

Ill-health Pension Process: Guidance Note 1 Making the Decision for an Active Member of the LGPS

PURPOSE

To assist employers with ill-health pension decisions for a current employee who is an active member of the LGPS.

KEY POINTS

- The difference between ill-health dismissal and eligibility for an ill-health pension is explained.
- Eligibility criteria for ill-health pension are explained.
- It is made clear that an individual **MUST** be dismissed on the grounds of ill-health or infirmity of mind or body to be able to qualify for an ill-health pension.
- No employee that would meet the **two year** vesting period requirement at date of leaving should be dismissed on ill-health grounds or leave because of health related issues without at least being offered a referral to a Fund approved Independent Registered Medical Practitioner (IRMP) for consideration of ill-health pension.
- Employers from both Funds may choose the Independent Doctor they seek opinions from in connection with ill-health decisions, however that Independent Doctor must have already been approved by the relevant Fund's administering authority **before** they can sign the Independent Doctor's Declaration part of the medical certificate, and it be accepted as valid.
- A number of case studies are documented to help understanding.
- An Ill-health Toolkit, containing recommended wording for letters and all necessary forms, is available at

<http://pensions.cambridgeshire.gov.uk/lgps/my-responsibility/my-responsibilities-ill-health-retirement/ill-health-active-members/>

<http://pensions.northamptonshire.gov.uk/lgps/my-responsibility/my-responsibilities-ill-health-retirement/ill-health-active-members/>

This Guidance Note is an updated version of the original note on the subject, issued by LGSS Pensions, which covered the position in respect of leavers under LGPS 2014, following introduction of the Local Government Pension Scheme Regulations 2013.

It covers only the making of a decision for an active (i.e. current) member of the LGPS who is still in employment. There are separate specific Guidance Notes dealing with ill health pension decisions in other circumstances.

OTHER RELEVANT DOCUMENTS

The following documents and processes have relevance to this issue.

Form IHCERTA1	The main ill-health certificate to be used.
Ill-health Guidance Note 2	Details the process for referring an ill-health case to the Independent Doctor.
Ill-health Toolkit	A collection of letters, flow charts and leaflets to use in the ill-health process.

BACKGROUND

The decision to dismiss an employee because they cannot do their job due to ill-health, or infirmity of mind or body, and the decision to award someone an ill-health pension can get muddled. This note has been prepared to explain the differences and how the pension regulations apply.

THE REGULATIONS

Detailed regulations apply. These are contained in: Regulations 35 and 36 of the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) as amended.

The Secretary of State has issued statutory ill health retirement guidance, as referred to in regulation 36(4), along with a set of Frequently Asked Questions.

An up-to-date version of the regulations is available on the LGPS Regulations and Guidance website <http://www.lgpsregs.org> and links to the latest Secretary of State statutory guidance and Frequently Asked Questions document are on our website at the foot of these pages:

<http://pensions.cambridgeshire.gov.uk/lgps/my-responsibility/my-responsibilities-ill-health-retirement/ill-health-active-members/>

<http://pensions.northamptonshire.gov.uk/lgps/my-responsibility/my-responsibilities-ill-health-retirement/ill-health-active-members/>

Throughout this document the regulations referred to are those mentioned above unless otherwise specified. For ease of use the full text of regulations 35 and 36 as currently worded can be found at Appendix A. To understand these regulations it is particularly important to understand a number of key terms that are defined in Schedule 1 – Interpretation:

Gainful Employment: This is defined as meaning “paid employment for not less than 30 hours in each week for a period of not less than 12 months”.

It is important to note that this means ANY employment – it could be a minimum wage job with any other employer and is not limited to comparable jobs or those which allow access to membership of the LGPS. It is almost certain that this definition will cause a problem for employees accepting ill-health pension decisions, particularly on tier, as they will not be able to:

- distinguish between the condition preventing them being able to do their current job and their condition preventing them undertaking any “gainful employment”;
- visualise their health and its impacts on “gainful employment” well into the future.

Permanently Incapable: This is defined as meaning: “that the member will, more likely than not, be incapable until at the earliest, the member’s normal pension age.”

This term now has a subtly different meaning than in previous regulations, with ‘normal pension age’ now being the individual member’s State Pension Age, or age 65 if later. This will continue to present the same problems as in the past. The “more likely than not” part of this is commonly known as the probability test and is key. In practical terms it means that if you had 100 similar employees in the same job with the same medical condition the doctor will only certify permanent incapability if more

than 50 of these would not recover enough to do their job by the member's 'normal pension age'. There is a long history of the term permanently incapable causing problems with acceptance of decision, particularly among younger employees or employees who have not yet finished treatment as many people cannot distinguish between how they are now and what they will be like approaching 'normal pension age'.

IRMP (Independent Registered Medical Adviser): For an employer to make an ill-health pension decision they must have the opinion of an IRMP in accordance with Regulation 36 (1). This specifies:

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

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

Regarding choice of IRMP, Employers from both Funds may choose the Independent Doctor they seek opinions from in connection with ill-health decisions, however that Independent Doctor must have already been approved by the relevant Fund's administering authority before they can sign the Independent Doctor's Declaration part of the medical certificate, and it be accepted as valid.

A list of approved IRMPs, together with details of the process for seeking approval for Independent Doctors not on the list, is available on the LGSS Pensions Service website here <http://pensions.cambridgeshire.gov.uk/lgps/my-responsibility/my-responsibilities-ill-health-retirement/ill-health-active-members/>
<http://pensions.northamptonshire.gov.uk/lgps/my-responsibility/my-responsibilities-ill-health-retirement/ill-health-active-members/>

APPLYING THE REGULATIONS

When considering ill-health there are essentially two questions:

Question 1: Is the employee fit enough to be employed to do their current job?

Question 2: Is the member entitled to an ill-health pension?

These should be considered as separate questions about EACH pensionable job the member holds. The answer might be different for each job. It is quite possible for a person to not be fit enough to do their job but not be entitled to an ill-health pension.

Question 1

The employer makes this decision subject to the appropriate internal procedure and employment law. The employer's occupational health advisor is likely to advise on the decision. An employer's policy will determine how far ahead a view is taken but, in reality, a short to medium length timescale will be used (i.e. two years maximum). It is likely that an employee will be determined as no longer fit for employment if they have:

- a temporary illness that is taking several months to treat; or
- a potentially permanent condition for which the normal treatment regimes have not yet been exhausted; or
- a permanent condition where treatment is now finished.

The employer resolves whether to continue employing someone, using their standard employment procedures.

For someone to stand any chance of qualifying for an ill-health pension this procedure MUST result in the individual being dismissed on grounds of ill-health or infirmity of mind or body, though the employer will decide exactly what terminology they will use (e.g. incapability due to ill-health, dismissal for ill-health).

Question 2

This is an entirely different issue. It must be dealt with for all employees who are members of the LGPS and subject to a procedure under question 1 that results in dismissal. Consideration should also be given to applying it to those who have opted out of the LGPS but continued in employment although, technically, the individual has to ask to be considered for this. The criteria and the necessary form required from an IRMP would be different and the process is covered in a separate Ill Health Pension Guidance Note.

It can also be dealt with as a standalone question if there is an individual who asks to access their pension on ill-health grounds PROVIDING that anyone who qualifies for an ill-health pension is then dismissed on ill-health grounds. Employers need to decide how to deal with this third category in relation to their ill-health dismissal process.

This decision rests with the employer but it is subject to the opinion of the IRMP (as stated on the IHCERTA1 certificate), the procedures of the Pension Fund and the LGPS regulations.

Regulation 35 says:

(1) An active member who has qualifying service for a period of two years and whose employment is terminated by a Scheme employer on the grounds of ill-health or infirmity of mind or body before that member reaches normal pension age, is entitled to, and must take, early payment of a retirement pension if that member satisfies the conditions in paragraphs (3) and (4) of this regulation.

... ..

(3) The first condition is that the member is, as a result of ill-health or infirmity of mind or body, permanently incapable of discharging efficiently the duties of the employment the member was engaged in.

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

In practical terms, Question 2 must be broken down into three main decision steps for the employer

- Decision 1: is the employee entitled to an ill-health pension?
- Decision 2: if they are entitled to an ill-health pension what tier of pension are they entitled to?
- Decision 3: if they are entitled to an enhancement, as a result of a Tier 1 or 2 award, what assumed pensionable pay will this be based on?

LGSS Pensions Service then decides on the value of benefits payable and, finally, makes the payment.

Decision 1

To be entitled to an ill-health pension the employee must meet all of the following criteria. This means the employer must have done what is necessary to allow a decision to be made about whether the criteria are met or not.

In practical terms this means that for every member that will be treated as having qualifying service for a period of at least two years you dismiss on the grounds of ill-health, you **MUST** either have sent the member's case to an approved IRMP and have a signed IHCERTA1 from that IRMP or have the employees consent not to send them to the IRMP. Refer to the guidance that deals with the practical aspects of going to the IRMP.

Criteria to be met	Guidance on applying the criteria
An active member has qualifying service for a period of at least two years (regulations 35 (1) and 3 (7))	This 'two year' rule is not as straightforward as it may appear, therefore to avoid issues, If you have a situation where a member may be dismissed on grounds of ill health or infirmity of body, having been an active member in your employment for less than two years, please contact LGSS Pensions Service to check whether the member may satisfy any of the criteria for being treated as having qualifying service for a period of at least two years as set out in regulation 3 (7).
Their employer agrees to terminate their pensionable employment before they reach normal pension age on grounds of ill-health or infirmity of mind or body (regulation 35 (1))	This will be for the employer to determine based normally on advice from their Occupational Health Adviser. Normal pension age is the member's State Pension Age, or age 65 if later.

Criteria to be met	Guidance on applying the criteria
<p>The member is, as a result of ill-health or infirmity of mind or body, permanently incapable of discharging efficiently the duties of their employment (regulation 35 (3))</p>	<p>The IRMP's certificate will indicate whether, in their opinion, the member meets the permanently incapable criteria or not. If they do meet the criteria and, as a result of the employers ill-health dismissal procedure (discussed above), they will be leaving as a result of ill-health the employer must agree to terminate employment on the grounds of ill-health or infirmity. A mutually agreed decision for the individual to leave voluntarily will mean an ill-health pension is not payable.</p> <p>To meet the permanently incapable criteria the doctor MUST have ticked B1 on the IHCERTA1. If B2 is ticked the employer does not have the necessary certificate for the individual to meet this criteria.</p>
<p>That the member, as a result of ill-health or infirmity of mind or body, is not immediately capable of undertaking any gainful employment.</p>	<p>The IRMP's certificate will indicate whether, in their opinion, the member meets the not immediately capable criteria or not.</p> <p>To qualify the doctor MUST have ticked B4 on the IHCERTA1. If B3 is ticked the person does not qualify.</p> <p>HOWEVER, the doctor ticking B4 does not automatically entitle the member to an ill-health pension. This is an employer decision and if the member is being re-deployed into gainful employment or has secured other gainful employment this criteria is not met.</p>

In summary for an employer to grant an ill-health pension as a result of this decision:

- the doctor **MUST** have ticked B1 **AND** B4 on the IHCERTA1. If B2 or B3 is ticked the person does not qualify; **AND**
- you must be sure that there are no other non-medical issues that prevent the criteria being met.

Appendix D gives information and a range of case studies that will aid understanding of why the IRMP will make certain decisions that may not always make sense to the employer or the member.

Decision 2

This decision only needs making if the employer, having regard to the IRMP's opinion, has determined that the member qualifies for ill-health pension benefits.

This decision is important as it determines whether the individual gets an enhancement to their benefits and whether their pension is permanent or not. The member's capability for gainful employment determines which tier of ill-health they fall into – these are explained below.

Tier	When it applies	The effect on benefits
1	Where it is determined that the member is unlikely to be capable of undertaking any gainful employment before their normal pension age.	Enhancement based on 100% of the further annual pension that would have been achieved between leaving and NPA.
2	Where the member is not entitled to Tier 1 benefits, is unlikely to be capable of undertaking any gainful employment within 3 years of leaving, but is likely to be able to undertake gainful employment before reaching normal pension age.	Enhancement based on 25% of the further annual pension that would have been achieved between leaving and NPA.
3	Applies where it is likely that the member will be capable of undertaking gainful employment within 3 years of leaving employment or normal pension age if earlier.	Temporary un-enhanced benefits will be paid for a period of no more than 3 years. The pension would be suspended if gainful employment were obtained, if a review 18 months after leaving found that the member was capable of gainful employment, or at the end of the 3-year period. The pension would then be deferred until normal pension age though the member could choose to have it paid earlier with appropriate early payment reductions, and would have the standard options of asking for early payment from age 55 or after, or early payment on ill health grounds at any age.

Importantly it is the employers' responsibility to decide which tier the person falls into NOT the IRMP. This is the most difficult part of the process.

The IRMP will indicate their medical opinion in relation to the questions relevant to which tier the employee falls into by ticking B5, B6 or B7 on the IHCERTA1. Employers then have to decide how to use this opinion bearing in mind the statutory guidance and non-medical factors that will affect the individual's ability to undertake gainful employment. More specific guidance on how to address this is given in the "Specific Guidance" section.

Decision 3

This decision is only relevant if the individual is awarded a Tier 1 or 2 ill health pension. The assumed pensionable pay, or APP, figure is calculated as follows:

- a) calculate the average of the pensionable pay for the 12 complete weekly pay periods, or for monthly paid employees, 3 complete monthly pay periods prior to the date of leaving after removing any lump sums, but including any assumed pensionable pay already credited in and relating to those 12 weeks / 3 months. Note that the calculation can include pensionable pay paid prior to 1 April 2014 (i.e. where the 12 weeks / 3 months goes back beyond 1 April 2014). If so, the pre 1 April 2014 pensionable pay to be included is pensionable pay as defined under the 2008 Scheme. If 12 complete weeks / 3 months do not exist, use whatever number of complete periods are available;
- b) gross up the figure in (a) to an annual figure;

You can then add back into APP any lump sums paid in the 12 months prior to the date of leaving if you, at your sole discretion, determines there is a 'reasonable expectation' that such a payment would be paid on a regular basis.

Where the Independent Registered Medical Practitioner (IRMP) certifies that the member was working reduced contractual hours during the relevant 12 week / 3 month period as a result of the condition that caused or contributed to the member's ill health retirement, the APP figure is to be calculated on the pay the member would have received during the relevant pay periods if they had not been working reduced hours.

Protections

The regulations allow for some protection to be given to some people, although these cases are likely to be rare, due to the enhancement under the 2014 scheme being based on 49ths rather than 60ths, coupled with a later normal pension age for many members. LGSS Pensions Service will automatically apply any protections when calculating benefits.

Reviewing Tier 3 Cases

There is a specific requirement on the employer to review all tier 3 ill-health pension cases after 18 months. Regulation 37 says:

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

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

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

(a) to continue payment of Tier 3 benefits for any period up to the maximum permitted by regulation 35(7) (early payment of retirement pension on ill-health grounds: active members);

(b) to award Tier 2 benefits to the member from the date of the review decision if the authority is satisfied that the member—

(i) is permanently incapable of discharging efficiently the duties of the employment the member was engaged in, and either

(ii) is unlikely to be capable of undertaking gainful employment before normal pension age, or

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

(c) to cease payment of benefits to the member.

For those that left employment after 31 March 2014, Ill-health Guidance Note 3B deals with the review of Tier 3 ill-health pensions, including where a tier 3 pensioner notifies the employer that they have obtained employment. Upon being notified of a tier 3 pensioner obtaining employment, the awarding employer should assess whether they consider the employment to be “gainful employment” and make a decision whether to suspend payment of the pension. Please send a copy of this decision to LGSS Pensions Service without delay so that the pension can be suspended.

THE PRACTICALITIES

Ill-health Toolkit

1. The ill-health pension process relies on a large number of forms, letters and leaflets. LGSS Pensions Service has put together a tool kit that includes all of the necessary forms and draft wording of the letters and leaflets for you to move to your own headed paper and design. The letters can either be used stand alone or the text can be incorporated into other standard letters you already use. A list of the Toolkit contents relating to dealing with active members can be found at Appendix E and is available at:

<http://pensions.cambridgeshire.gov.uk/lgps/my-responsibility/my-responsibilities-ill-health-retirement/ill-health-active-members/>

<http://pensions.northamptonshire.gov.uk/lgps/my-responsibility/my-responsibilities-ill-health-retirement/ill-health-active-members/>

When to Start

2. Typically an employer will have an ill-health management process with a number of stages. When the ill-health pension issue is addressed will be subject to the employer’s specific processes BUT it must be addressed before the person is dismissed on ill-health grounds (but see specific guidance on people who change their mind or seek to frustrate the process). It is recommended that processes are aligned so that:
 - everyone who is likely to proceed to actual ill-health dismissal has had the opportunity to have their case considered by the Independent Doctor;
 - the signed IHCERTA1 has been received before the final dismissal stage BUT no more than a couple of months prior to it;
 - the individual is informed of the result of the referral to the Independent Doctor and the likely pension entitlement following receipt of the IHCERTA1 and before the dismissal process finishes;
 - The issues around “treatment not yet exhausted” and “investigation not yet complete” cases are carefully communicated and dealt with – more details on this are provided below.
3. The ill-health pension process only applies to those individuals who are dismissed on grounds of ill-health. It does not apply to those people with an ill-health problem who choose to leave voluntarily.
4. You should therefore make a clear decision on how you are going to deal with cases where the individual wants to leave voluntarily. If a person with an ill-health issue indicates that they intend to leave voluntarily they need to be very clearly told that this will mean they have no hope of qualifying for an ill-health pension immediately. It is recommended that you get this in writing to avoid any future disputes. A letter, with a form for the individual to complete, for use in these circumstances is available in the ill-health toolkit.
5. Once it has been identified that an ill-health pension is a possibility the individual should be referred to the independent doctor. Ill-health Guidance Note 2 covers the practicalities of preparing the person, getting the Independent Doctor’s opinion and how to inform LGSS Pensions Service of the decision.

6. As a minimum all ill-health termination letters need to include the entitlement award letter (and a pensions application form if relevant) which includes the information regarding the Internal Dispute Resolution Procedure. However, best practice would be to inform the individual of the results of their independent doctor referral and give them the opportunity to provide information for the tier decision if relevant. Ill-health Guidance Note 2 gives more details of the practical steps to take. The ill-health tool kit has recommended wording for letters to use. It is for each employer to decide where in their ill-health procedures to use these letters or whether to incorporate the text into other documents.

SPECIFIC GUIDANCE

Making the Tier Decision

7. This is the most difficult part of the ill-health process. In making this decision you should:
 - give strong regard to the Independent Doctor's medical opinion regarding likelihood of the individual being capable of undertaking any gainful employment. This should be your starting point;
 - take into account non-medical factors that will aid or prevent an individual undertaking any gainful employment and identify whether these change when the individual is likely to be able to undertake gainful employment. In making this decision make sure you are considering the person's ability to undertake gainful employment not obtain it. In particular locational issues are not relevant;
 - thoroughly document the decision making process so that it is clear why a decision has been made if, and when, the individual appeals;
 - take advice from LGSS Pensions Service if you are inclined to award a different tier to that indicated by the Independent Doctor.
8. Department for Communities and Local Government (DCLG) issued guidance in relation to the 2008 Scheme aimed at the Independent Doctor regarding how to use the medical information available to give opinions on the matters relevant to ill health retirement decisions. Sections of this remain valid for contextual purposes and are included within Appendix C. There is mention of non-medical aptitude issues in the latest DCLG Frequently Asked Questions document that may assist employers. It is for you as the employer to decide how you will use non-medical factors to make the decision using the principles and references contained in the guidance and Frequently Asked Questions document as best you can.
9. To aid this process it is recommended that you develop your own guidance on what non-medical factors you will consider when making the tier decision and how these will be applied. Appendix F gives some ideas on what you may wish to consider – this is not exhaustive.
10. Employers should also bear in mind:
 - If the matter did proceed to an appeal, the opinions given by the independent doctor will be given significant weight and so any decision to downgrade the tier must have a sound argument.
 - If an employer makes a decision to award ill-health pension benefits in a way that does not reflect the independent doctor's opinion they must make a clearly justified case for why this has been done. If an award is based on a higher tier and an acceptable case is not made the Cambridgeshire and Northamptonshire Pension Funds reserve the right to charge the difference between the capital costs of the tiers to the employer immediately. If an award is based on a lower tier, they will also charge any compensation award made by the Pensions Ombudsman as a result of this decision directly to the employer.

Treatment Not Yet Exhausted/Investigation Not Yet Complete

11. Employers are increasingly dismissing individuals at an earlier stage of ill-health absence. This inevitably means that individuals are now often dismissed before their treatment is complete or even before investigation is complete. In assessing these people the Independent Doctor applies a probability test to the medical evidence. This means that if more than 50% of people in similar circumstances would make a recovery to the point that they would be able to do their job before their normal pension age, the doctor will decide they do not meet the criteria.
12. At the point of dismissal the employer is therefore correct to award deferred benefits as they do not meet the balance of probability test which is contained in the definition of “permanently incapable”. However, once treatment is exhausted, it may turn out that they are in the group of people for whom treatment is not successful or only partially successful.
13. Ill-health Guidance Note 2 provides details of how to handle these cases at the point of dismissal. This includes the issuing of a specific entitlement award letter, contained in the ill-health tool kit, which has been developed to deal with these circumstances and is issued with the dismissal letter. This letter should not be used without prior consultation with LGSS Pensions Service.
14. Ill-health Guidance Note 4 addresses the process of dealing with these cases when they come back following unsuccessful treatment – we are calling these hindsight applications. In summary, providing:
 - the individual was dismissed on the grounds of ill-health; and
 - the doctor is prepared to sign a certificate that says, with hindsight, that it is now clear that the individual was permanently incapable at the point of leaving, payment of pension will be backdated to the date of leaving with enhancements as appropriate. In Appendix D are a range of case studies which show the practical implications of this.

Terminal Illness Cases

15. When an employee is terminally ill and death is expected in the short to medium term future, advice should be sought from LGSS Pensions Service. As a minimum LGSS Pensions Service can provide an estimate for death in service and death on pension.
16. This is one circumstance where consideration could be given to dismissing an individual on ill-health grounds BEFORE an IHCERTA1 is received. If the individual wants death on pension, perhaps because this provides greater benefits for their dependents, and they have a rapidly progressing terminal illness it may not be physically possible for the IHCERTA1 to be received in time. In these circumstances, in discussion with the individual/their relatives, you may decide you want to dismiss without the IHCERTA1 and deal with it retrospectively (see case study 7).
17. Circumstances will determine whether the individual concerned, and their family, would be better off financially if they were to die in service or whether they want ill-health pension before death. This may affect whether you even need to progress an ill-health dismissal. Be aware that the relative merits of death in service and death on pension benefits are very much down to individual member, and their family, circumstances and it is not possible to generalise in this area.
18. However, the definition of “gainful employment” may limit when a person with a terminal illness will qualify for an ill-health pension. It would certainly appear to mean that an individual who has a terminal illness but more than a year to live must get to the point that they will not be capable of gainful employment as a result of their terminal illness before an ill-health pension will be payable.

Delaying Tactics

19. Best practice is to have a signed IHCERTA1 before you dismiss an individual on ill-health grounds. However, if an individual chooses to deliberately delay a referral, has a genuine late change of mind or chooses to appeal the result of a signed IHCERTA1 you are unlikely to be penalised by the Pensions Ombudsman if you continue with the dismissal process but deal with the pension issues afterwards.

Disputes

20. The most common issue for appeals to date is when an employee is refused an ill-health pension when being dismissed on grounds of ill health; however tier disputes are also possible. It is therefore sensible to ensure that solid HR/personnel procedures are in place to deal with ill-health cases; as long as all the requirements are visibly complied with, a refusal to award immediate payment of benefits on ill-health grounds should not fail on appeal. Five areas to look at specifically are:

- to ensure that any disagreements between the employee's GP or specialist, the employer's occupational health advisor and the independent doctor are either reconciled or a clear statement is obtained as to why there is disagreement.
- To be reasonable about the date of dismissal for employees suffering from an illness from which they may become permanently incapable but where treatment routes or medical investigations have not yet been exhausted (and therefore they may yet make a full recovery).
- To use the information supplied by the IRMP on why the individual has not qualified and inform the individual of this. This will not be medical information but should provide useful information. The most likely are:
 - Treatment is not yet exhausted i.e. the individual is still in treatment and most people at this stage of treatment would recover.
 - Investigations are not yet complete i.e. it is not yet clear what is wrong with the individual so the doctor is assuming the individual has a treatable condition.

In both of the above scenarios the IRMP should also be providing details of how the balance of probability test has been applied e.g. 90% of people with this condition make a full recovery within 5 years.

- Make sure the IHCERTA1 is still relevant – if you have an IHCERTA1 which is more than 3 months old you should certainly be checking if there has been any significant change and if any more medical information is available before dismissing – if there is, the case really needs to go back to the Independent Doctor with the additional medical evidence. This is particularly important for treatment or investigation not yet exhausted cases.
 - As soon as you have the signed IHCERTA1 back from the Independent Doctor inform the individual of the decision. If ill-health pension is being granted this is also a good opportunity to ask the employee for any evidence to support the tier decision. Taking this approach allows disputes to be sorted before the individual is dismissed.
21. Four types of disputes are most likely.

1. **The employee or the employer's occupational health advisor believes it is an ill-health pension case while the independent doctor does not:** In this case you as the employer have no choice but to accept the opinion of the independent doctor as you cannot award an ill-health pension without an Independent Doctor's certificate saying the person is permanently incapable of their current employment and is not immediately capable of undertaking any gainful employment. If the employee is unhappy with this the following process should be used.
 - a) The employer needs to be certain that the employee and/or their occupational health advisor understands the issues of "permanently incapable" and "gainful employment" and is applying the current criteria set out earlier in this document to the case rather than a test of "unfit to do the job for the foreseeable future".

- b) The employer's occupational health advisor can discuss the case with the independent doctor subject to the normal rules of patient confidentiality and the agreement of both parties to the discussion. The independent doctor can, at any stage, change his/her mind providing s/he is still prepared to sign the independence clause on the appropriate form.
- c) If there is still a dispute the employee has to proceed with the Pensions Appeals Process.
- 2. The employer's occupational health advisor does not believe it is an ill-health pension case while the employee/employee's own doctor does:** In this case the employee still has the right to have their case examined by an independent doctor. The employer should organise this in the same way they would if their OH provider was of the opinion that the individual would meet the ill-health pension criteria. However, before submitting such cases to the independent doctor the employer should ensure that the differences of opinion have been thoroughly explored and it is clear why there is a difference of opinion. The IHRC form provides the employee with the option of presenting information about their case should they so wish. As above, you as employer have no choice but to accept the opinion of the independent doctor, as you need the certificate to make the decision.
- 3. The employee is suffering from a significant illness that is likely to last for several years BUT medical opinion is that most people with that illness do eventually recover. Inherent in this situation may be the fact that some people do not recover.** In these circumstances the employee is normally convinced that their circumstances are unique and if the Independent Doctor had only seen them he would have understood this. This is a difficult circumstance.
- If you have an individual like this with a signed IHCERTA1 to say they are not, on the balance of probabilities, permanently incapable until at least their normal pension age you cannot award an ill-health pension.
 - It is not necessary for the Independent Doctor to actually see the individual. Many cases are determined on the basis of the information provided by GPs and consultants. The Independent Doctor then applies information of what the prognosis would be for most people with similar circumstances together with the DCLG guidance which includes things like "assume average motivation". For example, if 90% of people with a particular condition would recover within 10 years but only 40% recover within five years a 55 year old would not meet the balance of probability criteria but a 60 year old might. If the case is marginal e.g. 55% of people would recover the Independent Doctor may ask to see the individual to assess the more personal aspects of the illness.
 - This is the circumstance where hindsight decisions may be appropriate. If you have a case where the Independent Doctor says more than 10% of people don't recover contact LGSS Pensions Service for advice. It may be appropriate to send out a qualified deferred benefit entitlement letter.
- 4. Tier Disputes – particularly that Tier 3 is inappropriate.** These are the most difficult to deal with, particularly if the individual has been awarded Employment and Support Allowance for more than three years but the Independent Doctor is saying tier 3. In these circumstances:
- a) Make sure the employee understands the basis of the decision. In particular the issues of "permanently incapable" and "gainful employment" and what non-medical factors you have taken into account.
- b) Review your tier decision – make sure you've given the employee the opportunity to present evidence regarding the tier decision and then review if there anything about the case where your non-medical knowledge of the individual should have meant a different decision to the doctors opinion.
- c) If there is still a dispute the employee has to proceed with the Pensions Appeals Process.

The Pensions Appeals Process (as applied to a decision not to award an ill-health pension or about the Tier awarded)

22. If the employee is disputing the fact of dismissal this should be dealt with as part of your employment appeals procedure. It needs to be dealt with before looking at the pension's decision.
23. If the employee is content with the dismissal but appealing the pension decision they can appeal the pension decision. This is done through the pension scheme's Internal Dispute Resolution Procedure (IDRP). It is recommended that the employer ensures there are two clear decision points where the right to appeal is mentioned:
 - When the result of the referral to the independent doctor is known, the employee should be notified, and also given an opportunity to provide any evidence they want taking into account on a tier decision,
 - Following the actual dismissal when the decision on the entitlement to benefit is notified.
24. The IDRP has two steps:

Step 1: The case is reviewed by a person nominated by you, the employer. The nominated person (or Adjudicator) looks at whether the correct procedure has been followed and whether a decision has been correctly taken according to LGPS Regulations. Two specific areas need looking at:

 - When looking at the IHCERTA1 the nominated person is strictly concerned with whether the form that has been completed by the independent doctor supports the decision made by the employer not about whether the independent doctor's medical opinion is correct. However, s/he will be concerned if there are:
 - any apparent discrepancies in the process; or
 - if it appears that a proper reconciliation has not been done between the employee's doctors and the occupational health advisor or the occupational health advisor and the independent doctor; or
 - there is medical evidence not considered (e.g. there is no report from the consultant or the report used is old); or
 - there were medical developments between signing off the IHCERTA1 & the dismissal date.
 - When considering the tier, has the employee been given the opportunity to provide evidence on non-medical issues and has reasonable consideration been given to these non-medical issues.

Step 2: If the Adjudicator determines the correct procedure was followed, the employee may then take the case to the administering authority for consideration by the Director of LGSS Law & Governance Northamptonshire and Cambridgeshire.
25. A second independent doctor's opinion could be sought at either stage. However, it is recommended that this only happens if the employee can produce written evidence from an appropriate GP or consultant which demonstrates what has changed between the dates that information used by the Independent Doctor was produced and the last day of pensionable employment.
26. If the employee is still dissatisfied with the decision, they have a final right of appeal to the Pensions Ombudsman (PO). The PO will take an overview of the case and, in particular, look at any issues of maladministration. The PO also has the option of yet another medical opinion but is unlikely to require one if there has been consistency throughout the whole process.

LGSS Pensions Service

Tel: 01604 366537

Email: pensions@northamptonshire.gov.uk

May 2017

Appendix A:

Full text of Regulations 35 and 36 of the Local Government Pension Scheme Regulations 2013 plus relevant extracts from Schedule 1 – Interpretation.

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

35. —(1) An active member who has qualifying service for a period of two years and whose employment is terminated by a Scheme employer on the grounds of ill-health or infirmity of mind or body before that member reaches normal pension age, is entitled to, and must take, early payment of a retirement pension if that member satisfies the conditions in paragraphs (3) and (4) of this regulation.

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

(3) The first condition is that the member is, as a result of ill-health or infirmity of mind or body, permanently incapable of discharging efficiently the duties of the employment the member was engaged in.

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

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

(6) A member is entitled to Tier 2 benefits if that member—

(a) is not entitled to Tier 1 benefits ; and

(b) is unlikely to be capable of undertaking any gainful employment within three years of leaving the employment; but

(c) is likely to be able to undertake gainful employment before reaching normal pension age.

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

Role of the IRMP

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

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

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

(2A) For the purposes of paragraph (2) 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.

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

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

Extracts from Schedule 1

"Gainful employment" means paid employment for not less than 30 hours in each week for a period of not less than 12 months;

"IRMP" means an independent registered medical practitioner who is registered with the General Medical Council and—

- (a) holds a diploma in occupational health medicine (D Occ Med) or 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;

"Permanently incapable" means that the member will, more likely than not, be incapable until at the earliest, the member's normal pension age;

Appendix B: Regulation Governing the Selection of the Independent Doctor

The Local Government Pensions Scheme Regulations 2013 set out the requirements for the Independent Registered Medical Practitioner (IRMP) in Regulation 36 and Schedule 1 the meaning of IRMP.

Role of the IRMP

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

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

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

(2A) For the purposes of paragraph (2) 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.

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

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

Extract from Schedule 1

"IRMP" means an independent registered medical practitioner who is registered with the General Medical Council and—

- (a) holds a diploma in occupational health medicine (D Occ Med) or 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;

Regarding choice of IRMP, Employers from both Funds may choose the Independent Doctor they seek opinions from in connection with ill-health decisions, however that Independent Doctor must have already been approved by the relevant Fund's administering authority before they can sign the Independent Doctor's Declaration part of the medical certificate, and it be accepted as valid.

A list of approved IRMPs, together with details of the process for seeking approval for Independent Doctors not on the list, is available on the LGSS Pensions Service website here

<http://pensions.cambridgeshire.gov.uk/lgps/my-responsibility/my-responsibilities-ill-health-retirement/ill-health-active-members/>

<http://pensions.northamptonshire.gov.uk/lgps/my-responsibility/my-responsibilities-ill-health-retirement/ill-health-active-members/>

Appendix C: Most relevant extracts of guidance issued by Department for Communities and Local Government

NOTE: Some of this guidance was for the 2008 Scheme, however is included here for information as it remains relevant. Where there are contextual differences, these are shown in bold italics.

Extract from: Supplementary Guidance for Independent Registered Medical Practitioners Qualified In Occupational Health Medicine (IRMPs) (July 2011)

5. When completing Part B of an Ill-Health Retirement Certificate, as an IRMP, you are not making a decision as to whether the employee is eligible for a category of ill health retirement pension at tier 1, 2 or 3. Rather, you are providing an opinion and advice to the employer about the individual's likely future health and what employment task-related ability the individual has in relation to the medical condition that is being assessed. It is the employer who will, based on that opinion, decide whether to terminate the member's employment on grounds of ill health, and if so, which tier of ill-health retirement benefit is to be awarded. Equally, it remains the employer's decision on whether to uplift a tier 3 to a tier 2 ill health retirement, where the member seeks this, based on an IRMP's subsequent medical assessment.
6. As made clear in footnote (3) of the example Ill-Health Retirement Certificate, the doctor is asked to provide his/her opinion on the person's capability of undertaking gainful employment based solely on the effect of the medical condition.
7. Boxes B1-B2 of the certificate require the doctor to indicate whether the employee is suffering from a condition that, on the balance of probabilities, renders him/her permanently incapable of discharging efficiently the duties of his/her employment with his/her employer because of ill-health or infirmity of mind or body. In answering this and subsequent questions, "ill-health or infirmity of mind or body" should be taken to include illnesses such as non-specific arm pain, non-specific low back pain, chronic fatigue syndrome and fibromyalgia, despite the fact that there may be no demonstrable underlying pathology. However, the fact that an employee is diagnosed with such an illness should not automatically mean that the employee is deemed to be permanently incapable. Similarly, an employee who becomes mentally ill through work or as a consequence of a breakdown in working relationships should not automatically be deemed to be permanently incapable of their employment. The IRMP may wish to recommend to the employer that the member tries alternative working arrangements.

8. - 9. No longer relevant as the "reduced likelihood" criterion was replaced with a test as to whether the member is or is not immediately capable of undertaking gainful employment.

10. Boxes B4-B6 (***Boxes B5-B7 on IHCERTA1***) refer to the prospect/likelihood of the employee being capable of undertaking gainful employment in different time windows. Here, "gainful employment" means paid employment for 30 or more hours per week for a period of not less than 12 months in an unsubsidised job (i.e. excluding sheltered employment).
11. Part C has been included in the medical certificate. This is to take account of HMRC's ... "severe ill health" test... IRMPs are ... asked to give an opinion and certify whether the member meets not only the LGPS criteria for the release of ill health benefits but additionally whether the member has a "severe ill health" condition for the purposes of the

exemption from the annual allowance test in the Finance Act.... Boxes B9 and B10 on the certificate (**Boxes C1/C2 on IHCERTA1**) refer.

12. Non-medical factors, such as the general availability of gainful employment in a particular area or the attitude of employers to certain conditions, are not material factors here, and should not be part of the IRMP's consideration. It is the effect that the medical condition would be expected to have on the employee's practical ability to undertake gainful employment that should be considered. This should include any effect that the condition has on the individual's attitude towards undertaking gainful employment, which could be a limiting factor in their search for employment. In considering the capability of undertaking employment, you should assume that the individual has average motivation, except in so far as his/her motivation may have been reduced as a clinical feature of the illness.
13. Medical incapacity could arise, not only because of disability resulting from the employee's illness, but also if there were a serious risk that a job could exacerbate the employee's illness. For example, an employee with allergic occupational asthma might need to avoid exposure to the sensitising agent.
14. The salary that would be paid for jobs that the employee could undertake in the future is not an issue here for the IRMP. For example, if a Chief Executive had suffered a head injury in a road traffic accident leading to mental impairment, but would be capable in the future of working for 30 or more hours per week for a period of not less than 12 months at other work such as a car park attendant, then he/she should be reported by the IRMPs as having a reasonable prospect of being medically capable of undertaking gainful employment. However, in such circumstances, it might help the employer if you indicated the type of work for which the employee would be capable.
15. You are not expected to take into account the competencies or aptitude of the employee in the absence of his/her illness. For example, if a manual labourer were rendered permanently incapable of performing his normal duties because of a chronic back disorder, but someone with such a disorder could be capable of working in a clerical job, you should classify the employee as capable of undertaking gainful employment, even if you think his aptitude would not enable him to work as a clerk. In these circumstances, you should add a report indicating the types of work for which someone with an illness or disability such as that affecting the employee, would be medically fit. This information can then be taken into account by the employer, when deciding the overall likelihood of the employee undertaking gainful employment.
16. Nor should you take account of factors other than the illness or disability that might influence the employee's competitiveness when applying for jobs (e.g. potential to perform well at interview, poor sickness absence record). You should assume the employee has average competitiveness.

22. It is important that all parties are clear about the meanings behind the terms used in either the regulations or this guidance. The examples given below expand on the definitions given in Schedule 1 to the 2013 Regulations, or others refer to words or phrases that are not defined but which merit explanation.
23. The term “**permanently incapable**” is defined in Schedule 1 as meaning “that the member will, more likely than not, be incapable until, at the earliest, the member’s normal pension age”. In addressing questions about permanent incapacity, whether in terms of the local government employment or gainful employment elsewhere, consideration must, therefore, be given not to the immediate or foreseeable future, but to the date when the member attains their normal pension age. The independent registered medical practitioner should also consider whether the member would be capable following further treatment. Consideration should include whether that treatment is readily available and appropriate for the member and whether, with treatment, the member is likely to become capable before normal pension age. The fact that the member might choose not to accept such treatment should not be a relevant factor. Treatment can include lifestyle changes such as weight loss and stopping the use of harmful substances such as tobacco and alcohol. It would not be appropriate to consider the release of ill health retirement benefits for a reason other than when the member was genuinely medically incapacitated from undertaking their current employment or any other employment at the point of departure.
24. The term “**gainful employment**” is defined by Schedule 1 as “paid employment for not less than 30 hours in each week for a period of not less than 12 months”. The independent registered medical practitioner is required to judge the member’s capability of undertaking any gainful employment and not the type of local government post formerly held by the member. This reflects government policy whereby public service ill health pensions are to be paid not only on the basis of ability to undertake the member’s current employment, but also other employment in the general workforce. The “gainful employment” test is applied regardless of whether the member has worked full or part-time. The assessment being made is whether the member is likely or unlikely to be capable of undertaking gainful employment and not whether the member would actually want to. The independent registered medical practitioner is encouraged to give an assessment of the type of gainful employment the member is likely to be capable of, in the narrative report.
25. **Significance of ‘3 years’**. The level of benefits payable under regulations 35 and 39 are dependent upon how long the member is unlikely to be capable of undertaking gainful employment, having taken into account the medical condition at the time when the employer decides to terminate a member’s employment. Three years represents a “reasonable period” for the purposes of considering either a Tier Two or Tier Three award (respectively regulation 35(6) and (7)). The regulations also provide for a limit of 3 years for payment of Tier Three benefits (regulation 35(7)).
26. “**capable of undertaking**”. It is important to highlight the fact that regulation 35(4) and (5) (6) and (7) restrict entitlement considerations to medical factors, taking into account the full medical effects of the condition which gave rise to the retirement on the grounds of permanent ill health.
27. Non-medical factors, such as the general availability of gainful employment in a particular area or the attitude to certain conditions, would not be material factors and should not be part of the independent registered medical practitioner’s consideration, while the effect a medical condition would have on their practical ability to undertake gainful employment would. The same would apply to the individual’s own attitude towards their condition, which could be a limiting factor to undertaking gainful employment, although it is recognised that in some cases, the member’s attitude may constitute a medical condition in itself and the independent registered medical practitioner could be asked to make a comment on this.

Extract From:

FREQUENTLY ASKED QUESTIONS – ILL HEALTH RETIREMENT – 2014 SCHEME –
EDITION 2 – June 2015 revised

Q39. Can we have some clarity as regards a situation where a member is medically fit for gainful employment but has no aptitude for it?

Generally, aptitude is not due to be considered by the IRMP of itself. However, if aptitude and/or attitude emerge as the out-workings of an illness/disease, then it would appear that these should be noted down by the IRMP in his medical report. It is then for the Scheme employer to review the IRMP's report and to take these matters of aptitude/attitude into account when making their decision on ill health retirement.

Q40. The LGPS Statutory Guidance seems to imply that the Scheme employer can only award ill health retirement if the IRMP states that the member is eligible, in effect, expecting the IRMP to make the decision. Can DCLG clarify that this is not the case?

The Statutory Guidance is clear that it is mandatory for the Scheme employer to seek the professional opinion of the IRMP before it makes a decision as to whether to retire the member on ill health grounds. Paragraph 9 of the Guidance specifically refers to Regulation 35 of the LGPS Regulations 2013 and what that Regulation seeks to do but, that said, DCLG notes that the Scheme employer could also assess other factors (as part of the decision making process). These could include:- medical reports from hospital specialists/consultants; whether 'any reasonable adjustments' have also been taken into account of where appropriate (as part of the Disability Discrimination Act) along with any HR reports on absenteeism, sickness, performance records etc.

Appendix D: The Independent Doctors' Role with Case Studies

An Independent Doctor has considerable knowledge of the way individual medical conditions affect people in the workplace. Their role is to apply this knowledge to the specific medical information provided by the member's consultant and GP AND the information provided by the employer about the job and then decide what the employment prospects of an average person in those circumstances would be. The more complete information the Independent Doctor has about the job, the better their opinion and the employer's decision will be.

The Independent Doctor uses these average prospects and compares them with the criteria set out in the LGPS regulations. Key to decisions 1 & 2 is the definition of permanent incapability, in particular that the target date is normal pension age, i.e. the individual's state pension age or age 65 if later, and that a balance of probabilities test has to be applied.

For example, if 90% of people with a particular condition would recover within 10 years but only 30% recover within five years a 55 year old whose State Pension Age is 65 would not meet the criteria (because, 90% of people would be fit enough to do his job again by age 65) but a 60 year old whose State Pension Age is 65 might (because, 70% of people would not be fit enough to do his job again by age 65).

Case Studies

The following are all based on real cases that occurred in Cambridgeshire or which our colleagues have encountered in other counties. Details have been changed to preserve anonymity and ensure terminology fits with current process.

Depression

Case 1 – 55 year old dismissed for non-attendance due to depression.

Drs opinion – 90% of people with even the most severest depression recover within five years which is age 60, therefore probability is that individual would recover well before normal pension age so not permanently incapable on balance of probabilities.

Employer Decision – do not have an appropriate certificate from Independent Doctor so award deferred benefits.

Case 2 – 63 year old dismissed for non-attendance due to depression.

Drs opinion – Investigation not yet exhausted as hasn't yet seen consultant psychologist so individual prognosis unclear. 90% of people with condition will be fully fit within five years, most within much shorter period. Cannot say this person is permanently incapable because no evidence to support this. Signs IHCERTA1 as not permanently incapable.

Employer Decision – do not have an appropriate certificate from Independent Doctor so award deferred benefits which the employee can choose to have paid immediately as is over age 60.

Appeal Decision – Employee appealed. By the time they had been referred to a second independent doctor (several months after dismissal) they had seen the consultant psychologist who was then able to give a prognosis of severe depression which was unlikely to be treated by time they reached their individual normal pension age of 65. Independent Doctor signed certificate as permanently incapable with hindsight. As employer now had appropriate certificate they changed the entitlement award to an immediate ill-health pension with enhancement.

Case 3 – 42 year old dismissed for non-attendance due to depression.

Drs opinion – 90% of people with condition will be fully fit within five years which is age 47. Would not normally qualify but has a secondary condition for which drug treatment will be required for the rest of life. Treatment for secondary condition is known to frequently trigger depressive episodes. While may be able to get gainful employment is likely to always be under management for ill-health due to depression so unlikely to be able to hold job. Marginal case but after thorough investigation Dr determined that they were permanently incapable and would be until at least their individual normal pension age of 65.

Employer Decision – awarded immediate ill-health pension as IHCERTA1 said permanently incapable and accepted Drs Tier 1 opinion.

Limb Issues

Case 4 – 60 year old dismissed for lack of necessary mobility as needed hip replacement.

Drs Opinion – Awaiting hip replacement and 75% of people with replacement hips fully mobile within a few months of surgery so would be fit to return to job. Surgery can be expected within a year so will occur well before their individual normal pension age of 65. Person is therefore not permanently incapable.

Employer Decision – do not have an appropriate certificate from Independent Doctor so award deferred benefits which the employee can choose to have paid immediately as is age 60.

Follow up: In this case individual recovered fully so did not get ill-health pension (though, due to age, they chose to take normal pension). However, if they had been one of 25% that didn't recover ill-health pension would have been backdated as a hindsight decision.

Case 5 – 60 year old dismissed due to knee problems.

Drs Opinion – Most people with replacement knees fully mobile within a few months of surgery BUT job requires use of knees and activity will cause replacement knees to wear out more quickly than would normally happen. Marginal case but Dr eventually concluded that it fell within category that there was a serious risk that the job could exacerbate the employee's illness and signed IHCERTA1 off as the individual being permanently incapable and with an opinion consistent with tier 3.

Employer Decision – awarded immediate ill-health pension as IHCERTA1 said permanently incapable, did skills assessment and identified that skills would allow individual to undertake work once treatment complete so awarded tier 3.

Back Problems

Case 6 – 55 year old dismissed for non-attendance due to back pain.

Drs Opinion – Most people with this condition can have successful treatment though some fall into a category who can't. It is not yet clear which category this employee falls into as further investigation is required but there is chance individual will fall into untreatable category. Therefore probability is that individual would recover well before their individual normal pension age of 65 so not permanently incapable on balance of probabilities.

Employer Decision – do not have an appropriate certificate from Independent Doctor so award deferred benefits. However, due to doctor's comments that treatment may yet prove not possible individual informed that if it was proved that treatment wasn't successful they could return for a hindsight decision.

Follow up: In this case further investigation determined that individual had a 30% chance of improvement from surgery, 30% chance of significant deterioration and 40% chance of no change. They chose not to have surgery and Independent Doctor revised their decision on a IHCERTDX3 to permanently incapable with hindsight. Employer changed decision with hindsight and awarded pension.

If the odds had been 60% chance of improvement and they decided not to have surgery this would have been a more difficult case. Doctor would probably have stuck by not permanently incapable because treatment had not yet been exhausted.

Terminal Illness

Case 7 – 55 year old with rapidly progressing terminal illness and given one month to live.

Employer sought information from LGSS Pensions Service for employee and employee decided they wanted death on pension as it gave their family better benefits. Employer and Independent Doctor expedited IHCERTA1 but employer had not yet received it when employee was given only a couple of days to live. In consultation with the family, employer dismissed on ill-health grounds without IHCERTA1. In the end the IHCERTA1 came through a couple of days later as Tier 1 and individual died four days later.

Comment: The employer had a wide range of ways in which they could have dealt with this case. What they achieved was a good balance of following procedure and doing the best for the employee – in the end a full salary was paid up to a week before death and the family had the best possible survivor's pension.

Tier Decision

Case 8 – 57 year old dismissed due to inability to do heavy manual job.

Drs Opinion – Condition precludes ability to do any manual labour but would be able to do an admin/clerical job. IHCERTA1 signed as being permanently incapable of current job with an opinion of tier 3 as individual would be capable of undertaking gainful employment within three years.

Employer Decision – did skills assessment that identified functional illiteracy which would preclude admin/clerical work. On basis of this combination of factors employer decided employee would never be capable of undertaking the sort of work suggested as being medically possible by the doctor and granted Tier 1 even though the doctor had indicated tier 3.

Brain Damage

Case 9 – 35 year old in highly paid job dismissed after accident causing brain damage.

Drs Opinion – Permanent brain damage precludes ability to do current job but will be capable of doing a manual, unskilled job following rehabilitation. Rehabilitation should be complete in less than three years but it might take longer. IHCERTA1 signed as permanently incapable with opinion of tier 3.

Employer Decision – awarded immediate ill-health pension as IHCERTA1 said permanently incapable, did assessment of likely period of rehabilitation and decided that the 18 month review point would allow length of rehabilitation to be better assessed – if it was going to go over three years award could be changed as per regulation at that point. Tier 3 award made.

Additional Comment – the fact that this individual would suffer a large drop in pay between their current job and an unskilled manual job is not a point for consideration.

Reduction in Hours

Case 10 – 60 year old part-timer dismissed, went half time five years ago.

Drs Opinion – Individual has a progressive illness that has now got to the point of permanent incapacity. The illness has gradually worsened over the years. Individual went half time five years ago so that they could continue working. It is clear that without reduction of hours five years ago individual would have left job for ill-health reasons so ticks B8 on IHCERTA1.

Employer Decision – awarded immediate ill-health pension as IHCERTA1 said permanently incapable and accepted Drs Tier 1 opinion.

Pensions Service – when calculating pension calculated ill-health enhancement based on full-time (giving enhancement based on 5 rather than 2.5 years).

Case 11 – 60 year old part-timer dismissed, went half time five years ago.

Drs Opinion – Individual current illness has now got to the point of permanent incapacity. However, this illness is only recent in origin. There is no medical evidence that reduction of hours five years ago was related to the current illness. Dr ticks B9 on IHCERTA1.

Employer Decision – awarded immediate ill-health pension as IHCERTA1 said permanently incapable and accepted Drs Tier 1 opinion.

Pensions Service – when calculating pension calculated ill-health enhancement based on half-time (giving 2.5 years).

Alternative Approach – If employer felt reduction in hours had been agreed as a result of a previous ill-health situation they could have increased hours to full-time again in last week. The ill-health enhancement would be based on full-time (giving enhancement to pension based upon five years rather than 2.5).

Appendix E: Ill-health Toolkit for Active Members - Contents

Documents available here:

<http://pensions.cambridgeshire.gov.uk/lgps/my-responsibility/my-responsibilities-ill-health-retirement/ill-health-active-members/>

<http://pensions.northamptonshire.gov.uk/lgps/my-responsibility/my-responsibilities-ill-health-retirement/ill-health-active-members/>

Ill-Health Guidance Note 1 – “Ill-health Pension: Making the Decision for an Active Employee”: Detailed information on ill-health pension and how it fits with your ill-health employment process.

Ill-health Guidance Note 2 – “Processing an Ill-health Pension Case Including Referral to an Independent Doctor”: Detailed instruction on how to send an application for a current employee to the independent doctor and then deal with the returned form.

Letters: Active Member Ill-health - A set of wording for letters and associated forms to be used during the ill-health pension process as detailed in Ill-health Guidance Notes 1 and 2.

- **To send out the IHRC, or chosen IRMP’s consent form,** - covering letter
- **Ill-health referral required** - Letter and form to check whether employee wants an ill health referral when the OH provider says the individual does not meet criteria.
- **Definite voluntary?** - Letter and form to be used when individual indicates their intention to leave voluntarily even though they have ill-health issues.
- **Meets ill-health criteria** - To be used once there is a signed IHCERTA1 and employer has decided there will be immediate entitlement to ill-health pension.
- **Ill-health declined but 55 or over** - To be used once there is a signed IHCERTA1 and employer has decided there will be no entitlement to ill-health pension and the person is 55 or older
- **Ill-health declined, less than 55** - To be used once there is a signed IHCERTA1 and employer has decided there will be no entitlement to ill-health pension and the person is under age 55
- **Ill-health declined but treatment not yet exhausted and 55 or over** - To be used once there is a signed IHCERTA1 and employer has decided there will be no entitlement to immediate ill-health pension but that hindsight considerations may apply – use only after discussion with LGSS Pensions Service.
- **Ill-health declined but treatment not yet exhausted and less than 55** - To be used once there is a signed IHCERTA1 and employer has decided there will be no entitlement to immediate ill-health pension but that hindsight considerations may apply – use only after discussion with LGSS Pensions Service.
- **Tier 1 or 2 Ill-health Pension Awarded** - To be used to make entitlement award when individual has been awarded ill-health pension. Will need editing depending on tier.
- **Tier 3 Ill-health Pension Awarded** - To be used to make entitlement award when individual has been awarded ill-health pension.
- **No Ill-health pension and 55 or older** - To be used to make entitlement award when individual age 55+ is dismissed without ill-health pension.
- **No Ill-health pension and less than 55** - To be used to make entitlement award when individual under age 55 is dismissed without ill-health pension.

- **No Ill-health pension and less than 55 but treatment not yet exhausted** - To be used to make entitlement award when individual under age 55 is dismissed without ill-health pension but where there is a clear chance that their treatment may not actually succeed – discuss with LGSS Pensions Service before sending.
- **No Ill-health pension and 55 or older but treatment not yet exhausted** - To be used to make entitlement award when individual age 55+ is dismissed without ill-health pension but where there is a clear chance that their treatment may not actually succeed – discuss with LGSS Pensions Service before sending.

Form: IHRC – Suggested generic member consent form that, once completed, allows sharing of medical details with the independent doctor. Your chosen IRMP may have a specific consent form that they require instead.

Leaflet: for Active Member: A leaflet titled “Understanding Your Referral to an Independent Doctor” to be issued with the IHRC, or chosen IRMP’s consent form..

IHCERTA1 Ill-health certificate – for currently active members;

Flowchart: Ill-health Referral - A flow chart for the whole ill-health referral process.

Form: IHRE1 – Suggested generic form for referral of an active or deferred member to the IRMP. Your chosen IRMP may have a specific referral form that they require instead, however the Fund’s ill health certificate (eg. IHCERTA1) must always be used.

Flowchart: Which Form? - A flowchart to help decide which option to choose on the IHRE1 if that is being used, and which ill-health certificate to attach.

Flowchart: IHCERTA1 Decision Guider - A flow chart to help with the decision making process once the IHCERTA1 is received.

Checklist: for Practitioners who manage current employee ill-health - A checklist to provide reassurance for the person managing the ill-health case that everything that is needed has been dealt with.

Appendix F: Non Medical Issues for Consideration in Making Tier Decision

The following list of issues gives an indication of the issues your organisation MIGHT want to consider when making a tier decision. It is suggested that if you regularly deal with ill-health dismissal you should develop guidance for your organisation – in doing so start with the medical opinion as given by the Independent Doctor.

The list is simply a few ideas and, in the end, you will need to consider the individual and whether they have any circumstances unique to them. In all of these you need to take a view as to whether they leave you open to an age discrimination claim.

All of these points should be used with great caution. If you are going to use them you need to decide on what evidence you will need for them to apply.

- The individual's competency to immediately do the employment the Independent Doctor considers them to be medically suitable for and, if they do not have the skills, their ability to get those skills in a realistic period. If they do not already have the skills and the realistic training period would take them beyond the three year period or past their individual normal pension age, you might want to increase the tier award.
- If the medical opinion is that the individual could have treatment that would cure them to a point that they would be capable of gainful employment but they are saying no to that treatment what will your attitude to this be, given that people can change their mind?
- How much weight will you give to an individual's current attitude to their illness and likelihood of gainful employment given this will probably change as they recover and/or learn to cope?