

Local Government Pension Scheme (LGPS) – notes for scheme employers about ill health retirements and certificates.

Background:

1. The Local Government Pension Scheme Regulations 2013 introduced a Career Average Revalued Earnings (CARE) defined benefits pension scheme from 1 April 2014 in England and Wales (the 2014 Scheme). Before that date, the Scheme was a Final Salary defined benefits scheme.
2. Although the basic structure of a three-tier ill-health system that applied under the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (the 2008 Scheme) is retained, the conditions for entitlement to an ill health pension changed from 1 April 2014. To qualify for an ill health pension under the 2014 Scheme, the following conditions must be satisfied:
 - the member's employment must be terminated by the employer on the grounds of ill health or infirmity of mind or body;
 - at the date of termination the member must be under their Normal Pension Age in the 2014 Scheme (see definition of Normal Pension Age on page 14);
 - at the date of termination the member must have met the 2 year qualifying service criteria for entitlement to a benefit (see definition of 2 year qualifying service criteria on page 13);
 - the member must, as a result of ill health or infirmity of mind or body, be permanently incapable of discharging efficiently the duties of the employment the member was engaged in; and
 - the member, as a result of ill health or infirmity of mind or body, must not be immediately capable of undertaking any gainful employment (i.e. paid employment for not less than 30 hours in each week for a period of not less than 12 months).
3. If the conditions in paragraph 2 are satisfied, then the tier of ill-health retirement a member is entitled to is decided as follows:
 - a member is entitled to enhanced Tier 1 benefits if that member is unlikely to be capable of undertaking gainful employment before their Normal Pension Age;
 - a member is entitled to enhanced Tier 2 benefits if that member

- a) is not entitled to Tier 1 benefits;
 - 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 their Normal Pension Age; and
- a member is entitled to unenhanced Tier 3 benefits if they are likely to be capable of undertaking gainful employment within three years of leaving the employment, or before their Normal Pension Age if earlier. No Tier 3 benefits can be awarded if the member has previously been awarded a Tier 3 pension under the 2008 or 2014 Schemes. In that case, the member would only be entitled to a deferred benefit but could apply to the employer to have the deferred benefit brought into payment (at an unenhanced rate). Before agreeing to such an application the employer would have to obtain a certificate from an Independent Registered Medical Practitioner as to whether the member is suffering from a condition that renders the member permanently incapable, because of ill health or infirmity of mind or body, of discharging efficiently the duties of the employment they had been engaged in and, as a result of that condition, the member is unlikely to be capable of undertaking gainful employment before reaching their Normal Pension Age, or for at least three years, whichever is the sooner.

4. Before determining whether or not a member is entitled to a Tier 1, Tier 2 or Tier 3 ill health pension, the employer must obtain a certificate from an Independent Registered Medical Practitioner (IRMP) who has not previously advised on, or given an opinion on, or otherwise been involved in the case and who has been authorised by the Pension Fund administering authority. The certificate must show:

- whether the member, as a result of ill-health or infirmity of mind or body, is permanently incapable of discharging efficiently the duties of the employment the member was engaged in; and
- whether the member, as a result of ill-health or infirmity of mind or body, is not immediately capable of undertaking any gainful employment; and
- how long the member is unlikely to be capable of undertaking gainful employment; and
- where the member has been working reduced hours and has reduced pay as a consequence of the reduction in working hours, whether that member was in

part-time service wholly or partly wholly or partly as a result of the condition that caused or contributed to the member's ill-health retirement.

5. Where a member is retired with a Tier 1 or Tier 2 ill health pension the amount of enhancement a member receives to their pension is calculated as follows:
 - Tier 1 - the member's pension account is adjusted by adding the equivalent of the amount of earned pension the member would have accrued between the day following the date of termination and their Normal Pension Age. This is calculated as $1/49^{\text{th}}$ of assumed pensionable pay (see paragraph 6) for each year and fraction of a year in that period (regardless of whether the member is in the main section or the 50/50 section of the Scheme when their employment is terminated on ill health grounds);
 - Tier 2 – the member's pension account is adjusted by adding 25% of the Tier 1 adjustment described above.

For reference:

- no enhancement can be added if the member has previously received a Tier 1 ill health pension under the 2014 or 2008 Schemes or has received an ill health pension under any earlier Scheme;
 - the enhancement for a member entitled to a Tier 1 or Tier 2 pension is adjusted if the member has previously received a Tier 2 ill health pension under the 2014 or 2008 Schemes. The enhancement shall not exceed three quarters of the number of years between the initial ill health retirement and the member's Normal Pension Age, less the number of years of active membership since the initial ill health retirement; and
 - members covered by regulation 20(13) of the LGPS (Benefits, Membership and Contributions) Regulations 2007 (minimum ill health enhancement for those who were active members before 1 April 2008, were aged 45 or over at that time, have been in continuous membership since then, and have not already received any benefits in respect of that membership) will continue to have a minimum benefit underpin, calculated in accordance with regulation 12(1) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 [SI 2014/525].
6. In order to calculate the amount of ill health enhancement, assumed pensionable pay (APP) will need to be calculated by the employer when terminating an active member's employment on the grounds of ill health with a Tier 1 or Tier 2 ill health

pension. The same applies where an active member dies in service, or where a Tier 3 ill health pension is awarded which is subsequently changed to a Tier 1 or Tier 2 ill health pension following an appeal or changed to a Tier 2 pension following the 18 month review of a Tier 3 pension or following a request for a review made by the scheme member at any time up to 3 years after the Tier 3 pension has been suspended.

The APP figure is calculated as follows:

a) **Weekly / Monthly paid employees**

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..

Fee paid returning officer / acting returning officer

Where any pensionable pay received by a member includes returning officer / acting returning officer fees, the annual rate of pensionable pay in respect of the fees in that employment is the annual average of the pensionable pay relating to those fees during the three years preceding the date of the absence, the ill-health retirement or death occurred, or during the membership in that employment if less than three years.

If 12 complete weeks / 3 months do not exist, use whatever number of complete periods are available (but see paragraph below);

If the pensionable pay received by a member during the preceding 12 complete weeks / 3 months was, in the opinion of the, materially lower than the level of pensionable pay that member normally would have received, the employer may choose to substitute the pensionable pay the member received (or lack thereof), a higher level of pensionable pay to reflect the level of pensionable pay that the member would normally have received. However, in doing so the employer must have regard to the level of pensionable pay received by the member in the previous 12 months.

b) gross up the figure in (a) to an annual figure;

The employer can then add back into APP any lump sums paid in the 12 months prior to the date of leaving if the employer, at its 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 period as a consequence of ill health, 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.

7. Where a member is awarded a Tier 3 ill health pension:

- there is no enhancement (only the member's accrued pension is payable)
- the member must inform the (former) employer of any employment which is commenced whilst the Tier 3 pension is in payment
- the member must answer any reasonable enquiries made by the (former) employer about such employment including enquiries about the hours worked and pay
- the Tier 3 pension must cease if the (former) employer determines the member is in gainful employment (being employment of 30 hours or more per week that is likely to endure for at least 12 months) or fails to answer any reasonable enquiries made by the (former) employer
- if payment of the pension has not already ceased, the (former) employer must review payment of the Tier 3 pension after it has been in payment for 18 months and must obtain a certificate from an Independent Registered Medical Practitioner (who can be the same Independent Registered Medical Practitioner who provided the certificate for the initial Tier 3 ill health retirement) as to whether, and if so when, the member will be likely to be capable of undertaking gainful employment
- following an 18 month review the (former) employer may
 - cease payment; or
 - continue payment for any period up to a total period of 3 years (or to the member's Normal Pension Age, if earlier); or
 - award a Tier 2 ill health pension if the (former) employer is satisfied that the member is permanently incapable of discharging efficiently the duties

of the employment the member held with the (former) employer and is either

- a) unlikely to be capable of undertaking gainful employment before their Normal Pension Age, or
- b) unlikely to be capable of undertaking gainful employment within 3 years of leaving but is likely to be able to undertake such employment before reaching their Normal Pension Age

and should inform the member and the appropriate Pension Fund administering authority of their decision.

Any Tier 3 ill health pension awarded under the 2008 Scheme continues to be subject to the 2008 Scheme regulations.

8. At any time whilst a Tier 3 ill health pension is in payment the member can request that the (former) employer considers moving the member to Tier 2. The (former) employer can make a determination to move the member to Tier 2, payable from the date of the determination, if the (former) employer is satisfied, having obtained a further certificate from an Independent Registered Medical Practitioner (who can be the same Independent Registered Medical Practitioner who provided the certificate for the initial Tier 3 ill health retirement), that the member is permanently incapable of discharging efficiently the duties of the employment the member held with the (former) employer and is either
 - a) unlikely to be capable of undertaking gainful employment before their Normal Pension Age, or
 - b) unlikely to be capable of undertaking gainful employment within 3 years of leaving but is likely to be able to undertake such employment before reaching their Normal Pension Age.
9. When payment of a Tier 3 ill health pension is ceased the member becomes a "deferred pensioner member". That 'suspended' pension is payable from the member's Normal Pension Age unless:
 - the member elects to defer payment to a date no later than their 75th birthday (payable at an increased rate on account of the delayed payment in accordance with actuarial guidance issued by the Secretary of State); or
 - the member elects for payment on or after age 55 and before their Normal Pension Age (reduced on account of the early payment in accordance with

actuarial guidance issued by the Secretary of State, although the (former) employer can agree, at their discretion, to waive any reduction); or

- within 3 years of the Tier 3 ill health pension ceasing, the (former) employer makes a determination to move the member to Tier 2, payable from the date of the determination, if the (former) employer is satisfied, having obtained a further certificate from an Independent Registered Medical Practitioner (who can be the same Independent Registered Medical Practitioner who provided the certificate for the initial Tier 3 ill health retirement), that the member is permanently incapable of discharging efficiently the duties of the employment the member held with the (former) employer and is either:
 - a) unlikely to be capable of undertaking gainful employment before their Normal Pension Age, or
 - b) unlikely to be capable of undertaking gainful employment within 3 years of leaving but is likely to be able to undertake such employment before reaching their Normal Pension Age; or
- following a request received from the member before their Normal Pension Age, the (former) employer is satisfied, having obtained a further certificate from an Independent Registered Medical Practitioner (who can be the same Independent Registered Medical Practitioner who provided the certificate for the initial Tier 3 ill health retirement and who has been authorised by the Pension Fund administering authority), that as a result of ill health or infirmity of mind or body, the member is unlikely to be capable of undertaking gainful employment before their Normal Pension Age (in which case the 'suspended' pension is brought back into payment at an unenhanced rate).

FAQs

Does an ill-health certificate for an active member have to be obtained before termination of employment?

Regulations 35 and 36 of the LGPS Regulations 2013 (the '2014 Scheme') require that, for there to be entitlement to an ill-health retirement pension:

- a) the employer has to *terminate the member's employment* on the grounds of ill-health or infirmity of mind or body before the member's Normal Pension Age, and
- b) *before deciding* whether the member meets the conditions for an ill-health retirement pension and, if so, which Tier of benefit to award, the employer must obtain a

certificate from an IRMP who has been approved by the administering authority showing whether, in the opinion of the IRMP.

- the member is permanently incapable of discharging efficiently the duties of his / her employment as a result of ill-health or infirmity of mind or body and, if so
- whether as a result of ill-health or infirmity of mind or body, the member is not immediately capable of undertaking any gainful employment and, if that is the case
- how long the member is unlikely to be capable of undertaking gainful employment, and
- where the member has been working reduced contractual hours and had reduced pensionable pay as a consequence of the reduction in working hours, whether the member was in part-time service wholly or partly as a consequence of ill-health or infirmity of mind or body (see paragraph 20 below).

Under the '2014 Scheme' there is no requirement for the employer to get the IRMP certificate before deciding to terminate employment. Unlike the 2008 Scheme where there was such a requirement. The employer can terminate the member's employment on the grounds of ill-health or infirmity of mind or body [note that at the point of termination there is no requirement for that ill-health or infirmity of mind or body to have been determined to be permanent] and subsequently get a certificate to help them determine whether or not the member satisfies the criteria for an ill-health retirement pension and, if so, what Tier of benefit to award.

Whilst it is still advisable for employers to get all the certification in place before terminating employment (particularly as the Scheme member will wish to know before their employment is terminated whether or not they will be entitled to immediate payment of pension), there is technically nothing in the '2014 Scheme' requiring them to do so. The employer can terminate employment on the grounds of ill-health or infirmity of mind or body and subsequently get a certificate upon which to determine whether or not the member meets the criteria for an ill-health retirement pension and the Tier of benefit to award.

From what date is a deferred pension or a suspended Tier 3 ill-health pension awarded under the 2014 Scheme payable if it is subsequently brought into payment on the grounds of permanent ill-health?

A member who has a deferred pension which was awarded under the '2014 Scheme' may, before attaining their Normal Pension Age, request that the deferred pension is paid early if the member has, because of ill-health or infirmity of mind or body, become permanently incapable of discharging efficiently the duties of the employment they were engaged in at the date of becoming a deferred member and is unlikely to be capable of undertaking gainful employment before reaching Normal Pension Age or for at least three years, whichever is the sooner.

Before determining whether to agree to the request the former employer or, where that employer is no longer a Scheme employer, the appropriate administering authority, must obtain a certificate from an IRMP who has been approved by the administering authority showing whether, in the opinion of the IRMP, the member is suffering from a condition that renders them:

- permanently incapable, because of ill-health or infirmity of mind or body, of discharging efficiently the duties of the employment they were engaged in at the date of becoming a deferred member, and
- whether, as a result of that condition, the member is unlikely to be capable of undertaking gainful employment before reaching Normal Pension Age or for at least three years, whichever is the sooner.

A member who has a suspended Tier 3 ill-health pension which was awarded under the '2014 Scheme' may, before attaining their Normal Pension Age, request that the suspended Tier 3 pension is brought into payment early if the member is, because of ill-health or infirmity of mind or body, unlikely to be capable of undertaking gainful employment before reaching Normal Pension Age.

Before determining whether to agree to the request the former employer or, where that employer is no longer a Scheme employer, the appropriate administering authority, must obtain a certificate from an IRMP who has been approved by the administering authority showing whether, in the opinion of the IRMP, the member is, as a result of ill-health or infirmity of mind or body, unlikely to be capable of undertaking gainful employment before their Normal Pension Age.

Where, in either case, the former employer or, where that employer is no longer a Scheme employer, the appropriate administering authority, decides to agree to the member's request for early payment, regulation 30(10) of the LGPS Regulations 2013 provides that

the pension is payable from the date on which the former employer (or, where relevant, the appropriate administering authority) decides to agree to the request (and not from the date of the member's request or the date the IRMP signed the certificate).

Can giving pay in lieu of notice (instead of paid notice) affect the amount of a member's Tier 1 or Tier 2 ill-health pension?

In order to calculate the amount of ill-health enhancement, assumed pensionable pay (APP) will need to be calculated by the employer when terminating an active member's employment on the grounds of ill-health with a Tier 1 or Tier 2 ill-health pension¹ (see paragraphs 5 & 6).

Where APP is calculated as shown in paragraph 6(a), a decision to give pay in lieu of notice rather than paid notice can impact on the calculation. Take, for example, a member on £20,004 per annum who goes onto half-pay due to sickness on 1 April 2015. APP would be the pay for January 2015 (£1,667) + February 2015 (£1,667) + March 2015 (£1,667) = £5,001 / 3 x 12 = £20,004 (£1,667 per month). Let's assume that a 1% pay award was granted from 1 April 2015 (taking basic pay to £20,204 per annum). If the member is retired on ill-health grounds from 1 August 2015 with, say, three months' pay in lieu of notice, the APP for the Tier 1 or Tier 2 enhancement calculation will be £20,004 (i.e. APP of £1,667 for May, June and July 2015 / 3 x 12). However, if three months' paid notice is given, taking the date of leaving to 31 October 2015, the APP for the Tier 1 or Tier 2 enhancement calculation will be £20,204 (i.e. pay of £1,683.67 for August, and for September and for October / 3 x 12). There is, in this example, a difference of £200 in the APP figure used to calculate the amount of Tier 1 or Tier 2 enhancement which is caused purely by whether or not the employer had given paid notice or pay in lieu of notice.

When can a reduction in contractual hours be ignored when calculating ill-health benefits under the '2014 Scheme'?

Where the Independent Registered Medical Practitioner (IRMP) certifies that the member was, as at the date of termination on the grounds of ill-health or infirmity of mind or

¹ The same applies where an active member dies in service, or where a Tier 3 ill-health pension is awarded which is subsequently changed to a Tier 1 or Tier 2 ill-health pension following an appeal or changed to a Tier 2 pension following the 18 month review of a Tier 3 pension or following a request for a review made by the scheme member at any time up to 3 years after the Tier 3 pension has been suspended.

body, working reduced contractual hours wholly or partly as a consequence of ill-health or infirmity of mind or body then, in calculating the APP figure upon which the Tier 1 or Tier 2 ill-health enhancement under the '2014 Scheme' is to be based, the APP figure is to be calculated on the pay the member would have received during the relevant period prior to payment of benefits if they had not been working reduced hours².

Accrued benefits to the date of leaving (even those accrued prior to 1 April 2014) are not calculated as if there had been no reduction in contractual hours (unlike the situation that would have applied had the member retired on ill-health grounds under the '2008 Scheme'). The reduction in contractual hours is only ignored for the purposes of calculating the APP figure upon which the Tier 1 or Tier 2 ill-health enhancement is to be calculated.

Exclusions

The certificates do not, due to the small number of cases involved, cover the following two situations:

i) Active members with an added years' contract

By virtue of regulation 2 and Schedule 1 of the LGPS (Transitional Provisions) Regulations 2008 and regulation 15(1)(c) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, regulation 83 of the LGPS Regulations 1997 has not been revoked.

This means that where an active member has an added years' contract, that contract will be deemed to have been fully paid for if the member meets the old definition of ill health retirement³ under regulation 27 of the LGPS Regulations 1997.

² Note that there is no equivalent of this adjustment to APP where the person dies in service rather than being retired on health grounds.

³ i.e. the member leaves a local government employment by reason of being "permanently incapable" of discharging efficiently the duties of that employment or any other "comparable employment" with his/her employing authority because of ill-health or infirmity of mind or body; where:

"Comparable employment" means employment in which, when compared with the member's employment-

- (a) the contractual provisions as to capacity either are the same or differ only to an extent that is reasonable given the nature of the member's ill-health or infirmity of mind or body; and
- (b) the contractual provisions as to place, remuneration, hours of work, holiday entitlement, sickness or injury entitlement and other material terms do not differ substantially from those of the member's employment; and

"permanently incapable" means that the member will, more likely than not, be incapable, until, at the earliest, his/her 65th birthday.

The effect of this is that:

- a member who meets the old ill health definition under regulation 27 of the LGPS Regulations 1997 but who does not meet the ill health definition in regulation 35 of the LGPS Regulations 2013 will be deemed to have completed payment of the added years' contract but will not be entitled to an ill health pension under the 2013 or 2008 Regulations
- a member who does not meet the old ill health definition under regulation 27 of the LGPS Regulations 1997 but who does meet the ill health definition in regulation 35 of the LGPS Regulations 2013 will not be deemed to have completed payment of the added years' contract (they will only be entitled to the proportion they had paid for) but they will be entitled to an ill health pension under the 2013 or 2008 Regulations
- a member who meets the ill health definition under the 1997 or 1998 Regulations and under the 2013 or 2008 Regulations will be deemed to have completed payment of the added years' contract and will be entitled to an ill health pension under the 2013 or 2008 Regulations.

Due to the small number of cases involved, the sample certificates for current active members do not include a relevant question to cover cases where the member has an added years' contract. Where the member does have an added years' contract, the employer should ask the Independent Registered Medical Practitioner (IRMP) for a view on whether or not the member also meets the old ill health definition under regulation 27 of the LGPS Regulations 1997.

All of the regulations referred to above may be viewed in the 'scheme regulations page' of www.lgpsregs.org.

ii) Retrospective ill health retirements – leavers between 1 April 1998 and 31 March 2008 under the LGPS Regulations 1997.

Under regulation 27 of the LGPS Regulations 1997 a member only had to have left employment because of permanent ill health or infirmity of mind or body; they did not have to be dismissed because of permanent ill health or infirmity of mind or body.

The LGPC Secretariat is aware that there are some cases where a person may have simply resigned rather than soldier on, or resigned because they did not want their employer to know that they were ill, and so the employer did not necessarily realise the member should have been considered for an ill health retirement and, in consequence, a deferred benefit was awarded. The member may, at some later date, make a decision to ask for

their deferred benefits to be paid on the grounds of permanent ill health and it is at that stage where it might become apparent that the member should actually have been awarded an ill health pension at the date of leaving.

However, we are a number of years beyond the last date that a person could have left under the 1997 Regulations so the vast majority of members who apply for their deferred benefit to be brought into payment on health grounds will not have left originally because of permanent ill health. If, however, the person claims to have been permanently ill at the time of leaving and was not seen by an Independent Registered Medical Practitioner at that time, the employer can now ask the Independent Registered Medical Practitioner whether the person would have met the permanent ill health definition under the 1997 Regulations at the date of leaving (based on the medical evidence that would have been discoverable at the date of leaving) and, if so, award an ill health pension.

Definitions

Unless stated otherwise within this document, the following words / phrases contained have the meaning prescribed below:

2 year qualifying service criteria

To meet the 2 year qualifying service criteria:

- a) the member must have spent 2 years as an active member of the LGPS in England or Wales; or
- b) the member must have transferred into the LGPS in England or Wales pension rights from a different occupational pension scheme (or from a European pensions institution) and the length of service in respect of benefits in that scheme was 2 or more years; or
- c) the aggregate of the period the person has spent as an active member of the LGPS in England or Wales and of a different occupational pension scheme or European Pensions Institution in respect of which a transfer value payment has been accepted, is 2 or more years; or
- d) the member has transferred pension rights into the LGPS in England or Wales from a pension scheme or arrangement that does not permit a refund of contributions to the member (e.g. from a personal pension scheme or stakeholder pension scheme); or
- e) the member has paid national insurance contributions whilst an active member and ceases active membership after the end of the tax year preceding that in which the member attains pensionable age (i.e. age 60 for a female or age 65 for a male) if the

member has a Guaranteed Minimum Pension (GMP) accrued prior to 6 April 1997 or, in any other case, State Pension Age; or

- f) the member already holds a deferred benefit under the LGPS in England or Wales or is in receipt of a pension from the LGPS in England or Wales (other than a survivor's pension or pension credit member's pension); or
- g) a transfer value payment has been made from the LGPS in England or Wales in respect of the member to a qualifying recognised overseas pension scheme.

(Former) Employer

This means the employer the member worked for before leaving active membership of the scheme on the grounds of ill health (or the Pension Fund administering authority if that employer has since ceased to be a Scheme employer).

Gainful employment

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

Independent Registered Medical Practitioner (IRMP)

IRMP means an independent registered medical practitioner who is registered with the General Medical Council and either holds a diploma in occupational health medicine (D Occ Med) or an equivalent qualification issued by a competent authority in an EEA state (within the meaning given by section 55(1) of the Medical Act 1983); or is an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA state.

Normal Pension Age (NPA)

Normal Pension Age (NPA) means the member's Normal Pension Age under the 2014 Scheme which is linked to the member's State Pension Age (SPa) but with a minimum of age 65.

SPa was equalised in November 2018 to age 65. SPa will then increase to age 66 from December 2018 to October 2020, age 67 by April 2036 and age 68 by April 2046.

Permanently incapable

Permanently incapable means that the member will, more likely than not, be incapable until, at the earliest, the member's Normal Pension Age.