

LGPC Update – Technical Group – 15 September 2017

Scheme advisory board (LGPS England & Wales)

- Local pension board survey
- SAB consultation on academies objectives
- SAB consultation on pooling forum
- MIFID2 – publication of FCA policy statement and opt up documents
- Tier 3 employers

Contracted-out reconciliation – pensioner overpayments

- LGPS Administering Authority Information Note (LGPS E&W)

DWP

- Automatic enrolment where member opted out more than 12 months before their automatic enrolment date
 - Transitional delay
- New automatic enrolment brief guide

The Pensions Regulator

- 2016 governance and administration survey findings published
- Secretariat meeting with the Pensions Regulator
- TPR brings first prosecutions on pensions failures

Other News and Updates

- Exit payment reform
- Letter from DCLG on Brewster cases
- Supreme Court judgment – Walker vs Innospec
- Outcome of judicial review on DCLG investments guidance
- Publication of GDPR handout
- Update following 2017 general election
- Legal opinion on discharge of death grants
- Payments of deferred refunds and non-life assurance AVC pots attached to a deferred refund, in respect of deceased members
- Meeting with GAD on actuarial guidance queries
- Options where LGPS benefits exceed ALTA

Scheme advisory board (LGPS England & Wales)

Local pension board survey

On 31 May 2017, the Scheme Advisory Board (SAB) commenced a survey of local pension boards which can be found at <http://lgpsboard.org/survey.php> .

The survey is being undertaken to inform a review of the new governance arrangements introduced in 2015 and to establish what is working well about local pension boards and what could be improved or done differently.

The survey was planned initially to run until 28 July but has now been extended to 29 September due to a lack of responses received.

The SABEW Secretariat have asked us to remind administering authorities that the survey is open to employer and member representatives of local pension boards as well as to chairs.

SAB consultation on academies objectives

The SAB has [commenced a consultation](#) on the development of options for academies. The consultation is open to all interested parties and is open until 29 September 2017.

The proposed draft objectives that the SAB are seeking views upon are as follows:

- Protect the benefits of scheme members through continued access to the LGPS
- Ring fence local taxpayers and other scheme employers from the liabilities of the academy trust sector
- Improve the efficiency and effectiveness of administrative practices
- Increase the accuracy and reliability of data

However, in achieving the objectives, the SAB do not believe the changes should:

- Significantly alter cashflow at the fund level
- Significantly alter assets at the pool level

A form for submitting responses is held on the SAB website. Responses via email are preferred and should be sent to [Liam Robson](#) and [Bob Holloway](#).

SAB consultation on pooling forum

The SAB have also [commenced a consultation](#) on the development of a national Cross Pool Information Forum (CPF) for the LGPS in England and Wales.

The SAB propose that the CPF is established to receive, share and disseminate information on the pooling of LGPS assets as well as provide a platform to exchange best practice and items of cross pool interest. However, it should not have decision making powers, nor should its discussions be technical in nature. It is proposed that the CPF would consist of up to three members from each pool, nominated by the member administering authorities of each pool.

Views from LGPS pensions committee chairs are sought on the proposals and the consultation closes on 29 September 2017. A form for submitting responses is held on the SAB website. Responses via email are preferred and should be sent to [Liam Robson](#) and [Bob Holloway](#).

MIFID2 – publication of FCA policy statement and opt up documents

In early July, the Financial Conduct Authority (FCA) published their final policy statement on the implementation of the EU's Markets in Financial Instruments Directive II (MIFID2) from January 2018.

Upon coming into force, MIFID2 will re-designate local authorities as 'retail' investors from their current status as 'professional' investors.

The policy statement confirmed significant revisions to the criteria via which a local authority pension fund will be able to opt up to professional status and follows detailed discussions undertaken by the SAB with the FCA

On Thursday 10 August, a SAB event on MIFID2 and cost transparency was held at the LGA's offices in London. On the same date, the SAB published details of the standardised opt up process it has developed with the Investment Association and other industry bodies for use by LGPS pension funds [on its website](#). The information that has been published includes a number of template documents that may be used in this process.

Tier 3 employers

In June and July, the Scheme Advisory Board put out a tender for a body to look into the issues associated with the participation of 'tier 3' employers in the LGPS and come up with proposals for addressing these. 'Tier 3' employers are those that do not have tax raising powers and do not receive significant funding from a central or local Government source.

A panel comprising the Chair and Vice-Chair of the SAB met on 17th August to consider four bids. After careful consideration, the bid panel, with the approval of scheme advisory board members, decided to award the commission to Aon Hewitt.

The final version of the report is expected to be published in 2018.

Contracted-out reconciliation – pensioner overpayments

LGPS Administering Authority Information Note (LGPS England & Wales)

On 9 June 2017, the LGPC Secretariat published the above information note which can be found under [Guides and sample documents](#). The note was prepared and published in response to a number of queries received by the Secretariat. Its aim is to assist administering authorities in determining what action to take following the discovery of an over-payment of pension during the course of the contracted-out reconciliation exercise.

The note includes the following topics:

Background
Current position
Considerations for administering authorities: <ul style="list-style-type: none">• Is the size of the overpayment relevant?• Can 'Estoppel' be used to prevent the recovery of an overpayment?• Can 'change of position' be used to make a partial claim for recovery of an overpayment?• Is 'relevance of member awareness' important?• Should the 'cost effectiveness' of recovery be considered?• Should any resultant 'hardship' be considered when deciding whether or not to seek recovery?
Limitation Act 1980 <ul style="list-style-type: none">• How does the Limitation Act 1980 affect what monies may be recovered?

Tax

- Where a pension is overpaid, from what date should the pension be reduced?
- Would sums written off be unauthorised payments?

The note represents the views of the Secretariat and should not be treated as legal advice nor in any way a complete and authoritative statement of the law. Readers cannot place any legal reliance on the content and may wish, or will need, to take their own legal advice on the interpretation of any particular piece of legislation. No responsibility whatsoever will be assumed by the LGPC Secretariat or the LGA for any direct or consequential loss, financial or otherwise, damage or inconvenience, or any other obligation or liability incurred by readers relying on information contained in the Note.

DWP

Automatic enrolment where member opted out more than 12 months before automatic enrolment date

The LGPC Secretariat have received clarification from DWP on the policy intent behind a change to the regulations governing automatic enrolment introduced in April 2015.

The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015 [SI2015/501] introduced a number of exceptions to the requirement to automatically enrol individuals into qualifying pension schemes, effective from 1 April 2015.

One of the exceptions relates to members who had previously been members of schemes that would have been qualifying pension schemes but had opted out (regulation 5C).

DWP have confirmed that the impact of this exception is as follows:

- Where an eligible jobholder opts out within 12 months of their automatic enrolment date, the employer *may* automatically enrol the individual at the automatic enrolment date.
- Where an eligible jobholder opts out more than 12 months before their automatic enrolment date, the employer *cannot* automatically enrol the individual at the automatic enrolment date.

The LGPC Secretariat queried the logic of this change because it has some odd impacts. For example, an individual who opted out of the LGPS 10 years before their automatic enrolment date could not be put back into the scheme by their employer on their automatic enrolment date. However, the employer of an individual who opted out of the LGPS only 3 months before their automatic enrolment date would have the discretion on whether to automatically enrol the eligible jobholder or not.

Nevertheless, DWP have confirmed this interpretation is correct. This approach is also consistent with what the Pensions Regulator say in their detailed guidance 3c (paras 14 – 19).

It should be noted that for the purposes of automatic *re-enrolment*, if an eligible jobholder opts out more than 12 months before their automatic re-enrolment date, they **must** be automatically re-enrolled. However, if they opt out within 12 months of their automatic re-enrolment date, the employer would have the discretion on whether to automatically enrol them or not.

Transitional delay

Employers who used transitional delay will be aware that the end of the transitional period is approaching i.e. 30 September 2017. We encourage employers to review the [transitional delay guidance](#) on TPR's website and to note the implications of the 12 month opt out exception for transitional delay.

For LGPS employers who used transitional delay, in essence, this means that an employer **cannot** automatically enrol an eligible jobholder who opted out more than 12 months before the transitional delay assessment date of 1 October 2017. As this exception was introduced by the Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015 from 1 April 2015 it is likely to have changed the position for many employers whose staging date was prior to 1 April 2015. These employers will have sent letters to eligible jobholders to whom transitional delay was applied informing them that they will be enrolled into the LGPS on 1 October 2017 if they meet the eligible jobholder criteria on that date. However, where the worker opted out more than 12 months before 1 October 2017 this cannot now happen. It would be advisable for employers to write to such individuals to inform them they will not be automatically enrolled from 1 October 2017 and to remind them of their option to opt in to the LGPS.

In addition, employers should also be aware that [TPR's guidance](#) (see paragraphs 73 to 78) states that where an individual to whom transitional delay was applied is not an eligible jobholder on 1 October 2017 the employer must keep assessing the worker each pay reference as usual. If at any point after 1 October 2017 the eligible jobholder criteria are met, unless one of the exceptions apply, the individual must be automatically enrolled with effect from 1 October 2017 i.e. active membership must be backdated to start from 1 October 2017 irrespective of the date the employee first meets the eligible jobholder criteria after 1 October 2017. Obviously, this could have serious consequences if employers are required to backdate contributions for several years. We have been seeking clarification from DWP on this and will provide further information as soon as it becomes available

Administering authorities may wish to alert employers in the Fund to the above.

New automatic enrolment brief guide

A new version of the automatic brief guide (version 7.0) was uploaded to both www.lgpsregs.org and www.scotlgpsregs.org on 5th September.

As mentioned in bulletin 159 the new version is a complete rewrite of the guide meaning that a tracked version is not available. The new guide aims to supplement

the information provided by the Pensions Regulator (TPR); it covers automatic enrolment from the perspective of the LGPS and TPS and contains signposts to the detailed guidance available on TPR's website. The sample letters have also been updated and are now contained in a standalone document (rather than as part of the full guide) – clean and tracked version of these are also available on www.lgpsregs.org and www.scotlgpsregs.org.

The full guide has now been removed and placed under the 'withdrawn guides' section of the website. We have taken this decision because in 2017 automatic enrolment, for the most part, is simply 'business as usual' and the TPR website contains the vast majority of information needed by an employer.

The Pensions Regulator

2016 governance and administration survey findings published

Following last year's survey of public service pension schemes (as reported in [bulletin 150](#)), the Pensions Regulator (TPR) have published their 2017 report on the governance and administration of such schemes. The survey achieved a 90% response rate, covering 98% of public service pension scheme membership.

The commentary in the report highlights a number of points that LGPS funds should be aware of:

- TPR are concerned that, in their view, 'a significant minority of scheme managers and pension board members may not be effective in, or even fully aware of, their governance duties' (p3).
 - TPR have stated they will provide clarity on the roles and responsibilities of those involved in running schemes and will clearly set out the standards they expect of all parties.
- TPR expect all schemes to undertake an annual data review and put an improvement plan in place if required (p4).
 - TPR will provide additional education in 2017 to assist with this, including guidance on developing a good improvement plan.
 - TPR will consider enforcement action where scheme managers fail to demonstrate that they are taking appropriate steps to improve their records, including having a robust improvement plan in place.
- The survey picked up that only 43% of schemes said that all their members received their annual benefit statement on time and that 21% of members did not receive their statement on time (p7).
 - TPR recognise that the reasons for the failure to issue ABSs are complex but they expect schemes to have made 'significant progress' in meeting ABS deadlines by now.
 - TPR also note in this section '*We expect member outcomes, in particular the proportion of members who receive their statements on time, to improve dramatically. Our tolerance for schemes' shortcomings, particularly in the areas identified in this report, is reducing.*'
- The report concludes by saying '*Scheme managers should be aware that we are more likely to move to use of our enforcement powers this year. We have,*

and will, take enforcement action where scheme managers have not taken sufficient action to address issues or meet their duties.’ (p8)

The report is supplemented by a research paper which outlines the Pensions Regulator’s findings in more detail.

In August 2017, the Pensions Regulator published information on the roles and responsibilities of certain people and bodies in respect of the governance and administration of public service pension schemes (PSPSs). The information is available [on the Regulator’s website](#).

Secretariat meeting with the Pensions Regulator

In late August, the LGPC Secretariat met with the Pensions Regulator and received confirmation that they are working to provide additional materials to support public service pension schemes in the coming months, particularly in the fields of breach reporting and record keeping. As these materials are finalised and published, details will be circulated to the LGPC distribution list.

TPR brings first prosecutions on pensions failures

The Pensions Regulator (TPR) has confirmed that it has [undertaken its first two prosecutions](#) relating to pensions failures.

The prosecutions related to two cases where the Pensions Regulator had issued information notices under section 72 of the Pensions Act 2004 and the information requested was not provided within certain timescales. Under section 77(1) of the Pensions Act 2004, it is a criminal offence to fail to comply with an information notice without a reasonable excuse.

In both cases, it was not the detail in the papers the Pensions Regulator requested that was the trigger for prosecution activity, it was the failure to provide the information in the required timescales. Neither case related to the LGPS or a public service pension scheme.

In July, it was also confirmed that an LGPS fund has been fined £1,000 by TPR for its failure to complete its annual scheme return.

Other News and Updates

Exit payment reform

The Government have confirmed that a fresh consultation on draft regulations governing the exit payment cap and exit payment recovery is due to take place in autumn. This would potentially mean an implementation for both reforms in the first half of 2018, subject to sufficient parliamentary time being found.

We also understand the Government are minded to progress the [further reform](#) of exit payments in local government. However, the exact details and timing for this reform is not yet known.

Letter from DCLG on Brewster cases

On 17th August, a letter from DCLG was circulated to LGPS funds in England and Wales regarding the implications of [the Brewster judgment](#) for the scheme in England and Wales.

In the Brewster judgment the Supreme Court found that the requirement of the LGPS in Northern Ireland for members to have completed a nomination form for a cohabiting partner to be entitled to payment of survivors pension constituted unlawful discrimination and was a breach of the European Convention on Human Rights (ECHR).

The LGPS in England and Wales previously included a similar requirement, meaning that:

- where a member had active membership in the 2008 Scheme,
- that member died on or after 1 April 2008 and prior to 1 April 2014,
- at the time of their death, the member was in a relationship where their partner would have met the definition of a 'nominated cohabiting partner' under regulation 25 of the LGPS (Benefits, Membership and Contributions) Regulations 2007), but
- no nomination had been made,

no survivor's pension would have been payable to that partner.

Whilst making clear that it is for LGPS funds in England and Wales to determine their approach in respect of claims arising from the Brewster case, the letter states that it would, in DCLG's view, be 'reasonable' for funds to rely on the judgment as well as section 3 of the Human Rights Act 1998 to *not* require that a survivor partner must have been nominated to have been eligible for an LGPS survivor's pensions in the circumstances set out above.

Section 3 of the Human Rights Act 1998 states that primary and subordinate legislation must be read and given effect in a way which is compatible with ECHR rights. DCLG's interpretation is that section 3 reasonably gives administering authorities the vires to read the aforementioned regulation 25 of the Benefits Regulations 2007 in a way compatible with ECHR rights and therefore disapply the nomination requirement. This is because the judgment of the Supreme Court earlier this year would appear to mean that the current wording of the Benefit Regulations 2007 is not compatible with ECHR rights.

The letter goes on to outline further points that LGPS funds should consider in dealing with claims arising from the Brewster judgment.

Separately DCLG have confirmed that they have received legal advice that there is no need for them to amend the Benefits Regulations 2007 to reflect the Brewster judgment and they therefore have no plans to do so.

Supreme Court judgment – Walker vs Innospec

In July, the Supreme Court [handed down a judgment](#) which has potential implications for pension schemes who offer differing survivors' pension benefits

depending on whether their relationship with the originating member was a civil partnership, same sex marriage or opposite sex marriage.

The Equality Act 2010 contains an exception which made it legal for pension schemes to discriminate in the survivor benefits it offered, saying that pension schemes did not have to provide civil partners with pension benefits relating to membership accrued prior to the introduction of civil partnerships in December 2005. The Supreme Court found that this exception was incompatible with EU law.

The case relates to a member (Mr. Walker) whose pension scheme, making use of the exception in the Equality Act 2010, would have only provided his civil partner with a survivor's pension based on his membership from 5 December 2005 upon his death. By contrast if Mr. Walker had been married to a woman, a survivor's benefit payable based on his entire membership would have been payable on his death.

Following the judgment, we understand that Government lawyers are considering the possible impacts the ruling will have on the survivors pension rights offered by public service pension schemes, including the LGPS.

Outcome of judicial review on DCLG investments guidance

On 23rd June, the High Court published its judgment in a judicial review case concerning the statutory guidance DCLG issued to accompany the LGPS (Management and Investment of Funds) Regulations 2016.

The High Court ruled that the section of the statutory guidance on preparing and maintaining an investment strategy statement stating that funds should not pursue policies that are contrary to UK foreign policy or UK defence policy was unlawful. The High Court found that the Secretary of State had exceeded his regulation making powers by using the guidance to protect government foreign policy and UK defence policy, which, in the judge's view, were not policies for "pension purposes". The Secretary of State was held to have acted for an unauthorised purpose and therefore unlawfully.

Following the judgment, DCLG have published an updated version of the guidance on their website. This is also available under [the LGPS Investment Regulations 2016](#) on www.lgpsregs.org.

The updated version removes the references contained in the previous version which suggested that funds should not pursue policies that are contrary to UK foreign policy or UK defence policy. Funds should now use this version of the guidance in preparing and maintaining their investment strategy statements.

We understand however that DCLG are planning to appeal the judgment and, in July, Lord Bourne of Aberystwyth confirmed the Government had received permission to do so.

Publication of GDPR handout

On 25 May 2018 the EU's General Data Protection Regulation (GDPR) comes into force containing new standards for the protection of individual's personal data in the European Economic Area.

In July, the LGPC Secretariat circulated a handout commissioned from Squire Patton Boggs to provide a brief overview of the new requirements and the steps which local authority pension funds should be taking to prepare for GDPR coming into force.

We are aware that GDPR is an area that is getting increased attention across the LGPS and there are a number of crucial questions where there are different views, in particular:

- a) the implications of GDPR for LGPS funds, and
- b) the work that needs to be undertaken to ensure administering authorities are fully compliant by the time GDPR comes into force.

In general, we recommend that LGPS administering authorities which form part of a local authority discuss and become involved in the local authority's broader project for the implementation of GDPR.

However, at a national level, plans are also in place to help funds with their GDPR responsibilities:

- a number of funds have joined together to form a GDPR group. The group, in consultation with the communications working group, plan to produce sample documentation for use by LGPS funds, and
- the LGPC Secretariat are also seeking a legal view on a number of specific questions that have been raised about GDPR in respect of the LGPS.

All information will be circulated to funds via the mailing list as and when this is available.

Update following 2017 general election

Following the general election of 8 June and the subsequent formation of a Conservative minority government, Guy Opperman, MP for Hexham, has been appointed the new Minister for Pensions and Financial Inclusion in DWP. Marcus Jones, MP for Nuneaton, remains the Minister for Local Government in DCLG with responsibility for the LGPS in England and Wales.

In the Queen's Speech on 21 June, the Government confirmed they would bring forward legislation in the next two years which will merge the Money Advice Service, the Pensions Advisory Service and Pension Wise into one body providing financial guidance. This follows a consultation on the proposal which was undertaken last year.

Since the election, the Government have also confirmed the following:

- that the state pension triple lock will remain in place for the duration of this Parliament,
- legislation will be introduced to bring into effect the reduction in the money purchase annual allowance (MPAA) from £10,000 to £4,000. Before the general election, this proposal had been included in the Finance Bill 2017 but

was withdrawn as the Government decided they wished to proceed on a consensual basis before the dissolution of Parliament. A written ministerial statement published on 13 July 2017 confirmed that a forthcoming Finance Bill would include this change, and that this is intended to apply retrospectively from 06/04/2017, and

- that the increase in the state pension age to the age of 68 will be brought forward so that this takes place in stages between 2037 and 2039. Those born between 06/04/1970 and 05/04/1978, who currently have an SPA of 67, will be affected by the change.

Legal opinion on discharge of death grants

On 11 July, the LGPC Secretariat sent the below email to funds regarding the discharge of death grants from the scheme.

We have obtained a legal opinion from Squire Patton Boggs as to what LGPS administering authorities are able to do to avoid the special lump death charge being payable when discharging a death grant. The special lump sum death charge is payable when the death grant is not discharged within 2 years of the date of death, or within 2 years of the date on which the administering authority could reasonably be expected to have become aware of the member's death and the payment is made to the personal representatives, as required by the LGPS regulations – see below for details.

“Background

The LGPS Regulations (including the 1995, 1997, 2008 and 2013) require that where a death grant is not paid within 2 years of the date of the death, or within 2 years of the date on which the administering authority could reasonably be expected to have become aware of the member's death (except for the 1995 Regulations which only mention date of the death) payment must be made to personal representatives. So in essence, the regulations provide that if the death grant has not been paid within the 2 year period, the administering authority can no longer exercise a discretion over to whom to pay the death grant but must, instead, pay it to the personal representatives.

From 6 April 2016 death grants paid after two years are no longer unauthorised payments but where they are being paid to the personal representatives are subject to the special lump sum death charge of 45%.

It goes without saying that administering authorities should do their utmost to ensure that they don't get themselves into a position where they end up paying out a death grant after the 2 year period has expired, however, we are aware that they sometimes experience difficulties in determining whether there is anyone they can pay the death grant to (under their discretionary power) or in ascertaining who is administering the estate and consequently payments are not always made within the 2 year period. The question we asked was in such circumstances:

Q1. *Is it acceptable for administering authorities to pay the death grant into a separate bank account just before the expiry of the 2 year period in order to avoid the death grant being subject to the special lump sum death charge*

Q2. *If the answer to question 1 is yes, what form would the bank account would have to take to meet the requirement of our Regulations that payment must be made to the personal representatives? That is, would a separate bank account need to be set up for each case, with the account being set up in the name of “The legal personal representatives of XXXXX deceased” (with XXXX being the name of the deceased) in order to meet the requirements of our regulations (if this is even possible?) or would it be acceptable for the administering authority to set up one ESCROW account (a holding account held by a third party during the process of a transaction between two parties) and pay all such death grants into it until payment can be made to the personal representatives?*

Legal opinion

We agree that the payment of the death grant to a separate bank account held outside of the Fund, before the two year period has expired is likely to prevent the death grant from being subject to a special lump sum death benefits charge. However, we don't think this solution would work in respect of payments made after two years. This is because section 40(4) of the LGPS Regulations 2013 makes clear that after the expiry of two years the payment should be made to the personal representatives, it does not allow the Authority to hold the death grant “for the benefit of” the personal representatives.

Section 40(2) of the LGPS Regulations 2013, however, states that “the appropriate administering authority may, at its absolute discretion, pay the death grant to or for the benefit of the member's nominee, personal representatives or any person appearing to the authority to have been a relative or dependent of the member”. So, as long as the payment is made out of the Fund before the expiry of two years from the date of death (or the date the Authority should have reasonably known about the member's death) holding the death grant in an escrow account is likely to fulfil this criteria, such that the payment could be made tax free to the member's personal representative. Whilst the money would still be held by the Authority (albeit outside the Fund) it would not be the Authority's money. The death grant would be held on constructive trust for the benefit of the personal representatives.

We don't see any reason why a separate bank account should be set up in respect of each death grant where the personal representatives are being located so long as the monies can be identified and the appropriate funds credited to the escrow account before the two year period expires. Just to note this approach is common in private trusts so we see no reason why this approach couldn't be adopted by the Authority too.”

Whilst the question to Squire Patton Boggs was couched in terms of the LGPS in England and Wales, we understand the same position applies for the LGPS in Scotland.

Since circulating the email, we have received a couple of follow up questions, our views on which are as follows:

Where a fund pays a death grant to an escrow account does interest under regulation 81 of the LGPS Regulations 2013 (regulation 79 of the LGPS (Scotland) Regulations 2014) continue to accrue?

No, in the view of the LGPC Secretariat, once a death grant has been paid to the escrow account, the liability has been discharged for the purposes of the LGPS's regulations and no more interest will accrue before it is paid to the personal representative of the deceased.

Although no further interest would be due under the LGPS regulations (because administering authorities would have discharged their liability at the point of making payment into the escrow account), administering authorities would need to consider whether the escrow account they set up should itself be an interest bearing account or a non interest bearing account.

If it is to be an interest bearing account administering authorities would need to ensure that a system was in place to determine how much of the interest paid by the account relates to each separate death grant and refund held within the account (so that when a death grant or refund is paid out from the account, the appropriate proportion of the interest paid by the account is added to the death grant or refund paid out of the account).

Could LGPS administering authorities use escrow accounts to discharge refund liabilities? This would be done in order to comply with the requirement of regulations 18(5) of the LGPS Regulations 2013 and the LGPS (Scotland) Regulations 2014 that refunds are paid 'on the expiry of five years' beginning with the date the person's active membership ceased if no request is made before then or, on the day before attaining age 75, whichever is earliest.

Yes, in the view of the LGPC Secretariat an escrow account could be used for this purpose. As things currently stand under both sets of regulations, a refund would technically not be payable more than five years after the member left the scheme or upon the member turning 75. Paying the refund to an escrow account in either situation would technically discharge the fund's liability and mean that a refund could subsequently be paid onward to the individual beyond either date.

If a refund is paid to an escrow account in this way, it is also our view that interest under the LGPS regulations would no longer accrue on the refund for the same reasoning as set out above in respect of death grants paid to escrow accounts. In the same way, consideration would also need to be given to whether to use an escrow account that is interest bearing or one that is non-interest bearing.

Payments of deferred refunds and non-life assurance AVC pots attached to a deferred refund, in respect of deceased members

Since 6 April 2016, the Secretariat has received a number of queries concerning how to pay a refund of contributions where the member has died prior to payment. The below sets out our understanding of the requirements in this situation.

For completeness we have also addressed the payment of a non-life assurance AVC pot attached to a deferred refund, though we expect such cases to be few and far between.

The Secretariat was initially of the view that the refund of contributions should simply be paid to the personal representatives as a refund. This was because neither the 2008 nor the 2014 LGPS Regulations (1998, 2009 and 2015 LGPS (Scotland) Regulations) specifically stated that such a payment be treated as a Defined Benefit Lump Sum Death Benefit (unlike the LGPS 1997 Regulations¹). However, we have recently had cause to review this position and accordingly the Secretariat put forward an alternative proposal, which was agreed by Technical Group on the 16 June 2017 as a consistent approach that should be adopted.

Technical Group agreed that the following monies should be paid under section 168 of the Finance Act 2004:

- Refund of contributions - where the member dies prior to payment this should be paid in the form of a Defined Benefit Lump Sum Death Benefit (DBLSDB) consisting of employee contributions plus interest (if any), less the Certified Amount, and
- Non-life-assurance AVC pot attached to a frozen refund - where the member dies prior to payment this should be paid in the form of an Uncrystallised Funds Lump Sum Death Benefit (UFLSDB)

The above payments will always be paid to a non-qualifying person² (e.g. a personal representative) and taxed by the scheme administrator as set out in the following table. It is important to note that neither of these payments can be paid to a nominee (because a nomination form only covers death grants prescribed within the LGPS regulations). Therefore, where tax is appropriate in the table below:

- a refund which becomes a DBLSDB will always be taxed at a rate of 45%.
- a non-life assurance IHAVC Fund attached to a frozen refund will always be taxed at a rate of 45%.

Circumstance	Tax deducted by the Scheme Administrator
Member died prior to age 75 and payment made to a non-qualifying person within 2 years of when the Scheme administrator first knew of the date of death or within 2 years of when the Scheme administrator could first	Taxed: Tax Free Legislation: Not present in Section 636AA of the Income Tax (Earnings and Pensions) Act 2003.

¹ Regulation 87(2B) of the LGPS Regulations 1997 stated "If a member dies before repayment of the contributions have been made, these shall be treated as a lump sum death benefit for the purposes of Part 2 of Schedule 29 to the Finance Act 2004". Therefore, people who left on or after:

- 1 April 1997 and prior to 1 April 2008, and
- 1 April 1974 and prior to 1 April 1997 (this group are covered by regulation 29 of the LGPS (Transitional Provisions) Regulations 1997)

must be dealt with in accordance with the LGPS Regulations 1997. Accordingly, the refund paid in respect of a deceased member should be treated as a defined benefit lump sum death benefit (DBLSDB) under section 168 of the Finance Act 2004.

² Section 206 of the Finance Act 2004 defines a non-qualifying person as someone who is receiving the payment in their capacity as a trustee (other than a bare trustee*), or in their capacity as a personal representative, director of a company, partner in a firm or member of a limited liability partnership. Note: "bare trustee" means a person acting as trustee for (a) an individual absolutely entitled as against the trustee, (b) two or more individuals who are so entitled, (c) an individual who would be so entitled but for being a minor or otherwise lacking legal capacity, or (d) two or more individuals who would be so entitled but for all or any of them being a minor or otherwise lacking legal capacity.

reasonably have been expected to have known about the death.	
Member died prior to age 75 and payment not made to a non-qualifying person within 2 years of when the Scheme administrator first knew of the date of death or within 2 years of when the Scheme administrator could first reasonably have been expected to have known about the death.	Taxed: 45% Legislation: Section 206(1B) & (4) Finance Act 2004
Member died on or after age 75 and payment made to a non-qualifying person within 2 years of when the Scheme administrator first knew of the date of death or within 2 years of when the Scheme administrator could first reasonably have been expected to have known about the death.	Taxed: 45% Legislation: Section 206(1A) & (4) Finance Act 2004
Member died on or after age 75 and payment not made to a non-qualifying person within 2 years of when the Scheme administrator first knew of the date of death or within 2 years of when the Scheme administrator could first reasonably have been expected to have known about the death.	Taxed: 45% Legislation: Section 206(1A) & (4) Finance Act 2004

Accordingly, the Secretariat will request that a change be made to the LGPS Regulations both in England & Wales and Scotland to clarify that such payments should be made as a Defined Benefit Lump Sum Death Benefit or, where relevant, an Uncrystallised Funds Lump Sum Death Benefit. Clearly any changes to the LGPS regulations will take time, and LGPS Funds may wish to adopt the above approach (and thus rely on section 168 of the Finance Act 2004) when making such payments prior to any change in the regulations.

Meeting with GAD on actuarial guidance queries

On 23 May, the LGA held a meeting with GAD and DCLG to discuss a number of queries that have been raised relating to actuarial guidance.

Following that meeting, a number of next steps have been agreed and the LGPS Secretariat have compiled a query log which is now available on the actuarial guidance pages [[E&W](#) / [Scotland](#)] of www.lgpsregs.org and www.scotgpsregs.org detailing:

- The nature of each query,
- The guidance to which it relates,
- The date it was first raised,
- Where relevant, links to further information.

As new queries are added and existing queries are resolved/ amended, the log will be updated accordingly. Administering authorities are asked to review the document before raising any queries directly to the LGPC Secretariat in case your query relates to a known issue.

GAD have also confirmed that they plan to issue standalone guidance to enable funds in England and Wales to process the cases described in paragraph 7.5 of the individual incoming and outgoing transfers guidance dated 8 April 2016 without needing to refer these to GAD. Paragraph 7.5 relates to Club transfer cases where a member is transferring from scheme A to scheme C with a gap of more than five years, but a period of scheme B membership in between the two means that the overall gap in public service pension scheme membership is less than five years. In such a case, the transfer would be calculated on a non-Club basis but would retain a final salary link.

We have asked GAD if they also plan to issue equivalent standalone guidance for LGPS Scotland.

Options where LGPS benefits exceed ALTA

The DCLG and SPPA actuarial guidance documents entitled 'Limit on Total Amount of Benefits – Lifetime Allowance' (dated 14 April 2016 and 26 February 2015 respectively) provide guidance for LGPS funds on the permitted ways that an LGPS member may take benefits that exceed the lifetime allowance.

In particular, paragraphs 2.21 of the DCLG guidance and 2.22 of the SPPA guidance provide three options for how a member may take their post-commutation pension where, following the crystallisation of their lump sum, the member's pension still exceeds the available Lifetime Allowance (ALTA).

In [bulletin 132](#), we provided details of a query we had raised with GAD regarding the availability of option 1, the commutation of the remaining pension for a further lump sum which would be subject to tax (payable as a lifetime allowance excess lump sum). The query noted that whilst this option is permitted under the Finance Act 2004, restrictions contained in regulations 20 and 60 of the Occupational Pension Schemes (Contracting-out) Regulations 1996 [SI 1996/1172] appeared to mean that lifetime allowance excess lump sums could not be paid from pre 6 April 1997 GMPs or from post 5 April 1997 section 9(2B) rights.

The 1996 Regulations have, since 6 April 2016, been superseded by the Occupational Pension Schemes (Schemes that were Contracted-out) (No 2) Regulations 2015 [SI 2015/1677], but the same restrictions regarding the commutation of contracted-out rights apply by virtue of regulations 18 and 25 of the 2015 Regulations.

GAD have now confirmed that they agree with our interpretation meaning that LGPS members can only use option 1 to commute pension for a lifetime allowance excess lump sum where the part of the pension they are seeking to commute relates to:

- Pre 6 April 1997 pension rights in excess of the GMP, or

- Post 5 April 2016 pension accrual.

GAD will update their guidance to reflect this in due course and we have asked that when they do so they provide a methodology for funds to determine which portion of an individual's pension is available for commutation.

Query 30 on our [query log](#) has been updated to reflect the position outlined above.