

Dear Sirs

Nottinghamshire Local Government Pension Fund
Consultation Reply – Amendments to the Statutory Underpin
LGPS (McCloud/Sargeant)

I write in reply to the consultation on the amendments to the Statutory Underpin. The reply is on behalf of the Nottinghamshire Local Government Pension Fund.

I reply to the 29 questions;

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

Answer 1 – Yes

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

Answer 2 – Yes

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

Answer 3 – Yes

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

Answer 4 – Yes

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

Answer 5 – The Fund feels the draft regulations provide for a framework of protections which work for members. However, the Fund is concerned about the impact on the scheme employers and the significant impact on Pension Administration.

Employers need to check and provide hours and service breaks between 1 April 2014 and 31 March 2022. In this period some employers will have left the Fund, merged with other employers (especially Academies joining Multi Academy Trusts) and changed payroll providers. For some employers, providing the data will be problematic and a pragmatic solution will be required that should be adopted nationally for those scheme members where the data is unavailable.

Pension Administration has the added burden this proposal brings. Scheme employers will also see this as an additional burden given funds will also be undertaking other projects with scheme employers, such as data improvement, and moving to monthly returns.

Fortunately, the Nottinghamshire Fund has continued to collect hours and breaks in service, therefore the Fund proposes to check Employer data, and collect any missing data, rather than the proposed solution of collecting the data for the first time. However, this will still create difficulty for the Fund due to the many changes that have occurred with scheme members and employers, especially where schools moved to academy status and then moved to multi academy trusts and where there have been changes in payroll providers.

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

Answer 6 – 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 the underpin protection to apply?

Answer 7 – Yes, this seems reasonable given actuarial factors that could be applied when a member claims payment. These factors could decrease or increase a member's benefits depending on their age and membership, at the point benefits are paid.

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

Answer 8 – No

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

Answer 9 – Yes, whilst the Fund accepts there are administrative issues in opening the aggregation window for a new 12 months (from the date of the regulations) for a set group of members, the Fund feels this is more sensible than trying to deal with underpins covering more than one scheme if the proposal was reversed.

The Fund wishes to raise concern about the increased risk reopening the aggregation window could have on employer strain costs.

Because of the increased financial pressure on employers due to Covid-19, some Fund employers are looking at potential staff reductions through redundancy exercises. The Fund has concern, if a member is being considered for redundancy (age 55 plus) and is now able to transfer in earlier service (because of the reopened

12 month aggregation window in the proposal), which they previously had not transferred but would now be attractive to do as the member would then be able to include this service unreduced with immediate payment, this could significantly increase the redundancy capital cost value that the employer has to pay to the Fund.

This could make cases, that could have been considered for early release unviable, which makes the necessary staff reductions more difficult for the employers to resolve. The fund is also unsure at this point how the exit Cap would impact on this situation.

Question 10 – Do you agree with our proposal that certain active and deferred members should have an additional 12 months period to decide to aggregate previous LGPS benefits because of the proposed changes?

Answer 10 – Yes, as detailed in answer 9, but noting the increased risk detailed, and considering any impact by the exit cap.

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?

Answer 11 – No, the Fund’s view is that, it is very unlikely to impact adversely on pensions payable to current pensioner members.

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

Answer 12 – The Fund feels the paragraphs 56 to 59 are reasonable and designed to benefit scheme members and their surviving partners and provide a consistent and effective approach.

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

Answer 13 – Having reviewed Annex C and the examples in Annex D (pages 62 to 69) the Fund accepts a two stage underpin is required to guarantee the member receives the higher “protected benefit” from either the 60th 2008 scheme or the 49th CARE 2014 scheme.

The Fund does have concerns about the calculations of the comparisons and wishes to stress that the pension system providers will need to ensure their systems calculate the options correctly, to ensure the higher option is provided to the member.

The Fund also believes that pension Teams will be inundated with questions and scenarios by members who may be impacted, which will put increased strain on Pension Fund Admin Teams.

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

Answer 14 – No, the Fund has no comments on the proposed approaches in Sections 64 to 102.

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

Answer 15 – No

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

Answer 16 – The Fund agrees the annual benefit statement is the most important information a scheme member receives whilst in active or deferred membership. However, the Fund feels many members are a little overwhelmed by the calculation of their pension already and usually head for the "total annual pension" figure and compare this to last year's value. If the latest value is higher, the Fund's general experience is, the member will accept this without question.

Whilst the Fund does appreciate the proposal, to include the underpin on the annual benefit statement, the Fund's view is this will only add another layer of unnecessary confusion to the majority of members, especially given this may not apply to many members, and if it does, it is only at a future point in time.

The fund will need to increase its Administration Team in order to be able to address the increase in administration that this change will bring. There is currently difficulty in recruiting experienced staff in order to meet the current needs of the service, let alone finding new experienced staff.

This comes at a time of heightened financial pressures on Councils, increased further by the Covid-19 crisis, where Councils need to be reducing costs.

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

Answer 17 – If it is decided the underpin value is to be included on annual benefit statements, the system providers will need to capture this value and write it back to the member's record annually.

The Fund suggests if the value must be included it should be shown as a separate value with simplistic wording applied. If a member wants greater information, then more detailed explanation can be provided.

This maybe an appropriate time to review benefit statements and the information required.

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

Answer 18 – The Fund agrees the impact of the underpin should only take effect on the members annual allowance pension growth calculation from the year the member reaches their “underpin crystallisation date”. The Fund accepts this approach, meaning a member’s pension input amount in this year is higher than in previous years.

The Fund recognises there may be a very small group of people impacted by this approach (members with low career average earnings 1 April 2014 to 31 March 2022, but a high final salary over the same period), but the Fund accepts this risk is extremely small, and the approach is reasonable.

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

Answer 19 – Yes

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

Answer 20 – 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, for the protected characteristics not covered by the GAD analysis (age and sex)?

Answer 21 – No

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

Answer 22 – No

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

Answer 23 – The Fund agrees members and employers need to understand the implications of the proposals.

The Fund's view is there will need to be targeted communications for the different groups of members affected, in the main pensioners, deferred and actives and the communications will need to be tailored to suit the individual's circumstance and this should be done at Fund level. However, the Fund is aware the Local Government Association has a communication sub group working on McCloud and intends to use agreed wording that is provided nationally.

The Fund agrees employers need to be made aware of the implications it has on them. This includes providing and checking for missing data (hours and service breaks), but they also need to be aware of the impact on them financially.

The Pension Fund's Actuary is likely to provide guidance on the financial impact on future employer rates, at the next Fund valuation, but also for noting in their accounts and FRS notices, where applicable.

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

Answer 24 – The Fund has plans to set up a Project in the Pension Administration Team to manage the administrative impact.

The Fund will be writing to scheme employers making them aware of McCloud and the outlining the potential requirement that they will need to check and provide any missing data between April 2014 and March 2022. Fortunately, the Fund has continued to collect data from scheme employers unlike other LGPS funds. Therefore, it is hoped that this will reduce some of the burden in collecting data. The plan is to send data to employers for them to check and update any incorrect or missing data.

2012 Member movements between employers and Funds from 2012 may be necessary for a complete picture.

The Fund is represented on the Local Government Associations McCloud working party through the East Midlands Pension Managers Group so has been kept up to date on the work to produce a national data template and notes to assist employers.

The Fund will be reliant on Civica, our system provider to assist in the uploading of any updates in employer data into the system along with enabling the Administration System to revise member calculations to provide a set of results.

Revision of pensions in payment will be time consuming, especially if the member has been in receipt of their pension prior to the latest annual pensions increase.

The Fund will be planning the work in a priority order, but further work will be required as part of our planning process.

The Fund is concerned about the complexity of the communications to members, especially to those members who will have the aggregation window reopened for 12 months. It is expected this will generate phone calls and enquiries.

There is clearly an additional administrative cost to this work, both in times of resource and systems.

The Fund is also concerned about the administrative impact on the employers checking (in our position) data including hours and service breaks between April 2014 and March 2022. This will be challenging and costly for the employers.

It is expected that some employers may ask if any additional charges they incur can be passed back to the Fund.

Whilst the fund accepts there is no recommended date for completion of the exercise and should therefore be able to set its own timeframe to complete the work, there is also some concern that without a set timescale, employers may drag their feet, which will impact on the funds ability to undertake the work, which increases costs, but also leads to a never ending activity.

Pressure for accounting disclosures may encourage timely response from some employers, if auditors insist on a level of accuracy.

The other alternative would be to set a deadline

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

Answer 25 – The Fund believes the priority order should be – pensioners, deferred members and then active members. Within the pensioners the Fund suggests there should then be further prioritisation based on the likelihood of recalculation. The initial priority cases are likely to be “best of the last 3-year cases and average 3 in 13 cases” as it is anticipated these are more likely to require revised benefits.

The deferred members could be prioritised by age. Those nearing, or at age 55 and over, should be treated with greater priority.

Other groups including deaths and transfers out may require greater prioritisation, but guidance should be provided nationally on this.

In the event of a death where a payment is expected to be made to an estate rather than just to a survivor, a rapid approach is recommended before estates are dissolved (potentially trapping payments with no beneficiaries) or to avoid delaying the completion of administration of the estate

The reopening of the 12-month aggregation window will appear to run alongside, if the 12 months starts for the amendment of the regulations.

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

Answer 26 – The Fund's view is the remedy must deal with the legal age discrimination challenge. Given the complexity of the current scheme, the proposal was always going to be extremely challenging for employers, system providers and administrators.

The Fund accepts there needs to be clear regulations to satisfy the legal requirements of the age discrimination challenge, and therefore a check needs to be made for each member, however the impact administratively seems to be disproportionate to the resolution.

The Fund suggests an idea to address the challenge more easily but accepts it does not provide complete clarity from the legal challenge, but it better solves the administrative and employer impact.

In order to try and simplify the resolution, there is an idea circulating, to pay a compensation value to members impacted, rather than take the time to collect and calculate benefits, but to use each individual member's hours for the period April 2014 to March 2022 (which employers will need to extract from their systems and the administrator backload into their pensions administration system), instead, use full time hours for all.

For cases that show an underpin applies, then collect the correct hours from the employers and if the underpin still applies, pay them a single value compensation payment to these members, given only a small number of members are likely to be impacted, this seems a fair and pragmatic solution.

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

Answer 27 – The Fund believes the work already taking place by the Local Government Association adequately addresses this. This includes the data template, notes and guidance.

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

Answer 28 – The Fund feels the prioritisation of the different groups is required so that all Funds work consistently.

There are differing views in relation to time limits, there are advantages and disadvantages, set time limits will focus the projects, and support the work with employers. Whilst on the other hand some funds with less generous resources may not be able to meet nationally set deadlines.

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?

Answer 29 – The Fund is concerned that the McCloud remedy could appear to some local taxpayers, as “Public Sector pension changes, guaranteed, to provide an even better pension”. This is at a time of significant financial crisis throughout the economy and when people are losing their jobs after Covid-19.

Therefore, the Fund strongly supports preventing increased costs being passed to local taxpayers.

Increased cost through the employer contribution rate may in fact be offset in the cost cap, but the administrative costs still remain regardless and could perhaps be identified in isolation as an additional burden with a transparent cost

The Fund has no comment on how this should be achieved.