

Ombudsman's Determination

Applicant	Mr S
Scheme	Sears Retail Pension Scheme
Respondents	The Trustees of the Sears Retail Pension Scheme (the Trustees)

Outcome

1. Mr S' complaint against the Trustees is partly upheld, but there is a part of the complaint I do not uphold. To put matters right (for the part which is upheld), the Trustees shall review their decision not to waive the early payment reduction in Mr S' case.

Complaint summary

2. Mr S has complained that the Trustees have declined to pay his deferred pension early on the grounds of ill health. He has also complained that the Trustees have not "inflation-proofed" his Guaranteed Minimum Pension (**GMP**).

Background information, including submissions from the parties

Background

3. Mr S became a deferred member of the Scheme in October 1983.
4. Mr S made enquiries about the early payment of his pension on the grounds of ill health in 2003. He said his health had been in serious decline since 1996 and he had been diagnosed with MS. Mr S said he would try to continue working for as long as possible but it was likely that he would have to give up work in due course. He said he understood that, under the Scheme Rules, he would be entitled to draw his pension early in the event of not being able to work.
5. The Scheme administrator provided Mr S with an estimate of his pension. It said his deferred pension amounted to £1,099.20 a year when he left and, with revaluation, would be £4,945.80 a year at his normal pension age (**NPA**). The administrator said, because Mr S' pension at NPA would consist wholly of GMP, it would not be possible for him to draw the pension any earlier. It said the Scheme Rules would require a reduction to the pension for early payment and this was not possible because it was required to pay the GMP.

6. Mr S sought further clarification. The Scheme administrator said deferred members were entitled to apply for early retirement on the grounds of ill health and each case would be considered on its merits.
7. Mr S retired on the grounds of ill health in April 2008.
8. In 2014, Mr S made further enquiries about either transferring his pension or taking it early on the grounds of ill health. The Scheme administrator sent Mr S a medical form for completion. In subsequent correspondence, the administrator said the option of applying for ill health early retirement was available to deferred members. It said the pension could not be paid if it was less than the GMP payable at Mr S' NPA and it was likely that his pension would not be enough to allow early retirement.
9. Mr S also enquired whether his GMP would be "inflation proofed". The Scheme administrator said the GMP would be paid by the Scheme at age 65, unless Mr S transferred it to another pension arrangement. It said Mr S' GMP was entirely made up of pre-1988 GMP and would not increase in payment. In response to further enquiries from Mr S, the Scheme administrator said the Scheme would not increase Mr S' GMP once in payment. It said a "broadly equivalent amount of additional state pension" would be increased by the Government and the increase paid with Mr S' basic state pension. The Scheme administrator subsequently explained that Mr S' GMP was subject to Fixed Rate Revaluation at 8.5% between the date he left and age 65. It said, once Mr S reached age 65, future increases would be paid by the Government.
10. Mr S asked what the position would be after April 2016; that is, after contracting-out was abolished. He suggested that the Scheme would be responsible for post-retirement increases to his GMP. The Scheme administrator responded that there were no proposed changes to the way pension increases applied to pre-1988 GMP. It said the Scheme was not required under legislation to increase Mr S' GMP.
11. In support of his request for early payment of his deferred pension on the grounds of ill health, Mr S submitted medical reports from 2007/08. He said he had previously incorrectly been told that he would not be entitled to early retirement on health grounds and he wished his application to be considered as at 2007/08.
12. On 29 June 2016, the Trustees' medical officer (**MO**) wrote to the Secretary to the Trustees. He said he had reviewed the medical reports relating to Mr S dating from 2007. The MO said, at that time, his report would have said:

"I have received reports on [Mr S] and confirm that he is unfit for work in any respect for the foreseeable future and as such I recommend early retirement on the grounds of ill health with a Grade 3 medical incapacity and a 3 year review."
13. On 14 July 2016, the Secretary to the Trustees wrote to Mr S saying they had requested advice from their MO as to whether he qualified for payment of a medical retirement pension as at August 2007 and, if so, at what level. The Secretary said:

“However, in consideration of the medical information you produced, the Trustees’ independent Medical Officer was asked to advise whether payment of a pension on the grounds of “serious ill health” would have been appropriate given your condition in April 2007 [*sic*]. As the definition implies, this prognosis only applies in the most serious cases where an individual is unfortunately totally incapacitated and/or has very limited (generally less than twelve months’) life expectancy. It is only in these most severe instances that pensions may be paid early on an unreduced basis even though, like you, a member’s benefit comprises revalued GMP only.

The Medical Officer concluded that the medical evidence provided would not have supported payment of a “serious ill health” pension. Accordingly, for the pension to be put into payment in 2007, it would have had to be reduced – but again, that was not possible due to the requirement to meet the revalued GMP test ...”

14. The Secretary to the Trustees wrote to Mr S again on 1 September 2016. With regard to increases to Mr S’ GMP once in payment, he said the Government would no longer be paying increases for individuals who retired after 6 April 2016. He provided Mr S with a link to a Government paper: Briefing Paper CBP-4956, 1 February 2019.
15. On 3 March 2017, the Secretary to the Trustees wrote to Mr S. He said each grade of medical incapacity qualified a member to be considered for a level of pension which was a percentage of the deferred pension they had built up in the Scheme. He said the level of pension which might have been payable to Mr S, in 2007, for a Grade 3 condition (£3,055.44) was less than his GMP at NPA (£4,945.80). He said, therefore, the Trustees could not have paid Mr S a Grade 3 pension in 2007. The Secretary to the Trustees said he had enclosed a copy of a framework which had been agreed between the Trustees and their MO. This sets out five grades relating to medical incapacity. Full details are provided in Appendix 1. Grade 3 was described as:

“Major chronic disease affecting the patient’s ability to work and the person is likely to be permanently incapacitated and unable to work for the foreseeable future. Such patients should therefore generally receive early retirement. These people usually have considerable difficulties managing daily life activities.”
16. Unfortunately, the framework was omitted from the 3 March 2017 letter. However, on 30 March 2017, the Secretary to the Trustees did provide Mr S with a copy.
17. Following further enquiries by Mr S, the Secretary to the Trustees explained that the term “Serious Ill-Health” was not defined in the Scheme rules. He said the Trustees used the HMRC definition, which anticipated that the member had a life expectancy of less than one year. He said the only grade of ill health which allowed the Trustees to pay an unreduced pension was Grade 5 (see Appendix 1). Mr S responded saying “Serious Ill-health” was defined, in a set of guidance notes, as being forced to give up work in any capacity. The guidance notes stated:

“Early retirement will only be permitted where the resultant early retirement pension is at least equal to the Revalued GMP at SPA discounted by 3% for each tax year by which the member’s age at date of early retirement is below SPA.

If “serious” ill-health (with medical evidence satisfactory to the Trustees’ Medical Adviser) forces early retirement, the member will be entitled to an ‘unreduced’ pension revalued to the date of retirement. Less serious cases of ill-health will be subject to actuarial reduction depending upon nature of illness.”

18. The Trustees confirmed their position in their stage two internal dispute resolution (**IDR**) procedure decision. They referred Mr S to Rule 6.5, which provides:

“A Member entitled to a deferred pension may request payment of the pension from a date before Normal Pension Date. Where a Member makes such a request:

- (1) if at the date in question the Member is suffering from Ill-health, then subject to the consent of the Trustees the pension may be paid from that date, with a reduction (unless the Trustees decide otherwise) to take account of payment before age 60;

...

A Member will not be entitled to early payment under this Rule 6.5 if, in the opinion of the Trustees, his or her pension at State Pension Age ... would be less than the Revalued GMP.”

19. “Ill-health” is defined in the Scheme Rules as:

“serious ill-health which prevents (and will continue to prevent) the Member from following his or her normal employment. The decision of the Trustees will be final as to whether a Member is suffering from Ill-health or a retirement is due to Ill-health. The Trustees’ decision must be supported by evidence from a registered medical practitioner. The Trustees will be entitled (but not obliged) to rely on the opinion of the Scheme’s medical adviser.”

20. In subsequent correspondence with Mr S’ TPAS adviser, the Secretary to the Trustees provided details of the methodology for calculating ill health retirement pensions for deferred members. Briefly, for Grades 2 and 3, the early retirement pension is uprated by 2.5% for each year between retirement and NPA (to a maximum of 25%); and, for Grades 4 and 5, the pension is uprated by 5% (to a maximum of 50%).

21. The Scheme administrator subsequently confirmed that the early retirement pension is compared with a discounted GMP at date of retirement. It said it had looked at the situation if Mr S had been assessed as grade 4 in 2007 (receiving an uplift of 5% per annum). The administrator said Mr S’ pension would still have been less than his

GMP at NPA. It said the early retirement factor in force when calculations were done for Mr S was 7.6%; this subsequently changed to 7.22%.

Mr S' position

22. Mr S submits:-

- In 2003, he was told that ill health early retirement was only provided for current employees.
- When he challenged this, he was told he could not claim his pension because it was a GMP and a reduction would apply on early retirement.
- He did not contact the Scheme in 2008, when he retired on health grounds, because of the earlier response.
- When he contacted the Scheme in 2014, because he was approaching his NPA, he was asked why he had not applied for early retirement in 2008.
- He then read the Scheme Rules and realised that his GMP could have been paid without reduction in cases of serious ill health, such as his.
- He submitted the reports which had been obtained by his other pension scheme when he retired in 2008. The Scheme administrators would not accept these and he had to obtain an up-to-date report in 2015.
- He was offered early retirement from January 2016, which was only five months before his NPA. He declined to accept this on the grounds that the pension should be backdated.
- The Trustees' MO did not see him or speak to his GP. All the other medical advisers had concluded that he could no longer be employed in any capacity.
- He was not told about the grading system in 2003.
- The grading system only applies to "less serious ill health"; whereas "forced retirement" on serious ill health grounds results in an unreduced pension. This is set out in the Scheme's guidance notes (see paragraph 17). If the grading system applied to all ill health retirement, there would be no need to distinguish between them and the guidance notes would simply refer to medical retirement.
- Despite the MO agreeing that he would not be able to pursue any further employment, it appears that the Trustees have a carte blanche right to simply ignore this and not pay him. If the Trustees have an unchallenged discretion, this leaves him entirely at their whim. It would appear to give the Trustees the freedom to make arbitrary decisions, which surely cannot be right. If the criteria for early payment have been met, it would not be justice if the Trustees were allowed to decide not to pay his pension.

- The Scheme should be responsible for inflation-proofing his pension. This has been confirmed by the Department for Work and Pensions (**DWP**) and the then Pensions Minister.
- The 1978 legislation, which has not been repealed, required contracted-out pension schemes to provide, as a minimum, the equivalent pension to someone who was contracted-in. If the Scheme does not increase his GMP in payment, it will have failed to meet this obligation.

The Trustees' position

23. The Trustees submit:-

- Mr S had an element of non-revaluing benefit in excess of his GMP at the date he left the Scheme. The effect of franking means that his entire benefit now comprises pre-1988 GMP.
- Rule 6.5 provides that an early retirement factor is applied on ill health early retirement unless the Trustees decide otherwise.
- The Trustees, on the advice of their independent MO, operate a five-point system for grading the severity of the member's medical condition. It is only in the most severe cases (Grade 5) that the Trustees do not apply an early retirement reduction factor.
- Mr S left the Scheme in 1983. His GMP was all accrued before 1988. There is no statutory requirement for the Scheme to provide any increases on it.

Adjudicator's Opinion

24. Mr S' complaint was considered by one of our Adjudicators who concluded that some further action was required by the Trustees. The Adjudicator's findings are summarised below:-

- There were two elements to Mr S' complaint:-
 - the Trustees had declined to pay his deferred benefits early on the grounds of ill health; and
 - his GMP would not be increased by the Scheme once in payment.
- Members' entitlements to benefits when taking early retirement due to ill health were determined by a scheme's rules or regulations. A scheme's rules or regulations determined the circumstances in which members were eligible for ill health benefits, the conditions which they must satisfy, and the way in which decisions about ill health benefits must be taken.
- In Mr S' case, the relevant rule was Rule 6.5 (see paragraph 18). Under Rule 6.5, a deferred member may request the early payment of their pension on the

grounds of “Ill-health”. Payment of the pension early was subject to the consent of the Trustees. The pension would be reduced for early payment unless the Trustees decided otherwise. Ill-health was defined as “serious ill-health which prevents (and will continue to prevent) the Member from following his or her normal employment”.

- Early payment of a deferred pension on the grounds of Ill-health was, therefore, a matter of discretion for the Trustees. This limited the extent to which the Ombudsman could interfere with the decision. The Ombudsman’s role was limited to ensuring the decision-making process was correctly followed. The Ombudsman could only interfere with the decision if the Trustees: failed to take something relevant into account or took something irrelevant into account; reached a decision no reasonable person could have reached; failed to ask the right questions as determined by the Scheme Rules; or failed to construe the Scheme Rules correctly.
- In order for Mr S to be considered for the early payment of his pension, he first had to meet the definition of Ill-health as set out in the Scheme Rules. This referred to serious ill health which prevented Mr S from following his normal employment and would continue to do so. It was for the Trustees to determine whether or not Mr S was suffering from Ill-health and their decision had to be supported by evidence from a registered medical practitioner. This could be, but was not confined to, evidence from the Scheme’s medical adviser.
- The first question for the Trustees to consider was, therefore, whether Mr S met the definition of Ill-health; that is, whether his medical condition was such that it would prevent him from following his normal employment and was likely to continue to do so. The Courts had found that, in ill health retirement cases, incapacity for employment should be expected to last at least until the member’s NPA¹. This was a finding of fact; Mr S either met the definition of Ill-health or he did not.
- The Scheme Rules required the Trustees to obtain medical evidence before reaching a decision as to whether Mr S is suffering from Ill-health. They did so by requesting an opinion from their MO. He expressed the view that Mr S was “unfit for work in any respect for the foreseeable future”. On that basis, Mr S met the definition of Ill-health.
- The Adjudicator noted that there had been some discussion in the correspondence as to whether Mr S was suffering from “serious ill health”. The Trustees aligned this with the definition of serious ill health applied by HMRC. They had referred to a member with a life expectancy of less than one year. The Adjudicator took this to be a reference to the provision within the Finance Act 2004 for payment of a serious ill-health lump sum benefit where the

¹ *Harris v Shuttleworth* [1994] PLR 47

scheme had received evidence from a registered medical practitioner that the member was expected to live for less than one year².

- The Trustees acknowledged that this definition of serious ill health was not contained in the Scheme Rules. It arose from a grading system they had agreed with their MO. The grading system also did not form part of the Scheme Rules. The system required the Trustees' MO to place a member's incapacity within one of five grades (see Appendix 1). This system had been developed for the purposes of assisting the Trustees in coming to the decisions they were required to make under the Scheme Rules.
- Following on from the question of whether or not Mr S met the definition of ill-health, the Trustees had two discretionary powers under Rule 6.5. The first was to consent to early payment of the deferred pension; the second was to determine whether or not the pension should be reduced.
- Mr S' case was complicated by the fact that his deferred pension was entirely comprised of pre-1988 GMP. The Scheme had a statutory obligation to pay Mr S' GMP at his state pension age. Rule 6.5 provided that Mr S was not entitled to early payment of his deferred pension if his pension at state pension age would be less than his revalued GMP. Because Mr S' deferred pension was all GMP, he could not be paid a reduced pension before his NPA. The only way in which Mr S could have been paid his pension before his NPA was if the Trustees exercised their discretion not to reduce the pension.
- The Adjudicator explained that, in addition to the decision-making principles she had already referred to, there was another factor which had to be considered in such cases. That was whether or not the decision-maker had fettered the discretion. Trustees must not limit their discretions by rigidly applying a set list of requirements for awarding benefits which was not set out in the scheme rules. It was not inappropriate for trustees to formulate a policy for the exercise of any discretions open to them under the scheme rules. Such a practice was helpful in maintaining consistency and fairness in their decision-making. However, they had to be careful not to apply the policy so rigidly that they could be said to have fettered the discretion. The trustees had to be able to show that they had genuinely exercised an independent judgment based on the particular facts of a case.
- In Mr S' case, the reason put forward by the Trustees for not exercising their discretion to waive the reduction to his pension was that their MO had not placed his incapacity in the Grade 5 category. Grade 5 was described as covering those members with a life expectancy of less than 12 months who were usually supported for early payment of a pension under HMRC rules. In fact, so far as HMRC requirements were concerned, the short life expectancy was a requirement for payment of a lump sum in place of a pension. It was a

² Paragraph 4, Part 1, Schedule 29

recognition that, in such circumstances, payment of a pension was not appropriate.

- By rigidly applying a requirement for incapacity to be considered a Grade 5 before an unreduced pension would be paid, the Trustees had, in effect, imported a requirement for the statutory “serious ill health” definition to be met into the Scheme Rules. The evidence did not indicate that the Trustees had genuinely exercised an independent judgment based on the facts of Mr S’ case. It was the Adjudicator’s view that they had fettered their discretion.
- It was the Adjudicator’s opinion that the Trustees’ approach to the exercise of their discretion to waive the early retirement reduction in Mr S’ case amounted to maladministration. Mr S had sustained injustice as a consequence because his eligibility for early payment of a pension had not been considered in a proper manner. This part of his complaint could be upheld on that basis.
- The Adjudicator explained that she was not expressing any view as to whether or not it would have been appropriate for the Trustees to waive the early payment reduction in Mr S’ case. This remained a decision for the Trustees to make in accordance with Rule 6.5. A decision not to waive the reduction remained one of the possible outcomes but the Trustees should be able to show that they had come to such a decision after proper consideration of Mr S’ circumstances.
- Mr S had a GMP as a result of being contracted-out of the then state earnings related pension scheme. Contracting-out allowed scheme members and employers to pay a lower rate of National Insurance contribution on the basis that the employer’s pension scheme would provide a minimum level of pension; the GMP. The GMP had to be paid at state retirement age and, in effect, replaced that part of the member’s state pension which they would otherwise have accrued by paying full National Insurance contributions.
- Between the date of Mr S leaving the Scheme and his state retirement age, the Scheme had to increase (revalue) his GMP³. Mr S’ GMP at the date he left the Scheme was £1,099.20 a year. It had increased to £4,945.80 a year. However, Mr S disagreed that the Scheme had no obligation to increase his GMP once it had been put into payment.
- Prior to legislative changes in 2016, members received increases in relation to pre-1988 GMPs from the state pension scheme. The total amount of an individual’s GMP was subtracted from the additional state pension they would have accrued and any net amount was paid by the state pension scheme. The effect was to provide increases on pre-1988 GMPs once in payment. From April 2016, the Government introduced a single-tier state pension. As a result, there was now no additional state pension. An individual’s GMP was deducted

³ Section 16, The Pension Schemes Act 1993

from his/her state pension entitlement at the date of implementation to establish a “foundation amount” of state pension.

- Mr S argued that, with effect from April 2016, the responsibility for increasing pre-1988 GMPs passed to occupational pension schemes.
- Section 109 of The Pension Schemes Act 1993 (see Appendix 2) provided for the increases schemes are required to provide once a GMP is in payment. The key point for Mr S was that the increases applied to “that part of guaranteed minimum pensions which is attributable to earnings factors for the tax years in the relevant period”. The relevant period began with the tax year 1988/89. His GMP was attributable to earnings received in tax years prior to 1988.
- There was no statutory requirement for the Scheme to assume any responsibility for increasing Mr S’ GMP once it is in payment. This part of Mr S’ complaint could not be upheld.
- The Adjudicator suggested that, in order to put matters right for that part of Mr S’ complaint which can be upheld, the Trustees should review their decision not to waive the early payment reduction for Mr S’ deferred pension. The Trustees should then provide Mr S with a decision setting out their reasons and the evidence upon which it was based. If the Trustees decided that it would have been appropriate for them to have waived the early retirement reduction in Mr S’ case, they should pay him arrears of pension from 2007, together with simple interest at the base rate quoted by the Bank of England for the time being.

25. The Trustees indicated that they were willing to undertake the actions suggested by the Adjudicator. However, Mr S did not fully accept the Adjudicator’s Opinion and the complaint was passed to me to consider. Mr S provided his further comments which do not change the outcome. I agree with the Adjudicator’s Opinion and I will therefore only respond to the key points made by Mr S for completeness.

Ombudsman’s decision

26. With regard to the future inflation-proofing of Mr S’ pension once in payment, I do not intend to add to what was said by my Adjudicator. It appears Mr S now accepts the situation as it has been explained to him. He is aware that this part of his complaint cannot be upheld because the Scheme is complying with its statutory obligations.
27. I will, therefore, move to consider the early payment of Mr S’ pension under Rule 6.5.
28. Under Rule 6.5, Mr S’ pension could be paid before his normal pension age if he was suffering from ill-health, as defined in the Scheme Rules. This is subject to the consent of the Trustees and the pension will be reduced to take account of early payment. There is, however, provision for the Trustees to decide to waive the early

payment reduction. The power to waive the early payment reduction is a discretion vested in the Trustees.

29. When a case involves the exercise of a discretionary power, the extent to which I may interfere in a decision is limited. As my Adjudicator explained, my role is to consider whether the decision-making process has conformed to certain well-established principles⁴. I may not exercise the discretion myself and it is irrelevant whether or not I would have come to the same or a similar decision.
30. The fact that the Trustees are expected to follow an established set of principles in making their decision should reassure Mr S. He has suggested that the availability of a discretion has given the Trustees carte blanche to act in an arbitrary way. This is not the case. The Trustees are expected:-
 - To take only relevant matters into account and no irrelevant ones;
 - To adopt the correct construction of the law and the Scheme Rules;
 - To ask the right questions as determined by the Scheme Rules; and
 - Not to reach a decision no reasonable person could have reached.
31. If the Trustees failed to make a decision in accordance with these principles, it would open to me or the Courts to require them to re-take the decision. The discretionary power is not, therefore, a carte blanche to act arbitrarily.
32. There is another factor which must be borne in mind by the Trustees when considering whether or not to exercise the discretion provided by Rule 6.5. That is that they should not fetter their discretion in any way. The Trustees must not limit their discretion by rigidly applying certain requirements for waiving the early payment reduction which are not provided for in the Scheme Rules.
33. I acknowledge that having the grading system in place was helpful in maintaining consistency and fairness in the Trustees' decision-making. However, they have to be careful not to apply the system so rigidly that they can be said to have fettered their discretion. The Trustees must be able to show that they genuinely exercised an independent judgment based on the particular facts of Mr S' case.
34. In Mr S' case, the reason put forward by the Trustees for not exercising their discretion to waive the reduction of his pension is that their MO has not placed Mr S' incapacity in the Grade 5 category. Grade 5 is described as covering those members with a life expectancy of less than 12 months who are usually supported for early payment of a pension under HMRC rules. In fact, HMRC requires evidence of a short life expectancy when a scheme wishes to pay a lump sum in place of a pension. It recognises that, in such circumstances, payment of a pension is not appropriate.

⁴ *Edge v the Pensions Ombudsman* [1999] 4 All ER 546

35. By rigidly applying a requirement for incapacity to be considered Grade 5 before an unreduced pension would be paid, the Trustees effectively imported a requirement to meet the statutory "serious ill health" definition into the Scheme Rules. I find that the evidence does not indicate that the Trustees genuinely exercised an independent judgment based on the facts of Mr S' case. I find that they fettered their discretion.
36. This does amount to maladministration on the part of the Trustees. Mr S sustained injustice as a consequence because his eligibility for early payment of a pension has not been considered in a proper manner.
37. Therefore, I uphold Mr S' complaint.

Directions

38. Within 28 days of the date of the Determination, the Trustees shall review their decision not to waive the early payment reduction for Mr S' deferred pension. The Trustees shall then provide Mr S with a decision setting out their reasons and the evidence upon which it is based.
39. If the Trustees decide that it would have been appropriate for them to have waived the early retirement reduction in Mr S' case, they shall pay him arrears of pension from 2007, together with simple interest at the base rate quoted by the Bank of England for the time being.

Anthony Arter

Pensions Ombudsman
27 November 2019

Appendix 1

Summary of Sears Pension Scheme Medical Criteria

- Grade 5: Covers those members with a terminal illness (usually cancer) of short life expectancy of usually less than 12 months and they were usually supported for early payment of pension under the Inland Revenue rules. Unusual for there to be more than one person awarded Grade 5 annually.
- Grade 4: Severe major illness with disabling incapacity rendering the person difficult to exist independently e.g. being registered blind or having a stroke rendering them unable to speak and unable to walk.
- Grade 3: Major chronic disease affecting the patient's ability to work and the person is likely to be permanently incapacitated and unable to work for the foreseeable future. Such patients should therefore generally receive early retirement. These people usually have considerable difficulties managing daily life activities.
- Grade 2: A chronic disease that prevents a person from continuing in their position of employment. No prospect of being able to return to work for the foreseeable future. These people can usually manage most of their daily activities.
- Grade 1: A person with specific chronic health problems rendering them permanently unable to undertake the position they were employed for but can otherwise function adequately in their daily living.

Note that the disease/illness must be of long standing and chronic in nature to be eligible for early retirement.

Appendix 2

The Pension Schemes Act 1993

40. Section 109 provides for annual increases to be paid to GMP as follows:

- “(1) The Secretary of State shall in each tax year review the general level of prices in Great Britain for the period of 12 months commencing at the end of the period last reviewed under this section.
- (2) Where it appears to the Secretary of State that that level has increased at the end of the period under review, he shall lay before Parliament the draft of an order specifying a percentage by which there is to be an increase of the rate of that part of guaranteed minimum pensions which is attributable to earnings factors for the tax years in the relevant period for -
 - (a) earners who have attained pensionable age; and
 - (b) widows, widowers and surviving civil partners.
- (3) The percentage shall be -
 - (a) the percentage by which that level has increased at the end of the period under review; or
 - (b) 3 per cent.,whichever is less.
- (3A) The relevant period is the period -
 - (a) beginning with the tax year 1988–89, and
 - (b) ending with the last tax year that begins before the principal appointed day ...”