

YPS Employer Guide

Ill health

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Introduction

This document aims to assist employers when they are operating the ill health provisions of the Local Government Pension Scheme (LGPS).

Ill health retirement from active status

Introduction

This section outlines the rights and obligations in connection to active members whose employment is terminated by their employer on or after 1 April 2014 on the grounds of ill health or infirmity of mind or body.

Eligibility

A member is entitled to, and must take, payment of an ill health pension under the Scheme if the following conditions are met:

- (1) The member was an active member immediately prior to termination;
- (2) The member meets the scheme's 2 year vesting period¹;
- (3) The member's employment is terminated by their employer;
- (4) The termination is done on the grounds of ill health or infirmity of mind or body;
- (5) The termination takes effect before the member's normal pension age (i.e. State Pension Age or 65 if later);
- (6) The member is permanently incapable² of discharging efficiently the duties of that employment as a result of ill health or infirmity of mind or body; **and**
- (7) The member is not immediately capable of undertaking any gainful employment³ as a result of ill health or infirmity of mind or body.

The ill health pension will become payable from the day immediately after the date on which the employment ends.

It is the duty of the employer to determine whether the above conditions are met. However, before they do so, they must have obtained a certificate from an Independent Registered Medical Practitioner.

¹ You may need to check if this condition is satisfied with Your Pension Service.

² "*Permanently incapable*" means that the member will, more likely than not, be incapable until at the earliest, the member's state pension age (or 65 if later).

³ "*Gainful employment*" means paid employment for not less than 30 hours in each week for a period of not less than 12 months.

Ill health tiers

The amount of any ill health pension will depend upon when the member will likely again be capable of undertaking gainful employment³.

It is the duty of the employer to determine which ill health tier to award. However, before they do so, they must have obtained a certificate from an Independent Registered Medical Practitioner.

Tier 1 ill health pension

A member is entitled to a tier 1 ill health pension where the employer determines that the member is unlikely to be capable of undertaking gainful employment⁴ before their state pension age (or 65 if later).

The annual rate of the tier 1 ill health pension will be equal to the sum of the following:

- (1) The unreduced annual rate of the pension built up at leaving; and
- (2) The unreduced annual rate of the pension they would have built up between leaving and SPA (or 65 if later) calculated assuming that, for that period, the member received Assumed Pensionable Pay (APP) and was in the main section.

Additionally, where the member joined before 1 April 2008, they will also be entitled to immediate unreduced payment of the automatic retirement grant.

See ['Ill health restrictions'](#) where the member is, in respect of an earlier employment, entitled to an ill health pension.

Tier 2 ill health pension

A member is entitled to a tier 2 ill health pension where the employer determines that -

- (1) The member is not entitled to a tier 1 ill health pension;
- (2) The member is unlikely to be capable of undertaking any gainful employment⁴ within the 3 year period beginning on the termination of employment; and
- (3) The member is likely to be able to undertake gainful employment⁴ before the member attains their state pension age (or 65 if later).

The annual rate of the tier 2 ill health pension will be equal to the sum of the following:

- (1) The unreduced annual rate of the pension built up at leaving; and
- (2) 25% of the unreduced annual rate of the pension they would have built up between leaving and SPA (or 65 if later) calculated assuming that, for that period, the member received Assumed Pensionable Pay (APP) and was in the main section.

Additionally, where the member joined before 1 April 2008, they will also be entitled to immediate unreduced payment of the automatic retirement grant.

See ['Ill health restrictions'](#) where the member is, in respect of an earlier employment, entitled to an ill health pension.

Tier 3 ill health pension

A member is entitled to a tier 3 ill health pension where the employer determines that the member is likely to be capable of undertaking gainful employment⁴ within three years of leaving or, if earlier, before attaining state pension age (or 65 if later).

The annual rate of the tier 3 ill health pension will be equal to the unreduced annual rate of the pension built up at leaving. There will be no enhancements added.

See footnote 3.

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Additionally, where the member joined before 1 April 2008, they will also be entitled to immediate unreduced payment of the automatic retirement grant.

Note that a member who meets the above conditions and who has previously received a tier 3 ill health pension will not be entitled to payment of a new tier 3 ill health pension (see ['Ill health restrictions'](#)).

A tier 3 ill health is a reviewable pension that may not be paid for longer than 3 years from the date the member left employment. See ['Review of tier 3 ill health pensions'](#) for more information about the grounds on which a tier 3 ill health pension may be stopped before that 3 year deadline.

Calculation of APP

As mentioned above, a Tier 1 or Tier 2 enhancement is calculated using Assumed Pensionable Pay (APP).

It is an employer's responsibility to provide APP figures to Your Pension Service (YPS).

It should be noted that YPS will need APP figures for all ill health from active cases, even where Tier 3 benefits are being awarded as it is possible that these benefits could subsequently be uplifted to Tier 2.

Generally, the annual rate of APP will be the sum of –

- (1) The annualised version of the pensionable pay the member received⁴ (or the APP the member was treated as receiving) (excluding lump sum payments) within the 3 month (or 12 week if not monthly paid) period ceasing immediately prior to the pay period in which the ill health retirement occurred; and
- (2) Any regular lump sums⁵ received in the year ceasing on the termination date.

Where the member had been working reduced contractual hours and had reduced pay as a consequence, the employer will need to ask the independent registered medical practitioner to certify whether the member was in part time service wholly or partly as a result of the condition that caused or contributed to the ill health retirement. If the IRMP certifies to the affirmative, the reduction in pensionable pay the member received is ignored when calculating APP.

⁴ Any reductions in the pay the member received in the 3 month or 12 week period because of a trade dispute or authorised absence will be ignored when calculating APP. Additionally, where the pensionable pay received was, in the opinion of the employer, materially lower than the level of pensionable pay that the member normally receives, the employer has discretion to replace the actual pensionable pay received with a higher level of pensionable pay to reflect the level of pensionable pay that the member would normally have received. An employer must have regard to the level of pensionable pay received in the previous 12 months when working out what level of pensionable pay the member normally receives.

⁵ a "regular lump sum" is a payment for which the member's employer determines there is a reasonable expectation that such a payment would be paid on a regular basis.

Ill health restrictions

If a member has ever previously received an ill health pension under the Scheme, there may be restrictions on their entitlement to receive a new ill health pension should they return and again retire on ill health.

If a member received an ill health pension prior to 1 April 2008, or received a Tier 1 ill health pension on or after that date, and returns and leaves again on ill health, the member's new ill health pension would not receive any enhancement.

If a member received a Tier 2 ill health pension on or after 1 April 2008 and returns and leaves again on ill health, any enhancement due on the new ill health pension would be modified.

Lastly, if a member received, on or after 1 April 2008, a Tier 3 ill health pension which has been suspended and the member again leaves on ill health, they would not be entitled to payment of a new Tier 3 pension. So, in other words, should such a member meet the Tier 3 pension conditions, the member would not be entitled to immediate payment of any ill health pension.

Review of Tier 3 ill health pensions (for post March 14 leavers)

Introduction

This section outlines the rights and obligations in connection to members who are receiving Tier 3 ill health pensions where their employment terminated on or after 1 April 2014.

Please note that none of the following information under this section applies to a member receiving a Tier 3 ill health pension who attains their state pension age (or 65 if later) as at that point the pension becomes a non-reviewable pension payable for the rest of the member's life.

See ['Review of Tier 3 ill health pensions \(for pre April 14 leavers\)'](#) where the member's employment terminated before 1 April 2014.

Requirement to notify if employment found

A member receiving a Tier 3 ill health pension is required to notify the former employer upon commencing any employment.

If the notified employment is gainful employment⁷, payment of the pension would be suspended.

The former employer has a duty to determine whether the notified employment is gainful employment⁶. Please note that an employer may determine that the employment is gainful employment⁶ if it takes a reasonable view that the employment is likely to endure for at least 12 months irrespective of whether this proves to be the case.

To assist the employer in this duty, or where they suspect a member has found employment to which they have not been notified, the member is required to answer any reasonable inquiries (e.g. regarding hours, pay) made by the employer about the member's employment status. The former employer may determine to suspend payment of the pension if the member fails in this regard.

See footnote 3.

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If the pension is suspended on the grounds that gainful employment has been commenced, the former employer may recover any payment of pension which regards the period from commencing such employment to the suspension date.

18 month review

The former employer must undertake a review of Tier 3 ill health pensions after they have been in payment for 18 months and make one of the decisions below.

Prior to making their decision, the former employer must have obtained a certificate from an Independent Registered Medical Practitioner (may be the same one who was used as part of the original tier 3 retirement).

Continue payment of the Tier 3 ill health pension

The former employer may decide to continue payment of the tier 3 pension for any period up to the permitted maximum (i.e. 3 years from leaving employment or up to their SPA (minimum of 65) if earlier). The former employer may consider this option to be suitable where they determine at the review stage that the member is still not capable of undertaking gainful employment⁶ but they are still likely to be so capable within 3 years of leaving employment or, if earlier, by their state pension age (or 65 if later).

Uplift payment of the pension to a Tier 2 ill health pension

The former employer may make this decision if they are satisfied that the following conditions are met:

- (1) the member is permanently incapable⁷ of discharging efficiently the duties of their former employment; **and**
- (2) It is unlikely that the member will be capable of undertaking gainful employment⁹ before their state pension age (or 65 if later); **or**
- (3) It is unlikely that the member will be capable of undertaking gainful employment⁹ within the 3 year period beginning with the date left employment but is likely to be capable of undertaking gainful employment⁷ prior to their state pension age (or 65 if later).

If so, the pension would be increased with effect from the date of the employer's decision and it would then become a non-reviewable pension payable for the rest of the member's life.

Suspend payment of the Tier 3 ill health pension

The former employer may consider this appropriate where the member is now capable of undertaking gainful employment⁹. However it should be noted that even where the medical advice indicates that the member is capable of undertaking gainful employment⁹ the former employer may still determine to continue payment for so long as the person is not actually in

⁶ See footnote 3

⁷ See footnote 2

gainful employment¹⁰, up to a maximum period of 3 years from the date of leaving (or to the date the person attains normal pension age, if earlier).

Member initiated reviews

A member receiving a Tier 3 ill health pension, or a member whose Tier 3 ill health pension was suspended within the last 3 years, may request that their pension is uplifted to a Tier 2 ill health pension.

The former employer may accept this request if they are satisfied that the following conditions are met:

- (1) the member is permanently incapable⁸ of discharging efficiently the duties of their former employment; **and**
- (2) It is unlikely that the member will be capable of undertaking gainful employment¹¹ by their state pension age (or 65 if later); **or**
- (3) It is unlikely that the member will be capable of undertaking gainful employment within the 3 year period beginning with the date left employment but is likely to be capable of undertaking gainful employment prior to their state pension age (or 65 if later).

If so, the pension would be increased with effect from the date of the employer's decision and it would then become a non-reviewable pension payable for the rest of the member's life.

Prior to making their decision, the former employer must have obtained a certificate from an Independent Registered Medical Practitioner (may be the same one who was used as part of the original tier 3 retirement).

Review of Tier 3 ill health pensions (for pre April 14 leavers)

Introduction

This section outlines the rights and obligations in connection to members who are receiving Tier 3 ill health pensions where their employment terminated before 1 April 2014.

Requirement to notify if employment found

A member receiving a Tier 3 ill health pension is required to notify the former employer if they obtain any employment.

Additionally, a member receiving a tier 3 ill health pension is also required to answer any inquiries made by the former employer as to their current employment status, including as to their pay and working hours.

18 month review

Unless the person is aged 65 or over, once the tier 3 pension has been in payment for 18 months, the former employer must make inquiries as to the member's current employment. If the member is not in gainful employment, the former employer must obtain a further

⁸ See footnote 2
See footnote 3.

certificate from an IRMP (may be the same IRMP who was involved in the original retirement).

Discontinuance of Tier 3 pensions

Unless the person is aged 65 or over, a tier 3 pension must be suspended if the former employer considers –

- (1) That the person is in gainful employment; or
- (2) In reliance on a certificate obtained under the 18 month review, that the member is capable of undertaking gainful employment; or

In any event, the payment must be suspended at the end of the 3 year period.

If the pension is suspended on the grounds that gainful employment has been commenced, the former employer may recover any payment of pension which regards the period from commencing such employment to the suspension date.

The former employer must notify us as soon as possible of any action they have taken in respect of a tier 3 pension.

Uplift from Tier 3 to Tier 2

An employer, in respect of a member receiving a tier 3 pension, may subsequently determine that (after obtaining a certificate from an IRMP who may be the same one who was involved with the original retirement) –

- (1) Although the member is not capable of undertaking gainful employment within 3 years of leaving employment, it is likely that the member will be capable of undertaking any gainful employment before their 65th birthday.

In which case, the member's benefits will be uplifted to tier 2 benefits with effect from the date of the subsequent determination.

A subsequent determination may only be made within 3 years of the tier 3 benefits being suspended or, if earlier, before the member's 65th birthday.

Suspended tier 3 ill health pensions (post March 2014 leavers)

Introduction

This section outlines the rights available to members, who have had their Tier 3 ill health pensions suspended, to elect for those pension benefits to be brought back into payment.

It should be noted that this section deals solely with members who originally left employment on or after 1 April 2014. For earlier leavers, see the section ['Suspended tier 3 ill health pensions \(pre April 14 leavers\)'](#).

Overview of members' rights

Suspended Tier 3 ill health pensions return back into payment on a non-reviewable basis for life upon the following events:

- (1) The member elects to receive early payment (normally at a reduced rate) between age 55 and their state pension age (or 65 if later)
- (2) The member attains their state pension age (or 65 if later) though the member could defer payment up to 75
- (3) The member's request for uplift to a Tier 2 ill health pension is accepted (see

"member initiated reviews" sub-section)

- (4) The member's request for early release on ill health grounds is accepted (see subsection below).

Early access on ill health grounds

As noted in the above sub-section, a member may request on ill health grounds that, whatever their age, their suspended tier 3 ill health pension be brought back into payment on a non-reviewable basis payable for life.

The former employer may accept the request if they determine, after obtaining a certificate from an independent registered medical practitioner (who could be the same one who was originally involved in the tier 3 retirement), that the following condition is met:

- (1) The member, as a result of ill health or infirmity of mind or body, is unlikely to be capable of undertaking gainful employment⁹ before their state pension age (or 65 if later).

If so, the pension will return back into payment from the date of the former employer's decision to accept the member's request.

Lastly, it should be noted that it is possible that the member could be entitled to early release on ill health grounds at an unenhanced rate and also be entitled to a tier 2 pension uplift. In which case, as the uplift option will be most beneficial to the member, the employer should decide for that option out of the two.

Suspended tier 3 ill health pensions (pre April 2014 leavers)

Introduction

This section outlines the rights available to members, who have had their Tier 3 ill health pensions suspended, to elect for those pension benefits to be brought back into payment.

It should be noted that this section deals solely with members who originally left employment before 1 April 2014. For later leavers, see the section ['Suspended tier 3 ill health pensions \(post March 14 leavers\)'](#).

Overview of members' rights

Suspended Tier 3 ill health pensions return back into payment on a non-reviewable basis for life upon the following events:

- (1) The member elects to receive early payment (normally at a reduced rate) between age 55 and 65
- (2) The member attains their 65th birthday
- (3) The employer uplifts the benefits to a Tier 2 ill health pension
- (4) The member's request for early release on ill health grounds is accepted (see subsection below).

⁹ See footnote 3

Early access on ill health grounds

As noted in the above sub-section, a member may request on ill health grounds that, whatever their age, their suspended tier 3 ill health pension be brought back into payment on a non-reviewable basis payable for life.

The former employer may accept the request if they determine, after obtaining a certificate from an independent registered medical practitioner (who could be the same one who was originally involved in the tier 3 retirement), that the following condition is met:

- (1) The member, as a result of ill health or infirmity of mind or body, is permanently incapable of undertaking gainful employment.

If so, the pension will return back into payment from the date the member became permanently incapable.

Lastly, it should be noted that it is possible that the member could be entitled to early release on ill health grounds at an unenhanced rate and also be entitled to a tier 2 pension uplift. In which case, as the uplift option will be most beneficial to the member, the employer should decide for that option out of the two.

Early access to deferred benefits on ill health grounds

Introduction

This section outlines the rights and obligations regarding members with deferred benefits who request early release of such benefits because of ill health or infirmity of mind or body.

Note that the following does not cover councillor members with deferred benefits. If you have such a case, please contact us for more information.

Eligibility conditions

Criteria for deferred benefits brought into payment on health grounds for members who left before 1 April 2008

Deferred benefits become payable providing that the member is permanently incapable on health grounds of discharging efficiently the duties of the local government employment he/she has ceased to hold.

Criteria for deferred benefits brought into payment on health grounds for members who left after 31 March 2008 and before 1 April 2014

Deferred benefits become payable providing that the member is:

- (1) Suffering from a condition that renders the member permanently incapable of discharging efficiently the duties of the local government employment he/she has ceased to hold because of ill health or infirmity of mind or body, and, if so,
- (2) As a result of that condition, they have a reduced likelihood of being capable of undertaking any gainful employment before reaching age 65 or for at least 3 years from the date of their application for early payment, whichever is the sooner.

Criteria for deferred benefits brought into payment on health grounds for members who left after 31 March 2014

Deferred benefits become payable providing that the member is:

- (1) suffering from a condition that renders them permanently incapable of discharging efficiently the duties of the former employer because of ill health or infirmity of mind or body.
- (2) if so, as a result of that condition, the member is unlikely to be capable of undertaking gainful employment before reaching state pension age (or 65 if later), or for at least 3 years from the date of their application for early payment of ill-health benefit, whichever is the sooner.

Payment dates

Leaver pre 1 April 1998

Benefits are payable from the date the medical officer certifies that the person first became permanently incapable of their former employment.

Note: This date can be earlier than the person's application for early payment of benefits.

Leaver on or after 1 April 1998 and up to 31 March 2008

Benefits are payable from the date of the person's application for early payment.

Leavers on or after 1 April 2008 and up to 31 March 2014

Benefits are payable from the date the medical officer certifies that the person first became permanently incapable of their former employment. Note: This date can be earlier than the person's application for early payment of benefits.

Leavers from 1 April 2014

Benefits are payable from the date on which the former employer makes their determination. This date cannot be earlier than the date the opinion from the medical officer was received.

As a consequence, it is important that employers do not unnecessarily delay the decision making process as in doing so they could cause financial loss to the member.

Decision making process

Employers' duty to make the formal decision

As noted in the above sections, the responsibility to make the formal decision regarding a member's entitlement rests with the employer.

Before an employer makes such a decision, they must have, at the very least, obtained an opinion from an independent registered medical practitioner (IRMP). However, an employer is not bound by the IRMP's opinion nor are they prohibited from considering other evidence when arriving at their decision.

When an employer makes a decision, they should consider the following principles:

- (1) The employer should take into account all relevant matters and no irrelevant ones
- (2) The employer should ask themselves the correct questions
- (3) The employer should direct themselves correctly in law and must adopt a correct construction of the Regulations
- (4) The employer should not arrive at a perverse decision. A perverse decision is taken to mean a decision which no reasonable decision maker, could arrive at in the circumstances.

As part of making a decision which adheres to the above principles, the employer ought to have sight of the medical rationale from the IRMP as this provides important information into how the IRMP has arrived at their opinion particularly highlighting areas which may require further clarification before an employer can properly consider the evidence received.

The Pension Ombudsman has produced a Newsletter for employers which provides generic guidance on ill health decision making. The newsletter is available on the [other-guidance](#) page of www.lgpsregs.org.

Role of an IRMP

The definition of an "independent Registered Medical Practitioner" is as follows:

"IRMP" means an independent registered medical practitioner who is registered with the General Medical Council and—

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

As mentioned in the above sub-section, an employer must obtain a certificate from an IRMP before they make a decision regarding a member's entitlement (e.g. whether to consent to ill health retirement, if so which tier should be awarded, whether deferred benefits should be released early, etc.).

Before an employer obtains an opinion from an IRMP, the administering authority (Cumbria County Council or Lancashire County Council) must have approved the employer's choice of IRMP.

In order to register an IRMP please complete the form found within the Employers' area of the website [here](#). Once your IRMP is approved, they will then be in a position to provide advice to you concerning eligibility for potential ill health benefits. You would need to write to them and ask that they undertake a review taking into account the ill health statutory guidance and requesting completion of the relevant ill health certificate. The ill health certificates can also be found within the employers' area under 'Form Access.' When you have obtained the completed ill health certificate confirming the opinion of the IRMP and the

rationale used in coming to that opinion, you as employer must make a determination on whether the member meets the criteria for payment of benefits. You would need to contact Your Pension service advising whether benefits can be paid, providing a copy of the ill health certificate, and, if appropriate, the Leaver Form where the member is still in employment. **If your decision is contrary to the opinion of the IRMP, you will also need to submit a covering note setting out your decision with a full explanation as to why you disagree with the IRMP's opinion.**

Information on registered medical practitioners can be obtained from the General Medical Council website. See link www.gmc-uk.org

Duty to have regard to statutory guidance

Both employers and IRMPs must have regard to any ill health statutory guidance when carrying out their functions.

The latest version of the guidance is available from www.lgpsregs.org where the member left on or after 1 April 2014 or www.lgpsregs.org/timelineregs/Default.html where the member left prior to that date.

Disclosure requirements

Under the scheme regulations, whoever makes a decision is responsible for disclosing that decision to any person affected by it.

As it regards ill health, an employer is responsible for deciding whether a member is entitled to early access of benefits on ill health grounds; Your Pension Service is responsible for determining the amount of any pension benefits so payable.

Therefore, an employer must make their decision as soon as is reasonably practicable and then notify the member of it in writing as soon as possible. This notification should set out the grounds upon which the decision has been taken so that the member has the full facts at their disposal when considering whether to exercise their right of appeal.

Additionally, the following information must also be contained within the employer's notification to the member:

- (1) a conspicuous statement giving the address from which further information about the decision may be obtained;
- (2) set out the right to appeal to an adjudicator against the decision (within 6 months of being notified of the initial decision, or such longer period as the adjudicator may allow);
- (3) set out the job title and address of the adjudicator (i.e. the person the employer has appointed to consider appeals);
- (4) set out the right to ask the administering authority, within 6 months of the adjudicator's decision, to undertake a further review of the decision if they are still unhappy.

Workflow Flow Chart

This section sets out the procedures to follow regarding the following:

- (1) ill health retirement from active status
- (2) Early access of deferred benefits on ill health grounds

- (3) Reviewing a Tier 3 pension
- (4) Early access of suspended tier 3 pension on ill health grounds







