

9 October 2020

Local Government Finance Stewardship
Ministry of Housing, Communities and Local Government
2nd Floor, South East Quarter
Fry Building
2 Marsham Street
London, SW1P 4DF

Dear Sir/Madam

Consultation Response – The Local Government Pension Scheme (England and Wales) - Amendments to the statutory underpin

This response represents the views of the administering authority, Northamptonshire County Council, in respect of Northamptonshire Pension Fund.

The administering authority's views on this consultation are set out below.

Question 1 - Do you agree with our proposal to remove the discrimination found in McCloud and Sargeant cases by extending the underpin to younger scheme members?

Yes.

Question 2 - Do you agree that underpin period should end in March 2022?

Yes.

Question 3 - Do you agree that the revised regulations should apply retrospectively to 1st April 2014?

Yes.

Question 4 - Do the regulations implement the revised underpin which we describe in this paper?

Yes.

Question 5 - Do the draft regulations provide for a framework of protection which would work effectively for members, employers and administrators?

The protection appears to work effectively but the additional work required of scheme employers and especially LGPS administrators is significant and must not be underestimated.

We can foresee that there will be scheme employers who will not be able to provide every piece of data that is required to calculate the underpin across all eligible members e.g. historic salary details for ex-employees. In these instances, Funds will need to make assumptions on the missing data. Guidance from the Ministry of Housing, Communities and Local Government (MHCLG) or the Scheme Advisory Board (SAB) on how Funds should account for any missing data and how this should be communicated with employers and impacted scheme members would be required. Guidance is also required to clarify whether it is the responsibility of the Fund or the Scheme employer to provide missing information and/or make assumptions on data that is no longer available.

Question 6 - Do you have other comments on technical matters related to the draft regulations?

It is understood that the SAB have provided to MHCLG within their consultation response a detailed analysis of amended regulation 89 of the LGPS 2013 Regulations. We support the concerns raised within the SAB's draft response and do not have anything further to add.

Question 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, otherwise the unlawful age discrimination will not be removed.

Question 8 - Are there any other comments regarding the proposed underpin qualifying criteria you would like to make?

The proposed remedy does not extend the underpin to younger members who joined the Scheme after 31 March 2012. These members will have final salary membership in the Scheme but will not qualify for the new protection because the changes were already publicised when they joined the Scheme. This could be an area of future challenge given the likelihood that younger members will see the cost of the remedy passed onto them via the cost cap arrangement. This administering authority would ask that MHCLG review the proposed remedy with a view to extending it to this cohort of membership.

Question 9 - Do you agree that members should meet the underpin qualifying criteria in a single scheme membership for underpin protection to apply?

Yes. This is the approach taken with the 85-year rule and the final salary link. Allowing members to meet the qualifying criteria in respect of multiple periods of un-aggregated membership is inconsistent with how the Scheme operates and would be complex administratively and to communicate to members.

Question 10 - Do you agree with our proposal that certain active and deferred members should have an additional 12 month period to decide to aggregate LGPS benefits as a consequence of the proposed changes?

Yes. Despite the additional administration that will be required it is right to allow active and deferred members this opportunity where they would otherwise lose their right to underpin protection if their benefits were not aggregated. It should also be considered if the administering authority should be given a discretion to allow a longer period than 12 months for the member to make a decision where required.

Question 11 - Do you consider that the proposals outlined in paragraphs 50 – 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?

On balance we do not feel that the proposals will have significant adverse effects in relation to the pension payable to or in respect of affected members.

Question 12 - Do you have any comments on the proposed amendments described in paragraphs 56 – 59?

We have no further comments other than it should be noted that the amendments to the protections will result in additional administrative work resulting from potentially having to revisit underpin calculations where a protected member leaves active service, returns without a disqualifying break in service and elects to aggregate the two periods of membership.

Question 13 - Do you agree with the two-stage underpin process proposed?

Yes. The two-stage process is necessary to ensure that a true comparison of final salary and CARE benefits takes place because it takes account of the different normal retirement ages in the two schemes as well as any future changes to State Pension age.

Question 14 - Do you have any comments regarding the proposed approaches outlined above?

We do not have anything further to add and support the comments made by the SAB in their draft response in relation to this question.

Question 15 - Do you consider there to be any notable omissions in our proposals of the changes to the underpin?

Besides what has already been identified by the SAB in their draft response to question 6, we do not have anything further to add.

Question 16 - Do you agree that the annual benefit statements should include information about a qualifying member's underpin protection?

As an administering authority we would suggest that when considering when the requirements will apply to annual benefit statements that a lead in period of at least one year is needed. Failure to allow for a lead in time will lead to administering authorities prioritising the correction of active and deferred member to comply with the new annual benefit statement requirement over revisiting pensions in payment / recalculation of death benefits etc. Guidance from MHCLG and/or the SAB would be welcome on the prioritisation of correction of benefits in any case.

This administering authority supports the view of SAB that annual benefit statements for active members under NPA 2008 **should not** include information about a qualifying member's underpin protection. Qualifying members should instead receive a separate communication setting out the notional final salary service membership that will be used in the underpin calculation. This will prevent annual benefit statements becoming more complex than they already are. Careful thought is required to ensure the annual benefit statement is as simple for scheme members to understand as possible.

Question 17 - Do you have any comments regarding how the underpin should be presented on annual benefit statements?

The underpin will introduce additional complexity and it will be challenging to explain to scheme members. Affected members will see their underpin value change from year to year and may see years when the underpin applies and years when it does not. A form of consistent presentation and wording for annual benefit statements is required and proposal for SAB to provide a standardised approach is welcomed.

Question 18 - Do you have any comments on the potential issue identified in paragraph 110?

No, there is undoubtedly an issue but we are unable to suggest a suitable mitigation.

Question 19 - Do the proposals contained in this consultation adequately address the discrimination found in the McCloud and Sargeant cases?

Yes.

Question 20 - Do you agree with the equalities impact assessment?

Yes.

Question 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)?

No.

Question 22 - Are there other comments or observations on equalities impacts you would wish to make?

No, although reference should be made to this administering authority's response to question 8.

Question 23 - What principles should be adopted to help members and employers understand the implications of the proposals outlined in this paper?

Members will need to be reassured that the underpin process is fair, being applied accurately and that they do not need to lodge a claim.

Members should be made aware that the number of cases in which the underpin will actually 'bite' are likely to be small and where it does the financial redress may be small.

Employers need to be made aware of the importance of supplying complete and accurate data as incorrect, missing or assumed data may adversely affect their funding position, although not necessarily on a significant scale.

Question 24 - Do you have any comments to make on the administrative impacts of the proposals outlined in this paper?

It is estimated that 19% of members of the Northamptonshire Pension Fund will be affected by the underpin and will require some form of ongoing record maintenance by both the administrators and scheme employers. This will have a significant impact on administration teams and careful planning will be key to ensuring successful and efficient implementation.

This administering authority has already assessed the impacts of implementing the remedy and the full detail of this can be found in **appendix 1** covering the following issues:

- Governance
- Data collection
- Member communication and employer engagement
- Staff training
- Administration system requirements
- Ongoing administration
- Specialist areas (annual allowance, lifetime allowance, pension sharing on divorce and transfer out).

Question 25 - What principles should be adopted in determining how to prioritise cases?

Cases where members have already retired (or died) should be the priority as the underpin could impact on a member's (or survivor's) current retirement income followed by members closer to their underpin crystallisation date.

Guidance on the order of priority would be welcomed in order to achieve consistency of prioritisation across administering authorities, along with expected timelines for completion.

Question 26 - Are there material ways in which the proposals could be simplified to ease the impacts on employers, software systems and scheme administrators?

Please refer to the response to question 16 with regards to keeping annual benefit statements as clear and as simple as possible with regards to the underpin.

Question 27 - What issues should be covered in administrative guidance issued by the Scheme Advisory Board, in particular regarding the potential data requirements that would apply to employers?

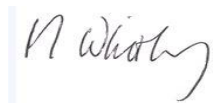
Guidance would be welcome for when an employer is incapable of providing historic member data (or when the employer no longer exists) and assumptions need to be made by the employer and/or the administering authority.

Question 28 - On what matters should there be a consistent approach to implementation of the changes proposed?

- A consistent centralised data template and communications, as issued by SAB.
- Because of the potential inequalities in the administering authority having to assume or make decisions on data, a centralised approach to dealing with employers who:
 - cannot provide the necessary data;
 - no longer exist;
 - are unwilling to engage in the process;
- Clarity on what are the employers' responsibilities and what are the administering authority's responsibilities; and
- Case correction prioritisation.

I trust you will find the above information useful and if any further information is required please do not hesitate to contact me.

Yours sincerely



Mark Whitby
Head of Pensions (Northamptonshire Pension Fund)
Encs Appendix 1 – McCloud remedy implementation plan considerations and dependencies

Appendix 1

McCloud remedy implementation plan considerations and dependencies

Area	Considerations	Dependent factors
Governance	<ul style="list-style-type: none"> Establish a project group to oversee all aspects of the activity. Will any external project support be required? Ongoing and regular reporting to the Pension Committee and Local Pension Board. 	<ul style="list-style-type: none"> Timing of establishment of project group will depend on how quickly LGPS regulations are amended and associated guidance is received. There will also be inevitable conflicts with other ongoing priorities.
Data collection	<ul style="list-style-type: none"> Need to identify member records with data not supplied from the scheme employer (such as breaks in service and hour changes). An approach will need to be decided on such as asking scheme employers to provide any missing information against the data already held by the administering authority. Will the administering authority be expected to make decisions on the accuracy of information supplied or not supplied? The Scheme Advisory Board have devised a universal data capture spreadsheet for employers to populate. Will the administering authority accept data in a different format? 	<ul style="list-style-type: none"> Employers will need to provide this information back to 1 April 2014 up to 31 March 2022 for members who were active members of the scheme on 31 March 2012. Some employers may no longer exist. Some employers may have destroyed data in accordance with their data retention policies. Depending on the amount of record amendments required, there may be insufficient capacity to upload the data, particularly if it supplied in different formats and is of poor quality.
Member communication and employer engagement	<ul style="list-style-type: none"> Scheme employers and scheme members need to be kept suitably engaged and informed of timescales and any actions that they are required to take. A communication plan will be required taking into account statutory disclosure requirements. Communications with scheme members needs to be as clear and as simple as possible to ensure the relevant messages are understood, including the message that scheme members do not need to engage a claims company in order to receive rectification of their benefits. 	<ul style="list-style-type: none"> Requires employers to recognise their responsibilities. Employers will need to be suitably engaged to provide the information required from them. Any data not provided or incorrectly provided will ultimately be at a cost to the scheme employer in potentially overstated liabilities. It is expected that the Local Government Pensions Committee and the Scheme Advisory Board will assist with the design of employer and member regulations. The timing of the issuance of final regulations and guidance will be important in ensuring these communications are sent at the appropriate time.

Area	Considerations	Dependent factors
Staff training	<ul style="list-style-type: none"> • Sufficient time will need to be allocated to training staff, taking time away from existing workloads. 	<ul style="list-style-type: none"> • Timing of training will be dependent on the timely issuance of final regulations and any guidance and an understanding of the pensions administration system's capabilities. • Ability to recruit suitably skilled additional staff if required. It is likely that skilled and experienced staff will be deployed to McCloud rectification activities and new staff will need to be trained to deliver business as usual activities.
Administration system requirements	<ul style="list-style-type: none"> • Will the software system be updated in time to be able to identify with certainty the scheme members requiring rectification? • Will the software be able to accurately calculate amendments to individual's entitlement? • Will the software be able to support bulk calculations? • Will there be sufficient time and resources for testing automated calculations? 	<ul style="list-style-type: none"> • It is understood that LGPS software suppliers are currently actively engaging with MHCLG and the Scheme Advisory Board to sufficiently prepare for the system changes that will be required. Should the issuance of the final regulations and guidance be very late this may impact how effectively the necessary software changes can be implanted and how much time there will be for testing. • If automated and bulk calculations are not available, manual or individual automated calculations will be required significantly increasing the length of time to process cases.
Ongoing administration	<ul style="list-style-type: none"> • What is the priority order for rectification? • Processes and workflow maps will to be designed to deal with the rectification and will be different for each category of membership. 	<ul style="list-style-type: none"> • Guidance from MHCLG or the Scheme Advisory Board will be required to ensure cases are dealt with consistently across all administering authorities.
Specialist areas	<ul style="list-style-type: none"> • The following areas are likely to require manual intervention to ensure that any rectification is carried out correctly and will need to be undertaken by skilled and experienced staff. <ul style="list-style-type: none"> ○ Annual allowance – may need to revisit pension input amounts from April 2014 and the final pay from 2014. ○ Lifetime allowance – revisit members who have crystallised benefits since April 2014. ○ Pension Sharing on Divorce – may need to revisit cases where the divorce took place and there is service after April 2014. ○ Transfers out – may need to be revisited where there is service is after April 2014. 	<ul style="list-style-type: none"> • Guidance from MHCLG or the Scheme Advisory Board will be required to ensure cases are dealt with consistently across all administering authorities.