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Local Government Finance Stewardship
Ministry of Housing, Communities and Local Government
2nd Floor, Fry Building
2 Marsham Street
London
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7 August 2020

Dear Sir/Madam

Local Government Pension Scheme (England and Wales)

The London Borough of Tower Hamlets Administering Authority to the London Borough of Tower Hamlets Pension Fund (the Fund) is pleased to respond to the consultation on the above topic attached as annex to this letter.

Yours Faithfully

Neville Murton

Corporate Director Resources

For and on behalf of London Borough of Tower Hamlets Pension Fund

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

It is our belief that this will be 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 period beyond 31 March 2022

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

Yes

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, however it is our belief that the administrative work required will be extensive.

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

We will welcome clarity in relation to death in service after 2008

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?

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?

We believe further clarification is required on dealing with aggregation cases

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?

We believe there should be a discretion to allow administering authorities to extend the 12-month aggregation window. While we hope the exercise can be completed within 12 months, in reality this may not be the case as there may be cases where through no fault of the member the exercise is not completed in time and it would be unreasonable for the member to miss out.

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?

The proposed changes seem to suggest that the aggregation window will not be extended to members who opted out after 11 April 2015 and then re-joined the scheme.

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

It is our belief that the proposed amendments to the protection will result in additional work for administrators as it would involve them having to visit underpin calculations where a protected member leaves active service, returns without a disqualifying break in service and elects to aggregate the two membership periods.

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

This is consistent with the governments stated policy intentions

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

We believe a consistent approach is required to assist members

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

No

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 underpin information in their annual benefit statements.

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

Explaining the new process and underpin calculations may prove difficult as affected members may see their underpin value change in some years and not others

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

It is our belief that annual assessment of the underpin will not be necessary. The appropriate annual allowance test should be applied at crystallisation date

Question 19 – Do the proposals contained in this consultation adequately address the discrimination found in the ‘McCloud’ and ‘Sargeant’ cases?

We believe proposals address the discrimination found in the ‘McCloud’ and ‘Sergent’ cases

Question 20 – Do you agree with our equalities impact assessment?

It is our understanding that the underpin seeks to address the equalities impact

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

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

We believe that our members will seek assurance that the underpin process is fair and will be accurately applied

Central communication from the SAB to all employers will help a great deal.

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

Although the underpin does not immediately take effect for most members, such members will require on going record maintenance by employers and Funds, this will inevitably impact administration resources. Obtaining data from employers also remain challenging issue.

Question 25 – What principles should be adopted in determining how to prioritise cases

It is our opinion that the following priorities should be extended:

- In the calculation of death and survivor benefits
- Retirements
- Actives should be prioritised by those close to their underpin crystallisation dates first

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

It is our belief that removing the underpin for ill health cases would simplify calculations although it could lead to a possibility of future discriminations or policy not being fully realised.

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?

Additional guidance would be welcome on salary service history where:

- Employers are unable to provide historic data
- Employers have changed payroll providers
- Employers no longer existing

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

Overall it will benefit Funds if clarity is provided through guidance or legislation on standard ways to deal with employers who cannot provide data, are no longer in existence or outsourced.

Standardised data gathering templates and communications from the SAB will be beneficial.

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?

Whilst the Fund allowed for McCloud in the 2019 valuation and Funding Strategy Statement, the actual and exact translation is not currently known due to the membership of employers in the Fund. It is the opinion of the Fund that the administrative and implementation costs will be significant.