

## Internal Dispute Resolution Procedure: Guidance Note

### Decision Making, Right of Appeal and Internal Dispute Resolution Procedure – Cambridgeshire & Northamptonshire Pension Funds

#### Key Points

- Explains the pension decision making process, the associated right to appeal every pension decision and the Internal Dispute Resolution Procedure (IDRP)
- Makes sure you recognise every time you are making a pensions decision and treat it as such.
- Makes sure the decision making process is robust from the start.
- It is important to explain the reason behind all decisions INCLUDING the routine ones.
- All decisions should include details of the right of appeal and the job title and contact details of the specified person.
- Employers must appoint an adjudicator to deal with IDRP applications.
- If possible fix the problem before it gets to IDRP.
- How to do the first stage IDRP is explained.

#### Other Relevant Documents

1. This note has relevance to all documents where a decision which will or may affect pension benefits is being taken or conveyed to a pension scheme member.

#### Background

2. Throughout this guidance we are focusing on decision making, the right of appeal and IDRP as it applies to employer first instance decisions. There is also a parallel process which refers to administering authority first instance decisions – these are not a matter of specific concern for employers.
3. The incidences of disputes regarding decisions are increasing in line with rising awareness and an increasingly litigious society. Getting sound processes in place is therefore an essential part of managing the risk associated with decisions and disputes.
4. The advice contained in this guidance significantly increases the focus given to decision making and the appeals process.
5. The LGPS requires decisions to be made in a wide range of circumstances. Decisions tend to fall into two types:
  - The employment decision has been made on employment grounds and this leaves no choice on the pensions decision; or
  - Options are available to the employer, which they choose depends on how they apply their discretions.

6. There are some circumstances – most notably the application of tiered contribution rates and decision on which ill-health pension tier to award – which are clear cut in theory and are therefore not discretions. In reality it is less clear cut and, as such, it is advisable to treat these as if they are discretions so that there is clarity on how the decision will be made.
7. Section 50 of the Pensions Act 1995 required occupational pension schemes such as the LGPS to make arrangements for the resolution of disagreements between the managers of the scheme on the one hand, and on the other, active, deferred and pensioner members, their widows, widowers and dependants, their nominated representatives and prospective members. The detailed procedures to be followed are now set out in:
  - Section 50B of the Pensions Act 1995, which was inserted by section 273 of the Finance Act 2004 and amended by Section 16 of the Pensions Act 2007, and
  - The Occupational Pension Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments) Regulations 2008.
8. The Local Government Pension Scheme Regulations 2013 (hereafter referred to as the 2013 Regulations) provide for the Scheme's arrangements in this respect. The main features of the arrangements are:
  - Responsibility for the first stage of the procedure (applications for adjudication of disagreements) is vested in an adjudicator appointed by you, the employer who considered and made the initial decision against which the dispute has arisen; and
  - The responsibility for second stage determinations falls to either Cambridgeshire County Council or Northamptonshire County Council acting as the relevant Administering Authority.
9. These arrangements mean the LGPS reflects the intention of the Pensions Act, i.e., that pension disputes should be resolved internally before progressing to an external, independent, consideration by the Pensions Ombudsman.
10. Whilst IDRPs essentially deals with whether a correct pension decision has been made, determinations can comment on matters of maladministration related to the making of the first instance decision that is being disputed, and seek to provide recompense to applicants where this is appropriate.
11. Examples of decisions that an employer makes which could be subject to an appeal include:
  - Exercise of employer discretions;
  - What is treated as Pensionable Pay,
  - Cumulative Pensionable Pay used to calculate benefits in respect of post 31 March 2014 membership,
  - Final Pay used to calculate benefits in respect of pre 1 April 2014 membership, and whether to use any of the pay protections;
  - Decision regarding tiered contributions;
  - Whether an individual is entitled to be a scheme member;
  - Ill-health pension decisions, including tier decisions; and
  - Anything else where a decision is made which will affect entitlement to pension benefits.
12. There continues to be encouragement to resolve disputes informally without recourse to the formal IDRPs arrangements. The formal two stage IDRPs arrangement should, in these circumstances, be reserved for cases which are more complex and contentious.

## Applying the Regulations

13. Detailed regulations apply regarding all decisions. When making decisions it is particularly important to make sure you know which set of regulations the decision is being made under. Generally current employees are subject to the current set of regulations although people who started in the LGPS before the 1 April 2014 changes may have protections or be subject to transitional arrangement. Once people leave they tend to be subject to the set of regulations that applied at the time they left. If in doubt ask LGSS Pensions Service. Up to date sets of the relevant LGPS regulations can be found online as follows:
  - the current scheme  
<http://lgpsregs.org/index.php/regs-legislation/timeline-regulations-2014>
  - the transitional provisions, savings and amendments that apply to those that have been members of the current and previous schemes  
<http://lgpsregs.org/index.php/regs-legislation/timeline-transitional-regulations-2014>
  - the previous schemes  
<http://timeline.lge.gov.uk/regidx.html>
14. The specific set of current IDRP regulations are found in Regulations 72 to 79 of the 2013 Regulations. Unless otherwise specified these are the regulations referred to throughout this document. A full copy of the current wording of Regulations 72 to 79 is at Appendix A.
15. An up-to-date version can be accessed on the LGPS Regulations and Guidance website <http://lgpsregs.org/index.php/decisions?showall=1&limitstart>

## Decisions: The basic process

16. There are three sets of circumstances where the regulations require you to actually make a pension decision. It is important to understand them all.
17. Circumstance 1: Whenever you make an individual employment decision:
  - There may be an accompanying pensions decision – it is important you understand when you do this and make sure that your standard employment paperwork also addresses the pension issues;
  - You may be making a decision which only allows one pension response – you need to be clear when this is and decide if your process needs to address any issues before you get to a definite decision.

Examples include:

- New starter – you make the decision on entitlement to join the LGPS, what tier to use for contributions and, if they are automatically in the LGPS, the right of opt-out at this point. In all likelihood you are doing this intermingled with employment decisions e.g. terms & conditions, pay scale etc. Therefore your new starter information and employment contract should be clear on the pension issues.
- Job evaluation and re-deployment resulting in change in pay has pension impacts because it affects both the amount of pension built up during ongoing membership and the value of the pension relating to membership prior to 1 April 2014, which is generally based on final year's pay. Individuals in these circumstances need to understand the implications for their pension – particularly where pay reduces or is frozen.

- Reason for leaving employment has a huge impact as, together with length of membership, and often age, it determines the pension entitlement award. In particular there are some reasons for leaving where the individual might not actually want the resulting pension decision – this particularly applies to ill-health dismissal resulting in tier 3 ill-health pension and sometimes to redundancy and business efficiency cases where the individual does not want immediate payment of pension.
18. Circumstance 2: In addition to individual decisions there are some terms & conditions decisions that can have impacts across whole groups of people. The pension implications of these need understanding and either addressing or communicating. An example would be increasing the number of hours per week that constitutes ‘full time’ whilst keeping ‘full time’ pay the same i.e. decreasing the hourly rate; for members who remain working the same hours as previously, their pensionable pay and the benefits that they build up in the current scheme will be lower as a result of such a change.
  19. Circumstance 3: Finally, there are the decisions you make as a result of applying discretions, discretions where you have a choice of decision.

### **Obligation to inform scheme member**

20. When you make a decision, the notification of that decision must include a reference to both the recipient’s right under regulation 74 to refer any disagreement to the stage 1 adjudicator, and their right under regulation 76 to refer any subsequent disagreement with the stage 1 adjudicator’s decision to the administering authority (regulation 73(5)(a)). The reference in the notification to the adjudicator who would decide any application under regulation 74, must include that person's job title and the address at which he or she can be contacted (regulation 73(5)(c)). It should also specify the time limits within which the rights under the Regulations may be exercised.

### **Appeals: The basic process**

21. There is a two stage formal dispute resolution procedure.
22. The first stage consists of an application to a person specified by you, the Scheme employer. This person is referred to as the adjudicator and is required to issue his or her decision on the disagreement within two months of receiving the applicant's written appeal, or longer if a letter explaining the reasons for the delay, and confirming the date when the decision notification will be provided, is sent within the initial two month window. The written decision notification must be issued to the applicant, the scheme employer and the administering authority (addressed to the Deputy Head of LGSS Pensions).
23. Where the applicant is dissatisfied with the stage 1 adjudicator's decision, the matter can then be referred to Cambridgeshire County Council or Northamptonshire County Council as appropriate (acting as the relevant Administering Authority) for determination at the second stage of the procedure. Unless the matter is referred in this way, the decision of the Stage 1 adjudicator is binding. There may be occasions when the adjudicator at Stage 1 is uncertain about the determination, would welcome a second opinion or confirmation that the proposed decision would resolve matters. In these circumstances, it would be appropriate for a draft determination to be sent to the main interested parties, including the applicant and LGSS Pensions Service, to invite their views on the proposed decision.

24. Please note that under the arrangements, if you as the employer are dissatisfied with the adjudicator's decision, there is no right for the body that took the initial decision to refer the matter up to the second stage of the procedure.

### **Application under IDR**

25. Although most applications under regulation 74 are likely to follow from a notification of a decision made by you, a dispute can be made in relation to an act or omission. This means, in effect, that the person specified under regulation 73(5)(c) cannot refuse to accept an application on the grounds that no notification of a decision under the Scheme has been issued. This will of course be the case where you have failed to make a decision which is required to be made under the regulations, but there may be other occasions where a regulation 74 application must proceed, because it relates to the Scheme, even though no decision has been made by you.
26. The arrangements apply only to disputes which arise from the operation of the LGPS. In other words, they are restricted to any person whose rights or liabilities under the Scheme are affected by a first instance decision or an act or omission by a scheme employer. This will mean that the process is open to actual and prospective members along with their dependents.
27. Close attention needs to be given to ensuring any employment issues are sorted out through employment complaint channels. If the pension decision is driven by the employment decision, IDR cannot address the fundamental employment issue.
28. Detailed guidance on how to approach a stage 1 application is given in the Practicalities Section.

### **Second stage of the IDR process**

29. Once a stage 1 decision has been made and notified by the stage 1 adjudicator, the scheme member has a right to refer the case to a person specified by Cambridgeshire County Council or Northamptonshire County Council as appropriate, acting as the relevant Administering Authority. In addition to the information previously supplied to the stage 1 specified person, the administering authority must also be given a copy of the stage 1 adjudicator's decision, a statement of the reasons why the applicant is dissatisfied with that decision, and a statement confirming that they wish the disagreement to be reconsidered by the administering authority (regulation 76).
30. A disagreement may also be referred to the administering authority in cases where :
- the stage 1 adjudicator has failed to issue, within two months of the application under Regulation 74, either:
    - a formal decision, or
    - an interim letter explaining a delay in making a decision and confirming the date by which the decision will be made and notified,
  - or
  - an interim letter of explanation has been sent, but the adjudicator has failed to notify the applicant of a decision by the date given in that letter.

31. It is the administering authority's responsibility to determine Stage 2 disputes. Cambridgeshire County Council or Northamptonshire County Council, as appropriate, will:
- reconsider the decision, taking full account of the facts of the case and of any evidence submitted, or relied on, by either party in the determination at Stage 1,
  - check that the regulations were applied correctly, and
  - check that sound, impartial procedures were used to reach the decision. This is particularly important where the dispute concerns the exercise of a discretion by an employer.
32. The administering authority also needs to satisfy themselves that the first stage decision was reasonable and consistent with other decisions from other employers in the Fund, and that it would stand up to external scrutiny.

### **Pensions Ombudsman**

33. If the complainant decides to pursue the dispute beyond the second stage of the internal procedure it will be considered by the Pensions Ombudsman, or his Deputy.

### **The Practicalities**

#### **Avoiding the Pensions Ombudsman**

34. The ultimate intention of this is to avoid cases ending up at the office of the Pensions Ombudsman and him, or his Deputy, finding against you.

#### **Get the initial decision correct and explain it**

35. Having robust processes for getting necessary information before making a decision, making a decision and then providing a clear written explanation of the decision is an obvious, and essential, part of good administration. The 2013 Regulations are quite specific on the point of notification of first instance decisions. "The grounds for the decision" must be included in any notification informing a person that they are not entitled to a benefit (regulation 73(2)). The notification must give an address from which more information about the decision can be obtained (regulation 73(4)).

#### **Routine Decisions Driven by Employment Decisions**

36. Appendix B provides a list of the most common pension decisions that result from employment decisions. Make sure your standard employment processes recognize the pension implications and deal with them in standard paperwork. In doing this use common sense – for example, if your new starter process has lots of documents associated with it the pensions appeal process could be simply addressed in a single covering letter rather than in every relevant document.
37. It is also important that those people effectively making pensions decisions understand they are doing so and what to do if there is a particularly adverse pension result.

#### **Discretion Decisions**

38. There is a document on the LGSS Pensions Service website <http://pensions.cambridgeshire.gov.uk/index.php/employers/discretions/> <http://pensions.northamptonshire.gov.uk/index.php/employers/discretions/> which gives details of all pensions discretions available under the various Regulations. It is in a format that you may wish to populate with your policy on how discretion will be exercised in each eventuality, or it can simply be used as a means of cross checking that you have appropriate policies in place. There are also links to the LGPS Regulations and Guidance website which includes further information in the HR Guide and Discretions Policies Guide on putting your policy statement in place. Your policy statement is key to these decisions, it is effectively a set of

guidelines which details how you would normally expect to act when asked to make a decision. However, a good discretions statement will recognize that there are always unusual circumstances where a non-standard response may be appropriate.

39. When dealing with a discretions request you should be aware that a scheme member may not have asked for what they actually want. It is therefore important to establish at an early stage what is actually being asked for within the terms of the Regulations and, in some cases, to explore if there are other ways of achieving the desired result. Some common examples
- A deferred pensioner asks for consent for early payment of their benefits but doesn't mention they want this because they are ill – in this case the evidence gathering should identify if the request should primarily be treated as a deferred pension into payment on ill-health grounds case and switch to this process accordingly. If ill-health pension is turned down an employer's consent to early payment decision could then be looked at.
  - Someone asks for early payment of their pension – they could actually also be asking for or expecting waiving of any early payment reductions.
  - Someone who left before 1 April 2014 and is age 60 asks for early payment of their deferred pension thinking they have to wait until age 65 without realising they can choose to have it at age 60 – in this case it does not actually require an employer to exercise discretion (unless the member wants waiving of any early payment reduction)
40. Before making a discretions decision you need to collect evidence about the circumstances of the case. This evidence can come from the individual, a professional employed by you to look at the case (e.g. HR officer, a doctor), line managers, other employees, LGSS Pensions Service (acting as Administering Authority) and anyone who appears reasonable.
41. Once evidence has been received you need to use it to make your decision. LGSS Pensions Service will help talk you through the issues if you need help. Make sure you document the reasons for your decision – you will need them if the applicant appeals.

### **Informing the Individual**

42. There is no specific suggested format for pensions decisions related to routine employment decisions – largely this is for you to decide what best fits with your standard formats. Somewhere in your documentation you need to:
- Make reference to the relevant set of regulations, preferably with specific reference to the appropriate regulation number (if in doubt ask LGSS Pensions Service or simply refer to the whole set of regulations);
  - Make your decision clear (e.g. in relation to redundancy/business efficiency cases where the member is aged at least 55 on leaving and has satisfied the qualifying service condition, “you are entitled to, and must take, immediate payment of your retirement pension”);
  - Refer to the reason for the decision, including any evidence you have collected (e.g. because you are age 55 or over and have been dismissed by reason of redundancy...);
  - Give details of the right of appeal.

43. Again apply common sense in this – if a decision is often contentious it is important to comply with the above as fully as possible. If a decision is rarely contentious a light touch approach is not unreasonable in the first instance but you will need clear processes to address an issue thoroughly if someone is unhappy.
44. Appendix C provides a suggested format for a letter informing the individual of a discretion decision. This basic format can also be used if you have a standard decision that requires more explanation. A separate Word version of Appendix C is available on our website.
45. If no proper explanation of the decision is given at the time, it is possible that there could eventually be a maladministration ruling by the Pensions Ombudsman.

### **Wording of Appeals Information**

46. A suggested appeals paragraph is shown in Appendix D. There are three options given, all of which can be adapted as appropriate, these are:
  - Option 1 – a general appeals paragraph for use in routine decision making and where there has not been a lot of history to the decision.
  - Option 2 – a paragraph for use where there has been a long history to the case where you don't want any more "informal" discussion.
  - Option 3 – for use when there is also an appeal process for an employment decision running parallel to the pension decision.A separate Word version of Appendix D is available on our website
47. The person should also receive a copy of the "Disputing an EMPLOYERS decision sheet (2014)". This leaflet is available from the LGSS Pensions Service website. The links are:  
<http://pensions.cambridgeshire.gov.uk/wp-content/uploads/2014/10/Disputing-an-EMPLOYERS-decision-sheet-2014.pdf>  
<http://pensions.northamptonshire.gov.uk/wp-content/uploads/2014/10/Disputing-an-EMPLOYERS-decision-sheet-2014.pdf>

### **Identifying the Stage 1 adjudicator**

48. You need to appoint your adjudicator and make sure their job title and contact details are given in every decision notification, with the right of appeal information. Confirmation of the appointment of the adjudicator, together with their job title and contact details, should also be provided to LGSS Pensions Service.
49. The Pensions Act 1995 does not stipulate any particular requirements about who should determine any disputes at the first stage. Section 50(4A)(a) simply says that where there is a two stage arrangement, at the first stage a person of a description specified in the arrangements ("the adjudicator") is to give a decision on a disagreement. The arrangements set out in the 2013 Regulations do not elaborate on who the "person ("the adjudicator") to consider applications" should or might be.
50. In practice, as the person will need to understand the details of the dispute, the employer is likely to ask someone with relevant expertise to decide it. As a minimum it is assumed that if a person is competent to consider and make the initial decision then they are equally competent to re-consider that decision comprehensively and carefully in the light of a Stage 1 appeal. However, best practice would direct you to someone with a degree of independence who is unlikely to be involved in most of the day-to-day decisions and does not make discretion decisions. Depending on the circumstances, a suitable person could be, for instance, the authority's solicitor, the

human resources manager, pensions liaison officer or payroll manager. The person does not, however, have to be an employee or elected member of the authority.

### **Action to avoid a dispute**

51. Where the member is clearly unhappy with the decision and may resort to the formal dispute procedure in the absence of any further action you should attempt to sort it out first. LGSS Pensions Service is always happy to provide support and advice to you and to provide information to the scheme member to help resolve disputes before they reach IDRPs.

### **Fix it first**

52. The first aim is to try and resolve problems at the outset and stop cases getting to the point where people feel the need to formally appeal, since this is much less time consuming for all involved. It is therefore recommended that you:

- Encourage anyone who is unhappy with the decision to contact you through normal procedures to discuss the issue;
- Thoroughly check the facts of the issue in dispute, contacting LGSS Pensions Service for advice if necessary; then
- Explain why the decision has been made OR change your decision if necessary.

### **Starting the Appeal**

53. A person wanting to make an appeal should contact the adjudicator for their employer who should issue a full guide to the IDRPs process for disputing an Employer Decision (this is available from LGSS Pensions Service website). If the individual contacts LGSS Pensions Service direct about an employer decision and making an IDRPs application, a full guide to the IDRPs process will be issued to them and the individual will be directed to the adjudicator. The adjudicator will be informed that this has been done.

### **Doing the First Stage IDRPs**

54. This stage involves a formal review by the stage 1 adjudicator of the decision. It is an opportunity to reconsider the question, check process and, where appropriate, to alter the decision – for instance, where certain relevant facts or evidence were not taken into account, or where there has clearly been a mistake or oversight.

### Procedure

55. Upon receipt of an application, which must be a written one signed on or behalf of the applicant, the stage 1 adjudicator will need to ensure that they are in receipt of the relevant particulars (regulations 74(5)). Specifically:

- the applicant's full name, address and date of birth;
- if the applicant is not a member, their relationship to the member, the member's full name, address, date of birth, national insurance number and the name of the member's scheme employer;
- a statement giving details of the nature of the disagreement and the reasons why the applicant is aggrieved;
- a copy of the decision in dispute.

They should then acknowledge the application and advise the applicant that TPAS are available to help them.

56. The adjudicator must also check that the application has been submitted within a period of six months from the date of notification of the decision being challenged, or the date of the act or omission which is the cause of the disagreement (regulations

74(2) and (3)). However, the adjudicator may extend this period at their discretion (see regulation 74(4)).

57. To reach a decision the stage 1 adjudicator should :
- Gather all of the necessary facts and opinions from the employee (or their dependants if a death is involved) and the relevant case officer/s who have been involved in the case;
  - Gather any other evidence which he or she requests from expert advisers, etc. Where the dispute is of a medical nature, the specified person may wish to consider each case on the basis of the medical evidence submitted by both parties to the disagreement, although in some circumstances, the opinion of a second independent registered medical practitioner (IRMP) could be sought. (see paragraph 68 below).
  - Give all parties opportunity to comment on the facts as presented by the other party, if relevant;
  - Make a decision about what facts are correct and relevant;
  - Compare the facts to the LGPS Regulations;
  - Reach a decision.
58. A variety of decisions can be made:
- To uphold the original decision;
  - To change the decision partially or in full;
  - To send the case back for review following further action.

#### Notice of a decision

59. Written notice of the stage 1 adjudicator's decision must be sent to the applicant (or his/her representative), the Scheme employer, and LGSS Pensions Service, within two months of the receipt of the relevant particulars. Regulation 75(3) requires the decision to include the following :
- the decision;
  - a reference to any legislation or Scheme provisions that it relies on;
  - where relevant, a reference to the Scheme provisions conferring the discretion whose exercise has caused the disagreement;
  - a reference to the applicant's right to have the disagreement reconsidered by the appropriate administering authority, and the time limit for doing this;
  - a statement that the Pensions Advisory Service (TPAS) is available to assist the member with any difficulty with the Scheme which remains unresolved, and the address at which they can be contacted.

Appendix E contains a sample decision letter. A separate Word version of Appendix E is available on our website.

60. Where it will not be possible for the specified person to issue his/her decision within the two month period, an interim letter must be sent immediately to all the relevant parties explaining the reasons for the delay and giving an expected date for issuing the decision (regulation 75(2)).
61. In most cases the decision as described in paragraph 59 above will be a final one. However, there may be circumstances where the adjudicator may wish to issue a provisional decision so that the views of the interested parties, in particular, that of Cambridgeshire County Council or Northamptonshire County Council as appropriate, acting as the relevant administering authority, can be obtained before a final decision is taken. Because the two month time-limit relates to the final decision, a letter of explanation should still be sent if the issue of a provisional letter delays the adjudicator's decision beyond that time-limit.

62. Unless the applicant refers the decision of the adjudicator to the administering authority for determination under regulation 76, the decision reached by the specified person under regulation 75 is final and binding on the Scheme employer.

## Specific Guidance

### Ill-health benefit decisions

63. Disputes are particularly likely to arise when a member is refused an ill health pension benefit, or is awarded a lower tier of ill health pension benefit than they believe they should have been awarded. There are several areas for potential dispute. You should first check that all of the requirements for managing ill-health have been complied with; the main issues are discussed below. If they have not, a fresh decision needs to be made.
64. To qualify for an immediate ill-health pension a member must, in accordance with Regulation 35 of the 2013 Regulations:
- have “ [qualifying service for a period of two years](#) “,
  - have had their employment “terminated by a [Scheme employer](#) on the grounds of ill-health or infirmity of mind or body before that member reaches normal pension age”,
  - be, “as a result of ill-health or infirmity of mind or body, [permanently incapable](#) of discharging efficiently the duties of the employment the member was engaged in”, and
  - “as a result of ill-health or infirmity of mind or body” not be “immediately capable of undertaking any gainful employment”.

Check firstly whether the member met the qualifying service and age criteria, and then whether they had their employment terminated on the grounds of ill-health or infirmity of mind or body. If they did, go on to consider the other criteria; if not, you may have a problem – see paragraph 68.

65. Before making any decision on entitlement to ill health benefits or early payment of a deferred benefit on the grounds of ill-health, the employer/former employer must obtain a certificate from an independent registered medical practitioner (IRMP) qualified in occupational health medicine approved by the administering authority. The certificate must give the doctor's opinion on whether the member is suffering from a condition that renders them permanently incapable of discharging efficiently the duties of the relevant employment because of ill-health or infirmity of mind or body. In addition, for those who left pensionable employment after 31<sup>st</sup> March 2008 or are leaving now, an opinion is required on when, or if, the member may on the balance of probabilities be capable of undertaking any gainful employment. Check that this certificate exists, the accompanying report from the IRMP gives sufficient detail about the member's medical condition, prognosis, treatment options and their likely efficacy, and a narrative description of the likelihood of the member being capable of their employment/former employment, and where appropriate gainful employment, before the relevant date, which would be age 65 under the Regulations in place between 1 April 2008 to 31 March 2014 and is now since 1 April 2014, their State Pension Age or 65 if later. The report should be detailed enough to have enabled the employer to objectively determine whether they consider the opinion expressed on the certificate to be consistent and correct and therefore a sound basis for making their ill health pension decision. The certificate and report must be dated reasonably in relation to the dismissal date. If a certificate is more than 3 months old at the point of dismissal you should consider whether it is too old. This is particularly an issue in cases where the IRMP is stating the fact that treatment or investigation is not yet exhausted as a factor in coming to their opinion.

66. In addition to having the above certificate, if the member meets the criteria for an immediate ill health pension from active membership the employer must determine which tier of ill-health pension benefits apply. In doing this the employer has to take account of more than just the strict medical view of the individual's capability of undertaking gainful employment – the doctors opinion on this is given on the certificate if the person meets the ill-health medical criteria. Check whether any further, non medical, issues have or should have been collected and whether they were taken into account in a reasonable way.
67. Where these requirements have been complied with, there may still be a dispute. Commonly this is about the opinion taken by the independent registered medical practitioner. It is not for the stage 1 adjudicator to dispute the medical opinion. However, if evidence has been supplied:
- that treatment has moved on since the decision; or
  - that the IRMP did not have sufficient or correct information to make the decision; or
  - the IRMP was not suitably qualified (as per the regulations); or
  - the IRMP did not pay sufficient regard to the advice issued by the Secretary of State; or
  - there is any other reason to doubt the decision,
- the adjudicator can ask for the case to be referred to a second IRMP. Normally, however, this course of action would only be taken where there is sufficient evidence to create doubt. The costs of such an examination would fall to be met by the relevant employer.
68. If you determine that the individual should have been dismissed on the grounds of ill-health, but hasn't been, this could become a very messy situation. Neither the stage 1 adjudicator nor the Director of LGSS Law & Governance Cambridgeshire and Northamptonshire, as the stage 2 adjudicator, will be able to uphold an appeal in these circumstances EVEN if a IHCERTA1 certificate is received that says the individual met the ill-health criteria. This is because regulation 35 (1) requires the employment to have been "terminated by a [Scheme employer](#) on the grounds of ill-health or infirmity of mind or body..." and this criterion will not be met. However, if such a case goes to the Pensions Ombudsman he could require the employer to make up the difference between the current situation and what the employee would have received if his employment had been ended appropriately by putting in place an equivalent non-LGPS pension. Any such decision would depend on both the actions of the individual and the employer and whether the employee would otherwise meet the criteria. In these circumstances it is worth exploring whether the employer will re-instate the individual and dismiss on the grounds of ill-health.

## **LGSS PENSIONS SERVICE CONTACTS**

### **MEMBER PENSIONS CONTACT:**

[PENSIONS@NORTHAMPTONSHIRE.GOV.UK](mailto:PENSIONS@NORTHAMPTONSHIRE.GOV.UK)

**01604 366537**

### **EMPLOYERS TEAM CONTACT:**

[PENEMPLOYERS@NORTHAMPTONSHIRE.GOV.UK](mailto:PENEMPLOYERS@NORTHAMPTONSHIRE.GOV.UK)

**01604 364621**

## **DECISIONS**

### **First instance decisions**

Please click [here](#) for a list of the Statutory Instruments which have amended this regulation since its introduction.

**72.** —(1) Any question concerning the rights or liabilities under [the Scheme](#) of any person other than a [Scheme employer](#) must be decided in the first instance by the person specified in this regulation.

(2) In these Regulations, reference to [the Scheme employer](#) or appropriate [administering authority](#) of a prospective member is a reference to the body that would be that prospective member's [Scheme employer](#) or appropriate [administering authority](#) if that person were to become an [active member](#) in the employment by virtue of which eligibility to join [the Scheme](#) would be established.

(3) The appropriate [administering authority](#) must decide any question concerning—

- (a) a person's previous service or employment;
- (b) the crediting of [additional pension](#) under [regulation 16 \(additional pension\)](#); and
- (c) the amount of any benefit, or return of contributions, a person is or may become entitled to out of a pension fund.

(4) A person's [Scheme employer](#) must decide any question concerning any other matter relating to the person's rights or liabilities under the Scheme.

(5) A decision under this regulation must be made as soon as is reasonably practicable.

### **Notification of first instance decisions**

Please click [here](#) for a list of the Statutory Instruments which have amended this regulation since its introduction.

**73.** —(1) Every person whose rights or liabilities are affected by a decision under [regulation 72 \(first instance decisions\)](#) must be notified of it in writing by the body which made it as soon as is reasonably practicable after the decision is made.

(2) A notification of a decision that the person is not entitled to a benefit must contain the grounds for the decision.

(3) A notification of a decision about the amount of a benefit must contain a statement showing how it is calculated.

(4) Every notification must contain a conspicuous statement giving the address from which further information about the decision may be obtained.

(5) Every notification must also—

- (a) specify the rights available under [regulations 74 \(applications for adjudication of disagreements\)](#) and [76 \(references of adjudications to administering authority\)](#);
- (b) specify the time limits within which the rights under those regulations may be exercised; and
- (c) specify the job title and the address of the person appointed under [regulation 74\(1\)](#) to whom an application may be made.

## Applications for adjudication of disagreements

Please click [here](#) for a list of the Statutory Instruments which have amended this regulation since its introduction.

**74.** —(1) Each [Scheme employer](#) and [administering authority](#) must appoint a person ("the adjudicator") to consider applications from any person whose rights or liabilities under [the Scheme](#) are affected by—

- (a) a decision under [regulation 72 \(first instance decisions\)](#); or
  - (b) any other act or omission by a [Scheme employer](#) or administering authority, and to make a decision on such applications.
- (2) An applicant under paragraph (1)(a) may apply to the adjudicator appointed by the body making the decision, within six months of the date notification of the decision is given under [regulation 73 \(notification of first instance decisions\)](#).
- (3) An applicant under paragraph (1)(b) may apply to the adjudicator appointed by the body responsible for the act or omission, within six months of the date of the act or omission which is the cause of the disagreement, or, if there is more than one, the last of them.
- (4) The adjudicator may extend the time for making an application under paragraph (2) or (3).
- (5) An application under paragraph (2) or (3) must—
- (a) set out the applicant's name, address and date of birth;
  - (b) if the applicant is not a member of the Scheme, set out the applicant's relationship to any relevant member of [the Scheme](#) and give that member's full name, address, date of birth, national insurance number and the name of the member's Scheme employer;
  - (c) include a statement giving details of the nature of the disagreement and the reasons why the applicant is aggrieved;
  - (d) be accompanied by a copy of any written notification under [regulation 73 \(notification of first instance decision\)](#); and
  - (e) be signed by or on behalf of the applicant.
- (6) The adjudicator must determine—
- (a) the procedure to be followed when exercising functions under this regulation; and
  - (b) the manner in which those functions are to be exercised.

## Decisions of the adjudicator

Please click [here](#) for a list of the Statutory Instruments which have amended this regulation since its introduction.

**75.** —(1) The adjudicator must give written notice of a decision under [regulation 74 \(applications for adjudication of disagreements\)](#) to—

- (a) the applicant;
- (b) [the Scheme employer](#); and
- (c) if [the Scheme employer](#) is not an administering authority, to the appropriate [administering authority](#) before the expiry of two months beginning with the date on which the application was received.

(2) But if no such notice is given before the expiry of that period, an interim reply must immediately be sent to the persons mentioned in paragraph (1)(a) to (c) setting out—

- (a) the reasons for the delay; and
- (b) an expected date for giving the decision ("the expected decision date").

(3) A notice under paragraph (1) must include—

- (a) a statement of the decision;
- (b) a reference to any legislation on which the adjudicator relied;
- (c) in a case where the disagreement relates to the exercise of a discretion, a reference to the provisions of these Regulations conferring the discretion;
- (d) a reference to the right of the applicant to refer the disagreement for reconsideration by the appropriate [administering authority](#) under [regulation 76 \(reference of adjudications to administering authority\)](#) and to the time within which the applicant may do so; and
- (e) a statement that the Pensions Advisory Service is available to give assistance in connection with any difficulty with [the Scheme](#) that remains unresolved including the address at which it may be contacted.

(4) A decision under paragraph (1) takes effect as a decision of [the Scheme](#) employer or administering authority, as the case may be, except where the matter concerns the exercise of a discretion, in which case, if the adjudicator does not uphold the decision, the matter must be referred back to the body which made the decision under adjudication for reconsideration or, where that body would have been [the Scheme](#) employer but that body is no longer a Scheme employer, to the appropriate administering authority.

### **Reference of adjudications to administering authority**

Please click [here](#) for a list of the Statutory Instruments which have amended this regulation since its introduction.

**76.** —(1) An applicant under [regulation 74 \(applications for adjudication of disagreements\)](#) may refer a decision under [regulation 75 \(decisions of the adjudicator\)](#) for reconsideration by the appropriate administering authority.

(2) A reference under paragraph (1) must—

- (a) be made before the relevant date;
- (b) set out the applicant's full name, address and date of birth;
- (c) if the applicant is not a member of the Scheme, set out the applicant's relationship to any relevant member of [the Scheme](#) and give that member's full name, address, date of birth, national insurance number and the name of the member's Scheme employer;
- (d) include a statement that the applicant wishes the decision to be reconsidered by the administering authority;
- (e) set out the details of the grounds on which the applicant relies;
- (f) be accompanied by a copy of any written notifications under [regulations 73 \(notification of first instance decisions\)](#) and [75 \(decisions of the adjudicator\)](#); and
- (g) be signed by or on behalf of the applicant.

(3) The relevant date for the purposes of paragraph (2)(a) is—

- (a) in a case where notice of a decision has been given under [regulation 75\(1\)](#), six months from the date the notice is received;

- (b) in a case where an interim reply has been sent under [regulation 75\(2\)](#), but no notice has been given under [regulation 75\(1\)](#), seven months from the expected decision date; and
  - (c) in a case where no notice have been given under [regulation 75\(1\)](#) and no interim reply was sent under [regulation 75\(2\)](#), nine months from the date on which the application was made.
- (4) The [administering authority](#) must determine—
- (a) the procedure to be followed when exercising its functions under this regulation; and
  - (b) the manner in which those functions are to be exercised, but it must ensure that no person who was involved in the making of a first-instance decision or a decision under [regulation 75 \(decisions of the adjudicator\)](#) is involved in a decision on reconsideration.
- (5) For the purposes of paragraph (1) of this regulation, the appropriate [administering authority](#) is the [administering authority](#) which is or was the last appropriate [administering authority](#) for the member who is the applicant, or who is the relevant member in relation to any other applicant.

### **Decisions of the [administering authority](#) on reconsideration**

*Please click [here](#) for a list of the Statutory Instruments which have amended this regulation since its introduction.*

**77.** —(1) An [administering authority](#) must give written notice of its decision after reconsideration under [regulation 76 \(reference of adjudications to administering authority\)](#) to—

- (a) the applicant; and
  - (b) where the [administering authority](#) is not the [Scheme](#) employer, to the [Scheme](#) employer, before the expiry of the period of two months beginning with the date the application is received.
- (2) But if no such notice is given before the expiry of that period, an interim reply must be sent as soon as is reasonably practicable to the persons mentioned in paragraph (1)(a) and (b) setting out—
- (a) the reasons for the delay; and
  - (b) an expected date for giving the decision ("the expected decision date")
- (3) A notice under paragraph (1) must include—
- (a) a statement of the decision;
  - (b) a reference to any legislation on which the [administering authority](#) relied;
  - (c) in a case where the disagreement relates to the exercise of a discretion, a reference to the provisions of these Regulations conferring the discretion;
  - (d) a statement that the Pensions Advisory Service is available to give assistance in connection with any difficulty with [the Scheme](#) that remains unresolved;
  - (e) a statement that the Pensions Ombudsman may investigate and determine any complaint or dispute of fact or law in relation to [the Scheme](#) made or referred in accordance with the Pension Schemes Act 1993 **(a)** ; and
  - (f) the addresses at which the Pensions Advisory Service and the Pensions Ombudsman may be contacted.

(4) A decision under paragraph (1) takes effect as a decision of [the Scheme](#) employer or administering authority, as the case may be, except where the matter concerns the exercise of a discretion, in which case, if the adjudicator does not uphold the decision, the matter must be referred back to the body which made the decision under adjudication for reconsideration or, where that body would have been [the Scheme](#) employer but that body is no longer a Scheme employer, to the appropriate administering authority.

### **Rights of representation**

Please click [here](#) for a list of the Statutory Instruments which have amended this regulation since its introduction.

**78.** —(1) An application under regulation [74 \(applications for adjudication of disagreements\)](#) or [76 \(reference of adjudications to administering authority\)](#) may be made or continued to be made on behalf of the applicant by a representative nominated by the applicant.

(2) Where a person who has the right to make, or has made such an application dies, the application may be made or continued on the applicant's behalf by the applicant's personal representatives.

(3) Where such a person is a minor or is or becomes incapable of acting, the application may be made or continued on the applicant's behalf by a family member or some other suitable representative.

(4) Where a representative is nominated before an application is made, the application must specify the representative's full name and address, and whether that address is to be used for service on the applicant of any documents in connection with the application.

(5) Where a representative's address is not to be so used, the representative must nevertheless be sent a copy of—

- (a) any notice under regulation [75\(1\) \(decisions of the adjudicator\)](#) or [77\(1\) \(decisions of the administering authority on reconsideration\)](#); or
- (b) an interim reply under regulation [75\(2\)](#) or [77\(2\)](#).

### **Appeals by administering authorities**

Please click [here](#) for a list of the Statutory Instruments which have amended this regulation since its introduction.

**79.** —(1) This regulation applies where a Scheme employer—

- (a) has decided, or failed to decide any question falling to be decided by that employer under [regulation 72 \(first instance decisions\)](#), otherwise than in the exercise of a discretion; and
- (b) is not an administering authority.

(2) Where this regulation applies, an [administering authority](#) maintaining a pension fund into which a [Scheme employer](#) pays contributions may appeal to the Secretary of State against the employer's decision on a question or failure to make a decision on a question.

(3) Such an appeal must be made by notice in writing given before the end of—

- (a) the period of six months beginning with the relevant date; or
- (b) such longer period as the Secretary of State allows.

(4) The relevant date is—

(a) where a **Scheme employer** has decided a question, the date of the notification of the decision; or

(b) where a **Scheme employer** has failed to decide a question, the date of the failure.

(5) For the purposes of paragraph (4)(b) a **Scheme employer** is to be taken to have failed to decide a question if it has not given a decision in writing at the expiry of three months beginning with the date on which the **administering authority** has requested a decision in writing.

(6) Subject to paragraph (7), the Secretary of State must make a decision on the appeal which is to take effect as a decision of **the Scheme employer** and must issue a notice in writing to the appellant and to any other person appearing to the Secretary of State to be affected by it.

(7) The appeal must be stayed if, before the appeal is determined, any application is made to the adjudicator under **regulation 74 (applications for adjudication of disagreements)**, or reference to the **administering authority** under **regulation 76 (reference of adjudications to administering authority)** in respect of any of the matters which are the subject of the appeal under this regulation.

(8) The **administering authority** must inform the Secretary of State whether it wishes to continue with an appeal stayed under paragraph (7), or to withdraw it and if the appeal is continued, the Secretary of State must make a decision under paragraph (6).

## **Appendix B: Employment issues and decision likely to have pension impact**

- Decision on entitlement to membership – Likely to include issue of “A Short Guide to the LGPS” and for employees with a contract of less than 3 months and casual/relief they should be referred to the LGSS Pensions Service website for information about opting in to the LGPS.
- Decision that membership is not available, i.e. they commence employment on or after the day before their 75<sup>th</sup> birthday.
- Decision on which pay is pensionable.
- Pension contribution tier decision.
- Opt-out and whether a payroll refund if applicable.
- Opt-in.
- Change of hours or weeks per year worked.
- Change of pay rate – including impacts of shift pattern changes.
- Change of full-time equivalent hours.
- Calculation of Final Pay, taking into account both the ‘best of the last 3 years’ principle and, where appropriate, the application of protections under the current and former pension scheme regulations for those that have had certain reductions in pensionable pay.
- Provision of pay for estimates, transfers and divorce calculations.
- Maternity leave – decisions on how much needs to be paid to count membership in respect of unpaid maternity leave.
- Unpaid leave – decisions on collecting pension contributions in respect of the first 30 days and how much needs to be paid to count membership in respect of unpaid leave.
- Strike break – decisions on how much needs to be paid to count membership in respect of during strike breaks.
- Collection of the various categories of additional contributions, e.g. Added years, Additional Regular Contributions, Additional Voluntary Contributions etc.
- Reason for Leaving and consequential pension entitlement award.

The above list covers most scenarios but is not a comprehensive list. It is up to each employer how they handle the notification and appeal information in each case.

## Appendix C: Suggested wording for a first instance decision letter regarding a request for an employer to exercise a discretion

<p>Mr John Smith 14 Road Street Townley AB1 2CD</p> <p>1 May 2013</p>	<p>Employer Name 00 Nowhere Street Any Town Any Shire AA0 Z00 Direct line: 01010 111111 Fax: 01010 111100 email : xxxxxx@xxx.xxx.uk website : www.xxx.xxx.uk</p>
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Dear Mr Smith

### Local Government Pension Scheme: Decision on the exercise of a discretion

Thank you for #enter details of how request was received e.g. your letter of ..#. For #employer name# to agree to your request it must exercise the power it has under #enter relevant regulation number and regulation title (remember that if this is a deferred into payment request the relevant regulations will be the ones in force at the time the person left the LGPS)#.

The regulations requires #enter the detail of what is required by the regulation and what you as the employer now need to do#.

I have decided that #employer name# #enter your decision in summary form#.

Our policy regarding this issue is #enter wording of agreed discretion policy or attach as a separate document if you have a specific document#.

I have taken note of your particular circumstances, notably:

- #List circumstances you have considered#

My main reasons for this decision are:

- #List your reasons using format of evidence used and the impact of this evidence on your decision#
- On the basis of this I have decided that your circumstances are #reiterate your decision by comparing to your discretion e.g not sufficiently different from normal for me not to apply the discretion as written.#

#If you have consented to the requests then add a Next Steps paragraph telling the applicant what to do now e.g. return attached Pensions Application Form to the LGSS Pensions Service with the enclosed copy of this letter#

### Right of Appeal

If you are not satisfied with this decision you should contact me for clarification and further explanation of the matter in question. Many misunderstandings or incorrect information can be explained or put right quickly and easily by doing this. If, following this, you are still not satisfied with the decision you have the right of appeal, within six months of this letter, to #enter job title and contact details of adjudicator#. If you are not satisfied with his/her decision you can then appeal to the Director of LGSS Law & Governance Cambridgeshire and Northamptonshire, a separate person specified by #Cambridgeshire County Council acting as Administering Authority of the Cambridgeshire Pension Fund or Northamptonshire County Council acting as Administering Authority of the Northamptonshire Pension Fund#. A leaflet on the Internal Dispute Resolution Procedure is enclosed.

Yours sincerely.

Mr John Brown  
Title - eg Human Resources Manager

## Appendix D: Suggested appeal wording for every decision letter

Use something similar to the following paragraph in all decision letters, amending the wording in green as appropriate (it doesn't need highlighting in the actual letter!).

### Option 1: Standard General Wording

#### **Right of Appeal**

If you are not satisfied with this decision you should contact me for clarification and further explanation of the matter in question. Many misunderstandings or incorrect information can be explained or put right quickly and easily by doing this. If, following this, you are still not satisfied with the decision you have the right of appeal, within six months of this letter, to #enter job title and contact details of adjudicator#. If you are not satisfied with his/her decision you can then appeal to the Director of LGSS Law & Governance Cambridgeshire and Northamptonshire, a separate person specified by #Cambridgeshire County Council acting as Administering Authority of the Cambridgeshire Pension Fund or Northamptonshire County Council acting as Administering Authority of the Northamptonshire Pension Fund#. A leaflet on the Internal Dispute Resolution Procedure is enclosed.

### Option 2: Wording Where Long-running case is being brought to a conclusion.

#### **Right of Appeal**

If you are not satisfied with this decision you have the right of appeal, within six months of this letter, to #enter job title and contact details of adjudicator#. If you are not satisfied with his/her decision you can then appeal to the Director of LGSS Law & Governance Cambridgeshire and Northamptonshire, a separate person specified by #Cambridgeshire County Council acting as Administering Authority of the Cambridgeshire Pension Fund or Northamptonshire County Council acting as Administering Authority of the Northamptonshire Pension Fund#. A leaflet on the Internal Dispute Resolution Procedure is enclosed.

### Option 3: Appeal where there are also employment appeal rights

#### **Right of Appeal**

If you are not satisfied with this pensions decision you should contact me for clarification and further explanation of the matter in question. Many misunderstandings or incorrect information can be explained or put right quickly and easily by doing this. Please note that if you wish to appeal the **employment** decision to #enter decision details# you need to #enter your appeal process#. If, following this, you are still not satisfied with the **pension** decision you have the right of appeal, within specified time limits, to #enter job title and contact details of adjudicator#. If you are not satisfied with his/her decision you can then appeal to the Director of LGSS Law & Governance Cambridgeshire and Northamptonshire, a separate person nominated by #Cambridgeshire County Council acting as Administering Authority of the Cambridgeshire Pension Fund or Northamptonshire County Council acting as Administering Authority of the Northamptonshire Pension Fund#. A leaflet on the Internal Dispute resolution Procedure is enclosed.

### General Principles

This wording is generic – amended wording can be used depending on the exact nature of the decision. Key things to include are:

- There is a right of appeal
- There are time limits
- The job title and contact details of the adjudicator.
- Attach an Internal Dispute Resolution Procedure leaflet.

## Appendix E: Suggested wording for first stage IDR decision letter

<p>Mrs Jane Smith 14 High Street Townham AB1 2CD</p> <p>1 June 2013</p>	<p>Employer Name 00 Nowhere Street Any Town Any Shire AA0 Z00 Direct line: 01010 111111 Fax: 01010 111100 email : xxxxxx@xxx.xxx.uk website : www.xxx.xxx.uk</p>
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Dear Mrs Smith

### Local Government Pension Scheme : First-stage decision

Thank you for your letter of 10 April enclosing information on your disagreement with **#employer name#**. You have asked me to make the first stage decision under the dispute resolution procedure set up under the Local Government Pension Scheme.

Your dispute is **#enter summary of the question for decision#**

I have looked at the details of your disagreement and have decided **#give details of your decision#**.

I have made this decision based on

**#list evidence received, any scheme regulations considered, and, if the decision is based on a discretionary power contained in a policy, include a copy of the policy or the relevant part of it, and a reference to the scheme regulation that allows the policy. Then, if necessary explain you decision#**

If you are not happy with this reply, you have the right to ask the Director of LGSS Law & Governance Cambridgeshire and Northamptonshire, to look at your disagreement again on behalf of the pension fund administering authority. You must do this in writing, within six months from the date of this letter. You should forward your application in the first instance to the Deputy Head of LGSS Pensions, LGSS Pensions Service, PO Box 202, John Dryden House, 8-10 The Lakes, Northampton, NN4 7YD.

If you are still not happy, you can contact TPAS (The Pensions Advisory Service). TPAS helps members and beneficiaries of pension schemes with disputes that they cannot sort out.

Their address is 11 Belgrave Road, London, SW1V 1RB  
Pensions Helpline number: 0845 6012923 (local call rate)  
Fax: 020 7592 7000

Email: [enquiries@pensionsadvisoryservice.org.uk](mailto:enquiries@pensionsadvisoryservice.org.uk)

TPAS can also be contacted via your local Citizens' Advice Bureau.

Yours sincerely.

Mr John Brown  
Title - eg Human Resources Manager