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Date: 1 September 2020
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Dear Sirs

Leicestershire 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 Leicestershire 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?

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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 employers and administrators.

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.

Administrators have the added burden this proposal brings. These will be expanded upon later in the consultation reply.

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.

We also agree this extends the protection to include members that previously were not covered.

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

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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 eminently 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 would be an unintended consequence of the proposals resulting in a significant cost increase. 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.

A proposed remedy is for any pension release granted in the next 12 months to only apply to the service originally held with the employer. It should also only apply to actives and preserved members when the Regulations change, it should not include pensioners.

The Fund is also concerned that members who have rightly decided not to aggregate previously, often because their pay with PI is significantly higher with their previous Fund, may now question their decision given they are having a second opportunity to aggregate. This generates the risk that members could make a bad decision based upon their perceived benefits of McCloud. The

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communications must be very clear to members, otherwise this could lead to future complaints and appeals.

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 as a consequence of the proposed changes?

Answer 10 – Yes, as detailed in answer 9, but with employer protection for additional pension release against the increased risk detailed.

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 feels communication to members must be simply and clear, otherwise members may become confused, when or if, the protection applies.

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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 member's, especially given this may not apply to many members, and if it does, it is only at a future point in time.

However, the Fund does appreciate some members will be aware of McCloud, so they may have an expectation this is included. The Fund feels simple communication is key to this, probably in terms of agreed wording that explains the underpin, rather than including figures that may or may not apply.

The Fund is concerned about administrative costs increasing due to McCloud and feels that including the underpin will generate more phone calls and enquiries from members, that will take time to answer. 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.

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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 a link to a more detailed explanation can be provided.

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, in particular for the protected characteristics not covered by the GAD analysis (age and sex)?

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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 McCloud Team in the Pension Section to deal with the administrative impact.

The Fund has written to all its employers making them aware of McCloud and the likelihood they will need to provide any missing data between April 2014 and March 2022.

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The Fund is represented on the Local Government Associations McCloud working party so has been involved in the work to produce a national data template and notes to assist employers. The Fund will be reliant on the system provider backloading the data into the system and revising the calculations to provide the "best 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 is planning on working on the priority order of cases, to determine case that are most likely to need revision.

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 concerned about the administrative impact on the employers extracting the hours and service breaks between April 2014 and March 2022. This will be challenging and costly for the employers. Some of the Fund's employers have already asked if the additional charges they incur can be passed back to the Fund.

The Fund is pleased there is no recommended date for completion of the exercise and should therefore be able to set its own timeframe to complete the work.

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 age or the retirement date of the pensioners should also be considered, maybe starting with those who retired first.

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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.

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 has to 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 for there to be clarity 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 completely 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 feels it better solves the administrative and employer impact.

The idea is to pay a compensation value to members impacted. Rather than 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. This could be set at a national level for all members impacted. Given only a small number of members are likely to be impacted, this seems a fair and pragmatic solution.

The Fund also feels a level of pragmatism must be applied. From liaison with some of the Fund's employers already, it seems likely not all employers will be able to extract all service changes and breaks, especially for employers that have either

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moved payroll provider or amalgamated with other employers during the period in question.

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?

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 all Fund work consistently.

The Fund does not believe there should be a set time limit on the completion of the work as Fund's will have differing levels of resource available to work on the exercise.

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. The Fund has no comment on how this should be achieved, but by linking the McCloud remedy to the cost cap exercise, it is expected this will limit the burden on tax payers.

The Fund also took account of McCloud in the recent Fund valuation exercise and included an expectation of increased costs that were factored into the valuation results and the employer rates which came into effect from 1 April 2020.

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The Fund stresses no deadline for completion of the work is very helpful. Having a deadline will add extra pressure and potentially increase administration costs.

Please treat this letter as the official reply of the Leicestershire Local Government Pension Fund.

As required, my details are as follows;

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Yours sincerely

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