Legislation, Guidance and Information relating to Freedom and Choice

Changes in the law introduced by the Pension Schemes Act 2015 mean that from 6th April 2015 many members of UK pension schemes which offer Defined Contribution (DC) benefits have increased flexibility over how they take their pension from age 55. These changes in the law will affect members who have flexible benefits, which include money purchase or cash balance benefits. Subject to the Scheme adopting the new flexibilities, these members will have more options for taking retirement income and fewer restrictions on the amount they can withdraw as cash. There will be four main options:

i) purchase an annuity (or scheme pension if offered by the scheme and with / without a pension commencement lump sum),
ii) flexi-access drawdown (if offered by the scheme),
iii) taking a number of cash sums from uncrystallised funds at different stages (if offered by the scheme), and
iv) taking the entire pot as cash from uncrystallised funds in one go.

To help people understand their retirement choices, the government has introduced a free and impartial service called Pension Wise. This help will be available to members online, over the phone or face to face. More information about Pension Wise and the choices that members taking flexible benefits from a DC scheme have can be found at: www.pensionwise.gov.uk.

The Pension Schemes Act 2015 also ~~introduces~~ introduced additional flexibility to allow members to take a transfer of their accrued LGPS benefits and / or accrued AVC fund to a Defined Contribution scheme in order to flexibly access their benefits.

Whilst the Pension Schemes Act 2015 sets out the framework for the new options, the following regulations provide added detail:

- The Occupational and Personal Pension Schemes (Transfer Values) (Amendment and Revocation) Regulations 2015 [SI 2015/498]

- The Occupational and Personal Pension Schemes (Disclosure of Information) (Amendment) Regulations 2015 [SI 2015/482]

- The Occupational Pension Schemes (Consequential and Miscellaneous Amendments) Regulations 2015 [SI 2015/493]

- The Funded Public Service Pension Schemes (Reduction of Cash Equivalents) Regulations 2015 [SI 2015/892]

- The Pension Schemes Act (Transitional Provisions and Appropriate Independent Advice) Regulations 2015 [SI 2015/742]

- The Public Service (Civil Servants and Others) Pension (Consequential and Amendment) Regulations 2015 [SI 2015/372]
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- The Pension Sharing (Miscellaneous Amendments) Regulations 2016 [SI 2016/289]

- The Pension Protection Fund and Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2016 [SI 2016/294]

The Pensions Regulator (TPR) has issued guidance on DB to DC transfers and conversions. Please see http://www.thepensionsregulator.gov.uk/docs/db-dc-transfers-conversions-regulatory-guidance.pdf for more information.

The Pensions Regulator (TPR) has also issued an "Essential Guide to Communicating with Members About Pension Flexibilities" – see http://www.thepensionsregulator.gov.uk/docs/essential-guide-pension-flexibilities-april-2015.pdf

The FCA has published policy statement PS14/17 which sets out the standards to be met by the guidance providers together with a package of rules for firms directly affected by the new flexibilities – see https://www.fca.org.uk/news/ps14-17-retirement-reforms-and-the-guidance-guarantee. The FCA also consulted on proposed changes to its transfer rules (CP15/7). The consultation, which closed on 15 April 2015, proposed that the FCA rules be amended to:

- incorporate the new specified activity of advising on conversions or transfers of safeguarded benefits to flexible benefits, and
- require that all advice on DB to DC pension transfers be provided or checked by a Pension Transfer Specialist.

The consultation paper can be found at http://www.fca.org.uk/static/documents/consultation-papers/cp15-07.pdf.

Following the consultation the FCA published Policy Statement (PS15/12). The new rules described in this Policy Statement came into force on 8 June 2015. Financial advisory firms advising on pension transfers and pension providers receiving transfer business must make any changes necessary to comply with the rules which require that advice or a personal recommendation about a pension transfer must be given by a pension transfer specialist or, if an individual who is not a pension transfer specialist gives advice or a personal recommendation about a pension transfer on a firm's behalf, the firm must ensure that the recommendation or advice is checked by a pension transfer specialist. A pension transfer specialist is an individual appointed by a firm to check the suitability of a pension transfer who has passed the required examinations as specified in the FCA's Training and Competence sourcebook - see the document at http://fshandbook.info/FS/html/handbook/TC/App/4/1 and look at activity 11 in Part 1 which says the person has to meet qualification criteria 1, or 2+3 , or 4 + 5 + 6.; then look at Part 2 which shows the qualifications that meet those criteria.

On 27 May 2016 DCLG issued a consultation on changes to LGPS regulations which can be found at:-

> https://www.gov.uk/government/consultations/local-government-pension-scheme-regulations

The proposed changes implement policies on Fair Deal for staff pensions and freedom and choice in pensions. Specifically, as far as the proposed changes relate to this document, the consultation proposes greater flexibility in how members who have additional voluntary contributions (AVC) contracts may access their savings. The content of that consultation will impact on the content of this document, and this document will be updated once the legislation is enacted.

What does this mean for the LGPS?

There are four main impacts for the LGPS.

The first is to determine the policy line the LGPS should adopt in relation to AVCs.

The second is to be aware of the changes to the Disclosure of Information requirements which result from Freedom and Choice.

The third is to be aware of the rules governing transfers out from the LGPS where a member wishes to transfer the value of their accrued LGPS rights and / or AVC fund to a Defined Contribution arrangement in order to access flexible benefits.

The fourth is the impact taking flexible benefits has on a member's annual allowance.

This paper considers each of these in turn.

One other matter to be aware of is that where a member of a DC scheme has taken an Uncrystallised Funds Pension Lump Sum (UFPLS) when flexibly drawing part, but not all, of their benefits from the DC arrangement and subsequently transfers the DC amount not yet drawn to the LGPS, this has no impact on the maximum tax-free Pension Commencement Lump Sum (PCLS) the member can draw from the LGPS. This can be shown in the following example:

A member has a DC pot of £10,000 and draws £4,000 as an UFPLS. £1,000 would be tax free and £3,000 taxable.

If the member then transfers the remaining £6,000 to the LGPS the £6,000 will purchase an amount of pension in the LGPS.

The member will ultimately be able to take 25% of the pension derived from that £6,000 transfer as a PCLS.

So, looking at it simplistically, the overall 25% limit would not have been broken i.e. of the initial £10,000, £1,000 would have been drawn tax free via an UFPLS and £1,500 (25% x £6,000) would have been drawn as a PCLS, meaning the overall total would be £2,500 (25% x £10,000).

IMPACT 1

Determine the policy line the LGPS should adopt in relation to AVCs.

~~Current position~~Position prior to 6th April 2015 - England and Wales

~~At the present time~~Up to and including 5th April 2015, members of the LGPS in England and Wales ~~can~~ could use their AVC fund in the following ways on retirement;

- **Buy an Annuity** from an insurance company, bank or building society of the member's choice at the same time as drawing the LGPS retirement benefits or, for a pre 1st April 2014 AVC contract, the member may be able to choose to delay buying an annuity until any time up to the eve of their 75th birthday.

- **Buy a Top-up LGPS Pension -** they can use some or all of their AVC fund to buy a top-up pension from the LGPS but, for a member with a pre 1st April 2014 AVC contract, only if the member retires with immediate payment of benefits.

- **Take the AVC fund as a pension commencement lump sum (tax-free cash from crystallised benefits)**
  - For a post 31st March 2014 AVC contract, take up to 25% of the AVC fund as a tax-free cash lump sum[1].
  - For a pre 1st April 2014 AVC contract, take up to 100% of the AVC fund as a tax free lump sum if drawn at the same time as the main LGPS pension and provided, when added to the LGPS lump sum, it does not exceed 25% of the overall value of the LGPS benefits (including the AVC fund).[2] If the member retires (other than on flexible retirement) and draws the AVC fund later, the member can normally only have up to 25% of the AVC fund as a tax free lump sum.

- **Buy extra membership in the LGPS** - if the member's election to start paying AVCs was made before 13 November 2001 the member may be able in certain circumstances (such as flexible retirement, retirement on ill health grounds, or on ceasing payment of AVCs before retirement) to convert the AVC fund into extra LGPS membership in order to increase

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[1] Provided the total lump sum does not exceed £250,000 ~~312,500~~ (~~2015/2016~~2016/2017 figure) less the value of any other pension rights the member may have in payment. The LGPS Regulations 2013 neither define the term 'lump sum' nor limit its value to 25% of the value of the AVC pot. Technically, by default therefore, the regulations currently continue to permit the AVC to be taken wholly as a pension commencement lump sum (tax-free cash) subject to overall HMRC restrictions.

[2] Provided the total lump sum does not exceed £250,000 ~~312,500~~ (~~2015/2016~~2016/2017 figure) less the value of any other pension rights the member may have in payment.

their LGPS benefits. The extra membership will attract a pension of 1/60th of final pay for each year of membership purchased.

If the member draws benefits on flexible retirement and their AVC contract started on or after 13 November 2001 they can choose not to draw on their AVC fund or to take all of their AVC fund in one of the above ways at the time they draw their flexible retirement benefits, and, if they wish, continue paying AVCs. If the AVC contract started before 13 November 2001 the AVC contract will cease and the member will have to use all of the AVC fund in one of the above ways at the time they draw their flexible retirement benefits.

Position prior to 6th April 2015 ~~Current position~~ - Scotland

~~At the present time~~Up to and including 5th April 2015, members of the LGPS in Scotland ~~can~~ could use their AVC fund in the following ways on retirement;

- **Buy an Annuity** from an insurance company, bank or building society of the member's choice at the same time as drawing the LGPS retirement.

- **Buy a Top-up LGPS Pension -** they can use some or all of their AVC fund to buy a top-up pension from the LGPS.

- **Take the AVC fund as a pension commencement lump sum (tax-free cash from crystallised benefits) -** take up to 100% of the AVC fund as a tax free lump sum at the same time as drawing the main LGPS pension and provided, when added to the LGPS lump sum, it does not exceed 25% of the overall value of the LGPS benefits (including the AVC fund) [3].

- **Buy extra membership in the LGPS** - if the member's election to start paying AVCs was made before 30 June 2005 the member may be able in certain circumstances (such as flexible retirement, retirement on ill health grounds, or on ceasing payment of AVCs before retirement) to convert the AVC fund into extra LGPS membership in order to increase their LGPS benefits. The extra membership will attract a pension of 1/60th of final pay for each year of membership purchased.

If the member draws benefits on flexible retirement and their AVC contract started on or after 30 June 2005 they can choose not to draw on their AVC fund or to take all of their AVC fund in one of the above ways at the time they draw their flexible retirement benefits, and, if they wish, continue paying AVCs. If the AVC contract started before 30 June 2005 the AVC contract will cease and the member will have to use all of the AVC fund in one of the above ways at the time they draw their flexible retirement benefits.

[3] Provided the total lump sum does not exceed £250,000 ~~312,500~~ (~~2015/2016~~2016/2017 figure) less the value of any other pension rights the member may have in payment.

~~Way forward~~Position from 6th April 2015

1. Members with AVC funds ~~should see~~have seen no diminution of the ~~current~~ options available to them (as set out above). However, given that:

   i) despite the HM Treasury policy position, the current LGPS Regulations in England and Wales allow all AVC payers (including those with post 31st March 2014 AVC contracts) to take up to 100% of the AVC fund as a tax free lump sum,
   ii) no amendments were included in the LGPS (Amendment) Regulations 2015 in England and Wales to deliver the HM Treasury policy position of restricting the maximum tax free lump sum from a post 31st March 2014 AVC contract to 25% of the value of the AVC fund (and there are no such amendments on the horizon), and
   iii) the LGPS in Scotland and in Northern Ireland will not be implementing the HM Treasury policy position

   administering authorities in England and Wales should (from April 2015), allow members with post 31st March 2014 AVC contracts to take up to 100% of the AVC fund as a tax free lump sum at the same time as drawing the main LGPS pension[4] provided, when added to the LGPS lump sum, it does not exceed 25% of the overall value of the LGPS benefits (including the AVC fund). [5] Regulation 33(2) of the LGPS Regulations 2013 in England and Wales which currently says:

   > (2) But the total amount of the member's commuted sum shall not exceed 25% of the capital value of the member's accrued rights under all local government pension provision in relation to that benefit crystallisation event **excluding** those under regulation 17(7)(a) (additional voluntary contributions).

   would need to be amended to read:

   > (2) But the total amount of the member's commuted sum shall not exceed 25% of the capital value of the member's accrued rights under all local government pension provision in relation to that benefit crystallisation event **including** those under regulation 17(7)(a) (additional voluntary contributions).

   given that, as presently drafted, regulation 33 allows up to 25% of the capital value of the main benefits to be drawn as a lump sum and regulation 17 allows 100% of the AVC pot to be drawn as a lump sum. So, technically, the member could, at present, draw in excess of 25% of the overall value of their combined main scheme and AVC benefits. However,

[4] Note: if HM Treasury still wish to insist that a 25% limit is imposed, this should only be from a future date ('A' Day).
[5] Provided the total lump sum does not exceed £250,000 ~~£312,500~~ (~~2015/2016~~2016/2017 figure) less the value of any other pension rights the member may have in payment.

that would mean allowing the member to take an unauthorised lump sum – something that, as a scheme, we should not permit. It is worth noting that the draft LGPS (Amendment) Regulations 2016 contain a correction to this regulation which appears to correct the position if the amendment regulations are enacted.

2. Where the member draws a lump sum from the AVC fund under one of the **existing** options this will continue to be a Pension Commencement Lump Sum, not an Uncrystallised Funds Pension Lump Sum (UFPLS).

3. The LGPS will not **currently** permit flexi-access drawdown. If members wish to avail themselves of flexi-access drawdown, they will have to transfer their AVC fund elsewhere. Provided a member has ceased payment of AVCs they can transfer their AVC fund to another scheme without also having to transfer the value of their main LGPS rights. They can transfer their AVC fund even if they continue to contribute to the LGPS (provided they have ceased making AVC payments).

4. As members, on or after normal minimum retirement age (55), may wish to avail themselves of one or more UFPLS payments after drawing their main LGPS benefits **or prior to drawing their main scheme benefits** it would be helpful if the LGPS Regulations were amended to allow this. If the LGPS wished to operate this from 6th April 2015 (in order to cater for the few AVC payers who would wish to give up a 100% tax free lump sum for a 25% tax free lump sum in order to draw the AVC earlier than the main scheme benefits) then administering authorities would need a letter of intent from DCLG, SPPA and DOE Northern Ireland confirming that the regulations will be amended retrospectively to 6th April 2015 to allow members to take a UFPLS. The LGPC Secretariat understands that no such letter of intent will be forthcoming from DCLG. Thus, for the time being, there will be no option to take AVCs as a UFPLS and if a member wishes to obtain a UFPLS the member will have to transfer their AVC fund to another DC arrangement offering flexible benefits.

   As mentioned earlier in this paper, the DCLG May 2016 consultation on amending regulations for the LGPS England and Wales proposes introducing greater flexibility for how LGPS members may access their AVC fund from the age of 55 onwards, in line with the Freedom and Choice reforms. Following those proposals being enacted into law, this document will be updated to reflect the changes made.

IMPACT 2

The Disclosure of Information requirements

The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 [SI 2013/2734] have been amended on account of the 'Freedom and Choice' changes.

Provision of information in the scheme members' guide

The scheme members' guide must:

- include information on whether or not the scheme allows accrued safeguarded benefits for a member who leaves before Normal Pension Age to be transferred out. At present, the LGPS allows transfers of safeguarded benefits for members with at least 3 months membership[6] (except where a member retires with an immediate entitlement to a pension on the grounds of redundancy, business efficiency or ill health), provided:

    a) if the member has met the 2 years vesting period, the member ceased active membership at least 12 months before Normal Pension Age, has not had a Crystallisation Event in respect of accrued safeguarded benefits in the scheme (i.e. defined benefits, other than Pension Credit rights or a survivor's pension), is not an active member in an ongoing employment in the scheme, and has elected for a CETV at least 12 months prior to Normal Pension Age,
    b) if the member has not met the 2 year vesting period, the member ceased active membership before Normal Pension Age and has elected for a CETV prior to the latest election date specified by the administering authority

- contain a statement that the member may be required to take independent advice before transferring safeguarded benefits to another scheme with a view to acquiring a right or entitlement to flexible benefits

- include information on whether or not the scheme allows accrued safeguarded rights for a deferred Pension Credit member who leaves before Normal Pension Age (Normal Benefit Age) to be transferred out. The LGPS allows transfers of such rights provided the Pension Credit member elects for the CETV at least 12 months before Normal Benefit Age and is not already in receipt of a pension from another Pension Credit in the scheme.

[6] The requirement to have at least 3 months membership does not apply to members who left the LGPS in England and Wales between 1st April 2008 and 31st March 2014 (see regulation 78(2) of the LGPS (Administration) Regulations 2008) or to members who left the LGPS in Scotland or Northern Ireland between 1st April 2009 and 31st March 2015 (see regulation 73(3) of the LGPS (Administration) (Scotland) Regulations 2009 and regulation 74(2) of Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009)

- confirm whether, in respect of AVCs, the scheme allows the member to take the value of the AVC fund as an annuity which is designated as being available for the payment of drawdown pension and commuted to a lump sum. A member cannot obtain a drawdown pension from their AVCs as a scheme option; they can only obtain a drawdown pension from their AVCs if they transfer their AVC fund to a scheme that permits drawdown. There is **presently** no option in the LGPS for members to take an uncrystallised funds pension lump sum (UFPLS) from their AVCs; they can presently only utilise the UFPLS option by transferring their AVC fund to a scheme that permits an UFPLS (although consideration is being given to allow an UFPLS direct from the LGPS AVC and, if the scheme is amended to allow this, the scheme guide must contain a statement that the member may be required to take independent advice before taking a UFPLS)

- confirm whether the member is allowed to transfer out their accrued AVC fund and, if so, any cost of exercising the right to transfer. The LGPS does allow a transfer of accrued AVC rights (provided the member has ceased paying AVCs). The LGPS itself does not impose any cost on a member exercising a right to transfer (but the AVC provider might make an adjustment to the AVC fund value).

Provision of information for leavers

Administering authorities should ensure that the leaver options documentation sent to **any** member leaving with 3 or more months membership[7] (and who is not retiring with an immediate pension on the grounds of redundancy, business efficiency, or ill health) includes a notification that they have the right to a transfer of their accrued pension rights in the LGPS (including any accrued AVC fund) to another scheme, including to a scheme that offers flexible benefits. However, they will be required to take independent advice before transferring safeguarded benefits (but not AVCs) to another scheme with a view to acquiring a right or entitlement to flexible benefits if the transfer value of their 'safeguarded benefits' in the LGPS (excluding AVCs, which are not 'safeguarded benefits', and excluding any survivor's pension which the member is in receipt of) is more than £30,000. This financial advice has to be paid for by the member and although not required in respect of transfer values of £30,000 or less (or in respect of a transfer of AVCs), the member is recommend to seek independent financial advice before deciding to transfer their LGPS pension benefits and / or AVCs out to a pension scheme with a view to acquiring a right or entitlement to flexible benefits under that scheme.

[7] The requirement to have at least 3 months membership does not apply to members who left the LGPS in England and Wales between 1st April 2008 and 31st March 2014 (see regulation 78(2) of the LGPS (Administration) Regulations 2008) or to members who left the LGPS in Scotland or Northern Ireland between 1st April 2009 and 31st March 2015 (see regulation 73(3) of the LGPS (Administration) (Scotland) Regulations 2009 and regulation 74(2) of Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009)

Provision of information to those leavers who have an AVC fund and who are aged 54 and 8 months or older

In addition to the information in the paragraph above, if the member has an AVC fund, they must, if they will attain age 55 within 4 months of being sent the leaver options documentation, or have already attained age 55, or ceased employment and the administering authority has received evidence from a registered medical practitioner that the member is (and will continue to be) incapable of carrying on the member's occupation because of physical or mental impairment, be provided with:

a) a statement showing the options available in respect of the accrued AVC fund under the LGPS Regulations,
b) a statement that pensions guidance is available to help the person to understand their options in relation to what they can do with their AVC fund
c) a statement that the pensions guidance may be accessed on the internet, by phone, or face to face
d) the phone number and website address [www.pensionwise.gov.uk] at which the pensions guidance may be accessed and details of how the person may access the pensions guidance face to face
e) a statement that the pensions guidance is free and impartial
f) a statement that the person should access the pensions guidance and consider taking independent advice to help them decide which option is most suitable for them.

The statements referred to in (b) to (f) can be provided using the standard letter developed by Government (available at www.pensionwise.gov.uk/signposting/assets.zip) together with a statement that the member is recommended to seek independent financial advice before deciding to transfer the value of their AVC fund to another scheme.
The pensions guidance referred to in (b) to (f) above is the service provided by Pension Wise – www.pensionwise.gov.uk.

It would be wise to point out that (at present) the LGPS does not offer flexible benefits from the AVC fund and if the member wishes to obtain flexible benefits they would have to transfer the AVC fund to a scheme that offers such benefits.

Further provision of information in relation to AVC options

If, in response to being sent the above information, the member requests further information about what they may do with their accrued AVC fund, or a member who has an opportunity to transfer their accrued AVC fund:

i) requests information about what they may do with their accrued AVC fund, and
ii) will attain age 55 within 4 months of making the request, or has already attained age 55, or has ceased employment and the

administering authority has received evidence from a registered medical practitioner that the member is (and will continue to be) incapable of carrying on the member's occupation because of physical or mental impairment, and

iii) has not been provided with the information in the last 12 months

the member must be provided, within 2 months of making the request, with:

a) a statement of the options available to the member under the scheme in respect of their AVCs
b) a statement that the member may transfer the value of the accrued AVC fund to one or more different pension providers
c) a statement that different pension providers offer different options in relation to what the member can do with the flexible benefits, including the option to select an annuity
d) a statement that different options have different features, different rates of payment, different charges and different tax implications together with a copy of guidance that explains the characteristic features of the options that has been prepared or approved by the Pensions Regulator – which is likely to be a revised version of the Money Advice Service leaflet *Your pension: it's time to choose* - or a statement that gives materially the same information as that guidance
e) a statement that pensions guidance is available to help the person to understand their options in relation to what they can do with their flexible benefits
f) a statement that the pensions guidance may be accessed on the internet, by phone, or face to face
g) the phone number and website address [www.pensionwise.gov.uk] at which the pensions guidance may be accessed and details of how the person may access the pensions guidance face to face
h) a statement that the pensions guidance is free and impartial
i) a statement that the person should access the pensions guidance and consider taking independent advice to help them decide which option is most suitable for them
j) an estimate of the cash equivalent of the AVC fund
k) the date by reference to which the estimate of the cash equivalent or value (as appropriate) is calculated
l) an explanation that the cash equivalent or value (as appropriate) is an estimate, is not guaranteed, and may not represent the exact amount available to the member to transfer to another pension provider and
(i) details of any guarantee to which the benefits are subject; and
(ii) details of any other features, restrictions and conditions that apply to the benefits that affect, or may affect, their value.
m) a statement that—
(i) there may be tax implications associated with accessing flexible benefits;
(ii) income from a pension is taxable; and
(iii) the rate at which income from a pension is taxable depends on the amount of income that the person receives from a pension and from other sources.

It would also, where appropriate, be wise to include the ‘scorpion’ pensions liberation information (such as the leaflet available at ~~http://www.pensionsadvisoryservice.org.uk/publications-files/uploads/members_detailed_booklet_7_page.pdf~~ http://www.pensionsadvisoryservice.org.uk/content/publications-files/uploads/members_detailed_booklet_7_page.pdf) under cover of a warning such as “If you are taking a transfer of your pension rights to another scheme with a view to taking flexible benefits, be aware that scammers may operate in these markets” together with brief information on the benefits the available to the member under the LGPS in respect of their AVCs (to enable any FCA authorised independent adviser to explain the benefits being given up when compared to any future options).

Provision of information to those with an AVC fund who are nearing retirement

Where a member has not already transferred out their AVC fund, they must be provided with the information in (a) to (m) above at least 4 months before they attain the retirement date they specified when taking out the AVC or, where no retirement date was specified, their Normal Pension Age or, if the member is already over that age when commencing payment of AVCs, age 75. If the member specifies a retirement date but only does so within the 4 month period, the information has to be provided within 20 days of the date the member specifies a retirement date.

IMPACT 3

The rules governing transfers out from the LGPS where a member wishes to transfer the value of their accrued LGPS rights and / or AVC fund to a Defined Contribution arrangement in order to access flexible benefits.

As part of the Pension Schemes Act 2015 members of Defined Benefit (DB) occupational pension schemes and funded public service pension schemes (such as the LGPS) will continue to be allowed to transfer out to Defined Contribution (DC) schemes from 6th April 2015.

The Pension Schemes Act 2015 includes a ban on transfers from unfunded public service pension schemes and sets out the circumstances in which reductions in transfers from funded public service schemes may be introduced.

The government has introduced a number of safeguards for transfers from funded public service pension schemes.

The Pension Schemes Act 2015 requires members (with an entitlement to a deferred benefit or Pension Credit) who are transferring their 'safeguarded benefits' to flexible benefits to take appropriate independent advice (where the CETV of the member's 'safeguarded benefits' in the scheme, other than any survivor's pension which the member is in receipt of is more than £30,000). 'Safeguarded benefits' are defined as those which are not money purchase or cash balance benefits (i.e. LGPS benefits other than AVCs will be 'safeguarded benefits') and flexible benefits are those benefits which are part of a DC scheme which are flexible. Note, however, that there has been a great deal of industry debate around the interpretation of 'safeguarded benefits' and whether or not With-Profits AVC policies are 'safeguarded benefits'. The LGPC Secretariat understands that the Prudential have concluded that Prudential With-Profits policies are not 'safeguarded benefits' as they do not offer guaranteed annuity rates under the AVC product. However, other providers may offer guaranteed annuity rates (GARs) or other features / benefits which may be considered 'safeguarded benefits'. Whilst the FCA has stated in PS 15/12 that GARs offered through an insurance contract and which are not written into scheme rules are not 'safeguarded benefits', the DWP position is not clear. In view of the lack of certainty it would be worthwhile for administering authorities to ask their AVC provider to confirm that their AVC product does not fall within the definition of 'safeguarded benefits' in section 48(8) of the Pension Schemes Act 2015 before any AVC transfers are made (or any payment of UFPLS should the LGPS Regulations eventually be amended to allow such payments).

It should be noted that there is no requirement for a member who has 3 or more months' membership[8] but who is not entitled to a deferred benefit to take appropriate independent advice (in the unlikely event that the CETV of the member's deferred refund in the scheme is more than £30,000). This is because section 48 (Independent Advice) of the Pension Schemes Act 2015 only covers members with 'subsisting rights' in respect of 'safeguarded benefits'. 'Subsisting rights' are defined as:

(i) any right which has accrued to or in respect of the member to future benefits under the scheme, or
(ii) any entitlement to benefits under the scheme.

A deferred refund member does not have 'subsisting rights' as they have no right to future benefits from the LGPS.

A member with an entitlement to a deferred benefit under the scheme (or who has met the vesting period required for entitlement to a deferred benefit) only has the right to the payment of a CETV under the Pension Schemes Act 1993 in respect of AVC benefits in the scheme if the member:

- is no longer accruing rights to AVC benefits in the scheme (i.e. has ceased payment of AVCs to the scheme), and
- has not had a Crystallisation Event in respect of AVCs under the scheme (other than Pension Credit rights derived from AVCs or a survivor's pension derived from AVCs). Note that a Crystallisation Event for this purpose is payment of a pension or annuity derived from the AVCs. If the member has previously taken an AVC fund wholly as tax free cash, this (perhaps perversely) will not constitute a Crystallisation Event for the purposes of section 93(3) of the Pension Schemes Act 1993 due to the wording of section 93(7) of the Act.

A member only has the right to the payment of a CETV under the Pension Schemes Act 1993 in respect of non-AVC benefits in the scheme:

a) if the member
    - has an entitlement to a deferred benefit under the scheme (or who has met the vesting period required for entitlement to a deferred benefit) (Condition 1),
    - ceased active membership of the scheme at least 12 months before Normal Pension Age (Condition 3b),
    - has not had a Crystallisation Event in respect of accrued safeguarded benefits under the scheme in the same category (i.e.

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[8] The requirement to have at least 3 months membership does not apply to members who left the LGPS in England and Wales between 1st April 2008 and 31st March 2014 (see regulation 78(2) of the LGPS (Administration) Regulations 2008) or to members who left the LGPS in Scotland or Northern Ireland between 1st April 2009 and 31st March 2015 (see regulation 73(3) of the LGPS (Administration) (Scotland) Regulations 2009 and regulation 74(2) of Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009)

defined benefits other than Pension Credit rights or a survivor's pension) (Condition 2),
  - is not an active member in an ongoing employment under the scheme (Condition 3a), and
  - has elected for a CETV at least 12 months prior to Normal Pension Age, or

b) if the member
  - has 3 or more months' but less than 2 years' membership[9]),
  - has ceased active membership of the scheme before Normal Pension Age, and
  - has elected for a CETV prior to the latest election date specified by the administering authority, or

c) if the member
  - is a deferred Pension Credit member,
  - has not had a Crystallisation Event in respect of other Pension Credit rights in the scheme, and
  - elects for a CETV in respect of their Pension Credit rights under the scheme at least 12 months prior to Normal Benefit Age.

It should be noted that a member in receipt of a bare GMP under the scheme, or who is receiving benefits in respect of a flexible retirement under the scheme, will not be able to take a CETV in respect of the remainder of their benefits in the scheme as they will have had a Crystallisation Event in relation to benefits in the defined benefit category. Similarly, a deferred pensioner member (i.e. a suspended Tier 3 ill health pensioner) is not entitled to a CETV as they will already have had a Crystallisation Event under the scheme in relation to benefits in the defined benefit category.

It should also be noted that, apart from members retiring with immediate benefits on the grounds of redundancy, business efficiency or ill health (see issue 2 below), members retiring with an immediate entitlement to benefits under the LGPS who are at least a year away from Normal Pension Age will have a right to a CETV as an alternative to a pension from the LGPS.

Lastly, it should be noted that a member with an entitlement to a deferred benefit under the scheme (or who has met the vesting period required for entitlement to a deferred benefit) and who has an AVC fund in the scheme as well as their main scheme benefits can transfer out their main scheme benefits and not their AVC fund, or vice versa. That is also true for a Pension Credit member. However, a member with 3 or more months[10] but less than 2

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[9] Members with less than 3 months' membership are not entitled to a CETV under the Pension Schemes Act 1993 but note that the right to a CETV was extended by the LGPS Regulations in the following cases to those with less than 3 months' membership - members who left the LGPS in England and Wales between 1st April 2008 and 31st March 2014 (see regulation 78(2) of the LGPS (Administration) Regulations 2008) and members who left the LGPS in Scotland or Northern Ireland between 1st April 2009 and 31st March 2015 (see regulation 73(3) of the LGPS (Administration) (Scotland) Regulations 2009 and regulation 74(2) of Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009).

[10] And those with less than 3 months membership who left the LGPS in England and Wales between 1st April 2008 and 31st March 2014 (see regulation 78(2) of the LGPS

years membership has to transfer the whole of their accrued rights (i.e. they cannot transfer out their main scheme benefits and not their AVC fund, or vice versa).

There will, of course, be some members who requested a statement of entitlement before 6th April 2015 and, within the 3 month guarantee period but after 5th April 2015, elected to proceed with the transfer. Prior to 6th April 2015, the member met the conditions of section 93 of the Pension Schemes Act 1993. However, when the member applied to proceed with the transfer, the member did not meet the amended requirements of section 93. This could be because, in connection with a separate period of membership in the LGPS the member has drawn a pension or is an active member.

Has the member lost the right to proceed with the transfer because of the changes to Section 93?

The LGPC Secretariat is of the view that the administering authority must honour the original quotation which was guaranteed for 3 months. This is because section 16(1) of the Interpretation Act 1978 says:

(1) Without prejudice to section 15, where an Act repeals an enactment, the repeal does not, unless the contrary intention appears,-
   (a) revive anything not in force or existing at the time at which the repeal takes effect;
   (b) affect the previous operation of the enactment repealed or anything duly done or suffered under that enactment;
   (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under that enactment;
   (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against that enactment;
   (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed.

Note: all references above to “the Scheme” are references to:

- the LGPS in England or Wales for a member of the LGPS in England or Wales, or
- the LGPS in Scotland for a member of the LGPS in Scotland, or
- the LGPS in Northern Ireland for a member of the LGPS in Northern Ireland.

(Administration) Regulations 2008) or who left the LGPS in Scotland or Northern Ireland between 1st April 2009 and 31st March 2015 (see regulation 73(3) of the LGPS (Administration) (Scotland) Regulations 2009 and regulation 74(2) of Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009)

<u>Policy issues</u>

<u>Issue 1</u>

If a member already in receipt of a pension from the scheme (other than a pension in respect of a Pension Credit or a survivor's pension) re-joins the scheme and builds up further rights, then leaves that further period of membership with a deferred benefit, they will not be entitled to a CETV under the Act in respect of that further period of employment. This is because they fail Condition 2 of section 93 of the Pension Schemes Act 1993 i.e. they have already had a Crystallisation Event in relation to their personal accrued rights to defined benefits in the scheme (but see Issue 2 below regarding Club transfers out).

The Act, of course, only sets out the minimum statutory entitlement. If the LGPS wishes to allow such a member to have a right to request a CETV for the deferred benefit relating to that further period of membership, then the LGPS Regulations will have to be amended to provide for this. This is a matter that DCLG, SPPA and DoE (NI) will need to consider.

Similarly, if a member has a deferred benefit in the scheme, subsequently re-joins the scheme and does not aggregate the membership (i.e. retains separate benefits), the member would not (whilst still an active member in the new employment) be entitled to a CETV under the Act in respect of the deferred benefit. This is because the member fails Condition 3 of section 93 of the Pension Schemes Act 1993 i.e. they are still accruing rights to defined benefits in the scheme.

The Act, of course, only sets out the minimum statutory entitlement. If the LGPS wishes to allow such a member to have a right to request a CETV in respect of the earlier deferred benefit (whilst the member is still an active member in the new period of membership), then the LGPS Regulations will have to be amended to provide for this. This is a matter that DCLG, SPPA and DoE (NI) will need to consider.

If a member is within 12 months of, or has already attained, their Normal Pension Age when they voluntarily retire then, although they can defer drawing their LGPS benefits until, at the latest, age 75 they have no right to a CETV under the Act (but see Issue 2 below regarding Club transfers out).

The Act, of course, only sets out the minimum statutory entitlement. If the LGPS wishes to allow such a member to have a right to request a CETV, then the LGPS Regulations will have to be amended to provide for this.

NOTE: The Technical Group, at its meeting on 5 June 2015, concluded that no recommendation should be made to DCLG, SPPA or DoE (NI) to amend the Regulations to go beyond the minimum statutory entitlement.

Issue 2

As mentioned in Issue 1 above, a member who:
a) is in receipt of a pension from the scheme (other than a pension in respect of a Pension Credit or a survivor's pension),
b) re-joins the scheme,
c) leaves, and
d) wants a transfer in respect of that further period of membership to another (non-Club) scheme

cannot have such a transfer as they fail Condition 2 in section 93(3) of the Pension Schemes Act 1993 i.e. they have had a crystallisation event in the scheme in relation to their earlier defined benefits in the scheme and the LGPS Regulations only give a right to a CETV to a member who has a right to a CETV under the Pension Schemes Act 1993.

However, if:

a) the transfer is to a Club scheme, and
b) the period between leaving the LGPS and joining the receiving scheme is no more than 5 years, and
c) the member has a right to a deferred benefit (which they would, as the fact that they already have a pension in payment automatically entitles them to a deferred benefit from the second period of employment, even if that period was for less than 2 years)

we are left in a bit of a cleft stick. The LGPS Regulations only give a right to a CETV to a member who has a right to a CETV under the Pension Schemes Act 1993 (so the member would not have a right to a CETV because they fail Condition 2) but membership of the Club requires LGPS administering authorities to comply with the Club rules (and under the Club rules a member can, provided they meet all the other criteria in the Club rules, have a transfer at any time up to or, potentially, beyond Normal Pension Age – even if they fail Condition 2 in the Pension Schemes Act 1993). The LGPC Secretariat takes the view that administering authorities should follow the Club rules in such a case and allow a transfer.

Similarly, a member who is within 12 months of, or has already attained, their Normal Pension Age when they voluntarily retire has no right to a CETV under the Pension Schemes Act 1993 because they either fail Condition 3 in section 93(4) of the Act (i.e. they have to have ceased accruing benefits at least 12 months before Normal Pension Age) or they fail section 95(1A)(b) of the Act (i.e. that they must elect for a transfer to proceed at least 12 months before Normal Pension Age). However, the Club rules allow member to elect for a Club transfer up to the member's Normal Pension Age in the sending scheme or, if the sending and receiving scheme rules allow it, on or after that age. The LGPS Regulations only give a right to a CETV to a member who has a right to a CETV under the Pension Schemes Act 1993 (so the member would not have a right to a CETV because they either fail Condition 3 or fail section 95(1A)(b) of the Act) but membership of the Club requires LGPS administering authorities to comply with the Club rules (and under the Club rules a member can, provided they meet all the other criteria in the Club rules, have a transfer at any time up to or, potentially, beyond Normal Pension Age). The LGPC Secretariat takes the view that administering authorities should follow the Club rules in such a case and allow a transfer.

Another issue with Club transfers is that under section 95(1A) of the Pension Schemes Act 1993 a member must elect for a transfer within 3 months of the guaranteed date (and, in the case of non AVC rights, at least one year before the member attains Normal Pension Age) and if the member does not do so, section 98(1) of the Act says the member loses the right to take that CETV. However, the Club rules go beyond the provisions of the Pension Schemes Act 1993 in that the member does not have to elect to proceed with the transfer within 3 months of the guarantee date (merely within 12 months of first becoming eligible to join the receiving Club scheme). The LGPC Secretariat takes the view that, in such cases, administering authorities should follow the Club rules. The Club rules state:

Application for a Club transfer

4.1 An individual must arrange for an election to proceed for a Club transfer to be received in writing to the receiving scheme within 12 months of becoming eligible to join, or, subject to (i) below, re-join the scheme. (A request for an estimate of a transfer value should not be regarded as an election to proceed.) The election to proceed should be copied to the previous scheme. Elections to proceed should not be accepted where either:
   - (i) an individual resigns from employment or opts out of membership of the scheme and rejoins the same scheme within 6 months, except during any period after rejoining which falls within 12 months of first becoming eligible to join the scheme; or
   - (ii) an individual has joined the Club scheme from another Club scheme as a consequence of a compulsory transfer of employment, or of pension scheme (see 2.6).

4.2 A Club transfer is normally available until the date the individual reaches the normal pension age of the sending scheme~~1~~. However, a Club scheme may allow a Club transfer to be taken after this date provided the receiving scheme is willing to accept it AND the member has not started drawing the benefits from the sending scheme. The sending scheme may impose other time limits, which affect the individual's right to a Club transfer value, where there is no statutory requirement to provide preserved benefits.

4.3 An election to proceed may be withdrawn, in writing, at any time before the sending scheme makes arrangements to pay a transfer value.

Breaks between pensionable employments

4.4 A Club transfer can only be accepted if the length of the break between leaving the sending scheme and joining the receiving scheme is no more than 5 years.

Guarantee date

4.5 The relevant date for calculating a Club cash equivalent transfer value after 6 April 1997 is the 'Guarantee Date' as defined in The Occupational Pensions Schemes (Transfer Values) Regulations 1996. This must be within 3 months (or exceptionally 6 months) of the date of the individual's election to proceed. In practice it will normally be the date when the transfer value is calculated.

Guaranteed transfer values

4.6 A Club transfer value must be guaranteed for three months from the guarantee date, subject to the election to proceed being received within 12 months of the member becoming eligible to join the receiving scheme (see paragraph 4.1). This ensures consistency with non-Club transfer values, and should ease administration. 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 Club transfer value.

~~In reality a transfer quote is requested by the receiving scheme. Upon receipt of the quote from the sending scheme, the receiving scheme tells the member what it will purchase in the receiving scheme and the member then makes a formal election to transfer. Under the old Club rules the quote had to be produced within 3 months of the request being received and it had to be guaranteed for a period of 3 months. Paragraph 4.1 of the new guidance makes it clear that a request for an estimate is not an election to proceed but 4.6 says a CETV has to be guaranteed for 3 months from the guarantee date which 4.5 says is defined in the Occupational Pension Schemes (Transfer Values) Regulations 1996 [SI 1996/1847]. That SI says the guarantee date in relation to a statement of entitlement must be -~~
~~(a) within the period of three months beginning with the date of the member's application for a statement of entitlement; or~~
~~(b) where the trustees are unable to provide a statement of entitlement for reasons beyond their control within the period specified in sub-paragraph (a), within such longer period not exceeding six months beginning with the date of the member's application as they may reasonably require.~~

~~However, confusingly, 4.5 then says that the guarantee date has to be within 3 months of the ***election to proceed***. The LGPC Secretariat takes the view that this must be wrong and that it should say the guarantee date has to be within 3 months beginning with the date of the member's application for a statement of entitlement. Paragraphs 4.5 and 4.6 would then make sense.~~

So, it seems to the LGPC Secretariat that in the case of a Club transfer:
a) the member asks for a CETV quote
b) the sending scheme produces a CETV quote which is guaranteed for 3 months
c) the receiving scheme tells the member what benefits the CETV will purchase in the receiving scheme
d) the member elects to proceed with the transfer and the election must be within 12 months of becoming eligible to join the receiving scheme

e) subject to (d), if the election is made within the 3 month guarantee period, the guaranteed transfer is paid but if the election is made outside the 3 month guarantee period the sending scheme recalculates the Club CETV.

Issue 3.

As from 6th April 2015 a member who has met the 2 year vesting period has the right to a CETV under the Pension Schemes Act 1993 in respect of their main LGPS benefits if the member has ceased active membership at least 12 months before Normal Pension Age, has not had a Crystallisation Event in respect of accrued benefits under the scheme in the same category (other than in respect of Pension Credit rights or a survivor's pension the member is in receipt of), is not an active member in an ongoing employment in the scheme, and has elected for a CETV at least 12 months prior to Normal Pension Age. Section 100C of the Pension Schemes Act 1993 defines Normal Pension Age as follows:

100C Meaning of "normal pension age" in this Chapter
(1) In this Chapter "normal pension age", in relation to a category of benefits under a pension scheme, means—

(a) in a case where the scheme is an occupational pension scheme and those benefits consist only of a guaranteed minimum pension, the earliest age at which the member is entitled to receive the guaranteed minimum pension on retirement from any employment to which the scheme applies,

(b) in any other case where the scheme is an occupational pension scheme and the scheme provides for the member to become entitled to receive any of those benefits at a particular age on retirement from any employment to which the scheme applies, the earliest age at which the member becomes entitled to receive any of the benefits, and

(c) in a case not falling within paragraph (a) or (b), normal minimum pension age as defined by section 279(1) of the Finance Act 2004.

(2) For the purposes of subsection (1) any scheme rule making special provision as to early retirement on grounds of ill-health or otherwise is to be disregarded.

At the present time, both the LGPS Regulations in England and Wales, Scotland, and Northern Ireland require that if a member who has met the 2 year vesting period:

a) is retired on or after the minimum retirement age on the grounds of redundancy or business efficiency, or
b) is retired at any age on the grounds of permanent ill health

the member **must** take immediate payment of their pension benefits.

The LGPS Secretariat takes the view that members retiring on those grounds prior to 6th April 2015 do not have the option of a CETV under the Pension Schemes Act 1993. This is because Pension Schemes Act 1993 was not amended until 6th April 2015 to introduce the Freedom and Choice provisions and the amendments to the Act should have no impact on benefits that were legally payable prior to then.

However, for post 5th April 2015 leavers, section 93 of the Pension Schemes Act 1993 only debars the CETV if the member has had a Crystallisation Event[11] . Although the LGPS Regulations require that the member **must** be paid an immediate pension, section 93(7) of the Pension Schemes Act 1993 says that the Crystallisation Event does not occur until such time as payment of a pension in respect of any of the benefits has begun. So, it could be argued that until the physical payment of the pension has occurred the member has the right under the Act to a CETV (up to 12 months prior to Normal Pension Age) regardless of the fact that the LGPS Regulations say the benefit **must** be payable.

The LGPC Secretariat is aware that there have been, and will be, cases where members will not wish to draw a pension from the LGPS and will want to take a CETV instead e.g. where the member has impaired life expectancy, or where a member is being made redundant and would prefer to take all the benefits in the form of flexible benefits under Freedom and Choice.

If the argument proffered above is correct (i.e. that a Crystallisation Event does not occur until such time as payment of a pension in respect of any of the benefits has begun) then DCLG, SPPA and DoE (NI) will need to consider whether an amendment to the LGPS Regulations is required (or whether the Act can simply be relied upon).

However, if the argument proffered above is not correct then, given the Government's Freedom and Choice policy, DCLG, SPPA and DoE(NI) will need to consider whether:

a) the LGPS should retain the existing rules for the sake of simplicity, or

b) although it adds to administrative and disclosure complexity, the regulations should be amended to offer, for the sake of the small proportion of members who might be interested in / benefit from it, the choice between:

    i) an immediate unreduced pension from the LGPS (including ill health enhancement in the case of a Tier 1 or Tier 2 ill health pension), and
    ii) a CETV of the value of a deferred benefit (i.e. not the CE value of an immediate unreduced pension in the case of redundancy,

[11] A Crystallisation Event (CE) has its own definition within section 93(7) of the Pension Schemes Act 1993. It should not be confused with a Benefit Crystallisation Event (BCE) for the purposes of the Finance Act 2004, as defined in section 216 of that Act.

business efficiency or Tier 3 ill health nor the CE value of an immediate enhanced Tier 1 or Tier 2 ill health pension).

If (a) above was chosen, members who are at least a year away from Normal Pension Age would, nonetheless, have the tools available to them to obtain a CETV. They could simply opt out of membership prior to the date of leaving. They would then not have an entitlement to an immediate ill health or redundancy pension upon leaving and so could take a CETV instead.

NOTE: The Technical Group, at its meeting on 5 June 2015, considered the position of those members who have met the 2 year vesting period and:

a) are retired on or after the minimum retirement age on the grounds of redundancy or business efficiency, or
b) are retired at any age on the grounds of permanent ill health.

The LGPS Regulations require that such members **must** take immediate payment of their pension benefits.

The Technical Group concluded that in such cases the payment of the pension has, technically, “begun” and, therefore, such members are not entitled to a CETV. The Group took the view that it was immaterial that a physical payment of pension may not have been paid before the member makes a request for a CETV. Payment of the pension has “begun” and the fact that a physical payment had not yet been made due to the timing of the pensions payroll processing or due to the member not completing the pension application form is irrelevant.

Issue 4

At the present time, members in England or Wales who left with a deferred benefit prior to 1st April 2014 (1st April 2015 in Northern Ireland) cannot access the deferred benefit prior to age 60 (other than on health grounds) without employer consent. Similarly, any deferred member of the LGPS in Scotland cannot access the deferred benefit prior to age 60 (other than on health grounds) without employer consent. This is rarely given due to the cost implications for the employer.

Such members are, therefore, likely to wish to take a CETV to a DC scheme in order to access benefits from 55 onwards under Freedom and Choice.

In order to prevent an outflow of assets from the LGPS and to give such members the choice of accessing their deferred benefits from age 55 without having to take the risk of transferring to a DC arrangement:

a) the LGPS Regulations 1995, the LGPS Regulations 1997 and the LGPS (Benefits, Membership and Contributions) Regulations 2007,
b) the LGS (Scotland) Regulations 1987, the LGPS (Scotland) Regulations 1998, the LGPS (Benefits, Membership and Contributions)

(Scotland) Regulations 2008 and the LGPS (Scotland) Regulations 2014, and

c) the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations (Northern Ireland) 2009, the Local Government Pension Scheme Regulations (Northern Ireland) 2002 and the Local Government Pension Scheme Regulations (Northern Ireland) 2000

should all be amended, presumably via the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 (for pre 1st April 2015 deferred members) and the Local Government Pension Scheme (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2014, to allow such members to draw benefits from age 55 onwards without the need for employer consent. However, if the benefits are drawn before age 60, an actuarial reduction would be applied to:

i) the later of age 60 or the member's Critical Retirement Age where the member is subject to the 85 year rule, or
ii) Normal Pension Age, where the member is not subject to the 85 year rule.

NOTE: The Technical Group, at its meeting on 5 June 2015, concluded that a recommendation should be made to DCLG, SPPA or DoE (NI) to amend the Earlier Regulations to allow such members to draw benefits from age 55 onwards without the need for employer consent. However, if the benefits are drawn before age 60, an actuarial reduction would be applied to:

i) the later of age 60 or the member's Critical Retirement Age where the member is subject to the 85 year rule, or
ii) Normal Pension Age, where the member is not subject to the 85 year rule.

Issue 5

If a member has two deferred benefits (in the same or separate Funds) does the member have to transfer both, or can the member elect to take a CETV out in respect of one and not the other?

The advent of Freedom and Choice has not in itself introduced a requirement that the member must take a transfer in respect of all deferred benefits in the LGPS but the fact that both deferred benefits would have to be valued for the purposes of the £30,000 independent financial advice test has brought to the fore the above question.

Section 96 of the Pension Schemes Act 1993 (which requires a member to transfer the whole of a cash equivalent, except where ~~the trustees or managers~~ of a receiving ~~contracted-in occupational pension scheme or of a personal pension~~ scheme are able or willing to accept a transfer payment only in respect of a member's non-GMP or non-section 9(2B) rights) has not changed and the LGPC Secretariat suspects that administering authorities would, in the past, have allowed members to take a transfer in respect of one deferred benefit without having to transfer the other. However, it is difficult to categorically prove that is allowable. Section 93A of the Pension Schemes Act 1993 requires that "The trustees or managers of a pension scheme must, on the application of any member, provide the member with a statement of entitlement in respect of the member's transferrable rights in relation to categories of benefits other than money purchase benefits and, in the case of a member with transferrable rights in relation to two categories of benefits (other than money purchase benefits), the application may relate to transferrable rights in relation to either or both of those categories." Clearly, the scheme in, for example, England and Wales is, technically, a single scheme and two deferred benefits are benefits in the same category (i.e. defined benefits). There is nothing in the Registered Pension Schemes (Splitting of Schemes) Regulations 2006 [SI 2006/569] to say that each LGPS Fund should be treated as a separate scheme for the purposes of the Pension Schemes Act 1993. So it could be argued that the member would, subject to section 96 of the Pension Schemes Act 1993, have to transfer out both deferred benefits.

The Technical Group considered the above question at its meeting on 11 September 2015 and concluded that a member with two deferred benefits under the Scheme (in the same or separate Funds) appears, subject to section 96 of the Pension Schemes Act 1996, to be required to transfer out both (if electing for a transfer out). However, if this was disputed by a member, administering authorities should obtain their own legal advice.

<u>Issue 6 - Transfers out of AVCs</u>

A member with an entitlement to a deferred benefit in the scheme (or who has met the vesting period for entitlement to a deferred benefit) has the right to the payment of a CETV under the Pension Schemes Act 1993 in respect of AVC benefits under the scheme if the member:

i) is no longer accruing rights to AVC benefits in the Scheme (i.e. has ceased payment of AVCs to the Scheme), and
ii) has not had a Crystallisation Event in respect of AVCs under the Scheme (other than Pension Credit rights derived from AVCs or a survivor's pension derived from AVCs). Note that a Crystallisation Event for this purpose is payment of a pension or annuity derived from the AVCs. If the member has previously taken an AVC fund wholly as tax free cash, this (perhaps perversely) will not constitute a Crystallisation Event for the purposes of section 93(3) of the Pension Schemes Act 1993 due to the wording of section 93(7) of the Act.

Note: all references to "the Scheme" are references to:

- the LGPS in England or Wales for a member of the LGPS in England or Wales, or
- the LGPS in Scotland for a member of the LGPS in Scotland, or

- the LGPS in Northern Ireland for a member of the LGPS in Northern Ireland.

Subject to the above, regulation 17(10) of the LGPS Regulations 2013 and regulation 17(10) of the LGPS (Scotland) Regulations 2014 will both need to be amended to comply with the overriding right which Pension Credit members and members entitled to deferred benefits have under the Pension Schemes Act 1993 i.e. to transfer out their AVC fund without having to transfer their main LGPS benefits.

At their meeting on 11 September 2015 the Technical Group were asked to consider two matters.

Firstly, what process should be put in place to comply with the requirement in point (i) above that, at the point of transferring an AVC fund, a member with an entitlement to a deferred benefit in the scheme (or who has met the vesting period for entitlement to a deferred benefit) is no longer accruing rights to AVC benefits in the Scheme (i.e. has ceased payment of AVCs to the Scheme)?

Secondly, to what degree can an administering authority delegate the AVC transfer process to the AVC provider? A major item for consideration is how an administering authority would satisfy itself that:

a) the transfer is to a bona fide pension scheme,
b) the member does not already have a pension in payment from LGPS AVCs paid to the Scheme, and
c) the member is not still paying AVCs to the Scheme in another job in another administering authority's Fund?

Unless the AVC provider is willing to undertake all the necessary checks on behalf of the administering authority and indemnify the administering authority if an incorrect payment is made, it is difficult to see how the AVC provider could undertake the transfer process in its entirety on behalf of the administering authority. Indeed, given the possibility that a member might have AVCs with another Fund (and / or, potentially, with another AVC provider) it would not be logistically possible for an AVC provider to undertake the necessary checks / provide the indemnity.

The Technical Group felt that an appropriate process should be put in place to deal with the two matters raised above and asked the LGPC Secretariat to draft up such a process, which the Secretariat has now done i.e.:

a) the member should notify the administering authority that he / she wishes to transfer the AVC fund
b) the administering authority should notify the member that in order to be able to transfer the AVC fund he / she must (if he / she has not already done so) cease payment of AVCs to the Scheme, cannot recommence payment of AVCs to the Scheme until after the AVC CETV has been paid and (in England and Wales) any new AVC contract would be a

post-14 contract. The administering authority should send the member a transfer out disclaimer form which should

- include a statement from the member confirming that they have ceased payment of AVCs to the Scheme and that, if they are an active member and intend to recommence payment of AVCs to the Scheme, they will not do so until after the AVC CETV has been paid
- include a statement for a member with an entitlement to a deferred benefit in the scheme (or who has met the vesting period for entitlement to a deferred benefit) to confirm that they have not had a Crystallisation Event in respect of AVCs under the Scheme (other than Pension Credit rights derived from AVCs or a survivor's pension derived from AVCs). Note that a Crystallisation Event for this purpose is payment of a pension or annuity derived from the AVCs.

The administering authority should also inform the member that queries related to the transfer of AVCs should be directed to the administering authority (and not the AVC provider)

c) the member should (if he / she has not already done so) instruct the employer (with a copy to the administering authority) to cease payment of the AVCs and send back the transfer out declaration form
d) where appropriate, the administering authority should ask the employer when the last AVC payment is to be paid over to the AVC provider
e) where appropriate, the administering authority should notify the AVC provider when the last AVC payment is to be paid over to the AVC provider and tell the employer not to accept any new instructions to commence AVCs until the administering authority confirms they may do so
f) the administering authority should check the transfer declaration form has been completed satisfactorily and carry out due diligence checks on the receiving scheme
g) assuming everything is satisfactory, the administering authority should either (depending on the agreement they reach with their AVC provider over processes):
   - check with the AVC provider that the last AVC payment referred to in (e) has been received and applied and, if it has, ask the AVC provider to pay the CETV of the AVC fund to the administering authority. The administering authority would then pay the CETV to the receiving scheme(s), or
   - check with the AVC provider that the last AVC payment referred to in (e) has been received and applied and, if it has, confirm to the AVC provider that the necessary due diligence tests have been undertaken and request the AVC provider to pay the CETV of the AVC fund to the receiving scheme(s).

   If the latter of the above two options is adopted, the AVC provider should notify the administering authority when the CETV of the AVC fund has been paid to the receiving scheme(s)
h) the administering authority should then notify the member (if he / she is an active member) that he / she can now elect to re-start payment of AVCs to the Scheme if he / she so wishes i.e. the "new business"

process would have to start over again with the AVC provider (including all application forms / illustrations, etc.)

i) the administering authority should notify the employer (if the member is an active member) that new instructions to re-start AVC payments may now be accepted.

The Technical Group also asked the LGPC Secretariat to produce sample AVC transfer out forms and these are included in the transfer declaration forms section of www.lgpsregs.org - http://www.lgpsregs.org/index.php/guides/forms ~~at the end of this Technical Note. The Communications Working Group is looking to produce sample letters / information packs to provide to members who are aged 54 and 8 months or older.~~

What the Pension Schemes Act 2015 says about the administering authority's responsibility to ensure appropriate independent advice has been obtained

Section 48 of the Pensions Schemes Act 2015 and regulation 2 of the Pension Schemes Act (Transitional Provisions and Appropriate Independent Advice) Regulations 2015 require the administering authority to check that the member (or survivor of a deceased member) who has 'safeguarded benefits' has received appropriate independent advice before:

- making a transfer payment in respect of any of the 'safeguarded benefits' with a view to acquiring a right or entitlement to flexible benefits for the member or survivor under another pension scheme, including a scheme established outside Great Britain (but not in cases where the member had made a request for a CETV statement of entitlement before 6th April 2015); or
- paying a lump sum that would be an uncrystallised funds pension lump sum in respect of any of the benefits [Note that this will not apply in the LGPS because the LGPS does not allow members to draw 'safeguarded benefits' as an Uncrystallised Funds Pension Lump Sum (UFPLS), although the LGPS may be amended to allow an AVC fund to be drawn as a UFPLS].

The administering authority is not required to carry out the check if the total value of the member's subsisting rights in respect of 'safeguarded benefits' under the pension scheme (other than a survivor's pension which the member is in receipt of) is £30,000 or less on the valuation date (ignoring any reduction in a CETV due to an insufficiency report[12] and, where the member is an active member, assuming they cease to be an active member on the valuation date).

Note that, subject to the following paragraph, the £30,000 test is against the value of **all** the member's rights (excluding both AVCs and the value of any survivor's pension the member is in receipt of) in the LGPS in England and Wales (for a member of the scheme in England or Wales), not just the CETV

[12] The figure of £30,000 is the value **prior to** any reduction (P) of the CETV if a designation has been made by HM Treasury, or the relevant Minister of the Crown, or Scottish Ministers under the Funded Public Service Pension Schemes (Reduction of Cash Equivalents) Regulations 2015. Regulation 5 of the Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015 [SI 2015/742] confirms that, in determining whether the value of a member's subsisting rights to 'safeguarded benefits' is more than £30,000, schemes should ignore any reduction of a CETV resulting from an insufficiency report. Although that regulation only specifically allows for reductions referred to in regulation 7D and Schedule 1A of the Occupational Pension Schemes (Transfer Values) Regulations 1996 to be ignored, and does not also make reference to any reduction under the Funded Public Service Pension Schemes (Reduction of Cash Equivalents) Regulations 2015, that is likely to be because those latter regulations had not been made and laid at the time the Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015 [SI 2015/742] were made and laid. It seems to the LGPC Secretariat, however, that the clear intention is that the £30,000 figure should apply prior to the reduction by (P).

value of the benefits in the Fund from which the CETV would be paid. Similarly, the test is against the value of **all** the member's rights (excluding both AVCs and the value of any survivor's pension the member is in receipt of) in the LGPS in Scotland (for a member of the scheme in Scotland) or the value of **all** the member's rights (excluding both AVCs and the value of any survivor's pension the member is in receipt of) in the LGPS in Northern Ireland (for a member of the scheme in Northern Ireland).

If the CETV in respect of the main LGPS benefits is £30,000 or less but there is also an AVC, the value of which would take the overall transfer value to more than £30,000, the administering authority is **not** required to carry out the check.

If the administering authority is required to carry out a check and fails to do so, section 10 of the Pensions Act 1995 (civil penalties) applies to any scheme manager who failed to take reasonable steps to ensure that the check was carried out.

Given the above, it is recommended that, unless the member confirms in writing that:

a) they are not transferring to a scheme which will offer flexible benefits, or
b) if they are transferring to such a scheme, they have no other rights (other than AVCs or a survivor's pension) in the LGPS in England and Wales (for a member of the scheme in England or Wales), or they have no other rights (other than AVCs or a survivor's pension) in the LGPS in Scotland (for a member of the scheme in Scotland), or they have no other rights (other than AVCs or a survivor's pension) in the LGPS in Northern Ireland (for a member of the scheme in Northern Ireland)

administering authorities should assume that the member is transferring to such a scheme and that the member has other rights in the LGPS. This means the administering authority, before paying the CETV, would require evidence from the member that they have received appropriate independent advice.

If LGPS Pension Funds are asked by members how they can locate an authorised independent adviser they should be referred to the FSA register, the Personal Finance Society website, the Association of Professional Financial Advisers website or their local Citizens Advice Bureau. Funds **must not** either attempt to provide the advice themselves or refer the member to a particular authorised independent adviser.

<u>Definitions under the Pension Schemes Act 2015</u>

“appropriate independent advice” means advice that—
(a) is given by an authorised independent adviser, and
(b) meets any other requirements specified in regulations made by the Secretary of State;

“authorised independent adviser” means a person who—
(a) has permission under Part 4A of the Financial Services and Markets Act 2000, or resulting from any other provision of that Act, to carry on a regulated activity specified in regulations made by the Secretary of State, and
(b) meets such other requirements as may be specified in regulations made by the Secretary of State for the purpose of ensuring that the person is independent;
[Note: throughout the rest of this document we will refer to an FCA authorised independent advisor].

“cash balance benefit” means a benefit calculated by reference to an amount available for the provision of benefits to or in respect of the member (“the available amount”) where there is a promise about that amount. But a benefit is not a “cash balance benefit” if, under the scheme—
(a) a pension may be provided from the available amount to or in respect of the member, and
(b) there is a promise about the rate of that pension.
[Note: The LGPS is not a cash balance scheme.]

“flexible benefit” means—
(a) a money purchase benefit,
(b) a cash balance benefit, or
(c) a benefit, other than a money purchase benefit or cash balance benefit, calculated by reference to an amount available for the provision of benefits to or in respect of the member (whether the amount so available is calculated by reference to payments made by the member or any other person in respect of the member or any other factor).

“safeguarded benefits” means benefits other than—
(a) money purchase benefits, and
(b) cash balance benefits.

“subsisting right”—
(a) in relation to a member of a pension scheme means—
    (i) any right which has accrued to or in respect of the member to future benefits under the scheme, or
    (ii) any entitlement to benefits under the scheme,
(b) in relation to a survivor of a member of a pension scheme, means any right to future benefits, or entitlement to benefits, which the survivor has under the scheme in respect of the member.

Active and deferred members (other than deferred Pension Credit members)

Requests for information on how to transfer – members entitled to a deferred benefit

Upon the receipt of a member's request for general information on how to transfer out 'safeguarded benefits' the administering authority must, within one month of receipt of the request, provide the member with a written explanation that, if they were to ask for a CETV:

i) unless the CETV of their 'safeguarded benefits' (i.e. main scheme benefits) in the scheme (excluding AVCs and any survivor's pension the member is in receipt of) is £30,000 or less, the administering authority would be required to check that the person has obtained appropriate independent advice from a FCA authorised independent adviser before they would be able to pay any CETV to another pension scheme under which the member may take flexible benefits;

ii) the member would have to provide the administering authority, before the end of the period of 3 months from when the administering authority sends them a CETV statement, with a signed statement from the adviser confirming:

- that the adviser has permission under the Financial Services and Markets Act 2000 to carry out the regulated activity described in article 53E of the Financial services and Markets Act 2000 (Regulated Activities) Order 2001 to provide advice on the transfer of safeguarded benefits
- the advice has been given on the transfer of 'safeguarded benefits' to flexible benefits and that the advice is specific to the type of transaction proposed by the member
- the advice has been given by a pension transfer specialist or, if an individual who is not a pension transfer specialist has given the advice on a firm's behalf, the firm has ensured that the advice has been checked by a pension transfer specialist. A pension transfer specialist is an individual appointed by a firm to check the suitability of a pension transfer who has passed the required examinations as specified in the FCA's Training and Competence sourcebook
- the name of the member that was given the advice and the scheme in which they hold the 'safeguarded benefits' to which the advice given applies (i.e. the LGPS)
- the FCA reference number of the company or business the adviser giving the advice works for

iii) unless the member confirms otherwise, the administering authority would assume that the member was requesting a CETV statement in order to arrange flexible benefits under another pension scheme.

Administering authorities might also wish to point out that:

- if the member has any other pension rights as an active member, deferred member, deferred refund member or deferred pension credit member in the LGPS in England or Wales (if they are asking about a potential CETV from a Fund in England or Wales), or in Scotland (if they are asking about a potential CETV from a Fund in Scotland), or in Northern Ireland (if they are asking about a potential CETV from NILGOSC), the member would, if the CETV provided by the administering authority is £30,000 or less, need to obtain a CETV quote in respect of those other rights too in order to determine whether the total value is more than £30,000 (in which case the member would have to obtain appropriate independent advice from a FCA authorised independent adviser before proceeding with the transfer)
- even if the total value of the member's CETVs are £30,000 or less, it is recommended that the member should take financial advice before making a decision about transferring their pension rights (given the implications for their pension provision)
- the advice the member receives from the FCA authorised independent adviser should be informed by their personal circumstances and should explain the benefits being given up when compared to any future options
- the member will be expected to meet the cost of the advice
- it is the responsibility of the financial adviser to comply with the FCA rules
- if the member is already in receipt of a pension from the LGPS in England or Wales, other than as a Pension Credit member or as a survivor (if they are asking about a potential CETV in respect of a deferred benefit or in respect of a period of active membership in a Fund in England or Wales) then they will not be entitled to a CETV from the LGPS in respect of that deferred benefit or period of active membership
- if the member is already in receipt of a pension from the LGPS in Scotland, other than as a Pension Credit member or as a survivor (if they are asking about a potential CETV in respect of a deferred benefit or in respect of a period of active membership in a Fund in Scotland) then they will not be entitled to a CETV from the LGPS in respect of that deferred benefit or period of active membership
- if the member is already in receipt of a pension from the LGPS in Northern Ireland, other than as a Pension Credit member or as a survivor (if they are asking about a potential CETV in respect of a deferred benefit or in respect of a period of active membership in the NILGOSC Fund) then they will not be entitled to a CETV from the LGPS in respect of that deferred benefit or period of active membership
- if the member is asking about a potential CETV in respect of a deferred benefit from a Fund in England or Wales and is currently also an active member in a Fund in England or Wales then they will not be entitled to a CETV from the LGPS in respect of that deferred benefit (or the period

of active membership) unless they cease to be an active member of the scheme

- if the member is asking about a potential CETV in respect of a deferred benefit from a Fund in Scotland and is currently also an active member in a Fund in Scotland then they will not be entitled to a CETV from the LGPS in respect of that deferred benefit (or the period of active membership) unless they cease to be an active member of the scheme
- if the member is asking about a potential CETV in respect of a deferred benefit from the NILGOSC Fund and is currently also an active member in that Fund then they will not be entitled to a CETV from the NILGOSC Fund in respect of that deferred benefit (or the period of active membership) unless they cease to be an active member of that Fund
- an election to transfer any 'safeguarded benefits' would have to be made at least 12 months before the member's Normal Pension Age
- if the member does proceed with a transfer, then:

i) they will have to transfer the whole of the CETV in respect of their 'safeguarded benefits' unless the trustees or managers of the receiving scheme ~~is an occupational pension scheme which is not a contracted-out scheme or is a personal pension scheme and the trustees or managers of the receiving scheme~~ are not able or willing to accept a transfer of any pre 6th April 1997 Guaranteed Minimum Pension (GMP) or any post 5th April 1997 section 9(2B) rights, in which case the member can leave those rights in the LGPS and transfer the value of their pre 6th April 1997 benefits in excess of the GMP; and

ii) if they wish to transfer the CETV in respect of any AVC fund they have, they will have to transfer the whole of that CETV (but can transfer this, even if they do not transfer their main scheme benefits, and vice versa).

Any CETV can be split across more than one receiving scheme (but any GMP element has to be transferred to a single scheme i.e. it cannot be split across more than one receiving scheme).

It should be noted that a member in receipt of a bare GMP will not be able to take a CETV in respect of the remainder of their 'safeguarded benefits' as they will have had a Crystallisation Event in relation to the benefits in the defined benefit category.

It should also be noted that a member with an entitlement to a deferred benefit under the scheme (or who has met the vesting period required for entitlement to a deferred benefit) and who has an AVC fund in the scheme as well as their main scheme benefits can transfer out their main scheme benefits and not their AVC fund, or vice versa.

Also, if a member has an accrued AVC fund and requests information about what they may do with their accrued AVC fund, they have a statutory right if they will attain age 55 within 4 months of making the request, or have already attained age 55, or have ceased employment and the administering authority has received evidence from a registered medical practitioner that the member is (and will continue to be) incapable of carrying on the member's occupation because of physical or mental impairment, to be provided, within 2 months of making the request, with the following information, provided they have not previously been sent the information in the last 12 months:

a) a statement of the options available to the member under the scheme
b) a statement that the member may transfer the value of the accrued AVC fund to one or more different pension providers
c) a statement that different pension providers offer different options in relation to what the member can do with the flexible benefits, including the option to select an annuity
d) a statement that different options have different features, different rates of payment, different charges and different tax implications together with a copy of guidance that explains the characteristic features of the options that has been prepared or approved by the Pensions Regulator (or a statement that gives materially the same information as that guidance)
e) a statement that pensions guidance is available to help the person to understand their options in relation to what they can do with their flexible benefits
f) a statement that the pensions guidance may be accessed on the internet, by phone, or face to face
g) the phone number and website address [www.pensionwise.gov.uk] at which the pensions guidance may be accessed and details of how the person may access the pensions guidance face to face
h) a statement that the pensions guidance is free and impartial
i) a statement that the person should access the pensions guidance and consider taking independent advice to help them decide which option is most suitable for them

Requests for a CETV quotation – members entitled to a deferred benefit

Members with ‘safeguarded benefits’ who cease active membership[13] at least 12 months before Normal Pension Age[14] with an entitlement to a deferred benefit have a statutory right to request a CETV quotation once in every 12

[13] Regulation 2 of the Occupational Pension Schemes (Transfer Values) Regulations 1996 [SI 1996/1847] provide that Chapter 1 of Part 4ZA of the Pension Schemes Act 1993 does not apply to pre 1st January 1986 leavers whose benefits are subject to the Pensions (Increase) Act 1971. Although benefits under the LGPS are subject to that Act, transfers for such leavers would still be subject to the LGPS Regulations 1997 and regulation 116(2) of the LGPS Regulations 1997 dis-applied the aforementioned regulation 2 of the Occupational Pension Schemes (Transfer Values) Regulations 1996 [SI 1996/1847]. Thus, pre 1st January l986 leavers are entitled to a CETV.
[14] The rule that the members had to have ceased membership at least a year before their Normal Pension Age **and**, if they had done so, could exercise a right to a CETV up to one year before their Normal Pension Age or within six months of ceasing of their termination date, whichever was the later, has been amended. Now, the member must have ceased membership at least a year before their Normal Pension Age **and** must elect for a transfer at least one year before their Normal Pension Age.

month period in respect of the 'safeguarded benefits' (not AVCs). Note that the definition of Normal Pension Age in section 100C of the Pension Schemes Act 1993 is:

(1) In this Chapter "normal pension age", in relation to a category of benefits under a pension scheme, means—
(a) in a case where the scheme is an occupational pension scheme and those benefits consist only of a guaranteed minimum pension, the earliest age at which the member is entitled to receive the guaranteed minimum pension on retirement from any employment to which the scheme applies,
(b) in any other case where the scheme is an occupational pension scheme and the scheme provides for the member to become entitled to receive any of those benefits at a particular age on retirement from any employment to which the scheme applies, the earliest age at which the member becomes entitled to receive any of the benefits, and
(c) in a case not falling within paragraph (a) or (b), normal minimum pension age as defined by section 279(1) of the Finance Act 2004.

(2) For the purposes of subsection (1) any scheme rule making special provision as to early retirement on grounds of ill-health or otherwise is to be disregarded.

It is interesting to compare the above definition with the definition of normal pension age in:

a) section 101B of the Pension Schemes Act 2013 (Pension Credit members) which, as presently drafted, says:

   "normal pension age", in relation to a benefit for a member of a scheme, means the earliest age at which the member is entitled to receive the benefit without adjustment for taking it early or late (disregarding any special provision as to early payment on the grounds of ill-health or otherwise); and

b) section 1 of the Pension Schemes Act 2015[15] which, for the purposes of Part 1 of that Act (Categories of Pension Scheme), says:

   "normal pension age", in relation to a benefit for a member of a pension scheme, means—
   (a) the earliest age at which, or earliest occasion on which, the member is entitled to receive the benefit without adjustment for taking it early or late (disregarding any special provision as to early payment on the grounds of ill health or otherwise), or
   (b) if there is no such age or occasion, normal minimum pension age as defined by section 279(1) of the Finance Act 2004.

[15] Note, however, that section 1 of the Act says that the definitions contained in Part 1 of the Act do not apply in any public service pensions legislation.

Given the differences in the definitions (i.e. the lack of a reference in section 100C to “without adjustment for taking it early or late”) it is arguable that, other than for Pension Credit members, the Normal Pension Age in the LGPS in England and Wales is age 60 for pre 1st April 2014 leavers and age 55 for post 31st March 2014 leavers; in the LGPS in Scotland it would be age 60 for both pre 1st April 2015 and post 31st March 2015 leavers; and in the LGPS in Northern Ireland it would be age 60 for pre 1st April 2015 leavers and age 55 for post 31st March 2015 leavers.

However, the LGPC Secretariat sought clarification on this point from DWP, given that such an interpretation would seem to debar many of the scheme members who would be interested in a transfer under ‘Freedom and Choice’ and so would appear to run counter to what the Government is seeking to achieve. DWP have confirmed that Normal Pension Age in section 100C should be read to mean the age at which the member is entitled to receive the benefit without adjustment for taking it early or late (disregarding any special provision as to early payment on the grounds of ill health or otherwise[16]).

Where a member has two Normal Pension Ages in respect of a period of membership in the Scheme (e.g. one in respect of the benefits accrued up to 31st March 2014 in England and Wales, or 31st March 2015 in Scotland and Northern Ireland under the final salary scheme and a different, later, one in respect of the benefits accrued from 1st April 2014 in England and Wales, or 1st April 2015 in Scotland and Northern Ireland under the CARE scheme) the LGPC Secretariat is of the view that, due to the wording of the Pension Schemes Act 1993, the member would have to have both ceased membership and elected for a transfer to proceed at least 12 months prior to the **later** of the two Normal Pension Ages. This is because, based on the clarification above provided by DWP, NPA is to be interpreted as the earliest age at which the member is entitled to receive the benefit without adjustment for taking it early or late (disregarding any special provision as to early payment on the grounds of ill health or otherwise[17]). A member cannot draw their pre 1st April 2014 final salary benefits (pre 1st April 2015 in Scotland and Northern Ireland) prior to, and separate from, their post 31st March 2014 CARE benefits (post 31st March 2015 in Scotland and Northern Ireland). Thus, as both elements must be drawn at the same time, the earliest age that benefits can be drawn without any actuarial reduction is the member’s NPA under the CARE scheme.

Thus, as Normal Pension Age (NPA) under section 100C of the Pension Schemes Act 1993 is intended to have the same meaning as set out in the LGPS Regulations:

a) NPA for a post 31st March 2014 leaver in the LGPS in England and Wales is equal to the member’s State Pension Age (with a minimum of

[16] And for this purpose it is to be assumed that the 85 year rule is a special provision.
[17] And for this purpose it is to be assumed that the 85 year rule is a special provision.

age 65), apart from members who are subject to the underpin (for whom the NPA is, in effect, 65[18])

b) NPA for a 1st October 2006 to 31st March 2014 leaver in the LGPS in England and Wales is age 65[19]

c) NPA for a pre 1st October 2006 leaver in the LGPS in England and Wales is 65 unless the person was in the scheme pre 1 April 1998 in which case NPA is:
(i) in the case of a member who by his 60th birthday has a total period of membership of at least 25 years, that birthday; or
(ii) in the case of a member who first has such a total period of membership by a date after his 60th birthday but before his 65th birthday, the day after that date; or
(iii) in the case of a member who does not fall within paragraph (i) or (ii), his 65th birthday[20];

d) NPA for a post 31st March 2015 leaver in the LGPS in Scotland is equal to the member's State Pension Age (with a minimum of age 65), apart from members who are subject to the underpin (for whom the NPA is, in effect, 65)

e) NPA for a 1st December 2006 to 31st March 2015 leaver in the LGPS in Scotland is age 65[21]

f) NPA for a pre 1st December 2006 leaver in the LGPS in Scotland is 65 unless the person was in the scheme pre 1 April 1998 in which case NPA is:
(i) in the case of a member who by his 60th birthday has a total period of membership of at least 25 years, that birthday; or
(ii) in the case of a member who first has such a total period of membership by a date after his 60th birthday but before his 65th birthday, the day after that date; or
(iii) in the case of a member who does not fall within paragraph (i) or (ii), his 65th birthday;

g) NPA for a post 31st March 2015 leaver in the LGPS in Northern Ireland is equal to the member's State Pension Age (with a minimum of age

[18]The reason for this is that, where a member is subject to the underpin, any reduction if they draw benefits before 65 would be to age 65 (or the 85 year rule if earlier). Equally, if a member who is subject to the underpin retires after age 65, both the benefits accrued to age 65 (including the underpin amount) and the CARE benefits accrued post age 65 will be subject to an actuarial increase for drawing the benefits after age 65.
[19] Or 60 for certain protected Meat Hygiene Service and Learning and Skills Council for England members.
[20] Or 60 for certain protected Meat Hygiene Service members.
[21] Or 60 for certain protected members i.e. former employees of the Scottish Legal Services Ombudsman, of the Scottish Administration's Learning Connections Division, of the Care Commission, of the Social Work Inspection Agency, and of Her Majesty's Inspectorate of Education, and employees formerly entitled to membership of the SDS Scheme.

65), apart from members who are subject to the underpin (for whom the NPA is, in effect, 65)

h) NPA for a 1st October 2006 to 31st March 2015 leaver in the LGPS in Northern Ireland is age 65

i) NPA for a pre 1st October 2006 leaver in the LGPS in Northern Ireland is 65 unless the person was in the scheme pre 1 February 2003 in which case NPA is:
   (i) in the case of a member who by his 60th birthday has a total period of membership of at least 25 years, that birthday; or
   (ii) in the case of a member who first has such a total period of membership by a date after his 60th birthday but before his 65th birthday, the day after that date; or
   (iii) in the case of a member who by his 60th birthday has a total period of membership of at least 10 years, provided that he was a contributory employee before 1st April 1972, that birthday; or
   (iv) in the case of a member who does not fall within paragraph (i), (ii) or (iii), his 65th birthday;

It should be noted that a member in receipt of a bare GMP will not be able to take a CETV in respect of the remainder of their ‘safeguarded benefits’ as they will have had a Crystallisation Event in relation to the benefits in the defined benefit category.

Members with an AVC fund who cease contributing to the AVC fund have a statutory right to request a CETV quotation once in every 12 month period. There is no requirement for them to have ceased contributing to the AVC fund at least 12 months before Normal Pension Age nor to have elected to proceed with a CETV out in respect of the AVC fund at least 12 months before Normal Pension Age.

It should be noted that a member with an entitlement to a deferred benefit under the scheme (or who has met the vesting period required for entitlement to a deferred benefit) and who has an AVC fund in the scheme as well as their main scheme benefits can transfer out their main scheme benefits and not their AVC fund, or vice versa.

Any CETV can be split across more than one receiving scheme (but any GMP element has to be transferred to a single scheme i.e. it cannot be split across more than one receiving scheme).

Upon receipt of a request for a CETV quotation the administering authority must, within one month of receipt of the request, provide the member with a written explanation that:

i) unless the CETV of their ‘safeguarded benefits’ (i.e. main scheme benefits) in the scheme (excluding AVCs, which are not ‘safeguarded benefits’, and excluding any survivor’s pension which the member is in receipt of) is £30,000 or less, the administering authority will be required to check that the person has obtained appropriate independent advice from a FCA authorised independent adviser before they will be able to pay any CETV to another pension scheme under which the member may take flexible benefits;

ii) the member will have to provide the administering authority, before the end of the period of 3 months from when the administering authority sends them a CETV statement, with a signed statement from the adviser (preferably using the sample advice confirmation statement produced by the LGPS Secretariat which can be found on our website www.lgpsregs.org at ~~is attached as Appendix 1 to this note) confirming:~~ http://www.lgpsregs.org/index.php/guides/forms

- that the adviser has permission under the Financial Services and Markets Act 2000 to carry out the regulated activity described in article 53E of the Financial services and Markets Act 2000 (Regulated Activities) Order 2001 to provide advice on the transfer of safeguarded benefits
- the advice has been given on the transfer of 'safeguarded benefits' to flexible benefits and that the advice is specific to the type of transaction proposed by the member
- the advice has been given by a pension transfer specialist or, if an individual who is not a pension transfer specialist has given the advice on a firm's behalf, the firm has ensured that the advice has been checked by a pension transfer specialist. A pension transfer specialist is an individual appointed by a firm to check the suitability of a pension transfer who has passed the required examinations as specified in the FCA's Training and Competence sourcebook
- the name of the member that was given the advice and the scheme in which they hold the 'safeguarded benefits' to which the advice given applies (i.e. the LGPS)
- the FCA reference number of the company or business the adviser giving the advice works for

iii) unless the member confirms otherwise, the administering authority would assume that the member was requesting a CETV statement in order to arrange flexible benefits under another pension scheme.

Administering authorities should also point out that:

- if the member has any other pension rights as an active member, deferred member, deferred refund member or deferred Pension Credit member in the LGPS in England or Wales (if they are asking about a potential CETV from a Fund in England or Wales), or in Scotland (if they are asking about a potential CETV from a Fund in Scotland), or in Northern Ireland (if they are asking about a potential CETV from NILGOSC), the member would, if the CETV provided by the administering authority is £30,000 or less, need to obtain a CETV quote in respect of those other rights too in order to determine whether the total value is more than £30,000 (in which case the member would have to obtain appropriate independent advice from a FCA authorised independent adviser before proceeding with the transfer)

- even if the total value of the member's CETVs are £30,000 or less, it is recommended that the member should take financial advice before making a decision about transferring their pension rights (given the implications for their pension provision)
- the advice the member receives from the FCA authorised independent adviser should be informed by their personal circumstances and should explain the benefits being given up when compared to any future options
- the member will be expected to meet the cost of the advice
- it is the responsibility of the financial adviser to comply with the FCA rules
- if the member is already in receipt of a pension from the LGPS in England or Wales, other than as a Pension Credit member or as a survivor (if they are asking about a potential CETV in respect of a deferred benefit or in respect of a period of active membership in a Fund in England or Wales) then they are not entitled to a CETV from the LGPS in respect of that deferred benefit or period of active membership
- if the member is already in receipt of a pension from the LGPS in Scotland, other than as a Pension Credit member or as a survivor (if they are asking about a potential CETV in respect of a deferred benefit or in respect of a period of active membership in a Fund in Scotland) then they are not entitled to a CETV from the LGPS in respect of that deferred benefit or period of active membership
- if the member is already in receipt of a pension from the LGPS in Northern Ireland, other than as a Pension Credit member or as a survivor (if they are asking about a potential CETV in respect of a deferred benefit or in respect of a period of active membership in the NILGOSC Fund) then they are not entitled to a CETV from the LGPS in respect of that deferred benefit or period of active membership
- if the member is asking about a potential CETV in respect of a deferred benefit from a Fund in England or Wales and is currently also an active member in a Fund in England or Wales then they are not entitled to a CETV from the LGPS in respect of that deferred benefit (or the period of active membership) unless they cease to be an active member of the scheme
- if the member is asking about a potential CETV in respect of a deferred benefit from a Fund in Scotland and is currently also an active member in a Fund in Scotland then they are not entitled to a CETV from the LGPS in respect of that deferred benefit (or the period of active membership) unless they cease to be an active member of the scheme
- if the member is asking about a potential CETV in respect of a deferred benefit from the NILGOSC Fund and is currently also an active member in that Fund then they are not entitled to a CETV from the NILGOSC Fund in respect of that deferred benefit (or the period of active membership) unless they cease to be an active member of that Fund

- an election to transfer any 'safeguarded benefits' would have to be made at least 12 months before the member's Normal Pension Age
- if the member does proceed with a transfer, then:
  i) they must transfer the whole of the CETV in respect of their 'safeguarded benefits' unless the trustees or managers of the receiving scheme ~~is an occupational pension scheme which is not a contracted-out scheme or is a personal pension scheme and the trustees or managers of the receiving scheme~~ are not able or willing to accept a transfer of any pre 6th April 1997 Guaranteed Minimum Pension (GMP) or any post 5th April 1997 section 9(2B) rights, in which case the member can leave those rights in the LGPS and transfer the value of their pre 6th April 1997 benefits in excess of the GMP;
  ii) they can, if they wish, split the CETV across more than one receiving scheme (but any GMP element has to be transferred to a single scheme i.e. it cannot be split across more than one receiving scheme); and
  iii) if they wish to transfer the CETV in respect of any AVC fund they have, they must transfer the whole of that CETV (but can transfer this, even if they do not transfer their main scheme benefits, and vice versa).

Given the above, it is recommended that, unless the member confirms in writing that:

a) they are not transferring to a scheme which will offer flexible benefits, or
b) if they are transferring to such a scheme, they have no other rights (other than AVCs or a survivor's pension they are in receipt of) in the LGPS in England and Wales (for a member of the scheme in England or Wales seeking a transfer), or they have no other rights (other than AVCs or a survivor's pension they are in receipt of) in the LGPS in Scotland (for a member of the scheme in Scotland seeking a transfer), or they have no other rights (other than AVCs or a survivor's pension they are in receipt of) in the LGPS in Northern Ireland (for a member of the scheme in Northern Ireland seeking a transfer), and
c) regardless of the type of scheme they are transferring to, they are not in receipt of a pension from the LGPS in England or Wales, other than as a Pension Credit member or as a survivor (for a member of the scheme in England or Wales seeking a transfer), or they are not in receipt of a pension from the LGPS in Scotland, other than as a Pension Credit member or as a survivor (for a member of the scheme in Scotland seeking a transfer), or they are not in receipt of a pension from the LGPS in Northern Ireland, other than as a Pension Credit member or as a survivor (for a member of the scheme in Northern Ireland seeking a transfer).

administering authorities should assume that the member is transferring to such a scheme and / or that the member has such other rights in the LGPS.

The administering authority must also:

i) provide a CETV statement of entitlement in respect of the 'safeguarded benefits' (i.e. main scheme benefits) and of the realisable value of any AVCs[22] within three months of the date of the member's application (or within such longer period, not exceeding six months, where they cannot meet the three month deadline for reasons beyond their control). This statement should include a formal quotation of the member's transfer value in respect of the 'safeguarded benefits' as at the guarantee date (a date which must be within the same three month period). The statement should also confirm which rights the CETV relates to.

ii) give the member the statement of entitlement in respect of the 'safeguarded benefits' within 10 days of the guarantee date (excluding Saturdays, Sundays, Christmas Day, New year's Day and Good Friday). By default, this statement must provide details of **all** the 'safeguarded benefits' the member holds with that administering authority.

iii) confirm that the CETV statement of entitlement in respect of the 'safeguarded benefits' (but not any AVCs) is valid for 3 months from the guarantee dated (provided, if the member is an active member, they cease to be an active member on the date the statement has assumed they cease to be an active member) and that if the member wishes to proceed they must elect to do so, in respect of the 'safeguarded benefits' (but not the AVCs) by no later than:
   - the end of the 3 month guarantee period or, if earlier
   - the date which falls 12 months before their Normal Pension Age if that date is within the 3 month guarantee period.

iv) indicate whether the CETV in respect of the 'safeguarded benefits' has been reduced and, if so, for what reason and by what amount and an estimate of the date when an unreduced CETV could be available.

v) explain that in exceptional circumstances the CETV quoted in respect of the 'safeguarded benefits' could be reduced and that the member would be informed if that were to occur.

vi) explain that the member has a right to only one CETV quotation in any 12 month period.

vii) if the member is still an active member at the date of the CETV request, explain the member's active membership has been assumed to have ended on [enter date][23].

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[22] See regulation 11(1C) of SI 1996/1847.

[23] It should be noted that regulations 3 and 4 of the Occupational Pension Schemes (Transfer Values) Regulations 1996 [SI 1996/1847] which provided that an optant out could only transfer the value of post 5th April 1988 benefits (but could transfer the value of the pre 6th April 1988 benefits when the employment ceased) have been deleted as from 6th April 2015. Thus, optants out will be able to transfer all of their accrued rights (including in respect of any pre 6th April 1988 membership). It should also be noted that regulation 18 of the Occupational Pension Schemes (Transfer Values) Regulations 1996 [SI 1996/1847], which provided that a CETV could not be paid if a member re-joined the scheme within a month and a day of ceasing active membership, has also been deleted as from 6th April 2015. That regulation had become superfluous because a member who is accruing rights as an active member would

viii) explain that the CETV in respect of any AVC fund is not guaranteed and if they elect to proceed with a transfer in respect of their AVC fund the value will be calculated by reference to the date of their transfer election.

ix) State that the Financial Conduct Authority, the Regulatory Authority and the Pensions Advisory Service provide information about transfers that may assist the member in deciding whether to transfer.

Also, if a member has an accrued AVC fund and will attain age 55 within 4 months of making the CETV quotation request, or has already attained age 55, or has ceased employment and the administering authority has received evidence from a registered medical practitioner that the member is (and will continue to be) incapable of carrying on the member's occupation because of physical or mental impairment, the member should be provided with the following information:

a) a statement of the options available to the member under the scheme
b) a statement that the member may transfer the value of the accrued AVC fund to one or more different pension providers
c) a statement that different pension providers offer different options in relation to what the member can do with the flexible benefits, including the option to select an annuity
d) a statement that different options have different features, different rates of payment, different charges and different tax implications together with a copy of guidance that explains the characteristic features of the options that has been prepared or approved by the Pensions Regulator – see the guidance at www.moneyadviceservice.org.uk/en/articles/free-printed-guides#pensions-and-retirement called "Your pension: it's time to choose" - (or a statement that gives materially the same information as that guidance)
e) a statement that pensions guidance is available to help the person to understand their options in relation to what they can do with their flexible benefits
f) a statement that the pensions guidance may be accessed on the internet, by phone, or face to face
g) the phone number and website address [www.pensionwise.gov.uk] at which the pensions guidance may be accessed and details of how the person may access the pensions guidance face to face
h) a statement that the pensions guidance is free and impartial
i) a statement that the person should access the pensions guidance and consider taking independent advice to help them decide which option is most suitable for them
j) an estimate of the cash equivalent of the AVC fund
k) the date by reference to which the estimate of the cash equivalent or value (as appropriate) is calculated

now fail Condition 3 of section 93 of the Pension Schemes Act 1993 and so not be entitled to a CETV.

l) an explanation that the cash equivalent or value (as appropriate) is an estimate and may not represent the exact amount available to the member to transfer to another pension provider and
   (i) details of any guarantee to which the benefits are subject; and
   (ii) details of any other features, restrictions and conditions that apply to the benefits that affect, or may affect, their value.

m) a statement that—
   (i) there may be tax implications associated with accessing flexible benefits;
   (ii) income from a pension is taxable; and
   (iii) the rate at which income from a pension is taxable depends on the amount of income that the person receives from a pension and from other sources.

It would also, where appropriate, be wise to include the 'scorpion' pensions liberation information (such as the leaflet available at ~~http://www.pensionsadvisoryservice.org.uk/publications-files/uploads/members_detailed_booklet_7_page.pdf~~ http://www.pensionsadvisoryservice.org.uk/content/publications-files/uploads/members_detailed_booklet_7_page.pdf) under cover of a warning such as "If you are taking a transfer of your pension rights to another scheme with a view to taking flexible benefits, be aware that scammers may operate in these markets" together with brief information on the benefits the LGPS provides (to enable any FCA authorised independent adviser to explain the benefits being given up when compared to any future options).

Lastly, although LGPS Pension Funds are only legally required to supply the CETV value in response to the request for a quote it is recommended that, to ensure the authorised independent adviser has the necessary understanding of the LGPS in order to be able to provide appropriate advice to the member, administering authorities should also include additional information alongside the transfer quote. Such information could include a copy of the full scheme guide or a copy of the brief scheme guide and a link to the online version of the full scheme guide.

If the member elects within the relevant time period – members entitled to a deferred benefit

If the scheme member elects to proceed before the end of the 3 month guarantee period[24] (or, if earlier, before the date which falls 12 months before their Normal Pension Age if that date is within the 3 month guarantee period), the administering authority must:

i) check that the receiving pension scheme is able and willing to accept the transfer
ii) obtain the relevant transfer disclaimer / discharge forms from the member and the receiving scheme (see the sample forms provided by the LGPC which can be found on our website www.lgpsregs.org

[24] Or such longer period as regulations may allow.

at ~~in Appendix 2 to this paper)~~
http://www.lgpsregs.org/index.php/guides/forms

iii) ensure they have a copy of the relevant[25] signed statement[26] from the FCA authorised independent adviser (which the administering authority should retain on the member's record) confirming:
- that the adviser has permission to carry on the regulated activity (i.e. to provide advice on the transfer of 'safeguarded benefits') under article 53E of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001
- the advice has been given on the transfer of 'safeguarded benefits' to flexible benefits and that the advice is specific to the type of transaction proposed by the member
- the name of the member that was given the advice and the scheme in which they hold the 'safeguarded benefits' to which the advice given applies (i.e. the LGPS)
- the FCA reference number of the company or business the adviser giving the advice works for.

iv) check that the company or business providing the advice has permission to carry on the regulated activity (i.e. to provide advice on the transfer of 'safeguarded benefits') under article 53E of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 by checking the Financial Services Register maintained by the FCA. Where there are concerns about the adviser, these should be reported to the FCA. The member should be contacted as soon as possible in the event of a problem corroborating information on the Financial Services Register. The member should be informed that the transfer will not proceed until they have provided the correct information. The member should be made aware that their transfer will be at risk if confirmation is not received within three months of the guarantee date. The administering authority should keep a record of the checks undertaken,

[25] Where a member misses the 3 month deadline for electing to proceed with a CETV, subsequently requests a further CETV quotation and elects to proceed with that subsequent CETV quotation, they cannot use the 'appropriate financial advice' declaration from an FCA authorised independent adviser that was obtained in relation to the earlier CETV quote. A new declaration would have to be obtained. This is because regulation 6 of the Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015 [SI 2015/742] requires that the declaration has to be provided to the administering authority within 3 months of the day on which the statement of entitlement was given. A subsequent statement of entitlement would be a new statement of entitlement and so the initial declaration would not relate to it (and thus be outside the 3 month time limit). Also, regulation 7 of that SI requires that the declaration must confirm that the advice provided is specific to the type of transaction proposed by the member. The original declaration cannot meet this requirement (as the type of transaction being proposed, and the member's circumstances and requirements, may have changed since the first declaration was completed).

[26] It is only the signed statement that has to be obtained. The act of requiring members to obtain appropriate independent advice does not make the administering authority responsible for checking what advice was given, what recommendation was made or to confirm whether the member is following that recommendation. A copy of the advice and recommendation provided to the member need not be obtained.

v) (subject to the above) pay the guaranteed transfer value in respect of the 'safeguarded benefits' within six months of the guarantee date (or such longer period as the Pensions Regulator may agree[27]). This six month time limit applies only where the administering authority has been able to check that the member has obtained independent advice about the transfer. If they are unable to do so for reasons outside their control, or the check does not show the member received appropriate independent advice, the member loses the right to that guaranteed CETV, and

vi) if the member has AVC rights that they wish to transfer, follow the transfer procedures outlined under 'Issue 6' on pages 26 to 28 of this note.

A record of who conducted the checks, when and evidence showing that the adviser was on the register and had the necessary permissions should be kept and retained for at least 6 years.

The administering authority should also undertake relevant pension liberation checks. The Pensions Regulator says:

34. We expect trustees to conduct proper due diligence on the receiving scheme to ensure that it is a legitimate arrangement.
35. Where trustees have reason to believe that the receiving scheme is not a legitimate arrangement, they should consider carefully whether the transfer should be made. Trustees should refer to our guidance on pension scams, which includes a checklist of the common indicators of a pension scam and outlines ways for trustees to make further enquiries, contacting the member and reporting to authorities (www.pension-scams.com).

Where a member's 'safeguarded benefits' contain contracted-out rights the administering authority should also make sure that they comply with the requirements of the Contracting-out (Transfer and Transfer Payment) Regulations 1996 [SI 1996/1462] which include obtaining additional written acknowledgements from the member regarding their contracted-out rights before they complete the transfer. These requirements are included on the LGPC's sample transfer out disclaimer / discharge forms which can be found on our website www.lgpsregs.org at~~included in Appendix 2 to this paper.~~ http://www.lgpsregs.org/index.php/guides/forms

Note that a CETV in respect of AVCs is to be calculated by reference to the date of the member's election to proceed with the transfer and has to be paid within 6 months of that date.

Note that a member who has acquired a right to a CETV in respect of their 'safeguarded benefits' (i.e. their main LGPS benefits) and in respect of their accrued AVC rights, can elect to proceed with none, either or both CETVs. However, each transfer that the member elects to proceed with must be in

[27] There are limited circumstances in which the Pensions Regulator may grant an extension of this time period. Any application for an extension must be made within this six month period. It should indicate the additional time required to effect the transfer and the reasons why the transfer cannot be completed on time.

respect of all of the benefits to which the transfer relates except where, in the case of a transfer of the main LGPS benefits, the receiving scheme is ~~a contracted-in occupational pension scheme or is a personal pension scheme and the scheme is~~ not able or willing to accept contracted-out rights (i.e. GMP and / or section 9(2B) rights). In that case, unless the member elects to transfer the contracted-out rights elsewhere, the administering authority can retain the contracted-out rights in the LGPS and only transfer the pre 6th April 1997 benefits in excess of the GMP. If the member elects to transfer their AVCs but not their ‘safeguarded benefits’ (i.e. their main LGPS benefits), they can continue to build up rights in the main scheme (provided they are still eligible to be an active member of the LGPS). Conversely, if the member elects to transfer their ‘safeguarded benefits’ (i.e. their main LGPS benefits) but not their AVCs, they can continue to build up rights in the AVC arrangement (provided they are still eligible to be an active member of the LGPS – although the LGPC Secretariat cannot see how this will be possible if the member does not elect to re-join the LGPS but wishes to continue paying AVCs).

Any CETV can be split across more than one receiving scheme (but any GMP element has to be transferred to a single scheme i.e. it cannot be split across more than one receiving scheme).

If the member wishes to transfer their ‘safeguarded benefits’ (i.e. their main LGPS benefits) and also has a Pension Credit in the scheme, the Pension Schemes Act 1993 allows the LGPS to introduce a rule which would require the member to also transfer their Pension Credit rights. No such amendment has yet been made to the LGPS.

Similarly, if the member has an AVC pot in the scheme which they wish to transfer and also has an AVC pot as a Pension Credit member in the scheme, the Pension Schemes Act 1993 allows the LGPS to introduce a rule which would require the member to also transfer their Pension Credit AVC pot. No such amendment has yet been made to the LGPS.

Members with 3 or more months' membership[28] who are not entitled to a deferred benefit

If a member who has 3 or more months' membership[29] but who is not entitled to a deferred benefit ceases membership of the LGPS before attaining Normal Pension Age[30] that member has the right to choose to take either a refund of contributions (less the statutory deductions) or a CETV (which is to include the value of any AVC fund the member may have as, unlike deferred and pension credit members, a deferred refund member does not have the right to transfer their main scheme benefits and not their AVCs, or vice versa).

Any CETV can be split across more than one receiving scheme (but any GMP element has to be transferred to a single scheme i.e. it cannot be split across more than one receiving scheme).

The administering authority must, within a reasonable period of time after the cessation of active membership, notify the member of the above choice and include:

a) the amount of the refund of contributions available, including the amounts of the statutory deductions,
b) the amount of the CETV at the date of cessation of pensionable service and the permitted ways the member may use it (i.e. to transfer it to another occupational pension scheme, or to a personal pension scheme, or to purchase one or more appropriate annuities), and
c) the last day by which the member must make an election under (b)

The date under (c) must be a reasonable period of time after the provision of the CETV figure.

Where the member elects for a transfer, the administering authority must pay the CETV that was quoted within a reasonable period of time after receiving the member's election form.

It should be noted that there is no requirement for a member who has 3 or more months' membership[31] but who is not entitled to a deferred benefit to take appropriate independent advice (in the unlikely event that the CETV of the member's deferred refund in the scheme is more than £30,000). This is because section 48 (Independent Advice) of the Pension Schemes Act 2015

[28] The requirement to have at least 3 months membership does not apply to members who left the LGPS in England and Wales between 1st April 2008 and 31st March 2014 (see regulation 78(2) of the LGPS (Administration) Regulations 2008) or to members who left the LGPS in Scotland or Northern Ireland between 1st April 2009 and 31st March 2015 (see regulation 73(3) of the LGPS (Administration) (Scotland) Regulations 2009 and regulation 74(2) of Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009)
[29] See footnote 28
[30] See the comments earlier in this paper on the definition of Normal Pension Age.
[31] See footnote 28

only covers members with ‘subsisting rights’ in respect of ‘safeguarded benefits’. ‘Subsisting rights’ are defined as:

(i) any right which has accrued to or in respect of the member to future benefits under the scheme, or
(ii) any entitlement to benefits under the scheme.

A deferred refund member does not have ‘subsisting rights’ as they have no right to future benefits from the LGPS.

If a deferred refund member does not elect for a CETV or a refund of contributions, the refund of contributions is automatically payable 5 years after cessation of active membership (assuming the member has not re-joined the LGPS prior to then).

Deferred Pension Credit Members

Note: the information below relates to members who have been awarded a Pension Credit in the LGPS. It **does not** relate to those persons who, during the pension sharing on divorce process, indicate that they do not wish to be awarded a Pension Credit in the LGPS and wish, instead, for the share of the CETV awarded under the Pension Sharing Order to be paid to another qualifying pension arrangement. In such a case, the rules regarding:

a) taking appropriate independent advice from an FCA authorised independent adviser if the CETV is more than £30,000,
b) not being able to transfer if the person is already in receipt of a pension from another Pension Credit awarded in the LGPS, and
c) having to make an election to transfer at least 12 months before the member's Normal Benefit Age

do not apply.

Deferred Pension Credit Members - Requests for information on how to transfer

Upon the receipt of a deferred Pension Credit member's request for general information on how to transfer out 'safeguarded benefits' the administering authority must, within one month of receipt of the request, provide the member with a written explanation that, if they were to ask for a CETV:

i) unless the CETV of **all** their 'safeguarded benefits' (i.e. main scheme benefits) in the scheme (excluding AVCs, which are not 'safeguarded benefits', and excluding any survivor's pension which the member is in receipt of) is £30,000 or less, the administering authority would be required to check that the person has obtained appropriate independent advice from a FCA authorised independent adviser before they would be able to pay any CETV to another pension scheme under which the member may take flexible benefits;
ii) the member would have to provide the administering authority, before the end of the period of 3 months from when the administering authority sends them a CETV statement, with a signed statement from the adviser confirming:
    - that the adviser has permission under the Financial Services and Markets Act 2000 to carry out the regulated activity described in article 53E of the Financial services and Markets Act 2000 (Regulated Activities) Order 2001 to provide advice on the transfer of safeguarded benefits
    - the advice has been given on the transfer of 'safeguarded benefits' to flexible benefits and that the advice is specific to the type of transaction proposed by the member
    - the advice has been given by a pension transfer specialist or, if an individual who is not a pension transfer specialist has given the advice on a firm's behalf, the firm has ensured that the advice has been checked by a pension transfer specialist. A pension transfer

specialist is an individual appointed by a firm to check the suitability of a pension transfer who has passed the required examinations as specified in the FCA's Training and Competence sourcebook

- the name of the member that was given the advice and the scheme in which they hold the 'safeguarded benefits' to which the advice given applies (i.e. the LGPS)
- the FCA reference number of the company or business the adviser giving the advice works for

iii) unless the member confirms otherwise, the administering authority would assume that the member was requesting a CETV statement in order to arrange flexible benefits under another pension scheme.

Administering authorities might also wish to point out that:

- if the member has any other pension rights as an active member, deferred member, deferred refund member or deferred pension credit member in the LGPS in England or Wales (if they are asking about a potential CETV from a Fund in England or Wales), or in Scotland (if they are asking about a potential CETV from a Fund in Scotland), or in Northern Ireland (if they are asking about a potential CETV from NILGOSC), the member would, if the CETV provided by the administering authority is £30,000 or less, need to obtain a CETV quote in respect of those other rights too in order to determine whether the total value is more than £30,000 (in which case the member would have to obtain appropriate independent advice from a FCA authorised independent adviser before proceeding with the transfer)
- even if the total value of the member's CETVs are £30,000 or less, it is recommended that the member should take financial advice before making a decision about transferring their pension rights (given the implications for their pension provision)
- the advice the member receives from the FCA authorised independent adviser should be informed by their personal circumstances and should explain the benefits being given up when compared to any future options
- the member will be expected to meet the cost of the advice
- it is the responsibility of the financial adviser to comply with the FCA rules
- if the member is already in receipt of a pension from another Pension Credit awarded in the LGPS in England or Wales (if the member is seeking a CETV from a Fund in England or Wales), or Scotland (if the member is seeking a CETV from a Fund in Scotland), or Northern Ireland (if the member is seeking a CETV from a Fund in Northern Ireland), then they will not be entitled to a CETV from the LGPS
- an election to transfer any Pension Credit 'safeguarded benefits' would have to be made at least 12 months before the member's Normal Benefit Age (i.e. their Normal Pension Age in the LGPS)
- if the member does proceed with a transfer, then:
    i) they would have to transfer the whole of the CETV in respect of their Pension Credit 'safeguarded benefits'; ii) if they wish to

transfer the CETV in respect of any Pension Credit AVC fund they have, they would have to transfer the whole of that AVC CETV; and

iii) if they wish, they can split the CETV across more than one receiving scheme.

Requests for a CETV quotation – members entitled to a deferred Pension Credit benefit

Deferred Pension Credit members with 'safeguarded benefits' have a statutory right to request a CETV quotation in respect of those benefits at any time up to 12 months before Normal Benefit Age.

Note that the definition of Normal Benefit Age in section 101B of the Pension Schemes Act 1993 is:

"normal benefit age", in relation to a pension credit benefit for a member of a scheme, is the earliest age at which the member is entitled to receive the benefit without adjustment for taking it early or late (disregarding any special provision as to early payment on the grounds of ill-health or otherwise);

"normal pension age", in relation to a benefit for a member of a scheme, means the earliest age at which the member is entitled to receive the benefit without adjustment for taking it early or late (disregarding any special provision as to early payment on the grounds of ill-health or otherwise).

The Normal Benefit Age in the LGPS in England and Wales is, for Pension Credits held under the LGPS Regulations 1997, age 65 and for Pension Credits held under the LGPS Regulations 2013, the member's State Pension Age (but with a minimum of age 65).

The Normal Benefit Age in the LGPS in Scotland is, for Pension Credits held under the LGPS (Scotland) Regulations 1998 or the LGPS (Administration) (Scotland) Regulations 2008 and the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008, age 65 and for Pension Credits held under the LGPS (Scotland) Regulations 2014, the member's State Pension Age (but with a minimum of age 65).

The Normal Benefit Age in the LGPS in Northern Ireland is, for Pension Credits held under the LGPS Regulations (Northern Ireland) 2000 or the LGPS Regulations (Northern Ireland) 2002 or the LGPS (Administration) Regulations (Northern Ireland) 2009, age 65 and for Pension Credits held under the LGPS Regulations (Northern Ireland) 2014, the member's State Pension Age (but with a minimum of age 65).

Upon receipt of a request for a CETV quotation the administering authority must, within one month of receipt of the request, provide the member with a written explanation that:

i) unless the CETV of **all** their 'safeguarded benefits' (i.e. main scheme benefits) in the LGPS (excluding AVCs, which are not 'safeguarded benefits', and excluding any survivor's pension which the member is in receipt of) is £30,000 or less, the administering authority would be required to check that the person has obtained appropriate independent advice from a FCA authorised independent adviser before they would be able to pay any CETV to another pension scheme under which the member may take flexible benefits;

ii) the member would have to provide the administering authority, before the end of the period of 3 months from when the administering authority sends them a CETV statement, with a signed statement from the adviser (preferably using the sample advice confirmation statement produced by the LGPS Secretariat which can be found on our website www.lgpsregs.org ~~is attached as Appendix 1 to this note)~~ http://www.lgpsregs.org/index.php/guides/forms confirming:
   - that the adviser has permission under the Financial Services and Markets Act 2000 to carry out the regulated activity described in article 53E of the Financial services and Markets Act 2000 (Regulated Activities) Order 2001 to provide advice on the transfer of safeguarded benefits
   - the advice has been given on the transfer of 'safeguarded benefits' to flexible benefits and that the advice is specific to the type of transaction proposed by the member
   - the advice has been given by a pension transfer specialist or, if an individual who is not a pension transfer specialist has given the advice on a firm's behalf, the firm has ensured that the advice has been checked by a pension transfer specialist. A pension transfer specialist is an individual appointed by a firm to check the suitability of a pension transfer who has passed the required examinations as specified in the FCA's Training and Competence sourcebook
   - the name of the member that was given the advice and the scheme in which they hold the 'safeguarded benefits' to which the advice given applies (i.e. the LGPS)
   - the FCA reference number of the company or business the adviser giving the advice works for

iii) unless the member confirms otherwise, the administering authority would assume that the member was requesting a CETV statement in order to arrange flexible benefits under another pension scheme.

Administering authorities should also point out that:

- if the member has any other pension rights as an active member, deferred member, deferred refund member or deferred pension credit member in the LGPS in England or Wales (if they are asking about a potential CETV from a Fund in England or Wales) or in Scotland (if they are asking about a potential CETV from a Fund in Scotland), or in Northern Ireland (if they are asking about a potential CETV from NILGOSC) the member would, if the CETV provided by the administering authority is £30,000 or less, need to obtain a CETV quote in respect of those other rights too in order to determine whether the total value is more than £30,000 (in which case the member would have to obtain appropriate independent advice from a FCA authorised independent adviser before proceeding with the transfer)

- even if the total value of the member's CETVs are £30,000 or less, it is recommended that the member should take financial advice before making a decision about transferring their pension rights (given the implications for their pension provision)
- the advice the member receives from the FCA authorised independent adviser should be informed by their personal circumstances and should explain the benefits being given up when compared to any future options
- the member will be expected to meet the cost of the advice
- it is the responsibility of the financial adviser to comply with the FCA rules
- if the member is already in receipt of a pension from another Pension Credit awarded in the LGPS in England or Wales (if the member is seeking a CETV from a Fund in England or Wales), or Scotland (if the member is seeking a CETV from a Fund in Scotland), or Northern Ireland (if the member is seeking a CETV from a Fund in Northern Ireland), then they will not be entitled to a CETV from the LGPS
- an election to transfer any Pension Credit 'safeguarded benefits' would have to be made at least 12 months before the member's Normal Benefit Age (i.e. their Normal Pension Age in the LGPS) - if the member does proceed with a transfer, then:
  i) they would have to transfer the whole of the CETV in respect of their Pension Credit 'safeguarded benefits'; ii) if they wish to transfer the CETV in respect of any Pension Credit AVC fund they have, they would have to transfer the whole of that CETV; and
  iii) if they wish, they can split the CETV across more than one receiving scheme.

Given the above, it is recommended that, unless the member confirms in writing that:

a) they are not transferring to a scheme which will offer flexible benefits, or
b) if they are transferring to such a scheme, they have no other rights (other than AVCs or a survivor's pension they are in receipt of) in the LGPS in England and Wales (for a member of the scheme in England or Wales seeking a transfer), or they have no other rights (other than AVCs or a survivor's pension they are in receipt of) in the LGPS in Scotland (for a member of the scheme in Scotland seeking a transfer), or they have no other rights (other than AVCs or a survivor's pension they are in receipt of) in the LGPS in Northern Ireland (for a member of the scheme in Northern Ireland seeking a transfer), and
c) regardless of the type of scheme they are transferring to, they are not already in receipt of a pension from another Pension Credit awarded in the LGPS in England or Wales (if they are seeking a CETV from a Fund in England or Wales), or Scotland (if they are seeking a CETV from a Fund in Scotland), or Northern Ireland (if they are seeking a CETV from a Fund in Northern Ireland),

administering authorities should assume that the member is transferring to such a scheme and / or that the member has such other rights in the LGPS.

The administering authority must also:

i) provide a CETV statement of entitlement in respect of the Pension Credit 'safeguarded benefits' (i.e. main scheme benefits) and of the realisable value of any Pension Credit AVCs[32] within three months of the date of the member's application (or within such longer period, not exceeding six months, where they cannot meet the three month deadline for reasons beyond their control). This statement should include a formal quotation of the member's transfer value in respect of the Pension Credit 'safeguarded benefits' as at the guarantee date (a date which must be within the same three month period).
ii) give the member the statement of entitlement in respect of the Pension Credit 'safeguarded benefits' within 10 days of the guarantee date (excluding Saturdays, Sundays, Christmas Day, New year's Day and Good Friday). By default, this statement must provide details of **all** the 'safeguarded benefits' the member holds with that administering authority.
iii) confirm that the CETV statement of entitlement in respect of the Pension Credit 'safeguarded benefits' (but not any Pension Credit AVCs) is valid for 3 months from the guarantee dated and that if the member wishes to proceed they must elect to do so, in respect of the Pension Credit 'safeguarded benefits' (but not the Pension Credit AVCs) by no later than:
    - the end of the 3 month guarantee period or, if earlier
    - the date which falls 12 months before their Normal Benefit Age if that date is within the 3 month guarantee period.
iv) indicate whether the CETV in respect of the Pension Credit 'safeguarded benefits' has been reduced and, if so, for what reason and by what amount and an estimate of the date when an unreduced CETV could be available.
v) explain that in exceptional circumstances the CETV quoted in respect of the Pension Credit 'safeguarded benefits' could be reduced and that the member would be informed if that were to occur.
vi) explain that the member has a right to only one CETV quotation in any 12 month period.
vii) explain that the CETV in respect of any Pension Credit AVC fund is not guaranteed and if they elect to proceed with a transfer in respect of their Pension Credit AVC fund the value will be calculated by reference to the date of their transfer election.

Also, if the Pension Credit member has an accrued AVC fund and will attain age 55 within 4 months of making the CETV quotation request or has already attained age 55, Pension Credit member should be provided with the following information:

[32] See regulation 11(1C) of SI 1996/1847.

a) a statement of the options available to the member under the scheme
b) a statement that the member may transfer the value of the accrued AVC fund to one or more different pension providers
c) a statement that different pension providers offer different options in relation to what the member can do with the flexible benefits, including the option to select an annuity
d) a statement that different options have different features, different rates of payment, different charges and different tax implications together with a copy of guidance that explains the characteristic features of the options that has been prepared or approved by the Pensions Regulator – see the guidance at www.moneyadviceservice.org.uk/en/articles/free-printed-guides#pensions-and-retirement called "Your pension: it's time to choose" - (or a statement that gives materially the same information as that guidance)
e) a statement that pensions guidance is available to help the person to understand their options in relation to what they can do with their flexible benefits
f) a statement that the pensions guidance may be accessed on the internet, by phone, or face to face
g) the phone number and website address [www.pensionwise.gov.uk] at which the pensions guidance may be accessed and details of how the person may access the pensions guidance face to face
h) a statement that the pensions guidance is free and impartial
i) a statement that the person should access the pensions guidance and consider taking independent advice to help them decide which option is most suitable for them
j) an estimate of the cash equivalent of the AVC fund
k) the date by reference to which the estimate of the cash equivalent or value (as appropriate) is calculated
l) an explanation that the cash equivalent or value (as appropriate) is an estimate and may not represent the exact amount available to the member to transfer to another pension provider and
(i) details of any guarantee to which the benefits are subject; and
(ii) details of any other features, restrictions and conditions that apply to the benefits that affect, or may affect, their value.
m) a statement that—
   (i) there may be tax implications associated with accessing flexible benefits;
   (ii) income from a pension is taxable; and
   (iii) the rate at which income from a pension is taxable depends on the amount of income that the person receives from a pension and from other sources.

It would also, where appropriate, be wise to include the 'scorpion' pensions liberation information (such as the leaflet available at ~~http://www.pensionsadvisoryservice.org.uk/publications-files/uploads/members_detailed_booklet_7_page.pdf~~ http://www.pensionsadvisoryservice.org.uk/content/publications-files/uploads/members_detailed_booklet_7_page.pdf) ~~-~~under cover of a warning such as “If you are taking a transfer of your pension rights to another scheme with a view to taking flexible benefits, be aware that scammers may operate in these markets” together with brief information on the benefits the LGPS provides (to enable any FCA authorised independent adviser to explain the benefits being given up when compared to any future options).

Lastly, although LGPS Pension Funds are only legally required to supply the CETV value in response to the request for a quote it is recommended that, to ensure the authorised independent adviser has the necessary understanding of the LGPS in order to be able to provide appropriate advice to the member, administering authorities should also include additional information alongside the transfer quote. Such information could include a copy of the full scheme guide or a copy of the brief scheme guide and a link to the online version of the full scheme guide.

If the deferred Pension Credit member elects within the relevant time period

If the Pension Credit member elects to proceed before the end of the 3 month guarantee period[33] (or, if earlier, before the date which falls 12 months before their Normal Benefit Age if that date is within the 3 month guarantee period), and / or elects to transfer any AVC Pension Credit, the administering authority must:

i) check that the receiving pension scheme is able and willing to accept the transfer
ii) obtain the relevant transfer disclaimer / discharge forms from the member and the receiving scheme (see the sample forms provided by the LGPC ~~in Appendix 2 to this paper~~ which can be found on our website www.lgpsregs.org at http://www.lgpsregs.org/index.php/guides/forms)

[33] Or such longer period as regulations may allow.

iii) ensure they have a copy of the relevant[34] signed statement[35] from the FCA authorised independent adviser (which the administering authority should retain on the member's record) confirming:

- that the adviser has permission to carry on the regulated activity (i.e. to provide advice on the transfer of 'safeguarded benefits') under article 53E of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001
- the advice has been given on the transfer of 'safeguarded benefits' to flexible benefits and that the advice is specific to the type of transaction proposed by the member
- the advice has been given by a pension transfer specialist or, if an individual who is not a pension transfer specialist has given the advice on a firm's behalf, the firm has ensured that the advice has been checked by a pension transfer specialist. A pension transfer specialist is an individual appointed by a firm to check the suitability of a pension transfer who has passed the required examinations as specified in the FCA's Training and Competence sourcebook
- the name of the member that was given the advice and the scheme in which they hold the 'safeguarded benefits' to which the advice given applies (i.e. the LGPS)
- the FCA reference number of the company or business the adviser giving the advice works for.

vii) check that the company or business providing the advice has permission to carry on the regulated activity (i.e. to provide advice on the transfer of 'safeguarded benefits') under article 53E of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 by checking the Financial services Register maintained by the FCA. Where there are concerns about the adviser, these should be reported to the FCA. The member should be contacted as soon as possible in the event of a problem corroborating

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34 Where a member misses the 3 month deadline for electing to proceed with a CETV, subsequently requests a further CETV quotation and elects to proceed with that subsequent CETV quotation, they cannot use the 'appropriate financial advice' declaration from an FCA authorised independent adviser that was obtained in relation to the earlier CETV quote. A new declaration would have to be obtained. This is because regulation 6 of the Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015 [SI 2015/742] requires that the declaration has to be provided to the administering authority within 3 months of the day on which the statement of entitlement was given. A subsequent statement of entitlement would be a new statement of entitlement and so the initial declaration would not relate to it (and thus be outside the 3 month time limit). Also, regulation 7 of that SI requires that the declaration must confirm that the advice provided is specific to the type of transaction proposed by the member. The original declaration cannot meet this requirement (as the type of transaction being proposed, and the member's circumstances and requirements, may have changed since the first declaration was completed).

35 It is only the signed statement that has to be obtained. The act of requiring members to obtain appropriate independent advice does not make the administering authority responsible for checking what advice was given, what recommendation was made or to confirm whether the member is following that recommendation. A copy of the advice and recommendation provided to the member need not be obtained.

information on the Financial Services Register. The member should be informed that the transfer will not proceed until they have provided the correct information. The member should be made aware that their transfer will be at risk if confirmation is not received within three months of the guarantee date. The administering authority should keep a record of the checks undertaken, and

viii) (subject to the above) pay the guaranteed transfer value within six months of the guarantee date[36] (or such longer period as the Pensions Regulator may agree[37]). This six month time limit applies only where the administering authority has been able to check that the member has obtained independent advice about the transfer. If they are unable to do so for reasons outside their control, or the check does not show the member received appropriate independent advice, the member loses the right to that guaranteed CETV.

A record of who conducted the checks, when and evidence showing that the adviser was on the register and had the necessary permissions should be kept and retained for at least 6 years.

The administering authority should also undertake relevant pension liberation checks. The Pensions Regulator says:

34. We expect trustees to conduct proper due diligence on the receiving scheme to ensure that it is a legitimate arrangement.
35. Where trustees have reason to believe that the receiving scheme is not a legitimate arrangement, they should consider carefully whether the transfer should be made. Trustees should refer to our guidance on pension scams, which includes a checklist of the common indicators of a pension scam and outlines ways for trustees to make further enquiries, contacting the member and reporting to authorities (www.pension-scams.com).

Note that a CETV in respect of Pension Credit AVCs is to be calculated by reference to the date of the member's election to proceed with the transfer and has to be paid within 6 months of that date.

Note that a member who has acquired a right to a CETV in respect of their Pension Credit 'safeguarded benefits' (i.e. their main LGPS benefits) and in respect of their accrued Pension Credit AVC rights, can elect to proceed with none, either or both CETVs. However, each transfer that the member elects to proceed with must be in respect of all of the benefits to which the transfer relates.

Any CETV can be split across more than one receiving scheme.

[36] Or such longer period as regulations may allow.
[37] There are limited circumstances in which the Pensions Regulator may grant an extension of this time period. Any application for an extension must be made within this six month period. It should indicate the additional time required to effect the transfer and the reasons why the transfer cannot be completed on time.

If the member wishes to transfer their Pension Credit 'safeguarded benefits' (i.e. their deferred Pension Credit benefits) and also has rights in the scheme from having been an active member in their own right, the Pension Schemes Act 1993 allows the LGPS to introduce a rule which would require the member to also transfer their other rights. No such amendment has yet been made to the LGPS.

Similarly, if the member has a Pension Credit AVC pot in the scheme which they wish to transfer and also has an AVC pot from having been an active member in their own right, the Pension Schemes Act 1993 allows the LGPS to introduce a rule which would require the member to also transfer their Pension Credit AVC pot. No such amendment has yet been made to the LGPS.

Reduction of cash equivalents

Sections 97A and 97B of the Pension Schemes Act 1993, together with the Funded Public Service Pension Schemes (Reduction of Cash Equivalents) Regulations 2015 [SI 2015/892], allow:

a) HM Treasury or any Minister of the Crown by whom, or with whose approval, the LGPS in England and Wales was established, and
b) the Scottish Ministers, in the case of the LGPS in Scotland

to designate the LGPS (or a Fund or Funds in the LGPS) as a scheme (or a Fund) in respect of which CETVs which are to be used to acquire rights to flexible benefits in another scheme must be reduced by a 'specified percentage' (where the CETV is paid whilst the designation is in force). Note, however, that due to the wording of section 97C of the Pension Schemes Act 2015 and regulation 3 of the Funded Public Service Pension Schemes (Reduction of Cash Equivalents) Regulations 2015 only CETVs for members with an entitlement to a deferred benefit can be reduced (but not the CETV for those with 3 or more months membership who have not met the 2 years vesting period nor for those who have been awarded a Pension Credit in the LGPS[38]).

It is understood that in respect of the LGPS the power where it is used will relate to individual LGPS Pension Funds as part of the scheme and not to the LGPS as a whole

The 'specified percentage' (P) is the percentage by which the market value of the scheme's (or Fund's) assets were insufficient to cover its liabilities, based on a CETV calculation for all members of the scheme (or Fund), as shown in a "transfer report" requested from an actuary by the LGPS administering authority/authorities (or such lesser percentage as may be specified by:

a) HM Treasury or any Minister of the Crown by whom, or with whose approval, the LGPS in England and Wales was established, or
b) the Scottish Ministers, in the case of the LGPS in Scotland)

The designation can only occur if:

a) HM Treasury or the relevant Minister of the Crown,
b) the Scottish Ministers

consider that as a result of the actual payments, or expected future payments, of CETVs in respect of members taking the CETVs to acquire rights to flexible

[38] Note that where a person granted a pension share under a Pension Sharing Order elects to transfer their rights rather than having a Pension Credit in the LGPS, regulation 16 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 [SI2000/1053] provides that, if the pension credit is being discharged externally once the former spouse has declined the option of an internal discharge, a pension scheme can reduce the CETV to take account of any underfunding. However, there is no provision within the LGPS Regulations that permits this.

benefits in other schemes , there is an increased likelihood that payments from public funds (i.e. from local authorities / councils) into the LGPS (or Fund) will have to increase to cover liabilities.

For example such a risk may occur in circumstances where the volume of transfers out has had a sufficient impact on cash flow to cause the Fund to sell assets (of the wrong type, at the wrong time) in order to meet benefit payments. It is important to note that any impact will be considered at the total fund level and not at the individual employer level. Therefore, although there may be circumstances where small amounts of transfers could have a detrimental impact on the position of individual employers these would not constitute sufficient reason for HM Treasury or the relevant Minister of the Crown, or Scottish Ministers, to use this power.

Any CETV in respect of AVCs cannot be reduced by the specified percentage (P).

If the administering authority believes that the conditions for designation are met they must notify:

a) HM Treasury and the relevant Minister of the Crown responsible for the LGPS in England and Wales, or
b) the Scottish Ministers, in the case of the LGPS in Scotland.

The designation can be for up to 2 years and may be extended (on more than one occasion) for a period of no more than 2 years. The designation can be revoked.

If the administering authority believe that the conditions for designation are no longer met they must notify:

a) HM Treasury and the relevant Minister of the Crown responsible for the LGPS in England and Wales, or
b) the Scottish Ministers, in the case of the LGPS in Scotland.

Equivalent provisions to those set out above apply to the LGPS in Northern Ireland under the Pensions Schemes (Northern Ireland) Act 1993. In Northern Ireland, the relevant body is:

(a) the Department of Finance and Personnel, and
(b) (where relevant) each Northern Ireland department by whom, or with whose approval, the scheme was established.

IMPACT 4

The impact taking flexible benefits has on a member's annual allowance.

Annual allowance - Special rules apply if a member has taken any "flexible access" benefits from a money purchase (defined contribution) arrangement

If a member has any benefits in a money purchase (defined contribution) pension arrangement which they have flexibly accessed on or after 6th April 2015 then:

a) in the year in which they flexibly access their money purchase benefits:

- if their contributions to a money purchase (defined contribution) scheme do not exceed £10,000 in the year, their pension savings will be tested against the normal £40,000 annual allowance figure (as described in the "standard annual allowance calculation" referred to below), or
- if their contributions to a money purchase (defined contribution) scheme do exceed £10,000 in the year, the money purchase contributions they paid before flexibly accessing their money purchase benefits will, together with value of their defined benefit savings for the year, be measured against an annual allowance figure of £30,000 and the money purchase contributions paid after flexibly accessing their money purchase benefits will be measured against an annual allowance figure of £10,000. However, if the "standard annual allowance calculation" referred to below would produce a higher annual allowance tax charge, then that figure will be used instead.

b) in subsequent years (but see below for 2015/16 transitional arrangements):

- if their contributions to a money purchase (defined contribution) scheme do not exceed £10,000 in the year, their pension savings will be tested against the normal £40,000 annual allowance figure, or
- if their contributions to a money purchase (defined contribution) scheme do exceed £10,000 in the year, their annual allowance charge will be based on any money purchase (defined contribution) savings for the year in excess of £10,000, plus the value of any defined benefit savings in excess of £30,000. It will not be possible to carry forward any unused money purchase (defined contribution) annual allowance to offset against the £10,000.

"Flexible access" means taking a cash amount over the tax-free lump sum from a flexi-access drawdown fund; taking an uncrystallised funds pension lump sum (UFPLS); purchasing a flexible annuity; taking a scheme pension from a defined contribution scheme with fewer than 12 pensioner members or taking a stand-alone lump sum[39] from a money purchase arrangement if the member has primary but not enhanced protection. In addition, any person who had a valid notification for flexible drawdown before 6 April 2015 will be deemed to have flexibly accessed their pension rights at the start of 6 April 2015.

NB: In this section, references to the annual allowance as £40,000 are references to the standard annual allowance for years from 2014/15 onwards.

However, the Finance (No.2) Act 2015 aligned the pension input periods (PIP) for all schemes to the period from 6 April to 5 April inclusive, set out transitional arrangements for aligning the PIP during 2015/16 and introduced the annual allowance taper for high earners. The transitional arrangements for aligning the PIP meant that LGPS members had an annual allowance of £80,000 split between two 'mini' pension input periods. For more information on both of these changes, please see the appropriate sections below.

Annual allowance - Standard rules

This is the amount by which the value of a member's pension benefits may increase in any one year without the member having to pay a tax charge.

Following changes announced in the Summer Budget 2015 introduced by way of the Finance (No.2) Act 2015, from 2016/17 onwards ~~For the LGPS,~~ the pension savings year for all UK registered pension schemes runs from ~~1~~ 6 April to ~~31 March~~5 April inclusive.~~ and~~ This is called the pension input period (PIP). For years up to and including 2014/15, the pension input period in the LGPS was 1 April to 31 March inclusive. For the 2015/16 year, transitional arrangements meant that there were two pension input periods in the LGPS, one running from 1 April 2015 to 8 July 2015 inclusive, and the other running from 9 July 2015 to 5 April 2016 inclusive.

The standard annual allowance for tax years 2008/09 to 2013/14 was £50,000 and since 2014/15 it has been £40,000, with the exception of 2015/16 where transitional arrangements meant the annual allowance was £80,000, but split into two periods:

- For the period from 1 April 2015 to 8 July 2015 inclusive (the pre-alignment tax year), the annual allowance was £80,000.
- For the period 9 July 2015 to 5 April 2016 inclusive (the post-alignment tax year), the annual allowance was the amount that was not used in the pre-alignment tax year (but capped to a maximum of £40,000).

[39] A lump sum relating to pre 6th April 2006 where the whole amount can be taken as a lump sum without a connected pension.

~~for 2014/15 and 2015/16 it is £40,000.~~

For pension input periods from 2016/17 onwards, the Government has introduced an annual allowance taper for high earners which may reduce an individual's annual allowance. Please see the below section 'Annual allowance – taper' for more information.

Generally speaking, the assessment covers any pension benefits the member may have in all tax-registered pension arrangements where they have been an active member of the scheme during the tax year i.e. they have paid contributions during the tax year (or their employer has paid contributions on their behalf).

The member would only be subject to an annual allowance tax charge if the value of their pension savings for a tax year increase by more than the annual allowance for that tax year. However, a three year carry forward rule allows them to carry forward unused annual allowance from the previous three tax years. This means that even if the value of their pension savings increase by more than £40,000 in a year they may not be liable to the annual allowance tax charge. ~~For example, if the value of their pension savings in 2015/16 increase by £50,000 (i.e. by £10,000 more than the annual allowance) but in the three previous years had increased by £25,000, £28,000 and £30,000, then the amount by which each of these previous years fell short of the annual allowance for those three years would more than offset the £10,000 excess pension saving in the current year~~. For example, if the value of their pension savings in 2014/15 increased by £50,000 (i.e. by £10,000 more than the AA limit) but in the three previous years had increased by £25,000, £28,000 and £30,000, then the amount by which each of these previous years fell short of the annual allowance for those three years would more than offset the £10,000 excess pension saving in the current year. There would be no annual allowance tax charge to pay in this case. To carry forward unused annual allowance from an earlier year the person must have been a member of a tax registered pension scheme in that year.

Most people will not be affected by the annual allowance tax charge because the value of their pension saving will not increase in a tax year by more than the annual allowance ~~£40,000~~ or, if it does, they are likely to have unused allowance from previous tax years that can be carried forward.

If, however, a member is affected they will be liable to a tax charge (at their marginal rate) on the amount by which the value of their pension savings for the tax year, less any unused allowance from the previous three years, exceeds the annual allowance ~~£40,000~~.

Working out whether ~~you are~~ a member is affected by the annual allowance is quite complex, but this should help you work out their ~~your~~ general position.

In general terms, subject to special rules outlined above regarding "flexible access" benefits, the increase in the value of a member's pension savings in ~~the LGPS in~~ a tax year is calculated by working out the value of their benefits immediately before the start of the pension input period (6~~1~~ April), increasing them by inflation, and comparing them with the value of their benefits at the end of the input period (5 April)~~(31 March~~). In a defined benefit scheme like the LGPS the value of benefits is calculated by multiplying the amount of the member's pension by 16 and adding any lump sum they are automatically entitled to from the pension scheme. If the difference between:

a) the value of their benefits immediately before the start of the input period (the opening value) and
b) the value of their benefits at the end of the input period (the closing value) plus any contributions they have paid into the scheme's ***Additional Voluntary Contribution (AVC)*** arrangement in the year or that they and their employer have paid into the scheme's Shared Cost AVC arrangement in the year is more than the annual allowance ~~£40,000~~, they may be liable to a tax charge.

The method of valuing benefits in other schemes may be different to the method used in the LGPS.

Annual allowance – taper

For pensions saving periods from 2016/17 onwards, the introduction of an annual allowance 'taper' means that some high-paid individuals may have a reduced annual allowance. Where a member has 'adjusted income' of £150,000 or higher, their annual allowance will be reduced (subject to a certain minimum income) by £1 for every £2 by which their adjusted income exceeds £150,000. Adjusted income is broadly an individual's taxable income plus the amount that their pensions savings have increased by in the course of the period.

However, the taper will not apply to all individuals with adjusted income of £150,000 or higher. There is a lower level income threshold below which a person's annual allowance will not be reduced. This is known as the 'threshold income' which is broadly a person's taxable income after the deduction of pension contributions. If a person's threshold income is lower than £110,000, then the taper will not apply, even if the person's adjusted income is higher than £150,000.

For example, if a member has threshold income of £120,000 and the value of their pensions savings increased over the pension input period by £50,000, their adjusted income would be £170,000. As this exceeds £150,000 and their threshold income was higher than £110,000, the taper applies and their annual allowance will be reduced. Because the adjusted income exceeds £150,000 by £20,000, the annual allowance will be reduced by £10,000 (£20,000/2).

However, if a member has threshold income of £105,000 and the value of their pensions savings increased over the pension input period by £65,000, their adjusted income would also be £170,000, but the taper would not apply because their threshold income falls below £110,000.

~~The taper applies in addition to any~~

How does an administering authority know whether the Annual Allowance Standard Rules or the Annual Allowance Special Rules apply?

Of course, in order to know whether to use the annual allowance standard rules or the annual allowance special rules, it is necessary for an administering authority to know whether the member has flexibly accessed benefits from another scheme.

HMRC Newsletter 66 sets out the procedure that schemes which allow flexible access to benefits and members who flexibly access their benefits must follow. It says:

Pension Flexibility: Reporting Requirements
To ensure that members and scheme administrators know when a member is subject to the Money Purchase Annual Allowance (MPAA), a number of new reporting requirements are being introduced.

Where a member first flexibly accesses their pension savings, the scheme administrator must provide the member with a statement confirming the date the first payment occurred and setting out what they must do. They will be required to do this within 31 days of the flexible access occurring. If the member (or another scheme administrator) has already informed the scheme administrator that they have flexibly accessed another scheme then the scheme administrator does not need to provide the member with a statement. Members then need to tell any other pension scheme that they are an active member of, that they have flexibly accessed their pension savings, but excluding any DB only schemes. This notification must be provided within 91 days of receiving the statement or within 91 days of becoming an active member, whichever is the later.*

[*Note: the LGPS is not a DB only scheme because it also contains a DC element i.e. the AVC provision within the scheme is a DC arrangement and so the member must provide the above notification to any LGPS Fund in which they are a member]

When making a transfer, if a transferring scheme has been notified by a member that they also have flexibly accessed rights elsewhere or the member has flexibly accessed their rights in that scheme, the scheme administrator will be required to notify the receiving scheme of the date they believe the first flexible access occurred. This notification must be made within 31 days of the transfer, or if later, within 31 days from the date the scheme administrator became aware that the member had flexibly accessed their pension rights. Where a scheme receives a transfer for a member who has already flexibly accessed their rights there is no requirement for the new scheme *administrator to provide the member with a statement. In addition, there is no requirement for the scheme administrator to notify HMRC.*

There will also be a new requirement for scheme administrators to provide individuals who are subject to the MPAA with a pensions savings statement if their money purchase savings, which will include savings in certain hybrid arrangements, exceed £10,000 in that particular scheme.

When a member uses funds from a flexi-access drawdown fund to buy an annuity or scheme pension from an insurance company, the scheme administrator will be required to inform the insurance company providing that scheme pension or lifetime annuity. This extends the information that must already be provided to insurance companies where payments are made from drawdown funds, to include flexibly accessed funds.

More detailed information on the new reporting requirements can be found in Part 6 of Schedule 1 to the Taxation of Pensions Act.