

Local Government Pensions Committee
Secretary, Jeff Houston

LGPC Bulletin 101 – April 2013

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

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

This month's [Bits and Pieces](#) includes [LGPC Circulars](#), [LGPC Communications](#) and [LGPC Training](#).

Contents

[Scheme Regulations and GAD Guidance](#)

[LGPS 2008: GAD guidance on Lifetime Allowance and Additional Cash Commutation](#)

[LGPS 2008: GAD guidance on Limit on Total Amount of Benefits - Lifetime Allowance](#)

[Automatic Enrolment](#)

[Consultation from DWP on Automatic Enrolment simplification](#)
[LGPC Automatic Enrolment Guide Updated](#)

[LGPS 2014 Update](#)

[Consultation](#)
[Communications](#)
[Shadow Scheme Advisory Board](#)
[Public Service Pensions Act 2013](#)

[News and Updates](#)

[New website](#)
[GMP equalisation](#)
[Investigators' Opinions and recent determination](#)
[Councillor Pensions: Consultation](#)
[Transfer out option forms – amendments](#)
[Small Pension Pots](#)

[The Draft Occupational and Personal Pension Schemes \(Disclosure of Information\) Regulations 2013 – Consultation Response](#)
[KPMG research on LGPS deficit](#)
[Report on the impact of Scottish Independence could affect pensions](#)

Scheme Regulations and GAD Guidance

LGPS 2008: GAD guidance on Lifetime Allowance and Additional Cash Commutation

On the 16 April 2013, the Department for Communities and Local Government (DCLG) issued the latest GAD guidance in respect of Lifetime Allowance and Additional Cash Commutation relating to regulation 21 of the LGPS (Benefits, Membership and Contributions) Regulations 2007. This guidance replaces previous guidance issued on 18 June 2008 and provides the guidance required by Regulation 21(4). This guidance will be available on the Timeline Regulations website shortly.

LGPS 2008: GAD guidance on Limit on Total Amount of Benefits - Lifetime Allowance

DCLG also issued GAD guidance on 16 April 2013 in respect of the limit on the total amount of benefits permitted under the Lifetime Allowance. It provides the guidance required by Regulation 22(3) of the LGPS (Benefits, Membership and Contributions) Regulations 2007 in cases where the value of the member's benefits including those associated with a previous or simultaneous Benefit Crystallisation Event (BCE), whether from LGPS or another registered pension scheme, exceeds the Lifetime Allowance (LTA). This guidance will be available on the Timeline Regulations website shortly.

Automatic Enrolment

Consultation from DWP on Automatic Enrolment simplification

On 25 March the DWP published a [consultation paper](#) setting out its plans to simplify automatic enrolment legislation. The key changes proposed in the consultation paper are:

- defining 'pay reference period' so that the statutory definition is aligned with standard payroll reference periods
- defining 'pay reference period' for assessing scheme quality
- introducing consistency for contribution payment deadlines for all joiners
- exempting workers who have voluntarily opted-out in the 12 months before the statutory duty first arises
- clarifying the form and content of opt-out notices
- extending the 'joining window' from one month to six weeks

The paper also confirms that the DWP plans to include a power in the Pensions Bill to enable the Secretary of State to exempt workers who have registered for fixed or enhanced protection against the lifetime allowance charge from the automatic enrolment duty.

The DWP is also considering introducing an easement for employers who go beyond the minimum statutory requirements and automatically enrol all of their staff into a qualifying pension scheme, regardless of eligibility. This would be a welcome change for the LGPS. The LGA will be submitting a response to this consultation which ends on 7 May 2013.

LGPC Automatic Enrolment Guide Updated

An updated clean and tracked automatic enrolment guide (version 5.3) has been loaded to [our website](#). The main change to the guide has been to incorporate the 2013/14 earnings bands for LGPS contributions into Annexes 3 and 6 of the guide and into various letters in Annex 7 of the guide. Changes have also been made to paragraphs 14, 32, 38, 53, 61, 84, 96 and 120 to 123 of the guide. All the changes are highlighted in the tracked version of the guide.

LGPS 2014

Consultation

On 28 March the DCLG published a further consultation document covering the draft regulations on membership, contributions and benefits for the LGPS from April 2014. In addition a consultation commenced on the transitional regulations for LGPS 2014 as well as miscellaneous amendment regulations for the current scheme regulations.

The consultation closing date for the LGPS regulations is 3 May 2013 and for the transitional regulations and miscellaneous amendment regulations is the 24 May 2013.

To view the full consultation document please visit the [LGA website](#).

In addition the LGA has issued Pension Managers and Client Managers in England and Wales with copies of the following draft papers on the latest thinking behind key components of the LGPS 2014:

- Draft LGPS regulations with comments from Terry Edwards
- Certificate of Protection Paper
- Aggregation Paper
- Pensionable Pay, Assumed Pensionable Pay and Absences Paper
- Revaluation Paper
- Rule of 85 Paper

This information aims to assist funds with understanding the background behind key aspects of the scheme and in formulating a response to the above consultations.

Communications

Scheme Members

In [Bulletin 98](#) the work of the Communications Working Group for LGPS 2014 was outlined and details given on the five different communication areas being developed to help deliver the new scheme. These included:

- leaflets and paper-based information
- benefit modellers
- videos and podcasts

- social media
- PowerPoint presentations.

Over the past three months the various groups have been meeting to progress each of these areas. This progress includes plans to:

- Develop and deliver a suite of topic based leaflets and topic based videos, to be available on the LGPS2014.org website for scheme members and also made available to LGPS funds to use as required
- Develop and deliver a Benefit Modeller which acts as an educational tool for scheme members to help with their understanding of LGPS 2014

The first item of communication which is expected to be available at the end of May is the 'LGPS 2014 Scheme Changes Video'. This will be a short, graphics based, one minute video which is intended to be engaging for scheme members to understand the high level changes being introduced next April. We will inform LGPS funds once this video is available on www.lgps2014.org.

The timetable and detail for other items of communication will form part of the main communication plan expected to be issued shortly.

Employer and Fund Practitioner

The administration group met in March 2013 tasked with getting underway with employer and fund practitioner guidance for the new scheme. The first area of work is to develop a payroll specification for LGPS 2014 to ensure employers and payroll providers can put the relevant payroll systems in place to effectively deliver the scheme from next April. This specification is expected to be issued in May 2013 to funds and employers.

Shadow Scheme Advisory Board

In [Bulletin 96](#) we outlined the work being carried out by the working group tasked with setting up a Shadow Scheme Advisory Board (SAB) for the LGPS in England and Wales. A communication was also issued to Pension Managers and Client Managers in England and Wales in April, detailing the work which is being undertaken.

Once the recommendations of the working party are finalised they will be communicated to all stakeholders and the process of nominations to the shadow board and committees will commence. One area of particular interest to fund practitioners is the need for appropriate representation on both the Shadow Board and the relevant sub-committees.

The LGA in conjunction with the Shadow SAB working group will be writing to administering authorities in the next month asking for nominations for both the shadow board and sub committees. The requirements of such a role for fund practitioners and the person specification details will be issued to administering authorities alongside instructions on how to make a nomination. It's expected that each administering authority will make one nomination. Dependent on the number of nominations received compared to the number of fund practitioner places available there may then need to be an election process. Details will follow shortly following agreement with the working group.

Public Service Pensions Act 2013

The Public Service Pensions Bill received Royal Assent on 25 April 2013 becoming the [Public Service Pensions Act 2013](#).

To recap the Act introduces a number of new terms and provides the framework for the forthcoming changes to public sector pension schemes. Some of the main areas it covers includes:

- Provides for scheme regulations to be made within a common framework and establishes new Career Average Revalued Earning schemes across public sector schemes
- For the majority of scheme members it links the normal retirement age to State Pension age (some exceptions for the armed forces, police and firefighters)
- Develops a new governance framework and introduces new terms including the Responsible Authority (the Secretary of State for Communities and Local Government), the Scheme Manager (the Administering Authority), the Pension Board (assisting the Scheme Manager at local level) the Scheme Advisory Board (providing advice to the Responsible Authority and the Pension Boards).
- Requires a cost control mechanism to keep the ongoing cost of the schemes within defined margins with steps outlining action to be taken.

News and Updates

New website

All the information previously held on the <http://www.lge.gov.uk> website is now available on our new website <http://www.local.gov.uk/web/lgaworkforcepensions/home>.

To confirm the LGE site will close on Friday 24 May 2013. A re-direct will be in place when it shuts.

Readers will know that the URL for Timeline Regulations contains reference to the existing website in that its <http://timeline.lge.gov.uk>. The Timeline Regulations website isn't changing its name and will continue to be available at this website address after the main LGE website has closed down.

GMP equalisation

The Department for Work and Pensions (DWP) issued an [interim response](#) on 8 April 2013 to their consultation which ended in April 2012 on Guaranteed Minimum Pension (GMP) equalisation.

This interim response outlines the government's view that '*it is in no doubt*' that there is a need for UK occupational pensions to equalise GMPs for men and women under EU law and the intention is to amend the relevant legislation. The Government do however acknowledge that many of the consultation responses received voiced strong objections against any requirement to equalise GMPs. Given this it appears the Government will not now publish a final version of the proposed methodology which was included in the original consultation and seen by many as a costly methodology for occupational schemes. Instead the Government has indicated that it is considering proposals and it may issue statutory guidance on GMP conversion which could be a simpler and less costly process than the

methodology provided in the initial consultation. The Government have indicated that a full response to the consultation of GMP equalisation will follow at a later date.

Investigators' Opinions and recent determination

The Pensions Ombudsman's office has agreed that the LGPC secretariat may share a recent update from their office on the 'Opinion Pilot'. Here is the text from a recent flyer and, in addition, the information below makes reference to a Sample Opinion and Sample Short Form Determination which are available as appendix documents to this Bulletin.

Update on the Opinion Pilot

Back in October last year we informed you that we were piloting a change to our process – known as the 'Opinion Pilot'. The purpose of this note is to update you on developments and next steps.

Key changes

Just to recap the key changes brought about by this new way of working are

- *the Investigator issues their own Opinion on the merits of the case and invites the parties to settle the case based on this Opinion.*
- *both the applicant and respondent will be sent a copy of the Opinion and be given the opportunity to respond.*

What hasn't changed

But in making these changes, importantly these things haven't changed

- *the applicant and respondent will still have the opportunity to either accept the Opinion, or to provide further comment and ask for an ombudsman to review the papers and determine the case;*
- *the investigator's Opinion will have been reached taking into account any relevant previous decisions of the ombudsmen, and from the experience and knowledge they have gained working alongside our Ombudsmen.*

Why have we made these changes

As explained earlier the primary reasons for making these changes are

- *to provide greater consistency and clarity. We hope the Opinion format will be clearer and easier to understand, and parties will understand what to do next.*
- *to influence more applicants and respondents to accept the Opinion allowing cases to be dealt with more informally and quicker*
- *to make it easier to publish more determinations*

Where we are

The pilot started at the beginning of October 2012 with 7 investigators taking part. A further 5 investigators were introduced to the pilot last year and by the end of April our plan is to have all our investigators issuing Opinions.

We have issued 86 Opinions so far. Half of these cases are now completed. In 35% of these completed cases the Opinion was accepted. And the average time between commencing the investigation and closing it (whether by the Ombudsman determination or the Opinion being accepted) has reduced.

Early indications show that the acceptance rate for Opinions is approximately the same as for the existing process. However, we have not as yet collated sufficient data to reach a final conclusion.

The feedback we have received to date from schemes (mainly public sector schemes) has been very positive, but we would welcome hearing more about how this change has been received.

Next steps

We will bring this pilot to an end once we have collected sufficient data to be able to measure

- the percentage of Opinions that have been accepted;*
- how easy it is for applicants and respondents to understand the content and decide what to do next;*
- the impact this has had on the time it takes us to deal with cases; and*
- whether more determinations can be published as a result of this change*

But, based on our initial findings we see no reason at this stage why this process will not be fully implemented.

Contact information

If you have any comments or questions please contact Kim Parsons, Casework Director at: kim.parsons@pensions-ombudsman.org.uk

Attached Appendices:

- * Sample Opinion*
- * Sample Short Form Determination*

Recent Determination – AVC's contributions 50% contributions limit.

The LGPC Secretariat has been informed of a recent Pension Ombudsman determination which found that the view of the Secretariat on the 50% AVC limit is correct i.e. it is 50% per pay period. Therefore a member cannot pay more than 50% of their pensionable pay in a pay period simply because, for example, they had not paid 50% of pensionable pay in previous pay periods in the tax year.

A letter detailing this determination is available as an appendix to this Bulletin.

Councillor Pensions: Consultation

This consultation seeks views on access by councillors and other elected local office holders in England to the LGPS which will come into effect from 1 April 2014. There are 3 options offered including:

- Option 1: No access to the new Local Government Pension Scheme from April 2014 through being directly elected to local office. Thus, councillors; elected mayors; the Mayor of London and members of the London Assembly would be excluded from active Scheme membership
- Option 2: Two-tier membership - continued access for 'front bench' councillors only. This option could include just elected mayors (including the Mayor of London) and

elected leaders or could encompass all those with a special responsibility allowance (including members of the London Assembly) - the government would welcome views on which councillors and elected local office holders should be eligible if this option were to be pursued;

- Option 3: No change. Access to the taxpayer-funded LGPS remains for all councillors and elected local office holders on the same basis as at present

The closing date for responses to this [consultation](#) is 5 July 2013.

Transfer out option forms – amendments

[Bulletin 97](#) was issued in January this year and updated the pro-forma transfer out declaration forms. Following investigation of a query received by the Secretariat it appears that it is only if:

- the transfer includes a GMP and / or section 9(2B) rights, and
- the transfer is to be made to a salary-related contracted-out occupational pension scheme

that the person must be employed by an employer who is a contributor to the receiving scheme.

The relevant transfer forms included in Bulletin 97 will be updated shortly but, for information, listed below are the amendments that are required.

- In Part B of the Receiving Scheme Discharge Form in Annex 2 delete “The member named in Part A is an employee of an employer that contributes to ‘the Scheme’ and the employee became a member of ‘the Scheme’ on _____”
- In Part B of the Receiving Scheme Discharge Form in Annex 4 amend “The member named in Part A is an employee of an employer that contributes to ‘the Scheme’ and the employee became a member of ‘the Scheme’ on _____” to read “If the transfer includes a GMP and / or section 9(2B) rights and the transfer is to a salary-related contracted-out occupational pension scheme, the member named in Part A is an employee of an employer that contributes to ‘the Scheme’ and the employee became a member of ‘the Scheme’ on _____”
- In Part B of the Receiving Scheme Discharge Form in Annex 6B delete “The member named in Part A is an employee of an employer that contributes to ‘the Scheme’ and the employee became a member of ‘the Scheme’ on _____”
- In Part B of the Receiving Scheme Discharge Form in Annex 6D delete “The member named in Part A is an employee of an employer that contributes to ‘the Scheme’ and the employee became a member of ‘the Scheme’ on _____”

Small Pension Pots

On 23 April 2013, the DWP published a paper, [“Automatic transfers: consolidating pensions savings”](#), setting out the Government’s proposals for a system for the automatic transfer of small pension pots when people change jobs.

The DWP proposals include the following:

- automatic transfers to take place between money purchase schemes (but automatic transfer will, at least initially, not apply to defined benefit schemes)
- automatic transfer to apply to all members in workplace pension schemes who are workers
- a pot to be eligible for automatic transfer either once all contributions have ceased and the individual has left employment or once all contributions have ceased for a prescribed period
- a pot to be eligible for automatic transfer as long as the pot was created after a certain date
- the pot size limit to be £10,000 with a requirement on the Secretary of State to review the limit and revise it if appropriate
- there will be an option for members to opt out and leave their pension pots in their previous employer's scheme, retaining the right to initiate a transfer to an alternative pension arrangement
- The Pensions Regulator (TPR) to be the main enforcement body for the automatic transfer process

The legal framework for automatic transfers will be created in the forthcoming Pensions Bill. Draft regulations setting out the details of the automatic transfer requirement will be the subject of a formal consultation after the Bill has received Royal Assent.

The Draft Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 – Consultation Response

The Local Government Pensions Committee responded to the above consultation on 11 April 2013.

Full details of the response are detailed below:

We have concerns over the wording of paragraph 11 of Part 4 of Schedule 5 to the draft regulations. This requires that a Pension Credit member is provided on the Statement of Benefits with details of "The method or formula for calculating the member's benefits and any survivor's benefits". However, in the Local Government Pension Scheme (as in, as far as we are aware, all the major public service pension schemes) a Pension Credit member is granted an amount of annual pension and, in some cases, a lump sum in accordance with guidance issued by the Government Actuary's Department (GAD) when the Pension Sharing Order takes effect. There is no method or formula for calculating the Pension Credit member's benefits each year thereafter (e.g. $1/60^{\text{th}}$ x length of membership) as the Pension Credit member does not have membership; they were simply granted a specific amount of annual pension and, in some cases, a lump sum when the Pension Sharing Order took effect - both elements of which will, thereafter, be increased in line with inflation as set out in Pensions (Increase) Review Orders issued in accordance with the Pensions (Increase) Act 1971.

If the actual method or formula used to determine the original Pension Credit amount has to be disclosed at each Statement of Benefits then each LGPS administering authority would have to provide each Pension Credit member with a copy of the relevant detailed and voluminous GAD guidance that applied at the time the person was originally awarded the Pension Credit (which may not necessarily be the current GAD guidance). This surely

cannot be the intention behind paragraph 11 of Part 4 of Schedule 5 and we believe that the paragraph should, consequently, be reworded / clarified.

With regard to regulation 18 of, and Part 3 of Schedule 2 to, the draft regulations it would be helpful if the wording could be amended to make it clear whether these apply where:

a) lifestyling is a choice exercisable by a scheme member, or

b) lifestyling is a default position in the absence of an election to the contrary by a scheme member, and

c) lifestyling is not provided in relation to the defined benefits from the LGPS but is provided as an option as in (a) or (b) in relation to the money purchase Additional Voluntary Contribution (AVC) provision in the LGPS.

Note that the LGPS AVC provision is an integral part of, and not a separate scheme to, the LGPS which is, apart from the AVCs, a defined benefit scheme.

With regard to question 14 in the consultation document we believe that changes should also be made to those parts of sections 1 to 3 in the Employment Rights Act 1996 that refer to pensions. It appears to us that some of the timescales in sections 1 to 4 of that Act are not consistent with the timescales set out in the draft Disclosure of Information Regulations.

KPMG research on LGPS deficit

Research carried out by KPMG has recently been published warning that employers in the LGPS face a difficult year given the indication from this research that the aggregate deficit in the LGPS has increased. To read more please visit the [KPMG website](#).

Report on the impact of Scottish Independence could affect pensions

ICAS (a professional body for chartered accountants) has published a new report called 'Scotland's Pensions Future: What Pensions Arrangements Would Scotland Need?'. It outlines that a robust plan for pensions is required in the run up to the referendum on Scottish Independence. To read the report please visit the [ICAS website](#).

Bits and Pieces

Circulars

[Circular 269](#) was published in April and provides an update on the forthcoming Annual LGPS Trustees Conference being held in Sheffield on 27 and 28 June 2013.

[Circular 270](#) was recently published and contains information on forthcoming "Understanding Transfer Values" workshops taking place in June and early-July 2013. Further details of the course, locations and dates can be found in this circular. Please also read the [LGPC training update](#) below for information on these forthcoming workshops.

LGPC Communications

Updated guides and leaflets to the LGPS for employees in England and Wales

The LGPC has updated the following guides and leaflets to the LGPS for employees in England and Wales for April 2013:

- Full guide to the LGPS - booklet and leaflets versions
- Brief Guide to the LGPS – Word & Designed versions
- Is the LGPS for me?
- Topping up your pension benefits

The updated guides, along with tracked versions showing the changes made to the previous version, are available on the [LGA website](#).

The April 2013 version of the Promotional Guide was issued in March. A further update to the Brief Guide has been made to include the 2013/14 earnings trigger for automatic enrolment.

Updated guides and leaflets to the LGPS for employees in Scotland

The LGPC has updated the following guides and leaflets to the LGPS for employees in Scotland for April 2013:

- Full guide to the LGPS - booklet and leaflets versions
- Promotional Guide to the LGPS
- Brief Guide to the LGPS
- Is the LGPS for me?
- Topping up your pension benefits

The updated guides, along with tracked versions showing the changes made to the previous version, are available on the [LGA website](#).

LGPC Training Update

The present round of employer/practitioner training on automatic enrolment (which finishes with a workshop in London on 30 May) is to be followed by a series of workshops for practitioners called “Understanding Transfer Values” in June and early-July. This workshop is one of the regularly cycled ones for administering authority pension practitioners which last ran in July 2011. Since that time, the methodology behind transfer values has altered significantly and it expected that demand for places will be high so early booking is advisable. Full details of the course, locations and dates can be found in [Circular 270](#) which has just been issued.

This year’s Insight residential courses are being held in Blackpool 20-23 May and Eastbourne 23-26 September. The residential course has been a regular feature on our training calendar since 2004 but regrettably bookings for 2013, even more so than 2012, are disappointingly low so far meaning the events will run at a financial loss. As the training function has to generate sufficient income to cover its expenditure, we must seriously consider continuing with these events after the current year. That would be a great shame as these events have always been well received by the delegates who attend. Full details of the 2013 courses were published in [Circular 267](#) earlier this year. If anyone is intending to attend this year but hasn’t yet booked you are advised to do so as soon as possible.

Legislation

England and Wales

SI Reference Title

2013/410 The Local Government Pension Scheme (Management and Investment of Funds) (Amendment) Regulations 2013

United Kingdom

SI Reference Title

2013/718 The Social Security (Contributions) (Amendment) Regulations 2013

Scotland

SSI Reference Title

2013/129 The Firefighters' Pension Scheme (Scotland) Amendment Order 2013

Northern Ireland

SR Reference Title

2013/91 Pension Increase (Review) Order Northern Ireland 2013
2013/83 The Pensions (Act 2013) (Commencement No.3) Order (Northern Ireland) 2013
2013/79 The Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) Order (Northern Ireland) 2013

Useful Links

[The LGA Pensions page](#)

[The LGPS members' website](#)

[The LGPS 2014 members' website](#)

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

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

[The Timeline Regulations](#)

Pensions Section Contact Details

Jeff Houston (Head of Pensions)

Telephone: 020 7187 7346

Email: jeff.houston@local.gov.uk

Terry Edwards (Senior Pensions Adviser)

Telephone: 01954 232 834

Email: terry.edwards@local.gov.uk

Tim Hazlewood (Pensions Training & Development Manager)

Telephone: 01455 824 850

Email: tim.hazlewood@local.gov.uk

Irene Wass (Pensions - Communications Adviser)

Telephone: 01246 414 902

Email: irene.wass@local.gov.uk

Elaine English (LGPS Executive Officer)

Telephone: 0207 187 7344

Email: elaine.english@local.gov.uk

Mary Lambe (Pensions Adviser)

Telephone: 020 7187 7374

Email: mary.lambe@local.gov.uk

Alison Hazlewood (Part-time Administration Assistant - Training & Development)

Email: alison.hazlewood@local.gov.uk

Distribution sheet

Pension managers (internal) of administering authorities
Pension managers (outsourced) and administering authority client managers
Officer advisory group
Local Government Pensions Committee
Trade unions
CLG
COSLA
SPPA
Regional Directors
Private clients

Copyright

Copyright remains with Local Government Group. This Bulletin may be reproduced without the prior permission of LG Group provided it is not used for commercial gain, the source is acknowledged and, if regulations are reproduced, the Crown Copyright Policy Guidance issued by HMSO is adhered to.

Disclaimer

The information contained in this Bulletin has been prepared by the LGPC Secretariat, a part of the LG Group. It represents the views of the Secretariat and should not be treated as a complete and authoritative statement of the law. Readers may wish, or will need, to take their own legal advice on the interpretation of any particular piece of legislation. No responsibility whatsoever will be assumed by the LG Group for any direct or consequential loss, financial or otherwise, damage or inconvenience, or any other obligation or liability incurred by readers relying on information contained in this Bulletin. Whilst every attempt is made to ensure the accuracy of the Bulletin, it would be helpful if readers could bring to the attention of the Secretariat any perceived errors or omissions. Please write to:

LGPC
Local Government Group
Local Government House
Smith Square
London, SW1P 3HZ

or email: [Mary Lambe](mailto:Mary.Lambe@lgpc.gov.uk)
tel: 020 7187 7374

I am authorised by the Pensions Ombudsman to give opinions on the merits of cases, including whether or not they can be upheld, and if applicable, what should be done to put matters right. The letter attached to this document explains what your options are depending upon whether, or not, you accept my opinion. Please ensure you read the attached letter carefully.

OPINION BY INVESTIGATOR FOR THE OFFICE OF THE PENSIONS OMBUDSMAN

Applicant : Mr W
Scheme : M Pension Fund (**the Fund**)
Respondent : M Trustees Limited (**the Trustees**)
M Limited (**M**)

Complaint Summary

Mr W's complaint is that he received an incorrect retirement benefit quotation which he relied upon when he decided to retire. Mr W says that had he been notified earlier regarding the errors he could have taken up alternative employment.

My opinion

I have looked very carefully at the case and it is my view that Mr W's complaint cannot be upheld because although he was misinformed it seems more likely than not that his actions would have been the same. In addition, Mr W has been offered compensation which more than adequately redresses any upset and inconvenience caused.

Background

On 25 January 2011 M, the Fund's administrator, issued to Mr W an estimate of his benefits based on an early retirement date of 26 June 2011. The estimate stated that Mr W was entitled to an annual pension of £41,027.31 or a cash lump sum of £178,302.67 and a reduced annual pension of £26,745.40 and said "*The figures shown in this Statement are an estimate only, and could change by the time you retire. If there is any significant change, a further statement will be given to you closer to your retirement date.*"

The letter accompanying the estimate said "Please note that the figures given in your Retirement Statement are based on the information I have at the moment, and may change. As a member who is currently contributing to the Fund it takes longer to process your application and put the pension into payment as we have to wait for you to cease contributing and the last payment to have been received from your company. This is usually the third week of the following month, and we require this information to calculate your actual benefits and send you the final option form."

Mr W's employment was terminated by way of redundancy on 13 April 2011.

Mr W returned the completed Pension Application Form on 18 April 2011 to request that his pension be paid with effect from 26 June 2011.

On 3 May 2011, M wrote to Mr W requesting his authority to approach his employer for details of his final contributions. Mr W provided his authority on 9 May 2011 and the final contributions were received by M on 13 May 2011.

M issued Mr W's retirement benefit statement on 29 June 2011. The statement said Mr W was entitled to an annual pension of £35,963.74 a year or a cash lump sum of £156,739.44 and a reduced annual pension of £23,510.91.

On 1 July 2011, M wrote to Mr W and explained that because the Fund is a Career Averaged Revalued Earnings Scheme, each year's salary is revalued to the date of retirement in line with the Revaluation of Earnings factors and then averaged over the period of contributory service. The Revaluation of Earnings factors were declared in February 2011 and therefore when the benefits were calculated in January 2011 (based on a retirement date of 26 June) the factors had not been declared and an assumed rate of 5% was applied. However, when the factors were published the actual rate was 2.5% resulting in a reduction to the pension. In addition an incorrect number of years had been used in the revaluation calculation which reduced the pension still further.

In recognition of the delay in notifying Mr W of the reduction in his retirement figures, M have offered Mr W £5,000 as compensation for the potential loss of earnings during the period from mid-May to the end of June 2011 when the correct figures were known and for the distress and inconvenience experienced.

My findings

There is no dispute that the figures Mr W received in January 2011 were incorrect. However, whilst the provision of incorrect information is maladministration the fact Mr W was misinformed does not, of itself, entitle him to the additional funds. In order for his complaint to be upheld Mr W would need to demonstrate that he relied on the incorrect quotation in a way which was detrimental to him. In other words, he would need to be able to show that he made financial decisions or commitments, which he would not otherwise have done, in reliance on the incorrect quotation.

Mr W maintains that his redundancy was voluntary and therefore he could have reconsidered his position had he been better informed. He says that had he been made aware of the significant changes to the estimate he would have been able to seek alternative employment with his employer. The Trustees say that they have received evidence from Mr W's employer that his redundancy was compulsory. Specifically the employer said that because of the closure of the route on which Mr W worked in their terms he was compulsorily made redundant, however Mr W did have the option of applying for vacancies on other routes. He did not take that option and decided to leave having signed a compromise agreement on 14 April 2011. In my view the question of whether Mr W's redundancy was compulsory or voluntary is largely irrelevant as the option to apply for other positions was open to Mr W which is the argument he puts forward.

I find it difficult to accept that Mr W's actions would have been any different had he known the correct position before 14 April 2011. Because, although I accept that the level of pension he would receive would have been important to Mr W, I think there were a

number of other significant factors that Mr W is likely to have taken into account when making his decision.

Not least that he had less than a year to work before reaching his normal retirement date on 26 March 2012 and so was limited as to the amount by which he could increase his pension in any event. In addition, if Mr W had sought alternative employment with his employer there was no guarantee he would have secured one of the available positions and had he done so would not have received the settlement amounting to £77,000 plus an ex gratia payment of £6,000. In all the circumstances I do not think Mr W's position would have been any different simply because if he had taken the actions he suggests he would have been considerably worse off financially.

Mr W considers that the details of his redundancy package are irrelevant to the complaint about his pension. The question under consideration is whether Mr W would, or would not, have taken certain actions to remain an active member of the Fund following his employer's decision to close the route on which he worked. It is therefore necessary to weigh up how those particular actions would affect Mr W financially and so necessarily included details of his redundancy package.

I agree with Mr W that, in accordance with the statement in their letter of 25 January 2011, M ought to have issued a revised statement once the changes in the figures issued in January 2011 were known to be significant. The failure to do so amounts to maladministration. However, even had M done so it would not have changed the outcome as the final contributions were not received until 13 May 2011 which post dated the date that Mr W's employment ended.

M has offered Mr W £5000 in recognition of the potential loss of earnings during the period from mid-May to the end of June 2011, when the correct figures were known, and for the distress and inconvenience experienced. I fully accept how annoying mistakes can be, and that they are a cause of considerable inconvenience. However, payments in recognition of such difficulties are typically very modest, usually in the region of £250 to £500 and rarely above £1,000. In my view the offer made by M is more than reasonable in all the circumstances.

Signed

Senior Investigator

November 2012

PENSION SCHEMES ACT 1993, PART X

DETERMINATION BY THE DEPUTY PENSIONS OMBUDSMAN

Applicant : Mr W
Scheme : M Pension Fund (**the Fund**)
Respondent : M Trustees Limited (**the Trustees**)
M Limited (**M**)

Complaint Summary

Mr W complains that he received an incorrect retirement benefit quotation upon which he relied when deciding to retire.

The Deputy Pensions Ombudsman's determination and reasons

My decision is to uphold Mr W's complaint but only to the extent that he has suffered distress and inconvenience as a result of receiving incorrect information. My reasons are essentially the same as in XX's Opinion of 29 November 2012 (the **Opinion**) a copy of which is attached. My additional comments follow.

Mr W maintains that he volunteered for redundancy and says he would not have done so had he known the correct position. The Trustees argue that evidence from Mr W's former employer, confirms that Mr W was made compulsorily redundant. His former employer says that because the route upon which Mr W worked was closed with effect from 24 December 2011 his employment was deemed to have been terminated by way of compulsory redundancy.

Mr W signed a Compromise Agreement on 14 April 2011 and therefore there can have been no element of compulsion about the termination of his employment. His employment was, as a matter of fact, terminated by mutual consent. Obviously, Mr W might have chosen not to enter into that agreement when he did but given that his position was subsequently made redundant just nine months after his employment was terminated he would, in any event, have been in the same position by 24 December 2011 as he now finds himself. He could of course have chosen redeployment but as previously stated there was no guarantee that he would have been successful in obtaining one of the posts available and, if he had been successful, he would not then have received the redundancy and ex gratia payments.

Although Mr W disagrees, in my judgment, he has not suffered a financial loss. He says that had he remained in employment until the end of the financial year he would have earned £36,785.04. But against that he received his pension for nine months plus the redundancy and ex gratia payments which together were considerably higher than his potential earnings. As previously pointed out, Mr W is not entitled to receive the overstated pension. The Trustees are required to provide benefits appropriate to the facts at the time entitlement arises in accordance with the Trust Deed and Rules which govern the Fund and, in my

judgment, this is what they have done. In order for Mr W to be compensated for having received incorrect information there needs to be evidence not only that he would have taken different actions but also that those actions would have been financially beneficial to him. On that basis the evidence does not lead me to conclude that Mr W's complaint should be upheld.

I do however consider that Mr W should be compensated for the inconvenience caused to him as a result of receiving incorrect information. M has offered Mr W a sum of £5,000 in recognition of the potential loss of earnings for the period from mid-May to the end of June 2011 when he became aware of the error that had occurred. In my view such a payment, being considerably in excess of the top end of the broad range for such payments, is more than adequate and I make appropriate direction below.

Directions

I direct that within 28 days of the date of this determination M shall pay to Mr W a sum of £5,000.

Jane Irvine
Deputy Pensions Ombudsman

January 2013

Our Ref: 88164/1/AJLK

28 September 2012

Dear [REDACTED]

Local Government Pension Scheme (the Scheme)

Thank you for your letters of 31 July and 10 August 2012.

After carefully considering what you have said, I have to tell you that my decision is not to find in your favour in your dispute with [REDACTED] (the County Council).

I have looked at the whole matter completely afresh. It may help if I am clear about my jurisdiction in the matter. As well as dealing with complaints of maladministration, I can determine disputes of law. Essentially this is a dispute of law between you and the County Council. The County Council have raised the same matter before the Secretary of State as a dispute between them and [REDACTED] (the City Council).

In dealing with the dispute of law, I can, by statute, give a final and binding decision (subject to appeal to the High Court) on the matter. The test is not whether either council's interpretation is reasonable. The test is what is correct in law.

For ease, I shall repeat the relevant regulations.

Regulation 25(5) says:

- "(5) Where the member elects to pay AVCs or SCAVCs, he must first-
- (a) notify his employing authority in writing; and
 - (b) in the notification specify:
 - (i) the percentage of his pensionable pay he wishes to pay or the amount he wishes to pay on his usual pay days from his pay,
 - (ii) whether he wishes any of his AVCs or SCAVCs to be used to provide benefits payable on his death, and
 - (iii) if he does, the proportion to be so used."

Regulation 25(6) says that the member can vary the amounts, subject to notice as required by Regulation 25(7).

Regulation 25(10) says:

"(10) The maximum a person may specify under paragraph (5)(b)(i) or notify under paragraph (7) as the varied amount in respect of each employment is 50 per cent of the pensionable pay of that employment or an amount equal to 50 per cent of the pensionable pay of that employment."

The Department for Communities and Local Government said, on behalf of the Secretary of State, in paragraph 11 of the letter of 23 January 2012 that paragraph 25(5)(b) restricts AVCs to pensionable pay. I do not agree with that exactly. It says notification should be of a percentage of pensionable pay or an amount of pay. So if the notification is of an amount, it need only come from pay, not restricted to pensionable pay. At least, that would be so if it were not for what follows.

Paragraph 25(10) restricts any notification to being no more than 50% of pensionable pay. So we return to the question of whether "pensionable pay" means pensionable pay over a period (you would argue a tax year) or pensionable pay on the pay day when the deduction is being made.

For the answer to that one has to look beyond that particular regulation. Pensionable pay is defined in Regulation 4 of The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 as follows:

"(1) An employee's pensionable pay is the total of-

- (a) all the salary, wages, fees and other payments paid to him for his own use in respect of his employment; and
- (b) any other payment or benefit specified in his contract of employment as being a pensionable emolument."

The next paragraph sets out specific exclusions.

So the definition does not itself say that it relates to any particular period. As it does not, it is properly read as being the total of those earnings at any moment at which they need to be identified, rather than the total over a period of time. Other regulations are consistent with that. So, for example, the definition of Final Pay in the same regulations refers to pensionable pay for "the final pay period" and then identifies what that period is to be in individual cases. If pensionable pay on its own meant a tax year's total pensionable pay, then that definition would not work.

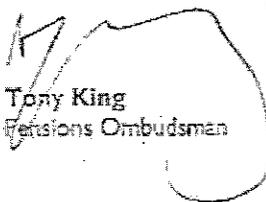
Thus, my determination of the dispute is that by the operation of Regulation 25(10) you could not make a single payment from your pay of more than 50% of pensionable pay at the time of the payment. That apparently meant in your case that the maximum payment was £3,332.

The determination is final and binding on all parties, subject only to an appeal on a point of law. In England and Wales, appeal is to the Chancery Division of the High Court, in Northern Ireland to the Court of Appeal and in Scotland to the Court of Session. The courts have quite short time limits

within which appeals must usually be set in motion, in some cases as short as 14 days, so you should take advice quickly if you are considering an appeal.

This Determination is also being notified to the County Council as the respondent. I am also arranging for it to be sent to the City Council and the Department for Communities and Local Government as they each have an interest in the outcome.

Yours sincerely



Tony King
Hearings Ombudsman