

Local Government Pension Scheme (LGPS)



Ill Health Retirement - Guide for Employers

TYPES OF ILL HEALTH RETIREMENT

Ill health retirement within the LGPS is the release of pension benefits to employees or ex-employees who satisfy the relevant criteria.

There are two types of ill health retirement:

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

Active members

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

- **Qualifying period** - A member must have at least two years' scheme membership or have transferred pension rights from another pension scheme (of any length) into the LGPS.
- **Permanent incapacity** - The employer must terminate the employment on the grounds that his or her ill-health, or infirmity of mind or body, renders him/her permanently incapable of efficiently discharging the duties of their current employment. 'Permanently incapable' means the member will, more likely than not, be incapable until their State Pension Age, at the earliest.
- **Not immediately capable of undertaking any gainful employment** - The member must not immediately be capable of undertaking any gainful employment. 'Gainful employment' means paid employment for not less than 30 hours a week, for not less than 12 months.

If the member satisfies the above criteria, then an ill health pension is payable. The test for permanent incapacity is based on the employee's ability to undertake the duties of their current employment. If the employee has more than one contract of employment separate opinions must be made for each post where ill health retirement is being considered. It is possible for an employee in more than one post to satisfy the above criteria for one, but not the other post.

Deferred members

The conditions for early payment of benefits depend on the date the member left the LGPS:

Those who left the LGPS before 1st April 1998

The ex-employee must be permanently incapable, by reason of permanent ill-health or infirmity of mind or body, of discharging efficiently the duties of the employment the member has ceased to hold. Benefits are payable from any date on which the ex-employee becomes permanently incapable, by reason of ill-health,

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

Those who left the LGPS on or after 1st April 1998 but before 1st April 2008

As with above, the ex-employee must be permanently incapable of discharging efficiently the duties of their former employment because of ill health, or infirmity of mind or body. Benefits are payable from any date when the ex-employee applies for the early payment of benefits or, from the date permanent incapacity is judged to have arisen, whichever is the sooner.

Exceptional ill health

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

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

The ex-employee must be permanently incapable of discharging efficiently the duties of the former employment because of ill-health, or infirmity of mind or body and, if so, whether as a result of that condition the member has a reduced likelihood of being capable of undertaking any gainful employment before reaching normal retirement age (65), or for at least three years, whichever is the sooner. Benefits are payable from any date when the ex-employee applies for the early payment of benefits or, from the date permanent incapacity is judged to have arisen, whichever is the sooner.

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

The ex-employee must be permanently incapable of discharging efficiently the duties of the former employment because of ill-health, or infirmity of mind or body and the condition is likely to prevent them from undertaking gainful employment before reaching his/her normal retirement age, or for at least three years, whichever is the sooner. Benefits are payable from the date when the ex-employee applies for the early payment of benefits.

YOUR ROLE AS AN EMPLOYER

Decisions about eligibility

While an ex-employee would need to apply to the former employer to release the pension due to ill health, the Scheme Regulations do not require an active member to apply for benefits. It would usually be the employer, or a doctor consulted by the employer, that would instigate the process for an active employee. However, once the process starts, it is the employer who has the responsibility for reaching a decision on pension entitlement.

The employer must decide if an employment should be terminated. If an employee has been absent from work for a considerable period or has suffered an injury that prevents them from working, then the employer should decide if the employment should be terminated. This is a decision that should be taken entirely for human resource reasons. The question should be asked: 'Is the employee capable of continuing to work?' If the answer is no, then the employee should be referred to an Independent Registered Medical Practitioner (IRMP).

Referral to an Independent Registered Medical Practitioner (IRMP)

An IRMP who is qualified in Occupational Health medicine, must certify whether an employee meets the criteria. An IRMP is defined as; a practitioner who is registered with the General Medical Council and;

- a. holds a diploma in occupational health medicine (D Occ Med) or an equivalent qualification issued by a competent authority in an EEA state; and for the purposes of this definition, “competent authority” has the meaning given by section 55(1) of the Medical Act 1983; or
- b. is an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA state.”

Employers may refer both current and ex-employees for medical opinions under the Scheme. It is likely that employees who have had long periods of sick leave, have already been in contact with the employer’s occupational health advisers. However, a long period of sickness is not required before an employee could be referred. For example, an employee may not have been off sick, but has been diagnosed with a terminal illness. The occupational health provider acting for the employer should ensure all relevant information is available for the IRMP.

Information to provide to the IRMP

In order to ensure that the application is dealt with quickly and with the minimum disruption, the IRMP requires a fully worked case to review. These should include:

- Details of illness/medical condition
- Absence record for the previous two years
- Medical reports from your occupational health practitioner
- Medical reports from the individual’s GP or specialist consultant or similar
- Accident report forms and risk assessments
- Current job description
- Details of any adjustments that have been made to help the individual undertake their job.

THE ROLE OF THE INDEPENDENT REGISTERED MEDICAL PRACTITIONER (IRMP)

The IRMP must certify whether or not in his/her opinion the employee satisfies the relevant criteria under the specific set of regulations by completing the ill health certificate. In addition, if the member is still an active employee and works part time, it may also be necessary for the IRMP to provide an opinion stating whether or not any reduction in hours is as a result of the condition for which ill health retirements may be paid. This will have an impact on the calculation of any enhancement. **Please contact the pension administration team for a copy of the relevant ill-health retirement certificate which the IRMP will need to complete.**

In order to comply with the Access to Medical Reports Act 1988, it is essential that the individual gives their informed consent before any medical records are disclosed to the IRMP. This can be best achieved by the employer and their own Occupational Health doctor obtaining this authority at the point at which it is decided that the individual should be referred to the IRMP. When the IRMP receives the referral papers they will decide whether or not it is necessary to see the employee. An appointment, where appropriate, will be arranged. The employee will be informed by letter and copies sent to the referring employer. If the employee fails to attend, the employer will be notified by letter. No further action will be taken until the employer requests a new appointment.

THE DECISION

Once the IRMP has made their medical opinion, the certificate will be completed and returned, along with a narrative report to the employer. When the employer receives this certificate and report, they should look at it in conjunction with any other information they have. The employer will then make their decision on pension entitlement, including which tier of ill health award the member is entitled to.

Who to tell about your decision

When you have made your decision, a leaver form, assumed pensionable pay calculation, relevant ill health certificate and written confirmation of the employer's decision should be sent through to us at skpensions@sutton.gov.uk.

You must also inform the employee of your decision, in writing, setting out which tier of benefits they are entitled to (if any) and their right of appeal.

PENSION BENEFITS PAYABLE

Active Members

For active members, the level of pension and enhancement is based on the likelihood of the individual being able to undertake further gainful employment. Gainful employment means paid employment for at least 30 hours per week for at least a year.

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

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

Active Members - Tier 3 ill health benefits

When the employer determines that an active scheme member is entitled to a Tier 3 ill-health benefit the employer is responsible for reviewing the pension during the period of payment.

Employers should ensure that the following information is given to the member, in writing, on leaving:

- The latest date the pension will cease in 3 years' time.
- If still in payment the pension will be reviewed after 18 months.

- The member must inform the previous employer if they obtain gainful employment (30 hours or more per week for a period of not less than 12 months) as the pension will cease.

What the employer must do once the pension is in payment:

- Review the medical condition of the member after 18 months on pension, by referring them to the IRMP for re-assessment.
- Following the 18 month review, inform the Fund whether the third tier conditions still apply, or whether the pension should cease or be upgraded to Tier 2, in which case a copy of the IRMP medical certificate is required.
- Inform the Fund at any time when the pension must cease, for example, on obtaining gainful employment or medical re-assessment.
- Inform the member in writing when the pension is ceasing.
- Inform the Fund if they need to recover an overpayment of pension.

The Fund will do the following to help the employer achieve the above:

- Inform the employer when the member has been in pension for nearly 18 months and confirm the member's current home address held on the payroll record.
- Inform the employer when the member has been on pension for nearly 36 months and confirm the member's current home address held on the payroll record. This letter will confirm that the pension will cease at 36 months.
- Recover any overpayment as instructed by the employer.

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

Deferred Members

Deferred scheme members do not receive an additional enhancement on their pension. They receive their unreduced pension that they would have received at their normal pension age (NPA), without any early retirement reductions. Once a scheme member is awarded an ill-health retirement benefit they must claim their pension from the date it becomes payable. They cannot defer payment to a later date.

COSTS

When deciding whether to award an ill health retirement the cost to release the pension should not be a factor. Whether you decide to award an ill health retirement should be based on whether a member meets the requirements set out in the legislation.

It is however important to note that awarding an ill-health retirement may incur significant strain costs for employers. With the exception of the local authority, from 1 April 2023 employers will be invoiced for ill health retirement strain costs. You can contact the pension administration team if you would like information on insurance for ill-health retirement strain costs.

APPEALS

In all cases the employee should be given the right to appeal under the Internal Disputes Resolution Procedure (IDRP). The appeal can relate to the decision to grant retirement and/or the benefits paid. It is the scheme employer, not the IRMP that the appeal is made against, as it is the responsibility of the employer to decide on, if and what benefits to award. The IRMP is only there to give a medical opinion.