

UCEA response to consultation - Local Government Pension Scheme Amendments to the Statutory underpin

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?

Yes, we believe the proposal addresses discrimination within the LGPS in line with the McCloud and Sargeant cases.

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

Yes. We agree that the underpin period should end in March 2022. The original underpin could not have applied to service after 31 March 2022 and so there is no reason to change this.

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

Yes. We agree that the revised regulations should apply retrospectively to 1 April 2014. This is the only way to rectify the age discrimination that applied.

Question 4 – Do the draft 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?

While it is our view that the protection would appear to work effectively, universities that participate in the LGPS have raised significant concerns relating to the additional administration burden that will fall on them in providing data to calculate the underpin for affected members. This includes the management and retention of data for several years or decades into the future.

There is also the issue of how calculations will be undertaken where data is missing. It has been mentioned separately that the Scheme Advisory Board (SAB) should consider how individual LGPS funds could address issues relating to missing data so that there is a consistent approach across the 89 LGPS funds.

Addressing age discrimination adds to the cost of the LGPS. Several participating universities have raised concerns about the affordability of the scheme. While we note that the McCloud remedy is unlikely to have a significant immediate impact on the cost of the LGPS as a whole, there is a risk that certain individual employers might be faced with a 5 to 10 per cent increase in their liabilities. There is also the potential risk that contributions will have to be revisited before the 2022 valuations.

There is also the cost cap work to be considered. While we note that the inclusion of the McCloud remedy in the cost management mechanism is likely to reduce or wipe out the proposed benefit uplifts following the 2016 valuations, there is still some uncertainty about the cost cap mechanism and there is the potential for further legal challenge on this issue from member representatives. In a post Covid-19 world it is important that any significant increases in employer costs are managed carefully. In addition, it is not yet clear how the McCloud costs will be included in the SAB cost management process alongside the HMT process.

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

No further comments.

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, we agree. However, if this leads to an extension of the current application of the underpin the cost implication should be fully understood.

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

We believe that the government needs to be mindful of areas where other forms of age discrimination could be introduced which may lead to future challenge. For example, it is our understanding that the proposal to rectify age discrimination in the LGPS is likely to mean the cost cap uplifts relating to the 2016 valuations do not come into effect, depending on the outcome of the government's review into the cost cap, and this is already being challenged. In addition, not applying the underpin in the cases of members who joined between April 2012 and March 2014 may also be open to challenge.

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

Yes, we agree that the underpin qualifying criteria should have to apply in a single scheme membership. This is the simplest way from an administrative perspective. This is also similar to the way the final salary link is applied.

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?

Although this proposal will add to the administrative burden of implementing the remedy, it is fair and reasonable for members to be given the chance to aggregate previous LGPS benefits in order to preserve their underpin entitlement.

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?

While we do not consider that the proposals in paragraph 50 to 52 would have significant adverse effects, in a scheme the size of LGPS, there are likely to be the odd cases where a member could argue they are negatively impacted by this proposal, though admittedly these cases are likely to be rare.

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

No further comments.

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

Yes, we agree with a two-stage process.

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

There are areas where it is for the member to make decisions, for example Club Transfers where a decision needs to be made as to how their benefits will be treated in the receiving scheme. Without clear and detailed information, and potentially access to an informed IFA, it seems difficult to see how the member can make an appropriate decision and so thought should be given as to how to address this issue. It may be helpful to add this to any SAB guidance to ensure transparency and consistency of treatment between each LGPS fund.

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

No.

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

Yes, ideally members affected by the underpin should receive information on their underpin protection on each annual benefit statement, but we do not underestimate the administrative effort this will take. It will also take time to ensure that the required additional data is collected from employers.

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

We are aware that members currently find the annual benefit statement complex to understand so this is an area that needs further thought before more information is added. If included, the underpin information needs to be set out clearly and in a way that is easily understandable to the members and this needs to be consistently done across all the funds. Again, this could be included in SAB guidance.

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

We note that this is a particularly complicated issue and that it is very difficult to comment on the numbers of members that may be affected, or the materiality given that this policy will run for many years into the future. However, it does seem sensible to apply the annual allowance test at the underpin crystallisation date rather than on an annual basis. The one question this raises is what should the member do if they breach the annual allowance and have used all their carry forward. Would scheme pays still be available if their pension was due to go into payment immediately?

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

Yes, it is our view that the proposals adequately address the discrimination found in the McCloud and Sargeant cases.

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

It seems reasonable. The only additional comment is regarding maternity as given the LGPS is predominately female are those women who are of childbearing age and take career breaks during the remedy period at a particular disadvantage?

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?

See 20.

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

Employers will need clear communications on how to provide the relevant data required to calculate the underpin and what processes to follow when there is missing or insufficient data.

It should be noted here that many universities that participate in the LGPS do not have a dedicated pensions manager or pensions team, so find pensions related issues difficult to understand.

Employers will need assistance in communicating with their staff on these complicated issues. The standard of communications provided by funds differs hugely. It would be very helpful if there were some central templates alongside guidance from the SAB to ensure consistency in the messages getting out to members and employers. In particular, members should be told that this will mean no immediate changes to their benefits and that the aim is for them to receive the better of the two options i.e. they will be no worse off. It may also be useful to highlight that in most cases seen so far, the new final salary underpin has not provided a “better” benefit.

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

Clearly the proposals will have significant administrative impacts, from obtaining relevant data, addressing cases where there is insufficient data, through to calculating the underpin and dealing with legacy retirement, death, transfers etc. Universities have expressed significant concern about the added administrative burden that will be placed on them when these proposals come into effect. There will also be a communications burden as employees often go to their employer in the first instance with pensions queries. LGPS funds must try to have a consistent approach to the administration of the remedy and addressing any difficult issues that arise. It would be helpful if different employer types could be involved in discussions around how to address administration and communication issues. The main outstanding issue appears to be regarding the approach funds should take if data is not available.

This will all be at a time when local authority resources will be coming under increasing pressure. There must be a strong central message from government, and the SAB that adequate resources must be allocated to each local pensions function.

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

Cases where the impact of the remedy will impact on benefits already in payment should be prioritised. This includes death cases, ill health cases and recent retirements. However, we would strongly recommend that a “de minimis” amount be set across the LGPS to avoid

disturbing bereaved families or those members with serious health issues unless absolutely necessary. Then the focus should move to those closest to retirement.

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

Any support that could be centralised would be helpful, for example, discussions with major payroll software providers, to remove the requirement for every employer to have the same conversation with their provider and to pay for the same changes to be made to their systems. This would help to keep the costs to each employer down.

In addition, reasonable judgements need to be made about the effort that should be expended to track down missing data.

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?

A number of points have been mentioned in the response above. The SAB administrative guidance should include:

- how to address cases where the employer is unable to provide historic data. This should include what assumptions relating to salary and service should be applied.
- how to assist members in approaching the decision on club transfers
- how to assist members in taking financial advice, where necessary
- what needs to be included in the ABS
- detailed guidance on the pensions tax implications for those members affected
- communications including draft wording or template documents
- de minimis increases before intervening in sensitive cases such as deaths
- support for continued appropriate resourcing of the pensions function

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

See Q27. It should also be noted that there are several universities in the LGPS in Scotland and Northern Ireland and employers would appreciate a consistent approach in these matters across the four nations.

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?

While it is appreciated that local authorities are the substantive employers participating in the LGPS there are many other employers, not only universities, that maintain a clear interest in keeping the costs of the LGPS down.

It would be extremely useful if it could be made clear to employers that, generally speaking, any additional costs coming out of the McCloud remedy are unlikely to affect the current employer contribution rates and would not be considered further until the 2022 valuations. There may be concern about this following the recent flexibilities announced that give administering authorities the ability to review contributions mid-valuation cycle.

Employers are also aware that the low-level impact expected at a national level may not translate to a similarly low-level impact for their organisation. If some general information could be shared about the type of employers that may be worst affected, these employers

could then start conversations early with their fund about how to manage and mitigate the impact on their 2022 valuation result.

Most importantly, employers need to understand how the McCloud remedy will impact on the cost management mechanism now that the HMT process has been “unpaused”. There also needs to be clarity on how this might affect the SAB cost management process and whether the McCloud costs will also be included as a member cost for this purpose.

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