Service data for the McCloud remedy

Contents

Scope

This guidance has been produced by the Scheme Advisory Board (SAB) to the LGPS in England and Wales. It is provided in accordance with regulation 110(3) of the LGPS Regulations 2013 and applies to LGPS administering authorities in England and Wales.

Regulation 110(3) provides the SAB with the function of providing advice to administering authorities in relation to the effective and efficient administration and management of the Scheme.

Whilst this guidance refers to general legal advice obtained by the SAB on McCloud data issues, administering authorities should consider whether it is appropriate to obtain their own legal advice on how to meet their obligations in this area.

How to use this guidance

SAB has produced this guidance to assist administering authorities recreate notional final salary membership for the McCloud remedy period. It follows on from the SAB guidance issued in July 2020, which consisted of a set of documents to assist administering authorities collect the data necessary to recreate notional final salary membership.

This guidance reconfirms what data is needed and considers the options if administering authorities have not been able to collect the necessary data, or they have reason to believe it is not accurate. It also suggests a method for checking notional reckonable service in the remedy period.

This guidance should be read in conjunction with the legal advice on McCloud data issues. Administering authorities should pay particular attention to the section in the advice about what steps they should take to collect, validate and query McCloud data from employers before adopting the methods described in this guidance.

Administering authorities will need to familiarise themselves with the different employer ‘groups’ before reading the section on how to deal with missing and inaccurate data.

Background

The LGPS changed from a final salary scheme to a career average re-valued earnings scheme on 1 April 2014. From that date, administering authorities were no longer required to collect certain data that used to be needed to calculate benefits built up in a final salary scheme.

The protections introduced for older members of other public service pension schemes when those schemes were reformed in 2015 were judged to be unlawful on the grounds of age discrimination in 2018. The Government confirmed that it will make changes to all public service pension schemes, including the LGPS, to remove the discrimination.

We are waiting for the LGPS regulations to be amended to remove the discrimination. DLUHC has already consulted on proposals to:

- extend the current underpin to younger members, and
- remove the requirement to have an immediate entitlement to benefits on leaving to qualify for underpin protection.

DLUHC has also proposed other amendments to ensure that the underpin is applied consistently and fulfils its purpose of providing a meaningful comparison of career average benefits and the benefits that would have built up in the final salary scheme. We welcome these changes, but they will not be covered in this guidance unless they have an impact on data collection, storage and validation.

Administering authorities will need to re-create notional final salary membership in the remedy period for those members in scope of protection by the new underpin. The remedy period runs from 1 April 2014 to 31 March 2022 or, if earlier, to a member's normal pension age under the 2008 scheme or date of leaving. Most administering authorities are in the process of either gathering the data they will need to do this from Scheme employers or asking employers to check the existing data from the pensions database.

Different administering authorities are at different stages of this process. At the time of writing, we do not yet know how many employers will be unable to supply this data. It is reasonable to expect that some data will not be complete or may not be accurate. This guidance considers what the options are if all the information needed to re-create notional final salary membership for the remedy period is not available or if the administering authority has reason to believe that it is not accurate. Accurate and complete data might not be available because:

- the employer no longer exists and the administering authority is not able to request the data
- the employer is no longer a Scheme employer and either cannot or will not provide the information requested
- the employer is still a Scheme employer but is not able to provide the required data for the whole period. There are a number of reasons for this which could

include data retention schedules, change of payroll provider or reporting limitations of payroll systems.

- the employer has provided the information, but the administering authority has reason to believe that it is not accurate. This may become evident:
    - during data validation as part of the data upload or other validation process
    - when the eventual underpin calculation shows a significant difference between the assumed benefits and underpin amount that is not consistent with the final salary pay progression
    - if the member queries the details.
- an administering authority switched from annual to monthly employer returns part way through the remedy period and it is likely that the relevant information is present after the date of the change, but not before
- the employer supplied the information requested as part of a bulk exercise, but it is different from existing information on members' records.
- an administering authority continued to collect the relevant data throughout the remedy period. In theory, it does not have to undertake any further data collection, but in practice some employers did not continue to send the information or did not send it in full.

What data is needed?

The information needed to calculate final salary membership accurately is set out in the list below.

1. **Percentage of full time working.** The administering authority will need to know the dates of any changes in working hours and the percentage of full time the member started working on that date. If the administering authority pro-rates service for members who work less than 52 weeks per year, then the employer will also have to inform the administering authority of the dates of these changes and the percentage of full time worked.
2. **Unpaid service breaks.** The employer must supply the start and end dates of any unpaid service breaks. It must also inform the administering authority if the member has chosen to pay extra to buy back the pension 'lost' during an authorised unpaid break. In practice, administering authorities should already know if the member is paying an APC as this should be displayed on the member's pension record and included in any benefit calculations.

NB. There are further issues concerning APCs and service breaks, such as:

- how to make sure the APC is linked to the service break and the possible complications if an APC is linked to multiple breaks
- the impact if the member stops paying APCs to buy 'lost' pension part way through the contract either by choice or because they leave employment
- how the APC should be treated for underpin purposes if the APC continues beyond the end of the remedy period
- making sure that breaks that start in the remedy period and end after it are fairly treated.

These important issues do not impact on what data must be collected. They may require software solutions. We need further policy guidance on the final three points, but software suppliers may wish to consider whether their systems take account of the first point. This is an issue that affects those protected by the current underpin and should therefore be operational already.

3. **Final salary pay at age 65.** A member's underpin date is their normal pension age under the 2008 scheme, or earlier if they leave before then. This is age 65 for most, but age 60 for a limited number of members. Employers must calculate a notional final salary pay figure at age 65 (or 60) for all employees who remain active members after that age.

4. **Final salary pay at 31 March each year.** In practice, administering authorities will have collected final salary pay figures for most members in scope of the underpin. This is because they joined the LGPS before 1 April 2012 and therefore have final salary membership. A final salary pay figure at 31 March (and 5 April) each year is needed to produce an annual benefit statement and calculate a member's annual allowance.

   Some administering authorities may have chosen not to collect final salary pay figures (including final pay at leaving) for members who joined the LGPS after 31 March 2014. These members may end up in scope of protection, and therefore notional final salary membership during the remedy period will need to be worked out. This could occur because:

   - the member qualifies for underpin protection because of membership of the LGPS before 1 April 2012 that is not currently combined with the active or deferred pension account.
   - the member qualifies for underpin protection because of membership in another public service pension scheme that is not combined with the LGPS pension account.

A final salary pay figure at 31 March is not required to perform an underpin calculation for a member if their record contains all the information needed to work out notional final salary service for the remedy period. If the information on working hours and service breaks is not complete, then accurate final salary pay figures at 31 March could be used to estimate the number of days worked in a Scheme year.

Checking data

As set out in legal advice on McCloud data issues, administering authorities should follow their normal process for checking and validating McCloud data. In addition, administering authorities may need to check the notional reckonable service in the remedy period it holds for a member for various reasons. These include:

- spot checks on the quality of data it has received from an employer
- in response to a member query
- no further data has been received from an employer, although it is possible that the existing information may be correct because there have been no changes.

The calculation set out in method 2 of the how to deal with missing and inaccurate data section estimates a member's reckonable service in a Scheme year. However, it could also be used to check whether the service information currently held looks reasonable based on the cumulative pensionable pay and final salary pay recorded for each year. Administering authorities could use this method to validate the data held on the system before deciding which of the methods set out in the how to deal with missing and inaccurate data section to use.

For example, where no service data has been provided for the remedy period, we assume that the member's record will show that they continued to work the same hours they worked before 1 April 2014 throughout the remedy period. If a member was working full time before 1 April 2014, it would be appropriate for an administering authority to accept that the member continued to work full time throughout the remedy period if their cumulative pensionable pay was roughly equal to their final salary pay for each year of the remedy period.

An administering authority could check the service data for an individual Scheme year by comparing:

- the estimated reckonable service based on Cumulative pensionable pay ÷ final salary pay at 31 March × 365, with

- the notional reckonable service based on number of days in the year and the recorded percentage of part time working, taking into account any periods of unpaid leave.

The administering authority could perform a similar comparison for the whole of the remedy period using the total estimated reckonable service for each year and the notional reckonable service for the whole period.

Whether an administering authority chooses to compare the whole remedy period or an individual year may depend on whether they are checking service details provided or checking a particular year where data appears to be missing or inaccurate.

The administering authority will need to decide a ‘tolerance level’ and what to do if the results fall outside that limit. The tolerance level may be different depending on whether a single year or the whole period is being considered. If the results fall within the tolerance level, then no further action is needed, but it would be helpful for administering authorities to record that the check has been performed.

If the administering authority has run a check on the whole period, and that result is outside of its chosen tolerance limits, it may then decide to run the comparison on each of the years in the remedy period individually. This would show whether the data for the whole period is inaccurate or if the problems are limited to one or two years within the remedy period.

Types of employer

For simplicity, it would be preferable to find a single solution to the problem of missing or inaccurate data. The view of the SAB is that it is not appropriate for it to recommend a single solution. Administering authorities are likely to find it appropriate to use different methods for different employers. Administering authorities may adopt different methods if:

- an employer no longer exists
- an employer remains a Scheme employer but is unable or unwilling to supply the full data
- an employer has supplied data but not resolved queries about that data
- the administering authority does not have confidence in the data the employer has provided. The administering authority might lack confidence in the data if:
    - there are obvious gaps such as a group of members or a period for which no data is provided

    - employees are invited to check the information on their records and many of them complain that the information is wrong
    - the service information provided is not consistent with the cumulative pensionable pay and final pay figures already provided for the remedy period.

We have categorised employer types into three groups. Once an administering authority has established there is missing or inaccurate data, it will need to work out which of the three employer groups the employer fits into in relation to the data. It is possible for an employer to fit into more than one group during the remedy period, either at different times or for different groups of members.

Group 1: The employer has supplied full data

A group 1 employer is co-operative and is able to respond in full to queries about gaps or discrepancies. The administering authority believes the data it holds for members of these employers is complete because it has:

- continued to collect the relevant data since 1 April 2014 and is confident that the employer has continued to supply that information fully, or
- run a bulk exercise to collect the relevant data for the whole remedy period and the employer has responded in full, and
- the administering authority has followed its normal process for validating data, and the employer has answered any queries about any gaps or discrepancies in full.

After the validation process is complete, we would expect there to be no missing or inaccurate data in this scenario. However, queries may still arise because of:

- further interrogation of the data at a later date. This could happen when the administering authority performs spot checks of pay and service or when an underpin calculation is first performed and the results show a guarantee amount that seems disproportionate or inappropriate based on the member's salary progression
- a member querying the part time hours or service breaks on their pension record.

Group 2: The employer has not supplied full or accurate data

Group 2 employers can still be contacted. The administering authority has followed its normal process for validating data, but the employer has not been able or willing to answer queries about gaps and/or discrepancies in full.

This may be because:

- the administering authority asked employers to continue to send in the relevant data from 1 April 2014, but they have reason to believe that the employer did not fully comply
- the administering authority asked employers to continue to send the relevant data since 1 April 2014, but the employer did not send any data
- the administering authority moved to monthly data collection from a point in the remedy period. Hours and service break data have been supplied since that date, but not for the period from 1 April 2014 to the date that monthly data collection started
- the administering authority ran a bulk exercise to gather the relevant data for the remedy period but it has reason to believe that the employer did not fully supply the data needed. They may have this view because there are gaps in the data (nothing supplied before a certain date, for example), data validation processes have shown that the working hours are not consistent with actual and final salary pay, or a large number of member queries suggest that there are problems with the data
- the administering authority asked employers to supply the data as a bulk exercise but the employer did not respond
- the data supplied as part of a bulk exercise is different from the data previously supplied. The administering authority had reason to believe the data originally on the system was correct
- the employer did supply the data (either on an ongoing basis or as part of a bulk exercise) but not for all employees who may be protected by the McCloud remedy, or not for the entire remedy period.

Group 3: The employer has not supplied the data and is not contactable

Group 3 employers have exited the scheme and can no longer be contacted.

The administering authority did not ask employers to supply the relevant data from 1 April 2014 or the data that they supplied is not reliable. The employer is no longer a Scheme employer and the administering authority has not been able to contact it to request the data as part of a bulk exercise.

If the employer has exited the Scheme but can still be contacted, they will fall into Group 1 or 2.

How to deal with missing data and inaccurate data

This section describes the methods that the SAB thinks are appropriate for administering authorities to adopt when they have a problem with the service information held for a member.

This section should be read in conjunction with the legal advice on McCloud data issues. Administering authorities have a duty to provide members of the LGPS with the correct pension benefits to which they are legally entitled. They should ensure they have taken all reasonable steps (as set out in the advice) to collect, validate and query McCloud data from employers before adopting the methods described in this guidance.

Although it may be preferable to find one solution that can be applied to all cases, in reality, different methods will be appropriate depending on the circumstances of a particular case. Each section considers whether the method could be used for each employer 'group' described above.

Method 1 – Accept the information provided by the employer

The employer is responsible for providing the data and answering queries about the data from members and the administering authority:

Employers are responsible for providing an administering authority with the information it needs to calculate a member's LGPS benefits. Under method 1, the administering authority decides that remains the case for the McCloud remedy exercise as it does for business-as-usual administration of the LGPS.

Administering authorities currently take different approaches to member queries about the information on their pension record:

- the administering authority raises the query with the employer and chases them for a response, or
- the member is instructed to contact the employer directly with their query.

The SAB expects administering authorities to choose their own approach to member queries relating to service during the remedy period.

Using method 1
This section sets out SAB's opinion on when it is appropriate to use method 1.

Group 1: Appropriate
It would be reasonable to assume that the data supplied by the employer is correct. Queries may still arise due to further validation checks and member complaints. An

employer that has fully supplied data is also likely to be cooperative in responding to subsequent queries.

Group 2: Not appropriate
As the administering authority is aware that the employer has not supplied full and accurate data, it would be inappropriate to assume the data is correct. The administering authority should take all reasonable steps to obtain full and accurate data.

If the administering authority were to assume that the data supplied is correct and direct any queries to the employer, this is unlikely to be a good outcome for the member, especially where the employer has repeatedly ignored requests from the administering authority. The administering authority also risks a finding of maladministration if a member complains to the Pensions Ombudsman.

If there is a specific reason why the data was not supplied in the first place – it relates to a period before the current payroll system was in operation, for example – the employer may not be able to supply the missing data in response to a subsequent request for the same information.

If an administering authority is not confident that the data is complete, then some underpin calculations may be inaccurate. How many people will be affected depends on the amount of data that is missing or incorrect. Members will ‘win’ or ‘lose’ depending on whether the notional final salary service on their record is greater or lower than it should be. Complaints from members who believe their notional service has been underestimated are possible.

The administering authority must consider the interests of the member. A member may be waiting to take their pension or to complete a transfer to another scheme.

Group 3: Not appropriate
The SAB does not recommend this method is adopted for this group. It would not be acceptable to assume the data on the software system is correct, where an employer has not supplied the information needed. Clearly, queries cannot be directed to an employer that no longer exists.

Advantages of method 1
Assuming that the information on a member record is correct places less of an administrative burden on administering authorities.

This method follows the principles that have always been followed in relation to queries about membership history – it is an employer responsibility to supply the relevant information and respond to queries about that information. If the employer

responds to those queries fully, the data is more likely to be accurate, meaning that the underpin calculation reflects the true value of the benefits the member would have built up in the final salary scheme during the remedy period.

There may be additional employer costs in cases where a reduction in working hours or a service break has not been recorded. The cost associated with this type of error will be borne by the employer, providing they are still an active Scheme employer.

Disadvantages of method 1
A query may arise on the underpin date, which could be many years after the end of the remedy period. Although a cooperative employer may have the relevant data now, they may not be able to respond to queries about that period 20 years from now.

If an administering authority were to use this method even though they have not received any data or full data from an employer, they could simply assume that the member continued to work the same hours they worked before 1 April 2014. This would mean winners and losers amongst members. A member who has reduced their hours or taken an unrecorded service break may receive a guarantee amount that they are not entitled to. The greater the hours reduction or the longer the break, the bigger the potential undeserved addition. In the case of hours changes, the reverse is also true. A member who has increased their hours may not get a guarantee amount they are entitled to because the lower hours are recorded. Complaints from the latter group are possible. If a member takes their complaint to the Pensions Ombudsman, there is a risk of a finding of maladministration against the administering authority.

There will be cases where the member clearly changed hours or had a service break, for example an employer has reported a final salary pay figure of £25,000, cumulative pensionable pay of £10,000 and full time working hours for a member in a Scheme year. Closer inspection by the administering authority would clearly show that there was an error. Using this method would mean that no such inspection took place. It is for this reason that the SAB does not recommend a blanket use of this method.

If an administering authority were to assume that the data supplied by a former Scheme employer is correct, it will not be possible to refer any queries to an employer that no longer exists. There may be additional costs related to guarantee amounts paid that a member is not entitled to. Those costs would be met by other employers in the fund. Complaints from members whose increase in working hours has not been recorded are likely.

The SAB does not believe it is appropriate to use this method in isolation for Scheme employers that no longer exist or for former Scheme employers that the administering authority has not been able to contact.

The opinion of the SAB is that this method is only appropriate for existing Scheme employers where the administering authority is confident the data supplied is correct.

The administering authority will need to use a different method if, after taking all reasonable steps, they are unable to obtain full and accurate data. It would not be appropriate to delay the payment of a member's benefits or transfer payment because an employer repeatedly fails to respond.

Method 2 - Estimate the number of days worked in each year or part year

Administering authorities have collected cumulative pensionable pay (including any assumed pensionable pay) and final salary pay at 31 March each year for most members who are in scope of protection. This information could be used to estimate the number of days worked in each Scheme year during the remedy period. It would not be possible to tell whether the number of days a member worked is reduced because they do not work full time or because they have had an unpaid break.

There are ways that this method can be used to estimate the amount of reckonable service during the remedy period even if the pay information on a member's record is incomplete. We set out below how this can be done.

If we assume the member was active throughout the remedy period and that:

- actual pay and final salary pay have been supplied for each Scheme year, and
- the final salary pay progression appears consistent.

the number of days worked in a Scheme year is estimated as:

- Cumulative pensionable pay ÷ final salary pay at 31 March × 365 = days worked. This would be capped at 365 days
- Cumulative pensionable pay ÷ final salary pay at 31 March = estimated percentage of full time working for the year. This would be capped at full time.

This would be capped at 365 days or 100 percent of full time. Administering authorities will need to take additional measures to identify any members with concurrent membership that represents more than 100 percent of full time.

The calculation above will also work out the correct number of days worked for a part year. If the percentage of full time working as opposed to the reckonable service is recorded, the percentage will need to be adjusted to account for the part year. The estimated percentage of full time working for a part year would be:

- Cumulative pensionable pay ÷ final salary pay at 31 March × 365 ÷ days in part year. This would be capped at full time.

If final salary pay figures have been supplied at 31 March for some but not all of the years in the remedy period, the salaries provided can be used to estimate final salary pay figures in the intervening years. Two different methods follow for estimating a member's final salary pay for the remedy period. The member in these examples had final salary pay of £25,000 on 31 March 2014 and £32,164 on 31 March 2022.

If final salary pay figures have been supplied at 31 March, but the pay is not consistent eg the pay differs significantly in one year, the administering authority should query this with the employer. Where the query remains unresolved, the administering authority will need to assess whether it is appropriate to replace the final pay figure with a more reasonable estimate.

Average increase amount method
The total increase is averaged over the number of years that final salary pay estimates are required for. In this case, the total increase of (£32,164 - £25,000 =) £7,164 is split across eight years ie £7,164 ÷ 8 = £895.50.

The estimated final salary pay figures using this method are shown in blue below:

31 March 2014: £25,000
31 March 2015: £25,896
31 March 2016: £26,791
31 March 2017: £27,687
31 March 2018: £28,582
31 March 2019: £29,478
31 March 2020: £30,373
31 March 2021: £31,269
31 March 2022: £32,164

Average increase percentage method
The total percentage increase is averaged over the number of years that final salary pay estimates are required for. In this case, the total percentage increase of ([£32,164 ÷ £25,000] – 1 × 100 =) 28.66 percent is split over eight years. The average annual increase is:

(salary at end of period ÷ salary at beginning of period) $^{1 / \text{number of increases}}$ – 1 × 100%

In this example: (£32,164 ÷ £25,000) = 1.2866 $^{1 / 8}$ = 1.032 – 1 × 100% = 3.2%

The estimated final salary pay figures using this method are shown in blue below:

31 March 2014: £25,000
31 March 2015: £25,800
31 March 2016: £26,626
31 March 2017: £27,478
31 March 2018: £28,357
31 March 2019: £29,264
31 March 2020: £30,201
31 March 2021: £31,167
31 March 2022: £32,164

Either of these methods would provide estimated final salary pay figures based on the assumption that the member's pay increased evenly throughout the period. This method could be used to estimate missing final salary pay figures for a single year or any number of consecutive years.

The employer must have supplied cumulative pensionable pay for each Scheme year for every active member as part of the end of year process. If this is missing, this presents a wider data issue than the one covered in this guidance.

If an administering authority uses this method to estimate a member's reckonable service for a period, any existing information about part time hours in that period would need to be ignored in future calculations. Using either of the calculations above would mean that any service break information would also need to be ignored. A more sophisticated calculation could be used to apply the estimated reckonable service to the Scheme year excluding any service break. A local decision is needed on whether to adopt a more sophisticated calculation.

For audit purposes, it would be helpful to be able to identify any period for which estimated service has replaced information provided by the employer.

Using method 2
This section sets out SAB's opinion on when it is appropriate to use method 2.

Group 1: Not appropriate
If the administering authority is confident that an employer has supplied all the relevant data, it is not appropriate to ignore that data and use an estimate instead.

Administering authorities may wish to use this calculation to check whether the percentage of full time working and service breaks provided by the employer are consistent with a member's cumulative pensionable pay and final salary pay.

Group 2: Appropriate
If the administering authority has little or no confidence in the data supplied and has taken all reasonable steps to obtain the correct data, they could adopt this approach to estimate the member's notional reckonable service in the remedy period.

This method should not be adopted routinely in every case. Administering authorities should consider whether it is appropriate on a case-by-case basis.

If the employer has supplied some of the data required, it is not appropriate to ignore that data and use an estimate instead. It may be appropriate for an administering authority to use this method:

- if the employer has not supplied hours and service break data for a particular period
- if an employer has not provided hours and service break data for a particular group of employees
- if the service and hours on the record are inconsistent with the pay data for an individual member for a Scheme year or multiple Scheme years in the remedy period.

and the employer has not responded to requests to provide or clarify this information.

Administering authorities may wish to use this calculation to check whether the percentage of full time working and service breaks provided by the employer are consistent with a member's cumulative pensionable pay and final salary pay.

Group 3: Appropriate
Estimating the notional reckonable service in the remedy period is an appropriate option where the exited employer no longer exists and cannot be contacted. Final salary pay may have been supplied for every member for each 31 March. If it has not been, but final pay on exit was supplied, the administering authority could estimate final salary pay for each Scheme year in the remedy period.

Again, this method should not be adopted routinely in every case. Administering authorities should consider whether it is appropriate on a case-by-case basis.

Advantages of method 2
Fairness – the actual entitlement that this method will yield is close to the member's 'true' entitlement. The underpin amount may be increased because the pay used to

estimate the days worked in a year includes pay for non-contractual overtime and additional hours, which is a good outcome for the member.

Flexibility – this method can be used for the whole remedy period, for periods where data is missing, when the member has raised a query about a certain period or when the pay information is not consistent with the hours recorded. It can also be used to validate the hours and service break information supplied by the employer.

There are methods that can be used to estimate the position in cases where full pay information is not available.

For employers that have exited the Scheme, this method means that any cost related to an over-stated guarantee amount that would be passed on to the remaining fund employers is minimal.

Disadvantages of method 2
This method is administratively complex.

Some employers may view this method as removing their responsibility for supplying service information to the administering authority. Publicising this method may be attractive to uncooperative employers. This method would involve the least effort for them but also provide a fair result for their members. The cost related to any ‘undeserved’ guarantee amounts is likely to be small.

There could be issues at audit, as it may be difficult for administering authorities to demonstrate where the notional service has come from, particularly if:

- the service has only been estimated for part of the remedy period
- estimated service has replaced service information provided by the employer
- the administering authority has estimated both final salary pay for a Scheme year and notional service.

The results will be further from the ‘true’ result in certain circumstances:

- This method may result in a larger guarantee amount than the ‘true’ position. This is because any pay for non-contractual overtime or additional hours will be used to estimate the number of days worked. It may be considered unfair for a member to benefit from an increased entitlement that they would not get if their employer has supplied full service information.
- If a member receives arrears of pensionable pay in a later Scheme year, this will affect the accuracy of the estimate. The impact will depend on whether the arrears are paid in the remedy period or later.

The results will only be as accurate as the pay data held by the administering authority. The pension accounts of most members in scope of protection include final salary benefits. To provide accurate annual benefit statements and calculate a member's annual allowance position, administering authorities must have collected a final salary pay figure at 31 March (and 5 April) each year. If the administering authority does not have confidence in those salary figures, that is a wider problem than just an issue with the McCloud remedy. Employers will need to continue to supply final salary pay each year for many years to come. Administering authorities must make sure that employers understand their responsibilities in this regard.

The accuracy of the estimate will be affected by the accuracy of the final salary pay figures provided by the employer. If the employer reported the member's rate at the end of the year instead of an average rate for the whole year the results would be less accurate. If the member had a midyear pay increase and the employer reported that higher pay rate at the end of the year as the final salary pay for the whole year, then the estimated service would be lower than the true value.

An administering authority may have to estimate the final salary pay figure at 31 March. If it does, this will erode the level of accuracy of the estimate. Assuming smooth salary increases will, on average, give a fair result. Results will be further from the 'true' position if the employee:

- had a large pay rise at the beginning of the remedy period – their notional service will be over-stated
- had a large pay rise towards the end of the remedy period – their notional service will be under-stated
- had a drop in pay – this will not be reflected in the estimated final salary pay figures.

This approach will be difficult to explain to members. If the member does not work full time (or works full time but has had unpaid service breaks), this method is based on average working days across a Scheme year. Depending how this is recorded, their pension record is likely to show changes on dates that do not correspond with the dates that the member actually changed working hours.

Any working hours or service breaks currently recorded would have to be ignored in any period when an estimate has been used. This may also be difficult to explain to members.

SAB recommends that administering authorities inform both the employer (if it still exists) and the member if they plan to estimate service data for the remedy period. Page 9 of the legal advice on McCloud data issues contains suggested wording that

should be used when communicating with members to help protect against a complaint where estimated figures turn out to be an over-estimate.

The suggested wording includes giving the member the opportunity to submit their own data. See the Communicating with employer and members section for more information.

Method 3 - Base the service on information provided by the member

Members themselves may have correspondence that confirms the date of a change in working hours or a period of unpaid leave. If the member is able to supply information for the period in question, an administering authority may choose to accept that information as the basis for the underpin calculation.

Using method 3

This section sets out SAB's opinion on when it is appropriate to use method 3.

Group 1: Not appropriate

If the employer has supplied full information, an administering authority would not generally overwrite that based on information provided by the member. We would expect the employer to deal with any query from the member concerning their service details. Member information could be used to confirm the details on their record.

Group 2: Appropriate

If the employer has not provided data or the administering authority does not have confidence in that data, information from the member could be used to confirm the data, fill in gaps or to estimate notional service for the whole remedy period.

Group 3: Appropriate

If the employer has exited the Scheme, information from the member could be used to work out their notional service, fill in gaps or confirm any figures estimated by the administering authority.

Advantages of method 3

Accepting information from the employee offers a way to resolve a complaint. Doing so may lead to a more accurate result than estimating service details.

Information from the employee could be used to confirm information already on the record or confirm that there were no changes in a period that appears to be a gap.

It could also be used in conjunction with method 2 where, after being notified that their service has been estimated, the member is able to provide the necessary data.

Disadvantages of method 3
This method will be labour intensive. The administering authority may choose to adopt it only in exceptional circumstances, such as when a member makes a complaint or when the member supplies their own data after being notified their data is being estimated using method 2.

The difficulties are that a member may only supply part of the information needed, or that information may not be consistent with the pay information already held on the record. The administering authority may need to decide in advance what information it will accept from a member, in what circumstances and what checks it will perform to make sure that any information supplied by the member is full and accurate.

A member may make a complaint because the service information used in the underpin calculation does not match their actual service. This may be because the employer has supplied the wrong information or because the administering authority has used an estimate. Obtaining the correct information from the member may result in a reduction to the underpin amount. This is likely to be the case if the member is paid for a significant amount of non-contractual overtime or additional hours.

Communicating with employers and members

The SAB recommends that an administering authority informs both employers and members if it plans to use method 2 to estimate service data for its members during the remedy period. Administering authorities should follow the suggestions set out in the legal advice on McCloud data issues about this communication. This states that an administering authority should only use estimated service data to calculate benefits once it has:

- notified both the Scheme employer (if it still exists) and the member of the reasons why the data held by the administering authority is believed to be incorrect or incomplete, and of the estimated figures to be used instead; and
- allowed a reasonable period of time for both employer and member to raise any objection before the estimated data is actually used to calculate and pay benefits.

This may incentivise the Scheme employer to look more carefully at the information it has supplied. It may also help flush out cases where the member has concerns about the use of estimates (which could result in complaints) and/or is able to provide accurate data before any final calculations are undertaken and implemented.

When informing members, the written notification should make the following points:

- the member is being provided with the data (including estimated figures) in advance so that they have the opportunity to check it.
- the member is entitled to raise any concerns or provide what they believe to be the correct data (and the communication should set out what the procedure for doing this is and what kinds of evidence the administering authority will be willing to consider in this respect eg P60s, payslips, pay award notices etc.)
- if the administering authority does not receive notification of any concerns by a specified and reasonable deadline, this will be treated as confirmation that the member is not aware of any information suggesting that the data proposed to be used is materially incorrect, and that they do not object to their benefits for the McCloud remedy period being calculated on the basis of that data.
- if it subsequently comes to light that any estimated figures used are an over-estimate or that any of the data provided by employer is incorrect, any previous use of those figures to calculate benefits will not mean that the member acquires an absolute legal entitlement to benefits based on the incorrect estimates or data.

When communicating with employers, administering authorities should ask the employer to confirm in writing that it agrees to the estimates being used in order to implement the McCloud remedy for the affected member(s). The administering authority may also want to remind the employer of their legal duty to provide complete and accurate data and that failure to do so could result in:

- a finding of maladministration and potential liability to affected members
- breaching the LGPS regulations
- the levying of additional charges under Regulation 70
- increased liabilities in the LGPS and an increase in their employer contribution rate as part of the valuation process.

Summary table

Table 1: summary of groups and appropriate methods of dealing with missing and inaccurate McCloud data

	Method 1. Assume data supplied by the employer is correct. Employer remains responsible for answering any queries	**Method 2. Estimate the reckonable service based on pay**	**Method 3. Use service information supplied by the member**
Group 1 – employer has supplied all data needed	Appropriate	Not appropriate – but could be used to check existing data is consistent	Not appropriate
Group 2 – employer has not supplied full and accurate data	Not appropriate – administering authority will need to use an alternative method if the employer does not respond to a query or is not able to provide full and accurate data	Appropriate – estimating notional reckonable service for the whole or part of the remedy period may be appropriate if the employer has not supplied the requested data or has not provided accurate data.	Appropriate – information provided by the member could be used to fill gaps or check existing data.
Group 3 – employer has not supplied full and accurate data, and is not contactable	Not appropriate – if the administering authority knows that the employer did not supply data for all or part of the remedy period, it is not appropriate to assume the data is correct without further checks.	Appropriate – estimating the notional reckonable service may be appropriate if the employer has not supplied data. Estimates could be used to validate the information already held or to replace it.	Appropriate – information provided by the member could be used to fill gaps or check existing data.

When estimating reckonable service is not appropriate

There are some special cases when estimating notional final salary service would not be appropriate or would require extra care to make sure the results are meaningful and fair.

If an individual has concurrent membership, those cases must be identified and dealt with separately. If a member is protected by the underpin and has a period of concurrent service aggregated to an active pension account, it is likely that only cumulative pensionable pay will have been aggregated in respect of post 2014 membership. To perform an accurate underpin calculation, notional final salary service for the combined membership is required for any period of concurrent membership in the remedy period. If the final salary pay rates in the two posts were different on the date the terminated post ended, a concurrent adjustment to the notional service in the terminated post is required. Where the notional final salary membership is over full time, it would not be appropriate to limit this to full time. For all concurrent cases, the preferable result would be to use service details provided by the employer. If an administering authority has no choice but to estimate notional final salary service for an individual with concurrent memberships, it must make sure that the pay figures it uses include ongoing and terminated posts and that the results are a fair reflection of the service details after any concurrent adjustment.

If an individual has a period of unpaid leave in the remedy period and they have not elected to pay extra contributions to buy the pension ‘lost’ in that period, the estimate method will yield useful results. If the estimate is being used to replace employer-supplied data, either the service break must be removed or the administering authority must perform a more complicated calculation that factors in the unpaid period.

If an individual has a period of unpaid leave in the remedy period and has elected to pay extra contributions to buy the pension ‘lost’ in that period, the basic calculation for estimating reckonable service is not appropriate. We await further information on how APCs to buy back ‘lost’ pension will be treated in the new underpin calculation. Administering authorities may wish to exclude members in this position from any checks. If a calculation is required, then the administering authority must make sure that it is comparing like with like when comparing the service information with the pay information.

Cases without a solution in this guidance

There is a cohort of LGPS members for whom none of the solutions for missing or inaccurate data set out in this guidance would be appropriate. We expect the number

of members in this category to be very small. For none of the solutions to be appropriate, all the following would need to apply:

- the member joined after 31 March 2014
- the member's employer no longer exists or has exited the Scheme and the administering authority is not able to contact them
- the administering authority did not collect final salary pay figures at 31 March for members who joined after 31 March 2014
- the administering authority did not collect a final salary pay figure when the individual's LGPS membership ended
- the record 'inherits' underpin protection because of LGPS membership before 1 April 2012 **or** the member was previously a member of another public service pension scheme before 1 April 2012
- the member is not able to provide the necessary service information.

Administering authorities will need to consider members in this position on a case-by-case basis. They will need to document the approach that they have taken, and the reasons for it.