

Regulatory and Other Committee

Open Report on behalf of Andrew Crookham, Executive Director - Resources

Report to:	Lincolnshire Pension Board
Date:	15 October 2020
Subject:	Internal Disputes Resolution Procedures

Summary:

This is a report on the Fund's Internal Disputes Resolution Procedure and how the process is administered by both LPF and WYPF.

Yunus Gajra, the Business Development Manager from WYPF, will update the Board.

Recommendation(s):

That the Board note the report.

Background

- 1.1 Over the course of a member's employment, and after they have left, certain decisions are taken that can have an effect upon their rights and benefits. Because of this, where decisions are taken, and the member disagrees with them, the law provides them with the opportunity to challenge the decision.

The IDRП is a formal procedure which is in place to resolve disagreements in relation to decisions taken, or failure to make a decision, regarding LGPS pension matters. It forms part of an overall process where disagreements occur which can be put simply as:

Step 1: A decision is taken that affects rights or benefits (a "first instance decision")

Step 2: An informal approach to resolving a disagreement about that decision

Step 3: The instigation of the formal, two stage IDRП (the internal "appeal")

Step 4: Application to the Pensions Ombudsman for a determination (the external "appeal")

1.2 The First Instance Decision

Under the LGPS regulations, Scheme employers and the administering authority for the Fund have different decisions to make that could affect members' or dependants' pension rights or benefits.

Administering authority First Instance Decisions

- Any question concerning the person's previous service or employment;
- Any question about crediting additional pension; or
- The amount of any benefit, or return of contributions, the member becomes entitled to under the regulations

Scheme Employer's First Instance Decisions

- Eligibility for membership;
- Pensionable pay;
- Final pay;
- Employee's contribution rate;
- Entitlement to benefit on termination of membership;
- Entitlement to early release of pension benefits, AND
- EVERYTHING ELSE! - Regulation 72(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."

Most Employer first instance decisions are made entirely within the employing organisation, without the requirement for any external involvement.

For NON ILL HEALTH decisions where an active or deferred member requests the early release of his pension benefits. The employer must consider the request in accordance with its published discretions policy and the relevant pension regulations.

However, for ILL HEALTH decisions the regulations require external input for an Independent Registered Medical Practitioner BUT it is still the Scheme employer who is responsible to make the first instance decision. A significant number of disputes are regarding entitlement to ill health benefits.

1.3 The formal internal appeal process

A member may appeal against any decision made by an Administering Authority or Scheme employer that affects that member's rights or benefits under the scheme, or against any other act or omission by these bodies.

The member must appeal within six months of the date they are notified of that decision, or from the date of the act or omission – the adjudicator has discretion to extend this time limit

An appeal will not be able to be considered if proceedings in respect of it have been commenced in any court or tribunal.

The member has a further right of appeal to the administering authority if dissatisfied with the adjudicator's decision

The formal internal appeal process is in two stages; Stage 1 is looked at by a person who the first instance decision maker has appointed to look at these cases. A stage 1 appeal against the Administering Authority is looked at by Jo Ray. Stage 2 appeals are looked at by the Business Development Manager at WYPF.

2.0 Stage 1 Appeals

2.1 The purpose of the first stage is to carry out a formal review of the initial decision by the authority or body which took that decision. It is an opportunity to reconsider the question and, where appropriate, to alter the decision if it was not a reasonable one to reach based on the relevant procedures, legislation and evidence; e.g. where certain relevant facts or evidence were not taken into account, or where there has clearly been a mistake or oversight. The adjudicator will need to:

- Check that the application has been submitted within 6 months of the relevant date and send an acknowledgement.
- Consider all facts, reports, background information before reaching a determination.
- Request further evidence if necessary.
- Issue a copy of the determination to the applicant / representative, the Scheme employer and the Administering Authority.
- Provide a determination within two months of receipt of the appeal.
- If not, must write immediately to the applicant explaining the reason and when a determination will be made.

2.2 Further points on appeals

- The adjudicator cannot make a determination outside the provisions of the regulations
- The adjudicator cannot consider cases of alleged maladministration
- The adjudicator cannot make an award of compensation
- A right of appeal against a decision on entitlement to a benefit only arises after the earlier of – the date employment ends, or the date specified in a notice to opt out
- Unless the applicant refers the decision of the adjudicator to the administering authority for determination under stage 2, the decision reached by the adjudicator is final and binding on the scheme employer.

2.3 Notice of a stage 1 decision

Written notice of the adjudicator's decision must be sent to the applicant, the Scheme employer, and the Administering Authority, within two months of the receipt of the appeal.

The decision notice must include the following:-

- The question for determination
- Evidence received and considered
- The decision
- A reference to any legislation or Scheme provisions that it relies on
- Where relevant, a reference to the Scheme provisions conferring the discretion whose exercise has caused the disagreement
- A reference to the applicant's right to have the disagreement reconsidered by the Administering Authority, and the time limit for doing this
- A statement that TPAS is available to assist the member with any difficulty with the Scheme which remains unresolved, and the address for TPAS.

3.0 Stage 2 appeals

3.1 The person determining appeals at Stage 2 will, in many respects, undertake that function in the same way that the adjudicator did under Stage 1.

The applicant's complaint must be considered in depth and in a formal way; the Administering Authority need to satisfy themselves that the first stage decision was reasonable, had considered all relevant facts and regulations, was consistent with other decisions reached and that it would stand up to external scrutiny.

The Administering Authority should:-

- Reconsider the decision, taking full account of the facts of the case and any evidence submitted, or relied on, by either party in the determination at Stage 1,
- Check that the regulations were applied correctly,
- Check that sound, impartial procedures were used to reach the decision. This is particularly important where the dispute concerns the exercise of a discretion by a Scheme employer or by the Administering Authority.

3.2 Limit of administering authority powers at Stage 2

- Cannot replace an employer first instance decision, can only instruct to reconsider where discretion is exercised.
- No awards for maladministration even where found although this has recently been amended so that Administering Authorities can make an award of a similar level to that the Pensions Ombudsman would make (between £500 to £2000 depending on the severity).
- No power to act outside of the regulations nor to instruct any party to do so.
- No power to award compensation for any reason, including where an appeal is upheld against the amount of a benefit due; limited to placing the affected party in the position they would have been in.

3.3 Impartiality

By definition, an internal resolution procedure must be carried out by those responsible for the scheme; an entirely independent judgement is available via the Ombudsman.

However, the decision must be fair-minded and impartial having regard to the following principles:

- Not representing any party or interest
- No previous personal involvement with the case

In practice, even where the appeal is against a decision that has been taken by the Administering Authority, there will always be sufficient senior officers that have not had any personal interest and who can give an impartial decision without deference to the position of the Administering Authority at an earlier stage.

3.4 Notice of a Stage 2 decision

The Administering Authority must respond to a Stage 2 appeal within the same time limits that apply to Stage 1 appeals, i.e. within two months of the receipt of the appeal. A notice of the decision must be in writing and contain:

- The question for determination
- Evidence received and considered
- The decision
- A reference to any legislation or Scheme provisions that it relies on
- Where relevant, a reference to the Scheme provisions conferring the discretion whose exercise has caused the disagreement
- A statement that TPAS is available to assist the member with any difficulty with the Scheme which remains unresolved, and the address for TPAS

- A statement that the Pensions Ombudsman may investigate and determine any complaint or dispute of fact or law and the Pensions Ombudsman's address.

3.5 Possible outcomes

Appeal not upheld:

The Stage 2 decision maker has reviewed the facts and the evidence in the case and has not found that any decision reached is either incorrect or inconsistent with the appropriate application of the regulations and any discretion applied.

Appeal upheld:

The decision maker may not be satisfied that the initial decision was properly reached or that the appropriate legislation has not been correctly applied or adhered to. The stage 2 decision maker cannot impose any alternative decision upon the original decision maker wherein a discretion was exercised – he can only remit the case for reconsideration highlighting his areas of concern or where fault was found in law or in fact. Where it is found that the decision was incorrect in the application of regulations or in calculating benefits due, he can instruct that the correct position be applied in relation to the member.

Appeal partially upheld:

Occasionally, an appeal may have more than one head of argument or may rest on more than one determining factor. Where this is the case, the administering authority may find that the appeal should be upheld in part rather than wholly and a combination of the possible outcomes above be applied.

The decision of the administering authority is binding and can only be overturned by the Ombudsman or the High Court. The administering authority will not enter into further correspondence in relation to the appeal.

4.0 Beyond IDR – the external appeal

4.1 Where a member remains dissatisfied after the IDR has been exhausted, they can seek independent review of their appeal. There are two bodies responsible for the review of appeal decisions beyond the IDR.

4.2 The Pensions Advisory Service

The Pensions Advisory Service (TPAS) is an independent non-profit organisation that provides free information, advice and guidance on all types of pension schemes. Their role is primarily one of negotiation and advice;

they have no statutory power to impose any course of action or determination.

This should be the first port of call for any member seeking an independent review of the IDR. They will attempt to explain or resolve the problem and, where this is not possible, the steps available to the member. TPAS can also give their opinion to the member as to whether they believe this would be a case that the Pensions Ombudsman would pursue.

If resolution can still not be found, the member has one further point of recourse.

4.3 The Pensions Ombudsman

- Will only normally consider cases after the member's case has been through the scheme's two stage IDR and where TPAS have been approached
- May investigate and determine any complaint or dispute of fact or law in relation to the Scheme made or referred in accordance with the Pension Schemes Act 1993
- The Ombudsman can make awards of compensation for loss and for distress and inconvenience
- The determination of the Ombudsman is final and binding on all parties, subject only to an appeal on a point of law to the Chancery Division of the High Court

Where the Ombudsman does make a determination in respect of a case that he feels can and should be before him, the possible outcomes are the same as set out at Stage 2 of the IDR (above).

The appeal may be wholly, or partially, upheld or he may determine that the appeal should not be upheld against the respondents at all. When making his determination, the Ombudsman will have regard to former cases, but these are not precedent, as at law. Consequently, parties to an Ombudsman investigation should concentrate on the facts and law applicable in their circumstances rather than rely upon the outcome of previous cases that were prima facie the same.

Conclusion

The two stage IDR process is a thorough process and cases are looked at by independent Senior Officers who have not had any personal interest and who can give an impartial decision.

Consultation

a) Have Risks and Impact Analysis been carried out?

Yes

b) Risks and Impact Analysis

The Pension Fund has a risk register which can be obtained by contacting the Head of Pensions.

Background Papers

No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

This report was written by Yunus Gajra, who can be contacted on 01274 432343 or yunus.gajra@wypf.org.uk .