

The Local Government Pension Scheme

What to do if you have a complaint

These notes explain what action you can take under “dispute rules” if you are unhappy with a decision made about your pension rights under the Local Government Pension Scheme.



BACKGROUND

Decisions

From the day that a person starts working for an employer who participates in a Local Government Pension Scheme Fund, decisions are made about his or her entitlement to membership of the Local Government Pension Scheme ("LGPS") and to any benefits derived from that membership. Some decisions are the responsibility of the Scheme employer, some are the responsibility of the body administering the Fund (the "administering authority"). Staffordshire County Council is the administering authority for the Staffordshire Pension Fund.

A Scheme employer makes decisions about such things as the contribution rate paid by a Scheme member and entitlement to LGPS benefits for a member and his or her dependants. The administering authority will make decisions about such things as the amount of benefits payable.

How and when you should be told about decisions

Every time a Scheme employer or the administering authority make a decision under the LGPS Regulations, they must write to the person affected. If their decision is that a person is not entitled to a benefit they must say why they have reached that decision. If their decision is about the amount of a benefit, they must explain how they have worked it out. They must also tell the Scheme member where he/she can get further information and details of rights of appeal under the LGPS Regulations. Similar information must be given to dependants and/or personal representatives on the death of a LGPS member.

The appeal provisions in the LGPS are based on Internal Dispute Resolution Procedures which are required by the Pensions Act 1995. In these notes, the appeal procedures are referred to as "the dispute rules".

Your rights under the dispute rules

When you are told of a decision made under the LGPS you should check it, as far as you can, to see if you think it is based on the right details and that you agree with it.

If you are not happy with the decision then, under the dispute rules, you have the right to have it looked at afresh by a "specified person", i.e. a person specified for this purpose by your Scheme employer if it is an employer's decision with which you are unhappy, or specified by the administering authority if it is their decision with which you are unhappy.

Should you remain dissatisfied with the specified person's decision, you may take your grievance to the next stage of the dispute process. At the second stage, your grievance would be considered by the administering authority.

If you are not happy with the decision made at the second stage, you could take your case to the Pensions Ombudsman.

You may also use the dispute rules if a decision should have been made by your Scheme employer or the administering authority, but hasn't been.

Discretionary questions - LGPS

A specified person may also be asked to consider a disagreement about the way in which a Scheme employer or administering authority has exercised a discretionary power under the LGPS Regulations. (Discretionary powers allow a Scheme employer or the administering authority to choose to do something rather than requiring them to do it.)

This would follow the standard two stage dispute process with the specified person considering the application at the first stage and the administering authority considering it at the second stage.

However, at neither stage would the persons considering the application be able to overturn the initial decision. Instead they would have to ensure that the discretion had been exercised reasonably. If this was found not to be the case, they would determine that the matter should be reconsidered in a proper manner.

Discretionary Payments and Compensation Regulations

Apart from making awards under the LGPS Regulations, an employer may use discretionary powers to make an award under Compensation Regulations, e.g.

- The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, or
- The Local Government (Discretionary Payments) Regulations 1996.

For example, if a person leaves on redundancy grounds, the employer may award a compensatory lump sum.

Decisions made under Compensation Regulations are subject to a two stage appeal process under Internal Dispute Resolution Procedures. The LGPS Regulations dispute rules would not apply here. It is for the Scheme employer to set up the arrangements for this - the administering authority would not be involved. Ask your employer for further details if your grievance is with the award of compensation and you wish to appeal.

Because compensation is awarded at the discretion of the employer the persons considering the application would not be able to overturn a decision, but could require that it should be reconsidered in a proper manner if they believe the initial decision was not "reasonable".

Injury awards

An injury award would be made under Part V of the Local Government (Discretionary Payments) Regulations 1996. The amount of award payable would be at the discretion of the employer and so could be appealed against like other decisions made under the Discretionary Payments Regulations (see above). However entitlement to the award is not a matter of discretion. In the case of entitlement to an injury award the Discretionary Payments Regulations give a person a right of appeal to the Secretary of State. This puts the appeal route for an injury award out of step with the provisions mentioned above. It would be appropriate for a person who wishes to appeal against a decision (or failure to make a decision) about allowing an injury award, to use the standard first stage procedures and apply to the person appointed for this purpose by the Scheme employer. Failing satisfaction, the person could then appeal to the Secretary of State.

Complaints about maladministration

It may be that a complaint is about something other than a decision. For example, you may feel that there has been some element of maladministration in the way in which your case has been handled. The following are examples of maladministration in pensions administration –

- unreasonable delays in letting you know about, or paying, your benefits;
- failure to let you know about changes in your pension entitlement or changes in the Scheme rules which may affect you;
- failure to give you adequate or timely information that you need in order to be able to make informed decisions about your rights and benefits under the Scheme.

You may use the dispute rules for this type of complaint.

Who can use the dispute rules?

You have the right to use the dispute rules if you are a member of the LGPS; this includes members who are paying into the Scheme, those who have left with entitlement to immediate payment of benefits or who have benefits preserved in the Scheme, and those who have left and leave a period of membership in the Scheme of insufficient length to qualify for benefits.

The following people also have a right to use the dispute rules -

- a prospective member of the LGPS, i.e. an employee who, although not currently a member, could become one at his/her request or at the employer's discretion;
- a pension credit member or a person entitled to a pension credit, i.e. someone who, under the terms of a pension sharing order made on divorce, dissolution of civil partnership, or annulment, has entitlement to pension rights as the former spouse or civil partner of a LGPS member;
- a widow, widower, surviving civil partner, child or other dependant of a person in one of the above categories before he or she died.

You would also have the right to use the dispute rules if -

- you think that you should or could fall into one of the categories listed above, or
- you do not currently fall into one of the categories listed above, but you did at some time in the last six months.

Using someone else to represent you

Under the dispute rules you can, if you wish, ask someone else to act on your behalf. A trade union representative or an adult son or daughter will often help in this way.

You will, however, need to give the person you choose your written authority to act for you by signing a simple statement to that effect.

If the person who is entitled to make the complaint has died, a personal representative (the person dealing with the estate) can make and carry on the complaint on his/her behalf. If the person who is entitled to make the complaint is a child, or is for some reason not capable of making and carrying on the complaint him or herself, a family member or other suitable person can act on his or her behalf.

What to do first if you are unhappy with a decision

When your Scheme employer or administering authority tells you about a decision they have made, they will probably ask you to get in touch with them first if you want any further explanation or if you are unhappy with the decision. Most problems are resolved in this way. They are often caused by misunderstandings or wrong information which can be explained or put right quickly and easily by the employer or administering authority. So it is normally a good idea to make an informal enquiry in the first place if you have a problem or complaint to do with the LGPS. This would not affect your right to use the dispute rules if you remain dissatisfied.

Cost

No charge is made by the employer or administering authority for investigating a complaint at any stage under the dispute rules.

Written process

The dispute rules (as set out in the LGPS) and as required by the Pensions Act 1995 expect the process to be conducted in writing, i.e. you would not normally be required to attend any meeting to put your case in person. If, however, the person deciding your application at the first or second stage is of the view that a medical examination is required, you may be requested to attend an appointment with an independent medical adviser selected by that person.

STAGE ONE OF THE DISPUTE RULES

Applying for a decision by the specified person

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

An application can also be made to the specified person if the relevant body should have made a decision, but has failed to do so.

The specified person

Neither the Pensions Act 1995 nor the LGPS Regulations stipulate who should make a decision at the first stage of the dispute process. It could be, for example, the human resources manager, or the pensions or payroll manager. It will be for each Scheme employer to decide who should be the specified person or persons.

Whenever the employer makes a decision under the LGPS Regulations, the notification of that decision should mention the recipient's right to refer any disagreement to the specified person. It must mention the specified person's job title and the address at which he or she can be contacted.

If the decision is one that is made by the administering authority, the administering authority, too, must give details of their specified person(s) for a first stage appeal.

When to apply to the specified person

If you want to use the dispute rules, you must make your application to the specified person within six months of being notified of the decision with which you are unhappy. If your complaint is that a decision was not made, you must make your application within six months of the time the decision ought to have been made. The specified person can extend the six month time limit for a reasonable period where there are special circumstances.

How to apply to the specified person

There is an application form supplied with this leaflet; you can use this to apply to the specified person if you wish. If you prefer not to use the supplied form please note that your application must be made in writing and –

- sent to the address given by your Scheme employer on the enclosed address list if your grievance is in respect of a decision which has, or should have been, made by your employer
- sent to the administering authority at the address given on the enclosed address list if your grievance is in respect of a decision which has, or should have been, made by the administering authority.

Your application must contain the details listed on the next page.

What the specified person needs from you

The specified person will need the following information –

In all cases

⇒ you must explain your complaint as fully as you can, enclosing copies of any documents you think may be helpful. In particular, if you are complaining about a decision that has been made you must include a copy of the letter or notice from your employer or administering authority telling you about that decision.

plus, if you are –

(a) a LGPS member or a prospective member, or

(b) someone who ceased to be such a person within the 6 months before the application was made, or

(c) someone who claims to be a person within (a) or (b) above

⇒ you must state in your application your full name, address, date of birth, National Insurance number and the full name of your employing body (not simply the department in which you work).

plus, if you are –

(a) a person entitled to a pension credit or a pension credit member, or

(b) someone who ceased to be such a person within the 6 months before the application was made, or

(c) someone who claims to be a person within (a) or (b) above

⇒ you must state in your application your full name, address, date of birth and the name of the administering authority (Staffordshire County Council).

plus, if you are –

the spouse, civil partner, child, or other dependant of a LGPS member

⇒ you must state in your application your full name, address, date of birth, relationship to the member and the member's full name, address, date of birth, National Insurance number and the name of the member's employing body.

plus, if you are –

the member's or dependant's representative

⇒ you must state in your application the member's or dependant's details as indicated above, together with your own name and address and the appropriate correspondence address. You must also send evidence of your authority to act for the member or dependant.

Finally, you as the applicant, or a representative on your behalf, must sign the application. (If you use the application form supplied with this leaflet you will find that it will prompt you to give all the necessary details.)

What else could you be asked to provide or do?

The specified person will acknowledge receipt of your application and may write to you to ask for more information or further explanation to be sure that he/she understands your complaint and is able to make a proper decision.

If your state of health has a bearing on your complaint, you may be asked to have a medical examination and to give consent for your medical records to be released to an independent occupational health physician chosen by the specified person. You will not have to pay medical charges.

When can you expect the specified person's decision?

The specified person should either give a decision within two months of receiving your written complaint or write to you at the end of two months telling you the reasons for a delay in reaching a decision and giving you a date when he/she expects to be able to let you know the outcome. Unless the case is complex or the specified person needs to collate information from a number of sources which are slow in responding, a final decision would be made within four months of your application.

What must the specified person tell you?

The specified person must write to you or to your representative to let you know of his/her decision. If your Scheme employer made the decision you complain of, the specified person must supply a copy of the decision to your employer. The administering authority must also receive a copy. The letter must give –

- the specified person's decision; he/she could either confirm the original decision of your employer or administering authority, or replace that decision with a new decision of his/her own (unless the decision was based on a discretionary power);
- details of the provisions of the LGPS or other legislation relied upon to arrive at the decision;
- if the disagreement relates to an exercise of a discretion, a reference to the provisions conferring the discretion;
- a reference to the right of the applicant to refer the disagreement for consideration by the administering authority, specifying the time limits; and
- a statement to the effect that the Pensions Advisory Service (TPAS) is available to assist members and beneficiaries in connection with any difficulty which remains unresolved, together with the address at which it may be contacted.

The power of the specified person's decision

Unless the complaint is taken further and an application made under the second stage of the LGPS dispute rules, the specified person's decision is binding on the employer or administering authority that made the decision. This means that, if the specified person's decision is contrary to theirs, they must deal with your case on the basis of the decision made by the specified person.

STAGE TWO OF THE DISPUTE RULES

Who makes the second stage decision?

The second stage decision is made by the administering authority.

Staffordshire County Council as the administering authority has set up a Panel of senior officers for this purpose. The application should be sent to the Director of Law and Democracy at the address given in the enclosed address list. A Panel member will be selected to decide the case. The person who is selected to make the decision will not have had any previous direct or indirect involvement in any way with the matter. He or she will be supported, as appropriate, by specialist guidance from officers and others not previously involved in the consideration or determination of the matter in dispute. These could include an independent medical examiner or the Pension Fund Actuary.

When and how to apply for a second stage decision

If you are dissatisfied with the first stage decision and want to apply for a second stage decision you must do so within six months of the date of the first stage decision.

If you applied for a first stage decision, received an interim reply, but no notice of decision was made within a month beginning with the date the interim reply stated you should receive it, you can apply for a second stage decision within six months of the date on which the one month period expired.

If you applied for a first stage decision but no notice or interim reply was made within three months of your application, you can apply for a second stage decision within six months of the date on which the three month period expired.

Your second stage application should be sent to the address given in the enclosed address list.

What details should be sent with a second stage application?

All the information and details that were required for the first stage application should be submitted at the second stage plus, where you have received a first stage decision, a copy of that decision and why you are dissatisfied with it.

There is a second stage application form you can use for this purpose.

As with complaints at the first stage of the dispute rules, the person considering your application should acknowledge receipt of the form and may request further information so that he/she can fully understand your complaint.

When can you expect the second stage decision?

The person dealing with your complaint must either give you a decision within two months of receiving your written complaint or must write to you at the end of two months telling you the reasons for the delay in reaching a decision and giving you a date when you can expect to receive it. This should normally be within four months of your application.

What must you be told as part of the second stage decision?

When you are given your second stage decision you must be told whether, and to what extent, it confirms or replaces the first stage decision. The notice of decision must also tell you –

- the provisions of the LGPS or other legislation relied upon to arrive at the decision;
- if the disagreement relates to an exercise of a discretion, a reference to the provisions conferring the discretion;
- that the Pensions Advisory Service (TPAS) is available to assist members and beneficiaries in connection with any difficulty which remains unresolved, together with the address at which it may be contacted; and
- about the Pensions Ombudsman's powers to investigate and determine any complaint or dispute of fact or law.

How can the Pensions Advisory Service (TPAS) help?

TPAS offer a free service to all who have problems with their pension scheme. TPAS advisers can explain, or obtain more information about, your pension. You can contact TPAS through your local Citizen's Advice Bureau or by contacting the address given in the list supplied with this leaflet. If you would like the Pensions Ombudsman to consider a complaint you should normally contact TPAS first. If the Advisory Service cannot sort out your problem and they believe there has been maladministration or they believe that a decision made is wrong, they will recommend that you make a formal complaint to the Ombudsman. You can ask TPAS for help at any time if you are having difficulties in sorting out a complaint under the dispute rules.

Contact details for TPAS are given in the address list which accompanies these notes.

Applying to the Pensions Ombudsman

The Pensions Ombudsman can investigate disputes of fact or law about decisions made about your pension but, normally, you must first go through all the procedures laid down in the dispute rules. On the other hand, the Ombudsman can investigate complaints or disputes about the handling of a case at Stage One or Stage Two at any time - you need not wait until the dispute procedure has been completed.

Contact details for the Ombudsman are given in the address list which accompanies these notes.

If a copy of this information is needed in large print, Braille, another language
or on cassette, please contact Pension Services at
Staffordshire County Council,
Wedgwood Building, Tipping Street, Stafford ST16 2DH