

GREATER MANCHESTER PENSION FUND

**ILL HEALTH RETIREMENT IN THE LOCAL GOVERNMENT
PENSION SCHEME**

**A GUIDE TO THE RULES APPLYING TO MEMBERS LEAVING
FROM APRIL 2008 ONWARDS**

FIRST EDITION

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SECTION 1 – INTRODUCTION

- 1.1. Tameside MBC is the administering authority for the Greater Manchester Pension Fund (the GMPF), which is part of the Local Government Pension Scheme for England and Wales (the LGPS). The employers participating in the GMPF include the 10 Greater Manchester district councils, several joint authorities and smaller statutory bodies, large numbers of schools and colleges and a great variety of other public and private sector bodies providing public services. Membership of the LGPS is open to almost all employees of these organisations, apart from teachers, police officers and fire-fighters, for whom other pension schemes are provided.
- 1.2. The LGPS is a statutory pension scheme the rules of which are set out in regulations made under the Superannuation Act 1972. The Government Department responsible for drafting regulations for approval by Parliament is the Department for Communities and Local Government (the DCLG). The main current rules, applying to members leaving the scheme after 31 March 2008, are the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (as amended)¹ and the Local Government Pension Scheme (Administration) Regulations 2008 (as amended)². For members who left the scheme up to 31 March 2008, earlier rules (i.e. the Local Government Pension Scheme Regulations 1995 (as amended) and the Local Government Pension Scheme Regulations 1997 (as amended) remain relevant.
- 1.3. On 24 November 2008, the DCLG issued statutory guidance as referred to in regulation 56 (3) of the Local Government Pension Scheme (Administration) Regulations 2008. Under that regulation, employers and independent registered medical practitioners are required to have regard to this guidance when carrying out their functions. The statutory guidance is available on the DCLG's website at:
<http://www.xoq83.dial.pipex.com/whatsnew2008.htm>
- 1.4. The current rules of the LGPS provide for members to receive immediate pension benefits if they leave employment because of permanent incapacity caused by ill-health³ and have a reduced likelihood of obtaining any gainful employment before normal retirement age. The rules also allow members with deferred pension benefits to receive those benefits early if they become permanently incapable of doing their previous job because of ill-health and if their medical condition is likely to prevent them obtaining gainful employment before normal retirement age or for at least 3 years whichever is sooner.
- 1.5. Decisions on entitlement to pension benefits under the LGPS are the responsibility of a person's former employer. However, where a person's ill-health may be relevant to pension benefits, employers are required, before making their decision on pension benefits, to obtain an opinion from an approved independent registered medical practitioner (referred to from now on in this Guide as an approved IRMP) on whether a person is permanently incapacitated because of ill-health and also, in the case of an

¹ SI 2007 No 1166 as amended by SI 2008 No 1083.

² SI 2008 No 239 as amended by SI 2008 No 1083

³ Where the term "ill-health" is used by itself in this Guide, it is normally shorthand for "ill-health or infirmity of mind or body".

active member, whether he has a reduced likelihood of obtaining any gainful employment before normal retirement age, and for a deferred member, whether the medical condition is likely to prevent him obtaining gainful employment before normal retirement age or for at least 3 years whichever is sooner.

- 1.6. It is the responsibility of the administering authority (i.e. Tameside MBC in the case of employers in the GMPF) to approve IRMPs for this purpose.
- 1.7. The aim of this Guide is to help all those with a specific role in relation to the LGPS rules on ill-health retirement, including employers, approved IRMPs, administering authorities and decision makers under the scheme's internal dispute resolution procedure, to understand those rules and their role properly. It may also interest scheme members, employee representatives and others wishing to find a clear, concise explanation of how the LGPS deals with ill-health issues.
- 1.8. It has been written by David Phillips, Technical Manager in Tameside MBC's Pensions Office. It describes the GMPF's understanding of the current scheme regulations and statutory guidance and of best practice in their administration.
- 1.9. Please refer any comments or questions about the Guide to the author. Contact details are as follows:

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- 1.10. The Guide is now issued in its first definitive edition after being available as a consultation draft to allow interested parties to suggest amendments or additions. Further editions will follow as necessary to reflect changes in legislation and administrative practice and further comments from users.
- 1.11. Anyone wishing to make use of any of the material in this Guide is free to do so.
- 1.12. Please note that this Guide does not cover the position of LGPS members who left the scheme prior to 1 April 2008. A separate guidance manual covering such members is available on the GMPF website at:

http://www.gmpf.org.uk/publications/policies_and_documents.htm
- 1.13. Finally, please also note that references in the Guide to "he", "him" or "his" should be taken to embrace "she" or "her" as appropriate unless the context suggests otherwise.

SECTION 2 – LEAVERS AFTER 31 MARCH 2008 – CONDITIONS FOR ILL-HEALTH RETIREMENT

- 2.1 The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (as amended) (“the Benefits Regulations”) came into force on 1 April 2008. The DCLG have confirmed that they agree that the regulations do not apply to a member whose last day of employment was 31 March 2008. So, a person leaving employment on that date would have any pension benefits determined under the 1997 regulations referred to in paragraph 1.2 above. A person who is a member of the scheme on 1 April 2008 comes within the scope of the Benefits Regulations.
- 2.2 Regulation 20 of the Benefits Regulations describes the conditions for immediate ill-health retirement for active members of the scheme. Although entitlement depends (in part) on the employer determining to terminate the employment on grounds of permanent incapacity because of ill-health, we assume that regulation 20 can apply to a member leaving employment on or after 1 April 2008 even if the decision to terminate employment is taken before that date (and by implication, before the Benefits Regulations came into force). Making this assumption is necessary to avoid some members falling outside both the 1997 regulations and the Benefits Regulations. A copy of regulation 20 is included in this Guide at Appendix I.
- 2.3 There are three pre-conditions for entitlement to immediate benefits under regulation 20 of the Benefits Regulations for active members leaving employment on or after 1 April 2008. These are:
 - (a) The member satisfying one of the qualifying conditions described in regulation 5 of the Benefits Regulations (i.e. having total membership of at least 3 months or having a transfer value credited to him) [Regulation 20 (1)].
 - (b) The member’s employer determining to terminate his employment on the grounds that his ill-health renders him permanently incapable of his current employment [Regulation 20 (1) (b)].
 - (c) The member’s employer determining that the member has a reduced likelihood of obtaining any gainful employment before his normal retirement age [Regulation 20 (1)(b)].
- 2.4 Before making a determination as described in paragraph 2.3 (b) or (c) above, an employer must obtain a certificate from an approved IRMP qualified in occupational health medicine as to whether in his opinion the member is suffering from a condition that renders him permanently incapable of discharging efficiently the duties of the relevant employment because of ill-health or infirmity of mind or body and, if so, whether as a result of that condition he has a reduced likelihood of obtaining any gainful employment before reaching normal retirement age.
- 2.5 By virtue of regulation 56 (3) of the Local Government Pension Scheme (Administration) Regulations 2008 (as amended) (“the Administration Regulations”), the employer’s choice of IRMP has to be approved by the administering authority. A copy of regulation 56 is included in this Guide at Appendix III.

- 2.6 Certain terms used in regulation 20 of the Benefits Regulations are defined in that regulation, as follows:
- (a) “gainful employment” means paid employment for not less than 30 hours in each week for a period of not less than 12 months
 - (b) “permanently incapable” means that the member will, more likely than not, be incapable until, at the earliest, his 65th birthday
 - (c) “qualified in occupational health medicine” means ~
 - holding a diploma in occupational medicine (D Occ Med) or an equivalent qualification issued by a competent authority in an EEA State; and for the purposes of this definition, “competent authority” has the meaning given by the General and Specialist Medical Practice (Education, Training and Qualification) Order 2003, or
 - being an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA State.
- 2.7 The term “normal retirement age” is defined in regulation 16 of the Benefits Regulations as 65.
- 2.8 The expression “he has a reduced likelihood of obtaining any gainful employment before (reaching) his normal retirement age” as used in regulation 20 (1) (b) and 20 (5) of the Benefits Regulations is not defined in those regulations. It appears that the DCLG intend the expression to be interpreted as meaning that a person is not judged medically capable of undertaking gainful employment immediately on leaving the normal job. See paragraphs 21, and 26 to 28 of the statutory guidance referred to in paragraph 1.3 above. Whilst employers are required to have regard to the statutory guidance, this does not prevent them forming a different view about the meaning of expressions used in the scheme regulations.
- 2.9 The expression “independent registered medical practitioner” as used in regulation 20 (5) of the Benefits Regulations is not defined. However, we assume that for an IRMP to be seen as independent he must be able to give the declarations referred to in regulation 56 (1) of the Administration Regulations, i.e. that
- (a) he has not previously advised, or given an opinion on, or otherwise been involved in the particular case for which the certificate has been requested; and
 - (b) he is not acting, and has not at any time acted, as the representative of the member, the employing authority or any other party in relation to the same case.
- 2.10 We believe that judgement is required by approved IRMPs in deciding if they have had previous involvement in a case. It may be that forming a definitive opinion requires consideration of a case over a period of time, e.g. if further medical reports need to be collected or the outcome of treatment evaluated. We think that in such circumstances, the practitioner can be considered independent when giving an opinion despite perhaps

having seen the member or reviewed a case file on more than one occasion.

- 2.11 We assume that the term “registered medical practitioner” covers qualified doctors registered with the General Medical Council.

SECTION 3 – AMOUNT OF BENEFITS UNDER REGULATION 20 OF THE BENEFITS REGULATIONS

- 3.1 If the three pre-conditions described in paragraph 2.3 are satisfied, the former employer is required by regulation 20 (1) of the Benefits Regulations to agree to retirement benefits coming into payment immediately on leaving employment. However, to enable the level of benefits to be assessed, the employer needs to make one of three further possible determinations (as described in regulations 20 (2), (3) or (4) of the Benefits Regulations).
- 3.2 If the employer determines that there is no reasonable prospect of the member obtaining any gainful employment before his normal retirement age (i.e. age 65) benefits are increased by adding to his total membership at date of leaving the period from date of leaving to age 65 [Regulation 20 (2)].
- 3.3 If the employer determines that, although the member cannot obtain gainful employment within three years of leaving his employment, it is likely that he will be able to obtain gainful employment before age 65, benefits are increased by adding to his total membership at date of leaving 25% of the period from date of leaving to age 65 [Regulation 20 (3)].
- 3.4 If the employer determines that it is likely that the member will be able to obtain gainful employment within three years of leaving his employment, his benefits are those which he would have received were his leaving date also his normal retirement date. In this situation, benefits continue to be paid for a maximum of three years as long as the member is not in gainful employment unless otherwise discontinued under the provisions of regulation 20 (8) of the Benefits Regulations (see Section 4 of this Guide).
- 3.5 It appears that the DCLG intend that references to obtaining gainful employment should be interpreted as meaning being medically capable of undertaking gainful employment. See paragraphs 26 and 27 of the statutory guidance referred to in paragraph 1.3 above.
- 3.6 Unless the special rules described in regulation 20 (12) (b) or 20 (13) of the Benefits Regulations apply (see paragraphs 3.7 to 3.9 below), if a member is in part-time service when the employment ends, the period to be added under either regulation 20 (2) or 20 (3) of the Benefits Regulations (see paragraphs 3.2 and 3.3 above) is calculated as the fraction of the period to his normal retirement age which results from dividing the contractual hours of the employment by the contractual hours of a comparable whole-time employment.
- 3.7 The general rule described in paragraph 3.6 is modified if either the approved IRMP states in his certificate that the person is in part-time service wholly or mainly because of the incapacitating condition which has led to loss of employment (see regulation 20 (12) (b) of the Benefits Regulations) or because the member was a member of the scheme prior to 1 April 2008 and has attained the age of 45 before that date (see regulation 20 (13) of the Benefits Regulations).

- 3.8 Where the approved IRMP certifies as described in paragraph 3.7, no account is to be taken of such reduction in the member's service as is attributable to the member's medical condition.
- 3.9 Where a person (whether or not in part-time service) meets the "member aged 45 pre 1 April 2008" test described in paragraph 3.7, and the period to be added under regulations 20 (2) or (3) of the Benefits Regulations would otherwise be less than the period that would have been added had regulation 28 of the 1997 Regulations applied, then his benefits are increased by adding the latter period.
- 3.10 A form of transitional protection applies in cases where employers determine to terminate a scheme member's employment on the grounds of permanent incapacity before 1 October 2008 – see regulation 20 (15) of the Benefits Regulations. If such a member is placed in a worse position as a result of such a determination than he would have been in had the 1997 regulations continued to apply, then those regulations have effect in relation to the member as if they were still in force instead of regulations 20 (1) to (14) of the Benefits Regulations.
- 3.11 As this Guide is being published after the period of transitional protection referred to in paragraph 3.10 above ended, we assume that new cases where that protection is relevant will not arise. Nevertheless, employers and others need to be aware of this protection in case pension decisions made prior to 1 October 2008 need to be reviewed – perhaps as a result of an appeal.

SECTION 4 - REVIEW OF ILL HEALTH PENSIONS

- 4.1 Pensions payable to members where regulations 20 (2) or (3) of the Benefits Regulations apply are not subject to review. These are known informally as First Tier and Second Tier pensions respectively.
- 4.2 However, pensions payable to which regulation 20 (4) of the Benefits Regulations applies (known informally as Third Tier pensions) are subject to review as determined by regulations 20 (6) to (9) of the Benefits Regulations.
- 4.3 A person who receives benefits to which regulation 20 (4) of the Benefits Regulations applies is required by regulation 20 (6) of the Benefits Regulations to inform his former employer if he obtains employment and answer any inquiries made by his former employer as to his current employment status, including as to his pay and working hours.
- 4.4 Once benefits to which regulation 20 (4) of the Benefits Regulations applies have been in payment to a person for 18 months, the former employer is required by regulation 20 (7) (a) to make inquiries as to the person's current employment.
- 4.5 If as a result of any inquiries as are referred to in paragraphs 4.3 or 4.4 above, the former employer considers that a person is in gainful employment, they are required to discontinue the payment of benefits to which regulation 20 (4) of the Benefits Regulations applies and may recover any payment made in respect of a period before discontinuance during which they consider the person to have been in gainful employment (see regulation 20 (8) (a) of the Benefits Regulations). See paragraph 7.16 below for more information about what constitutes gainful employment.
- 4.6 If, following enquiries made by the former employer after the pension to which regulation 20 (4) of the Benefits Regulations applies has been in payment for 18 months, the former employer concludes that the person is not in gainful employment, they are required by regulation 20 (7) (b) of the Benefits Regulations to obtain a further certificate from an approved IRMP as to whether the person is permanently incapable of doing his former job and has a reduced likelihood of obtaining any gainful employment before reaching his normal retirement age.
- 4.7 If the former employer considers (in reliance on a certificate obtained under regulation 20 (7) (b) of the Benefits Regulations) that the person is capable of obtaining gainful employment, they are required by regulation 20 (8) (a) (ii) of the Benefits Regulations to discontinue the payment of benefits and may recover any payment made in respect of a period before discontinuance during which they consider the person to have been in gainful employment (see regulation 20 (8) (a) of the Benefits Regulations). **As administering authority, we recommend (contrary to paragraph 38 of the statutory guidance) that any such recovered amounts should be retained by the employer.**
- 4.8 In any event, the former employer is required by regulation 20 (8) (b) of the Benefits Regulations to discontinue the payment of benefits to which regulation 20 (4) of the Benefits Regulations applies after they have been in payment to a person for three years.

- 4.9 A former employer which is required to discontinue payment of pension under regulation 20 (8) of the Benefits Regulations or which chooses to recover any payment as permitted by that regulation is required by regulation 20 (8) (c) of the Benefits Regulations to notify the appropriate administering authority without delay of any action they have taken.

SECTION 5 – TREATMENT OF A THIRD TIER PENSIONER AFTER DISCONTINUANCE

- 5.1 A person whose third tier ill health pension has been discontinued under regulation 20 (8) of the Benefits Regulations is treated as a pensioner member with deferred benefits from the date the discontinuance has effect and shall not be eligible to receive Third Tier ill health benefits in respect of any future period. Nor, if he later becomes an active member of the scheme can the period of membership which gave rise to the Third Tier benefits be aggregated with his later active membership (see regulations 20 (9) and (10) of the Benefits Regulations).
- 5.2 However, an employer which has made a determination under regulation 20 (4) of the Benefits Regulations may make a subsequent determination under regulation 20 (3) of the Benefits Regulations in respect of him and any increase in benefits as a result of such a subsequent determination is payable from the date of that determination (see regulation 20 (11) of the Benefits Regulations). In other words, a Third Tier pension may be upgraded to a Second Tier pension, but not to a First Tier pension.
- 5.3 Although the Benefits Regulations do not explain how a person whose Third Tier pension has been discontinued can again become entitled to payment of a pension in respect of the relevant membership, we assume that for practical purposes such a person is treated as having an entitlement to deferred benefits (albeit excluding any retirement grant paid at the time the Third Tier benefits started). Regulations 29, 30 and 31 of the Benefits Regulations are therefore assumed to apply. However, we assume that for the deferred benefit to be brought into payment early on health grounds under regulation 31 of the Benefits Regulations, the medical condition giving rise to permanent incapacity for the purpose of that regulation must be something other than that which led to the earlier payment of the Third Tier benefits. Please note that the assumptions referred to in this paragraph may need to be revised if regulatory amendments are made or if new statutory guidance emerges.

SECTION 6 - LEAVERS AFTER 31 MARCH 2008 – EARLY PAYMENT OF DEFERRED BENEFITS ON ILL HEALTH GROUNDS

- 6.1 Regulation 31 of the Benefits Regulations describes the circumstances in which a person who has left an employment on or after 1 April 2008 and been awarded deferred pension benefits may receive payment of those deferred benefits before reaching his normal retirement age on grounds of ill-health.
- 6.2 Under regulation 31 (1) of the Benefits Regulations, a member who has left his employment before he is entitled to the immediate payment of retirement benefits (under regulations other than regulation 31 of the Benefits Regulations) and who becomes permanently incapable of discharging efficiently the duties of that employment because of ill-health or infirmity of mind or body may ask to receive payment of his retirement benefits immediately, whatever his age.
- 6.3 However, it is implicit in regulation 31 (2) of the Benefits Regulations that such a request is ineffective without the agreement of the former employer (which is what we assume the word “authority” refers to in regulation 31 (2)) and that before agreeing the former employer should consider whether the medical condition giving rise to the permanent incapacity is likely to prevent the member from obtaining gainful employment (whether in local government or otherwise) before reaching age 65, or for at least 3 years, whichever is the sooner. Regulation 31 (2) requires the former employer to obtain a certificate from an approved IRMP giving his opinion on the questions of permanent incapacity and ability to obtain gainful employment.
- 6.4 Pensions brought into payment under regulation 31 of the Benefits Regulations are no subject to review.

SECTION 7 – ROLE OF THE EMPLOYER

- 7.1 Employers are responsible for determining entitlement to pension benefits for current and former scheme members. In cases where ill-health is an issue, it is important that appropriate medical opinions are obtained at the right time to provide a sound basis for decision making. This will minimise the administrative burden on employers both leading up to pension decisions and in dealing with any appeals from members.

Selection of doctors for approval

- 7.2 One of Tameside MBC's roles as administering authority for GMPF is to approve IRMPs that employers wish to use to provide medical opinions. When selecting IRMPs for approval by GMPF, employers should be looking for professional competence as doctors, understanding of the scheme rules about ill-health retirement and an independence of mind. Where medical standards for employees are determined by external parties (e.g. by the DVLC for bus drivers) IRMPs should be able to demonstrate familiarity with the standards required. The GMPF cannot in practice check whether a particular IRMP has had any previous connection with the case which would prevent him making the "independence" declarations referred to in paragraph 2.9 above. Any approvals are therefore given on the understanding that employees will not be referred for opinions in circumstances where the IRMP would not be in a position to make the "independence" declarations.
- 7.3 Once an IRMP has been approved by the GMPF, it is important that employers ensure that he is kept up to date with the relevant LGPS rules and the associated administrative procedures. Hopefully, this can be achieved by making this Guide widely available.

Referring members for opinions

- 7.4 Employers may refer both current and ex-employees for medical opinions under the scheme. In the case of employees who have had long periods of sick leave, there may have already been contact with an occupational health unit for periodic reviews aimed primarily at helping the employee return to his normal job or to suitable alternative work. These reviews may eventually indicate that termination of employment on capability grounds is appropriate. If so, an independent medical opinion from an approved IRMP is then required under regulation 20 of the Benefits Regulations to inform the employer's pensions decision. Clearly, an IRMP who has carried out periodic reviews on behalf of an employer should not be asked for a medical opinion for the purposes of the pension scheme. For other employees, the need to seek an independent medical opinion may arise before there has been any long term absence. In either case, actual or prospective termination of employment because an employee will be unable for health reasons to return to work within a timescale which is acceptable to the employer, or continue at work, should prompt the employer to ask an approved IRMP who has had no previous involvement with the case to give an opinion on the question of whether or not the tests of permanent incapacity and reduced likelihood of obtaining any gainful employment before normal retirement age are satisfied.

- 7.5 Where ex-employees are concerned, employers will have to respond to requests from the individuals concerned to have benefits brought into payment early on ill-health grounds.
- 7.6 Where an employer gives an approved IRMP a remit wider than simply giving medical opinions for the purposes of the scheme, employers will need to check carefully that the IRMP is capable of making the “independence” declaration in any particular case. Also, they will need to make clear to approved IRMPs what the purpose of a particular referral is.
- 7.7 Once the employer has decided to refer a person for a medical opinion, the approved IRMP should be provided with full information about the requirements of the person’s normal job, details of sickness absence and any other relevant information, including the relevant part-completed medical certificate form (PF 72 (Ongoing) or PF 72A (2008) as appropriate). Section 10 below gives more information about the forms.
- 7.8 We recommend employers to ask approved IRMPs to provide a report to accompany the certificate, explaining the process that has been adopted and giving reasons for the opinions reached.
- 7.9 Although approved IRMPs are expected to give impartial opinions, their task is likely to be made easier if employers refrain from mentioning to them irrelevant matters such as the cost of an ill-health retirement.

Meeting the cost of medical opinions

- 7.10 Employers are required by the scheme regulations to obtain a medical opinion before making decisions about benefits where ill-health may be relevant. The cost of obtaining opinions is part of the employer’s cost of administering the scheme and is not a responsibility of the scheme member.

Action on receipt of a medical opinion

- 7.11 It is for the employer to decide what action to take on receipt of a medical opinion. For a current employee, a certificate confirming permanent incapacity and reduced likelihood of obtaining any gainful employment will normally lead to termination of employment by the employer and an award of immediate pension benefits under regulation 20 of the Benefits Regulations. Where permanent incapacity and/or reduced likelihood of obtaining any gainful employment is not certified for a current employee, the employer will have to decide whether or not to terminate employment. If employment is terminated an entitlement to deferred pension benefits is likely to arise (unless immediate benefits are payable on other grounds).
- 7.12 For a former employee, receipt of a certificate confirming permanent incapacity and inability to obtain gainful employment within 3 years or by age 65 if sooner will normally result in the employer authorising the GMPF to put benefits into payment.

- 7.13 Employers should take account of any requirements of the Disability Discrimination Act 1995 to make reasonable adjustments when deciding how to deal with incapacitated employees. An explanation of these requirements is beyond the scope of this Guide.

Notifying the pension decision to employees

- 7.14 Regulation 57 of the Administration Regulations deals with notification of first instance decisions. In particular, it requires that:

- (a) a body making a pension decision notify the person concerned of the decision in writing as soon as is reasonably practicable,
- (b) a notification of a decision that a person is not entitled to a benefit (e.g. if a person is not entitled to benefits under regulation 20 of the Benefits Regulations) must contain the grounds for the decision,
- (c) every notification must contain a conspicuous statement giving the address from which further information about the decision may be obtained, and
- (d) every notification must refer to the person's rights under the two stage internal dispute resolution procedure, the applicable time limits and the job title and address of the person to whom applications under the first stage should be addressed.

Review of Third Tier Pensions

- 7.15 Section 4 above describes the statutory requirements for review of Third Tier pensions. The key roles for the former employer are:

- Where a pensioner member informs an employer that he has obtained employment, asking the member to provide details of the employment, including pay and working hours
- Deciding whether such an employment constitutes "gainful employment" as defined in regulation 20 (14) of the Benefits Regulations
- If it is considered gainful employment, notifying the administering authority of the need to discontinue pension payments
- Deciding whether to recover from the member any pension payments made between the start of gainful employment and the date pension payments are discontinued.
- Where no notification of obtaining employment has been received within the first 18 months after pension payments started, asking the member as to his current employment status
- If in such a case the member is found not to be in gainful employment, obtaining a further certificate from an approved IRMP as to the matters set out in Regulation 20 (5) of the Benefits Regulations.
- If such a further certificate suggests that the member is capable of obtaining gainful employment, notifying the administering authority of the need to discontinue pension payments.
- Considering, in any case where a Third Tier pension has been awarded, whether to make a subsequent decision to award a Second Tier pension.

- 7.16 The statutory guidance at paragraphs 52 – 58 suggests how to decide if gainful employment has been obtained in the following circumstances:
- If a member has an open ended employment contract, working at least 30 hours per week, treat him as being in gainful employment (see statutory guidance paragraph 58)
 - If a member has an employment contract for a period of less than 12 months, working at least 30 hours per week, review the position after the initial term has expired. If the contract is renewed for a further period of less than 12 months, treat the gainful employment test as being satisfied once a continuous period of employment of 12 months has been completed. If the renewal is for a period of at least 12 months, treat the gainful employment test as being satisfied immediately on renewal (see statutory guidance paragraph 53).
 - If a member works variable hours, defer any decision about whether the gainful employment test has been met until a pattern of working has been established (see statutory guidance paragraph 54).

Pensions Increase

- 7.17 Members of the LGPS benefit under the Pensions (Increase) Act 1971 from statutory inflation-proofing of their pensions once they become payable, provided qualifying conditions are met. Pensions increase applies straightaway to any person leaving with immediate benefits under regulation 20 of the Benefits Regulations irrespective of the person's age. However, where a deferred pension is brought into payment early on health grounds under regulation 31 of the Benefits Regulations, pensions increase can only apply immediately if the pension authority (i.e. Tameside MBC) is satisfied that the pensioner is "disabled by physical or mental infirmity". That term (as defined in Section 3 of the Pensions (Increase) Act 1971) means "permanently incapacitated by such infirmity from engaging in any regular full-time employment". If this condition is not met, pensions increase is not normally payable until age 55.
- 7.18 Where an opinion from an approved IRMP is requested for a person who has deferred benefits, two questions are involved ~ one relating to entitlement to pension benefits under the LGPS and another relating to eligibility for pensions increase under the Pensions (Increase) Act 1971. The form of certificate used by the GMPF where deferred members are involved provides for certification both for pension benefits and pensions increase. See Section 10 below for more information.

SECTION 8 – ROLE OF THE INDEPENDENT REGISTERED MEDICAL PRACTITIONER

8.1 Regulation 20 (5) of the Benefits Regulations taken together with regulation 56 of the Administration Regulations requires employers to obtain a certificate from an independent registered medical practitioner who:

- Is qualified in occupational health medicine,
- Is approved by the appropriate administering authority,
- Has not previously been involved in the case in any way, and
- Is not and never has been the representative of any party in the case.

before making a decision on termination of employment on grounds of permanent incapacity through ill-health. The implication is that the certificate should be obtained before any decision is taken to terminate employment. However, employers should be aware that the length of the period between obtaining an opinion and termination of employment may be an issue in any appeal against an employer's pension decision.

8.2 The certificate must give the approved IRMPs opinion "as to whether in his opinion the member is suffering from a condition that renders him permanently incapable of discharging efficiently the duties of the relevant employment because of ill-health or infirmity of mind or body and, if so, whether as a result of that condition he has a reduced likelihood of obtaining any gainful employment before reaching his normal retirement age".

8.3 The term "independent" is not defined in the regulations. However, a clue to its meaning is the requirement that the approved IRMP must be in a position to certify and must actually include in his certificate a statement that (a) he has not previously advised, or given an opinion on, or otherwise been involved in the particular case for which the certificate has been requested, and (b) he is not acting, and has not at any time acted, as the representative of the member, the scheme employer or any other party in relation to the same case.

8.4 The implication is that the approved IRMP must be able to give an objective opinion based solely on the relevant medical evidence and free from any influence that may arise had the approved IRMP had any previous involvement with the case or if the approved IRMP is or was a representative of any party in relation to the case.

8.5 The term "qualified in occupational health medicine" means ~

- holding a diploma in occupational medicine (D Occ Med) or an equivalent qualification issued by a competent authority in an EEA State; and for the purposes of this definition, "competent authority" has the meaning given by the General and Specialist Medical Practice (Education, Training and Qualification) Order 2003, or
- being an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA State.

- 8.6 Tameside MBC (as administering authority for the GMPF) is responsible for deciding whether or not to approve the IRMPs that employers in the Fund nominate to provide medical opinions for the purposes of the pension scheme. The key criteria for approval are that nominated IRMPs have a suitably arm's length contractual relationship with the employer and hold one or more of the specified qualifications. It will not be possible for Tameside MBC to investigate the ability of approved IRMPs to make the independence declaration described in paragraph 2.9 above, so employers need to consider this point carefully when referring an employee for an opinion.

How should approved IRMPs form opinions ?

- 8.7 It may be helpful to restate in simple terms the basic questions that approved IRMPs need to address and then to explore in more detail how they may be answered.

- 8.8 The opinion referred to in Regulation 20 (5) of the Benefits Regulations covers two different questions. The first, relating to permanent incapacity, could be expressed as:

“In my opinion, is it more likely than not that this person will be unable to do his normal job efficiently until age 65 for health reasons?”

- 8.9 Answering this first question involves:

(a) Finding out what an acceptable standard of performance is for a particular job and what physical or mental capabilities are required to achieve this standard.

(b) Identifying what medical problems currently affect an individual and forming a view about the extent to which those medical problems may be resolved by age 65, and

(c) By combining understanding of the job requirements and the long term medical outlook, forming a view about the likelihood of the medical problems preventing efficient working in the relevant job over the period to age 65.

- 8.10 No medical opinion about a person's capacity for work can be valid unless the approved IRMP understands the type of job in question. Approved IRMPs should ensure that they are provided with a detailed job description and if necessary should ask for more information (from both employer and employee) about what the job entails.
- 8.11 Similarly, it would not be proper for an approved IRMP to certify permanent incapacity on the grounds of ill-health etc until he has a clear understanding about the nature of the ill-health and its likely future course. Approved IRMPs must therefore find out what is wrong with the individual and form a view about how any problems may develop in future. Subject to complying with accepted standards of confidentiality, approved IRMPs should supplement the results of their own questioning/examination of the individual with reports from other doctors who have been involved with his treatment. It may well be that assessment of both current medical status and likely future medical prospects cannot be completed until the current

medical condition has been further investigated and appropriate treatment options pursued.

- 8.12 The GMPF does not impose any requirements on approved IRMPs to obtain specialist reports in particular cases. We rely on approved IRMPs using their professional judgement in deciding what information they need to form an opinion about a person's degree of incapacity.
- 8.13 By combining their understanding of the requirements of particular jobs with that of a person's current and prospective health status, it should normally be possible for approved IRMPs to be able to form an opinion as to whether or not a health related incapacity that currently exists is likely to continue up to age 65.
- 8.14 Approved IRMPs are expected to have regard to guidance issued within their profession when forming opinions. This does not, of course, override the requirement to treat each case individually on its own merits.
- 8.15 The second question referred to in regulation 20 (5) of the Benefits Regulations deals with the issue of whether a person who is judged permanently incapable of doing his normal job for health reasons has, because of that medical condition, "a reduced likelihood of obtaining any gainful employment before reaching his normal retirement age".
- 8.16 The expression "a reduced likelihood of obtaining any gainful employment before reaching his normal retirement age" is not defined in the regulations. Arguably, a person who has been judged permanently incapable of doing his normal job for health reasons must be less likely to obtain gainful employment in future than he would be had the permanent incapacity not applied. However, such an interpretation would make the "reduced likelihood" condition redundant and may therefore not be what may have been intended. The statutory guidance at paragraph 28 suggests that DCLG believe that a person who is immediately capable of obtaining gainful employment does not have a reduced likelihood of obtaining gainful employment. Also, in paragraphs 21, 26 and 27 of the statutory guidance, DCLG claim as a fact that both regulations 20 (1) and 20 (5) restrict entitlement considerations to medical factors. Taken together, the implication of the statutory guidance appears to be that DCLG consider a person to have "a reduced likelihood of obtaining any gainful employment before reaching his normal retirement age" only if he is not immediately capable as a result of his medical condition of undertaking any gainful employment.
- 8.17 It is for employers to decide whether to accept the interpretation suggested by DCLG in the statutory guidance. The form of certificate recommended by the GMPF does not refer explicitly to the expression "a reduced likelihood of obtaining any gainful employment before reaching his normal retirement age". Instead it asks the approved IRMP to address the question of when a person is likely to be capable of undertaking gainful employment, having regard to his medical condition. One of the range of options is that "because of/despite that ill-health or infirmity....the employee is medically capable of gainful employment IMMEDIATELY on leaving". Taking the DCLG interpretation of the "reduced likelihood" expression as described in paragraph 28 of the statutory guidance, completion of that option implies that the person does not have "a reduced likelihood of obtaining any gainful

employment before reaching his normal retirement age” and would not therefore be entitled to immediate benefits under regulation 20 of the Benefits Regulations.

- 8.18 Although regulation 20 (5) of the Benefits Regulations only refers to two questions to be addressed by the IRMP (i.e. dealing with permanent incapacity and reduced likelihood etc), employers may need to consider the further questions implicit in regulations 20 (2), (3) and (4) of the Benefits Regulations. These relate to the likelihood of obtaining any gainful employment within 3 years of leaving or by age 65. It seems appropriate that medical advice on such questions should be sought at the same time and from the same approved IRMP as for the regulation 20 (5) questions.
- 8.19 We deduce from the statutory guidance that DCLG consider that the questions as to whether a person has a reduced likelihood of obtaining any gainful employment before age 65 and, if so, when he is likely to be able to obtain any gainful employment are effectively questions about when (if ever) – in the light of the person’s medical condition – he is likely to be capable of undertaking gainful employment. DCLG regard considerations such as the availability of suitable jobs or the attitudes of employers as not being material factors.
- 8.20 We assume that it is within the competence of approved IRMPs to form views about how long it may be – given a person’s medical condition – before the person may be fit for work which would satisfy the definition of gainful employment. That definition has only three elements. It must be paid work, for at least 30 hours a week and for at least 12 months. There is no requirement for the work being considered to be similar in nature or in pay to the normal job.
- 8.21 The form of certificate recommended by the GMPF does not use the exact wording found in regulations 20 (2), (3) or (4) of the Benefits Regulations. Instead it asks the approved IRMP to address the question of when a person is likely to be capable of undertaking gainful employment, having regard to their medical condition. As explained in paragraph 8.17 above, one option that approved IRMPs may choose is intended to establish whether (on the DCLG interpretation of the expression) the person has a reduced likelihood of obtaining any gainful employment before age 65. The other options allow the approved IRMP to give his opinion as to whether, in the light of the medical condition:
- (a) there is no reasonable prospect of the employee being medically capable of gainful employment before age 65, or
 - (b) the employee is likely to be medically capable of gainful employment before age 65 but not within a period of 3 years of leaving the normal job, or
 - (c) the employee is likely to be medically capable of gainful employment within a period of 3 years of leaving the normal job, BUT NOT IMMEDIATELY
- 8.22 If the DCLG’s statutory guidance is accepted by employers, the opinions referred to in (a) to (c) of paragraph 8.21 appear to be consistent

(assuming that the permanent incapacity test is satisfied) with awards of First Tier, Second Tier or Third Tier pensions respectively.

Should IRMPs see the member before forming an opinion ?

8.23 To help approved IRMPs form opinions it will often be useful for them to see the individuals concerned. Instances will arise however when this isn't practicable, perhaps when the member is a deferred beneficiary living abroad. In other instances someone may be so ill as to be unable to travel. Occasions will therefore arise when approved IRMPs may decide to base their opinions on written statements. In these circumstances it is important that they satisfy themselves that the reports they receive are *bona fide*. Medical reports may also describe a malady or condition affecting a member that is so certainly permanent and unequivocally incapacitating (possibly completely so in the case of a deferred beneficiary under the age of 55), that an approved IRMP may believe a personal examination of the member to be pointless (and possibly an unwarranted inconvenience for the member). In these circumstances approved IRMPs may again prefer to base their opinions on written statements, but again they must ensure that the reports that they have received are *bona fide*.

8.24 We are aware that even where the exceptional circumstances described in paragraph 8.23 do not apply approved IRMPs may form opinions about scheme members based on a paper review of the case and not see the person concerned. There is nothing in the scheme rules to prevent this, but approved IRMPs and employers should bear in mind that scheme members who are aggrieved about a pension decision based on a medical opinion given by an approved IRMP may be more likely to challenge that decision if they have not been offered a consultation with the approved IRMP. We suggest the scope for dispute could be minimised if:

(a) members are kept fully informed about the process that needs to be gone through to arrive at a decision about their pension rights so that they understand the respective roles of the approved IRMP and the employer

(b) members are fully involved with the compiling of information about them which is to be submitted to the approved IRMP and have the opportunity to add their own views about its accuracy and completeness

(c) approved IRMPs are properly briefed about their role so that they understand that it is not their responsibility to make any kind of pension decision but to provide an opinion on particular questions as set out in the scheme rules

(d) approved IRMPs are asked to give a written explanation as to why they think a consultation with a member may be necessary or unnecessary as applicable (which may be helpful in the event of an appeal under IDRPs).

SECTION 9 – ROLE OF THE ADMINISTERING AUTHORITY

- 9.1 Tameside MBC is the designated administering authority for the Greater Manchester Pension Fund. Its responsibilities are set out on the statutory rules of the pension scheme. In relation to ill-health retirement matters, its key responsibilities are:
- (a) Approving IRMPs nominated by employers to provide medical opinions in connection with the scheme.
 - (b) Where an entitlement to benefits has been determined by an employer, calculating and paying those benefits.
 - (c) Discontinuing payment of Third Tier pensions on instructions from employers
 - (d) Managing the second stage of the scheme's internal dispute resolution procedure (IDRP).

Approval of IRMPs

- 9.2 Regulations 20 (5) and 31 (2) of the Benefits Regulations require employers to obtain a certificate from an independent registered medical practitioner qualified in occupational health medicine before making decisions under those regulations.
- 9.3 Regulation 56 (2) of the Administration Regulations requires employers to obtain the appropriate administering authority's approval to their choice of IRMP.
- 9.4 The word "independent" is not defined, but we assume that for an IRMP to be seen as independent he must be able to give the declarations referred to in regulation 56 (1) of the Administration Regulations, i.e. that
- (a) he has not previously advised, or given an opinion on, or otherwise been involved in the particular case for which the certificate has been requested; and
 - (b) he is not acting, and has not at any time acted, as the representative of the member, the employing authority or any other party in relation to the same case.
- 9.5 The term "registered medical practitioner" is not defined but we assume it covers qualified doctors registered with the General Medical Council.
- 9.6 The term "qualified in occupational health medicine" is defined in regulation 20 (14) of the Benefits Regulations as meaning:
- (a) holding a diploma in occupational medicine (D Occ Med) or an equivalent qualification issued by a competent authority in an EEA state; and for the purposes of this definition, "competent authority" has the meaning given by the General and Specialist Medical Practice (Education, Training and Qualification) Order 2003; or

(b) being an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA State.

- 9.7 In approving IRMPs, Tameside MBC (as administering authority) would expect there to be an arm's length relationship with the employer. In other words, we expect occupational health doctors providing certificates not to be employees of the commissioning employer and to have a variety of clients, so as to satisfy the requirement at (b) above. We also expect the selected IRMP to have one or more of the prescribed occupational health qualifications.
- 9.8 Employers should ensure that an approved IRMP asked to provide a certificate has not been previously involved with the case (as described in (a) above). Some judgement may be needed here as situations may arise where an approved IRMP needs to consider a case over an extended period before being able to form a definite opinion (e.g. if further medical evidence needs to be collected or the outcome of treatment evaluated).

Calculating and paying benefits

- 9.9 An outline of the calculation of benefits in ill-health cases is provided in Section 3 of this Guide. More details are available in the Pensions Office Guide to the Local Government Pension Scheme – available on the GMPF Employers website.

Discontinuing payment of Third Tier Benefits

- 9.10 Regulation 20 (8) of the Benefits Regulations requires employing authorities to discontinue payment of Third Tier benefits if they consider that the person is in gainful employment or if (in reliance on a medical certificate obtained for the purpose of regulation 20 (7) (b) of the Benefits Regulations) they consider that he is capable of obtaining such employment. This regulation also requires the pension to be discontinued in any event after it has been in payment for 3 years.
- 9.11 Regulation 20 (8) (c) requires the employing authority to notify the appropriate administering authority of any action they have taken under this regulation. In practice, employers need to advise the administering authority promptly when a pension needs to be discontinued. A suitable form (PF73B) is available in the Online Forms section of the GMPF Employers' Area website.
- 9.12 Where a pension is discontinued because the employer considers that the person has been in gainful employment, the employer may recover any payment made in respect of any period before discontinuance during which they consider a person to have been in gainful employment. We recommend (contrary to the statutory guidance) that any such recovered amounts should be retained by the employer.

The second stage of the IDR

- 9.13 Regulation 60 of the Administration Regulations allows scheme members and alternative applicants to refer disagreements about the scheme which have not been resolved by the first stage of the IDR to Tameside MBC (as administering authority) for decision (see Section 11 of this Guide)..

SECTION 10 – FORMS USED BY GREATER MANCHESTER PENSION FUND

- 10.1 Greater Manchester Pension Fund has its own forms of medical certificate which are available to employers on the Fund's Employers' Area website. Whilst we prefer these to be used, we will accept other versions provided they are consistent with current regulations. In particular, samples supplied by Local Government Employers may be used in preference to GMPF forms. A suite of forms is attached to LGE Circular 221 which is available on the Local Government Employers website at:

<http://www.lge.gov.uk/lge/core/page.do?pagelid=119455>

Active Members

- 10.2 Where a pension decision is required about an active member and any decision to terminate employment is made after 30 September 2008, the appropriate medical certificate form is PF72 (Ongoing). A copy of the current version of this form is included in this Guide at Appendix IV. The certificate is in two main parts. The first, which should be completed by the employer, shows details identifying the employee concerned, his current occupation, actual or estimated date of leaving, and whether a part-timer has reduced his hours of work. The second part – headed “Medical Practitioner’s Certificate” – is in five parts, described in more detail in the following paragraphs.
- 10.3 The first part asks the approved IRMP to give an opinion (by ticking the relevant box) as to whether the employee is permanently incapable, because of ill-health, of doing his/her normal job.
- 10.4 The second part is only to be completed where 1A on the form applies (i.e. where the approved IRMP’s opinion is that the employee is permanently incapable of doing his normal occupation). Where this is the case, the approved IRMP is asked to give an opinion (by ticking one of the four boxes) on when (if ever) the employee is likely to be capable of “gainful employment” where that term is defined to mean:
- “paid employment for not less than 30 hours in each week for a period of not less than 12 months”
- 10.5 Option A in this second part applies if there is no reasonable prospect of the employee being capable of gainful employment before age 65 (which is the scheme’s normal retirement age).
- 10.6 Option B applies if the employee is thought likely to be capable of gainful employment before age 65, but not within 3 years of leaving the current employment.
- 10.7 Option C applies if the employee is thought likely to be capable of gainful employment within 3 years of leaving the current employment, but not immediately.
- 10.8 Option D applies if the employee is thought likely to be capable of gainful employment immediately on leaving.

- 10.9 Although the words in regulation 20 (1) (b), “he has a reduced likelihood of obtaining any gainful employment before his normal retirement age” are not defined in the regulations, we understand that the Government’s intention is that anyone capable of gainful employment immediately on leaving would not satisfy this condition⁴. Such a person would have no entitlement to benefits under regulation 20, except where transitional protection applies – see paragraph 3.10 above.
- 10.10 Please note that although the regulations use phrases such as “it is likely that he will be able to obtain any gainful employment before his normal retirement age”, we understand that approved IRMPs are expected to assess this possibility solely on the basis of medical capability for work⁵.
- 10.11 The third part asks the approved IRMP to give an opinion – in the case of a part-time employee who has reduced his hours of work – as to whether the reduction was wholly or partly the result of the medical condition which has caused the incapacity for the normal occupation. Employers should provide appropriate information to the approved IRMP about the circumstances surrounding the reduction in hours. Approved IRMPs may need to confirm with the employer when any reduction in hours occurred and whether issues other than health were relevant. This question needs addressing only in cases of permanent incapacity and where the person is not capable of other gainful employment immediately on leaving.
- 10.12 The fourth part is a statement of independence and the fifth indicates whether a separate report by the approved IRMP is to accompany the certificate.

Deferred Members – Leavers after 31 March 2008

- 10.13 If a member who has left the scheme after 31 March 2008 becomes entitled to deferred pension benefits, he may, under regulation 31 (1) of the Benefits Regulations request early payment of those benefits if he becomes permanently incapable of discharging efficiently the duties of his former employment because of ill health.
- 10.14 Before deciding whether to agree to such a request, the former employer must, under regulation 31 (2) of the Benefits Regulations, obtain a certificate from an approved IRMP qualified in occupational health medicine as to whether in his opinion the member is permanently incapable of discharging efficiently the duties of the relevant employment because of ill-health and if so whether that condition is likely to prevent the member from obtaining gainful employment (whether in local government or otherwise) before reaching his normal retirement age, or for at least three years, whichever is the sooner.
- 10.15 For such a member, the appropriate form of medical certificate is PF72A (2008), the current version of which is included at Appendix V of this Guide. The certificate is in two main parts. The first, which should be completed by the employer, shows details identifying the former employee concerned, his former occupation, date of leaving, and date of application for early payment of benefits. The second part – headed “Medical Practitioner’s

⁴ See paragraph 28 of the statutory guidance.

⁵ See paragraphs 21, 26 and 27 of the statutory guidance.

Certificate” – is in five parts, described in more detail in the following paragraphs.

- 10.16 The first part asks the approved IRMP to give an opinion (by ticking the relevant box) as to whether the employee is permanently incapable, because of ill-health, of doing his former job. It also asks the approved IRMP to state when he thinks permanent incapacity arose. This may be important in deciding the date from which benefits should become payable.
- 10.17 The second part (which is relevant only if permanent incapacity for the former job has been certified) asks the approved IRMP to indicate, by ticking the relevant box, his opinion as to whether or not the person’s medical condition is likely to prevent him being capable of gainful employment for at least 3 years from the date of application, or until age 65 if earlier.
- 10.18 The third part (which is relevant only if the approved IRMP considers the person both permanently incapable of the former job and not likely to be capable of gainful employment within the period of 3 years or to age 65 referred to in the previous paragraph) asks the approved IRMP to indicate, by ticking the relevant box, whether or not the person is disabled by physical or mental infirmity and permanently incapacitated from engaging in any regular full-time employment.
- 10.19 The fourth, fifth and sixth parts are, respectively, a statement of independence, confirmation that the approved IRMP has had regard to statutory guidance and confirmation as to whether a separate report by the approved IRMP is to accompany the certificate.
- 10.20 On the reverse of the form, there is a box for the former employer to authorise payment of benefits and pensions increase.

Third Tier Pensioner Members

- 10.21 Where an employer seeks a medical opinion from an approved IRMP in relation to a Third Tier pensioner whose pension has been in payment for at least 18 months, the appropriate form of medical certificate is form PF72R, the current version of which is included at Appendix VI to this Guide. This is in four parts.
- 10.22 The first part – to be completed by the former employer – provides details of the identity and former occupation of the pensioner.
- 10.23 The second part asks the approved IRMP to give an opinion (by ticking the relevant box) as to whether the person remains permanently incapable for health reasons of doing his former job.
- 10.24 The third part asks the approved IRMP to give his opinion (assuming that box 1A applies), as to when the person may be capable of undertaking gainful employment – having regard to the medical condition that gave rise to the permanent incapacity.
- 10.25 If box 2A is ticked, this suggests that the former employer would be able to require the discontinuation of pension payments under regulation 20 (8) (a) of the Benefits Regulations.

- 10.26 If box 2B is ticked, this suggests that payment of pension can continue for the remainder of the three year period or until discontinued as a result of gainful employment being obtained.
- 10.27 If box 2C is ticked, the former employer needs to consider whether an uplift to a Second Tier pension should occur.
- 10.28 The third and fourth parts of the form are, respectively, a statement confirming that the approved IRMP has had regard to statutory guidance and confirmation as to whether a separate report by the approved IRMP is to accompany the certificate.
- 10.29 Please note that form PF72R does not require the approved IRMP to make a declaration of independence. Paragraph 42 of the statutory guidance suggests it is acceptable for the same approved IRMP to provide an opinion for the 18 month review as provided the opinion when the original decision to award a Third Tier pension was made.

SECTION 11 – ILL HEALTH AND THE LGPS INTERNAL DISPUTE RESOLUTION PROCEDURE

- 11.1 The LGPS currently has a two stage internal dispute resolution procedure (an IDRPs). If a member disagrees with a decision by the employer or the administering authority, or if no decision is made, the first stage is for the member to refer the matter to a person specified by the decision making body (or, by default, by the administering authority). For disputes concerning administering authority decisions, the specified person will be Tameside's Director of Pensions. If a member is not satisfied with the first stage decision, or if no such decision is made within the specified time limits, he can proceed to the second stage. This is the responsibility of the administering authority. GMPF will be using two local referees to decide second stage disputes. These are Colin Fielding, who is the former Tameside MBC General Manager (District Assemblies) and David Postlethwaite, a former Tameside MBC Borough Treasurer. If a person remains dissatisfied with the decision made by the local referee, he may refer the matter to the Pensions Ombudsman and/or to the High Court. The Pensions Ombudsman expects complainants to have made use of the services of The Pensions Advisory Service.
- 11.2 The Secretary of State for the DCLG also has a limited quasi-judicial role in relation to the LGPS in that she makes determinations in appeal cases involving disputes between administering authorities and employers. These could arise, for example, where an employing authority has made a determination about entitlement to immediate ill-health retirement benefits in the absence of or contrary to independent medical opinion.
- 11.3 Decisions by employers that an employee is either not entitled to ill-health retirement or is entitled to one of the lower tiers of benefit may well be appealed by the employee concerned. Such decisions would normally have been taken after having received the opinion of an approved IRMP. Whilst there is no explicit requirement that an employer's decision should be consistent with the approved doctor's opinion, this is normally to be expected. If for any good reason, an employer doubts the reliability of an opinion they have been given, or if the approved doctor is unable to form an opinion, they should consider obtaining a further opinion from a second approved IRMP.
- 11.4 Where a dispute is referred to a person under either stage of the IDRPs, he should collect evidence on how the pension decision was taken by the employer and on the member's medical status. If the decision making process adopted by the employer seems flawed, the employer may be instructed to consider the matter afresh. Exceptionally, and particularly where there appears to be a genuine conflict of medical evidence, the person deciding the dispute may wish to seek an independent medical opinion of his own from a different approved IRMP before reaching his decision in the matter.

SECTION 12 – SOURCES OF FURTHER INFORMATION

- 12.1 Up to date copies of the regulations referred to in this guide can be accessed through the Local Government Employers “Timeline Regulations” facility, available at:

<http://timeline.lge.gov.uk/>

- 12.2 The same website address contains the statutory guidance issued by the DCLG and a Frequently Asked Questions document also issued by the DCLG.

Early leavers: ill-health

20.—(1) If an employing authority determine, in the case of a member who satisfies one of the qualifying conditions in regulation 5—

(a) to terminate his employment on the grounds that his ill-health or infirmity of mind or body renders him permanently incapable of discharging efficiently the duties of his current employment; and

(b) that he has a reduced likelihood of obtaining any gainful employment before his normal retirement age,

they shall agree to his retirement pension coming into payment before his normal retirement age in accordance with this regulation in the circumstances set out in paragraph (2), (3) or (4), as the case may be.

(2) If the authority determine that there is no reasonable prospect of his obtaining any gainful employment before his normal retirement age, his benefits are increased—

(a) as if the date on which he leaves his employment were his normal retirement age; and

(b) by adding to his total membership at that date the whole of the period between that date and the date on which he would have retired at normal retirement age.

(3) If the authority determine that, although he cannot obtain gainful employment within three years of leaving his employment, it is likely that he will be able to obtain any gainful employment before his normal retirement age, his benefits are increased—

(a) as if the date on which he leaves his employment were his normal retirement age; and

(b) by adding to his total membership at that date 25% of the period between that date and the date on which he would have retired at normal retirement age.

(4) If the authority determine that it is likely that he will be able to obtain any gainful employment within three years of leaving his employment, his benefits—

(a) are those that he would have received if the date on which he left his employment were the date on which he would have retired at normal retirement age; and

(b) unless discontinued under paragraph (8), are payable for so long as he is not in gainful employment.

(5) Before making a determination under this regulation, an authority must obtain a certificate from an independent registered medical practitioner qualified in occupational health medicine as to whether in his opinion the member is suffering from a condition that renders him permanently incapable of discharging efficiently the duties of the relevant employment because of ill-health or infirmity of mind or body and, if so, whether as a result of that condition he has a reduced likelihood of obtaining any gainful employment before reaching his normal retirement age.

(6) A person who receives benefits under paragraph (4) shall—

(a) inform the authority if he obtains employment; and

(b) answer any inquiries made by the authority as to his current employment status, including as to his pay and working hours.

(7) (a) Once benefits have been in payment to a person for 18 months, the authority shall make inquiries as to his current employment.

(b) If he is not in gainful employment, the authority shall obtain a further certificate from an independent registered medical practitioner as to the matters set out in paragraph (5).

(8) (a) The authority shall discontinue the payment of benefits under paragraph (4) if they consider—

(i) that the person is in gainful employment; or

(ii) in reliance on the certificate obtained under paragraph (7)(b), that he is capable of obtaining such employment

and may recover any payment made in respect of any period before discontinuance during which they considers him to have been in gainful employment.

(b) The authority shall in any event discontinue the payment of benefits under paragraph (4) after they have been in payment to a person for three years.

(c) The authority shall forthwith notify the appropriate administering authority of any action they have taken under this paragraph.

(9) A person in respect of whom the payment of benefits is discontinued under paragraph (8) shall be treated as a pensioner member with deferred benefits from the date the suspension takes effect, and shall not be eligible to receive benefits under paragraph (4) in respect of any future period.

(10) If a person in respect of whom the payment of benefits is discontinued under paragraph (8) subsequently becomes an active member of the Scheme, his earlier period of active membership in respect of which benefits were paid under paragraph (4) shall not be aggregated with his later active membership.

(11) (a) An authority which has made a determination under paragraph (4) in respect of a member may make a subsequent determination under paragraph (3) in respect of him.

(b) Any increase in benefits payable as a result of any such subsequent determination is payable from the date of that determination.

(12) (a) Subject to sub-paragraph (b) and to paragraph (13), in the case of a member in part-time service, the period to be added under paragraph (2)(b) or (3)(b), as the case may be, is calculated in accordance with regulation 7(3) as if he had remained in such part-time service until his normal retirement age.

(b) If the certificate obtained under paragraph (5) states that, in the medical practitioner's opinion, the member is wholly or partly in part-time service as a result of the condition that has caused him to be incapable of discharging efficiently the duties of the relevant local government employment, no account shall be taken of such reduction in his service as is attributable to that condition.

(13) But if, in the case of a person who is a member before 1st April 2008, and who has attained the age of 45 before that date, the period to be added under paragraph (2)(b) or (3)(b) is less than the period that would have been added had regulation 28 of the 1997 Regulations applied, then his benefits are increased by adding the latter period.

(14) In this regulation –

“gainful employment” means paid employment for not less than 30 hours in each week for a period of not less than 12 months;

“permanently incapable” means that the member will, more likely than not, be incapable until, at the earliest, his 65th birthday; and

“qualified in occupational health medicine” means—

(a) holding a diploma in occupational medicine (D Occ Med) or an equivalent qualification issued by a competent authority in an EEA State; and for the purposes of this definition, “competent authority” has the meaning given by the General and Specialist Medical Practice (Education, Training and Qualification) Order 2003; or

(b) being an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA State.

(15) Where, apart from this paragraph, the benefits payable to a member in respect of whom his employing authority makes a determination under paragraph (1) before 1st October 2008 would place him in a worse position than he would otherwise be had the 1997 Regulations continued to apply, then those Regulations shall have effect in relation to him as if they were still in force instead of the preceding paragraphs of this regulation.

[Substituted regulation 20 inserted by regulation 13 of SI 2008 No 1083 having effect from 1 April 2008]

Early payment of pension: ill-health

31.—(1) Subject to paragraph (2), if a member who has left his employment before he is entitled to the immediate payment of retirement benefits (apart from this regulation) becomes permanently incapable of discharging efficiently the duties of that employment because of ill-health or infirmity of mind or body he may ask to receive payment of his retirement benefits immediately, whatever his age.

(2) Before determining whether to agree to a request under paragraph (1), an authority must obtain a certificate from an independent registered medical practitioner qualified in occupational health medicine as to whether in his opinion the member is permanently incapable of discharging efficiently the duties of the relevant employment because of ill-health or infirmity of mind or body and, if so, whether that condition is likely to prevent the member from obtaining gainful employment (whether in local government or otherwise) before reaching his normal retirement age, or for at least three years, whichever is the sooner .

(3) In this regulation, “gainful employment”, “permanently incapable” and “qualified in occupational health medicine” have the same meaning as in regulation 20.

[Substituted regulation 31 inserted by regulation 18 of SI 2008 No 1083 having effect from 1 April 2008]

APPENDIX III

First instance determinations: ill-health

56.—(1) An independent registered medical practitioner from whom a certificate is obtained under under regulation 20(5) of the Benefits Regulations in respect of a determination under paragraph (2), (3) or (4) of that regulation (early leavers: ill-health) must be in a position to declare that—

[Regulation 56 (1) amended by regulation 24 of SI 2008 No 1083 having effect from 1 April 2008]

(a) he has not previously advised, or given an opinion on, or otherwise been involved in the particular case for which the certificate has been requested; and

(b) he is not acting, and has not at any time acted, as the representative of the member, the employing authority or any other party in relation to the same case,
and he must include a statement to that effect in his certificate.

(2) If the employing authority is not the member's appropriate administering authority, it must first obtain that authority's approval to its choice of registered medical practitioner for the purposes of regulation 20 and 31 of the Benefits Regulations.

(3) The employing authority and the independent registered medical practitioner must have regard to guidance given by the Secretary of State when carrying out their functions under this regulation or, in the case of the employing authority, when making a determination under regulation 20 of the Benefits Regulations.

The forms used by employers have been removed from this document.