

Overview of the McCloud Remedy in the Local Government Pension Scheme (Northern Ireland) (“the LGPS (NI)”)

1. This annex summarises the remedy to the McCloud discrimination described in this document. The remedy will be made through scheme regulations which will come into operation on 1 October 2023.
2. The remedy will apply retrospectively, with the changes taking effect from 1 April 2015. The retrospective effect of the regulations means that the remedy may affect pensions paid and calculations performed between 1 April 2015 and 30 September 2023. These payments and calculations will need to be reviewed and potentially corrected to ensure the remedy is fully applied. This approach means that underpin protection will apply equally to members originally in scope of transitional protections and those who gain protection because of the remedy.

Underpin protection

3. The McCloud discrimination will be removed from the LGPS (NI) by extending underpin protection to younger qualifying members. Underpin protection was introduced on 1 April 2015 when the LGPS (NI) changed from a final salary benefit structure to a career average structure.
4. For the underpin period, members will receive an addition to their career average pension if their final salary pension over the same period would have been higher.

Qualifying criteria

5. Underpin protection will apply to qualifying members. A qualifying member is a member who:
 - was active in the LGPS (NI) or another public service pension scheme on or before 31 March 2012;
 - was a member of the career average LGPS (NI); and
 - did not have a disqualifying gap in service (more than 5 years).

Underpin period

6. Underpin protection will apply in the underpin period. When the scheme manager (the Northern Ireland Local Government Officers’ Superannuation Committee (NILGOSC)) compares a member’s career average benefits with the final salary benefits that would have built up, it is only benefits built up in the underpin period that it will compare.
7. The underpin period for a qualifying member’s pension account will run from 1 April 2015 to the earliest of:

- 31 March 2022;
 - the date the member leaves active service; or
 - the day before the member reaches their final salary normal pension age (for most members, this will be age 65).
8. After the end of the underpin period, an active member will continue to accrue service in the career average scheme without underpin protection.

The underpin calculations

9. For most members, underpin calculations will involve two or three stages. At the first stage, on the underpin date, the scheme manager will calculate provisional figures. Those provisional figures will form the basis of:
- the final underpin calculation, generally done when the member takes their pension;
 - the calculation of adjustments to the survivor pension paid when the member dies.
10. In simple terms, the underpin will involve a comparison of the benefits the member built up in the career average scheme in the underpin period with the benefits they would have built up in the final salary scheme in the same period. Certain adjustments will be needed to make sure the benefits can be compared fairly. For example, the following will be ignored:
- any reduction in contributions when the member was in the 50/50 section of the scheme;
 - most transfers into the career average scheme;
 - any additional pension awarded by the employer or bought to boost the member's pension;
 - additional voluntary contributions (AVC).

Underpin date

11. A qualifying member's underpin date for a pension account will be the earliest of:
- the date they leave active service;
 - the day before the reduction in hours or grade, if the member is taking flexible retirement; or
 - the day before they reach their final salary normal pension age (usually 65).
12. On the underpin date, the scheme manager will calculate provisional figures:

- **Provisional assumed benefits:** the benefits the member built up in the career average scheme in the underpin period, after the adjustments mentioned above.
 - **Provisional underpin amount:** the benefits the member would have built up in the underpin period, had they built up in the final salary scheme. The member's final salary on the underpin date will be used to work out the provisional underpin amount, even if they don't leave active service until later.
13. The provisional figures will include any ill health enhancement that falls within the underpin period, up to the member's 2009 Scheme normal retirement age.
14. The provisional figures may give members an indication of how underpin protection will affect their benefits. However, there will be no change to their pension until their final underpin date.

Final underpin date

15. A final comparison of benefits will take place on a member's final underpin date. For most members, this will be when they take their pension.
16. On the final underpin date, the type of benefit the member is taking from the scheme and the value of that benefit is known. Performing a final underpin check at this time ensures that the underpin is based on the type of benefit that is being paid and truly reflects the benefits that would have been paid from the final salary scheme.
17. Scheme regulations will provide that a qualifying member's final underpin date is the earliest of these events:
- the day before they start to receive their pension (on normal age, ill health or redundancy grounds);
 - the day before the reduction in hours or grade, if the member is taking flexible retirement;
 - the date they transfer out;
 - the date they receive a trivial commutation payment in respect of their benefits.

How will the underpin change a member's benefits?

18. The underpin will apply differently to qualifying members, depending on how their LGPS benefits are paid out. This section explains the rules that will apply when a qualifying member's benefits are paid out in different ways.

Age retirement

19. When a protected member retires voluntarily between age 55 and 75, the scheme manager will calculate the LGPS (NI) benefits they are entitled to. They will then perform a final underpin check. The provisional figures

calculated on the underpin date are adjusted to reflect the date of retirement and the member's age on that date. Those adjustments may include:

- inflationary increases for the period between the underpin date and the final underpin date. Inflationary increases may even apply if the member is retiring from active status. This will happen if the member retires after their 2009 scheme normal pension age. Inflationary increases will also apply to the underpin amount if the final pay used to work it out is based on a period ending before the member's last day of service;
 - actuarial adjustments relating to the member's age and based on the early or late retirement factors set out in actuarial guidance.
20. The provisional figures will be known as the final assumed benefits and final underpin amount after these adjustments.
21. If the final underpin amount is higher than the final assumed benefits, the difference is added to the member's pension. The addition is known as the final guarantee amount.

Redundancy or efficiency retirement

22. A similar approach to the one described above for age retirements will apply when a member retires due to redundancy or business efficiency. The difference is that there will generally be no actuarial adjustment for early retirement.

Ill health retirement

23. If a protected member retires from active status with a tier 1 or 2 ill health pension, the provisional figures calculated on the underpin date will include any relevant enhancement to the member's pension. The enhancement is relevant if it falls within the underpin period and before the member's 2009 scheme normal retirement age.
24. The provisional figures are adjusted to reach final assumed benefits and final underpin amount. The provisional figures are increased by any inflationary increases that apply. If the member is retiring after their 2009 scheme normal pension age, actuarial increases will apply to the underpin amount.
25. If the final underpin amount is higher than the final assumed benefits, the difference is added to the member's pension.

Flexible retirement

26. The underpin will broadly offer the same protection to a member who takes flexible retirement as it does to a member who voluntarily retires.
27. If a member took flexible retirement before 31 March 2022 (and before their 2009 Scheme normal pension age), they may build up more benefits during the underpin period after flexible retirement. A member taking flexible retirement may choose not to take all of the benefits they built up in the underpin period

when they retire. If a member takes only a part of the pension built up in the underpin period, the regulations need to set out how that will affect any guarantee amount payable immediately and when the member takes the remainder of the benefits.

28. The Department for Communities will consult on proposals for how the underpin will operate for a member who takes flexible retirement. This will aim to result in fair and consistent treatment of qualifying protected members. The new approach will reflect the fact that a member who takes flexible retirement:
- may have more than one underpin date;
 - may have more than one final underpin date in respect of the same benefits if they do not take all of their benefits built up in the underpin period when they first flexibly retire.

Trivial commutation

29. A qualifying member with a small LGPS (NI) pension may be able to receive a one-off lump sum instead of an ongoing pension under the trivial commutation or small pot payment rules.
30. If this type of lump sum is paid after the pension is in payment, the member will already have had a final underpin date. If their pension includes a final guarantee amount, that will increase the lump sum that they receive.
31. If a member takes a trivial commutation or small pot payment before the pension is paid, the payment date will be the final underpin date. The lump sum paid will be based on the pension that they would have been entitled to, including any final guarantee amount.

Transfer out

32. If a qualifying member transfers their benefits out of the LGPS (NI), the calculation date of the transfer payment will be their final underpin date. On transfer, the cash equivalent transfer value (CETV) of the member's benefits is paid to the new pension arrangement.
33. To ensure the value of the underpin is reflected in the CETV, the scheme manager, NILGOSC will need to calculate CETVs of:
- a) the member's total accrued rights in the LGPS (NI) (assuming membership of the career average scheme);
 - b) the provisional assumed benefits, including inflationary increases to date;
 - c) the provisional underpin amount, including inflationary increases to date.
34. If the CETV of the provisional underpin amount c) is greater than the CETV of the provisional assumed benefits b), then the difference would be added to a) to reach the total CETV payable.

35. Special rules will apply when a qualifying member transfers their pension from one public sector pension scheme to another. You can find out more in the Special cases section below.

Special cases

36. As the sections above show, most qualifying members will have:
- an underpin date when provisional assumed benefits and provisional underpin amounts are calculated;
 - a final underpin date (which may happen on the same date) when the provisional figures are used as the basis of a comparison between the benefits in the career average and final salary schemes. Where the final salary benefits are higher, the pension or other payment being made is increased.
37. In this section we look at cases which do not fit this pattern.

Refunds

38. When a member leaves the LGPS (NI) without the right to a deferred or immediate benefit from the scheme, they are entitled to a refund of their contributions. If a qualifying member leaves with an entitlement to a refund, they will have had an underpin date on their date of leaving or on their 2009 Scheme normal pension age.
39. If they complete a transfer to another pension scheme, the calculation date will be their final underpin date and the amount transferred will reflect their underpin protection, as set out in the 'Transfers' section above.
40. If the member claims a refund, this is not a final underpin date. The refund amount is calculated and paid as normal. In this circumstance, the member will have an underpin date but no final underpin date.

Death

41. A qualifying member who dies as an active or deferred member will have an underpin date but no final underpin date. You can read more about how underpin protection affects the benefits paid when a qualifying member dies in the 'Underpin and survivor benefits' section below.

Aggregation

42. A member may have multiple LGPS (NI) pension accounts. In certain circumstances, separate pension accounts may be joined up, known as aggregation. The government will consult on rules about how the figures calculated on an underpin date are treated when a member has multiple records.

The underpin and survivor benefits

43. Following the death of an LGPS (NI) member, one or more of the following will be paid:
- a death grant;
 - a partner's pension;
 - children's pensions.

Death grants

44. Underpin protection will not change the death grant paid when an active member dies. This is because the death grant is based on the member's pay.
45. Any death grant paid when a pensioner member dies is based on the pension that was being paid. If the pension includes a final guarantee amount, that will increase the death grant paid.
46. The death grant paid when a deferred member dies is based on the level of pension that would have been paid to the member. Any guarantee amount that would have been added to the member's pension will be included when working out the death grant payable.

Survivor pensions

47. The pension payable to a survivor in the LGPS (NI) is a proportion of the pension the member has built up. However, any actuarial adjustment based on the member's age at retirement is not reflected in a survivor pension.
48. Our scheme regulations will provide for the calculation of a survivor guarantee amount. This will be based on the provisional figures calculated on the member's underpin date, increased in line with any inflationary increases that have applied since that date. If the underpin amount is higher than the assumed benefits after this adjustment, the difference is the survivor guarantee amount. A proportion of the survivor guarantee amount will be added to the survivor pension. The proportion will depend on what type of survivor pension is being paid.

The public sector transfer Club

49. There are special arrangements to enable transfers between different public service pension schemes. Known as 'Club' transfers, the rules that apply are set out in the public sector transfer Club memorandum. When protected service is transferred between public sector pension schemes, that service will 'inherit' the protection offered by the new scheme. Benefits will only be protected if they were built up in the remedy period. For most schemes, the remedy period runs from 1 April 2015 to 31 March 2022, this is the same for the LGPS (NI). The Club memorandum will be updated to reflect the additional information that schemes will need to share when benefits are transferred to make sure members remain protected.

Club transfers in

50. When the LGPS (NI) receives a transfer of protected benefits, the member will be awarded with career average benefits that have underpin protection. The transferred benefits, combined with any LGPS (NI) benefits the member built up before the end of the underpin period, will be used in the provisional calculations performed on the member's underpin date.

Club transfers out

51. When a member transfers protected LGPS (NI) benefits on Club terms, those benefits will acquire the protection provided by the receiving scheme. In most cases, this will be 'deferred choice' protection, meaning that the member will have a choice between final salary and career average benefits when they take their pension. At retirement, the protected LGPS (NI) service transferred will be combined with any other protected service the member has in that scheme and the member will make a single choice covering the whole protected period.

Pension sharing on divorce

52. When an LGPS (NI) member has a divorce or a dissolution of their civil partnership, a Court may order that their LGPS (NI) rights are split by issuing a pension sharing order. The Court uses a cash equivalent value of the member's LGPS (NI) benefits when valuing assets and deciding how they should be split. For a qualifying member, that cash equivalent value would be calculated as if it was a non-Club transfer (see above). This means that the value of the underpin, or an estimate of its value, would be taken into account by the Courts.
53. Any percentage split of the member's LGPS (NI) benefits would be applied in line with the Court order. This could happen before or after the member's underpin date or final underpin date. The government intends that any calculations related to a divorce or dissolution of a civil partnership will not change a member's underpin date or final underpin date. However, the government will consult on further issues in relation to pension sharing and the underpin.