Ministry of Housing
Communities & Local
Government

# Local Government Pension Scheme (England and Wales) amendments to the statutory underpin

Response from the Chartered Institute of Public Finance and Accountancy (CIPFA)

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CIPFA, the Chartered Institute of Public Finance and Accountancy, is the professional body for people in public finance. CIPFA shows the way in public finance globally, standing up for sound public financial management and good governance around the world as the leading commentator on managing and accounting for public money. Further information about CIPFA can found on the **CIPFA website**. Any questions arising from this submission should be directed to:


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# Executive summary

CIPFA welcomes the proposals to remedy the age discrimination caused by the reforms. This refers to the package of reforms recommended by the Commission, which promised a "balanced deal that will deliver fair outcomes for public service workers and for taxpayers and build trust and confidence in the system." We hope this remedy will be a step in delivering this.

Despite this, CIPFA would like to raise the issue that in an already strained and increasingly complex discipline of administering pensions, the resources and cost cannot be underestimated in implementing these changes. High-level analysis of a typical fund of 60,000 members shows around 6,000 active members fall into the scope of McCloud, and around 8,000 leavers are affected and will require a retrospective review of their benefits to see if the new underpin affects them. On average, 31% of the total active membership, 22% of deferred and other leavers and 15% of pensioners are in scope.

Adopting these proposals will inevitably have a significant impact on LGPS administrative teams and good management of the process will be critical to successful implementation. This will inevitably require more resources in an industry where recruitment is already a challenge.

We believe the most substantial pressures will fall into three key areas:

- Administration teams will require more staff to check cases and systems may need investment to adapt to reviewing bulk cases.
- Strong and transparent communications to both members and employers will be required and will need significant time, resource and expertise from the Communications team.
- Pension Funds teams will need to resource ongoing ad-hoc support for complex individual circumstances.

The lead in time will be key to the resources required – specifically, the question of whether the implementation date will be April 2022 or later is key to the resource intensity required. Analysis of a typical scheme to see what additional admin resource could be needed to carry out the review of leavers' benefits is included in the chart detailed in Appendix 1.

The first column shows that if each case takes an hour and they have one year to complete all the cases, the fund would need another six FTEs to review those 8,000 cases. If each case takes 90 minutes, they'd need 10 extra people. If, however, they only have six months to do the work, they might need between 13 and 19 extra staff.

COVID-19 has also presented an enormous challenge for fund administration and employers. The implementation of this significant change will be exacerbated by the ongoing situation while working from home arrangements continue and essential elements of implementation such as changing systems and testing arrangements will be more difficult than ever.

The Commission's wrongful assessment that special protections for members over a certain age should not be necessary, as well as the age discrimination legislation, means that it is not possible in practice to provide protection from change for members who are already above a certain age.

With the increased cost to employers – from a combination of increased liabilities and costs of administration, ultimately combining into increased contributions - CIPFA would like to raise the case for 'top down' funding from governments to remedy the extra expense of a scheme which has caused cost and strain to both employers and Pension Funds teams who have successfully implemented this age discriminatory scheme.

# Our comments and responses

### **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?

CIPFA agrees with the proposal as this is consistent with the Court of Appeal's ruling.

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

We see no case to extend the underpin beyond the date proposed as this is consistent with the original commitment that members within 10 years of retirement on 31 March 2012 would not be in detriment.

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

CIPFA agrees in the retrospective application of the regulations as the age discrimination began on 1 April 2014 on transition of the scheme. Therefore, it is essential to retrospectively apply the regulations.

### **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?

Yes, CIPFA would agree the protections work effectively on initial assessment. CIPFA would however wish to raise the significant work required by administrative bodies, who will need to assess this on a case-by-case basis. The lead in time will be key to the resources required, and the question of whether the implementation date will be in April 2022 or later will be key to the resource intensity required.

This work also represents an enormous data collection exercise. There is a possibility that this data may not be available, and the Pension Funds team will need to establish assumptions for calculating the underpin across eligible members. Constancy on these assumptions would be welcome and CIPFA offers support to MHCLG in issuing guidance on how the team should account for any missing data required to calculate the underpin.

COVID-19 has also presented an enormous challenge for fund administration and employers. The implementation of this significant change will be exacerbated by the ongoing situation while working from home arrangements continue, and essential elements of implementation such as changing systems and testing arrangements will be more difficult than ever.

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

No further comment.

### **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?

The protection does address existing age discrimination for the extension of underpin to those who do not have an immediate entitlement to benefit and by extension to those who have already retired without an immediate entitlement to benefit. Furthermore, the underpin will now apply to members of all ages in more circumstances than was previously the case..

We understand that the proposals for the underpin can produce a scenario in which a member who was within 10 years or less from retirement on 1 April 2012 is worse off, as a result of retiring from deferred status. We understand the government's policy intention is to rectify this circumstance and we agree that the underpin should be extended to those members who leave without an immediate entitlement to pension.

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

No further comment.

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

We agree that the underpin qualifying criteria should have to apply in a single record.

### **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?

CIPFA is of the view that it would be useful to allow administering authorities to extend the 12-month aggregation window. This exercise will be complex and possibly not completed within 12 months, so there may be cases where, through no fault of the member, the exercise is not completed in time and it would be unfair for the member to miss out in such circumstances.

In these cases, members could be given the opportunity to aggregate their records in order to protect their underpin entitlement and to also allow administration to be undertaken without the need for excessive cost and resources to complete.

### **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?

CIPFA understands it is possible to construct a scenario where a member could argue they had suffered adverse effects because of introducing the requirement to aggregate service in order to retain the underpin. However, this situation is likely to be rare and the inclusion of an option to allow members to make a late election to aggregate goes some way to mitigating the impact. Clear communications will be essential in explaining individual circumstances and successful implementation.

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

We have no further comments. The proposals seem consistent with the government's stated policy of ensuring appropriate protection for scheme members and their survivors.

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

The two-stage approach is consistent with the government's stated policy intentions.

### **Question 14:** Do you have any comments regarding the proposed approaches outlined above?

The proposal for club transfers places a significant responsibility on the member as it requires them to decide as to how their benefits will be treated in the receiving scheme. This will inevitably require a complex financial decision and one where it will not be known until retirement whether they have made the right decision. This will need to have consistent application and clear communication to members, employers and unions or staff representatives.

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

We do not view that there are any notable omissions.

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

It would be useful for members who may be impacted by the underpin to receive information in their annual benefit statements. This will have increased pressure on administration or require investment in systems to produce this.

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

The underpin will inevitably introduce additional complexity and it will be challenging to explain to members. Those impacted members will need to see their underpin values change from year to year and may see years when the underpin does or does not apply.

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

CIPFA believes other organisations are better placed to comment.

### **Question 19:** Do the proposals contained in this consultation adequately address the discrimination found in the McCloud and Sargeant cases?

CIPFA believes they do.

### **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 further comment.

## **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 transparent and accurate. It will be important for members to understand that the process is an automatic one and does not require them as individuals to make separate legal claims.

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

While the underpin will not actually take effect for most members, many members are potentially affected and will require some form of ongoing record maintenance by employers and the Pension Funds team. High-level analysis of a typical fund of 60,000 members shows around 6,000 active members fall into the scope of McCloud, and around 8,000 leavers are affected and will require a retrospective review of their benefits to see if the new underpin affects them.

On average, 31% of the total active membership, 22% of deferred and other leavers and 15% of pensioners are in scope.

Adopting these proposals will inevitably have a significant impact on LGPS administrative teams and proper planning will be critical to ensure successful implementation.

A significant obstacle will be to obtain the data required from employers, however, there will be situations where employers will not be able to provide the required data. This may be due to those employers no longer existing or historic payroll data not being retained or lost.

A further challenge will be applying the underpin test retrospectively to members who have already retired or left. While systems can be adapted to carry out these calculations, there will inevitably be complex cases which will require manual intervention adding additional pressure to already strained administration teams.

This exercise will create a significant communications challenge for administering authorities.

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

Cases where members have already retired should be the priority as the underpin could impact on a member's retirement income. Secondly, members closer to the underpin crystallisation date should be assessed.

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

Unfortunately, we believe attempts to simplify the proposals may dilute the impact of the policy.

## **Question 27:** What issues should be covered in administrative guidance issued by the Scheme Advisory Board (SAB), in particular regarding the potential additional data requirements that would apply to employers?

One area where additional guidance would be welcome is what to do when an employer is incapable of providing historic member data. Ideally, the 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.

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

We support a consistent centralised data template and communications, as issued by the SAB. We believe that a centralised approach to dealing with employers who cannot provide the necessary data is also welcome (see answer to question 27).

## **Question 29:** Do you have any comments regarding the potential costs of the McCloud remedy, and steps that should be taken to prevent increased costs being passed to local taxpayers?

An increase in LGPS liabilities is unavoidable and will ultimately be paid by employers, most of which are publicly funded.

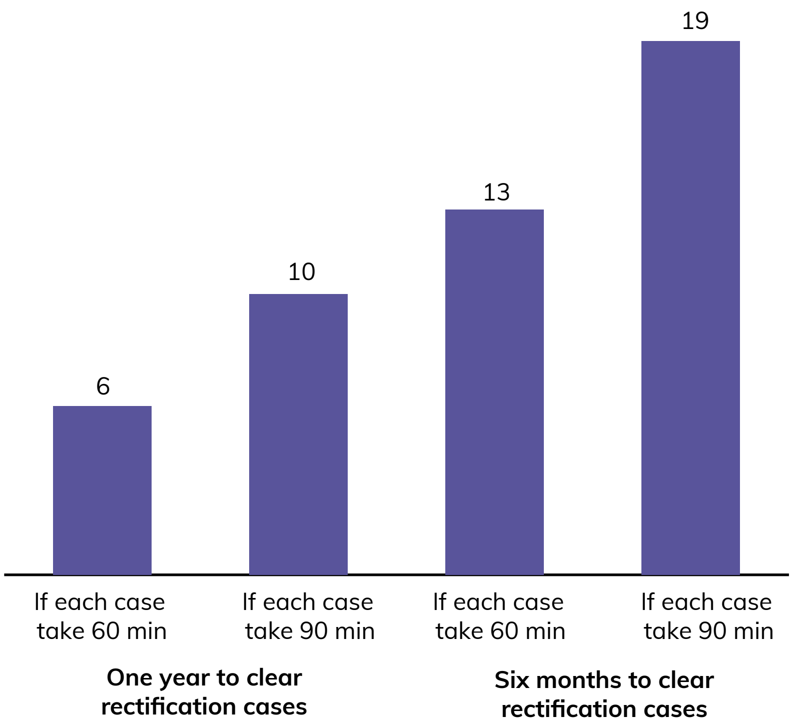
While at whole fund level the impact is small, it may be more material at individual employer level. The cost impact is likely to be higher for employers with youthful membership profiles, as there is a greater likelihood of the underpin impact for younger members. The majority of the costs will fall on employers with a long-term funding horizon and this will have an additional impact on an already constrained budget.

In addition to the employer's costs, the costs of administration and communications funds could be significant in terms of extra human resource. These costs are typically recouped via an administration charge as part of an employers' ongoing contribution rate, therefore putting greater strain on employers.

# Appendix 1

## Resource requirements

### Possible additional FTE requirements - data collection and benefits review



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