

## Ombudsman's Determination

Applicant	Ms G
Scheme	Local Government Pension Scheme ( <b>LGPS</b> )
Respondent	Humber Bridge Board ( <b>the Board</b> )

## Outcome

1. I do not uphold Ms G's complaint and no further action is required by the Board.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Ms G's complaint against the Board, her employer, is that it has decided she is not entitled to pension benefits on the grounds of ill health from active status.

## Background information, including submissions from the parties

4. From around July 2010, Ms G was an employee of the Board working as head of operations and human resources. She was also a member of the LGPS.
5. In April and September 2014, Ms G raised grievances with the Board in relation to her health in general, and the impact of management decisions on her health in particular. However, she says that the Board failed to take appropriate action.
6. On 13 July 2015, she went off sick "after raising grievances concerning [various problems which included] worsening of my MS symptoms. These were not addressed... Due to worsening health issues I was unable to continue working."
7. On 14 July 2015, a "Statement of Fitness for Work" (**fitness statement**) was signed by Ms G's doctor indicating she was not fit for work due to "stress" and it was date stamped as received by the Board on 16 July 2015.
8. On 20 July 2015, a fitness statement was signed by Ms G's doctor indicating she was not fit for work due to "stress" and "multiple sclerosis [**MS**]" and it was stamped as being received by the Board on 24 July 2015.

9. On 18 August 2015, a fitness statement was signed by Ms G's doctor indicating she was not fit for work due to "stress" and "[MS]" and it was stamped as being received by the Board on 24 August 2015.
10. On 21 August 2015, Ms G's employment was terminated by the Board. At this date, she was still absent from work through ill health.
11. Ms G appealed the decision to terminate her employment. A hearing was scheduled for 30 November 2015 but it did not go ahead. A further hearing was scheduled for 10 March 2016 which did take place. Ms G says the Board settled her case "due to wrongful dismissal"; the Board says it was settled without admission of liability.
12. On 23 March 2016, an employee leaver form, notifying East Riding Pension Fund (**the Administrator**) of the end of Ms G's employment with the Board, was signed.
13. On 11 April 2016, the form was sent to the Administrator with a covering letter, and the Administrator received it on 12 April 2016.
14. On 9 November 2016, the Administrator wrote to Ms G and stated: -

"A recent review of my records has identified that you were not provided with a statement of your Deferred Benefits at the time your membership of the [LGPS] ended on 21 August 2015...

You may be able to take your benefits from age 55 but with reductions for early payment. You should contact [the Administrator] at this time for full details."
15. On 20 November 2016, Ms G applied for payment of her deferred benefits under the LGPS. She also complained about the delay in informing her of her pension options. The Administrator arranged a medical examination with an independent registered medical practitioner (**IRMP**).
16. On 30 November 2016, Hull City Council (**the Council**) sent Ms G an application and consent forms. At the same time, the Board wrote to Ms G, saying it had asked the Council to contact her to make arrangements for a medical examination.
17. On 16 February 2017, the Council wrote to Ms G with details of the medical examination she was to attend.
18. On 7 March 2017, Dr Tony Hynes, consultant occupational health physician, wrote to occupational health at the Council. He stated: -

"In my opinion, based on my assessment of the available medical evidence, [Ms G] is permanently incapacitated from the duties of her former job role as a Head of HR and Operations. I do not think she is likely to be capable of gainful employment, as defined in the [LGPS] guidelines, in the future."

19. On 8 March 2017, the Council wrote to Ms G saying that her application had been accepted and it had contacted her management about putting her benefits into payment.
20. On 30 March 2017, the Administrator wrote to Ms G enclosing a claim form and other documents and Ms G signed these on 3 April 2017.
21. On 3 April 2017, Ms G wrote to the Administrator. She stated: -

"I also wish to make a formal complaint as per my letter dated the 20<sup>th</sup> November 2016...

... your letter dated the 9<sup>th</sup> November 2016 informed me that your records identified that I was not provided with a statement of my deferred benefits at the time my membership of the Local Government Pension Scheme ended on the 21<sup>st</sup> August 2015 and acknowledged that I should have been...

Evidence supports the fact that if I had been informed in a correct and timely manner as part of the pension fund administrative requirements, I would have applied immediately after receiving the information (as I did when I received the information on the 9<sup>th</sup> November 2016) and the medical evidence supports the fact that my health at that time would have mirrored the findings made in March 2017, resulting in a Certificate of Incapacity, and I would have been granted early payment of my deferred benefits under ill health."

22. As part of her complaint under the LGPS's internal dispute resolution procedure (IDRP), Ms G said: -

"... should I have had the ill health retirement option contained within the... Pension Scheme Regulations discussed with me, as per my pension member rights, by representatives of [the Board] I would have taken up this option as my health had deteriorated to the point where I was unable to sustain employment...

I have also attached a letter from [DS], Clerk to [the Board], which is evidence that he had knowledge of my illness and in his role should have had the experience and responsibility to advise the Board of pension regulations regarding ill health, thus ensuring I was given accurate and correct information regarding my options."

23. Ms G also said the Board was guilty of several failings around the time she went off ill on 13 July 2015, including not requesting medical records, not offering her access to occupational health, and not discussing her options for ill health retirement.
24. On 21 June 2017, the Board responded to Ms G under stage one of the IDRP and is summarised below: -

- It outlined two relevant sections of the Local Government Pension Scheme Regulations 2013 (**the 2013 regulations**). First, section 35 relating to early payment of a retirement pension on ill-health grounds (active members) (**IHRP**). Second, section 38 in relation to the early payment of a retirement pension on ill-health grounds (deferred members).
- On 20 November 2016, Ms G applied for payment of her deferred benefits. She said it was the first time she had been told she was potentially eligible to apply to her former employer for IHRP benefits.
- The Board was required to notify the Administrator, when Ms G's employment ended, by submitting a leaver's form. The guidance stated priority should be given to members with access to immediate payment of benefits.
- Ms G's employment with the Board ended on 21 August 2015 as, in its view, "there was a breakdown in the working relationship between [her] and [another party] sufficient to justify [her] dismissal."
- She had been absent through ill health – first stress, later MS – since 14 July 2015. But whilst there was a letter indicating that the Board was aware of her condition, there was also an indication that a recovery and return to work was anticipated.
- When, in August 2015, Ms G appealed the Board's decision to dismiss her, she did not say she believed the dismissal was related to ill health. Nor did she say she was unfit to work or unlikely to be able to return to work.
- When, in November 2015, Ms G appealed to the employment tribunal, she did not say she was unable to return to work due to ill health. Nor did she say she was dismissed on grounds of ill health. Moreover, she said the Board had failed to make reasonable adjustments to allow her to return to work. So, she must have wished to, or considered herself able to, return to work.
- Ms G read a prepared statement, at the March 2016 hearing, but did not say she was unable to work because of ill health and her appeal was "dismissed".
- Ms G was dismissed in August 2015, for a reason unrelated to redundancy, efficiency or ill-health. There was no reason for the Board to consider she might qualify for IHRP benefits prior to her dismissal; and, there was no reason for it to consider she was entitled to immediate payment of benefits following the ending of her employment.
- It was reasonable for the Board to wait for the outcome of the appeal, before sending Ms G leaver forms. Before then, there was a possibility that she would be re-instated. There was no unreasonable delay between the conclusion of the appeal and the Board sending Ms G leaver forms.
- Throughout the period in question, the Board had no reason to consider Ms G might be entitled to payment of pension benefits immediately after the end of her employment, so, there was no reason for it to treat the leaver form as a high priority. Therefore, its decision to send it to her after the appeal was reasonable.

- In terms of Ms G's other complaint, it was clear from Regulation 35 that members were only entitled to IHRP where they were dismissed on grounds of ill health. Ms G was not dismissed on the grounds of ill health. Nor was she entitled to an IHRP as at the date of her dismissal. No entitlement to an IHRP could arise after termination of employment.
- The Board had no reasonable grounds for considering that, as a result of ill-health or infirmity of body or mind, Ms G was, at the time of her dismissal, permanently incapable of discharging efficiently the duties of her employment. There were just over five weeks between her going on sick leave and being dismissed. In the absence of "very clear evidence", no reasonable employer would have had reason to believe she was permanently incapable of discharging efficiently the duties of her employment.
- Ms G had also complained that the Board made no attempt to enquire about her health or request further medical information. These issues were outside the jurisdiction of the LGPS. But she had told the Board, in July 2015, she was too sick to speak with anyone from the Board. So, it acted reasonably by not contacting her after she went off sick.
- Ms G was certified, in March 2017, as being permanently incapable of discharging the duties of her employment at that time. But, this was not evidence of incapability as at August 2015. In general, there was not enough evidence of that.

25. On 26 June 2017, Ms G appealed the Board's decision. She stated: -

"The crux of my complaint is that it is the employer's obligation to advise me of my rights under the pension scheme regulations pertaining to ill health retirement and they did not do this...

I am not stating that by going through the ill health procedure I would have automatically been entitled to ill health retirement; what I am stating is that I was entitled to be given the factual pension process information relating to the ill health rulings and therefore been given the opportunity to go through the process and be assessed by medical professionals...

My complaint is that [the Board] failed in its obligation to inform me in an accurate and timely way of the rulings of ill health retirement and by their failure to do so effectively denied me of that right."

26. On 15 September 2017, the Administrator wrote to Ms G under stage two of the IDR. It stated: -

"[Dr H] completed your medical certificate on 7 March 2017, having assessed your condition at the date of application which was 20 November 2016 and stated that in his opinion, you were permanently incapable by reason of disability caused by physical or mental infirmity of engaging in any regular full time employment..."

Your complaint is that you should have been assessed for ill health retirement whilst you were still an active member and therefore you should have been assessed under regulation 35, instead of regulation 38...

The question for decision by the [Authority] is whether you were, on the balance of probabilities, permanently incapable of discharging efficiently the duties of your normal occupation by reason of health or infirmity of body or mind when you ceased employment with the Board and so qualify for the immediate payment of your local government retirement benefits because of ill health before you were dismissed from your employment on 21 August 2015 by the Board...

In my opinion, there is not enough evidence to make a decision as to whether your condition had progressed by 21 August 2015 to meet the requirements for an ill health pension at 21 August 2015. However, there is evidence that your condition was deteriorating in July 2015 in the neurology report dated 4 March 2016 and that you were unfit for work at this time as evidenced by the Statements of Fitness for Work which confirm that you remained unfit for work at least until 23 March 2016.

Therefore, it is my recommendation that given that your condition was deteriorating in July 2015, your Statements of Fitness for Work confirms that you were unfit for work from 14 July 2015 to 23 March 2016 and you were then granted deferred ill health retirement with effect from 22 November 2016, that it would be appropriate for the Board to seek a medical opinion on whether or not you met the criteria for ill health retirement on 21 August 2015."

27. On 7 November 2017, the Board wrote to Ms G. It stated: -

"As set out in our original decision, you were not dismissed on the grounds of ill health or infirmity of mind or body. It is therefore the Board's view that entitlement to [an] ill health retirement pension did not arise on the termination of your employment with the Board in August 2015.

In light of this, therefore, I must inform you that the Board now intends to refer this matter to the Pension Ombudsman Service for a determination of the legal position."

28. On 14 November 2017, dissatisfied with the Board's decision, Ms G referred her complaint to this Office.

## **Adjudicator's Opinion**

29. Ms G's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Board. His findings are briefly summarised below: -

- Ms G was accepted for IHRP benefits from deferred service, under Regulation 38, but believed she was entitled to IHRP benefits from active service, under Regulation 35.
- She met the first requirement under Regulation 35, as she had more than two years' qualifying service, but she did not meet the second, as her employment was not terminated by the Scheme employer "on grounds of ill-health or infirmity of mind or body" before she reached normal pension age.
- Ms G's position was: if she had been told about an IHRP in August 2015, she would have applied for and qualified for it. Or, there was insufficient evidence whether she would have qualified for it, so the Board should re-consider her application.
- In the Administrator's view, the key question was whether Ms G was permanently incapable of discharging efficiently the duties of her normal occupation on grounds of ill health or infirmity of body or mind when she ceased employment. The Administrator argued that there was insufficient evidence either way, so the decision should be remitted back to the Board.
- In the Board's view, the key question was whether Ms G was dismissed on grounds of ill health or infirmity of body or mind. It argued there was no doubt that she was not dismissed for that reason. So, she did not qualify for IHRP benefits from active service. The Board sought a ruling from the Ombudsman as to whether its own view, or that of the Administrator, was correct.
- The Adjudicator agreed with the Board. Ms G's employment was terminated by the Board for "some other substantial reason", not on grounds of ill health, and that was the relevant question.
- But the Adjudicator also considered whether the Board should have dismissed Ms G on the grounds of ill health.
- The Board seemed to have been aware of Ms G's underlying condition. But, there was insufficient evidence that it knew, or should have known, that her condition was sufficiently serious to consider the possibility of IHRP or to bring this to her attention. For example, there was no evidence of long-term sickness absence before August 2015. Nor was there medical evidence, from before August 2015, that Ms G was permanently incapable of discharging the duties of her employment because of ill-health or infirmity of mind or body.
- Under Regulation 72, it was for the Board to make first instance decisions. There was no evidence that, as Ms G had asserted, the Board had dismissed her specifically to avoid paying her IHRP benefits from active service.
- Nor was there further evidence that, as Ms G had asserted, someone from the Board told her she should not expect to qualify for an IHRP. In any event, if that were true, she could not claim that she was unaware of this option.

- Information with regard to the IHRP option would have been made available to Ms G via LGPS documents. As head of operations and HR, it was likely Ms G would have been aware of options such as an IHRP.
  - The reality is that Ms G was not dismissed on grounds of ill health. Moreover, there was insufficient evidence to indicate that the Board knew, or should have known, that her illness was such, in August 2015 or earlier, to justify giving consideration to an IHRP application or bringing it to her attention. So, the Board had not made an administrative error by not highlighting this option to her.
  - Although there was a delay of about seven months, from April to November 2016, before the Administrator wrote to Ms G about her pension options, the Adjudicator was of the view that this would not have caused Ms G significant distress and inconvenience. So, an award was not appropriate in this case.
30. The Board accepted the Adjudicator's Opinion but Ms G did not and the complaint was passed to me to consider. Ms G provided 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 Ms G for completeness.

### **Ombudsman's decision**

31. Ms G says the Adjudicator had argued there was insufficient evidence she had been suffering from symptoms prior to going off sick. She says that was incorrect. The Board had information in relation to her MS dating back to 2001. She had also raised, as part of grievances made in 2014 and 2015, the fact that she was struggling with her health, and that it had been affected adversely by management decisions. She claims the Board therefore had sufficient evidence regarding her health, and so it should have referred her to occupational health. I agree with Ms G that the Board may have been aware of Ms G's health in general, however, there is insufficient evidence that it knew, or should have known, her health was sufficiently poor to justify specifically bringing the possibility of an IHRP to her attention.
32. I agree that if Ms G's record had shown long-term sickness absence prior to August 2015, or contemporaneous medical evidence of an inability to carry out her duties at that time or before, the Board should have considered making her aware of the option of applying for an IHRP. However, there is insufficient evidence of either here.
33. Ms G has also expressed concern about the fact that there was a difference between the Administrator's decision, at stage two IDRP, and the Adjudicator's Opinion. But, this Office was asked by the Board specifically to resolve the disagreement about whether the Administrator's decision, or the Board's, was the correct one. Having considered the Regulations and the surrounding circumstances, I agree with the Board's view. So, the relevant question is not whether Ms G would have qualified for an IHRP, if she had been aware of the option back in August 2015. Rather, the question is whether Ms G was actually dismissed on the grounds of ill health and



whether the Board should have considered notifying her of the option to apply for an ill health pension.

34. Only where the member is dismissed on grounds of ill health, can he or she potentially qualify for an IHRP from active status under Regulation 35 and Ms G was not dismissed on grounds of ill health. With regard to whether the circumstances were such that the Board was under a duty to inform Ms G of this option, as I have stated in paragraph 32 above, I do not find that the Board were required to do so.
35. Ms G further states it is incorrect, as the Adjudicator stated in his Opinion, that she wrote to the Administrator in April 2016 to notify it that she would not be returning to work. In fact, her dismissal date was August 2015, and she had received her P45 form. It is accepted Ms G first left the Board in August 2015 after it had terminated her employment. However, she then appealed the Board's decision, and it later settled her case without admission of liability. So, it was still possible, after August 2015, that Ms G would return to work. The evidence supplied by the Administrator shows that Ms G's Employee Leaver Form was received by it on 12 April 2016. In other words, only after that time was it certain that she would not return to work.
36. Ms G also says it is incorrect, as the Adjudicator has stated, that as a member of HR she should have been aware of pension regulations. At no point was she a pensions adviser and was not permitted to give pensions advice. However, the Adjudicator did not say Ms G was, or should have been, aware of pension rules specifically. Rather, he said that, as an HR specialist, Ms G would have been aware, or ought to have been aware, of the possibility of applying for an IHRP. Even if she was not familiar with all the rules, she at least ought reasonably to have known that an IHRP was an option for which she could apply.
37. Ms G further states that the Board failed in its duty to investigate her illness and properly review her grievances. Moreover, it acted incorrectly when it dismissed her after only five weeks of absence without investigating her illness, and it failed in its duty to ensure that, as a member of the LGPS, she had access to proper procedures. However, I find that the Board had no general obligation to bring the possibility of an IHRP to Ms G's attention. Moreover, whilst the evidence indicates she was off sick and had a doctor's sickness note at the time of her dismissal, that is not sufficient for me to find that the Board should have brought the option of an IHRP to her attention.
38. Ms G maintains that, while her dismissal was an employment matter, it was directly connected with her pension rights. By making a "perverse" decision and dismissing her without adhering to employment absence procedures, her pension rights have been removed, and she has suffered a loss. However, I am unable to consider whether the Board was right to dismiss Ms G in the way it did; Ms G's claim was settled without admission of liability, and there is no evidence that the tribunal made any finding of wrongful dismissal. In any case, if there were evidence that Ms G had been on long-term sickness absence before her dismissal, or if there were evidence her health at that time prevented her from carrying out the duties of her employment, I

might have concluded that the Board should have brought the possibility of an IHRP to her attention. However, there is insufficient evidence in either case.

39. Ms G has claimed a member of the Board told her, “don’t be thinking you will get ill health, why should you get something I won’t”, or words to that effect, although she has not said when exactly this was said. However, I agree with the Adjudicator that there is insufficient evidence to substantiate this. In any event, if it was said, then Ms G cannot claim she was not informed, or did not know, that an IHRP was an option.
40. I also agree that the Administrator would have provided general information in relation to an IHRP at the time Ms G joined the LGPS (although I accept that was some time before her dismissal). However, notwithstanding the length of time between her joining the LGPS and her dismissal, the information would have been available. I find that there is no general requirement to bring an IHRP to members’ attention unless that information is not available to them from any other source. This is true in general; however, it is particularly true with regard to the process involving the award of an IHRP, as it is a well-known and valued option for members of the LGPS.
41. Finally, part of Ms G’s complaint is that there was a delay in putting her benefits into payment; she was not informed, until November 2016, that she could apply for IHRP. The major part of Ms G’s complaint is about whether she should have been informed of IHRP at the time of her dismissal, if not before. I agree that it was reasonable for the Board to wait for the outcome of the appeal before sending Ms G leaver forms as, before this issue was resolved, there was a possibility that her employment would be re-instated. I also agree that there was no unreasonable delay between the conclusion of the appeal and the Board sending Ms G leaver forms. So, I do not find that the Board acted incorrectly between August 2015 and April 2016.
42. However, by April 2016 it was clear Ms G would not return to work. The Board sent her completed Employee leaver form to the Administrator on 11 April 2016, which was within a reasonable period of time following her signing it on 23 March 2016. I agree it was then the responsibility of the Administrator to process the form, and send Ms G her statement of deferred benefits, within a reasonable period of time after that. However, the evidence indicates the form was not sent to her until 9 November 2016, about seven months later, owing to a backlog of work at the Administrator.
43. The Board and the Administrator have concentrated on the relevant question under the Regulations. But neither has properly considered the question whether Ms G should have been provided with a statement of deferred benefits in April 2016. Given that this prompted her to apply for an IHRP in November 2016, it is at least arguable that she would have applied for it in April 2016, had she been provided with the information.
44. So, Ms G should consider contacting the Board and the Administrator directly about this specific issue, the seven month delay between April and November 2016. If she remains dissatisfied once they have had the chance to respond, she can bring a new complaint to this Office.

**PO-19632**

45. I do not uphold Ms G's complaint.

**Anthony Arter**

Pensions Ombudsman

26 April 2018

## Appendix 1

### The Local Government Pension Scheme Regulations 2013

#### 35 Early payment of retirement pension on ill-health grounds: active members

(1) An active member who has qualifying service for a period of two years and whose employment is terminated by a Scheme employer on the grounds of ill-health or infirmity of mind or body before that member reaches normal pension age, is entitled to, and must take, early payment of a retirement pension if that member satisfies the conditions in paragraphs (3) and (4) of this regulation.

(2) The amount of the retirement pension that a member who satisfies the conditions mentioned in paragraph (1) receives, is determined by which of the benefit tiers specified in paragraphs (5) to (7) that member qualifies for, calculated in accordance with regulation 39 (calculation of ill-health pension amounts).

(3) The first condition is that the member is, as a result of ill-health or infirmity of mind or body, permanently incapable of discharging efficiently the duties of the employment the member was engaged in.

(4) The second condition is that the member, as a result of ill-health or infirmity of mind or body, is not immediately capable of undertaking any gainful employment.

(5) A member is entitled to Tier 1 benefits if that member is unlikely to be capable of undertaking gainful employment before normal pension age.

(6) A member is entitled to Tier 2 benefits if that member-

(a) is not entitled to Tier 1 benefits; and

(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 normal pension age.

(7) Subject to regulation 37 (special provision in respect of members receiving Tier 3 benefits), if the member is likely to be capable of undertaking gainful employment within three years of leaving the employment, or before normal pension age if earlier, that member is entitled to Tier 3 benefits for so long as the member is not in gainful employment, up to a maximum of three years from the date the member left the employment.

## **Appendix 2**

### **Ibid**

#### 36 Role of the IRMP

(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 is unlikely to be capable of undertaking gainful employment; and
- (c) where a member has been working reduced contractual hours and had reduced pay as a consequence of the reduction in contractual hours, whether that member was in part time service wholly or partly as a result of the condition that caused or contributed to the member's ill-health retirement.

(2) An IRMP from whom a certificate is obtained under paragraph (1) must not have previously advised, or given an opinion on, or otherwise been involved in the particular case for which the certificate has been requested.

(2A) For the purposes of paragraph (2) an IRMP is not to be treated as having advised, given an opinion on or otherwise been involved in a particular case merely because another practitioner from the same occupational health provider has advised, given an opinion on or otherwise been involved in that case.

(3) If the Scheme employer is not the member's appropriate administering authority, it must first obtain that authority's approval to its choice of IRMP.

(4) The Scheme employer and IRMP must have regard to guidance given by the Secretary of State when carrying out their functions under this regulation and regulations 37 (special provision in respect of members receiving Tier 3 benefits) and 38 (early payment of retirement pension on ill-health grounds: deferred and deferred pensioner members).

## Appendix 3

### Ibid

#### 38 Early payment of retirement pension on ill-health grounds: deferred and deferred pensioner members

- (1) A deferred member who, because of ill-health or infirmity of mind or body-
- (a) becomes permanently incapable of discharging efficiently the duties of the employment that member was engaged in at the date the member became a deferred member, and
  - (b) is unlikely to be capable of undertaking gainful employment before normal pension age, or for at least three years, whichever is the sooner, may ask to receive payment of a retirement pension whatever the member's age.
- (2) A request under paragraph (1) must be made in writing to the deferred member's former Scheme employer or appropriate administering authority where the member's former Scheme employer has ceased to be a Scheme employer.
- (3) Before determining whether or not to agree to a request under paragraph (1), the deferred member's former Scheme employer, or administering authority, as the case may be, must obtain a certificate from an IRMP as to whether the member is suffering from a condition that renders the member-
- (a) permanently incapable of discharging efficiently the duties of the employment the member was engaged in because of ill-health or infirmity of mind or body; and, if so,
  - (b) whether as a result of that condition the member is unlikely to be capable of undertaking gainful employment before reaching normal pension age, or for at least three years, whichever is the sooner.
- (4) A deferred pensioner member who, because of ill-health or infirmity of mind or body, is unlikely to be capable of undertaking gainful employment before normal pension age, may ask to receive payment of a retirement pension at any time before the member's normal pension age.
- (5) A request under paragraph (4) must be made to the deferred pensioner member's former Scheme employer, or appropriate administering authority where the member's former Scheme employer has ceased to be a Scheme employer.
- (6) Before determining whether to agree to a request under paragraph (4), the deferred pensioner member's former Scheme employer, or administering authority, as the case may be, must obtain a certificate from an IRMP as to whether the member, as a result of ill-health or infirmity of mind or body, is unlikely to be capable of undertaking gainful employment before normal pension age.

**PO-19632**

(7) If the Scheme employer is not the deferred or deferred pensioner member's appropriate administering authority, it must obtain that authority's consent to the appointment of an IRMP under this regulation.

(8) An IRMP appointed under paragraph (6) may be the same IRMP who provided the first certificate under regulation 36(1) (role of the IRMP).

## **Appendix 4**

### **Ibid**

#### 72 First instance decisions

(1) Any question concerning the rights or liabilities under the Scheme of any person other than a Scheme employer must be decided in the first instance by the person specified in this regulation.

(2) In these Regulations, reference to the Scheme employer or appropriate administering authority of a prospective member is a reference to the body that would be that prospective member's Scheme employer or appropriate administering authority if that person were to become an active member in the employment by virtue of which eligibility to join the Scheme would be established.

(3) The appropriate administering authority must decide any question concerning-

(a) a person's previous service or employment;

(b) the crediting of additional pension under regulation 16 (additional pension); and

(c) the amount of any benefit, or return of contributions, a person is or may become entitled to out of a pension fund.

(4) A person's Scheme employer must decide any question concerning any other matter relating to the person's rights or liabilities under the Scheme.

(5) A decision under this regulation must be made as soon as is reasonably practicable.