

Appendix 2

McCloud Consultation

Consultation on Proposed Changes to the Scheme Rules

The McCloud and Sergeant cases

Soon after the reformed scheme benefit structures were introduced in other public service pension schemes in April 2015, legal challenges were brought against the transitional protection arrangements in the judicial and firefighters' pension schemes ('McCloud' and 'Sargeant', respectively) on grounds that the transitional protections offered to older workers constituted unjustified direct age discrimination. In those cases, younger firefighters and judges argued that younger workers were treated less favourably than older workers who were given transitional protection. The Court of Appeal ruled in December 2018 that transitional protection in the judicial and firefighters' pension schemes gave rise to unlawful age discrimination. The UK Government sought permission to appeal to the Supreme Court. This application was refused on 27 June 2019. In a written ministerial statement on 15 July 2019, the government explained that it accepted that the Court of Appeal's judgment had implications for all schemes established under the Public Service Pensions Act 2013, as all schemes had provided transitional protection arrangements for older members. The government confirmed that it would take steps to address the difference in treatment across all schemes and for all members with relevant service, regardless of whether they had lodged a claim. Since summer 2019, the Scottish Public Pensions Agency (SPPA) have been considering the changes necessary to remove the unlawful discrimination from LGPS regulations in Scotland.

Proposed Approach for LGPS in Scotland

Unlike most other public service pension schemes, the LGPS provided transitional protection to its older workers via a statutory underpin. All members moved into the 2015 Scheme on the reform date of 1st April 2015, but protected members were given a statutory underpin that provides their retirement pension cannot be less than it would have been in the 2009 Scheme.

Through the McCloud and Sergeant cases, the Courts identified unjustified age discrimination in transitional protection arrangements in the Judicial and Firefighters' Pension Schemes. This unlawful discrimination exists between two groups of LGPS members:

- those who were in service on 31 March 2012 and were within ten years of Normal Pension Age (NPA) on 1st April 2012, therefore benefiting from underpin protection; and,
- those who were in service on 31 March 2012 and were more than ten years from NPA, and so were not eligible for underpin protection.

At a high-level, SPPA's proposal for removing the unlawful age discrimination from the LGPS is to extend underpin protection to the second group of members listed above i.e. those who were not old enough to receive underpin protection

when it was originally introduced. This should ensure that the two groups listed are treated equally for benefits accrued from April 2015 onwards.