

GREATER MANCHESTER PENSION FUND

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

A GUIDANCE MANUAL

3rd EDITION

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**FOR MEMBERS WHO HAVE LEFT THE SCHEME
BEFORE 1 APRIL 2008 ONLY**

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INTRODUCTION

1. Tameside MBC is the administering authority for Greater Manchester Pension Fund (the GMPF), which is part of the Local Government Pension Scheme (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.
2. The LGPS is a statutory pension scheme the rules of which are set out in regulations made under the Superannuation Act 1972. The current rules are the Local Government Pension Scheme Regulations 1997 (as amended). In some cases, the previous rules (i.e. the Local Government Pension Scheme Regulations 1995 (as amended)) remain relevant. The Government Department responsible for drafting regulations for approval by Parliament is the Office of the Deputy Prime Minister (the ODPM). The Secretary of State for the ODPM also has a limited quasi-judicial role in relation to the LGPS in that he makes determinations in appeal cases involving disputes between administering authorities and employers.
3. The rules of the LGPS provide for members to receive immediate pension benefits if they leave employment because of permanent incapacity caused by ill-health¹. 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.
4. 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 manual as an approved doctor) on whether a person is permanently incapacitated because of ill-health.
5. It is the responsibility of the administering authority (i.e. Tameside MBC in the case of employers in the GMPF) to approve doctors for this purpose.
6. The aim of this Guidance Manual is to help all those with a specific role in relation to the LGPS rules on ill-health retirement, including approved doctors, employers, and decision makers under the Scheme's internal dispute resolution procedure, to understand those rules and their role properly. It will also interest Scheme members, employee representatives and others wishing to find a clear, concise explanation of how the LGPS deals with ill-health issues.
7. It has been written by David Phillips, Principal Technical Officer in Tameside MBC's Pensions Office. It describes the GMPF's understanding of the current scheme regulations and of best practice in their administration.
8. A number of readers have made helpful comments about the earlier editions. Further feedback is welcome. Please refer any comments or questions about the Guidance Manual to the author. Contact details are shown in Appendix 1.
9. Anyone wishing to make use of any of the material in this manual is free to do so.

¹ Where the term "ill-health" is used by itself in this Guidance Manual, it is normally shorthand for "ill-health or infirmity of mind or body".

CONDITIONS FOR ILL-HEALTH RETIREMENT

10. There are two situations in which pension benefits may arise on ill-health grounds in the LGPS. These are (i) retirement with immediate benefits under regulation 27 and (ii) early payment of deferred pension benefits under regulation 31 (1997 regulations) or regulation D11 (1995 regulations). Copies of the current versions of these regulations are included as Appendices 2-4 at the back of this Guidance Manual.

Immediate benefits

11. Regulation 27 of the 1997 regulations deals with active members of the LGPS who leave their employment because of permanent incapacity caused by ill-health. Provided the specified conditions are met, it provides entitlement to immediate payment of lump sum retirement grant and annual pension. There are no reductions applied to pension benefits and in many cases extra membership is given automatically to increase benefits. It does not have to be the employer who terminates the employment - Regulation 27 can apply where an employee leaves an employment by resignation, provided health-related incapacity is the reason for the employment ending.
12. The specified conditions for receiving immediate lump sum retirement grant and annual pension under regulation 27 are as follows:
- A member must have at least 3 months' scheme membership or have transferred pension rights from another pension scheme into the LGPS.
 - A member must have left a "local government employment". This is one in which the person is (or was) a member of the LGPS and the employer concerned can be any employer participating in the scheme. The effect of this condition is that entitlement cannot arise until the employment has ended.
 - The reason for leaving the employment must be "... being permanently incapable of performing efficiently the duties of that employment or any comparable employment with his employing authority because of ill-health or infirmity of mind or body...".
13. The term "permanently incapable" is defined in regulation 27 as meaning that "the member will, more likely than not, be incapable, until, at the earliest, his 65th birthday"².
14. The term "performing efficiently" is not defined in the regulations. Subject to any relevant judicial or quasi-judicial interpretations of its meaning, it needs to be given its commonly understood meaning. In practice, it is for employers to define what constitutes an acceptable standard of performance.
15. The term "ill-health or infirmity of mind or body" is also not defined in the regulations. So, again, subject to any relevant judicial or quasi-judicial interpretations of its meaning, it needs to be given its commonly understood meaning.
16. The term "comparable employment" is defined in regulation 27. It means a job whose terms as to pay, hours, location etc are similar to the current job and whose capability requirements are either the same as those of the normal job or only differ sufficiently to accommodate a person's medical condition. Where regulation 27 could apply (i.e. where a local government employment has ended (or is about to end) for health reasons, it is for the employer to identify any available job which may be suitable and provide details to the approved doctor

² Age 70 in the case of coroners, justices' clerks and councillors

whose opinion is being sought. Please note, to be regarded as comparable, a job must be with the same employer. The ODPM have advised that the job must be an actual available job, although this is not explicitly stated in regulation 27. So, for the purposes of regulation 27, no account need be taken of whether a person can do any job available at another employer or any job not currently available. See paragraph 64 for further comments on this term.

17. The Scheme regulations do not require an individual to apply for benefits under regulation 27. Whenever it becomes clear that a contributing member is to leave a local government employment because of incapacity, the employer should take the initiative to decide whether or not pension benefits under regulation 27 will apply.

Early payment of deferred benefits (1997 regulations)

18. Regulation 31 of the 1997 regulations deals (among other things) with the early payment of deferred benefits on ill-health grounds.
19. If a person who has left a local government employment on or after 1 April 1998 and been awarded deferred pension benefits in the LGPS becomes permanently incapable of discharging efficiently the duties of that employment because of ill-health or infirmity of mind or body he may elect to receive those benefits immediately. GMPF interprets “immediately” as meaning “from the date of the election”. Benefits are payable without reduction, but no increase in membership is possible. Although no employer consent to the election is required, employers are responsible for assessing whether the incapacity test is satisfied.
20. Although in most respects the test of incapacity under regulation 31 is similar to that for immediate benefits under regulation 27, there is a key difference. For early payment of deferred benefits, the only job in relation to which the judgement of incapacity is to be made is the person’s former job (i.e. the job to which the deferred benefits relate)³. Approved doctors may however be asked to give an opinion about the member’s capacity to undertake any other work in order to assess eligibility for statutory inflation-proofing of pension benefits (i.e. pensions increase). This is referred to in paragraph 48 of this Guidance Manual.
21. So, the medical question that needs to be addressed before an election can be accepted from a person wishing to receive deferred benefits early under regulation 31 can be expressed as:

“Is it more likely than not that this person would be unable for health reasons to perform efficiently until age 65⁴ the duties of the employment which gave rise to the deferred benefits?”

22. Under regulation 31, former members can elect to receive benefits immediately. If the person meets the test of permanent incapacity, pension benefits can be paid from the later of the date permanent incapacity is judged to have arisen and any date when the former member applies to have this regulation applied to him.

Early payment of deferred benefits (1995 regulations)

23. For Scheme members who acquired an entitlement to deferred benefits before 1 April 1998, the rules about early payment of deferred benefits are contained in regulation D11 of the 1995 regulations.

³ It may be that a doctor will regard a deferred member’s ability to do his current job as relevant to the task of assessing capacity for the former employment .

⁴ Age 70 in the case of coroners, justices’ clerks and councillors.

24. The test of incapacity in the 1995 regulations is very similar to that in the 1997 regulations, although the term “permanently incapable” is not defined in the 1995 regulations. However, the date from which benefits may be payable can be different. In the 1995 regulations, pension benefits can be payable to a person “from any date on which he becomes permanently incapable, by reason of ill-health or infirmity of mind or body, of discharging efficiently the duties of the employment he has ceased to hold.”
25. This means that benefits under the 1995 regulations can be payable with effect from some date prior to when the deferred member requests payment provided a medical opinion indicates that the permanent incapacity arose prior to that request. This is not possible under the 1997 regulations.
26. So, for members whose deferred benefits arose under the 1995 regulations, it is particularly important that approved doctors try to establish when permanent incapacity arose.
27. If a member who is entitled to deferred pension benefits requests early payment on health grounds, the employer should take action to obtain the required medical opinion.

THE ROLE OF THE APPROVED DOCTOR

28. Regulation 97 of the 1997 regulations (as amended by regulation 6 (b) of The Local Government Pension Scheme (Amendment No 2) Regulations 2001) 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 retirement benefits in cases where ill-health may be relevant⁵. The regulations do not state whether an opinion should be obtained before or after the employment is ended. However, employers should be aware that if an opinion is obtained before the employment ends, the length of the period between obtaining an opinion and termination of employment may be an issue in any appeal against an employer's decision.

29. Because regulation 97 is part of the so-called "common provisions" (as defined in regulation 2 of the Local Government Pension Scheme (Transitional Provisions) Regulations 1997), it applies both to those scheme members who left employment on or after 1 April 1998 (to whom the Local Government Pension Scheme Regulations 1997 apply) and to earlier leavers (who are generally subject to the Local Government Pension Scheme Regulations 1995). A copy of regulation 97 is included in Appendix 5 to this Guidance Manual.

30. The certificate must give the approved doctor's opinion "as to whether the person is permanently incapable of discharging efficiently the duties of the relevant local government employment because of ill-health or infirmity of mind or body".

31. The term "independent" is not defined in the regulations. However, a clue to its meaning is the requirement that the doctor 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.

32. The implication is that the approved doctor 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 doctor had any previous involvement with the case or if the doctor is or was a representative of any party in relation to the case.

33. Regulation 97 lists the qualifications which allow a doctor to be described as "qualified in occupational health medicine". These are a diploma in occupational medicine (D Occ Med) or an equivalent qualification issued by a competent authority in an EEA State (which has the meaning given by the European Specialist Medical Qualifications Order 1995) or being an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA State.

34. Tameside MBC (as administering authority for the GMPF) is responsible for deciding whether or not to approve the doctors that employers in the Fund nominate to provide medical opinions for the purposes of the pension scheme.

⁵ Ill health may be relevant to a pensions decision in any case where a contributing member leaves a local government employment for health reasons, or where a deferred member requests early payment of benefits on health grounds.

The key criteria for approval are that nominated doctors have one or more of the specified qualifications, and that a degree of independence is ensured through a suitably arm's length contractual relationship with the employer. It will not be possible for Tameside MBC to investigate the ability of doctors to make the statement described in paragraph 31 in a particular case, so employers need to consider this point carefully when referring an employee for an opinion.

35. Because regulation 97 is part of the "common provisions", there is no need for the changes made to it by the Amendment No 2 regulations referred to in paragraph 28 above requiring approved doctors to make a statement about independence to be reflected in the equivalent provision of the 1995 regulations (regulation J1 (2A) – included at Appendix 6 of this manual). The same interpretation of "independence" applies whether the 1997 regulations or the 1995 regulations apply to an individual. The Fund will therefore expect approved doctors to complete the same form of certificate (PF 72A - referred to in paragraphs 50 and 52 below) for all deferred members, whether their benefits have arisen under the 1995 regulations or the 1997 regulations.

HOW SHOULD APPROVED DOCTORS FORM OPINIONS ?

36. It may be helpful to restate in simple terms the basic question that approved doctors need to address and then to explore in more detail how it may be answered.
37. When a member or former member of the LGPS is referred by an employer to an approved doctor for an opinion under the Scheme rules, the question to be addressed is on the lines of:
- “In my opinion, is it more likely than not that this person will be unable to do one or more particular jobs⁶ efficiently until age 65⁷ for health reasons?”
38. Answering this 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 problems⁸ currently affect an individual and forming a view about the extent to which those medical problems may be resolved by age 65⁹, 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 65¹⁰.
39. No medical opinion about a person’s capacity for work can be valid unless the approved doctor understands the type of job in question. Approved doctors 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.
40. Similarly, it would not be proper for an approved doctor to certify permanent incapacity on the grounds of ill-health etc until he/she has a clear understanding about the nature of the ill-health and its likely future course. Approved doctors 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 confidentiality¹¹, approved doctors should supplement the results of their own questioning/examination of the individual with reports from other doctors who have been involved with his/her 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.
41. The GMPF does not impose any requirements on approved doctors to obtain specialist reports in particular cases. We rely on approved doctors using their professional judgement in deciding what information they need to form an opinion about a person’s degree of incapacity.

⁶ The particular jobs to be considered will depend on circumstances. If the opinion relates to a current member, the jobs concerned are the current job and any comparable job identified by the employer. For a former member, only the former job needs to be considered.

⁷ Age 70 in the case of coroners, justices’ clerks and councillors

⁸ The term “medical problems” used here encompasses ill-health or infirmity of mind or body. Infirmity may be age related rather than a result of ill-health as such.

⁹ Age 70 in the case of coroners, justices’ clerks and councillors

¹⁰ Age 70 in the case of coroners, justices’ clerks and councillors

¹¹ Approved doctors should note the requirements of the Access to Medical Reports Act

42. 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 doctors 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 65¹².
43. Approved doctors 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.
44. The Local Government Pensions Committee, which is a body representing employers in the LGPS, has publicised a paper entitled "Ill health retirement – guidelines for occupational physicians" which was published in *Occup. Med.* Vol 46 No 6 pp 402-406 1996. It was written by a working party of the Association of Local Authority Medical Advisors made up of Dr Poole and others. This appears to be the only professional medical guidance specifically related to the LGPS. A copy is attached at Appendix 9.
45. It is implicit in the rules of the LGPS, and particularly in the definition of the term "permanently incapable", that not all employees who are currently too ill to work will qualify for pension benefits. The need to look forward to age 65¹³ means that some people who are expected to face long periods of incapacity may nonetheless have no entitlement to ill-health pension benefits from the scheme because recovery before age 65¹⁴ is thought likely.

IMPORTANT

46. (A) The opinion offered by an approved doctor on a person's degree of incapacity is of great significance to the individual concerned and to the employer and can lead to action which will have major financial consequences for both parties. Because of the weight that will be attached to an opinion, it is important that it should be completely objective and impartial and given only after the most careful consideration of all relevant information. The wishes of both the person concerned and the employer in any particular case are totally irrelevant and should be disregarded by approved doctors in forming opinions.
46. (B) To help approved doctors 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 doctors 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 doctor may believe a personal examination of the member to be pointless (and possibly an unwarranted inconvenience for the member). In these circumstances approved doctors may again prefer to base their opinions on written statements, but again they must ensure that the reports that have received are *bona fide*.

¹² Age 70 in the case of coroners, justices' clerks and councillors

¹³ Age 70 in the case of coroners, justices' clerks and councillors

¹⁴ Age 70 in the case of coroners, justices' clerks and councillors

PENSIONS INCREASE

47. 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 27 irrespective of the person's age. However, where a deferred pension is brought into payment early on health grounds under regulation 31 (or its 1995 Scheme equivalent), 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 means "permanently incapacitated by such infirmity from engaging in any regular full-time employment"¹⁵ If this condition is not met, pensions increase is not normally payable until age 55.
48. Where an opinion from an approved doctor 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 paragraph 52 below for more information.

¹⁵ See Section 3 of the Pensions (Increase) Act 1971.

FORMS USED BY THE GMPF IN ILL-HEALTH CASES

49. Tameside MBC, as administering authority of the GMPF, is responsible for deciding the amount of a person's benefits (once entitlement has been determined by the former employer) and putting those benefits into payment. We only pay benefits in ill-health cases where a certificate appropriately completed by an approved doctor is submitted by the employer along with leaver papers.
50. There are two forms of medical certificate in use, one (called a PF72) for use where the question of whether or not an entitlement to immediate pension benefits under regulation 27 needs to be addressed, and another (called a PF72A) which is used in cases where an employer needs to consider whether or not the conditions for early payment of deferred pension benefits on ill-health grounds under regulation 31 (or its 1995 regulations equivalent) are satisfied. The certificates are designed to cover all the possible opinions that may apply in a particular case. Approved doctors may wish to supplement the certificate with an explanatory report (or be asked to do so by the referring employer). Copies of these forms are shown in Appendices 7 and 8 to this Guidance Manual.

PF 72

51. PF 72 is in two parts. The upper part (Employee's Details) which is to be completed by the employer gives personal details of the individual about whom the opinion is sought. Approved doctors should pay particular regard to the person's job description and to the details of any comparable employment identified. The lower part of the form (headed Medical Practitioner's Certificate) includes a number of optional statements that may be deleted or left standing as appropriate. In statement C, space is left to show the date from when permanent incapacity through ill-health arose. This will be important where an opinion is required about a person who has already left employment on health grounds. The date inserted by the doctor will enable the employer to determine if immediate or deferred pension benefits are due. In the (probably rare) case that form PF 72 is completed to show a date of permanent incapacity arising after employment has terminated, employers will need to arrange for form PF 72 A to be completed as well.

PF72A

52. Form PF 72A is in three parts. The first (Former employee's details) is used by the former employer to give details of the identity and former occupation of the deferred member. The second part (Approved independent medical practitioner's certificate) is itself in three parts. Item A is the standard statement about independence. Item B enables the approved doctor (by deleting or leaving standing the appropriate bracketed words) to provide an opinion on whether or not there is permanent incapacity for the former employment, and if so, specify a date when the permanent incapacity arose. This is the opinion that the former employer needs to obtain before it decides whether the test for early payment of pension benefits is satisfied. Item C asks the approved doctor for an opinion on whether or not that the person is permanently unable for health reasons to do any regular full-time job. This opinion is required to assess the date from which inflation-proofing of the pension is to apply (see paragraph 48 above). The third part of the form is for the former employer to complete. It allows the former employer to show (if appropriate) that it has determined an entitlement to payment of pension benefits and to indicate to the administering authority when pensions increase should be applied.

NOTE:

Forms PF72 and PF72A will not be accepted by Tameside MBC as administering authority if they are incomplete or have been altered in any way.

ILL HEALTH DECISIONS AND THE LGPS INTERNAL DISPUTE RESOLUTION PROCEDURE

53. Overriding law requires the LGPS to have 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, s/ 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 Alan Ellison, a retired Tameside MBC employee who previously held a senior position in the GMPF's Legal Section. If a person remains dissatisfied with the decision made by the local referee, s/he may refer the matter to the Pensions Ombudsman and/or to the High Court.
54. It is not unusual for a Scheme member whose employer has decided that s/he is not entitled to ill-health retirement to dispute that decision. Such a decision would normally have been taken after having received the opinion of an approved doctor. 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 doctor.
55. Where a dispute is referred to a person under either stage of the IDRPs, h/she 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 doctor before reaching his decision in the matter.

THE ROLE OF THE EMPLOYER

56. The employer has an important role in helping to ensure that approved doctors give reliable opinions in cases of possible ill-health retirement. Without reliable opinions, the ability of employers to make decisions under the Scheme regulations which are fair, rigorous and consistent will be compromised.

Selection of doctors for approval

57. As explained in paragraph 34 above, the key criteria adopted by the GMPF in considering approval of doctors are that a doctor has to hold one or more relevant qualifications and have an arm's length relationship with the employer. When selecting doctors for approval by GMPF, employers should be looking for both professional competence and an independence of mind. Where medical standards for employees are determined by external parties (e.g. by the DVLC for bus drivers) doctors should be able to demonstrate familiarity with the standards required. The GMPF cannot in practice check whether a particular doctor has had any previous connection with the case which would prevent him/her making the "independence" statement referred to in paragraph 31 above. Any approvals are therefore given on the understanding that employees will not be referred for opinions in circumstances where the approved doctor would not be in a position to make the "independence" statement.
58. Once a doctor has been approved by the GMPF, it is important that employers ensure that the approved doctor is familiar with the relevant LGPS rules and the associated administrative procedures. Hopefully, this can be achieved by making this Guidance Manual widely available.

Referring members for opinions

59. 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 doctor is then required under regulation 97 to inform the employer's pensions decision. Clearly, a doctor 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 doctor who has had no previous involvement with the case to give an opinion on the question of whether or not the test of permanent incapacity is satisfied.
60. Where ex-employees are concerned, employers will have to respond to requests from the individuals concerned to have benefits brought into payment early on health grounds.
61. Where an employer gives an approved doctor a remit wider than simply giving medical opinions for the purposes of the Scheme, employers will need to check carefully that the doctor is capable of making the "independence" statement in any particular case. Also, they will need to make clear to approved doctors what the purpose of a particular referral is.

62. Once the employer has decided to refer a person for a medical opinion, the approved doctor should be provided with full information about the requirements of the person's normal job (and if appropriate any identified comparable job), details of sickness absence and any other relevant information, including the relevant part-completed medical certificate form (PF 72 or PF 72A as appropriate).
63. Although approved doctors are expected to give impartial opinions, their task is likely to be made easier if employers refrain from mentioning to approved doctors irrelevant matters such as:
- The cost of an ill-health retirement
 - Concurrent disciplinary issues or legal disputes.

Comparable employments

64. Under regulation 27, one of the conditions for an entitlement to ill-health retirement benefits is that a person is permanently incapable of doing "any other comparable employment with his employing authority". Under the definition of the term "comparable employment" there are two tests to be satisfied. One requires that the alternative job's pay, hours, location etc do not differ substantially from the normal job. The other test requires the contractual provisions as to capacity in the alternative job to be either the same as in the normal job or differ "only to the extent that is reasonable given the nature of the member's ill-health or infirmity of mind or body". Medical advice may be needed to identify what changes to a person's normal duties would be sufficient to allow a person to perform the job. Irrespective of whether a job is deemed to be comparable where its capacity requirements are identical to those of the normal job or different, approved doctors giving medical opinions for the purposes of the Scheme will need to consider whether any incapacity that affects the normal job also affects the identified alternative job and assess whether incapacity for either job (or both jobs) is likely to be permanent.

Meeting the cost of medical opinions

65. 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

66. 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 will normally¹⁶ lead to termination of employment by the employer and an award of immediate pension benefits under regulation 27. Where permanent incapacity is not certified for a current employee, the employer will have to decide whether or not to terminate employment. If employment is terminated on (non-permanent) incapacity grounds, an entitlement to deferred pension benefits is likely to arise (unless immediate benefits are payable on other grounds).
67. Circumstances may arise where an employee is permanently incapable of doing his current job but can do a comparable job with the employer. If the person chooses not to accept the comparable job and either is dismissed or resigns, then deferred pension benefits would normally arise. In this case, immediate benefits under regulation 27 would not apply as the full permanent incapacity test would not be met. However, on leaving the job the person can elect for immediate

¹⁶ See final sentence of paragraph 54 above.

payment of the deferred benefits without enhancement on the grounds of permanent incapacity.

68. For a former employee, receipt of a certificate confirming permanent incapacity will normally¹⁷ result in the employer authorising the GMPF to put benefits into payment.
69. 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 Guidance Manual.

¹⁷ See final sentence of paragraph 54 above.

CHANGES IN LGPS REGULATIONS

70. Ill-health retirement in the LGPS has been the subject of detailed scrutiny by the Audit Commission and H M Treasury in recent years. The H M Treasury report “Review of Ill Health Retirement in the Public Sector” was published in July 2000. In essence, it claims that the levels of ill-health retirement in the public sector are too high and must be reduced to save money and avoid loss of expertise. The clear implication is that employers and their medical advisers have failed to manage employees’ health effectively and have made inappropriate use of pension schemes’ ill-health retirement provisions.

71. Against this background there have already been some changes made to the rules of the LGPS affecting ill-health retirement. The most significant are:

- To prevent people leaving jobs for reasons other than ill-health having an entitlement to immediate ill-health retirement. [Effective from 28 March 1997]
- To require employers taking decisions on ill-health pension benefits to obtain a medical opinion from an approved independent duly qualified doctor. [Effective from 28 March 1997]
- To specify the particular qualifications required for doctors to be regarded as qualified in occupational health medicine. [Effective from 1 July 1999]
- To require employers to consider the availability of comparable alternative employment before agreeing to ill-health retirement. [Effective from 1 April 1999]
- Defining “permanently incapable” as meaning “that the member will, more likely than not, be incapable, until, at the earliest, his 65th birthday¹⁸”. [Effective from 1 April 2004]
- Requiring approved doctors to be able to certify and to actually certify that in relation to a particular case they have had no previous involvement and are not and have not previously acted as representative of any party in relation to it. [Effective from 1 April 2002]
- Reducing the qualification period for ill-health retirement to 3 months and removing the provisions to pay ill-health retirement grants. [Effective from 1 April 2004]

72. Apart from the first and last ones, the changes described above either make explicit the existing general understanding of a term (i.e. “permanently incapable”) or incorporate what is regarded as best practice in employee management and Scheme administration.

73. Any further significant changes to the Scheme regulations affecting ill-health retirement will be widely publicised by the GMPF and will be incorporated in future editions of this Guidance Manual.

¹⁸ Age 70 in the case of coroners, justices’ clerks and councillors.

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Ill-health

27. - (1) Where a member leaves a local government employment by reason of being permanently incapable of discharging efficiently the duties of that employment or any other comparable employment with his employing authority because of ill-health or infirmity of mind or body, he is entitled to an ill-health pension and grant.

[Regulation 27 (1) amended by regulation 10 (a) of SI 1999 No 1212 having effect from 1 April 1999]

(2) The pension and grant are payable immediately.

~~(3) A member—~~

~~(a) whose total membership is at least one year, but less than two years, and~~

~~(b) to whom no transfer value is credited, is entitled to an ill health grant (but not a pension), unless paragraph (4) applies to him.~~

~~(4) This paragraph applies to a member if—~~

~~(a) he is entitled to any payment out of the appropriate fund (other than an injury allowance under regulation 7 of the Benefit Regulations or a return of contributions);~~

~~(b) he has received any payment under Part VI of the Local Government (Discretionary Payments) Regulations 1996[2], or~~

~~(c) he would receive at least as much as the grant if his contributions were returned to him.~~

[Regulations 27 (3) and (4) omitted by regulation 10 (a) of SI 2004 No 573 coming into force on 1 April 2004]

(5) In paragraph (1) ~

"comparable employment" means employment in which, when compared with the member's employment ~

(a) the contractual provisions as to capacity either are the same or differ only to the extent that is reasonable given the nature of the member's ill-health or infirmity of mind or body; and

(b) the contractual provisions as to place, remuneration, hours or work, holiday entitlement, sickness or injury entitlement and other material terms do not differ substantially from those of the member's employment; and

~~"permanently incapable" means incapable until, at the earliest, the member's 65th birthday.~~

"permanently incapable" means that the member will, more likely than not, be incapable, until, at the earliest, his 65th birthday.

[Regulation 27 (5) inserted by regulation 10 (b) of SI 1999 No 1212 having effect from 1 April 1999]

[Regulation 27 (5) amended by regulation 10 (b) of SI 2004 No 573 coming into force on 1 April 2004]

Other early leavers: deferred retirement benefits and elections for early payment

31. - (1) If a member leaves a local government employment (or is treated for these regulations as if he had done so) before he is entitled to the immediate payment of retirement benefits (apart from this regulation), once he is aged ~~50~~ 55 or more he may elect to receive payment of them immediately.

[Regulation 31 (1) amended by regulation 5 (a) of SI 2004 No 3372 coming into force on 1 April 2005]

(2) An election made by a member aged less than 60 is ineffective without the consent of his employing authority or former employing authority (but see paragraph (6)).

(3) If the member elects, he is entitled to a pension and retirement grant payable immediately.

(4) ~~If the sum—~~

~~(a) of the member's age in whole years on the date his local government employment ends or the date he elects, if later,~~

~~(b) of his total membership in whole years, and~~

~~(c) in a case where he elects after his local government employment ends, of the period beginning with the end of that employment and ending with the date he elects,~~

~~is less than 85 years,~~ his retirement pension and grant must be reduced by the amounts shown as appropriate in guidance issued by the Government Actuary (but see paragraphs (5) and (6) and regulation 36(5) (GMPs)).

[Regulation 31 (4) amended by regulation 5 (b) of SI 2004 No 3372 coming into force on 1 April 2005]

(5) A member's appropriate employing authority may determine on compassionate grounds that his retirement pension and grant should not be reduced under paragraph (4).

(6) If a member who has left a local government 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

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~~(a) he may elect under paragraph (1) before attaining the age of 50, and he may elect to receive payment of the retirement benefits immediately, whatever his age, and~~

(b) paragraphs (2) and (4) do not apply.

[Regulation 31 (6)(a) amended by regulation 14 of SI 1998 No 1238 having effect from 1 April 1998]

(7) If a member does not elect for immediate payment under this regulation, he is entitled to receive a pension and grant payable from his NRD without reduction without reduction, payable from his NRD ~~or from such earlier date on or after his 60th birthday as the member elects on which the sum of the items referred to in sub-paragraphs (a) to (c) of paragraph (4) is 85 years or more.~~

[Regulation 31 (7) amended by regulation 7 of SI 2001 No 770 coming into force on 2 April 2001]

[Regulation 31 (7) further amended by regulation 5 (c) of SI 2004 No 3372 coming into force on 1 April 2005]

(8) An election under paragraph (1) must be made by notice in writing to the member's Scheme employer.

Entitlement to deferred retirement benefits ("preserved benefits")

D11.—(1) If a member who ceases to hold a local government employment—

(a) is not entitled under regulation D5, D6, D7 or D9 to retirement benefits which are payable immediately on his ceasing to hold that employment; and

(b) fulfils one of the following requirements, namely—

(i) he has a statutory pension entitlement; or

(ii) he is treated by virtue of regulation K23(2) as having ceased to hold the employment on becoming subject in it to an approved non-local government scheme;

then, subject to regulation D13, he becomes entitled in relation to that employment to a standard retirement pension and a standard retirement grant payable from the appropriate date; and in these regulations benefits to which a person becomes entitled under this paragraph by virtue of fulfilling one of the requirements mentioned in paragraph (b) and which have not yet become payable are called "preserved benefits".

(2) For the purposes of paragraph (1) "the appropriate date", in relation to any person, is his 65th birthday or, if earlier, the earliest of the following—

(a) his NRD;

(b) any date on which he becomes permanently incapable, by reason of ~~permanent~~ ill-health or infirmity of mind or body, of discharging efficiently the duties of the employment he has ceased to hold;

[Regulation D11 (2) (b) amended by regulation 3 of SI 1997 No 578 coming into force on 28 March 1997]

(c) any date after he has attained the age of 50 years from which the employing authority determine on compassionate grounds that the benefits are to become payable;

(d) in the case of a person who has attained the age of 60 years, has ceased to be employed in local government employment and has duly elected to receive payment from the relevant date, that date.

(3) An election under paragraph (2)(d) shall be made by notice in writing to the employing authority given within the period of three months beginning with the relevant date.

(4) In this regulation "relevant date", in relation to any person, means—

(a) the date on which he attains the age of 60, or

(b) if later, the date of his ceasing to be employed in local government employment.

First instance decisions

97. - (1) Any question concerning the rights or liabilities under the Scheme of any person other than a Scheme employer must be decided in the first instance by the person specified in this regulation.

(2) Any question whether a person is entitled to a benefit under the Scheme must be decided by ~~the Scheme employer who last employed him.~~ –

(a) in the case of a person entitled to a pension credit or a pension credit member and in relation to his pension credit rights or pension credit benefits, by his appropriate administering authority, and

(b) in any other case by the Scheme employer who last employed him.

(3) That decision must be made as soon as is reasonably practicable after ~~the employment ends~~ the earlier of the date the employment ends or the date specified in the notification mentioned in regulation 8 (3).

[Regulation 97 (3) amended by regulation 28 (a) of SI 1997 No 1238 having effect from 1 April 1998]

(4) Where a person is or may become entitled to a benefit payable out of a pension fund, the administering authority maintaining that fund must decide its amount.

(5) That decision must be made as soon as is reasonably practicable after the event by virtue of which the entitlement arises or may arise.

(6) In relation to any employment in which a person is a member or prospective member, the appropriate administering authority must decide -

(a) any questions concerning his previous service or employment;

(b) what rate of contribution he is liable to pay to the appropriate fund;

(c) any questions about counting added years or additional periods as membership; and

(d) whether he is a Class A member, a Class B member or a Class C member.

(7) Those decisions must be made as soon as is reasonably practicable after the person becomes a member in the employment.

(8) Other questions in relation to any member or prospective member must be decided by his employer as soon as is reasonably practicable after he becomes a member or a material change affects his employment.

(8A) But any question in relation to a person entitled to a pension credit or a pension credit member and his pension credit rights or pension credit benefits must be decided by his appropriate administering authority as soon as is reasonably practicable after the question arises.

(9) Before making a decision as to whether a member may be entitled under regulation 27 or under regulation 31 on the ground of ill-health or infirmity of mind or body, the Scheme employer must obtain a certificate from an independent registered medical practitioner who is qualified in occupational health medicine as to whether in

his opinion the member is permanently incapable of discharging efficiently the duties of the relevant local government employment because of ill-health or infirmity of mind or body.

[Regulation 97 (9) amended by regulation 15 (a) of SI 1999 No 1212 having effect from 1 July 1999 and by regulation 6 (a) of SI 2001 No 3401 coming into force on 13 November 2001]

(9A) The independent registered medical practitioner must be in a position to certify, and must include in his certification 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.

[Regulation 97 (9A) inserted by regulation 6 (b) of SI 2001 No 3401 coming into force in 1 April 2002]

(10) If the Scheme employer is not the member's appropriate administering authority, before referring any question to any particular registered medical practitioner under paragraph (9) the Scheme employer must obtain ~~that authority's approval~~ the approval of the appropriate administering authority to their choice of registered medical practitioner.

[Regulation 97 (10) amended by regulation 28 (b) of SI 1998 No 1238 having effect from 1 April 1998]

(11) In paragraphs (2) and (4) "benefit" includes a return of contributions.

(12) In paragraph (4) benefit includes a benefit specified in regulation F6(12) or (16) of the 1986 regulations.

(13) For this Chapter, references to the Scheme employer or the appropriate administering authority of a prospective member are references to the body that would be his employer or appropriate administering authority if he were to become an active member in the employment by virtue of which he would be eligible to join the Scheme.

(14) In paragraph (9) ~

(a) "permanently incapable" has the meaning given by regulation 27 (5), and

(b) "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 (which has the meaning given by the European Specialist Medical Qualifications Order 1995) or being an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA State.

(44 13A) For this Chapter, references to the appropriate administering authority of a person entitled to a pension credit are references to the body that would be his appropriate administering authority if he were to become a pension credit member.

[Regulation 97 (14) inserted by regulation 15 (b) of SI 1999 No 1212 having effect from 1 July 1999]

[Further amendments to regulation 97 (including second paragraph 14) inserted by SI 2000 No 3065 coming into force on 1 December 2000. Paragraph number changed to 13A by regulation 10 of SI 2001 No 1481 coming into force on 1 May 2001]

Initial decisions

J1.—(1) Any question concerning the rights or liabilities under these regulations of any person other than a LGPS employer shall be decided in the first instance by the relevant LGPS employer.

(2) Where the LGPS employer by whom any such question falls to be decided is ascertainable by reference to regulations J2 or J3, for the purposes of ~~this regulation and of regulation J5~~ this Part that employer shall be the relevant employer.

(2A) Where a relevant LGPS employer are considering whether

(a) a person who ceased to hold a local government employment is entitled to a benefit under regulation D7, or

(b) for the purposes of regulation D11, the appropriate date in relation to a person is to be ascertained under paragraph (2) (b) of that regulation.

they shall refer for decision to an independent, duly qualified medical practitioner approved by the appropriate administering authority (if different from the relevant LGPS employer) the following questions -

(i) whether at the time the employment ceased, in the case of entitlement under regulation D7, or at the date in question, in the case of regulation D11, the person was, on the balance of probabilities, permanently incapable of discharging efficiently the duties of the local government employment he had ceased to hold and, if so,

(ii) whether the permanent incapacity was by reason of ill-health or infirmity of mind or body.

(2B) The decision of the independent medical practitioner on the questions referred to him under paragraph (2A) shall be expressed in the form of a certificate.

[Regulations J1 (2A) and (2B) inserted by Regulation 9 of SI 1997 No 578 coming into force on 28 March 1997]

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

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ILL HEALTH RETIREMENT – GUIDELINES FOR OCCUPATIONAL PHYSICIANS

[This appendix is an extract from Occupational Medicine, Volume 46, No 6 pp 402-406]

C J M Poole (secretary), C E Baron, W J Gunnyeon, M O'Hanlon (co-opted), A Raouf, S A Robson and P E M Turner
Association of Local Authority Medical Advisors (working party)

These guidelines have been produced by a working party of the Association of Local Authority Medical Advisors to help doctors arrive at equitable decisions when assessing applications for ill health retirement. The general guidelines are intended to apply to all pension schemes and the specific ones to those such as The Local Government Pension Scheme where there is a requirement for the applicant to have permanent ill health.

Introduction

These guidelines have been developed to help doctors who act for employers to decide whether an applicant is eligible for retirement on the grounds of ill health. By so doing it may help to reduce inconsistencies in decisions between doctors at a time when applications to retire on health grounds are increasing in some organisations (Table 1). They could also be used to limit the outcome of applications for ill health retirement. No guidelines have been written previously and standard textbooks offer little advice in this area.¹² Furthermore, there is evidence of poor correlation between doctors when assessing case scenarios for ill health retirement³

The following general guidelines are recommended for all assessments and specific guidelines are provided for some of the more difficult types of cases.

The criterion for ill health retirement must be known.

It is essential that both the doctor who is being asked to advise the pension fund and the applicant know the criterion for ill health retirement. The Local Government Pension Scheme Regulations (1995), states that the employee must be 'incapable of discharging efficiently the duties of that employment by reason of permanent ill health or infirmity of mind or body' (D71b). The NHS Pension scheme and several private schemes have a similar criterion.

In practice the key part of the criterion is the word 'permanent', which is meant to imply until the applicant's normal age of retirement, i.e. age 65 (*sic*). So for someone of, for example, age 35 it follows that they must have a medical condition that will prevent them from doing their job for the next 30 years.

Some pension schemes have a criterion which is easier for the applicant to fulfil. These include phrases such as 'incapacity which is likely to be permanent', or 'incapacity sufficiently serious to prevent the applicant from following his or her employment for the foreseeable future', where foreseeable future may be interpreted as the next few years, or 'incapacity to regularly and effectively undertake the duties of the grade'. Some pension schemes however have a criterion which is harder to fulfil, such as 'permanent incapacity which is likely to prevent any gainful occupation'.

Table 1. Local government annual rates of retirement per 10,000 pensionable employees due to ill health, redundancy or normal retirement age from 1979-1995 (William M Mercer Ltd Actuaries)

<i>Years</i>	<i>Ill health</i>	<i>Redundancy</i>	<i>Age</i>
1979-84	85	95	155
1984-89	125	125	100
1989-92	160	160	95
1992-95	180	175	85

An opinion should not be given until all the relevant facts are known

You should not offer an opinion until you know from what illness the applicant is suffering; the treatment options that have been tried and the prognosis of the illness. It may be helpful to know if the applicant had the illness when they were appointed.

If information about the applicant is required from the general practitioner or specialist, a letter should be sent with specific questions rather than a request for a report or an opinion about fitness to work. Direct access to the hospital medical records may be helpful. Examples of relevant questions are: ‘From what condition is the patient suffering?’ ‘Could I have a copy of the x-ray and MRI scan reports please?’ The Access to Medical Reports Act will apply to replies from the GP or specialist.

Do not be pressurized into making a hasty decision

The doctor should resist any pressure to make a hasty decision when for example, the relevant medical information about the applicant has not been received, or there is a possibility of the employee’s condition improving. If changes to the workplace have been recommended these may take time to organise and a period of assessment will need to take place. Unsatisfactory working relationship problems may also take time to address.

Occasionally decisions about permanent ill health may take one or two years to make. In such cases management should be advised about the delay and the date when such a decision might be reached. If this delay is unacceptable then the employee could be dismissed on capability grounds, but if at a later date it becomes apparent that the applicant was permanently incapacitated, then the Local Government Pension Scheme allows for a retrospective payment of benefits.

Assess the workplace and if necessary obtain a job description.

When gathering the necessary information to formulate an opinion, it is often helpful to visit the workplace and speak to the applicant’s manager rather than rely solely on the applicant’s history. Because the content of jobs change with time, fitness for the job is normally taken as the current job and not the one which appears on the job description. It is good practice however to support ill health retirement only when the applicant cannot be rehabilitated or deployed to suitable alternative work.

Your advice should be based on objective medical evidence

The decision whether or not to support retirement on the grounds of ill health must be based on objective medical evidence and not be illness behaviour, feelings of benevolence towards the applicant or for financial reasons. The decision should not depend on the applicant making heroic efforts to keep working, or on the other hand

be influenced by a lack of will-power on the part of the employee to return to work. Although most applicants will welcome or be resigned to retirement, occasionally for reasons of safety an employee may need to be encouraged, or even rarely, forced to retire. The general practitioner must also be informed of your recommendation.

When the occupational physician's opinion regarding fitness to work or suitability for a pension differs from that of another doctor, the applicant should, if he or she wishes, be given the opportunity of presenting the other doctor's report to management (or the Trustees of the pension fund) who will then make the decision.

EMPLOYMENT LAW

For most Local Authority employees, provided they are in the pension scheme, incapability to do their job due to ill health will lead to dismissal on the grounds of permanent incapacity. Employees who are ill but do not fulfil the criterion for permanent incapacity and are unable to return to work after a reasonable period of absence, may be dismissed by management on the grounds of incapability of fulfilling the terms of their contract due to ill health. Premature retirement or redundancy are other forms of dismissal which may be available to employees who are not permanently incapacitated by ill health.

SPECIFIC GUIDELINES

Some applications for retirement are difficult to assess and examples of these are given below. Where they are available, the results of the longitudinal surveys are given as they help to predict prognosis. Those employees who fail to respond to specialist treatment and whose illnesses have features of the worst prognosis may warrant retirement on the grounds of permanent ill health. The following guidelines apply specifically to pension schemes with a criterion which requires the applicant to have permanent ill health.

Anxiety disorders (neuroses)

These include adjustment disorders, generalised anxiety, phobias, social disorders, panic attacks, post-traumatic stress, dissociative (conversion) states and somatoform disorders. The majority (especially acute reactions to stress and adjustment disorders) have a very good prognosis and are helped by counselling. The others usually improve with cognitive-behavioural therapy or high dose antidepressant treatment.⁴ In most cases ill health retirement is inappropriate unless specialist psychiatric treatment and job modification have been unsuccessful and there are features of their illness associated with a poor prognosis.

For post-traumatic stress disorder, a sense of helplessness during the disaster or bereavement as a result of the disaster are associated with the worst prognosis.⁵ Treatment by a clinical psychologist is usually helpful for these people and should have taken place before the question of retirement is considered.

Obsessive-compulsive disorder

The majority of people suffering from obsessive-compulsive disorder (66%) improve by the end of a year with cognitive-behavioural therapy and high dose serotonin receptor specific antidepressants. The prognosis is worse for those with severe symptoms, co-existent other mental illness, personality disorder or continuing stressful events in their life.³ Ill health retirement is appropriate if the applicant has severe symptoms which have not been controlled by the above treatment.

Stress

Feelings of an inability to cope with the pressures of work should not warrant retirement on the grounds of ill health per se unless they are associated with mental ill health which has been unresponsive to specialist psychiatric treatment. Relevant factors in the workplace such as an excessive workload or poor interpersonal working relationships should be addressed by the occupational physician.

Eating disorders

Most patients with anorexia nervosa return to normal weight and, in women, menstruation. However in some patients, eating habits remain abnormal and they become overweight or develop bulimia.³ The poorest prognosis is associated with a late onset of illness, hostility of the family towards the patient, a neurotic or personality disorder and a long duration of illness.^{6 7}

Employment as a nurse,⁸ nursery nurse or with children is not recommended whilst suffering from an eating disorder or personality disorder of the paranoid, schizoid, emotionally unstable or psychopathic variety. Employees with an eating disorder should be able to return to work unless they have failed to respond to psychiatric treatment, or they have a personality disorder which prevents them from safely undertaking their job, in which case retirement on the grounds of ill health would be appropriate.

Depression

The majority (80%) of patients with endogenous depression recover within two years of the onset of clinical illness.³ Ill health retirement should only be supported if a trial of high dose tricyclic antidepressants and selective serotonin reuptake inhibitors or lithium therapy have been unsuccessful. In 99% of cases reactive depression will respond to a combination of counselling and antidepressant treatment, so ill health retirement in these circumstances should be unusual.

Bipolar affective disorder (manic-depressive psychosis)

Relapse is less likely on lithium therapy. Twenty to thirty per cent of patients have three or four episodes of mania per year. Those with the poorest prognosis usually have psychotic features with their manic episodes, a rapidly cycling form or a personality disorder.^{3,9} Ill health retirement may be appropriate in these circumstances.

Chronic fatigue syndrome

There have been a few longitudinal studies published recently of patients with chronic fatigue or chronic fatigue syndrome. Although follow-up has been for no longer than four years, 60-70% of patients have made a good functional recovery. In two studies, 66-70% of patients improved sufficiently to be able to return to their work or courses and functional impairment fell significantly with increasing length of follow-up. A belief that an undiagnosed physical illness explained all the patients' symptoms, or a primary psychiatric diagnosis, were associated with a poor prognosis.^{10,11,12}

A cognitive-behavioural approach to management of the illness is recommended.^{13,14} Dysfunctional thoughts should be addressed and a programme of graded activities with the objective of returning to normal functioning arranged, rather than periods of prolonged inactivity. Psychiatric referral should be considered for those who fail to respond to rehabilitation or for those with psychiatric symptoms. The

possibility of co-existing mental ill health should be approached in a non-confrontational manner as some patients with this illness will be resistant to psychiatric referral. The criterion for ill health retirement is unlikely to be fulfilled in the majority of applications.

Alcohol abuse

The applicant should have had at least one trial in a rehabilitation programme. Outcome appears to be independent of the type of programme and the majority manage to reduce or abstain from alcohol consumption.³ Ill health retirement would be appropriate if there is evidence of end-organ damage such as cirrhosis of the liver, oesophageal varices, peripheral neuropathy, organic brain damage (confirmed by psychological testing), or if there is co-existing major mental illness unresponsive to treatment.

Schizophrenia

Only about 20% of patients in this country have a complete remission from symptoms.¹⁵ When this does occur it is usually within the first two years of the onset of the illness. Factors associated with a poor prognosis are an insidious onset, a long episode of illness, a previous psychiatric history, negative symptoms, young age of onset, not being married, poor psychosexual adjustment, an abnormal previous personality, social isolation, poor compliance with treatment and a poor work record.³ Any decisions about ill health retirement in a newly diagnosed schizophrenic patient should be deferred for at least two years after diagnosis.

Back pain

Most people with acute back pain recover within a few weeks. In the absence of neurological symptoms and signs, early mobilisation within the limits permitted by the pain and return to work is now recommended in preference to prolonged bed rest or inactivity.¹⁶ For those patients with chronic or severe mechanical back pain, chiropractic treatment has been shown to result in better outcome measures than conventional hospital outpatient management.¹⁷ Strategies which address negative beliefs by the patient, such as work being detrimental to their backs, whilst at the same time promoting a positive attitude towards controlling back pain have also been recommended.¹⁸ Patients with back pain and mental ill health, prolonged sickness absence, poor job satisfaction or who are pursuing compensation are associated with the worst prognosis.¹⁹

The presence of degenerative changes on x-ray in keeping with the applicant's age, or disk bulges and protrusions (but not prolapses) are equally prevalent in people without back pain^{20,21} and therefore should not warrant ill health retirement. It would, however, be appropriate if investigations (to include x-rays, a CT or MRI scan) have shown a significant and relevant lesion which has been unresponsive to treatment.

Diabetes

Diabetes mellitus should not be a bar to most jobs. Shift work is possible for those requiring treatment with insulin, without compromise to glycaemic control, provided that the timing of therapy is flexible.²² Only those that started insulin after 1 April 1991 are barred in law from holding a group 2 licence.²³ Ill health retirement should be considered if the applicant has organ damage such as severe visual impairment, nephropathy or arteriopathy for which treatment has been unsuccessful and job modification or adaptive technology is inappropriate.

Cardiovascular disease

For employees with angina or who have had a myocardial infarction, an exercise stress test may be good for the patients morale, it will give an objective guide to exercise tolerance and help to distinguish physical from psychological disability. It is essential after a myocardial infarction if group 2 driving is being considered.²²

Rehabilitation clinics help employees to assess their exercise tolerance and to regain their confidence before returning to work. Because of the wide range of therapeutic options now available to treat hypertension, ill health retirement is unlikely to be justifiable unless the hypertension is associated with significant organ damage or it is truly resistant to therapy.

There is no medical reason why someone who has had a successful heart transplant cannot return to their job. The holding of a group 1 driving licence and even heavy manual work is permissible. Published studies have shown that the majority of patients who were in work six months prior to their transplant return to their jobs.²⁴ Some centres have succeeded in getting more patients back to work by adopting a policy of not supporting a patient's claim for medical disability in the absence of an absolute medical indication. Ill health retirement is only appropriate if the transplant has been unsuccessful or the applicants job necessitates the holding of a group 2 driving licence.

Death in service

For employees with a life expectancy of less than a year, the Local Government Pension Scheme allows for commutation of pension equal to five times the annual pension in excess of the guaranteed minimum pension. For those still in service at the time of their death, the death grant of twice annual salary (payable from the first day of service) may be greater than the lump sum benefit from ill health retirement. For this reason each case must be assessed on its merits.

CONCLUSION

For pension schemes that require the applicant to have permanent ill health, adopting these guidelines will help doctors to make consistent decisions. This in turn will reassure both employees and employers that the process is equitable between Occupational Physicians throughout the UK.

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APPENDIX 10

SOURCES OF FURTHER INFORMATION

1. The Employers Organisation for local government has produced a “Management of Ill Health Handbook” which provides guidance on the management of ill health for local government employees covered by the Local Government Pension Scheme. It includes sections on ill health retirement. Copies can be ordered from Samantha Berry at the Employers Organisation [Phone: 020-7296-6781].
2. The Local Government Pension Committee, which represents the local authority employer side in the development of the LGPS, and which comes under the wing of the Employers Organisation, provides an advice and information network for pension specialists. Circulars and bulletins are issued regularly describing changes in scheme rules. Up to date copies of the regulations are maintained as well as copies of appeal determinations made by the Secretary of State at the ODPM. All this material can be accessed via the LGPC website at: www.lg-employers.gov.uk/pensions.
3. Certain Pensions Ombudsman determinations relate to ill health retirement in the LGPS. Details can be found on the Pension Ombudsman website at: www.pensions-ombudsman.gov.uk .