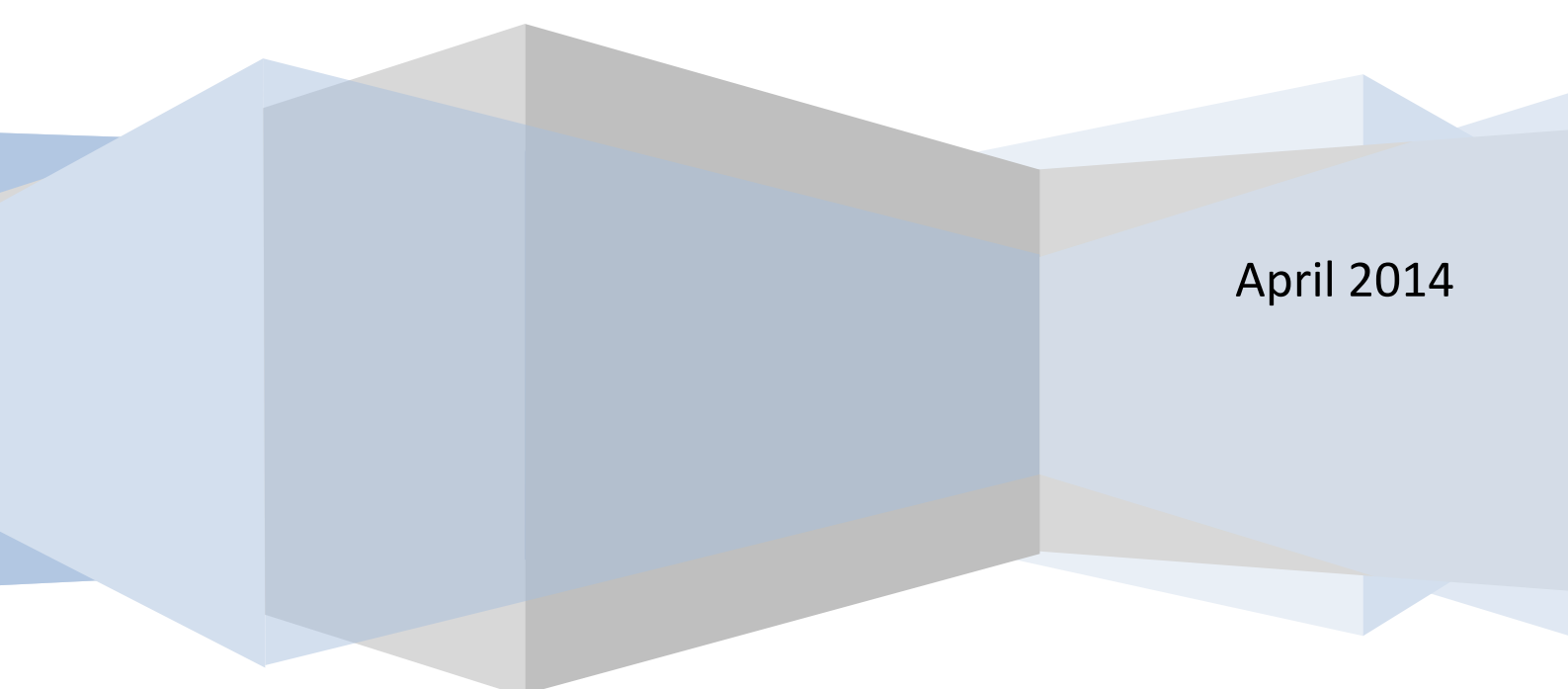


# Teesside Pension Fund

## LGPS 2014 Bulletin

LGPS 2014  
Discretionary policy formation



April 2014

# Discretions Policies for Scheme Employers in England and Wales from 1 April 2014

## Introduction

The Local Government Pension Scheme (LGPS) in England and Wales is being amended from 1 April 2014 so that benefits accruing for service after 31 March 2014 will accrue on a Career Average Revalued Earnings (CARE) basis, rather than on a final salary basis. The provisions of the CARE scheme, together with the protections for members' accrued pre 1 April 2014 final salary rights, are contained in the Local Government Pension Scheme Regulations 2013 and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014.

As a result of the changes, Scheme employers participating in the LGPS in England or Wales will have to formulate, publish and keep under review a Statement of Policy on certain discretions which they have the power to exercise in relation to members of the CARE Scheme. Scheme employers are also required to (or where there is no requirement, are recommended to) formulate, publish and keep under review a Statement of Policy on certain other discretions they may exercise in relation to members of the LGPS.

Overall, Scheme employers participating in the LGPS in England or Wales:

are required to formulate, publish and keep under review a Statement of Policy on certain discretions in accordance with:

- regulation 60 of the LGPS Regulations 2013,
- paragraph 2(2) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014
- regulation 66 of the Local Government Pension Scheme (Administration) Regulations 2008 (in respect of leavers between 1 April 2008 and 31 March 2014), and
- regulation 106 of the Local Government Pension Scheme Regulations 1997 (in respect of leavers between 1 April 1998 and 31 March 2008);

are recommended to formulate, publish and keep under review a Statement of Policy on one discretion under the Local Government Pension Scheme Regulations 1995 (in respect of leavers before 1 April 1998);

are (other than admission bodies) required to formulate, publish and keep under review a Statement of Policy on certain discretions in accordance with regulation 7 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, operative from 1 October 2006;

are (other than admission bodies) required to formulate, publish and keep under review a Statement of Policy on certain discretions in accordance with regulation 26 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000, operative from 1 October 2000; and

are (other than admission bodies) required to formulate, publish and keep under review a Statement of Policy on certain discretions relating to injury allowances under the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011.

The following notes set out the key discretions that apply under the 2014 Scheme, we have supplied similar pro forma and notes for earlier schemes. A full pro forma of discretions has been distributed with this note for you to use as a template for your policy statement.

## Summary of the key discretions to be exercised on and after 1 April 2014 in relation to active scheme members (excluding councillor members) and members (excluding councillor members) who cease active membership after 31 March 2014

Regulation 60 of the LGPS Regulations 2013 and paragraph 2(2) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 require you, as Scheme employers, to have a policy in relation to five specific discretions. These are:

i) whether to grant extra annual pension of up to £6,500 (figure at 1 April 2014) to an active Scheme member or within 6 months of leaving to a member whose employment was terminated on the grounds of redundancy or business efficiency [regulation 31 of the LGPS Regulations 2013]

### Tip:

Scheme employers should, prior to 1 April 2014, already have prepared and published a policy on granting extra pension of up to £5,000 under the 2008 Scheme (in accordance with the LGPS (Administration) Regulations 2008). Employers may, therefore, wish to simply carry forward their basic existing policy, but suitably amended to refer to the LGPS Regulations 2013 and the increased limit of £6,500. Employers considering granting 'straight' extra annual pension of up to £6,500 to employees in the 2014 Scheme will need to take a view on whether doing so could leave them open to challenge on age or gender discrimination grounds (as those not in the Pension Scheme tend to be younger employees and part-time female workers).

An implication of the Equality Act 2010 and the Equality Act (Age Exceptions for Pension Schemes) Order 2010 is that all staff should be treated equally regardless of their age, unless different treatment can be objectively justified.

The facility for employers to grant extra 'augmented' membership of the Pension Scheme ceases after 31 March 2014. Employers who have, prior to 1 April 2014, had a policy to allow 'augmentation by conversion' to members being made redundant or being retired on business efficiency grounds (i.e. granting the member augmented membership equivalent to any lump sum termination payment (in excess of the statutory redundancy payment or in excess of the redundancy payment based on an actual week's pay where this exceeds the statutory weeks' pay limit) the employer would otherwise have awarded under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006) will no longer be able to do so for retirements on or after 1 April 2014. Instead, the employer could grant the member additional pension actuarially equivalent to the value of any lump sum termination payment (in excess of the redundancy payment) the employer would otherwise have awarded under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 i.e. 'additional pension by conversion'. 'Additional pension by conversion' would be justifiable on actuarial grounds, as permitted by paragraph 2 of Schedule 1 to the Equality Act (Age Exceptions for Pension Schemes) Order 2010 [SI 2010/2133 as amended].

It should be noted that any extra annual pension granted by the employer would be subject to an actuarial reduction where, other than in a case of ill health retirement, that extra pension is drawn before the member's Normal Pension Age (including where the pension is being paid on redundancy or business efficiency grounds).

An issue that potentially arises in granting extra annual pension is that, in some cases, it can result in the value of the scheme member's benefits being increased by more than the permitted Annual Allowance of, currently, £40,000 (2014/15). Any increase in value above that figure could result in a tax charge for the individual. Any additional pension granted will also count towards the capitalised value of a person's pension benefits which have to be assessed against the member's Lifetime Allowance (LTA) under the tax regime governing pension schemes. Each time a person retires and draws benefits from a pension scheme they use up a part of their LTA. If, on retirement under the LGPS, the capitalised value of their total LGPS benefits is more than the person's remaining LTA, they will have to pay tax on the excess (at the rate of 25% if the excess is paid in the form of pension and 55% if paid in the form of a lump sum).

ii) whether, where an active Scheme member wishes to purchase extra annual pension of up to £6,500 (figure at 1 April 2014) by making Additional Pension Contributions (APCs), to (voluntarily) contribute towards the cost of purchasing that extra pension via a Shared Cost Additional Pension Contribution (SCAPC) [regulations 16(2)(e) and 16(4)(d) of the LGPS Regulations 2013]

### Tip:

Note that the above discretion does not relate to cases where a member has a period of authorised unpaid leave of absence and elects within 30 days of return to work to pay a SCAPC to cover the amount of pension 'lost' during that period of absence. That is because, in those cases, the employer must contribute 2/3rds of the cost to a SCAPC; there is no discretion [regulation 15(5) of the LGPS Regulations 2013]

iii) whether to permit flexible retirement for staff aged 55 or over who, with the agreement of the employer, reduce their working hours or grade [regulation 30(6) of the LGPS Regulations 2013] and, if so, as part of the agreement to permit flexible retirement:

- whether, in addition to the benefits the member has accrued prior to 1 April 2008 (which the member must draw), to permit the member to choose to draw
  - all, part or none of the pension benefits they accrued after 31 March 2008 and before 1 April 2014, and / or
  - all, part or none of the pension benefits they accrued after 31 March 2014[regulations 11(2) and 11(3) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014], and
- whether to waive, in whole or in part, any actuarial reduction which would otherwise be applied to the benefits taken on flexible retirement before Normal Pension Age (NPA) [regulation 3(5) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, regulation 18(3) of the LGPS (Benefits, Membership and Contributions) Regulations 2007 and regulations 30(6) and 30(8) of the LGPS Regulations 2013]

**Tip:**

Scheme employers should, prior to 1 April 2014, already have prepared and published a policy on flexible retirement for flexible retirements under the 2008 Scheme (in accordance with the LGPS (Administration) Regulations 2008). Employers may, therefore, wish to simply carry forward their basic existing policy, but suitably amended for post 31 March 2014 flexible retirement to reflect the above provisions.

If flexible retirement is agreed for a Scheme member aged 55 or over but under 60 who is subject to the 85 year rule and who, at the date of flexible retirement, has either met the 85 year rule or would have met the rule before age 60, there would be a strain on fund cost to be met by, and paid to the Pension Fund by, the employer in respect of the pension benefits paid following flexible retirement.

Where flexible retirement is agreed for an employee aged 55 or over but under Normal Pension Age the cost of waiving any actuarial reduction, in whole or in part, would have to be met by, and paid to the Pension Fund by, the employer.

iv) whether, as the 85 year rule does not (other than on flexible retirement) automatically apply to members who would otherwise be subject to it and who choose to voluntarily draw their benefits on or after age 55 and before age 60, to switch the 85 year rule back on for such members [paragraph 1(1)(c) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014]. Where the employer **does not do so**, then:

a) if the member has already met the 85 year rule, the member's benefits are to be reduced in accordance with actuarial guidance issued by the Secretary of State (with the benefits from any pre 1 April 2008 membership for members who will not be 60 or more on 31 March 2016, and benefits from any pre 1 April 2016 for members who will be 60 or more on 31 March 2016, which would not normally have been subject to an actuarial reduction nonetheless being subject to a reduction calculated by reference to the period between the date the benefits are drawn and age 60) [paragraphs 1(2) and (4) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014], or

b) if the member has not already met the 85 year rule, the member's benefits are to be reduced in accordance with actuarial guidance issued by the Secretary of State (with the reduction on that part of the member's benefits subject to the 85 year rule being calculated by reference to the period between the date the benefits are drawn and age 60, or the date of attaining the 85 year rule, whichever is the later), and

c) the employer can exercise a discretion to waive actuarial reductions (at cost to the employer) – see (v) below.

**Tip:**

If the employer does agree to switch back on the 85 year rule, the employer will have to meet the cost of any strain on fund resulting from the payment of benefits before age 60 i.e. where the member has already met the 85 year rule, or would meet it before age 60 [paragraph 2(3) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014].

Switching the 85 year rule back on might be a mechanism employers would wish to consider to encourage members to retire early to, for example, help achieve a balanced age profile within the workforce or to avoid possible redundancies later (which have attendant greater costs). Whilst also exercising the discretion to waive actuarial reductions would be more expensive than just switching back on the 85 year rule, it would still (in nearly all cases) be less expensive than redundancy.

v) whether to waive any actuarial reductions i.e. :

a) for active members voluntarily retiring on or after age 55 who elect under regulation 30(5) of the LGPS Regulations 2013 to immediately draw benefits, and for deferred members and suspended tier 3 ill health pensioners who elect under regulation 30(5) of the LGPS Regulations 2013 to draw benefits (other than on ill health grounds) on or after age 55, who were **not** members of the LGPS before 1 October 2006, whether to:

- waive on compassionate grounds, any actuarial reduction that would otherwise be applied to benefits accrued before 1 April 2014 [regulations 3(1) and (5) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 and regulations 30(5) or 30A(5) of the LGPS (Benefits, Membership and Contributions) Regulations 2007], and / or

- waive, in whole or in part (on any grounds), any actuarial reduction that would otherwise be applied to benefits accrued after 31 March 2014 [regulation 30(8) of the LGPS Regulations 2013]

b) for active members voluntarily retiring on or after age 55 who elect under regulation 30(5) of the LGPS Regulations 2013 to immediately draw benefits, and for deferred members and suspended tier 3 ill health pensioners who elect under regulation 30(5) of the LGPS Regulations 2013 to draw benefits (other than on ill health grounds) on or after age 55, who **were** members of the LGPS before 1 October 2006 and who **will** be 60 or more on 31 March 2016 (i.e. those falling within paragraph 3(1) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014), whether to:

- waive on compassionate grounds, any actuarial reduction that would otherwise be applied to benefits accrued before 1 April **2016** [paragraph 2(1) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014], and / or

- waive, in whole or in part (on any grounds), any actuarial reduction that would otherwise be applied to benefits accrued after 31 March **2016** [regulation 30(8) of the LGPS Regulations 2013]

c) for active members voluntarily retiring on or after age 55 who elect under regulation 30(5) of the LGPS Regulations 2013 to immediately draw benefits, and for deferred members and suspended tier 3 ill health pensioners who elect under regulation 30(5) of the LGPS Regulations 2013 to draw benefits (other than on ill health grounds) on or after age 55, who **were** members of the LGPS before 1 October 2006 and who will **not** be 60 or more on 31 March 2016 and will **not** attain age 60 between 1 April 2016 and 31 March 2020 (i.e. those falling within paragraph 3(2) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014), whether to:

- waive on compassionate grounds, any actuarial reduction that would otherwise be applied to benefits accrued before 1 April 2014 [regulations 3(1) and (5) of, and paragraph 2(1) of Schedule 2 to, the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 and regulation 30(5) or 30A(5) of the LGPS (Benefits, Membership and Contributions) Regulations 2007], and / or

- waive, in whole or in part (on any grounds), any actuarial reduction that would otherwise be applied to benefits accrued after 31 March 2014 [regulation 30(8) of the LGPS Regulations 2013]

d) for active members voluntarily retiring on or after age 55 who elect under regulation 30(5) of the LGPS Regulations 2013 to immediately draw benefits, and for deferred members and suspended tier 3 ill health pensioners who elect under regulation 30(5) of the LGPS Regulations 2013 to draw benefits (other than on ill health grounds) on or after age 55, who **were** members of the LGPS before 1 October 2006 and who will **not** be 60 or more on 31 March 2016 but **will** attain age 60 between 1 April 2016 and 31 March 2020 (i.e. those falling within paragraphs 3(2) and 9 of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014), whether to:

- waive on compassionate grounds, any actuarial reduction that would otherwise be applied to benefits accrued before 1 April **2020** [paragraph 2(1) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014], and / or

- waive, in whole or in part (on any grounds), any actuarial reduction that would otherwise be applied to benefits accrued after 31 March **2020** [regulation 30(8) of the LGPS Regulations 2013]

You should preferably prepare and publish a written statement of its policy on the above matters before 1 April 2014 but must do so, and send a copy to the Pension Fund administering authority, by no later than 30 June 2014 [regulation 60(2) of the LGPS Regulations 2013].

You are required to keep its statement under review and make such revisions as are appropriate following a change in its policy. Following any change in its policy you must publish the revised policy and send a copy to the Pension Fund administering authority within one month of the date the policy is revised [regulations 60(3) and (4) of the LGPS Regulations 2013]. In formulating and reviewing its policy, you must have regard to the extent to which the exercise of its discretionary powers could lead to a serious loss of confidence in the public service [regulation 60(5) of the LGPS Regulations 2013].

There are a number of other discretions which you may exercise under the LGPS Regulations 2013 (see our attached pro forma). There is, however, no requirement to have a written policy in respect of these but there are certainly some of these which it would be advisable to have a written policy for, in order that members can be clear on the employer's policy on these matters. Including (but not limited to):

i) whether, how much, and in what circumstances to contribute to a shared-cost Additional Voluntary Contribution (SCAVC) arrangement entered into on or after 1 April 2014 [regulation 17 of the LGPS Regulations 2013] and whether, how much, and in what circumstances to continue to contribute to any shared cost Additional Voluntary Contribution (SCAVC) arrangement that the employer had entered into before 1 April 2014 [regulation 15(1)(d) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, regulation 25(3) of the LGPS (Administration) Regulations 2008 and regulation 15(3) of the LGPS (Benefits, Membership and Contributions) Regulations 2007]

**Tip:** Scheme employers should, prior to 1 April 2014, already have prepared and published a policy on SCAVCs under the 2008 Scheme (in accordance with the LGPS (Administration) Regulations 2008). Employers may, therefore, wish to simply carry forward their existing policy, but suitably amended to reflect both of the elements referred to above.

ii) whether, with the agreement of the Pension Fund administering authority, to permit a Scheme member to elect to transfer other pension rights into the LGPS if he / she has not made such an election within 12 months of joining the LGPS [regulation 100(6) of the LGPS Regulations 2013]

**Tips:**

Scheme employers should, prior to 1 April 2014, already have prepared and published a policy on late elections under the 2008 Scheme (in accordance with the LGPS (Administration) Regulations 2008). Employers may, therefore, wish to simply carry forward their existing policy on this matter.

There may be circumstances where it would be reasonable to accept a late election.

For example:

- where the member asked for transfer investigations to be commenced within 12 months of joining the LGPS but a quotation of what the transfer value will purchase in the LGPS has not been provided to the member within 11 months of joining the LGPS.

The time limit for such a member to make a formal election to transfer pension rights into the LGPS could be extended to, say, one month beyond the date of the letter issued by the Pension Fund

where the available evidence indicates the member made an election within 12 months of joining the LGPS, but the election was not received by the Pension Fund administering authority (e.g. the election form was lost in the post);

- where the available evidence indicates the member had not been informed of the 12 month time limit due to maladministration.

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Accepting an option after 12 months can result in additional cost to the employer (e.g. where an employee opts to transfer in prior to a large salary rise / promotion / re-grading if the member has any pre 1 April 2014 membership, or where an employee opts to transfer in prior to early retirement on redundancy, business efficiency or ill health.)

Unlike under the 2008 Scheme, where the discretion to allow a late election rested solely with the employer, under the 2014 Scheme both the employer and the Pension Fund administering authority have to agree to the acceptance of a late election. If one agrees, and the other does not, the late election cannot be accepted.

iii) whether to extend the 12 month time limit within which a Scheme member who has a deferred LGPS benefit in England or Wales following the cessation of employment (or cessation of a concurrent employment) may elect not to have the deferred benefits aggregated with their new LGPS employment (or ongoing concurrent LGPS employment) if the member has not made an election to retain separate benefits within 12 months of commencing membership of the LGPS in the new employment (or within 12 months of ceasing the concurrent membership) [regulations 22(7) and (8) of the LGPS Regulations 2013]

**Tip:**

There may be circumstances where it would be reasonable to accept a late election to retain separate benefits. For example:

- where the available evidence indicates the member made an election within 12 months of joining the LGPS, but the election was not received by the Pension Fund administering authority (e.g. the election form was lost in the post);

- where the available evidence indicates the member had not been informed of the 12 month time limit due to maladministration;

- where the member has pre 1 April 2014 membership and the final pay in the former job is higher (in real terms, after adding on inflation) than in the new job



iv) how the pension contribution band to which an employee is to be allocated on joining the Scheme, and at each subsequent April, will be determined and the circumstances in which the employer will, in addition to the review each April, review the pension contribution band to which an employee has been allocated following a material change which affects the member's pensionable pay in the course of a Scheme year (1 April to 31 March) [regulations 9 and 10 of the LGPS Regulations 2013]

**Tip:**

See the information on allocation to a contribution band in sections 2A, 2B and 10 of the HR guide at [www.lgpsregs.org](http://www.lgpsregs.org)

v) whether or not, when calculating assumed pensionable pay when a member is:

- on reduced contractual pay or no pay on due to sickness or injury, or
- absent during ordinary maternity, paternity or adoption leave or during paid additional maternity, paternity or adoption leave, or
- absent on reserve forces service leave, or
- retires with a Tier 1 or Tier 2 ill health pension, or
- dies in service

to include in the calculation the amount of any 'regular lump sum payment' received by the member in the 12 months preceding the date the absence began or the ill health retirement or death occurred. A 'regular lump sum payment' is a payment for which the member's employer determines there is a reasonable expectation that such a payment would be paid on a regular basis [regulations 21(4)(a)(iv), 21(4)(b)(iv) and 21(5) of the LGPS Regulations 2013].

**Tip:**

It is entirely at the employer's discretion whether or not to include in the calculation of assumed pensionable pay the amount of any 'regular lump sum payment' received by the member in the 12 months preceding the date the absence began or the ill health retirement or death occurred. Take, for example, the following two situations as examples:

- if a 'regular lump sum payment' is added back for a member on reduced contractual pay or no pay on due to sickness or injury, or absent during ordinary maternity, paternity or adoption leave or during paid additional maternity, paternity or adoption leave, or absent on reserve forces service leave, that member can finish up with a bigger pension accrual than if the member had not been absent and had, instead, been at work. Take the case where a member receives a £1,200 annual performance payment in May 2014 and goes onto reduced contractual pay due to sickness for the period 1 November 2014 to 31 December 2014, returning to full pay from 1 January 2015. The £1,200 has already been included in the member's pensionable pay cumulatives for 2014/15. If it was included in assumed pensionable pay for November and December 2014, 2/12 of £1,200 (i.e. £200) would be added into the cumulative pensionable pay. If the member had not been sick, that £200 would not have been included in pensionable pay (as the member was not next due to get a lump sum annual performance payment until May 2015)

- it might seem reasonable to add back any 'regular lump sum payment' received by the member in the 12 months preceding ill health retirement or death in service into the assumed pensionable pay to be used to work out the amount of enhanced pension for a member who retires with a Tier 1 or Tier 2 ill health pension, or used to work out the survivor pension and / or death grant for a member who dies in service. However, what if the member is, say, only 40 at the time of the ill health retirement / death in service? Is it likely that the employer would have paid such a lump sum to the member every year between age 40 and the member's Normal pension Age? That, in essence, would be implied as being the case if the employer were to add the lump sum back into the assumed pensionable pay figure to be used to calculate the amount of ill health enhanced pension and / or survivor pension.

Any decision as to whether or not to include in the calculation of a scheme member's assumed pensionable pay the amount of any 'regular lump sum payment' received by the member in the 12 months preceding the date the absence began or the ill health retirement or death occurred would need to be fair, equitable and justifiable.



## **Policy statements in relation to pre April 2014 leavers and other discretionary provisions**

This guidance note is targeted at your LGPS 2014 discretions. We have previously provided a pro forma and completion notes for discretions available under earlier LGPS regulations and other discretionary provisions. These notes go into more wide ranging considerations when formulating your policies and will be a useful point of reference for your 2014 policy completion. If you need to refer to these documents, they can be accessed via [this link](#).