

# Employers guide to ill health retirement

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## 1. Types of ill health retirement

Local Government Pension Scheme ill health retirement is the release of pension benefits to employees or ex-employees who satisfy the relevant criteria.

There are two types of ill health retirement:

- **Active member ill health retirement** – members currently employed and in the LGPS
- **Deferred member early payment of pension benefits** – members no longer in the LGPS with deferred/preserved pension benefits

### Active members

The conditions required for immediate retirement on ill health grounds are:

- **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/her permanently incapable of efficiently discharging the duties of their **current** employment. 'Permanently incapable' means the member will, more likely than not, be incapable until 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 a week, for not less than 12 months.

If the member satisfies the above criteria, then an ill health pension is payable. 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 possible for an employee in more than one post to satisfy the above criteria for one, but not the other post.

### Deferred members

The conditions for early payment of deferred pension benefits are dependent upon the date the member left the LGPS:

#### **Those who left the LGPS before 1st April 1998**

*(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 ex-employee becomes permanently incapable, by reason of ill-health, or infirmity of mind or body, of discharging efficiently those duties. This means that if a medical opinion indicates that the permanent incapacity arose earlier, pension benefits can be paid from a date earlier than that on which the ex-employee applies for them.

#### **Those 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, the 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 ex-employee applies for the early payment of benefits or, from the date permanent incapacity is judged to have arisen, whichever is the sooner.

### **Exceptional ill health**

**Where the ex-employee left before 1st April 2008, it should be noted that if they are certified seriously ill and have a life expectancy of less than one year, under both the 1995 & 1997 regulations, Derbyshire Pension Fund may choose, subject to HMRC rules, to allow the ex-employee to commute the pension benefits into a single lump payment.**

### **Those who left the LGPS on or after 1st April 2008 but before 1st April 2014**

*(Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007)*

The 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, if so, whether as a result of that condition the member has a reduced likelihood of being capable of undertaking any gainful employment before reaching normal retirement age (65), or for at least three years, whichever is the sooner. Benefits are payable from any date when the ex-employee applies for the early payment of benefits or, from the date permanent incapacity is judged to have arisen, whichever is the sooner.

### **Those who left the LGPS on or after 1st April 2014**

*(Local Government Pension Scheme Regulations 2013)*

The 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 the condition is likely to prevent them from undertaking gainful employment before reaching his/her normal retirement age, or for at least three years, whichever is the sooner.

Benefits are payable from the date that you as the employer approve the early payment of benefits.

## **2. Your role as an employer**

### **Decisions about eligibility**

While 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 must 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 an Independent Registered Medical Practitioner (IRMP).

### **Referral to an Independent Registered Medical Practitioner (IRMP)**

An IRMP who is qualified in Occupational Health medicine, must certify whether an employee meets the criteria.

An IRMP is defined as; 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 occupational health advisers. 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 IRMP.

### **Information to provide to the IRMP**

In order to ensure that the application is dealt with quickly and with the minimum disruption, the IRMP 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.

## **3. The role of the Independent Registered Medical Practitioner (IRMP)**

The IRMP must 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.

## 4. The Decision

Once the IRMP has made their medical opinion, the certificate will be completed and returned, along with a narrative report to the employer. When the employer receives this certificate and accompanying report, they should look at it in conjunction 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.

Derbyshire Pension Fund's medical certificate includes a flow chart to help guide you through the decision-making process.

### Who to tell about your decision

When you have made your decision, an L1 leaver form and the relevant ill health certificate and employer's decision notice should then be forwarded to Derbyshire Pension Fund.

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.

## 5. Benefits payable

While the benefits released for deferred members are paid unreduced, neither are they enhanced. For active members, the level of pension and enhancement is based on the likelihood of the individual being able to undertake further gainful employment. Gainful employment means paid employment for at least 30 hours per week for at least a year.

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

*Note: Active members aged 45 or more on 31 March 2008 who were in the LGPS at that date, would receive the membership increase that would have been awarded under the LGPS Regulations 1997 if this would be greater than the current scheme award.*

### **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 years' 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.
- Following the 18 month review, inform Derbyshire Pension Fund whether the third tier conditions still apply, or whether the pension should cease or be upgraded to Tier 2, in which case a copy of the IRMP medical certificate is required.
- Inform Derbyshire Pension Fund 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 Derbyshire Pension Fund if they need to recover an overpayment of pension.

Derbyshire Pension Fund will do the following to help the employer to achieve the above:

- Inform the employer when the member has been in 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 Derbyshire Pension Fund will cease the pension at 36 months.
- Recover any overpayment as instructed by the employer.

Please note, that if the member applies for early release of their suspended Tier 3 pension, within 3 years of it being suspended and they meet the ill health criteria due to the same condition that triggered the original ill health pension, they can be uplifted to a Tier 2 pension.

### **Cost to employer**

Unlike other forms of early retirement (such as redundancy) there is no immediate 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. However, an employer will have to pay the cost of any medical referral.

**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.**

## **6. Tax implications**

Ill health retirement has the potential of providing enhanced benefits, therefore members who are awarded ill health retirement may be subject to tax charges when the growth to their benefits is tested against the Annual Allowance (AA). 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, other than to an insignificant extent, before State Pension Age (for example it should be infrequent or only for a few days during the year and the payment must be small in amount, not just as a proportion of previous pay or salary). 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.

It is worth noting that even a member awarded tier 1 could still be subject to an Annual Allowance tax charge as the criteria for the AA protection is stricter than the Tier 1 criteria.

## **7. Appeals - Application for Adjudication of Disagreements Procedure (AADP)**

In all cases the employee should be given the right to appeal under the Application for Adjudication of Disagreements Procedure (AADP). The appeal can relate to the decision to grant retirement and/or the benefits paid. 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.

## **8. Checklist**

The Pensions Ombudsman have suggested that regard should be given to the following 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.

## **Appeals**

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 appeal?

Has the appeal identified problems in the decision-making process and put them right?