

# Guidance: Local Government Pension Scheme and Ill Health Retirement Pensions

## Introduction

1. The Local Government Pension Scheme (LGPS) is available for all local government employees, other than those eligible to join another public service scheme e.g. teachers, police officers or fire-fighters. It is controlled by the Local Government Pension Scheme Regulations 1997, which are made under the Superannuation Act 1972. The LGPS is run locally by the administering authority and for our employees, this is Devon County Council.
2. For employees who are members of the Local Government Pension Scheme, there is provision for them to have their pension released early on health grounds, dependent upon:
  - length of membership in the pension scheme
  - the medical recommendation of an independent occupational health physician, and
  - leaving a local government employment.
3. Decisions regarding whether a member of the pension scheme is eligible for benefits are entirely separate from the authority's decision regarding the employee's future employment.

## Length of Membership

An employee leaving local government employment on health grounds with:

1. **Less than one years total membership**, may receive a refund of contributions, less statutory deductions.
2. **At least one, but less than two years membership** may be entitled to an ill- health retirement grant but not an annual pension. The grant will be 1/12<sup>th</sup> of their final salary per year of total membership. However, should a refund of contributions be higher this will be received instead.
3. **Two or more year's membership** may qualify for immediate pension and lump sum retirement grant, based on actual number of year's membership and final year's pay.
4. **Five or more year's membership** may be entitled to an immediate pension and lump sum retirement grant. For calculating the amount of pension and retirement grant, the period of membership of the scheme will automatically be increased to make up for having to leave the scheme

- before aged 65 years. (See DCC Local Government Pension Scheme: Employees Guide).
5. The total membership period of the LGPS takes account of any transferred pension rights from another scheme or arrangement.
  6. Total membership period is counted at full calendar length for part time employment.
  7. If at the date of retirement the administering authority's, medical advisor determines that a person entitled to an ill health pension is exceptionally ill and has a life expectancy of less than one year, a single lump sum may be payable.

## Independent Registered Medical Practitioner

1. An independent registered medical practitioner who is qualified in occupational health medicine and who is approved by the Pension Scheme Administering Authority, has to certify that an employee meets the criteria for early release of pension.
2. In DCC there is a reciprocal arrangement with a group of independent registered medical practitioners. Where a DCC OHU physician assesses an employee as likely to meet the requirements for an ill health retirement, or in some situations where there may be doubt, but the physicians think it professionally appropriate to refer on for the independent medical practitioners assessment, the OHU refer to the latter. It is for the independent medical practitioner to certify if an employee's ill health is such that they meet the requirement of LGPS Regulation 27.

## Release of Pension Benefits on the Grounds of Ill Health

1. **LGPS Regulation 27** states, 'Where a member leaves a local government employment by reason of being permanently incapable of discharging efficiently the duties of that employment or any other comparable employment with his employing authority, because of ill health or infirmity of mind or body, he is entitled to an ill health pension and grant'.
2. **'Comparable employment'** means employment in which, when compared with the member's employment:
  - the contractual provisions as to capacity either are the same or differ only to an extent that is reasonable given the nature of the member's ill-health or infirmity of mind or body, and
  - the contractual provisions as to place, remuneration, hours of work, holiday entitlement, sickness or injury entitlement and other material terms do not differ substantially from those of the members employment.

If the DCC redeployment allowance compensates an employee for loss of income when compared to their original substantive post, this would meet the 'remuneration' requirement in (b) above.

3. **'Permanently incapable'** means incapable until, at the earliest, the member's 65<sup>th</sup> birthday.
4. If the independent medical practitioner certifies an employee **'permanently incapable of discharging efficiently the duties of that employment or any other comparable employment with his employing authority, because of ill health or infirmity of mind or body'**, if that employee is a member of LGPS they will be entitled to the immediate release of pension benefits from the day after termination of employment, (subject to the membership requirements outlined in section 2 above).
5. Where the OH physician confirms that an employee is **permanently incapable of his/her own post, but is capable of a comparable job** with the employer, the redeployment process applies. Where a comparable post is secured, there is no entitlement to pension benefits.
6. If an employee accepts a non-comparable post and the whole time rate of pay is less than it was in their former substantive post, or the rate at which it may be increased is restricted in such away that it is likely that the rate of eventual retirement pension will be adversely affected, then the employee can elect within 12 months of the redeployment, for a Certificate of Protection of Pension Benefits. This certificate offers pension protection to employees who retire within 10 years of the change. Their pension will be based on either the highest year's salary in the last five years before retirement, or the best 3 years average from the last 13 years prior to retirement.
7. A 'comparable employment' has to be actually available, and not just a theoretical post that an employee may be capable of should one be available. Where a comparable post is not available or secured during the redeployment period, the OHU need to be informed toward the end of this period, and prior to a formal absence review meeting. In this instance, if the employee is a member of the LGPS, the independent medical practitioner will be asked to assess whether the employee meets the requirement for ill health retirement as defined in 4.4. If so, the employee will be entitled to ill health retirement pension benefits, subject to membership requirements.
8. An employee may resign, rather than accept a comparable employment. In this situation, the employee would be entitled to apply for the immediate payment of pension benefits (unenhanced) from the day after the termination of employment, subject to membership requirements.
9. If an employee refuses to consider or accept a comparable post, it will be important to inform OHU of this, and depending on the outcome, the

- Pensions Section. This may consequently affect their entitlement to enhanced pension benefits. It is therefore critical for the employee and ER staff to maintain a record of all available comparable jobs suggested, priority interviews, outcomes etc.
10. **Decisions about continued employment and dismissals are management decisions**, made in accordance with the DCC Managing Sickness Absence policy, taking into account medical advice.
  11. **Decisions about the release and amount of pension benefits are made by the Pension Section** in accordance with the Pension Scheme Regulations and based on the certification of the independent medical practitioner.
  12. At any time in the future between leaving local authority employment and retirement age, members of the LGPS whom become permanently incapable of undertaking their former work because of ill health, can apply for the early release of pension benefits on the grounds of ill health. In such situations the individuals apply directly to Pensions Section, who will refer directly to the OHU for a medical assessment. (LGPS Regulation 31(6)).

## Leaving Local Authority Employment

1. Possible access to early release of pension benefits on health grounds applies to all members of the LGPS and therefore applies to employees resigning, dismissed or mutual terminations where there is a health related reason.
2. As part of the process of managing the exit from the authority of employees on health grounds, it is essential that advice about access to pension benefits is built into the process.
3. Where Reg. 27 applies, A/POs need to complete and forward Form PAY/INT/27 'Ill Health Retirement Details' to Pensions Section for an estimate of pension benefits, followed by a memo to Pensions Section enclosing OH Physicians recommendation, copy of LGS8, marital status form (if applicable), and notice letter, before actual pension benefits can be determined.
4. Where Reg. 27 does not apply and the employee has been deemed permanently unfit for their substantive post, and resigns or is dismissed, A/POs working with the employee must ensure the latter is advised that they can apply to Pensions Section for early release of benefits on health grounds, on the day following termination of employment.
5. A letter of acceptance of resignation or notice of dismissal must contain the phrase 'You are advised that you may be entitled to the early release of pension benefits on the grounds of ill-health once you have left local government employment. Please seek advice from the Pensions Section'.

6. Notice of dismissal or letters of acceptance of resignation also need to advise staff of their right of appeal against the dismissal (where applicable) and against the pension decision. See section 6.

## Appeals

1. If employees wish to appeal against the decision to dismiss, this is dealt with in accordance with the Managing Sickness Absence Policy and will be heard by the Personnel Panel.
2. All members of the Local Government Pension Scheme have a right of appeal against decisions made by the administering authority i.e. Devon County Council. If an employee wishes to appeal against pension decisions or the maladministration of those decisions, the appeal will be dealt with under the Internal Dispute Resolution Procedure, (IDRP), managed by the Pensions Section.
3. Individual's can appeal against the decision not to award ill health pension benefits, or the amount awarded, only once their employment has ended. Where an ill health pension has not been awarded, the appeal will review whether the procedure has been followed correctly but the Pensions Section cannot award an ill health pension unless the required medical evidence supports this. As the medical evidence is reviewed by an independent expert as part of the ill health retirement process, further medical opinions will not be sought unless new evidence is submitted.
4. Members of the pension fund need to write directly to the Pensions Section. The latter are only able to deal with an individual's representative, if that individual gives the pension section consent to do so.
5. In the first instance, the Pensions Section will respond informally, giving their view based on the facts presented.
6. If the employee does not accept this response, they will be advised by Pensions Section of their right of appeal under the IDRP. Appeals must be made within 6 months of the pension decision that is being complained about.
7. The IDRP is a two-stage process. Stage 1 is an appeal to the "Appointed Person" - Rod Turner Principal Pensions Manager.. If the complaint is about the application of scheme rules, the appointed person can either uphold the original decision or give a new decision, which will replace and override the original. Decisions made by the appointed person are binding on the Local Authority who cannot appeal against them unless the appeal is about the 'exercise of discretion,' in which case the appointed person has no power to overturn the decision but can insist on the decision being reconsidered.
8. Stage 2 is an appeal to the "Administering Authority" - the County Solicitor and Director of Finance and IT - who will decide on the basis of the

- schemes rules whether the appointed persons decision was correct and if not can replace it with their own..
9. The Pensions Ombudsman can investigate complaints of maladministration or disputes of fact or law about decisions. The IDRPs process must be followed first before the Pensions Ombudsman will investigate. The latter is able to award compensation.
  10. All employees must be advised in writing of their right of appeal. This should be included in notices of dismissal, advising the two routes of appeal i.e. against the dismissal decision or the pension decision.

## **Further Information**

[Appeals Procedure \(LG Pension Scheme\)](#)

[Devon Pension Services.](#)

DCC Local Government Pension Scheme Employees Guide, Section 3, Management of Ill Health Handbook, Employers Organisation (<http://www.lg-employers.gov.uk/pensions/guides/>)

[Occupational Pensions Advisory Service and Pensions Ombudsman](#)

11 Belgrave Road, London, SW1V 1RB.