



Government
Actuary's
Department

Local Government Pension Scheme (Scotland)

McCloud / Sargeant litigation:
Equalities impact

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John Bayliss FIA

Jenny Bullen FIA



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Executive summary

1. This note has been put together to help SPPA understand how LGPS members are likely to be affected by the proposed McCloud underpin remedy (set out in the paper “Local Government Pension Scheme (Scotland): Addressing discrimination – amendments to the statutory underpin” published on 31 July 2020), from an equality point of view. The impact of the remedy is analysed by sex and age.
2. The analysis presented considers the result of applying the remedy to members who joined the LGPS before 1 April 2012.

Analysis by sex

Figure 1a: Percentage of currently protected, eligible and expected to benefit from remedy split by sex

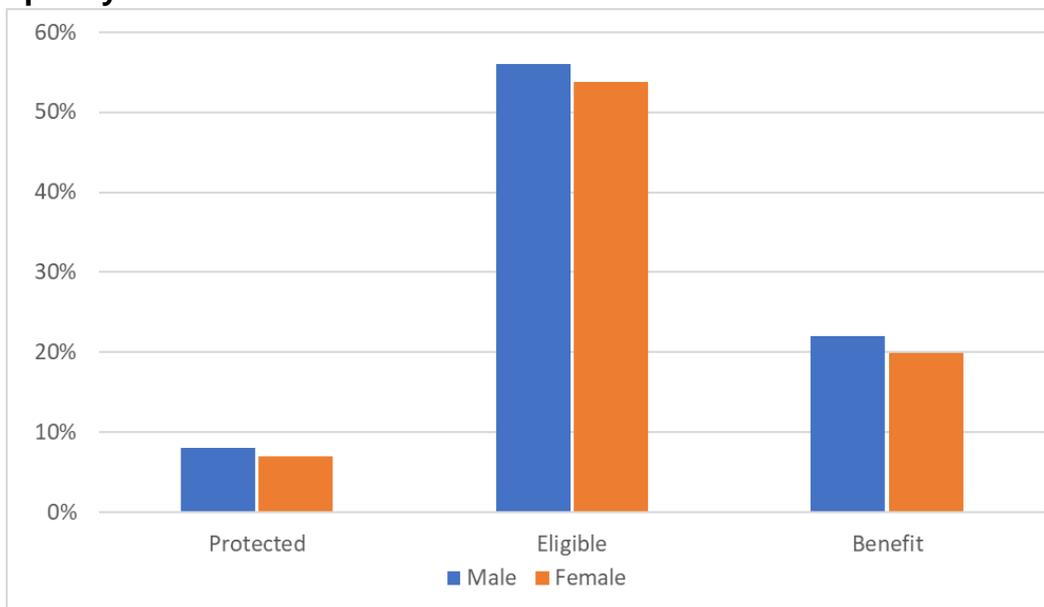
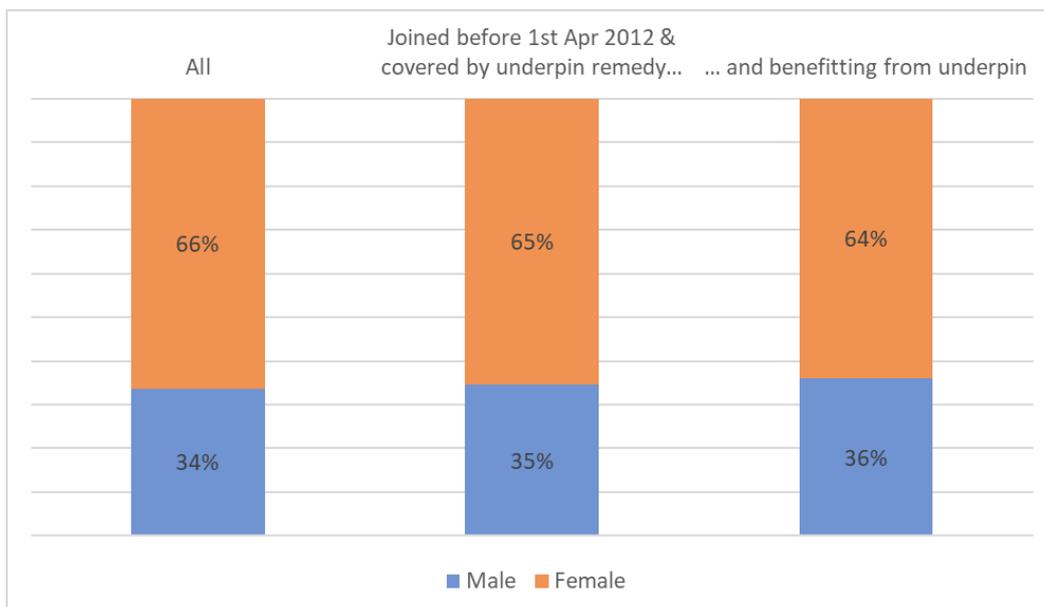


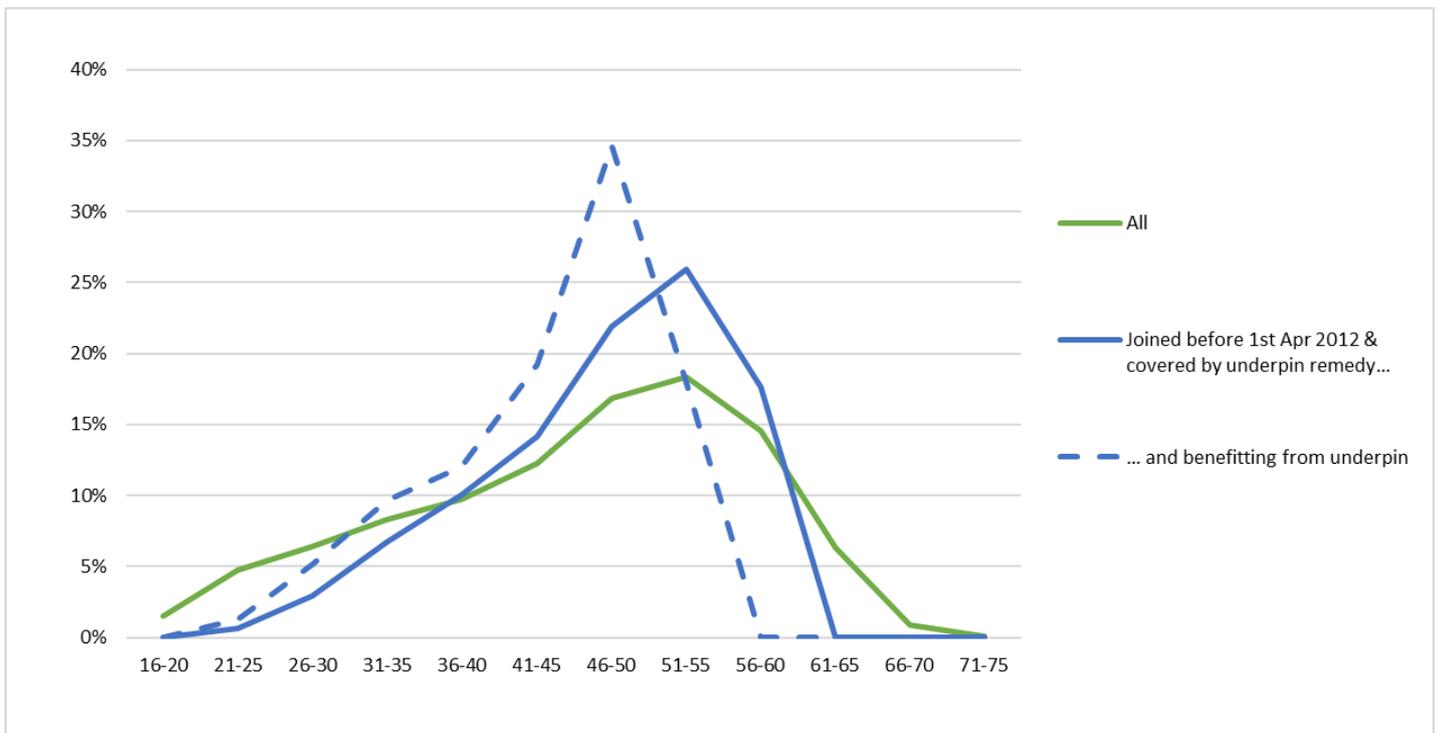
Figure 1b: Remedy coverage and benefit by sex



3. Figure 1a shows the proportions of women and men who currently have underpin protection (far-left bar), the proportion who would be eligible for remedy (second bar) and expected to benefit from remedy (third bar).
4. Figure 1b shows that 66% of all active members are women (far-left bar). Of members who qualify for the underpin remedy, 65% are women under the remedy (second bar). Of members who qualify and also benefit from the remedy, 64% are women (third bar).
5. We can observe that the proportion of men and women who are both eligible for remedy and those who are expected to benefit from remedy broadly matches the profile of the scheme.

Analysis by age

Figure 2: Remedy coverage and benefit by age as at 31 March 2017



6. Figure 2 shows that:
 - a) The majority of active members are aged between 41 and 60 (green line).
 - b) The majority of members who qualify for the remedy are also aged between 41 and 60, although this age group qualifies to a larger extent (between ages 41-60, the solid blue line is higher than the green line). Younger members are less likely to qualify as a greater proportion of these members joined after 2012. Members aged 60 and over will already have protection (and hence not benefit from remedy).
 - c) The majority of members who qualify and also benefit from the remedy are aged between 36 and 50 (dashed blue line)
7. Figure 2 therefore indicates that the remedy proposals have different impacts across different age groups (note that if the impact was the same on all age groups the two blue lines would closely mirror the green line).

Introduction

8. The Local Government Pension Scheme (Scotland) (LGPS) introduced a new career average benefit structure with effect from 1 April 2015 ('the career average scheme'). For members who were 10 years or less from Normal Retirement Age on 1 April 2012 (ie aged 55 or above), an underpin was provided based on the existing final salary scheme ('the final salary scheme'). In December 2018, the Court of Appeal found that similar transitional provisions in the pension schemes for firefighters and the judiciary resulted in unlawful age discrimination. The Government passed the [Public Service Pensions and Judicial Offices Act 2022](#) in March 2022 which allows the Government to provide McCloud remedy to affected members. SPPA have separately consulted on how this will apply in the LGPS.
9. SPPA officials have set out their preferred policy approach for remedying the discrimination in the LGPS in the paper "Local Government Pension Scheme (Scotland): Addressing discrimination – amendments to the statutory underpin" published on 31 July 2020.
10. SPPA have commissioned GAD to prepare data on the number of members who may be affected by the remedy by sex and age, so that they can consider the equality impacts of the proposed remedy. GAD have prepared this note for SPPA for that purpose.

Underpin: eligibility

11. This note is based on data on the active members of LGPS as at 31 March 2017. These members can be split into three groups:
 - a) Those already eligible for the underpin under the regulations as they stand
 - b) Those who are not currently eligible for the underpin, but would be eligible under the proposed remedy
 - c) Those who are not eligible for the underpin (even after remedy)

Underpin: members expected to benefit

12. Members who are eligible for the underpin may, on taking their benefits, either:
 - a) Benefit from the underpin: Receive a higher pension because the underpin of the final salary scheme benefits is greater than the career average scheme benefits. Members are more likely to benefit from the underpin if they remain in the scheme for many years and receive significant salary increases over this time.
 - b) Not benefit from the underpin: Receive their career average scheme pension without any uplift, because it is higher than the final salary scheme benefits
13. In the remainder of this note, we consider the number of members qualifying for the underpin (and those subsequently expected to benefit from the underpin) according to:
 - a) Sex
 - b) Age (and sex)

Data

14. The analysis is based on member data as at 31 March 2017. Exclusions made to the data are described in Appendix A. It should be noted that administrators will need to undertake further work to identify all members who will be eligible under remedy. It is possible, depending on future consultations and final policy decisions taken, that this will include future aggregation decisions as well as identifying members with previous public service employment. This analysis has been carried out assuming only members who joined the fund prior to 1 April 2012 and remain in active service as at 31 March 2017 are eligible. We do not expect the updated eligibility exercise will materially change the results of this analysis.

Assumptions

15. In order to estimate the number of members who are expected to ultimately benefit from the remedy underpin, it is necessary to make assumptions about members' future careers, in particular how long they remain in the scheme and their future pay increases (both pay awards and individual promotion or progression pay).

16. The analysis in this note is based on the assumptions recommended for the 2017 valuation under HM Treasury directions, including the assumption that earnings increase at 2.2% above CPI. These assumptions are consistent with those used in our draft paper "McCloud / Sargeant litigation: Potential cost impacts" of 11 November 2019.

17. The estimated number of members expected to benefit from the remedy underpin is sensitive to the assumed increase rates for earnings and CPI (which is used in the 2015 career average scheme revaluation). For example, if earnings were to increase in line with CPI (rather than 2.2% above CPI) then we would expect very few members to benefit from the underpin.

18. This analysis of the number of members expected to benefit from the remedy underpin is based on an average member at a particular age and sex and the 2017 valuation assumptions. Allowing for variations in individual members' future service or salary progression may produce different figures, because the underpin may bite for 'high flyers' with significant salary progression, but not for those with less salary progression. In addition, based on our current calculations we can only identify if members of a particular age and sex will on average benefit based on their expected future method of exit (ie retirement, withdrawal, ill health retirement, or death in service).

19. The analysis of the number of members expected to benefit should be treated with some caution because of the sensitivity to assumptions and the limitations in the methodology discussed above. Some features of this analysis may not be realistic for every individual, however, the analysis does indicate the broad pattern of members expected to benefit.

20. Further details of the assumptions are set out in Appendix B.

Compliance and limitations

21. This work has been carried out in accordance with the applicable Technical Actuarial Standard TAS 100 issued by the Financial Reporting Council (FRC). The FRC sets technical standards for actuarial work in the UK.

22. Important limitations are set out in Appendix C.

Analysis by sex

Summary

23. The tables that follow analyse the number of members who would qualify for the remedy and the number who would be expected to benefit by sex. The key results are:

- a) In terms of number of members, the majority of LGPS active members are women, and so the majority of those who would qualify for the remedy and would be expected to benefit from it are women
- b) About 54% of women who are active members as at 31 March 2017 are expected to have underpin eligibility extended to them, compared with 56% of men.
- c) Around 20% of women and 22% of men who are active members as at 31 March 2017 are expected to benefit from having the underpin eligibility extended to them.

Table 1: Proportion of members covered and expected to benefit from remedy split by sex

	remedy	
	Covered by underpin remedy	Benefitting from remedy
Male population	56%	22%
Female population	54%	20%

Analysis

24. The following tables considers the number of members in each of the following three categories, split by sex and remedy proposal.

- a. Those already eligible for the underpin under the regulations as they stand
- b. Those who are not currently eligible for the underpin, but would be eligible under the proposed remedy
- c. Those who are not eligible for the underpin (even after remedy)

Table 2: Members with different potential underpin status

	Total members (000s)		Men (000s)		Women (000s)	
Group A: Member of the scheme on 1 Apr 2012 – originally had underpin protection	15	7%	6	8%	9	7%
Group B: Member of the scheme on 1 Apr 2012 – originally no underpin protection	117	55%	41	56%	77	54%
Group C: Not a member of the scheme on 1 Apr 2012	82	38%	26	36%	56	40%
Total	215		72		142	

25. There is a marginally higher proportion of male members who have underpin protection and a higher proportion of female members who joined the scheme on or after either remedy date. Whilst these characteristics work in opposite directions the overall impact is that proportionally more male members may be expected to be eligible for the remedy underpin than female members.
26. The following paragraphs consider members in Group B, that is members who are not already eligible for the underpin, but would be under the proposed remedy and on taking their benefits in the future would expect to receive an underpin.

Table 3: Group B members expected to benefit from remedy

	All members	Men	Women
Number of members expected to benefit (000s)	44	16	28
Proportion of members expected to benefit (as a proportion of all members)	21%	22%	20%

27. Again, the sex difference of the remedy is small; males have a marginally higher expectation of gaining from the remedy than women; 22% compared to 20%.
28. The key results are that the sex proportions are almost identical between:
- Members who qualify for the remedy
 - Members who benefit from the remedy.

Analysis by age and sex

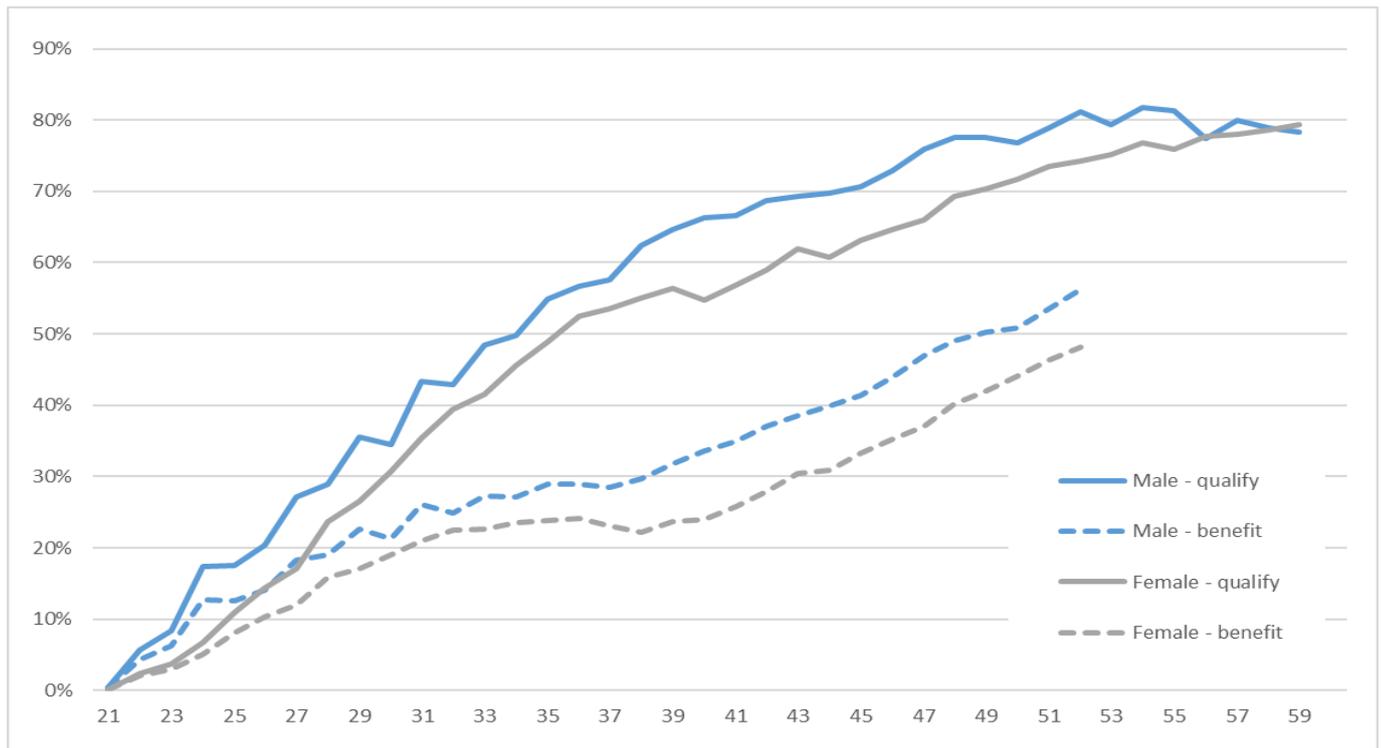
Summary

29. The charts and tables that follow analyse the number of members who would qualify for the underpin and the number who would be expected to benefit by age and sex. The key results are:

- a) In terms of number of members, approximately 80% of the LGPS are aged between 31 and 60; with the highest proportion in the range 46 to 55.
- b) Members aged 60 and over in 2017 will not be affected by the remedy (having been within 10 years of retirement on 1 April 2012, and hence protected)
- c) Younger members are less likely to qualify for the underpin as a result of the remedy
- d) Even where younger members qualify for the underpin, they are expected to be less likely to benefit from it, because they are more likely to leave service and so not obtain the pay increases required to make the final salary benefits higher than the career average scheme benefits
- e) Considering age and sex, at each age
 - i) Men are more likely to qualify for the underpin than women
 - ii) Men are more likely to be expected to benefit from the underpin than women

Analysis

30. The charts and tables that follow analyse the number and proportions of members who would qualify for remedy and who would be expected to benefit by age and sex. Men are more likely to qualify for the remedy up to age 54 and more likely to benefit from the remedy at all ages where a benefit is observed. This is a result of the expected number of voluntary leavers being lower for men; and hence men have a longer period in which to obtain higher salary increases.

Figure 3: Proportion of members who qualify and benefit from remedy

31. Table 4 and Figures 2-3 indicate:

- Members aged 60 and over in 2017 will not be affected by the remedy as they would already qualify.
- More generally members aged 53 or older (on 31 March 2017) are not expected to benefit from the remedy given the shorter time period for salary increases to accrue. However, for members below this age the lower voluntary withdrawal at older ages increases the likelihood of members benefitting from the remedy underpin.
- Younger members are less likely to qualify for the underpin as a result of the remedy. Given the higher turnover of employees at younger ages (and therefore the small percentage having been in employment prior to 1 April 2012) the proportion expected to qualify for an underpin generally increases with age.
- Even where younger members qualify for the underpin, they are expected to be less likely to benefit from it, because they are more likely to leave service and so not obtain the pay increases require to make the final salary benefits better than the career average scheme benefits.
- Men are more likely to qualify for the underpin than women (because a greater proportion of women joined after 2012; despite a marginally higher proportion of men being eligible for the existing underpin)
- Men are more likely to be expected to benefit from the underpin than women because they are more likely to qualify for the underpin, and the lower voluntary withdrawal rates for men compared to women means they are expected to be more likely to benefit.

g) However, there are higher numbers of female members in the age bands where the proportion of members expected to both qualify for the remedy underpin and expected to benefit from the remedy underpin is highest; which results in a more even sex split overall.

32. In summary, male members are both more likely to be eligible for and benefit from the remedy at almost all relevant ages.

33. Figures 2-3 are shown as tables below.

Table 4: Members who qualify for the remedy, by age and sex

Age	Male members			Female members			All members		
	Total number of members 000s	Qualify for extended underpin 000s	Proportion of total qualifying	Total number of members 000s	Qualify for extended underpin 000s	Proportion of total qualifying	Total number of members 000s	Qualify for extended underpin 000s	Proportion of total qualifying
16-20	1	0	0%	2	0	0%	3	0	0%
21-25	4	0	11%	6	0	6%	10	1	8%
26-30	5	1	29%	9	2	23%	14	3	25%
31-35	6	3	48%	12	5	43%	18	8	44%
36-40	6	4	61%	15	8	54%	21	12	57%
41-45	8	5	69%	19	11	61%	26	17	63%
46-50	11	9	76%	25	17	69%	36	26	71%
51-55	13	11	81%	26	20	75%	39	30	77%
56-60	11	7	66%	20	13	66%	31	21	66%
61-65	5	0	0%	8	0	0%	14	0	0%
66-70	1	0	0%	1	0	0%	2	0	0%
71-75	0	0	0%	0	0	0%	0	0	0%
All	72	41	56%	142	77	54%	215	117	55%

Table 5: Members expected to benefit from remedy, by age and sex

Age	Male members			Female members			All members		
	Total number of members 000s	Number of members benefitting 000s	Proportion of total benefitting	Total number of members 000s	Number of members benefitting 000s	Proportion of total benefitting	Total number of members 000s	Number of members benefitting 000s	Proportion of total benefitting
16-20	1	0	0%	2	0	0%	3	0	0%
21-25	4	0	8%	6	0	4%	10	1	6%
26-30	5	1	19%	9	1	15%	14	2	17%
31-35	6	2	27%	12	3	23%	18	4	24%
36-40	6	2	30%	15	3	23%	21	5	26%
41-45	8	3	39%	19	6	30%	26	9	32%
46-50	11	5	48%	25	10	40%	36	15	43%
51-55	13	3	22%	26	5	19%	39	8	20%
56-60	11	0	0%	20	0	0%	31	0	0%
61-65	5	0	0%	8	0	0%	14	0	0%
66-70	1	0	0%	1	0	0%	2	0	0%
71-75	0	0	0%	0	0	0%	0	0	0%
All	72	16	22%	142	28	20%	215	44	21%

Appendix A: Data

34. This note is based on the data provided for the 2017 valuation.

35. This note is based on the data provided in 2017. For the purpose of this analysis, the following manipulations have been made:

	Sex & Age analysis
Input data	232,159
Excluded duplicate records so analysis is by member, not employment record; only members with unique combination of NI number, sex and date of birth are included	17,542
Used for analysis	214,617

36. The qualifying criteria for eligibility for remedy underpin protection is that a member:

- a) Was active in the LGPS or another public service pension scheme on or before 31 March 2012
- b) Was a member of the career average scheme
- c) Did not have a disqualifying break in service (more than five years)

37. Based on the current data available it is not possible to precisely identify all eligible members. For the purpose of this assessment, we have assumed that a member who joined the fund before 1 April 2012 and who remains in active service as at 31 March 2017 will be eligible for remedy underpin protection. Whilst the number of members may change due to future aggregation decisions and additional information of other public service scheme membership we do not expect this to be material.

Appendix B: Assumptions

38. This note is based on the assumptions recommended for the 2017 valuation, as detailed in our note “Local Government Pension Scheme (Scotland) Actuarial valuation as at 31 March 2017 Advice on assumptions” of 24 March 2020. The limitations associated with these assumptions set out in that note also apply to this advice.
39. The estimated cost of extending the underpin is sensitive to assumptions that have different impacts on the benefits payable under the career average scheme and the underpin benefits, in particular assumptions regarding:
- Future increases in salaries and CPI
 - Promotional salary increases
 - Withdrawal (ie leaving active membership without an entitlement to immediate benefits)
40. The following table sets out the main financial assumptions.

Table B1: Financial assumptions

Discount rate	2.4% pa real; 4.45% nominal			
Pension increases	2.0% pa			
Long term salary growth	4.2% pa, 2.2% pa in excess of assumed CPI			
	Year	Gross discount rate	Pension increases ¹	Salary growth
Short term variations in assumptions	2017/18	5.88%	3.0% ²	2.2%
	2018/19	5.27%	2.4%	2.1%
	2019/20	4.24%	1.8%	2.3%
	2020/21	n/a	n/a	2.6%
	2021/22	n/a	n/a	2.8%
	2022/23	n/a	n/a	3.0%

¹ Relates to the Pension Increase made in the April following the year end

² Order made for 2017/18

41 The following table sets out the assumed promotional pay salary scales:

Table B2: Promotional salary scales for all members

Age	Men and Women
20	93
25	93
30	100
35	107
40	109
45	111
50	112
55	112
60	112
65	112

42 The following table sets out the assumed decrements:

Table B3: Voluntary withdrawal rates for all members

Age	Men	Women
20	0.099	0.094
25	0.065	0.063
30	0.046	0.053
35	0.036	0.046
40	0.029	0.038
45	0.024	0.031
50	0.018	0.024
55	0.016	0.020
60	0.012	0.021
65	0.009	0.020

Appendix C: Limitations

- 43 These results show the estimates of the expected impact of the remedy assuming the proposed remedy applies to joiners prior to 1 April 2012. The actual number of members impacted will depend on the individual circumstances of each member.
- 44 This estimate is based on 2017 valuation assumptions. If different assumptions were adopted, results would be different.
- 45 In preparing this advice, we are aware that our analysis may be affected by risks arising from the impact of the COVID-19 pandemic. At this stage, the full impact of the COVID-19 pandemic is not known and will remain uncertain until further evidence is available. No adjustments have been applied to the analysis to reflect these risks. To the extent that COVID-19 impacts individual members' future salary growth and the future career paths it will impact which members' are expected to benefit from the underpin and hence this analysis.
- 46 This note is based on the data provided for the 2017 valuation.
- 47 GAD has no liability to any person or third party for any action taken or for any failure to act, either in whole or in part, on the basis of this report.
- 48 GAD are not legally qualified and our advice does not constitute legal advice. Advice in this area should be sought from an appropriately qualified person.
- 49 The form of remedy has not yet been legislated and if the final remedy differs from the assumptions made here, results will be different.