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24 September 2020  
Ref: McCloud/CLS

Dear Sir/Madam

**Local Government Pension Scheme (LGPS): Amendments to the statutory underpin**

Thank you for the Department's Consultation seeking views on changes to the LGPS in England and Wales to remove unlawful discrimination in relation to public service pension scheme 'transitional protection' arrangements.

I am responding on behalf of Buckinghamshire Council in its capacity as administering authority of the Buckinghamshire Pension Fund. The attached appendix sets out the Fund's consultation response.

Yours faithfully

Claire Lewis-Smith  
Pensions Administration Manager

## Appendix

**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 with your proposal to remove the discrimination.

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

Ceasing the underpin on 31 March 2022 is consistent with the original intention of providing protection to Scheme members for a 10 year period from 1 April 2012. We agree the period should end on 31 March 2022.

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

1 April 2014 is the date age discrimination took effect in the Scheme; therefore we agree this is the date retrospection should apply from.

**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?**

The draft regulations provide the required outcome for Scheme members. In order to achieve this however, there will be a significant amount of work for both Scheme employers and administering authorities in collating/obtaining the data required to calculate the underpin for all qualifying Scheme members. There will be Scheme employers who no longer participate in the Fund and others who have used numerous payroll providers during the period, making obtaining data in order to adhere to the regulations challenging. Guidance from MHCLG and the Scheme Advisory Board (SAB) would be welcomed on how the issue of missing data should be addressed.

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

No.

**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.

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

No.

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

Yes.

**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?**

Yes. There are Scheme members who currently have underpin protection who have unaggregated periods of membership. If the qualifying criteria is amended to Scheme members having to meet the criteria in a single membership, it is only fair to offer the opportunity to aggregate membership in order to retain their underpin entitlement. The additional 12 month period in order to complete this exercise across the Fund as a whole, could result in some Scheme members not exercising the right to aggregate in time or the exercise not being completed within the required timeframe. It would be helpful if administering authorities could exercise discretion regarding the 12 month timeframe.

**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?**

Not if the option to allow the administering authorities discretion to extend the 12 month period in which to aggregate membership.

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

The proposals regarding early/late retirement factors, deaths in service and survivor benefits provide relevant protection for both Scheme members and their survivors. The amendments will however result in increased administration with the possibility of having to reassess underpin calculations where a member with protection leaves, re-joins without a disqualifying break and makes an election to aggregate the periods of membership.

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

Yes, however under current provisions the underpin calculation takes point at a single place in time. The proposed two-stage process provides better protection for Scheme members but the requirement to calculate the underpin at the ‘underpin date’ (the earlier of the Scheme member’s last day of active scheme membership, their 2008 Scheme Normal Pension Age (NPA) or death) and again at the ‘underpin crystallisation date’ (when the Scheme member takes their benefits), is a further increase in administration requirements.

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

The decisions to be made regarding Club transfers may be confusing for Scheme members. Central guidance regarding consistency in approach concerning information provided to Scheme members and the implications of their decision would be welcomed.

**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 it would be useful but there are complexities as outlined in the response to Question 17.

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

Annual benefits statements are already complex to explain to Scheme members and the addition of the underpin will increase complexity. The underpin value could change from year to year and also appear in one year and not the next. Central guidance regarding consistency of approach concerning the information provided to Scheme members would be welcomed.

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

For ease of administration and for consistency with current practice, as the underpin crystallisation date is the date at which benefits become payable and an exact underpin value is known, we believe it is appropriate to undertake the annual allowance test at this date rather than assessing estimated figures on an annual basis. We appreciate there may be Scheme members who will benefit from this approach and others who would benefit from the alternative option. However, we believe that as there will be Scheme members who are affected by either approach, it would be beneficial to keep the administration of this as simple as possible.

**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 our 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.

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

Scheme members need clear and concise information regarding what the underpin is, how it is applied and the implications it as for them. It should be made clear that Scheme members do not need to do anything for the underpin to apply and that application is automatic. Scheme members expectations need to be managed regarding the number of cases where the underpin will actually apply as it is anticipated that it will only be in a small number of cases where the benefits from application of the underpin will exceed those of the 2014 Scheme.

Scheme employers need to be made aware of the data that is required, for whom, and the period the data will be required for. As detailed in our response to Question 5, guidance from MHCLG and the Scheme Advisory Board (SAB) would be welcomed on how the issue of missing data should be addressed as this would need to be communicated to Scheme employers in cases where they cannot provide the necessary data.

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

Adopting these proposals will have a significant impact on LGPS administration teams. This is not only in respect of the initial project that will need to be undertaken to apply the retrospection and revisit calculations that have already been run, but also in respect of ongoing administration requirements.

Obtaining data from Scheme employers, past and present, is a colossal task. Scheme employers may no longer exist, or existing employers may not be able to access the historical data needed. In our experience, schools in particular change payroll provider on a regular basis and it may not be possible to obtain historical data from previous payroll providers.

Once data has been obtained or assumptions/guidance applied where data cannot be provided, retrospective calculations of benefits will need to be undertaken. Although it is anticipated that pension software systems will be updated to address this, there will still be complex cases that will need manual calculation and the necessary knowledge and expertise to undertake such manual calculations.

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

Scheme members who have already retired or died should be prioritised as the revised underpin could impact the benefits in payment for the Scheme member or their survivors. Scheme members with a deferred benefit entitlement would then need to be addressed with those closest to their underpin crystallisation date taking precedence.

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

No.

**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 consistent approach should be provided by the SAB for all Funds to follow where an employer is unable to provide the required data. Standard assumptions on membership accrual, salary history and service breaks would ensure that all Funds apply the same approach.

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

The SAB have already provided a standard data collection template. As detailed in Question 27, a standard approach to be applied when data is not available would be appreciated.

**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?**

The cost of the McCloud remedy is being taken into account as part of the resumed 2016 cost cap mechanism. The results of this will reduce/remove the benefit improvements that were due to take effect from 1 April 2019 in England and Wales. Fortunately for us as a Fund, our Actuary has included an allowance for the cost of the McCloud remedy for all our Scheme employers and there should be no need to revisit our accounting reports.

However, there may be some employers where the impact of McCloud could be more significant going forward, particularly where they have a young membership profile or where their active membership is small and significant pay increases occur.

The administrative cost of applying the McCloud remedy will not be insignificant. Additional administration and communication costs, costs of upgrading and amending software and staffing costs for the additional resource needed to ensure delivery of the remedy, will be substantial.