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**Sean Collins
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11 September 2020

Dear Sir/Madam

Local Government Pension Scheme (England and Wales)

Amendments to the statutory underpin

Thank you for the opportunity to comment on the consultation to amend the arrangements for the Statutory Underpin within the LGPS, following the outcome of the McCloud and Sergeant court cases. This response is sent on behalf of the Oxfordshire Pension Fund Committee who agreed the content at their meeting on 11 September 2020.

We have set out our responses to the 29 questions raised in the consultation document below.

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

Yes. We believe this is the most appropriate solution in light of the Court decisions.

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

Yes – we agree this is a suitable date to conclude the underpin as this would be the last date the underpin would impact under the current arrangements given the eligibility requirement that Members had to be 10 years or less from retirement age at 1 April 2012. We do not believe the underpin should be extended any further than necessary to meet the requirements of the Court ruling given the additional complexity it adds to the Scheme.

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

Yes - This would seem to be a requirement as this was the first date the age discrimination could apply.

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?

Whilst we believe that the draft regulations are the best solution for meeting the requirements to remedy the age discrimination found within the current Regulations, there will be significant challenge to implement them effectively. There will be a major challenge for Administering Authorities and Scheme Employers to retrospectively update the records for all eligible members to enable the underpin calculations to be completed. This will particularly be the case where the scheme member has moved between employers in the intervening period (especially where the move meant they transferred pension benefits for the relevant period between Funds), or where a scheme employer has had multiple payroll providers during the intervening period.

For the arrangements to work effectively, there needs to be very clear guidance communicated to all Administering Authorities, Scheme Employers and Scheme Members to set out how the underpin calculation should be completed where it has not been possible to retrospectively collect all the scheme data required.

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 – we believe this is the most equitable solution for those deemed to be eligible members in terms of their membership record. Any other solution risks bringing further discrimination cases, including from those eligible members made redundant before reaching their minimum retirement age.

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 – otherwise the proposal introduces a further level of complexity and administrative difficulty, especially where a member has membership records across more than one Fund which may not be brought into payment at the same time.

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 – we believe it is only equitable to provide such members with a further opportunity to consider aggregation given the potential change in financial consequences of their decision. Administering Authorities should be given discretion within the Regulations to extend the 12

month period to allow for exceptional cases where it was not possible for the scheme member to complete the election within the 12 month period.

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?

No

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

No.

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

We understand the rationale for the two-stage approach and the fact that the underpin calculation will be based on the final salary as at normal retirement age in the 2008 Scheme (with cost of living adjustments as appropriate), even if the member continues in active membership after this date. We are concerned though that this does introduce additional complexity which will make understanding of their pension arrangements more difficult for scheme members.

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

As noted in Q13, this is going to require excellent communications with scheme members, particularly in the case where they seek to transfer their pension benefits after accruing underpin protection. We would encourage the Scheme Advisory Board to produce such appropriate communications to ensure a consistency of approach across all Funds and to assist scheme members in understanding their benefits and the implications where seeking a transfer of their pension benefits.

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?

Whilst we think it important that the annual benefit statement should include reference to the underpin protection, we do not believe it is helpful to present annual information on the potential value of the underpin, such that each ABS shows two different values for future pension benefits. We believe this additional complexity will not assist the average member and will simply increase the administrative burden on administering authorities in seeking to respond to member queries. We believe the ABS for an eligible member should include a statement that that underpin protection applies and therefore the value quoted on the ABS is the minimum pension benefit receivable on retirement at the dates quoted.

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

Include in response to Q16 above.

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

This is an area of significant concern. We agree that it is not appropriate to carry out an annual allowance calculation each year on the basis of the underpin protection, as there is no change to the actual pension benefits until the underpin crystallisation date. Any annual allowance charge made in an intervening year on the basis of the underpin protection applying therefore carries the risk that a member will pay tax on a benefit that will not actually be received.

The proposed approach to assess the annual allowance charge at the point of the underpin crystallisation date though does not appear to be consistent with the approach proposed in the equivalent consultation document from HM Treasury for the remaining public sector schemes. Under paragraphs 2.51 in the main document and B38 of the Annex it is stated that the Government does believe it is fair for an individual to pay a significant annual allowance charge in the year of choice under the deferred choice underpin option, which is directly related to the design of the option itself, and will therefore compensate the individual for the difference in the annual allowance charge between the two options in respect of the remedy years. We do not believe it is equitable for members of the LGPS to be treated any less favourably than members of the other public sector schemes and would expect the Government to put in place equivalent compensation arrangements for LGPS members.

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

Yes.

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

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)?

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?

All communications should make it clear that these changes are a direct consequence of the need to remedy the age discrimination under the existing arrangements, and that they are design to ensure no eligible members are worse off as a result of the changes to the arrangements introduced in 2014. It should be made clear to all eligible members that given the quality of the benefits available under the 2014 Scheme, the underpin protection will not be relevant for the majority of eligible members, but where it is, it will automatically be applied by the Administering Authority and that they are not required to submit a claim.

For scheme employers, it is important to confirm that the provision of the information required to undertake the underpin calculations is a statutory requirement and that they should make all reasonable efforts to provide the data. On the assumption that in the absence of complete data, any guidance issued by the Scheme Advisory Board will err on the side of the scheme member, the communications should ensure that scheme employers understand that there is

likely to be a cost charged through future employer contribution rates where they are unable to provide the requested data.

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

There will be significant administrative impacts as a direct consequence of these proposals. The first results from the requirement to retrospectively collect and validate the required data for all eligible scheme members and load this to their pension record. As noted in Q5 above, this is likely to present significant challenges to scheme employers and administering authorities, especially where the scheme member has transferred job in the period since 1 April 2014, or is now employed by a new organisation following an outsourcing or transfer to an academy school and/or where the scheme employer has changed payroll provider.

The second big challenge will be applying the underpin test retrospectively to members who have already retired or left, particularly those who have subsequently died and survivor benefits are now in payment. While administration systems can be adapted to carry out these calculations, there will inevitably be complex cases which will require manual intervention.

The third administrative challenge will be contacting those eligible members who need to be given the further 12-month opportunity to aggregate their current record with a previous membership record.

The scale and complexity of this exercise will also create a significant communications challenge for administering authorities, and scheme employers.

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

Cases where members have already retired (or died) should be the priority as the underpin could impact on a member's (or survivor's) current retirement income. Thereafter, members closer to their underpin crystallisation date should be prioritised.

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

Apart from removing the requirement to calculate the impact of the underpin protection on an annual basis and include two sets of benefit figures on all future annual benefit statements for eligible members there is no obvious way to simplify the proposals whilst addressing the age discrimination issues identified by the Courts. .

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?

The key area of guidance to be published by the Scheme Advisory Board should be in respect of the process to be followed where it is not possible to retrospectively collect the data required for an eligible member. The Scheme Advisory Board should provide a framework for employers and administering authorities when making assumptions about service and salary history in the absence of complete information.

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

Given the complexity of the issues and the need to ensure equitable treatment of all members, there should be a consistent approach across all matters in respect of the implementation of the proposed changes. This includes as noted above guidance to administering authorities

and scheme employers on data collection and approach where data is not available, and communications to be shared with scheme members.

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?

At this time, we are not clear of the potential costs in respect of increased benefits for eligible scheme members or in additional administration staff to implement the changes. Whatever the cost to remedy the age discrimination though, we cannot see how they cannot be passed on the local taxpayers, as all costs to the Pension Fund are recovered by way of an allocation through employer contribution rates, which in turn for the largest scheme employers are in turn funded through the Council tax, unless the Government provides specific earmarked funding. Under the cost control mechanism, the opportunity to pass the cost back to scheme members by way of an increased employee contribution rate or reduced benefits is limited. The Government should recognise the reality of the position and should be transparent with local taxpayers.

We hope you find these responses helpful and we welcome the final proposals from the Government.

Yours sincerely

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On behalf of the Oxfordshire Pension Fund Committee

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