



Local Government Pensions Committee
Secretary, Jeff Houston

LGPC Bulletin 120 – November 2014

This month's Bulletin contains a number of general items of information.

Please contact Mary Lambe with any comments on the contents of this Bulletin or with suggestions for other items that might be included in future Bulletins. [LGPC contacts](#) can be found at the end of this Bulletin.

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Aggregation

A paper setting out the latest position on aggregation (and some issues concerning revaluation) following discussions held on the topic in a breakout session at the Torquay Pension Managers' conference on 18 November 2014 is attached to this Bulletin - see [appendix 1](#) below.

A meeting between the LGPC Secretariat, DCLG, GAD and the pensions administration software providers is currently scheduled for the 16 December to consider a number of actuarial matters, including revaluation.

The LGPC Secretariat is also seeking an urgent meeting with HM Treasury officials to seek to persuade them that the view they have so far taken is incorrect. The Secretariat is hoping to persuade HM Treasury that when an active member of the LGPS in England or Wales does **not** aggregate membership from a LGPS deferred benefit in England or Wales which includes pre 1 April 2014 final salary membership (i.e. retains separate deferred benefits) and does **not** have a continuous break of more than 5 years in active membership of a public service pension scheme (as defined in section 1 of the Public Service Pensions Act 2013), the unaggregated deferred benefit **does not** retain an **ongoing** final salary link.

The LGPC Secretariat will notify all administering authorities in England and Wales of the outcome from the pensions administration software providers' meeting scheduled for 16 December and of any outcomes from the proposed meeting with HM Treasury.

The LGPC Secretariat will also issue templates for the information to be provided to scheme members who have a decision to make over whether or not to aggregate membership (i.e. the aggregation leaflet).

LGA/LGPC Response to draft Governance and Cost Management Regulations Consultation

The LGA/LGPC response to the recent consultation from the Department for Communities and Local Government (DCLG) on the draft LGPS (Amendment) Regulations 2014 is available from the [LGPS Regulations website](#). In summary the response included the following information:

Local Pension Boards

- **Membership - regulation 107(3):** The LGA seeks clarification on the restriction on elected members and officers of an administering authority who are responsible for the discharge of any function under the LGPS 2013 Regulations. We believe that such individuals should only be precluded from being on the local pension board for that administering authority, rather than being precluded from sitting on any local pension board in England and Wales and the regulation should make this clear (i.e. an elected member or officer from fund A should be able to sit on the local pension board of fund B).
- **Membership - Otherwise appointed members:** The nature and number of other members of a local pension board should be spelt out and their number limited to ensure they cannot out-vote the employer and scheme member representatives on a board.

- **Membership - Chair:** The appointment of a chair from outside of the local pension board membership should be subject to confirmation by the membership of the local pension board.
- **Timeframe for implementation:** The very restricted timescale remaining before 1 April 2015 may result in flawed structures being hastily created which may not provide for an effective employer voice.
- **Joint Pension Boards and also provisions for specific cases (closed funds):** Provision for joint boards where there is a joint discharge of the function across two or more scheme managers should be expressly provided for in the regulations. In addition the regulations should make provision for flexibility in the case of closed funds with a small employer base, providing more dynamic ways in which these atypical administering authorities can establish a local pension board.

Scheme Advisory Board

- **Funding:** Clarity on the amount of, and arrangements for, Scheme Advisory Board funding should be forthcoming as soon as possible.

Cost Management

- **Interaction between two cost management processes:** We are concerned over the silence in the regulations with regard to the interaction between the two cost management processes but welcome the letter from the Minister inviting the Scheme Advisory Board to set out proposals for such interaction.

HR and Payroll Guides

In November the HR (now version 3.6) and Payroll (now version 3.5) Guides were both updated and are available on the [LGPS Regulations website](#). Please see tracked changes versions for details of the amendments that have been made.

APC Calculator

Since the introduction of the Additional Pension Calculator (APC) calculator to buy extra and lost pension the LGPS Secretariat have received numerous comments and suggestions to improve how the calculator works as well as how the information is displayed. The Secretariat consider all comments received but it is not always possible to make the suggested amendments. This is normally due to the fact that we need to ensure the calculator meets the requirements of all Pension Funds.

Going forward, unless the calculator has an error in the way the calculation is being carried out, or there is a legislative change requiring an amendment, we will only review comments on process and design every quarter. To incorporate comments we've received over recent months we will make the final update for 2014 at the end of December and release in early January 2015.

Following receipt of a number of comments the following changes will be made to the APC calculator in December 2014:

- **Buying Lost Pension Facility –** When a member wants to make an election to buy lost pension the calculator will produce two forms (one for the Pension Fund and one for the Employer) and relevant headings will be added to both forms to indicate the recipient of each form and the text will be amended on the bottom of each form to also indicate the correct recipient for that form).

- **Main page for the APC calculator** – Additional text is to be added in the introductory section (top of APC calculator homepage) that confirms that if a member draws their benefits earlier than their Normal Pension Age then the APC will be reduced (other than in the case of ill-health retirement) or increased if benefits are drawn after the member's Normal Pension Age.

We have also considered a number of other suggestions but decided **not** to incorporate these in the next review of the APC calculator including:

- **To add a start date to the input details on buying lost pension for the period they are buying lost pension for** – The reason for rejecting this request is that if DCLG change the regulations to allow for a person to buy multiple periods of lost pension through a Shared Cost APC in, for example, one scheme year then this date would become obsolete.
- **Add a tick box that indicates whether the period the member is buying lost pension for is for the whole period of absence or only part of the absence** – we don't think this should be included, the idea being that a member is being given the lost pensionable pay/assumed pensionable pay by their employer for their whole period of absence and, therefore, the expectation is that the lost pension they are covering would cover the whole of that amount. Where they wish to buy a partial amount of the lost pension they should instead do so through the buying extra pension route.
- **Add field for employer's name** – we feel that given that the main NI identifier and post reference number are included this information isn't also required. In addition if Pension Funds receive a form and cannot locate the member on their database (or an employer for that matter) they can use the LGPS database (once available) to identify which Fund that request should be sent to.

Should you have a suggestion regarding the APC calculator not noted above that you wish the LGPC Secretariat to consider please email suggestions to mary.lambe@local.gov.uk by Friday 19 December 2014 to allow them to be considered in the final review for this year.

Fair Deal in the LGPS

The Fair Deal Working Group held their first meeting on the 2 October 2014. The Working Group, which is comprised of representatives from the Trade Unions (GMB, Unite and UNISON), employers and their representatives (British Services Association, the Compass Group and LGA) and DCLG held discussions on the Fair Deal provisions within the LGPS.

The minutes outline that where public sector staff are compulsorily transferred to a new employer the pension protection "A Fair Deal for Staff Pensions" would be delivered by retaining scheme members in the pension scheme they were in before the transfer. There are however a number of implications for the LGPS. In particular the current Best Value Authorities Staff Transfers (Pensions) Direction 2007 cannot remain as currently drafted and neither can it be altered to widen the scope beyond its current remit (best value authorities).

The Working Group are therefore tasked with working through what is required to ensure the new policy on the provisions of Fair Deal in the LGPS (as agreed as part of the LGPS 2014 reforms through workstream 1) can be implemented into the Scheme's regulatory

framework. For further details on these discussions please read the minutes of the meeting which are available on the [LGPS Regulations website](#).

Shadow Scheme Advisory Board

Update of Shadow Scheme Advisory Board activities - November 2014

The November 2014 update of the Shadow Scheme Advisory Board's (SSAB) activities is available on the [LGPS Board's website](#). As well as providing brief updates in respect of the activities of the Board sub-committees over the past few months, this edition also includes content in respect of:

- the deficit management project currently being worked on by the Board, and
- the 2012/13 scheme annual report which was published in November.

Scheme Annual Report 2013

The SSAB issued the first ever scheme wide annual report for the LGPS in England and Wales in November. The aim of this Annual Report is to provide information about the LGPS, the largest defined benefit occupational pension scheme in England and Wales, for its members, employers, and other stakeholders. It aggregates information supplied in the 89 fund annual reports, as at 31 March 2013. For more details please visit the [SSAB's website](#).

Response to draft Governance and Cost Management Regulations

The Shadow Scheme Advisory Board response to the recent consultation from the Department for Communities and Local Government (DCLG) on the draft LGPS (Amendment) Regulations 2014 is available from the [SSAB's website](#).

Guidance on the creation and operation of local pension boards

The consultation on the guidance covering the creation and operation of local pension boards from the SSAB ended 21 November 2014. The Board Secretariat is currently reviewing the 22 responses received and will be making any necessary amendments in the coming weeks. In addition the guidance will be reviewed in line with final regulations which are expected to be made and laid in January 2015 as well as the Pension Regulators Code of Practice no 14 which is expected to be made and laid before Parliament in December. It is anticipated that the final version of this guidance will be issued in January 2015 in line with the making of final regulations. In addition a Questions and Answers document on the subject of local pension boards is also being developed by the SSAB and due to be issued at the same time as the guidance.

Other News and Updates

Pension Schemes Bill

The [Pension Schemes Bill 2014/15](#) is currently making its way through the House of Lords. This Bill is one of two pieces of legislation (the other is the Taxation of Pensions Bill as referred to in [Bulletin 119](#)) being considered by Parliament at the moment. Both Bills deal in the main with the regulatory changes required for defined contribution schemes following the new flexibilities announced in the 2014 Budget to allow individuals who are over the age of 55 to access their defined contribution pension in more flexible ways from April next year, subject to their marginal rate of tax and scheme rules.

As part of the Pension Schemes Bill 2014/15 one of the impacts on funded public service pension schemes, such as the LGPS, is that the government has sought to extend the

flexibility being afforded to defined contribution members as far as possible by allowing transfers out of the LGPS to continue from April 2015. However in order to protect taxpayers from significant cost risk if members of funded public service schemes were to transfer out to a defined contribution scheme and draw down their pension flexibly, the government will introduce a number of safeguards for transfers from funded public service pension schemes.

As a result the Government in November laid a series of amendments to the Pension Schemes Bill. Of these, three affect public service pension schemes. These are:

- A requirement to take independent financial advice when transferring from a defined benefit to a defined contribution scheme (as opposed to the “Guidance Guarantee” that will be offered to those in defined contribution arrangements as they approach retirement);
- A ban on transfers out of unfunded public service schemes to a defined contribution scheme as previously announced by the government, and
- A new safeguard that will give Ministers a power to reduce CETVs in funded public service pension schemes, should it prove necessary to protect the taxpayer.

DCLG recently issued a summary paper on the amendments introduced by government and this can be found on the [LGPS Regulations website](#).

In addition to the impacts around transfers from the LGPS to DC schemes there are also potential impacts for the AVC provisions in the scheme as well as for the conversion factors used in defined benefit schemes (including the LGPS) i.e. to determine if these should be reviewed given the wholesale changes being introduced for DC schemes. Once the Secretariat have further information on these or any further impacts following either the Pension Schemes Bill or the Taxation of Pensions Bill we will include that information in a future Bulletin.

LGA/LGPC Response to the Disclosure Regulations consultation

The LGA/LGPC response to the recent [DWP consultation](#) on technical amendments to the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 can be found on the [LGPS Regulations website](#).

Non-consolidated Pay - Pensions Implications

The National Joint Council for Local Government Services and the Joint Negotiating Committee for Local Authority Craft and Associated Employees have reached agreement on rates of pay applicable from 1 January 2015 in England and Wales. However, the agreements include provisions for non-consolidated payments to be paid in December 2014 and, in the case of employees covered by the NJC for Local Government Services, for a further non-consolidated payment to be made in April 2015 to certain employees.

The non-consolidated payment is pensionable for all active members of the LGPS on 1 December 2014 (except in cases where that member is on a career break). The LGPC Secretariat issued [Circular 286](#) which seeks to provide advice on how the non-consolidated payments should be treated for pension purposes. In particular it deals with the treatment of the non-consolidated payment for both the career average scheme and for those members who have membership before 1 April 2014 as well as how it should be treated for those members who are on relevant child related leave, reduced or no pay sick leave, leave of absence (both authorised and unauthorised) and strike breaks. For more information please read [Circular 286](#).

Marriage Same Sex Couples Act - Phase 2 Negative Order

On 19 November 2014 the phase 2 negative order of the [Marriage \(Same Sex Couples\) Act 2013](#) was laid and comes into forces in England and Wales on the 10 December with provisions for Scotland coming into force on 16 December 2014.

This phase 2 order deals with the conversion of civil partnerships to marriages, and implementation of the transgender exception in pension schemes. The policy on conversion of civil partnerships to marriage requires no action on public service schemes as married same sex couples are treated in the same way as civil partners for the purpose of survivor benefits.

Under Phase 2 a marriage will be able to continue in the event that one or both spouses change legal gender, provided both spouses agree. An exception to the general policy on survivor benefits for same sex spouses was made during the passage of the Act to deal with concerns raised about the potential 'loss' of survivor pension in such scenarios because survivor benefits for married same sex couples are less generous than they are for opposite sex couples. Without the exception such a loss to a surviving spouse, as a result of a decision taken by the scheme member to change legal gender, would be likely to violate Article 14 of the European Convention of Human Rights.

Timeline Regulations will need to be amended to reflect the relevant changes to the LGPS 1997 Regulations. Once actioned an update will be included in a future Bulletin.

DWP publishes research on automatic enrolment opt-out rates

The Department for Work and Pensions (DWP) published their ad hoc research report on 9 November. The research which covered 46 employers who staged between January and July 2014 found that 44% of workers were already members of a pension scheme before the introduction of automatic enrolment. The research states that 35% of workers were automatically enrolled with 12% of these opting out. For more information visit the [Government's website](#).

DWP publishes State Pension leaflets

In November DWP published a host of leaflets relating to the State Pension these include:

- [State Pensions: your guide](#) - which gives information about the basic State Pension
- [Deferring your State Pension](#) - which explains how putting off the date to claim State Pension can mean more an individual gets more money.
- [Your State Pension statement explained](#) - for men born on or after 5 April 1951 and women born on or before 5 April 1953
- [Combined Pension Statement: your State Pension statement explained](#)
- [Combined Pension Statement: your State Pension estimate explained](#)
- [Your new State Pension explained](#) - to help explain the changes to the State Pension from 6 April 2016, and,
- [The new State Pension information for employers and trustees](#) with open, contracted out defined benefit pension schemes (private sector).

DWP publishes 2014 Automatic Enrolment Evaluation Report

DWP has published its Automatic Enrolment Evaluation Report for 2014. Figures (up to September 2014) state that more than 4.7 million workers have been automatically enrolled by nearly 34,000 employers since the start of automatic enrolment. The report can be found at the [Government's website](#).

Legislation

United Kingdom

| SI | Reference Title |
|-----------|---|
| 2014/3061 | The Marriage (Same Sex Couples) Act 2013 and Marriage and Civil Partnership (Scotland) Act 2014 (Consequential Provisions) Order 2014 |

Useful Links

[LGA Pensions page](#)

[LGPS members' website](#)

[LGPS 2014 members' website](#)

[LGPS Advisory Board website](#)

[LGPS 2014 Regulations and Guidance website](#)

[LGPS Discretions](#) lists all the potential discretions available within the LGPS in England and Wales.

[LGPS Discretions](#) lists all the potential discretions available within the LGPS in Scotland.

[Qualifying Recognised Overseas Pension Schemes](#) approved by HMRC and who agreed to have their details published.

[The Timeline Regulations](#)

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Distribution sheet

Pension managers (internal) of administering authorities
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APPENDIX 1

Aggregation / non-aggregation and the final salary link

A: Introduction

It is clear from section 20 of, and Schedule 7 to, the Public Service Pensions Act 2013 that if

- a) a person has final salary membership in a public service pension scheme (as defined in section 1 of the Act), other than the LGPS in England or Wales, and elects to transfer that membership to the LGPS in England or Wales, or
- b) a person has pre 1 April 2014 final salary membership in the LGPS in England or Wales and aggregates that membership with another period of membership in the LGPS in England or Wales, and
- c) does **not** have a continuous break of more than 5 years in active membership of a public service pension scheme

the member will continue to be entitled to final salary benefits in respect of that transferred / aggregated final salary membership.

It is equally clear that if a person has final salary membership in a public service pension scheme (as defined in section 1 of the Act), other than the LGPS in England or Wales, and does **not** elect to transfer that membership to the LGPS in England or Wales, the deferred benefit held in that former scheme (including a deferred benefit held in the LGPS in Scotland or Northern Ireland) will not have an **ongoing** link to the salary the member is receiving from their employment which is subject to the LGPS in England or Wales (even where the person has not had a continuous break of more than 5 years in active membership of a public service pension scheme).

However, whereas:

- a) a member who moves from the NHS to local government and does not transfer their accrued NHS Pension Scheme rights to the LGPS in England or Wales, or
- b) a member moves from local government in Scotland to local government in England or Wales and does not transfer their accrued rights in the LGPS in Scotland to the LGPS in England or Wales

does **not** have an ongoing final salary link to the salary the member is receiving from their employment which is subject to the LGPS in England or Wales, HM Treasury have so far taken the view that the Public Service Pension Act 2013 requires that when an active member of the LGPS in England or Wales does **not** aggregate membership from a LGPS deferred benefit in England or Wales which includes pre 1 April 2014 final salary membership (i.e. retains separate deferred benefits) and does **not** have a continuous break of more than 5 years in active membership of a public service pension scheme (as defined in section 1 of the Public Service Pensions Act 2013), the unaggregated deferred benefit **does retain** an **ongoing** final salary link.

The LGPC Secretariat is seeking a further meeting with HM Treasury officials to seek to persuade them that the view they have taken is not correct, not just because of the numerous practical and funding implications outlined in **Sections B to G** of this paper but because:

- a) their view runs contrary to the standing policy that there should be no retrospective improvements to benefits. In the view of the LGPC Secretariat the purpose of section 20 of, and Schedule 7 to, the Public Service Pensions Act 2013 is to ensure that a member with accrued final salary rights should not, in terms of the final pay used to calculate those accrued benefits, be placed in a worse position than they would have been had the final salary schemes not be closed. The intention was not to introduce a retrospective improvement to benefits and to place members in a materially better position than they would have been had the final salary schemes not be closed. Under the LGPS Regulations prior to 1 April 2014 a member who did not elect to aggregate previous LGPS deferred benefits did not retain an **ongoing** final salary link. The line currently being taken by HM Treasury would mean that such a person would now have an ongoing final salary link. This represents a retrospective improvement as it is a 'benefit' they would not have been entitled to under the old Scheme and, as shown in the final paragraph of **Section B**, retrospectively increases the value of not just future unaggregated deferred benefits but of deferred benefits where the member had, prior to 1 April 2014, already retained separate benefits; and
- b) it therefore places an unwarranted additional burden on tax payers; and
- c) it places administering authorities in a position of not being able to comply with the annual allowance calculations required under the Finance Act 2004; and
- d) there is an interpretation of Schedule 7 of the Public Service Pensions Act 2013, as set out in the opening paragraphs of Section D below, under which an unaggregated deferred benefit in the LGPS would **not** have an **ongoing** final salary link.

The LGPC Secretariat hopes that the meeting being sought with HM Treasury will, for the reasons set out above, lead HM Treasury to agree that there is no ongoing final salary link where a member does not aggregate LGPS benefits. However, all meetings and correspondence with HM Treasury to date have not yet persuaded them to take that view. Sections B to G of this paper have, therefore, been drafted to set out the implications should the LGPC Secretariat be unsuccessful in its final attempt to persuade HM Treasury that, where a member does not aggregate LGPS benefits, there is no ongoing final salary link on the unaggregated deferred benefit and Annex 1 provides some sample situations.

Sections B to G of this paper consider who the **ongoing** final salary link would / would not apply to and how administering authorities should deal with an **ongoing** final salary link at a practical level (e.g. for annual benefit statements, annual allowance calculations, triennial valuations, when the member ceases active membership in Employment B before drawing the deferred benefits from Employment A, when the member draws deferred benefits from Employment A before ceasing active membership in Employment B, what if the final pay in Employment A is higher than that in Employment B, what if the final pay in Employment B is higher than that in Employment A, who meets the cost of the ongoing final salary link).

Section H of this paper considers some of the practical implications where benefits are aggregated (e.g. implications for inter-fund adjustment calculations, implications for revaluation of benefits).

The questions posed throughout this paper were considered during a break out session attended by many administering authorities at the Pension Managers' conference in

Torquay on 18 November 2014. The answers shown in this paper reflect the views agreed at that session.

B: The requirements of the Public Service Pensions Act 2013

The relevant parts of the Public Service Pensions Act 2013 are reproduced below.

1 Schemes for persons in public service

- (1) *Regulations may establish schemes for the payment of pensions and other benefits to or in respect of persons specified in subsection (2).*
- (2) *Those persons are-*
 - (a) *civil servants;*
 - (b) *the judiciary;*
 - (c) *local government workers for England, Wales and Scotland;*
 - (d) *teachers for England, Wales and Scotland;*
 - (e) *health service workers for England, Wales and Scotland;*
 - (f) *fire and rescue workers for England, Wales and Scotland;*
 - (g) *members of police forces for England, Wales and Scotland;*
 - (h) *the armed forces.*

20 Final salary link

Schedule 7 contains provision for a "final salary link" in relation to schemes to which section 18(1) applies

18 Restriction of existing pension schemes

- (1) *No benefits are to be provided under an existing scheme to or in respect of a person in relation to the person's service after the closing date.*
- (2) *In this Act "existing scheme" means a scheme listed in Schedule 5 (whether made before or after this section comes into force).*
- (3) *Subsection (1) does not apply -*
 - (a) *in relation to an existing scheme which is a defined contributions scheme;*
 - (b) *to benefits excepted by Schedule 5.*
- (4) *The closing date is -*
 - (a) *31 March 2014 for an existing scheme which is a relevant local government scheme, and*
 - (b) *31 March 2015 in any other case.*
- (10) *In subsection (4), "relevant local government scheme" means regulations under section 7 of the Superannuation Act 1972 which relate to persons in England and Wales.*

Schedule 7

Final Salary Link

Sections 20 and 31

Persons who remain in an old scheme for past service

- 1(1) *This paragraph applies in a case where -*

- (a) *a person is a member of an existing scheme to which section 18(1) applies or a scheme to which section 31(2) applies ("the old scheme") by virtue of his or her pensionable service for that scheme ("the old scheme service"), and*
 - (b) *the person is also a member of a scheme under section 1 or a new public body pension scheme ("the new scheme") by virtue of his or her pensionable service for that scheme ("the new scheme service").*
- (2) *If, in a case where this paragraph applies -*
- (a) *the old scheme service and the new scheme service are continuous, and*
 - (b) *the person's employer in relation to the old scheme service is the person's employer in relation to the new scheme service (or any other employer in relation to the new scheme),*
- then, in determining the person's final salary for any purpose of the old scheme -*
- (i) *the old scheme service is to be regarded as having ended when the new scheme service ended, and*
 - (ii) *such earnings as scheme regulations for the new scheme may specify, being earnings derived by the person from the new scheme service, are to be regarded as derived from the old scheme service (subject to sub-paragraph (3)).*
- (3) *The amount of the earnings that are to be regarded as derived from the old scheme service must not be materially less than the amount of the earnings that would have been the person's pensionable earnings derived from that service had the new scheme service been old scheme service.*

Persons whose benefits under an old scheme are transferred to another closed scheme

- 2(1) *This paragraph applies in a case where -*
- (a) *a person has been a member of an existing scheme to which section 18(1) applies or a scheme to which section 31(2) applies ("the old scheme") by virtue of his or her pensionable service for that scheme ("the old scheme service"),*
 - (b) *the person is also a member of a scheme under section 1 or a new public body pension scheme ("the new scheme") by virtue of his or her pensionable service for that scheme ("the new scheme service"),*
 - (c) *the person's rights to benefit under the old scheme have been transferred after the date referred to in section 18(1) or 31(2) to an existing scheme to which section 18(1) applies or a scheme to which section 31(2) applies ("the transfer scheme"), and*
 - (d) *the old scheme service is treated, by virtue of that transfer, as pensionable service of the person for the transfer scheme ("the deemed transfer scheme service").*
- (2) *If, in a case where this paragraph applies -*
- (a) *the deemed transfer scheme service and the new scheme service are continuous, and*
 - (b) *the person's employer in relation to the new scheme service is an employer in relation to the transfer scheme,*
- then, in determining the person's final salary for any purpose of the transfer scheme*
-

- (i) *the deemed transfer scheme service is to be regarded as having ended when the new scheme service ended, and*
 - (ii) *such earnings as scheme regulations for the new scheme may specify, being earnings derived by the person from the new scheme service, are to be regarded as derived from the deemed transfer scheme service (subject to sub-paragraph (3)).*
- (3) *The amount of the earnings that are to be regarded as derived from the deemed transfer scheme service must not be materially less than the amount of the earnings that would have been the person's pensionable earnings derived from that service had the new scheme service been deemed transfer scheme service.*
- (4) *In sub-paragraph (1)(c), the reference to a transfer of rights to benefit includes the making of a transfer payment in respect of such rights.*

Continuity of employment

- 3(1) *For the purposes of paragraphs 1(2)(a) and 2(2)(a), there are to be disregarded -*
- (a) *any gap in service where the person was in pensionable public service;*
 - (b) *a single gap of service where the person was not in pensionable public service, if that gap does not exceed five years;*
 - (c) *two or more gaps in service where the person was not in pensionable public service, if none of the gaps exceeds five years.*
- (2) *In this paragraph, "pensionable public service" means service which is pensionable service in relation to -*
- (a) *a scheme under section 1, or*
 - (b) *a new public body pension scheme.*

Movement between new schemes

- 4 *Where the condition in sub-paragraph (1)(b) of paragraph 1 or 2 applies by virtue of periods of pensionable service for two or more different schemes -*
- (a) *identify the last period of pensionable service by virtue of which that paragraph applies and the scheme to which that service relates, and*
 - (b) *disregard, for the purposes of that sub-paragraph, periods of pensionable service relating to other schemes.*

Final salary link not to apply again to a pension in payment

- 5(1) *Scheme regulations may provide that where a pension in payment under a scheme to which section 18(1) or 31(2) applies has been calculated by reference to this Schedule, the pension cannot be recalculated by reference to this Schedule where there is a subsequent period of pensionable public service (within the meaning of paragraph 3).*
- (2) *Provision made under sub-paragraph (1) may in particular be made by amending the scheme under which the pension is in payment.*

There appears to be nothing in Schedule 7 of the Public Service Pension Act 2013 that precludes the **ongoing** final salary link from applying to deferred benefits awarded pre 1 April 2014 where the member re-joined the LGPS pre 1 April 2014 and did not elect to aggregate benefits (provided the member did **not** have a continuous break of more than 5 years in active membership of a public service pension scheme - as defined in section 1 of the Public Service Pensions Act 2013). Thus a member who retained deferred

benefits **prior to 1 April 2014** (because, for example, their pay on joining the new employer prior to 1 April 2014 was, in real terms, less than the pay from the former employment as increased by Pensions Increase) will benefit from the **ongoing** final salary link if, for example, they get a promotion that takes the pay in the new employment, in real terms, to more than the pay from the former employment as increased by Pensions Increase. There is, thus, an **ongoing** final salary link for such members (which this paper will refer to as **category 1 members**), even though when they made their initial decision there might not have been any **ongoing** final salary link given that Schedule 7 of the Public Service Pensions Act 2013 did not come into force until 28 February 2014 (SI 2014/433). Hence some members will benefit from an ongoing final salary link that they were not expecting.

Question 1: *Do you agree with this analysis in respect of Category 1 members?*

Answer: Yes

C: The requirements of the LGPS Regulations

Under the Local Government Pension Scheme Regulations 2013 and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 there are two categories of member who, having become entitled to a deferred benefit in the LGPS in England or Wales can, upon re-joining the LGPS in England or Wales after 31 March 2014 (or upon continuing in an LGPS employment in England or Wales that was concurrent with the employment that ceased on or after 1 April 2014 and which gave rise to the deferred benefit), elect to retain that deferred benefit i.e. the membership is not aggregated.

The two categories are set out below.

Category 2 members – these are active members of the LGPS in England or Wales who:

- a) have a deferred benefit from a period of membership of the LGPS in England or Wales which ceased after 31 March 2014 or have a deferred benefit from the cessation (after 31 March 2014) of a concurrent LGPS employment in England or Wales, **where**
- b) the deferred benefit includes pre 1 April 2014 and post 31 March 2014 membership, **and**
- c) the member was an active member on both 31 March 2014 and 1 April 2014, **and**
- d) since becoming entitled to the deferred benefit, the member **has not** had a continuous break in active membership of a public service pension scheme of more than 5 years.

In such a case:

- a) the amount in the member's (post 31 March 2014) deferred pension account **must** automatically be aggregated with the active pension account or, if there is more than one, with whichever of the active accounts the member chooses, **and**
- b) the pre 1 April 2014 final salary membership will automatically be attached to the relevant active pension account (with an **ongoing** final salary link), **unless**
- c) within 12 months of the date the member re-joined the Scheme (or such longer period as the employer in relation to the new employment allows) or within 12 months of the date the concurrent employment ceased (or such longer period as the employer in relation to the ongoing employment allows), the member makes

an election to the appropriate administering authority to retain the deferred benefit as a separate benefit.

[See regulations 22(7) and 22(8) of the LGPS Regulations 2013].

If the member makes such an election, the member will retain a deferred benefit in respect of the employment that had ceased, made up of the post 31 March 2014 pension account and the pre 1 April 2014 final salary membership. The element of the deferred benefit that relates to the pre 1 April 2014 final salary membership still retains an **ongoing** final salary link [s20 and paragraph 1 of Schedule 7 to the Public Service Pensions Act 2013]. This is discussed in **section D** below.

Category 3 members - these are active members of the LGPS in England or Wales who:

- a) have a deferred benefit from a period of membership of the LGPS in England or Wales which ended prior to 1 April 2014, **and**
- b) re-join the LGPS in England or Wales on or after 1 April 2014, **and**
- c) since becoming entitled to the deferred benefit, **have not** had a continuous break in active membership of a public service pension scheme of more than 5 years.

Such a member can make an election to the appropriate administering authority within 12 months of re-joining the Scheme to be treated as if he / she had been an active member on 31 March 2014 and 1 April 2014. [See regulation 5(5) of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014]

Where the member makes such an election, the pre 1 April 2014 membership will be automatically attached to the relevant active pension account (and will entitle the member to a final salary benefit in respect of that membership). However, if the member:

- a) does **not** make an election to be treated as if he / she had been an active member on 31 March 2014 and 1 April 2014, and
- b) does **not** elect for the transfer value in respect of the pre 1 April 2014 membership to be used to purchase an amount of earned pension in the member's active pension account¹

¹ It should be noted that where a member left prior to 1 April 2014 with a **deferred benefit** and rejoins the Scheme on or after 1 April 2014 **and**, since becoming entitled to the deferred benefit, the member **has not** had a break in active membership of a public service pension scheme of more than 5 years the member can make an election to the appropriate administering authority within 12 months of rejoining the Scheme to be treated as if he / she had been an active member on 31 March 2014 and 1 April 2014. Where the member does **not** do so the member may elect for the transfer value in respect of the pre 1 April 2014 membership to be used to purchase an amount of earned pension in the member's new active pension account, **else** the pre 1 April 2014 membership will remain as a deferred benefit. What is not clear is why, if the member elects to be treated as if he / she had been an active member on 31 March 2014 and 1 April 2014 and elects to aggregate, regulation 10(6) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 requires that the transfer value in respect of the pre 1 April 2014 membership should purchase an amount of earned pension in the member's active pension account (rather than final salary membership in accordance with section 20 of, and paragraph 1 of Schedule 7 to, the Public Service Pensions Act 2013). **Clarification has been sought from DCLG.**

Similarly, where a member left prior to 1 April 2014 with a **deferred refund** and rejoins the Scheme on or after 1 April 2014 it is not clear why regulation 10(5) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 requires that the transfer value in respect of the pre 1 April 2014 membership should purchase an amount of earned pension in the member's active pension account (rather than final salary membership in accordance with section 20 of, and paragraph 1 of Schedule 7 to, the Public Service Pensions Act 2013). **Clarification has been sought from DCLG.**

[see regulation 10(6) of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014]

the pre 1 April 2014 final salary membership will remain as a deferred benefit. That deferred benefit will retain an **ongoing** final salary link [s20 and paragraph 1 of Schedule 7 to the Public Service Pensions Act 2013]. This is discussed in **section D** below.

D: Is there an ongoing final salary link?

Where a **category 1, 2 or 3 member** retains a separate deferred benefit does the pre 1 April 2014 element of that deferred benefit retain an **ongoing** final salary link i.e. linked to the salary in the new / ongoing employment and, if so:

- (i) does that link only apply if the member ceases active membership of the new / ongoing employment before drawing the deferred benefit, or
- (ii) does that link also apply if the member draws the deferred benefit before ceasing active membership in the new / ongoing employment?

Neither regulations 3(6) and 10 of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014, the LGPS (Benefits, Membership and Contributions) Regulations 2007 nor the LGPS Regulations 2013 provide that an unaggregated deferred benefit should have an **ongoing** final salary link.

One view that has been proffered is that there is no **ongoing** final salary link. That view hinges on the meaning, in paragraph 1(2) of Schedule 7 to the Public Service Pensions Act 2013, of the phrase “in determining the person's final salary for any purpose of the old scheme”.

It is argued that the words “in determining” imply a current or future usage i.e. there is something that has yet to be determined. The final pay figure used to calculate a deferred benefit has already been determined and as such does not need to be determined again. Paragraph 1 of Schedule 7 to the Public Service Pensions Act 2013 simply tells administering authorities what to do if they have to calculate a final pay figure for a member whose ceases active membership after 31 March 2014 with an entitlement to a benefit that includes pre 1 April 2014 final salary membership, but it does not, in itself, require the administering authority to re-calculate a final pay figure that has already been determined and upon which an unaggregated deferred benefit has been based.

Thus, if the administering authority for **Employment A** holds a deferred benefit and the administering authority for **Employment B** holds an active pension account for the same member, then the administering authority for **Employment A** will have no need to determine a final salary “for any purpose of the old scheme”, since there is no such purpose i.e. the benefits in respect of the pre 1 April 2014 deferred membership have already been awarded based on the final pay applicable to them.

As such, paragraph 1 of Schedule 7 to the Public Service Pensions Act 2013 only has effect in the context of a member with deferred benefits (which include pre 1 April 2014 final salary membership) if the member has aggregated that membership with the membership in the active employment i.e. it is the act of aggregation which creates the ‘purpose under the old scheme’ which obliges administering authorities to then apply paragraph 1 of Schedule 7 to the Act.

This would mean that administering authorities in England and Wales would not have to recalculate a deferred benefit for those members falling within **categories 1, 2 or 3** when a new period of active membership in the LGPS in England or Wales ends. Although “the Scheme” is a single Scheme it is divided into 89 Funds administered by separate administering authorities and there is already precedent for regulations to recognise that, for various purposes, each Fund is to be treated as if it were a separate scheme - see The Registered Pension Schemes (Splitting of Schemes) Regulations 2006 [SI 2006/569].

However, so far HM Treasury seem to have taken the view that the LGPS in England and Wales should, for the purposes of Schedule 7 of the Public Service Pensions Act 2013, be treated as a single Scheme and that the Schedule applies to a member’s benefits in the Scheme as a whole.

In consequence they have taken the view that there is an **ongoing** final salary link in the case of (i) above because the requirements of paragraphs 1(1) and (2) of Schedule 7 to the Public Service Pensions Act 2013 have been met i.e.:

- a) the member has been a member of ‘the old scheme’ (i.e. the pre 1 April 2014 Scheme), and
- b) the member is a member of ‘the new scheme’ (i.e. the 2014 Scheme), and
- c) the member has not had a continuous break in active membership of a public service pension scheme of more than 5 years, and
- d) the person’s employer in relation to ‘the old scheme’ service is the person’s employer in relation to ‘the new scheme’ service, or any other employer in relation to ‘the new scheme’ service.

Where those conditions are met, paragraph 1 of Schedule 7 to the Public Service Pensions Act 2013 requires that, in determining the person’s final salary for any purpose of ‘the old scheme’, ‘the old scheme’ service is to be regarded as having ended when ‘the new scheme’ service ended and the pensionable pay from ‘the new scheme’ service is to be regarded as derived from ‘the old scheme’ service. That pensionable pay must not be materially less than what the member’s pensionable pay would have been under ‘the old scheme’. A member’s pensionable pay in the 2014 Scheme will not be less than it would have been under ‘the old scheme’ because the definition of pensionable pay in the 2014 Scheme is wider than under ‘the old scheme’.

Thus, when the period of active membership in the new employment in ‘the new scheme’ ends it could be argued that the separate deferred benefit has to be recalculated based on the final pay on ceasing that new employment, using the 2008 Scheme definition of final pay as protected by regulation 3(1) of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014.

In the case of (ii) above it is the view of the LGPC Secretariat that there is no **ongoing** final salary link because, at the point of drawing the deferred benefit the member is still in active membership of the LGPS in the new / ongoing employment. Paragraph 1 of Schedule 7 to the Public Service Pensions Act 2013 requires that, in determining the person’s final salary for any purpose of ‘the old scheme’, ‘the old scheme’ service is to be regarded as having ended when ‘the new scheme’ service ended. At the point of drawing the deferred benefit ‘the new scheme’ service has not ended and so paragraph 1 of Schedule 7 to the Public Service Pensions Act 2013 cannot apply.

E: Examples (if there is an ongoing final salary link)

The following examples show the results, and raise a number of questions, in relation to various scenarios that arise following the response from HM Treasury that there is an **ongoing** final salary link in relation to unaggregated deferred benefits held by members falling within **categories 1, 2 or 3** above.

Example 1 (category 2 member who does not aggregate)

A member left with a deferred benefit in respect of **Employment A** on 30 April 2014:

- deferred pension at 30 April 2014 = £3,000 made up of £43 post 31 March 2014 CARE pension and £2,957 pre 1 April 2014 final salary benefit
- final salary (for year ending 30 April 2014) used to calculate the pre 1 April 2014 final salary element of the deferred pension was £25,000
- Pensions Increase (PI) date for deferred benefit: 1 May 2014.

The member re-joins the LGPS on 1 August 2014 in **Employment B** on £24,000 and, because pay has dropped, elects not to aggregate (i.e. elects to retain separate deferred benefits and there has not been a continuous break in active membership of any public service pension scheme of more than 5 years).

The member subsequently gets promoted to a higher paid job.

The member ceases active membership in **Employment B** on 31 July 2016.

Final pay in **Employment B** (for year ending 31 July 2016, based on 2008 Scheme definition of final pay) = £27,000.

April 2016 Pensions Increase (Review) Order for a PI date of 1 May 2014 = 4%.

Final pay used in original deferred benefit calculation in respect of **Employment A**:
 $£25,000 + 4\% = £26,000$.

The pre 1 April 2014 element of the deferred benefit in respect of **Employment A** would have to be recalculated based on a new final pay figure of £27,000 and would have a PI date of 1 August 2016. Note, however, that the post 31 March 2014 CARE element of the deferred benefit in respect of **Employment A** would have a PI date of 1 May 2014.

In April 2017 a full year's PI would be 2.5% but the part year's PI from 1 August 2016 would be 1.67%. If the deferred benefit in respect of **Employment A** had not been recalculated based on the final pay from **Employment B** it would have received a full year's PI, meaning it would have been based on the equivalent of $£25,000 + 4\% + 2.5\% = £26,650$. However, the recalculated deferred benefit in respect of **Employment A** would be calculated on the equivalent of $£27,000 + 1.67\% = £27,450.90$. Thus, at April 2017, the deferred benefit in respect of **Employment A** is still worth more, when recalculated on the final pay plus PI from **Employment B**, than it would have been had it been calculated based on the final pay plus PI from **Employment A**.

Question 2: *Do you agree with the above analysis?*

Answer: Yes

The member then re-joins the LGPS on 1 September 2017 in **Employment C** on £26,900 and, because pay has dropped, elects not to aggregate (i.e. elects to retain separate deferred benefits and there has not been a continuous break in active membership of any public service pension scheme of more than 5 years).

The member subsequently gets promoted to a higher paid job.

The member ceases active membership in **Employment C** on 31 January 2018.

Final pay in **Employment C** (for year ending 31 January 2018, based on 2008 Scheme definition of final pay) = £31,000.

The pre 1 April 2014 element of the deferred benefit in respect of **Employment A** (which has already been recalculated to be based on a final pay figure of £27,000 from **Employment B** + 1.67% = £27,450.90), and the pre 1 April 2014 element of the deferred benefit in respect of **Employment B** (which has been calculated on a final pay figure of £27,000 + 1.67% = £27,450.90), would both have to be recalculated based on a new final pay figure from **Employment C** of £31,000 and would have a PI date of 1 February 2018. Note, however, that the post 31 March 2014 CARE element of the deferred benefit in respect of **Employment A** would have a PI date of 1 May 2014 and the post 31 March 2014 CARE element of the deferred benefit in respect of **Employment B** would have a PI date of 1 August 2016.

In April 2018 a full year's PI would be 2.1% but the part year's PI from 1 February 2018 would be 0.35%. If the deferred benefits in respect of **Employments A** and **B** had not been recalculated based on the final pay from **Employment C** they would have received a full year's PI, meaning they would have been based on the equivalent of £27,000 + 1.67% + 2.1% = £28,027.37. However, the recalculated deferred benefits in respect of **Employments A** and **B** would be calculated on the equivalent of £31,000 + 0.35% = £31,108.50. Thus, at April 2018, the deferred benefits in respect of **Employments A** and **B** are still worth more, when recalculated on the final pay plus PI from **Employment C**, than they would have been had they been calculated based on the final pay plus PI from **Employment B**.

Question 3: Do you agree with the above analysis?

Answer: Yes

Example 2 (category 2 member who does not aggregate)

A member left with a deferred benefit in respect of **Employment A** on 30 April 2014:

- deferred pension at 30 April 2014 = £3,000 made up of £43 post 31 March 2014 CARE pension and £2,957 pre 1 April 2014 final salary benefit
- final salary (for year ending 30 April 2014) used to calculate the pre 1 April 2014 final salary element of the deferred pension was £25,000
- Pensions Increase (PI) date for deferred benefit: 1 May 2014.

The member re-joins the LGPS on 1 August 2014 in **Employment B** and elects not to aggregate (i.e. elects to retain separate deferred benefits and there has not been a continuous break in active membership of any public service pension scheme of more than 5 years).

The member ceases active membership in **Employment B** on 31 July 2016.

Final pay in **Employment B** (for year ending 31 July 2016, based on 2008 Scheme definition of final pay) = £26,010.

April 2016 Pensions Increase (Review) Order for a PI date of 1 May 2014 = 4%.

Final pay used in original deferred benefit calculation in respect of **Employment A**:
£25,000 + 4% = £26,000.

The pre 1 April 2014 element of the deferred benefit in respect of **Employment A** would have to be recalculated based on a new final pay figure of £26,010 and would have a PI date of 1 August 2016. Note, however, that the post 31 March 2014 CARE element of the deferred benefit in respect of **Employment A** would have a PI date of 1 May 2014.

In April 2017 a full year's PI would be 2.5% but the part year's PI from 1 August 2016 would be 1.67%. If the deferred benefit in respect of **Employment A** had not been recalculated based on the final pay from **Employment B** it would have received a full year's PI, meaning it would have been based on the equivalent of £25,000 + 4% + 2.5% = £26,650. However, the recalculated deferred benefit in respect of **Employment A** would be calculated on the equivalent of £26,010 + 1.67% = £26,444.37. Thus, the deferred benefit in respect of **Employment A** is now worth less than it would have been had it not been recalculated based on the final pay from **Employment B**.

Question 4: *What should happen in such a case? Should the recalculation be undone? What if the recalculated benefit had already been brought into payment before April 2017? Would reducing a pension in payment make subsequent payments unauthorised payments as the Finance Act 2004 only permits a reduction to a pension in payment in limited circumstances – see <http://www.hmrc.gov.uk/manuals/rpsmmanual/rpsm09101500.htm> - or would reducing the pension in payment be seen as a correction of a pension level that was not legally due - see <http://www.hmrc.gov.uk/manuals/rpsmmanual/RPSM09101570.htm>?*

Answer: *The recalculation should not be undone. The calculation of a member's benefit entitlement is performed at the date of leaving **Employment B** and was correct at that time.*

Example 3 (category 3 member who does not aggregate)

A member left with a deferred benefit in respect of **Employment A** on 30 April 2012:

- deferred pension at 30 April 2012 = £2,500
- final salary (for year ending 30 April 2012) used to calculate the deferred benefit was £25,100
- Pensions Increase (PI) date for deferred benefit: 1 May 2012.

The member re-joins the LGPS on 1 August 2014 in **Employment B** in a lower paid job. The member does **not** make an election to be treated as if he / she had been an active member on 31 March 2014 and 1 April 2014, and does **not** elect for the transfer value in respect of the pre 1 April 2014 membership to be used to purchase an amount of earned pension in the member's active pension account. Thus, the member retains a separate

deferred benefit in respect of **Employment A** for membership to 30 April 2012 and there has not been a continuous break in active membership of any public service pension scheme of more than 5 years.

The member ceases active membership in **Employment B** on 31 July 2016.

Final pay in **Employment B** (for year ending 31 July 2016, based on 2008 Scheme definition of final pay) = £26,000.

April 2016 Pensions Increase (Review) Order for a PI date of 1 May 2012 = 9.54%.

Final pay used in original deferred benefit calculation in respect of **Employment A**:
 $£25,100 + 9.54\% = £27,494.54$.

The deferred benefit in respect of **Employment A** would **not*** have to be recalculated based on a new final pay figure of £26,000 and would retain a PI date of 1 May 2012.

In April 2017 a full year's PI would be 2.5% but the part year's PI from 1 August 2016 would be 1.67%. The deferred benefit in respect of **Employment A** will receive a full year's PI of 2.5% and the deferred benefit in respect of **Employment B** will receive a part year's PI of 1.67%.

As has already been mentioned, schedule 7 of the Public Service Pensions Act 2013 makes no mention of Pensions Increase. Pensions Increase is payable on the pension and is not, technically, used to recalculate the member's final pay. Furthermore, Pensions Increase is payable under the Pensions (Increase) Act 1971 and not under the Local Government Pension Scheme Regulations. Nevertheless, Pensions Increase must surely have to be taken into account when determining whether the deferred benefit in respect of **Employment A** has to be recalculated on the final pay from **Employment B** as, otherwise, in this example the deferred benefit in respect of **Employment A** would have to be calculated on a final pay figure of £26,000 from **Employment B** even though the final pay of £25,100 on which the deferred benefit in respect of **Employment A** had originally been calculated is, in real terms (after allowing for inflation) higher at £27,494.54.

Although the ongoing final salary link is derived from a later Act (the Public Service Pensions Act 2013), the sentiments contained in section 12 of the Superannuation Act 1972 should surely be honoured. That section provides as follows:

12 Further provisions as to regulations.

- (1) Any regulations made under section 7, 8(2), 9 or 10 of this Act may be framed so as to have effect as from a date earlier than the making of the regulations.
- (2) Subject to subsection (4) below, any regulations made under section 7, 9 or 10 of this Act may be framed-
 - (a) so as to apply in relation to the pensions which are being paid or may become payable under the regulations to or in respect of persons who, having served in an employment or office service in which qualifies persons to participate in the benefits for which the regulations provide, have ceased to serve therein (whether or not they have subsequently recommenced any such service) or died before the regulations come into operation; or

- (b) so as to require or authorise the payment of pensions to or in respect of such persons.
- (3) Subsection (2) above shall apply in relation to regulations under the said section 7, being regulations made by virtue of section 8(3) of this Act, as if for the first two references to those regulations in paragraph (a) there were substituted references to the local Act scheme affected by the regulations.
- (4) No provision shall be made by any regulations by virtue of subsection (2) above unless any person who is placed in a worse position than he would have been in if the provision had not applied in relation to any pension which is being paid or may become payable to him is by the regulations given an opportunity to elect that the provision shall not so apply in relation to that pension except as provided by subsection (4A) below.
- (4A) If, at the coming into force of the provision mentioned in subsection (4) above, a person who makes such an election as is mentioned in that subsection is serving in an employment or office to which the regulations governing the pension apply, or if he subsequently recommences service in such an employment or office, then-
- (a) the election shall have effect in relation to the pension only to the extent that it accrues or has accrued-
- (i) by virtue of periods of service rendered before the cessation referred to in subsection (2) above (or, if there has been more than one such cessation, the last of them before the coming into force of the provision in question); or
- (ii) by virtue of contributions paid in respect of any such periods of service; and
- (b) in determining entitlement to, or the amount of, the pension to that extent, he shall (without prejudice to the application of this subsection) be treated as if he had never recommenced service in such an employment or office at any time after the cessation referred to in paragraph (a) above; and the provision in question shall apply accordingly.
- (5) In the foregoing provisions of this section "pension" includes allowance and gratuity.
- (6) Regulations made under section 7, 8, 9 or 10 of this Act shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

Question 5: *Do you agree that the spirit of the Superannuation Act 1972 (although an earlier Act than the Public Service Pensions Act 2013) should be adhered to i.e. a member with a deferred benefit who would be placed in a worse position due to amending regulations could elect that the amendments made by the regulations should not apply to his / her deferred benefit. This would mean that the pre 1 April 2014 deferred benefit in respect of **Employment A** would **not** have to be recalculated based on a new final pay figure of £26,000 from **Employment B** (i.e. a figure lower than the original final pay from **Employment A** plus PI which totals £27,494.54) because, although the actual final pay from **Employment B** is higher than the actual final pay from **Employment A** (excluding Pensions Increase), it is less than that in **Employment A** once Pensions Increase has been taken into account? In practice this would mean the administering authority responsible for the deferred benefit from **Employment A** would pay the actual deferred benefits (plus Pensions Increase) and the administering authority responsible for the benefits from **Employment***

B (which could be a different administering authority) would pay separate benefits based on the lower final pay figure.

If you disagree with the above analysis, how should the member's benefit be calculated without having a detrimental effect on the accrued deferred benefit?

Answer: Pensions Increase should be taken into account and thus, in this example, the pre 1 April 2014 deferred benefit in respect of **Employment A** would **not** have to be recalculated based on a new final pay figure of £26,000 from **Employment B** (i.e. a figure lower than the original final pay from **Employment A** plus PI which totals £27,494.54).

Example 4 (category 2 member who does not aggregate)

A member left with a deferred benefit in respect of **Employment A** on 30 April 2014:

- deferred pension at 30 April 2014 = £3,000 made up of £44 post 31 March 2014 CARE pension and £2,956 pre 1 April 2014 final salary benefit
- final salary (for year ending 30 April 2012 – best one of the last 3 years) used to calculate the pre 1 April 2014 final salary element of the deferred pension was £25,100
- Pensions Increase (PI) date for deferred benefit: 1 May 2012 (April 2013 PI = 2.02%, April 2014 PI = 2.7% and April 2015 PI = 2.5%).

The member re-joins the LGPS on 1 August 2014 in **Employment B** and elects not to aggregate (i.e. elects to retain separate deferred benefits and there has not been a continuous break in active membership of any public service pension scheme of more than 5 years).

The member ceases active membership in **Employment B** on 31 July 2016.

Final pay in **Employment B** (for year ending 31 July 2016, based on 2008 Scheme definition of final pay) = £27,000.

April 2016 Pensions Increase (Review) Order for a PI date of 1 May 2012 = 9.54%.

Final pay used in original deferred benefit calculation in respect of **Employment A**:
 $£25,100 + 9.54\% = £27,494.54$.

The pre 1 April 2014 element of the deferred benefit in respect of **Employment A** would **not*** have to be recalculated based on a new final pay figure of £27,000 and would retain a PI date of 1 May 2012 and the post 31 March 2014 CARE element of the deferred benefit in respect of **Employment A** would have a PI date of 1 May 2014.

In April 2017 a full year's PI would be 2.5% but the part year's PI from 1 August 2016 would be 1.67%. The deferred benefit in respect of **Employment A** will receive a full year's PI of 2.5% and the deferred benefit in respect of **Employment B** will receive a part year's PI of 1.67%.

Question 6: Do you agree that the spirit of the Superannuation Act 1972 (although an earlier Act than the Public Service Pensions Act 2013) should be adhered to i.e. a member with a deferred benefit who would be placed in a worse position due to

amending regulations could elect that the amendments made by the regulations should not apply to his / her deferred benefit. This would mean that the pre 1 April 2014 deferred benefit in respect of **Employment A** would **not** have to be recalculated based on a new final pay figure of £27,000 from **Employment B** (i.e. a figure lower than the original final pay from **Employment A** plus PI which totals £27,494.54) because, although the actual final pay from **Employment B** is higher than the actual final pay from **Employment A** (excluding Pensions Increase), it is less than that in **Employment A** once Pensions Increase has been taken into account?

In practice this would mean the administering authority responsible for the deferred benefit from **Employment A** would pay the actual deferred benefits (plus Pensions Increase) and the administering authority responsible for the benefits from **Employment B** (which could be a different administering authority) would pay separate benefits based on the lower final pay figure.

If you disagree with the above analysis, how should the member's benefit be calculated without having a detrimental effect on the accrued deferred benefit?

Answer: Pensions Increase should be taken into account and thus, in this example, the pre 1 April 2014 deferred benefit in respect of **Employment A** would **not** have to be recalculated based on a new final pay figure of £27,000 from **Employment B** (i.e. a figure lower than the original final pay from **Employment A** plus PI which totals £27,494.54).

Example 5 (category 2 member who does not aggregate)

A member left with a deferred benefit in respect of **Employment A** on 30 April 2014, having originally joined the Scheme on 1 May 1996:

- deferred pension at 30 April 2014 = £6,267.32 made up of £43 post 31 March 2014 CARE pension and £6,224.32 pre 1 April 2014 final salary benefit (plus a £11,172.95 automatic lump sum)
- final salary (for year ending 30 April 2014) used to calculate the pre 1 April 2014 final salary element of the deferred pension was £25,000
- Pensions Increase (PI) date for deferred benefit: 1 May 2014.

The member re-joins the LGPS on 1 August 2018 in **Employment B** on £35,000 and, even though the pay is much higher in real terms (after allowing for inflation) than the pay upon which the deferred benefit has been based, elects not to aggregate (i.e. elects to retain separate deferred benefits and there has not been a continuous break in active membership of any public service pension scheme of more than 5 years). The reason the member elects not to aggregate is because the member is aged 63½ on 1 August 2018 and met the 85 year rule on 30 April 2018. If the member aggregates, the date he meets the 85 year rule is delayed (because of the break in membership) whereas if he does not aggregate he still retains an 85 year rule date of 30 April 2018 on the deferred benefit.

The member ceases active membership in **Employment B** on 31 December 2018.

Final pay in **Employment B** (for year ending 31 December 2018, based on 2008 Scheme definition of final pay) = £35,000.

April 2018 Pensions Increase (Review) Order for a PI date of 1 May 2014 = 8%.

Final pay used in original deferred benefit calculation in respect of **Employment A**:
£25,000 + 8% = £27,000.

The pre 1 April 2014 element of the deferred benefit in respect of **Employment A** would have to be recalculated based on a new final pay figure of £35,000 and would have a PI date of 1 January 2019. Note, however, that the post 31 March 2014 CARE element of the deferred benefit in respect of **Employment A** would have a PI date of 1 May 2014.

By electing to retain separate benefits the member has managed to protect the 85 year rule on the deferred benefit from **Employment A** (even though there has been a 4¼ year break) and has that deferred benefit recalculated upon leaving **Employment B** based on a final pay figure of £35,000. The member is getting the best of all worlds (but at the expense of the former employer).

Question 7: *Do you agree with the above analysis?*

Answer: Yes

Example 6 – (category 2 and / or category 3 member who does not aggregate and has multiple deferred benefits)

A member has two deferred benefits in the LGPS from **concurrent employments (A and B)** that ended on the same day (and has not had a continuous break in active membership of a public service pension scheme of more than 5 years). The member subsequently re-joins the Scheme in **Employment C** and retains separate benefits. When the member ceases active membership in **Employment C** the ongoing final salary link applies, separately, to each one of the member's deferred benefits i.e. the pre 1 April 2014 element of the deferred benefit from the first of the concurrent employments (**Employment A**) should be recalculated if the pay from that employment, plus Pensions Increase, is less than the pay from the new employment (**Employment C**) that has now ended; and, independently, the pre 1 April 2014 element of the deferred benefit from the second of the concurrent employments (**Employment B**) should be recalculated if the pay from that employment, plus Pensions Increase, is less than the pay from the new employment (**Employment C**) that has now ended.

Question 8: *Do you agree with the above analysis?*

Answer: *Yes, this is logical as if the two concurrent employments had ended on different dates each one would separately have had an ongoing final salary link with Employment C. The outcomes for the deferred benefits in respect of Employments A and B should be the same regardless of whether those employments ceased on the same day or on separate days.*

Example 7 – (category 2 and / or category 3 member with a deferred benefit which is not aggregated – has multiple new concurrent employments)

A member has a deferred benefit in the LGPS from **employment A** (and has not had a continuous break in active membership of a public service pension scheme of more than 5 years). The member subsequently re-joins the Scheme in two concurrent employments (**employments B and C**) and does not aggregate the deferred benefit with either of the new concurrent employments. The new concurrent employments have different FTE rates of pensionable pay (2008 Scheme definition)

Scenario 1: The member ceases both of the concurrent employments (**employments B and C**) on the same day. The pre 1 April 2014 element of the deferred benefit from **employment A** should be recalculated if the final pay from **employment A**, plus Pensions Increase, is less than whichever is the **higher** of the FTE rate of pensionable pay (2008 Scheme definition) from **employments B or C** that have ceased.

Question 9: *Do you agree with the above analysis? It seems a bit illogical given that if the member had aggregated the membership they would have had to decide which of the active posts to aggregate the membership with (and, depending on how the pay rates increased in the concurrent active posts, that decision might have turned out to be the right or wrong decision), whereas if they don't aggregate they always appear to finish up having the deferred benefit recalculated on the highest final pay figure from either of the concurrent posts (where this is higher than the pay on which the deferred benefit was calculated plus PI).*

*The above assumes that if a member has two concurrent employments (**B and C**) which both terminate at the same date the deferred benefit from **employment A** will automatically be recalculated based on the **higher** of the FTE rate of pensionable pay (2008 Scheme definition) from the concurrent employments (**B and C**) that have ceased. However, if the final pay figures in **employments B and C** are different, and both are higher than the final pay from **employment A**, plus Pensions Increase, should the member be given the choice over which final pay figure they wish to be used in the recalculation of the earlier deferred benefit from **employment A** (e.g. because using the lower of the final pay figures from **employments B and C** might keep the member below the annual allowance or lifetime allowance limits).*

Answer: *Yes, the default position should be that the higher pay figure is used but the member should be given the choice over which final pay figure they wish to be used in the recalculation of the earlier deferred benefit from **employment A** (e.g. because using the lower of the final pay figures from **employments B and C** might keep the member below the annual allowance or lifetime allowance limits).*

Scenario 2: The member ceases one of the concurrent employments (**employment B**) before the other (**employment C**). On ceasing the first concurrent employment (**employment B**), the pre 1 April 2014 element of the deferred benefit from **employment A** should be recalculated if the final pay from **employment A**, plus Pensions Increase, is less than the FTE rate of pensionable pay (2008 Scheme definition) from **employment B** which has ceased. Then, upon the cessation of **employment C**, the pre 1 April 2014 element of the deferred benefit from **employment A** should be further recalculated if the final pay used to calculate the deferred benefits from **employment A** after **employment B** ceased, plus Pensions Increase, is less than the FTE rate of pensionable pay (2008 Scheme definition) from **employment C** which has ceased; and the pre 1 April 2014 element of the deferred benefit from **employment B** should be recalculated if the final pay used to calculate the deferred benefits from **employment B**, plus Pensions Increase, is less than the FTE rate of pensionable pay (2008 Scheme definition) from **employment C** which has ceased.

Question 10: *Do you agree with the above analysis?*

Answer: Yes

F: Costs – the implications if there is an ongoing final salary link

Where there is an ongoing final salary link it raises the question of who should pay for the increase in the value of the deferred benefit (over and above CPI) when the deferred benefit is recalculated if:

- a) the employer from the new employment, and
- b) the employer for whom the member previously worked (and in respect of which the deferred benefit was awarded)

are different. At present, it would appear that the cost would fall to the former employer, even though that employer had not paid the member at the higher salary level. This could constitute a major cost to that former employer – see, for instance, example 5 in **section E** above – being a cost over which that former employer has no control. This does not seem appropriate in the LGPS where, unlike in other public service pension schemes, each employer has a separately assessed employer contribution rate (i.e. there is not a standard employer contribution rate that all employers pay).

Question 11: *How should this be dealt with in the LGPS as it seems wholly inappropriate that the cost should fall to the former employer? For example, should the latter administering authority be required to pay a transfer payment from their Fund to the Fund of the former administering authority equal to the additional liability incurred by the former employer (to be credited to the former employer's section of the Fund)? Or should the former administering authority be required to pay a transfer payment from their Fund to the Fund of the latter administering authority, based on the value of the deferred benefit excluding the final salary link, and the new Fund would become responsible for administering that deferred benefit? Note that in the latter case the deferred benefit would still remain separate (and not aggregated with the latter benefits, as aggregation could affect the member's 85 year rule on the deferred benefit or could result in additional costs for the new employer if the reason for cessation in the latter employment was, for example, redundancy, efficiency, ill health, flexible retirement, etc.). Or is there some other mechanism that could be used?*

Answer: *It is not appropriate that the cost should fall to the former employer, given that:*

- i) *that employer had not paid the member at the higher salary level: and*
- ii) *it would constitute a major cost to that former employer – being a cost over which that former employer has no control.*

The cost cannot be managed on a knock for knock basis across LGPS Funds. This is because the cost falls at employer level, not the Fund level and, unlike in other public service pension schemes, each employer has a separately assessed employer contribution rate. The increase in cost for the former employer could result in a level of extra cost which some small employers could not manage and could lead to some of them ceasing to trade.

It would also not be appropriate for the former administering authority to be required to pay a transfer payment from their Fund to the Fund of the latter administering authority, based on the value of the deferred benefit excluding the final salary link, with the new Fund would become responsible for administering that deferred benefit. This is because:

- a) *it would lead to an increase in 'orphan' AVCs (where members would wish their AVC pot to remain with their former administering authority in order to avoid market value adjustments that might be applicable upon a transfer);*

- b) *it would lead to confusion for members (i.e. why is my deferred benefit being administered by a different Fund from that in which I opted to retain a separate deferred benefit?);*
- c) *the new administering authority would need to obtain a copy of the discretions policy from the former employer (even though that employer does not actively participate in their Fund);*
- d) *the new administering authority would have to liaise with the former employer over requests for deferred benefits to be brought into payment on ill health grounds (even though that employer does not actively participate in their Fund); and*
- e) *the **new** employer would become responsible for meeting the cost of the final salary link on the deferred benefit (even though the member had opted to retain separate benefits). The increase in cost for the new employer could result in a level of extra cost which some small employers could not manage and could lead to some of them ceasing to trade.*

Requiring the latter administering authority to pay a transfer payment from their Fund to the Fund of the former administering authority equal to the additional liability incurred by the former employer (to be credited to the former employer's section of the Fund) is the least worst option of the three options . It overcomes the problems in (a) to (d) above but not the problem in (e) above. It also helps to address the problem described below. An appropriate amendment to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 would be required.

The new employer can, under regulation 22(8) of the LGPS Regulations 2013, extend the 12 month time limit within which a member can elect to **retain** separate benefits. The new employer might be tempted to do so where this reduces its pension liability and places liability on a former employer – see, for instance, example 5 in **section E** above. Whilst this seems to be morally wrong, there is nothing to prevent this.

Question 12: *How should this be prevented (or dealt with) in the LGPS as it seems wholly inappropriate that the cost should fall to the former employer?*

Answer: *See the preferred answer to Question 11.*

There is also the potential problem of who should pick up the additional cost where the former employer has ceased to be a Scheme employer (e.g. if, for example, the former employer was an admitted body and has become insolvent). It would currently appear from regulation 64 of the LGPS Regulations 2013 that the cost would have to be spread across all employers participating in the Fund in which the former employer had participated. Thus, the cost would be met by employers who not only have not paid the employee the higher salary but who have had no link with that employee whatsoever.

Question 13: *How should this be dealt with in the LGPS as it seems wholly inappropriate that the cost should fall to employers who have never employed the member?*

Answer: *See the preferred answer to Question 11. The payment made from the latter administering authority's Fund would be spread across all employers participating in the Fund in which the former employer had participated.*

Lastly, as a former employer's ultimate liability will not be known until the member ceases active membership in the new / ongoing employment, actuaries will presumably need to

make some allowance when assessing the employers' contribution rates at each triennial valuation.

Question 14: *What allowance should actuaries make at the triennial valuations in respect of potential additional liabilities for unaggregated deferred benefits that retain an ongoing final salary link and how should it be assessed? Presumably the allowance should be made in the new Fund (as a result of the potential answer to question 10).*

Answer: *This is a matter for the actuarial firms to take a view on.*

G: Administration – the implications where there is an ongoing final salary link

At the outset of employment it will be necessary to ensure that the member completes a form detailing any membership they have had in the LGPS in England or Wales and / or in any other public service pension scheme (regardless of whether or not a refund of contributions has been paid in respect of that membership). This is to ensure that the administering authority can ascertain whether or not there has been a break in continuous active membership of public service pension schemes of more than 5 years in order to determine:

- a) whether there is an ongoing final salary link for any pre 1 April 2014 benefits transferred from the LGPS in England or Wales (or whether the transfer would simply purchase an amount of earned pension in the member's pension account in the CARE scheme), or
- b) whether there is an ongoing final salary link for the pre 1 April 2014 element of an unaggregated deferred benefit held in the LGPS in England or Wales, and
- c) whether a transfer from a Club Scheme should (for any final salary element included in the transfer) purchase pre 1 April 2014 final salary membership (or simply purchase an amount of earned pension in the member's pension account in the CARE scheme).

The member should also be asked to detail the above information again on the cessation of their active membership in that employment (in order to pick up any information that had not previously been disclosed by the member).

In addition, each year when annual benefit statements are issued, members should be reminded that, if they have not already done so, it is important that they disclose this information.

Inter-Fund Adjustments

In the case of:

- a) a **category 2 member**, the member has 12 months to elect to retain separate deferred benefits (which would retain an **ongoing** final salary link), and
- b) a **category 3 member**, the member can make an election within 12 months of re-joining the Scheme to be treated as if he / she had been an active member on 31 March 2014 and 1 April 2014. Where the member makes such an election, the pre 1 April 2014 membership from the deferred benefit will entitle the member to a final salary benefit (the membership will be attached to the new active pension account). Where the member does not make such an election the member may

elect for the transfer value in respect of the pre 1 April 2014 membership to be used to purchase an amount of earned pension in the member's new active pension account, **else** the pre 1 April 2014 membership will remain as a deferred benefit with an **ongoing** final salary link.

Although there is a 12 month window within which members may make elections, administering authorities will wish to get a signed decision from members as soon as possible.

However, what should happen if the administering authority cannot obtain a reasonably quick decision from the scheme member?

Question 15: *In the case of a **category 2 member**, should the administering authority (in the absence of an option from the member) delay aggregation (and the request for any Inter-Fund Adjustment) until the 12 month period has elapsed (or until the member ceases active membership in the Fund, if earlier²) in order to avoid having to unpick membership (and repay any Inter-Fund Adjustment received) if:*

- a) *the member were to make an election to retain separate benefits, after the benefits have been aggregated and an IFA paid but before the 12 month deadline has elapsed, or*
- b) *after the benefits have been aggregated and an IFA paid the member opts out within 3 months of becoming an active member in the new employment (in which case the person would be treated as never having been a member in the new employment).*

Furthermore, paying an IFA prior to 12 months without an election from the member could cause complications (e.g. if a cash equivalent transfer value had been provided for divorce purposes in the period between the benefits being aggregated and unpicked).

However, waiting for a decision for up to 12 months will result in the stockpiling of cases (albeit that, in essence, this is not much different to the position that applied under the 2008 Scheme where cases were actioned unless / until a member made a positive election to aggregate benefits).

If the decision is not to await a decision from the member, then after what period of time should benefits be aggregated and an IFA paid – 3 months, 4 months, 6 months, 9 months? What would be the rationale for the period chosen? Benefits would have to be unpicked if the member subsequently elected within the 12 month time period to retain separate benefits.

A consistent approach is required across all LGPS administering authorities to avoid a situation where a receiving administering authority has a policy to request an Inter-Fund Adjustment if the member has not made a decision within, say, 4 months of commencement but the sending administering authority has a policy not to make any payments until 12 months have elapsed (where a member has not made an election

² If a member retires or dies in service within the 12 month aggregation period but before making an election, the calculation and payment of benefits should not be delayed until the IFA has been paid. This is because the previous membership, in the absence of an election to retain separate benefits, already automatically counts in the new Fund. It is not dependent on the payment of the IFA; the IFA is merely an administrative process between Funds.

within 12 months). If different administering authorities adopt different policies this will simply lead to confusion and disputes between administering authorities

Answer: *It was agreed that a consistent approach should be taken by all administering authorities and, by quite some margin, the majority view was that, in the absence of an option from the member, administering authorities should delay aggregation (and the request for any Inter-Fund Adjustment) until the 12 month period has elapsed (or until the member ceases active membership in the Fund, if earlier).*

[Postscript: *Under the 2008 Scheme members retained separate benefits unless they made an election within 12 months of re-joining the Scheme (or such longer period as the employer might allow) to aggregate. When we moved to the 2014 Scheme we took the view that, looking forward to a situation where people might only have benefits in the 2014 Scheme, it would make far more sense to move to a position where benefits were automatically aggregated unless the member made an election within 12 months of re-joining the Scheme (or such longer period as the employer might allow) to retain separate benefits. Thus, automatic aggregation would be the norm because, in a pure CARE environment, there would be little or no real benefit in retaining separate benefits.*

However, we are now realising that this is having a number of consequences that we had not envisaged when making the decision to move to an automatic aggregation approach. The main issue that has arisen is that it is causing problems with the assessment of the pension input amount in a pension input period for annual allowance purposes. A secondary problem is that, despite the answer given to question 15 above, it may not be possible to get all administering authorities to act in a concerted way and to only request an Inter-Fund Adjustment when the member has confirmed that they don't want to retain separate benefits or, in the absence of such confirmation, after 12 months has elapsed from the date of re-joining the Scheme. A divergence of approach between administering authorities will cause difficulties e.g. one administering authority might decide to request payment of an IFA after 3 months but the sending administering authority refuses on the grounds that the member has not yet confirmed that they do not wish to retain separate benefits and has 12 months to do so.

The LGPC Secretariat is, therefore, of the view that, to overcome these issues, it may be better if the Regulations were amended to revert back to the position where members retain separate benefits unless they make an election within 12 months of re-joining the Scheme (or such longer period as the employer might allow) to aggregate.

There is a likely to be a question about the final salary link and aggregation in the consultation document that is to accompany the set of draft amendment regulations that are due out shortly. The question is likely to concern, specifically, how administering authorities can get the information they need and whether any regulatory changes are required to achieve this. This would be an ideal opportunity to request that, as suggested above, the Regulations are amended to revert back to the position where members retain separate benefits unless they make an election within 12 months of re-joining the Scheme (or such longer period as the employer might allow) to aggregate.]

In the case of a **category 3 member**, there is no administrative problem with awaiting a decision from the Scheme member given that, in the absence of an election, the deferred benefit will remain unaggregated (albeit with an **ongoing** final salary link).

The Technical Group decided that once an election had been made the member should not be able to seek to rescind it within the 12 month period (e.g. in order to, for example, benefit from aggregation if termination of employment in the new job on health or redundancy grounds suddenly looked likely).

Question 16: *Do you agree that all administering authorities should stick by this decision (subject to any successful IDRPs challenge or decision of the Pensions Ombudsman)?*

Answer: *Regulations 22(7) and (8) of the LGPS Regulations 2013 refer to the member having to make of “an election” i.e. singular, not plural. This is also clearly the intention behind regulation 5(5) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014. Thus, once an election had been made the member cannot rescind it within the 12 month period.*

Annual allowance

For Annual Allowance purposes it is the scheme member’s responsibility to notify the current Fund of any other deferred benefits held in the LGPS in England or Wales, in order for the **appropriate** administering authority to correctly calculate the Pension Input Amount (as, if the deferred benefit has an **ongoing** final salary link, the value of the deferred benefit at each 31 March may have increased by more than CPI). Failure to disclose any period of membership in the LGPS in England or Wales and / or service with any other public service pension scheme could lead to statutory rights (to a final salary link) not being applied and, in the case of a failure to disclose any deferred refund or deferred pension held within the LGPS in England or Wales, the possibility that the Pension Input Amount calculation for Annual Allowance purposes will be incorrect.

There are two issues to consider for annual allowance purposes.

The first relates to a **category 2 member**. Where:

- a) such a member confirms, on or before the first 31 March following commencement in the new Fund (and regardless of when the inter-fund adjustment is actually paid), that they do not wish to retain separate benefits, or
- b) as at the first 31 March following commencement in the new Fund, the member has not made an election to retain separate benefits (even if they subsequently do so on or after the first 1 April following commencement in the new Fund and within 12 months of joining the new Fund)

the administering authority for the new Fund will be responsible for calculating the Pension Input Amount for the Pension Input Period ending 31 March of the Scheme year in which the member joined the new Fund. In the case of (b) the new administering authority will have to obtain details from the former administering authority and calculate the Pension Input Amount as if the inter-fund adjustment had already been paid by 31 March, even if the member subsequently, say on 15 April, elected to retain separate benefits. That subsequent election is irrelevant given that, as at 31 March, the member had not elected to retain separate benefits, and so (as at that date) the benefits must be treated as if they had been aggregated.

Similarly, where a **category 3 member** opts to aggregate on or before the first 31 March following commencement in the new Fund (regardless of when the inter-fund adjustment is actually paid), the administering authority for the new Fund will be responsible for

calculating the Pension Input Amount for the Pension Input Period ending 31 March of the Scheme year in which the member joined the new Fund.

Question 17: Do you agree with the above analysis?

Answer: Yes, this is technically correct BUT, in the case of (b), will be an administrative headache. It is likely that the administering authority for the new Fund will have great difficulty in obtaining a final pay figure (2008 Scheme definition) at the relevant 31 March from the new employer (given that the employer will question why they have to provide such a figure for a new employee who not only has not yet decided whether or not to aggregate benefits but who has no pre 1 April 2014 membership accrued whilst in their employment).

The second issue relates to:

- a) **category 1 members** who have elected to retain separate benefits,
- b) **category 2 members** who elect, on or before the first 31 March following commencement in the new Fund, to retain separate benefits, and
- c) **category 3 members** who do not elect, on or before the first 31 March following commencement in the new Fund, to be treated as if they had been an active member on 31 March 2014 and 1 April 2014 and do not elect for the transfer value in respect of the pre 1 April 2014 membership to be used to purchase an amount of earned pension in the member's new active pension account.

As at the first 31 March and (unless in the case of (c) the member makes such an election as is referred to in (c)) at each subsequent 31 March, the member will have deferred benefits in the previous Fund that retain an **ongoing** final salary link in respect of the pre 1 April 2014 benefits.

Question 18: Which Fund should be responsible for producing the Annual Allowance Statement in relation to the deferred benefit? Should it be the administering authority that is holding the deferred benefit (**administering authority A**) or the new administering authority (**administering authority B**)? Logically, it should be the administering authority that is holding the deferred benefit (**administering authority A**) as it is the value of the deferred benefit in their Fund that has increased by more than CPI.

Answer: Logically, the administering authority that is holding the deferred benefit (**administering authority A**) should be responsible for producing the Annual Allowance Statement in relation to the deferred benefit as it is the value of the deferred benefit in their Fund that has increased by more than CPI. However, this again will be an administrative headache for the reasons set out in question 19 below.

Question 19: If it is agreed that **administering authority A** should produce the Annual Allowance Statement it would mean that, unless an alternative solution is adopted, **administering authority A** would have to contact **administering authority B** every year to obtain a final pay figure from the new employer (in order to ascertain whether that pay figure is greater than the final pay figure on which the deferred benefit has been calculated, plus PI).

Administratively, it would make more sense if the new administering authority (**administering authority B**) held details of the amount of the deferred benefit / final pay in the previous Fund (**Fund A**) where there is an **ongoing** final salary link (or deferred

benefits in previous Funds where there is more than one deferred benefit with an **ongoing** final salary link) and for that new administering authority (**administering authority B**) to determine whether final pay in their Fund is greater than the final pay on which the deferred benefit was calculated, plus PI. Only where this is the case would the new administering authority (**administering authority B**) have to notify the administering authority holding the deferred benefit (**administering authority A**) of the final pay figure. The administering authority holding the deferred benefit (**administering authority A**) could then produce an Annual Allowance Statement showing the Pension Input Amount in their Fund (i.e. the value by which the deferred benefit had increased by more than CPI). This would negate the need for administering authorities holding unaggregated deferred benefits to contact the new administering authority every 31 March to obtain a final pay figure.

An alternative approach would be for the new administering authority (**administering authority B**) to hold a flag on their pensions administration system to indicate that the member has an unaggregated deferred benefit with an **ongoing** final salary link in **Fund A** (or in **Fund A** and **Fund AA** where the member has more than one unaggregated deferred benefit with an **ongoing** final salary link) and for that new administering authority (**administering authority B**) to automatically send a final pay figure (2008 Scheme definition) as at the relevant 31 March to the administering authority holding the deferred benefit (which, in most cases, will simply be the final pay figure used to calculate the member's pre 1 April 2015 benefits shown on the Annual Benefit Statement issued by **administering authority B** (assuming, of course, that the member has some pre 1 April 2015 benefits in Fund B). The administering authority holding the deferred benefit (**administering authority A**) could then determine whether the final pay figure provided by **administering authority B** is greater than the final pay on which the deferred benefit was calculated, plus PI and, if it is, produce an Annual Allowance Statement showing the Pension Input Amount in their Fund (i.e. the value by which the deferred benefit had increased by more than CPI).

Which of the suggested approaches should be adopted?

Answer: None of the approaches have much chance of success. It is likely that the administering authority for the new Fund will have great difficulty in obtaining a final pay figure (2008 Scheme definition) at the relevant 31 March from the new employer (given that the employer will question why they have to provide such a figure to help in the calculation of the value of a deferred benefit held in a Fund in which they, as an employer, do not participate and particularly if the request relates to an employee who has no pre 1 April 2014 membership accrued whilst in their employment).

[Postscript: It was felt by those attending the breakout session at Torquay that the problems surrounding the annual allowance calculation if there is an ongoing final salary link on an unaggregated deferred benefit were, from a practical point of view, virtually insurmountable and administering authorities would be forced into a position whereby they would fail to be able to comply with the provisions of the Finance Act 2004. It was agreed that HM Treasury should be made aware of this in the meeting the LGPC Secretariat is seeking to have with HM Treasury.]

Deferred Members' Annual Benefit Statements

Where an active member has, as at a 31 March, an unaggregated deferred benefit with an **ongoing** final salary link, the annual deferred benefit statement issued by the

administering authority holding that deferred benefit (**administering authority A**) should be based on the final pay figure (2008 Scheme definition) supplied by **administering authority B** in respect of the new / ongoing employment if that pay figure is higher than the final pay figure on which the deferred benefit was calculated, as increased by Pensions Increase. The process described above would mean that the administering authority holding that deferred benefit (**administering authority A**) would, depending on which approach set out in relation to question 19 is adopted:

- a) automatically be notified by the new administering authority (**administering authority B**) of the need to base the deferred benefit statement on a higher final pay figure than that upon which the deferred benefit had originally been calculated (where the final pay figure in **Fund B** is higher than the final pay figure on which the deferred benefit was calculated, as increased by Pensions Increase), or
- b) automatically be notified by the new administering authority (**administering authority B**) of a final pay figure (2008 Scheme definition) as at the relevant 31 March and the administering authority holding the deferred benefit (**administering authority A**) could then determine whether the final pay figure provided by **administering authority B** is greater than the final pay on which the deferred benefit was calculated, plus PI and, if it is, produce an deferred Annual Benefit Statement based on that higher final pay figure.

Question 20: *Do you agree this is a sensible approach?*

Answer: *This all hinges on the answer to question 19 which, at this point in time, is not resolved.*

H: Other issues where benefits are aggregated.

The Relevant Date for Inter-Fund Adjustments

If a member does aggregate benefits, and an Inter-Fund Adjustment CETV is to be paid, what is the relevant date for the purposes of the CETV?

Should it be:

- a) in the case of a **category 2 member** who does not elect to retain separate benefits, the date the member commenced active membership in the new employment or, where relevant, the day following the cessation of the concurrent employment, and
- b) in the case of a **category 3 member**, the date the member elected to be treated as if he / she had been an active member on 31 March 2014 and 1 April 2014.

Paragraph 2.1 of the current Secretary of State guidance on Inter-Fund Adjustments says “and, where the member has the option to do so, he or she decides to aggregate”. Whilst this reflects the wording of regulation 103 of the LGPS Regulations 2013, that regulation requires an amendment (which we have asked DCLG to make) as it does not accurately reflect the position set out in regulation 22 of the LGPS Regulations 2013 (or in regulation 10 of the **LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014**). The LGPC Secretariat has suggested to DCLG that the wording in paragraph 2.1 of the Secretary of State guidance should be amended to read “and, where the member has the option to do so, he or she decides not to retain separate benefits”.

The GAD guidance for IFAs under the 2008 Scheme provided that:

2.2.3 The effective date of the calculation should be the date of the election that triggers the transfer.

2.3 If the amount calculated is paid within three months of the effective date, then no interest is payable. If payment is delayed, then interest should be paid at the same rate as specified under Regulation 44(4) of the Administration Regulations.

The Secretary of State guidance for IFAs under the 2014 Scheme provides that:

3.1 The transfer amount for any interfund transfer should be calculated as an outgoing Club transfer from the member's old fund.

3.2 As usual in a normal Club transfer, the effective date of the calculation should be the date of the election that triggers the transfer.

However, in virtually all cases there is no date of election to aggregate. For members subject to regulation 22 of the LGPS Regulations 2013, aggregation is automatic unless, in the case of members covered by regulation 22(7) or (8) the member elects, within 12 months of re-joining, or within 12 months of the concurrent employment ceasing, not to aggregate (or within such longer period as the new employer may permit). Members subject to regulations 10(1) to (5) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 similarly have benefits automatically aggregated. Thus, in the absence of an election not to aggregate (for those subject to regulation 22(7) or (8) of the LGPS Regulations 2013), the relevant date will always be the date of re-joining the Scheme (or the day following the cessation of the concurrent employment). Only members covered by regulation 10(6) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 have to make an election to aggregate.

The Secretary of State guidance for transfers out under the 2014 Scheme provides that:

2.19 The relevant date for calculating a transfer value is the "guarantee date" as defined in The Occupational Pension Schemes (Transfer Values) Regulations 1996.

2.20 A transfer value should be guaranteed for three months from the guarantee date. If a request to pay the transfer value is made within three months of the guarantee date, it will not be necessary to recalculate the transfer value, provided the payment is made within 6 months of the guarantee date. If the payment is not made within those timescales, the administering authority must:

- For a Club transfer, recalculate the Club transfer amount as at the date of payment.

So, it seems to the LGPC Secretariat that:

- i) in the case of all members, other than those covered by regulation 10(6) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, the "guarantee date" where an IFA is to be paid is the date of re-joining the scheme (because that is the date the benefits are automatically aggregated – there is no election to aggregate). Thus, if the IFA is paid within 3 months of re-joining (or cessation of the concurrent employment), the CETV as at the date of re-joining (or the day following the cessation of the concurrent employment) should be paid and if the IFA is paid more than 3 months after re-joining / cessation of the concurrent employment, the CETV as at the date the IFA is paid should be calculated and paid; and

- ii) in the case of members covered by regulation 10(6) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, the relevant date for the calculation should be the date of the election that triggers the transfer. If the amount calculated is paid within three months of the relevant date, then no interest is payable. If payment is delayed, then WHAT? Should interest be payable and, if so, at what rate? Or should the CETV as at the date the IFA is paid be calculated and paid?

The LGPC Secretariat has requested that this matter be addressed in the guidance issued by the Secretary of State as, at present, it is not clear how administering authorities should proceed.

Revaluation

The following examples raise questions over how the revaluation of a member's pension account should be applied in various scenarios. No answers have yet been added to the questions posed. This is because the questions are to be discussed at a meeting between the LGPC Secretariat, DCLG, GAD and the pensions administration software providers which is currently scheduled for 16 December 2014.

Scenario 1

A member has employment 1 for the whole scheme year (1 April 2014 to 31 March 2015), commences employment 2 on 1 June 2014 and ceases employment 2 on 31 December 2014. The earned pension in the employment 2 pension account is automatically aggregated with the earned pension in the employment 1 pension account.

Question 21: *How much revaluation should be applied to the earned pension from employment 2 that has now been transferred into the employment 1 pension account? Should it be:*

- a) *a full year's increase, or*
- b) *10/12ths increase (June to March) given that if the member had not already held employment 1, the member would only have received 10/12ths of the annual revaluation increase for that second employment.*

Scenario 2

A member has employment 1 for the whole scheme year (1 April 2014 to 31 March 2015), commences employment 2 on 1 June 2014 and ceases employment 2 on 31 May 2015. The earned pension in the employment 2 pension account is automatically aggregated with the earned pension in the employment 1 pension account on 1 June 2015.

Question 22: *How much revaluation should be applied to the earned pension in the pension account for employment 2 at 31 March 2015? Should it be:*

- a) *a full year's increase, or*
- b) *10/12ths increase (June to March) given that if the member had not already held employment 1, the member would only have received 10/12ths of the annual revaluation increase for that second employment.*

Note that although the earned pension from employment 2 is only automatically transferred into the employment 1 pension account on 1 June 2015, the amount transferred receives a full year's revaluation increase at 31 March 2016.

Scenario 3

A member has an employment in Fund A (which commenced prior to 1 April 2014) and which she left on 31 December 2014 with entitlement to a deferred benefit. She starts a new employment in Fund B on 1 March 2015 and immediately confirms she wishes to aggregate benefits.

At 31 March 2015, there are no benefits in Fund A to revalue. The benefits are all held in the member's active pension account in Fund B which is responsible for revaluing the whole of the earned pension in the member's active pension account on 31 March 2015 (made up of transferred in earned pension from Fund A for the period 1 April 2014 to 31 December 2014 plus earned pension in Fund B for the period 1 – 31 March 2015).

Scenario 4

A member has an employment in Fund A (which commenced prior to 1 April 2014) and which she left on 31 December 2014 with entitlement to a deferred benefit. She starts a new employment in Fund B on 1 March 2015 and does not confirm she wishes to aggregate benefits until 30 June 2015.

Fund A applies revaluation to the deferred account on 31 March 2015 and PI on 6 April 2015.

Fund B applies revaluation to the active account on 31 March 2015 (in respect of the earned pension from 1-31 March 2015).

Question 23: *Technically, the member's benefits are automatically aggregated from 1 March 2015 unless she makes an election within 12 months of starting the new employment to retain separate benefits.*

As the member has not had a continuous break of more than 5 years in active membership of a public service pension scheme the PI applied by Fund A is ignored when the benefits are transferred in July 2015. Do you agree, therefore, that Fund B would have to hold earned pension for 2014/15 as the amount of earned pension from Fund A for the period 1 April 2014 to 31 December 2014 plus the amount of earned pension in Fund B for the period 1-31 March 2015, and revalue all of that at 31 March 2015 (despite the fact that the CETV for the inter-fund adjustment was not paid until July 2015).

Question 24: *if the conclusions reached in **section H** are correct, the CETV, because it is paid more than 3 months after re-joining the Scheme, would have to be calculated based on the value of the benefits on the day the CETV is paid. Do you agree that as the benefits have been aggregated and there has not been a continuous break of more than 5 years in active membership of a public service pension scheme the PI applied by Fund A in April 2015 is ignored and the CETV is calculated based on the earned pension in Fund A as increased at 31 March 2015 by the HM Treasury revaluation order.*

Scenario 5 – same case as scenario 4 but person elects to retain separate benefits

A member has an employment in Fund A (which commenced prior to 1 April 2014) and which she left on 31 December 2014 with entitlement to a deferred benefit. She starts a new employment in Fund B on 1 March 2015 but elects on 30 June 2015 to retain separate benefits.

Fund A applies revaluation to the deferred account on 31 March 2015 and PI on 6 April 2015. Fund a the applies PI each subsequent April.

Fund B applies revaluation to the active account on 31 March 2015 (in respect of the earned pension from 1-31 March 2015).

Question 25: *How much revaluation should be applied to the earned pension in the pension account in Fund B at 31 March 2015? Should it be:*

- a) *a full year's increase (which would have been the case if the member had aggregated benefits), or*
- b) *a 1/12th increase (March 2015)?*

Question 26: *Do the issues raised in questions 20, 21 and 24 lead to a wider conclusion that all active members, no matter when they commenced membership during a scheme year, should always receive a full year's revaluation on the amount in their active account (even if they only joined the Scheme on, say, 30 March of that year)?*

I: Next steps

The LGPC Secretariat will notify all administering authorities in England and Wales of the outcomes from the proposed meeting with HM Treasury (which the LGPC Secretariat is urgently seeking) and from the meeting between the LGPC Secretariat, DCLG, GAD and the pensions administration software providers which is currently scheduled for 16 December 2014.

It is hoped that, whatever the outcomes of those meetings, all administering authorities will adhere to the decisions taken (in order to ensure consistency of approach and avoid disputes between administering authorities).

The LGPC Secretariat will also issue templates for the information to be provided to scheme members who have a decision to make over whether or not to aggregate membership.

Terry Edwards,
Senior Pensions Adviser,
Local Government Association
1 December 2014

Annex 1

Example 1

| | Pension Scheme | From | To | Scenario |
|----------|-----------------------|-------------|------------|--------------------|
| 1 | GMPF | 01.01.1990 | 31.12.2013 | Transferred to NHS |
| 2 | NHS | 01.01.2014 | 31.08.2014 | Deferred with NHS |
| 3 | GMPF | 01.01.2015 | present | |

There would be no on-going final salary link for employment 3 as the member has not transferred their benefits into LGPS (GMPF).

Example 2

| | Pension Scheme | From | To | Scenario |
|----------|-----------------------|-------------|------------|---------------------------|
| 1 | GMPF | 01.01.1990 | 31.12.2002 | Deferred |
| 2 | NHS | 01.01.2003 | 31.05.2014 | Transferred to Derbyshire |
| 3 | Derbyshire | 01.01.2015 | 31.07.2015 | Deferred |
| 4 | GMPF | 01.01.2016 | present | |

On leaving Derbyshire, Derbyshire should have notified GMPF of the final pay for year ending 31/7/15. If it was higher than the pay on which the GMPF deferred benefit (1) was calculated plus PI, GMPF would have had to recalculate the deferred benefit from (1) based on that higher pay. On ceasing (4):

- a) the deferred benefits from (1) would have to be recalculated if the final pay from (4) is higher than the pay upon which deferred benefit (1) had previously been recalculated plus PI, and
- b) the deferred benefits from (3) would have to be recalculated if the final pay from (4) is higher than the pay upon which deferred benefit (3) had been calculated plus PI.

Example 3

| | Pension Scheme | From | To | Scenario |
|----------|-----------------------|-------------|------------|---------------------------------|
| 1 | GMPF | 01.01.1990 | 31.12.2002 | Deferred |
| 2 | NHS | 01.01.2003 | 31.05.2014 | Transferred to personal pension |
| 3 | GMPF | 01.01.2020 | 31.12.2020 | Deferred |

There would be no on-going final salary link for employment 1 as the disqualifying break is more than 5 years (01.01.2003 to 31.12.2019). The transfer from NHSPS to a personal pension does not mean that the member had not been in active membership of a public service pension scheme during the period 1/1/03 to 31/5/14. They had been and, the transfer out does not negate this. However, the member does not have an ongoing final salary link because there was a period of more than 5 years when the person had not been eligible for membership of a public service pension scheme i.e. 1/6/14 to 31/12/19. If, however, the member had rejoined the LGPS on 1/4/19 there would then have been an ongoing final salary link.

Example 4

| | Pension Scheme | From | To | Scenario |
|----------|-----------------------|-------------|------------|-------------------------|
| 1 | GMPF | 01.01.1990 | 31.12.2002 | Deferred |
| 2 | NHS | 01.01.2003 | 31.05.2014 | Transferred to Teachers |
| 3 | Teachers | 01.01.2015 | 31.07.2015 | Deferred with Teachers |
| 4 | GMPF | 01.01.2016 | present | |

There would be a final salary link for employment 1 as there is no disqualifying break of more than 5 years.

Example 5 (Optant out)

| | Pension Scheme | From | To | Scenario |
|----------|-----------------------|-------------|------------|--|
| 1 | GMPF (opted out) | 26.07.1983 | 30.11.2009 | Post 88 transferred to personal pension. 26.07.1983 to 05.04.1988 deferred with GMPF |
| 2 | GMPF | 01.05.2014 | present | |

The break in public service pension scheme counts from 01.12.2009 to 30.04.2014 (less than 5 years), and not from 06.04.1988 to 30.04.2014 (more than 5 years). Therefore there is an ongoing final salary link.