



Derbyshire Pension Fund

Employers Guide to Appeals



For further information about the information in this document, or the LGPS in general, please contact us:

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1. Introduction

Over the course of a Local Government Pension Scheme (LGPS) member's employment, and after they have left, certain decisions are made that can affect that member's benefits. Therefore, where decisions are taken, and the member disagrees with them, the law provides that member with the opportunity to challenge the decision, supported by:

The Pensions Act 1995

Section 50 of the Pensions Act 1995 requires occupational pension schemes, such as the LGPS, to arrange to resolve disagreements between the trustees or managers of the scheme, and one or more persons with an interest in the scheme.

The Local Government Pension Scheme Regulations 2013

The relevant sections are:

- Regulation 72 - First instance decisions
- Regulation 73 - Notification of first instance decisions
- Regulation 74 - Application for adjudication of disagreements
- Regulation 75 - Decisions of the adjudicator
- Regulation 76 - Reference of adjudications to Administering Authority
- Regulation 77 - Decisions of the Administering Authority on reconsideration
- Regulation 78 - Rights of representation
- Regulation 79 - Appeals by Administering Authorities

The Application for Adjudication of Disagreements Procedure (AADP) is a formal procedure which is in place to resolve disagreements about decisions taken regarding LGPS pension matters. It forms part of an overall process, where disagreements occur, which can be put simply as:

- a. A decision is taken that affects benefits (a 'first instance decision')
- b. An informal approach to resolving a disagreement about that decision
- c. The instigation of the formal, internal two-stage appeal (AADP)
- d. Application to the Pensions Ombudsman for a determination (the external appeal)

2. First Instance Decisions

First Instance Decisions – General

Under the LGPS regulations, both the employer and the administering authority have different decisions to make that could affect member or dependants' pension benefits. These are called 'First Instance Decisions'. The lists below show the different decisions that both the employer and administering authority need to make.

Administering Authority First Instance Decisions

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

Examples of 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."

Statement of policy on the exercise of discretions

Employers and administering authorities when making first instance decisions are exercising various discretions within the LGPS regulations. These regulations require that employers **MUST** prepare and publish a statement of policy stating how they exercise some (though not all) of these discretions; not to do so is a breach of the employer's statutory obligation. A list of discretions is shown in **Appendix A**.

Apart from being a statutory requirement to have a bare minimum published statement, it is good practice to have a comprehensive and regularly updated statement in place. Being able to demonstrate a clear and consistent approach when making first instance decisions is one of the first steps to avoiding challenges to those decisions, and a vital part of defending a position when the matter is escalated. These are covered more in 'Avoiding Appeals' and 'The Importance of Record Keeping' below.

Notification of First Instance Decisions

Providing a clear written explanation of the decision is an obvious and essential part of good administration. Employers should bear in mind, particularly when the decision results from the exercise of discretion, that there could be a possibility of a maladministration ruling by the Pensions Ombudsman.

- The grounds for the decision must be included in any notification which states that the person is not entitled to a benefit.
- A notification about a decision on the amount of benefits must show how the benefit is calculated.
- All notifications must give an address from where further information about the decision can be obtained.
- All notifications must include:
 - A reference to the right of appeal under regulations 74 and 76 of the LGPS regulations (the right of appeal under the AADP),
 - time limits within which those rights may be exercised, and
 - the job title and address of the person appointed to whom applications may be made.

The Informal Process – Avoiding Appeals

Where a member is unhappy with a decision, rather than proceed down the formal AADP process, it may be better to deal with the matter informally. The member could have a meeting with the body that took the decision, where further details and reasons for the decision could be provided.

It is important to demonstrate that the decision has been made in a manner consistent to other decisions, in accordance with a clear policy statement and that should help the member to understand why the decision has been reached and that it is 'nothing personal'. Any

acknowledgement of their concerns, and a deeper understanding of any reasons behind a decision, may satisfy the complainant. Carefully recording your decision making also makes this process much easier.

Sometimes, informal attempts to resolve disagreements fail. The member has a statutory right to then instigate the formal AADP. Detailed investigations will then take place into any decisions made and the processes involved in reaching those decisions.

3. The Formal Appeal Process (AADP)

Who may appeal (the applicant)?

- A member or a prospective member,
- a widow or widower of the member,
- a surviving civil partner of the deceased,
- a cohabiting partner,
- the deceased member's dependants, or
- the member's representative.

When and why can the applicant appeal?

- 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.
- The member has a further right of appeal to the Administering Authority if dissatisfied with the adjudicator's decision.
- The applicant may appeal against any decision made by an administering or employing authority that affects that member's rights or benefits under the scheme or against any other act or omission by these bodies.

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, Stage 2 is looked at by the Administering Authority.

Each employing authority must appoint a person to consider appeal cases at Stage 1 of the AADP (their adjudicator). Neither The Pensions Act 1995, nor the LGPS regulations state who the adjudicator should or might be. However, in practice, as the person will need to understand the details of the dispute, it is likely to be someone with relevant expertise, although this does not have to be an employee or elected member of the authority. Depending on the circumstances, a suitable person could be a human resources manager, payroll manager or a solicitor.

The Importance of Record Keeping

Once investigations reach the formal appeal process, evidence of how and why first instance decisions were reached will be required. It is therefore important that employers keep detailed records of first instance decisions taken, which may include the following (but not limited to):

- Dates of scheme entry,
- reductions/restrictions in pay,
- elections to opt out of, or re-enter the scheme,
- breaks in service and elections to pay or not to pay contributions,

- policy on exercise of discretions, including previous versions and dates of publication,
- publicity materials, publications and other notifications issued to members and the dates of issue,
- minutes of meetings to determine eligibility for benefits, and
- committee reports or minutes on release of benefits or retirement decisions.

Rights of Representation

A person who is entitled to make an application under the procedure can nominate a representative to make the application on their behalf. They can use the representative to make a Stage 1 or Stage 2 application. They can also use the representative to continue the appeal.

If a person dies and had a right to make an appeal, or had made an application at either Stage 1 or Stage 2, their personal representative may continue the appeal on behalf of the deceased.

If a person who has a right to make an appeal is a minor or is incapable of acting for themselves, the appeal may be made / continued on by a family member or another suitable representative.

If a person who has made an appeal at either Stage 1 or Stage 2, is or becomes otherwise incapable of acting for themselves, the appeal may be made / continued on their behalf by a member of their family or some other suitable representative.

Where a representative is nominated before an appeal is made, the appeal must specify their full name and address and whether that address is to be used for service on the applicant of any documents in connection with the appeal. If the representative's address is not used in that way, they must nevertheless be sent a copy of any notification of a Stage 1 or Stage 2 decision. If an interim reply was sent at either Stage 1 or Stage 2, the representative must be sent a copy.

A Fair and Impartial Decision

The AADP must be carried out by those responsible for the scheme; an entirely independent judgement is available through the Ombudsman (see later).

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

- Not representing any party or interest, and
- no previous personal involvement with the case.

Even where the appeal is against a decision that has been taken by the Administering Authority, there will always be enough 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.

4. AADP – Stage 1

Where an applicant wishes to appeal, this should be done in writing using Derbyshire Pension Fund's appeal application form, available on the website, with a copy of the decision they wish to appeal against if possible. The Stage 1 appeal is then submitted to the 'adjudicator'.

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 (where certain relevant facts or evidence were not taken into account, or where there has clearly been a mistake or oversight, for example).

- Check that the application has been submitted within six months of the relevant date and send an acknowledgement. (A specimen acknowledgement letter is included at **Annex A**)
- Consider all facts, reports, background information before reaching a determination.
- Request further evidence if necessary.
- The adjudicator must provide a determination within two months of receiving the appeal and issue a copy of the determination to the applicant/representative, the employer and the Administering Authority.
- If not, the adjudicator must write immediately to the member explaining the reason and when a determination will be made.
- The member may refer the dispute direct to the Administering Authority where the specified person fails to make a determination within the prescribed or extended time limits.

Although in most cases the Stage 1 decision will be a final one, there may be circumstances where the adjudicator may wish to issue a provisional decision so that the views of all interested parties, in particular, that of the Administering Authority, can be obtained before a final decision is taken. Because the two month time limit relates to the final decision, a letter of explanation should be sent if the issue of a provisional letter delays the final decision beyond the time limit.

Important points to note

- The adjudicator cannot make a determination outside the provisions of the regulations.
- The specified person 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.
- A successful appeal only applies to that particular case.
- Unless the applicant refers the decision of the adjudicator to the Administering Authority for determination under regulation 60 the decision reached by the adjudicator is final and binding on the scheme employer.

Notice of a Stage 1 Decision

Within two months of receiving the appeal, written notice of the adjudicator's decision must be sent to:

- The applicant (and/or his/her personal representative),
- the scheme employer, and
- the Administering Authority.

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 upon,
- 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, and
- a statement that The Pensions Advisory Service (TPAS) is available to assist the member with any difficulty with the scheme which remains unresolved, and the address for TPAS.

A specimen Stage 1 determination letter is included at **Annex B**.

5. AADP – Stage 2

Referrals to the Administering Authority against the decision of the adjudicator may be made by the applicant. A disagreement may also be referred in cases where:

- The adjudicator has failed to issue either a decision, or a letter of explanation, within two months from the date on which the application was made, or
- an interim letter of explanation was sent, but the adjudicator has failed to subsequently issue a decision.

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 Stage 1 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, and
- 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.

Important points to note

- The Administering Authority cannot replace an employer first instance decision, it can only instruct the employer to reconsider where discretion is exercised.
- The Administering Authority cannot make any awards for maladministration even where found.
- The Administering Authority has no power to act outside of the regulations, nor to instruct any party to do so.
- The Administering Authority has 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.

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

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, so within two months of receipt.

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

6. Beyond AADP – The External Appeal

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

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 scheme. 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 AADP. 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 Ombudsman would pursue.

If resolution can still not be found, the member (or alternative applicant) has one further option.

The Pensions Ombudsman

The Pensions Ombudsman:

- Will only normally consider cases after the member's case has been through the scheme's two stage AADP and where TPAS has 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, and

- 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 makes a determination about a case that they feel can and should be before them, the possible outcomes are the same as set out at Stage 2 of the AADP (above). The appeal may be wholly or partially upheld or they may determine that the appeal should not be upheld against the respondents at all. When making the 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. A history of former determinations is available on the Pensions Ombudsman's [website](#).

The Ombudsman's determination can only be challenged on a point of law. The appeal against the decision of the Ombudsman needs to be made to the High Court within 28 days of the date of the decision that is being appealed against.

7. Further Notes

Derbyshire Pension Fund is available to help employers with appeals and will provide information on the process and regulations that may be involved. However, Derbyshire Pension Fund cannot draft responses, advise upon decisions or become otherwise directly involved with an employer/adjudicator function.

It is important that employers keep comprehensive records in the event of an appeal from members.

Members must not be discouraged from submitting an appeal.

Considerations of medical appeals

For ill health retirement disputes, it would be sensible for an employer to first check that all the regulatory requirements have been complied with. If they have not, a fresh decision needs to be made.

- Has a qualified, approved medical practitioner been used to assess the member's eligibility?
- Has the medical practitioner clearly stated that the member is not assessed as permanently incapable?
- Has the medical practitioner paid due consideration to the duties of the post?
- Has the medical practitioner considered reports from the member's GP, consultants etc. in arriving at that decision?
- Has the medical practitioner made a recommendation in accordance with the LGPS regulations?
- Has the employer made their decision having considered all relevant evidence?
- Has the employer asked all of the necessary questions to have satisfied themselves before reaching any decision?
- It is not the role of the adjudicator to question the opinion of a suitably qualified, approved medical practitioner. But the assessment must be in accordance with the eligibility criteria in the regulations.

Exercise of discretionary powers

The adjudicator may be asked to consider a disagreement about the way in which a Scheme employer has exercised a discretionary power. In such cases, the role of the person deciding the disagreement is not to overturn the initial decision but to ensure that the discretion has been exercised reasonably, and in cases where this is found not to be the case, to determine that the matter should be reconsidered in a proper manner.

Appendix A

Specimen acknowledgement letter

Dear *[name]*

Local Government Pension Scheme: Application for Adjudication of Disagreements Procedure

Thank you for your application received on *[date]*, enclosing information on your disagreement with *[name of relevant body]*. I have been appointed by *[name of body]* to make the Stage 1 decision under the Application for Adjudication of Disagreements Procedure.

I am required to make a decision within two months of receiving your application. If, for some reason, I am unable to comply with that timescale, I will write to you explaining the reason and the date by which I expect to make my final determination.

You can also ask the Pensions Advisory Service (TPAS) for assistance. TPAS helps members and beneficiaries of pension schemes with disputes they cannot resolve.

You can contact TPAS at:

The Pensions Advisory Service
11 Belgrave Road
London
SW1V 1RB

Yours sincerely

Appendix B

Specimen Stage 1 decision letter

Dear [name]

Local Government Pension Scheme: Application for Adjudication of Disagreements Procedure

I have looked at the details of your disagreement and reached a decision under Stage 1 of the Application for Adjudication of Disagreements Procedure.

Details should include

- *Question for determination*

Details of the disagreement

- *My decision*

The decision itself

- *Relevant facts*
- *Evidence received/considered*
- *Regulations considered and reason for decision*

If the decision is based on a discretionary power contained in a policy made by the employer, include a copy of the policy or the relevant part of it, and a reference to the scheme regulation that allows the policy.

This concludes the first stage of the Application for Adjudication of Disagreements Procedure (AADP). If you are not happy with my decision, you have the right to ask Derbyshire Pension Fund to look at your complaint under Stage 2 of the AADP. You must do this in writing, within six months from the date of this letter.

You can also ask the Pensions Advisory Service (TPAS) for assistance. TPAS helps members and beneficiaries of pension schemes with disputes they cannot resolve. You can contact TPAS at:

The Pensions Advisory Service
11 Belgrave Road
London
SW1V 1RB

Copies of this determination have been sent to [name of body] as your employer/former employer and Derbyshire Pension Fund.

Yours sincerely