Greater Manchester Pension Fund

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Date: 07 October 2020

Dear LGPensions,

Local Government Pension Scheme (England and Wales)
AMENDMENTS TO THE STATUTORY UNDERPIN

This response to the consultation named above is on behalf of the Greater Manchester Pension Fund ('GMPF'), which is the largest Local Government Pension Scheme ('LGPS') fund in England and Wales.

GMPF has approximately 375,000 members, 580 contributing employers and assets with a value of approximately £25 billion.

GMPF is supportive of the broad policy objectives being consulted upon.

However, **we OBJECT to the proposal that:**

(a) notional underpin amounts should be included on annual benefits statements.

(b) members should be given a one-time only 12-month window in which to decide whether to aggregate their benefits or not and we suggest this option is instead given at the underpin crystallisation date.

Please see our responses in full to these points in schedule below.

We would also like to highlight the following:

Timescales for implementation – We note that a timescale has not been proposed within the consultation. If a timescale for remedy is to be set, then we would strongly recommend that this is not done until the scale of the work has been fully determined. Once the number of cases plus the amount of manual work needed is known, this can inform any remedy timeframe to ensure it is both realistic and achievable in a cost effective manner.

Cost – Aside from the funding strain, the cost of implementation is likely to be significant. The costs charged from software suppliers together with administering and employing authority resource costs will lead to a notable increase in the overall cost of administration.

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Please do not hesitate to get in touch if you wish to discuss any of the matters covered by this consultation.

Yours sincerely,

Sandra Stewart
Director of Pensions
Greater Manchester Pension Fund

SCHEDULE OF RESPONSES TO CONSULTATION 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

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

Yes – This was the end of the original period of protection and should be retained.

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

Yes

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

Yes – The draft regulations appear to us to implement the recommendations in the consultation document. However, as we explain in our response to Q16 & Q17, we do not support the view that potential underpin figures should be shown in the annual benefit statements. The final regulations would need to be revised to remove this requirement. We do not show this figure to those in scope of the current underpin protection and based on our experience and the size of underpin protection amounts likely to be paid, this is not detrimental to the member's ability to understand the pension they have built up or to plan for retirement effectively.

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

Focusing on each group separately:

Members:
Yes – The draft regulations appear to provide an adequate framework of protection in that they address the discriminatory issues that have been identified.

Employers:
No – The draft regulations alone do not provide enough detail regarding the practical application of the legislation. From an employer's perspective, the regulations require the provision of information which may not be readily available, particularly in relation to employees who have transferred between scheme employers or where employers have changed payroll providers. Clear guidance is needed to ensure that employers can change or introduce processes that allow them to meet their regulatory obligations.

Administrators:
In part – The draft regulations alone provide the basic information needed for implementation but, from an administrative perspective, the effective application of the new regulations will depend on several things including:

- a scheme employer's ability to provide key member data to the administrator such as hours and service break data in a timely manner
- the availability of clear and consistent guidance from central government regarding the processes that should be followed where key member data is not available
- reliable software that identifies members in scope of the revised protection, accurately performs the comparison calculation and retains this information on the member record

Scheme administrators have limited control on the above. Furthermore, problems in the above areas would undoubtedly impede the administrative process as they would make the application of the regulations a difficult, labour intensive and costly exercise.

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

Yes – Regulations should make it clear that the final underpin benefit granted (final guarantee amount) is treated in the same way as other accrued pension. For example, final guarantee amount is defined as 'pension' under "Schedule 1 – Interpretation" of the Local Government Pension Scheme Regulations 2013.

Guidance should also clarify the treatment for members who have already retired and are in receipt of pension and, where due to the retrospective calculation of the revised underpin, there is a balance of benefits due. For example, whether any additional amount is affected by a previous lump sum commutation election.

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 – In order to remove age discrimination, the underpin protection should apply without the need for an immediate entitlement to a pension at the date of leaving.

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

Yes – Whilst we understand the reasoning for retaining the original underpin criteria, in relation to the initial qualifying date of 31 March 2012, we believe that in order to remove the possibility of future legal challenges, consideration should be given to extend the protection to members who were active on both 31 March 2014 and 1 April 2014, rather than 31 March 2012 and 1 April 2014.

This approach would be consistent with previous scheme changes, such as the transitional criteria under the 2007 scheme, which applied to members who were active on both 31 March 2008 and 1 April 2008.

The number of additional cases to consider under this revised criterion would be relatively small and, based on existing data, any underpin addition payable to qualifying members would not present a significant additional cost implication. We believe that if this is not changed then this decision could be open to potential future challenge.

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

Yes – GMPF supports this approach as it simplifies administration and removes the possible need to compare benefits in separate periods of scheme membership, especially if these are held in different funds. However, we do have concerns about the proposal around aggregation, detailed in our response to Q10.

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?

In part only– We agree that eligible members who have already made an election to retain separate benefits under the previous underpin provisions should be offered an opportunity to reconsider that decision.

However, we do not believe that offering this option immediately would be in the best interests of members, given that the final value of any underpin protection will not be known until their benefits crystallise.

We believe an alternative and more expedient option would be to allow eligible members the opportunity to make their decision at the time of crystallisation, so they could see if the benefit of the underpin protection is greater than the value of the deferred benefits that they would be cancelling. With this option we would suggest that a much shorter election period, of say one or two months, should be adopted to enable members to make an informed but timely decision.

If the original proposal is pursued, we would suggest that an administering authority is given discretion to extend the 12-month period in order to deal appropriately with the exceptional cases that are likely to arise after twelve months has passed.

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?

No – Please see our response to question 10.

Our uncertainty relates to the need for a member to be able to make an informed decision, which we believe they are not able to do when the value of the underpin protection is unknown. A member could therefore end up in a worse position and is then likely to make a challenge or appeal.

The alternative option offered in our response to Q10, in providing the choice at the underpin crystallisation date, would remove the risk to the member of being worse off because of an incorrect decision taken now. Member choice would continue to apply but exercised when in possession of all the relevant information.

12. Do you have any comments on the proposed amendments described in paragraphs 56 to 59 (breaks in service, early/late retirement factors, DIS, survivor benefits)?

No – The proposals are consistent with the protection being applied in the future. However, we do believe some consideration needs to be given to situations that might arise as a consequence of retrospective changes, such as recalculations triggering the breaching of tax or cost cap limits, and for a transfer out where the new scheme is not willing to accept a balance of payment.

We also think it should be made clear that it is not the intention that interfund adjustment payments will need to be recalculated. We feel that if it was the intention to do so, it would be administratively onerous with no effect on the benefits paid to members. We would expect the eventual net result on LGPS funds of hundreds of incoming and outgoing corrections would be largely neutral.

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

Yes – This will enable any communications with a member after they have left to take account of their 'protected' status when relevant. Also, being required to calculate an initial underpin amount at the time of leaving will assist in ensuring software systems are changed to enable administrators to record this information.

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

No – The proposals are reasonable for each on the events listed. With regards to Club transfers, it would seem appropriate for a consistent approach to be taken across the public sector and for consideration to be given to the implications for members if they need to make a decision as to how their benefits will be treated in the receiving scheme.

Greater Manchester Pension Fund
Responses to consultation questions

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

Yes - We would refer you back to our concerns raised in our responses to questions:
6 – 'Final guarantee amount' to be defined as 'pension'
8 – Scope of protection to include joiners 1 April 2012 to 31 March 2014
10 – Timing of additional option to aggregate previous LGPS benefits

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

In part only – We think this should be limited to the statements including some general explanatory wording only for those in scope of protection.

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

Yes – We strongly disagree that a potential underpin amount should be quoted in the annual benefit statement each year. Any amount applicable will change each year and may not apply at all in some years when it has applied previously. This will be very difficult to explain to members and equally complicated for them to understand that they have not 'lost out' when the underpin amount is lower than in previous years or does not appear at all. In addition, so few members will be affected that any perceived benefit would be greatly outweighed by the costs of providing this.

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

Yes – In our opinion, it would be correct to measure the effect of the underpin addition for Annual Allowance tax purposes in the pension input period of leaving or retiring, if that is the same date. This is the same as for any deferred or retiring member.

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

In part – We agree to an extent, but we believe the amendments suggested in our response to Q15 would further address the discrimination.

20. Do you agree with our equalities impact assessment?

We do not feel we are suitably qualified to comment on the equality impact assessment.

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)?

As per Q20.

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

No

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

We believe that clear, consistent and reassuring communications that set out the reasoning of the underpin changes and the likely benefits for members will assist with this. Templates should be made available that all LGPS funds can use to ensure a consistent message is provided to members and employers across all funds.

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

Yes – From an administering authority perspective, we believe the impact will be manageable. But if the pension administration software we use is not developed to allow one or more of the items below to be automated and more manual intervention than anticipated is required, then the administrative impact will be significant:

- Reports to identify the members in scope
- Tools to enable the collection and uploading of missing data to member records
- System calculation changes to enable administrators to both calculate and pay the correct pension amounts
- Changes to the member self-service calculations that enable members to obtain accurate current estimates of their pension

Additionally, if accurate and timely data is not supplied by employers or is not available to obtain, for example because the employer no longer exists, this could create a significant challenge and therefore impact on both the administering authority and the member.

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

We would suggest that any principles to be adopted should be considered once funds are able to advise on the number and demography of members affected by the underpin in each category and can provide an estimate of the time and resource needed for caring out the work to resolve each. That way, a more informed decision can then be made on priorities.

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

Yes – The eventual remedy and the required steps should be set out clearly in guidance for all parties to follow. Communications should be tailored for each intended audience.

If the regulations are not put in place until 2022, we will still be calculating benefits on the old basis between now and then. This is going to make the problem bigger and will add to the cases we may need to amend in the future. It would be very beneficial to all concerned if a direction be issued to funds that would allow us to use the revised underpin criteria when calculating benefits that crystallise before the implementation date. To have nationally agreed tolerances that identify minimum thresholds before retrospective changes/updates are made outlined in guidance would also be helpful.

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?

Same answer as for Q26.

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

Same answer as for Q26.

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?

Yes - The need for effective software is the main area that we believe it is crucial to get right in order to greatly minimise the administration costs for funds and for employers, as explained in Q24. Therefore, it is necessary for final draft regulations and draft guidance to be agreed and available as soon as possible in order to allow software suppliers to put automated and tested solutions in place. If this can be achieved, then it will reduce the need for costly manual work to be undertaken.

Removing the requirement for information to be provided on annual benefit statements will also assist in reducing the costs, as the anticipated costs for a software development of this scale would be significant.

Ensuring there is no requirement to recalculate or pay interfund adjustments would also reduce costs.