



**SHROPSHIRE COUNTY
PENSION FUND**

Administered by Shropshire Council

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Please ask for
Mrs D Sharp

Dear Sirs,

**Local Government Pension Scheme (England and Wales)
Amendments to the statutory underpin**

I am pleased to provide a response to the Department's consultation on proposals to amend the rules governing 'transitional protection' in the LGPS. I am responding in a capacity of Pension Administration Manager for Shropshire County Pension Fund. This response has not been able to be agreed by the Pension Committee because of timing.

Addressing the discrimination

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

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

Yes

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

Yes

Detailed proposals

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

Not qualified to give a legal comment on draft regulations.

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

The regulatory framework should work effectively so long as administrators have the data to apply it properly. Timescales however need to be adequate given the complexity of the



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changes proposed. Consideration also needs to be taken of other legislative changes that will require resource from Administration teams to implement at the same time. If data is missing and employers cannot provide it then the underpin framework fails. Additional guidance is therefore needed alongside the underpin legislation to support cases where assumptions are required by administrators to be fair and consistent across Funds especially if it is a Policy intention of no member being worse off by the changes.

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

Not qualified to give a legal comment on draft.

The revised underpin – basic elements

Qualification criteria

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?

There is a worry that new joiners to the final salary scheme between 01.04.2012-31.03.2014 will claim the same underpin protection as those members already in the scheme prior to 01.04.2012.

Aggregation

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?

An additional period should be given but 12 months will not be adequate for administrators to identify issue guidance and process cases. Suggest at least 24 months if the period must be defined at all. Alternatively, introduce a discretion for administering authorities to extend the 12-month aggregation window in cases that are not completed within that timescale with no fault of the member.



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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?

A very small number of members could be adversely affected by these proposals but the option to allow members to make a late election to aggregate should mitigate this fact.

Achieving a fair and consistent underpin

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

Amendments to the protections will result in additional work for administrators. Clear guidance needed for all from MHCLG.

A two-stage process

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

Yes. Additional administration not to be underestimated but fair to member.

Underpin period and final salary link

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

The proposed process for Club Transfers means the member must decide as to how their benefits will be treated in the receiving scheme when they will be uncertain of whether it will be right for them. They will require an element of guesswork. A consistent approach across funds and clear communication to members will be important and add to the Administration burden.

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

Yes. Final pay – best of last 3 or protections of average of 3 in 13. Transitional protections will have to be carried forward. Will Divorce Pension Share also be affected? If not, what happens if Funds are challenged in this area – central guidance would be required. The recalculations would need to be automated by software providers. If not the Administration burden on team resource would be unmanageable.

Supplementary matters

Annual benefit statements

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

No – It will be meaningless to the member and may cause more issues and challenges as its accuracy would be questionable as pensionable pay can vary between date of ABS and actual retirement/leaving date. Current underpin is not included in ABS’s.



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If insisted by MHCLG then a settling in period must be including, to say 2024. This will allow Administrators to collect data where gaps exist and software companies to produce the calculations. Already having to recalculate benefits for retirements and aggregations deaths etc having to provide data on underpin to active members seems an unnecessary burden.

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

It should be consistent across all Funds. Guidance on this matter should be provided by SAB as proposed.

Annual allowance

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

On balance it is probably appropriate to apply the annual allowance test at the underpin crystallisation date, when the actual value of the underpin is known. This is consistent with what is already in place for the existing underpin. This approach will potentially cause a spike in the closing value of a member's benefits in the pension input period in which the underpin crystallisation date occurs.

The consultation document acknowledges that the proposed solution might not work for those members with relatively low career average pensions in respect of the underpin period, but relatively high final salary benefits as a consequence of career progression.

Next steps

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

It appears to. Please ensure no scope for future challenge.

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)?

Not in a position to comment.

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

Not in a position to comment.



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Implementation and impacts

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

Members will need to receive reassurance that the underpin process is fair and is being applied accurately. It will be important for members to understand that the process is an automatic one and does not require them to lodge a claim. Some members may have misconceptions about the value of the underpin and should be made aware that the number of cases in which the underpin will give a better benefit are likely to be small. Communications with employers should focus on the practical requirements of providing the data required to operate the underpin and any assumptions being made where member data is missing. National communications from MHCLG or SAB are needed for a consistent country wide message. Will tolerances be used regarding rectification cases or will ever single case have to be rectified?

Administration impacts

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

The scale and complexity of this exercise will create a significant resourcing and communication challenge for administering authorities.

The underpin will not actually take effect for most members, however a huge proportion of members are potentially affected and will require some form of ongoing record maintenance.

Where there are employers who cannot provide the required data, for a variety of reasons; employers no longer existing or historic payroll data not being retained, what is the fall-back situation. Consistent clear guidance is required rather than local determinations having to be made.

Applying the underpin test retrospectively to members who have already retired or left will only actually be realistically doable if administration software can undertake these automatically. Who will the cost fall to for these software improvements – the local tax payer? Systems no doubt will not be able to calculate arrears so manual calculations will be inevitable anyway. Additional complications would arise if the backdated payment was in respect of a survivor's pension. Thankfully these cases will be extremely rare. All of this whilst trying to ensure business as usual is kept on top of and having to have introduced the exit payment cap and exit payment reform as well as GMP equalisation and the cost cap outcome.

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

Priority should be given to ensuring new calculations are correct going forward then members who have already retired or died. To reassess the member's (or survivor's) current retirement income. Then aggregation. But systems need to be changed quickly to ensure new backlogs are not created – so this supports that regs are laid early with a later



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implementation date to allow software providers the time they need to make the changes required.

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

None come to mind other than National tolerances mentioned earlier.

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?

Additional guidance would be welcomed as mentioned earlier around what to do when an employer is incapable of providing historic member data. 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, so this is done consistently across all Funds.

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

There should be a consistent centralised communication, approach issued by the SAB. A centralised approach to dealing with employers who cannot provide the necessary data is also necessary.

All areas should be consistent - including Auditors

Costs

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?

National guidance. Admin cost will have to be passed on to employers (rectification and BAU increase) – software costs are being stated as running into millions of pounds – valuations. Is it fair that local tax payers ultimately pay for a Central Government failing to take account of advice that the regulations they put in place in 2013 were not in line with age equality legislation?

I hope you find this response useful.

Yours faithfully

Debbie Sharp
Pensions Administration Manager

