

FOR PUBLICATION
DERBYSHIRE COUNTY COUNCIL
PENSIONS AND INVESTMENTS COMMITTEE

21 July 2021

Report of the Director of Finance & ICT

**Arrangements for the Determination of Stage 2 Applications under
the LGPS Applications for Adjudication of Disagreements Procedure**

1. Purpose of the Report

To seek approval for the delegation to the Director of Finance & ICT to determine arrangements for deciding the outcome of appeals at the second stage of the Adjudication of Disagreements Procedure under the Local Government Pension Scheme Regulations 2013 (LGPS 2013).

2. Information and Analysis

Regulations

Under Regulation 74 of LGPS 2013, Derbyshire County Council (DCC), as the administering authority of Derbyshire Pension Fund (the Fund/Pension Fund), and each participating employer in the Pension Fund, are required to appoint an adjudicator to consider applications by pension scheme members, or other stakeholders, for adjudication of their disagreement with a pension related first-instance decision made by the administering authority or the scheme employer. The adjudicators are required to make decisions on each application at Stage 1 of the 'Applications for Adjudication of Disagreements Procedure' (AADP) and provide written notice of their decision, or reasons for any delays in being able to make a decision, to the applicant within two months of the application having been received.

Under Regulation 76 of LGPS 2013, DCC, as the administering authority of Derbyshire Pension Fund, must consider appeals from Fund members or others who disagree with an adjudicator's Stage 1 findings, at Stage 2 of AADP and also provide written notice of its decision, or reasons for any delays in being able to make a decision, to the applicant within two months of the Stage 2 application having been received.

LGPS 2013 requires that no person involved in the making of either the first-instance decision or the Stage 1 decision is involved in the reconsideration process at Stage 2.

DCC Constitution

Article 12 of the Constitution of Derbyshire County Council, which sets out the role and function of the Pensions and Investments Committee (the Committee), requires that the Committee ensures that arrangements are in place for the adjudication of AADP applications (including the appointment of adjudicators).

The adjudication process

The role of the adjudicator at AADP Stages 1 and 2, is to examine and review the making of the original first-instance decision which has been disputed, and to determine whether it had been made and applied correctly in compliance with appropriate legislation, statutory guidance, policies or other guiding principles.

Appeals which are submitted through AADP may be connected to any pension related decision made by a participating employer or the administering authority.

The majority of applications submitted, relate to an individual scheme member's dissatisfaction with a decision made about their entitlement to, or calculation of, pension benefits. The most commonly disputed decisions referred to AADP, relate to entitlement to the early release of pension benefits on the grounds of ill-health.

At Stage 1, the member has the right to apply to an adjudicator appointed by their scheme employer or the administering authority of the Fund, dependant on who made the decision on which the complaint is based.

Where the decision was made by the Fund, the administering authority's appointed adjudicator reviews the decision at Stage 1 to determine whether evidence supports upholding the member's complaint against the actions and decisions made by the Fund, and where necessary, what corrective actions or remedy should be applied. Where the decision was made by a scheme employer, the scheme employer's appointed adjudicator reviews the decision at Stage 1.

Where applicants remain dissatisfied with the outcome following consideration at AADP Stage 1, they may escalate their dispute or disagreement to AADP Stage 2, and, if they remain dissatisfied following the Stage 2 decision, they may further escalate their dispute or disagreement to The Pensions Ombudsman.

Determinations made by The Pensions Ombudsman are final, binding and enforceable in court, unless there is a successful appeal on a point of law. There is no financial limit to an award of financial redress which the Ombudsman can enforce.

AADP Stage 1 adjudicators

Currently, applications submitted under AADP Stage 1 are adjudicated as follows:

- Disputes against a decision by DCC in its role as an LGPS employer are currently adjudicated by Mrs Mary Fairman in her role as the acting Assistant Director of Legal Services.
- Disputes against a decision by other participating LGPS employers are adjudicated by the person appointed by each employer.
- Disputes against a decision by DCC in its role as the administering authority of Derbyshire Pension Fund are also currently adjudicated by Mrs Mary Fairman in her role as the acting Assistant Director of Legal Services.

Current practice for adjudicating AADP Stage 2 applications

All applications referred to the administering authority at AADP Stage 2 are currently reviewed and determined by the Committee during the exempt part of meetings following consideration of a detailed report prepared by officers of the Fund. Information related to individual members, which often includes confidential medical records, is anonymised and redacted where appropriate.

Reason for review of arrangements

The complexity of administering and managing LGPS funds has increased in recent years due to the introduction of the new scheme in 2014, the increased number and diversity of employers in the scheme, and the introduction of investment pooling. At the same time, oversight of LGPS funds has increased following the introduction of the LGPS Scheme Advisory Board (SAB) and Local Pension Boards and the extension of The Pension Regulator's duties to include oversight of the governance and administration of the LGPS.

The adjudication of applications at AADP Stage 2 involves a review of first instance decisions and their reconsideration at AADP Stage 1, based on compliance with legislation and procedure; the process of reaching a decision is a determination of fact based on operational compliance which requires a thorough understanding of the relevant regulations.

The recent Hymans Robertson Good Governance: Phase 3 Report to SAB noted that a pension committee member is not being asked to be a subject matter expert or to act operationally.

Putting in place alternative arrangements for considering individual applications at AADP Stage 2, would allow Committee to increase its focus on strategic matters, further strengthening Committee's oversight of the governance of the Pension Fund. Additionally, alternative arrangements outside of the Committee's cycle of meetings would support decision making within the required timescales.

Practice in other administering authorities

To assist the Committee's review of arrangements for AADP Stage 2 adjudications, Fund officers have undertaken a survey of six other LGPS funds who collaborate on joint LGPS working groups. The results of the survey are attached at Appendix 2.

The findings of the survey demonstrate that other Funds' operational arrangements for adjudicating Stage 2 applications are managed without reference to their local pensions committee, instead periodic summaries of cases are reported to committee to facilitate oversight.

Proposed alternative arrangements

The Committee are asked to delegate the determination of arrangements for adjudication of AADP Stage 2 applications to the Director of Finance & ICT.

The Director of Finance & ICT would be responsible for ensuring that each AADP Stage 2 application would be adjudicated by an appropriately qualified person from the following options:

- Director of Legal Services, DCC
- Assistant Director of Legal Services, DCC (except where the same officer has already adjudicated the case at AADP Stage 1)
- A suitably qualified adjudicator from a different LGPS employer (except where the same person has already adjudicated the case at AADP Stage 1)
- A senior officer from a different LGPS Fund
- An external specialist lawyer

This flexibility to appoint a suitable adjudicator based on the type of application would ensure that disputes and disagreements referred to the administering authority at AADP Stage 2 would continue to be properly considered, with the required level of impartiality, and detailed explanation of decisions. It would also support the provision of decisions to applicants within the two months' timeframe set out in the regulations.

Committee has previously decided to retain the consideration of Stage 2 adjudications in order to provide members with reassurance about the robustness of the process. The alternative arrangements set out above will be equally robust, whilst providing access to specialist expertise and more timely decisions, and they

are supported by the Pension Board. The continuing provision of an annual summary report of all AADP cases will enable the Committee to retain oversight of the AADP process.

3. Implications

Appendix 1 sets out the relevant implications considered in the preparation of the report.

4. Background papers

Papers held by the Pension Fund;

5. Appendices

5.1 Appendix 1 – Implications.

5.2 Appendix 2 - Summary of survey relating to six other administering authorities and their approach to adjudicating AADP Stage 2 appeals.

6. Recommendation

That the Committee:

Approves the delegation of arrangements for the adjudication of AADP Stage 2 applications to the Director of Finance & ICT.

7. Reason for recommendation

The analysis set out in this report identifies the benefits of delegating arrangements for the adjudication of AADP Stage 2 applications to the Director of Finance & ICT.

Peter Handford

Director of Finance & ICT

Implications

Financial

1.1 None

Legal

2.1 Delegating the arrangements for adjudicating AADP Stage 2 applications will reduce the likelihood of determinations being provided to applications beyond the 2 months deadline set out in LGPS 2013.

Human Resources

3.1 None

Information Technology

4.1 None

Equalities Impact

5.1 None

Corporate objectives and priorities for change

6.1 None

Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)

7.1 None

Summary of survey relating to six other Administering Authorities' approach to adjudicating AADP Stage 2 appeals

Fund	Stage 2 appeals against your host authority	Stage 2 appeals against other scheme employers	Stage 2 appeals against your Fund	Employer recharges for Stage 2 appeals	Reporting to Committee
Cheshire	Host authority legal dept	Host authority legal dept	Host authority legal dept	No recharges	Included in Annual Report (plus quarterly report to Board)
Leicestershire	Host authority legal dept	Host authority legal dept	External adjudication (usually a neighbouring fund)	No recharges	Annual summary report to Committee (plus quarterly report to Local Pension Board numbers only)
Nottinghamshire	Senior Fund officer supported by external legal firm	Senior Fund officer supported by external legal firm	Senior Fund officer supported by external legal firm	Reserves the right to charge additional admin costs to employer if appropriate	Summary included in annual performance report (numbers only)
Staffordshire	Host authority legal dept (or where required, specialist lawyer)	Host authority legal dept (or where required, specialist lawyer)	Host authority legal dept (or where required, specialist lawyer)	No recharges	Included in Annual Report (numbers only)
West Midlands	Fund officer, plus specialist lawyer if required	Fund officer, plus specialist lawyer if required	Fund officer, plus specialist lawyer if required	No recharges	Part of quarterly administration report
Worcestershire	Fund officer	Fund officer	Council Monitoring Officer or other LGPS Fund	No recharges	Included in rolling Administration Business Plan