Administration and Communications Sub-Committee – Paper C

Meeting: 4th September 2014

Agenda Item 4(a)

Ill health retirement options

1. The attached paper was presented to the Shadow Scheme Advisory Board (SSAB) on 9th June 2014.

2. The SSAB agreed that a limited range of costed ill-health options [4 – 5] were required and referred the item back to the sub-committee.

3. Members of the sub-committee are, therefore, asked to:

   - determine which of the various options in paragraphs 31 to 54 of the attached paper should be costed by GAD to enable the sub-committee to decide which options to recommend to the SSAB
   - determine which of the options in paragraphs 55 to 66 should be recommended to the SSAB

4. Funding for the work to be undertaken by GAD will need to be agreed. DCLG have indicated they may be able to contribute towards the costs and the SSAB has a small amount of funding that can be utilised (c£5-£6k).

5. One further matter that requires consideration, and which is not set out in the attached paper, is how reductions in hours due to ill health should be dealt with within the scheme.

   When discussions took place on the development of the 2008 Scheme the members of the Ill Health Working Group were concerned to ensure that if a scheme member agreed to work reduced contractual hours in an attempt to carry on working but this did not work out and the member had to retire on ill health grounds (or died in service), the benefits due to or in respect of the member (including the amount of ill health enhancement) should not be detrimentally affected by having made the attempt to continue working. The intention was that there should be a short trial period during which it could be determined whether or not the new arrangements were satisfactory or whether the person would have to retire on health grounds. If retirement on health grounds was necessary, then the reduction in contractual hours would, for pension purposes, be treated as if it had not occurred.

   Unfortunately, no time limit was placed on the protection. Thus, a member who agreed to work reduced contractual hours, remained on those reduced hours for 20 years and was then retired on ill health grounds would have the reduction in hours for all of those 20

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years (and for the ill health enhancement) ignored. This was not the intention behind the regulations as the protection was intended merely to cover the trial period. It can be argued that once a member has worked reduced contractual hours for a period of X months, those new hours have, in effect, become their agreed terms and conditions of employment as opposed to a short-term trial.

In the 2014 Scheme, the reduction in hours (and hence in pensionable pay and the amount of pension accruing in the CARE scheme) is not ignored whilst the member is an active member. However, the reduction in pay is ignored in calculating the amount of Assumed Pensionable Pay (APP) upon which the amount of ill health enhancement is calculated if the member retires on ill health grounds but, somewhat perversely, not if the member dies in service (nor is it ignored in calculating APP for the purpose of a lump sum death in service grant).

A decision will need to be taken as to

a) whether the protection in the 2014 Scheme should be extended to cover the member who subsequently dies in service
b) whether there be a time limit on the protection following a reduction in contractual hours, and
c) if so, what that time limit should be.

The view of the Secretariat is that if a member tries to carry on working at reduced hours or moves to a job on a lower grade or with less responsibility and it does not work out, resulting in eventual ill health retirement, it is reasonable to calculate the ill health enhancement using an APP figure based on the pay they would have received had their hours or grade not been reduced (even though their CARE benefit up to the point of leaving will not be based on the pay they would have received had their hours or grade not been reduced). The same protection should be extended to members who die in service after reducing their contractual hours or grade due to ill health. In previous discussions with HM Treasury they stipulated that any protections should be for temporary and unexpected reductions in pay. Thus, it would be appropriate to build a time limit into the protection following a reduction in contractual hours or grade and this might, for example, be set at 3 years. A 3 year limit draws a parallel with the 3 year limit for temporary tier 3 benefits. If the reduction in hours or grade carries on beyond 3 years then there is an argument that it is no longer a temporary reduction in pay and has simply become the person's new terms and conditions. The reason for including a move to a job on a lower grade or with less responsibility (the wording used in Benefits regulation 10(1)) is because a person might, for example, not reduce their hours but move, on their doctor's advice, to a job at a lower grade or with less responsibility (e.g. in stress cases). Regulations 36 and 39 of the LGPS Regulations 2013 could then be amended to read as follows:

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 will have a reduced likelihood of undertaking gainful employment; and

(c) where a member had, within the previous continuous period of 3 years of membership (or the member's actual continuous period of membership if less) –

(i) has been working reduced their contractual hours, or

(ii) moved to a position on a lower grade or with less responsibility

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and had reduced pay as a consequence, whether that change in their terms of employment was wholly or partly as a consequence of ill-health or infirmity of mind or body.

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Calculation of ill-health pension amounts

39. – (9) For the purposes of this regulation—

(a) in calculating assumed pensionable pay in accordance with regulation 21(4) (assumed pensionable pay), account is only taken of any reduction in the pensionable pay the member received if an IRMP has certified that the member had, within the previous continuous period of 3 years of membership (or the member's actual continuous period of membership if less) reduced their contractual hours or moved to a position on a lower grade or with less responsibility as a consequence of ill-health or infirmity of mind or body; and

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(b) no adjustment is to be made to any sum by virtue of regulation 21(6) for any period after the date of termination of employment under regulation 35 (early payment of retirement pension on ill-health grounds: active members).

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The reason for mentioning continuous period of membership is to exclude cases where the reduction occurred in an employment, say, 2 years ago, the person then voluntarily left and subsequently rejoined in a new job (see Benefits regulation 10(1) which also refers to "continuous").

An additional paragraph would need to be added at the end of regulations 40 (death grants: active members), 41 (survivor benefits: partners of active members) and 42 (survivor benefits: children of active members) akin to that contained in regulation 39(9)(a)i.e.

"For the purposes of this regulation, in calculating assumed pensionable pay in accordance with regulation 21(4) (assumed pensionable pay), account is only taken of any reduction in the pensionable pay the member received if an IRMP has certified that the member had, within the previous continuous period of 3 years of membership (or the member's actual continuous period of membership if less) reduced their contractual hours or moved to a position on a lower grade or with less responsibility as a consequence of ill-health or infirmity of mind or body."

Introduction

1. The Shadow Scheme Advisory Board has asked the Administration and Communications Sub-Committee to investigate options for changes to the current ill health retirement provisions in the LGPS.

2. As a result, at its meeting on 25th February 2014 the members of the Sub-Committee asked the Secretariat to prepare a paper on:

   a) options for simplifying the ill health retirement provisions in the LGPS in England and Wales
   b) the ill health provisions in other public service pension schemes, and
   c) the interaction between the employment decision and the pension decision.

3. A paper was duly produced and discussed by the members of the Sub-Committee at their meeting on 8th May 2014, culminating in the following report.

Background

4. Prior to 1 April 2008 the Scheme provided an ill health pension for those with 2 years membership of the Scheme which, for those with 5 or more years membership, included ill health enhancement. The member's enhanced pension was, in simple terms, based on the following membership:

   a) if membership was less than 10 years, double the membership
   b) if membership was 10 or more but no more than 13 1/3rd years, 20 years
   c) if membership was more than 13 1/3rd years, total membership plus 6 2/3rd years

   but the ill health pension could not be based on more membership than the member could have achieved by age 65 and the amount of enhancement was adjusted if the member had been in part-time employment and had not had a period of at least 13 1/3rd years in full-time employment.

5. In July 2000, HM Treasury published its "Review of ill-health retirement in the public sector". The 35 recommendations of the report were accepted in full by the Government and government departments responsible for public service pension schemes were tasked to come forward with individual action plans to implement the report's recommendations. The then DETR's action plan was agreed and published in October 2001.

6. The Department's action plan to implement the inter-Departmental report into ill health retirements in the public sector 2000 included an undertaking to prepare a discussion paper outlining the scope for introducing four changes to the arrangements for the payment of ill-health retirement benefits under the Local Government Pension Scheme Regulations 1997.

7. The four recommendations included in the Action were:

   Recommendation 27 - To examine the scope for introducing a two-tier ill-health retirement provision into the LGPS;

   Recommendation 28 – To introduce the facility to review the levels of ill-health retirement benefit during retirement;

   Recommendation 29 – To consider the role of abatement in the context of ill-health retirement, and

Recommendation 34 – To consider the scope for introducing a more efficient system for awarding enhanced membership on ill-health retirement with less incentive for members to seek ill-health retirement at specific ages.

8. In common with most other occupational pension schemes in the public sector, the LGPS had historically assessed entitlement to ill-health retirement benefits on the individual employee's capacity to perform efficiently the duties of their former employment. However, the LGPS was different to the extent that since April 1999, it had also required employers to consider the capacity to undertake other local government employments that were comparable on the basis of pay, location, training/skill levels, etc. But that apart, there remained the problem envisaged by the July 2000 report that the LGPS, in common with most other occupational pension schemes in the public sector, failed to address the issue of a person's ability to perform a wide range of jobs in the employment sector as a whole.

9. The proposal to introduce a two-stage level of ill-health retirement benefit entailed the introduction of a new upper level of benefit for LGPS members whose condition rendered them permanently incapable of any work, whether in local government or elsewhere. For the remainder whose incapacity meant that they were still capable of performing work elsewhere, the second level of benefit would be assessed on a case by case basis according to a number of factors, including the degree of incapacity and the extent to which this might affect future earning potential. But given the Government's aim of reducing the levels of ill-health retirement and of retaining people in the workforce up to their normal retirement age and possibly beyond, the scope for introducing a series of measures designed to ease the transition between work and retirement and to retain staff in employment despite their inability to perform their current duties because of ill-health had to be explored.

10. Although the HM Treasury review focussed its attention on a two tier ill-health pension arrangement, the working group set up by the then DETR to take forward implementation of the action plan considered that the range of incapacities covered by the second tier - from those just short of meeting the top tier criteria and those who would be capable of obtaining gainful employment within a reasonable period after ceasing their local government employment on permanent ill-health grounds - was such that a three tier provision might be more appropriate.

11. It was also suggested that there could be a role for some form of income-protection arrangement as a way of managing long term sickness absence and ensuring that other alternatives to ill-health retirement, e.g. re-training, rehabilitation, re-deployment and flexible retirement, were fully explored before employment was finally terminated on grounds of incapacity.

12. After consideration of the views expressed by interested parties, Ministers came forward, in April 2007, with a two tier arrangement as set out in the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007. A Top Tier member would receive their accrued pension entitlements plus a service enhancement of all (100%) of their prospective membership to their normal retirement date. A Second Tier member with a lower level of incapacity would receive 25% of that prospective membership along with their accrued pension entitlements.

13. The final element of ill health remained to be decided. CLG explored with key stakeholders the scope for a form of income replacement allowance, outside the pension scheme and to be paid by employers from their revenue. However, agreement was not reached. As tax rules did not preclude the cessation of a pension, consideration of a 3rd tier within the LGPS was then an option.

14. In November 2007, interested parties were consulted on a reviewable Third Tier of ill health retirement benefit for a Scheme member who leaves employment because they are assessed by an independent occupational health practitioner as being permanently incapable of their current job but medical evidence indicates that they are capable of obtaining alternative employment within three years of their leaving. That Third Tier provision was built into the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007.

15. On 28 June 2010 Lord Hutton issued a call for evidence after being invited by the Chancellor of the Exchequer to conduct an independent review of public service pension provision and to make recommendations on provisions that are sustainable, affordable and fair in the long term. The interim report from the Independent Public Service Pensions Commission was published on 7 October 2010. A further call for evidence followed on 1 November 2010 and the final report, including 27 recommendations, was issued on 10 March 2011. This resulted in the LGPS moving to a CARE scheme from 1 April 2014.

16. The intention was that the three tier ill health provisions in the 2008 Scheme would be reviewed with a view to agreeing revised ill health provisions for inclusion in the CARE scheme which was to be introduced in England and Wales on 1 April 2014. Unfortunately it did not prove possible to reach an agreement on what the new provisions should be prior to the introduction of the CARE scheme and it was agreed that the three tier system should temporarily be carried forward into the 2014 Scheme. However, work should continue to seek to reach agreement on revised ill health provisions for introduction into the 2014 Scheme at a future date.

Current LGPS ill health provisions

17. The Local Government Pension Scheme Regulations 2013 introduced a Career Average Revalued Earnings (CARE) pension scheme from 1 April 2014 in England and Wales (the 2014 Scheme).

18. 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) was retained, the conditions for entitlement to an ill health pension changed. 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 (NPA) in the 2014 Scheme i.e. the member's State Pension Age (SPA)[1] but with a minimum of age 65;

- at the date of termination the member must have met the 2 year qualifying service criteria for entitlement to a benefit;

[1] *State pension age is currently age 65 for men. State pension age for women is currently being increased to be equalised with that for men. Women's State pension age will reach 65 by November 2018. The State pension age will then increase to 66 for both men and women from December 2018 to October 2020. Under the Pensions Act 2007 the State pension age is due to rise to 67 by April 2036 and to 68 by April 2046. The Chancellor of the Exchequer announced in the Autumn Statement 2013 that the Government intends to introduce legislation under which the SPA will be reviewed every Parliament. Based on the principle that people should expect to spend, on average, up to one third of their adult life in receipt of the State pension, this implies that the increase in State pension age to age 68 is likely to come forward from the current date of 2046 to the mid-2030s, and that the State pension age is likely to increase further to 69 by the late 2040s.*

- 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 i.e. the member will, more likely than not, be incapable until, at the earliest, the member's Normal Pension Age; 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).

19. If the conditions in paragraph 17 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. Note, however, that 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

20. 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)[2] 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

[2] *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.*

- 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 as a consequence of ill health or infirmity of mind or body.

21. 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 1/49th of assumed pensionable pay 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.

    It should be noted that:

    - 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;

    - where the Independent Registered Medical Practitioner (IRMP) certifies that the member was, as a consequence of ill health, working reduced contractual hours during the relevant 12 week / 3 month period used to calculate the member's assumed pensionable pay, 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. Note that there is no equivalent of this latter adjustment to APP where the person dies in service rather than being retired on health grounds; 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) continue to have a mimimum benefit underpin, calculated in accordance with regulation 12(1) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 [SI 2014/525].

22. 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, 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.

23. 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

    - unlikely to be capable of undertaking gainful employment before their Normal Pension Age, or

    - 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.

24. 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).

Comparison with provision in other public service pension schemes

25. The following table compares the position in the LGPS in England and Wales from April 2014 with the proposals for the other standard accrual public service pension schemes operating in local government (coming into force in April 2015).

	General criteria	Top tier criteria	Second tier criteria	Third tier criteria
LGPS E&W	• under NPA • 2 years membership • permanently incapable to NPA • not immediately capable of gainful employment (30+ hrs. p.w. for 12 months) • certificate from IRMP before terminated • terminated by employer because of permanent ill health • employer decides tier	• unlikely to be capable of gainful employment before NPA • immediate pension • 100% enhancement to NPA (49th x APP, ignoring reduction in APP if working reduced contractual hours due to ill health)	• unlikely to be capable of gainful employment within 3 years but likely to be capable before NPA • immediate pension • 25% enhancement to NPA (49th x APP, ignoring reduction in APP if working reduced contractual hours due to ill health)	• likely to be capable of gainful employment within 3 years or before NPA if earlier • immediate pension • no enhancement • payable for up to 3 years (but ceases if in gainful employment) • reviewable after 18 months (can cease if capable of gainful employment)
LGPS Scotland	• under NPA • 2 years membership • permanently incapable to NPA • certificate from IRMP before terminated • terminated by employer because of permanent ill health • employer decides tier	• unlikely to be capable of gainful employment before NPA • immediate pension • 100% enhancement to NPA (49th x APP, ignoring reduction in APP if working reduced contractual hours due to ill health)	• likely to be capable of gainful employment before NPA • immediate pension • 25% enhancement to NPA (49th x APP, ignoring reduction in APP if working reduced contractual hours due to ill health)	• N/A BUT can pay a lump sum of 1 weeks' pensionable pay per whole year of membership (up to max of 30 weeks' pay) if: - 2 years membership, and - employer terminates on ill health grounds (where not permanent ill health)
NHSPS	• under NPA • 2 years membership • permanently incapable to	• permanently incapable of current job and of engaging	• permanently incapable of current job	• N/A

Comment [TE1]: Although this may be an error in the Scottish Regulations which may be corrected.

Comment [TE2]: Although this may be an error in the Scottish Regulations which may be corrected.

	NPA • terminated by employer because of ill health • Sec of State decides whether ill health is permanent and the tier of benefit to be paid based on recommendation from Atos healthcare	in regular employment of like duration (i.e. hours per week) as in NHS job • immediate pension • 50% enhancement to NPA at a 54th accrual rate (was 66% under pre 2015 scheme) • move to second tier if re-employed and earnings are above NI lower earnings limit	• immediate pension • no enhancement	
TPS E&W	• under NPA • 2 years membership • permanently incapable to NPA • teacher can make application for ill health pension whilst in employment or within 2 years of leaving, signed by employer • Sec of State decides whether ill health is permanent and the tier of benefit to be paid based on recommendation from Atos healthcare – employment must terminate if Sec of State determines member meets permanent ill health	• permanently incapable of current job and ability to carry out any work is permanently impaired by more than 90% • immediate pension • 50% enhancement to NPA at a 57th accrual rate (if member has 'stepped down' as a result of ill health to manage their condition, pension can be based on the salary that they were earning on the day before they 'stepped down') • pension ceases if	• permanently incapable of current job • immediate pension • no enhancement	• N/A

	criteria	again becomes a teacher under NPA or impairment in ability to carry out any work falls to 90% or less		

Major differences between the public service pension schemes

26. The major differences between the public service pension schemes listed in the table above are:

- The LGPS in England and Wales is the only scheme to have a short-term, reviewable, third tier pension[3]. The other schemes have a two tier ill health pension system.

- For entitlement to an ill health pension under the LGPS in Scotland the member only has one gate to get through i.e. the member has to be permanently incapable (to Normal Pension Age) of discharging efficiently the duties of their employment by reason of ill health or infirmity of mind or body; once through the gate, either a Top Tier or Second Tier pension is awarded. In England and Wales there is a second gate i.e. the member has to also be not immediately capable of undertaking gainful employment (being paid employment for not less than 30 hours in each week for a period of not less than 12 months); if the member gets through both gates either a Top Tier, Second Tier or Third Tier pension is awarded.

- The enhancements for the Top Tier and Second Tier pensions in the LGPS in England and Wales are, respectively, 100% and 25% of prospective membership to Normal Pension Age based on a 49th accrual rate. In the NHPS and TPS the equivalents are enhancements of 50% and 0% of prospective membership to Normal Pension Age based on, in the NHSPS, a 54th accrual rate and, in the TPS, on a 57th accrual rate. Clearly, the enhancements in the NHSPS and TPS are significantly less than in the LGPS, both in terms of the amount of enhancement and the accrual rate attached to the enhancement.

- The Top Tier pension in the LGPS is not reviewable, whereas the Top Tier pension in both the TPS and NHSPS are reviewable i.e. in the NHSPS if the member is re-employed and earnings are above the NI lower earnings limit (£5,772 in 2014/15) the member ceases to be entitled to a Top Tier enhanced pension and is moved to a Second Tier unenhanced pension; and in the TPS the enhanced pension ceases if the person again becomes a teacher whilst under Normal Pension Age or the impairment in the person's ability to carry out any work falls to 90% or less (in which case the member could request that an unenhanced pension is then paid).

- In the LGPS, the termination of employment, the decision on whether or not the criteria for entitlement to an ill health pension have been met and the Tier of pension to be awarded are all made by the employer, after having obtained a Certificate from an Independent Registered Medical Practitioner. In the NHSPS the employer decides whether to terminate employment because of ill health and the Secretary of State decides whether the ill health is permanent and the Tier of benefit to be paid, based on a recommendation from Atos healthcare. In the TPS the member can simply apply to the Scheme for ill health retirement – the Secretary of State decides whether the ill health is permanent and the Tier of benefit to be paid, based on a recommendation from Atos healthcare, and the employer must then terminate the member's employment if the teacher is still employed by them.

- In the LGPS the medical recommendation as to whether or not the member meets the ill health retirement criteria is decentralised (to the IRMP appointed by the

[3] *The LGPS in Scotland has a facility for employers to pay a one off lump sum lump sum of 1 weeks' pensionable pay per whole year of membership (up to max of 30 weeks' pay) to a pensionable employee who has 2 years membership and whose employment is terminated on ill health grounds but the member is not suffering from permanent ill health. However, it is understood that the facility is not widely used by employers (if at all).*

employer) whereas in the NHSPS and the TPS the process is centralised (via Atos healthcare).

Statistical analysis of LGPS retirement in England and Wales

27. The number of LGPS ill health retirements in England and Wales fell dramatically following the tightening up of the ill health retirement procedures from circa 35,000 in 1995/96 to 9,808 in 2001/02, 7,515 in 2002/03 and 6,784 in 2003/04.

28. That trend continued in subsequent years. The table below, provided by DCLG, shows the breakdown of ill health retirements for the LGPS in England and Wales for the last three Scheme years 2010/11 through to 2012/13 compared to the first year of the tiered ill health arrangements (2008/09).

1/4/08 – 31/3/09 – data

Total numbers of ill health retirements = 3,411

Of which: 1,410 = males
Of which: 2,001 = females

Average age: 56 yrs = male
Average age: 55 yrs = female

2,505 members were awarded Tier 1 IHR benefits – 73.43%*
473 members were awarded Tier 2 IHR benefits – 13.86%*
433 members were awarded Tier 3 IHR benefits – 12.69%*

Total number of contributors = 1,813,000
Ill health retirement percentage = 0.188%

1/4/10 – 31/3/11 – data

Total numbers of ill health retirements = 3,367

Breakdown of numbers of males and females IHRs – not known as this particular data was not requested during DCLG's latest exercise.

Breakdown of average ages for male and female – not known as this particular data was not requested during DCLG's latest exercise. However, overall average age = 50 years.

2,555 members were awarded Tier 1 IHR benefits – 75.88%*
348 members were awarded Tier 2 IHR benefits – 10.34%*
464 members were awarded Tier 3 IHR benefits – 13.78%*

There was a 1.29% decrease in numbers of IHRs compared with that in 2008/09.

Total number of contributors = 1,759,000
Ill health retirement percentage = 0.191%

1/4/11 – 31/3/12 – data

Total numbers of ill health retirements = 2,972

Breakdown of numbers of males/females IHRs – not known as this particular data was not requested during DCLG's latest exercise.

Breakdown of average ages for males/females – not known as this particular data was not requested during DCLG's latest exercise. However, overall average age = 49 years.

2,229 members were awarded Tier 1 IHR benefits – 75.00%*
255 members were awarded Tier 2 IHR benefits – 8.58%*
488 members were awarded Tier 3 IHR benefits – 16.41%*

There was an approximate 12.87% decrease in numbers of IHRs compared with that in 2008/09 which is in line with the overall downward trend in numbers of IHRs.

Total number of contributors = 1,691,000
Ill health retirement percentage = 0.176%

1/4/12 – 31/3/13 – data

Total numbers of ill health retirements = 2,722

Breakdown of numbers of males/females IHRs – not known as this particular data was not requested during DCLG's latest exercise.

Breakdown of average ages for males/females – not known as this particular data was not requested during DCLG's latest exercise. However, overall average age = xx** years.

2,009 members were awarded Tier 1 IHR benefits – 73.81%*
260 members were awarded Tier 2 IHR benefits – 9.55%*
453 members were awarded Tier 3 IHR benefits – 16.64%*

There was an approximate 20.2% decrease in numbers of IHRs compared with that in 2008/09 which is in line with the overall downward trend in numbers of IHRs.

Total number of contributors = 1,712,359
Ill health retirement percentage = 0.159%

* percentage of the total numbers of IHR per data collection year.
** figure yet to be obtained.

29. The Secretariat has requested that DCLG ask GAD to share with members of the Sub-Committee and the Shadow Scheme Advisory Board any ill health retirement data extracted from the 2013 Fund valuation data. No data has yet been provided.

Cost envelope for the LGPS in England and Wales

30. The cost envelope at 2014 for ancillary benefits is as follows:

	Retirement at SPA	Retirement at 65
Ill health benefits	0.8%	0.7%
Death in service benefits	0.3%	0.3%
Death in deferment benefits	0.1%	0.1%
Survivors benefits (at 1/160th accrual rate)	1.1%	1.1%

Options for consideration – the number of tiers

31. There is a general consensus amongst members of the Sub-Committee that:

- the Third Tier ill health provision in the LGPS is overly burdensome to administer and, by its very nature, leads to appeals from members seeking to be awarded a Second Tier or Top Tier ill health pension instead,
- the number of Third Tier pensions, relative to the overall number of Top and Second Tier pensions is small, and
- a simpler, more readily understood system, should be introduced.

32. The first question for consideration therefore is "How many Tiers should there be?"

A single Tier

33. As mentioned in paragraph 4, prior to 1 April 2008 there was a single Tier with an ill health pension for those with 2 years membership of the Scheme plus ill health enhancement for those with 5 years membership. The member's enhanced pension was, in simple terms, based on the following membership:

- if membership was less than 10 years, double the membership
- if membership was 10 or more but no more than 13 1/3rd years, 20 years
- if membership was more than 13 1/3rd years, total membership plus 6 2/3rd years

but the ill health could not be based on more membership than the member could have achieved by age 65 and the amount of enhancement was adjusted if the member had been in part-time employment and had not had a period of at least 13 1/3rd years in full-time employment.

34. Roughly three quarters of all ill health retirements currently fall into the Top Tier (with full enhancement to Normal Pension Age). Thus, as only a quarter fall into the Second and Third Tiers one could argue that a move back to a single Tier arrangement could be justified, with the additional cost being offset by a reduction in the level of enhancement (to something less than full enhancement to Normal Pension Age). The level of enhancement that could be afforded within the cost envelope would need to be determined by GAD and this will be impacted on by the average age of those currently falling within the Second and Third Tiers. The pros and cons of moving to a single Tier arrangement are set out in the table below.

Pros	Cons
Simple to administer / understand	Out of step with the other standard accrual public service pension scheme operated in local government
No appeals relating to Tier a member has been placed in	
No (Third Tier) reviews. Admin savings from removal of reviewable Third Tier.	Does not conform with the principles behind the recommendations in the HM Treasury "Review of ill health retirement in the public sector" i.e. that ill heath provision should be targeted with better benefits for those most seriously ill.
Increase in level of benefit for those falling within current Second and Third Tiers	Decrease in level of benefit for those falling within current Top Tier.
Level of current Top Tier enhancement for younger members can produce very large strain on Fund costs (more than £600,000 at the extreme) which, for smaller stand-alone employers, can be hard to meet. The level of enhancement under a single Tier would be less, meaning that one-off strain on Fund costs in any single case might be easier for smaller stand-alone employers to meet.	

Three tiers

35. Alternatively, a three tier system could be retained but with the benefit for anyone falling within the current Third Tier definition becoming entitled to an immediate unenhanced pension.

36. This, of course, would lead to additional costs. The level of enhancement at the Second and Top Tiers that could be afforded within the cost envelope would need to be reviewed by GAD but would be less than currently provided under the Top and Second Tiers.

Pros	Cons
All members whose employment is terminated on the grounds that they are permanently incapable of undertaking their job would be entitled to a long-term, ongoing pension.	Does not fully conform with the principles behind the recommendations in the HM Treasury "Review of ill health retirement in the public sector" i.e. that ill heath provision should be targeted with better benefits for those most seriously ill.
Simple to administer / understand	Out of line with the other standard accrual public service pension scheme operated in local government
No (Third Tier) reviews. Admin savings from removal of reviewable Third Tier.	Appeals relating to Tier a member has been placed in are still likely
Increase in level of benefit for those falling within current Third Tiers	Decrease in level of benefit for those falling within current Top and Second Tier.

Two tiers

37. It can be argued that a two tier ill health system is more appropriate as it provides for consistency with the other standard accrual public service pension schemes operated within local government and continues to deliver the principles behind the

recommendations in the HM Treasury "Review of ill health retirement in the public sector" that ill heath provision should be targeted, with better benefits for those most seriously ill.

38. Before considering, in a two tier system, what the appropriate level of benefit in the Top and Second Tier should be, it is first necessary to consider what should happen to members who would currently fall within the Third Tier.

39. One could take the view that those who fall into the current definition for a Third Tier pension should receive no benefits as, although they have been dismissed by the employer on the grounds that they are permanently incapable of discharging efficiently the duties of their employment, they are likely to be capable of undertaking other gainful employment within three years of leaving the employment, or before their Normal Pension Age if earlier. This Secretariat is of the view that such an approach would not be acceptable to the unions.

40. There are, thus, only two potential options for consideration.

41. The first option is that members who do not fall within the current definitions for entitlement to a Top or Second Tier pension would have no entitlement to the immediate payment of a pension. Instead, the level of savings falling to employers (from non-payment of Third Tier pensions) could be used to provide a lump sum compensation payment to help tide the member over until they become capable of / obtain gainful employment. There would be no need to change the level of enhancement at the Top and Second Tiers.

Pros	**Cons**
The payment would be a one off payment	
Once paid, no need for a subsequent review but person could subsequently have deferred LGPS benefits brought into payment early if health worsens.	If the person believes that they should have been awarded a Top or Second Tier ill health pension they will appeal under IDRP and, if successful, would receive an ill health pension. Any termination payment already received would have to be paid back to the ex-employer.
If the payment was discretionary, the cost could be controlled by employers	Employers would need to draw up and maintain a policy on the exercise of their discretion. The national unions would be opposed to a system under which payment is discretionary.
If the payment was mandatory, all employees would receive a payment, which might be seen to be fairer than if the benefit were discretionary. The level of payment would need to be such as to remain within the cost of the current Third Tier cost envelope. No need for employers to produce and maintain a policy.	Lack of discretion for employers.
All employees who do not meet the Top or Second Tier criteria, not just those in the Pension Scheme, could be awarded a termination payment.	Not consistent with Top and Second Tier pensions, as these are only provided to those in the Pension Scheme.

42. The second option is that those who currently fall within the Third Tier should be entitled to a Second Tier pension. This, of course, would lead to additional costs. The level of this

additional cost will depend on the average age of those falling within the current Third Tier definition.

43. The level of enhancement at the Top and Second Tiers that could be afforded within the cost envelope would need to be reviewed by GAD but would be less than currently provided under the Top and Second Tiers. One option would be for the Second Tier to be unenhanced (as is the case in the NHSPS and TPS).

Pros	**Cons**
All members whose employment is terminated on the grounds that they are permanently incapable of undertaking their job would be entitled to a long-term, ongoing pension.	Does not fully conform with the principles behind the recommendations in the HM Treasury "Review of ill health retirement in the public sector" i.e. that ill heath provision should be targeted with better benefits for those most seriously ill.
Simple to administer / understand	
In line with the other standard accrual public service pension scheme operated in local government	
No (Third Tier) reviews. Admin savings from removal of reviewable Third Tier.	Appeals relating to Tier a member has been placed in are still likely
Increase in level of benefit for those falling within current Third Tiers	Decrease in level of benefit for those falling within current Top and Second Tier.

Options for consideration – should there be more than one gate to determine entitlement to an ill health pension?

44. The LGPS in England and Wales is the only one of the standard accrual public service pension schemes operating in local government that requires a member to get through two gates before becoming entitled to an ill health pension i.e.

- Gate 1 - 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 i.e. the member will, more likely than not, be incapable until, at the earliest, the member's Normal Pension Age; and

- Gate 2 - 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).

45. All the other schemes simply apply the equivalent of Gate 1.

46. What are the pros and cons of removal of Gate 2?

Pros	**Cons**
Simplifies the decision making process	Adds to costs, as members who would not previously have been entitled to an ill health pension would now be entitled to one
Consistent with the other standard accrual public service pension scheme operated in local government	

47. An alternative would be for gate 2 to be removed but, if the Second Tier would normally provide entitlement to an enhanced pension, anyone who is immediately capable of undertaking gainful employment or who would be capable of such employment within 3 years of leaving would be awarded an unenhanced pension (i.e. a variation on paragraphs 35 and 36 above).

Options for consideration – should the Top Tier benefit be reviewable?

48. In the current LGPS in England and Wales only the bottom, Third Tier, pension is reviewable. The Top and Second Tier pensions are not reviewable. A different approach is taken in the TPS and the NHSPS where the Top Tier (enhanced) pension is reviewable i.e. in the NHSPS if the member is re-employed and earnings are above the NI lower earnings limit (£5,772 in 2014/15) the member ceases to be entitled to a Top Tier enhanced pension and is moved to a Second Tier unenhanced pension; and in the TPS the enhanced pension ceases if the person again becomes a teacher whilst under Normal Pension Age or the impairment in the person's ability to carry out any work falls to 90% or less (in which case the member could request that an unenhanced pension is then paid).

49. If the LGPS in England and Wales were to move to a two tier approach, consideration would need to be given to whether or not the Top Tier pension should be reviewable, with the member being moved to the Second Tier if the member ceases to meet the conditions for entitlement to a Top Tier pension.

Pros	**Cons**
An element of consistency with TPS and NHS Pension Schemes	Need to monitor earnings – adding to administrative overheads (given that currently around 75% of members fall into the Top Tier) and possible overpayments that need to be recovered.
May help limit overall costs	Savings may not be material – given that to receive a Top Tier pension the Independent Registered Medical Practitioner has already certified that the member is permanently incapable of undertaking gainful employment to Normal Pension Age.
	Moving retirees to a lower Tier subsequent to the initial ill health retirement could lead to appeals.

50. If the LGPS in England and Wales were to move to a three tier approach, with the Third Tier being an unenhanced non-reviewable (ongoing) pension, consideration would need to be given to whether or not the Top and Second Tier pensions should be reviewable, with the member being moved to the appropriate lower tier if the member ceases to meet the conditions for entitlement to tier of pension they were originally awarded.

Pros	**Cons**
May help limit overall costs	Under the current system only one tier (the Third Tier) of benefits have to be monitored. This would mean two tiers (the Top and Second Tiers) would have to be monitored, adding to administrative overheads and possible overpayments that need to be recovered.

	Moving retirees to a lower Tier subsequent to the initial ill health retirement could lead to appeals.

Options for consideration – minimum period of membership for entitlement to an enhanced ill health pension

51. Under the 2014 Scheme, a member who has met the 2 year vesting period is entitled to an enhanced pension if retired on ill health grounds under the Top or Second Tier.

52. The 2 year vesting period is met if the member:

- has been a member of the LGPS in England and Wales for 2 years, or
- has brought a transfer of pension rights into the LGPS in England or Wales from a different occupational pension scheme or from a European pensions institution and the length of service in that scheme or institution was 2 or more years or, when added to the period of time the member has been in the LGPS is, in aggregate, 2 or more years, or
- has brought a transfer of pension rights into the LGPS in England or Wales from a pension scheme or arrangement which did not allow members to receive a refund of contributions, or
- has previously transferred pension rights out of the LGPS in England or Wales to a pension scheme abroad (i.e. to a qualifying recognised overseas pension scheme), or
- already holds a deferred benefit or is receiving a pension from the LGPS in England or Wales (other than a survivor's pension or pension credit member's pension), or
- has paid National Insurance contributions whilst a member of the LGPS and ceases to contribute to the LGPS in the tax year of attaining pension age, or
- ceases to contribute to the LGPS at age 75.

53. An option that could be considered upon a move away from the current three tier system would be to also, at the same time, move to a position whereby:

- a member who has met the 2 year vesting period but has less than 5 years membership* would be entitled to an unenhanced ill-health pension, and
- a member who has 5 or more years membership* would be entitled to a Top Tier or Second Tier enhanced ill health pension.

* a decision would have to be taken on how to define this i.e. should it be only actual LGPS membership or should it include the qualifying service from a transfer in from another scheme?

Pros	**Cons**
Savings could help enable a move to a two tier system	
Rewards those with a reasonable length of scheme membership	Differential treatment of members.

54. The impact on the level of enhancement that could, under such an approach, be awarded within the cost envelope would depend on the number of members who retire on ill health grounds with 2 or more but less than 5 years membership and this would need to be determined by GAD.

Options for consideration – should the decisions on termination of employment and entitlement to a pension be taken by the same body?

55. In the LGPS, the termination of employment, the decision on whether or not the criteria for entitlement to an ill health pension have been met and the Tier of pension to be awarded are all made by the employer, after having obtained a Certificate from an Independent Registered Medical Practitioner. In the NHSPS the employer decides whether to terminate employment because of ill health and the Secretary of State decides whether the ill health is permanent and the Tier of benefit to be paid, based on a recommendation from Atos healthcare. In the TPS the member can simply apply to the Scheme for ill health retirement – the Secretary of State decides whether the ill health is permanent and the Tier of benefit to be paid, based on a recommendation from Atos healthcare, and the employer must then terminate the member's employment if the teacher is still employed by them – so there is a slight blurring of the lines in the TPS in that whilst the employer is responsible for terminating the member's employment, the employer must do so if the Secretary of State determines the member is permanently incapable of performing the duties of a teacher.

56. The decision to terminate employment is clearly a decision that the employer must take under employment law.

57. Whether or not the employer should be responsible under the LGPS for deciding whether a member meets the criteria for payment of an ill health pension and, if so, what Tier to award is, perhaps, less clear. An argument for the employer making the pension decision is that it is the employer that must ultimately pick up the cost of that early retirement. However, that is also an argument for an employer not being responsible for making the decision (as they could be influenced by cost considerations).

58. Clearly there is a reasonable argument to say that the employer must decide whether employment should be terminated and the LGPS administering authority should determine whether or not a member meets the criteria for an ill health pension and the Tier to be awarded.

59. If such a change were to be introduced into the LGPS then a number of issues would need to be addressed e.g.

- such a change would necessitate a change in procedures and would require close liaison between the administering authority and the employer in the lead up to the termination of employment, as it is important for both the scheme member and the employer to know before employment is terminated whether or not the member will be entitled to a pension and, if so, the amount, and

- such a change could have significant implications for the existing contractual agreements between employers and their Independent Registered Medical Practitioners (IRMPs). Either:

    a) the employer would still have to be responsible for obtaining the medical advice from an IRMP and would then pass that advice to the relevant administering authority to determine whether or not a pension should be awarded and, if so, what tier of benefit should be awarded, or

b) the administering authority would become responsible for obtaining the medical advice from an IRMP and for determining whether a pension should be awarded and, if so, the Tier to be awarded. Existing contracts between employers and IRMPs would either have to be honoured until the contract end date, or terminated under any termination clause, or assigned to the administering authority under any assignment clause.

Pros of employer making the pension decision	**Cons of employer making the pension decision**
Employer ultimately pick up the cost of the early retirement	Cost may influence decision taken by the employer
Decisions on termination of employment and eligibility for a pension taken by a single body	
	Lack of consistency in decision making process for determining entitlement to a pension – due to differing degrees of capability / capacity within employers (and because different employers use different IRMPs)
No impact on current procedures or on existing contracts with IRMPs	
Employer pays for the cost of obtaining medical advice from the IRMP	

Pros of administering authority making the pension decision	**Cons of administering authority making the pension decision**
Cost will not influence the decision taken by the administering authority	Employer ultimately pick up the cost of the ill health pension benefits but has no control over benefits awarded
	Decisions on termination of employment and eligibility for a pension not taken by a single body
Consistency in decision making process for determining entitlement to a pension	Need for close liaison between the employer and the administering authority in the lead up to termination of employment.
Administering authority could be responsible for obtaining medical advice from IRMP resulting in consistency of advice (flowing from the use of a smaller number of IRMPs)	Potential impact on existing contracts with IRMPs and would need to determine how cost for medical advice from IRMP would be met – if charged to the administering authority and they recharge the employer, this would add to administration

Options for consideration – should the initial medical advice from an IRMP be under local arrangements or should it be centralised?

60. Whether the medical advice is, under the paragraph above, to be obtained by the employer or by the administering authority, consideration should be given to whether or not that the provision of that advice should continue under local arrangements or whether the medical advice should be obtained via a centralised contract (as is the case with the NHSPS and the TPS who have contracted with Atos healthcare).

61. An advantage of moving to a centralised contract would be that there would be consistency of advice across all employers / administering authorities / members.

However, the downside would be that the process would become even more of a paper driven exercise with, perhaps, less ability for a local examination.

62. Furthermore, consideration would need to be given to whether or not any existing centralised provider has, or could achieve, the capacity to deal with the volume of additional work. Existing contracts between employers and IRMPs would either have to be honoured until the contract end date or terminated under any termination clause.

Pros of centralised medical advice	**Cons of centralised medical advice**
Consistency across all employers / administering authorities / members of medical advice obtained	Becomes more of a paper driven exercise with, perhaps, less ability for a local examination
	Impact on existing contracts with IRMPs
	Does any existing centralised medical advisory service have the capacity to deal with additional work that would result?
	Need to determine: - who would commission / arrange the centralised contract - who the contract would be with (each administering authority or each employer participating in the scheme) - who would pay for the medical advice provided (each employer as and when they use the service or each administering authority as and when an employer in their Fund uses the service) and if the administering authority pays, how would they recoup the expense from the employer (e.g. if on a case by case basis this would add to administration in raising / chasing invoices)

Options for consideration – how should medical disputes be managed under the Internal Dispute Resolution Procedure (IDRP)?

63. Under the current arrangements there is a two stage IDRP. The first stage appeal is determined by an adjudicator appointed by the employer and the second stage appeal is determined by an adjudicator appointed by the administering authority.

64. Should the process be changed to a single stage process (for all IDRPs, not just those relating to ill health), with determinations being made by an adjudicator appointed by the administering authority, as permitted by section 50 of the Pensions Act 1995 and the Occupational Pension Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments) Regulations 2008 [SI 2008/649]?

Pros of a single stage IDRP at administering authority level	**Cons of a single stage IDRP at administering authority level**
Simpler, less wieldy process – one less step for member to go through before being able to take a case to the Pensions Ombudsman	Loss of ability for issue to be resolved at a lower level
Perhaps seen by members as being more impartial than the initial stage 1 in a 2 stage appeal process	

Consistency of decision making at the initial appeal stage	
Adjudicator at the administering authority level likely to be more knowledgeable than, perhaps, an adjudicator in a very small employer due to size of the organisation and the number of appeals dealt with	Greater number of appeals to be dealt with by the adjudicator at the administering authority.
	Need to determine how the adjudicator's costs are to be met.

65. Furthermore, should that that single stage be at the administering authority level or can it be at a centralised level? Section 50 of the Pensions Act 1995 says that the 'trustees or managers' of the scheme must make the decision. Section 124 of that Act says that in the case of a scheme which is a non-trust based scheme, 'trustees or managers' means the managers of the scheme (which it defines as being 'the persons responsible for the management of the scheme').

Pros of a centralised single stage IDRP	**Cons of a centralised single stage IDRP**
Perhaps seen by members as being more impartial than an appeal at administering authority level	Loss of ability for issue to be resolved at a local level
Even greater consistency of decision making at the appeal stage	
Likelihood of adjudicator(s) having even greater knowledge than adjudicators at administering authority level due to the number of appeals dealt with	Potential difficulty in finding adjudicators willing to act at a national level. Number of appeals could mean that the adjudicator position(s) could be full-time and remunerated.
	Need to determine: - who would commission / arrange the centralised contract with the adjudicators - who the contract would be with - who would meet the adjudicator's costs - how those costs would be recouped

66. Additionally, even if the answer to the question posed under paragraph 60 is that the initial medical advice should continue to be provided under local arrangements, should a central panel of IRMPs be set up to provide opinions where requested to do so in relation to all medical IDRP cases?

Pros of a centralised panel of IRMPs to give an opinion in medical appeals	**Cons of a centralised panel of IRMPs to give an opinion in medical appeals**
Greater consistency of advice at the appeal stage	Potential difficulty in finding IRMPs willing to act at a national level.
Perhaps seen by members as being more impartial than advice given by IRMP appointed by the employer (or the administering authority)	Need to determine: - who would commission / arrange the centralised contract with the IRMPs - who the contract would be with - who would meet the IRMPs costs - how those costs would be recouped

Conclusion

67. The Shadow Scheme Advisory Board is asked to consider this report and determine:

a) which of the options outlined in the paper the Board wishes the Administration and Communications Sub-Committee to investigate in more detail

b) how the fees for any actuarial advice needed to cost those options are to be met

c) the process to be followed (e.g. the Sub-Committee obtains costings for the options the Board wishes to be investigated further, the Sub-Committee reports back to the Board, the Board determines which of the costed options it prefers, whether there should then be an informal consultation with employers and unions to obtain backing before putting recommendations to the Secretary of State)

68. When considering which of the options outlined in the paper the Board wishes the Administration and Communications Sub-Committee to investigate in more detail, the Board will need to take a view on what the primary drivers for change are and their relative importance e.g.

- a requirement for a simpler system than the current three tier arrangement
- a non-targeted, single tier ill health system or a targeted system providing a higher level of benefits for those more seriously ill than others
- consistency of approach

69. The Sub-Committee believe that, depending on the decisions taken by the Board in relation to item (a) in paragraph 67 above, the Sub-Committee could seek to determine:

- what the additional cost would be of moving to the position that applies in the LGPS in Scotland
- what level of savings would result if entitlement to an enhanced ill health pension only arose after 5 years membership (instead of the current 2 years membership)
- what the effect on the level of Top Tier enhancement would be if all of any additional costs arising from the options to be investigated were recovered by a reduction in the level of the Top Tier enhancement
- what the effect on the level of Second Tier enhancement would be if all of any additional costs arising from the options to be investigated were recovered by a reduction in the level of the Second Tier enhancement
- what the effect on the level of Top Tier and Second Tier enhancement would be if all of any additional costs arising from the options to be investigated were recovered by a proportionate reduction in the level of Top Tier and Second Tier enhancement.