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1 Introduction

This Guide has been produced to assist you, as a scheme employer in the Staffordshire Pension Fund, your occupational health colleagues and your independent registered medical practitioner (IRMP) understand the ill health provisions within the Local Government Pension Scheme along with your specific individual statutory requirements when processing potential ill health retirements in your organisation.

It is not, however, a definitive summary of the ill health retirement rules of the LGPS. It also does not attempt to set out the ordinary process you might follow when dealing with sickness absence in your organisation and the interactions you might have with your own occupational health colleagues or providers.

In addition to the information contained here you are also advised to have regard to the following guidance and supporting documentation:

**Department for Communities and Local Government (DCLG):**

- Statutory ill health retirement guidance to accompany the Local Government Pension Scheme 2008
- Statutory Ill Health Retirement guidance to accompany the Local Government Pension Scheme Regulations 2013
- Supplementary guidance for Independent Registered Medical Practitioners – June 2011

**Pensions Ombudsman**

- LGPS - Ill Health Newsletter – November 2015
2 LGPS Provisions

The LGPS currently provides for the payment of retirement benefits in circumstances where an employee or ex-employee is considered to be permanently incapable of carrying out the duties of their post or former post, and their ill-health restricts their ability to carry out any other gainful employment. Slightly different rules apply, depending on whether you are dealing with an active or a deferred scheme member. Those members who left prior to the current LGPS regulations are covered by the version of the regulations that applied at the point they left.

Active member – Immediate payment of an ill health pension, which depending on the severity of the ill health could be subject to enhancement;

Deferred member - Early payment of current value of their deferred pension benefits, but with no enhancement to that pension.

Specific criteria are set out within the LGPS Regulations, which needs to be met in order that an ill health retirement pension can become payable, and these are explained in more detail below.

Active member
There are three important criteria that need to be met in order for an active member to be considered for ill health retirement.

Qualifying period – an active member must have at least 2 years’ membership in the LGPS (including any pension transferred into the scheme from another pension arrangement) in order to qualify for ill health retirement.

Permanently incapable – the scheme employer must terminate the employment because the active member is considered, because of their medical condition, to be permanently incapable of undertaking the duties of their current employment. Permanently incapable itself is defined as meaning they are, more likely than not, incapable until their normal pension age at the earliest. Normal pension age is their State pension age or age 65 if that is later.

Where an active member has more than one employment contract then any test of permanent incapacity must be carried out against each post, with a separate determination made against each one. Ideally this should happen at the same time.

Gainful employment – as well as considering whether or not an active member is permanently incapable of undertaking the duties of their current employment the scheme employer must also be satisfied that, because of their medical condition, they cannot immediately undertake any other gainful employment. Gainful employment itself is defined as any paid employment for not less than 30 hours per week over a period of not less than 12 months. This includes employment outside of their current employer and does not consider the likelihood of any such employment necessarily being readily available.
Ill health pension plus enhancement

For an active member the LGPS currently provides different levels of ill health pension, depending on the severity of the ill health, as summarised in the following table.

<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 after 18 months and suspension within 3 years</td>
</tr>
</tbody>
</table>

Former Scheme protections

There is one important protection from previous versions of the LGPS that it is important to be aware of, in the rare event that it may apply where you are considering the ill health retirement of an active member.

Old style enhancement

Prior to 1 April 2008 the LGPS provided enhancement based on the level of membership an individual had in the scheme, not the severity of their ill health. When the LGPS was amended from 1 April 2008 protection was introduced for those active scheme members who, on 31 March 2008 were aged 45 or more. Such individuals, who remain in continuous service, are entitled to receive enhancement based on the following table, if this would be greater than the current scheme award. The extra benefits, however, would be based on the 2008 accrual rate which was 1/60.

<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>13 1/3 years and above</td>
<td>Membership increased by 6 2/3 years*</td>
</tr>
</tbody>
</table>

* Limited to a maximum of 40 years membership in total
Deferred member

It is important for a scheme employer and its IRMP to understand the differences in approach when dealing with the early release of deferred benefits on the grounds of permanent ill health. These have been summarised below:

<table>
<thead>
<tr>
<th>Date of leaving LGPS</th>
<th>Conditions to be met</th>
<th>Payable from</th>
</tr>
</thead>
<tbody>
<tr>
<td>On or after 1 April 2014</td>
<td>Permanently incapable of discharging efficiently the duties of their former post because of ill health or infirmity of mind or body and the condition is likely to prevent them from undertaking any form of gainful employment before reaching their normal retirement age….or three years if sooner</td>
<td>From the date the former employer determines that the member meets the criteria for early release.</td>
</tr>
<tr>
<td>On or after 1 April 2008 – before 1 April 2014</td>
<td>Permanently incapable of discharging efficiently the duties of their former post because of ill health or infirmity of mind or body and the condition is likely to prevent them from undertaking any form of gainful employment before reaching their normal retirement age….or three years if sooner</td>
<td>From the date determined by the former scheme employer that the individual first met the ill health criteria, which can be earlier than the date of the application.</td>
</tr>
<tr>
<td>On or after 1 April 1998 – before 1 April 2008</td>
<td>Permanently incapable of discharging efficiently the duties of their former post because of ill health or infirmity of mind or body</td>
<td>Later of the date from when the former member applied for the early payment or the date were considered to be permanently incapable.</td>
</tr>
<tr>
<td>Before 1 April 1998</td>
<td>Permanently incapable of discharging efficiently the duties of their former post because of ill health or infirmity of mind or body</td>
<td>Any date the member is considered to have been permanently incapable, which can be earlier than the date they applied for ill-health retirement, which can be earlier than the date of the application.</td>
</tr>
</tbody>
</table>

Former Scheme protections

There is one important protection from previous versions of the LGPS that it is important to be aware of, in the rare event that it may apply where you are considering the ill health retirement of a deferred member.

Severe ill health

Where the scheme member left before 1st April 2008 your IRMP may certify that the person is seriously ill and has a life expectancy of less than one year. Where such a certification is given Staffordshire Pension Fund may choose, subject to HM Revenue and Custom rules, to commute the pension benefits into a single lump payment.
3 Employer Responsibilities

The decision regarding a Member’s ill health retirement ultimately resides with the Scheme employer and not the IRMP. You cannot, however, agree to or decline any ill health retirement request unless you have first obtained a certificate from your IRMP.

It is important that where consideration is being given to ill health retirement there is a clear and open dialogue between you as the scheme employer and your employee/their representatives to explain the process that will be followed and what they can expect to receive from you.

Everything that follows in this section is designed to enable you as the scheme employer to undertake this requirement in any cases where one of your (former) employees is being considered for ill health retirement.

Employer decisions

When considering any ill health retirement a scheme employer has to consider a number of specific questions, in sequence. This is to determine whether the case for ill health retirement has been proved and, if so, the tier of ill health retirement that should be applied.

Initial questions to consider

The initial decision for a scheme employer to decide is whether or not to terminate the individual’s employment because of their ill health. This initial question is a workforce management question and not one specifically a pension related one. Where employment is terminated as a result of the ill health further pension specific questions then need to be considered by the scheme employer:

- Does the IRMP consider that the member is permanently incapable of discharging the duties of their (former) post as a result of ill-health or infirmity of mind or body; and
- Does the IRMP consider that the member’s ill-health or infirmity of mind or body render the member not immediately capable of undertaking any gainful employment?

Questions to consider if case for ill health retirement proved

If the IRMP answers “yes” to the above two questions, the employer will then need to determine whether or not it believes the individual is entitled to an ill health retirement pension from the scheme. As well as considering the IRMP certificate it would also be expected that the employer also consider all other medical evidence it may have at its disposal – e.g. any correspondence with the individual’s GP, specialist reports, etc. before reaching its decision. Where ill health retirement is ultimately confirmed the scheme employer will then need to determine the tier of ill health retirement that should be awarded, based on the following criteria:

<table>
<thead>
<tr>
<th>Tier</th>
<th>Degree / level of ill health</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unlikely to be capable of undertaking any gainful employment before 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>
</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>
</tr>
</tbody>
</table>
Part time employee decisions
Where an individual is in part time employment a further question needs to be answered by the IRMP.

- Was the part time employment as a direct result of the medical condition that has led to the ill health retirement?

If this is the case then level of any enhancement set out in the table on page 3 would be based on the pensionable pay the scheme member would have been receiving but for the reduction in hours.

What if ill health retirement is not granted by a scheme employer?
Regardless of any consideration to award ill health retirement in accordance with the rules of the LGPS a scheme employer may still have to consider terminating the employment due to the individual’s sickness and absence record. While the individual’s ill health may be a major, if not the only, factor in the reason for terminating the employment, unless the specific provisions of the LGPS have been met there would not be an entitlement to ill health benefits from the scheme. Any decision to terminate the employment, therefore, would be for workforce management reasons on the grounds of capability.

Referral to your Independent Registered Medical Practitioner (IRMP)
You are responsible for referring both current and former employees to your IRMP, where ill health retirement is being considered. Certainly for your active employees it is expected that you will already have referred them to your own occupational health team or external advisers as part of your general workforce management processes. It is important to appreciate, however, that an employee does not have to have experienced lengthy sickness absence to be considered for ill health retirement and it is for you, as the employer, to decide when referral to an IRMP is appropriate.

Steps to be undertaken
Access to Medical Reports Act 1988
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 is best achieved by you and your Occupational Health doctor obtaining this authority when it is decided that the individual should be referred to the IRMP for an ill health retirement assessment.

Job Description
It would also be useful to provide the employee with a copy of the job description you intend to share with your IRMP and on which the IRMP will be basing their opinion. This gives the employee to raise any concerns ahead of the assessment being made and potentially limit disputes later in the process.

Casework file for your IRMP
In order that your IRMP can correctly consider whether the scheme member meets the LGPS ill health criteria it is important that they are provided with a comprehensive casework file, containing all the necessary information and evidence they require. This should include:

- Details of illness/medical condition;
- Current job description;
- Absence record for the scheme member;
- Occupational Health medical reports and any notes of meetings and consultations with the employee and/or their representatives;
- GP or specialist consultant medical reports, where relevant;
Details of any adjustments/adaptations that have been made to help the individual undertake their role (which should include any changes to hours as a direct result of the illness/medical condition); and

The appropriate medical certificate, with Part A completed by you.

Issues to consider when making any ill health retirement decisions

Scheme employers should understand that in deciding any entitlement to ill health retirement they must exercise their judgment on issues of fact and not consider ill health retirement as some form of discretionary award. That said, when considering the questions of entitlement a scheme employer can follow similar principles to those it would be expected to use when exercising a discretion, namely:

- applying the law correctly;
- asking itself the right questions;
- taking account of all relevant and no irrelevant information; and
- making a decision that is genuine and rational and not perverse or irrational (i.e. not make a decision that no reasonable person could make in the circumstances).

Whether you choose to see the medical evidence on which you IRMP’s opinion is based is for you to consider. The key factor when considering ill health retirement is that you can evidence you have considered all pertinent facts and have reached a reasoned decision.

It is permissible to give more weight to certain of the evidence available, so long as you can demonstrate that you have considered all of the evidence when reaching your decision. Where you have any concerns over the evidence available you should take steps to clarify this, either with the individual’s GP/specialist or by requesting your IRMP provide an explanation behind their conclusions.

There may be cases where the judgment of the IRMP differs from the opinions expressed by the member’s specialist or GP. In these cases you are not expected to make medical evaluations of the evidence presented however it is good practice to seek clarification in layman’s terms of why the IRMP takes a different view.

During the ill health process it is important that you fully document all of the various meetings or discussions that take place leading up to the point where ill health retirement is awarded or not, and, where appropriate, the tier of ill health that is to be applied.
4 Independent Registered Medical Practitioner (IRMP) Responsibilities

IRMP qualifications
The LGPS Regulations set out specific requirements that must be met, when referring any individual to an IRMP as part of it’s considering the possibility of ill health retirement.

The specific qualifications that need to be met by your IRMP are that they are registered with the General Medical Council (GMC) 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."

It is necessary for Staffordshire County Council, as the administering authority, to approve any IRMP you propose to use. A list of approved IRMPs is available on the website here;


Key responsibilities
The key responsibility of your IRMP is to consider the medical evidence made available to them by the employer and on the basis of this, and any face-to-face consultation with the scheme member, certify whether or not, in his/her opinion, the employee in question satisfies the ill health retirement criteria under the specific set of LGPS Regulations under which their application is being made. The LGPS requires that the IRMP state their opinion by completing an ill health certificate. Template Certificates for the Staffordshire Pension Fund can be found at https://www.staffspf.org.uk/Employers/Ill-Health-Retirement/Ill-Health-Retirement.aspx. This certification is to confirm that:

- the IRMP considers that the member’s ill-health or infirmity of mind or body render the member permanently incapable of discharging efficiently the duties of the employment (or former employment) that the member was engaged in; and

- the IRMP considers that the member’s ill-health or infirmity of mind or body render the member not immediately capable of undertaking any gainful employment.

It is not to decide whether or not ill health retirement should be granted. This is the decision of you, as the scheme employer.

Where an application is being made in respect of an active member working part time the IRMP will also need to certify whether, in the IRMP’s opinion, any existing reduction in hours is as a direct result of the medical condition for which ill health retirement is being considered, as this will impact on the calculation of any personal ill health enhancement the scheme member receives.

Where an IRMP considers it necessary, having received the referral papers, they can decide to arrange a face-to-face consultation with the scheme member, although it is important to appreciate that it is not necessarily a requirement that a face-to-face consultation is required in every case.

The IRMP should then confirm the appointment with the scheme member, confirming this to you as the scheme employer at the same time. The scheme member should be free to make reasonable requests to alter the
appointment to a date which is more suitable to them, if the date suggested by the IRMP is not appropriate. Any failure to attend a consultation should be referred back to you as the scheme employer, to raise and resolve with the scheme member before any further action is taken.

Depending on whether a face-to-face consultation takes place the IRMP will then consider the contents of the referral papers and any findings from a face-to-face consultation. If further information or clarification is required then they should take action to obtain this. Otherwise, based on the information available to them they should make their decision and complete the appropriate sections of the ill health certificate and return this to you. While not a regulatory requirement it is also considered best practice for the IRMP to provide a supporting report at the same time as returning the completed ill health certificate, setting out a summary of the evidence they considered and the rationale behind their conclusion (please see Appendix 1 for further information on the supporting report requirements).

Completing the ill health certificate
It is important that your IRMP completes all of the necessary sections of the medical certificate correctly and completely. This not only helps eliminate delays in dealing with ill health retirement decisions, but also ensures you are able to correctly determine whether the (former) employee is eligible for ill health retirement.

Part A – general information regarding the (former) scheme member, to be completed in all cases by you the scheme employer

Part B – your IRMP should complete to confirm whether in their opinion the (former) employee is or is not permanently incapable of carrying out the duties of their (former) post.

For an active employee the IRMP is also required in this Part to confirm which of tiers 1, 2 or 3 they believe apply.

Part C – applies only in the case of an active member and should be completed by the IRMP to confirm whether, in their opinion, the employee is suffering from severe ill health.

Severe ill health is considered to be such that the employee is considered unable to continue in their current job and is incapable of taking on any other paid work in any capacity, except to an insignificant extent, before their State pension age.

This is an important declaration where either tier 1 or 2 ill health is awarded, as it determines whether or not the employee could be subject to a tax charge under the HMRC annual allowance provisions. As a result, if left blank the employer should seek confirmation from the IRMP and require them to complete the appropriate box, before proceeding with any ill health retirement decision

Part D (Part C for a deferred member) – Declaration to be completed by the IRMP confirming that they are registered with the GMC, hold the relevant qualifications required by the LGPS and have previously not advised, given an opinion or otherwise been involved in the case.

Important notes
- An IRMP 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.
- An IRMP is not to be treated as having advised, given an opinion on or otherwise been involved in a particular case merely because another practitioner from the same occupational health provider has advised, given an opinion on or otherwise been involved in that case.
It is important to understand that the IRMP is not making the decision as to whether the scheme member should be retired on the grounds of permanent ill health. This decision rests entirely with you as the scheme employer. The role of the IRMP is solely to give an opinion on whether they believe, on the balance of probabilities, the individual is suffering from a condition that renders them permanently incapable of undertaking their (former) employment due to ill health and other matters specified in the regulations.
5 The Decision Making Process

It is perhaps worth setting out a number of important matters that you as the scheme employer should consider when reaching any decision whether or not to retire one of your (former) employees on the grounds of permanent ill health.

IRMP decision

Once your IRMP has given their medical opinion they must complete and return the appropriate medical certificate to you, together with their supporting report. You then need to check that it has been completed correctly and that you have all the information from the IRMP that you expected. If there are any gaps in the certificate or supporting information missing you should raise these with your IRMP before taking any further action in relation to the ill health retirement decision.

Who to tell about your decision

When you have received your IRMP’s certificate and supporting report and are satisfied you have everything that you require you must then consider the certificate, along with any other information you have. You must then make your decision on pension entitlement, including which tier of ill health award the member is entitled to.

Staffordshire Pensions

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

Employee

You must also inform your (former) employee of your decision in writing, setting out which tier of benefits they are entitled to (if any) and their right of appeal under the formal pension dispute process. This should include the name and address of your stage 1 pension dispute adjudicator and also provide information on the role of the Pensions Advisory Service (TPAS) who are available to assist members and beneficiaries in relation to any difficulties they have failed to resolve regarding their pension rights.

Tier 3 awards

If your employee is awarded the 3rd tier of ill health benefits you should advise them that the award is subject to review after 18 months and will only be paid for a maximum period of 3 years, before being suspended (if not uprated to a tier 2 award at any time during that 3 year period). Please see Section 6 below for more detail on tier 3 awards.

Where medical interventions considered not to have been exhausted

It is not uncommon for an IRMP to raise as part of their considerations where medical interventions are ongoing and should be completed, albeit it would be expected that these would have been picked up as part of the initial workforce management and employer decision making process. Alternatively there could be medical interventions that have not yet been commenced, but should be considered, before the IRMP is able to provide an opinion, on the balance of probabilities, as to the permanency of any medical condition. Again it is hoped these would have been considered before any decision by a scheme employer to terminate employment on the grounds of ill health.

Where this is the case consideration should be given as to whether or not to delay any ill-health decision for a period, to give the employee the chance to exhaust treatment options. The decision, and terms of this, will depend on your approach to managing your workforce and be guided by the length of the ill health or any absence from work and how much longer it may be before any further interventions will be considered to have been exhausted.
6 Tier 3 awards

As a scheme employer it is important that you appreciate the specific requirement that surround tier 3 ill health retirement awards.

As the scheme employer that made the award you are responsible for reviewing the pension during the period of payment.

**LGPS provisions**

A tier 3 award applies where, following receipt of the medical certificate from your IRMP, you consider that the employee is likely to be capable of undertaking gainful employment within 3 years of leaving employment (or before their normal retirement age if earlier).

Where this is the case you may award an ill health pension, but it will be subject to the following specific requirements:

- There is no enhancement (only the member’s accrued pension is payable);
- The tier 3 award must be reviewed by you after it has been in payment for 18 months, as to whether, and if so when, the individual would be likely to undertake any gainful employment;
- Following an 18 month review you may:
  - cease payment (where you believe the individual is in, or is capable of undertaking, any gainful employment); or
  - continue payment for any period up to a total period of 3 years (or to the member’s Normal Pension, if earlier); or
  - award a Tier 2 ill health pension if you are satisfied that the member is permanently incapable of discharging efficiently the duties of their former employment and is either:
    - unlikely to be capable of undertaking gainful employment before their Normal Pension Age, or
    - unlikely to be capable of undertaking gainful employment within 3 years of leaving but is likely to be able to undertake such employment before reaching their Normal Pension Age
- The member must inform you of any employment which is commenced whilst the tier 3 pension is in payment and must respond to any reasonable enquiries made by you about such employment, including enquiries about the hours worked and pay
- The Tier 3 pension must cease if you determine the member is in gainful employment or fails to answer any reasonable enquiries made by you;
- The tier 3 pension must also cease after 3 years in payment, unless you determine that it should be upgraded to a tier 2 award during that period.
- Following a request from a Tier 3 member, you may agree to award the member a Tier 2 benefit, effective from the date of the award. The award must be made while the member is in receipt of a Tier 3 benefit or within 3 years of a Tier 3 benefit ceasing. You can only award a Tier 2 benefit if you are satisfied that the member is permanently incapable due to ill health of carrying out their former role, and;
  - They are unlikely, due to ill health, of carrying out any gainful employment before normal pension age, or
They are unlikely, due to ill health, of carrying out any gainful employment within three years of leaving the employment, but are likely to be able to undertake gainful employment before reaching normal pension age.

Before making such a decision you must receive a further certificate from an IRMP (who can be the same IRMP that considered the original tier 3 application).

**Post tier 3 provisions**

When payment of a tier 3 ill health pension is ceased the member becomes a “deferred pensioner member”. This ‘suspended’ pension is payable from the member’s normal pension age unless:

- The member elects to defer payment to a date no later than their 75th birthday; or
- The member elects, and you agree, for payment on or after age 55 and before their Normal Pension Age (reduced on account of the early payment);
- Following a request received from the member before their normal pension age, you are satisfied, having obtained a further certificate from an IRMP (who can be the same IRMP that considered the original tier 3 application), that as a result of ill health or infirmity of mind or body, the member is unlikely to be capable of undertaking gainful employment before their normal pension age;

**Reviewing the tier 3 award**

Where you determines that one of your employee’s is entitled to a tier 3 award you should ensure that the following information is given to the member, in writing, on leaving:

- The latest date the pension will cease in 3 years’ time.
- If still in payment, that the pension will be reviewed after 18 months.
- That the member must inform you if they obtain gainful employment, as the pension will cease.

**The review process**

As part of the review process you should ensure you carry out the following:

- Review the medical condition of the member after 18 months on pension, by referring them to your IRMP for re-assessment;
- Inform Staffordshire Pensions whether the tier 3 eligibility conditions still apply, or whether the pension should cease or be upgraded to Tier 2;
- Inform Staffordshire Pensions at any time when the pension must cease, for example, on obtaining gainful employment or medical re-assessment;
- Inform the member in writing when the pension is ceasing;
- Inform Staffordshire Pensions if they need to recover any overpayment of pension.
- Inform Staffordshire Pensions if the member has been re-assessed to a tier 2 ill-health pension and the date from which that is to apply. A copy of the IRMP medical certificate will also be required as part of such a notification.

*As the scheme employer that made the award you are responsible for reviewing the pension during the period of payment.*
Staffordshire Pensions responsibilities

To assist you in dealing with any tier 3 review Staffordshire Pensions will inform you when the member has been in receipt of their tier 3 pension for nearly 18 months. We will also notify you, while ensuring compliance with the General Data Protection Regulations requirements, of their current home address, so that you can communicate with them regarding the review.

Similarly we will inform you when the member has been on pension for nearly 3 years and confirm our intention to cease payment of the pension after 3 years, unless you provide the appropriate confirmation that the award should be upgraded to a tier 2 award.

Where you confirm that the pension should be upgraded to a tier 2 award we will commence payment at the revised rate from the date you instruct. Where the pension is to cease we will recover any overpayment as instructed by you.
7 Pension disputes and Ombudsman decisions

It is the case that many pension disputes result from membership ill health situations. This is particularly where a scheme employer has either not granted ill health retirement or there is disagreement over the tier of ill health enhancement awarded. The pension appeal can relate to the decision to grant retirement and/or the benefits paid.

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.

- **Stage 1** - Appeal to you as the scheme employer that made the original decision;
- **Stage 2** - Referral to Staffordshire County Council, as the administering authority, where they are not satisfied with the original stage 1 determination.

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. Any IDRP should also be made within six months of the decision being appealed.

- It is you as the scheme employer, not the IRMP, that the appeal is made against, as it is your responsibility to decide on, if and what benefits to award. The IRMP is only there to give a medical opinion.

**Pension Scheme dispute process**

Where the dispute is of a medical nature the stage 1 or 2 adjudicator may wish to consider each case on the basis of the medical evidence submitted by both parties to the disagreement. Although in some circumstances, the opinion of a second IRMP could be sought.

It is also important to ensure that when considering ill health retirement disputes, and before reaching a decision, the stage 1 or 2 adjudicator:

- Ensures the IRMP is suitably independent of any preceding occupational health assessments and is also suitably qualified;
- Ensures any IRMP certificate is also accompanied by a supporting report from the IRMP setting out the basis of their decision;
- Ensures the employer has reached its decision having considered all relevant evidence (i.e. they have not based their decision simply on the basis of the IRMP certificate alone);
- Is satisfied the employer has asked all of the necessary questions to have satisfied themselves before reaching any decision;
- Gives all parties opportunity to comment on the facts as presented by the other party, if relevant;
- Makes a decision about what facts are correct and relevant; and
- Compares the facts to the LGPS Regulations;

It is not the role of the adjudicator, however, to question the concluding opinion of the IRMP, but rather to ensure that any certificate and supporting medical report has been completed in accordance with the criteria set out in the LGPS Regulations.
**Pensions Ombudsman**

If a complaint is dealt with by the Pensions Ombudsman, the whole process may be considered (i.e. both your original decision and the way the IDRP process was dealt with at stages 1 and 2). If a complaint is upheld, it will normally be referred back to you as the scheme employer to look at again and make a fresh decision.

The Pensions Ombudsman is clear that their power to interfere is not to override a decision, but to see whether the decision-maker has acted within their powers. That said, in the event that you reached a conclusion of fact that the evidence simply did not support, the Pensions Ombudsman may intervene with your decision and substitute that decision with one of their own.
8 Issues to consider when dealing with ill health applications

The Pensions Ombudsman receives a significant number of pension dispute cases relating to the processing of ill health retirement decisions by LGPS employers. While it does not remove the right of an individual to pursue a pension dispute if they feel aggrieved it is important, however, to learn from the experience of those disputes and ensure any common issues or trends are addressed. Some of these issues will be workforce management matters, rather than issues necessarily within the Pensions Ombudsman’s remit, but it is important that you have given them all due consideration.

**Workforce matters**

- Have you demonstrated that your employee’s health situation is having an adverse impact on their ability to perform the duties of their post?
- Will your employee require additional support from you?
- Have you considered any reasonable adjustments that could be made to keep the employee in employment?
- Have you followed all of your internal policies and procedures correctly?
- What support, if any, does the employee require from you?
- Are you aware of the employee’s views in relation to the possibility of ill health retirement?
- Has all of the relevant evidence been considered when making your decision regarding ill health retirement?
- Have you maintained a complete and accurate record of all the actions you have taken?

**Medical evidence and decision**

- Has your IRMP applied the correct test?
- Has your IRMP considered the question of permanently incapable correctly? The relevant point being the permanence of the incapacity, not the permanence of the medical condition itself.
- Has the ability to undertake gainful employment been considered properly?
- Have you made an informed and independent decision taking account all of the evidence at your disposal or have you simply adopted the IRMP’s opinion without question?
- Where there is insufficient information or any uncertainty, have you sought clarification from the IRMP or any specialists?
- How has conflicting medical evidence been 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 would be expected to give a view as to their likely effect and whether, on the balance of probabilities, the condition ultimately renders the member permanently incapable of discharging the duties of the employment they were engaged in. 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?

- Have you informed the (former) employee correctly of the decision, with reasons? (failure to provide reasons is generally considered by the Pensions Ombudsman to amount to maladministration)

- Has the member been given correct advice about their right to appeal under the pension dispute process?

- Have all the procedures been followed correctly - both in relation to the original decision and the pension dispute process?

- Has the IDRP identified any significant issues in your decision-making process and have steps been taken by you to put them right?
Appendices

Appendix 1 – IRMP Supporting report – template – active member

Overview
LGPS members require demonstrable evidence of the decision making process used by Independent Registered Medical Practitioner (IRMP) and Scheme employer when determining any ill health retirement application. All appropriate considerations should be detailed correctly to ensure the ill health retirement process has been completed in a fair and robust manner and stand up to scrutiny via either the LGPS’s formal pension dispute process or ultimately where a complaint is lodged with the Pensions Ombudsman.

As part of the completion of the ill health retirement process, it is recommended by DCLG (noted within the “Statutory Ill Health Retirement guidance to accompany the Local Government Pension Scheme Regulations 2013”) that the IRMP provides a narrative report to accompany their ill health certificate. The primary reason for this is to enable the Scheme employer to understand the reasoning behind the IRMP’s certification.

It is important that the narrative report provides sufficient evidence of what the IRMP has, and has not, considered when forming their opinion together with their rationale, to enable Scheme employers to make informed decisions in relation to potential ill health retirements.

The IRMP supporting report
The IRMP supporting report has been produced to enable Scheme employers and their IRMPs to ensure a structural, evidence based, process has been followed.

Part A should be completed by the Scheme employer setting out details of the LGPS Member.

Part B provides the detailed narrative of the IRMP’s decision making process in determining whether, in the IRMP’s opinion, the relevant test is satisfied, which should include the following:

- The IRMP should document the specific evidence considered, or disregarded, in the case (not just “I have reviewed the file…..”) together with reasons why any evidence has been disregarded.
- If the IRMP’s opinion differs to any significant medical opinion in this area or differs to the conclusion of any of the specialist medical consultants of the Member, an explanation for the differing view should be provided along with supporting evidence.
- In order for the Scheme employer to understand the factors that the IRMP has considered, the IRMP should provide details of all the illnesses/conditions the IRMP has took into account, the impact of Member’s illnesses/conditions on Member’s state of health and level of mobility.
- Where treatment/intervention is available to assist the Member’s illnesses/conditions, the IRMP should specify what treatment/intervention is available, when improvement is likely to be seen and level of improvement expected.
- In the conclusion section, the IRMP should set out the detailed decision making process used in coming to their conclusion including current and future prognosis of the Member. Best practice in this area would also be for the IRMP to state when concluding:
  - Tier 1 – Why they have come to this conclusion.
  - Tier 2 – Why they have come to this conclusion and commentary on how the Member will/may attain gainful employment before normal pension age.
Tier 3 - Why they have come to this conclusion and commentary on how the Member will/may attain gainful employment within 3 years of leaving employment.

Member should not retire on ill health grounds – Why they have come to this conclusion and why they can either currently work in gainful employment or the expectation of when this might be expected to occur.

- Where the IRMP considers that the Member is able to undertake work, the IRMP should advise of the type of work they consider the Member could undertake, when the Member is likely to be able to undertake such work and whether any adjustments are required. When considering the type of work, the member’s salary expectation, competencies or their aptitude should NOT be taken into account.
- Appropriate medical evidence should be provided by the IRMP to back up their conclusion.

The relevant test

The relevant test is whether:

(i) the Member is suffering from a condition that, will more likely than not, render them incapable to return to their role before state pension age or (if sooner) age 65 (an individual’s state pension age should be checked online by following the steps here: https://www.gov.uk/state-pension-age); and

(ii) if so, whether the Member has, as a result of that illness, a reduced likelihood of being capable of undertaking any "gainful employment" before reaching state pension age. For this purpose, “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 above test is satisfied, the Member is entitled to one of the following level of benefits:

<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>

The role of the Scheme employer

The decision regarding a Member’s ill health retirement ultimately resides with the Scheme employer and not the IRMP. Consequently, the Scheme employer must be satisfied that the conclusion reached by the IRMP is both appropriate to the evidence presented and effectively aids their decision. The template supporting report will provide the documentary evidence of the IRMP’s decision making and should enable the Scheme employer to making an informed decision based on the IRMP’s report. However, the Scheme employer should seek further clarification from the IRMP where the report does not provide sufficient detail in relation to the points set out above or does not satisfy their own review of the evidence provided in a case.
The Scheme employer should, within their decision letter to the Member, set out the evidence they have considered and demonstrate the clear decision making process they have completed when reaching their conclusion.
### IRMP Supporting report – TEMPLATE

#### PART A – DETAILS OF THE LGPS MEMBER (To be completed by the Scheme Employer before submission to the IRMP)

<table>
<thead>
<tr>
<th>Name of LGPS Member</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of birth of LGPS Member</td>
<td></td>
</tr>
<tr>
<td>Role of LGPS Member</td>
<td></td>
</tr>
<tr>
<td>Employer of LGPS Member</td>
<td></td>
</tr>
<tr>
<td>Date last worked</td>
<td></td>
</tr>
<tr>
<td>Brief summary of the case</td>
<td></td>
</tr>
<tr>
<td>Medical evidence/documents provided to IRMP (list author and date of document)</td>
<td></td>
</tr>
</tbody>
</table>

#### SECTION B – MEDICAL ANALYSIS OF ILL-HEALTH REQUEST (to be completed by the IRMP upon assessment of the ill-health early retirement request)

<table>
<thead>
<tr>
<th>Consideration of medical evidence relevant to the Member’s ability to work</th>
<th>Evidence considered (List author and date of document):</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Evidence not considered/used (List author and date of document along with reasons why such evidence has been disregarded):</th>
</tr>
</thead>
</table>

Please provide a detailed explanation with supporting evidence if your opinion differs to any significant medical opinion in this area or differs to the conclusion of any of the specialist medical consultants of the Member:

<table>
<thead>
<tr>
<th>List of all the illnesses/conditions suffered by the Member relevant to their ability to work</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Impact of Member’s illnesses/conditions on Member’s state of health and</th>
<th></th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>level of mobility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is there any treatment/intervention available to assist the Member’s illnesses/conditions that has not already been exhausted/considered? If so, please specify what treatment/intervention is available, when improvement is likely to be seen and level of improvement expected</td>
</tr>
</tbody>
</table>

**Conclusion**

*Conclusion reached (detail decision making process used):*

*Current and future prognosis of the Member based on your conclusion:*

*If you consider the Member is able to undertake “gainful employment” (as defined on page 2), please advise of the type of work you consider the Member could undertake (taking into account the comments on page 2) and when the Member is likely to be able to undertake such work. Please also advise whether any adjustments are required and, if so, what adjustments should be expected:*

*Any additional notes/comments to aid the Scheme employer’s decision:*

**References used**

<table>
<thead>
<tr>
<th>Opinion</th>
<th>Tier 1</th>
<th>Tier 2</th>
<th>Tier 3</th>
<th>Not supported</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Appendix 2 – Employer Checklist – Active members

The following checklist is provided as an aid to ensure you cover off all of the major steps when considering any potential and/or actual ill health retirements.

<table>
<thead>
<tr>
<th>Employee name:</th>
</tr>
</thead>
</table>

- Check the individual is in the LGPS and meets the two year qualifying period – check with Staffordshire pensions if you are unsure.

- Liaise with the individual regarding the option of ill health retirement and when to start the referral process.

- Where referral process is to take place, work with your occupational health adviser in preparing casework for submission to the IRMP – to include:
  - job description of each job involved,
  - the appropriate ill health certificate completed at Part A,
  - details of any reduction in hours that has occurred for each job (where applicable),
  - relevant notes from your occupational health adviser, and
  - any other information relating to the role and/or the impact of the medical condition that you feel relevant.

- Where necessary, request an ill health retirement estimate from Staffordshire pensions.

- Undertake discussions with individual regarding ill health retirement, providing them with copy of estimate, Access to Medical Reports declaration and explaining how the process will work.

- Ensure a log of all information provided to IRMP is kept throughout ill health retirement process.

- Submit referral pack to IRMP for consideration and completion of ill health certificate

- Deal with any issues raised by the IRMP

- Liaise with the individual regarding any face-to-face consultation that might be requested by the IRMP and support individual where necessary.

- On receipt of completed ill health certificate from IRMP check everything received to ensure it is all complete. Ensure their separate report is also provided and if missing refer back to the IRMP and request

- Resolve any remaining queries or uncertainties with IRMP ahead of considering all the evidence and reaching your decision.

- Consider all the evidence and make your decision regarding ill health retirement under the LGPS – clearly document the evidence considered with any particular weighting that is given to particular evidence and the process you have followed in reaching your decision.

- At the same time consider the tier of ill health to be applied

- Confirm your decision to the individual

Where ill health is to be awarded:

- confirm this to the individual, along with the tier of ill health to be applied – include details of pension dispute process at the same time

- inform Staffordshire pensions of your decision in order that pension can be commenced – providing the relevant leaver notification and including a copy of the IRMP ill health certificate

Where ill health is not to be awarded:
Employee name:

- confirm this to the individual, along with the reasons for your decision – include details of pension dispute process at the same time
- inform Staffordshire pensions of your decision – if dismissing the individual, provide the relevant leaver notification.

For a tier 3 award ONLY:

- Diary the case for review after 18 months after leaving.
- If continuing in payment after 18 month review, diary for a further review after 3 years

As part of 18 month review:

- refer to IRMP for further certification
- on receipt of IRMP opinion, either:
  - cease payment;
  - continue payment;
  - upgrade to a tier 2 award.
- notify the individual of your decision, ensuring you include information on the pension dispute process

As part of 3 year review:

- refer to IRMP for further certification
- on receipt of IRMP opinion, either:
  - cease payment;
  - continue payment;
  - upgrade to a tier 2 award.
- notify the individual of your decision, ensuring you include information on the pension dispute process
Appendix 3 – Employer Checklist – Deferred members

The following checklist is provided as an aid to ensure you cover off all of the major steps when considering any deferred member’s ill health retirement request. Please ensure you refer to the deferred member list on page 5 for conditions to be met and payable from details applicable to the benefit structure of the deferred member being assessed.

<table>
<thead>
<tr>
<th>Employee name:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Check the individual was in the LGPS and holds deferred benefits – check with Staffordshire pensions if you are unsure. Confirm details of the affected member’s applicable conditions to be met and payable from details (this is dependent on the member’s date of leaving LGPS – see table on page 5 for further detail).</td>
</tr>
<tr>
<td>Liaise with Staffordshire pensions regarding the process of deferred member ill health retirement</td>
</tr>
<tr>
<td>Where referral process is to take place, prepare casework for submission to the IRMP – to include:</td>
</tr>
<tr>
<td>- job description of each former post involved (this may be problematic for older cases if historic job descriptions are not held),</td>
</tr>
<tr>
<td>- the appropriate ill health certificate completed at Part A (dependant on date member left the LGPS), and</td>
</tr>
<tr>
<td>- any other information relating to the job role and/or the impact of the medical condition that you feel relevant.</td>
</tr>
<tr>
<td>Undertake discussions with the individual regarding ill health retirement, complete Access to Medical Reports declaration (GP reports may be submitted to IRMP) and explaining how the process will work.</td>
</tr>
<tr>
<td>Ensure a log of all information provided to IRMP is kept throughout ill health retirement process.</td>
</tr>
<tr>
<td>Submit referral pack to IRMP for consideration and completion of ill health certificate</td>
</tr>
<tr>
<td>Deal with any issues raised by the IRMP</td>
</tr>
<tr>
<td>Liaise with the individual regarding any face-to-face consultation that might be requested by the IRMP and support individual where necessary.</td>
</tr>
<tr>
<td>On receipt of completed ill health certificate from IRMP check everything received to ensure it is all complete (specifically that the form is applicable for the benefit structure being assessed). Ensure their separate report is also provided and if missing refer back to the IRMP and request.</td>
</tr>
<tr>
<td>Resolve any remaining queries or uncertainties with IRMP ahead of considering all the evidence and reaching your decision.</td>
</tr>
<tr>
<td>Consider all the evidence and make your decision regarding ill health retirement under the LGPS – clearly document the evidence considered with any particular weighting that is given to particular evidence and the process you have followed in reaching your decision. Ensure you have used the correct certificate according to when the member became a deferred member.</td>
</tr>
<tr>
<td>Confirm your decision to the individual</td>
</tr>
<tr>
<td>Employee name:</td>
</tr>
<tr>
<td>----------------</td>
</tr>
<tr>
<td>Where ill health is to be awarded:</td>
</tr>
<tr>
<td>• confirm this to the individual (including details of <em>exceptional ill health</em> if applicable) – include details of pension dispute process at the same time</td>
</tr>
<tr>
<td>• inform Staffordshire pensions of your decision in order that pension can be commenced – providing the relevant leaver notification and including a copy of the IRMP ill health certificate</td>
</tr>
<tr>
<td>Where ill health is not to be awarded:</td>
</tr>
<tr>
<td>• confirm this to the individual, along with the reasons for your decision – include details of pension dispute process at the same time</td>
</tr>
<tr>
<td>• inform Staffordshire pensions of your decision.</td>
</tr>
</tbody>
</table>