

**CAMBRIDGESHIRE  
PENSION FUND**



**Pension Fund Board**

**Date:** 15 February 2019

**Report by:** Head of Pensions

<b>Subject:</b>	<b>Internal Dispute Resolution Procedure (IDRP)</b>
<b>Purpose of the Report</b>	To present an outline of the working of the Internal Dispute Resolution Procedure to the Pension Board.
<b>Recommendations</b>	<b>The Pension Board are asked to note the Internal Dispute Resolution Procedure Report</b>
<b>Enquiries to:</b>	Michelle Oakensen – LGSS Pensions Governance Officer <a href="mailto:moakensen@northamptonshire.gov.uk">moakensen@northamptonshire.gov.uk</a>

**1. Background**

- 1.1 Members, prospective members, and beneficiaries may not always agree with pension decisions that are made, or may be unhappy that decisions have not been made, by either an administering authority or a scheme employer. The Internal Dispute Resolution Procedure is the route by which they may raise their concerns and challenge such decisions.
- 1.2 An appropriate administering authority is required to make decisions on questions concerning:
- A person’s previous service or employment;
  - The crediting of additional pension following the payment of additional pension contributions; and
  - The amount of any benefit, or return of contributions, a person is or may become entitled to out of the pension fund.
- 1.3 Questions concerning any other matter relating to the person's rights or liabilities under the Scheme are decided by the relevant scheme employer. Examples of such matters are:
- Entry to the scheme;
  - Early payment of retirement benefits on ill health grounds;
  - The Tier of benefits awarded on ill health retirement from active membership;
  - The exercise of discretions regarding:
    - the pension contribution banding that applies;
    - the granting of flexible retirement; and
    - the extension of certain time limits.

## **2. The Pensions Regulator Governance and Administration Survey Results**

- 2.1 As part of the survey, public service pension schemes were asked to disclose the number of complaints they had received in the past 12 months. Overall, an estimated 12,753 complaints were made to public service schemes equating to 0.08% of all memberships. Local government was proportionally least likely to generate complaints, having 37% of all public service scheme membership but 17% of the complaints, with these equating to 0.03% as a percentage of scheme membership.
- 2.2 On average across all public service pension schemes, 44% of complaints entered the internal dispute resolution process; Local Government was just below this average at 41%. In terms of the types of complaints received, overall the most commonly mentioned reasons were ill health eligibility disputes (40%), incorrect estimates of benefits (31%) and slow or ineffective communication (30%); the most commonly mentioned type of complaint for Local Government by some margin was eligibility for ill health benefits (60%) followed by delays to benefit payments (33%) and delay or refusal of pension transfer (31%).

## **3. The Internal Dispute Resolution Procedure (IDRP)**

- 3.1. A person who disagrees with a pension decision made, or an act or omission, by an administering authority or a scheme employer and whose rights or liabilities under the Local Government Pension Scheme are affected, may make an application under the IDRP. The IDRP has four stages as detailed in appendix 1 of this report.

### First formal stage

- 3.2 A first formal stage application must normally be made within 6 months of the date the 'first instance' decision was notified to the person, or of the act or omission which is the cause of the disagreement. The adjudicator may extend the time for making such an application.
- 3.3 The member should receive a full written response within 2 months of their application being received, or an interim response at the end of this period telling them the reason for the delay and providing an expected decision date.
- 3.4 When the decision has been reached the outcome in terms of the pension decision will be:
- The adjudicator has upheld the original decision and that decision will continue to apply; or
  - The adjudicator has decided part or all of the original decision is incorrect, or requires reconsideration, and has either:
    - amended the decision, or
    - where the dispute concerned the exercise of a discretion, referred the matter back for reconsideration of the 'first instance' decision.

### Second formal stage

- 3.5 A second formal stage application must be made:
- within 6 months of the date the first formal stage decision was received, or
  - where an interim response was issued, but no decision has been received, within 7 months of the expected decision date, or
  - in a case where no interim response has been received, within 9 months of making the first formal stage application.

- 3.6 Second formal stage applications are made to the LGSS Head of Pensions, who acknowledges the application, gathers appropriate details and forwards to the appropriately independent person who will consider the application carefully and make the administering authority's decision on the matter.
- 3.7 The decision will be given in writing and the outcome in terms of the pension decision will be:
- The administering authority has upheld the original decision and that decision will apply; or
  - The administering authority has decided part or all of the original decision is incorrect, or requires reconsideration, and has either:
    - amended the decision; or
    - where the dispute concerned the exercise of a discretion, referred the matter back for reconsideration of the 'first instance' decision.

### Referral to the Pensions Ombudsman

- 3.8 An application to The Pensions Ombudsman (TPO) may be made within 3 years of the date of the original 'first instance' decision which is being disputed or of when they first became aware of the problem.
- 3.9 TPO solely deals with pension complaints about the administration and/or management of personal or occupational pension schemes. It deals with these fairly, impartially, and for free. There is no financial limit on the amount of money that TPO can make a party award to a complainant. Its determinations are legally binding on all the parties and enforceable in court, being subject only to further appeal made to the High Court on a point of law.

## **4. Examples of Employer and Administering Authority disputes.**

### **4.1 Ill Health Retirement (Employer)**

- 4.1.1 A member was considered for ill health retirement benefits from active membership by the scheme employer whilst in employment. Based on the opinion of an Independent Registered Medical Practitioner approved by the administering authority (IRMP) the employer determined that the criteria for the award of such benefits were not met and their pension decision was that a deferred pension be awarded, however the employment decision based on occupational health advice was still to terminate the member's employment on ill health grounds.
- 4.1.2 The member submitted a formal first stage IDR application and this was considered by the adjudicator appointed by the scheme employer. The result of this application was the scheme employer seeking the opinion of a further IRMP and, based upon this, they determined that the criteria for the award of ill health retirement benefits from active membership were met, as were the criteria for Tier 2 benefits, and their pension decision was that Tier 2 benefits be awarded.
- 4.1.3 The member was dissatisfied with this decision, considered that they met the criteria for Tier 1 benefits which are greater than Tier 2 benefits, and submitted a formal stage 2 application.
- 4.1.4 The administering authority reconsideration of the earlier decisions made by the scheme employer identified that there were issues with a lack of clarity in terminology used within the latest IRMP's narrative report submitted in support of the Pension Fund's standard ill health certificate (IHCERTA1) completed by the IRMP and an inconsistency between two particular boxes ticked. These were summarised in the decision as follows:

- The IRMP refers to what is “possible” rather than what is likely on the balance of probabilities;
- The IRMP refers to “work” rather than “gainful employment” ;
- The IRMP refers to your 65<sup>th</sup> birthday when the criteria should be by reference to the date they attain their normal pension age, which in this members case is 67<sup>th</sup> birthday;
- The IRMP ticked Box B6\* and C1\*\* which contradict each other \*.

\*B6 – the member “is unlikely to be capable of undertaking any gainful employment within the next three years but is likely to be capable of undertaking gainful employment at some time thereafter and before his/her normal pension age”.

\*\*C1 – the member “is unable to continue in his/her current job and is unlikely to be capable of taking on any other paid work in any capacity otherwise than to an insignificant extent, before his/her State Pension Age”.

4.1.5 The complaint was therefore upheld and, as the matter of which Tier of ill health benefits applies is one for employer discretion, the scheme employer was directed to obtain the opinion of a further IRMP on all relevant questions required in order to assess entitlement to an ill health pension and the appropriate Tier of benefit and reconsider their pension decision afresh.

4.1.6 Having sought the further opinion, the scheme employer decision remained that a Tier 2 benefit was appropriate. It is understood that the member has since referred their complaint to TPO and the outcome is awaited.

## 4.2 **Overpayment of Pension following a system error (Administering Authority)**

4.2.1 A pension overpayment was identified during a routine annual process (comparison of pension input against standard annual allowance) for the year in which the member retired. The cause of the overstatement of annual pension was traced back to a pension administration system issue that was introduced during an upgrade.

4.2.2 The member was dissatisfied that an overpayment had occurred and that there should have been extra vigilance at the time of a system change. The member was also unhappy about the communication surrounding the reduction in her ongoing pension payments, the recovery of the overpayment including the method proposed and the time it took to discover the overpayment.

4.2.3 The member submitted a formal first stage IDR application and the adjudicator, LGSS Head of Pensions, concluded the following –

- The Head of Pensions apologised for the error, but noted that the benefits actually due under the terms of the scheme are what should be paid and that an individual should not benefit as a result of an error
- Given the cause was a pension administration system error the Head of Pensions considers that it was identified and dealt with in a reasonable timescale and does not constitute maladministration;
- The reduction in the rate of pension payable within the month the issue was identified, the notification of this and recovery method proposed in both the letter of 4 August 2017, and that of 24 August 2017, were all within the terms of the Pension Fund’s overpayment of pension policy; the only issue being that you, for whatever reason, did not appear to have received the original letter of 4 August 2017;

- The Head of Pensions rejects the assertion that the member accepted the award in good faith when all of the information prior to that award indicated the annual pension would be around £6,000; this discrepancy was sufficient to conclude that it would have been reasonable to expect the member to have identified this as a potential issue and raised this with the administrators.

4.2.4 Based on the points above the adjudicator's decision was that the complaint was not upheld.

4.2.5 The member was dissatisfied with this decision and submitted a formal stage 2 application which was considered by the administering authority and the decision remained that the complaint was not upheld.

4.2.6 The member has since referred her complaint to TPO and the outcome is awaited.

## 5. Relevant Pension Fund Objectives

Have robust governance arrangements in place, to facilitate informed decision making, supported by appropriate advice, policies and strategies, whilst ensuring compliance with appropriate legislation and statutory guidance. <i>Objective 1</i>
Manage the Fund in a fair and equitable manner, having regard to what is in the best interest of the Fund's stakeholders, particularly the scheme members and employers. <i>Objective 2</i>
Ensure the relevant stakeholders responsible for managing, governing and administering the Fund, understand their roles and responsibilities and have the appropriate skills and knowledge to ensure those attributes are maintained in a changing environment. <i>Objective 3</i>
Continually monitor and measure clearly articulated objectives through business planning <i>Objective 4</i>
Continually monitor and manage risk, ensuring the relevant stakeholders are able to mitigate risk where appropriate. <i>Objective 5</i>
Put in place performance standards for the Fund and its employers and ensure these are monitored and developed as necessary. <i>Objective 8</i>
Administer the Fund in a professional and efficient manner, utilising technological solutions and collaboration. <i>Objective 10</i>

## 6. Finance & Resources Implications

6.1 The financial and resource implications are set out in the Business Plan

## 7. Risk Management

7.1 The Pension Committee and Local Pension Board are expected to have an awareness of how the fund is operated and maintain knowledge surrounding processes of when and how the Fund deals with complaints and appeals against decisions be the scheme employer and the administering authority. Details of complaints and appeals are reported in the Annual Report which accompanies the Statement of Accounts which requires Pension Committee approval.

7.2 The risks associated with Pension Committee and Pension Board members not having the required level of awareness and knowledge of the Internal Dispute Resolution Procedure have been captured in the Fund's risk register as detailed below.

<b>Risk register</b>	<b>Risk mitigated</b>	<b>Residual risk</b>
Governance (risk 1)	Failure to administer the scheme in line with regulations and policies.	Amber
Governance (risk 2)	Those charged with governance of the Fund and Scheme are unable to fulfil their responsibilities effectively.	Amber
Governance (risk 4)	Policies and Strategies not being in place and up to date.	Green
Governance (risk 12)	Changes to the LGPS and lack of expertise in the new/revised area	Green
Governance (risk 18)	Failure to provide adequate information to the Pension Committee/Pension Board	Green

7.3 The full version of the Fund risk register can be found at the following link  
<http://pensions.northamptonshire.gov.uk/governance/key-documents/cambridgeshire/>

## 8. Communication Implications

<b>Direct Communications</b>	The Annual Report and Statement of Accounts is published on the LGSS Pensions website.
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## 9. Legal Implications

9.1 Not applicable

## 10. Consultation with Key Advisers

10.1 Consultation with the Fund's advisers was not required for this report.

## 11. Alternative Options Considered

11.1 Not applicable

## 12. Background Papers

12.1 Not applicable

## 13. Appendices

13.1 Appendix 1 – The Internal Dispute Resolution Procedure

<b>Checklist of Key Approvals</b>	
Has this report been cleared by Head of Pensions?	Mark Whitby – 30/1/2019

## Appendix 1 – The Internal Dispute Resolution Procedure

<b>Stage</b>	<b>Scheme employer dispute</b>	<b>Administering authority dispute</b>
<b>Informal stage</b>	<p>The person contacts whoever notified them of the decision for information on how and why the decision was arrived at. This allows decisions to be explained and understood, as well as the correction of errors caused by mistakes, misunderstandings, incorrect information and system issues.</p>	
<b>First formal stage</b>	<p>If the person remains dissatisfied after the informal stage, a formal application for adjudication of the disagreement can be made. An adjudicator appointed by the scheme employer makes decisions on such applications.</p>	<p>If the person remains dissatisfied after the informal stage, a formal application for adjudication of the disagreement can be made. The adjudicator appointed by the administering authority makes decisions on such applications; for the Cambridgeshire Pension Fund this is the LGSS Head of Pensions. In practical terms, they are unlikely to have been involved in the original decision, however there is nothing to prevent them undertaking this role even if they were.</p>
<b>Second formal stage</b>	<p>If the person remains dissatisfied after the conclusion of the first formal stage, or has not received a decision from the adjudicator within the specified timeframe, a formal application for reconsideration of the matter by the administering authority can be made. Cambridgeshire County Council as the administering authority must have such an application considered, and a decision made in relation to it, by someone who was not involved in the making of either the original 'first instance' decision or a decision at the first formal stage.</p>	
<b>Referral to The Pensions Ombudsman</b>	<p>If the person remains dissatisfied after the conclusion of the second formal stage, or has not received a decision on their application within the specified timeframe, a formal application to The Pensions Ombudsman can be made. Such applications will only be considered once a dispute has been through both formal stages of the IDRP.</p>	