A Scheme Employers’ Guide to Ill Health under the Local Government Pension Scheme Regulations

For Local Government Pension Scheme employers

Please note that external links within this document are not updated by Peninsula Pensions and are provided for reference purposes only. Practitioners should ensure that they are referring to up-to-date information within any external links.
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1. Introduction

Peninsula Pensions has produced this guide to help employing authorities exercise their statutory responsibilities under the regulations governing the Local Government Pension Scheme (LGPS).

This guide does not convey any rights or entitlements, and employing authorities should also have regard to statutory guidance on ill health.

All documents mentioned in the guide are available from the Peninsula Pensions website.

2. What is ill health retirement?

Put simply, an ill health retirement, under the LGPS provides a pension to employees or ex-employees who satisfy the relevant criteria, and are permanently incapable of carrying out the duties of their role.

This can be broken down into 2 categories:

• Active employees – Immediate Ill Health Retirement
• Preserved member - Early payment of preserved pension benefits

Immediate Ill Health Retirement – active members

Conditions required for immediate retirement on ill health grounds:

• Qualifying period A member must have at least two years’ scheme membership or have transferred pension rights from another pension scheme (of any length) into the LGPS.

• Permanent incapacity The employer must terminate the employment on the grounds that his or her ill-health or infirmity of mind or body renders him or her permanently incapable of discharging efficiently the duties of his or her current employment. ‘Permanently incapable’ means the member will, more likely than not, be incapable until their normal pension age (their State Pension Age) at the earliest.

• Not immediately capable of undertaking any gainful employment The member must not immediately be capable of undertaking any gainful employment. ‘Gainful employment’ means paid employment for not less than 30 hours in each week for a period of not less than 12 months.

If the member satisfies the above criteria, then an ill health pension is payable. Also the test for permanent incapacity is based on the employee’s ability to undertake the duties of their current employment. If the employee has more than one contract of employment separate opinions must be made for each post where ill health retirement is being considered. It is quite possible for an employee in more than one post to satisfy for one, but not the other.
Early Payment of Preserved Benefits – deferred members

Conditions required for early payment of preserved pension benefits:

Scheme members who left the LGPS before 1st April 1998
(Covered by Local Government Pension Scheme Regulations 1995)
The ex-employee must be permanently incapable, by reason of permanent ill-health or infirmity of mind or body, of discharging efficiently the duties of the employment the member has ceased to hold.

Benefits are payable from ‘any date on which the member becomes permanently incapable, by reason of ill-health or infirmity of mind or body, of discharging efficiently the duties of the employment they cease to hold’.

This means that if a medical opinion indicates that the permanent incapacity arose earlier, under the 1995 Regulations, benefits can be paid from a date earlier than that on which the former member applies for them.

If the IRMP believes that the permanent incapacity existed at the date the person ceased employment, and was capable of being discovered at that time, the ill health should be backdated to be an active ill health retirement. If however the IRMP believes that, in hindsight and with the benefit of the intervening time, it is only now possible to determine that the person was permanently incapacitated at the date of leaving, only the unenhanced deferred benefits can be brought into payment from the day following the date of termination, at the earliest,.

Scheme members who left the LGPS on or after 1st April 1998 but before 1st April 2008
(Covered by the Local Government Pension Scheme Regulations 1997)
As with above, ex employee must be permanently incapable of discharging efficiently the duties of their former employment because of ill health or infirmity of mind or body.
Benefits are payable from any date when the former member applies for the early payment of benefits or, from the date permanent incapacity is judged to have arisen, whichever is the later.

Exceptional ill health
Where the scheme member left before 1st April 2008, covering the above, it should be noted that where a fully registered person, within the meaning of the Medical Act 1983, certifies that the person is seriously ill and has a life expectancy of less than one year, under both the 1995 & 1997 regulations, the Pension Fund Administering Authority may choose, subject to HM Revenue and Custom rules, to commute the pension benefits into a single lump payment.
Scheme members who left the LGPS on or after 1st April 2008 but before 1st April 2014
(Covered by the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007).
Ex-employee must be permanently incapable of discharging efficiently the duties of the former employment because of ill-health or infirmity of mind or body and, that the condition is likely to prevent the member from undertaking gainful employment (whether in local government or otherwise) before reaching his/her normal retirement age, or for at least three years, whichever is the sooner.

Benefits are payable from a date determined by the former employer.

Scheme members who left the LGPS on or after 1st April 2014
(Covered by the Local Government Pension Scheme Regulations 2013).
Ex-employee must be permanently incapable of discharging efficiently the duties of the former employment because of ill-health or infirmity of mind or body and, that the condition is likely to prevent the member from undertaking gainful employment (whether in local government or otherwise) before reaching his/her normal retirement age, or for at least three years, whichever is the sooner.

Benefits are payable from any date when the former member applies for the early payment of benefits or, from the date permanent incapacity is judged to have arisen, whichever is the later.

3. My role as an employer

Decisions about eligibility
While it is probably obvious that an ex-employee would need to apply to the former employer to release the pension due to ill health, the Scheme Regulations do not require an active member to apply for benefits. It would usually be the employer, or a doctor consulted by the employer, that would instigate the process for an active employee. However, once the process starts, it is the employer who has the responsibility for reaching a decision on pension entitlement.

The employer has to decide if an employment should be terminated. If an employee has been absent from work for a considerable period or has suffered an injury that prevents them from working then the employer should decide if the employment should be terminated. This is a decision that should be taken entirely for human resource reasons. The question should be asked: ‘Is the employee capable of continuing to work?’

If the answer is no, then the employee should be referred to the IRMP.

An independent registered medical practitioner who is qualified in Occupational Health medicine, and approved by Peninsula Pensions, has to certify that an employee meets the criteria. A list of IRMPs can be found on the Peninsula Pensions website.
Referral to the Independent Registered Medical Practitioner (IRMP)

Extract from LGPS Benefit Regulations for definition of an IRMP:
An independent registered medical practitioner ("IRMP") qualified in occupational health medicine” means a practitioner who is registered with the General Medical Council and — (a) holds a diploma in occupational health medicine (D Occ Med) or an 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; or (b) is an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA state.”

Employers may refer both current and ex-employees for medical opinions under the Scheme. It is likely that employees who have had long periods of sick leave, have already been in contact with the employer’s own occupational health advisers for periodic review aimed primarily at helping the employee return to his/her normal job or to identify suitable alternative work. However, a long period of sickness is not required before an employee could be referred. For example, an employee may not have been off sick, but has been diagnosed with a terminal illness.

The occupational health provider acting for the employer should ensure all relevant information is available for the independent physician.

Information to provide to the IRMP

In order to ensure that the application is dealt with quickly and with the minimum disruption the independent doctor requires a fully worked case to review. These should include:

• Details of illness/medical condition
• Absence record for the previous two years
• Medical reports from your occupational health practitioner
• Medical reports from the individual’s GP or specialist consultant or similar
• Accident report forms and risk assessments
• Current job description
• Details of any adjustments/adaptations that have been made to help the individual undertake their job. This includes adjustments to hours worked which can affect the level of ill health enhancement awarded.

In practice, sending the entire occupational health record is the best way to ensure all relevant information is passed on.
4. The role of the Independent Registered Medical Practitioner (IRMP)

The IRMP has to certify whether or not in his/her opinion the employee satisfies the relevant criteria under the specific set of regulations by completing the ill health certificate.

In addition, if the member is still an active employee and works part time, it may also be necessary for the IRMP to provide an opinion stating whether or not any reduction in hours is as a result of the condition for which ill health retirements may be paid. This will have an impact on the calculation of any enhancement.

**In order to comply with the Access to Medical Reports Act 1988, it is essential that the individual gives their informed consent before any medical records are disclosed to the IRMP. This can be best achieved by the employer and their own Occupational Health doctor obtaining this authority at the point at which it is decided that the individual should be referred to the IRMP.**

When the IRMP receives the referral papers they will decide whether or not it is necessary to see the employee. An appointment, where appropriate, will be arranged. The employee will be informed by letter and copies sent to the referring employer. If the employee fails to attend, the employer will be notified by letter. No further action will be taken until the employer requests a new appointment.

5. The Decision

Once the IRMP has made their medical opinion, the certificate will be completed and returned to the employer. When the employer received this certificate, they should look at it, along with any other information they have. The employer will then make their decision on pension entitlement, including which tier of ill health award the member is entitled to.

**Who to tell about your decision**

When you have made your decision, a leaver’s form (for active employees) and the relevant ill health certificate and employer’s decision notice should then be forwarded to Peninsula Pensions.

You must also inform the member of your decision, in writing, setting out which tier of benefits they are entitled to (if any) and their right of appeal under IDRDP.

If the member is awarded the 3\textsuperscript{rd} tier of ill health benefits, as they will receive benefits for a maximum period of 3 years (subject to review at 18 months), we also suggest you enclose the Pension Fund guide to third tier benefits to remind the member of the ongoing position.
6. Benefits payable

The level of pension and enhancement under the 2014 scheme is dependent on the extent and expectation of the individual being able to undertake further gainful employment.

<table>
<thead>
<tr>
<th>Tier</th>
<th>Degree / level of ill health</th>
<th>LGPS pension and level of enhancement</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unlikely to be capable of undertaking any gainful employment before normal retirement age</td>
<td>Accrued pension rights plus an enhancement of membership of 100% of prospective benefits up to normal retirement age</td>
</tr>
<tr>
<td>2</td>
<td>Unlikely to be capable of undertaking any gainful employment within 3 years of leaving employment but likely to be capable before normal retirement age</td>
<td>Accrued pension rights plus an enhancement of membership of 25% of prospective benefits up to normal retirement age</td>
</tr>
<tr>
<td>3</td>
<td>Likely to be capable of undertaking gainful employment within 3 years of leaving employment or normal retirement age if sooner</td>
<td>Accrued pension rights only with no enhancement, with award subject to review and suspension</td>
</tr>
</tbody>
</table>

Gainful employment means paid employment for at least 30 hours per week for at least a year.

PROTECTIONS

- 1997 LGPS members aged 45 or more on 31 March 2008 would receive the membership increase that would have been awarded under the 1997 scheme if this would be greater than the 2014 scheme award. The extra benefits, however, would be based on the 2008 scheme rates.

Enhancements paid under regulation 28 of the 1997 Regulations

<table>
<thead>
<tr>
<th>Actual Total Membership</th>
<th>Ill Health enhancement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 5 years</td>
<td>Actual membership only</td>
</tr>
<tr>
<td>Between 5 and 10 years</td>
<td>Membership doubled</td>
</tr>
<tr>
<td>Between 10 and 13 1/3 years</td>
<td>Membership increased to 20 years</td>
</tr>
<tr>
<td>Between 13 1/3 and 33 1/3 years</td>
<td>Membership increased by 6 2/3 years</td>
</tr>
<tr>
<td>Between 33 1/3 and 40 Years</td>
<td>Membership increased to 40 years</td>
</tr>
<tr>
<td>Over 40 years</td>
<td>Actual membership only</td>
</tr>
</tbody>
</table>

- If a member is purchasing added years under the old 1997 Regulations then for their added years to be ‘paid up’ they will need to satisfy the ill-health conditions under the 1997 regulations. It is possible for a member to satisfy the old ill-health conditions but not the new conditions and visa versa, which could mean that their added years are ‘paid up’ but they are not entitled to an ill-health benefit or they are entitled to an ill-health benefit but their added years are not ‘paid up’ and will be apportioned.
**Tier 3 ill health benefits**

When the employer determines that a scheme member is entitled to a Tier 3 ill-health benefit the employer is responsible for reviewing the pension during the period of payment.

Employers should ensure that the following information is given to the member, in writing, on leaving:

- The latest date the pension will cease in 3 year’s time.
- If still in payment the pension will be reviewed after 18 months.
- The member must inform the previous employer if they obtain gainful employment (30 hours or more per week for a period of not less than 12 months) as the pension will cease.

What the employer must do once the pension is in payment:

- Review the medical condition of the member after 18 months on pension, by referring them to the IRMP for re-assessment (Form IH3RW1).
- Inform Peninsula Pensions whether the third tier conditions still apply (Form IH3RW2), or whether the pension should cease or be upgraded to Tier 2.
- Inform Peninsula Pensions at any time when the pension must cease, for example, on obtaining gainful employment or medical re-assessment (Form IH3RW2).
- Inform the member in writing when the pension is ceasing.
- Inform Peninsula Pensions if they need to recover an overpayment of pension (Form IH3RW2).
- Inform Peninsula Pensions if the member has been re-assessed to a Tier 2 ill-health pension (Form IH3RW2). A copy of the IRMP medical certificate is required (Form IH3RW1).

Peninsula Pensions will provide the following information to help the employer to achieve the above:

- Inform the employer when the member has been on pension for nearly 18 months and confirm the member’s current home address held on the payroll record.
- Inform the employer when the member has been on pension for nearly 36 months and confirm the member’s current home address held on the payroll record. This letter will confirm that Peninsula Pensions will cease the pension at 36 months.
- Recover any overpayment as instructed by the employer.

**Cost to employer**

Unlike other forms of early retirement (such as redundancy) there is no immediate capital cost payable by an employer. All pension costs associated with ill health are included in the normal employer contribution rate determined by the actuary every three years.

An employer will however have to pay the cost of any medical referral.

*Very important* An ex-employee can apply for ill health as many times as they wish. The Pensions Ombudsman has made it clear that the employer has a statutory duty to make a decision on each request, which they can only do after obtaining the IRMP certificate, and could therefore face multiple referral costs, which they cannot pass on to the ex-employee.
7. Tax implications

From April 2014, the annual allowance for tax‐relieved pension savings reduces to £40,000. Because ill health retirement has the potential of providing enhanced benefits, members who are awarded ill health retirement may be subject to tax charges. HM Revenue and Customs provide protection against the tax charges but only if the member is unlikely to be capable of taking on any other paid work in any capacity, otherwise than to an insignificant extent before State Pension Age. If this is the case and the doctor certifies this on the ill health certificate, any enhancement awarded to the member is ignored for tax purposes.

8. The right of appeal - Internal Dispute Resolution Procedure (IDRP)

In all cases the employee should be given the right to appeal under the ‘Internal Dispute Resolution Procedure’ (IDRP), which is a two‐stage process.

The pension appeal can relate to the decision to grant retirement and/or the benefits paid.

It is important to note the following:

- An IDRP appeal can only be made after employment has ceased, for example, against a decision to award, or not award, ill health retirement benefits, or against the amount of those benefits.
- It is the scheme employer, not the IRMP, that the appeal is made against, as it is the responsibility of the employer to decide on, if and what benefits to award. The IRMP is only there to give a medical opinion.

9. What can go wrong?

The Pensions Ombudsman has recently published a guide showing some of the reasons that cases normally come to them. They have suggested that the following should be looked at to avoid a potential appeal.

Medical evidence and decision

- Has the IRMP applied the correct test?
- Has the IRMP considered permanence correctly? The relevant point is the permanence of the incapacity, not the permanence of the medical condition itself.
- Has gainful employment been considered properly?
- Has the scheme employer made a decision or simply adopted the IRMP’s opinion without question?
- Where there is insufficient information or any uncertainty has the scheme employer sought clarification from the IRMP?
- How is conflicting medical evidence addressed? If the IRMP’s evidence is preferred over other medical evidence, is it clear that both have been considered; and is it clear why one has been given more weight than the other?
• Has the question of untried treatments been addressed properly? It is not enough simply to say that treatment options exist or that it is premature to conclude that the condition is permanent. The IRMP must be asked to give a view as to their likely effect and whether, on the balance of probabilities, the condition renders the member permanently incapable of discharging the duties of the employment they were engaged in (along with the other criteria set out in regulations 36(1) or 38(3), as relevant). The same approach applies if there has been no diagnosis for the member’s condition.

Procedure and Internal Dispute Resolution Procedure (IDRP)
• Is the certification complete, or is anything missing or incorrect?
• Has the scheme employer informed the member correctly of the decision with reasons? (Failure to provide reasons is generally considered to amount to maladministration)
• Has the member been given correct advice about their right to appeal?
• Have all the procedures been followed correctly – both in relation to the original decision and the IDRP?
• Has the IDRP identified problems in the decision-making process and put them right?
10. **Ill Health Retirement – a simple flowchart**

Employer decides an active member is no longer able to carry out the duties of their post and the employment should be terminated.

*OR*

An ex-employee applies to have their pension paid early due to a permanent breakdown in health.

Employer completes relevant form and refers to Independent Registered Medical Practitioner to complete relevant Ill Health Certificate.

Active Member: IHCURR1.
Ex-employee: IHDB1A/B/C/D (depending on when the member left – see [website](#)).

IRMP completes the certificate and returns it to the employer.

Employer looks at certificate from IRMP along with any other information available and decides whether ill health benefits can be awarded and what tier (if relevant).

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**Yes**

Inform employee of decision. Send certificate with employer decision form IHCURR2 (active) and leaver’s form to Peninsula Pensions.

*OR*

Send certificate with employers decision form IHDB2 (ex-employee) form to Peninsula Pensions.

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**No**

Inform employee of decision and give right of appeal under IDRP.