Brief overview of the Local Government Pension Scheme (LGPS)

The LGPS is a defined benefit scheme, and unlike other pension schemes in the public sector it is funded – meaning benefits are backed by a pension fund. There are 88 (active) administering authorities in England and Wales, each of which holds a pension fund. These bodies are responsible for the investment of the fund and the administration of the scheme. Every employer subject to the LGPS will pay into the appropriate pension fund in order to fund their member employee's (and former member employee's) LGPS benefits. Over 14,800 employers are subject to the LGPS.

Every three years the assets and liabilities of each fund are assessed via a valuation. From these results the employer rate is set for the next three years– covered in more depth in employer contributions.

As the LGPS is a defined benefit scheme benefits are calculated using the member's pay and the accrual rate. Unlike defined contribution schemes the benefits are guaranteed and the employer bears the risk of funding – generally through their contribution rate.

The LGPS was reformed along with other public service pension schemes from a defined benefit final salary accrual basis to a defined benefit career average revalued earnings (CARE) basis. Protection still exists for members with final salary accrual however, and benefits accrued under the final salary scheme retain a final salary link. From 1 April 2014 the accrual in the LGPS changed to a CARE basis. Each member of the pension scheme holds a pension account, which is added to at the 31 March each year by taking the pay that was earned and multiplying it by the accrual rate, 1/49. On the first of April each year the total accrued pension is revalued in line with the change in inflation as measured by the Consumer Price Index (from the previous September)

Career Average Revalued Earnings Accrual example

Clare was paid £12,000 in her first year of scheme membership (2016/17).

The accrual is calculated as £12,000 x 1/49 = £244.90 pension accrued at the 31 March 2017.

On the 1 April 2017 revaluation is applied: 1%.
£244.90 x 1.01 = £247.35

In the second year (2017/18) Clare was paid £13,110

£13,110 x 1/49 = £267.55 at the 31 March 2018

On the 1 April 2018 revaluation is applied to the total pension account – 3%
£267.55 + £247.35 = £514.90 x 1.03 = £530.35

The pension account continues to be built up year by year. If inflation is ever negative (as was in 2016) the account can be decreased.

The CARE benefits in the new scheme have a normal pension age (NPA) of the member's State Pension age (SPa) (or 65 if that is later). Benefits can be paid earlier than this date if the member has left the employment in which the benefits accrued, but cannot be taken earlier than age 55, the exception being on ill health grounds – covered later under Ill Health. If benefits are taken before NPA there will be a reduction for early payment. There are some protections for certain members who started in the scheme before 1 October 2006 and were protected under the 'rule of 85', which could mean that part or all of their benefits could be paid prior to NPA unreduced, these are also covered later in the workbook.

As these changes took place from 1 April 2014 a large number of members also have final salary benefit accrual due to their membership of the scheme before that date. This accrual is protected as well as the final salary method of calculation. Unlike CARE benefits which use the actual pay paid to the member to calculate benefits, Final Salary benefits use the final 365 days full time equivalent pay up to the member's leaving date (or, if that would produce a higher figure, either of the two immediately preceding years) as well as service accrual while in the scheme in years and days, adjusted for part time periods - where it counts at is pro-rata length. The scheme was based on 1/60 pension accrual from 1 April 2008 to 31 March 2014 and 1/80 pension accrual with a retirement grant accrual of 3/80 for service before 1 April 2008.

Final Salary Accrual example

Finn leaves on the 31 July 2018. He was part-time (18.50 hours with 37 being the whole-time equivalent) throughout his membership which started on the 1 April 2006. His pay earned from 1 August 2017 to 31 July 2018 was £9,500.

His Final Pay is therefore the full time equivalent, £19,000.
(£9,500 x 37/18.5)
His 1/60 final salary service is therefore 6 years x 18.5/37 = 3 years and his 1/80 final salary service is 2 x 18.5/37 = 1 year.

Ignoring CARE benefits for now his Final Salary benefits are calculated as:

Pension
1 x 1/80 x £19,000 = £237.50
3 x 1/60 x £19,000 = £950.00

Total Pension = £1,187.50

Retirement Grant
1 x 3/80 x £19,000 = £712.50

The NPA of the final salary scheme was 65, though (as previously mentioned) members who joined the scheme prior to 1/10/2006 may have protection to allow an earlier unreduced payment date for part or all of their benefits – covered later.

Although a CARE scheme is easier to administer the fact that currently the majority of the membership have mixed final salary and CARE accrual means that the administration of the scheme, and the task of explaining benefits, has become more challenging. CARE accrual is reliant on accurate pay data and any errors in this information will be compounded over the years of membership.

Information provision and the GDPR

Clearly much personal information will need to be shared and exchanged in the administration of the LGPS between the employer and the administering authority. The LGPC Secretariat, on behalf of LGPS administering authorities, commissioned Squire Patton Boggs to produce a template Memorandum of Understanding (MOU) document for administering authorities to issue to participating employers in their fund. This document is available on www.lgpsregs.org.

The aim of the MOU is to set out that participating employers in the LGPS are able to share data with the LGPS administering authority without a data sharing agreement being in place (i.e. that there is no legal requirement for employers to have a data sharing agreement with LGPS administering authorities as they are both data controllers).

Joining the LGPS

CONTRACTUAL ENROLMENT AND AUTO-ENROLMENT

Contractual enrolment

Scheme employers are listed in Schedule 2 of the regulations as follows:

Part 1 "*Scheduled*" bodies – those employers that must make the LGPS available to all eligible employees;

Part 2 "*Designation*" bodies – those employers that can make the LGPS available to all or some of their employees;

Part 3 "*Admission*" bodies– those employers participating in the LGPS through an admission agreement which will specify which employees are eligible for membership; and

Part 4 "*Deemed*" employers – a mixture of employers where another body (usually) is deemed to be the Scheme employer. Persons in the first column of the table are eligible for membership.

The only employees barred from membership are those aged 75 or above, those employed by an admission body who are members of another occupational pension scheme and those eligible for membership of another public sector pension scheme (although there are some with "dual" eligibility for the LGPS and NHSPS and persons eligible for membership of the Armed Forces Pension Scheme whilst on reserve forces service leave can make an election to their scheme employer to remain in the LGPS).

If a person is eligible for membership of the LGPS, they will be contractually enrolled into it from the first day of employment or the first date they become eligible, if later, providing they have a contract of employment for at least three months.

Auto-enrolment

Overriding auto-enrolment provisions were phased in over a period from 2012 to 2018. Starting with the largest employers in 2012, every existing employer in the UK was allocated a date from which the duties would first apply to them, known as the employer's 'staging date'. For newly created employers after 1 April 2012, staging dates started in May 2017.

Although employers are only subject to their duties from the 'staging date' it is important to note that some provisions of the legislation, in particular the prohibition against inducing opt-outs, prohibited recruitment conduct and unfair dismissal and detrimental treatment safeguards have applied to all employers since 1 July 2012. Once staged, re-enrolment will take place every three years from the staging date – for those who had opted out previously.

Workers that will be subject to auto-enrolment are known as ‘eligible jobholders’. These are workers who (a) earn more than the minimum earnings threshold, (b) are aged between 22 and SPa; and (c) who work in the UK. Other workers are subdivided into ‘non-eligible jobholders’ and ‘entitled workers’. Employer duties are not limited to just eligible jobholders and include (this list is not exhaustive):

- automatically enrol eligible jobholders into an automatic enrolment scheme, although the employer can apply a 3 month postponement period (or “waiting period”) before doing so,
- tell eligible jobholders they have been automatically enrolled, provide specified information to them, and inform them they have the right to opt-out of the scheme if they wish to,
- advise non-eligible jobholders and entitled workers that they can join a pension scheme and provide specified information to them,
- process opt-ins and opt-outs in a prescribed manner,
- keep accurate records to demonstrate how they have complied with their automatic enrolment duties, including records of opt-outs, opt-ins and re-enrolment (a three-yearly rolling programme of auto-enrolment),
- keep records about the pension scheme(s) used to comply with their duties,
- monitor their workers’ eligibility status for automatic enrolment purposes, which will include keeping track of workers’ age and earnings at all times,
- avoid any action whose sole or main purpose is to seek to induce any person to opt-out of the pension scheme.

The LGPS is a qualifying auto-enrolment scheme as it satisfies the defined benefit ‘Test scheme standard’. For more information on automatic enrolment and the LGPS please read the LGPC's Automatic Enrolment Guide which can be found in the guides and sample documents section under the LGPC Administration Resources tab at www.lgpsregs.org. The qualifying scheme certificate and sample letters are also available there.

Contracts for less than 3 months

A person employed under a contract of employment of less than 3 months is contractually enrolled on their automatic enrolment date. This means that an eligible jobholder with a contract of less than 3 months would join the LGPS on the first day of employment unless the employer issues a “postponement notice” delaying assessment of the automatic enrolment date.

Non- eligible jobholders and entitled workers with a contract of less than 3 months would not be contractually enrolled on commencement but, if they subsequently became an eligible jobholder under that contract, they would be contractually enrolled from the first day of the “pay reference period” in which they first became an eligible jobholder (although, once again, an employer could issue a “postponement notice” delaying the auto-enrolment date).

By issuing a postponement notice, employers who have passed their staging date can, if they wish, effectively exclude such employees from the LGPS. However, any employee with a contract of less than 3 months who is not in the LGPS (e.g. an eligible jobholder who has been issued with a “postponement notice”, a non-eligible jobholder or an entitled worker) has the right to opt into the LGPS at any time and, if the employee does so, would be brought into the scheme on the first day of the payment period following the election to join.

If a person employed under a contract of less than 3 months has that contract extended to 3 months or more and they have not already joined the LGPS they should be brought into the scheme on the first day of the payment period following the extension to the contract of employment.

NB: Those terms highlighted in quotations marks in the text above are to be construed in accordance with the Pensions Act 2008.

Providing information to all new starters

Under disclosure of information legislation, basic information about the scheme has to be provided by the administering authority:

a) automatically to prospective members (i.e. those people who are about to take up employment), if it is practicable to do so, and
b) automatically to new members if not already provided under (a), and
c) on request to existing members (if they have not already been given the information in the last 12 months).

For those falling within (a) or (b) and where the administering authority has:

- not received any jobholder information, the information has to be provided by no later than 2 months of joining the LGPS
- received jobholder information, the information has to be provided within one month of the date that information was received

and for those falling within (c) by no later than 2 months of the request being made. The employer has to provide the jobholder information to the administering authority within 6 weeks of a person becoming a member under the auto-enrolment provisions of the Pensions Act 2008. There are significant fines for non-compliance.

Obtaining details of new members from employers has always been an onerous task. Many administering authorities have moved to obtaining details of new members from their employers in an electronic format whilst others have moved to their employers having direct access to their pension administration software. Either way, it is still necessary to solicit information from the employee regarding previous employment for a number of reasons (including transfers in) and so “New Starter Forms” are still a necessary evil.

Opting-out

A person ceases to be an active member in an employment from the date they specify in a written notice given to their employer that they wish to leave the scheme (an opt-out form). A person cannot complete an opting out form before commencing employment.

If they specify no date, or a date earlier than the date the notice is given, they cease to be an active member in that employment at the end of the payment period during which the notice is given (so from the end of the week if weekly paid, end of the month if monthly paid, and so on).

If they opt out within 3 months of joining, they will be treated as not having been a member of the LGPS on that occasion and will be entitled to a refund of their employee contributions via payroll.

When opting out after 3 months but before 2 years, they would be entitled to claim a refund via the Pension Fund unless they are disqualified from receiving a refund – though this can also remain 'deferred' in the fund for up to 5 years, after which time it must be paid. A member might choose to do this if they felt they might rejoin in the future or wished to explore a transfer out.

If the opt-out was after 2 years of membership, the member would be entitled to a deferred benefit. Members who opt out of the scheme after the 11 April 2015 are barred from combining their deferred benefit to any new LGPS employment. There is no such restriction where there was a concurrent employment or the member is only entitled to a refund.

It is important to note that employers are not allowed to issue opt-out forms to its employees after their staging date was met (for the purposes of the Pensions Act 2008). Instead, the opt-out form must be obtained by the employee direct from the administering authority.

Opting-in

A person who is eligible for membership, but who is not an active member in that employment, can apply to their employer to join the scheme. If they do, they become an active member in that employment in the main section of the scheme on the first day of the payment period following the application (but can then elect for 50/50).

A person is free to opt out of the scheme and rejoin as many times as they wish. A rule allowing employers to block applications to rejoin if a person had already opted out twice was removed from the LGPS some years ago.

As mentioned above a member who rejoins after having opted out of the scheme after 11 April 2015 can only combine their membership if their entitlement was to a deferred refund (in which case it is automatically combined with no other option available), or they had a concurrent membership of the scheme.

ONE SCHEME, TWO SECTIONS

The 2014 scheme has an option that allows employees eligible for LGPS membership to elect, from the beginning of the next available pay period, to contribute less and receive less benefit in return. This option can be used by the member to reduce the cost of the scheme and many administering authorities present this as an alternative to opting out of the scheme altogether.

Although unlikely, it is possible for a member with two (separate) concurrent jobs to opt for the 50/50 section in only one of those jobs. If this is the case, the person would be paying full contributions into the main section in one job, and half contributions into the 50/50 section in the other.

This option to elect for the 50/50 section (per job) simply enables members to pay half their normal rate of contribution and in return build up half pension during that period. They will still retain the full value of other benefits such as the death in service lump sum and full (1/49) ill health enhancement and any survivor benefits payable following the member's death are also not affected by the member being in the 50/50 section.

As with automatic enrolment (where a person cannot complete an opting out form before they have joined the scheme) a person cannot elect for the 50/50 section

- before employment has commenced, or
- for those being automatically enrolled, immediately before their automatic enrolment or automatic re-enrolment date, or
- for those being enrolled following an extension of a contract of employment from less than 3 months to 3 months or more, before the contract has been extended, or
- for those opting into the LGPS, immediately before opting in.

They have to be brought into the main section first and can then opt for the 50/50 section and, if they do so before the first payroll is closed, can be brought into the 50/50 section from day one.

Members electing for the 50/50 section will see their contribution halved from the beginning of the pay period in which they are placed in the 50/50 section and, from that date, their accrual rate becomes $1/98^{th}$ of their pensionable pay (instead of $1/49^{th}$). The employer contributions are not halved and remain payable in full.

Members can elect to move from the main section to the 50/50 section (and vice versa) as many times as they wish.

The employer of a member electing for the 50/50 section is required to give the member information about the effect on that member's likely benefits as a result of that election. This can be a simple statement, potentially even included on the 50/50 election form itself. The 50/50 election form should also contain notes explaining when the 50/50 election will lapse – see below.

It should be noted that on movement to the 50/50 section any existing contributions to:

- an Additional Voluntary Contribution (AVC)/Shared Cost AVC;
- an Additional Pension Contribution (APC) to purchase an amount of pension "lost" due to a trade dispute;
- a Shared Cost APC to purchase an amount of pension "lost" during a period of authorised unpaid leave of absence or during a period of unpaid additional maternity, paternity or adoption leave or unpaid shared parental leave; or
- an additional regular contribution (ARC), added years, Preston part-time buy-back, or additional survivor benefit contribution (ASBC) contract / arrangement in force prior to 1 April 2014

are not reduced to half rate. The contributions under such contracts / arrangements continue to be paid in full i.e. the full percentage rate or flat rate sum due under the relevant contract / arrangement. However any APC at whole-cost to the member must cease – meaning an APC which is being used to purchase extra pension rather than replacing lost pension (as above).

50/50 Section election lapses

The 50/50 option is not designed to replace long term membership of the main section and, therefore, membership of the 50/50 section will cease from the beginning of the pay period following the **employer's** automatic re-enrolment date and the person would move back into the main section. This would happen irrespective of what category of worker they were for the purposes of the Pensions Act 2008.

Note that the initial "staging date" for those employers who met their "staging date" after 31 March 2014 had no implication on existing 50/50 elections since this was not classed as re-enrolment.

In addition, a person going on to no pay as a result of sickness or injury or going onto no pay during ordinary child-related leave is moved back into the main section on the first day of the next pay period (provided that the member is still on no pay at the beginning of that pay period). This protects the member from the loss of pay as their accrual will be based on assumed pensionable pay, covered later in the workbook, and will not cost them anything. Of course, the person will have the right to make a further 50/50 election, which they might wish to do upon/if returning to work.

Finally, a member in the 50/50 section in a job always has the right to elect to rejoin the main section from the beginning of the next pay period following their election. From that next pay period their contribution rate doubles and their accrual rate changes from $1/98^{th}$ to $1/49^{th}$. On rejoining the main section the member would stay in that section unless/until they make a subsequent election to move back to the 50/50 section.

MONTHLY CONTRIBUTIONS

Employee contributions will need to be taken by the employer and paid over to the administering authority on a monthly basis. The overriding deadline for payment is either 22 days after the end of the month in which they were taken, if sent electronically, or 19 days if sent by another method. The administering authority is able to set an earlier, binding, deadline if they wish. A schedule of pay and contributions (employee and employer) must accompany every payment.

Where a member is paying an AVC the employer should make payment directly to the AVC company following the deadlines above and accompany every payment with a schedule as required by the AVC company.

DECIDING THE CONTRIBUTION RATE

At the outset of active membership for new members and from time-to-time thereafter (including every April), the Scheme employer has to make a decision on the percentage rate of contributions a member will pay on their earnings in a job. Each job is assessed separately. The employer can do this on an individual basis and notify payroll, or agree an automated process with their payroll provider.

The rate of contribution a member will pay has to be notified to them as soon as is reasonably practicable together with their right of appeal under the Internal Disputes Resolution procedure (IDRP).

The bandings and rates are as follows:

Actual Pensionable Pay 2019/20	**Main Section Gross Contribution**	**50/50 Section Gross Contribution**
Up to £14,400	5.5%	2.75%
£14,401 - £22,500	5.8%	2.90%
£22,501 - £36,500	6.5%	3.25%
£36,501 - £46,200	6.8%	3.40%
£46,201 - £64,600	8.5%	4.25%
£64,601 - £91,500	9.9%	4.95%
£91,501 - £107,700	10.5%	5.25%
£107,701 - £161,500	11.4%	5.70%
£161,501 or more	12.5%	6.25%

Any reductions in pensionable pay due to sickness, child related leave, reserve forces service leave or other absence from work are to be disregarded when assessing / reviewing the appropriate band / contribution rate.

If the employee has a reduction in pay they will continue to pay contributions on the amount of pensionable pay received (if any) except in the case of employees on reserve forces service leave, the special terms of which we will come to later in these notes.

Please note that the above bandings are changed each April in line with the annual increase in CPI from the previous September, rounded down to the nearest £100.

Rate based on actual pay

Part-time members' contribution rates are assessed on actual pensionable pay (unlike prior to 1 April 2014 where part-time member contribution rates were assessed on their full-time equivalent rates of pay).

For those workers employed on "zero hours" contracts, variable hour contracts and the like, employers must make an assumption as to what pensionable pay a person will probably receive in the Scheme year.

This can be done in a number of ways for example (though not limited to):

- The annual rate of contractual pay
- The annual rate of contractual pay plus an estimation of the non-contractual overtime or hours worked in excess of the contractual hours which might be worked in a full year
- The hourly contractual rate multiplied by an estimate of the number of hours to be worked in a full year
- The weekly contractual rate multiplied by 52.143
- The weekly contractual rate multiplied by 52.143 plus an estimate of other pensionable payments to be made in a full year

Each employer should assess the appropriate rate in a reasonable and consistent manner (note that the multiplier of 52.143 shown above is one of many used across the UK).

Allocating employees to an appropriate band is relatively straightforward where the employee is not expected to undertake any additional hours or overtime. However, it is less straight forward where the number of hours an employee may work in a year is not known.

Where an employee with part-time contractual hours is likely to undertake a number of additional hours in excess of their contractual hours, the employer could:

a) use one of the methods in the first and fourth bullet points above i.e. place the employee in the band applicable to their contractual hours only and subsequently review the band allocation at an appropriate time, or

b) use one of the methods set out in the second, third or fifth bullet points above, perhaps taking account of the hours worked by the previous holder (if any) of the post, and subsequently review the band allocation at an appropriate time.

Matters become more complicated with employees who have no contractual hours of employment e.g. casual employees, or employees on zero hours contracts. In these cases employers will need to either:

a) make a reasonable initial assessment of the number of hours the person is likely to work on an annual basis, perhaps taking account of the hours worked by the previous holder (if any) of the post, and subsequently review the band allocation at an appropriate time, or

b) allocate the employee to the lowest band (5.5%) and subsequently review the band allocation at an appropriate time, or

c) allocate the employee to the 6.5% band (on the basis that this is the average contribution rate for scheme members) and subsequently review the band allocation at an appropriate time.

Movements between contribution bands

Once the initial pay band and contribution rate has been determined for an employee, the employer is required by the regulations to reassess the appropriate band and rate each April (in the pay period in which 1 April falls) and is permitted by the regulations to review the appropriate band and rate on any material change in pay.

In practice, the latter means that the employer can, for example, review the band and rate during a scheme year should the employee have a material change in contractual pay (e.g. a change of job, a promotion / demotion, a regrading, a pay award or a change in contractual hours). However where the initial rate was set based on an estimated pay figure, the employer may wish to put in place a process to regularly review the actual pensionable pay being received in order to ensure the correct rate is being applied.

Such a review could take place:

a) each pay period (using pay in each month or year to date).

b) each quarter (or half yearly). This could be done in a number of ways including using the previous quarter’s pay to assess the next quarter’s contribution rate, or using year to date

c) at the end of, say, month 11 (or, say, week 48 for weekly paid employees).

d) each year with the rate for the next scheme year being set by reference to:

    - the actual pensionable pay received in the previous scheme year, or

    - the annual rate of pensionable pay at the beginning of the new scheme year, or

    - the expected annual pensionable pay for the new scheme year.

In deciding the approach to take, **employers** will need to balance the wish to ensure the employee contributions deducted over a scheme year fairly reflect the pay band appropriate to the pensionable pay received by the employee in the scheme year, against the need to adopt an approach that is simple both to administer and for employees to understand.

In other words employers will need to consider whether seeking to get income from employee contributions correct to the n^{th} degree (thereby reducing the impact on the employer's contribution rate that might otherwise subsequently result from under or over collection of employee contributions) is more than outweighed by the cost of the additional efforts required to achieve this. Employers should ensure that whatever process they adopt is reasonable and consistent in its application.

Multiple employments

The employee pays contributions at the appropriate band rate on all pensionable pay received **in respect of that job** (or at half that rate if in the 50/50 section).

So, if a person holds more than one employment with the same employer that are treated as separate jobs, each job (and the pensionable pay from that job) is assessed separately when determining the contribution rate for each job.

For example, one job could have a rate of 5.8% and the other a rate of 6.5% if Job 1 was salaried at £22,000 and Job 2 at £26,000. Conversely, if the employer determines that a single employment relationship exists, then the pay from each job should be combined to determine the single contribution rate. In our example, the two salaries combined would be £48,000 meaning a single contribution rate of 8.5%.

From an employer's payroll perspective, separate pensionable cumulatives have to be held for each job, and reported to the administering authority upon the pay over of the employee contributions. Of course, if there is a single employment relationship then, assuming the member had not changed from the main to the 50/50 section, or vice versa, during the scheme year, there will only be one contribution rate, one set of cumulatives and, regardless of whether the member had changed sections during the scheme year, one pension record for the person (this could be a problem if, for example, to cope with different hourly rates on different parts of the job, the payroll system holds and then reports the single employment relationship as two separate records).

The Net Pay arrangement

All LGPS contributions are paid under HMRCs 'net pay arrangement', meaning that they are not subject to tax. The employee contributions are deducted from pay before the tax free pay, and then the tax rate, is applied and therefore no tax is taken. Members who earn less than the standard tax threshold will not benefit from this however.

All additional contributions are treated in the same way.

The Employer Contribution Rate

The employer contribution rate is set by the triennial valuation of the pension fund and is made of two components – the Primary rate – which is the rate set to cover the build-up of benefits for the three years after the valuation, and the Secondary rate – which is the adjustment to reflect the particular circumstances of the employer including any deficit that had previously built up. In this way the employer rate is set for the three years following the valuation. Whether the contribution rate set did cover the cost of benefit build-up is assessed at the following valuation and if the rate was not enough the shortfall in funding becomes a deficit. This could be due to the under value of valuation assumptions (e.g. pay rises were higher, or return on investments not as good) or a change in the demographics of the employer for example. Deficit payments must be recovered, but this can be over a period of time, set by the administering authority.

The actuary who performs the valuation for the administering authority needs accurate information to correctly assess each employer's liability. Where the information provided is not accurate or is missing elements the actuary will make assumptions and err on the side of prudence. This could mean that a higher employer contribution rate will result. Therefore it is in the employer's financial best interest to provide accurate and complete information within the timescales set by the administering authority.

A cost sharing mechanism was set up for all the new Public Service Pension schemes, and for the LGPS this is centrally assessed by HM Treasury. The Scheme Advisory Board (SAB), the statutory body that seeks to encourage best practice, increase transparency, co-ordinate technical and standards issues and also recommends scheme changes to MHCLG – has it's own independent mechanism. The cost sharing mechanism assesses whether the cost of the scheme's benefits exceeds the agreed cost of the scheme. The Treasury exercise measures the employer cost of the scheme against a benchmark of 14.6% and the SAB against a total scheme cost of 19.5%. If the Treasury cost changes by more than 2% the scheme will have to be amended to allow for this and where the SAB cost changes by more than 1% a change to the scheme will be considered and over 2% a change will be recommended. This central cost mechanism, however, has no bearing on an individual employer rate which is locally set, though any changes to the scheme will impact on employer rates through the valuation.

CARE vs Final Pay

CUMULATIVE PENSIONABLE PAY

This is the total of the “pensionable pay” and/or “assumed pensionable pay” in either section of the Scheme in the Scheme year. Cumulative pensionable pay must be provided separately for each section as different accrual rates will apply when calculating the pension in each section.

If the employee moves between sections more than once in a Scheme year there is no requirement to differentiate between different periods in the sections. The cumulative amounts should contain all of the pensionable pay and/or assumed pensionable pay in each section during the year.

Let’s say a member is on a salary of £24,000 throughout the entire Scheme year and moves to the 50/50 section after 3 months at which point they have already earned £6,000. They spend 5 months in the 50/50 section whilst they earn £10,000 before moving back into the main section earning another £8,000. Their cumulatives at the end of the Scheme year are £14,000 in the main section and £10,000 in the 50/50 section.

PENSIONABLE PAY DEFINITION

Pensionable Pay in the LGPS is all payments in respect of the job apart from those listed in the regulations as exclusions.

The 2014 Scheme definition of pensionable pay (Regulation 20) is as shown below:

(1) Subject to regulation 21 (assumed pensionable pay), an employee’s pensionable pay is the total of—

  (a) all the salary, wages, fees and other payments paid to the employee, and

  (b) any benefit specified in the employee’s contract of employment as being a pensionable emolument.

(2) But an employee’s pensionable pay does not include—

  (a) any sum which has not had income tax liability determined on it;

  (b) any travelling, subsistence or other allowance paid in respect of expenses incurred in relation to the employment;

  (c) any payment in consideration of loss of holidays;

(d) any payment in lieu of notice to terminate a contract of employment;

(e) any payment as an inducement not to terminate employment before the payment is made;

(f) any amount treated as the money value to the employee of the provision of a motor vehicle or any amount paid in lieu of such provision (note that there a limited number of people with an entitlement for their lease car / cash to be pensionable);

(g) any payment in consideration of loss of future pensionable payments or benefits;

(h) any award of compensation (excluding any sum representing arrears of pay) for the purpose of achieving equal pay in relation to other employees;

(i) any payment made by the Scheme employer to a member on reserve forces service leave;

(j) returning officer, or acting returning officer fees other than fees paid in respect of—
   (i) local government elections,
   (ii) elections for the National Assembly for Wales,
   (iii) Parliamentary elections, or
   (iv) European Parliamentary elections.

Prior to the introduction of the 2014 scheme non-contractual overtime was not pensionable. Another change was that payments in consideration of loss of future pensionable payments or benefits became, from 1 April 2014, not pensionable. A third change was that, from 1 April 2014, any actual pay paid by the Scheme employer to a reservist during Reserves Forces Service Leave is not pensionable. Note that whilst on reserve forces service leave the employee and the Ministry of Defence pay contributions on the amount of Assumed Pensionable Pay.

Salary sacrifice

HMRC approved salary sacrifice arrangements where an employee has their contractual pay reduced by an agreed amount (supported by a variation to their contract) in return for a tax assessable benefit in kind from which income tax liability is determined as nil are pensionable under the LGPS (though the benefit in kind must be specified in the employee’s contract of employment as being a pensionable emolument).

Thus, in 2014, the position remained largely the same (though see bulletin 147) as it had been in the 2008 Scheme – see LGPC Circular 244 issued in February 2011 (jointly authored by the LGPC Secretariat and Price Waterhouse Coopers LLP) for more information.

In Bulletin 147 (July 2016), the Secretariat reported that they had updated the legislative references from the section of LGPC Circular 244 (salary sacrifice) concerning Shared Cost Additional Voluntary Contributions (SCAVCs) which were becoming increasingly popular. Appendix 2 to the bulletin outlined their understanding of the current position in England and Wales.

In the Autumn Statement on 23 November 2016, Chancellor Philip Hammond announced a clampdown on salary sacrifice schemes. He said that, with effect from April 2017, the tax benefits and employer NI savings of salary sacrifice schemes will be removed. However, he also said that ultra-low emission cars, pensions' savings and advice, childcare and the cycle-to-work scheme will be excluded from this change. For those "perks" that are ending, arrangements made before April 2017 were protected until April 2018, while arrangements for cars, accommodation and school fees will be protected until April 2021.

Therefore the salary sacrificed through such schemes can only remain pensionable where:

- The benefit in kind is specified in the employee's contract of employment as pensionable; and
- The sacrifice is in relation to childcare, a cycle to work scheme or Shared Cost AVC (but not a car); or
- The sacrifice was in place prior to April 2017 in relation to accommodation or school fees up until April 2021.

“ASSUMED” PENSIONABLE PAY (APP)

In cases where a member has reduced contractual pay or no pay as a result of sickness or injury; or during relevant child related leave (i.e. ordinary maternity, paternity or adoption leave, paid shared parental leave and any paid additional maternity or adoption leave); or whilst on reserve forces service leave (if the employee, although eligible to be in the Armed Forces Pension Scheme during that period, has elected to remain a member of the LGPS) a notional pay figure, APP, should be used to replace the reduced (or nil) pay.

In these circumstances, the amount added to the cumulative pensionable pay should be the assumed pensionable pay and not the actual pensionable pay received (if any). The only exception is where the actual pensionable pay received for any given day is greater than the assumed pensionable pay (e.g. pay from a KIT day), in which case actual pensionable pay for that given day would be added into the cumulative and assumed pensionable pay added for the other days.

If, in the employers opinion, the figure calculated as assumed pensionable pay is “materially less” than what the member usually receives, the employer can substitute a higher level of pensionable pay to reflect the usual amount.

The calculation

Assumed pensionable pay is calculated as an annual rate then applied to the relevant period as a proportion of that rate.

The relevant period starts on the date the employee drops to reduced contractual pay or no pay due to sickness or injury, or when “relevant” child related leave or reserve forces service leave commences.

It should be noted that the relevant period does **not** include the <u>unpaid</u> additional maternity, paternity or adoption leave or unpaid shared parental leave available at the end of “relevant” child related leave. This is treated as unpaid leave of absence and no assumed pensionable pay accrues during that period.

The annual rate is calculated as follows for a monthly paid employee:

a) Take the pensionable pay for the 3 complete months prior to the start of the relevant circumstance after removing any “lump sums” but including any assumed pensionable pay already credited in those 12 weeks.

b) Gross up to an annual figure.

c) If 3 complete pay periods do not exist, use whatever number of complete periods are available.

d) Add any regular lump sum payment received in the 12 months prior to the date of the circumstance if there is a reasonable expectation it will be paid again during the period of APP.

For a weekly paid employee 12 complete pay periods should be used instead of 3 but the calculation methodology is the same.

An Example

A monthly paid employee has received the following pensionable pay in the three complete months prior to the start of the relevant period and the employer expects assumed pensionable pay will apply for the next six months:

Month 1 £1,400
Month 2 £2,500 including a £1,000 regular bonus and £100 overtime
Month 3 £1,400

Annual rate of assumed pensionable pay is:

(£1,400 + £1,500 + £1,400) / 3 * 12) = £17,200

Note that the £1,000 bonus is removed prior to the averaging and grossing up calculation. If it happened to be an annual bonus, for example, were it not removed it would result in a perverse outcome i.e:

(£1,400 + £2,500 + £1,400) / 3 * 12) = £21,200

"Lump Sums"

Assumed pensionable pay, however, may be increased <u>at the time of calculation</u> where the employer, at their sole discretion, decides to add back into the assumed pensionable pay calculation any regular lump sum payment paid in the last 12 months.

The employer must determine, at the point assumed pensionable pay commences, whether there is a 'reasonable expectation' that a regular lump sum payment received in the previous 12 months would have been paid again during the period where assumed pensionable pay will apply and, if so, whether that lump sum already paid should be added back into the annual rate of assumed pensionable pay.

In deciding whether or not the lump sum should be added back into the assumed pensionable pay annual rate the employer should reasonably assess if in their view the employee will still be on assumed pensionable pay the next time the lump sum is due to be paid.

In our previous example, if in the employer's reasonable assessment the period of assumed pensionable pay will extend to 11 months or more and the £1,000 bonus were annual and would have been paid again within those 11 months, then the amount could be added back into the assumed annual pensionable pay rate.

If so, the calculation would be as follows:

(£1,400 + £1,500 + £1,400) / 3 * 12) = £17,200 + £1,000 = £18,200

APP and Separate Employments

The calculation of APP uses the 3 most recent months or 12 most recent weeks in which the member received pensionable pay relating to that employment before the period of reduced contractual pay or nil pay due to sickness or injury began, or relevant child related leave commenced or the date the member commenced reserve forces leave.

If during the period of 3 months or 12 weeks pensionable pay used to calculate the APP the member ceases one employment and is re-employed on a new contract of employment the calculation of the value of the APP is based on the pensionable pay received in the new employment **only** using the number of complete weeks or complete months available in that employment to calculate the APP.

Proportioning

When determining the proportion of the annual assumed pensionable pay rate to be added into the cumulative pensionable pay, the same method used for determining part periods for pensionable pay should be maintained. Therefore you should use whatever method you would normally use to calculate one day’s pay from an annual rate.

For three days in August for example, this could be:

$$\frac{\text{Annual rate}}{365} \times 3$$, or

$$\frac{\text{Annual rate}}{12} \times \frac{3}{31}$$, or

$$\frac{\text{Annual rate}}{12} \times \frac{3}{22}$$

Which formula you would use would depend on how pensionable pay is normally derived for a part month (and in the case of a week is it 3/5, 3/6 or 3/7 of a week’s pay?) and there are probably other methods in addition to the examples shown.

Adjusting the Assumed Pensionable Pay figure

Once set, assumed pensionable pay is not subsequently adjusted unless it continues for a period that crosses two 31 March dates. Where an employee is, for example, on long term sick leave, assumed pensionable pay needs to be adjusted on account of inflation. It is adjusted at midnight on the second 31 March following the date the relevant period commenced.

The adjustment is the percentage adjustment specified in the Treasury Revaluation Order for that (second) Scheme year ending on that 31 March.

If the relevant period continues for a further year it will be revalued again at midnight on the next 31 March, and so on.

The 50/50 rule

If the member was in the 50/50 section prior to dropping to no contractual pay because of sickness they are placed in the main section from the beginning of the next pay period (provided they are still on no pay at that time).

So, for a monthly paid person dropping from half pay to no pay in the middle of August for example, the assumed pensionable pay for August would drop into the cumulative pensionable pay in the 50/50 section whereas the assumed pensionable pay in September would drop into the main section cumulative pensionable pay.

Reserve Forces Service Leave

Where a member takes reserve forces service leave (provided, if the person is eligible to be in the Armed Forces Pension Scheme during that period, the person has made an election to remain a member of the LGPS to their employer) APP will be applied.

Effectively the employer will calculate assumed pensionable pay whilst the reservist is on leave and drops that into the person's cumulatives (i.e. into the main or 50/50 section depending on the section the member is in) so the person continues to build up a pension as if they were still at work. If the employer continues to pay the reservist some pay whilst they are on reserve forces service leave, no contributions are due on that pay (because that pay is non-pensionable), that pay is not added into the person's cumulatives (i.e. into the main or 50/50 section), and assumed pensionable pay is added into the cumulatives instead.

If the member is eligible for the Armed Forces Pension Scheme and does not elect to remain in the LGPS, they will not be eligible for the LGPS and should be taken out of the scheme for that period.

CARE ACCOUNTS – HOW THEY WORK

The Local Government Pension Scheme (LGPS) in England and Wales moved to a CARE basis from 1 April 2014. A career average scheme is still a defined benefit scheme, but with an important difference in how the pension is calculated.

In a final salary 60ths scheme each accrued year earns pension equal to the final salary (normally the full time equivalent pay for the last 365 days ending on the leave date) divided by 60. Of course at the point in time membership is accrued, final salary is not yet known and could only be estimated.

In the CARE scheme, each accrued year earns a pension equal to the salary paid during that year uprated to retirement using a specified revaluation rate divided by 49.

The move from Final Salary to CARE accrual was made in all Public Service Pension Schemes' to both ensure the cost of schemes was better controlled and to eliminate the unfairness inherent within Final Salary schemes where those members with little pay growth subsidise the benefits of those members with high pay growth.

For LGPS2014 it was decided that the accrual rate would be 49ths and the revaluation rate based on the consumer prices index (CPI). The revaluation rate is announced by HM Treasury Order each year. The Government Actuary's Department (GAD) believed that, broadly speaking, a 60ths final salary scheme was equivalent to a 49ths CARE scheme with CPI indexation.

As it is presently possible to join the LGPS at age 16 and remain a member until the day prior to the age of 75, the 2014 Scheme operates an account based system, removing the need to keep a record of earnings covering a potential 60 year period.

Rather than record pay over a person's career and then average that out, multiplying the result by the person's membership and then dividing by the accrual rate(s), the pension in respect of each year is calculated and then revalued in line with the chosen method of pay revaluation.

The known pensionable pay paid in each year to the 31 March is simply divided by 49 (or 98 if the member was in the 50/50 section) to arrive at the pension earned in each year. On the 1 April the cumulative pension is adjusted by the revaluation rate. In the following year the pensionable pay is divided by the accrual rate and the pension earned is added to the previously earned pension and adjusted by the revaluation rate on the following 1 April. And so on.

The revaluation rate is based on the annual change in CPI inflation from the previous September before the scheme year end date.

Example active member pension account

Scheme Year ending on	Pensionable Pay paid during the scheme year	Accrual Rate	Earned Pension	carry forward from previous scheme year	Total	Revaluation on 1st April	Total Pension to carry forward
31 March 2015	£8,900	1/49	£181.63	£0	£181.63	1.2%	£183.81
31 March 2016	£4,500	1/98	£45.92	-		-	-
31 March 2016	£5,200	1/49	£106.12	£183.81	£335.85	-0.1%	£335.51
31 March 2017	£9,700	1/49	£197.96	£335.51	£533.47	1%	£538.80
31 March 2018	£10,600	1/49	£216.33	£538.80	£755.13	3%	£777.78

As shown above it is essential for the employer to split the pay into the section of the scheme in which it accrued.

THE BASICS OF FINAL PAY CALCULATIONS for protected Final Salary benefits

Although all active scheme members are now accruing pension on a CARE basis, pre-1 April 2014 membership will retain a final salary link. It is therefore necessary for the employer to provide a final pay calculation **under the 2008 Scheme definition**, for any person who has membership prior to 1 April 2014 or who is subject to the "underpin". This will have to be provided at the date of cessation of active membership and, for active members, at every 31 March for Annual Benefit Statement and, at every 5 April for Annual Allowance calculation purposes and, for members subject to the underpin, at their 2008 Scheme normal pension age (NPA) if they remain active members of the Scheme beyond then.

Under the 2008 Scheme, in the majority of cases, final pay is the total pay earned, and on which contributions were paid or were deemed to be paid, in the last 365 days of employment. For part-time members, the pay used is the whole-time equivalent pay.

Where either of the immediately preceding two years would yield a higher figure, then that figure is used (hence, the old adage "best of the last three years"). For someone leaving on 13 August 2018 for example, one would be calculating whole-time equivalent pay earned in the year to 13 August 2018, year to 13 August 2017 and year to 13 August 2016 to see if either of the previous years was higher than the last.

Where there is a gap in membership in the final year (e.g. due to a break in employment, or some unpaid leave for which the member has not paid contributions), then the pay is mathematically grossed up to a full year. Where an absence was due to illness or injury, any reduction or loss of pay is disregarded (i.e. final pay is calculated as if the reduction or loss had not occurred). Where earnings, or a part of earnings, are derived from fees, the basis of calculation is the annual average in the last three years normally but the employer has discretion to use a different three year period ending on a 31 March in the last 10 years.

Since 1 April 2008, any member having a pay cut or restriction in respect of prescribed circumstances has the right for 10 years to choose the best average of any consecutive three years in the last thirteen years of membership. For simplicity, these thirteen years all end on 31 March rather than anniversaries of the date of leaving. This right continues to apply even where the pay cut or restriction occurs after 31 March 2014.

There may be some members with a historic "Certificate of Protection" of pay, but as these lapsed 10 years after the reduction/restriction in pay and were removed from the regulations with effect from 1 April 2008 they can only apply to members leaving before 1 April 2018 at the latest.

Whole-time members

Here is an example of a final pay calculation for a whole-time employee, employed 37 hours a week, 365 days a year:

Mrs Sally Final

Retired at age 60 on 31 August 2018. She was calendar monthly paid and her rates of pensionable pay earned (**using the 2008 Scheme definition**) over the last three years were:

1 September 2015	£15,000 p.a.
1 April 2016	£15,600 p.a.
1 April 2017	£16,440 p.a.
1 April 2018	£17,400 p.a.

Final Year:		
1 September 2017 to 31 March 2018	£16,440 x 7/12 =	£ 9,590
1 April 2018 to 31 August 2018	£17,400 x 5/12 =	£ 7,250
		£16,840 p.a.
Year –1		
1 September 2016 to 31 March 2017	£15,600 x 7/12 =	£ 9,100
1 April 2017 to 31 August 2017	£16,440 x 5/12 =	£ 6,850
		£15,950 p.a.
Year –2		
1 September 2015 to 31 March 2016	£15,000 x 7/12 =	£ 8,750
1 April 2016 to 31 August 2016	£15,600 x 5/12 =	£ 6,500
		£15,250 p.a.

The best of her last three years is her final year - her final pay is **£16,840**.

For administrative ease, and for simplicity of building spreadsheets, calculations of final pay are often performed using days rather than months. If this was the case with Mrs Final, the result would be:

Mrs Final

Final Year:

1 September 17 to 31 March 18	£16,440 x 212/365	= £ 9,548.71
1 April 18 to 31 August 18	£17,400 x 153/365	= £ 7,293.70
		£16,842.41

Only £2.41 different in this case and it could be deemed as splitting hairs but, as the definition of final pay refers to pensionable pay in the final pay period and pensionable pay refers to monies "paid to him", the calculation of final pay should be done strictly in accordance with the way a person is paid and so, in this case, the technically correct answer is £16,840.

Part-time members

Under 2007 Benefit Regulation 7(3), part-time members accrued membership as an "appropriate fraction" of the duration of membership they had. Benefit Regulation 8(3) then, in describing final pay for a part-timer, states "In the case of part-time employment, the final pay is the pay which would have been paid for a single comparable whole-time employment".

To calculate final pay for our simple example above we could calculate the actual pay earned in the final year and then multiply it by 37/20. An alternative calculation would be to use the comparable whole-time salary in the equation rather than the actual part-time salary earned. Either method should end up with the same result.

Great care must be taken when scaling up pay to a whole-time equivalent or in taking the whole-time pay of a comparable employment. Sometimes no whole-time comparator exists and sometimes the hours worked and the pay received are not directly in proportion. The latter tends to occur when there is more than one element to the pay and reward package.

Here is an example of final pay for a monthly-paid part-time employee, deriving the answer from grossing up actual part-time pay:

Venus Williams

Leaves 31 December 2017
She works 20 hours a week out of a possible 37
She earns part-time pay as follows:

1 January 2017 to 31 March 2017 at	£8,000 p.a.
1 April 2017 to 31 December 2017 at	£8,600 p.a.

£8,000	x	3/12	=	£2,000.00				
£8,600	x	9/12	=	<u>£6,450.00</u>				
				£8,450.00	x	37/20	=	**£15,632.50**

Her sister, Serena, works at the same establishment but changes her contractual hours during her final year. Her calculation is as follows:

Serena Williams

Leaves 31 December 2017
She works 20 hours a week out of a possible 37 until 1 July 2017 when she reduces to 16 hours per week. She earns part-time pay as follows:

1 January 2017 to 31 March 2017 at	£8,000 p.a.
1 April 2017 to 31 June 2017 at	£8,600 p.a.
1 July 2017 to 31 December 2017 at	£6,880 p.a.

£8,000	x	3/12	=	£2,000.00	x	37/20	=	£ 3,700.00
£8,600	x	3/12	=	£2,150.00	x	37/20	=	£ 3,977.50
£6,880	x	6/12	=	£3,440.00	x	37/16	=	£ 7,955.00
								£15,632.50

Term-time members

Administering authorities either pro-rate membership for term-time scheme members to an all-year-round standard or not. There are two ways to calculate pay for a term-timer as a result.

Where "equating" is used, a term-time employee working 37/37 x 44/52[1] would have had membership recorded as 84.6% of whole-time; and a term-time employee working 20/37 x 44/52 would have had membership recorded as 45.7% of whole-time (if recorded to one decimal place).

The final pay of a term-time employee would, correspondingly, be grossed-up for benefit calculation purposes. So, if the full-time term-timer in the previous paragraph was earning £20,000 per annum, their final pay would be:

£20,000 x 52/44 = £23,636.36

The part-time term-timer would have earned 20/37ths of that of the full-time term-timer i.e. £10,810.81. Final pay would be:

£10,810.81 x 37/20 x 52/44 = £23,636.36

The alternative method is for an administering authority to perform their calculations using "actual pay" and "actual membership".

The example of a term time employee working 37/37 x 44/52 shown above would therefore alter to:

Membership	=	100% of whole time
Pay	=	£20,000

[1] Of those administering authorities in England and Wales that do "equate" only some use the denominator of 52. Others use 52.143 or 52.167 or 52.179 (accounting for the leap year day and/or there not being exactly 52 weeks in any calendar year).

Similarly, the part-timer would be equated to a full time term timer and no further.

Variable-time members

Where pensionable pay consists of or includes fees, the average of the last 3 years fees are used when calculating final pay or, at the employer's discretion, the average of any 3 consecutive years ending on a 31st March in the last 10 years. Where a person's total period of membership is less than three years, the average is to be calculated using that lesser period.

Pay Protection (Benefit Regulation 10)

In the 2008 Scheme Benefit Regulation 10 protects members from decreases in their Final Pay in certain circumstances. Where a person's pensionable pay in a continuous period of employment is reduced or restricted for one of the following reasons:

(a) because the member chooses to be employed by the same employer at a lower grade or with less responsibility;

(b) for the purposes of achieving equal pay in relation to other employees of that employer;

(c) as a result of a job evaluation exercise;

(d) because of a change in the member's contract of employment resulting in the cessation or restriction of, or reduction in, payments or benefits specified in the member's contract of employment as being pensionable emoluments; or

(e) because the rate at which the member's rate of pay may be increased is restricted in such a way that it is likely that the rate of the member's retirement pension will be adversely affected.

and if the reduction or restriction was not a result of a temporary position ceasing or flexible retirement, then the person can choose any three year average of pensionable pay (calculated to 31st March) that falls within the period of thirteen years ending with their last day as an active member.

It is important to understand that, by virtue of the 2014 Transitional Regulations, rights under Benefit Regulation 10 do not stop at 1 April 2014. Anyone who has the final salary link will have Benefit Regulation 10 protection for many years to come.

There follows an example calculation based on a person who retires in 2018 having suffered a significant pay drop in 2013:

Mrs Claire Vision - Leaver on 30 September 2018

Year to 30/9/18	**£17,250**	Year to 31/3/18	£16,920
Year to 30/9/17	£16,470	Year to 31/3/17	£16,020
Year to 30/9/16	£15,660	Year to 31/3/16	£15,300
		Year to 31/3/15	£14,760
		Year to 31/3/14	£14,247
		Year to 31/3/13	£17,850
		Year to 31/3/12	£16,764
		Year to 31/3/11	£15,981
		Year to 31/3/10	£15,183
		Year to 31/3/09	£14,418
		Year to 31/3/08	£13,890
		Year to 31/3/07	£13,290

Three year averages (2018 Pensions Increase)

01/04/2015 to 31/03/2018	£16,080		£16,080.00
01/04/2014 to 31/03/2017	£15,360	3.00%	£15,820.80
01/04/2013 to 31/03/2016	£14,769	4.03%	£15,364.19
01/04/2012 to 31/03/2015	£15,619	4.03%	£16,248.45
01/04/2011 to 31/03/2014	£16,287	5.28%	£17,146.95
01/04/2010 to 31/03/2013	**£16,865**	8.12%	**£18,234.44**
01/04/2009 to 31/03/2012	£15,976	10.50%	£17,653.48
01/04/2008 to 31/03/2011	£15,194	16.25%	£17,663.03
01/04/2007 to 31/03/2010	£14,497	19.85%	£17,374.65
01/04/2006 to 31/03/2009	£13,866	19.85%	£16,618.40

The best final pay figure to be used would therefore be £16,865. Her benefits are calculated on £16,865 and pensions increase is then added to the lump sum and the pension payable to inflate the benefits up to the value upon payment.

Annual Allowance and Pay

The Annual Allowance (AA) is the amount by which the value of the member's pension benefits may increase in any one year without them having to pay a tax charge. This is in addition to any income tax they may pay on their pension once it is in payment. If the value of a member's pension savings in any one pension input period (including pension savings outside of the LGPS) are in excess of the annual allowance, the excess will be taxed as income.

The Government reduced the AA from £255,000 to £50,000 from 6 April 2011 and then reduced it again to £40,000 from 6 April 2014. Further changes to the annual allowance have been made for higher earners from 6 April 2016, which resulted in special transitional rules for the 2015/16 tax year.

The increase in the value of a member's pension savings in the LGPS in a year is calculated by working out the value of their benefits immediately before the start of the 'pension input period', increasing the value by inflation and then comparing it with the value of their benefits at the end of the 'pension input period'.

The 'pension input period' (PIP) is the period over which pension growth is measured. From 6 April 2016, PIPs for all pension schemes were aligned with the tax year – 6 April to 5 April. Prior to the 2016/17 the PIP for the LGPS was 1 April to 31 March, except for the year 2015/16 when special transitional rules apply.

In the LGPS the value of a member's pension benefits is calculated by multiplying the amount of their annual pension by 16 and adding any lump sum to which they are automatically entitled to, from the pension scheme, plus any AVCs they or their employer has paid during the year.

If the difference in the value of pension benefits at the end of the PIP less the value of their pension benefits immediately before the start of PIP (adjusted for inflation), is more than the AA then they may be liable to pay a tax charge.

It is important to note that the assessment for the AA covers any pension benefits the member may have where they have been an active member during the year, not just benefits in the LGPS.

A member would only be subject to an AA tax charge if the value of their total pension savings for a year increase by more than the AA for that year. However, a three year carry forward rule allows them to carry forward unused AA from the previous three years. This means that even if the value of their pension savings increase by more than the AA in a year they may not be liable to the AA tax charge.

If the member exceeds the AA in any year they are responsible for reporting this to HMRC on a self-assessment tax return by 31 January following the PIP in which the excess occurred.

If the member has an AA tax charge that is more than £2,000 and their pension savings in the LGPS alone have increased in the year by more than the standard AA they may be able to opt for the LGPS to pay some or all of the tax charge on their behalf. The tax charge would then be recovered from their pension benefits.

Increases in pay will increase a member's pension's savings in the LGPS, particularly where those increases are significant and the member retains final salary benefits, through promotion for example. In turn this may significantly increase the member's PIA during a year and the member may inadvertently exceed the annual allowance –this is something that the member may not be aware of. Although it is the administering authorities responsibility to calculate the PIA this will be after year end information including Final Pay figures have been received – up to 18 months after the increase took place (i.e. if an increase took place on 1 April 2017 the administering authority would not assess the relevant PIA and provide the member with a pensions saving statement until 6 October 2018).

For this reason the employer may wish to make the member aware of potential tax implications so they can request an estimate of their pension savings from the administering authority where a substantial pay increase is being taken. More details can be found in the Annual Allowance – Factsheet for members held on www.lgpsregs.org .

Example
During 2017/18, Freda earned a promotion that increased her pay from £72,000 p.a. to £80,000 p.a. She has 25 years in the pension scheme at the end of March 2018.

Her benefits at 5/4/17 were Pension: £24,204 and Retirement Grant: £37,800

And benefits at 5/4/18 were Pension: £28,200 and Retirement Grant: £42,000

Closing value: (16 x £28,200) + £42,000 = £493,200

Opening value: (16 x £24,204) + £37,800 = £425,064 + 1% CPI = £429,315

£493,200 - £429,315 = £63,885, exceeding the annual allowance for 2017/18 of £40,000 by £23,885

Administering Authority pay requests

As the Annual Allowance exercise must be completed between year-end and the 6 October there may be additional pay requests during this time for affected members who have been initially identified as exceeding, or being close to exceeding, the Annual Allowance since, clearly, accurate pay figures are required to calculate an accurate liability. Generally there are not large numbers of members affected however –those that are tend to be the higher paid.

Tapered Annual Allowance

From the tax year 2016/17 the AA is tapered for members who have a 'Threshold Income' in excess of £110,000, and 'Adjusted Income' in excess of £150,000. For every £2 that the member's Adjusted Income exceeds £150,000, their AA is tapered down by £1 (to a minimum of £10,000).

	Definition	**Limit**
Threshold Income	Broadly a member's taxable income after the deduction of their pension contributions (including AVCs deducted under the net pay arrangement)	£110,000
Adjusted Income	Broadly a member's threshold income plus pensions savings built up over the tax year	£150,000

Threshold income includes all sources of income that are taxable e.g. property income, savings income, dividend income, pension income, social security income (where taxable), state pension income etc.

It is the member's responsibility to determine as to whether or not they are affected by 'Taper' and to calculate the effect and apply the new Annual Allowance limit to their pension savings.

Employer Role in Annual Allowance

It should be stressed that the above is for information only. Anyone potentially affected should be directed to: the administering authority for information; and an FCA registered financial adviser for financial advice. HMRC also have a number of information pages online at https://www.gov.uk/tax-on-your-private-pension/annual-allowance

That said the employer can have a role in raising the awareness of those members potentially affected to allow them greater time for their tax planning.

Absences

Due to the nature of a Career Average Revalued Earnings scheme any drop in pay due to an absence may have a negative effect on benefits. To address this the scheme allows for the replacement of reduced pay in the case of paid (or deemed to be paid) child related leave, sickness or reserve forces service leave through Assumed Pensionable Pay. For authorised unpaid leave the scheme allows the purchase of pension to replace that which was lost (where the cost is shared subject to conditions) and for strike (where the cost falls fully on the member).

Relevant child-related leave

During the period of ordinary maternity leave (OML), ordinary paternity leave (OPL) or ordinary adoption leave (OAL), any period of paid shared parental leave (SPL) and any period of paid additional maternity leave (AML) or paid additional adoption leave (AAL) the member will accrue 1/49 of assumed pensionable pay (APP) if they are in the main section (or actual pensionable pay for any period when that exceeds APP) or 1/98 of assumed pensionable pay (APP) if they are in the 50/50 section (or actual pensionable pay for any period when that exceeds APP). The member will pay basic pension contributions on the actual pay received (although the employer will pay contributions on APP).

For a Keep In Touch (KIT) day during that period the member will accrue 1/49 of the pensionable pay received for that day, if greater than APP, if they are in the main section or 1/98 of the pensionable pay they received for that day, if greater than APP, if they are in the 50/50 section. The employee will pay basic pension contributions on the actual pay received (although the employer will pay contributions on the higher of actual pay received or APP).

Authorised unpaid leave

Where a member has a period of authorised unpaid leave they can purchase pension (by way of an age related additional pension contribution) to replace that which they have lost, and if they elect to do so within 30 days from returning to work the employer must pay 2/3 of that cost. The maximum unpaid leave period that can be purchased in this way is 3 years (though the member can elect to purchase the excess over 3 years at their own cost).

If the member does elect to purchase pension to replace what will often be a small amount of pension ”lost” in respect of a period of authorised unpaid leave of absence, as mentioned previously, they can do so through an age-related Additional Pension Contribution (APC) contract, either over a period of time (except where the Pension Fund administering authority determine that payment by regular contributions would not be practicable) or as a one off lump sum.

The amount of “lost” pension is calculated as 1/49 of the APP during the period of the absence if the person was in the main section during that period, or 1/98 of the

APP for the period of the absence if they were in the 50/50 section during that period.

Provided they elect within 30 days of returning from the leave of absence the cost of the APC contract will be split 1/3 employee and 2/3 employer. If they elect after the 30 day period the cost of the APC contract will be at full cost to the employee (unless the employer chooses to extend the 30 day time limit).

For a Keep In Touch (KIT) day during a period of unpaid additional maternity, paternity or adoption leave, or unpaid shared parental leave, the member will accrue 1/49 of the pensionable pay received for that day, if they are in the main section, or 1/98 of the pensionable pay they received for that day if they are in the 50/50 section. The employee will pay basic pension contributions on the actual pay received and the employer will pay employer contributions on the actual pay received.

If a member is on jury service on no pay (i.e. authorised leave of absence) the rules above apply (unlike the 2008 scheme which had special rules).

Trades dispute

If a member wishes to buy-back pension ”lost” in respect of a period of strike action they can do so through an age-related Additional Pension Contribution (APC) contract, either over a period of time (except where the Pension Fund administering authority determine that payment by regular contributions would not be practicable) or as a one off lump sum.

The amount of “lost” pension shall be calculated as 1/49 of the pensionable pay ‘lost’ during the period of the absence if the person was in the main section during that period, or 1/98 of the pensionable pay ‘lost’ for the period of the absence if they were in the 50/50 section during that period.

There is no employer contribution towards the APC (unless the employer chooses to contribute towards the cost).

Reserve forces service leave

For scheme members who go on reserve forces service leave (provided the person, if eligible to be in the Armed Forces Pension Scheme during the period of reserve forces service leave, has elected to remain a member of the LGPS) the employer will calculate the Assumed Pensionable Pay whilst the reservist is on leave and drop that into the person’s cumulatives (i.e. into the main or 50/50 section) so the person continues to build up a pension as if they were still at work. The employer pays no employer contribution to the Fund on that assumed pensionable pay.

The employer would then tell both the reservist and, via the reservist, the Ministry of Defence of the assumed pensionable pay and the employee and employer contributions due (including any additional contributions). The MoD would deduct the employee contributions and the additional employee contributions (if any) from the reservist and pay those contributions, together with the employer contribution and any additional employer contributions directly over to the administering authority or to the AVC provider, as appropriate.

If the employer continues to pay the reservist some pay whilst they are on reserve forces service leave, neither employee or employer contributions are payable on that pay - because that pay is non-pensionable and contributions are payable on the assumed pensionable pay figure instead - and the pay the employer has continued to pay is not added into the person's cumulatives (i.e. into the main or 50/50 section) because the assumed pensionable pay is added into the cumulatives instead.

Sickness/injury

Under the 2014 Scheme, during a period on reduced contractual pay or no pay, "assumed pensionable pay" (APP) is added to the member's pensionable pay cumulative (and not the amount of any pay actually received).

APP could be higher than normal full contractual pay because, for example, the green book provides that when determining sick pay this will exclude any payments not made on a regular basis e.g. excess hours or non-contractual overtime.

Inevitably, although the member is accruing full membership of the Scheme, the Pension Fund is receiving far less than it needs in contributions to cover the liability it is accruing, especially in the case of no pay sickness.

Whilst the employee will pay a contribution on actual pay received (if any) the employer will pay contributions on APP during the period the employee is on reduced contractual pay or no pay.

"Unauthorised" leave of absence

Any absence which is "unauthorised" by the employer does not count as membership and the employee has no right to make good the "lost" pension as a result of that unauthorised period of leave.

Additional contracts during absences

It is quite possible that a person on any of the types of absences mentioned in this section of the notes could already be paying extra contributions. These extra contributions could take the form of:

a) APCs (Additional Pension Contributions)

b) SCAPCs (Shared-Cost Additional Pension Contributions)

c) AVCs (Additional Voluntary Contributions)

d) SCAVCs (Shared-Cost Additional Voluntary Contributions)

e) ARCs (Additional Regular Contributions)

f) ASBCs (Additional Survivor Benefit Contributions)

g) Additional contributions to buy membership ("Added Years" contracts)

h) Part-time buy-back contributions ("Preston" cases)

There are, sometimes subtle, differences according to the type of absence and the type of additional contribution. For detailed information, please refer to the guidance available under the "Guides" tab at www.lgpsregs.org as follows:

- (a) to (d) – Section 12 of the HR Guide to the 2014 Scheme
- (e) to (h) – Section 6.4 of the Payroll Guide to the 2014 Scheme

Additional Contributions

ADDITIONAL PENSION CONTRIBUTIONS (APCS)

Employee only APCs and employer/employee shared cost APCs

Employees in the Scheme may choose to buy extra annual pension up to a maximum set at £6,500 from 1 April 2014, using an Additional Pension Contribution (APC) contract (with or without a contribution from the employer). The maximum is increased each April by Pensions Increase (assuming a PI date of 1 April 2013). The current limit, from the 1 April 2019 is now £7,026. A member can enter into an APC contract:

- To buy extra pension. The employee may choose to make a one off contribution or regular additional contributions, with or without a contribution from the employer, in order to buy a set amount of additional pension. The cost (a cash amount NOT a percentage of pay) is determined by the employee's age and the amount they wish to purchase. Note that an employee **cannot** commence an APC in this circumstance if they are in the 50/50 section.

- To buy 'lost' pension for authorised unpaid leave of absence (including any period of unpaid additional maternity, shared parental or adoption leave). Where an employee elects to pay an APC to purchase any or all of the amount of pension 'lost' during the period of absence and makes the election within 30 days of returning to work the employer shall, for any individual period of absence up to 36 months, but not any period beyond that, pay 2/3 of the cost of the APC (a shared cost APC). An employee **can** commence an APC or shared cost APC in this circumstance even if they are in the 50/50 section.

- To buy pension 'lost' due to industrial action. An employee **can** commence an APC in this circumstance even if they are in the 50/50 section.

APCs provide a member pension benefit only, and there is no partner's pension attached to it. The payment date for additional pension purchased by way of an APC is the member's Normal Pension Age. If, the additional pension purchase by the member is paid:

- earlier than this date the additional pension is reduced for earlier payment (excluding where the members benefits are brought into payment on the grounds of Tier 1 or tier 2 ill health).
- Later than this date the additional pension is increased for late payment.

The mechanics of APCs

If the employee wishes to go ahead with a purchase of extra pension in any of the above circumstances they will need to make an application in writing to the administering authority, with a copy to the employer, stating the amount to be purchased, the cash contribution, the period over which it is to be paid, the reason for the purchase and, if the member has more than one active pension account, the account to which the APC contract is to be attached.

Members should be encouraged to utilise the self-service modeller and application process available on www.lgpsmember.org.

An administering authority can determine that payments cannot be made over a period of time where it would be impracticable. Additionally, an administering authority can require the member to produce a report by a registered medical practitioner of the results of a medical examination (undertaken at the member's own expense) before agreeing to an APC election and can refuse an APC contract application if they are not satisfied that the member is in reasonably good health. Though a policy is not compulsory your administering authority may hold one on these applications

At the end of each Scheme year, or at the date the APC contract is terminated if earlier, the member's active pension account is credited with the amount of additional pension purchased that year. If the contract is terminated early because the member is retired with a Tier 1 or Tier 2 ill health pension, the remaining amount of additional pension is deemed to have been purchased and is credited to the member's active account at the point of leaving.

Employer only APCs

Employers can award additional annual pension to active members up to the current maximum (less any amount of additional annual pension the employer has already contributed towards or is contributing towards under a shared cost APC) using an Additional Pension Contribution (APC) contract. The maximum is increased each April by Pensions Increase (assuming a PI date of 1 April 2013). The current maximum limit is £7,026 from the 1 April 2019.

Such an award may also be made within 6 months of leaving to those persons who have left on the grounds of redundancy or business efficiency (or whose employment was terminated by mutual consent on grounds of business efficiency).

The employer would make a one off contribution in order to buy a set amount of additional pension for the member. The cost is determined by the employee's age and the amount purchased.

IN-HOUSE ADDITIONAL VOLUNTARY CONTRIBUTIONS (AVCS)

In-house Additional Voluntary Contributions (hereafter called AVCs or SCAVCs) can be made by the employee or, in the case of a shared cost AVC (SCAVC), by both the employer and employee. Such contributions will be either a cash amount or a percentage of pensionable pay (or both). Payroll will be notified of the employee amount and/or percentage per pay period and, in the case of a SCAVC, the employer amount and/or percentage per pay period.

The employer share of the SCAVC can vary across employees but the proportion for any individual employee will not vary. The split between an employee’s and employer’s additional contributions for an SCAVC can be any ratio as agreed but **not** 100% cost to the employer.

A member electing for 50/50 can continue to pay into or take out an Additional Voluntary Contribution (AVC) arrangement or a shared cost AVC arrangement.

AVC Contracts

AVCs of up to 100% of pensionable pay, allowing for the statutory deductions (LGPS contributions, NI contributions etc.) are permissible in respect of an AVC contract entered into on or after 1 April 2014. There was a 50% contribution limit on AVCs where the AVC contract was entered into before 1 April 2014, however this has been amended for consistency from 14 May 2018, so these contracts can now be changed by the member to allow a higher payment level.

As these are member contributions they fall under the same payment rules and must be paid over to the AVC provider by at least the 22 after the month in which they were paid (or 19 if they were not paid electronically). As AVCs are invested timely payment is highly important as investment returns could be lost. Failure to pay contributions on time should be recorded and possibly reported to the Pension Regulator.

Other Regulatory Requirements – "Actives"

OBLIGATIONS TO PROVIDE INFORMATION

2013 Regulation 80 opens with:

(1) A Scheme employer must—

> *(a) inform the appropriate administering authority of all decisions made by the employer under regulation 72 (first instance decisions) or by an adjudicator appointed by the Scheme employer under regulation 74 (applications for adjudication of disagreements) concerning members; and*
>
> *(b) give that authority such other information as it requires for discharging its Scheme functions.*

2013 Regulation 70 deals with the recovery of costs from an employer where an administering authority, purely in its own opinion, has incurred additional costs as a result of that employer's level of performance. In addition, Transitional Regulation 22 states:

(1) Scheme employers must provide administering authorities with such information as administering authorities reasonably require to enable them to discharge their functions under these Regulations and any outstanding functions under the Earlier Regulations.

(2) An administering authority may give a written notice under regulation 70 of the 2013 Regulations (additional costs arising from Scheme employer's level of performance) where the additional costs incurred were as a result of the employer's level of performance in carrying out functions under the Administration or Benefits Regulations.

The upshot of these regulations is that it is a legal requirement for each employer to supply necessary information at the appropriate time to the administering authority. This includes end of year information (as detailed in 2013 Regulation 80(3) and 80(4)) which we will discuss later in this section.

In order to assist employers in this task, the LGPC Secretariat has produced guides for both employer payroll and human resource professionals. All the data requirements at year end can be found in Sections 1 and 6 of the Payroll Guide. The HR and Payroll guides can be found under the LGPC administration resources under Guides and sample documents tab at www.lgpsregs.org.

Changes in Contractual Part Time Hours and / or Contractual Weeks/Contractual Days per year

For employees with LGPS membership prior to 1 April 2014 employers will still be required to notify the administering authority of:

a) changes in contractual hours for part-time employees (or the average hours for the Scheme year for employees who have no contractual hours), and

b) changes in contractual weeks / contractual days per year (if the administering authority prorates the membership of employees whose contractual weeks / contractual days per year are less than 52 per annum / 365 per year)

but only in respect of those persons to whom the statutory underpin applies (so that the underpin can be calculated correctly), those with an added years contract, and those pre-1/4/2008 joiners who are covered by the ill-health enhancement underpin.

For all such members, employers will need to provide, at each 31 March, the relevant changes that have occurred during the Scheme year and provide, at the date of leaving, the changes that have occurred during the Scheme year in which the date of leaving falls.

Breaks in membership

Employers will still be responsible for providing details to the administering authority of breaks in “membership” that occur prior to age 65 (i.e. the 2008 Scheme definition of Normal Pension Age) due to:

- a trade dispute, or
- authorised unpaid leave of absence,
- unpaid additional maternity, shared parental or adoption leave, or
- unauthorised unpaid absence

but only for those members to whom the statutory underpin calculation applies, or to whom the 85 year rule applies, and who have not taken out an APC contract to cover the whole of the break period (or SCAPC contract in the case of a non-strike break). Note that unauthorised unpaid absences will always constitute a break as there is no facility to pay an APC specifically to cover the whole of the pension that would have accrued during such a period of absence.

PAY-OVER OF CONTRIBUTIONS

Employers participating in the Scheme are required to pay over to the appropriate Pension Fund all contributions paid by **employees** (both basic contributions and employee contributions to an APC or SCAPC).

the employee contributions deducted from pay have to be paid over

> where the payment is by means of an electronic communication, by no later than 22 days after the end of the month in which the contributions were deducted from pay; or
>
> in any other case, by no later than 19 days after the end of the month in which the contributions were deducted from pay
>
> OR
>
> any such earlier time as the Pension Fund administering authority may stipulate.

It should be noted that contributions for added years, Preston part-time buy-back, ARCs and ASBCs must also be paid over to the Pension Fund within the timescales mentioned above.

The payment must be accompanied by a statement, in such form as the appropriate Pension Fund administering authority specifies, showing comprehensive information about both contributions and pay.
The Public Service Pensions (Record Keeping and Miscellaneous Amendments) Regulations 2014 (SI 2014/3138) provided that, from April 2015, the old exemption for reporting to the Pensions Regulator the late pay-over of member contributions by participating employers where it is believed the failure is likely to be of ‘material significance’ to the Regulator was removed. This means that where an employer makes late payment of member contributions over to the administering authority, and this is believed by the administering authority to be material they should report this to the Pensions Regulator.

Employers participating in the Scheme are required to pay over to the appropriate Pension Fund all contributions paid by employers (both basic contributions and the employer contributions to a SCAPC). The employer contributions must be paid over to the appropriate Pension Fund on or before such dates falling at intervals of not more than 12 months as the Pension Fund administering authority may specify. It is common practice for the employer contributions to be paid over to the appropriate Pension Fund at the same time as the employee contributions.

In addition, employers are required to pay over to the appropriate Pension Fund on or before such dates falling at intervals of not more than 12 months as the Pension Fund administering authority may specify:

- any amount notified by the administering authority during the interval to cover any extra charge for payment of ill health pensions or early payment of deferred benefits or deferred pensioner benefits on ill health grounds; any strain on fund costs in respect of flexible retirements, redundancy or business efficiency retirements; any strain on fund costs relating to the waiver by the employer of any actuarial reduction; and the cost of any additional annual pension granted to the member by the employer;

- a contribution towards the cost of the administration of the fund (where the cost of administration is not charged direct to the Pension Fund); and

- any amount specified in a notice given to the employer by the Pension Fund administering authority in consequence of additional costs that have arisen as a result of the employer's level of performance.

END OF YEAR RETURNS

Provision of year-end information is a statutory requirement for each employer in the LGPS. Employers **must** supply their appropriate LGPS Pension Fund with information about each of their employees who have been an active member of the LGPS with that Fund during the Scheme year (which runs from 1 April to 31 March). This information must be provided separately for each job which a member holds. This is because each job held by an LGPS member must have a separate Pension Account.

Employers are both responsible and accountable for the provision of accurate information supplied in a timely manner in line with legislative requirements which amongst other things require the issue of an annual benefit statement by 31 August each year and a pension savings statement (where a member has exceeded the annual allowance limit) by the 6 October.

The statutory time-limit for the provision of year end data is within 3 months of the scheme year end – or in other words the 30 June. Your administering authority may set their own time-limits which should be adhered to. The statutory information required is a statement in respect of each employee who has been an active member during the Scheme year which includes:

- The employee’s name and gender;
- the employee's date of birth and national insurance number;
- a unique reference number relating to each employment in which the employee has been an active member;

and for the Scheme year in question for each employment:

- the dates of active membership;
- the pensionable pay in the main section;
- the pensionable pay in the 50/50 section;
- employee contributions paid while in the main section;
- employee contributions paid while in the 50/50 section;
- employer contributions paid on the employee’s pensionable pay;
- employee additional pension contributions (APCs);
- employer additional pension contributions (APCs);
- employee in house AVC contributions; and
- employer in house AVC contributions

Adherence to set timescales is vital for the administering authority to comply with the tight deadlines in relation to annual benefit statements. The Pensions Regulator (TPR) confirmed that individual administering authorities needed to report any breaches provided that it constituted a breach of ‘material significance’ to the Regulator. Where funds did report a breach, the Regulator made contact with those funds to clarify the reasons for the breach and to discuss improvement plans.

In March 2016, TPR produced two documents to assist all public service pension schemes in meeting their obligations to produce annual benefit statements. Both documents can be located in The Pension Regulator section under the Government Publications tab on www.lgpsregs.org.

Section 10 of the on-line payroll guide gives more information on the detail and, briefly, the information required is essentially that which is outlined above with the addition of final pay for members with Final Salary accrual (as the member may have accrued this during or prior to their current employment).

A sample format for a year end return is shown below.

Information for each employment
Scheme year ending
Surname
Forename (or initials)
Gender
Date of birth
National insurance number
Unique ID for the employment
Date became an active member of the Scheme in the employment if this was during the Scheme year
Date ceased active membership of the Scheme in the employment if this was during the Scheme year
CPP1: Cumulative pensionable pay received in the employment during the Scheme year whilst in main section (including APP where relevant)
CEC1: Cumulative employee contributions (if any) deducted from pensionable pay in previous field

Information for each employment
CPP2: Cumulative pensionable pay received in the employment during the Scheme year whilst in 50/50 section (including APP where relevant)
CEC2: Cumulative employee contributions (if any) deducted from pensionable pay in previous field
Section of the Scheme the employee was a member of in the employment at the end of the Scheme year (or at the date of cessation of active membership)
CRC: Cumulative employer contributions deducted from pensionable pay in respect of the employment
EAPC CAC: Cumulative additional pension contributions (APCs), if any, paid in respect of the employment by the employee
RAPC CARC: Cumulative additional pension contributions (APCs), if any, paid in respect of the employment by the employer
EAVC CAC: Cumulative additional voluntary contributions (AVCs), if any, paid in respect of the employment by the employee
RAVC CARC: Cumulative additional voluntary contributions (AVCs), if any, paid in respect of the employment by the employer
FTE Final pay for the Scheme year (for employees with membership of the LGPS prior to 1/4/14 who are active members at the end of the Scheme year)

The on-line Payroll Guide also gives, at Section 6, the requirements for pay and membership details for any member with pre-1 April 2014 membership (as mentioned earlier in this section of the notes)

All Types of Retirement

The employer role in the retirement of an employee very much depends upon the type of retirement. In the case of an employee voluntarily resigning for example, other than deciding the type of benefit the person will be entitled to and forwarding information to the administering authority to enable them to calculate the retirement benefits due, there is little else for the employer to do. Alternatively, in ill-health retirement for example, the employer role is much more intense.

In this section we will take a look at all of the various ways of taking payment of benefits through retirement, noting that much of the content is aimed at aiding your understanding of the calculation of benefits which is of advantage when your employees ask questions regarding taking payment of their benefits..

The importance of normal pension age (NPA)

In the 2014 Scheme the normal pension age (NPA) for each member is equal to their State Pension Age (SPA) subject to a minimum of age 65.

If a member chooses to retire before their NPA, their pension will be reduced for early payment (subject to the 85 year rule – which applies from age 60). If they retire after NPA their pension will be increased for late payment.

Protections built into LGPS2014 means that members are still be able to take any benefits relating to pre-1 April 2014 service unreduced at their old NPA of 65 (if they have retired at that time).

NORMAL RETIREMENT

Normal retirement occurs at the age the Scheme pays benefits at 2014 Scheme NPA. Where retirement occurs at NPA there is no actuarial reduction to post 31 March 2014 benefits and no actuarial increase either. Of course, where 2008 Scheme NPA was earlier, pre 1 April 2014 benefits will see an actuarial increase.

Let’s look at a few examples of normal retirement

Prior to 1 April 2008 the accrual rate of the LGPS was 1/80 and there was an entitlement to an automatic lump sum (sometimes referred to as the retirement grant or tax-free cash).

Example A – all pre-08

Roy retired on 31 March 2008 (his 65th birthday eve) on a final pay of £22,497 and with total membership of 4 years.

Pension:			$\frac{4}{80}$	x	£22,497	=	£1,124.85 pa
Lump Sum:	3	x	$\frac{4}{80}$	x	£22,497	=	£3,374.55

The accrual rate in the LGPS altered on 1 April 2008 to 60ths pension and no automatic lump sum.

Example B – all post-08/pre-14

Rae retired on 31 March 2014 (his 65th birthday eve) on a final pay of £22,497 and with total membership of 4 years.

Pension: $\frac{4}{60}$ x £22,497 = £1,499.80 pa

And since 1 April 2014 we have had a CARE scheme with 49ths accrual (or 98ths for those in the 50/50 section).

Example C – all post-14

Raj retired on 31 March 2018 (his 65th birthday eve and SPa) with total membership of 4 years.

Year 1	£20,000/49 = £408.16 x 1.012	=	£ 413.06
Year 2	£20,800/49 = (£424.49 + £413.06) x 0.999	=	£ 836.71
Year 3	£21,632/49 = (£441.47 + £836.71) x 1.01	=	£1,290.96
Year 4	£22,497/49 = (£459.12 + £1,290.96)	=	£1,750.08

In the last example the revaluation due at the 1st April would be added post retirement.

LATE RETIREMENT AND ACTUARIAL INCREASES

A person leaving after age 55 can draw their benefits immediately or can defer payment until a date no later than the day before age 75. Pensions are increased:

- In respect of pre-1/4/2014 benefits, if they are taken after age 65.

- In respect of post-31/3/2014 benefits, if they are taken after (new) NPA.

The actuarial increases are applied to all of the member's benefits and not just that portion which was accrued prior to the member's 65th birthday / NPA.

On 4 October 2016 DCLG (now MHCLG) produced new guidance on late retirement increases effective from 4 January 2017. The actuarial increase applied to a member's pension is now 0.01% simple per day for the period from the day after the member's 65th birthday / NPA until the day before benefits come into payment. Where there is a lump sum payable, the actuarial increase is 0.001% simple per day.

The late retirement factors are due to change again from the 1 September 2019, where retirement is after that date. Old factors will apply to the 31 August and new from the 1 September.

ILL HEALTH RETIREMENT OF AN ACTIVE MEMBER

Ill health retirement takes place when the employer terminates an active member's employment for the reason of ill-health or infirmity of mind or body and they meet the criteria below. It should be noted that the member must have vested in the scheme to be eligible for these benefits (e.g. more than 2 years' service).

Certification

The regulations require that before making a decision as to ill-health retirement, and the level of benefits to be provided, the employer must obtain a certificate from an Independent Registered Medical Practitioner (IRMP) qualified in occupational health. The IRMP must be approved by the Administering Authority.

Ill health can be one of the most emotive and contentious issues, and also generates the highest proportion of complaints in the LGPS. The Pensions Ombudsman Service recommends that an employer making a decision on ill health obtains a narrative report from the IRMP to help them understand the reasoning behind the medical opinion the IRMP has given. This is important to minimise the risk of the employer making a poor or flawed decision – which could later result in a complaint or claim of maladministration.

It should be stressed that ill-health retirement remains the employer decision and at least one case has recently been upheld by the Pensions Ombudsman where an employer has effectively 'rubber stamped' the IRMP opinion.

Sample certificates can be found under Guides and sample documents on the lgpsregs.org website.

The criteria the member is assessed against are as follows:

First, the member must be ill!

To qualify for ill-health benefits two conditions must be satisfied as follows:

- The member is, as a result of ill-health or infirmity of mind or body, permanently incapable of discharging efficiently the duties of the employment they were engaged in, and

- The member, as a result of ill-health or infirmity of mind or body, is not immediately capable of undertaking any gainful employment.

Gainful employment is defined as paid employment for not less than 30 hours in each week for a period of not less than 12 months.

Secondly, assess how ill?

If those conditions are satisfied, which tier of ill-health retirement a person falls into is then decided as follows:

- A member is entitled to Tier 1 benefits if that member is unlikely to be capable of undertaking gainful employment before NPA.

- A member is entitled to Tier 2 benefits if that member (a) is not entitled to Tier 1 benefits; (b) is unlikely to be capable of undertaking any gainful employment within 3 years of leaving the employment; but (c) is likely to be able to undertake gainful employment before reaching normal pension age.

- A member is entitled to Tier 3 benefits if they are likely to be capable of undertaking gainful employment within 3 years of leaving the employment, or before NPA if earlier for so long as the member is not in gainful employment and for up to a maximum period of 3 years.

Tier 1 and Tier 2 ill-health

An enhancement of pension based on 1/49, in respect of "assumed pensionable pay" and service from ill-health retirement to NPA is granted as follows:

- Tier 1 - adjusting the active member's pension account by adding the equivalent of the amount of earned pension the member would have accrued between the day following the date of termination and the member's NPA under the 2014 Scheme calculated as above.

- Tier 2 - adjusting the active member's pension account by adding 25% of the Tier 1 adjustment described above.

NB: There are rules restricting or negating the enhancement if ill-health retirement has happened previously. There is also a protection for some pre-1 April 2008 joiners on the amount of enhancement due. When calculating the enhancements, if the person was in the 50/50 section at the point of retirement, the election for 50/50 is treated as lapsed. Taking the possible existence of these things into account, it is always advisable to obtain an estimate from the administering authority.

In order to calculate the enhancements, the employer will need to calculate assumed pensionable pay (APP) **at the date of leaving** when terminating an active member's employment on the grounds of permanent ill-health with a Tier 1 or Tier 2 ill health pension.

Where the IRMP certifies that the member was working reduced **contractual hours** during the relevant 12 (weekly) or 3 (monthly) pay periods as a consequence of ill health, the APP figure is to be calculated on the pay the member would have received during the relevant pay periods if they had not been working reduced contractual hours.

NB: There is no equivalent to the 2008 Scheme provision that provided for membership prior to the date of leaving to be uplifted where the person had been working reduced hours because of the condition that resulted in their ill-health retirement.

Tier 3 ill-health

No Tier 3 benefits can be awarded if the member has previously been awarded a Tier 3 pension from a previous local government employment.

Tier 1 and tier 2 ill-health benefits decisions are made on the balance of probabilities and result in the immediate payment of any lump sum and a pension for life. There is no subsequent review. Tier 3 retirement also triggers payment of the lump sum, if any, but the pension is only paid for a maximum of 3 years.

An employee who leaves local government employment as a tier 3 member will be entitled to their annual accrued benefits payable as a pension for such time as the tier 3 member does not obtain gainful employment, or until the employer stops payments following the "review" or, in any event, at the end of 3 years.

The tier 3 member is required to notify the previous employer when employment is found providing details, including pay and working hours, and the employer would then stop payments if this was 'gainful employment'.[1]

The regulations provide that a tier 3 pensioner whose pension stops is then classed as a "deferred pensioner member". This does not mean that they become a deferred member and have all the rights associated with that (e.g. transfer values, amalgamation of membership, etc.), instead they remain a pensioner whose payment of pension is merely deferred and then payable again at normal pension age.

The person does have the opportunity to elect to receive the benefits from the age of 55 and, if so, the rules mirror those discussed later in this section of the workshop notes in sub-sections covering early retirement and switching back on the Rule of 85.

The Tier 3 Review

The former scheme employer will undertake a review after 18 months if payments are still continuing at that point[2]. 2013 Regulation 37(6) requires the employer to seek a further opinion from an IRMP (this can be the same IRMP that certified payment of the initial tier 3 ill health pension) concerning the condition which resulted in the 3rd tier ill-health retirement.

Effectively, the IRMP is asked whether it remained the case that gainful employment could have been undertaken within 3 years of leaving (and, if necessary in practice, the doctor could be asked to state the precise point at which gainful employment could be undertaken were that to be somewhere between the 18 month and 3 year stage) ***or*** if the member is now judged to be incapable of undertaking gainful employment within 3 years of leaving but is likely to be able to undertake gainful employment before their NPA.

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[1] If payments had continued after gainful employment had been found, the employer has powers to recover any overpayment from the tier 3 member.

[2] Unless the person is over NPA at the time.

If the former situation is the case, then as the IRMP is of the opinion that the member is capable of undertaking gainful employment, the employer has powers to stop payments from the date of the review or a later date specified by the IRMP.

Where the IRMP certifies that the person is now adjudged to be incapable of undertaking gainful employment with the 3 year period following retirement, the employer has the power to determine that a tier 3 ill health member should become a tier 2 ill health member and the date of the “review decision” will decide the date from which the uplift to tier 2 will be put into payment.

Indeed, 2013 Regulation 37(10) gives the employer the ability to uplift from tier 3 to tier 2 within the period of 3 years following the cessation of tier 3 benefits – where the member asks for a review and an IRMP certificate is obtained by the employer to support the decision.

Statutory guidance

2013 Regulation 36(4) makes it a requirement that both employers and independent registered medical practitioners have regard to statutory guidance when carrying out their functions.

The latest guidance is dated September 2014 and is accompanied by FAQs dated June 2015. Both of these documents are available on-line at: http://lgpsregs.org/schemeregs/lgpsregs2013.php under Statutory guidance relating to the LGPS.

Ill health costs

Any extra charge on the appropriate fund resulting from a member becoming entitled to benefits under regulation 35 (early payment of retirement pension on ill-health grounds) or 38 (early payment of retirement pension on ill-health grounds: deferred and deferred pensioner members) must be paid into the fund by the Scheme employer concerned. However, this is often built into the employer contribution rate (as opposed to a direct strain cost). Some employers take out ill-health insurance for this reason, which can be drawn upon if they have a member who retires on ill-health grounds.

EARLY RETIREMENT & ACTUARIAL REDUCTIONS

Providing they have more than two years' membership (or have vested in the LGPS for another reason) members may elect to retire and receive LGPS benefits at any time from age 55 onwards.

If a member retires before Normal Pension Age their pension (and lump sum if any) is reduced on account they will receive their pension for a longer period (and in the case of the lump sum, they are receiving it earlier than expected). Conceptually simple, the situation is complicated by there being a different definition of NPA for pre and post 1 April 2014 membership and more so because of the former yardstick by which the actuarial reduction was measured (the 85-year rule) which, although removed from the scheme rules in October 2006, still lives on through various protections.

Present (from 9 January 2019) actuarial reductions to benefits are as follows:

Years Early	Pension Male	Pension Female	3/80ths Lump Sum
0	0.0%	0.0%	0.0%
1	5.1%	5.1%	2.3%
2	9.9%	9.9%	4.6%
3	14.3%	14.3%	6.9%
4	18.4%	18.4%	9.1%
5	22.2%	22.2%	11.2%
6	25.7%	25.7%	13.3%
7	29.0%	29.0%	15.3%
8	32.1%	32.1%	17.3%
9	35.0%	35.0%	19.2%
10	37.7%	37.7%	21.1%
11	41.6%	41.6%	N/A
12	44.0%	44.0%	N/A
13	46.3%	46.3%	N/A

Note that where the number of years a person is retiring early is not an exact number, the necessary interpolations are made in the preceding table.

In the 2008 Scheme, employer's consent was required if a person was under the age of 60 and wished to voluntarily draw their pension benefits. This is no longer the case but it important to understand that, as retirement at the member's own choice between 55 and 59 inclusive was a new facility, Rule of 85 protection does not automatically apply in full to such cases.

85 Year Rule

The 85-year rule was a test which was used at retirement to assess whether an early retirement reduction should be applied to the benefits of a member who chose to draw their benefits on or after 60 and before age 65 (or before age 60 with the employer's consent). Where the sum of the member's age and length of Scheme membership (both in whole years) added together equals 85 years or more no reduction to the member's benefits would be applied.

For example, there would be no early retirement reduction applied to the benefits of a member retiring at age 60 if the person had 25 years Scheme membership (60 + 25 = 85) and no reduction for a person at age 62 with 23 years (62 + 23 = 85) etc.

If the 85-year rule was not met, both the pension and lump sum were reduced based on the lesser of the number of years and days until (a) age 65, (b) the date when the member would satisfy the 85 year rule, and for pre-1 April 1998 members, (c) their former protected Normal Retirement Date of pre-1 April 1998 members[3]. The earlier of (a), (b) and (c) is referred to as Critical Retirement Age (CRA).

It is important to understand that in the case of voluntary early retirement under the age of 60 from 1 April 2014, CRA cannot be earlier than age 60 unless the employer has agreed that it should be. See "Switching on the 85 Year Rule" later in this section.

85 Year Rule protections

When the 85 Year Rule was removed from the scheme in 2006, existing members were protected. Those protections were enhanced in 2008 and honoured in 2015. Some people have full protection to one date, others full protection to a different date and others still, full protection to one date and a tapered protection to another. All in all, it potentially makes the calculation very difficult to explain to the employee.

More information on the 85 year rule, including a number of important notes to the table that follows and details of what membership counts towards CRA, can be found in the 85 Year Rule paper available in the Guides and sample documents section under the administration resources tab at [lgpsregs.org.](lgpsregs.org)

The Secretary of State Guidance refers to "Parts" and "Groups". Parts refer to membership as follows:

Part A:	membership to 31 March 2008
Part B1:	membership 1 April 2008 to 31 March 2014
Part B2:	membership 1 April 2014 to 31 March 2016
Part C:	membership 1 April 2016 to 31 March 2020
Part D1	membership 1 April 2020 onwards (including Part D1 benefits as defined in the 85 Year Rule paper notes)
Part D2	membership defined as D2 membership in the notes.

[3] NRD for these members was age 60 if they had at least 25 years' service by 60, age 65 if they could not achieve 25 years' service by 65, or the age (in years and days) on which they would achieve 25 years' service – this only applies where the member was in the scheme on 31 March 1998 and continuously thereafter and who left prior to 1/10/06 when the rule was removed.

Groups refer to members as follows:

Group 1: a member who was an active member prior to 1 October 2006 and who was born on 31 March 1956 or earlier

Group 2: a member who was an active member prior to 1 October 2006, was born between 1 April 1956 and 31 March 1960 inclusive, and who would reach their CRA by 31 March 2020

Group 3: a member who was an active member prior to 1 October 2006 and who is not a Group 1 or Group 2 member

Group 4: a member who was not a member prior to 1 October 2006.

And the following table explains it all!

	Group 1	Group 2	Group 3	Group 4
Part A	CRA (can't be later than 65)	CRA (can't be later than 65)	CRA (can't be later than 65)	65
Part B1	CRA (can't be later than 65)	Taper (proportion of normal % reduction to 65)	65	65
Part B2	CRA (can't be later than 65)	Taper (proportion of normal % reduction to 65)	SPa (min 65)	SPa (min 65)
Part C	SPa (min 65)	Taper (proportion of normal % reduction to 65)	SPa (min 65)	SPa (min 65)
Part D1	SPa	SPa	SPa	SPa
Part D2	65	65	65	65

"SWITCHING BACK ON" THE 85 YEAR RULE

The 2014 Transitional Regulations provide that whilst the 85 year rule does not automatically apply in full if the employee decides to voluntarily draw benefits on or after age 55 and before age 60, the employer will be able to, in effect, switch the rule back on.

Where the employer does so the position is no different to that which applied under the 2008 Scheme where an employer agreed to payment of benefits on or after 55 and before age 60 i.e.

a) there would be an actuarial reduction on

    - the benefits relating to their fully protected 85 year rule membership calculated by reference to the period (if any) between the date the benefits are drawn and the date the member would meet the 85 year rule, and

    - the benefits related to any 1 April 2008 to 31 March 2020 tapered 85 year rule membership calculated by reference to the period between the date the benefits are drawn and age 65, and

    - the benefits relating to their non-protected membership calculated by reference to the period from the date the benefits are drawn to NPA (2008 Scheme definition) for the pre 1 April 2014 membership and Part D2 membership; and SPa, with a minimum of age 65, for the post 31 March 2014 membership (excluding Part D2 membership)

b) the employer would be responsible for meeting any remaining strain on fund cost relating to the payment of benefits before age 60.

If, however, the employer does **not** switch the 85 year rule on, there would be an actuarial reduction, calculated in accordance with the actuarial guidance issued by the Secretary of State, on:

- the benefits relating to their fully protected 85 year rule membership calculated by reference to the period between the date the benefits are drawn and the earlier of the date the member would have met the 85 year rule or age 65, but with a minimum reduction to age 60 where the 85 year rule is met before then

- the benefits related to any 1 April 2008 to 31 March 2020 tapered 85 year rule membership calculated by reference to the period between the date the benefits are drawn and age 65, and

- the benefits relating to their non-protected membership calculated by reference to the period from the date the benefits are drawn to NPA (2008 Scheme definition) for the pre 1 April 2014 membership and Part D2 membership; and SPa, with a minimum of age 65, for the post 31 March 2014 membership (excluding Part D2 membership).

So, in simple terms, if the employer switches on the 85 year rule they will pick up any strain on Fund cost and, if they don't switch it on, the scheme member meets the cost of having their benefits paid early by having an actuarial reduction applied to their benefits. The cost of releasing benefits early is the same - it is merely a question of who pays.

The calculation of Pension Strain

Calculation of the strain on the Pension Fund is performed using formulae issued by the local government actuaries. A standard set were agreed in 1998 which cross-referenced Government Actuary tables on augmentation of membership in force at that time.

Subsequently a change in GAD guidance on the calculation of augmentation costs, coupled with an increase in longevity, caused local government actuaries to move away from the standard and calculate strain costs in a bespoke manner for their clients.

Although now there is general agreement amongst the local government actuaries on the calculation of capital costs, there is still flexibility built in at Fund level and, indeed, in exceptional circumstances, at employer level within a Fund.

It is therefore not possible to show an example here of exactly how strain is calculated however the principle applies that the cost of early payment and of unreduced benefits (if applicable) is the basis of the calculation.

The strain on the Fund is then made good by the payment of extra employers' contributions, either over a period of time or immediately according to the position taken by the Administering Authority and Fund Actuary.

FLEXIBLE RETIREMENT

Projections show that over the next few decades we will become an increasingly ageing society. People born today can look forward to a lifespan of between ten and thirty years longer than the three-score years and ten once allocated to them!

The older population continues to grow[4], with over 11.8 million (18% of the population) of the UK aged 65 and over and 1.57 million (2.4% of the population) aged 85 and over in mid-2016. Since mid-2006, the UK population aged 65 and over has increased by 22%, whereas the total population has only increased by 7.9%.

With increasing life expectancy, a lower birth rate in recent years, and the baby-boomer generation heading for retirement, we face the real prospect of a greatly increased retired population being dependent on a reduced active workforce.

One approach is to raise the retirement age and, for State Pension purposes, this was one of the recommendations of the Turner Commission taken on board by Government. An alternative or complementary solution is to create conditions where gradual or phased retirement is possible and to allow paid work during retirement without financial penalty.

For employers (especially those experiencing recruitment or retention difficulties and skills shortages) the older workforce is a resource just waiting to be tapped into. Key obstacles to this have been the all or nothing mentality of the "cliff edge of retirement" and historical Revenue rules regarding just what constituted retirement for the purposes of drawing pension scheme benefits.

From 6 April 2006, a change in Government policy allowed pension schemes to facilitate flexible retirement. Flexible retirement provisions were subsequently written into the LGPS by modifying the principal regulations in 2006 and when the new look scheme was introduced in 2008, the flexible retirement provisions were modified further. Similarly, the advent of LGPS2014 has seen the provisions modified slightly again.

A scheme member who has attained the age of 55 can draw all or part of their retirement benefits (both pension and lump sum) even though they have not retired providing that:

- the employer consents, and
- there has been a reduction in hours, or
- a reduction in grade.

[4] Statistics in this paragraph are from the *Mid-2016 Population Estimates* published by the UK Office for National Statistics in July 2017.

Actuarial Reductions

The actuarial reduction to be applied would be based on:-

- for non-protected membership, the shortfall to age 65 in respect of membership pre-1 April 2014 and the shortfall to (new) NPA in respect of membership after 31 March 2014, and

- for protected membership, the shortfall to CRA. It is important to understand that, unlike voluntary early retirement under the age of 60, the Rule of 85 automatically applies (i.e. it is not "switched off" with a discretion for the employer to switch it back on).

The actuarial reductions applicable under the 85 Year Rule do not eliminate the cost of early retirement where a member retires before age 60 even where a member would have met the 85 Year Rule before the age of 60.

If an employer so chooses, all or part of the actuarial reduction can be waived[5]. Where all or part of the reduction is waived, the cost of the strain on the Pension Fund will become due immediately.

Partial Drawing of Benefits

A person flexibly retiring does not have to draw on all of the benefits they have built up at the point of flexible retirement. They have to draw:

- all of their pre 1 April 2008 benefits, plus

- all, some or none of their 1 April 2008 to 31 March 2014 benefits, plus

- all, some or none of their post 31 March 2014 benefits, plus

- any "additional benefits" in accordance with actuarial guidance issued by the Secretary of State.

"Additional benefits" are added years being purchased by the member, AVCs, additional pension bought by APCs/SCAPCs, additional pension bought by ARCs and additional pension awarded by the employer. Basically, added years contracts with an election date prior to 1 October 2006 and AVC contracts entered into before 13 November 2001 **must** be taken on flexible retirement, whereas for other contracts the member has a choice whether to take all or none of the additional benefit.

[5] Although the regulations were worded to the effect that actuarial reductions could only be waived on certain membership in whole and on the grounds of compassion, this was not an intentional change in policy and a regulatory amendment was made by SI2015/755 (see next section "Waiving Actuarial Reductions" for more details).

WAIVING ACTUARIAL REDUCTIONS

An employer has the power to waive actuarial reductions from benefits. This is a discretion and the employers' powers have historically been different according to the type of retirement.

In all cases bar flexible retirement, waiving actuarial reductions was only permitted on compassionate grounds (e.g. a reduction in hours necessary to care for a sick relative etc.). Where an employer exercises compassion, the whole of the actuarial reduction is waived which, of course, leads to pension strain.

In the case of flexible retirement however, the employer has been permitted to waive part or all of the actuarial reduction and may exercise this discretion on any grounds (i.e. not just compassion).

Position from 1 April 2014 re: non-flexible retirement cases

The employer can exercise it's discretion to waive actuarial reductions but the situation differs according to the member group the person is classed as being in for 85 Year Rule purposes as follows:

a) Group 1 member

- **all** of the actuarial reduction in respect of pre-1 April 2016 benefits (on compassionate grounds only).
- **all or some** of the actuarial reduction in respect of post-31 March 2016 benefits (on any grounds).

b) Group 2 member

- **all** of the actuarial reduction in respect of pre-1 April 2020 benefits (on compassionate grounds only).
- **all or some** of the actuarial reduction in respect of post-31 March 2020 benefits (on any grounds).

c) Group 3 or 4 member

- **all** of the actuarial reduction in respect of pre-1 April 2014 benefits (on compassionate grounds only).
- **all or some** of the actuarial reduction in respect of post-31 March 2014 benefits (on any grounds).

The discretions in (a) to (c) above, apply equally to deferred members and suspended tier 3 ill health pensioners (other than those drawing benefits on ill-health grounds as no actuarial reduction would apply) who are granted early release of their benefits. Cost justifying this discretionary power in these circumstances is nigh-on impossible, and the former employer might only seek to exercise its discretion on the grounds of compassion in any event.

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REDUNDANCY AND EFFICIENCY RETIREMENTS

Under Regulation 30(7) of the 2013 Regulations, if

(a) a member aged 55 or more leaves a local government employment, and

(b) he/she has 2 or more years' membership in the LGPS or has less than 2 years membership but has had a transfer of pension rights (of any length) into the LGPS from another scheme, and

(c) the reason for leaving was dismissal due to redundancy or business efficiency (including termination by mutual consent in the case of business efficiency)

then that person is entitled to, and must take payment of, pension benefits immediately.

There is no distinction made between voluntary and compulsory redundancy under the LGPS regulations.

Settlement Agreements

A settlement agreement (formerly known as a compromise agreement) allows an individual to contract out of certain rights, the most common ones being:

- the right to claim unfair dismissal at an employment tribunal; or
- the right to claim discrimination at an employment tribunal on grounds of gender, race, disability, age, sexual orientation, religion or belief.

A settlement agreement should not be used in an attempt to negate the statutory right to pension fund benefits described above. The employee might later seek to rely on section 91 of the Pensions Act 1995 (inalienability of occupational pension) and claim that it was not permissible for them to surrender that right to receive benefits.

Pension Strain

The early payment of fund benefits under Regulation 30(7) will place a "strain" on the pension fund when termination occurs before Normal Pension Age or Critical Retirement Age as the case may be. This is because the benefits (excluding any additional pension purchased by the member) are not subjected to any actuarial reduction for early payment. The basis of this is covered earlier in this workbook.

It is always in the employers' interest to obtain a quote including the strain cost, where any member of the scheme may be subject to redundancy over the age of 55. Although the member may not have a substantial amount of service or pension accrual with their current employer the possibility remains that the member may have transferred in previous pension benefits which the employer will not be aware of – since it is the administering authority that carries out the administration of this. This could mean a large and unexpected cost due to the unreduced payment of all benefits held.

EXIT PAYMENTS REFORM

Exit payment recovery

The Small Business, Enterprise and Employment Act 2015 makes provision for the introduction of the recovery of public sector exit payments in certain situations.

Under the reforms, when a person leaves a relevant public sector employment with a salary of £80,000 or higher and subsequently re-joins another part of the public sector within 12 months, they will have to pay some or all of the exit payments (including strain costs) they received back to their prior employer.

It was originally expected that the reforms would take effect from April 2016 but the regulations have since been delayed a number of times. At the time of writing we have no timescale for this though the Repayment of Public Sector Exit Pay Regulations 2016 are currently in draft. The regulations are subject to the affirmative process and must be passed by resolutions of both Houses before they can become law.

For the recovery regulations to apply the individual must have both left and become re-employed in relevant public service employments on or after the effective date of the recovery regulations (i.e. the regulations will not be retrospectively applied).

Once the recovery regulations are enacted changes will need to be made to both leaving and recruitment communications by the employer. The draft legislation places certain duties on the exit payee, responsible authority and hiring authority to ensure the repayment requirement is satisfied.

Exit payment cap

The introduction of the exit payment cap has been subject to delays following the Enterprise Act 2016 gaining Royal Assent in May 2016. When introduced, the cap will restrict the total exit payments made in respect of an individual's exit from a public sector employment in England to a total of £95k. LGPS strain payments resulting from redundancy pensions being put into payment will be included in the cap.

The Government have used the ONS public sector classification guide as their starting point to define what bodies will be covered by the policy, although there are some exceptions to this. Notably though, as higher education and further education bodies are no longer included in the definition of public sector, the exit payment cap will – in general – not apply to them. However, please note that there are a limited number of bodies listed on the ONS spreadsheet which call themselves 'Universities' or 'Colleges' which are still defined as public sector and so would be caught by the cap.

It is anticipated that there will be further consultation (draft HM Treasury regulations) on how the cap will work in practice. The consultation is expected to last for 6-8 weeks. Once final Treasury regulations are laid they will enact the relevant parts of the Enterprise Act 2016 which will amend the LGPS regulations. HM Treasury are also expected to publish guidance on the circumstances when the cap can be waived - these circumstances will be prescriptive and set out the specific situations in which HMT think it would be acceptable to waive the cap.

Discussion with regard to how the 'strain on fund' cost would be calculated for the purposes of the exit payment cap are ongoing i.e. whether it will be on a standardised basis.

The exit payment cap regulations are subject to the affirmative process and must be passed by resolutions of both Houses of Parliament before they can become law.

Exit payment further reform consultation

In September 2016, the government responded to the further consultation on exit payments confirming that it intends to proceed with plans for further reform. This is a brief summary of the proposals:

- a maximum tariff for calculating exit payments of three weeks' pay per year of service. Employers could apply tariff rates below these limits;

- a ceiling of 15 months on the maximum number of months' salary that can be paid;

- a maximum salary on which an exit payment can be based. As a starting point the government will expect this to align with the existing NHS scheme salary limit of £80,000;

- a taper on the amount of lump sum compensation an individual is entitled to receive as they get closer to their normal pension age; and

- action to limit or end employer-funded early access to pension within exit packages. As part of an overall package the government will consider proposals appropriate to each workforce, including action to:

    - cap the amount of employer funded pension 'tops ups' to no more than the amount of the redundancy lump sum to which that individual would otherwise be entitled;

    - remove the ability of employers to make such top ups altogether, or offer greater flexibility to employers as to the circumstances in which they are available; and

    - increase the minimum age at which an employee is able to receive an employer funded pension top up, so that this minimum age is closer to or otherwise linked more closely with the individual's normal pension age in the scheme in which they are currently accruing pension benefits or to which they would be entitled to belong if they were accruing benefits.

The response confirmed that the government expects each department to produce a package consistent with the framework above and consult on these where appropriate.

MHCLG are expected to publish a consultation on the proposed package for local government – but no details are available at this time.

Early Leavers

WHAT HAPPENS WHEN PEOPLE LEAVE BEFORE RETIREMENT AGE?

Prior to 1 April 2004, early leavers did not become entitled to deferred benefits unless they had 2 years' membership of the scheme or had less than 2 years but had transferred-in previous pension rights from another pension scheme.

Amendment regulations effective from 1 April 2004 introduced "immediate vesting" into the Local Government Pension Scheme which meant that an active member who opted out of the scheme or ceased to be employed and who had at least 3 months' membership (or has less than 3 months' membership but a transfer value has been received) became entitled to deferred benefits.

Now, with the advent of the LGPS CARE scheme, from 1 April 2014 we moved back to a two year vesting period.

Date of Payment

Deferred benefits awarded under the "Earlier schemes" continue to be subject to regulations governing those Earlier Schemes i.e. the 1995, 1997 or 2007 Regulations.

Deferred benefits awarded under the 2014 Scheme are payable when the member attains Normal Pension Age (NPA) under the 2014 Scheme, unless the member makes an election to defer payment (to age 75 at the latest) or to draw benefits on or after age 55 and before NPA. Benefits drawn after NPA will be subject to an actuarial increase and benefits drawn before NPA will be subject to an actuarial reduction (in accordance with actuarial guidance issued by the Secretary of State).

Between 1 October 2006 and 31 March 2014, deferred benefits awarded were payable from NPA (or Normal Retirement Date (NRD) as it was then referred to). Prior to 1 October 2006, deferred benefits were also payable from NRD but members who joined the scheme pre-1 April 1998 and who left the scheme prior to 1 October 2006, or who simply left the scheme pre 1 April 1998, retained the right to a Normal Retirement Date of age 65 or, if earlier, the date between 60 and 65 when 25 years' membership would be attained. For a deferred benefit case, this included notional membership from the date of leaving, i.e. it is the date <u>they would have</u> attained 25 years' membership <u>had they</u> continued in membership of the scheme.

Employers will therefore have a variety of deferred beneficiaries with payable dates ranging from age 60 up to age 68 presently.

TAKING DEFERRED BENEFITS EARLY

There are a number of instances where deferred benefits may be payable earlier and these are as follows:

(i) Ill health – pre-1/4/2008 leaver

Deferred benefits can be released at any age where the former employee becomes incapable of carrying out the duties of their former post by reason of permanent ill-health. An application for early payment on ill-health grounds is made to the former employer.

The former employer would need to refer the case to an Independent Registered Medical Practitioner, just as for an ill-health retirement from employment. However, the question being asked of the doctor about permanent incapacity differs because the comparable employment clause does not apply i.e. the doctor is being asked whether the person is incapable of carrying out the duties he last held rather than those he currently holds along with any comparable employment offered.

In addition, if the applicant is under the age of 55 it is necessary to establish whether the person is incapable of performing **any** employment whatsoever. This is because only those deferred beneficiaries who are incapable of any work when their benefits are released on ill-health grounds under the age of 55 are entitled to the payment of subsequent pension increases from the date of payment (otherwise increases will be paid from age 55).

(ii) Ill health – post-31/3/2008 / pre-1/4/2014 leaver

Deferred benefits can be released at any age at the discretion[1] of the former employer where the former employee becomes incapable of carrying out the duties of their former post by reason of permanent ill-health and who, at the date of application, would have met the provisions of Benefits Regulations 20(2) or (3) if they had still been employed by the former employer (i.e. would have fallen into the 1st or 2nd tier of ill-health retirement). Although silent, it is understood that the application for early payment on ill-health grounds is made to the former employer. As with (i) above, certification is required by an IRMP.

Statutory guidance for ill health under (ii) is available at
http://timeline.lge.gov.uk/Statutory%20Guidance%20and%20circulars/statguide.htm

(iii) Ill health – post-31/3/2014 leaver

Deferred benefits can be released at any age at the discretion[2] of the former employer where the former employee becomes incapable of carrying out the duties of their former post by reason of permanent ill-health and is unlikely to be capable of

[1] See Pensions Ombudsman case (PO-9309) regarding Mrs R vs Trafford Council in June 2016. The LGPC Secretariat believe the introduction of discretion in this area in the 2008 Scheme, carried forward to the 2014 Scheme, was unintentional and are seeking an amendment to the regulations.
[2] See footnote 7.

undertaking gainful employment for at least 3 years (or by NPA if earlier) if they had still been employed by the former employer.

The application for early payment on ill-health grounds is made to the former employer but if that employer is no longer a Scheme Employer then it is made to the Administering Authority. As with (i) and (ii) above, certification is required by an IRMP.

(iv) At age 55 – all leavers

A person can elect for the early payment of their preserved benefits at age 55. Such an election, and any approaches in respect of it, are made to the Administering Authority i.e. the former employer is not involved, unless the former employer wishes to switch back on the 85-year rule.

Prior to 14/5/18 pre 1/4/14 leavers would require the employers permission to take benefits between 55 and 60 – however the right to take payment has now been extended to this group by changes in the regulations.

The considerations are exactly the same as those detailed earlier in these notes in the context of early retirement of an active member. Additionally, the former employer has the power to waive actuarial reductions when releasing deferred benefits early and, again, the rules are exactly the same as for a retiree.

Reductions can be waived on any grounds for post 14 unprotected membership, and on compassionate grounds for pre 14 benefits.

(v) Between age 50 and 55 – Pre-1/4/2008 leavers

It is possible for benefits to be released between **age 50 and 55** on a deferred member's request for pre 08 leavers. However please see note below:

Important NB: There are potentially significant tax implications in releasing deferred benefits before **age 55** and employers should be advised to consult their administering authority before entertaining any request for early release.

Other Areas for Consideration

NOTIFYING ALL LEAVERS OF THEIR BENEFIT ENTITLEMENTS

Three sub-paragraphs of Regulation 72 (First instance decisions) are reproduced here:

> *(3) The appropriate administering authority must decide any question concerning—*
> *(a) a person's previous service or employment;*
> *(b) the crediting of additional pension under regulation 16 (additional pension); and*
> *(c) the amount of any benefit, or return of contributions, a person is or may become entitled to out of a pension fund.*
>
> *(4) A person's Scheme employer must decide any question concerning any other matter relating to the person's rights or liabilities under the Scheme.*
>
> *(5) A decision under this regulation must be made as soon as is reasonably practicable.*

It is for the administering authority to decide the amount of the benefit (sub-paragraph 3(c)) but it is the role of the employer to decide whether a person is entitled to any benefit, and if so which benefit they are entitled to, when they leave or opt out of membership (sub-paragraph 4). Each party must arrive at a decision as soon as is reasonably practicable (sub-paragraph 5).

Regulation 73 (Notification of first instance decisions) is reproduced here in its entirety:

> *(1) Every person whose rights or liabilities are affected by a decision under regulation 72 (first instance decisions) must be notified of it in writing by the body which made it as soon as is reasonably practicable after the decision is made.*
>
> *(2) A notification of a decision that the person is not entitled to a benefit must contain the grounds for the decision.*
>
> *(3) A notification of a decision about the amount of a benefit must contain a statement showing how it is calculated.*
>
> *(4) Every notification must contain a conspicuous statement giving the address from which further information about the decision may be obtained.*
>
> *(5) Every notification must also—*
> *(a) specify the rights available under regulations 74 (applications for adjudication of disagreements) and 76 (references of adjudications to administering authority);*
> *(b) specify the time limits within which the rights under those regulations may be exercised; and*

(c) specify the job title and the address of the person appointed under regulation 74(1) to whom an application may be made.

This regulation prescribes that whichever body made the decision is responsible for notifying the person concerned of that decision, giving them an address from which further info can be obtained and telling them of their right of appeal, and to who and in what timescale, any appeal can be made. Once again, the words “as soon as is reasonably practicable” are used.

The constant usage of the words “as soon as is reasonably practicable” might to some imply that there is significant leeway available in notifying any leaver of their right to a benefit or the amount of those benefits. However, there are a number of pieces of overriding legislation that contain explicit time limits and there are fines that may be levied for non-compliance with those limits.

The Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 [SI 1991/167] contain provisions to the effect that early leavers' rights and options must be notified to them automatically within 2 months of member or employer notifying the scheme administrator of the termination of active member status. Failure to do so can result in a fine of up to £1,000 against an individual, or up to £10,000 otherwise.

The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 [SI 2013/2734] stipulate that on a benefit becoming payable, the member/beneficiary must be provided with details of:-

- the amount of the benefit(s) payable,
- the conditions on which periodic payments will continue,
- the provisions under which periodic payments may be altered, and
- the rights and options available on the death of a member/beneficiary and the procedures for exercising them.

The required information is to be given automatically within 1 month following the date the benefit becomes payable, extended to 2 months where retirement occurs prior to Normal Pension Age. Again, failure to do so can result in fines of up to £5,000 against an individual, or up to £50,000 otherwise.

Employers and administrators need to ensure, therefore, that timely procedures and information flows are in place not only to facilitate a first-class service to members but also to avoid any potential fines for non-compliance.

MAXIMISING TAX-FREE CASH

The Administering Authority will need to “discuss” with every retiree their options for additional tax-free cash on retirement. This is necessary before benefits are paid and so it should go without saying that the sooner the Pensions Section is notified of a retirement, the better. Wherever possible, in fairness to the employee and the expedition of their pension and lump sum being paid, notification in advance of actual retirement is recommended.

The calculation

The HMRC rules on maximum tax-free cash are extensive and complex to say the least. A good starting point is to visit the section of HMRC's Pension Tax Manual (PTM) entitled "Member benefits: lump sums: Pension commencement lump sum (PCLS): general limits information" at: https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm063230.

Under 2013 Regulation 33(3), maximum tax-free cash is calculated under actuarial guidance from the Secretary of State. In simple terms, a member is allowed to take up to 25% of the capital value of benefits "crystallising" when they draw them.

The factor used to convert pension into tax-free lump sum is 1 to 12 – meaning every £1 of pension given up will provide £12 lump sum. There is a reiterative calculation since the capital value for HMRC purposes is calculated as 20 x pension plus lump sum meaning every £1 of pension given up reduces the capital value by 20 and increases it by 12.

AVCs can also be used to provide tax-free cash and are included in the capital value on a £1 for £1 basis.

Commuting pension to lump sum has no effect on survivor's pensions.

Example

Freda Cash retires with a pension of £8,000 and a lump sum of £6,000. She has an AVC pot of £2,000

She gives up £2,000 pension to increase her lump sum by £24,000 and takes her AVC as tax free cash meaning tax free cash of £32,000.

Her capital value is (£6,000 x 20) + £30,000 + £2,000 = £152,000

The maximum tax free cash is 25% of the capital value, £38,000 and she is within this.

Death in Service

In the LGPS there is no qualification period of benefits for death in service – members, and their dependants, are covered from day one of membership.

The benefits payable from a death in service are:

- A death grant of 3 times the member's assumed pensionable pay (calculated as for ill health or absences);

- Partner pensions for a spouse, civil partner or co-habiting partner – where the criteria are met;

- And child/rens' pensions where the criteria are met.

The administering authority has absolute discretion in respect of the recipients of the death grant, though the member may have completed an expression of wish form, which will be taken into account when the decision is made as to whom to pay the death grant. The correct recipient/s of the death grant may take some time to establish, so while swift resolution is preferable it is far more important to be correct and make a decision that is based on the circumstances and relationship with the member.

Employer assistance

In the first instance the information requirements will be defined by each administering authority but are likely to include the contact details of the member's next of kin as well as accurate leaver information in the required format.

Any additional information in respect of the member's circumstances could also save time.

Partner pensions and eligibility

All partner's pensions are based on the accrual rate of 1/160. In other words what the member's benefits would have been had their accrual rate been 1/160. An enhancement to the member's Normal Pension Age (NPA) is added to the survivor's pension account based on Assumed Pensionable pay and accrual of 1/160 (similar to the Tier One Ill health enhancement)

The criteria for married spouses or civil partners is simply proof of status. The criteria for cohabiting partners is more complex. To be an eligible co-habiting partner the partner must meet the following conditions:

For at least 2 years at the date of death – the deceased member was able to marry or form a civil partnership with the partner, been living together as if married/civil partners, not living with a third person as if married or civil partners and be either financially interdependent or the partner was financially dependent on the deceased member.

Evidence of this status will need to be gathered by the administering authority and might include: joint mortgage statement/rental agreement, proof of address, shared bills etc.

Children's pensions and eligibility

If a member dies leaving one or more eligible children a pension is payable. This is based on an accrual rate of 1/320 (half of 1/160) if a partner's pension is payable or 1/240 where a partner's pension is not payable.

Where there is more than one child the total accrual rate is 1/160 where a partner's pension is payable and 1/120 where a partner's pension is not payable.

The child(s) pension is calculated and enhanced up to the members NPA in the same way a partner's pension would be – using the appropriate accrual rate. Where more than 1 child is eligible, the pension divided between all eligible children.

Where the pension is divided between more than 1 eligible child, at the point a child loses eligibility the pension will be divided between those who remain eligible – if more than 1 eligible child remains. If only 1 eligible child remains the pension reverts to the 1/320 or 1/240 accrual rate

An eligible child is:

- a natural or adopted child who was born before, on, or in the case of a natural child, within 12 months' of the member's death, or
- a step child or a child accepted by the deceased member as a member of the family (excluding a child sponsored by the member through a registered charity) who was dependent on the member at the date of death.

In addition to the above eligible children must also meet the following conditions:

- be under age 18, or
- be aged 18 or over and under 23 and in full-time education or vocational training (although your pension fund can continue to treat the child as an eligible child even if there has been a break in full-time education or vocational training), or
- be unable to engage in gainful employment because of physical or mental impairment and either:
    1. has not reached the age of 23, or
    2. the impairment is, in the opinion of an independent registered medical practitioner, likely to be permanent and the child was dependent on you at the date of your death because of that mental or physical impairment.

In this context gainful employment means paid employment for not less than 30 hours in each week for a period of not less than 12 months.

EMPLOYER DISCRETION

Employers are required to formulate, publish and keep under review a policy statement in relation to the exercise of a number of discretions under the LGPS.

These are the mandatory employer discretions subject to a written policy under the Local Government Pension Scheme Regulations 2013 [prefix **R**] and the Local Government Pension Scheme (Transitional Provisions and Savings) Regulations 2014 [prefix **TP**]:

Employer Discretion	**Regulation**
Whether, how much, and in what circumstances to contribute to a shared cost APC scheme	**R**16(2)(e) & **R**16(4)(d)
Whether all or some benefits can be paid if an employee reduces their hours or grade (flexible retirement)	**R**30(6) & **TP**11(2)
Whether to waive, in whole or in part, actuarial reduction on benefits paid on flexible retirement	**R**30(8)
Whether to waive, in whole or in part, actuarial reduction on benefits which a member voluntarily draws before normal pension age	**R**30(8)
Whether to "switch on" the 85 Year Rule for a member voluntarily drawing benefits on or after age 55 and before age 60.	**TP**Sch 2, para 1(1)(c)
Whether to waive, on compassionate grounds, the actuarial reduction applied to benefits from pre 1/4/14 membership for a member voluntarily drawing benefits on or after age 55 and before age 60	**TP**Sch 2, para 2(1)
Whether to grant additional pension to an active member or within 6 months of ceasing to be an active member by reason of redundancy or business efficiency (by up to £6,822 p.a. from 1/4/18)	**R**31

These are the mandatory employer discretions subject to a written policy under the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (as amended) [prefix **B**]:

Employer Discretion	**Regulation**
Whether to waive, on compassionate grounds, the actuarial reduction applied to deferred benefits paid early under **B**30	**B**30(5)
Whether to waive, on compassionate grounds, the actuarial reduction applied to benefits paid early under **B**30A	**B**30A(5)

These are the mandatory employer discretions subject to a written policy under the Local Government Pension Scheme Regulations 1997:

Employer Discretion	**Regulation**
Waive, on compassionate grounds, the actuarial reduction applied to benefits paid early for a post 31.3.98 / pre 1.4.08 leaver or a councillor leaver	31(5)

A copy of the employer's published policy statement must be sent to the Pension Fund administering authority. In respect of the 2014 Scheme it was a legal requirement that all policies be published and copied to the Administering Authority no later than 30 June 2014.

If the employer decides to amend the policy they must send a copy of the new policy to the Pension Fund administering authority within a month of the date of any revisions to the policy.

In formulating and reviewing its policy an employer is required by the Regulations to have regard to the extent to which the exercise of its discretionary powers could lead to a serious loss of confidence in the public service. The employer also must have regard to legislation outside of the scheme rules and make sure that its policies do not infringe anti-discrimination laws in areas of gender, race, age etc.

It should be noted that there are many other areas in which an employer can exercise their discretion for which a policy is optional e.g. extension of the year time limit to allow a transfer in, extension of 30 day limit to elect for a Shared Cost APC in respect of unpaid leave etc. It can be beneficial to hold a policy in these areas to allow for an equal and consistent decision making process in these matters which in turn would provide evidence to support any decisions that are challenged.

For a full list of discretions together with more information on the key discretions upon which employers should have a published policy, go to www.lgpsregs.org and look for the 'Discretions List' and 'Discretions Policies' papers within the Guides and sample documents section under LGPC Administration resources – the latter paper includes a number of tips for employers.

An Observation

Some employers are guilty of playing "follow my leader" and wait for the lead authority that holds the pension fund for its area to issue their employer discretions policy. A simple "copy and paste" procedure then follows together with a little "top and tail" making it their own.

Quite often, the lead authority is by far the biggest employer in the local fund. However, the membership demographics and funding levels of one employer are unlikely to match that of another, and if they do not match to a significant degree, then following their lead would not be at all prudent.

THE INTERNAL DISPUTE RESOLUTION PROCEDURE (IDRP)

Every time an employer or administering authority makes a decision about a member under the scheme rules they must notify that member in writing. Decisions cover a wide variety of issues from joining the scheme and contribution rates right through to leaving the scheme and resulting benefits. If the decision is that a person is not entitled to a benefit that person must be told why that decision has been reached. If the decision is about the amount of benefit, the person must be told how the benefits were worked out. In the case of a deceased member, similar details have to be given to any dependants about their benefits.

If the person is not happy with the decision then they have a right to complain. By law, an occupational pension scheme must have a procedure to deal with member's concerns or complaints and this is called an Internal Dispute Resolution Procedure (IDRP). Ultimately, if a member is not happy with what happens through this system, they can take their case to the Pensions Ombudsman.

Individuals also have the right to use the dispute rules if a decision should have been made by the employer or the administering authority and given to them, but hasn't been. Individuals can also complain about maladministration. The following are examples of maladministration:

- Unreasonable delays in letting the member know about, or paying, their pension benefits.

- Failure to let members know about changes in their pension entitlement or changes in the scheme rules that may affect them.

- Failure to give adequate or timely information that members need to enable them to make informed decisions about their rights and benefits in the scheme.

Of course, before going to the trouble of making a formal complaint, the employer or Pensions Section may welcome the opportunity to try to resolve the matter in an informal way. This avenue is worth promoting as misunderstandings and errors can sometimes be amicably resolved without recourse to formal complaint.

The Procedure

The formal complaint procedure has two stages. Any complaint made should be treated seriously, and considered thoroughly and fairly. An individual can ask someone to take their complaint forward on their behalf. This could be, for instance, a trade union official, welfare officer, husband, wife or partner, or a friend.
At any stage before or during the formal complaint procedure the Pensions Ombudsman can be contacted in a less formal capacity for assistance and advice.

Stage 1

If a person needs to make a formal complaint, they should make it in writing and normally within 6 months of the day when they were told of the decision they want to complain about. If the complaint is about a lack of a decision then it should normally be made within 6 months of the date the decision should have been made.

Some examples of employer decisions that might be complained about are ill –health retirement, pensionable pay, scheme entry and contributions. Some examples of administering authority decisions could be the allocation of a death grant, transfers of benefits (in or out) and the calculation of benefits.

The complaint will be considered carefully by a person nominated by the body that took the decision against which the person is complaining. This person is referred to as the “adjudicator”. The LGPS regulations state that the employer must appoint an adjudicator to consider and make decisions on such applications. The adjudicator has the power to extend the 6 month time-limit mentioned above.

If the adjudicator's decision is contrary to the original decision complained about, the employer or administering authority who made that original decision will then have to deal with the case in accordance with the adjudicator's decision.

If the decision complained about concerned the exercise of a discretion by the employing or administering authority, and the adjudicator decides that the employing or administering authority should reconsider how they exercised their discretion, they will be required to reconsider their original decision.

Stage 2

The complainant can ask the administering authority to take a fresh look at the complaint in any of the following circumstances:

- they are not satisfied with the adjudicator's first-stage decision,
- they have not received a decision or an interim letter from the adjudicator, and it is 3 months since they lodged their complaint,
- it is one month after the date by which the adjudicator told them (in an interim letter) that they would give a decision, but they have still not received that decision.

This review would be undertaken by a person not involved in the first stage decision. Again, the complaint must be made in writing and the administering authority will consider the complaint and give their decision in writing.

If the complainant is still unhappy following the administering authority's stage 2 decision, they can take their case to the Pensions Ombudsman for formal adjudication provided they do so within 3 years from the date of the original decision (or lack of a decision) about which they are complaining.

The Pensions Advisory Service (tPAS)

The Pensions Advisory Service offer a free service to all members of pension schemes who require information or guidance in relation to their pensions. They also have local advisors who can help to explain and obtain more information about scheme member's pensions for them.

Individuals can normally contact a tPAS advisor through their local Citizen's Advice Bureau or by contacting tPAS directly at 11 Belgrave Road, London SW1V 1RB, telephone 0300 123 1047. They also offer an on-line support service including Webchat – for more details go to:
http://www.pensionsadvisoryservice.org.uk/contacting-us

The Pensions Ombudsman

The Pensions Ombudsman can investigate complaints of maladministration or disputes of fact or law about decisions that have been made about pensions but the procedures laid down in the disputes rules must have been gone through first. This means that a person must first take their complaint through Stage 1 and Stage 2 of IDRP before the Pensions Ombudsman will investigate it.

TPAS previously performed a role where they assisted members with complaints prior to the IDRP procedure having been completed, however this dispute resolution function has been moved, along with the network of advisors to the Pensions Ombudsman from March 2018. The Pensions Ombudsman can, therefore, be contacted for help at any time if a person is having difficulties in sorting out their complaint under the dispute rules.

The Pensions Ombudsman can, therefore assist members during the IDRP process on a less formal basis, and investigate complaints or disputes about the handling of a case at either stage of the IDRP process. The Pensions Ombudsman's address is: 11 Belgrave Road, London SW1V 1RB, telephone 020 7630 2200.

The Pensions Ombudsman published statistics on complaints and enquiries received by them in respect of the LGPS and other public service schemes from 2015 through to 2017. These show that by far the highest proportion are regarding Ill Health – at 45.6% with misquotes, incorrect calculations and late payment following this at respectively 11.9%, 9.98% and 8.7%. These figures are provided in appendix A.

Outsourcing and admission agreements

The Best Value Authorities Staff Transfers (Pensions) Direction 2007 covers the obligation of English best value authorities (as defined in section 1 of the Local Government Act 1999), and Welsh Police authorities, to provide pension protection for the employees of those authorities where a service is contracted out and the staff performing that service are TUPE transferred to a new employer.

Pension protection can be in the form of either continued access to the LGPS, or access to a broadly comparable scheme – approved by the Government Actuaries Department (GAD passport scheme).

Continued access to the LGPS is brought about by way of an admission agreement between the administering authority and the new employer. The administering authority will need to liaise with the scheme actuary to set the new employer rate and then draw up the admission agreement.

This process can take some time and early engagement with the administering authority is important. The letting authority should take pension issues into account early on in the exercise – especially when the tender specification is drawn up. The letting authority will need to make the necessary assessments, in consultation with the contractor, concerning potential financial risks to any contract with the contractor, which may have implications for the ongoing provision of the service or function being transferred, and where an admission agreement is to be entered into, consider the level of indemnity / bond, if any, they may wish the contractor to provide. It should be noted that any closure cost due to pensions that cannot be met by the contractor (due to insolvency for example) will fall to the letting employer. Close liaison with the administering authority will also be needed.

Where a contractor wishes to offer membership of its own pension scheme, the letting authority will need to ensure that the scheme is broadly comparable to the LGPS and should discuss with the administering authority the bulk transfer terms to be offered to potential bidders if transferring staff are being offered a broadly comparable pension scheme.

Admission agreements can be open or closed. Closed agreements will include a list of the members who are entitled to membership of the LGPS and only those listed can join/remain members. Open agreements allow a category of employee to join so not only the members who transferred, allowing staff movement, though normally only those members who will work on the contract can become members. Closed agreements are generally more expensive in relation to contribution rates as there will be no new members to replace those who leave – though the liability is capped for the same reason.

The new Fair Deal policy covers schools where the employer is not a best value authority e.g. academies, free school, foundation schools, foundation special schools and voluntary aided schools as, although such schools are maintained schools, the staff in those schools are employees of the governing body of the school, not the local authority. These schools should, therefore, make sure they are conversant with the requirements of new Fair Deal.

Employees in a maintained community school, maintained community special school, maintained nursery school or maintained voluntary controlled school are employees of a local authority, and so remain covered by the Best Value Direction, rather than new Fair Deal.

Where a school is considering outsourcing a function they should contact the administering authority for advice.

Changes to the LGPS regulations are expected to incorporate the new Fair Deal policy and MHCLG have given a 2018 timescale for these.