



North East Scotland Pension Fund

nespf

McCloud Determination Report

September 2025

1. Background

In 2015, the Government made changes to public sector pensions including the Local Government Pension Scheme (LGPS). These changes provided transitional protections for older members of the schemes. However, in December 2018, the Court of Appeal ruled that younger members of the judicial and firefighters' pension schemes had been unlawfully discriminated against because the protections did not apply to them. This ruling became known as the "McCloud judgement".

In 2023, Scottish Ministers made regulations to address the McCloud age discrimination in the LGPS by extending underpin protection to younger members who did not qualify originally due to their age. The LGPS "McCloud Remedy" was implemented legislatively through the Local Government Pension Scheme (Remediable Service)(Scotland) Regulations 2023 ("the 2023 Regulations"), which came into force on 1st October 2023.

Implementation of the "McCloud Remedy" has been a priority of the NESPF administration team over the last two years with a dedicated Project Lead in place. As a result of this prioritisation, the Fund was able to 'go live' with McCloud calculations as soon as the required changes to the regulations and updates to the pension administration system, Altair, made it possible and updates have been provided quarterly to Committee through the PAS reporting.

2. Determination

By law, LGPS administering authorities will need to include remediable service information in the Annual Benefit Statement (ABS) issued to members for the 2024 to 2025 scheme year unless they exercise their discretion to delay this for a further year. The deadline for issuing the ABS's is 31st August 2025.

ABS's for the year 2024/25 were issued for all active and deferred members of the NESPF by early August 2025 and include details of and provisional guaranteed amounts that have arisen as a result of the McCloud Remedy in line with the requirements.

An additional default deadline also exists in terms of ensuring all McCloud rectification work is completed by 31st August 2025. This means that all calculations carried out for McCloud affected members during the remedy period where no allowance for McCloud was previously considered are to be revisited and any calculated adjustments to payments are to be made.

Whilst the Fund have made every effort to revisit all affected calculations, there are a limited group of calculations where this has not been possible.

To date and in advance of the 31st August 2025 deadline, the Fund has carried out recalculations and rectification work on the following calculation types:

- All pensioner calculations including late retirements
- Manual calculation of all Councillor pensions
- Checks against trivial commutations paid out for the remedy period

However, the Fund has been unable to meet the deadline for the revisiting of the following calculation types:

- **Transfer Calculations** – the benefit administration system, Altair, has not been updated to allow for recalculation of the transfer of benefits. This includes Club and Non-club transfers, both in and out of the Fund.
- **Divorce Calculations** – similar to transfers, the benefit administration system will require updates to allow for this type of calculation to take place. There are very few actual divorce settlements that would fall within the remedy period, however the complicated nature of these calculations will require systems support.
- **Death in Service** – the Fund have identified 201 calculations that will need to be revisited to check whether any rectification work is required to be carried out. These can be carried out using the benefit administration system with any rectification payments being made to the deceased members beneficiaries.

Fund's can make a "determination" to extend the McCloud implementation phase to 31st August 2026 under the regulations in respect of individual or classes of members where the administering authority believes it is "reasonable in all the circumstances" to make that determination. If an administering authority makes a determination for any of its members, it provides an extra year to retrospectively adjust pensions, pay arrears etc. However careful consideration must be given to exercising this flexibility in terms of striking the right balance in the best interests of affected members. The deadline for exercising the determination is 31st August 2025.

After careful consideration, Officers have decided to make a determination in respect of limited classes of members i.e. those requiring transfer, divorce or death in service recalculations, for the reasons set out above.

3. Next Steps

By making a determination, it allows more time for the required key changes to the benefit administration system to be developed, tested and implemented. However, by extending the implementation phase, the Fund also recognises it will mean a delay before the McCloud discrimination, identified as part of the original legal challenge, is resolved for some members of the NESPF.

A Work Plan, attached at **Appendix I**, outlines the timeline for completion of the outstanding work and project as a whole.

Further progress updates will be provided to Committee at regular intervals in line with the proposed Work Plan. This will ensure the Fund is able to provide full rectification, and resolution for impacted members, as soon as it possibly can and in advance of the revised August 2026 deadline.

4. Recommendation

The Committee is asked to note this report with regards to the deferral of full McCloud rectification implementation to August 2026. Deferral in respect of the limited members set out above is considered to be reasonable in the circumstances given system limitations and resource requirements.

Appendix I

Work Plan for Completion by 31 August 2026

There are 3 types of retrospective calculations that the decision has been taken to extend the deadline to 31st August 2026 for them to be completed.

These are:-

- 1) Death in Service calculations
- 2) Transfer out calculations
- 3) Divorce calculations

These will be dealt with as follows:-

- 1) Death in Service calculations

There are 201 calculations to be revisited and all need a manual calculation to determine if there is a Survivors Guarantee Amount to be paid.

These will be targeted first from September 2025 to January 2026.

- 2) Transfer out calculations

The system is currently in the process of being updated to be able to do these calculations with less manual intervention required. Therefore the 147 transfers will be dealt with second from February 2026 to May 2026.

- 3) Divorce calculations

The guidance on when and how to do a retrospective calculation is not complete so these will be looked at last from June 2026 to August 2026 once full guidance has been received.