Northern Ireland Local Government Officers' Superannuation Committee

Response to the Department for Communities consultation – Addressing discrimination – amendments to the statutory underpin

Question number	Question	Response
1	Do you agree with our proposals to remove the discrimination found in the McCloud and Sargeant cases by extending the underpin to younger scheme members?	Given that we can only trace one member who may have benefitted from the current underpin it is preferable to remove the underpin altogether for those who were within 10 years of NPA on 1 April 2012 rather than revising and extending the current underpin to all members who in the scheme on 1 April 2012 and who remained in the scheme on and after 1 April 2015. We estimate that the new underpin could now bring 36,000 members into scope of the revised protection although most will not see an increase in benefits. However, if legally this is not possible then, yes, we agree that the only solution is to extend the underpin to all active contributing members who were in the scheme on 1 April 2012 and remained in the scheme on and after 1 April 2015.
2	Do you agree that the underpin period should end in March 2022?	Yes – it should not be extended beyond the current underpin period. However, it should be noted that although the period ends in March 2022, due to the final salary link the proposed underpin will complicate administration for decades to come and the final costs to the Scheme will not be known until the last 'protected' member has either drawn their benefits or died, and will be based on their final pay at that time.

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		However, the simplest method is to crystalise the underpin in March 2022 i.e. the underpin ends at the earlier of age 65, death or 31/3/2022 using the final salary at that date. This will allow all eligible members to know at that date the value of their underpin in advance of retirement and removes the uncertainty for them. And vastly reduces the complexity for Scheme administrators. It is also fairer for members – the CARE scheme was introduced to stop those members who had modest pay increments subsidising the members with significant pay growth, especially near retirement. Crystalising the underpin in 2022 keeps with the Department's policy intent to make the scheme fairer to the vast majority of members. In addition, we believe that maintaining the use of the Normal Retirement Age as part of the underpin calculation gives rises to other age discrimination.
3	Do you agree that the revised regulations should apply retrospectively to 1 April 2015?	Yes – if the underpin cannot be removed then all members must be treated equally. However, this does mean a significant administration workload for both NILGOSC and its employers as the benefits will need checked for all retirees, deferred member, transfers out and trivial commutations since 1 April 2015 who meet the terms of the

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		revised underpin. In order to carry out the comparison between potential final salary benefits for the period from 1 April 2015 to 31 March 2022, NILGOSC would need a full record of part-time hours, term-time weeks and service breaks for each of these members who are now newly benefitting from underpin protection. In some cases it may not be possible to obtain this retrospective information for each member as the employer may have since changed payroll or left the Scheme.
4	Do the draft regulations implement the revised underpin which we describe in this paper?	NILGOSC has already advised the Department on the draft consultation and will continue to liaise on technical issues regarding the draft Regulations.
5	Do the draft regulations provide for a framework of protection which would work effectively for members, employers and the	The regulations are not effective for administrators or employers or the majority of members. Introducing these changes will be a significant exercise for administrators, and the impact and cost of this should not be undervalued by Government. Although some bulk processing may be possible, updating records for approximately 36,000 NILGOSC members (which

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	scheme administrator?	will involve multiple updates of part-time hours/weeks and service breaks back to 2015), collecting and processing this additional information on an ongoing basis, and separately reviewing approximately 10,360 of our benefit calculations in relation to leavers since 2015, will be a massive exercise given the number of members impacted. Then going forward to have to annually undertake underpin calculations and explain these to members will be onerous. We expect all funds will have similar proportions of records to review. Employers are going to have to provide retrospective data on part-time hours/weeks and service breaks back to 2015. For example we are aware of one employer that will need to provide 50,000 records of hour changes just to bring records up to date from 2015 to 2020. For members we are concerned that this introduces a new complexity into the scheme that will be hard to understand with very little evidence of any benefit. The proposal to extend the underpin and use final salary many years into the future means that the majority of members will subside those few members that will benefit.

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		In addition, the method proposed gives rise to further age discrimination to the detriment of older members.
6	Do you have other comments on technical matters related to the draft regulations?	We would request that it be made clear that the final underpin benefit granted (final guarantee amount) could be accessed in the same way as "normal" scheme benefits. For example, we assume that it is intended that the underpin pension benefit can be commuted to tax-free cash should the member elect to do so. Assuming this is the case, under "Schedule 1 – Interpretation" of the Local Government Pension Scheme Regulations (Northern Ireland) 2014, can the "retirement pension" definition be amended such that it "*includes earned pension, additional pension and any final guarantee amount awarded*". This 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. There should be clarification on how or if this should impact on lump sum commutation.

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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, this seems more fair though does expand the number of members who could potentially benefit from the underpin considerably.
8	Are there any other comments regarding the proposed revisions to the underpin qualifying criteria that you would like to make?	The underpin is intended to remove age discrimination but the regulations still discriminate on legacy ill-health protections. There also remains a risk that those who joined after 31 March 2012 could raise a challenge in the future.
9	Do you agree that members should meet the underpin qualifying criteria in a single scheme membership for underpin	Yes, the nature of employments in the LGPS (NI) is such that many members have multiple records often across several employers which they have not aggregated (joined). It would be inconsistent with current practice (one record/job) and complicate administration considerably if you had to review all memberships collectively.

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	protection to apply?	It is current practice that members must aggregate to benefit from the final salary link and this would carry that policy forward.
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(NI) benefits as a consequence of the proposed changes?	We agree as it will be fair to members but note it will be administratively difficult and present significant communication issues due to the complexity of the matter. The current regulations for the LGPS(NI) give members 12 months to decide whether to aggregate their benefits or not. NILGOSC automatically writes to each member who re-joins advising them that they may choose to aggregate their old and new memberships within 12 months of joining (or longer if their employer permits). The considerations are complicated, NILGOSC provides a guide that sets out the pros and cons but many members struggle to make the decision. It should be noted that any deferred benefit entitlements that arose because of opting out cannot later be aggregated (regulation 24 (8A)). These members would need to be excluded from the exercise. Automatic aggregation applies to concurrent posts ending

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		Members will also need to be made aware of the implications of potential tax charges for aggregating benefits as this often increases their pension savings considerably in the year of aggregation. It may increase their normal pension age as older deferred benefits will have a payable date of age 65 but if they aggregate the benefits are payable at SPA. Members with a new lower paid job may be worse off by aggregating final salary benefits.
11	Do you consider that the proposals outlined in paragraphs 9.12 to 9.14 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	The potential drawbacks for members aggregating are set out in the response to Q10, however, as this proposal includes choice then members should be able to choose the option which meets their particular circumstances best.

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	(Northern Ireland) 2014?	
12	Do you have any comments on the proposed amendments described in paragraphs 10.2 to 10.5?	<u>Breaks in service of less than 5 years</u> No comment <u>Early/late retirement factors</u> Is the cut-off for including the factors in a calculation always age 65 or younger? The original policy is that the underpin only gives protection to age 65. <u>Death in service</u> If the underpin applies it should be included in death benefits for survivors i.e., both partner and children pensions <u>Survivor benefits</u> As stated above these should benefit from the underpin if it applied.
13	Do you agree with the two-stage underpin process proposed?	This is necessary if you include deferred members. However, if final salary increases are not taken into account after age 65 for the underpin why do you need to do a check at an age after 65?
14	Do you have any comments	<u>Club Transfers in</u> – the suggested approach is that for all public sector transfers-in with

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	regarding the proposed approaches outlined above?	membership covering the period from 1 April 2015 to 31 March 2022 members would be given underpin protection even if the transfer in was not club. Is that the Department's intention? We do not believe that transfers-in should be retrospectively changed after the member has accepted the value, the cash has been received and we have awarded a pension credit and/or final salary credit.
15	Do you consider there to be any notable omissions in our proposals on the changes to the underpin?	Divorce of active and deferred members – how should quotations be provided? Do previous quotes need to be revised on account of a revised underpin? Clarification is required on how ill-heath protections apply in cases of reduced hours where the reduction was due to the same medical condition as the cause of retirement.
16	Do you agree that annual benefit statements should include information about a qualifying member's underpin protection?	No – this is too difficult and inaccurate to provide on an annual basis. We suggest that up to age 65 (the underpin date) the active member annual statements carry a statement that says 'you have final salary protections for your active membership during the period from 1 April 2015 to 31 March 2022 and at retirement you will be paid the better of final salary or CARE benefit for your period of active membership'.

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		Active members – this figure will fluctuate from year to year and may not even appear in most years. It is really meaningless until the person actually crystallises their benefits. There are problems relating to the definition of final salary, which is always the best of the last three years – this would mean you would have to collect a final salary pay and fluctuating emoluments etc for each one of the next 40 years solely for the purpose of showing an illustration on a benefit statement. Our software has never been able to do a 'best of last 3 years' calculation automatically and these are all manual calculations. It does not make sense to calculate an accurate final salary each year solely for the purpose of benefit statements. Deferred members – again a simple statement about being a protected member would be preferable.
17	Do you have any comments regarding how the underpin should be presented on	It would be better and simpler to carry a line on the statement that says 'You qualify for underpin protection and this, if any, will be calculated when either you leave or you draw your benefits from the Scheme'.

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	annual benefit statements?	There has been a very successful drive to simplify the information on pension benefit statements and adding this additional information about an amount that may not eventually crystallise will confuse them. In addition, the aim is to provide information on pensions on the Pensions Dashboard. We don't know how this 'non guaranteed element' could be incorporated without having the potential to mislead.
18	Do you have any comments on the potential issue identified in paragraph 15.8?	<u>Annual allowance –</u> we agree that the underpin should not be taken into account until it crystallises. This is because the value is not known until the member crystallises their benefits and could fluctuate considerable in the intervening period. In a worst case scenario a member may be using up pension savings and paying tax charges on a benefit that will never crystallise. The issue of those younger people who will go on to have much higher final salaries in the decades to come and where the underpin will become much more valuable is highlighted by this potential issue. This is the risk/price of broadening the underpin to include those who are at an early stage in their careers.

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19	What principles should be adopted to help members understand the implications of proposals outlined in this paper?	The underpin is extremely complicated both to explain and to administer. It is highly unlikely that many members will understand it. The terms used in the underpin are complex language and thus will be difficult for members to understand. It would be better to simply refer to final salary versus CARE and paying the higher amount. The two-stage process is confusing. A one-stage process would be much better. Members seem to relate to videos and perhaps avatars of people in each category e.g. • Doesn't apply at all • Young active member • Active member over 55 • Active member over 65 • Deferred member below 55 • Deferred member over 55 and below 65 • Deferred member over 65 Plus basic questions on: • What happens if I die? • What happens if I'm ill? • What if I get divorced? • What if I'm made redundant?

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		And if possible, a modeller for members to input their own information to determine if there is any benefit from the underpin.
20	Do you have any comments on the administrative impacts of the proposals outlined in this paper?	There will be a huge amount of work for both NILGOSC and employers that may result in little benefit for members. Much of the work done since April 2015 will need to be redone. Appeals -how are these handled if members disagree with hours/weeks/breaks? What if employers cannot provide data? What are the timescales to check existing pensions in payment? There will be an additional cost to employers arising from NILGOSC staffing increases. Much of the work is likely to be manual with risk of incorrect calculations. Specialist pensions work will be required in recalculating and reassessing benefits. Software – Likely to be expensive and difficult to programme. Further GAD guidance will be required It is vital for all scheme administrators, and employers, that the regulations to implement the remedy are made well in advance of the implementation date – at least 12 months. This is needed to give time for software developers to

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		write, test and distribute the code required and for the collection of retrospective data.
21	What principles should be adopted in determining how to prioritise cases?	In order to prioritise cases the Regulations need to be made far enough in advance to allow software developers write the necessary pension administration programmes. We estimate that it will take years to amend scheme records and possibly scheme benefits therefore members need to have the correct expectations as to when underpin benefits can be calculated. Workstreams: • Redoing calculations where underpin already applied e.g. Deaths and survivor benefits, Pensioners, transfers out, trivial commutations • redoing work where underpin didn't apply e.g. collecting hours, weeks, service breaks and then recalculating Deaths and survivor benefits, Pensioners, transfers out, trivial commutations, collecting hours • collecting hours, weeks, service breaks for active members going forward and applying to records • fix software going forward and apply new underpin to new calculations

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22	Are there material ways in which the proposals could be simplified to ease the impacts on employers, software systems and scheme administrators?	Yes. 1. Remove the underpin altogether. or 2. For the existing members who are protected by the underpin the latest that they can avail of the underpin is March 2022, based on their salary at that date even if do not retire for many years hence. If the members for whom the extended underpin applies also follow the same principle, ie that the latest that they can avail of the underpin is March 2022, based on their salary at that date (not their salary at a future date) this will greatly reduce the administration for employers and the scheme administrator. It is also fairer for members – the CARE scheme was introduced to stop those members who had modest pay increments subsidising the members with significant pay growth, especially near retirement. Crystallising the underpin in 2022 keeps with the Department policy intent to make the scheme fairer to the vast majority of members. NILGOSC needs the new regulations to be made well in advance of the implementation date in order to give it time to change systems, collect data and communicate with employers and members and give the software providers time to amend the pension administration software.

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23	What issues should be covered in administrative guidance issued by the Department, in particular regarding the potential additional data requirements that would apply to employers?	We are not expecting guidance from the Department to us as administrator. However we will issue guidance to employers.
24	On what matters should there be a consistent approach to implementation of the changes proposed?	We believe this question is more pertinent to England and Wales were there are 91 scheme administrators. However we also believe that in Northern Ireland it would be helpful that all public service pension schemes prioritise the same issues at the same time.
25	Do you have any comments regarding the potential costs of McCloud remedy?	**Funding the remedy** GAD has estimated it will cost £75m initially and £12m extra per annum. The Government has already indicated that this cost will be met by the members of the scheme. As stated earlier the vast majority of members who will see no benefit from the revised underpin will be subsidised by those

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		members who will receive a benefit due to their above average pay growth. If however the Government revises its intention and the cost was met by employers the Department should be aware that the future service cost of the scheme is now over 23% and we are already concerned that it is too expensive for some employers. **Administering the remedy** The administrative burden is a significant one and therefore the costs relating to administration could be significant. Until we know what software solutions will be available we can't quantify the cost but it will include system upgrades and functionality, additional resources, external advisor support and communication activities. The costs for employers may also be significant in terms of their own resources and changes to and extracting data from payroll systems but we do not have an estimate at this point.
26	Do the proposals contained in this consultation adequately	We believe that the proposals go beyond what is required to remove the unlawful discrimination.

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	address the discrimination found in the 'McCloud' and 'Sargeant' cases?	In addition we believe that maintaining the use of the Normal Retirement Age as part of the underpin calculation gives rises to other age discrimination (see example at end of the document). There is also a risk that those who joined the scheme after 2012 but before 2015 who are not included in the protections will challenge the Regulations.
27	Are you aware of additional datasets 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
28	Are there other comments of	No

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	observations on equalities impacts you would wish to make?	

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Example of discrimination due to age created by Department's proposal.

The maximum underpin period is 7 years between 1 April 2015-31 March 2022. However the final salary used to calculate the underpin for that period is not based on the salary during that period but rather on the salary at the earliest of the following dates:

1. Member turns 65 (i.e. the normal retirement age under the 2009 scheme)
2. Member ceases to be an active member or flexibly retires.

Due to the first criterion, which is age related, members with the same service as at 31 March 2022 and same salary could receive a different underpin if they are of different ages.

For example:

Member A joins the scheme in 2010, aged 54 and retires sometime after 2022 (i.e. has underpin protection for the full 7 years of the underpin period).
Member B joins the scheme in 2010, aged 44 and retires sometime after 2022 (i.e. has underpin protection for the full 7 years of the underpin period).
Both are paid £10,000 for first 13 years and then £15,000 for the remainder.
For simplicity CPI is assumed to be 0% and there are no other pay rises.

Calculation of Member A's underpin

Service for the period 2015-2022 (the underpin period)

CARE benefits: £10,000 x7/49	£1,428	
Underpin amount based on salary at earliest Underpin date which in this case is at Age 65 £10,000 x7/60	£1,166	
Higher amount		**£1,428**

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Calculation of Member B's underpin

Service for the period 2015-2022 (the underpin period)

CARE benefits: £10,000 x7/49	£1,428	
Underpin amount based on salary at earliest Underpin date which in this case is at date of retirement £15,000 x7/60	£1,750	
Higher amount		**£1,750**

For the purposes of this illustration the calculation of benefits before the underpin period and after the underpin period have been ignored.