

## Local Government Pension Scheme (England and Wales)

### Amendments to the statutory underpin

#### Consultation

### Response of the Association of School and College Leaders

- 1 The Association of School and College Leaders (ASCL) represents more than 20,000 education system leaders, heads, principals, deputies, vice-principals, assistant heads, business managers and other senior staff of state-funded and independent schools and colleges throughout the UK. ASCL members are responsible for the education of more than four million young people in more than 90 per cent of the secondary and tertiary phases, and in an increasing proportion of the primary phase. This places the association in a strong position to consider this issue from the viewpoint of the leaders of schools and colleges of all types.
- 2 ASCL welcomes the opportunity to make a written response to the proposals to remedy the transitional arrangements to the Local Government Pension Scheme (LGPS) statutory underpin, following the Court of Appeal's ruling in the McCloud and Sargeant case.
- 3 This response is primarily submitted on behalf of school business leaders and bursars, as these are the category of ASCL member who are in the LGPS.
- 4 **ASCL is concerned that the cost of the remedy will be incurred by the LGPS individual schemes and therefore ultimately funded by member and/or employer contributions. The implementation of these remedies will be expensive. The scheme (administrators, members, employers) is not at fault and should not incur costs to fund a remedy to an illegality not of its making. This leads to real concern about cost pressures incentivising alternatives to the scheme.**

#### With reference to your specific questions

- 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. This appears to be consistent with the Court of Appeal's ruling.

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

The original underpin applied to service up to 31 March 2022. In terms of the discrimination ruling that this consultation addresses, it appears to protect the original commitment to members within ten years of retirement to 31 March 2022, whilst bringing all younger members into scope. At that point the discrimination is removed with no advantage to extension in relation to the discrimination. Moreover, at this point there will be an opportunity for major data collection to enable baseline calculation of the final salary underpin.

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

Yes. ASCL supports this as it directly addresses the prescient discrimination issues from the date from which they were identified.

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

The overall draft regulations appear to address the revised underpin implementation. However, considering the complexity of the remedy, we reserve the right to highlight any concerns should they become apparent.

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

Yes, although the additional work required of school administrators to support this protection should not be underestimated.

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

See answers to Q4 and Q5 above. The regulations for the renewed underpin will require scrupulous record keeping for up to 40 years.

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?*

ASCL agrees that the revised underpin should be extended to those members who leave without an immediate entitlement to a pension, as otherwise there is a risk of another discrimination being introduced.

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

There may be an issue with members accruing fewer than two years' service as described. ASCL would recommend that the revised underpin eligibility is immediately applicable to the scheme in its entirety, allowing aggregation with another LGPS or Club scheme,

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

Yes. The alternative would be extremely complex. Single Scheme Advisory Board (SAB) communications would further be essential, alongside some centralisation of process and resource (as in Q28).

- 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?*

ASCL agrees that scheme members should be able to aggregate their benefits in order to fairly preserve their underpin entitlement. However, given the complexities, a degree of allowable discretion by administrators beyond the 12-month period may be desirable..

- 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?*

This situation is avoidable if, as above, members have the option of late aggregation.

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

No, as they appear to address the required protections. As in Q4, considering the complexity of the remedy we reserve the right to highlight any concerns should they become apparent.

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

Yes. As described, the phased communication appears to address the ability of members to make informed decisions.

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

ASCL recognises the intention to facilitate members' scope to manage Club Transfers. However, this is a complex area where independent financial advice is essential and ASCL would support some scheme-recognised recompense for members. Members' elections may place further burdens on school administrators to deliver on these complexities.

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

Not that are immediately obvious or evident.

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

This is essential. In particular, ongoing annual communications explaining the two-stage underpin process, with each benefit in real time.

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

As in Q16, ongoing annual benefit statements would be most useful if they contained a breakdown of all scheme benefits with comparative additions where either the pre-2014 or post-2014 approach is optimal. This will engender a better ongoing understanding of the options as time progresses.

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

This is a very complicated area in which, again, members would be wise to take financial advice (see Q14). It is not possible to appreciate the possible scale of the issue both in terms of numbers of members affected, and the size of their AA excess. Clear repeated communication is vital to prepare members for this possibility even though it is possibly less complex than a more iterative approach.

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

These measures appear to do so.

- 20 *Do you agree with our equalities impact assessment?*

As it has been presented, we have not identified any specific issues. However, considering the complexity of the remedy we reserve the right to highlight any concerns should they become apparent.

- 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)?*

We have not identified any further data sets. However, considering the complexity of the remedy we reserve the right to highlight any concerns should they become apparent.

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

As it has been presented, we have not identified any specific issues. However, considering the complexity of the remedy we reserve the right to highlight any concerns should they become apparent.

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

ASCL is concerned about the complexity of the remedy, though we recognise that this is likely unavoidable. Members will therefore need crystal clear and unambiguous communications to assuage concerns and reassure. Communications with school leaders administering any process must emphasise longitudinal accuracy.

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

As in Q23, ASCL recognises that the scale and complexity in the administration of the proposed remedy is massive. There will need to be reviews of systems, processes and communications in the recalculation of diverse benefits. Ongoing maintenance will be

crucial, with the revised underpin affecting the additional members brought into scope alongside current protected members.

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

Decisions surrounding the death of a member may result in reopening of probate to ascertain benefits. ASCL believes that such cases should be prioritised as the underpin could impact on survivor benefits. This should be followed by retirees and then members approaching their underpin crystallisation.

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

See answers to Q23 and Q24 above. As always, communication and messaging are pivotal.

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?*

As above. Agile guidance on retrieval of past records and member-sympathetic processes when these are not forthcoming would be of benefit.

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

Scheme Advisory Board centralisation of process and documentation would be very useful (see answer to Q9).

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?*

ASCL is concerned that the cost of the remedy will be incurred by the LGPS individual schemes and therefore ultimately funded by member and/or employer contributions. The implementation of these remedies will be expensive. The scheme (administrators, members, employers) is not at fault and should not incur costs to fund a remedy to an illegality not of its making. This leads to real concern about cost pressures incentivising alternatives to the scheme.

We hope that this is of value to your consultation, ASCL is willing to be further consulted and to assist in any way that it can.

Jacques Szemalikowski  
Pay and Conditions Specialist: Pensions  
Association of School and College Leaders  
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