



The Greater Gwent (Torfaen) Pension Fund

**A Guide for Employers
and
Medical Advisors**

**In Relation to
Sickness Absence
and
Ill Health Retirement**

under

**The Local Government Pension Scheme
Regulations**

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1) INTRODUCTION

This document sets out guidance for Scheme Employers and Medical Advisors in relation to the management of sickness absence and Ill Health Retirement as it relates to the Local Government Pension Scheme Regulations.

2) THE REGULATIONS

The Local Government Pension Scheme (LGPS) is a statutory pension scheme which means that the rules governing the scheme are set out in Statutory Instruments and Acts of Parliament. Whilst the Scheme is a 'national scheme' and the same regulations apply across the whole of England & Wales, the scheme is administered locally. Torfaen County Borough Council as the administering authority for the Greater Gwent (Torfaen) Pension Fund.

The current regulations, which have been in force since 1 April 2014, are the Local Government Pension Scheme Regulations 2013 referred to hereinafter as 'the Regulations' and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 referred to hereafter as "the Transitional Regulations". Members who left their employment prior to 1st April 2014 are still covered by the Regulations which were in place at the date they left their employment. For ease of reference, the relevant parts of 'the Regulations' as they relate to **sickness absence** and **ill health retirement** are replicated below in italics:

STATUTORY INSTRUMENTS	
2013 No. 2586	
PUBLIC SERVICE PENSIONS, ENGLAND AND WALES	
The Local Government Pension Scheme Regulations 2013	
Made	28 September 2013
Laid before Parliament	28 September 2013
Coming into force in accordance with regulation 1	
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Regulations relating to Sickness Absence

Regulation 14 – Employee Contributions during absence for illness etc

Paragraph 1

An active member away from employment by reason of illness or injury must pay contributions in accordance with regulations 9 (Main Scheme contributions) or 10 (50/50 Scheme contributions) on any pensionable pay received, including statutory pay but that pay does not include any amount that reduces the member's actual pensionable pay on account of possible entitlement to statutory pay.

Paragraph 2

If an active member is absent from employment by reason of illness or injury and is not entitled to receive pensionable pay (including statutory pay) for any period that member—

- (a) is treated for the purposes of these Regulations as if that member had paid contributions for that period under paragraph (1); and*
- (b) if that member has an arrangement under regulation 16 (additional pension contributions) which was entered into prior to the commencement of the period of absence, that member is treated for the purposes of these Regulations as if that member had paid contributions under regulation 16.*

Regulation 15 Employer contributions during sickness absences

Paragraph 2

A Scheme employer must pay contributions in accordance with regulation 67(4) where an active member is absent from employment by reason of illness or injury.

Paragraph 4

Where an active member is —

- (c) absent from work due to illness or injury where regulation 14 (1) (contributions during absence for illness etc) applies; or*

has an arrangement under regulation 16 (additional pension contributions) the employer contributions under regulation 16(2)(e) OR (4)(d) (shared cost additional pension contributions) remain payable if that regulation applies

Regulation 21 Assumed pensionable pay

Paragraph 1

During the period the circumstances specified in paragraph (2) apply in relation to an employment, the pensionable pay that an active member is, in relation to that employment, treated as receiving for the purposes of these Regulations (including this regulation), other than regulations 9 to 14 (contributions), is that member's assumed pensionable pay calculated in accordance with paragraph (4).

Paragraph 2

The circumstances are that the member—

- (a) is on leave due to sickness or injury and is on reduced contractual pay or no pay;*

Paragraph 4

The annual rate of assumed pensionable pay for an employment for a Scheme year is—

- (a) Where the member is paid monthly –*

- (i) The pensionable pay the member received relating to that employment in the three months preceding the commencement of the pay period in which the circumstance specified in paragraph (2) began or, for the purposes of regulations 39(2)(a) (calculation of ill health pension amounts) and 40(3) (death grants: active members), the pay period in which, respectively, the ill-health retirement or death occurred;*
- (ii) less any lump sum received during that period*
- (iii) with the resulting sum being grossed up to an annual figure*
- (iv) to which any regular lump sum payment received in the 12 months preceding the date specified in paragraph (i) should be added;*

- (b) where the member is paid otherwise than monthly—*

- (i) The pensionable pay the member received relating to that employment in the 12 weeks preceding the commencement of the pay period in which the circumstance specified in paragraph (2) began or, for the purposes of regulations 39(2)(a) (calculation of ill health pension amounts) and 40(3) (death grants: active members), the pay period in which, respectively, the ill-health retirement or death occurred;*
- (ii) less any lump sum received;*
- (iii) with the resulting sum being grossed up to an annual figure;*
- (iv) to which any regular lump sum payment received in the 12 months preceding the date specified in paragraph (i) should be added.*

Paragraph 5

For the purposes of paragraph (4) a “regular lump sum” is a payment for which the member's employer determines there is a reasonable expectation that such a payment would be paid on a regular basis.

Paragraph 6

The assumed pensionable pay that a member is treated as receiving is adjusted by the revaluation adjustment on the first day of the second Scheme year which commenced after the first date on which the member is treated as receiving assumed pensionable pay.

Regulations relating to Ill Health Retirement

Regulation 35 Early payment of retirement pension on ill-health grounds: active members

Paragraph 1

An active member who has qualifying service for a period of two years and whose employment is terminated by a Scheme employer on the grounds of ill-health or infirmity of mind or body before that member reaches normal pension

age, is entitled to, and must take, early payment of a retirement pension if that member satisfies the conditions in paragraphs (3) and (4) of this regulation.

Paragraph 2

The amount of the retirement pension that a member who satisfies the conditions mentioned in paragraph (1) receives, is determined by which of the benefit tiers specified in paragraphs (5) to (7) that member qualifies for, calculated in accordance with regulation 39 (calculation of ill health pension amounts)

Paragraph 3

The first condition is that the member is, 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.

Paragraph 4

The second condition is that the member, as a result of ill-health or infirmity of mind or body, is not immediately capable of undertaking any gainful employment.

Paragraph 5

A member is entitled to Tier 1 benefit if that member is unlikely to be capable of undertaking gainful employment before normal pension age.

Paragraph 6

A member is entitled to Tier 2 benefits if that member—

- (a) is not entitled to Tier 1 benefits, and
- (b) is unlikely to be capable of undertaking any gainful employment within three years of leaving the employment, but
- (c) is likely to be able to undertake gainful employment before reaching normal pension age

Paragraph 7

Subject to regulation 37 (special provision in respect of members receiving Tier 3 benefits), if the member is likely to be capable of undertaking gainful employment within three years of leaving the employment, or before normal pension age if earlier, that member is entitled to Tier 3 benefits for so long as the member is not in gainful employment, up to a maximum of three years from the date the member left the employment.

Regulation 36 Role of the Independent Registered Medical Practitioner (IRMP)

Paragraph 1

A decision as to whether a member is entitled under regulation 35 (early payment of retirement pension on ill-health grounds: active members) to early payment of retirement pension on grounds of ill-health or infirmity of mind or body, and if so which tier of benefits the member qualifies for, shall be made by the member's Scheme employer after that authority has obtained a certificate from an IRMP as to—

- (a) whether the member satisfies the conditions in regulation 35(3) and (4); and if so
- (b) how long the member is unlikely to be capable of undertaking gainful employment; and
- (c) where a member has been working reduced hours and had reduced pay as a consequence of the reduction in working hours, whether that member was in part time service wholly or partly as a consequence of ill-health or infirmity of mind or body

Paragraph 2

An IRMP from whom a certificate is obtained under paragraph (1) must not have previously advised, or given an opinion on, or otherwise been involved in the particular case for which the certificate has been requested.

Paragraph 3

If the Scheme employer is not the member's appropriate administering authority, it must first obtain that authority's approval to its choice of IRMP.

Paragraph 4

the Scheme employer and IRMP must have regard to guidance given by the Secretary of State when carrying out their functions under this regulation and regulations 37 (special provision in respect of members receiving Tier 3 benefits) and 38 (early payment of retirement pension on ill-health grounds: deferred and deferred pensioner members)

Regulation 37 Special provision in respect of members receiving Tier 3 benefits

Paragraph 1

A member in receipt of Tier 3 benefits who attains normal pension age continues to be entitled to receive retirement pension and ceases to be regarded as being in receipt of Tier 3 benefits from that date, and nothing in the remainder of this regulation applies to such a person.

Paragraph 2

A member who receives Tier 3 benefit shall inform the former Scheme employer upon starting any employment while those benefits are in payment and shall answer any reasonable inquiries made by the authority about employment status including as to pay and hours worked.

Paragraph 3

Payment of Tier 3 benefits shall cease if a member starts an employment which the Scheme employer determines to be gainful employment, or fails to answer inquiries made by the employer under paragraph (2), and the employer may recover any payment made in respect of any period before discontinuance during which the member was in an employment it has determined to be gainful employment.

Paragraph 4

A Scheme employer may determine that an employee has started gainful employment for the purposes of paragraph (3) if it forms the reasonable view that the employment is likely to endure for at least 12 months and it is immaterial whether the employment does in fact endure for 12 months.

Paragraph 5

A Scheme employer must review payment of Tier 3 benefits after they have been in payment for 18 months.

Paragraph 6

A Scheme employer carrying out a review under paragraph (5) must make a decision under paragraph (7) about the member's entitlement after obtaining a further certificate from an IRMP as to whether, and if so when, the member will be likely to be capable of undertaking gainful employment.

Paragraph 7

The decisions available to a Scheme employer reviewing payment of Tier 3 benefits to a member under paragraph (5) are as follows—

- (a) to continue payment of Tier 3 benefits for any period up to the maximum permitted by regulation 35(7) (early payment of retirement pension on ill-health grounds: active members);*
- (b) to award Tier 2 benefits to the member from the date of the review decision if the authority is satisfied that the member*

- (i) *is permanently incapable of discharging efficiently the duties of the employment the member was engaged in, and either*
 - (ii) *is unlikely to be capable of undertaking gainful employment before normal pension age, or*
 - (iii) *is unlikely to be capable of undertaking any gainful employment within three years of leaving the employment, but is likely to be able to undertake gainful employment before reaching normal pension age; or*
- (c) *to cease payment of benefits to the member.*

Paragraph 8

A member whose Tier 3 benefits are discontinued under paragraph (3) or (7)(c) is a deferred pensioner member from the date benefits are discontinued and shall not be entitled to any Tier 3 benefits in the future.

Paragraph 9

A Scheme employer, which determines that it is appropriate to discontinue payment of Tier 3 benefits for any reason, shall notify the appropriate administering authority of the determination.

Paragraph 10

A Scheme employer may, following a request for a review from a member in receipt of Tier 3 benefits or within 3 years after payment of Tier 3 benefits to a member are discontinued, make a determination to award Tier 2 benefits to that member from the date of the determination, if the employer is satisfied after obtaining a further certificate from an IRMP, that the member is permanently incapable of discharging efficiently the duties of the employment the member was engaged in, and either—

- (a) *is unlikely to be capable of undertaking gainful employment before normal pension age; or*
- (b) *is unlikely to be capable of undertaking any gainful employment within three years of leaving the employment, but is likely to be able to undertake gainful employment before reaching normal pension age*

Paragraph 11

The IRMP who provides a further certificate under paragraphs (6) or (10) may be the same IRMP who provided the first certificate under regulation 36(1) (role of the IRMP).

Paragraph 12

Where the member's former employer has ceased to be a Scheme employer, the references in paragraphs (5) to (7), (9) and (10) are to be read as references to the member's appropriate administering authority.

Regulation 38 Early payment of retirement pension on ill-health grounds: deferred and deferred pensioner members

Paragraph 1

A deferred member who, because of ill-health or infirmity of mind or body—

- (a) *becomes permanently incapable of discharging efficiently the duties of the employment that member was engaged in at the date the member became a deferred member, and*
- (b) *is unlikely to be capable of undertaking gainful employment before normal pension age, or for at least three years, whichever is the sooner,*

may ask to receive payment of a retirement pension whatever the member's age.

Paragraph 2

A request under paragraph (1) must be made in writing to the deferred member's former Scheme employer or appropriate administering authority where the member's former Scheme employer has ceased to be a Scheme employer.

Paragraph 3

Before determining whether or not to agree to a request under paragraph (1), the deferred member's former Scheme employer, or administering authority, as the case may be, must obtain a certificate from an IRMP as to whether the member is suffering from a condition that renders the member—

- (a) permanently incapable of discharging efficiently the duties of the employment the member was engaged in because of ill-health or infirmity of mind or body; and, if so,*
- (b) whether as a result of that condition the member is unlikely to be capable of undertaking gainful employment before reaching normal pension age, or for at least three years, whichever is the sooner.*

Paragraph 4

A deferred pensioner member who, because of ill-health or infirmity of mind or body, is unlikely to be capable of undertaking gainful employment before normal pension age, may ask to receive payment of a retirement pension at any time before the member's normal pension age.

Paragraph 5

A request under paragraph (4) must be made to the deferred pensioner member's former Scheme employer, or appropriate administering authority where the member's former Scheme employer has ceased to be a Scheme employer.

Paragraph 6

Before determining whether to agree to a request under paragraph (4), the deferred pensioner member's former Scheme employer, or administering authority, as the case may be, must obtain a certificate from an IRMP as to whether the member, as a result of ill-health or infirmity of mind or body, is unlikely to be capable of undertaking gainful employment before normal pension age.

Paragraph 7

If the Scheme employer is not the deferred or deferred pensioner member's appropriate administering authority, it must obtain that authority's consent to the appointment of an IRMP under this regulation.

Paragraph 8

An IRMP appointed under paragraph (6) may be the same IRMP who provided the first certificate under regulation 36(1) (role of the IRMP).

Regulation 39 Calculation of ill-health pension amounts

Paragraph 1

Subject to paragraphs (5) to (7), Tier 1 benefits are calculated by adjusting the active member's pension account as follows—

- (a) an amount is added to the balance in the account for the year in which the member's employment was terminated, equivalent to the amount of earned pension the member would have accrued between the day following the date of termination and normal pension age, if that member had been treated as receiving assumed pensionable pay, calculated in accordance with regulation 21(4) (assumed pensionable pay) for each year and fraction of a year in that period and treating any election under regulation 10 (temporary reduction in contributions) as lapsed at the date of the termination of the member's employment; and*
- (b) retirement pension is payable to the member as if the member had reached normal pension age on the date the member's employment was terminated.*

Paragraph 2

Subject to paragraphs (5) to (8), Tier 2 benefits are calculated by adjusting the active member's pension account as follows—

- (a) for the year in which the member's employment was terminated, one quarter of the sum calculated in accordance with paragraph (1)(a) is added; and*

- (b) retirement pension is payable to the member as if the member had reached normal pension age on the date the member's employment was terminated

Paragraph 3

Tier 3 benefits are the retirement pension that would be payable to the member if that member had reached normal pension age on the date the active member's employment was terminated.

Paragraph 4

Benefits payable under regulation 38 (early payment of retirement pension on ill-health grounds: deferred and deferred pensioner members) are the retirement pension that would be payable to the member if that member had reached normal retirement age on the date from which benefits are awarded.

Paragraph 5

Where a member entitled to Tier 1 benefits subsequently becomes an active member, no addition is to be made under paragraph (1)(a) or (2)(a) to any Tier 1 or Tier 2 benefits that the member becomes entitled to after that subsequent period of membership.

Paragraph 6

Where a member entitled to Tier 2 benefits ("the initial ill-health retirement") subsequently becomes an active member, the addition made under paragraph (1)(a) or (2)(a) to any Tier 1 or Tier 2 benefits that the member becomes entitled to after that subsequent period of membership is modified in accordance with paragraph (7).

Paragraph 7

The number of years for which a member to whom paragraph (6) applies is treated as having received assumed pensionable pay for the purposes of paragraph (1)(a) or (2)(a) shall not exceed—

- (a) the number of years at the date of the initial ill health retirement up to the member's normal pension age at that time, less
- (b) a quarter of the number of years calculated in accordance with sub paragraph (a), less
- (c) the number of years during which the member has been an active member after the initial ill-health retirement.

Paragraph 8

Paragraph (2) applies in the case of a member entitled to Tier 2 benefits following a review under regulation 37(5) or (10) with the following modifications—

- (a) the references to the date on which the member's employment terminated are to be read as references to the date on which the review under regulation 37(5) was carried out or the determination under regulation 37(10) was made; and
- (b) the account that the member has on the date of the review decision under regulation 37(5) or the date of the determination under regulation 37(10), is treated as if it were an active member's pension account for the purposes of the calculation of the benefits to which the member is entitled.

Paragraph 9

For the purposes of this regulation—

- (a) in calculating assumed pensionable pay in accordance with regulation 21(4) (assumed pensionable pay), account is only taken of any reduction in the pensionable pay the member received if an IRMP has certified that the member was working reduced contractual hours as a consequence of ill-health or infirmity of mind or body; and
- (b) no adjustment is to be made to any sum by virtue of regulation 21(6) for any period after the date of termination of employment under regulation 35 (early payment of retirement pension on ill-health grounds: active members).

Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014

Regulation 12 Ill-Health Retirement

Paragraph 1

A member who qualifies for Tier 1 or Tier 2 benefits under the 2013 Regulations who would have benefited from the protection in regulation 20(13) of the Benefit Regulations (transitional protection for those aged 45 before 1st April 2008 (a) if those Regulations had applied on the date the member's employment was terminated, is entitled to benefits equalling the higher of—

- (a) the Tier 1 or Tier 2 benefits, as the case may be, calculated under the 2013 Regulations and these Regulations; or*
- (b) the benefits the member would have received under sub-paragraph (a) if the amount to be added under regulation 39(1) or (2) of the 2013 Regulations (calculation of ill-health pension amounts) were calculated by reference to the period that would have been added had regulation 28 of the 1997 Regulations (amounts of ill-health pension and grant) applied and if—*
 - (i) the period of membership the member had accrued under the Earlier Schemes and the 2014 Scheme had counted as a period of membership of the 1998 Scheme*
 - (ii) the amount added under regulation 39(1) or (2) of the 2013 Regulations were calculated by reference to a 1/60th accrual rate.*

Paragraph 2

The 2013 Regulations apply to a person in respect of whom benefits are paid under regulation 20(2)(b) of the Benefits Regulations (early leavers: ill-health) as if that person were in receipt of Tier 1 Benefits under the 2013 Regulations.

Paragraph 3

The 2013 Regulations apply to a person in respect of whom benefits are paid under regulation 20(3) (c) of the Benefit Regulations as if that person were in receipt of Tier 2 Benefits under the 2013 Regulations.

Paragraph 4

A person in respect of whom benefits are, or have been paid under regulation 20(4)(d) of the Benefit Regulations is not entitled to Tier 3 benefits under the 2013 Regulations.

Paragraph 5

Where a member is in receipt of benefits under regulation 20(4) of the Benefits Regulations on or before 31st March 2014, notwithstanding the revocations effected by regulation 2 of these Regulations (revocation of regulations), regulations 20(6) to (11) of the Benefits Regulations (e) continue to have effect in relation to those benefits and regulation 37 of the 2013 Regulations (special provision in respect of members receiving Tier 3 benefits) does not apply

Paragraph 6

A certificate produced by an IRMP under the 2008 Scheme may be used for the purposes of making determinations under the 2014 Scheme.

Paragraph 7

A person who has received an ill-health pension and grant under the Earlier Schemes, which for the purposes of this paragraph does not include the 2008 Scheme, is to be treated as if that person were in receipt of Tier 1 Benefits under the 2013 Regulations.

3) THE AIM OF THE GUIDANCE AND PROCEDURE

The aim of this Guide is to provide Scheme Employers and Medical Advisors with details of the application of the Local Government Pension Scheme Regulations in respect of Sickness absence and Ill health retirement. In the context of ill health retirement, the role of the Scheme Employer begins a long time before employment has been terminated and the question of entitlement to an ill health retirement benefit arises. The management of ill health in the work force and during the period leading up to the termination of employment will be dealt with in accordance with the Scheme Employers Management of Sickness Policy.

It is important to note that it would not be appropriate to consider the release of ill health retirement benefits for a reason other than when the member was genuinely medically incapacitated from undertaking their current employment or any other employment at the point of departure.

4. SICKNESS ABSENCE

Each employer who participates in the Pension Fund will have a Policy for the Management of Sickness Absence. The Policy will set out the employee's entitlement to reduced pay and unpaid sickness absence and the procedure for referral to the Employers Occupational Health Advisor.

4.1 Employee Contributions during Sickness Absence

Where a member is on reduced pay due to a sickness absence they are only required to pay employee pension contributions on the pay they actually receive and no contributions are therefore payable by the employee if they go on to no pay due to a sickness absence

4.2 Employer Contributions during Sickness Absence

Where a member is on reduced pay or no pay due to sickness absence the Employer is required to continue to pay the employer contributions as determined by the Actuary in the latest actuarial valuation report. Employer contributions are calculated on the members assumed pensionable pay

4.3 Assumed Pensionable Pay. For monthly paid employees Assumed Pensionable Pay is the pay the member received (relating to that employment) in the three months prior to the pay period during which the unpaid leave occurred. This must then be grossed-up to an annual figure and apportioned for the number of days of absence.

Example

A monthly paid employee has received the following pensionable pay in the three complete months prior to the commencement of unpaid leave.

Month 1 £1,400, Month 2 £2,500 (including a £1,000 regular bonus and £100 overtime) Month 3 £1,400.

The calculation of Assumed Pensionable Pay (APP) is as follows:

Annual rate of APP = $(£1,400 + £1,500 + £1,400)/3 \times 12 = £17,200$

Note that the £1,000 bonus is removed prior to the averaging and grossing- up calculation

For weekly paid employees (and those paid other than monthly) - the pensionable pay for the previous 12 weeks is used in the calculation.

There is further information for Scheme Employers about Assumed Pensionable Pay in the LGA [HR and Payroll Guides to the 2014 Scheme](#)

4.4 Employees in the 50/50 Section of the Scheme.

Where a member has previously elected to join the 50/50 Section of the LGPS the employer must bring them back into the Main section of the Scheme from the first pay period following the commencement of unpaid sickness absence provided the member is still on no pay at that date.

4.5 Management of Sickness Absence

The employer policy will determine the procedure to be followed in the event of long term sickness absence or where there is a history of short term absences and the employer will make a determination when the absence(s) can no longer be sustained from the point of view of the provision of the service.

An employer will need to make a judgment, in cases of long term sickness absence, whether to retain an individual on sick leave until their sick pay entitlement has been exhausted or whether to take steps to terminate an employment before sick pay expires.

It could be argued that the purpose of the provision of sick pay is to enable an employee to recover from their illness and return to work. Therefore if there is no prospect of the individual returning to their employment (even with adjustments) the employer will need to consider whether maintaining the individual on sick pay is in the best interest of the organisation and the member.

The options available to the employer will normally be

- dismissal on the grounds of capability to provide a sustained service
- dismissal on health grounds

Where the employer is considering dismissing a member of staff on health grounds they should (where the employee is a member of the LGPS) first refer the individual to the Independent Registered Medical Practitioner to obtain an opinion as to whether the member meets the criteria for early retirement on the grounds of permanent ill health in accordance with the Local Government Pension Scheme Regulations.

4.6 Terminal Illness

In instances of terminal ill-health it is normally more financially beneficial for the member to be retired on ill health rather than dying in service. Granting ill health retirement in these circumstances can ensure that the individual does not suffer financial hardship in their last months, that they are able to put their affairs in order, they do not suffer additional stress at what is a very difficult time and they can make provision for the future financial security of their family.

4.7 Occupational Health Physician V Independent Registered Medical Practitioner

There is a clear distinction between the role of the Occupational Health Physician and that of the Independent Register Medical Practitioner.

4.7.1 Occupational Health Physician.

The role of the Occupational Health Physician is to advise an employer with regard to the individuals

- Fitness for work in the short and long term
- The likelihood of the individual being able to return to their substantive post
- Any adjustments which can be made to the substantive post to facilitate a return to work

Based on this information the employer will then carry out an assessment as to whether the individual is likely to be able to provide sustained service and when this can be achieved.

Depending on this assessment the employer will make a decision as to whether the absence can be sustained for a further period or whether the individual's employment should be terminated.



It is not the role of the Occupational Health Physician to comment or otherwise advise the employer on whether the individual would meet the criteria for the early release of pension benefits and the Occupational Health Physician should not be asked to comment on this.

4.7.2 Independent Registered Medical Practitioner

The role of the Independent Registered Medical Practitioner is to provide an opinion to the Scheme Employer in accordance with the Local Government Pension Scheme Regulations as to whether the individual member meets the criteria for the early release of pension benefits on the ground of permanent ill health and if so the degree of capability of undertaking any other gainful employment.

An Independent Register Medical Practitioner must be approved by the Pension Fund to act in this capacity and must provide the Pension Fund with details of their qualifications as set out in the LGPS Regulations.

It is not the IRMP who makes the decision they merely provide an opinion to the employer and it is the employer who must make the decision.

5. Definitions

It is important that all parties are clear about the meanings behind the terms shown in bold below.

The word “**permanent**” is defined as meaning that the member will, more likely than not, be incapable until at the earliest, the member’s normal pension age. In addressing questions about permanency, whether in terms of the local government employment or gainful employment elsewhere, consideration must be given, not to the immediate or foreseeable future, but to the date when the member attains their normal pension age.

Normal pension age is defined as meaning the pensionable age of a person as specified from time to time in Schedule 4 to the Pensions Act 1995, or if higher age 65. Normal pension age in the LGPS is now linked to the individual members State Pension Age with a minimum age of 65.

The term “**gainful employment**” is defined as “paid employment for not less than 30 hours in each week for a period of not less than 12 months”.

IRMP’s will be required to apply the wider test of capacity to undertake general paid employment rather than one based on the type of local government employment currently held by the member. This reflects the change in government policy whereby public service ill-health pensions are to be paid not only on the basis of capacity to undertake current, actual employment, but also other employment in the general workforce. It is also important to note that the 30 hour threshold is a universal provision to be applied in every case, regardless of the status of the employment in respect of which the ill-health benefit is to be awarded. For example, in the case of a person who left their part-time local government employment with an entitlement to an ill -health pension, the test for determining whether or not they were capable of undertaking or had obtained gainful employment would be based on the 30 hour threshold without any adjustment to reflect the part-time employment.

Independent Registered Medical Practitioner (IRMP) is defined in the LGPS Regulations as meaning an independent registered medical practitioner who is registered with the General Medical Council and –

- a) holds a diploma in occupational health medicine (D Occ Med) or equivalent qualification issued by a competent authority in an EEA state; and for the purposes of this definition, “competent authority” has the meaning given by section 55(1) of the Medical Act 1983(b); or
- b) is an associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA state.

6. Role of the Employer



5.1 The Scheme Employer is solely responsible for deciding the grounds on which an employment is terminated. However in the context of ill health the Scheme Employer cannot make a determination under the LGPS Regulations unless they have obtained a certificate from an Independent Registered Medical Practitioner qualified in occupational health medicine.

It is also important to note that the LGPS Regulations are subject to the civil law burden of proof. As such the determination of questions is based on the “balance of probabilities” test and not on the stricter criminal law test of “beyond reasonable doubt”

7. Questions for the Employer to Determine

The Scheme Employer is required to consider and decide a number of questions under Regulation 35 before entitlement to an ill-health retirement benefit under the regulations can be awarded. These include:-

- a) Does the member have at least 2 years membership in the LGPS (including any transfers in from other previous pension arrangements).
- b) Does an IRMP consider that the member's ill health or infirmity of mind or body renders him or her permanently incapable of discharging efficiently the duties of the employment the member was engaged in i.e. would the member ever be able to do their old/ former job? and
- c) Does the IRMP consider that the member's ill health or infirmity of mind or body render him or her not immediately capable of undertaking any gainful employment i.e. would the member at the time of the medical assessment be able to do a different job which satisfies the definition of "gainful employment "

If the answer to all three questions is Yes, there is a prima facie entitlement to payment of an ill health benefit under Regulation 35. To decide the level of benefit, the employer must further decide which of the following three tiers apply:-

- a) Tier 1: is the member unlikely to be capable of undertaking gainful employment before reaching normal pension age
- b) Tier 2: is the member unlikely to be capable of undertaking any gainful employment within three years of leaving local government employment, but it is thought likely that he or she would be able to do so before reaching his normal pension age
- c) Tier 3: is the member likely to recover sufficiently from the incapacity within three years of leaving local government employment or before reaching normal pension age if earlier.

In addition if the member has been working reduced hours and has reduced pay as a consequence of the reduction in hours whether the member was in part-time employment wholly or partly as a consequence of ill health or infirmity of mind or body.

Under Regulation 31, an unenhanced ill-health benefit can also be paid to a person who has left a local government employment with an entitlement to a deferred benefit, who becomes permanently incapable of discharging efficiently the duties of their former employment and is unlikely to be capable of undertaking gainful employment before normal pension age or for at least three years whichever is sooner.

Under the Regulations an employer retains a responsibility in respect of a former member in relation to any application for the early payment of a pension benefit. Where an application is made by a former employee for the early payment of pension benefits on the grounds of permanent ill health the former employer is responsible for obtaining a certificate from the IRMP and for making the decision as to whether the early payment of the deferred benefits on the grounds of permanent ill health is to be awarded.

8. Review of Third-Tier Ill Health Pensions

The Regulations setting out the tier 3 ill-health pension provision require that the pension will cease after it has been in payment for three years and that during this three year period it must be periodically reviewed. Moreover, member's awarded Tier 3 pensions are required to advise the Scheme Employer if they obtain gainful employment and to answer any questions raised by the Scheme Employer in connection with their employment status, including pay and hours worked.

A Tier 3 ill health pension is awarded where the member is permanently incapable of undertaking their current employment and are not immediately capable of undertaking any other gainful employment but on the balance of probabilities, it is likely, that they will be capable of undertaking gainful employment within three years of the date their employment is terminated on ill health grounds.

18 month Review

A review must be carried out at the point that an individual has been in receipt of a Tier 3 pension for a period of 18 months to check that no gainful employment has been obtained. At the review, if it is found that the third-tier member is not in gainful employment, the employer must seek a further opinion from an IRMP to determine whether the

individual is capable of undertaking gainful employment or if not whether they would be capable of undertaking gainful employment within 3 years of the date they were awarded Tier 3 benefits.

Where a review shows the member to be in gainful employment; or, where the IRMP certifies that the member is capable of undertaking gainful employment, the Scheme Employer shall notify the individual that their Tier 3 benefit will cease with immediate effect. Where the Tier 3 benefit is to cease due to the individual undertaking gainful employment, the Scheme Employer may determine that the Tier 3 benefit shall cease from the date gainful employment was obtained and may recover any overpayments of pension made after the date gainful employment was obtained. The Scheme Employer must notify the Pension Fund immediately of the date from which the Tier 3 pension is to cease and any pension payments recovered from the member must be repaid to the Pension Fund

Where at the 18 month review the member is not in gainful employment the Scheme Employer must obtain an opinion from an IRMP as to whether the member is capable of undertaking gainful employment.

If the answer to this question is Yes then the Tier 3 benefit must cease from the date of the assessment.

If the answer to the question is No the IRMP must then provide an opinion as to whether the member is likely to be capable of undertaking gainful employment within three years of the date Tier 3 benefits were awarded.

If the answer to this question is Yes then the Tier 3 benefit will continue to the end of the three year period or until the member obtains gainful employment (which ever is earlier)

If the answer is No then the Tier 3 benefit can be uplifted to a tier 2 benefit.

Unless the Tier 3 benefit is uplifted to a Tier 2 benefit following a review the Tier 3 benefit will cease three years after the date the Tier 3 benefit was awarded.

The member notifies the Scheme Employer that they have entered employment;

At any time during the three years that the Tier 3 pension is in payment the member is required to notify the Scheme Employer if they undertake employment. The Scheme Employer must determine whether the employment which the member is undertaking constitutes "gainful employment" Gainful employment is defined in the Regulations as paid employment for not less than 30 hours in each week for a period of not less than 12 months. It would be unreasonable for an employer to assume that a person is in gainful employment if they have just entered into a short term contract of employment for, say, six months. Whether that contract would be reviewed or not would be pure conjecture and should not fall to be considered. Even if the member had served two months of a six month contract the definition of gainful employment has not been satisfied. Neither would it be reasonable to make any assumption that four months on the contract might be reviewed for a further six month period which could arguably bring it within the gainful employment definition.

Where the Scheme Employer is notified of a member's employment showing contract details of 30 hours or more each week for a period of less than 12 months, the Tier 3 payments should not be stopped but the employer should check the current employment status with the member at the point the contract is due to end. If it is found that a further contract has been obtained (i.e. the period of employment has been extended) and this was again for 30 hours or more in each week and the Scheme Employer forms the reasonable view that the continuous employment period in total is likely to endure for 12 months it can stop payments as the gainful employment test will have been satisfied. It is immaterial whether the employment does in fact endure for 12 months.

Under some contracts the hours may be variable and this may cause some difficulty in deciding whether, over the future, the 30 hour test is satisfied over a 12 month period. If employment was obtained some time ago it should be possible to ascertain a pattern of working from the variable hours worked up to that point and base a decision on that evidence. A better way forward would be to defer any decision until later in the employment when evidence about working hours has been established.

In other words taking short term contracts may avoid the Tier Three pension being suspended in the short term but once the employment in individual contracts for 30 hours or more in each week have been undertaken and the employer forms the reasonable view that the continuous employment period in total is likely to endure for at least 12 months the definition of gainful employment would be satisfied.

In any event, if it is clear from the outset that the member has obtained employment with a specific period of less than 12 months, the Scheme Employer will wish to ask the member in receipt of Tier 3 pension to let them know their employment status at the end of the period of the first short term contract and subsequent contracts until the gainful employment test is likely to be met.

The words "in each week" where they appear in the definition of "gainful employment" means in each week throughout the 12 month period rather than in each week where there is a contract of employment. Otherwise the definition of gainful employment would be satisfied by a person taking just a one month contract of employment for 35 hours a week.

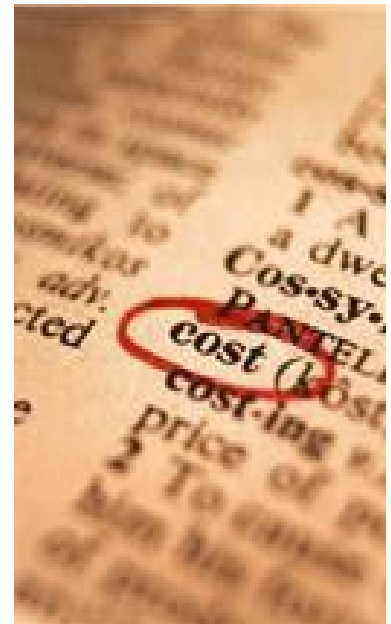
Where a member notifies the previous employer that they have obtained employment, for example, 37 hours per week on an open contract i.e. one that has no specific end date, it would be reasonable for an employer to take the view that the gainful employment test was met and to discontinue payment of the Tier 3 benefits.

9. Cost to the Employer

It must be understood that whilst the payment of an ill health pension will have cost implications for the Scheme Employer a decision as to whether a member qualifies for the early payment of their pension benefits on the grounds of permanent ill health is to be based solely on the medical evidence. If the member meets the criteria, as set out in the Regulations then they have a prima facie entitlement to payment of an ill health pension. In most cases the costs of ill health retirement are taken into account in setting the Employer Contribution Rate at each Actuarial Valuation and employers are not normally required to pay a strain cost up front. Where a Scheme Employer has a predetermined period of participation in the Greater Gwent (Torfaen) Pension Fund, for example private contractors, the cost of any ill health retirement is normally payable when the ill health pension is brought into payment but may be spread over the remaining term of the Contract by agreement with the Pension Fund.

For Active member the cost of obtaining medical reports and the IRMP referral will normally be met by the Scheme Employer

For deferred members i.e. employees who have already left your employment who apply for their deferred pension to be brought into payment on the grounds of ill health the former scheme employer may require the deferred member to pay for the cost of obtaining medical evidence. The cost of the referral to the IRMP may be met by the former scheme employer or may be recharged to the former member. This is a decision for the former Scheme Employer and should be set out in the Scheme Employers Policy.



10. Diagnosis of Terminal Ill Health

Where a member has been diagnosed as terminally ill the employer needs to assess whether they are able to sustain the employment during any period of full pay or half pay sick pay entitlement and let the member die in service or whether to refer the member to the IRMP for retirement on the grounds of permanent ill health.

This is a very difficult time for all concerned and requires careful handling for the following reasons: -

- An accurate prognosis may be difficult to determine
- The employer may not be in a position to sustain the absence for what could be a relatively prolonged period
- The member may be able to continue in employment, albeit on reduced hours
- The member may be in denial as to the severity of their condition

Under the Local Government Pension Scheme Regulations it can be more financially beneficial to the member, and the dependants, for the member to retire on the grounds of permanent ill health on the basis that it is likely that Tier 1 benefits would be awarded. This may however not always be the case depending on the age and the marital status of the member.

Making a decision to refer the member to the IRMP would negate the opportunity for the member to be allowed to die in service. In circumstances where terminal ill health has been diagnosed the employer should contact the Pension Department for advice on a case by case basis.

11. The Role and Status of the Independent Registered Medical Practitioner (IRMP)

It is important to understand that the IRMP is not being asked to confirm the termination or otherwise of the members employment. The IRMP's role is to certify whether or not, in his or her opinion, on the balance of probabilities, whether the member meets the criteria for entitlement to an ill health pension.

The Regulations set out the questions that the IRMP must address in his certificate and regulation 36(2) requires that the IRMP must not have previously advised, or given an opinion on, or otherwise been involved in the particular case for which a certificate has been requested.

However

- a) in respect of a Tier 3 member the IRMP who provided the original certificate can also provide a further medical certificate at the review stage or within 3 years after the payment of Tier 3 benefits have ceased
- b) where a deferred pensioner member (former Tier 3) applies for the early payment of retirement pension due to ill health the IRMP may be the same IRMP who made the initial determination.

The IRMP must be approved by the Pension Fund to act in this capacity and must provide the Pension Fund with evidence that they are suitable qualified.

12. Questions for the Independent Registered Medical Practitioner

In many respects, these reflect the questions that the employer is ultimately responsible for deciding but it is important to bear in mind that the IRMP is not being asked to confirm the termination or otherwise of the member's employment. The role of the IRMP is to certify whether or not, in his or her opinion, on the balance of probabilities, the criteria for entitlement to an ill-health benefit, is satisfied in any individual case. The questions to be considered by the IRMP are:-

- a) Is the member permanently incapable of discharging efficiently the duties of the local government employment the member was engaged in because of ill health or infirmity of mind or body and, if so-
- b) Whether this has resulted in the member not being immediately capable of undertaking any gainful employment and, if so-
 - whether the member is unlikely to be capable of undertaking gainful employment before normal pension age
 - or
 - whether the member is unlikely to be capable of undertaking any gainful employment within 3 years of leaving his employment but likely to be able to undertake gainful employment before reaching normal pension age
 - or
 - whether the member is likely to be capable of undertaking gainful employment within 3 years of leaving employment of before normal pension age, if earlier
- c) In the case of a member who has been working reduced contractual hours and had a reduction in pay as a consequence of the reduction in working hours, whether the member was in part time employment wholly or partly as a consequence of ill health or infirmity of mind or body

When addressing the question of permanent incapacity in terms of local government employment or gainful employment consideration must be given to the member's normal pension age and not the immediate or foreseeable future.

The IRMP should also consider whether the member would be capable following further treatment and consider: -

- a) Whether that treatment is readily available
- b) Whether the treatment is appropriate for the member
- c) Whether with treatment the member is likely to become capable before normal pension age

The fact that the member may choose not to accept such treatment should not be a relevant factor. Treatment can include lifestyle changes such as weight loss and stopping the use of tobacco and alcohol

When considering whether the member would be capable of any other gainful employment the IRMP is required to judge the member's capability of undertaking any gainful employment in the general workforce and not the type of local government post formerly held by the member.

The assessment being made is whether the member is likely or unlikely to be capable of undertaking gainful employment and not whether the member would actually want to. The IRMP should provide an assessment of the type of gainful employment the member is likely to be capable of in the narrative report.

When considering whether a member is "capable of undertaking" gainful employment the regulations restrict entitlement considerations to medical factors taking into account the full medical effects of the condition. Non medical factors such as the general availability of gainful employment in a particular area or the attitude to certain conditions would not be material factors and should not be part of the IRMP's consideration, whilst the effect a medical condition would have on their practical ability to undertake gainful employment would. The same would apply to the individual's own attitude towards their condition, which could be a limiting factor to undertaking gainful employment although it is recognised that in some cases, the member's attitude may constitute a medical condition in itself and the IRMP should make comment on this

It would not be appropriate to consider the release of ill health benefits for a reason other than when the member was genuinely medically incapacitated from undertaking their current employment or any other employment at the point of their departure.

13. Additional Assessment Under the Finance Act 2011

The Finance Act 2011 introduced further provisions which have an impact on the award of ill health benefits under the Local Government Pension Scheme Regulations. The Finance Act limits the amount by which the value of an individual's pension pot increases on a year by year basis to £40,000.

Under the Finance Act 2011 an exemption is applied to the payment of a severe ill health pension. This concept does not however exist under the Local Government Pension Scheme. Her Majesties Revenue & Customs (HMRC) have however confirmed to the Department of Communities & Local Government (DCLG) that provided the IRMP provides certification that the individual is suffering from ill health which makes the individual unlikely to be able to undertake gainful employment (in any capacity) before reaching State Pension Age then the individual is exempt from any tax charge under the Finance Act 2011.

14 Procedure- Assessing whether a member meets the criteria for ill health retirement

This section of the Guide sets out the procedure to be followed in carrying out an assessment as to whether a member meets the criteria for the early payment of pension benefits on the grounds of permanent ill health. It is not possible to cover all eventualities and each employer will have a different policy covering the management of sickness absence. This Guide therefore sets out the procedure to be followed to comply with the Local Government Pension Scheme Regulations and reflects previous Pension Ombudsman's rulings.

Step 1 Employee hits a trigger point in the Management of Sickness Policy

The Scheme Employer will apply the criteria set out in the Management of Sickness Absence Policy which may lead to

- A further period of monitoring of the absence
- A manager referral to HR
- A manager/ HR referral to the Employers Occupational Health Officer
- A check should also be made on the employees entitlement to full pay and half pay sick to
 - a) Ensure the employee is aware of their entitlement and
 - b) To ensure that any adjustments are made to the Payroll system to ensure that the employee pays pension contributions based on the pay they receive and the Employer pays pension contributions based on assumed pensionable pay



Step 2 Referral to the Independent Registered Medical Practitioner

The HR Advisor should obtain a letter of consent from the member to release medical records and occupational health records to the IRMP and to HR. The member should also provide details of how their condition affects their day to day life and contact details of the health professionals involved.

On receipt of the consent form the HR Advisor or Occupational Health Advisor should obtain a copy of medical information documenting investigations, diagnosis, treatment plan and prognosis from the relevant health professional such as: -

- the Scheme Employer's occupational health physician
- The treating specialist/consultant
- Independent occupational physician or other specialist
- General practitioner
- Other health professional e.g. clinical psychologist

Once all the medical evidence has been received the HR Officer should complete Part 1 of the LGPS Medical Certificate and submit this with the consent form to the IRMP together with the following: -

- a) A job description in respect of the members current post
- b) Details of any adjustments which have been tried and the effect of these adjustments
- c) Details of the members sickness absence(s) and the reasons given for these absences
- d) A copy of any medical information held on the members HR or Occupational File
- e) A copy of all medical evidence received from the health professionals
- f) The members description of how their condition effects their day to day life

Depending on the Scheme Employers internal procedure some of this evidence gathering may be carried out by the Employer's Occupational Health Officer. However all evidence must be provided to HR to enable the Scheme Employer to make an informed decision

Step 3 Independent Registered Medical Practitioner's Assessment

In most cases the IRMP will wish to meet with the individual and a suitable appointment should be made and the member notified in writing of the date, time and venue.

Once the IRMP has reviewed all the evidence available and met with the individual they may be in a position to provide an opinion to the Scheme Employer. If however the IRMP feels that they need further clarification or information from any of the health professionals then this should be obtained.

The particular condition may be outside of the IRMP's knowledge and experience and he/she should in these circumstances obtain any appropriate specialist advice.

Where the IRMP is satisfied that they have received all relevant medical evidence they need to form an opinion and answer yes or no to the following statements

- a) the member is permanently incapable of discharging efficiently the duties of the local government employment the member was engaged in because of ill health or infirmity of mind or body and, if so-
- b) the member is as a result of ill health or infirmity of mind or body not immediately capable of undertaking any gainful employment

If the answer to both of these statements is Yes, there is a prima facie entitlement to payment of an ill health benefit. The IRMP then needs to provide an opinion as to which of the following statements applies

- c) the member is unlikely to be capable of undertaking gainful employment before normal pension age, or
- d) the member is unlikely to be capable of undertaking any gainful employment within 3 years of leaving his employment but likely to be able to undertake gainful employment before reaching normal pension age
- e) the member is likely to be capable of undertaking gainful employment within 3 years of leaving employment or before normal pension age, if earlier

When the IRMP has reached an opinion he/she must complete the LGPS Medical Certificate as appropriate and the completed certificate should be forwarded to the Scheme Employer together with a full report which should include: -

- a) Details of the medical evidence which has been taken into account in arriving at the opinion. A copy of all medical evidence referenced in the report should be attached
- b) If the IRMP is unable to conclude permanent incapacity due to ongoing or pending treatment he/she should provide an assessment of
 - the likely outcome of treatment
 - whether a successful outcome would render the member capable before normal pension age
 - whether the treatment is readily available and appropriate for the member
- c) If, in the IRMP's opinion, the member could work in their current role with adjustments or in an alternative role that is likely to be available with that employer, the IRMP should include details of adjustments which could be made or the type of work the member could undertake in the report to the Scheme Employer
- d) If, in the IRMP's opinion, the member would be capable of gainful employment then they should provide an assessment of the type of gainful employment the member is likely to be capable of undertaking

Under the LGPS Regulations it is the responsibility of the Scheme Employer to decide as to whether a member meets the criteria for the early payment of pension benefits on the grounds of permanent ill health and they cannot make an informed decision without sight of all the medical evidence which has been considered by the IRMP

Step 4 Scheme Employer Determination

On receipt of the Medical Certificate, report and medical evidence from the IRMP the Scheme Employer must review all the medical evidence and make a determination. If the Scheme Employer requires further clarification relating to the evidence and the opinion of the IRMP then this should be sought.

The outcome of the review will be one of the following

a) The member is permanently incapable of undertaking their current employment and they are not immediately capable of undertaking any other gainful employment

Member is notified in writing that their employment will be terminated on the grounds of permanent ill health with confirmation of the level of the award i.e. Tier 1,2 or 3

The notification to the member should include

- details of the medical evidence taken into account in the assessment,
- reasons for the decision on the tier of benefit awarded
- details of the review of the temporary tier 3 benefit when it has been in payment for 18 months and that it will cease at the end of three years
- the requirement for the member to notify the employer if they undertake any employment
- confirmation that the member can apply for a review at any time whilst the tier 3 benefit is in payment or within 3 years of it ceasing if they feel that their condition has deteriorated
- details of their right of appeal under the Internal Dispute Resolution Procedure including details of the adjudicator for Stage 1 of the Appeal process.

The Scheme Employer must forward a copy of the Medical Certificate to the Pension Fund together with a leaving the scheme notification form.

b) The member is permanently incapable of undertaking their current employment but they are immediately capable of undertaking other gainful employment

Member is notified in writing that they do not meet the criteria under the LGPS Regulations for ill health retirement and notified that their employment will be termination on the grounds of capability to provide a sustained service

The notification to the member should include

- details of the medical evidence taken into account in the assessment,
- reasons for the decision not to award benefits
- confirmation that the member will be awarded deferred benefits within the LGPS payable from their normal pension age
- confirmation that they can apply for their deferred benefits to be brought into payment at any age from age 55 and that these benefits will be reduced if paid before normal pension age
- confirmation that if their condition deteriorates they can apply for their deferred benefits to be brought into payment on the grounds of permanent ill health and that their application should include up to date medical evidence
- details of their right of appeal under the Internal Dispute Resolution Procedure including details of the adjudicator for Stage 1 of the Appeal process.

The Scheme Employer must forward a copy of the Medical Certificate to the Pension Fund together with a leaving the scheme notification form.

c) The member is not permanently incapable of undertaking their current employment

Member is notified in writing that they do not meet the criteria under the LGPS Regulations for ill health retirement

The notification to the member should include

- details of the medical evidence taken into account in the assessment,

- reasons for the decision not to award benefits
- details of the next stage in the Management of Sickness Absence Policy which may include arranging a meeting to discuss any adjustment which can be made to the role, redeployment to another role, monitoring of absence for a further period or termination of their employment on the grounds of capability to provide a sustained service
- details of their right of appeal under the Internal Dispute Resolution Procedure including details of the adjudicator for Stage 1 of the Appeal process.

The Scheme Employer must forward a copy of the Medical Certificate to the Pension Fund.

15) Procedure – Review of Tier 3 pension

This section of the Guide sets out the procedure to be followed in relation to a Tier 3 benefit. In accordance with the LGPS Regulations a Tier 3 benefit is only payable for a period of 3 years and must be reviewed by the Scheme Employer when it has been in payment for 18 months. A member in receipt of Tier 3 benefits is required to notify the Scheme Employer if they undertake any employment and the Scheme Employer is required to assess whether that employment is gainful employment. If the member feels that their condition has deteriorated they can apply at any time whilst the Tier 3 benefit is in payment or up to three years after the Tier 3 benefit has ceased for the benefit to be uplifted to Tier 2.

Member notifies Scheme Employer that they are undertaking employment

When a member notifies the Scheme Employer that they are undertaking paid employment the Scheme Employer must make a decision as to whether this constitutes “gainful employment”

Step 1

Write to the member to obtain details of the terms of the contract of employment i.e. hours per week and whether the contract is open ended or of short term duration.

Step 2

On receipt of the information from the member check whether the contract is for 30 hours or more in each week and whether the length of the contract is for more than or less than 12 months.

- a) Contract is for 30 hours or more in each week for a period of 12 months or more or is open ended

Write to member to advise them that

- the Tier 3 benefit will cease with immediate effect
- where gainful employment was undertaken for a period prior to the member informing the Scheme Employer, whether any over payments of pension will be recovered and the terms of the repayment
- That the member is a deferred pensioner member of the Pension Scheme and that their deferred pension will be brought into payment at their normal pension age
- That the member can apply for their deferred pension to be brought into payment between the age of 55 and 75

Notify the Pension Fund in writing that the Tier 3 benefit is to cease and the date from which this is to be applied.

- b) Contract is for 30 hours or more in each week for a period of less than 12 months

- Defer a decision until the contract end date
- Write to the member and inform them that the decision is deferred until the end of the current contract or until the contract is extended whichever is earliest

Notify the member that they must inform the Scheme Employer if the contract is extended beyond the initial period

Step 1 18 month review

When the Tier 3 Benefit has been in payment for 18 months the Scheme Employer must write to the member to enquire as to whether they are in employment and if so the details of the contract of employment including hours and

length of contract. If they are not in employment the member should provide details as to how their condition affects their day to day life and whether their condition has deteriorated since the benefit was awarded.

The results of this enquiry will be one of the following:-

- a) Tier 3 member does not respond to the enquiries
- b) Tier 3 member is in employment
- c) Tier 3 member is not in gainful employment but their condition is stable
- d) Tier 3 member is not in gainful employment and they feel that their condition has deteriorated

Step 2 Consideration of the responses

1. Member does not respond to enquiries

The Scheme Employer must notify the Pension Fund that there has been no response to the 18 month review enquiries and that the payment of the Tier 3 pension is to cease with immediate effect

The Scheme Employer must also write to the Tier 3 member to notify them that the payment of their Tier 3 pension has ceased, the effective date and that the reason the benefit ceased was due to the lack of response to the 18 month review enquiries. The notification should include

- Confirmation that consideration will be given as to whether the Tier 3 pension can be reinstated if the member response to the previous enquiries
- A copy of the 18 month review letter

2. Member is in employment

Write to the member to obtain details of the contract if this has not already been provided.

Once details of the contract have been obtained make a decision as to whether the employment constitutes "gainful employment"

- a) If the employment **does** constitute "gainful employment" write to the member to confirm this

The notification should include

- The reason for the determination
- Details of the date from which the benefit will cease
- If the member was in gainful employment prior to the date of the 18 month review confirmation as to whether the overpayment of pension is to be recovered from the member and if so the amount of overpayment to be recovered and over what period
- Confirmation that they are a deferred pensioner member of the Pension Scheme and that their deferred pension will be brought into payment at their normal pension age
- Confirmation that the member can apply for their deferred pension to be brought into payment between the age of 55 and 75

Notify the Pension Fund in writing that the Tier 3 pension is to cease and the date this is to be applied

- b) If the employment **does not** constitute "gainful employment"

- Refer the member to the IRMP (this can be the same IRMP who made the original determination)
- The questions which the IRMP need to consider are whether in his/her opinion, on the balance of probability
 - (i) Is the member now capable of undertaking gainful employment
If Yes Tier 3 benefit to cease
If no
 - (ii) Is the member likely to be capable of undertaking gainful employment within 3 years from the date their employment was terminated on ill health
If Yes Tier 3 benefit remains in payment for the remainder of the three year period

If No the Benefit can be up lifted to Tier 2

The IRMP must complete a Tier 3 Review Medical Certificate and forward this to the Scheme Employer with a full report detailing

- Details of the medical evidence which has been taken into account in arriving at the opinion. A copy of all medical evidence referenced in the report should be attached
- If the IRMP is unable to conclude permanent incapacity due to ongoing or pending treatment he/she should provide an assessment of
- the likely outcome of treatment
- whether a successful outcome would render the member capable before normal pension age
- whether the treatment is readily available and appropriate for the member
- If, in the IRMP's opinion, the member would be capable of gainful employment then they should provide an assessment of the type of gainful employment the member is likely to be capable of undertaking

On receipt of the opinion from the IRMP the Scheme Employer makes a determination

If the member is now deemed to be capable of undertaking gainful employment the Scheme Employer must write to the member

The notification should include

- The reason for the determination
- Details of the date from which the benefit will cease
- Confirmation that they are a deferred pensioner member of the Pension Scheme and that their deferred pension will be brought into payment at their normal pension age
- Confirmation that the member can apply for their deferred pension to be brought into payment between the age of 55 and 75
- Details of their right of appeal under the Internal Dispute Resolution Procedure including details of the adjudicator for Stage 1 of the Appeal process.

Notify the Pension Fund in writing that the Tier 3 pension is to cease and the date this is to be applied

- (a) If the member is deemed not to be currently capable, but is likely to be capable, of undertaking gainful within 3 years of the date their employment was terminated The Scheme Employer must write to the member

The notification should include

- Confirmation that the Tier 3 benefit will remain in payment for the period of 3 years from the date the employment was terminated on the grounds of ill health
- That the member must notify the Scheme Employer if they undertake employment within this period
- Details of their right of appeal under the Internal Dispute Resolution Procedure including details of the adjudicator for Stage 1 of the Appeal process.

- (b) If the member is deemed unlikely to be capable of undertaking any gainful employment within three years of the date their employment was terminated on the grounds of ill health the benefit is uplifted to Tier 2 from the date of the determination. The Scheme Employer must write to the member

The notification should include

- The reason for the determination
- Confirmation that their pension is being up lifted to Tier 2 from the date of the determination
- Confirmation that this is a permanent benefit
- Details of their right of appeal under the Internal Dispute Resolution Procedure including details of the adjudicator for Stage 1 of the Appeal process.

The Scheme Employer must forward a copy of the Medical certificate completed by the IRMP together with written confirmation of the Scheme Employers determination and confirmation of the date the uplift is to be applied.

16) The Procedure for Applications for Early Payment of Deferred or Deferred Pensioner Benefit

An application for the early payment of deferred or deferred pensioner benefits may be submitted to the former Scheme Employer or to the Pension Fund. In any event it is the responsibility of the former Scheme Employer to make a determination as to whether the former employee meets the criteria for the early payment of deferred benefits and any application received by the Pension Fund will be forwarded to the former Scheme Employer. Where an application for early payment of preserved benefits is received, Pensions Section shall refer the matter to the former employer. Before reaching a determination the Scheme Employer must obtain an opinion from an Independent Registered Medical Practitioner.

Step 1 Gathering information

On receipt of application the Scheme Employer should write to the member to obtain

- a) A consent form to enable the IRMP and HR to have sight of all relevant medical evidence
- b) A written statement from the member detailing how their condition affects their day to day life
- c) Details of their current employment status
- d) Copies of medical reports from health professionals involved in their case.
- e) Contact details of the health professionals involved in their case.

The employer may require the former employee to obtain medical reports from their health professionals or may prefer that the medical evidence is obtained by their Occupational Health Officer, HR Officer or the IRMP. There is normally a charge for the provision of medical reports and the former scheme employer may require the former employee to meet these costs. Confirmation of who will be responsible for meeting the costs of providing medical evidence and reports should be set out in the employer's policy.

Step 2 Referral to the Independent Registered Medical Practitioner

Once all the medical evidence has been received the HR Officer should complete Part 1 of the appropriate LGPS Medical Certificate. Different Certificates apply depending on the date that the member left their employment. The Medical Certificate should be forwarded to the IRMP together with the following:-

- a) A job description in respect of the members former employment
- b) Copy of any relevant medical information held on the former members HR or Occupational Health file
- c) Copies of all medical evidence obtained from the member and /or their health professionals
- d) Copy of the former employees statement detailing how their condition affects their day to day life
- e) Confirmation of the former employees current employment status

Step 3 Independent Registered Medical Practitioner's Assessment

In most cases the IRMP will wish to meet with the individual and a suitable appointment should be made and the member notified in writing of the date, time and venue. If the former employee is living in another part of the UK and it is not feasible for them to be seen by the IRMP which you normally use for this purpose please contact the pension fund and we will provide details of an IRMP who is approved by an LGPS fund in the area in which the former employee is resident.

Once the IRMP has reviewed all the evidence available and met with the individual they may be in a position to provide an opinion to the Scheme Employer. If however the IRMP feels that they need further clarification or information from any of the health professionals then this should be obtained.

The particular condition may be outside of the IRMP's knowledge and experience and he/she should in these circumstances obtain any appropriate specialist advice.

Where the IRMP is satisfied that they have received all relevant medical evidence they need to form an opinion and answer yes or no to the following statements

Deferred Member

the member is permanently incapable of discharging efficiently the duties of the employment they were engaged in because of ill health or infirmity of mind or body and, if so

whether as a result of that condition the member is unlikely to be capable of undertaking gainful employment before reaching normal pension age, or for at least 3 years, whichever is sooner.

Deferred Pensioner Member

The member is unlikely to be capable of undertaking gainful employment before normal pension age

When the IRMP has reached an opinion he/she must complete the LGPS Medical Certificate as appropriate and the completed certificate should be forwarded to the Scheme Employer together with a full report which should include: -

- e) Details of the medical evidence which has been taken into account in arriving at the opinion.
A copy of all medical evidence referenced in the report should be attached
- f) If the IRMP is unable to conclude permanent incapacity due to ongoing or pending treatment he/she should provide an assessment of
 - the likely outcome of treatment
 - whether a successful outcome would render the member capable before normal pension age
 - whether the treatment is readily available and appropriate for the member
- g) If, in the IRMP's opinion, the member would be capable of gainful employment then they should provide an assessment of the type of gainful employment the member is likely to be capable of undertaking

Under the LGPS Regulations it is the responsibility of the Scheme Employer to make a determination as to whether a member meets the criteria for the early payment of pension benefits on the grounds of permanent ill health and they cannot make an informed decision without sight of all the medical evidence which has been considered by the IRMP

Step 4 Scheme Employer Determination

On receipt of the Medical Certificate, report and medical evidence from the IRMP the Scheme Employer must review all the medical evidence and make a determination. If the Scheme Employer requires further clarification relating to the evidence and the opinion of the IRMP then this should be sought.

The outcome of the review will be one of the following

- a) The former employee is permanently incapable of undertaking their former employment and they are unlikely to be able to undertake any other gainful employment before Normal Pension Age or within three years of the date of the assessment whichever is sooner

Member is notified in writing that their deferred pension will be brought into payment with effect from the date of the application

A copy of the Medical Certificate must be sent to the Pension Fund together with the written authority from the former Scheme Employer confirming that the deferred benefit or the deferred pensioner benefit is to be brought into payment and the date this is to be applied from.
- b) The former employee is permanently incapable of undertaking their former employment but they are likely to be capable of undertaking any other gainful employment before Normal Pension Age or within three years of the date of the assessment whichever is sooner.

Member is notified in writing that their deferred pension will not be brought into payment. The notification should include
 - Details of the medical evidence taken into account in the assessment
 - Reasons for the decision not to award benefits
 - If they were an active member of the 2014 Scheme that they can apply for their deferred pension to be brought into payment from age 55 onwards and that these benefits will be reduced if paid before normal pension age
 - If they were a member of one of the earlier schemes that they can apply for their deferred pension to be brought into payment from age 60 onwards and that these benefits may be reduced if paid before normal pension age
 - Confirmation that if their condition deteriorates they can submit a further application for their deferred benefit to be brought into payment, which should include up to date medical evidence,
 - Details of their right of appeal under the Internal Dispute Resolution Procedure including details of the adjudicator for Stage 1 of the Appeal process.

- c) The former employee is not permanently incapable of undertaking their former employment and they are likely to be capable of undertaking any other gainful employment before Normal Pension Age or within three years of the date of the assessment whichever is sooner.

Member is notified in writing that their deferred pension will not be brought into payment. The notification should include

- Details of the medical evidence taken into account in the assessment
- Reasons for the decision not to award benefits
- If they were an active member of the 2014 Scheme that they can apply for their deferred pension to be brought into payment from age 55 onwards and that these benefits will be reduced if paid before normal pension age
- If they were a member of one of the earlier schemes that they can apply for their deferred pension to be brought into payment from age 60 onwards and that these benefits may be reduced if paid before normal pension age
- Confirmation that if their condition deteriorates they can submit a further application for their deferred benefit to be brought into payment, which should include up to date medical evidence
- Details of their right of appeal under the Internal Dispute Resolution Procedure including details of the adjudicator for Stage 1 of the Appeal process.

17. Appeals under the Internal Dispute Resolution Procedure

15.1 If the member is dissatisfied with the decision made by the employer in relation to the award of pension scheme benefits they have the right of appeal under the Internal Dispute Resolution Procedure.

17.1 Stage 1 Appeal

The Member should provide a statement of the nature of the disagreement with sufficient details to show why they are aggrieved and provide supporting documentation.

On receipt of an appeal the employer should review all the evidence, any additional supporting evidence and the evidence and medical reports considered in the original assessment. In certain circumstances, for example where the opinion provided by a Consultant or Specialist is contrary to the opinion of the IRMP the employer may wish to refer the matter back to the IRMP who carried out the original determination there is no requirement under the LGPS Regulations for an opinion to be obtained from another IRMP.

Once the employer has made their determination they should notify the member in writing of their decision. The notification should include the following

- the reasons for the decision
- details of any additional evidence which has been taken into account
- details of the member right of appeal under Stage 2 of the Internal Dispute Resolution Procedure.

17.2 Stage 2 Appeal

The Stage 2 appeal is determined by the person appointed by the Pension Scheme to make the determination under Stage 2. The Appointed person in respect of ill health appeals is the Pension Manager of the Greater Gwent (Torfaen) Pension Scheme unless they have previously been involved in the case when the Stage 2 Appeal will be undertaken by the Head of Pensions, Torfaen County Borough Council.

The information which should accompany a Stage 2 appeal is as follows:

The Member should provide a statement of the nature of the disagreement with sufficient details to why they are aggrieved and provide supporting documentation.

The Member should also complete a form of consent to permit all the medical evidence and related correspondence which was considered as part of the original application and the Stage 1 Appeal to be released to the Stage 2 adjudicator.

On receipt of the application and the consent form the Stage 2 adjudicator will forward the Consent Form to the Scheme Employer. The Scheme Employer must provide the following

- a) A copy of all medical evidence which was considered by the IRMP and the Scheme Employer in the original determination and the Stage 1 Appeal
- b) A copy of the report from the IRMP setting out his/her opinion and the reasons for that opinion
- c) A copy of all relevant correspondence and sickness absence history which was taken into account in the original determination and the Stage 1 Appeal

On receipt of this information the Adjudicator will review all the evidence and make a determination.

The determination will be one of the following:-

- a) The Appeal is not upheld or
- b) The Appeal is upheld

If the Appeal is not upheld the adjudicator will write to the member with a copy to the Scheme Employer setting out details of the adjudication and the reasons why the appeal has not been upheld.

The adjudicator will also advise the member that they have a further right of appeal to the Pension Advisory Service and ultimately to the Pensions Ombudsman

If the Appeal is upheld the adjudicator will refer the matter back to the Scheme Employer for further consideration. It should be noted that the Adjudicator does not have the power to overturn the Scheme Employer's decision but can provide details of areas which should be reassessed.