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# The role of the Scheme Employer as a Pensions Administrator

A brief guide for front-line HR and Payroll staff



# The role of the Scheme Employer as a Pensions Administrator

## A brief guide for front-line HR and Payroll staff

### Action for responsible HR & Payroll clerks

The Information Contained within the red 'Action for responsible HR & Payroll clerks' boxes found within each section, directly inform the 'HR & Payroll clerk' of the appropriate action to take regarding administrating the Local Government Pension Scheme.

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## Introduction

### Who is this guide for?

This short guide is designed to give HR & Payroll clerks background information on administering the LGPS. It's assumed that HR & Payroll clerks reading this guide already have a basic understanding of the benefits provided by the LGPS. Each Scheme Employer has been provided with a copy of the Avon Pension Fund '**Employer Manual**' which describes in full the procedures to be followed in administering the LGPS and is available to download from the Employers Area of the Avon Pension Fund website at [www.avonpensionfund.org.uk](http://www.avonpensionfund.org.uk). The staff of Avon Pension Fund are always available to answer any queries HR & Payroll clerks may have about administering the LGPS.

### What is an occupational pension?

An occupational pension is **Pay** (European Court of Justice ruling 17 May 1990) the payment of which is deferred to a later date. Being Pay, a pension is an integral part of the reward package an employer gives to its staff. And, as pensions are Pay, the administration of pensions is not something remote from the employer but is a fundamental part of the day-to-day work of their HR and Payroll departments.

### What is the LGPS and who runs it?

The LGPS is a 'Final Salary' occupational pension scheme set up '**the Regulations**' which are Statutory Instruments (i.e. laws). The LGPS is a Final Salary pension scheme because benefits are based on a person's Final Pay and the length of their Membership of the scheme (they are not building up individual pots of money). Your staff who pay into the LGPS are known as **Members**.

The LGPS was originally designed for eligible staff of local authorities who were not entitled to pay into the Teachers, Police or Fire-Fighters pension schemes, which is the reason employing organisations are called 'Employing Authorities' in the Regulations. We call employing organisations '**Scheme Employers**' for ease of understanding as they now include organisations that are not local 'authorities' in the original sense, such as education institutions which are independent of councils, and other organisations which have been 'admitted' to the LGPS under an agreement. These organisations are called **Admission Bodies** and include both non-profit-making organisations and companies which have taken over a function of a Scheme Employer (i.e. under a TUPE arrangement).

Unlike some occupational pension schemes, the LGPS does not have a Board of Trustees making decisions about what benefits people are entitled to. The Regulations state that the **administration of the LGPS is carried out by both:**

- **Employing Authorities of the LGPS**  
(i.e. Scheme Employers including your own organisation)
- **Administering Authorities of the LGPS**  
(such as the Avon Pension Fund of Bath & NE Somerset Council)

## What are Scheme Employers responsible for and what is Avon Pension Fund responsible for?

The Regulations place certain legal obligations and responsibilities for administering the LGPS on Avon Pension Fund and others on Scheme Employers. Part of the job of HR & Payroll staff is therefore to be pensions administrators. A list of 'discretions' outlining who makes what decision under the Regulations can be found on the website of the Local Government Employers organisation at [www.lge.gov.uk/lge/aio/279274](http://www.lge.gov.uk/lge/aio/279274) In a nutshell:

- **Scheme Employers** are responsible for making decisions such as to a person's entitlement to LGPS membership and benefits. These are called '**First Instance Decisions**' under the Regulations. Scheme Employers are required to have Policies on how they will exercise some of the powers they have under the Regulations.
- **Scheme Employers** have a legal duty to deduct and pay over employee and employer contributions and to provide Avon Pension Fund with the information we need in order to carry out our duties to administer the LGPS. Scheme Employers normally provide routine starters, leavers and changes information for Members on specific forms which can be downloaded from the Forms section of the Employers Area of Avon Pension Fund's website at [www.avonpensionfund.org.uk](http://www.avonpensionfund.org.uk) Scheme Employers normally send end-of-year information to Avon Pension Fund either via a spreadsheet, or by Electronic Data Interface (EDI). From 1 April 2010 Scheme Employers will be required to send all electronic communications (e.g. emails) containing sensitive personal data via the Gandlake Secure Portal which encrypts data to internet banking standards.
- **Avon Pension Fund** records the years and days of LGPS Membership that each Member has built up and calculates the level of benefits that each Member will be paid in accordance with the Regulations, based on information provided by the Scheme Employer.
- **Avon Pension Fund** is responsible for investing employees and employers pension contributions and maintaining a Fund of money out of which the benefits of the LGPS are paid.

## What are the laws under which Avon Pension Fund & Scheme Employers administer the LGPS?

The LGPS operates under 'the Regulations', which are Statutory Instruments issued by the Secretary of State under the Superannuation Act 1972 and approved by Parliament. As the Regulations impose legal obligations and responsibilities on Scheme Employers you should be familiar with their main provisions. Copies of current Regulations can be found on the Avon Pension Fund website at [www.avonpensionfund.org.uk](http://www.avonpensionfund.org.uk) in the LGPS Information section.

At the time of writing, the main Regulations are:

- The LGPS (Benefits, Membership & Contributions) Regulations 2007 – i.e. the **BRegs**
- The LGPS (Transitional Provisions) Regulations 2008 – i.e. the **TRegs**
- The LGPS (Administration) Regulations 2008 – i.e. the **ARegs**
- The LGPS (Amendment) Regulations 2008
- The LGPS (Miscellaneous) Regulations 2008
- The LGPS (Discretionary Compensation) Regulations 2006
- The LGPS Regulations 1997 (as amended) – applicable to eligible **Councillor Members**

The administration of the LGPS must also comply with other legislation including: overriding Pensions, Employment, EU, Finance, Revenue, Social Security, Divorce, Disclosure of Information and Equalities legislation. Scheme Employers and Administering Authorities must also comply with guidance and directions from the Pensions Ombudsman and the Pensions Regulator.

## Decision Making in the LGPS

### First Instance Decisions

Scheme Employers make decisions about a person's entitlement to a benefit from the LGPS. This includes their right to join the LGPS as well as their right to benefits when they leave. When the Scheme Employer has made a 'First Instance Decision' (as the Regulations call them) they're required to notify the Member of it in writing 'as soon as reasonably practicable' – and also tell the Member of the reason for the decision, the address from which further information can be obtained, and their right of appeal under Avon Pension Fund's complaints procedure called the **Internal Disputes Resolution Procedure** (IDRP) including the job title and address of the person the Member can appeal to and the time limit in which to appeal. A Member can also initiate IDRP if a Scheme Employer fails to make a First Instance Decision.

### Policies of the Scheme Employer

Scheme Employers are legally required to publish formal policies on some of the discretions they have under the LGPS Regulations. As outlined in the Employers Discretions section of the Avon Pension Fund website, these are:

- Power of employer to increase total membership of an active member (BReg 12)
- Power of employing authority to award additional pension (BReg 13)
- Flexible retirement (BReg 18)
- Choice of early payment of pension (BReg 30)

Employers must keep the above policies under review and, if they make any changes, send an amended copy to Avon Pension Fund within 1 month.

To ensure consistency (and avoid any potential equalities claims) Scheme Employers should consider adopting policies on further discretions they have under the Regulations:

- Extending the time limit for members to pay contributions following a period of absence (AReg 22)
- Exclusion of rights to a return of contributions (AReg 47)
- Forfeiture of pension rights after conviction of employment-related offences (ARegs 72 & 73)
- Interim payments directions (AReg 73)
- Recovery or retention where former member has misconduct obligation (AReg 74)
- Transfers of sums from the pension fund to compensate for member's misconduct (AReg 76)
- Inward transfers of pension rights (AReg 83(8))

For the same reasons, Scheme Employers might also consider adopting a policy on how Members should be attributed and re-attributed to pension contribution rate bands.

## Action for responsible HR & Payroll clerks

- If you don't know what policies your organisation has published in respect of its discretions under the LGPS Regulations, ask your Manager
- If a person with an interest in the LGPS (e.g. a member/ prospective member/former member/ dependant of former member/ or the representative of any of these) asks you what your organisation's policies are, direct them to where they have been published, or send them a copy
- you are applying your organisation's policies to an LGPS Member, bear in mind that they:
  1. Must not be used for an ulterior motive and must be exercised 'reasonably'
  2. Must be used taking account of all relevant factors (e.g. the cost to the tax-payer must be balanced against the benefit to the employer)
  3. Must only be used when there is a 'real and substantial future benefit' to the employer in return for incurring the extra costs
  4. Must be duly recorded when used

## Internal Disputes Resolution Procedure (IDRP)

Avon Pension Fund is legally required to have a formal IDRP under the Pensions Act 2004 and the Occupational Pension Schemes (Internal Dispute Resolution Procedure Consequential and Miscellaneous Amendments) Regulations 2008. IDRP places strict obligations on both Scheme Employers and Avon Pension Fund.

In brief, if a person **with an interest in the LGPS** (e.g. a member/ prospective member/former member/ dependant of former member/ or the representative of any of these) writes a letter of complaint to a Scheme Employer about a decision you have made (or have failed to make) in connection with the LGPS you must tell them of their right of appeal to your 'nominated/specified person' (e.g. a named senior manager in your organisation) under IDRP and the time limits in which they must do this. Scheme Employers should send Members a guide and application form on which they can do this which can be downloaded from the IDRP section of the Employers Area of the Avon Pension Fund website at [www.avonpensionfund.org.uk](http://www.avonpensionfund.org.uk).

IDRP has 2 stages:

**Stage 1 IDRP** is dealt with by a nominated/specified person in the organisation which has made the initial decision and a person with an interest in the LGPS can make a complaint under IDRP within 6 months of being notified of your initial decision. At the point at which a Scheme Employer receives a Stage 1 application under IDRP they are legally required to write back 'as soon as reasonably practicable' and tell the complainant that TPAS (The Pensions Advisory Service) is available to assist them in connection with any difficulty with the scheme, and give them contact details for TPAS, which are:

The Pensions Advisory Service  
11 Belgrade Road  
London SW1V 1RB  
Tel: 020 7233 8016  
Email: [enquiries@pensionsadvisoryservice.org.uk](mailto:enquiries@pensionsadvisoryservice.org.uk)

## Internal Disputes Resolution Procedure (IDRP) Continued

The Scheme Employer's nominated/specified person must give a decision on a disagreement, or send an interim letter (outlining the reasons for the delay in making a decision and the expected reply date) to an applicant within 2 months (and send a copy to Avon Pension Fund) referring to (i) any legislation or LGPS provisions relied on (including any relating to employer discretions as appropriate), (ii) the right to make a Stage 2 IDRP appeal to the Administering Authority (Avon Pension Fund) within 6 months or receiving a Stage 1 decision or 1 month after receiving an interim reply, and (iii) that assistance is available from TPAS.

In **Stage 2 IDRP** the Stage 1 decision of a Scheme Employer will be reconsidered by Avon Pension Fund. The 'person with an interest in the LGPS' must apply within 6 months from the date of a Stage 1 decision, or, if no Stage 1 decision has been made, within 9 months of the complaint having been submitted. Avon Pension Fund can either uphold the decision of the Scheme Employer's nominated/specified person or require them to reconsider their decision.

### **Appeals to the Pensions Ombudsman**

If a Scheme Employer is required to reconsider a Stage 1 decision (by Avon Pension Fund) and reaches the same decision again, a person who remains dissatisfied can appeal to the Pensions Ombudsman (unless court action has started) within 3 years of from the date of the original decision. They can also appeal to the Pensions Ombudsman if they haven't received a Stage 2 decision from Avon Pension Fund within 2 months. The Pensions Ombudsman can overturn a decision of a Scheme Employer or Avon Pension Fund, fine either organisation for maladministration (including bias, neglect, inattention, delay, incompetence, ineptitude, perversity, turpitude and arbitrariness etc) and also direct that financial recompense be paid to a Member. Appeals against a determination of the Pensions Ombudsman can be made to the High Court.

You can read a comprehensive guide in the Employer's Area of the Avon Pension Fund website via the IDRP link. The Pensions Regulator has issued 'Code of Practice No 11' on dispute resolution which you can read at [www.thepensionsregulator.gov.uk](http://www.thepensionsregulator.gov.uk)

## Joining the LGPS

### Who can join the LGPS and how do I bring them in?

Scheme Employers must make a First Instance Decision as to whether or not an employee is eligible to be a Member of the LGPS, and this depends on what type of Scheme Employer your organisation is. They may become eligible as a new employee or when you put an existing employee on a new contract. To be eligible to join the LGPS all staff must have a contract of employment of 3 or more months duration with Mutuality of Obligation (as defined under Employment Law) and must be under 75. It is particularly important to ensure that Casual employees have Mutuality of Obligation in their contract otherwise they might not meet the criteria of being in a contract of employment for 3 or more months.

### How Different Types of Scheme Employer admit new Members

There are 3 types of Scheme Employer and they each bring staff into the LGPS in different ways:

#### Scheduled Bodies

– these Scheme Employers are listed in a ‘schedule’ in the Regulations and include: County & District Councils (incl. Unitary Authorities), Academies and Further & Higher Education Corporations.

On the first day they are eligible, employees of Scheduled Bodies **must be brought into the LGPS automatically**, unless they have Opted Out (e.g. by completing form LGPS 4). The Scheme Employer must not advise or induce an employee to opt out of the LGPS. The Scheme Employer makes the First Instance Decision re eligibility based on whether or not the employee has been appointed to a contract of 3 or more months (with mutuality of obligation) and is not eligible to be in the Teachers’, Fire-Fighters’ or Police pension schemes.

**N.B.** A person appointed to, say, a 2 month contract cannot join the LGPS, however if they were subsequently appointed to a second 2 month contract they would be brought in automatically at that point (i.e. because they’re now on a contract of 3 or more months) and these Members **must** be given the option to **backdate their entry** to the LGPS to the beginning of their first 2 month contract.

**Academies which were previously independent schools** (i.e. private schools) may already have been operating their own occupational pension schemes. CLG advice is that when previously independent schools become Academies they may continue to operate their previous occupational pension schemes for existing staff. However, as a Scheduled Body, Academy staff must be brought into the LGPS automatically as soon as they become eligible. Existing staff that want to remain in a previous occupational pension scheme may wish to consider electing to opt out of the LGPS (after having taken advice from an Independent Financial Adviser) in order that they do not end up paying into two pension schemes (or arrears of employees and employers contributions being owed to Avon Pension Fund if they are not auto-enrolled into the LGPS).

## Scheduled Bodies Continued

**Foundation, Trust & Voluntary Aided Schools** are **not Scheme Employers**. Under the LGPS Regulations their staff are deemed to work for the Local Education Authority in their area, therefore their Payroll & HR departments (and those of Council schools which do their own Payroll and/or HR function) are, from the point of view of the LGPS, secondary Payroll & HR departments of the Unitary Authority the LEA comes under, as this is the Scheme Employer of these Members

## Designating Bodies

– these Scheme Employers were previously called Resolution Bodies and include Town and Parish Councils and companies in the control of Scheduled Bodies.

Designating Bodies ‘designate’ an employee, or a class of employees, as being eligible to join the LGPS. On the first day they are eligible, **designated employees must be brought into the LGPS automatically**, unless they have Opted Out. The Scheme Employer must not advise or induce an employee to opt out of the LGPS. The Scheme Employer makes the First Instance Decision re eligibility based on whether or not the employee is either personally designated, or falls into their class of designated employees, and has been appointed to a contract of 3 or more months (with mutuality of obligation).

**N.B.** A designated person appointed to, say, a 2 month contract cannot join the LGPS, however if they were subsequently appointed to a second 2 month contract they would be brought in automatically at that point (i.e. because they’re now on a contract of 3 or more months with mutuality of obligation) but these Members **cannot backdate their entry** to the LGPS to the beginning of their first 2 month contract.

## Admission Bodies

– these Scheme Employers fall into 2 categories:

- 1. Community Admission Bodies** include organisations which have a ‘community of interest’ with a Scheme Employer, those local authorities give grants to, housing corporations and bodies representative of local authorities and their officers.
- 2. Transferee Admission Bodies** – previously known as SCOPE Admission Bodies, these include organisations which have contracted to take over a function of another Scheme Employer and many of their Members will have transferred across under TUPE Regulations.

It’s up to the Scheme Employer to determine which employees having a contract of employment of 3 or more months (with mutuality of obligation) are eligible to join the LGPS. **Eligible employees must then make an ‘election’ to join the LGPS**, they are not brought in automatically by Scheme Employers and cannot backdate their entry.

## Staff who've previously Opted Out of the LGPS

Staff who've previously Opted Out of the LGPS can make an **election to rejoin** so long as they meet the above criteria for Scheduled, Designating or Admission Bodies.

The way eligible new employees are brought into the LGPS is **summarised** in the table below:

|                  | Whole-time                                | Part-time                                 | Casual<br>(with Mutuality of<br>Obligation) |
|------------------|---|---|---|
| Scheduled Body   | Employee Right<br><i>Automatic Entry</i>  | Employee Right<br><i>Automatic Entry</i>  | Employee Right<br><i>Automatic Entry</i>    |
| Designating Body | Employer Choice<br><i>Automatic Entry</i> | Employer Choice<br><i>Automatic Entry</i> | Employer Choice<br><i>Automatic Entry</i>   |
| Admission Body   | Employer Choice<br><i>By Election</i>     | Employer Choice<br><i>By Election</i>     | Employer Choice<br><i>By Election</i>       |

## Action for responsible HR & Payroll clerks

- When you have made your First Instance Decision on whether or not a member of staff is eligible to join the LGPS you are legally required to **inform them in writing**, including their right of appeal against your decision (you should also tell them if you've brought them into the LGPS automatically, as appropriate) - see the section on First Instance Decisions on page 5.
- If you don't know what type of LGPS Scheme Employer your organisation is and how your staff become Members of the LGPS then you should check with your Manager or Avon Pension Fund.

## What could happen if I don't make a First Instance Decision on an employee's eligibility to join the LGPS or tell them about it?

An employee can appeal against a First Instance Decision (FID) of a Scheme Employer, or their failure to make one, through Avon Pension Fund's **Internal Disputes Resolution Procedure (IDRP)**.

For **Scheduled and Designating Bodies**, if staff aren't given the right to appeal at the first opportunity against a FID that they aren't eligible, or aren't brought into the LGPS automatically when they meet eligibility criteria, then substantial arrears of employees and employers contributions might become payable if they initiate IDRP and the FID of the Scheme Employer is overturned backdating the person's Membership to the beginning of their eligible employment.

For **Admission Bodies**, if staff aren't advised of the FID of the Scheme Employer that they are eligible to become a Member of the LGPS and therefore don't exercise their option to elect to join, then substantial arrears of employees and employers contributions might become payable if they initiate IDRP.

## What must I give to new eligible employees?

Scheme Employers must **provide an employee with information about the LGPS** within 2 months of them either becoming a Member of the LGPS, or being eligible to join the LGPS. Within 3 months of becoming a Member the Scheme Employer is legally required to request information from staff about their previous employments and Membership of the LGPS. To help Scheme Employers do this, Avon Pension Fund provides **Pension Packs** containing all the information they need to give to new staff about the LGPS and also forms on which new staff are asked to provide the required information, and we recommend you give them this with their offer of employment or within the first week.

## Action for responsible HR & Payroll clerks

- Ensure that each new eligible employee is given a Pension Pack within 2 months of them either joining the LGPS, or being eligible to join the LGPS. Avon Pension Fund recommends that you do this within their first week.
- Record the fact that they have been given a Pension Pack – you may be asked to prove it one day.

## What could happen if I don't give a new eligible employee a Pension Pack?

Avon Pension Fund or your organisation could potentially be **finned by the Pensions Ombudsman** for breaching our obligations under the Occupational Pension Schemes (Disclosure of Information) Regulations. The fines are currently £1,000 on the responsible organisation and a fine of £100 on the responsible person (i.e. this may be you), per case.

## Pension Contributions

### What level of contributions should I take from an LGPS Member's pay?

The Scheme Employer should make a First Instance Decision on what pension contribution rate an LGPS Member will pay using the criteria of '**reasonability**'. The term '**pensionable pay**' is used in the Regulations and means the elements of a person's pay which count for deduction of pension contributions.

Most Members will pay pension contributions based on a rate from a table (an updated version will be issued on 1 April each year) depending on their annual pensionable pay (or the whole-time equivalent if they work less than whole-time hours).

The table for 2011/2012 is reproduced below:

| Band | WT Pay Range (2011/12) | Contribution Rate |
|------|------------------------|-------------------|
| 1    | £0 - £12,900           | 5.5%              |
| 2    | £12,901 - £15,100      | 5.8%              |
| 3    | £15,101 - £19,400      | 5.9%              |
| 4    | £19,401 - £32,400      | 6.5%              |
| 5    | £32,401 - £43,300      | 6.8%              |
| 6    | £43,301 - £81,100      | 7.2%              |
| 7    | More than £81,100      | 7.5%              |

- Members on a **part-time contract** should pay a contribution rate based on the **whole-time equivalent pay** for their post, including the whole-time equivalent of any pensionable emoluments (i.e. bonuses and allowances from which pension contributions are deducted) that they receive.
- Members on a **term-time contract** (i.e. for a post which can only be worked term-time, not people who've made an arrangement to work term-time weeks because it suits them to fit in with school holidays etc) should pay a contribution rate based on the **whole-time equivalent term-time pay** for their post. For example if 44 weeks a year was the maximum they could work in the post you should not pro-rata the salary up to what it would be at 52 weeks.
- If your LGPS Member is a **protected Manual Worker** (i.e. was paying 5% contributions on 31 March 2008) they must initially pay a pension contribution rate from a **different table** in the Regulations, and be phased into the above table on a stepped basis by 2011.
- If your LGPS Member is a **Councillor Member** (in Avon Pension Fund only Unitary Authorities can have these) they must pay pension contributions at **6%** (under the LGPS Regulations 1997).

## What parts of an employee's Pay should I deduct the pension contributions from?

The Regulations set out the elements of Pay **you must count** as pensionable to be:

- 'all the salary, wages, fees and other payments paid to him for his own use in respect of his employment' and
- 'any other payment of benefit specified in his contract of employment as being a pensionable emolument'. A pensionable 'emolument' is a bonus or allowance which counts when deducting pension contributions.
- The Regulations also specify that no sum can count as Pay unless Income Tax liability has been determined on it.

The Regulations **prohibit you from counting the following as pensionable Pay**:

- Payments for non-contractual overtime – i.e. paid overtime that a person chooses to work when it is offered to them but is not contractually obliged to work (i.e. meaning that they could theoretically be sacked for refusing to do the overtime)
- Travelling, subsistence or other allowances paid in respect of expenses incurred in relation to the employment
- Payments for loss of holidays
- Payments in lieu of notice
- Payments to induce an employee not to terminate their employment
- The money value of providing (or in lieu of providing) a motor vehicle

In practice it will usually be the HR department that takes the First Instance Decision and then tells the Payroll department what contribution rate to take and what elements of a person's pay count for pension purposes.

## How do I work out what contribution band to put a Member in?

You have to use a 'reasonable' method when deciding what band a Member should be in. This is because the Member can appeal against your First Instance Decision, so you have to be able to account for how you came to make it. New starters could be allocated to a band using their known annual starting Pay (WT equivalent pay if they're PT), not forgetting any pensionable emoluments (i.e. bonuses and allowances [at the WT equivalent if PT]) which they may be paid. If the emoluments will be variable then you might have to anticipate what a reasonable figure would be.

The LGPS is costed on the basis that the Scheme Employer will, over all of their Members in different bands, be deducting an average pension contribution of 6.3%. Any shortfall in this will impact on the Employers Contribution Rate.

### What do I do when an employee has More than One Job?

Scheme Employers must treat each job separately for pensions purposes, and the Member could very well be paying a different contribution rate in respect of each post. Avon Pension Fund is required to hold a separate record on the pension's database for each post a Member holds, so the Scheme Employer will need to ensure that when they send information to us we can easily identify which job it relates to by a post reference number.

### What should HR & Payroll clerks be aware of when deducting an employee's contributions?

The LGPS is an exempt-approved pension scheme under HM Revenue & Customs rules and tax relief must be applied to pension contributions. The LGPS is contracted-out of the State Second Pension and Member's NI contributions should be at the contracted-out rate. Scheme Employers must record the pension contributions they deduct from a Member's pensionable Pay and also their contracted-out earnings between the lower earnings limit and the upper accrual point as Avon Pension Fund will need this information in order to administer the LGPS.

Scheme Employers must **keep pension payroll data for a minimum of 10 years**, unless you issued a Certificate of Protection to the Member in which case **data must be kept for 13 years** from the date of issue.

## Do I need to tell Avon Pension Fund when someone joins the LGPS?

Yes, it is **essential** that you tell Avon Pension Fund when someone joins the LGPS. Employers can either do this by manually completing **form LGPS 2** for each new Member, or by sending the same data by Electronic Data Interface (EDI) on a monthly return. An LGPS 2 form can be downloaded from the Forms section of the Employers Area of the Avon Pension Fund website. **We will use the information you give us to set up a record for the Member on the pension database:**

On the pensions database, Avon Pension Fund are **recording each Member's years and days of LGPS Membership** (this used to be called Reckonable Service). We need to know when a Member works less than whole-time hours you must state their part-time hours on the LGPS 2 form. If the Member is working less than 52 & 1/7 weeks a year you must state a **factor** on the LGPS 2 form:

- If a **Member works part-time** e.g. where they work 18½ hours per week (out of a whole-time maximum of 37) for 52 & 1/7 weeks per year, we must record them as working these hours so that they aren't credited with whole-time hours of Membership they haven't paid for.
- If a **Member is in a post that can only be worked less than a full year (such as term-time workers)** e.g. where they work 18½ hpw (out of a WT maximum of 37) but are actually paid for working for, say, 44 weeks per year and (not a full 52 & 1/7 weeks per year) - (even if in practice the employer then splits and pays that 44 weeks Pay the Member receives in 12 equal monthly (or 52 equal weekly) instalments). You **must** tell Avon Pension Fund the factor to of weeks the Member is paid to work (i.e. 44 in this example). We will then apply the factor to their record so they aren't over-credited with weeks of LGPS Membership they haven't paid for.

HR and Payroll clerks should understand that if an LGPS Member is credited with Membership they haven't paid for, their organisation as Scheme Employer will end up paying for any shortfalls in employee's contributions received by an increase in their Employer Contribution Rate.

## Action for responsible HR & Payroll clerks

- Ask your Manager if your organisation has a policy on attributing Members to contribution bands.
- Allocate the Member to a pension contribution rate band.
- Apply to correct % employee contribution rate to their payroll record.
- Write to the Member informing them of the First Instance Decision you have taken to determine the pension contribution rate they will pay, the reason for your decision, the address from which further information can be obtained, and their right of appeal under IDR.
- Complete **form LGPS 2** 'Notification of a New Pensionable Employee' and send it to Avon Pension Fund. N.B. the LGPS 2 form must be signed by an Authorised Signatory of your organisation who has been registered with Avon Pension Fund on an LGPS 53 form.

## What might happen if I don't tell a Member, or Avon Pension Fund, that I've started deducting contributions?

If a Member isn't given the **right to appeal** at the earliest opportunity against a Scheme Employer's decision on the rate of pension contributions they will pay, they may initiate **IDRP** at a later date - this might result in backdated adjustments having to be made were the decision on the rate to be overturned, or even a **fine being imposed on the Scheme Employer by the Pensions Ombudsman for maladministration**.

If the Scheme Employer doesn't tell Avon Pension Fund that they're deducting LGPS contributions in respect of a new Member (by completing form LGPS 2) we won't be able to set up a pension record for them; and the **Scheme Employer will be in breach of their legal obligation** under the Regulations to provide Avon Pension Fund with information necessary to administer the LGPS. Such a failure could cause the Member to miss vital deadlines on making important decisions re their pension rights and, when they find out, they could either: initiate IDRP, take you to the Pensions Ombudsman, or even launch **court action** against you.

If Avon Pension Fund is not holding an accurate record for a Member both we, and the Scheme Employer would be **in breach of the Data Protection Act** and could be liable to a **fine** from the Information Commissioner, and also the Pensions Regulator and the Pensions Ombudsman under pensions legislation. Avon Pension Fund has the legal right to recover from a Scheme Employer any additional costs it incurs (including fines) as a result of them not providing accurate and timely information.

## Should I change a Member's contribution rate when their Pay changes?

Once a Scheme Employer has attributed a Member to a pension contribution band, it is up to them how they re-attribute when Pay changes (or the WT equivalent), or whether they re-attribute at all i.e. keeping them in the same band for the rest of their employment. The overriding criteria is '**reasonability**' and, to reduce the potential for IDRP cases from Members, Scheme Employers would be wise to have a policy on re-attribution.

To try and achieve a consistent approach across Avon Pension Fund (APF), the majority opinion in a 'Working Group' of Scheme Employers **recommended** that for:

## A Salary Increase

- where WT equivalent pay has increased part way through a year, a Member should be re-banded in the April following the increase, rather than the date of the increase, to keep the process administratively as simple as possible. If the band is changed part way through a year the Scheme Employer must advise APF of the old % rate and the amount of contributions paid up to the date of change, and the new contribution rate and the amount of contributions paid from the date of change to the end of the financial year. The occasions when a pay increase part way through a year would cause a member to cross over into a higher contribution band will in practice be relatively small. The impact of a relatively small number of members paying a lower contribution rate for several months is not expected to be significant impact on the Scheme Employer being able to achieve an average contribution rate of 6.3%.

## A Salary Decrease

- where WT equivalent pay has decreased, then a Member should be re-banded from the date of change and not the following April. Although re-banding part way through a year would mean that the Scheme Employer will need to advise APF of the old % rate and the amount of contributions paid up to the date of change, and the new % rate and the amount of contributions paid from the date of change to the end of the financial year; it was thought that keeping members on a higher contribution rate until the following April would incur complaints and appeals from affected Members. The number of pay decreases part way through the year should be much lower than the number of pay increases.

## Action for responsible HR & Payroll clerks

- Confirm with your Manager what your organisation's policy/procedure is on re-attributing LGPS Members to pension contribution bands.
- Write to the Member informing them of the First Instance Decision you have taken to re-attribute their pension contribution band, the reason for your decision, the rate they will now pay, the address from which further information can be obtained, and their right of appeal under IDRP.
- Notify Avon Pension Fund of the change of the Member's % contribution rate on form **LGPS 3** 'Notification of Changes During Pensionable Employment' which can be downloaded from the Forms section of the Employers Area of the Avon Pension Fund website..

## What employer contributions should I deduct?

The Regulations require Scheme Employers to make contributions to the LGPS and they do this by paying a % contributions rate on each Member's pensionable Pay. Employer contributions underpin the real cost of providing the Member's benefits. Your organisation's Employer Contribution Rate has been determined by the Scheme Actuary to Avon Pension Fund, and will usually be reassessed every 3 years. Each Scheme Employer will be told what Employer Contribution Rate they must apply by Avon Pension Fund's Investments & Accounts Team.

## Increasing Pension Benefits

Avon Pension Fund has 2 methods by which LGPS Members can increase their pension benefits:

**AVCs (Additional Voluntary Contributions) through Friends Provident** – Scheme Employers must deduct these from the Members pay and send them directly to Friends Provident.

**ARCs (Additional Regular Contributions)** – Avon Pension Fund will advise you of the amount to deduct, the start date and the date the contribution is due to cease.

## What must Payroll send to Avon Pension Fund?

Scheme Employers are under a legal obligation to send all pension contributions to Avon Pension Fund no later than the 19th of the month following the month in which they've been deducted, under the Occupational Pension Schemes (Scheme Administration) Regulations 1996. Regulators treat the failure to do this is a **serious offence**, which could lead to the Scheme Employer being **heavily fined** - indeed until recently the ultimate penalty was imprisonment of the responsible person.

At the time they send the monthly pension contributions to Avon Pension Fund, Scheme Employers must also send a breakdown of contributions deducted at each % rate on **form LGPS 50** 'Pension Contributions Monthly Remittance Advice'.

At the end of each financial year, Scheme Employers must also send Avon Pension Fund **form LGPS 51** listing employee and employer contributions for each month; and **form LGPS 52** listing each individual Member's basic & additional contributions and their contracted-out earnings.

After 1 April 2010, any sensitive personal data sent electronically (e.g. by email) must be sent via the Gandlake Secure Portal which encrypts data to internet banking standards.

## Action for responsible HR & Payroll clerks

- Apply the correct % Employer Contribution Rate to the Member's payroll record.
- If you don't know what your current % Employer Contribution Rate is, ask your Manager or Avon Pension Fund.
- Add the details of the new Member to your returns for forms **LGPS 50, 51 & 52**. N.B. the LGPS 50, 51 & 52 forms must be signed by an Authorised Signatory of your organisation who has been registered with Avon Pension Fund on an LGPS 53 form.

## Changes During Pensionable Employment

### What do I have to do when a Member has a relevant Change?

HR & Payroll clerks must tell Avon Pension Fund when any changes occur to Member that are relevant to our administration of their pension by completing **form LGPS 3** 'Notification of Changes during Pensionable Employment'. **The changes we need to know about** are:

1. Change of **Name** and/or **Address**
2. Change of **Contractual Hours** and/or **Factor**
3. Change of **Date of Birth**
4. Change of **NI Number**
5. Change of **Contribution Rate**
6. Periods of **Unpaid Absence**  
(these must be reported on separate forms - see following sections)

### Action for responsible HR & Payroll clerks

Complete and return **form LGPS 3** to Avon Pension Fund whenever a Member has a relevant change. N.B. the LGPS 3 form must be signed by an Authorised Signatory of your organisation who has been registered with Avon Pension Fund on an LGPS 53 form.

### What might happen if I don't tell you of a Change?

Avon Pension Fund and Scheme Employers have an overriding responsibility to maintain accurate records under Data Protection legislation. If you don't tell Avon Pension Fund when a Member has a relevant change, the **Scheme Employer will be in breach of its statutory obligation** under the LGPS Regulations to provide us with the information we need to administer the LGPS. As Avon Pension Fund will be holding inaccurate information we could potentially pay the wrong amount of pension at the wrong time, or send the wrong returns to HM Revenue & Customs or send confidential personal data to the wrong address. Avon Pension Fund and/or the Scheme Employer could potentially be liable to **finances** from the Pensions Ombudsman, the Pensions Regulator and the Information Commissioner.

If Avon Pension Fund is not holding accurate records for one of your employees we run the risk of potentially overstating the value of their LGPS benefits. The Pensions Ombudsman can fine Avon Pension Fund or Scheme Employers for giving a Member false expectations, and award the Member compensation for maladministration.

Avon Pension Fund has the legal right to recover from a Scheme Employer any additional costs it incurs (including fines) as a result of them not providing accurate and timely information.

HR & Payroll clerks should clearly understand that if changes are not notified to Avon Pension Fund in a timely manner their organisation may incur additional costs. As Scheme Employers have been advised by the Government, inaccurate Member records may cause an incorrect assessment in their organisation's liabilities in the Triennial Actuarial Valuation, this may result in them having to pay a higher Employer Contribution Rate than they otherwise would.

## The consequences of not notifying Avon Pension Fund of Changes of Hours

The effect of not notifying Avon Pension Fund of a **Change of Contractual Hours** is one point worth illustrating in more detail: If a whole-time Member (e.g. working 37 hpw) reduces their hours to half-time (e.g. 18½ hpw for 6 months (182 days) before going back up to WT, and the Scheme Employer doesn't notify us then we will continue to credit their LGPS Membership at WT for that period. If we don't adjust the Membership down to 18½ hpw for 6 months the Scheme Employer will pick up the cost of the over-credit. Based on a Pay of £25,000 the **over-credited Membership** would cause the Member's pension to be increased each year by:

$$£25,000 \times 182/365 \times 18.5/37 \times 1/60 = £103.88$$

Actuaries assume that a Member will receive their pension for 20 years, so:

$$£103.88 \times 20 = \mathbf{£2,077.62}$$

So in this example, by failing to tell Avon Pension Fund that the Member had a change of hours for 6 months, **the responsible HR or Payroll clerk has overpaid them** by £2,077.62 (as pensions are of course part of Pay). Any such overpayment would be much larger than this where a Member has a dependent partner or children entitled to subsequent Survivor's Pensions after their death. If the Member is also buying Added Years, or paying ARCs, they will also be over-credited for these if Avon Pension Fund is not told of the reduction in hours. As the Member has not paid for the extra £2,077.62 the HR or Payroll clerk has given them, the cost of the overpayment will increase the strain on the Pension Fund for providing pensions for that Scheme Employer; and the cost of this strain would ultimately be paid for through **increases in their Employer Contribution Rate**. An HR or Payroll clerk who overpays staff by omitting to keep Avon Pension Fund up-to-date with changes in contractual hours is likely to draw the attention of their organisation's internal and external Auditors onto themselves.

## What do I have to do if a Member takes Unpaid Absence from work?

It is essential that periods of absence are dealt with correctly by HR & Payroll, otherwise the Member could end up being credited with LGPS Membership they haven't paid for, and **the cost of this will be picked up by the Scheme Employer**.

During any period of unpaid absence, pension **contributions must be deducted** in respect of **Added Years** and **Additional Regular Contributions (ARCs)**. If the Member elects to pay pension contributions for periods of authorised unpaid leave then they can **elect** to pay Additional Voluntary Contributions (AVCs) for the period.

## Authorised Unpaid Leave

The LGPS Regulations state that where a Scheme Employer has granted a period of unpaid leave:

- The Scheme Employer **must deduct contributions** in respect of the **first 30 days**.
- The Member can **elect** to pay contributions for up to **36 months** unpaid leave, within 30 days of returning to work (or more than 30 days if the employer allows).

If the Member does **not** elect to pay for the period from 31 days to the end of the unpaid leave then Avon Pension Fund **must** record that period as a **break in their LGPS Membership**.

## Action for responsible HR & Payroll clerks

- Deduct employees and employers pension contributions in respect of unpaid leave up to the first 30 days
- Write to Members as soon as they return to work informing them of their right to elect within 30 days to pay pension contributions for the remainder of the unpaid leave period (i.e. from 31 days to 36 months) – a sample letter is in the Employers Manual to be sent with the Member's election form LGPS 6 'Leave of Absence which Extends Beyond 30 Days – Payment of Contributions'
- Deduct contributions for any Added Years and ARC contributions at the rate they would normally have been due in respect of the period.
- If the Member was paying in-house AVCs advise them that they can make payments in respect of the period of unpaid absence.
- Write to Avon Pension Fund telling them of any unpaid leave period the Member has so we can record a break in Membership, and any unpaid leave period the Member has paid pension contributions for, on the pensions database - sample letters are in the Employers Manual.

## Maternity, Paternity and Adoption Leave

- During **Ordinary Maternity or Adoption Leave** (up to 26 weeks), **and during Statutory Paternity Leave** (two weeks), the Member will be credited with LGPS Membership in full for any pension contributions paid on full or reduced. If the Member is not entitled to pay (including statutory pay) they are credited in the LGPS in full as if they had paid contributions. The Scheme Employer must pay employer's contributions on what the Member would have earned if they had been working normally.
- During **Additional Maternity or Adoption Leave** (after 26 weeks), the Member will be credited with LGPS Membership in full for any pension contributions paid on actual Occupational Maternity Pay (OMP) or Statutory Adoption or Maternity Pay (SAP or SMP) they receive (up to 39 weeks), but the Scheme Employer must pay employer's contributions on what the Member would earn if they were working normally. For any period of unpaid Additional Maternity or Adoption Leave, the Member can elect to pay contributions within 30 days of returning to work otherwise if they don't **the period must count as a break in LGPS Membership**.
- **Paternity Leave** over the statutory 2 weeks is treated like Authorised Unpaid Leave (see above).

### Action for responsible HR & Payroll clerks

- Deduct contributions for any Added Years and ARC contributions at the rate they would normally have been due in respect of the period
- Write to Avon Pension Fund with details of the period of Maternity or Adoption leave – a sample letter is in the Employer’s Manual Deduct contributions for any Added Years and ARC contributions at the rate they would normally have been due in respect of the period
- If there is a period of unpaid Additional Maternity or Adoption Leave Write to the Member as soon as they return to work to tell them about their right to pay contributions within 30 days - a sample letter is in the Employer’s Manual to be sent with **form LGPS 7** ‘Maternity/Adoption Leave – Payment of Contributions’ N.B. the LGPS 7 form must be signed by an Authorised Signatory of your organisation who has been registered with Avon Pension Fund on an LGPS 53 form.

### What do I do if a Member has had a period of Unauthorised Absence?

Any periods of **unauthorised** absence must count as a **break in LGPS Membership** unless it is due to a **Trade Dispute** (e.g. a strike), in which case the Member can elect within 30 days of returning to work for the days to count as Membership by paying contributions of 16% of the pay they would have received (no employer’s contributions have to be paid). Unless the Member has paid contributions for a Trade Dispute you must tell Avon Pension Fund that there is a break in Membership.

### Action for responsible HR & Payroll clerks

- Deduct contributions for any Added Years and ARC contributions at the rate they would normally have been due in respect of the period
- Write to Avon Pension Fund with details of the period of Maternity or Adoption leave – a sample letter is in the Employer’s Manual which can be downloaded from the Employers Area of the Avon Pension Fund website.
- If there is a period of Unauthorised Absence due to a Trade Dispute, write to the Member as soon as they return to work to tell them about their right to pay contributions within 30 days - a sample letter is in the Employer’s Manual to be sent with form **LGPS 8** ‘Absence Due to a Trade Dispute – Payment of Contributions’. N.B. the LGPS 8 form must be signed by an Authorised Signatory of your organisation who has been registered with Avon Pension Fund on an LGPS 53 form.

## The consequences of not telling the Member or Avon Pension Fund about periods of Unpaid Absence

If a responsible HR or Payroll clerk doesn't advise the Member in good time of a right to pay pension contributions for a period of unpaid absence within 30 days of their return to work then the Member might initiate **IDRP** when they find out.

If a responsible HR or Payroll clerk fails to deduct compulsory pension contributions for the first 30 days of unpaid absence, the Member will continue to be credited in full by Avon Pension Fund for that period of LGPS Membership. An example of how a 30 day period which the Member hasn't paid for might increase their pension (based on Pay of £25,000) is outlined below:

$$£25,000 \times 30/365 \times 1/60 = £34.25$$

$$£34.25 \times 20 = \mathbf{£697.00}$$

Pensions are a form of Pay and the cost of providing the sum of £697.00 that **the HR or Payroll clerk has overpaid the Member** will increase the cost to the Pension Fund for providing benefits for their organisation, and this strain will ultimately be picked up by increases in their Employer's Contribution Rate.

If, for example, a responsible HR or Payroll clerk fails to tell Avon Pension Fund about a Member who takes a 6 month period of unpaid absence, we would continue to credit them in full with a period of LGPS Membership that they haven't paid for, and the Member's pension would be unduly increased as follows:

$$£25,000 \times 182/365 \times 1/60 = £207.76$$

$$£207.76 \times 20 = \mathbf{£4,155.20}$$

The cost of providing the sum of £4,155.20 that **the HR or Payroll clerk has overpaid the Member** will be picked up by their organisation in exactly the same way. Any overpayment the HR or Payroll clerk makes will of course be considerably higher if subsequent Survivor's Pensions are payable to the Member's partner or children, or if they fail to deduct compulsory contributions due on Added Years and ARC contracts during periods of unpaid absence.

An HR or Payroll clerk who overpays staff via the pension scheme by failing to deduct pension contributions when they're due, or omitting to tell Avon Pension Fund that they've had a period of unpaid absence (and should have a corresponding break in LGPS Membership), is likely to draw the attention of their organisation's internal and external Auditors onto themselves.

## Leaving the LGPS

### What must I do when someone leaves the LGPS?

When a Member leaves pensionable employment (i.e. when they stop paying into the LGPS), the question of whether or not they are entitled to immediate payment of LGPS benefits is a '**First Instance Decision**' of the Scheme Employer. The LGPS Regulations state that the Scheme Employer must make their decision and write to the Member, informing them of the decision, the reason for the decision and their right of appeal under IDR, as soon as reasonably practicable. A Scheme Employer failing to make a First Instance Decision **as soon as reasonably practicable** is in itself grounds for a Member to initiate IDR.

**Scheme Employers must securely retain a copy all elections to Opt Out of the LGPS** (form LGPS 4) **until the Member's 75th birthday**. Under the Regulations it is the Scheme Employer which decides entitlement to LGPS Membership and the majority of eligible employees should be auto-enrolled. Your organisation may be required to prove to a former employee, or the Pensions Ombudsman, several years (or even several decades) after an individual has left your employment that reason they have no benefits in the Avon Pension Fund of the LGPS is because they opted out after you auto-enrolled them.

The responsible HR & Payroll officers must tell Avon Pension Fund as soon as they know a Member has left, or is leaving, pensionable employment by completing **form LGPS 15** 'Leaving the LGPS' on which they must provide us with the **reason for leaving** (e.g. 'opted out of the LGPS' or 'resigned from work') and the **Final Pay** and other financial information we need in order to calculate the LGPS benefits, also attaching any necessary copies of certificates and letters to the Member as indicated on the form. Form LGPS 15 can be downloaded from the Forms section of the Employers Area of the Avon Pension Fund website. Avon Pension Fund will then calculate the amount of the Member's benefits entitlement based on the First Instance Decision of the Scheme Employer.

## How do I calculate Final Pay?

In most cases, Final Pay will be the average of the pensionable pay a Member has received in their final 12 months pensionable employment, at the whole-time equivalent if the Member is part-time. However, either of the preceding 2 years should be used as the Final Pay if the figures would be higher. If the Member has had a compulsory or voluntary downgrading in the last 10 years then the average of the best 3 years consecutive pay (uprated by RPI) in the last 10 years can be used as Final Pay.

Pensionable pay includes the whole time basic pay and emoluments (bonuses and allowances) on which the Member has paid pension contributions.

Final Pay is calculated as follows:

### Example 1

Ms Smith, an office supervisor, left pensionable employment on 24 November 2009, her Final Pay is the final 12 months pensionable pay from 25 November 2008 to 24 November 2009.

#### Basic Pay:

From 1 April 2009 her basic Pay was £24,000, previously it was £22,000. She also earned £900 of non-contractual overtime during her final 12 months which does **not** count towards her Final Pay. Final Pay is calculated by months and days:

Final Pay is calculated by months and days:

**25.11.2008 to 31.3.2009** at £22,000 (£1,833.33 per month) =

6/30 days + 4 months X £1,833.33 = **£7,699.99**

**1.4.2009 to 24.11.2009** at £24,000 (£2,000.00 per month) =

24/30 days + 7 months X £2,000.00 = **£15,600.00**

#### Pensionable Emolument:

In January 2009 Ms Smith was also paid a pensionable Honorarium of £2,000 for additional duties she undertook between 1 January 2008 and 31 December 2008. Part of this honorarium therefore falls into the final 12 months calculation period:

**25.11.2008 to 31.12.2008** at £2,000.00 (£166.67 per month) =

25/30 days + 1 month X £166.67 = **£305.56**

#### Final Pay =

Basic Pay £7,699.99 + £15,600.00

+ Honorarium £300.01

= **£23,605.55**

## Example 2

Mr Jones, a **part-time** caretaker, left pensionable employment on 30 December 2009. He worked 18½ hours a week out of a potential whole-time maximum of 37. His Final Pay is his whole-time equivalent final 12 months pensionable pay from 31 December 2008 to 30 December 2009.

### Basic Pay:

From 1 August 2009 his basic Pay was £9,500 (a whole-time equivalent (WTE) of £19,000), previously it was £9,250 (a WTE of £18,500).

**31.12.2008 to 31.7.2009** at £18,500 WTE (£1,541.67 per month WTE)

1/31 days + 7 months X £1,541.67 = **£10,841.42**

**1.8.2009 to 30.12.2009** at £19,000 WTE (£1,583.33 per month WTE)

30/31 days + 4 months X £1,583.33 = **£7,865.57**

**Emoluments** - Mr Jones was also paid pensionable Shift Allowance of £75 (£150 WTE) and pensionable Weekend Working Allowance of £60 (£120 WTE) per month from 1 August 2009, previously the Shift Allowance was £65 (£130 WTE) and the Weekend Working Allowance was £50 (£100 WTE).

### Shift Allowance

**31.12.2008 to 31.7.2009** at £130 per month WTE

1/31 days + 7 months X £130 = **£914.19**

**1.8.2009 to 30.12.2009** at £150 per month WTE

30/31 days + 4 months X £150 = **£745.16**

### Weekend Working Allowance

**31.12.2008 to 31.7.2009** at £100 per month WTE

1/31 days + 7 months X £100 = **£703.23**

**1.8.2009 to 30.12.2009** at £130 per month WTE

30/31 days + 4 months X £130 = **£645.81**

### Final Pay =

Basic Pay £10,841.42 + £7,865.57

+ Shift Allowance £914.19 + £745.16

+ Weekend Working Allowance £703.23 + £645.81

= **£21,715.38**

## Term Time Workers

Although term time workers paid pension contributions on the maximum number of weeks they could work in a year, their Final Pay must be based on the whole-time equivalent pensionable pay they would have earned if they had worked 52 & 1/7 weeks per year.

## Best of the last 3 years pay

Final Pay is usually the last 12 months pensionable pay but Scheme Employers must use either of the previous 2 years as Final Pay if it would produce a higher figure. For example, for someone leaving pensionable employment on 1 January 2010, Final Pay will be the higher of the pensionable pay from:

- 2 January 2009 to 1 January 2010
- 2 January 2008 to 1 January 2009
- 2 January 2007 to 1 January 2008

## Downgrading in the last 10 years

Scheme Employers must **record a minimum of 10 years of pay records** for each employee who is a Member of the LGPS. A Member (other than a Member who has previously taken flexible retirement) whose pay goes down in the last 10 years before retirement as a result of **downgrading** or, with the consent of the Scheme Employer, taking a post with less responsibility, can **choose to have benefits based on the best consecutive 3 years pay in the last 10 years** ending on a 31st March. Each three year pay figure will be calculated on the basis of an **average figure**, and this average will be **increased by Pensions Increase (PI) factors**.

Below is an **example calculation** based on a person who retires in 2020 having 13 years of Membership of the scheme from 2007 and who suffered a significant pay drop in 2013/14. (PI factors are assumptions):

| Pay Period      | Pay     |
|-----------------|---------|
| Year to 31/3/20 | £16,920 |
| Year to 31/3/19 | £16,020 |
| Year to 31/3/18 | £15,300 |
| Year to 31/3/17 | £14,760 |
| Year to 31/3/16 | £14,247 |
| Year to 31/3/15 | £13,746 |
| Year to 31/3/14 | £13,260 |
| Year to 31/3/13 | £15,981 |
| Year to 31/3/12 | £15,183 |
| Year to 31/3/11 | £14,418 |
| Year to 31/3/10 | £13,890 |
| Year to 31/3/09 | £13,290 |
| Year to 31/3/08 | £12,750 |

Comparing Pay, and the 3 year averages for each 3 year period for the last 10 years before retirement (increased by PI where appropriate), it is clear that the **most beneficial Final Pay figure** for calculating pension benefits in this example would be that for the period from 01/04/2010 to 31/03/2013:

| Pay Period                  | Average Pay | PI Factor (assumptions) | Average Pay (increased by PI) |
|-----------------------------|-------------|-------------------------|-------------------------------|
| <b>Final year's pay:</b>    |             |                         |                               |
| 01/04/2019 to 31/03/2020    | £16,920     | n/a                     | £16,920.00                    |
| <b>Three year averages:</b> |             |                         |                               |
| 01/04/2017 to 31/03/2020    | £16,080     | n/a                     | £16,080.00                    |
| 01/04/2016 to 31/03/2019    | £15,360     | 1.55%                   | £15,598.08                    |
| 01/04/2015 to 31/03/2018    | £14,769     | 4.54%                   | £15,439.51                    |
| 01/04/2014 to 31/03/2017    | £14,251     | 6.89%                   | £15,232.89                    |
| 01/04/2013 to 31/03/2016    | £13,751     | 8.70%                   | £14,947.34                    |
| 01/04/2012 to 31/03/2015    | £14,329     | 11.43%                  | £15,966.80                    |
| 01/04/2011 to 31/03/2014    | £14,808     | 13.86%                  | £16,860.39                    |
| 01/04/2010 to 31/03/2013    | £15,194     | 16.32%                  | £17,673.66                    |

If the Scheme Employer issued a **Certificates of Protection of Pension Benefits** to the Member under the 1997 Regulations (for a compulsory reduction or restriction in Pay before 1 April 2008) then they **must provide 13 years Final Pay figures from the date of change.**

## Does Unauthorised Unpaid Absence affect the calculation of Final Pay?

Where a Member has had a period of unauthorised unpaid absence after 1 April 2008 those days are **not** to be counted in the calculation of Final Pay (except where the Member has elected to pay contributions in respect of a Trade Dispute). Therefore, where a Member can only count **part** of their final year as Membership, the Final Pay would be the last 12 months pensionable pay (or WT equivalent) multiplied by 365 and divided by the number of days absence.

Up to 31 March 2008 the practice was to count backwards by the length of the unpaid period to use the last 365 days on which the Member was actually paid, however, **from 1 April 2008**, HR & Payroll clerks must **not** count backwards, by the length of the unpaid period, to use the last 365 days on which the Member was actually paid.

**For example**, a person leaving on 30.9.2008 has 2 days unauthorised absence: You would use the pensionable pay (or WT equivalent) they would have received for the period 1.10.2007 to 30.9.2008 (minus 2 days pay - not including weekends) X 365 divided by 363 (ignoring the leap year day) e.g.:

01.10.07 – 31.03.08 :  $6/12 \times \text{£}20,000 = \text{£}10,000.00$   
01.04.08 – 30.09.08 :  $6/12 \times \text{£}22,000 = \text{£}11,000.00$   
Less  $2/260 \times \text{£}22,000 = \text{£} 169.23$   
Total  $\text{£}20,830.77 \times 365/363 = \text{£}20,945.54$

If the same person was absent due to a Trade Dispute (i.e. a strike) for 2 days and on their return to work elected to **pay contributions** for the strike days to count as Membership, you would use the pensionable Pay they would have received for the period 1.10.2007 to 30.9.2008 if they hadn't been absent for the 2 days e.g.:

01.10.07. – 31.03.08 :  $6/12 \times \text{£}20,000 = \text{£}10,000$   
01.04.08 – 30.09.08 :  $6/12 \times \text{£}22,000 = \text{£}11,000$   
Total = **£21,000**

## What must I do when someone resigns from work, opts out of the LGPS, or is dismissed?

When a Member leaves pensionable employment, or elects to opt out of the LGPS, they will be given a refund of their pension contributions (minus statutory deductions) if they have less than 3 months LGPS Membership, or awarded a **Deferred Benefit** by Avon Pension Fund if they have 3 or more months LGPS Membership, or have transferred other pension rights into the LGPS. You must complete and send **form LGPS 15** to Avon Pension Fund **without delay**. An LGPS 15 form can be downloaded from the Forms section of the Employers Area of the Avon Pension Fund website.

This is **most important** because:

- Legislation states that a Member should be sent a Deferred Benefit statement **within 2 months of leaving pensionable employment**; and to calculate this we need the information you give us on the LGPS 15 form. **The potential fine for not sending a Deferred Benefit statement within 2 months of leaving is £50,000 per case.**
- Many Members below retirement age will want to transfer their LGPS benefits to a new pension scheme. Avon Pension Fund is **legally required** to provide a transfer value of an individual's pension rights **within 2 months of being requested** to do so by another pension scheme; and to calculate this we need the information you give us on the LGPS 15 form. **The potential fine for not sending a transfer value of a Member's pension rights with 2 months of it being requested is £50,000 per case.**

Where a Member has been **dismissed and convicted for an employment-related offence** a Scheme Employer may apply to the Secretary of State for a **Forfeiture Certificate**, and then make the decision whether or not the Member's LGPS benefits should be forfeited on the grounds that the offence was gravely injurious to the State or could lead to a serious loss of confidence in public service.

## What must I do when my organisation is compulsorily retiring a Member, or allowing them to take their benefits early?

When you are compulsorily retiring a Member, i.e. on grounds of **efficiency, redundancy, permanent ill health** or where they will soon reach the **Normal Retirement Age of 65** and you do not permit staff to work beyond that age, or you are permitting them to take early payment of benefits from age 55 (50 until 1.4.2010 for existing Members before 1.4.2008), then you must send **form LGPS 15** to Avon Pension Fund **without delay** so that we can calculate their pension benefits **before** their retirement date. This is **most important** because under HM Revenue & Customs rules a Member must make an election to give up part of their pension to buy a larger lump sum before their retirement date. With the form you must also **attach a copy of your dismissal letter** to the Member (in which you must tell them about your First Instance Decision, the reason for your decision, the address from which they can obtain further information, and their right of appeal under IDRP).

Where a Scheme Employer compulsorily retires a Member before the LGPS Normal Retirement Age (e.g. on the grounds of redundancy or business efficiency) they will be invoiced for direct 'Strain on the Fund' costs. Where the Scheme Employer consents for benefits to be paid early (e.g. voluntary early retirement or flexible retirement) some Strain on the Fund costs may be payable; Scheme Employers can choose to **waive any reductions for early payment** from the Member's benefits on compassionate grounds and they will be invoiced for direct 'Strain on the Fund' costs.

Where you are retiring a Member on the grounds of **permanent ill health**, the Regulations require you to take the advice of an independent doctor qualified in occupational health medicine on whether or not they are permanently unfit. The doctor must complete the correct medical certificate **LGPS 17B** for Councillor Members and **LGPS 17A** for non-Councillor Members. For a non-Councillor Member, the doctor is also asked to confirm whether or not they have a **reduced likelihood of being able to obtain gainful employment** and, if so, the Scheme Employer must also make a First Instance Decision to **award them a Tier of ill health retirement benefit**. In addition to form LGPS 15 and a copy of your letter to the Member, you must also attach a **copy of the medical certificate** from the doctor. The Scheme Employer must **stop Tier 3 benefits** if gainful employment is found and carry **out a review 18 months after payment has commenced**. The cost of ill health retirements falls on the Fund in general and Scheme Employers are not directly charged.

A **summary** of the Tiers of ill health retirement benefits is shown below:

|                 | <b>Eligibility for Tier of Ill Health Retirement Benefit</b>  | <b>Benefits provided by each Tier</b>  | <b>Protections for Member under previous LGPS Regulations</b>   | <b>Employer to Review the Benefit?</b> |
|-----------------|---|--|---|--|
| <b>1st tier</b> | those employees who leave because they are permanently incapable of their current employment but are not likely to work before normal retirement age (NRA)                                    | enhancement to accrued retirement benefits - 100% of Membership to NRA   | Those aged 45 before 1 April 2008 will receive the greater of the amount under either 2007 or 1997 ill health Regulations | <b>NO</b>                              |
| <b>2nd tier</b> | those employees permanently incapable of their current employment but are likely to be capable of work before NRA.  | enhancement to accrued retirement benefits - 25% of Membership to NRA  | Those aged 45 before 1 April 2008 will receive the greater of the amount under either 2007 or 1997 ill health Regulations | <b>NO</b>                              |
| <b>3rd tier</b> | those assessed as being permanently incapable of their current employment but medical evidence indicates that gainful employment could be obtained at the point of leaving or within 3 years. | Accrued retirement benefits at the point of leaving, but payments can be suspended when gainful employment is obtained | Not applicable  | <b>YES - at 18 months</b>              |

## If I know that someone who is resigning over the age of 60 wants to take their LGPS benefits straight away, is there anything I should do?

When a Member is **60**, they have reached the age on which they can **choose to take voluntary early payment** of their LGPS benefits without needing the consent of their Scheme Employer, although any payments made before age 65 may be permanently reduced for early payment because they will be paid for longer. LGPS Members can choose to put off taking payment of their benefits until any time up to the day before their 75th birthday, therefore **Avon Pension Fund we will not assume** that just because a Member has reached a certain age that they intend to take immediate payment of their benefits.

If a Member has **indicated to you** that they wish to take immediate payment of LGPS benefits you should state this on **form LGPS 15** and forward it to Avon Pension Fund **without delay** so that we can calculate their pension benefits **before** their retirement date. This is **most important** because under HM Revenue & Customs rules a Member must make an election to give up part of their pension to buy a larger lump sum before their retirement date.

## Action for responsible HR & Payroll clerks

- Where the Member is retiring, send **form LGPS 15** to Avon Pension Fund several weeks before the retirement date with a copy of the dismissal letter. N.B. the LGPS 15 form must be signed by an Authorised Signatory of your organisation who has been registered with Avon Pension Fund on an LGPS 53 form.
- Where the Member has been retired on the grounds of permanent ill health and the Scheme Employer has awarded a Tier 3 benefit, a record must be made of the need to review the benefit after 18 months
- Where the Member is not retiring, send form LGPS 15 to Avon Pension Fund in time for us to calculate and issue a Deferred Benefit statement well within 2 months of the leaving date, along with a copy of any dismissal letter. N.B. the LGPS 15 form must be signed by an Authorised Signatory of your organisation who has been registered with Avon Pension Fund on an LGPS 53 form.

## What must I do if an LGPS Member dies in service?

The responsible HR & Payroll clerk should send **form LGPS 15** to Avon Pension Fund **without delay** so that we can send details of any benefits due to their beneficiaries as soon as possible. Death in Service cases should be **treated with particular sensitivity** and as Avon Pension Fund might not have a record of the individual being married etc it would be helpful if you could let us know of any next-of-kin such as a surviving partner or children.

## What might happen if I don't make a First Instance Decision for a Leaver as soon as 'reasonably practicable' and send form LGPS 15 to Avon Pension Fund?

A Member can initiate **IDRP** when a Scheme Employer fails to make a First Instance Decision as soon as 'reasonably practicable'.

For leavers who are retiring immediately:

- In retirement cases, any delay whatsoever is likely to **incur vehement complaints** from the Member. Avon Pension Fund's procedure is to have calculated and written to a Member about their retirement benefits, received their choice of options and set them up on the pensions payroll system in time to hand them or post their lump sum cheque on their actual date of retirement. If form LGPS 15 is not received several weeks before a Member's retirement date then **all complaints will be referred back to the Scheme Employer**, including those relating to delays which have caused **late payments**, or complaints which have caused a Member to **lose their right to take a lump sum**, or complaints which result in appeals to the Pensions Ombudsman or the Courts.

For leavers who are not retiring immediately:

- A Scheme Employer and Avon Pension Fund can be **fined** for failing to issue a Deferred Benefit statement to a Member **within 2 months** of them leaving pensionable employment (including Opting Out of the LGPS). The fines are £540,000 on the organisation and £54,000 on the responsible individual (this could be you!), per case. Where we have not received form LGPS 15 in time to calculate the Deferred Benefits, come back to the Scheme Employer with any queries, and issue the Deferred Benefits statement within the 2 months time limit, Avon Pension Fund has the **legal power to recover** from a Scheme Employer any additional costs it incurs (including any fines) as a result of them not providing accurate and timely information.
- Avon Pension Fund can be **fined** for not providing another pension scheme with a transfer value of a Member's pension rights **within 2 months** of it being requested. The fines are £540,000 on the organisation and £54,000 on the responsible individual (this could be you!), per case. Where we have not received form LGPS 15 in time to calculate the transfer value, come back to the Scheme Employer with any queries, and issue the transfer value statement within the 2 months time limit, Avon Pension Fund has the **legal power to recover** from a Scheme Employer any additional costs it incurs (including any fines) as a result of them not providing accurate and timely information.

## Does a Scheme Employer have continuing responsibility for Members who've Left?

Yes, there are 2 main areas where the Scheme Employer has continuing responsibility:

- If the Scheme Employer has awarded a **Tier 3 ill health retirement benefit** to a non-Councillor Member they must tell the Member in writing that they are required to inform their former employer when they find employment. The Scheme Employer must then **determine** whether or not that employment constitutes **Gainful Employment**, i.e. 30 hours a week for 12 months or more, and if so **tell** Avon Pension Fund so that we can stop payment of the Tier 3 pension. The Scheme Employer must also **carry out a review of the entitlement 18 months after payment commenced**. The review must include taking the advice of an independent doctor qualified in occupational health medicine. Payment of benefits must stop if the Member is found to be capable of obtaining gainful employment now. The Scheme Employer can move a Member into **Tier 2** if the doctor is of the opinion that they are not now likely to obtain gainful employment within 3 years because of the original condition. If the payment of Tier 3 benefits continues beyond the 18 month review, and the Member does not obtain Gainful Employment, the Scheme Employer must stop payment 3 years after the original employment ceased.
- Where the Member has been awarded a **Deferred Benefit**, they may apply to the Scheme Employer for those benefits to be put into payment early, i.e. before the Normal Retirement Age. If the individual was an Active Member before 6 April 2006 and awarded a Deferred Benefit before 1 April 2008 their benefits may be paid from age 50. If the individual was not an Active Member before 6 April 2006, or they were awarded a Deferred Benefit after 1 April 2008, their benefits may be paid from age 55 (age 50 until 1.4.2010). Where the Scheme Employer **consents for Deferred Benefits to be paid early** they can choose to waive any reductions for early payment on compassionate grounds. Where the **Member with Deferred Benefits applies for ill health retirement**, this can be awarded at any age. When making their decision the Scheme Employer must take the advice of an independent doctor qualified in occupational health medicine. It is important that the Scheme Employer gives the doctor the correct medical certificate to complete (i.e. either form LGPS 18 A/B/C or D) as the certificates ask the doctor different questions for different categories of Members.

## Action for responsible HR & Payroll clerks

- If a Tier 3 Member tells you that they have found employment determine whether or not it is gainful employment and inform Avon Pension Fund if payments are to stop
- Review a Tier 3 ill health benefit after 18 months and inform Avon Pension Fund if payments are to stop or the Member is to move into Tier 2
- Consider applications for early payment of a Deferred Benefit in line with your organisation's Policy on Discretions under the LGPS Regulations (i.e. Regulation 30)
- When making a decision on early payment of a Deferred Benefit on grounds of permanent ill health, refer the applicant to your IOHP with the correct LGPS 18 A/B/C/D form.

**What happens if I don't tell Avon Pension Fund when a Tier 3 Member has obtained Gainful Employment, or carry out a review of a Tier 3 benefit after 18 months?**

- A Member with a 3rd Tier ill health benefit is legally obliged to tell their Scheme Employer if they obtain employment and **the Scheme Employer must determine whether or not it is gainful employment**, i.e. 30 hours a week for 12 months or more. If the employment is gainful employment the Scheme Employer must tell Avon Pension Fund immediately so that we can stop payment of the pension. The Scheme Employer should recover any overpayments which have been made to the Member and send them to Avon Pension Fund. If the Member ends up being overpaid because the Scheme Employer has failed to make a timely determination, or failed to tell Avon Pension Fund that gainful employment has been obtained, then **any overpayment will be reclaimed from the Scheme Employer**. Avon Pension Fund has the legal power to recover from a Scheme Employer any additional costs it incurs as a result of them not providing accurate and timely information.
- The Scheme Employer is under a legal obligation to **carry out a review of Tier 3 benefits after 18 months** at which time payment of the Member's benefits must be stopped if the doctor is of the opinion that they were capable of obtaining gainful employment at that time. If the Member ends up being overpaid because the Scheme Employer has not carried out a review, or told Avon Pension Fund that Tier 3 benefits should stop, then **any overpayment will be reclaimed from the Scheme Employer**. Avon Pension Fund has the legal power to recover from a Scheme Employer any additional costs it incurs as a result of them not providing accurate and timely information.

## Outsourcing (TUPE)

This section of the guide is designed to give you a brief overview of outsourcing as it relates to pension arrangement and to the LGPS. Outsourcing LGPS Members is a complex legal process largely governed by Transfer of Undertakings (Protection of Employment) Regulations 2006, the LGPS (Administration) Regulations 2008, and Government directions and guidance. HR and Payroll clerks involved in an outsourcing exercise should refer any questions on how to proceed to your Manager who is expected to be familiar with the relevant legislation and also the content of the following documents:

- Avon Pension Fund's **'Procedure for Managing Admission Body Applications and Controlling Admission Body Risk'**
- **The Best Value Authorities Staff Transfers (Pensions) Direction 2007** (under the Local Government Act 2003 S101 & S102)
- Cabinet Office **'Staff Transfers in the Public Sector'** 2007 (revised edition) including the documents:
  1. HM Treasury's **'A Fair Deal for Staff Pensions'** 1999; and
  2. **'Assessment of broad comparability of pension rights: Statement of Practice by the Government Actuary'** 1999
- HM Treasury's **'Fair Deal for Staff Pensions: Further Guidance'** 2004
- The ODPM **'Code of Practice on Workforce Matters in Local Authority Service Contracts'** (Annex D) 2003; or the Cabinet Office **'Code of Practice on Workforce Matters in Public Sector Service Contracts'** 2005, as appropriate.

If you'd like to read them yourself, these documents are available in the Employers section of the Avon Pension Fund website at [www.avonpensionfund.org.uk](http://www.avonpensionfund.org.uk) via the TUPE link.

## Which Scheme Employers must consider pension provision for their staff as part of a TUPE transfer?

The Best Value Authorities Staff Transfers (Pensions) Direction 2007 states that a 'Best Value Authority' is legally required to ensure that transferring employees are offered either continuing Membership of the LGPS or a 'broadly comparable' pension scheme if their employment is transferred under TUPE to another employer. A 'Best Value Authority' (under the Local Government Act 1999) includes Local Authorities (such as District and Parish Councils), and Police, Fire and Waste Authorities. The Secretary of State can order that levying and precepting bodies (under the Local Government Finance Acts) are also Best Value Authorities.

Other Public Sector employers (e.g. organisations funded by the State) which are not Best Value Authorities, should follow the guidance in the Cabinet Office's 'Staff Transfers in the Public Sector' document which states that TUPE terms ought to apply (even if they don't have to legally), that there should be 'appropriate terms' to protect occupational pensions, and that ministers expect Public Sector employers to adopt the policy set out in HM Treasury's 'A Fair Deal for Staff Pensions' (i.e. offering continuing Membership of the LGPS or transferring to a 'broadly comparable' scheme).

### How do Best Value Authorities or other Public Sector employers ensure their staff have continuing LGPS Membership or a 'broadly comparable' scheme?

The outsourcing Scheme Employer should ensure that the organisation to which staff are being transferred either becomes a Transferee Admission Body of Avon Pension Fund, in which case that organisation would become the new LGPS Scheme Employer of the transferred staff, or offers the staff membership of a pension scheme which is 'broadly comparable' to or better than the LGPS.

Local Authorities should include the ODPM 'Code of Practice on Workforce Matters in Local Authority Service Contracts' (Annex D) in a service contract.

### At what stage of the outsourcing exercise should pensions be considered?

As outlined in HM Treasury's 'A Fair Deal for Staff Pensions' a Best Value Authority or other Public Sector employer must **consider pensions right at the start of an outsourcing exercise**. Pensions are a fundamental part of the reward package an employer gives its staff, so if a Scheme Employer doesn't include pension arrangements in a tender document then a potential service provider, to which the staff will transfer under TUPE, won't be able to submit a realistic bid to provide the service.

### How does a Scheme Employer find out the cost of providing LGPS benefits for a group of employees?

Avon Pension Fund's Scheme Actuary will work out the cost and produce a '**Risk Assessment**' based on demographic and payroll details of the transferring staff provided by the Scheme Employer. The Risk Assessment will set out the new Employer Contribution Rate and overall liabilities for providing pensions for the staff (so the Scheme Employer can decide if it requires a **bond** in the event of the premature termination of the contract e.g. if the outsourced company goes into liquidation). A Risk Assessment is likely to **cost a Scheme Employer several thousand pounds**. It will take the Scheme Actuary at least **6 to 8 weeks to produce** and cannot be done any quicker than this. If there are subsequent changes to the group of staff which may be transferred it's probable that a new Risk Assessment will be required.

### How does an organisation to which staff will transfer join the LGPS

The organisation must apply to become a Transferee Admission Body of Avon Pension Fund. This will involve the Scheme Employer, the organisation and Avon Pension Fund jointly signing an '**Admission Agreement**' drawn up by our lawyers. This process **normally takes several weeks**. An example of an Admission Agreement can be viewed in the Employers section of the Avon Pension Fund website at [www.avonpensionfund.org.uk](http://www.avonpensionfund.org.uk) via the TUPE link. The organisation must also **put an indemnity or bond in place** if required by the Scheme Employer, to cover the level of risk arising on premature termination of the contract.

## New employees working on an outsourced service contract (the Two Tier Code)

The 'Code of Practice on Workforce Matters in Local Authority Service Contracts (Annex D)' (issued on 13 March 2003) states that any new joiners to the transferred-out workforce (i.e. new people working on the Council's outsourced service contract) must be offered reasonable pension provision. This is defined as either Membership of the LGPS, membership of a contracted-out final-salary occupational pension scheme, or membership of a defined contribution occupational pension scheme or stakeholder pension scheme with matching employer contributions of up to 6% or more. Local Authorities are required to monitor and enforce compliance with Best Value requirements, including the Code, and certify it in their Performance Plans. If a contract is re-tendered the new service provider is required to offer one of these options to eligible transferring staff.

## Once staff have been transferred, can an outsourcing Scheme Employer have any continuing liability towards the LGPS?

Yes, at the end of the contract the original Scheme Employer will have to pay any outstanding liabilities owed to Avon Pension Fund if the contract is terminated prematurely, e.g. the organisation to which the staff transfer goes into liquidation, the original Scheme Employer will have to pay any outstanding liabilities owed to Avon Pension Fund which are not covered by a bond or paid by the Transferee Admission Body A new Risk Assessment will determine the amount of those liabilities.

## Action for responsible HR & Payroll clerks

- Ensure that pensions are considered right at the beginning of an outsourcing exercise
- Ensure that future pension arrangements for outsourced staff comply with legislative requirements and Government guidance
- If the outsourcing Scheme Employer requires staff to have continuing Membership of the LGPS, follow Avon Pension Fund's '**Procedure for Managing Admission Body Applications and Controlling Admission Body Risk**'
- Provide the Avon Pension Fund with full and accurate details of staff who may be transferred in good time for our Scheme Actuary to calculate a Risk Assessment before tenders are invited and provide any updated staff information as necessary in good time for our lawyers to prepare an Admission Agreement
- Deal with anything Avon Pension Fund sends to you re setting up an Admission Agreement without delay
- Provide the organisation to which staff transfer with the last 10 years pensions payroll data for transferring Members (or longer as appropriate if you have issued the Member with a Certificate of Protection)
- Provide the outsource company with an overview of the employer's role in administering the LGPS e.g. providing information to Avon Pension Fund, deducting LGPS contributions, D rate and contracted-out earnings etc

### What will happen if a Best Value Authority or other Public Sector employer doesn't take proper account of occupational pension provision in an outsourcing exercise?

If a Best Value Authority or other Public Sector employer doesn't consider occupational pension provision right at the beginning of an outsourcing exercise then, when the question of pensions is finally raised, it's likely to end up causing the outsourcing exercise to be delayed (or even to fail), with associated costs falling on the outsourcing Scheme Employer.

If staff are transferred to a new employer without arrangements having been made for either continuing Membership of the LGPS, or a 'broadly comparable' scheme, then the Scheme Employer will have failed to comply with the legal requirements and would be likely to find themselves in **significant legal difficulties**. A Scheme Employer would probably find themselves in **legal difficulties** of the **utmost seriousness** if, for example, **one of the transferred staff died** without at least being in a 'broadly comparable' scheme, because they would **no longer be covered by the LGPS** as an Active Member for either the lump sum death grant of 3 year's pay or enhanced Survivor's pensions for their partner and eligible children.

An organisation that deducts pension contributions for transferred staff without having an appropriate pension scheme to pay them into by the 19th of the following month would be in breach of the Occupational Pension Schemes (Scheme Administration) Regulations 1996 and liable to be **fined** by the Regulator.

### If there's a delay in a Scheme Employer sorting out pensions provision in a TUPE exercise, can't Avon Pension Fund just backdate an Admission Agreement?

**In short, the answer is no.** It's open to legal interpretation whether or not an Admission Agreement can be backdated at all and Avon Pension Fund is only prepared to consider backdating for a very short period (i.e. a matter of days) in **exceptional circumstances** if all parties are **at an advanced stage of getting an Admission Agreement signed**, and none of the transferred Members have died in the meantime.

**Exceptional circumstances do not include a Scheme Employer failing to make arrangements for continuing Membership of the LGPS, or the setting up of a 'broadly comparable' scheme, until a couple of months before the start date of an outsourcing contract.** Where initial enquiries about continuing Membership of the LGPS have been made 'exceptional circumstances' do not include delays caused by a Scheme Employer failing to respond to correspondence from Avon Pension Fund (or our lawyers or actuaries); or Scheme Employers requesting Risk Assessments (for the staff **actually** being transferred) and Admission Agreements close to the start date of an outsourcing contract. These Scheme Employers are unlikely to have appropriate pension provision in place for their transferring staff by the start date of the outsourcing contract and **Avon Pension Fund will not agree to backdate an Admission Agreement to the LGPS for them.**

## Further Information

### How can I learn more about the role of the Scheme Employer in administering the LGPS?

Full details of the procedures to be followed can be found in the Employers Manual. You can view a copy in the Employers Section of the Avon Pension Fund website at [www.avonpensionfund.org.uk](http://www.avonpensionfund.org.uk)

If you have any queries about what to do you can always contact us at Avon Pension Fund.

A section of Avon Pension Fund's website is specifically for Scheme Employers. This contains the '**Employers Manual**' detailing the procedures which you should follow and other relevant information.

The Local Government Employer's organisation (LGE) runs training courses specifically for HR & Payroll officers of Scheme Employers. These are advertised on their website at [www.lge.gov.uk](http://www.lge.gov.uk) via the link for Pensions and if you would like to go on one ask your Manager. LGE also publish Circulars on topics relevant to Scheme Employers which you can view on their website.

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October 2009

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April 2011