

**Response to the Department of Levelling Up, Housing & Communities consultation on 'McCloud' remedy in the LGPS – supplementary issues and scheme regulations.**

**Question 1: Do you agree with the rules about aggregation and underpin protection that we are proposing?**

Whichever approach is adopted there will be considerable administrative complexity. On balance the approach of not requiring aggregation is preferable because of the issues highlighted in the consultation. Principal among these is the fact that some members would potentially miss out if aggregation was required. Given that the other Public Service pension schemes are taking the non-aggregation approach, it seems sensible to minimise the risk of further challenge, by taking the same route.

The issue for the LGPS will be ascertaining which members have underpin protection in a given fund by virtue of service in a different fund. In some cases, this will be known as members are usually asked to declare any LGPS service held with another fund when they commence an LGPS employment. But this won't always be the case.

It would be helpful to have a single co-ordinated exercise in order to establish the members who meet this criteria. Otherwise, different funds might take different approaches and send out different communications at different times which may have conflicting messaging. In addition, it may lead to some members not being identified or, a duplication of effort.

We would suggest that DLUHC work with the Scheme Advisory Board in order to issue guidance for establishing members who have underpin protection through service in another fund. This process might be able to utilise the existing national NI database that LGPS funds use and should provide a standard process and communications.

**Question 2: Do you agree with our proposed approach regarding Club transfers?**

We agree this approach but note that the complications of establishing who is protected under this approach are even more complicated than the issue on LGPS non-aggregation.

We would suggest a single co-ordinated exercise across the Public Service pension schemes in order to establish which members have such protection, allowing for a common approach and communications. This could be a role for the Official Committee on Occupational Pensions (OCOP).

**Question 3: Do you agree with our proposal to extend underpin protection to the period after flexible retirement, if it is in the underpin period?**

Agreed, in order to avoid members who flexibly retire from receiving less protection than others.

**Question 4: Do you agree with our proposal for multiple final underpin dates if a member takes 'partial flexible retirement'?**

Agreed.

**Question 5: Do you agree with our proposed method for calculating a CEV for a member with underpin protection?**

Agreed

**Question 6: Do you agree with our proposal to remove pension debits from the calculation of the provisional assumed benefits and underpin amount?**

Agreed.

**Question 7: Do you have any comments on the approach being adopted for these members?**

Again, this is an extremely complex area. We would endorse the idea of DfE, DHLUC, LGA, administrators and other relevant parties forming a working group to establish a process for dealing with these cases. We believe that statutory or SAB guidance would be welcome.

**Question 8: Are there any areas where specific scheme regulations regarding excess teacher service would be necessary or beneficial?**

The answer to this is likely to come from the above-mentioned working group.

**Question 9: Do you have any comments on the government's approach to compensation?**

We would expect that in most cases the application of the McCloud remedy would address any loss that members may have faced as a result of age discrimination. However, we recognise that in some cases members may be able to identify a specific loss which the payment of the underpin value does not mitigate, particularly where an annual allowance tax charge arises.

We, therefore, agree that there are certain circumstances in which a compensation payment is appropriate, and we are supportive of the need for national support for local administrators in determining how to approach this part of the remedy.

However, we don't believe that the cost of compensation should be borne by administering authorities. LGPS funds administered the scheme in line with statutory regulations as they stood at the time. The fact that those regulations were subsequently found to be unlawful should not be their responsibility. We believe that any compensation payable, which we expect to be minimal, should be paid from the Department.

**Question 10: Do you have any comments on the government's approach to interest?**

Subject to the previous point regarding compensation, we have no further comment.

**Question 11: Do you agree with the approach we have proposed for injury allowance payments?**

Agreed.

**Question 12: Do you have any comments on our equality impact assessment?**

No.

**Question 13: Are you aware of additional data sets that would help us assess the impacts of the LGPS McCloud remedy on the LGPS membership?**

We are not aware of any.

**Question 14: Do you have any comments on the draft regulations?**

We have no further comment.

**Question 15: Do you have any other comments you would like to make on McCloud remedy in the LGPS?**

We have no further comment.