

To: Local Government and Housing Regulation
Division

18 February 2025

Email: lgpdconsultations@communities-ni.gov.uk

Consultation on draft statutory guidance on the implementation of the McCloud Remedy

Thank you for the opportunity to respond to the above consultation. I am doing so on behalf of the Northern Ireland Local Government Officers' Superannuation Committee (NILGOSC) which is the public body responsible for administering the Local Government Pension Scheme for Northern Ireland (LGPS (NI)).

1. Whether you agree with the approaches proposed?

In general, we agree with the approaches proposed but areas of concern are set out in the table below.

Paragraph number in the consultation	Comment
4.5	<p>Recording members in scope</p> <p>This section refers to having a McCloud indicator on a member record to confirm whether a member qualifies for underpin protection, does not yet qualify or has not yet been determined. NILGOSC's pension administration software, which to date has had considerable software developments for implementing the McCloud Remedy, does not have such an indicator and the software provider has stated that they are not providing a standalone indicator. Those members who have been identified as being eligible for McCloud Remedy protections have a McCloud Rectification data view, which can be used to report on those who are eligible.</p> <p>This is further complicated by the multi-jobber nature of the LGPS (NI) membership records. For example, a member may have underpin protections by virtue of 3 of their 12 records but only 1 or 2 records may have underpin protections applied to them.</p> <p>Given the progress with gathering and recording data for over 36,000 members, this guidance has been issued too late for such an amendment to be possible.</p>

Paragraph number in the consultation	Comment
4.7	<p>We are unclear what cases the Department is referring to in this paragraph. From the consultation document it appears that continuing eligibility at retirement will need to be checked for all members, particularly where the third condition (the requirement to be in pensionable service on or before 31 March 2012) is met by virtue of service in another legacy public service pension scheme.</p>
4.8	<p>As set out in the response to paragraph 4.5, there is no indicator available to indicate 'unknown'.</p> <p>There appear to be a few issues with this paragraph of the Northern Ireland guidance as it is currently drafted. Firstly, it appears to suggest that it will only be necessary to determine whether a member qualifies for protection if they have transferred from an English and Welsh public sector scheme in which they had service between 1 April 2014 and 31 March 2022. The other sets of statutory guidance (England and Wales and Scotland) would appear to suggest that this is necessary for all public sector schemes where the member's service falls within the respective underpin periods (i.e. the period beginning April 2014 for the English and Welsh LGPS scheme and the period beginning April 2015 for the Scottish Scheme). If paragraph 4.8 is just making the point that the underpin dates for the English and Welsh LGPS schemes are different, we do not see why this is relevant or necessary. Should it not only refer to the LGPS (NI) underpin period? Furthermore, if the first sentence of this paragraph should only refer to the LGPS(NI) underpin dates, the second sentence would become unnecessary and should be removed.</p> <p>Also, this paragraph states that this applies where a member joins "an LGPS fund." NI only has one LGPS fund, so should it not say the LGPS fund or the LGPS(NI)?</p>
4.9	<p>After McCloud Implementation phase</p> <p>This paragraph states that at the conclusion of the implementation phase, annual benefit statements should state whether a member is recorded as qualifying for protection or not.</p> <p>The software programming to link the McCloud information to the annual benefit statement data views is still in development, though it is intended that this will be available by the time the 2024/25 annual benefit statements are being issued.</p> <p>We welcome the approach of only stating whether McCloud protections apply or not, rather than stating any provisional amounts that may apply as these will vary from year to year and may not apply at final retirement. However, this does appear to contradict paragraph 6.8 where it implies that NILGOSC will be required to include McCloud Remedy details on annual benefit statements. It would be helpful if clarification was provided on what is specifically to be stated.</p>

Paragraph number in the consultation	Comment
5.9	<p>This paragraph states that ‘the third condition (under s. 77(5)) requires that pensionable service must be held in a legacy Scheme’. This wording does not accurately reflect the wording in the Public Service Pensions and Judicial Offices Act 2022. Nevertheless, the conclusion appears to be correct.</p> <p>This wording also appears to contradict Regulation 3(4) of the Transitional Regulations - Where a person has been an active member of <i>the 2014 Scheme</i>, and retirement benefits under paragraph (1) are payable to a member in accordance with <i>regulation 11 of these Regulations</i> (retirement benefits), the benefits paid from <i>Earlier Schemes</i> and <i>the 2014 Scheme</i> are, for all purposes, to be regarded as constituting a single pension scheme.</p>
5.6 – 5.10	<p>Deferred Benefits</p> <p>The content of the paragraphs relating to deferred refunds (5.6 to 5.10) appears to contradict the later paragraphs on transfers out of deferred benefits. In the latter (5.11 to 5.14), it refers to transfers out of deferred benefits still meeting the criteria for pre-2012 service.</p>
5.14 and 5.19	<p>This paragraph covers members initially qualifying for underpin protection by virtue of multiple public service pensions and, at a later date, transferring one of their previous pensions resulting in a disqualifying gap.</p> <p>It will be very difficult at a member’s retirement, to track the latest status of any pensions that are held with other LGPS or public service pension schemes. This is an additional administrative complexity and will have the potential of delaying payment of a pension.</p>
6.	<p>Case prioritisation</p> <p>Due to the scale of this exercise NILGOSC is highly dependent on bulk calculations through the pensions administration software. This means that as members are identified as meeting the eligibility criteria for the McCloud Remedy and their records are updated, calculations can be run. However, these calculations are run across all groups of members and then those records identified with an underpin applying are investigated. Therefore, this means that Group 3 and Group 2 members are progressed together and the prioritisation approach that is outlined in the consultation cannot be followed. These constraints appear to be acknowledged in paragraph 6.4.</p>

Paragraph number in the consultation	Comment
8 & 9	<p>Multiple sets of underpin periods and unpaid APCs</p> <p>It is unlikely that pensions administration software systems will be able to deal with these types of cases and manual adjustments will be required to ensure that correct underpins are applied.</p> <p>It is also unlikely that the software can easily deal with apportioning APCs where the period being bought straddles the remedy period and only a portion of that bought (even when some unpaid) applies to the underpin period. These manual adjustments will increase the risk of error.</p>

2. Whether the guidance is clear and contains sufficient information on each topic?

The table below sets out areas where we feel the guidance is unclear or further information is required.

Paragraph number in the consultation	Comment
Multiple	In numerous paragraphs the Scheme is referred to as the LGPS. The LGPS is the Local Government Pension Scheme in England and Wales and the guidance should refer to the LGPS (NI) where it is meant to refer to the Local Government Pension Scheme in Northern Ireland.
3.4	<p>Data Collection</p> <p>This paragraph recommends following the Scheme Advisory Board’s advice on McCloud data collection. At the time the SAB guidance was issued, March and April 2023, the scope of the data collection exercise had not been expanded in legislation. The guidance does need some minor updating to make it clear that it also applies to those additional records that fell in scope following the Regulations being made on 28 September 2023 i.e. relevant unaggregated records that now have remedial service or those members where there may be other public service pension membership that means they now qualify for the Remedy in all their LGPS (NI) records with remediable service.</p>
4.4	<p>In the table the second stage refers to a) ‘pre-2009 Scheme normal pension age membership in the underpin period’. It is unclear what this means, and it needs rephrased. I suggest the wording is changed to ‘membership during the underpin period from 1 April 2015 to 31 March 2022 where the member is younger than age 65’. The same wording appears in Stage 3 and Stage 4.</p> <p>Stage 4 does not apply to the LGPS (NI) as we do not have access to the LGPS Database and most of our members with other public service pension membership have it with the other NI public service pension schemes rather than the LGPS in England, Wales or Scotland.</p>
5.8	This paragraph refers to a member leaving a Scheme with a refund entitlement and later aggregating that service with another LGPS fund or transferring to another public service pension scheme. A member leaving the LGPS (NI) can only aggregate a refund with other service in the LGPS (NI). It is suggested that 5.8 a should be amended to reflect this.
5.9 and 5.10	It would be helpful if the Department could confirm that a refund only counts towards the third condition if aggregated with legacy benefits.

Paragraph number in the consultation	Comment
6.8	<p>Timings</p> <p>This section states that all remedy work should be concluded by the end of the McCloud Implementation Phase in time for the despatch of the 2024/25 annual benefit statements, unless the Scheme Manager has determined that this is not possible for a member or group of members. The statutory deadline to issue the annual benefit statements for the year 2024/25 is 31 August 2025. Given the difficulties encountered gathering data for the increased number of members in scope and the complexity of software programming that is required, along with late guidance it is likely that it will not be possible to issue annual benefit statements for 2024/25 including McCloud remedy details for all eligible members.</p>

3. Whether there are any other topics that should be covered in the guidance?

While perhaps outside the scope of this consultation it would be useful to have guidance on the interest rate applicable in various scenarios and the period over which it is calculated.

I hope the above responses are helpful. Please do not hesitate to contact me if you have any queries on the above responses.

Yours faithfully,

Zena Kee

Head of Pensions Policy