Secretary of State Guidance – Outstanding Queries

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| **Query[[1]](#footnote-1)** | **Statutory Guidance** | **Brief description** | **Status** |
| 2 | Limit on additional Cash Commutation | [Use of AVC funds at retirement](#two) | With GAD |
| 6 | Annual Allowances Charges: Calculation of Scheme Pays Offset | [Interaction of Scheme Pays with valuing benefits for IP2016](#six) | With GAD |
| 7 | Scotland - Annual Allowance Charges: Calculation of Scheme Pays Offset | [Actuarial guidance incorrectly states the Pension Input Period is 1st April to 31st March](#seven) | With GAD |
| 8 | Individual Incoming & Outgoing Transfers | [Guidance needs clarification when a member who has flexibly retired can transfer out a separate deferred benefit.](#eight)   | With GAD |
| 9 | Factors to use for purchase of additional survivor benefits | [Multiple corrections necessary mostly to reflect that no new contracts can be taken out](#nine) | With GAD |
| 10 | Early payment of pension | [Guidance does not reflect that certain club transfers can still purchase D2 final salary benefits where membership is after 1/4/2015](#ten) | With GAD |
| 12 | All Statutory guidance where appropriate | [Some of the statutory guidance still refers/links to the withdrawn Registered Pension Scheme Manual (RPSM)](#twelve)   | With GAD |
| 14 | Individual Incoming & Outgoing Transfers | [Multiple queries raised by Capita on the transfer guidance](#fourteen) | Various see [document](http://lgpslibrary.org/assets/actgui/Queries/GAD14.docx) |
| 15 | Use of accumulated AVCs to provide additional pension under the Scheme (AVCs contracts before 1 April 2014 and Councillor members) | [The title of the guidance incorrectly includes the reference to Councillor members who are debarred](#fifteen) | CLOSED |
| 17 | Interfund transfers | [Correction to wording in paragraph 3.8(a) required](#seventeen) | CLOSED |
| 19 | Pension Debits | [Pension debits of 100% leave deferred members with a residual amount of PI payable](#nineteen) | With GAD |
| 20 | Limit on total amount of benefits – Lifetime allowance | [How should a lifetime allowance scheme pays deduction be apportioned across the different tranches of membership?](#twenty) | With GAD |
| 22 | Individual Incoming & Outgoing Transfers | [Guidance needs to be updated to take into account the revised Club memorandum](#twentytwo) | With GAD |
| 26 | Scotland – Interfund Adjustments | [Methodology used in Scottish interfunds is different to that in E&W](#twentysix) | With GAD |
| 27 | Limit on additional cash commutation | [Formula used to calculate maximum tax free cash](#twentyseven) | With GAD |
| 28 | Individual Incoming and Outgoing transfers | [Valuing protected rights – do we need to refer each case to GAD?](#twentyeight) | CLOSED |
| 29 | Limit on additional cash commutation | [Different treatment of pre and post 2014 AVC contracts](#twentynine) | With GAD |
| 30 | Limit on total amount of benefits – Lifetime allowance | [Guidance makes no reference to restrictions on commuting GMP/Section 9(2B) rights when taking a LTA excess lump sum](#thirty) | With GAD |

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| Guidance | Date  |
| E&W - Limit on additional cash commutation | **26/03/2014 – amended up to July 2015** |
| Query 2.  | **Use of AVC funds at retirement**  |
| Brief description:Where a member buys an annuity with an AVC excess (where the AVC cannot all be taken as tax free cash) outside of the Scheme, the value of the AVC fund that is used to purchase the annuity is not used in the calculation of the Capital Value of the LGPS benefits. This means it is impossible to determine how much tax free cash a member can take as the administering authority would need to know what the member wanted to do with the excess AVC fund before calculating the maximum lump sum. [Previous guidance](http://lgpsregs.org/timelineregs/GAD/Reg%2021_GAD_LTA_Add_Cash_Commutation_Guidance.pdf) referred to Type I and Type II cases in relation to AVCs. Type I being where the AVC taken at the same time as the main LGPS benefits is less than the difference between the maximum lump sum and the retirement grant from the main scheme LGPS and Type II where it was equal to or more than the difference. This was helpful and it would be useful if a version of this could be re-introduced in the current guidance. Issue linked to query 29 (see below). Query first raised on 7/8/2015 – see [attached document](http://lgpslibrary.org/assets/actgui/Queries/GAD2.docx) for full details.  |
| Query 27.  | **Formula used to calculate maximum tax free cash**  |
| Brief description:The [guidance](http://lgpsregs.org/timelineregs/GAD/GAD%20guidance%20under%20Regulation%2020%20-220506.pdf) issued by GAD on 22/5/2006 provided an alternative formula for the maximum PCLS formula ([LS + (P x 20)] / 4) because this formula causes problems as it is cyclical i.e. once you think you have the answer, you will realise that the answer is already wrong (as the components of the formula have changed whilst obtaining the answer—because it is the post-commutation pension that is relevant for the calculation. The alternative methodology was carried forward into the Lifetime Allowance and Additional Cash Commutation [guidance](http://lgpsregs.org/timelineregs/GAD/Reg%2021_GAD_LTA_Add_Cash_Commutation_Guidance.pdf) issued on 18 June 2008 but it is not included in the guidance issued on 1 March 2013 or the current guidance.  Can you please confirm why the alternative formula was removed from the guidance from 2013 onwards and if funds should still be using the methodology, as set out in the guidance on 22/5/2006, in order to avoid paying lump sums in excess of 25% of the capital value?We note that a version of the alternative formula for maximum PCLS has remained in guidance for both Scotland and Northern Ireland. Query first raised on 22/03/2017 – see [attached document](http://lgpslibrary.org/assets/actgui/Queries/GAD27.docx) for full details.  |
| Query 29.  | **Different treatment of pre and post 2014 AVC contracts**  |
| Brief description:As set out in [bulletin 126](http://lgpslibrary.org/assets/bulletins/2015/126.pdf) the current wording of regulation 33(2) of the LGPS Regulations 2013 allows members to draw up to 25% of the Capital Value of the main benefits as a lump sum and regulation 17 allows 100% of the AVC pot to be drawn as a lump sum. So, technically, the member could, at present, draw in excess of 25% of the overall value of their combined main scheme and AVC benefits. However, that would mean allowing the member to take an unauthorised lump sum - something that, as a scheme, we should not permit. Paragraph 2.7 and 2.9 of the actuarial guidance reflect the current incorrect wording of the regulations. A correction to this regulation was included in the [draft regulations](http://lgpslibrary.org/assets/cons/lgpsew/20160527CD.pdf) issued by DCLG in May 2016, however, the government have yet to respond to the regulations so we are stuck with an unworkable regulation and corresponding actuarial guidance. At the meeting with GAD and DCLG on 28/5/2015 LGA set out that given the current position in relation to tax free cash from AVCs, as set out in [bulletin 126](http://lgpslibrary.org/assets/bulletins/2015/126.pdf):1. the words “(but otherwise it is excluded, by virtue of regulation 33(2) of the 2013 Regulations)” should be deleted from the end of paragraph 2.7, and
2. the words “and the AVC arrangements were entered into prior to 1 April 2014” should be deleted from paragraph 2.9(a), and
3. paragraph 2.9(b) should be deleted.
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| Guidance | Date  |
| Annual Allowances Charges: Calculation of Scheme Pays Offset | **26/02/2015** |
| Query 6: | **Interaction of Individual Protection 2016 (IP2016) with an annual allowance scheme pays offset** |
| Brief description:How should pension benefits be valued for IP2016 where a scheme pays election for an annual allowance charge has a relevant date of prior to 5/4/2016 but the paperwork is not completed by that date? The situation is reasonably clear that if a scheme pays debit has a relevant date after 5/4/2016 then that debit could not be allowed for in the valuation of a pension at 5/4/2016. The situation is less clear for a scheme pays debit with a relevant date prior to 5/4/16 for which the paperwork is not complete by that date. HMRC have confirmed that in relation to the adjustments having to be made to the member’s benefits, they cannot be prescriptive as to when or how the adjustment has to be made, all they would say is simply  that an adjustment must be made to the member’s benefit rights.Query first raised on 16/07/2016 – see [attached document](http://lgpslibrary.org/assets/actgui/Queries/GAD6.docx) for full details |

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| Guidance | Date  |
| Early payment of pension | **18/04/2016** |
| Query 10: | **Guidance does not reflect that certain club transfers can still purchase D2 final salary benefits where membership is after 1/4/2015** |
| Club transfers from non-public sector outer Club schemes (who are still running final salary schemes) can purchase D2 final salary benefits in the LGPS, even where the member joined that non-public sector outer Club scheme after 1/4/2015 and so has no pre 1 April 2015 membership. We therefore suggest that the words “which included service before 1 April 2015” be deleted from paragraph B13 of this guidance. (NB connected query relating to para. 1.18 of the transfer guidance has already been actioned)Query first raised 08/05/2016  |

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| Guidance | Date  |
| Scotland - Annual Allowance Charges: Calculation of Scheme Pays Offset | **26/02/2015** |
| Query 7:  | **Actuarial guidance incorrectly states the Pension Input Period is 1st April to 31st March** |
| Brief description:Paragraph 2.3 states:*SPPA has confirmed that the Relevant Date (also known as the Implementation Date) will be the day coincident with the end of the pension input period. The pension input period in the LGPS runs from 1 April to 31 March, so the Relevant Date will be* *31 March*. All PIPs were aligned with the tax year from 6/4/2016 onwards with transitional rules applying for 2015/16. NB: The NI guidance has the same issue (again paragraph 2.3) but the E&W guidance is not affected. Query first raised on 18/03/2016 |

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| Guidance | Date |
| Factors to use for purchase of additional survivor benefits | **24/11/2015** |
| Query 9: | **Multiple corrections necessary mostly to reflect that no new contracts can be taken out** |
| Guidance does not reflect that no new contracts for the purchase of additional survivor benefits can be entered into after 31/3/2014. See the attached [document](http://lgpslibrary.org/assets/actgui/ew/ASBC20151124AR.pdf) setting out all the necessary amendments. Bob Holloway confirmed regulatory references are all correct. Query first raised on 26/02/2016.  |

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| Guidance | Date  |
| All Statutory guidance where appropriate | **Various** |
| Query 12.  | **Some of the statutory guidance still refers/links to the withdrawn Registered Pension Scheme Manual (RPSM)**  |
| All references and hyperlinks should now refer to the relevant [Pensions Tax Manual](https://www.gov.uk/government/publications/registered-pension-schemes-manual-rpsm/registered-pension-schemes-manual) (PTM) reference.  |

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| Guidance | Date  |
| Individual Incoming & Outgoing Transfers | **08/04/2016** |
| Query 8: | **Guidance is not prescriptive enough when referring to when a member who has flexibly retired can transfer out a separate deferred benefit.**  |
| Brief description:Paragraph 2.24 A member may be receiving pension benefits whilst still accruing further benefits, for example after “flexible retirement”. If such a member leaves service and requests a Club transfer or CETV (for the purposes of transferring a pension, not for divorce purposes) then the Club transfer or CETV should allow only for the deferred benefits but not the benefits in payment. The benefits in payment may not be transferred, and would only be considered when calculating a CETV for divorce purposes”. However, in LGA’s view the only circumstances that this would be permitted would be for a Club transfer. See [attached document](http://lgpslibrary.org/assets/actgui/Queries/GAD8.docx) for full details of query. Query first raised on 04/05/2016 |
| Query 14:   | **Multiple queries raised by Capita on the transfer guidance** |
| Brief description:See [attached document](http://lgpslibrary.org/assets/actgui/Queries/GAD14.docx) for details. LGA reviewed status of queries on 25/05/2017 and have included updates to each query raised in the document. Query first raised on 09/05/2016 |
| Query 22: | **Guidance needs to be updated to take into account the revised Club memorandum** |
| A revised Club memorandum is effective form 1 March 2017. All references in the transfer guidance are to the old guidance. In addition GMPs are no longer taken account if Club transfer which is not reflected in this guidance. Query first raised 07/12/2016 |
| ~~Query 28:~~ | **~~Valuing protected rights – do we need to refer each case to GAD?~~** |
| ~~Para 2.31 of the individual transfers guidance dated 8th April 2016 says that formulas and factors to value protected rights have not been included in the suite and such calculations should be referred to DCLG for onward transmission to GAD. This mirrors the equivalent para 2.32 in the previous version of the guidance dated 28th March 2014.~~ ~~However, in September 2015 we had confirmation from James Pepler (see attached email) that these cases did not need to be referred to DCLG and instead funds could use the factors in table 6.1 of the factor suite dated 22nd February 2012 (~~[~~http://www.lgpsregs.org/timelineregs/GAD/EW\_TVfactors\_v41\_220212.pdf~~](http://www.lgpsregs.org/timelineregs/GAD/EW_TVfactors_v41_220212.pdf)~~)) to value protected rights.~~ ~~Can funds still use those factors or should these cases be referred on to DCLG?~~~~Query first raised 02/08/2016~~ |
| Update: James Pepler confirmed by email on 25/5/2017 that it is not possible to use the 2012 factors any more so the guidance is correct and these cases do need to be referred to GAD. |

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| Guidance | Date  |
| Use of accumulated AVCs to provide additional pension under the Scheme Members who commenced payment of AVCs before 1 April 2014 and Councillor members  | 14/04/2016 |
| ~~Query 15:~~  | **~~The title of the guidance incorrectly includes the reference to Councillor members who are debarred~~** |
| ~~GAD confirmed it is also their understanding that councillors do not have this option so this guidance will be amended in due course to note this.~~ ~~Query first raised 12/05/2016/~~  |
| Update: Lamide Shittu (GAD) re-issued guidance on 6/6/2017 which corrected the above |

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| Guidance | Date  |
| Interfund transfers | **14/04/2016** |
| ~~Query 17:~~ | **~~Correction to wording in paragraph 3.8(a) required~~** |
| ~~Para 3.8(a) of the interfund transfer guidance appears to be missing the words ‘of cessation’ before ‘of active membership’~~ ~~Query first raised 24/05/2016~~ |
| Update: Lamide Shittu (GAD) re-issued guidance on 31/5/2017 which corrected the above.  |

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| Guidance | Date |
| Pension Debits | **29/04/2016** |
| Query 19: | **Pension debits of 100% leave deferred members with a residual amount of PI payable** |
| Query relates to when a pension debit is applied to a deferred member with a 100% sharing order. Paragraph 4.4 confirms that the pension debit is increased with effect from the Transfer day: *4.4 Both active and deferred members’ debits should be increased from the Transfer day until benefits come into payment as if they were deferred pensions.* However, where a sharing order directs that 100% of a deferred pension is to be awarded to the ex-spouse this leaves a residual amount of PI payable to the deferred member because the deferred benefit is increased for the full year whereas the debit is increased from the transfer day (unless by chance the transfer day and the pensions increase day happen to be the same). This leaves a situation where although 100% of the member’s benefits have been debited there is still a small amount of PI payable – is this correct? If one takes the view that there is no PI actually payable under section 8 of the PI Act 197 as there are no benefits payable to the member on which to apply pensions increase then it would seem not. *8(1)For purposes of this Act "pension" includes (subject to section 9 below)-**(a)any allowance or other benefit payable (either in respect of the services of the pensioner or in respect of the services of any other person)  by virtue of any superannuation scheme, whether contained in an enactment or otherwise, including a superannuation scheme providing benefits in the case of injury or death*;Query first raised on 18/10/2016 |
| Update from meeting held on 23/05/2017 – LGA to suggest pragmatic solution and advise GAD by July if guidance need updating.  |
| Update: On 07/06/2017 LGA forwarded the below to DCLG and GAD:In LGA’s view, the residual amount of PI would be payable to the debited member, albeit that the fund may, where appropriate, choose to pay the amount due as a trivial commutation or de minimis payment.   Will the guidance be amended to reflect this position if DCLG and GAD are both in agreement?  |

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| Guidance | Date |
| Limit on total amount of benefits – Lifetime allowance | **14/04/2016** |
| Query 20:  | **How should a lifetime allowance scheme pays deduction be apportioned across the different tranches of membership?** |
| The guidance is silent on how a LTA scheme pays deduction should be applied to a member’s benefits. This is different to  the annual allowance guidance for scheme pays which specifically states in paragraphs: -1.3       In accordance with regulation 16 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 a pension offset determined on or after 1 April 2014 can apply to benefits earned prior to 1 April 2014.2.4       The scheme pays offset will be initially based on the pension relating to the Post 1 April 2014 service (i.e. on the current tranche of benefits). Where at retirement, the post 2014 pension is insufficient to cover the pension offset then the balance of the offset should be initially applied to the pension earned between 1 April 2008 and 31 March 2014, with suitable adjustment for early or late payment by reference to the post-2014 NPA. If the offset cannot be met by the post-2008 benefits then the case should be referred to DCLG.   We are not sure if the LTA debit should be apportioned in the same way as instructed for the Annual Allowance Scheme Pays Debit for several reasons:* The LTA debit represents the tax charge that has arose as a result of the member’s lifetime pension saving within the LGPS in that employment(s) thus at least in the short-term, that value can most likely be attributed to the final salary element of the pension
* The AA Scheme Pays debit represents that tax charge that has over a single PIP
* How the LTA debit is proportioned will affect how it is revalued going forward (i.e. if deducted from FS in the first year of leaving it would receive a pro-rata PI the following April – if deducted from CARE it will receive part year TO 1 second after midnight on 1 April and pro rata PI thereafter).

I would, therefore, be grateful if you could advise how the LTA debit is deducted from LGPS benefits (i.e. CARE / FS or a combination of both)? See [attached document](http://lgpslibrary.org/assets/actgui/Queries/GAD20.docx) for full details. Query first raised on 19/10/2016.  |
| Update from meeting held on 23/05/2017 – LGA to suggest pragmatic solution and advise GAD by July if guidance need updating.  |
| Update: On 07/06/2017 LGA forwarded the below to DCLG and GAD:LGA’s view is that the LTA debit should be split proportionately across the different tranches of benefits payable to the member.  For example:LTA debit: £1,500Annual pension prior to debit:Pre 2008 benefits: £20,000 2008 to 2014 benefits: £5,000Post 2014 benefits: £5,000Annual Pension post debit:Pre 2008 benefits: £20,000 less £1,000 = £19,0002008 to 2014 benefits: £5,000 less £250 = £4,750Post 2014 benefits: £5,000 less £250 = £4,750If DCLG and GAD are both in agreement with this approach will the guidance be amended accordingly? |
| Query 30:  | **Guidance makes no reference to restrictions on commuting GMP/Section 9(2B) rights when taking a LTA excess lump sum** |
| Paragraphs 2.20 and 2.22 of the guidance says that a member can commute pension above ALTA for a lump sum. However, whilst that is permissible under the Finance Act 2004 it appears that, as the LGPS was formerly a contracted out scheme, it cannot allow commutation of pre 6/4/1997 GMP or post 5/4/1997 section 9(2B) rights for a LTA excess lump sum. This is because regulations 18 and 25 of the Occupational Pension Schemes (Schemes that were Contracted-out) (No 2) Regulations 2015 (SI 2015/1677) do not permit such rights to be commuted. At a meeting on 28/5/2015, GAD and DCLG agreed to consider the above points, and, if appropriate, make changes to the guidance. In addition, the guidance needs updating to take into account that the Finance Act 2016 has now been enacted and introduced Fixed and Individual Protection 2016. The first part of this query was originally included in [bulletin 132](http://lgpslibrary.org/assets/bulletins/2015/132.pdf) (page 5) – May 2015.  |

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| Guidance | Date |
| Scotland - Interfund Transfers | **26/02/2015** |
| Query 26:  | **Methodology used in Scottish interfunds is different to that in E&W** |
| In the latest “Individual Incoming and Outgoing Transfer” guidance (dated 9 March 2017) GMPs are ignored for Club transfers out.  So, on the face of it, GMPs should now be excluded from Scottish interfund adjustments. However, that would put the Scottish guidance completely out of step with that applicable in E&W where the interfund is calculated as a non-Club out and in, with the GMP taken into account; whereas in Scotland it would be a Club out and, for post 15 benefits, non-Club in – with the GMP not taken into account. Please advise accordingly. Query first raised on 24/04/2017 |

1. Corresponds to query number on referral log used in meeting of 23/05/2017 [↑](#footnote-ref-1)