

Cheshire Pension Fund

Internal Dispute Resolution Procedure

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This guidance for practitioners is intended to familiarise local authorities and other key users with the Local Government Pension Scheme IDRPs arrangements. It also offers informal advice on a number of issues, which may be of concern to those with responsibilities and interest under these arrangements.

Background

Over the course of a Local Government Pension Scheme (LGPS) member's employment, and after they have left, certain decisions are taken that can have an effect upon their 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; this derives from:

Pensions Act 1995

Section 50 of the Pensions Act 1995, required occupational pension schemes, such as the LGPS, to make arrangements for the resolution of disagreements between the trustees or managers of the scheme and one or more persons with an interest in the scheme (see Annex E – click to follow link).

The Local Government Pension Scheme (Internal Dispute Resolution Procedure) Regulations 1997 enshrined this process into the Scheme regulations. Subsequent changes to the LGPS regulations have not removed the various provisions which are now contained in:

The Local Government Pension Scheme Regulations 2013

Specifically, 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

Please note: throughout this guide if a regulation is quoted it will be one of these sections from the Regulations, unless stated otherwise.

The IDRPs is a formal procedure which is in place to resolve disagreements in relation to decisions taken 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 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 IDRPs (the internal "appeal")

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

This process is illustrated in flowchart form at [Annex A](#).(click to follow link)

We will now approach each of these steps in turn.

Step 1: The First Instance Decision

First Instance Decisions – General

Under the LGPS regulations, employers and the administering authority for the Fund have different decisions to make that could affect member or dependants' pension benefits ("First Instance Decisions").

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

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 in respect of how they exercise some (though not all) of these discretions; not to do so is a breach of the employer's statutory obligation.

Apart from being a statutory requirement to have a bare minimum published statement, it is good practice to have a comprehensive and regularly revisited 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.

Separate guidance on the development of policy statements can be found on the employer area of the Cheshire Pension Fund website. Most first instance decisions are made entirely within the employing organisation, without the requirement for any external involvement (other than, perhaps, the provision of information from the Pensions Fund). However, there is one area that the regulations require external input for **BUT** which still is an employer first instance decision:

First instance decisions: Ill health

A significant number of disputes are regarding ill health benefits; when members are turned down for ill health retirement or early payment of a deferred benefit-

- Medical Retirement (or early release of deferred benefits on ill health grounds) is an **employer decision** (LGPS Regulation 35* – ill health retirement and LGPS Regulation 38* – early release of deferred benefits on ill health grounds), **NOT** the decision of the medical practitioner
- Employer must obtain an opinion from an approved, qualified medical practitioner on members' eligibility. (LGPS Regulation 36(1) and 38(3)*)
- Member must be assessed as "permanently incapable" of discharging efficiently the duties of their current employment, **AND** must be incapable of immediately undertaking **ANY** "gainful employment" which is defined as paid employment for not less than 30 hours in each week for a period of not less than 12 months (Regulation 35 (3) & (4)*)
- Member must also have become permanently incapable and be unlikely to be capable of undertaking gainful employment until normal pension age (or for three years if sooner). (Regulation 38(3)*)
- Permanently incapable means on the balance of probability the member will more likely than not be incapable of performing the duties of their current employment until their State Pension Age.

* Please note that the LGPS Regulations can be viewed via this [link](#).

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 that the person is not entitled to a benefit.
- A notification about a decision on the amount of a benefits must show how the benefit is calculated
- ALL notifications must give an address from which 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 IDRP), 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. Specimen wording is contained in various template letters on the employer area of the Fund website.

Step 2: Informal settlement of disputes

Avoiding appeals

Where a member is clearly unhappy with a decision and may resort to the formal IDRPs in the absence of any further action by the body that took the decision, it makes sense for an appropriate person from the employing authority to offer the member further information on the reasons for the decision, perhaps at an informal meeting with his advisers, if necessary. In some instances where the issues are not complex, this recognition of their concerns, and the opportunity to understand more about the decision, may be sufficient to satisfy the complainant.

Being able to demonstrate that a first instance decision has been made in a consistent manner to other decisions in accordance with a clear policy statement can also help the member to understand why the decision has been reached and that it is “nothing personal”. Carefully recording your decision making (see below) also makes this process much easier.

The next step

Sometimes, informal attempts to resolve disagreements fail. The member has a statutory right to then instigate the formal IDRPs which we will cover in the next sections. Once this course of action is embarked upon, detailed investigations will take place into not only the decisions made but the processes involved in reaching those decisions.

The importance of record keeping

These investigations at the formal appeal process will require evidence of how and why first instance decisions were reached. It is important that employers keep detailed records of first instance decisions taken, including (but not limited to):

- Dates of scheme entry
- Reductions/restrictions in pay
- Elections to opt out of the scheme
- Elections to re-enter scheme
- Changes in hours and or weeks
- 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
- Committee reports or minutes on release of benefits or retirement decisions

Step 3: The formal internal appeal process (IDRP)

General right of appeal

The right to invoke the formal appeal process is open not only to members themselves:

Who may appeal?

- 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
- The member's representative

Please note that throughout this document, whosoever invokes the IDRP is referred to as the "applicant".

When and why can the applicant appeal?

- A member (or alternative 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 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 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.

A flowchart of the appeal procedure is included at [Annex A](#).

These two stages are dealt with in more detail in the following sections.

Stage 1 appeals

Lodging an appeal

Where an applicant wishes to appeal against a first instance decision (or lodge another valid appeal against an act or omission), this should be done in writing, with a copy of the decision they wish to appeal against if possible. The Pension Fund will provide any member wishing to make an application with a guide and application form if they wish.

The Stage 1 appeal is then submitted to the “adjudicator”.

The adjudicator

Each employing authority must appoint a person to consider appeal cases at Stage 1 of the IDR (their adjudicator). The Pensions Act 1995 does not stipulate any particular requirements about who should determine complaints at the first stage. The LGPS regulations, similarly, do not elaborate on who the adjudicator should or might be.

In practice, as the person will need to understand the details of the dispute, the employer is likely to ask someone with relevant expertise to decide it, 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.

Considering Stage 1 appeals

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.

- Check that the application has been submitted within 6 months of the relevant date and send an acknowledgement (a specimen acknowledgement letter is included at [Annex B](#))
- 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 employer and the administering authority
- The adjudicator must provide a determination within two months of receipt of the appeal
- 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 on 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.

Further points on appeals

- 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

Considerations of medical appeals

If a dispute over ill health has emerged, 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 doctor been used to assess the member's eligibility?
- Has the doctor 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 doctor considered reports from the member's GP, consultants etc in arriving at that decision?
- Has the doctor 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

Other potential appeal applications

- Tiered contributions
- Pensionable pay - e.g. exclusion of certain items
- Final pay for calculation purposes
- Date of scheme entry – especially at the end of a member's service
- Claim of not being informed of right to pay back for lost pension
- Claim of not being informed of right to transfer in previous rights or aggregate earlier LGPS membership within 12 months of joining

Exercise of discretionary powers

Due to the scope of the Pensions Act 1995, the adjudicator may be asked to consider a disagreement about the way in which a Scheme employer has exercised a discretionary power under both the main scheme regulations and the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006. 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.

Notice of a stage 1 decision

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, 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 The Pension Ombudsman is available to assist the member with any difficulty with the Scheme which remains unresolved, and the address for The Pension Ombudsman

A specimen stage 1 determination letter is included at [Annex C](#).

IDRP Stage 1 process summary

- Member notified of decision / benefit
- Member submits appeal, in writing within six month time limit
- Appeal considered by adjudicator within two months
- Member, employing authority AND administering authority notified of outcome
- Member has the right of appeal to The Administering Authority (within six months of the adjudicator's determination)

A flowchart of the appeal procedure is included at [Annex A](#).

Stage 2 appeals – referral of disagreement to Administering Authority

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

Considering Stage 2 appeals

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.

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
- 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.

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 (see later).

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.

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 the Pensions Ombudsman is available to assist the member with any difficulty with the Scheme which remains unresolved, and may investigate and determine any complaint or dispute of fact or law and the Pensions Ombudsman's address.

A template Stage 2 response is given at [Annex D](#).

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.

A flowchart of the appeal procedure is included at [Annex A](#).

Rights of Representation – Stages 1 & 2

A person who is entitled to make an application under the procedure can nominate a representative to make the application on his behalf. He can use the representative to make a first stage or second stage application. He can also use the representative to continue the appeal.

If a person dies and they had a right to make an appeal, or they had made an application at either the first or second stage, 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 he is otherwise incapable of acting for himself, the appeal may be made/continued on his behalf by a member of his family or some other suitable representative.

If a person who has made an appeal at either the first or second stage, is or becomes otherwise incapable of acting for himself, the appeal may be made/continued on his behalf by a member of his family or some other suitable representative.

Where a representative is nominated before an appeal is made, the appeal must specify his 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 first stage or second stage decision. If an interim reply was sent at either the first or second stage, the representative must be sent a copy.

Step 4: Beyond IDRП – the external appeal

Where a member remains dissatisfied after the IDRП has been exhausted, they can seek independent review of their appeal. The body responsible for the review of appeal decisions beyond the IDRП.

The Pensions Ombudsman

- Will only normally consider cases after the member's case has been through the scheme's two stage IDRП
- 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

Cases sent to the Ombudsman's office are initially assessed by his staff to determine whether the appeal or dispute can, or should, be referred for consideration by the Ombudsman. Further information may be sought at this stage from both the administering authority and the employing authority, as well as from the individual.

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 IDRП (above).

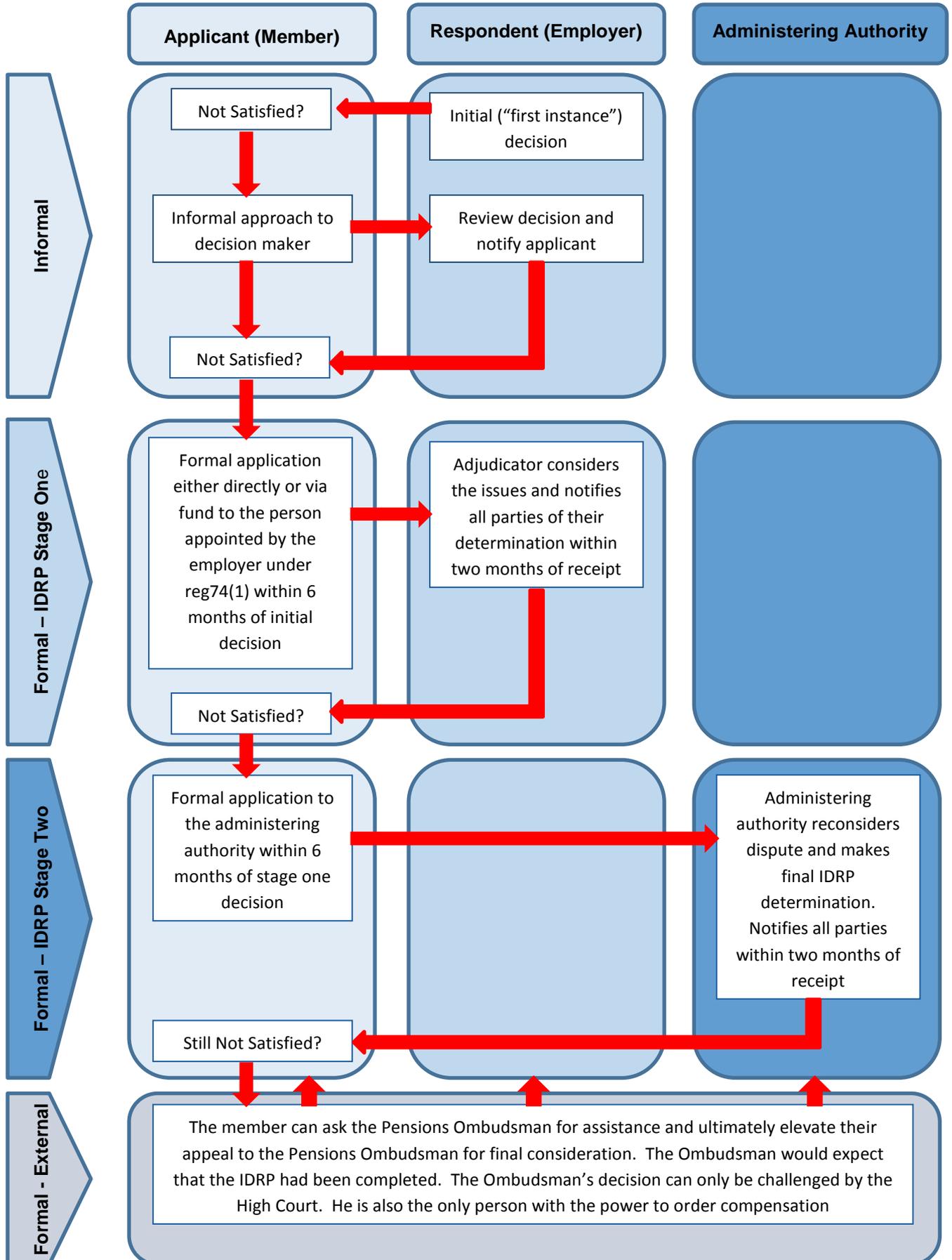
The appeal may be wholly, or partially, upheld or he may determine that the appeal should not be upheld against the respondents at all. When making his determination, the Ombudsman will have regard to former cases, but these are **not precedent**, as at law. Consequently, parties to an Ombudsman investigation 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. A history of former determinations is available on the Pensions Ombudsman's website: www.pensions-ombudsman.org.uk/our-decisions

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.

And, finally...

- Determining appeals is anything but straightforward
- The Pensions Fund is available to assist employers with this task and will provide information on the process and regulations that may be involved.
- The Pensions 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.

Annex A - The Appeal Process



Note: the applicant may also be a relative and the respondent could be the administering authority.

Annex B - Specimen acknowledgement letter

Dear Mrs Jones

Local Government Pension Scheme: Internal Dispute Resolution Procedure (IDRP)

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 one decision under the internal dispute resolution 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 Ombudsman for assistance. The Ombudsman help members and beneficiaries of pension schemes with disputes they cannot resolve.

The Pensions Ombudsman can be contacted at

10 South Colonnade,
Canary Wharf,
E14 4PU.

Tel: 0800 917 4487.

Email: enquiries@pensions-ombudsman.org.uk

Website: www.pensions-ombudsman.org.uk

You can also submit a complaint form online:

www.pensions-ombudsman.org.uk/our-service/make-a-complaint/.

Yours
sincerely

Annex C - Specimen stage 1 decision letter

Dear Mrs Jones

Local Government Pension Scheme: Internal Dispute Resolution Procedure (IDRP)

I have looked at the details of your disagreement and reached a decision under stage one of the IDRP.

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 internal dispute resolution procedure. If you are not happy with my decision, you have the right to ask the Cheshire Pension Fund to look at your complaint again. You must do this in writing, within six months from the date of this letter.

You can also ask the Pensions Ombudsman for assistance. The Ombudsman help members and beneficiaries of pension schemes with disputes they cannot resolve.

The Pensions Ombudsman can be contacted at

10 South Colonnade,
Canary Wharf,
E14 4PU.

Tel: 0800 917 4487.

Email: enquiries@pensions-ombudsman.org.uk

Website: www.pensions-ombudsman.org.uk

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

Yours sincerely

Annex D - Specimen stage 2 decision letter

Dear Mrs Jones

Local Government Pension Scheme: Internal Dispute Resolution Procedure (IDRP)

I refer to your appeal, under stage 2 of the Internal Disputes Resolution Procedure, against the decision at stage 1 by [insert name, job title and body], the adjudicator, not to uphold your complaint.

My role in making a determination on your complaint is to determine whether your employer has made their decision in accordance with the pension scheme regulations, that all relevant evidence has been taken into account and that the decision reached is not perverse. I have no powers to implement my own decision; however I can require the employer to reconsider their decision if I consider that they have misdirected themselves or that their decision is perverse. In addition, I have no power to direct the employer to act outside the provisions of the regulations.

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

This concludes the second stage of the internal dispute resolution procedure. The Pensions Ombudsman is available to assist members and beneficiaries of pension schemes in connection with difficulties you may have. Their address is 10 South Colonnade, Canary Wharf, E14 4PU. (telephone 0800 917 4487).

Having made my decision, I cannot enter into further correspondence with you; the decision can only be overturned by a judgement of the High Court or the Pensions Ombudsman. The Pension Ombudsman may investigate and determine any complaint of maladministration or dispute of fact or law or referred to him in accordance with the Pensions Schemes Act 1993. His address is: Office of the Pensions Ombudsman, 11 Belgrave Road, London SW1V 1RB (telephone 020 7630 2200).

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

Yours sincerely

Annex E - Pensions Act 1995

50 Requirement for dispute resolution arrangements

- (1) The trustees or managers of an occupational pension scheme must secure that dispute resolution arrangements complying with the requirements of this section are made and implemented.
- (2) Dispute resolution arrangements are arrangements for the resolution of pension disputes.
- (3) For this purpose a pension dispute is a dispute which-
 - (a) is between-
 - (i) the trustees or managers of a scheme, and
 - (ii) one or more persons with an interest in the scheme (see section 50A),
 - (b) is about matters relating to the scheme, and
 - (c) is not an exempted dispute (see subsection (9)).
- (4) The dispute resolution arrangements must provide a procedure-
 - (a) for any of the parties to the dispute mentioned in subsection (3)(a)(ii) to make an application for a decision to be taken on the matters in dispute ("an application for the resolution of a pension dispute"), and
 - (b) for the trustees or managers to take that decision.
- (4A) The dispute resolution arrangements may make provision for securing that an application for the resolution of a pension dispute may not be made to the trustees or managers unless-
 - (a) the matters in dispute have been previously referred to a person of a description specified in the arrangements ("the specified person") in order for him to consider those matters, and
 - (b) the specified person has given his decision on those matters, and for enabling the specified person's decision to be confirmed or replaced by the decision taken by the trustees or managers on the application, after reconsidering those matters.
- (5) Where an application for the resolution of a pension dispute is made in accordance with the dispute resolution arrangements, the trustees or managers must-
 - (a) take the decision required on the matters in dispute within a reasonable period of the receipt of the application by them, and
 - (b) notify the applicant of the decision within a reasonable period of it having been taken.
- (5A) In a case where a reference is made to the specified person in accordance with provision made under subsection (4A), subsection (5) applies in relation to the specified person as it applies in relation to the trustees or managers in a case where an application for the resolution of a pension dispute is made to them.
- (6) The procedure provided for by the dispute resolution arrangements in pursuance of Subsection (4) must include the provision required by section 50B.

- (7) Dispute resolution arrangements under subsection (1) must, in the case of existing schemes, have effect on and after the date of commencement of this section in relation to applications made on or after that date.
- (8) This section does not apply in relation to an occupational pension scheme if-
- (a) every member of the scheme is a trustee of the scheme,
 - (b) the scheme has no more than one member, or
 - (c) the scheme is of a prescribed description.
- (9) For the purposes of this section a dispute is an exempted dispute if-
- (a) proceedings in respect of it have been commenced in any court or tribunal,
 - (b) the Pensions Ombudsman has commenced an investigation in respect of it as a result of a complaint made or a dispute referred to him, or
 - (c) it is of a prescribed description.
- (10) If, in the case of an occupational pension scheme, the dispute resolution arrangements required by this section to be made-
- (a) have not been made, or
 - (b) are not being implemented,
- section 10 applies to any of the trustees or managers who have failed to take all reasonable steps to secure that such arrangements are made or implemented.

50A Meaning of "person with an interest in the scheme"

- (1) For the purposes of section 50 a person is a person with an interest in an occupational pension scheme if-
- (a) he is a member of the scheme,
 - (b) he is a widow, widower, surviving civil partner or surviving dependant of a deceased member of the scheme,
 - (c) he is a surviving non-dependant beneficiary of a deceased member of the scheme,
 - (d) he is a prospective member of the scheme,
 - (e) he has ceased to be within any of the categories of persons referred to in paragraphs (a) to (d), or
 - (f) he claims to be such a person as is mentioned in paragraphs (a) to (e) and the dispute relates to whether he is such a person.
- (2) In subsection (1)(c) a "non-dependant beneficiary", in relation to a deceased member of an occupational pension scheme, means a person who, on the death of the member, is entitled to the payment of benefits under the scheme.
- (3) In subsection (1) (d) a "prospective member" means any person who, under the terms of his contract of service or the rules of the scheme-
- (a) is able, at his own option, to become a member of the scheme,
 - (b) will become so able if he continues in the same employment for a sufficiently long period,
 - (c) will be admitted to the scheme automatically unless he makes an election not to become a member, or
 - (d) may be admitted to it subject to the consent of his employer.

50B The dispute resolution procedure

(1) The procedure provided for by the dispute resolution arrangements in pursuance of section 50(4) must (in accordance with section 50(6)) include the following provision.

(2) The procedure must provide that an application for the resolution of a pension dispute under section 50(4) may be made or continued on behalf of a person who is a party to the dispute mentioned in section 50(3)(a)(ii)-

- (a) where the person dies, by his personal representative,
- (b) where the person is a minor or is otherwise incapable of acting for himself, by a member of his family or some other person suitable to represent him, and
- (c) in any other case, by a representative nominated by him.

(3) The procedure-

- (a) must include provision requiring an application to which subsection (3A) applies to be made by the end of such reasonable period as is specified;
- (b) may include provision about the time limits for making such other applications for the resolution of pension disputes as are specified.

(3A) This subsection applies to-

- (a) any application by a person with an interest in a scheme as mentioned in section 50A (1) (e), and
- (b) any application by a person with an interest in a scheme as mentioned in section 50A (1) (f) who is claiming to be such a person as is mentioned in section 50A (1) (e).

(4) The procedure must include provision about-

- (a) the manner in which an application for the resolution of a pension dispute is to be made,
- (b) the particulars which must be included in such an application, and
- (c) the manner in which any decisions required in relation to such an application are to be reached and given.

(4A) The provision made under subsection (4) (c) may include provision for decisions of the trustees or managers to be taken on their behalf by one or more of their number.

(5) The procedure must provide that if, after an application for the resolution of a pension dispute has been made, the dispute becomes an exempted dispute within the meaning of section 50(9) (a) or (b), the resolution of the dispute under the procedure ceases.