Understanding….

CARE, Pay
&
Final Pay

Index

Foreword

Throughout these workshop notes there are references to the “Benefit Regulations” which are references to the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (as amended). Any reference to the “1997 Regulations” is a reference to the Local Government Pension Scheme Regulations 1997 (as amended). A “timeline” version of both sets of regulations is available on-line at www.lgpsregs.org/timelineregs.

References to the “2013 Regulations” or “2014 Transitional Regulations” are references to the current regulations governing LGPS2014 and timeline versions of these are available at www.lgpsregs.org under the “Regulations and Legislation” tab.

These notes do not purport to cover every single aspect of “pay” in the LGPS, both in a CARE and Final Salary sense, but concentrate on those areas that are relevant for the vast majority of scheme members. There are Payroll, HR and Administration Guides available on-line which contain a vast amount of information on all aspects of administering the LGPS, including matters related to pay. They have the benefit of being constantly updated as things change and are located at www.lgpsregs.org/index.php/guides.

These workshop notes do not cover the position of councillors. Councillors in England who were in the LGPS on 31 March 2014, in accordance with regulation 26 of the “2014 Transitional Regulations” remained eligible for membership of the councillor section of Scheme under the LGPS Regulations 1997 until the end of the term of office they were serving on 1 April 2014. Councillors in Wales remain eligible for membership of the councillor section of Scheme under the LGPS Regulations 1997.

Finally, these notes also do not apply to employees or councillors in Scotland.

I hope you enjoy the training experience and find these notes of assistance when you return to work.

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Pensions Training & Development Manager

1) Pensionable Pay

WHAT CONSTITUTES PENSIONABLE PAY IN LGPS2008 & LGPS2014?

The structure of the definition of Pensionable Pay is basically the same in the 2014 Scheme as it was in the 2008 Scheme inasmuch as all earnings in respect of the job are pensionable apart from those listed in the regulations as exclusions.

It is important to understand however that there are some differences in the definition of pensionable pay between the two schemes and therefore what is pensionable for the purposes of CARE accrual from 1 April 2014 is different to what is pensionable (and therefore what will constitute final pay) for final salary linked benefits in respect of pre-1 April 2014 membership. The following table shows the definitions of pensionable pay in both schemes side by side, illustrating the differences easily.

2014 Scheme	**2008 Scheme**
Regulation 20(1) Subject to regulation 21 (assumed pensionable pay), an employee's pensionable pay is the total of— (a) all the salary, wages, fees and other payments paid to the employee, and (b) any benefit specified in the employee's contract of employment as being a pensionable emolument .	*Benefits Regulation 4(1)* An employee's pensionable pay is the total of— (a) all the salary, wages, fees and other payments paid to him for his own use in respect of his employment; and (b) any other payment or benefit specified in his contract of employment as being a pensionable emolument.
Regulation 20(2) But an employee's pensionable pay does not include—	*Benefits Regulation 4(2)* But an employee's pensionable pay does not include -
	(a) payments for non-contractual overtime;
(a) any sum which has not had income tax liability determined on it;	*Separate Regulation 4(3)* No sum may be taken into account in calculating pensionable pay unless income tax liability has been determined on it.

(b) any travelling, subsistence or other allowance paid in respect of expenses incurred in relation to the employment;	(b) any travelling, subsistence or other allowance paid in respect of expenses incurred in relation to the employment;
(c) any payment in consideration of loss of holidays;	(c) any payment in consideration of loss of holidays;
(d) any payment in lieu of notice to terminate a contract of employment;	(d) any payment in lieu of notice to terminate his contract of employment;
(e) any payment as an inducement not to terminate employment before the payment is made;	(e) any payment as an inducement not to terminate his employment before the payment is made;
(f) any amount treated as the money value to the employee of the provision of a motor vehicle or any amount paid in lieu of such provision; *(but see important note following this table)*	*Unrevoked 1997 Regulation 13(2)(f)* (f) any amount treated as the money value to the employee of the provision of a motor vehicle or any amount paid in lieu of such provision; *(but see important note following this table)*
(g) any payment in consideration of loss of future pensionable payments or benefits;	
(h) any award of compensation (excluding any sum representing arrears of pay) for the purpose of achieving equal pay in relation to other employees;	(g) any award of compensation (excluding any sum representing arrears of pay) for the purposes of achieving equal pay in relation to other employees."
(i) any payment made by the Scheme employer to a member on reserve forces service leave;	
(j) returning officer, or acting returning officer fees other than fees paid in respect of— (i) local government elections, (ii) elections for the National Assembly for Wales, (iii) Parliamentary elections, or (iv) European Parliamentary elections.	*Similar provisions (but making pensionable certain returning officer fees rather than de-pensioning certain others) are to be found in 2008 Administration Regulation 11*

(2014 Transitional Regulation 8(1)) any supplement paid a).to an employee whose employment transferred on 1st April 1996 to the Environment Agency or to such an employee who subsequently transferred on 1st April 2013 to the Natural Resources Body for Wales; or b).to an employee whose employment transferred on 1st April 2010 from the Learning and Skills Council for England to a local authority or to London Councils Limited in recognition of the difference in contribution rates between members of the principal civil service pension scheme and the 2008 or 2014 LGPS Schemes.	(f) the amount of any supplement paid— (i) by the Environment Agency; or (ii) to an employee whose employment is transferred on 1st April 2010, under a staff transfer scheme, from the Learning and Skills Council for England to a local authority or to London Councils Limited, in recognition of the difference in contribution rates between members of the principal civil service pension scheme and the Scheme;
	Unrevoked 1997 Regulation 13(2)(g) (g) in the case of an employee or former employee of the Commission for the New Towns, any payment made under any scheme relating to the termination of the employment of employees by the Commission in respect of the completion before a specified date of specified functions;
	Unrevoked 1997 Regulation 13(2)(h) (h) a payment made in consequence of a School Achievement Award under the scheme established by the Secretary of State known as the School Achievement Award Scheme.”

Important note on "cars"

The LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 provide that, despite the entry at Regulation 20(2)(f), if

a. an employee's pensionable pay at both 31st December 1992 and 31st March 1998 included an amount treated as the money value to the employee of the provision of a motor vehicle or any amount paid in lieu of such provision, or

b. an employee was, immediately before 2nd May 1995 in the process of converting the provision of a motor vehicle into an amount paid in lieu of such provision where the process was concluded before 1st July 1995 and the employee's pensionable pay at 31st March 1998 included such an amount,

the relevant amount remains pensionable until such time as the member leaves employment with the employer who was employing him / her on 31 December 1992 (otherwise than as a result of a transfer to another Scheme employer which is beyond the employee's control) or ceases to be provided with a motor vehicle or an amount representing the money value to him / her of the provision of such a vehicle.

Equivalent provisions are found in the 2008 Scheme by virtue of unrevoked 1997 Regulation 13(8) and 13(9).

The main differences

The biggest change to the exclusions list in the 2014 Scheme was that non-contractual overtime was removed so from 1 April 2014 non-contractual overtime became a pensionable item.

Another change was that a payment in consideration of loss of future pensionable payments or benefits, from 1 April 2014, became non-pensionable. So, for example, where an employer changes an employee's contract to remove contractual overtime and gives a lump sum payment in consideration for the loss of future pensionable payments (because the number of voluntary hours of overtime are expected to be less than the former number of contractual hours of overtime), that lump sum would be non-pensionable. Similarly, where an employer reduces the pay of an employee but offers a 'marked time' payment (e.g. to bring the employee's pay up to the former rate of pay for a limited period of time) the employer could, by defining that 'top-up' sum in the 'marked-time' agreement as a sum to be paid each pay period for a period of X months in consideration of the loss of future pensionable payments, make the 'top-up' payment non-pensionable.

A third change was that, from 1 April 2014, any actual pay paid by the Scheme employer to a reservist during Reserves Forces Service Leave became non-pensionable (during such leave, the employee and the Ministry of Defence pay contributions on the amount of Assumed Pensionable Pay).

Salary sacrifice, bought and sold leave

HMRC approved salary sacrifice arrangements where an employee has their contractual pay reduced by an agreed amount (supported by a variation to their contract) in return for a tax assessable benefit in kind from which income tax liability is then removed remained pensionable under the 2014 Scheme (where the benefit in kind is specified in the employee's contract of employment as being a pensionable emolument). Thus, the position remains the same as in the 2008 Scheme – see LGPC Circular 244 for more information.

Where holiday entitlement is sold in return for additional remuneration, the extra pay will (as in the 2008 Scheme) be non-pensionable, because it is a "payment in consideration of loss of holidays".

Where an employee forgoes remuneration in return for additional days of holiday this is, in effect, authorised unpaid leave of absence. Many employers have introduced such cost saving arrangements as a mechanism to help deal with budget constraints.

It should be noted that an employer might take a different approach to that set out above. Instead of introducing a system whereby an employee forgoes remuneration in return for additional days of holiday, the employer might make a change to the employee's contract of employment whereby the employee is only required to work for, say 360 days a year (in the same way that a term-time employee may contractually only be required to work term-time).

In the first approach, if the member is on, say, £20,001 a year and takes 5 days authorised unpaid leave of absence (for which a deduction will be made from pay) the employee contribution rate would be determined on a salary of £20,001 and the employee could purchase the pension 'lost' during those 5 days leave of absence by electing to pay an APC. If the member makes the APC election within 30 days of returning from the absence, it would be a shared cost APC i.e. the employer would compulsorily have to contribute 2/3rds of the cost of that APC.

Under the second approach, however, the member's salary would be £19,727 and if the member wanted to purchase the equivalent of the pension that would have been earned for another 5 days work they could do so via an APC. However, this would be at whole cost to the member (unless the employer voluntarily agreed to contribute towards the cost of that APC). Of course, under the second method, regulations 8 to 10 of the Benefit Regulations would apply if the member has membership prior to 1 April 2014 meaning that the final pay used to calculate the member's pre 1 April 2014 pension benefits would be the best one of the last 3 years pay or, if the pay reduction occurred in the 10 years preceding the date of leaving, the average of any 3 consecutive years ending on a 31 March in the last 13 years.

A third approach is where the employer continues to pay the employees in full (so each month's pay would attract full tax, National Insurance and pension contributions) but has the agreement of the employee to deduct a **net** sum on the deductions side of the payslip (i.e. the net sum the employee would have received for the day's leave after deduction of tax, NI and pension contributions). This overcomes the problem of having, in the first approach, to treat the leave as unpaid leave of absence and means there would be no effect on the employee's pension and no need for them to elect to purchase the period via an APC; and it overcomes the problem in the second approach of reducing the employee's pensionable pay and having to apply regulations 8 to 10 of the Benefit Regulations if the member has membership prior to 1 April 2014.

A net deduction can be made provided it is:

- authorised by the employee's contract - provided the employee has been given a written copy of the relevant terms or a written explanation of them before it is made, or

- consented to by the employee in writing before it is made.

Exercise 1

Pensionable or not?

Mr Workaholic commences employment with you and his first pay packet is comprised of many elements. Which of the elements are classed as pay for pension purposes and which are not?

Amount	Item	'08	'14
£2500.00	Salary		
£ 250.00	Performance-related Pay		
£1000.00	Cash equivalent of lease car		
£ 500.00	Contractual Overtime		
£ 850.00	Non-contractual overtime		
£ 296.75	Travelling Expenses		
£ 424.75	Subsistence expenses		
£ 18.00	First Aid Allowance		
£ 154.25	Weekend working enhancement		
£5993.75			

Next month he receives a similar pay packet but with an extra £1000 "honoraria" payment – Is it pensionable?

'08 **'14**

In a number of months' time his final month's pay packet includes £2500 payment in lieu of notice and £1000 payment in lieu of holidays not taken. Are either of these payments pensionable?

'08 **'14**

THE DANGERS OF DISTORTING THE "CURVE"

When pay is so crucial in the determination of benefits (as it is in the calculation of "final pay" LGPS for the purpose of final salary linked benefits) there are logical reasons for excluding elements of pay from being classed as pay for pension purposes.

If payment in lieu of notice, for example, was included as pay and a person was paid 3 months payment in lieu of notice, then they would have received a total of 15 months' pay in the last 365 days of their employment. Their benefits would be based on a pay figure that was 25% higher in the final year because of this and yet would have paid contributions over the years on a much lower figure.

If non-contractual overtime were to be included, members could lose or gain significantly. An employee working a lot of overtime in their early years but not so closer to retirement (which is the general trend) would pay significant contributions over the years but reap no benefit for this on retirement. Conversely, a person could work every hour possible in the year leading up to retirement (having worked little or no overtime previously) and exploit the pension fund considerably.

The Local Government Pension Scheme is designed to be fair, both to the employee and employer. As mentioned above, there are good reasons for certain elements of pay being classified as non-pensionable. There have always been "winners and losers", however, in this Final Salary Scheme which is part of the reason we have had employee contribution banding since 2008.

If you were to plot pensionable pay over a member's career onto a graph and it was to result in a steady upward curve then, so long as the actuary made the correct assumption as to earnings inflation in the three-yearly valuation process then the contributions made to the Fund, together with investment growth, should match the liability the Fund had for that member.

In practice of course, there may be several sharp rises in the curve due to promotions. Again, as long as sufficient allowance has been made by the actuary, these should cause no problems overall.

Where the curve is volatile however, it is almost certain not to have been predictable. Any distortions upwards towards the end of a member's active membership are likely to result in an underfunding situation in that particular case.

Give someone a, say, 20% promotion in the last of forty years of service will lead to a serious amount of “past service deficit” in that individual’s case. That would be remedied by the actuary at the next valuation of the Fund by increasing the employer contribution rate to plug the gap. It could also result in a change to the pay inflation assumption leading to a further increase in employer contribution rate thereby being a “double whammy”.

Whilst some actuarial principles are not for the feint-hearted, you tutor will attempt to explain the “curve” in diagrammatical and pictorial terms at this point in the workshop.

2) CARE Scheme

CARE ACCOUNTS – HOW THEY WORK

The Local Government Pension Scheme (LGPS) in England and Wales moved to a CARE basis from 1 April 2014. Like a final salary scheme, a career average scheme is a defined benefit scheme, but with an important difference in how the pension is calculated.

In a final salary 60ths scheme each accrued year earns an additional pension equal to the final salary divided by 60. Of course at the point in time membership is accrued, final salary is not yet known and could only be estimated.

In a CARE 60ths scheme, each accrued year would earn an additional pension equal to the salary for that year uprated to retirement using a specified revaluation rate divided by 60. Once again, at the point in time membership accrued, the CARE figure is not yet known and could only be estimated.

In the unlikely event that the person's pay rose **exactly** lock-step with the method of indexation, the outcomes would be exactly the same in a CARE scheme as it would be in a final salary scheme.

Steady Eddie

Eddie was a member for 5 years and his pay increased by 4% per annum and belongs to a CARE scheme with a fixed revaluation rate of 4%.

His pay for those 5 years was as follows:

Year	Earnings	Revalued Earnings		
1	£20,000	+4%+4%+4%+4%	=	£ 23,397
2	£20,800	+4%+4%+4%	=	£ 23,397
3	£21,632	+4%+4%	=	£ 23,397
4	£22,497	+4%	=	£ 23,397
5	£23,397	+0%	=	£ 23,397
				£116,985

Final Pay = **£23,397**

CARE = £116,985 / 5 = **£23,397**

Of course, Eddie is totally hypothetical and highly improbable. Some people would gain from moving from 60ths final salary to 60ths CARE and some people would lose, depending on how their actual income rose over time.

For LGPS2014 it was decided that the accrual rate would be 49ths with a revaluation rate equal to the consumer prices index (CPI). The Government Actuary's Department (GAD) believed that, broadly speaking, a 60ths final salary scheme was equivalent to a 49ths CARE scheme with CPI indexation.

In real life, career average pay calculations can be rather complex. The State Earnings Related Pension Scheme (1978-2002) was a career average scheme, as are Guaranteed Minimum Pensions (1978-1997) resulting from contracting-out of SERPS.

Here is an example of a GMP calculation for a person who commenced in the LGPS in May 1988 and retired at State Pension Age in July 2001:

	Earnings	Percentage revaluation	Revalued Earnings
1988/89	12005	97	£23,649.85
1989/90	11880	77.8	£21,122.64
1990/91	14366	65.7	£23,804.46
1991/92	16688	50.5	£25,115.44
1992/93	17603	41.3	£24,873.04
1993/94	18235	34.6	£24,544.31
1994/95	18657	30.6	£24,366.04
1995/96	19690	25.1	£24,632.19
1996/97	20078	21.7	£24,434.93
		Total	£216,542.90

$$\frac{20\% \times £216{,}542.90}{23} \div 52 = £36.21 \text{ a week}$$

Deriving the weekly GMP from the actual earnings is simply a matter of:

- revaluing the earnings (in the case of GMPs in the LGPS, the revaluation is in accordance with annual Orders made that are in line with a measure of earnings inflation – commonly referred to as Section 148 Orders),

- taking account of the accrual rate (the design of SERPS from 6/4/88 was 1/100th per year to a maximum of 20 years, hence 20%),

- the “working life” for SERPS purposes (so averaging the pay over a period of time – 23 in this case not being the years of membership of the LGPS but the years from 6/4/78, the beginning date for SERPS, to the 5th April before SPA), and finally

- annual to weekly conversion (hence the divisor of 52).

Don’t worry - we’re not going to spend any more time on SERPS and GMPs! They are included here simply for you to observe the record keeping requirements in order to perform the career average calculation.

As it is still possible to join the LGPS at age 16 and remain a member until the age of 75, there would be a need to keep a record of earnings covering a 60 year period!

There is an alternative solution however which is much simpler to administer and understand. That is to operate an account-based system which, thankfully, LGPS2014 was designed around.

Pension Accounts

Rather than record pay over a person’s career and then average that out, multiplying the result by the person’s membership and then dividing by the accrual rate(s), you simply calculate the pension in respect of each year and then revalue that by the chosen method of pay revaluation.

Eddie’s pension from page 13 based on a career average pay of £23,397 would be as follows if the accrual rate was 49ths:

$$\frac{\text{Membership}}{49} \times \text{Career Average Pay}$$

5/49 x £23,397 = £2,387.45

Alternatively, we could calculate his pension each year, adding on the revalued accrued rights to the previous year.

Year 1	£20000/49	=	£ 408.16
Year 2	£20,800/49 = £424.49 + (£408.16 x 1.04)	=	£ 848.98
Year 3	£21,632/49 = £441.47 + (£848.98 x 1.04)	=	£1,324.41
Year 4	£22,497/49 = £459.12 + (£1,324.41 x 1.04)	=	£1,836.51
Year 5	£23,397/49 = £477.49 + (£1,836.51 x 1.04)	=	£2,387.46

The difference of one penny per annum is purely down to rounding.

The known pensionable pay in each year is simply divided by 49 to arrive at the pension earned in each year. Next year that pension is indexed and added to a 49th of his pensionable pay in the next year. And so on. No need to retain decades of salary history.

Also, a lot of the membership recording necessary for a final salary scheme disappears overnight, saving a huge amount of administration. Recording proportions of membership for term-timers, part-timers, part-time-term-timers, variable timers all become unnecessary, as does grossing up pay to a whole-time equivalent. The only real record of service needed is to establish whether someone has the requisite two years' active membership in the Scheme to qualify for benefits in the first instance.

It also benefits the individual as their accrued rights are more transparent which should make financial planning easier. Indeed, it can be argued that CARE scheme administration can be much simpler for all concerned.

Of course, in practice there will be necessary complications. There will be times when actual pay needs to be replaced by a notional pay, for example on certain child-related leave. We will look at these issues later in these notes and we will also look at the ramifications of maintaining the final salary link for pre-1 April 2014 membership.

Different types of account and revaluation

What we have looked at so far are active accounts. If a person retires, the money simply transfers into a pensioner account and commences to be paid. If they leave before retirement age, the money is transferred to a deferred account. There are also survivors' accounts and others to cover the various types of member and beneficiaries under the terms of the LGPS.

Active accounts are revalued by HM Treasury Order each year and the first such order in respect of the revaluation due for the 2014/15 year gave an increase of 1.2%. Benefits for non-actives will attract pensions increase, as before, authorised under annual Pensions Increase (Review) Orders.

Care is needed in the year of leaving/retirement to ensure that each member gets the correct level of inflation-proofing, i.e. not too little (not receiving the part-year revaluation on earnings) and not double indexation (receiving both earnings revaluation and pensions increase for the same period in time). More information on this administering authority responsibility can be found on-line at www.lgpsregs.org/images/AdministrationGuides/Revaluationv1.2clean.

CUMULATIVE PENSIONABLE PAY

This is the total of the “pensionable pay” and/or “assumed pensionable pay” in either section of the Scheme in the Scheme year. Cumulative pensionable pay must be provided separately for each section as different accrual rates will apply when calculating the pension in each section.

If the employee moves between sections more than once in a Scheme year there is no requirement to differentiate between different periods in the sections. The cumulative amounts should contain all of the pensionable pay and/or assumed pensionable pay in each section during the year.

Let’s say a member is on a salary of £24,000 throughout the entire Scheme year and moves to the 50/50 section after 3 months at which point they have already earned £6,000. They spend 5 months in the 50/50 section whilst they earn £10,000 before moving back into the main section earning another £8,000. Their cumulatives at the end of the Scheme year are £14,000 in the main section and £10,000 in the 50/50 section.

Dealing with arrears of pay etc.

In the old Scheme, benefits were based on the pensionable pay **due** for a period, not pensionable pay **received** in that period. This is necessary in a final salary scheme to prevent distortions in the calculation of final pay when benefits are eventually calculated.

Benefits in the 2014 Scheme are calculated based on the pensionable pay that is received in the Scheme year (1 April to 31 March) and not the pay due during that period. There is therefore no need to adjust pensionable pay on payment of arrears or other payments which are paid in the current pay period but not related to the current pay period.

It is important to note, however, that when dealing with pre-2014 benefits under the old definition of pensionable pay, it will be necessary to allocate arrears to the period in time it was due when calculating “final pay”. Also, any pensionable pay received after 31 March 2014 which relates to a period prior to 1 April 2014 should not be included in LGPS2014 cumulatives, but rather be allocated back to the period for which it is due.

The pensionable pay for the pre-1 April 2014 element should be based on the 2008 Scheme definition of pensionable pay (e.g. excluding non-contractual overtime) and not the 2014 Scheme definition of pensionable pay (which would, for example, include non-contractual overtime) and the employee contribution rate should be that which applied pre-1 April 2014 also. It is permissible however to use the employer contribution rate applicable at the time of payment to both the pre- and post-1 April 2014 pensionable pay.

Also, it would seem logical that any payments made after an employee elects to join the LGPS or is “automatically enrolled” or “automatically re-enrolled” into the LGPS that relate to a period prior to the employee joining the LGPS should not be pensionable and so should not be included in LGPS2014 cumulatives. However, the LGPS Regulations 2013 are not clear on this point[1].

Separate contracts?

Separate pension records must be maintained for each job the employee holds unless the employer determines that a single employment relationship exists. It is the same requirement as under automatic enrolment legislation where, if a worker has genuinely separate contracts, then the earnings from each should be treated separately (not aggregated) when determining whether, in relation to a contract, the worker is an entitled worker, a non-eligible jobholder or an eligible jobholder.

The need to calculate pensions on a year by year basis means that separate payroll records are vital to the task. Therefore it is essential that the payroll section/provider knows the basis on which people are employed and the reason for any changes that are notified from HR.

Examples of where the employer may determine a single employment relationship exists are:

1. Two concurrent employments where, if one is terminated, the other must be terminated at the same time,

2. Two sequential employments without a break (e.g. a promotion).

In either example above, the administering authority would hold one pension record and would require one set of cumulatives.

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[1] An argument for including such pay in the LGPS2014 cumulatives is that regulation 20(1)(a) of the LGPS Regulations 2013 states that pensionable pay is "all the salary, wages, fees and other payments paid to the employee" and regulation 20(2) does not exclude payments made to a member of the Scheme that relate to a period prior to joining the Scheme. An alternative argument would be that regulation 9(1) of the LGPS Regulations 2013 says that where an employee commences membership part way through a Scheme year, pension contributions are payable on “the annual pensionable pay the member receives at the commencement of membership”; thus any payments made after commencement of membership that relate to a period prior to commencement of membership is not “pensionable pay” as it relates to pay due prior to commencement of membership. If the payment had been made at the correct time (before commencement of membership) it would not have been pensionable; so why should the payment become pensionable simply because payment is delayed (either by the employee or the employer) until after the employee has joined the Scheme? The regulations governing the 2008 Scheme were equally unclear on this point.

Alternatively, for example, the administering authority would hold separate records and therefore require separate cumulatives where there are:

1. Two concurrent employments where, if one is terminated, the other would continue,

2. Two sequential employments with a break (e.g. ceasing one job and sometime thereafter securing further employment).

Where separate employment relationships exist and where the person is being paid on timesheet claim, it is imperative that timesheet design (and instructions for completion from HR) includes information that identifies which hours are in relation to which job.

ASSUMED PENSIONABLE PAY

This replaced the pre-2014 concept of notional or 'as was' pay in cases of reduced contractual pay or no pay as a result of sickness or injury; or during relevant child related leave (i.e. ordinary maternity, shared parental or adoption leave and any paid additional maternity, shared parental or adoption leave); or whilst on reserve forces service leave (if the employee, although eligible to be in the Armed Forces Pension Scheme during that period, has elected to remain a member of the LGPS).

In these circumstances, the amount added to the cumulative pensionable pay should be the assumed pensionable pay and not the actual pensionable pay received (if any). The only exception is where the actual pensionable pay received for any given day is greater than the assumed pensionable pay (e.g. pay from a KIT day), in which case actual pensionable pay for that given day would be added into the cumulative and assumed pensionable pay added for the other days.

The calculation

Assumed pensionable pay is calculated as an annual rate then applied to the relevant period as a proportion of that rate.

The relevant period starts on the date the employee drops to reduced contractual pay or no pay due to sickness or injury, or when "relevant" child related leave or reserve forces service leave commences.

It should be noted that the relevant period does **not** include the unpaid additional maternity, shared parental or adoption leave available at the end of "relevant" child related leave. This is treated as unpaid leave of absence and no assumed pensionable pay accrues during that period.

The annual rate is calculated as follows for an employee paid other than monthly:

a) Calculate the average of the pensionable pay for the 12 complete weeks prior to the start of the relevant period after removing any "lump sums" but including any assumed pensionable pay already credited in those 12 weeks.

b) Gross up to an annual figure.

c) If 12 complete pay periods do not exist, use whatever number of complete periods are available.

For a monthly paid employee three complete pay periods should be used instead of 12 but the calculation methodology is the same.

An Example

A monthly paid employee has received the following pensionable pay in the three complete months prior to the start of the relevant period and the employer expects assumed pensionable pay will apply for the next six months:

Month 1 £1400
Month 2 £2500 including a £1000 regular bonus and £100 overtime
Month 3 £1400

Annual rate of assumed pensionable pay is:

(£1400 + £1500 + £1400) / 3 * 12) = £17200

Note that the £1,000 bonus is removed prior to the averaging and grossing up calculation. If it happened to be an annual bonus, for example, were it not removed it would result in a perverse outcome i.e:

(£1400 + £2500 + £1400) / 3 * 12) = £21200

"Lump Sums"

Assumed pensionable pay, however, may be increased <u>at the time of calculation</u> where the employer, at their sole discretion, decides to add back into the assumed pensionable pay calculation any **regular** lump sum payment paid in the last 12 months.

The employer must determine, at the point assumed pensionable pay commences, whether there is a 'reasonable expectation' that a regular lump sum payment received in the previous 12 months would have been paid again during the period where assumed pensionable pay will apply and, if so, whether that lump sum already paid should be added back into the annual rate of assumed pensionable pay.

In deciding whether or not the lump sum should be added back into the assumed pensionable pay annual rate the employer should reasonably assess if in their view the employee will still be on assumed pensionable pay the next time the lump sum is due to be paid.

In our previous example, if in the employer's reasonable assessment the period of assumed pensionable pay will extend to 11 months or more and the £1,000 bonus would have been paid again within the period of assumed pensionable then the amount could be added back into the assumed annual pensionable pay rate.

If so, the calculation would be as follows:

(£1,400 + £1,500 + £1,400) / 3 * 12) = £17,200 + £1,000 = £18,200

APP and Separate Employments

The calculation of APP uses the 3 most recent months or 12 most recent weeks in which the member received pensionable pay the member receives relating to that employment before the period of reduced contractual pay or nil pay due to sickness or injury began, or relevant child related leave commenced or the date the member commenced reserve forces leave.

If during the period of 3 months or 12 weeks pensionable pay used to calculate the APP the member ceases one employment and is reemployed on a new contract of employment the calculation of the value of the APP is based on the pensionable pay received in the new employment only using the number of complete weeks or complete months available in that employment to calculate the APP.

Proportioning

When determining the proportion of the annual assumed pensionable pay rate to be added into the cumulative pensionable pay, the same method used for determining part periods for pensionable pay should be maintained. Therefore you should use whatever method you would normally use to calculate one day's pay from an annual rate.

For three days in August for example, this could be:

$$\frac{\text{Annual rate}}{365} \times 3$$, or

$$\frac{\text{Annual rate}}{12} \times \frac{3}{31}$$, or

$$\frac{\text{Annual rate}}{12} \times \frac{3}{22}$$

Which formula you would use would depend on how pensionable pay is normally derived for a part month (and in the case of a week is it 3/5, 3/6 or 3/7 of a week's pay?) and there are probably other methods in addition to the examples shown.

Keep in Touch days

In cases of employees on relevant child related leave who return for a KIT day, the pensionable pay for that day should be added to the cumulative pensionable pay rather than the assumed pensionable pay **if** the actual is higher than the assumed. The assumed pensionable pay applying after the KIT day will be the same as that applying before the KIT day (i.e. there is no need to recalculate it simply because of the KIT day).

Note that “SPLIT” and “Stringer” days are dealt with in the same fashion.

Adjusting the Assumed Pensionable Pay figure

Once set, assumed pensionable pay is not subsequently adjusted unless it continues for a period that crosses two 31 March dates. Where an employee is, for example, on long term sick leave, assumed pensionable pay needs to be adjusted on account of inflation. It is adjusted at midnight on the second 31 March following the date the relevant period commenced.

The adjustment is the percentage adjustment specified in the Treasury Revaluation Order for that (second) Scheme year ending on that 31 March.

If the relevant period continues for a further year it will be revalued again at midnight on the next 31 March, and so on.

The 50/50 rule

If the member was in the 50/50 section prior to dropping to no contractual pay because of sickness they are placed in the main section from the beginning of the next pay period (provided they are still on no pay at that time).

So, for a monthly paid person dropping from half pay to no pay in the middle of August for example, the assumed pensionable pay for August would drop into the cumulative pensionable pay in the 50/50 section whereas the assumed pensionable pay in September would drop into the main section cumulative pensionable pay.

Also, where a member is in the 50/50 section and goes on to no pay during ordinary maternity leave, ordinary adoption leave or paternity leave, the employee must be moved back into the main section from the beginning of the next pay period if they are still on nil pay at that time.

Exercise 2

APP

Calendar monthly paid Mrs Sippy went onto relevant child-related leave on 4 August. Her pay records for this year are as shown. There were no “lump sums” paid to her in the previous financial year.

Please calculate her APP.

April	May	June	July	Item
£2500	£2500	£2600	£2600	Salary
£ 250	£ 250	£ 260	£ 260	PRP (Bonus)
£ 650	£ 775	£ 450	£ 399	Overtime
£ 296	£ 210	£ 174	£ 305	Expenses
£1225	£ 0	£ 0	£ 0	One-off honorarium
£4921	**£3735**	**£3484**	**£3564**	

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3) Final Pay Calculations

GENERAL

As a result of the final salary link for pre-1 April 2014 membership it is necessary for the employer to provide a final pay calculation under the 2008 Scheme definition, for any person who has membership prior to 1 April 2014 or who is subject to the underpin[2].

Amended on more than one occasion, Benefit Regulation 8 now reads:

> **Final pay: general**
>
> (1) Subject to regulations 9 to 11, on ceasing a period of active membership in an employment, a member's final pay is that member's pensionable pay for as much of the final pay period as the member is entitled to count as active membership, whether this was accrued with the current or a previous employing authority, but excluding pensionable pay from membership in a concurrent employment, or concurrent employments.
>
> (2) A member's final pay period is the year ending with the day on which he stops being an active member or, if that would produce a higher figure, either of the two immediately preceding years.
>
> (3) In the case of part-time employment, the final pay is the pay that would have been paid for a single comparable whole-time employment.
>
> (4) Any reduction or suspension of a member's pensionable pay during the final pay period because of his absence from work owing to illness or injury is disregarded.

Concurrent employments

Where a member holds, or has held, more than one concurrent employment, it is only the pay in relation to active membership in the employment that is ending that counts towards the benefit calculation for that employment.

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[2] Persons within 10 years of their normal pension age (NPA) on 1 April 2012 were given a guarantee that their benefits accrued post-14 would be no less than they would have been had the final salary scheme continued until the earlier of their leaving date or NPA. The underpin calculation is complex and further information can be found in a 19-page paper contained within the Administration Guides section of www.lgpsregs.org

Unaggregated employments

The wording of 2008 Scheme Benefit Regulation 8(1) also prevents a person using pay that goes back into a period in respect of which the person holds an unaggregated period of membership or is already in receipt of a pension.

Best of the last 3 years

In the majority of cases, final pay is the total pay due, and on which contributions were paid or were deemed to be paid, in the last 365 days of employment. For part-time members, the pay used is the whole-time equivalent pay not the actual pay received.

Where either of the immediately preceding two years would yield a higher figure, then that figure is used (hence, the old adage "best of the last 3 years"). For someone leaving on 13 August 2015 for example, one would be calculating whole-time equivalent pay in the year to 13 August 2015, year to 13 August 2014 and year to 13 August 2012 to see if either of the previous years was higher than the last.

Absences

Whole-time equivalent pay for any period of ordinary maternity leave (OML), ordinary paternity leave (OPL) or ordinary adoption leave (OAL) and any period of **paid** additional maternity leave (AML), **paid** shared parental leave (SPL) or **paid** additional adoption leave (AAL) will count in the calculation of final pay for the pre 1 April 2014 benefits (i.e. if that period of leave of absence were to fall in the final pay period to be used for calculating the pre 2014 benefits). It will also count for the purposes of the "85 Year Rule" and the "underpin"

If the member wishes the period of **unpaid** AML, SPL or AAL to count in the final pay calculation for the pre 1 April 2014 benefits (i.e. if the unpaid leave of absence were to fall in the final pay period to be used for calculating the pre 2014 benefits) and/or for the purposes of the 85 Year Rule and/or the underpin, they would have to enter into an APC / SCAPC to cover the "lost" pension for that whole period of unpaid leave of absence.

Where APCs are paid therefore, the period of absence has been "bought" for the purposes of the final pay calculation in respect of the pre-1 April 2014 benefits. The same holds true for other types of **unpaid** leave of absence. Therefore, whether a member had decided to "cover" pay lost during a period of absence by the payment of APCs or not, is crucial to the calculation of final pay.

As it is so crucial, the actual wording of 2014 Transitional Regulation 8(4) is reproduced here:

> Where these Regulations provide for final pay received after 31st March 2014 to be calculated under regulations 8 to 11 of the Benefits Regulations (calculation of final pay), if a member has a period of absence from work of the description in regulation 11(4)(b) or (c) of the 2013 Regulations (contributions during absence from work with permission or due to a trade dispute) and, on or after the commencement of that period of absence, has purchased additional pension under regulation 16 of the 2013 Regulations (additional pension contributions) equivalent to the pension that the member would have accrued but for the absence—
>
> > (a) the member is treated as entitled to count the period of absence as a period of membership; and
> > (b) is treated as receiving the pay that would have been received but for the absence.

We will take a look at some examples of the calculations later in these workshop notes.

Illness or Injury

Where absence was due to illness or injury, any reduction or loss of pay is disregarded (i.e. final pay is calculated as if the reduction or loss had not occurred).

Gaps or Part-years

If a member is entitled to count only a part year for final pay, final pay is the pay received in that part year grossed up to 365 days. This means that if a member goes on authorised unpaid leave of absence for, say, 2 days during the last year of membership and doesn't pay APCs, it is the pay received in the last year x 365/363 that is used.

Also, where an employee takes flexible retirement and carries on in the Scheme for, say, a further 200 days before fully retiring, the final pay used for the second benefit should be the pay for those 200 days x 365/200. Although the employee was a member throughout all the last 365 days, he was only entitled to count 200 days as active membership when he fully retired. Of course, if the person only partially drew-down benefits on flexible retirement[3], the calculation would be somewhat different.

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[3] Although taking all pre-1 April 2008 benefits is mandatory, the flexible retiree has the choice (subject to the wording of the employer's policy) to draw all some or none of the post-31 March 2008 pre-1 April 2014 benefits and all some or none of the post-31 March 2014 benefits.

Fees

Where pensionable pay consists of or includes fees, the average of the last 3 years fees are used when calculating final pay or, at the employer's discretion, the average of any 3 consecutive years ending on a 31st March in the last 10 years.

Certificates of Protection

If a "Certificate of protection of pension benefits" had been issued under the 1997 Regulations, and the certificate has not lapsed, then the calculation of final pay is improved from best of the last 3 years to the greater of (1) the best of the last 5 years and (2) the best average of any 3 consecutive years in the last 13 years (all years ending on the anniversary of the date of leaving).

Benefit Regulation 10

From 1 April 2008, any member having a pay cut or restriction in respect of prescribed circumstances has the right for 10 years to choose the best average of any consecutive three years in the last 13 years of membership. For simplicity, these 13 years all end on 31 March rather than anniversaries of the date of leaving. This right continues to apply even where the pay cut or restriction occurs after 31 March 2014.

Can't it be simplified?

Calculating final pay has always been onerous. Consideration was given to whether the final pay calculation required for members' pre 2014 final salary linked benefits (and the underpin) could be simplified. Various options were considered but, as each of these had its own difficulties, none were taken forward.

WHOLE-TIME MEMBERS

2008 Scheme Benefits Regulation 1 defines a whole-time employee as:

> "an employee whose contract of employment provides-
>
> (a) that he is such an employee for the Scheme, or
>
> (b) that his contractual hours are not less than the number of contractual hours for a person employed in that employment on a whole-time basis".

This relatively simple definition causes some disagreement between employers and administrators alike, and this is understandable when you look at term-time employees and other employment capacities that are "full-time" long before they are "whole-time".

A classic example of the latter is that of a school-crossing patroller who, say, cannot possibly work more than 7.5 hours per week. Although, arguably, they could fall under the definition of "whole-time" this would lead to some absurd and inequitable benefit levels should they change jobs during their membership of the scheme. As they are paid pro-rata to a whole-time employee (working 37 hours per week for example) it is sensible for them to be classed as a part-timer and their pre-1 April 2014 membership scaled down and their final pay scaled up accordingly.

Arguments aside, let us look at a final pay calculation for a whole-time employee, employed 37 hours a week, 365 days a year:

Mrs Easy

Retires at age 60 on 30 September 2015. She is monthly paid and her rates of pay (**using the 2008 Scheme definition**) over the last three years have been:

1 October 2012	£15,000 p.a.
1 April 2013	£15,600 p.a.
1 April 2014	£16,440 p.a.
1 April 2015	£17,400 p.a.

Final Year:		
1 October 2014 to 31 March 2015	£16,440 x 6/12 =	£ 8220
1 April 2015 to 30 September 2015	£17,400 x 6/12 =	£ 8700
		£16920 p.a.
Year –1		
1 October 2013 to 31 March 2014	£15,600 x 6/12 =	£ 7800
1 April 2014 to 30 September 2014	£16,440 x 6/12 =	£ 8220
		£16020 p.a.
Year –2		
1 October 2012 to 31 March 2013	£15,000 x 6/12 =	£ 7500
1 April 2013 to 30 September 2013	£15,600 x 6/12 =	£ 7800
		£15300 p.a.

The best of these is her final year and so her final pay is **£16920**.

For administrative ease, and for simplicity of building spreadsheets, calculations of final pay are often performed using days rather than months. If this was the case with Mrs Easy, the result would be:

Mrs Even-Easier

Retires at age 60 on 30 September 2015.

1 April 2014	£16,440 p.a.
1 April 2015	£17,400 p.a.

Final Year:		
1 October 2014 to 31 March 2015	£16,440 x 182/365 =	£ 8197.48
1 April 2015 to 30 September 2015	£17,400 x 183/365 =	£ 8723.84
		£16921.32

Only £1.32 different in this case and it could be deemed as splitting hairs but, as final pay refers to pensionable pay in the final pay period and pensionable pay refers to monies “paid to him”, the calculation of final pay should be done strictly in accordance with the way a person is paid and so, in this case, the technically correct answer is £16920.

Generally speaking, employers pay one-twelfth of annual salary per month. If a person commences or leaves employment part way through a month, many employers calculate the part-month’s salary due by reference to the number of calendar days in the month in question. So, the calculation is done in September on 30ths whereas in October it is done on 31sts. There are some employers who have the practice of apportioning monthly salary according to the number of working days in the month (which can be anywhere between 20 and 23 days inclusive).

There are similar considerations for people who are weekly paid or “lunar paid” and there are some employers who pay 1/260th of annual salary for each day of work (irrespective of the number of calendar days in the month) and probably other variations too. These practices have to be taken into account in determining final pay, which must be accurately calculated.

If our earlier example of Mrs Easy left one day sooner we would need to look at her pay in the years beginning 30 September and ending 29 September. This would entail not only including a part-month pay as actually paid for the month of leaving but calculating one day’s pay or 29 days’ pay for months when she was fully paid i.e. calculate a proportion of a particular pay period.

Here is the calculation of the final year’s pay for Mrs Easy assuming she left on 29 September 2015:

Mrs Not-so-Easy

Retires at age 60 on 29 September 2015. She is monthly paid and her rates of pay over the last year were:

1 April 2014	£16,440 p.a.
1 April 2015	£17,400 p.a.

Final Year:

30 September 2014 to 31 March 2015	£16,440 x 6/12 =	£ 8220.00
	£$\frac{16,440}{12}$ x 1/30 =	£ 45.67
1 April 2015 to 29 September 2015	£17,400 x 5/12 =	£ 7250.00
	£$\frac{17,400}{12}$ x 29/30 =	£ 1401.67
		£16917.34

Performing the calculation on days rather than months and part-months would give the following result:

Mrs Not-so-Easy-made-easy

Retires at age 60 on 29 September 2015.

1 April 2014	£16,440 p.a.
1 April 2015	£17,400 p.a.

Final Year:

30 September 2014 to 31 March 2015	£16,440 x 183/365 =	£ 8242.52
1 April 2015 to 29 September 2015	£17,400 x 182/365 =	£ 8676.16
		£16918.68

Exercise 3 – Calculation of Final Pay

Calculate the final pay for monthly paid Mr Eric Herrick who is leaving active membership on 28 January 2016.

His rates of pay in the last 3 years are:

29 January 2013	£17472 p.a.
1 April 2013	£18000 p.a.
1 April 2014	£19200 p.a.
1 September 2014	£23502 p.a.
1 April 2015	£24678 p.a.
1 June 2015	£20160 p.a.

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PART-TIME MEMBERS

Although the LGPS moved to a career average scheme on 1 April 2014 and hours worked are no longer relevant, to get to grips with final pay calculations it helps to understand how membership was pro-rated before 1 April 2014.

According to Benefit Regulation 7(3), part-time members accrued membership as an "appropriate fraction" of the duration of membership they had. Benefit Regulation 7(4) states "The numerator of that fraction is the number of contractual hours during the part-time service and its denominator is the number of contractual hours of that employment if it were on a whole-time basis".

Counting membership was therefore relatively clear, a person reducing their hours from a whole-time post of 37 hours per week down to a part-time post of 20 hours per week, started to accrue membership at 20/37ths of calendar length rather than calendar length itself.

Benefit Regulation 8(3), in describing final pay for a part-timer, states "In the case of part-time employment, the final pay is the pay which would have been paid for a single comparable whole-time employment". To calculate final pay for our simple example above we could calculate the actual pay received in the final year and then multiply it by 37/20.

The object of scaling down membership and grossing up part-time pay to its whole-time equivalent is to provide an equitable benefit for the contribution paid. Straightforward perhaps, but this simple principle has caused much confusion amongst the rank-and-file membership over the years.

A person with 20 years membership who has always worked half time and who retired pre-1 April 2008 on a part-time pay of £12,000 would have received a pension calculated thus:

10/80 x £24,000 = £3,000 p.a.

Without any scaling the calculation would be:

20/80 x £12,000 = £3,000 p.a.

Both methods arrived at the same answer - hence the confusion – so why did we complicate matters? The reality is that people do not remain on the same hours throughout their membership and, indeed, do not always remain in the same sort of employment. Because of this, the only way to ensure a benefit commensurate with the hours worked (and contributions paid) was to convert both membership and pay to its whole-time equivalent.

Here is an example of final pay for a monthly-paid part-time employee:

Joan Collins

Retired 31 December 2014
She had worked 20 hours a week out of a possible 37
She received part-time pay as follows:

1 January 2014 to 31 March 2014 at	£6,000 p.a.
1 April 2014 to 31 December 2014 at	£6,600 p.a.

Therefore:

£6,000	x	3/12	=	£1,500.00				
£6,600	x	9/12	=	£4,950.00				
				£6,450.00	x	37/20	=	**£11,932.50**

Her Sister, Jackie, worked at the same establishment but changed her contractual hours during her final year. Her calculation is as follows:

Jackie Collins

Retired 31 December 2014
She had worked 20 hours a week out of a possible 37 until 1 July 2014 when she reduced to 16 hours per week.
She received part-time pay as follows:

1 January 2014 to 31 March 2014 at	£6,000 p.a.
1 April 2014 to 31 June 2014 at	£6,600 p.a.
1 July 2014 to 31 December 2014 at	£5,280 p.a.

Therefore:

£6,000	x	3/12	=	£1,500.00	x	37/20	=	£ 2,775.00
£6,600	x	3/12	=	£1,650.00	x	37/20	=	£ 3,052.50
£5,280	x	6/12	=	£2,640.00	x	37/16	=	£ 6,105.00
				£5,790.00				**£11,932.50**

HOURS/PAY PROPORTIONALITY

In a CARE environment there isn't an issue whatsoever but there can be problems in assessing final pay for pre-1 April 2014 rights where the fraction of hours worked and the fraction of the salary package paid are not in proportion.

This matter is difficult to understand at first and certainly difficult to explain now we have moved to a CARE scheme and membership going forward is not relevant to the accrual of benefits. The rest of this sub-section ignores the move to a CARE scheme and the change in accrual rate in order to get across the point in an understandable fashion.

Member A versus Member B and C

When calculating "final pay" for a part-time employee, great care has to be taken in calculating the whole-time equivalent of "actual" part-time pay when there is no proportionality between hours worked and pay received.

To expand on this statement, let us look at a situation where one person carrying out a whole-time employment is subsequently replaced by two people on a job-share basis. These two people both work the same number of hours each week but, because one works at weekends and the other does not, one gets paid more than the other.

Take the case of a whole-time employee (Member A) who receives a salary of £10,000 per year plus £2,000 enhancement for weekend working.

In one year Member A would contribute £660 (5.5% of £12000)

After 10 years membership, Member A would get a benefit of:

10 x 1/60 x £12000 = £2000 p.a. pension

Now let us take the case of two part-time employees (Member B and Member C) who share the same job. Each works half-time but Member C does all the weekend work and therefore receives 100% of the weekend enhancement.

A whole-time employee, at this employer, would work 37 hours a week, so Member B and Member C each work 18.5 hours a week. In assessing the length of membership for the calculation of benefits, calendar-length membership would have been scaled down in direct proportion to the hours worked and those that would be worked if whole-time. Therefore both Member B and Member C would have accrued membership at 18.5/37ths of whole-time i.e. 50%.

If you were to agree that their whole-time equivalent pay for the job was £12000 then:

In one year, Member B would contribute £275 (5.5% of £5000)

In one year, Member C would contribute £385 (5.5% of £7000)

Benefit Regulation 8 in describing final pay for a part-timer states “In the case of part-time employment, the final pay is the pay which would have been paid for a single comparable whole-time employment”.

A literal interpretation of this **could** be taken as meaning that, in our scenario, both Member B and Member C have a whole-time equivalent pay of £12000.

If so, after 10 years, Member B would get a benefit of:

5 x 1/60 x £12000 = £1000 p.a. pension

Similarly, after 10 years, Member C would get:

5 x 1/60 x £12000 = £1000 p.a. pension

And yet, Member B will have paid in £2750 in contributions whereas Member C would have paid in £3850 (i.e. 40% more).

A more logical way of interpreting Benefit Regulation 8 **might** be to say for Member B that a **comparable** whole-time equivalent pay would be £10,000 i.e. a 37 hour a week position with no weekend working.

If so, Member B would get a benefit of:

5 x 1/60 x £10000 = £833.33 p.a. pension

How then, do we assess the whole-time equivalent of Member C? If we say that the whole-time equivalent was £12000 (i.e. that of Member A - a whole-time post with weekend enhancements), Member C would get:

5 x 1/60 x £12000 = £1000 p.a. pension

But is this equitable? Member C is receiving 20% more than Member B having paid 40% more for the privilege. To be truly equitable, it **could** be argued that the whole-time equivalent for a half-timer with one weekend enhancement is one whole-timer with two. If so, Member C would get:

5 x 1/60 x £14000 = £1166.67 p.a. pension

Cost-neutrality and fairness

From the Pension Fund's financial viewpoint, this final version would give a total pension pay-out of £2000 per annum (£833.33 Member B, £1166.67 Member C) in return for a contribution of £6600 (£2750 from Member B and £3850 Member C). These figures are cost neutral to the Fund as it would have received in from, and paid out exactly the same to, Member A.

From a fairness point of view, Member C has paid in 40% more contributions than Member B and gets a benefit at the end of the day of exactly 40% more. So then, this **might seem** the logical way to calculate whole-time equivalent pay where hours worked are not proportionate to pay received but there are many views held by many pensions practitioners over the correct interpretation of the regulations!

Furthermore, the above example is relatively "simple" for one thing, and compares an actual part-time person to an actual whole-time person. In many cases, there is no actual whole-time equivalent person in existence to make a comparison with.

The Employer role

Each employer may well have different and intricate pay scales together with bonus systems and enhancements for its employees. Take an employer who gives a pensionable honorarium to a part-time person. Would they have given a proportionately greater honorarium to a whole-timer? Only the employer is in a position to know this.

The employing authority should therefore be best placed to calculate final pay (as is its responsibility under the scheme regulations). In addition, the administering authority is most likely to have the specialist knowledge to help in the calculation of whole-time equivalent final pay to ensure members are not advantaged or disadvantaged. Co-operation is therefore paramount especially where the case is far from simple!

The Member D Conundrum

You may have decided that, for the purpose of an equitable solution, the final pay for Member C should have been £14,000. In the scenario given, the author would agree with you! But, as we have discovered, people do not work on the same number of hours in the same job, or type of job, throughout their membership. What would be your answer to the final pay question if Member C had once been Member A?

Let's say that Member D worked for 9 years whole-time on a salary of £10,000 plus £2,000 weekend enhancement (akin to Member A). Then for 1 year reduces hours to exactly half-time, but receives a salary of £5,000 plus £2,000 weekend enhancement (akin to Member C).

At retirement, using a final pay figure of £14,000, Member D would get a benefit of:

9.5 x 1/60 x £14,000 = £2216.67 p.a. pension

This is more than Member A would have received for 10 years whole-time membership. The problem is that in being equitable in respect of the final year we have increased the value of the previous 9 years by over 16% (i.e. by increasing final pay from £12,000 to £14,000).

Surely then, the final pay figure should be £12,000 (i.e. synonymous with the comparable whole-time Member A). This would change the retirement benefits of Member D to:

9.5 x 1/60 x £12,000 = £1900.00 p.a. pension

Now we have cash amounts of 9.5/10ths of that of Member A so that feels right, but remember that Member D (just as Member C did) paid a contribution of nearly 60% of that of Member A in the final year. Where is the return for that extra 10% contribution?

An equitable solution might have been to massage the membership length or manufacture a final pay figure to achieve the desired result. However, neither appear to be within the scope of the Benefit Regulations.

Remembering that this is an exaggerated example to illustrate a point and that actual cases are more likely to be in respect of lesser relational amounts, and often no equivalent whole-time post exists to make a comparison with.

In terms of benefits accrued from 1 April 2014 in the CARE Scheme, all four members (A, B, C and D) would receive equitable benefits automatically. It is only in the assessment of final pay for the final salary link that the employer needs to be aware that grossing up a part-timer's pay to a whole-time equivalent isn't always an easy task.

TERM-TIME MEMBERS

We had understood that the original policy intention underpinning the 2008 Scheme in England and Wales was that membership and final pay calculations for term-time employees would be pro-rated. Thus, a term-time employee working 37/37 x 44/52[4] would have membership recorded as 84.6% of whole-time; and a term-time employee working 20/37 x 44/52 would have membership recorded as 45.7% of whole-time.

The final pay of a term-time employee would, correspondingly, be grossed-up for retirement benefit calculation purposes. So, if the full-time term-timer in the previous paragraph was earning £20000 per annum, his final pay would be:

£20000 x 52/44 = £23636.36

The part-time term-timer would have earned 20/37ths of that of the full-time term-timer i.e. £10810.81. Final pay would be:

£10810.81 x 37/20 x 52/44 = £23636.36

Through the CLG Commentary issued in 2008 however, it was evident that administering authorities were allowed to continue as before i.e. some already pro-rated, some did not. Therefore it remained possible for an administering authority to perform their calculations using “actual pay” and “actual membership”.

The example of a term time employee working 37/37 x 44/52 shown above would therefore alter to:

Membership	=	100% of whole time
Pay	=	£20,000

Similarly, the part-timer would be equated to a full time term timer and no further. Although recording membership is not a feature of the new CARE scheme, the assessment of final pay for pre-1 April 2014 rights must still take into account the way membership was historically recorded. Employers must therefore check the stance of their administering authority and take the appropriate actions.

[4] Of those administering authorities in England and Wales that do “equate” only some use the denominator of 52. Others use 52.143 or 52.167 or 52.179 (accounting for there not being exactly 52 weeks in any calendar year and/or the leap year day).

VARIABLE-TIME MEMBERS (FEES)

As explained briefly earlier in these notes, where pensionable pay consists of or includes fees, the average of the last 3 years fees are used when calculating final pay[5]. When a person's total period of membership is less than three years, the average is to be done by that lesser period.

As by definition these elements of pay can fluctuate, to protect the Pension Fund, an average is taken rather than allocating the payments to a single year. The ability for the employer to consent to using a different averaging period is given to them simply to ensure fair play where these elements of pay have varied dramatically over the years.

Let's take Mrs Easy from page 32 a stage further by giving her some fees in additional to her basic salary:

Mrs Easy-with-Fees

Retires at age 60 on 30 September 2015. She is monthly paid and her rates of pay over the last year were:

1 April 2014	£16,440 p.a.
1 April 2015	£17,400 p.a.

In addition she received the following fees:

In respect of 01/10/12 to 30/09/13 amounting to £3750
In respect of 01/10/13 to 30/09/14 amounting to £6100
In respect of 01/10/14 to 30/09/15 amounting to £4352

Final Year:

1 October 2014 to 31 March 2015	£16,440 x 6/12 =	£ 8220
1 April 2015 to 30 September 2015	£17,400 x 6/12 =	£ 8700
Average of fees	£14,202 / 3 =	£ 4734
		£21654

(NB: Calculating on a 365ths basis would yield a figure £1.32 higher)

[5] At the employer's discretion, the average of any 3 consecutive years ending on a 31st March in the last 10 years can be used instead.

It would also be necessary to calculate her average fees for the periods 1 October 2011 to 30 September 2014 and 1 October 2010 to 30 September 2013 and add these to her basic pay figures calculated to YR-1 and YR-2 respectively.

Even though she has seen steady salary progression over her final 3 years it is possible, with the fees element in her pay fluctuating over time, that a previous year may produce a higher figure.

CERTIFICATES OF PROTECTION

If a “Certificate of protection of pension benefits” has been issued under the 1997 Regulations (regulation 23) **and the certificate has not lapsed**, then the calculation of final pay is improved from best of the last 3 years to the greater of

(a) the best of the last 5 years, and

(b) the best average of any 3 consecutive years in the last 13 years,

The regulations actually provide for the member to elect which pay figure is to be used in the calculation of their benefits. In practice it is expected that employers would pick whichever pay figure will produce the highest amount (allowing for the effects of pensions increase).

It was therefore most important for employers to note that when certificates of protection were issued, there became a need to keep records of pay for far longer than that required for HMRC purposes.

Performed properly, final pay calculations for members with certificates of protection take a considerable amount of time. The following example will give you an idea of the mathematics involved:

Mrs COP
Retired at age 60 on 30 September 2012

Pay over last 13 years		Pensions Increase
01/10/2011 to 30/09/2012	£15,419	n/a
01/10/2010 to 30/09/2011	£14,518	2.60%
01/10/2009 to 30/09/2010	£13,797	6.83%
01/10/2008 to 30/09/2009	£13,256	8.46%
01/10/2007 to 30/09/2008	£12,742	11.17%
01/10/2006 to 30/09/2007	£12,240	16.11%
01/10/2005 to 30/09/2006	£11,753	20.46%
01/10/2004 to 30/09/2005	£14,473	24.24%
01/10/2003 to 30/09/2004	£13,674	27.85%
01/10/2002 to 30/09/2003	£12,908	31.62%
01/10/2001 to 30/09/2002	£12,379	34.57%
01/10/2000 to 30/09/2001	£11,778	
01/10/1999 to 30/09/2000	£11,237	

Last 5 years pay			
01/10/2011 to 30/09/2012	£15,419		£15,419.00
01/10/2010 to 30/09/2011	£14,518	2.60%	£14,895.47
01/10/2009 to 30/09/2010	£13,797	6.83%	£14,739.34
01/10/2008 to 30/09/2009	£13,256	8.46%	£14,337.46
01/10/2007 to 30/09/2008	£12,742	11.17%	£14,165.28

Three year averages			
01/10/2009 to 30/09/2012	£14,578		£14,578.00
01/10/2008 to 30/09/2011	£13,857	2.60%	£14,217.28
01/10/2007 to 30/09/2010	£13,265	6.83%	£14,171.00
01/10/2006 to 30/09/2009	£12,746	8.46%	£13,824.31
01/10/2005 to 30/09/2008	£12,245	11.17%	£13,612.77
01/10/2004 to 30/09/2007	£12,822	16.11%	£14,887.62
01/10/2003 to 30/09/2006	£13,300	20.46%	£16,021.18
01/10/2002 to 30/09/2005	**£13,685**	24.24%	**£17,002.24**
01/10/2001 to 30/09/2004	£12,987	27.85%	£16,603.88
01/10/2000 to 30/09/2003	£12,355	31.62%	£16,261.65
01/10/1999 to 30/09/2002	£11,798	34.57%	£15,876.57

The best final pay figure for her to select is £13,685 (the three-year average to 30 September 2005). Her benefits are then calculated on £13,685 and pensions increase is then added to the lump sum and the pension payable. Her pensions increase “beginning date” is 1 October 2005 and not 1 October 2012, which means that at the next pensions increase date (i.e. April 2013 in this case) her pension will attract a full year’s increase (when final pay is the year to retirement, the first year’s pensions increase is paid proportionately, according to how many months a person has been retired).

BENEFIT REGULATION TEN

Certificates of protection were not carried forward from the 1997 Regulations into the 2007 Benefit Regulations. The effect of this was that no new certificates of protection could be issued in respect of drops/restrictions in pay occurring after 31 March 2008.

The certificate of protection's counterpart in the 2008 Scheme (Benefit Regulation 10), works in a different fashion. Firstly a person's pensionable pay in a continuous period of employment has to be reduced or restricted for one of the following reasons:

(a) because the member chooses to be employed by the same employer at a lower grade or with less responsibility;

(b) for the purposes of achieving equal pay in relation to other employees of that employer;

(c) as a result of a job evaluation exercise;

(d) because of a change in the member's contract of employment resulting in the cessation or restriction of, or reduction in, payments or benefits specified in the member's contract of employment as being pensionable emoluments; or

(e) because the rate at which the member's rate of pay may be increased is restricted in such a way that it is likely that the rate of the member's retirement pension will be adversely affected,

If this is the case, and if the reduction or restriction was not a result of a temporary position ceasing or flexible retirement, then the person can choose any three year average of pensionable pay (calculated to 31st March) that fall within the period of thirteen years ending with their last day as an active member.

It is important to understand that, by virtue of the 2014 Transitional Regulations, rights under Benefit Regulation 10 do not stop at 1 April 2014. Anyone who has the final salary link will have Benefit Regulation 10 protection for many years to come.

It is interesting to note also that, whilst calculation of final pay is done by the employer, an election under Benefit Regulation 10(1) must be made in writing to the administering authority at least one month ***before*** the person leaves active membership of the scheme!

Benefit Regulation 10(2) allows the administering authority to pick the pay figure that would give the best result to the beneficiaries where a person has died before making the election themselves.

Benefit Regulation 10(3) dictates that the right extends for a period of 10 years from the date of the reduction or restriction whilst debarring members if the reduction or restriction was as a result of a temporary post or because of flexible retirement.

Benefit Regulation 10(4) outlines the calculation method “best average of any consecutive three years in the last 13”. It should be noted that although Benefit Regulation 10 rights have only existed since 1 April 2008, if a member leaves in, say, 2015, the 13 year window will include pay prior to 1 April 2008.

Unlike under Benefits Regulation 8(2), the average pay calculation under Benefits Regulation 10(4) does not have to be higher than the final year’s pay (because it simply refers to “any” three consecutive years). It can be lower, although, once Pensions Increase is added to the pension benefits in accordance with the Pensions (Increase) Act 1971, the resultant benefits will be higher than benefits based on the final year’s pay.

Benefit Regulation 10(5) gives protection to persons subjected to a “TUPE transfer” so that their employment is still classed as continuous for the purpose of Benefit Regulation 10(1)(a). There is no logical reason why the protection should only apply to sub-paragraph (a) as it ought to equally apply to sub-paragraphs (b) to (e) and many administering authorities and scheme employers act as though it did.

On the next page is an example calculation based on a person who retires in 2020 having suffered a significant pay drop in 2015 (Pensions Increase factors are hypothetical).

Mrs Claire Vision
Leaver on 30 September 2020

Year to 30/9/20	£17,250
Year to 31/3/20	£16,920
Year to 30/9/19	£16,470
Year to 31/3/19	£16,020
Year to 30/9/18	£15,660
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	£17,850
Year to 31/3/14	£16,764
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

Last 3 years pay

01/10/2019 to 30/09/2020	£17,250.00
01/10/2018 to 30/09/2019	£16,470.00
01/10/2017 to 30/09/2018	£15,660.00

Three year averages

01/04/2017 to 31/03/2020	£16,080		£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	£15,619	6.89%	£16,695.15
01/04/2013 to 31/03/2016	£16,287	8.70%	£17,703.97
01/04/2012 to 31/03/2015	**£16,865**	11.43%	**£18,792.67**
01/04/2011 to 31/03/2014	£15,976	13.86%	£18,190.27
01/04/2010 to 31/03/2013	£15,194	16.32%	£17,673.66
01/04/2009 to 31/03/2012	£14,497	20.27%	£17,435.54
01/04/2008 to 31/03/2011	£13,866	23.69%	£17,150.86
01/04/2007 to 31/03/2010	£13,310	27.41%	£16,958.27*

The best final pay figure to be used would therefore be £16,865. Her benefits are calculated on £16,865 and pensions increase is then added to the lump sum and the pension payable.

* During the evolution of Benefit Regulation 10(4), the words “ending with 31st March” have become enclosed in commas, changing the possible interpretation. We believe that, as the whole of the 3 year period here doesn’t fall within the last 13 years, this period cannot be taken into account.

4) Final Pay Scenarios

Explained briefly earlier, we now take a closer look at the mechanics behind the calculation of final pay when the calendar year leading up to a person leaving active membership of the scheme contains some form of unpaid leave or a physical break in employment or where only a part-year of membership exists.

AUTHORISED LEAVE

Member has period of authorised leave of absence without pay during final year and does not elect to pay additional pension contributions (APCs).

Authorised leave was from 1 October 2014 to 30 November 2014 and member subsequently left on 30 April 2015.

In this case, whilst the employee is a member throughout the whole of the final year, he is only entitled to "count as membership" 304 days in the last year and so we must refer to Benefit Regulation 9(4) which tells us to scale up the pay figure by 365 / the number of days that count as active membership.

The final pay calculation is thus:

Arthur Highsleeve (1)

01/05/2014 – 30/09/2014	(153 days)	£15501/12 * 5	= £ 6458.75
1/10/2014 – 30/11/2014	(61 days)		
1/12/2014 – 31/12/2014	(31 days)	£15501/12 * 1	= £ 1,291.75
1/1/2015 – 30/04/2015	(120 days)	£16500/12 * 4	= £ 5,500.00
		Total	= £13,250.50
Final pay = £13,250.50 * 365 / (120 + 31 + 153)			= **£15,909.32**

For those authorities calculating pay on a 365ths basis, the calculation would be:

Arthur Highsleeve (2)

01/05/2014 – 30/09/2014	(153 days)	£15501/365 * 153	= £ 6,497.68
1/10/2014 – 30/11/2014	(61 days)		
1/12/2014 – 31/12/2014	(31 days)	£15501/365 * 31	= £ 1,316.52
1/1/2015 – 30/04/2015	(120 days)	£16500/365 * 120	= £ 5,424.66
		Total	= £13,238.86
Final pay = £13,238.86 * 365 / (120 + 31 + 153)			= **£15,895.34**

The difference in the two calculation methods is far greater than it was when we looked at Mrs Easy and Mrs Even-Easier on page 32. As asserted earlier in these notes, technically the first method shown for Mr Highsleeve is correct as his final pay is being calculated in the same way as it was paid. However, because of the 365/n scaling up provision in the regulations this can often lead to a less-than-perfect end result.

To illustrate this point further, let's revisit Mr Highsleeve but change the pay he received to a constant amount throughout his final year:

Arthur Highsleeve (3)

01/05/2014 – 30/09/2014	(153 days)	£16500/12 * 5	= £ 6,875.00
1/10/2014 – 30/11/2014	(61 days)		
1/12/2014 – 31/12/2014	(31 days)	£16500/12 * 1	= £ 1,375.00
1/1/2015 – 30/04/2015	(120 days)	£16500/12 * 4	= £ 5,500.00
		Total	= £13,750.00
Final pay =	£13,750.00 * 365 / (120 + 31 + 153)		= **£16,509.05**

For those authorities calculating pay on a 365ths basis, the calculation would be done as follows:

Arthur Highsleeve (4)

01/05/2014 – 30/09/2014	(153 days)	£16500/365 * 153	= £ 6,916.44
1/10/2014 – 30/11/2014	(61 days)		
1/12/2014 – 31/12/2014	(31 days)	£16500/365 * 31	= £ 1,401.37
1/1/2015 – 30/04/2015	(120 days)	£16500/365 * 120	= £ 5,424.66
		Total	= £13,742.47
Final pay =	£13,742.47 * 365 / (120 + 31 + 153)		= **£16,500.00**

Although the differences are marginal at the end of the day (around 5 ten-thousandths different), employers are left to draw their own conclusions.

CHILD-RELATED LEAVE

Member goes on maternity leave, does not return to work and does not pay APCs for the period of unpaid additional maternity leave. Note that if a person did return to work and then left within three years, it would be processed the same as under "Authorised leave" starting on page 51 of these notes.

Unpaid leave commenced 30 January 2015 and the date of leaving was 30 April 2015[6]. Her rates of salary over the final year were £14100 from 1 May 2014, £15500 from 1 October 2014 and £16500 from 1 January 2015.

In this case, she is only entitled to "count as membership" 274 days in the last year and so we must refer to Benefit Regulation 9(4) which tells us to scale up the pay figure by 365 / the number of days that count as active membership within that period.

The final pay calculation is thus:

Annette Curtain

01/05/2014 – 30/09/2014	£14100 * 5/12	= £ 5,875.00
01/10/2014 – 31/12/2014	£15500 * 3/12	= £ 3,875.00
01/01/2015 – 29/01/2015	£16500 * 1/12 * 29/31	= £ 1,286.29
	Total	= £11,036.29
Final pay =	£11,036.29 * 365/274	**= £14,701.63**

We are aware that this may not accord with some administering authorities and their employers who historically have followed a different practice and would make the date of leaving in this case 29 January 2015 and then process the case as for any normal leaver (calculating final pay over the period 30 January 2014 to 29 January 2015). However, that would entail closing the active member's pension account on 29 January 2015 rather than 30 April 2015 which would be nonsensical when the member had active member rights during that time (active member death grant cover for example)

[6] It should be noted that the Pensions Increase date is equal to the day after the date of leaving i.e. 1 May 2015 - see s8(2) of the Pensions (Increase) Act 1971 – unless a previous year's pay has been used in which case the PI date is the day following the date to which the pay was calculated to.

STRIKE BREAK

Member has strike period during final year for which he does not pay contributions.

In this case, whilst the employee is a member throughout the whole of the final year, he is only entitled to "count as membership" 363 days in the last year and so we must refer to Benefit Regulation 9(4) which tells us to scale up the pay figure by 365 / the number of days that count as active membership.

Take, for example, the final year's pay of a person who goes on strike on 16 and 17 July 2015 and who leaves on 30 September 2015.

If the person did not pay APCs for the two strike days the pensionable pay would be the pay received for the period 1 October 2014 to 30 September 2015 (less 2 days' pay) x 365 divided by 363.

Ivor Gripe (1 – does not pay APCs)

01/10/2014 – 31/03/2015	£20,000 * 6/12	= £10,000.00
01/04/2015 – 30/09/2015	£22,000 * 6/12	= £11,000.00
Less pay lost on strike	2/260[7] * £22,000	= £ 169.23
	Total	= £20,830.77
Final Pay =	£20,830.77 * 365/363	= **£20,945.54**

If the member had paid APCs to cover the pay lost on the strike days, the final pay in respect of the period 1 October 2014 to 30 September 2015 would be calculated differently as follows:

[7] It is common for employers to deduct 1/260ths of annual pay for each strike day (especially non-teaching local authority staff – as confirmed by the Court of Appeal in Cooper & others v The Isle of Wight College [2007] EWHC 2831). This represents the number of working days in a year i.e. 52 x 5 = 260.

Ivor Gripe (2 – pays APCs)

01/10/2014 – 31/03/2015	£20,000 * 6/12	= £10,000.00
01/04/2015 – 30/09/2015	£22,000 * 6/12	= £11,000.00
	Total	= **£21,000.00**

By virtue of 2014 Transitional Regulation 8(4), the calculation of final pay is done on the basis that Mr Gripe's membership was uninterrupted and that he had received pensionable pay during the strike days.

Grossing up pay by 365 over (365 –X) when pay being lost is X over 260 will always cause the anomaly of distorting final pay. It is possible where there has been a significant increase in pay after the strike period (e.g. a promotion) for the final pay figure to be higher if the strike period is not covered by APCs.

It is inconceivable that it was intentional for the loss of membership on strike to cause the final pay figure to alter.

GAP IN EMPLOYMENT

Member leaves, has a break, returns to employment with the same employer and then leaves again.

Date of joining Employer A	= 01/01/2010
Date of leaving Employer A	= 30/09/2014
Date of re-joining Employer A	= 01/01/2015
Date of leaving Employer A	= 30/04/2015

In this case the active member's pension account would have been closed and, as the vesting period had been met for deferred benefits, a deferred member's pension account would have been opened. On recommencement, an active member's pension account would have been opened and auto-aggregation would have occurred (the deferred account is closed and the "contents" transferred to the active account, along with the final salary linked membership prior to 1 April 2014).

The person would have the option to keep the benefits separate however, and whether to calculate of final pay on leaving would depend on the aggregation decision made by the member.

If the person elected for separate benefits, there would be no need to calculate final pay when leaving on 30 April 2015. This is because the only benefit they would have in relation to the second employment would be a CARE pension in respect of membership from 1 January 2015 to 30 April 2015. Although the person has far less than two years in this employment, the fact they already have a deferred benefit qualifies them for another deferred benefit (and, indeed, debars a refund of contributions).

Let us now assume that she did not make an election to keep her benefits separate. The final pay period is 1 May 2014 to 30 April 2015. As there is a break in active membership during that time period we must again refer to Benefit Regulation 9(4) which tells us to scale up the pay figure by 365 / the number of days that count as active membership.

Had the person been on the same rate of pay in the previous employment during that time, the result would have been as follows:

May Ann Hayes

01/05/2014 – 30/09/2014	£16500 * 5/12	= £ 6875.00
01/01/2015 – 30/04/2015	£16500 * 4/12	= £ 5500.00
		= £12375.00
Final Pay =	£12375 * 365/273	= **£16545.33**

Just a mathematical quirk?

Well it could be described as such but surely the desired answer is £16500? That can only be achieved by calculating pay received based on 365ths of annual salary per day rather than on 1/12ths of annual salary per month.

May Ann Hayes (version 2)

01/05/2014 – 30/09/2014	£16500 * 153/365	= £ 6916.44
01/01/2015 – 30/04/2015	£16500 * 120/365	= £ 5424.66
		= £12341.10
Final Pay =	£12341.10 * 365/273	= **£16500.01**

Of course, it is easy to see with May Ann Hayes that there is a problem with the maths. It would be most unusual in a real case to have a single constant pay figure throughout the whole year leading up to leaving. A differential in salary rates, variable elements to the reward package, or a combination of the two, would make it most unlikely for the person calculating final pay to realise that the calculation was, potentially, being skewed.

Different employers

Let us suppose the two periods of membership were with different employers.

Date of joining Employer A	= 01/01/2010
Date of leaving Employer A	= 30/09/2014
Date of joining Employer B	= 01/01/2015
Date of leaving Employer B	= 30/04/2015

If the member did not elect for separate benefits (i.e. they accepted auto-aggregation) it would be necessary for Employer B to contact Employer A to establish what the pensionable pay was during the period 1 May 2014 to 30 September 2014 in order to be able to calculate final pay.

In practice, it is probable that the administering authority (already having the necessary information in order to have calculated the original deferred benefit) would accept pay details for the period 1 January 2015 to 30 April 2015 from Employer B and then perform the final pay calculation. .

CONCURRENT EMPLOYMENTS

Member holds two concurrent jobs with the same employer and ceases one of those jobs (Job Y), their benefits are auto-aggregated with the remaining job (Job Z) and they do not make an election for separate benefits.

He then ceases to hold the remaining job (Job Z).

Date started Job Y	= 01/09/2012
Date started Job Z	= 01/01/2013
Date of leaving Job Y	= 31/12/2014
Date of leaving Job Z	= 30/04/2015

The use of the words "but excluding pensionable pay from membership in a concurrent employment, or concurrent employments" mean that a member who has had aggregated a concurrent period of membership will nevertheless have their final pay calculated only using pensionable pay from the job that they are now leaving.

Thus, in the example above, on aggregating the membership from Job Y into Job Z, the pay in job Y is, effectively, annulled. When the member ceases Job Z, only pay for Job Z is used in the final pay calculation. If this were not the case, the member could get a double benefit, because the calculation methodology when aggregating pre-1 April 2014 benefits takes account of differentials in pay.

Simple Simon

Take for example, an exaggerated and simplified case of a member with two concurrent posts, both held since 1 April 2012 - one with a whole-time equivalent pay of £20,000 and a second with a whole-time equivalent pay of £10,000.

He now leaves the £20,000 job and his 2 years pre-1 April 2014 membership is aggregated with the membership in the continuing £10,000 job.

The 2 years' membership in the first job becomes reckonable as 4 years in the second job. Its value remains the same – the membership length has doubled but the whole-time equivalent pay has halved.

He leaves the second job 1 year later. If the final pay were not restricted to the pay from the continuing job he could choose to use the best of the last 3 years pay i.e. the £20,000 pay figure. If this were allowed, the member would have doubled the membership from the job that ceased and have benefits calculated by reference to £20,000, thereby getting a "double" benefit.

So, returning to our example case of Job Y and Job Z, if the pay rates were:

Job Y	01/05/2014 – 31/12/2014	£17,000
Job Z	01/05/2014 – 31/03/2015	£14100
	01/04/2015 – 30/04/2015	£14700

The final year's pay calculation would only relate to the pay from Job Z as follows:

Cornelius "Con" Current

01/05/2014 – 31/03/2015	£14100 * 11/12	= £12,925
01/04/2015 – 30/04/2015	£14700 * 1/12	= £ 1,225
	Total	= £14,150

Exercise 4 – Earl E Bird

Mr Earl E Bird had a deferred benefit in respect of an earlier period of membership from 1 August 2006 to 31 July 2011.

He will be subject to auto-aggregation when he recommences on 28 November 2015 and does not elect to retain separate benefits.

He then leaves employment on 28 February 2016.

His rate of pay throughout this employment was £24000 p.a.

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AND FINALLY……..

If time permits, an open session to discuss any items relating to final pay not explicitly covered elsewhere in these workshop notes.

Things like:

- Voluntary Term-Timers (e.g. “Family Friendly” hours)
- Under-taken leave
- Over-taken leave
- etc.

Notes

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Just for posterity really, an extract from a now defunct workshop that goes through a number of issues that prove there is no right or wrong answers sometimes when calculating final pay in the LGPS!

FINAL PAY – 365THS OR 12THS, THE SAGA CONTINUES

We have spent some considerable time in these workshop notes looking at the relative merits of calculating final pay using different methodologies. For a monthly paid person using the (technically correct) method of assessing final pay based on twelfths of annual salary or the alternative (easier when it comes to devising spreadsheets/software) method of using 365ths of annual salary.

In many instances the differences in calculation results are marginal and it can be argued that it doesn't really matter and both methods are reasonable. As we saw in the section "Final Pay – 365/n" using twelfths can lead to some odd-looking results. However, coupling the final pay methodology with the fact that, when it comes to the counting of membership, not all calendar months have the same number of days in them can lead to some surprising outcomes.

To illustrate this point further, let us consider the pension benefits of two people, Hugh Nose and Hugh Cares. Hugh Nose occupied the post of Pensions Assistant from 1 January 2011 to 30 April 2011. He received an annual salary of £18,000 and was paid £1,500 per calendar month. His pension contribution was 5.9% as he fell into Band 3. His contributions were £88.50 gross per month so he paid a total of £354.00. Using the twelfths method, his final pay would be:

Hugh Nose

01/01/2011 – 30/04/2011	£18000 * 4/12	= £ 6000.00
Final Pay =	£6000 * 365/120	= **£18250.00**

Hugh Cares took over the post of Pensions Assistant on 1 May 2011 and held it until 31 August 2011. He too received an annual salary of £18,000 and was paid £1,500 per calendar month. His pension contribution was 5.9% as he fell into Band 3. His contributions were £88.50 gross per month so he paid a total of £354.00. Using the twelfths method, his final pay would be:

Hugh Cares

01/05/2011 – 31/08/2011	£18000 * 4/12	= £ 6000.00
Final Pay =	£6000 * 365/123	= **£17804.88**

It is highly probable that you are thinking, not for the first time, that these final pay figures are ridiculous and that both Mr Nose and Mr Cares should have a final pay figure of £18000 as that was their salary figure throughout their employment.

What of their benefits from the LGPS though?

Hugh Nose 1

Pension: $\frac{120/365}{60}$ x £18250 = £100.00

Hugh Cares 1

Pension: $\frac{123/365}{60}$ x £17804.88 = £100.00

Incredible! Both gentlemen have paid in exactly the same contribution and receive exactly the same benefits in return. And all because we have used final pay figures that looked wrong at first sight. If we had used a final pay figure in both cases of £18000, their benefits would have been as follows:

	Hugh Nose 2				
Pension:	$\frac{120/365}{60}$	x	£18000	=	£ 98.62
	Hugh Cares 2				
Pension:	$\frac{123/365}{60}$	x	£18000	=	£101.10

Of course, one can argue that Mr. Cares should get more than Mr. Nose for the simple reason that he has three days more membership!

For those of you, however, who are now convinced that the version 1 outcomes are fairer than the version 2 outcomes, this can only be argued when their benefits are solely comprised of the membership used to derive the final pay. If we were to perform the calculations one more time and give each gentleman a period of ten years augmented membership, the outcome would be as follows:

	Hugh Nose 1				
Pension:	$\frac{10+120/365}{60}$	x	£18250	=	£3141.67
	Hugh Cares 1				
Pension:	$\frac{10+123/365}{60}$	x	£17804.88	=	£3067.48

The point of this short section in the workshop is to simply highlight that there are sometimes no absolute right and wrong answers and there will always be winners and losers in a final salary scheme and this can simply be down to mathematical idiosyncrasies.