CIPFA The Chartered Institute of Public Finance & Accountancy

# Supplement to CIPFA Bulletin 05:

# Pension Liabilities: McCloud Update and Goodwin Case Accounting Judgements in 19/20

1. This Bulletin provides an update on two developing issues which are likely to impact on the reporting of pension liabilities in the accounts of local, police and fire authorities and local authority pension funds both for 2019/20 and future years. This Bulletin does not amend the 2019/20 Code of Practice (the Code) requirements. The Bulletin applies in all jurisdictions.

2. Whilst it is recognised that many authorities will have prepared their 2019/20 accounts by the extended publication deadline of 31 August, publication deadlines have also been extended in all jurisdictions (30 November 2020 in England, Scotland and Wales and 31 December 2020 in Northern Ireland). Therefore, it is likely that these are matters which may need to be considered by authorities with their auditors up to the point when accounts are authorised for issue.

3. As highlighted in paragraph 23 of CIPFA Bulletin 05:

   (a) practitioners should keep developments of the pension schemes under review;

   (b) If changes to any of the schemes are proposed that could materially affect the figures disclosed for the reporting period, practitioners should consider the need to account for an event after the reporting period in accordance with Section 3.8 (events after the reporting period) of the Code.

4. This Bulletin provides an update on that earlier guidance which authorities may wish to take into account in considering the need to account for an event after the reporting period for 2019/20.

## McCloud Accounting Update

5. Since CIPFA Bulletin 05 was issued the Government published a consultation on 16 July 2020 proposing amendments to the Local Government Pension Scheme to provide a remedy for the McCloud and Sargeant cases. A consultation covering Scotland was issued on the 30 July 2020.

6. It is understood that all four actuarial firms have provided clients with IAS19 reports for 2019/20 which include assumptions taking account of the possible changes to the LGPS arising from the McCloud and Sargeant cases. The publication of the consultation document will allow for those assumptions to be updated.

7. Where authorities have reported pension liabilities in the 2019/20 statement of accounts which include assumptions for the impact of McCloud and Sargeant, they may wish to assess with their actuaries whether the change in the assumptions from the previous measurement of the liability compared with the proposals within the consultation publication would make a material difference to the valuation of liabilities included in the accounts.

8. If there is a material difference, then revised IAS19 reports should be commissioned and the 2019/20 accounts updated, as this would be a material adjusting event under paragraph 3.8.2.1(a).

## Goodwin Case Accounting Update

### Background

9. Changes to survivor pensions introduced by the Social Security Act 1986 resulted in most public service pension schemes providing survivor benefits to widowers (that is, male survivors in opposite-sex marriages) based on the female spouse's service from 6 April 1988 onwards. Since the introduction of both civil partnerships and later same sex marriages, public service pension schemes have provided survivor benefits in respect of both which have been in line with those paid to widowers i.e. entitlement based on service accrued from 6 April 1988.

10. On 12 July 2017, the Supreme Court ruled in the Walker v Innospec case that Mr Walker's male spouse was entitled to a pension calculated on all the years of Mr Walker's service with Innospec, provided that at the time of Mr Walker's death they remained married. As a result, public service schemes, including the Local Government Pension Scheme (LGPS), have been required to amend their regulations to provide equal survivor benefits for same-sex couples (whether married or in civil partnerships) to that provided for widows, based on a member's full length of service. Whilst some schemes have yet to introduce this change into regulations, it is being applied administratively and is backdated to 5 December 2005 when civil partnerships became possible).

11. The Goodwin case (Employment Tribunal: Mrs Goodwin v Department for Education) concluded on 30 June 2020 that a female member in an opposite sex marriage is treated less favourably than a female in a same sex marriage or civil partnership, and that treatment amounts to direct discrimination on grounds of sexual orientation. Where schemes contain provisions deemed discriminatory, those provisions must be dis-applied as being contrary to the non-discrimination rule set out in section 61 of the Equality Act 2010.

12. The Chief Secretary to the Treasury issued a Statement on 20 July 2020 that in the light of the Goodwin case, amendments would be made to the Teachers Pension Scheme and other public service pension schemes so that "*surviving male same-sex and female same-sex spouses and civil partners will, in certain cases, receive benefits equivalent to those received by widows of opposite sex marriages*".

13. It is expected that consultations on proposed changes to public service pensions schemes will take place during Autumn 2020. Potentially, applying the Walker judgement, this could affect some members benefit entitlement as far back as 5 December 2005.

### Accounting considerations

14. Although, the regulations underpinning the public service pension schemes have not yet been amended, the statement of the Chief Secretary to the Treasury of 20 July 2020 has much the same impact as that of his predecessor on 15 July 2019 in relation to the McCloud and Sargeant cases.

15. Accordingly, authorities will need to consider whether the changes anticipated under the Goodwin case should be accounted for as:

    (a) post-employment benefits under the Code's application of IAS 19 – *Employee Benefits* or

(b) contingent liabilities under the Code's application of *IAS 37 – Provisions, Contingent Liabilities and assets.*

## IAS19 considerations

### Obligations Created

16. Paragraph 6.4.3.1 of the Code of Practice on Local Authority Accounting in the United Kingdom 2019/20 (the Code) requires authorities to account for post-employment benefits for defined benefit schemes where there is either a legal obligation, under the formal terms of the defined benefit plan or a constructive obligation.

    While the regulations underpinning the various public service pension schemes, have not yet been amended, following the approach considered for the McCloud accounting treatment it is considered that the outcome of the Goodwin case confirms that a legal obligation has been created under sex-discrimination legislation, resulting in a liability.
17. Therefore, on this basis authorities should consider whether the IAS 19 valuation of post-employment benefit liabilities in the 2019/20 accounts should take into account the potential impact of the Goodwin case.

### Materiality

18. Given that the Goodwin changes need to be considered as an event after the reporting period, authorities will need to make an assessment about whether the possible changes would result in a material change to the pension liability already included in the accounts.

### Year-end accounting

19. Where an authority estimates that Goodwin would have a material change to its pensions liabilities already recognised:

    (a) A revised IAS 19 liability should be remeasured and if material included in the financial statements;
    (b) Where material, the estimation uncertainty disclosure note may need to be updated (see the Code paragraph 3.4.2.90).

## Contingent Liability considerations

20. Given that the legislation underpinning the various public service pension schemes has not yet been amended then the same reasoning for disclosing a contingent liability as set out in paragraphs 24-30 of CIPFA Bulletin 05 applies.

21. It should be noted that disclosing a contingent liability for the potential changes to the various public service pension schemes implies that when it becomes probable that an outflow of resources will be required (i.e. when the regulatory changes are made), then paragraph 8.2.2.22 of the Code would require an item previously disclosed as a contingent liability to be provided for.

22. Where an authority opts for this accounting treatment then the disclosures required under paragraph 8.2.4.2 (3) of the Code should be made. Sub-paragraph (a) requires a disclosure of the possible financial impact of any contingent liability. Notwithstanding that the relevant statutory schemes have not yet been amended, authorities should obtain an estimate from the actuary of what the possible financial impact might be on their pension liabilities for inclusion in the disclosure.

## Conclusion

23. Practitioners will need to make a professional judgement on whether the changes anticipated under the Goodwin case should be accounted for as:

    (a) post-employment benefits under the Code's application of IAS 19 or
    (b) contingent liabilities under the Code's application of IAS 37.

24. Whichever course of accounting treatment is decided upon, practitioners will be expected to document their consideration of both:

    (a) the consultation on the proposed changes to the LGPS arising from McCloud, and
    (b) anticipated changes to public service pension schemes arising from Goodwin,

    as an event after the reporting period and make some assessment of the likely impact to support their judgement.

25. As the scope of the changes to the public service pensions schemes take shape over the coming months, then assumptions will probably need to be revisited in 2020/21 and successive years.

26. Practitioners are likely to find it useful to document rationale for their choice of accounting treatment in their working papers.