

**Agenda Item No. 4 (e)**

**DERBYSHIRE COUNTY COUNCIL  
PENSIONS AND INVESTMENTS COMMITTEE**

**22 October 2019**

**Report of the Director of Finance and ICT**

**THE ROLE OF THE ADJUDICATOR IN THE 'APPLICATION FOR  
ADJUDICATION OF DISAGREEMENTS PROCEDURE' (AADP)**

**1. Purpose of the Report**

To inform Members of a change to the role of Stage 1 and Stage 2 adjudicators in respect of appeals against decisions made by Derbyshire Pension Fund Scheme employers or by Derbyshire County Council as the administering authority of the Pension Fund.

**2. Background**

The Local Government Pension Scheme Regulations (LGPSR) offer a two stage procedure to Fund members wishing to formally appeal against a decision made by either the administering authority or their employing authority (Scheme employer). The administering authority and each of the Fund's employers independently appoints a Stage 1 adjudicator to consider these appeals and determine the outcomes.

Where an applicant is dissatisfied with the adjudicator's decision at Stage 1, the LGPSR enables them to refer the decision for reconsideration by the administering authority. These Stage 2 appeals are considered by the Pensions and Investments Committee as the administering authority's adjudicator.

Until now, when a Stage 1 adjudicator, or the Committee at Stage 2, has upheld an appeal by a Fund member, the LGPSR have been interpreted as limiting the adjudicator's powers, when considering appeals, to referring cases back to the original decision-maker to reconsider their decision.

However, recent determinations made by The Pensions Ombudsman in cases escalated by LGPS members have highlighted that adjudicators also have the power to impose a decision on an employing authority or the administering authority.

In order to confirm this change of approach the Local Government Association (LGA) were asked to provide a view. Their reply stated:

*“It would appear that The Pensions Ombudsman has changed the way it wants to tackle cases and try to get cases done more quickly so whereas before an IDRPs adjudicator would in some cases refer back, the TPO are now saying that unless it is a discretionary decision the adjudicator can now impose their decision over any decision at first instance or Stage 1 IDRPs”* (The terms AADP and IDRPs are used interchangeably.)

The Local Government Pension Scheme Regulations (LGPSR) set out procedures for the adjudication of appeals including the power to impose a decision.

Regulation 75(4), which refers to Stage 1 appeals, and Regulation 77(4), which refers to Stage 2 appeals, each contain the following wording to describe how the adjudicator’s decision is to be applied:

A decision under paragraph (1) (i.e. by the adjudicator) takes effect as a decision of the Scheme employer or administering authority, as the case may be, **except where the matter concerns the exercise of a discretion**, in which case, if the adjudicator does not uphold the decision, the matter must be referred back to the body which made the decision under adjudication for reconsideration ...

As an application for ill-health retirement (IHR), for example, is a matter of judgement for the employer when considering whether the criteria for IHR have been met, the approach taken to date is that the Scheme employer has been exercising a discretion. Therefore, the outcome of an adjudication has been limited to referring a case back to the employing authority to review where the appeal has been upheld, for example because the Scheme employer or administering authority has been identified as not considering all evidence or not complying with regulatory procedural requirements.

However, the TPO and LGA now clearly interpret the LGPSR as referring only to specific discretions. Under the LGPSR there is a specified list of areas where administering authorities and employers are required to prepare, publish and maintain a policy setting out how they will apply discretion within the scheme rules locally for their employees and ex-employees who are/were members of the LGPS. The main discretion areas available for employers are:

- Contributing to additional pension for a Fund member
- Waiving actuarial reductions for early payment of benefits
- Switching on the rule of 85 before age 60
- Granting flexible retirement

However, the majority of decisions made by employing and administering authorities, including the decision not to grant IHR, are not covered in the published discretions policies, and it is now clear that these decisions should be treated differently. All adjudicator decisions at Stage 1 and Stage 2 can now take effect as decisions of the scheme employer.

Going forward, therefore, at both stages of the process, there is now the option for the adjudicator to implement a 'replacement decision'. In many ill-health cases, the adjudicator will continue to ask the employer to reconsider a case about which they have concerns. But, in some cases, where the employer's decision appears not to have properly considered the medical information, a replacement decision, for example Tier 1 ill-health benefits rather than Tier 2, can be imposed at either Stage 1 or Stage 2.

This revised approach is expected to result in fewer cases reaching Stage 2. Where cases do reach Stage 2, they will be investigated and a report will be presented to Committee which will set out the range of options available

### **3. Financial Considerations**

None.

### **4. Legal Considerations**

As set out in section 2 of this report.

### **5. Other Considerations**

In preparing this report the relevance of the following further factors has been considered: human rights, human resources, equality and diversity, health, environmental, transport, property and prevention of crime and disorder.

### **6. Officer's Recommendation**

That the Committee notes the change to the role of Stage 1 and Stage 2 adjudicators in respect of appeals against decisions made by Derbyshire Pension Fund employing authorities or against Derbyshire County Council as the administering authority of the Pension Fund.

**Peter Handford**  
**Director of Finance and ICT**