

8 October 2020

Private and Confidential

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

LGPensions@communities.gov.uk

Dear Sir/Madam,

Local Government Pension Scheme (England and Wales) Amendments to the statutory underpin

Thank you for inviting West Sussex County Council, as both Administering Authority and a participating employer in the Local Government Pension Scheme (LGPS) to respond to the Department's consultation paper on the statutory underpin.

The Annexe to this letter sets out our formal response to the questions set out in the consultation paper.

The County Council agrees with the consultation response provided by Hymans Robertson, who acts as our Fund Actuary and advisor to the Local Government Pension Scheme, Scheme Advisory Board.

Yours sincerely



Katharine Eberhart
Director of Finance and Support Services

Annexe

Question 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?

We agree that your proposal would be consistent with the Court of Appeal's ruling.

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

We agree that the underpin should only be until 31 March 2022 and see no reason to extend this. This is then consistent with the original commitment for members within 10 years of retirement on 31 March 2012.

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

We agree that 1 April 2014 is the correct date to retrospectively apply the revised regulations. This is because this is the date on which the Court of Appeal found the age discrimination to apply from.

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

We agree that the draft regulations implement the underpin as described within the consultation.

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

We believe that the protection would work effectively, however consideration should be given with regards to the amount of additional work and data that is required of employers and LGPS Administrators.

Consideration should also be given for the number of employers who will not hold all required data to calculate the underpin for their eligible members e.g. historic salary details for ex-employees. We would therefore welcome guidance on how Pension Funds should account for any missing data required to calculate the underpin and how this should be communicated with employers and impacted scheme members. If there are gaps in the data this will question the effectiveness of the regulations, as the underpin would not be able to be calculated accurately.

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

We do not have any specific comments relating to technical matters related to the draft regulations. However, we would refer to the technical comments made by Hymans Robertson and the Scheme Advisory Board in this regard.

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?

We agree that the underpin should be extended to those members who leave without an immediate entitlement to pension (and by extension to those who have already left without an immediate entitlement to benefit).

We would note that this extends the underpin to more members than those who the age discrimination claim intended to address but understand the Government's policy intention for the underpin to apply to members of all ages in more circumstances than was previously the case.

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

We would welcome clarity on those members who are referred to within the consultation where at the point of leaving they will only be entitled to a refund or aggregation. It is unclear if the member were to join another employer under the LGPS whether they would then be considered as qualifying members for the purposes of the revised underpin.

We consider that there may be further legal challenge from younger members as a result of the proposed remedy not extending the underpin protection to those who joined the Scheme after 31 March 2012 who will receive a final salary pension for the period to 31 March 2014.

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

We agree that the underpin qualifying criteria should apply in a single record.

There are examples within the LGPS already where there is a requirement to know across funds what benefits are being paid to ensure that a double payment is not made. Death Grants is an example. This adds complexity to administering LGPS benefits, which should be avoided where possible.

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 previous LGPS benefits as a consequence of the proposed changes?

We agree that an additional 12 month period should be applied, to ensure that those who would otherwise lose their underpin entitlement, are given an opportunity to aggregate their records in order to preserve their entitlement.

We believe that a discretion to allow administering authorities to extend the additional 12 month aggregation period, should also be reflected to take into account circumstances where a member has not been able to make the choice in the time period through no fault of their own.

Question 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?

We believe that the proposals would not have significant adverse effects.

This is because:

- Administrators are unlikely to have taken unaggregated membership into account when calculating the current underpin for members that have retired since 2014.
- Most members who have retired since 2014 are better off under the CARE scheme because of the accrual rate, and cost of living adjustment against pay increases.

It is likely that going forward the following members may be affected:

- Concurrent members where membership ends on the same day, so it is not possible to aggregate;
- Members opted out on or after 11 April 2015, as the regulations do not permit aggregation if they re-join the Scheme.
- Members who have two periods of membership, the first is on a higher salary, the member chooses not to aggregate them, but at a later stage the second period of memberships salary becomes higher than the first.

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

We agree that the proposed amendments appear to be consistent with the Government's stated policy of ensuring appropriate protection for scheme members and their survivors.

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

We agree the two-stage underpin approach is consistent with the government's stated policy intention.

Question 14 – Do you have any comments regarding the proposed approaches outlined in the application of the underpin to qualifying members at different stages of their membership of the scheme, and at different life events?

A consistent approach, and clear communication, across all Public Sector Schemes is welcome.

If a member has made a choice at the point of their benefits being deferred we do not believe that a further choice should be given at the point of transfer given the administrative complexities. There is however a risk of legal challenge which should be considered if a member is not then given a further choice following the move to a Public Sector Scheme, if it means they are worse off at retirement.

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

We would refer to the technical comments made by the Scheme Advisory Board in this regard. However we would like to highlight the need for clarity on how the proposed remedy will interact with the restriction of Public Sector Exit Payments regulations when enacted, in the following circumstances when a member:

- is awarded an exit payment capped at £95K in the period between the exit payment regulations becoming effective and the changes to the underpin taking effect, and
- then receives a retrospective increase to their benefits because of the changes to the underpin.

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

We agree that it would be useful for members who may be affected by the underpin to receive details of the underpin.

Communication with members needs to be consistent and clear across all Administering Authorities. As many members already find the annual benefit statement confusing, consideration could be given to using alternative options, including separate communications alongside the benefit statement.

Any requirement must reflect a lead in period to take into account the ability and timescales for software providers to update their programming to facilitate this.

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

Guidance should reflect the complexity that the underpin will add to the annual benefit statements and we would welcome the adoption of consistent presentation and wording.

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

We agree that the approach in respect of increases impacting annual allowance calculations would be consistent with what is already in place for the existing underpin.

We acknowledge that this approach may cause a spike in the members benefits in the pension input period in which the underpin crystallisation date occurs.

There is also a risk that the proposed solution may not work for those members with relatively low career average pensions in respect of the underpin period, but relatively high final salary benefits because of career progression.

Whilst there could be an alternative approach to assess a member’s notional underpin on an annual basis, this could result in a member paying a tax charge on a benefit that is not understood at retirement. It is difficult to know the scale of the issue in terms of the number of members who will be impacted.

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

We believe that they do.

Question 20 – Do you agree with our equalities impact assessment?

We believe that the assessments seem reasonable.

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)?

We are not aware of any additional data sets.

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

We do not have any additional comments or observations to make.

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

Member communications need to be clear and through a variety of formats e.g. use of webinars, posters, factsheets and through employers.

It will be important that members understand the process, why the changes are taking place and the part that they play in it e.g. that the process is automatic and when it will take place.

Employer communications need to take place early to ensure that they understand the data required, the impact on future data retention and payroll changes and to provide training where appropriate. It will also be important that there is a consistent approach set out for what is required should any of the data not be available.

We welcome the provision of a data capture template by the Local Government Association which will allow for a consistent approach across all Funds in obtaining the required data.

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

Our initial analysis indicates that over 16,000 member records need to be reviewed Whilst the underpin won't be for several years for many of them, there will be a sufficient number where the underpin test will need to be applied retrospectively.

This will add additional administrative burden on pension administration teams, especially as several administrators will also be being affected by the remedy for Police and Fire, as well as other significant legislative changes e.g. Reforming Local Government exit payments.

There is a large amount of data from employers which needs to be collected and held within Pension Administration systems. The underpin test will then need to be applied retrospectively. Whilst it is hoped that administration systems will be able to be adjusted to carry out these calculations, there are likely to be some complex cases which will need to be carried out manually. Alongside this there will be a significant communications challenge for administering authorities.

We would welcome clarity on what is deemed as 'reasonable efforts' by the authority to obtain data and what the default position should be if the data cannot be obtained.

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

Retrospective cases should be prioritised e.g. retirements or where a member has died. We would then anticipate those members who are closest to their underpin crystallisation date.

However, we would need to understand any timescales by which such cases are expected to have been completed – the expectation around annual benefit statements is an example of matters which would inform this.

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

Following consideration of ways where simplification could be added, there is concern that this would move away from the policy intention that no individual should lose out, and therefore we do not believe that there are any ways effective ways to simplify the process.

Question 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 reference in our answer to Question 23, we would welcome guidance on a consistent approach across all Funds as to what to do when the relevant historical data is not available.

We consider that this should be set out in a framework for employers and administering authorities when making assumptions about service and salary history.

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

As referenced within our response to Question 23 and 27, we believe that a consistent approach should be taken across all Funds when there is an absence of data.

We welcome the provision of a data capture template by the Local Government Association which will allow for a consistent approach across all Funds in obtaining the required data.

We also believe that a standard template and wording for annual benefit statements should be provided.

Question 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?

We would refer to comments made by Hymans Robertson in this regard.

We included additional prudence within the discount rate at the 2019 valuation to reflect for this uncertainty around the benefit structure. We do not anticipate revisiting employer contribution rates until the 2022 valuation.

In addition, we would highlight:

- Additional administration resource
- Additional employer resource
- Communications
- Project management
- Additional software charges