

Local Government Pension Scheme (England & Wales) – Consultation on changes to the transitional arrangements to the 2015 schemes: McCloud

No	Question	Response
1	Do you agree with our proposal to remove the discrimination found in the McCloud and Sargeant cases by extending the underpin to younger scheme members?	It would seem some one of a moot point to argue with the proposal to remove discrimination identified by The Court of Appeal, despite a legal challenge not having been made specifically in relation to Local Government Pension Scheme (LGPS) benefits. This is now a self-evident requirement on Public Sector pension schemes. Frustratingly, this issue was identified in the Independent ‘Public Service Pensions Commission: Final Report’ dated 10 March 2011, which stated <i>“Age discrimination legislation also means that it is not possible in practice to provide protection from change for members who are already above a certain age.”</i>
2	Do you agree that the underpin period should end in March 2022?	For reasons detailed within the consultation, whilst I would agree that a revised underpin need not apply to service post 31 March 2022, the date on which the underpin comparison can be made should be permitted to be on or after 1 st April 2022, but limited to no later than either normal pension age in the 2008 scheme, or the date of leaving active membership, whichever comes first. Not to do so would result in a revised underpin being disproportionately advantageous to older scheme members and potentially exposing to Scheme to further legal challenge.
3	Do you agree that the revised regulations should apply retrospectively to 1 st April 2014?	Yes – no to do so would not sufficiently address the inequalities that exist between older and younger scheme members. Clearly, doing so comes at a cost both in administration and the cost of the benefits themselves. The administrative burden of revisiting settled cases (i.e. those who have already left active membership) is a complicated matter, and a significant task for each Administering Authority.
4	Do the draft regulations implement the revised underpin which we describe in this paper?	The regulations detailed appear to deliver the policy intent. As in previous Consultations my understanding is that a full analysis of these revisions will be carried out by the Local Government Pensions Committee and identify in detail any areas that may require further consideration or where the policy intent is not delivered.
5	Do the draft regulations provide for a framework of protection which would work effectively for members, employers and administrators?	See response to question 4.

6	Do you have other comments on technical matters related to the draft regulations?	The amending regulations as drafted appear clear and easy to follow and understand.
7	Do you agree that members should not need to have an immediate entitlement to a pension at the date they leave the scheme for underpin protection to apply?	Yes – were the adoption of a policy requiring immediate entitlement to a pension to be applied, it would again be disadvantageous to younger scheme members.
8	Are there any other comments regarding the proposed underpin qualifying criteria you would like to make?	My only concern is in relation to members who may have left with insufficient service for an entitlement to a deferred benefit but who remain in continuous active membership of LGPS by virtue of taking up a post with another Administering Authority. Although, not specifically addressed, I would assume that the underpin could be applied when ultimately leaving the scheme, this may also impact of the inter-fund payment made to the new LGPS Fund.
9	Do you agree that members should meet the underpin qualifying criteria in a single scheme membership for underpin protection to apply?	Yes – the administrative complications resulting from not doing so would be significant. It is important for administrators and scheme members alike that the solution adopted in addressing the issues raised by McCloud and Sargeant are not only effective but as simple and straightforward as is practicable, added complexity generates added confusion and added cost. The confirmation that the Scheme Advisory Board would be involved in producing centralised member communications on this matter is very welcome.
10	Do you agree with our proposal that certain active and deferred members should have an additional 12-month period to decide to aggregate previous LGPS benefits as a consequence of the proposed changes?	The offer of a further opportunity to aggregate would seemingly address the issue. However, although referred to as rare in the Consultation document the exclusion of pensioner members, however uncommon may generate confusion where such cases arise, and therefore it would be better to ensure the provision is comprehensive for all membership types.
11	Do you consider that the proposals outlined in paragraphs 50 to 52 would have ‘significant adverse effects’ in relation to the pension payable to or in respect of affected members, as described in section 23 of the Public Service Pensions Act 2013?	Those affected by the existing underpin arrangements are relatively few in number and I think the proposed mitigation for affected members, in allowing a further period in which benefits may be aggregated, should be adequate in ensuring there are not ‘significant adverse effects in relation to the pension payable to or in respect of members of the scheme’, subject to my previous comments surrounding pensioner members and member communications (Question 9 and 10).
12	Do you have any comments on the proposed amendments described in paragraphs 56 to 59?	The measures described appear to be consistent in ensuring a greater level of equality in application of an underpin, when made available to younger scheme members (Breaks in service of less than 5 years), an improved application of policy intent (Early/late retirement factors) and greater clarity of circumstances in which the policy

		is applicable (Death in service & Survivor Benefits). As such, all would be a welcome addition.
13	Do you agree with the two-stage underpin process proposed?	The two-stage process described appears necessary in order for accurate communications to be available to scheme members post 'underpin date' but prior to the 'underpin crystallisation date' for example in annual benefit statements. Equally, the further check at the 'underpin crystallisation date' allows for differing early/late retirement factors to be applied. Resulting in benefits paid, truly reflecting the more beneficial benefits under either the 2008 or 2014 scheme. A single stage process would either not provide for communications pre 'underpin crystallisation date' to indicate that the underpin may apply or would not allow for early/late retirement factors to be accounted for within the process.
14	Do you have any comments regarding the proposed approaches outlined above?	<p>The most significant concern relating to the implementation, is the significant workload created by the backdating of regulations. This will apply to (but is not limited to) leavers without taking immediate payment, re-joiners, retirements, deaths, transfers and redundancies. This will be a significant amount of work for all administering authorities.</p> <p>With regard to Public Sector Transfer Club transfers both in and out of LGPS Funds, the concept of member choice, whilst on the face of it empowers members to make decisions in relation to their benefits, it may not always be something members are comfortable with. This may increase the anxiety of some members in considering whether they require independent financial advice, while at the same time creating an even greater requirement on administering authorities to ensure comprehensive member communications.</p>
15	Do you consider there to be any notable omissions in our proposals on the changes to the underpin?	Nothing to add.
16	Do you agree that annual benefit statements should include information about a qualifying member's underpin protection?	<p>Yes – providing that pensions administration software providers can adapt systems to easily include this information. It should be provided to members at the earliest opportunity, allowing them to fully understand the underpin and its impacts.</p> <p>However, given the two-stage process detailed in the consultation, it must be made clear to members that the benefits subject to the underpin are subject to change either at the point of the 'underpin date' and/or 'underpin crystallisation date'. This again emphasises the requirement for very clear member communications explaining the two-stage underpin process.</p>

17	Do you have any comments regarding how the underpin should be presented on annual benefit statements?	The statement should show the value of benefits for the relevant period in both the 2008 and 2014 scheme, and where the 2008 scheme benefits are greater, the potential addition to the pension that would be made. This should aid an understanding of the process by scheme members.
18	Do you have any comments on the potential issue identified in paragraph 110?	This is a complicated issue for consideration, the administrative burden is vastly diminished by only accounting for the underpin at the 'underpin crystallisation date'. However, the prospect of an individual having significantly lower 2014 scheme benefits, than would have been provided in the 2008 scheme for the period April 2014 to March 2022 is significantly greater by the widening scope of the underpin. Although, this will likely affect a small proportion of scheme members, where this issue does arise, the impacts could be significant. Arguably, members affected could be frustrated, given that the potential entitlement to the underpin may have been routinely communicated for a significant period by way of their Annual Benefit Statements.
19	Do the proposals contained in this consultation adequately address the discrimination found in the 'McCloud' and 'Sargeant' cases?	On the face of it, these measures do appear to address the age discrimination identified in the McCloud and Sargeant cases adequately and go far enough to minimise the risk of further legal challenge. My concerns rest more in relation to the administrative burden for implementation, which will be significant both in terms of resources and time.
20	Do you agree with our equalities impact assessment?	<p>I am in agreement that it is objectively justifiable for members joining after 1 April 2012 to be outside the scope for the revised underpin, for the reasons given, that they are either moving from the 2008 to the 2014 scheme in full knowledge that this was always going to be the case, or that they have only ever been members of the 2014 scheme and have not transitioned from one scheme to another.</p> <p>Issues relating to age and how this impacts on the revised underpin do appear to have been adequately addressed, and although older and younger members appear less likely to benefit from the revised underpin, leaving those aged between 41-55 the most likely to benefit, this would be an expected outcome, due to the other factors identified.</p> <p>The impacts in relation to gender, do appear to slightly favour male members, but this is again the function of other factors (higher pay growth and lower withdrawal rates) and not as a result of inherent discrimination.</p>

21	Are you aware of additional data sets that would help assess the potential impacts of the proposed changes on the LGPS membership, in particular for the protected characteristics not covered by the GAD analysis (age and sex)?	Nothing to add.
22	Are there other comments or observations on equalities impacts you would wish to make?	Nothing to add.
23	What principles should be adopted to help members and employers understand the implications of the proposals outlined in this paper?	It is in my view of great importance that member communications and also, but to a lesser extent employer communications, where possible are centrally produced in conjunction with MHCLG, the Scheme Advisory Board and the Local Government Association, for a more consistent message and to try and minimise the duplication of effort amongst the 87 administering authorities in England and Wales. Reassurance needs to be given to members that the underpin will be applied fairly and accurately, that it is automatic not applied for, and that it will likely apply in only a relatively small number of cases. The key focus for employers is surrounding the provision of data, to enable the relevant calculations to be performed.
24	Do you have any comments to make on the administrative impacts of the proposals outlined in this paper?	<p>As has already been mentioned the administrative burden this places on Administering Authorities is significant.</p> <p>From a member perspective, the key challenge will be to manage expectations, in relation to both identifying those in scope and managing the process of reviewing cases. The reopening of a 12-month window for aggregation will also require clear and concise communications to ensure members make an informed choice.</p> <p>From an employer perspective the principle challenge is to ensure access and availability to the historic data required (working hours, service breaks etc) for the period April 2014 to March 2022. Until recently, communications with employers were on the basis that this information was not routinely required, but for a handful of cases where the existing underpin applies. Issues may arise where employers have ceased, or payroll providers have been changed.</p> <p>Finally, a significant concern from an administration perspective is that of dealing retrospectively with breaches in Annual and Lifetime Allowance for members who have already crystallised their pension benefits. These cases can be complicated under the current environment and the addition of the revised underpin will only add to the complexity. A key issue being that members may have taken specific actions to mitigate potential tax charges, that may now prove to have been insufficient when</p>

		benefits are reassessed. Consideration should be given to what assistance can be afforded to scheme members in this position.
25	What principles should be adopted in determining how to prioritise cases?	In relation to the prioritisation of cases, in my view those to whom the revised underpin would apply retrospectively and who are in receipt of their pension benefits, transferred benefits from the Scheme or death benefits calculated should be the first cases to be looked at. Given that in these cases, there may be arrears and interest due. This may be an area where administering authorities could benefit from prescriptive central guidance to aid a uniform and consistent approach.
26	Are there material ways in which the proposals could be simplified to ease the impacts on employers, software systems and scheme administrators?	This exercise due to its nature was always going to be a complicated process. However, in order to minimise the additions administrative burden, it will create, there should be early and meaningful engagement with pensions administration software providers, enabling preliminary work to be carried out in anticipation of the likely outcomes following the consultation. Whilst not prejudging the outcome, this work should commence prior to the conclusion of the Consultation, allowing providers as much time as possible for the preparatory work. As already mentioned, clear central guidance for both administering authorities and scheme employers would also aid in minimising the administrative burden. The risk of simplification may be to exclude a number of member groups.
27	What issues should be covered in administrative guidance issued by the Scheme Advisory Board, in particular regarding the potential additional data requirements that would apply to employers?	As already mentioned, central guidance for members and employers alike would be extremely beneficial. Targeted employer communications detailing precisely the information required from them to the appropriate Administering Authority. This can of course be supplemented by locally produced communications, but a consistent centralised approach will aid all parties, particularly employers within multiple funds. A key area that would benefit from central guidance would be details of an approach to take in circumstances where administering authorities are unable to obtain the requisite information from scheme employers.
28	On what matters should there be a consistent approach to implementation of the changes proposed?	In common with the response to question 25, clear guidance should be given on the prioritisation of cases for all administering authorities to follow to ensure that all work to similar schedules. A centralised data template for use by employers and administering authorities may also be useful.
29	Do you have any comments regarding the potential costs of McCloud remedy, and steps that should be taken to prevent increased costs being passed to local taxpayers?	LGPS Fund actuaries are agreed that the impact of the revised underpin will be relatively small at Fund level but do make clear that there may be significant variance from one employer to another within Funds, largely dependent on the maturity and

		<p>size of the workforce. It may therefore be another area in which centralised communications can be produced to inform the relevant employers of the possibility for a further valuation assessment and a revision made to their employer contribution rates.</p> <p>Resources required for the management and implementation of these measures will be a significant cost to administering authorities It will be important that these additional costs are identified, reported and approved by Committee's individually so the cost of these measures is transparent.</p>
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