

20 October 2023

Dear Scheme Manager,

MCLOUD IMPLEMENTATION: CORRECTIVE PAYMENTS

1. I am writing now that retrospective regulations for the *McCloud* pensions remedy have come into force. A great deal of work has gone in to getting to this point, and effective collaboration across departments and schemes has been key to this. I hope that we can continue this good work as schemes begin to implement the remedy in the coming months. I am writing now to briefly set out the respective responsibilities of schemes and HMT moving forward and the future funding arrangements.
2. As you will be aware, elements of the remedy involve making corrective payments and paying compensation to members. Corrective payments made under the Public Service Pensions and Judicial Offices Act 2022 (PSPJOA) and underlying scheme regulations have been classified as Annually Managed Expenditure (AME). This includes:
 - a. Corrections to pension benefits, contributions and interest
 - b. Compensation for overpaid tax
 - c. Compensation for financial losses.
3. In limited circumstances, schemes can reduce or waive a member's liability to repay an overpaid amount.

4. Court-ordered compensation payments and any out-of-court settlements in respect of Injury to Feelings, will continue to be classed as Departmental Expenditure Limit (DEL) spending.

5. The parameters set out below apply to any payment made under the PSPJOA and scheme regulations, including payments classified as AME.

6. Any payments of compensation made as part of the remedy must be made within the parameters set by the PSPJOA and scheme regulations. Treasury directions made in December 2022 under the PSPJOA limit “compensatable losses” to direct financial losses and “part 4 tax losses” and set out further requirements with which scheme managers must comply when paying compensation. Scheme managers must:

- a. Have regard to the purpose of the compensation
- b. Comply with the principles of propriety, regularity and value for money
- c. Have regard to the circumstances of the member or person to whom the compensation is to be paid,
- d. Have regard to whether sufficient evidence has been provided that the conditions in the PSPJOA and Treasury direction have been met, and evidence provided to establish the quantum of the compensation
- e. Have regard to whether the claim were brought in litigation, it is likely to be successful
- f. Have regard to whether the member or person should have taken action to mitigate their loss
- g. Ensure that any payment is reasonable and proportionate to the loss
- h. Only pay amounts that would be sufficient to put the member into the position they would have been in absent the discrimination
- i. Only pay such amounts as necessary to put members to reasonably compensate the loss

While I am confident that these requirements will be adhered to, I would welcome your support in drawing them to the attention of any colleagues dealing with the *McCloud* remedy in your scheme.

HMT oversight

7. HMT recognise that there will continue to be a role for HMT beyond October 2023, in particular around coordination and troubleshooting on a variety of *McCloud* policy and implementation issues. A new implementation group has been formed and departments will be able to report in risks and issues as well as progress.

8. HMT also recognise that schemes will rely on HMT for advice and guidance related to the administration of compensation, and that HMT has responsibility to ensure that public money is spent appropriately, and so a new compensation working group has been formed and departments will be able to report in key data around compensation as well as discuss novel or contentious cases to ensure consistency across schemes.

9. I would urge Departments to play a full role in these groups and ensure that central reporting is carried out in a timely and consistent manner so that we can collectively monitor any emerging risks and promote appropriate consistency in implementation.

10. HMT will continue to have oversight across all strands of McCloud litigation and require agreement to all departmental litigation strategy, including agreeing any settlement payments, so I would be grateful if departments continue to engage HMT on this.

Next steps

11. The Second Permanent Secretary will be sending a similar letter to Finance Directors/Accounting Officers of the departments responsible for each of the affected schemes.

Yours sincerely



Nick Donlevy

Director of Public Spending, HM Treasury