

LOCAL GOVERNMENT PENSION SCHEME: PROPOSALS FOR CHANGE INTERNAL DISPUTE RESOLUTION PROCEDURE (IDRP) Discussion Paper

Background

The former Local Government Pension Scheme Shadow Scheme Advisory Board held discussions about the review of ill health retirement procedures in the LGPS in 2014 and out of these discussions they identified that there was a need to review the whole IDRP process, as well as the ill health IDRP process.

The Occupational Pension Schemes (Internal Dispute Resolution Procedure) Regulations 1996 (SI 1996 No 1270), made under section 50 of the Pensions Act 1995, required occupational pension schemes such as the LGPS to make arrangements for the resolution of disagreements between the managers of the Scheme and Scheme active, deferred and pensioner members, their widows, widowers and dependants, their nominated representatives and prospective members.

At the time, the stated policy intention was that an occupational pension scheme's internal dispute resolution procedure should serve as "a filter, to ensure that easily resolved complaints and simple misunderstandings are not referred to the Pensions Ombudsman". Policies were developed to resolve disputes informally without recourse to the formal IDRP arrangements and the two stage internal arrangement was reserved for cases which were more complex and contentious. This seemed a sensible approach but there may be better ways of operating the IDRP.

This discussion paper seeks to assess the scale of the problem that practitioners may have encountered while operating the Scheme wide IDRP process, and what they might see as an effective remedy. In light of this evidence, we would like to consider what options are available for a reformed, more streamlined approach.

The Local Government Pension Scheme (Amendment) Regulations 2004 [SI 2004 No 573] introduced the current IDRP provisions on 1 June 2004. Alongside the regulations, a new IDRP Practitioners' Guide was issued by DCLG to aid the smooth implementation of these regulations. It was the intention at the time to carefully monitor the effects to ensure that the correct standards were being applied consistently on a national basis.

The Current Provisions

Regulations 27 to 32 of The Local Government Pension Scheme (Amendment) Regulations 2004 (SI 2004 No 573) made important changes to the IDRP arrangements. Regulation 72 to 80 of The Local Government Pension Scheme Regulations 2013 [SI 2013 No 2356] replicated these changes.

The main features of the 2004 arrangements were that responsibility for the first stage of the procedure (arrangements for the determination of disputes) was to be vested in a specified person, typically, the person or body who considered and made the initial decision against which the dispute had arisen; and that responsibility for

the second stage determinations fell to the relevant Administering Authority. This removed the former role undertaken at this stage in the process by the Secretary of State in the then Office of the Deputy Prime Minister (which is now the Secretary of State for Communities and Local Government.).

The new arrangements essentially brought the LGPS system more into line with the intention of the Pensions Act, i.e. that pension disputes should be resolved internally before progressing to an external, independent consideration by the Pensions Ombudsman.

Two stage IDR

There is currently a two stage dispute resolution procedure as follows:-

First stage – This stage involves a formal review of the initial decision by the Scheme employer or administering authority which took the decision. This first stage consists of an application to an adjudicator specified by the Scheme employer; or, where a first instance decision has been made by an administering authority, to an adjudicator specified by that authority. The adjudicator is required to notify his or her decision on the disagreement within two months of the date the receipt of the application or, if no decision is made within those two months, the adjudicator must immediately issue a notification explaining the reasons for the delay and providing an expected date by which the decision will be made. The notification of the decision (or of the delay) must be sent to the applicant, the Scheme employer and, if the Scheme employer is not an administering authority, to the appropriate administering authority.

The decision of the adjudicator is binding on the Scheme employer / Administering Authority who took the initial decision, and on the scheme member unless:

- a) the decision relates to the exercise of a discretion, in which case (if the decision upholds the complaint) the matter has to be remitted back to the Scheme employer of administering authority that made the original decision for further consideration, or
- b) the applicant is unhappy with the decision of the adjudicator and makes an appeal to the second stage of the IDR.

Second stage - In cases where the applicant is dissatisfied with the adjudicator's decision, the matter can then be referred to the administering authority for determination at the second stage of the procedure. This stage involves an adjudicator appointed by the administering authority having a fresh look at the decision. The adjudicator must give written notice of a decision with two months of the date of the receipt of the application to the applicant and to the Scheme employer (where the Scheme employer is not the administering authority) or, if no decision is made within two months, an interim reply must be sent to these parties as soon as is reasonably practicable.

Appeals by administering authorities

If a Scheme employer (other than one which is an administering authority) has decided or failed to make a first instance decision (other than in relation to the

exercise of a discretion), an administering authority maintaining a pension fund into which a Scheme employer pays contributions may appeal to the Secretary of State. This appeal must be submitted within six months of the employer's decision on a question or failure to make a decision on a question (or such longer period as the Secretary of State may allow).

The Pensions Advisory Service

The Pensions Advisory Service (TPAS) can only affect a resolution to a Scheme dispute through persuasion and conciliation. As an organisation they do not have any statutory powers. They normally get involved before the Pension Ombudsman, who is usually the final arbiter in the matter. Their dispute and resolution service is independent of both sides of a complaint. The outcome may involve compromise and a negotiated settlement.

Pensions Ombudsman

When someone has tried to resolve a problem through the IDR process and isn't satisfied with the outcome, they may ask the Pension Ombudsman to intervene. They are an independent organisation set up by law to investigate complaints about fact of law, and complaints of maladministration in cases involving both private and public sector pension schemes. They look at the facts without taking sides, and have legal powers to make decisions that are final, binding and enforceable in court.

Questions for consideration

Practitioners have had much experience of IDR and wish to consider better ways of working. Consideration could include whether the structure for looking at individual cases works well or a more streamlined approach, including looking at IDR local panels, should be adopted. To help take the review forward it would be helpful to know:

- How many disputes have been resolved informally outside of the IDR process? Can you state for each of the last 5 years?
- Have the numbers of IDR disputes increased or decreased and, if so, what is the reason for the change? Can you state for each of the last 5 years?
- How many Scheme members were dissatisfied with the first instance decision that was made by the stage one adjudicator and so took their grievance to the administering authority for a decision to be considered under stage two of the IDR?
- How many members were dissatisfied with the second stage of the IDR process and so sought a decision from the Pensions Ombudsman?
- Do most appeals concern a dispute over decisions on the application for, or award of, ill health retirement?
- Are the timescales for the consideration of IDR disputes sufficient? If not, what would be appropriate timescales?

- Is the two stage IDR process working well? If not, what are the reasons?
- Would a move to a single stage IDR (rather than a two stage process) be preferable and why? If so, should the single stage reside at the level of the body that made the initial decision being complained about (i.e. Scheme employer or administering authority) or should the single stage reside at the level of the administering authority in all cases?
- Would it be helpful if a central panel of Independent Registered Medical Practitioners (IRMPs) was set up to provide opinions where requested to do so in relation to all medical IDR cases? If so, why?

Current and Relevant Legislative Provisions

1. The Occupational Pension Schemes (Internal Dispute Resolution Procedure) Regulations 1996 [SI 1996 No 1270] – now repealed.
2. Regulation 27 to 32 of The Local Government Pension Scheme (Amendment) Regulations 2004 [SI 2004 no 573]
3. The Occupational Pension Scheme (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments) Regulations 2008. [SI 2008 No 649]
4. Regulation 72 to 80 of The Local Government Pension Scheme Regulations 2013 [SI 2013 No 2356]