

From: Jayne Wiberg

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To: Kelly Scotford <Kelly.Scotford@royalgreenwich.gov.uk>; 'Alan South (alan_south@bathnes.gov.uk)' <alan_south@bathnes.gov.uk>; 'Amanda Hyde' <amanda.hyde@gmpf.org.uk>; 'Ann Cheffey' <a.m.cheffey@dorsetcc.gov.uk>; 'Annemarie Allen' <annemarie.allen@barnett-waddingham.co.uk>; 'Annette Greenslade' <Annette.Greenslade@gov.scot>; 'Bob Claxton' <rclaxton@wandsworth.gov.uk>; 'Bryan Chalmers' <bryan.chalmers@hymans.co.uk>; 'Catherine Carruthers' <catherine.carruthers@capita.co.uk>; 'Catherine Dix (catherine.dix@wiltshire.gov.uk)' <catherine.dix@wiltshire.gov.uk>; 'Catherine Pearce (catherine.pearce@Aonhewitt.com)' <catherine.pearce@Aonhewitt.com>; 'Civica Pensions' <pensions.techsupport@civica.co.uk>; 'Claire Lewis Smith' <clewissmith@buckscc.gov.uk>; Cornelius Hargrave <Cornelius.Hargrave@local.gov.uk>; 'Craig Allison' <craig.allison@mouchel.com>; 'Craig Martin (craig.martin@environment-agency.gov.uk)' <craig.martin@environment-agency.gov.uk>; 'Daniel Kanaris' <daniel.kanaris@aonhewitt.com>; 'Debbie Sharp' <debbie.sharp@shropshire.gov.uk>; 'Dee Goodwin' <Dee.goodwin@kent.gov.uk>; Elaine English <Elaine.English@local.gov.uk>; 'Erin Savage' <erin.savage@edinburgh.gov.uk>; 'Gary Chapman' <gchapman@sypa.org.uk>; 'Gary McLellan' <gmclellan@northamptonshire.gov.uk>; 'Gordon Dingwall' <Gordon.Dingwall@civica.co.uk>; 'Graeme Muir' <graeme.muir@barnett-waddingham.co.uk>; 'Heather Currie' <heather.currie@kier.co.uk>; 'Ian Colvin' <ian.colvin@hymans.co.uk>; 'Ian Howe (ian.howe@leics.gov.uk)' <ian.howe@leics.gov.uk>; 'Janet Caiazza' <janet.caiazza@staffordshire.gov.uk>; Jeff Houston <Jeff.Houston@local.gov.uk>; 'Jeremy Hughes' <Jeremy.Hughes@communities.gsi.gov.uk>; 'John Smith' <john.smith@lpfa.org.uk>; 'Jon Slater (jon.slater@equiniti.com)' <jon.slater@equiniti.com>; 'Justine Davies (justine.l.davies@pwc.com)' <justine.l.davies@pwc.com>; 'Karen Gibson' <k.p.gibson@dorsetcc.gov.uk>; 'Karen McWilliam' <karen.mcwilliam@aonhewitt.com>; 'Kevin Gerard (kgerard@carmarthenshire.gov.uk)' <kgerard@carmarthenshire.gov.uk>; 'Kimberley Linge' <kimberly.linge@gov.scot>; 'Lois Downer' <lois.downer@hants.gov.uk>; Lorraine Bennett <Lorraine.Bennett@local.gov.uk>; 'Louise Savage' <louise.savage@kent.gov.uk>; 'Lynne Fletcher' <lynn.fletcher@hmrc.gsi.gov.uk>; 'Mike Hopwood' <mike.hopwood@mouchel.com>; 'Neil Mason' <neil.mason@surreycc.gov.uk>; 'Nigel Thomas' <nigel.thomas@mercator.com>; 'Nikki Cooper' <nikki.cooper@civica.co.uk>; 'Paul Kateley' <paul.kateley@heywood.co.uk>; 'Peter Bishop' <peter.bishop@heywood.co.uk>; 'Peter Riedel' <peter.riedel@hymans.co.uk>; 'Rachel Abbey' <rachel.abbey@surreycc.gov.uk>; 'chris.hurst@powys.gov.uk' <chris.hurst@powys.gov.uk>; 'Richard Smyth' <richard.smyth@bexley.gov.uk>; 'Robert Ellis' <robert.ellis@communities.gov.uk>; 'Steven Potter' <steven.potter@civica.co.uk>; Terry Edwards <Terry.Edwards@local.gov.uk>; 'Zena Kee' <zena.kee@nilgosc.org.uk>; 'chris.hurst@powys.gov.uk' <chris.hurst@powys.gov.uk>; Jeremy Hughes <Jeremy.Hughes@communities.gsi.gov.uk>; 'Sheila Owen (sheila.owen@communities.gsi.gov.uk)' <sheila.owen@communities.gsi.gov.uk>; Adrian_Chapman@JLTGROUP.COM; Karl White <Karl.White@local.gov.uk>; TPO <mairi.Spiby@pensions-ombudsman.org.uk>; Cassidy Elizabeth DWP OPS OPE SDM TUO SERVICE (ELIZABETH.CASSIDY1@DWP.GSI.GOV.UK) <ELIZABETH.CASSIDY1@DWP.GSI.GOV.UK>

Subject: RE: Technical Group 12th December - LGA Query 6 - HMRC response

Dear Colleagues

Further to our meeting on Tuesday 12 December 2016, the query that I raised with HMRC concerning LGA Query 6 and their response, set out below and appropriate part highlighted in yellow, that I reported to Technical group within the meeting.

"Morning Jayne

I am pleased to say that my colleague, in our technical team, has already got back to me with an answer to your query (which I have copied below in its entirety). I hope this clarifies things for you.

The relevant valuation legislation for valuing Amount C (uncrystallised rights) for IP14 and IP16 is the same except for the valuation date. The legislation (Paragraph 4 Schedule 6 Finance Act 2014 and Paragraph 12 Schedule 4 Finance Act 2016 respectively) provides:

“Amount C is the total value of the individual’s uncrystallised right at the end of 5 April 2014/2016 under arrangements relating to the individual under registered pension schemes of which the individual is a member as determined in accordance with section 212 of FA 2004.”

So amount C is a factual test – what were the value of the individual’s rights at close of the valuation date.

Section 212(3)(c) FA 2004 provides that uncrystallised rights in a defined benefits arrangement should be valued in accordance with subsection (6) as set out in your enquiry.

The relevant part of the valuation equation in the context of your is ARP. As you say this is the annual rate of pension to which the member would, on the valuation assumptions (not relevant), be entitled to under the arrangement on the date (i.e. either 5 April 2014 or 5 April 2016) if, on that date, the member acquired an actual (rather than a prospective) right to receive a pension in respect of the rights.

Under scheme pays, Section 237E FA 2004 and supporting regulations where a scheme pays the member’s annual allowance (AA) charge the member’s entitlement to benefits under the pension scheme must then be reduced by a corresponding amount. There is substantial guidance on the operation of scheme pays in PTM056410 to PTM056470. The tax legislation does not set out when an adjustment should be made, that is a matter for the scheme administrator and what the scheme rules provide. This point is covered at PTM1056460 as follows:

Timing of the adjustment

Other than the requirement for there to be a just and reasonable adjustment to the member’s entitlement to benefits, the tax rules in relation to annual allowance charge payments where the member has elected to require the scheme to pay (‘scheme pays’) do not place a requirement on when the adjustment must be made relative to when the tax has been paid. It might be decided by the scheme administrator to make the adjustment before the tax is actually paid over to HMRC by the scheme administrator, at the same time as the tax is paid or after the tax is paid. (Note that there may be a timing requirement related to other issues which might limit the timing of the adjustment - for example it might only be possible to make the adjustment at the time the tax is paid.

*So, if on the appropriate 5 April the member’s rights on that date have been subject to a scheme pays adjustment by the scheme administrator (in point of fact it will be a sub-scheme administrator for LGPS) then the Amount C value will be the value after the adjustment. **This will be the case even if the actual adjustment can only be applied retrospectively because paperwork has not been completed in time.** But if the scheme pays adjustment does not result in a reduction in the value of the individual’s rights until on or after 6 April 2014/16, Amount C will be the value of the unadjusted pension as that would have been the actual value of the uncrystallised rights on 5 April 2014/2016. So if an individual does not incur an AA charge until on or after 6 April 2014/16 the individual’s Amount C value will be based on the pre-adjustment value. Likewise if the scheme administrator does not adjust the value of the individual’s rights until say the time the individual takes their benefits and that does not happen until after the valuation date. In such cases, no reduction in the value of Amount C is required even*

though, when benefits are eventually taken, the amount crystallised by the scheme pension BCE 2 will be based on the pension as adjusted (reduced) for scheme pays resulting in less lifetime allowance being used up.

This is the point the guidance at PTM094310 was trying to get across. But I accept that this has not been made sufficiently clear. I have spoken to the person responsible for this section of the guidance. They have agreed to include amendments in the next round of PTM Updates to clarify the position”.

Regards

Kind Regards

Jayne Wiberg
Pensions Advisor
Pensions Team
Local Government Association
18 Smith Square
Westminster
London, SW1P 3HZ
Direct dial: 07979 715825
E-mail: jayne.wiberg@local.gov.uk
Website: www.local.gov.uk/web/lgaworkforcepensions/home