

Our Ref: CPF/PENS/

Your Ref: McCloud

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

Dear Sir/Madam,

Consultation – Amendments to the statutory underpin (McCloud)

Please find enclosed our response to the Ministry of Housing, Communities and Local Government: Consultation on Local Government Pension Scheme (England and Wales) “Amendments to the statutory underpin” published 16 July 2020.

The response is on behalf of Cheshire West and Chester Council in its role as Administering Authority for the Cheshire Pension Fund and has been endorsed by the Pension Fund Committee.

We have provided responses to each of the questions posed but would like to draw out the following key points:

- It is critical to receive amended regulations as soon as possible.
- MHCLG need to clearly set out the timeframe by which they expect Funds to complete the McCloud rectification work.
- The timeframe for the McCloud rectification work must not be concurrent with the work required to implement the £95k exit payments cap.
- We would also note that the full details of the impact of the Exit Payment Cap on LGPS regulations are awaited and there may well be interactions between regulatory changes for the McCloud Remedy and the Exit Payment Cap of which we are as yet unaware.
- Funds will need to obtain data from employers in order to affect the remedy for members. However, this data will not exist for all members and standardised assumptions should be developed for use in this situation.
- Clear and consistent communication is key to the success of the remedy and every opportunity to produce national, standardised guidance should be taken. Funds should be presented with a plan of all national guidance/communication documents which will be produced so we can focus our efforts elsewhere.
- The inclusion of a tolerance level / de minimus (similar to the GMP reconciliation project) would be of benefit.

- Funds will incur potentially significant additional costs to implement the Government's remedy – the consultation is silent on what contribution Government will make to meet to these additional costs.

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 agree with the proposal.

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.

Question 3

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

Yes. However, careful consideration needs to be given to the rectification timeframe that Funds should follow as the work required poses a significant administrative burden that should not be underestimated.

We would encourage MHCLG to ensure that the timeline and peak workloads to implement the Exit Payment Cap (expected between now and March 2021 depending on when LGPS regulations are changed to implement the cap) do not coincide with peak workloads to implement McCloud.

Question 4

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

Yes, they would appear to, however please note this is not a legal view.

Question 5

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

The draft regulations do appear to provide a framework which would work effectively providing the data required for each member affected can be obtained. Where the data cannot be obtained Funds will need to make assumptions in order to calculate the benefit. It would be welcomed if national guidance could be produced to confirm how Funds should proceed on cases where the required data cannot be obtained.

The intention of the remedy is to remove discrimination and to uplift those members who did not previously benefit from the underpin protection. If the intention is that the “no worse off” policy applies across the board, the Regulations should explicitly state that if the underpin is revisited then no member will be made worse off under the new proposals.

Question 6

Do you have any other comments on technical matters related to the draft regulations?

The consultation document states, in respect of the death of an active member that “For a qualifying member in active service, their date of death will be both their underpin date and their underpin crystallisation date”.

However, this will not always be the case and a member who dies in active service after their 2008 Scheme NPA will have a separate underpin date and underpin crystallisation date.

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.

Question 8

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

No, we do not have any other comments.

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 fully support this approach. The single scheme membership criteria would be consistent with the principle applied to other LGPS protections for final salary and retirement ages. Applying this approach will remove unnecessary complexities being added to the administration of membership records.

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. This legislation will cause a material change to the factors that members considered when making their original decision, so offering an additional 12 month decision period is a fair solution.

Identifying individuals affected will be a complex task and the additional decision period is likely to cause a high volume of member queries. We believe these factors should be considered when determining the timescale for the decision period and would support the 12 month period for a decision commencing at the point the administering authority communicates with the individual scheme member, rather than from the date regulations come into force.

Question 11

Do you consider that the proposals outlined in paragraph 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 anticipate that there could be a small number of individuals who may suffer an adverse effect, however we believe that the proposals outlined in these paragraphs provide for the fairest method of applying the protection. The number of individuals who could suffer an adverse effect would be relatively small and the additional period for reaching a decision on whether to aggregate periods of membership would alleviate the effect. The proposals are consistent with the principle applied to other LGPS protections for final salary and retirement ages.

Question 12

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

No. However, the proposed amendments would result in additional work for administrators. Clear and consistent guidance would be required so that all Funds can apply amendments consistently.

Question 13

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

Yes. Although this will result in additional work for administrators as members may contact the Fund for additional estimates for retirements at different dates.

Question 14

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

The proposed process for Club Transfers places a significant onus on the member as it requires them to decide how their benefits will be treated in the receiving scheme. This will inevitably be a complex financial decision and one where the “correct” answer will not be known until retirement. This is an area where a consistent approach across funds and clear communication to members will be important.

Please also see our answer to question 6.

Question 15

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

The remedy can be applied providing Funds can obtain the necessary data from employers. As explained in our response to question 5, clear and consistent guidance is required for cases when the data cannot be obtained.

Question 16

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

Yes, we agree that the ABS should include explanatory information informing members about the underpin but we do not agree that estimates of the underpin value itself should be included for several reasons:

- The consultation does not appear to consider the complexity of producing an underpin estimate for the ABS.
- The underpin should be determined at crystallisation for all members (active or deferred) so the impact of early and late retirement factors can be accurately considered.
- The underpin estimate could change each year causing further confusion for members and resulting in unnecessary queries to the Fund.
- The ABS does not include calculated amounts for other protections so it would seem inconsistent to include the underpin.

We do think the ABS should include a statement explaining the existence and potential impact of the underpin for affected members and would request that consistent wording is produced by MHCLG/SAB for all Funds to use.

Question 17

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

As outlined in our response to question 16, in our view the underpin should be presented on the ABS in the form of an explanation and not in the form of an actual estimate. National guidance should be produced to standardise the wording to be included in the ABS for all Funds.

The aim should be to simplify the ABS not to increase the detail contained within it. With the increasing trend towards member self-serve functionality, where members can obtain pension estimates in real time, there is an argument for the phasing out of a single annual ABS over the coming years and so we would not see the benefit of increasing regulatory obligations around this area.

Question 18

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

The calculation of a member's tax liability for annual allowance purposes is already complex, adding in estimates for the potential impact of the underpin in the years prior to benefits being crystallised adds further complexity. This would implicitly involve forecasting a member's position into the future, rather than a calculation of taxable benefits at a specific point in time. Our suggestion would simply be to look at the tax position at the point the member leaves.

Question 19

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

They would appear to, but please note this is not a legal view.

Question 20

Do you agree with our equalities impact assessment?

No comment.

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, 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?

No, we do not have any other comments.

Question 23

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

Standardised communications should be produced at a national level wherever possible. Standardised processes should be adopted to administer the changes where possible.

Question 24

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

This remedy represents a tremendous amount of work but is expected to affect relatively few members, and for those members affected, the benefit increase is likely to be modest. Every opportunity should be taken to simplify the work required.

Other considerations:

- As mentioned at the start of this response it is critical to receive amended regulations as soon as possible, because:
 - Work cannot commence on the rectification of casework work required until the regulations have been formally amended.
 - Continuing to process casework based on outdated regulations will result in increased backlogs.
 - Administration software suppliers will not update any processes until the new regulations are available, meaning manual casework processing will be required causing a further impact on business as usual.
 - The Government should work with the software providers to provide certainty on the system changes necessary to implement the remedy.
- The timescale for the tasks outlined in the consultation needs to be clearly defined so Funds can plan effectively to manage this task.
- We would reiterate our request that the timeframe for the rectification work is not concurrent with from the work required for the £95k exit payments cap.
- Obtaining data from employers is key to calculating the revised underpin but the data may not be available in all instances:

- National guidance on the assumptions that could be used in the absence of the data would be welcomed.
- Could national guidance be produced (similar to the GMP project) to determine tolerance/de minimus levels below which a change in benefits would not be applied, to reduce the number of records which would need to be amended for small amounts of money.
- Member communication will be key and it would be welcomed if national guidance on communication could be produced.
- We understand that MHCLG and SAB are working on national guidance for a number of areas associated with McCloud. It would be helpful if Funds could have sight of the overall plan so we know which areas of guidance is being produced.

Question 25

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

Cases where members have already retired (or died) or transferred should be the priority as the underpin could impact on a member's (or survivor's) current retirement income.

Our initial view of priority cases is listed below, although we would expect Funds to retain discretion to determine priorities throughout the project.

1. Pensioners in payment
2. Deaths and survivor cases
3. Transfers
4. Age 55s and over

Thereafter, members closer to the underpin crystallisation date should be prioritised.

Question 26

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

Please see the answers to questions 16, 17 and 18. Removing the requirement to include an estimate of the underpin from the ABS would remove what is, in our view, an unnecessary burden upon Funds to produce.

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?

In our view the guidance should contain:

- The approach to be taken by Fund administrators when an employer is incapable of providing historic member data or the employer no longer exists.
- Ideally, SAB should publish a set of guidelines that provide a framework for employers and administering authorities when making assumptions about service and salary history in the absence of complete information.
- Nationally agreed tolerance/de minimus levels before retrospective changes/updates are made.

- Standard scheme member communication material

Question 28

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

There should be a consistent approach to the collection of data from employers, a uniform approach to rectification when the information cannot be supplied and communications to all stakeholders.

It would be helpful for clear guidance to be available for external auditors with regard to pension fund accounting for the McCloud remedy. This would pre-empt many queries and dialogue with auditors across the many thousands of employers within the scheme. This guidance should be created in partnership with CIPFA/SAB and any other interested parties and may need to be updated at various stages of this process (e.g. response to consultation, potential further draft regulations, final regulations).

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?

Ultimately the cost of the McCloud remedy will be borne by employers. And although the employer base in the LGPS is becoming increasingly disparate, Councils and other tax raising bodies still account for the majority of a typical LGPS Fund's membership and liabilities. As such it is inevitable that the majority of the cost of the McCloud remedy will be funded by local taxpayers.

The short term impact on the local tax payer can be mitigated by the typical approach taken by the LGPS of taking a long term view when setting the funding plans and funding objectives for long term tax raising bodies. Locally the McCloud remedy was considered in setting contribution rates for the tax raising bodies during the 2019 valuation.

Despite being able to take a long term view in setting contribution rates, any short term increases in Administering Authority costs to implement and administer the McCloud remedy will be recharged to employers through contribution rates.

It is unavoidable that these costs will be recovered over a much shorter time period, (typically over the next 3 year valuation cycle).

We would welcome an approach to mitigate and reduce these costs on individual LGPS Funds through maximising national collaboration, standard guidance, standard approaches, standard communication etc. that we have covered in responses to earlier questions.

Yours sincerely,

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pp Head of Pensions