in more detail and the Department is a member of this working group. Where topics for statutory guidance are identified the Department will conduct a technical consultation with those affected by the proposed guidance.
16. To ensure a consistent approach to the implementation of the McCloud Remedy, the Department considers that this guidance should be statutory, however, other guidance (eg worked examples) would be better issued on a non-statutory basis because this will be easier to amend and update over time.
17. The Department is also working closely with the Government Actuary's Department where updated actuarial guidance is needed.

Consultation responses - detail

Question 1 - Aggregation

18. In question 1, we asked for views on the rules that will apply where a member has multiple employments under the scheme. We proposed a different approach to our original proposals. Under our new approach, members who had multiple LGPS (NI) employments would not have to join up or 'aggregate' these to qualify for underpin protection, where they would not otherwise meet the underpin qualifying criteria.
19. This approach would mean that, where a member was in active service in the LGPS (NI) on or before 31 March 2012, and they did not have a disqualifying gap, they would have underpin protection on their LGPS (NI) service in the underpin period. This would be the case even if the service in the underpin period is in a different LGPS (NI) membership, unaggregated from the



membership they were in on or before 31 March 2012. The consultation also set out details of the rules that would apply where a member with underpin protection on their LGPS (NI) service later leaves and rejoins or has concurrent membership.

20. Of the 9 responses received, 6 answered this question directly. All 6 of those respondents were broadly in favour of the proposals although almost all expressed concerns around the administrative complexity and the extensive amount of additional data collection required in order to proceed. Of the 3 respondents who did not answer this question directly, 2 cited the additional administrative complexity that these proposals will create generally.

The Department's response

21. Our regulations will implement the approach outlined in our consultation, which we believe is fair to members and avoids some of the significant legal and practical complexities of introducing an aggregation requirement. As part of our work on the national guidance working group, we consider whether guidance is required on the steps the scheme manager should take to identify members in scope of underpin protection and, if so, whether such guidance should be issued on a statutory or non-statutory basis. Administrative guidance and/or examples for complex cases is easier to update and amend and may be more appropriate than statutory guidance.

Question 2 - Previous public service pension scheme membership

22. In question 2, we asked for views on our proposed approach regarding members who had moved into the LGPS (NI) from other public service pension schemes. In line with the approach being taken in other schemes, we had set out that members would not need to have transferred that previous membership into the LGPS (NI) to qualify for underpin protection in the LGPS (NI). Instead, if an LGPS (NI) member had membership of another public service pension scheme on or before 31 March 2012, and did not have a disqualifying gap, they would have underpin protection on their LGPS (NI)



service in the underpin period (even if the previous service was not transferred to the LGPS (NI)).

23. We received 6 direct responses to this question and all respondents noted that this approach brings the LGPS (NI) in line with other public sector pension schemes. However, most respondents also pointed out that this would create a huge administrative burden which would need to be addressed. In particular, respondents were concerned about how members would be identified as being entitled to underpin protection if they have not previously informed the scheme manager of prior public service pension scheme membership. Two respondents suggested that the onus should be on the member to advise the scheme manager if they have qualifying service by a fixed date. One respondent suggested that a central database of UK public service pensions information would ease the burden as it could be shared across the UK.

The Department's response

24. We intend to proceed on the proposals outlined in our consultation. We are grateful for the detailed comments on this issue, and in particular note the concerns raised by respondents about the challenges identifying members in scope of underpin protection where they have not transferred in their previous public service pension scheme membership. The Department believes that the process for identifying relevant members is an issue that should be covered in statutory guidance and we will discuss the content of that guidance with the national guidance working group.
25. We will consider if data sharing between public service pension schemes could be a practical tool to help identify members who qualify for underpin protection based on their prior public service pension scheme membership.



Questions 3 and 4 - Flexible retirement

26. In question 3, we sought views on a proposal that, where a member takes flexible retirement before 31 March 2022 or their final salary normal retirement age (if earlier), they should accrue underpin protection for the membership after their flexible retirement, for the remainder of their underpin period. 6 respondents commented, with all of these agreeing with the proposal - many mentioned that it would ensure the remedy applies fairly to all members.
27. In question 4, we sought views on a proposal that, where a member takes 'partial' flexible retirement, there should be multiple final underpin dates to assess the value of the benefits being taken at different stages. 6 respondents commented, with all of these agreeing with the proposal. Most responses mentioned that it seemed fair but some did express concerns about its complexity. Three respondents requested either comprehensive guidance or worked examples to help the scheme manager deal with complicated cases.

The Department's response

28. On both questions concerning flexible retirement, our regulations will implement the proposal we consulted on. We believe it is a fair and proportionate approach, which is consistent with the way the remedy is being applied to LGPS (NI) members in other circumstances. We agree that for partial flexible retirement cases in particular, these could be very complicated, and note the requests for guidance and examples to assist with these cases.

Questions 5 and 6 - Divorce

29. In question 5, we sought views on our proposal for how cash equivalent values should be calculated in cases of divorce and dissolution of civil partnerships. Six respondents commented. One of these respondents deferred to the scheme manager on this as a technical matter and the remaining 5, including the scheme manager, agreed with the proposal. One respondent requested actuarial guidance on this at the earliest opportunity.



30. In question 6, we sought views on a technical amendment to the underpin calculations to prevent the possibility of negative underpin figures occurring, which could be difficult to explain to members. We set out our view that this would have no impact on the results of underpin calculations. Six respondents commented. One of these respondents deferred to the administrator on this as a technical matter, 4 including the administrator, agreed with the proposal and one raised a question as to whether there was a potential for costs to be incurred by the employer in this circumstance.

The Department's response

31. On both the matters we consulted on regarding divorce, we are proceeding with our consultation proposal. We will work with the Government Actuary's Department to issue actuarial guidance on divorce and dissolution cases as soon as possible.
32. In response to the concern raised about potential employer costs arising in relation to the proposal to remove pension debits from the calculation of the provisional assumed benefits and underpin amount at question 6, as noted in the consultation document, this proposal will mean:
- no change in the level of any final guarantee amount because the change will not affect the difference between the assumed benefits and the underpin amount;
 - no negative assumed benefits or underpin amount and the associated challenges of explaining them to scheme members.
33. It is not clear how this potential employer cost will arise because any additional pension purchased or awarded or certain transfers into the Scheme will have already occurred before the divorce or dissolution proceedings and do not arise as a result of this proposal. This proposal deals with the divorce or dissolution arrangements in the context of the revised underpin proposal as part of the McCloud Remedy in the LGPS (NI). It does not propose that additional pension is awarded.



Question 7 - Compensation

34. In question 7, we sought comments on the Department's approach to compensation in relation to McCloud. Six respondents commented. Most respondents requested statutory or central guidance or support to help ensure consistency in how the issue of compensation is approached and applied in the LGPS (NI). One respondent noted that, as compensation will be treated as liabilities for funding valuations and exit valuations, there will need to be software programming to allow these compensation figures to be held. The same respondent stated that statutory guidance will be required on the application of the compensation provisions. Two respondents stated that they believe members should have financial losses restored and one of these respondents further noted that members should not be unduly financially improved by way of compensation.
35. A respondent noted that it was important to address ongoing litigation in respect of the McCloud judgment and whether these compensation arrangements would negate the outstanding claims.

The Department's response

36. We note the strong desire in responses for central guidance to assist with cases of compensation and intend to discuss this in more detail in the national guidance working group.
37. In particular, we note the requests for greater clarity on the circumstances where the government believes direct and indirect compensation could apply in the LGPS (NI), based on the provisions in the 2022 Act and in the accompanying Department of Finance directions.
38. In relation to how individual compensation applications should be considered, we note there is already a strong central framework set out in Department of Finance directions within which decisions must be made. In particular, direction



33 sets out the factors that the scheme manager must consider in making decisions on whether to pay compensation. Direction 42 sets out the information that must be provided to the scheme manager as part of an application for compensation, as well as the information that must be provided to a member after consideration of an application. It will need to be considered what LGPS (NI) specific guidance could helpfully add on these aspects of the compensation process.

Question 8 - Interest

39. In question 8, we sought comments on the UK Government's approach to interest for backdated payments in respect of the McCloud remedy. Four respondents commented, with all agreeing with the proposals and one also suggested that central guidance would be helpful in cases where discretion can be exercised.

The Department's response

40. The interest provisions which will apply in relation to backdated McCloud payments have been set through the Public Service Pensions (Exercise of Powers, Compensation and Information) Directions (Northern Ireland) 2023, so that the same interest rates shall apply to members of all public service pension schemes who have been affected by this court case. The Department believes this is the right approach.

Question 9 - Minor Amendments

41. In question 9, we sought comments on the proposed minor amendments in part 4 of the draft regulations - these are unrelated to the McCloud Remedy. There were no comments received from respondents in relation to the proposed minor amendments. The Department will proceed with the consultation proposals on these minor amendments.



Question 10 - Draft Regulations

42. In question 10, we sought comments on the draft regulations, published alongside the consultation, that were drafted to deliver the McCloud remedy. Four respondents provided comments and we are grateful for the time and consideration that was given to the draft provisions, particularly given the detail and complexity. Comments received covered a range of issues, and a number of technical and drafting improvements have been made to the final regulations to reflect some of the comments made.

Questions 11 and 12 - Equalities

43. Question 11 asked for comments on the screening analysis for equality impact. Question 12 asked if respondents were aware of additional data sets that would help us assess the impacts of the McCloud remedy on the LGPS (NI) membership.
44. No comments were received in response to question 11.
45. In response to question 12, two respondents provided comments. One noted that pension administration software does not hold information on protected characteristics, other than age, sex, and marriage and civil partnership status, so they are not aware of additional data sets that could be derived from that system. The other respondent suggested that data held by the national fraud initiative may be useful to assist with identifying information, such as members with multiple public sector pensions.

The Department's Response

46. The Department is grateful for the responses on the equalities impacts of our proposals.



Other Comments

47. In response to the consultation, three respondents provided additional comments not related to the questions within the consultation. In these responses, two respondents expressed concerns around the timescales in which the regulations must be in place with one of these respondents voicing concerns that they would not have the appropriate software in place on time. Two respondents expressed apprehensions regarding the administrative burden and one of these respondents raised the financial implications of the remedy. One respondent suggested that removing the underpin for all members would be a more equitable and simple solution than our approach of extending the underpin.

The Department's Response

48. We understand frustration at the short period between our remedy regulations being made and them coming into operation on 1 October 2023. The McCloud remedy project has been a significant cross-government workstream and there has been substantial complexity in seeking to develop fair and proportionate proposals for addressing the discrimination across a variety of different member situations. Whilst the remedy will come into operation on 1 October 2023, the delivery of the remedy to affected members will extend over the period after this date. The Department has taken steps to actively address the discrimination in a fair and proportionate way. Whilst this will have some significant administrative impacts for those working in the LGPS (NI), particularly in the coming 2 years, we believe it is unavoidable. Oversimplification of the remedy process would risk failing to achieve the policy intention of remedying the discrimination.
49. Removing the underpin for all members rather than extending the underpin to all members may have led to differential treatment on grounds of age in respect of those members who would no longer benefit from the underpin.
50. Taking a different approach in the LGPS (NI) to that adopted in other local government pensions schemes in the UK and other public service pensions



schemes could also lead to differential treatment, respectively, within the LGPS on a UK-wide basis and between the LGPS and other public service schemes.

51. The Department will make the Regulations and bring them into operation on 1 October 2023.