

# Scheme Advisory Board

## Guidance for the 2019 Valuation in respect of cost cap process and the McCloud and Sargeant age discrimination case (McCloud)

1. The Local Government Pension Scheme Advisory Board (SAB) is a body set up under Section 7 of the Public Service Pensions Act 2013 and The Local Government Pension Scheme Regulations 110-113.
2. The purpose of the Board is to be both reactive and proactive. It will seek to encourage best practice, increase transparency and coordinate technical and standards issues.
3. It will consider items passed to it from the Ministry for Housing, Communities and Local Government (MHCLG), the Board's sub-committees and other stakeholders as well as items formulated within the Board. Recommendations may be passed to the MHCLG or other bodies. It is also likely that it will have a liaison role with the Pensions Regulator. Guidance and standards may be formulated for local scheme managers and pension boards.
4. This guidance is published under Regulation 110 (3) *The Local Government Pension Scheme Advisory Board also has the function of providing advice to administering authorities and local pension boards in relation to the effective and efficient administration and management of the Scheme and any connected scheme and their pension funds*

### Purpose of this guidance

5. Due to the pause of the cost cap process (both HMT and SAB) and the uncertain outcome of the McCloud case there is a scheme liability which is unknown in both scale and timing. A survey of administering authorities undertaken by the SAB in February and March 2019 indicated very strong support for SAB guidance on the approach to be taken with regard to this liability in the 2019 valuation process.

### Cost Cap

6. Both the HM Treasury employer cost cap and the SAB cost management process are currently paused pending the outcome of McCloud. At the time of pausing a package of improvements costed at an average of 0.9% of payroll had been recommended. Depending on the profile of the membership of individual LGPS employers the impact on contributions could have varied widely.
7. Depending on the McCloud judgement and the cost of any remedy the following outcomes will be possible.
  - The proposed changes to the scheme as a result of the cost cap will be unnecessary, (should the remedial actions proposed by the Employment Tribunal to address the McCloud judgement match or exceed the costs of benefit improvements required under the cost cap or;
  - Should the McCloud judgement not stand, the cost cap changes will need to be reviewed to allow the impact to be backdated to 1 April 2019 in line with Government commitments or;
  - Should any McCloud remedy cost less than cost cap then further changes to the scheme may be required backdated to 1<sup>st</sup> April 2019

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## McCloud

8. Both the timing and the outcome of the age discrimination case McCloud and Sargeant are currently unknown. The potential impact on all public service pension schemes is significant should the 2018 Court of Appeal's finding that protections for those within 10 years of retirement are unlawful be upheld. If, however, the finding is not upheld then the cost cap process will restart.
9. More information on the McCloud case can be found on the Cost Management page of the SAB website <http://www.lgpsboard.org/index.php/structure-reform/cost-management>

## Proposed approach to the valuation

10. Given the unknown nature in the scale and timing of any impact on liabilities as a result of Cost Cap and McCloud the following approach to the 2019 valuation is advised; That -
  - I. If there is no finalised outcome on Cost cap/McCloud (in the form of a formal notification by MHCLG to administering authorities including a commitment by government to detailed benefit changes) by 31st August 2019 then the scheme benefit design used in the valuation should be as set out in current regulations.
  - II. In setting employer contributions for 2020 each administering authority should, with their Actuary, consider how they approach (and reflect in their Funding Strategy Statement) the risk and potential extra costs around this matter in the same way as they would for other financial, employer and demographic risks. This should be to allow employers to be aware of and make provision for the potential cost even though any additional contributions may not commence until after the outcome is known.
  - III. Once the outcome of Cost cap/McCloud is known and appropriate benefit changes are made, administering authorities should re-visit employer contributions under such statutory guidance or provision in regulation as may be available at that time. Authorities are referred to the proposals for interim valuations and revisiting employer contributions in the consultation entitled Local Government Pension Scheme: Changes to the Local Valuation Cycle and the Management of Employer Risk published 8<sup>th</sup> May 2019 <https://www.gov.uk/government/consultations/local-government-pension-scheme-changes-to-the-local-valuation-cycle-and-management-of-employer-risk>
  - IV. At present the impact on exit payments and credits is unknown. Therefore authorities should take account of regulatory requirements, FSS provisions and discuss the approach to be taken with their actuaries. It may be for example that for some employers any impact from either McCloud or Cost Cap would be immaterial and therefore no change to calculations is required. For others it may be that a level of prudence could be included in calculations to ensure that the fund is not adversely affected by the outcome of this process. Authorities are referred to the proposed changes to exit credits in the consultation entitled Local Government Pension Scheme: Changes to the Local Valuation Cycle and the Management of Employer Risk published 8<sup>th</sup> May 2019.

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- V. In order to provide some assistance for authorities in assessing the potential impact of McCloud the SAB have commissioned GAD to estimate both an overall scheme McCloud cost and a 'worst case' McCloud scenario on a range of pay assumptions. These figures will be published on the SAB website as soon they become available.

## Accounting provision

11. CIPFA have provided a separate note on accounting for McCloud/Cost Cap which can be found at <https://www.cipfa.org/services/networks/pensions-network/documents-and-guidance/mccloud-briefing-note>

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