

**HAMPSHIRE COUNTY COUNCIL****Report**

<b>Committee/Panel:</b>	Pension Fund Panel
<b>Date:</b>	7 June 2013
<b>Title:</b>	Internal Dispute Resolution Procedure
<b>Reference:</b>	4929
<b>Report From:</b>	Nick Weaver, Head of Pensions Services

**Contact name:** Nick Weaver

**Tel:** 01962 847584      **Email:** nick.weaver@hants.gov.uk

**1. Summary**

1.1. The purpose of this report is to:

- set out the requirements for a two stage Internal Dispute Resolution Procedure (IDRP) under the Local Government Pension Scheme
- review the current practice for Stage 2 decisions
- make recommendations to revise the Stage 2 process.

1.2. The Pension Fund Panel is asked to consider where future Stage 2 IDRP appeals should be heard and take this recommendation to full Council in July 2013.

**2. Background**

2.1. Local Government Pension Scheme (LGPS) regulations specify that administering authorities shall have a two stage Internal Dispute Resolution Procedure (IDRP) for determining questions and disputes relating to the LGPS. LGPS members and other related individuals can appeal any decision which affects their pension entitlements under the scheme rules.

2.2. At Stage 1 of the IDRP, the appeal is heard by a nominated person for whichever body made the disputed decision. This is either the employing authority (usually in relation to ill health retirement) or Hampshire County Council as the administering authority for the Hampshire Pension Fund (usually over how the regulations have been applied by Pensions Services).

2.3. The relevant authority has two months in which to hear the appeal and issue a response to the member. If the member is unhappy with the Stage 1

decision, they can ask for the administering authority to reconsider the decision under Stage 2 of the IDRPs.

- 2.4. Hampshire County Council recently reviewed its IDRPs Stage 1 process, and the links to the corporate complaint process. Following this review, it was decided that IDRPs stage one appeals against the County Council as an employing authority would be heard by the Head of the Employment Practice Centre (Stage 1 appeals from school based staff are heard by the Head of Education Personnel Services).
- 2.5. Stage 1 appeals against the County Council as the administering authority, are considered by the Director of Corporate Resources, or her nominated deputy. A flowchart showing the formal complaints and appeals process is shown in Appendix 1.
- 2.6. The process for Stage 2 appeals was not reviewed. These appeals continue to be heard by a panel of county councillors, taken from Regulatory B Committee. These appeal hearings are arranged by the Clerk of the Appeals panel, and are supported by a solicitor from Legal Services.
- 2.7. It is appropriate that the process for managing Stage 2 appeals is now formally reviewed, following the county-wide elections in May 2013, in order to effect any changes into the new committee structures and training programmes.

### **3. LGPS requirements for an IDRPs**

- 3.1. LGPS regulations set out the requirements for a two stage IDRPs, including the information to be provided at each stage and the timescales in which the processes should be completed.
- 3.2. A stage two appeal can be brought to the administering authority within six months of the stage one decision being given to the appellant. The purpose of stage two is to formally reconsider the stage one decision and ensure that:
  - the regulations were correctly applied
  - sound, impartial procedures were followed
  - the stage one decision was consistent and reasonable and would stand up to external scrutiny
- 3.3. As it forms part of an internal review process, and is heard by a member of the administering authority, the Stage 2 decision is not a wholly independent judgement. Instead it should be a fair minded, impartial decision. An entirely independent judgement is available from the Pensions Ombudsman, should the appellant pursue the dispute further.
- 3.4. Decision makers at stage two must be able to say that they are not acting as a representative of the applicant, employer or other party and that they have had no previous involvement in the appeal.

3.5. Department for Communities and Local Government (DCLG) issued a guidance document on the IDR process in 2004. This advises that a Stage 2 decision maker must:

- be senior to the day-to-day scheme administrator
- have a reasonable knowledge of the scheme and associated administrative procedures
- able to interpret regulations and make sound judgments

DCLG recognise that a decision maker may not have specific LGPS expertise, and that instead they could obtain information from someone who does, before making their own judgement.

3.6. An extract from the 2004 IDR guidance, covering the skills needed by Stage 2 decision makers, is attached in Appendix 2.

#### **4. Current process for the Hampshire Pension Fund**

4.1. Stage 2 IDR appeals are heard by members of the Regulatory B Committee. These Committee members hear appeals across the range of County Council functions, including schools appeals and employment tribunal cases. Panel members are supported by a solicitor from Legal Services, and have access to technical advice from a pensions officer who has not previously been involved in the case.

4.2. Whilst there are similarities between other appeal cases and Stage 2 IDR hearings, the complexities of the LGPS regulations mean that panel members require a significant amount of technical support to reach decisions. Unlike for other appeals, panel members are limited in their ability to determine an outcome as the panel has no powers to award compensation, nor can the panel compel the administering authority to take any action.

4.3. At Stage 2, the decision maker is required to scrutinise a decision which has previously been considered under Stage 1. This requires the decision maker to have a good knowledge of LGPS regulations in order to judge whether they have been fairly applied.

4.4. The Panel's role as a Stage 2 decision maker is to determine whether the decision reached at Stage 1:

- was consistent with previous rulings
- can be considered to be reasonable, given the evidence
- would stand up to external scrutiny.

4.5. The Stage 2 decision must be consistent with LGPS regulations. The regulations are prescriptive and can have unintended consequences which unfairly impact individuals. However the Stage 2 decision maker cannot override the legislation as it exists and must ensure they rule within the regulations. The Panel cannot compel the administering authority to take any

action, nor can they consider the award of compensation. The Panel can recommend that the administering authority considers a certain course of action to resolve the appeal, though this recommendation does not have to be adhered to.

## 5. Best practice

5.1. The LGPS is administered locally across 89 regional funds. It is therefore appropriate to consider the experience of other administering authorities when reviewing the IDRPs for the Hampshire Pension Fund.

5.2. The responses are shown in full in Appendix 3 and are summarised in the table below:

<b>Decision maker for Stage 2 appeals</b>	<b>Number of authorities</b>
Monitoring Officer	13
Director with responsibility for finance and resources	6
Chief Executive	1
Pensions committee	1
Pensions Manager	2

5.3. 54% of the authorities who responded use their monitoring officer to consider Stage 2 appeals. The reasons cited are that the monitoring officer is best placed within the authority to make the necessary independent judgement due to their legal and technical expertise.

5.4. The use of a monitoring officer is in line with DCLG guidance, as the monitoring officer's role demands that they are senior members of the authority, are able to interpret legislation and make sound judgements.

5.5. The monitoring officer does not play a role in the day to day administration of the LGPS. Therefore decisions taken by the monitoring officer would be considered impartial and in line with good governance.

## 6. Options for change

6.1. The Panel is asked to consider whether the current arrangements allow the administering authority to most effectively meet its responsibility for the two stage IDRPs.

6.2. The options for consideration are:

- 1) continue with the current practice of Stage 2 appeals being heard by members from Regulatory B Committee (or other suitable Committee)
- 2) use the County Council's monitoring officer to hear Stage 2 appeals, to bring the Fund in line with other authorities.

6.3. The current practice of using a panel of members to hear Stage 2 appeals provides assurance to scheme members that the appeal is being considered at an appropriate level, by members with no link to the administration of the LGPS.

6.4. However the cost of this impartiality is that Regulatory B Committee members require a significant amount of support and guidance in order to be able to make decisions that are consistent with LGPS regulations.

6.5. The majority of other administering authorities use their monitoring officer or director of finance and resources to hear Stage 2 appeals. It could be considered therefore whether it may be more effective, both in terms of cost and expertise, for Stage 2 hearings to be heard by an officer, rather than a panel of Councillor members.

6.6. The Director of Corporate Resources is the named person to hear Stage 1 appeals. Therefore it would be appropriate to use the County Council's Monitoring Officer for Stage 2 appeals. The Monitoring Officer currently reviews the Internal Audit self assessment in line with CIPFA best practice, so is skilled in making independent judgements.

6.7. Whilst this approach potentially increases the risk of conflict of interest, the Stage 2 decision is not designed to be a wholly independent judgement. Instead it should be a fair minded, impartial decision which an officer with a legal background would be well placed to make.

6.8. Any perceived loss of independence caused by appeals not being heard by councillors, may be mitigated by greater confidence in the final decision if it has been made by a person qualified in law.

## **7. Conclusions**

7.1. LGPS regulations require administering authorities to have a 2 stage appeal process for deciding disputes. The Stage 2 process has not been reviewed since this requirement came into effect under the 1995 Pensions Act.

7.2. Stage 2 decision makers have to independently consider the decision made by the nominated person at Stage 1 of the process. DCLG guidance says that the decision maker should have a good knowledge of regulations.

7.3. The current process uses a panel of councillors from Regulatory B committee. Decisions taken by the Panel who are not connected with the Fund are seen as impartial. However the Panel require a significant amount of technical support to enable them to fully consider the appeals.

7.4. Other administering authorities use their monitoring officer to make an independent assessment. Under CIPFA best practice the monitoring officer is the person designated to review the Internal Audit self assessment. Therefore the monitoring officer (or her deputy) is well placed to independently scrutinise decisions taken at Stage 1.

## **8. Recommendations**

8.1. It is recommended that:

- the Panel consider this report and approve the use of the County Council's Monitoring Officer (or deputy) to hear future Stage 2 appeals on behalf of the administering authority.
- take this recommendation to full Council in July 2013.

**CORPORATE OR LEGAL INFORMATION:****Links to the Corporate Strategy**

**This proposal does not link to the Corporate Strategy but, nevertheless, requires consideration to inform the Pension Fund Panel about the progress on implementing the new LGPS 2014 pension scheme.**

**Other Significant Links****Links to previous Member decisions:**

<u>Title</u>	<u>Reference</u>	<u>Date</u>

**Direct links to specific legislation or Government Directives**

<u>Title</u>	<u>Date</u>

**Section 100 D - Local Government Act 1972 - background documents**

**The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)**

<u>Document</u>	<u>Location</u>
None	

## **IMPACT ASSESSMENTS:**

### **1. Equalities Impact Assessment:**

- 1.1. Equality objectives are not considered to be adversely affected by the proposals in this report.

### **2. Impact on Crime and Disorder:**

- 2.1. The proposals in this report are not considered to have any direct impact on the prevention of crime.

### **3. Climate Change:**

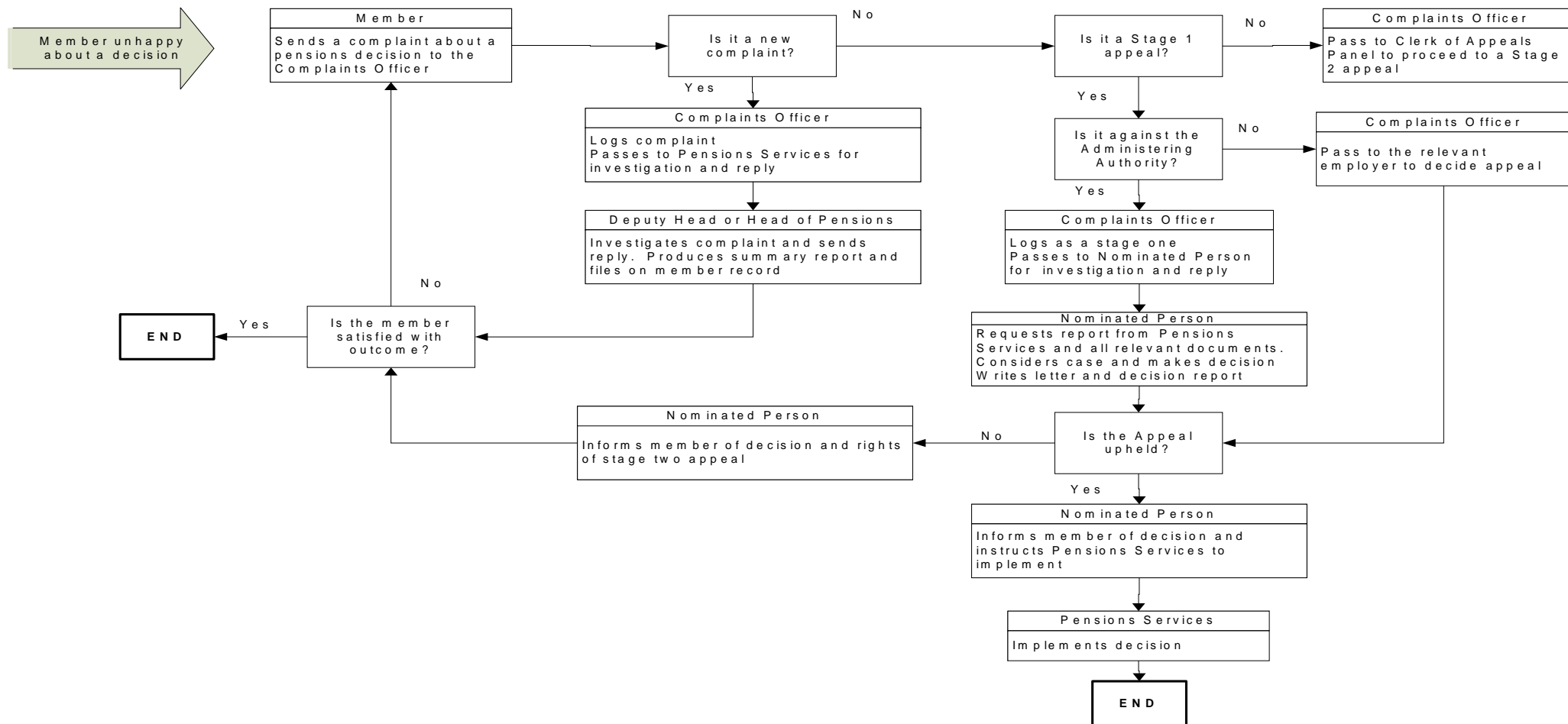
- a) How does what is being proposed impact on our carbon footprint / energy consumption?

No specific impact.

- b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

No specific impact.

### Hampshire Pension Fund Pensions Complaints and Internal Dispute Resolution Procedure



Extract from ...

**LOCAL GOVERNMENT PENSION SCHEME ENGLAND & WALES  
NEW INTERNAL DISPUTE RESOLUTION PROCEDURE  
A PRACTITIONER'S GUIDE (With effect from 1 June 2004)**

**NATURE OF SECOND STAGE**

46. There is no statutory requirement for the authority to appoint a suitably qualified panel of persons to determine disputes, or for the decision maker to be someone with no previous involvement in the dispute. However, this simpler approach at the regulatory level does **not** of course mean that administering authorities should ignore good practice, nor ignore the need to foster and maintain the confidence of complainants in their dispute resolution arrangements.

47. The applicant's complaint is to be considered :

- in-depth, and
- in a formal way.

48. The administering authority should :

- reconsider the decision, taking full account of the facts of the case and of any evidence submitted, or relied on, by either party in the determination at Stage 1,
- check that the regulations were applied correctly,
- check that sound, impartial procedures were used to reach the decision. This is particularly important where the dispute concerns the exercise of a discretion by a scheme employer or by the administering authority.

49. The administering authority need to satisfy themselves that the first stage decision was reasonable and consistent with other decisions issued by the authority and from other employers in the Fund, and that it would stand up to external scrutiny. If the complainant decides to pursue the dispute beyond the second stage of the internal procedure, it will of course fall to be considered by the Pensions Ombudsman.

**Expertise**

53. The Pensions Act clearly intends that the second stage of the internal dispute resolution procedure for an occupational pension scheme should be carried out by a person/persons senior to the day-to-day scheme administrator, and who has a reasonable knowledge of that scheme.

54. The kind of skills likely to be needed therefore by the second stage decision-maker are :

- a good working knowledge of the LGPS regulations, and
- a thorough understanding of the associated administrative procedures.

55. Where a decision-maker is chosen for their skills in interpreting regulations in general and their ability to make sound judgements, rather than because they possess specific LGPS expertise, they would need to obtain information/advice from someone who does have such expertise, before being able to proceed to make their own judgement.

**Impartiality**

56. The second stage of the procedure should seek to achieve an impartial, fair-minded decision on the dispute. This is not the same thing as a wholly independent judgement. By definition, an "internal dispute resolution procedure" is carried out by those responsible for a particular occupational pension scheme. An entirely independent judgement by an external body is available from the Pensions Ombudsman, after the second stage of the internal procedure, if a complainant decides to pursue a dispute that far.
57. To encourage trust in the second stage of the procedure, administering authorities are strongly recommended to follow the guidelines below.

**Not representing either party or any other particular interest**

58. Decision makers at this stage should be able to say they are not acting, in relation to the case :
- As the representative of the member/alternative applicant, or
  - As the representative of the Scheme employer, or
  - As the representative of any other party

**No previous personal involvement with the case**

59. The decision-maker should be able to say they :
- have not previously advised on the case,
  - have not previously given an opinion on it, and
  - have not previously been involved in it.
60. Where the administering authority is the body whose initial decision gave rise to the dispute, they must not use the same person to determine the dispute at both the first and second stages of the procedure, as this would obviously be contrary to natural justice, and there would not be the proper separation between the two stages which the Pensions Act requires.. They should take all appropriate steps to ensure the dispute is reconsidered impartially at the second stage.
61. If the complainant works/worked for another Scheme employer whom the administering authority has previously advised on the dispute, then the second stage decision maker within the administering authority would need to be someone who had no connection with that advice.

## Annex C - Sample first-stage decision letter

**SECOND STAGE DECISION-MAKERS**

78. The following list of suggestions is indicative, but by no means exhaustive, of the type of persons that an administering authority may wish to consider selecting as Appointed Persons under Stage 2.

**Elected members**

79. Some local authority elected members may possess the necessary expertise to make decisions based on the Local Government Pension Scheme Regulations. But they would still be perfectly entitled to consult with their expert pensions officers, but not with those involved in taking original decisions (ie where the administering authority is the employer in the case, or the dispute arose from their exercise of their discretion).

**Administering Authority's Monitoring Officer, Borough Solicitor or Treasurer**

80. Some of these officers may lack detailed experience of the LGPS Regulations, but they would be competent to interpret regulations and make decisions.

**Administering authorities which are legally joint authorities**

81. Where a number of constituent local authorities comprise the administering authority, that authority could consider using a panel of officers from the various constituent authorities to make decisions. This could provide the scope for every complaint to be referred to an officer who had nothing to do with the original decision complained of. It should also be possible to ensure that a complaint is never referred to an officer who is employed by the same authority as a complainant. This may reassure complainants as to the impartiality of the procedure.

82. Where the functions of the administering authority are the responsibility of a single local authority, this option would not be available. Under the amended Regulations, the second stage of the dispute procedure is the responsibility of the administering authority, and it cannot be delegated to another local authority.

**Advice from the fund actuary, pensions lawyer or other professional adviser, prior to issuing a decision**

83. As none of these hold office or employment within the administering authority, the authority cannot delegate its responsibility for making a second stage decision to them. However, the authority would be able, if they wish, to seek advice from such a person before making and issuing their own decision. Professional advisers would normally have some knowledge of the LGPS regulations and possess the necessary competencies to make interpretations and judgements, although they are obviously not engaged in making decisions under the LGPS Regulations on an everyday basis.

**Appendix 3 – Responses from other Administering Authorities**

<b>Authority</b>	<b>Decision maker for Stage 2 appeals</b>	<b>Comments</b>	<b>Category</b>
Bedford	Head of legal services	If appeal against AA then heard by independent reviewer, as Head of Legal hears Stage 1	Monitoring officer
Buckinghamshire	Group solicitor		Monitoring officer
Cheshire	Senior legal manager		Monitoring officer
Cornwall	Head of Finance	Stage one heard by Head of legal services	Finance and Resources
Cumbria	Senior manager with responsibility for Legal Services	Seek advice as appropriate. Stage 1 is senior finance manager with responsibility for LGPS	Monitoring officer
Derbyshire	Full pensions committee		Pensions Committee
Devon	County Treasurer and County Solicitor		Monitoring officer
Dorset	Monitoring Officer Or Deputy Monitoring Officer (Head Of Legal)		Monitoring officer
East Riding	Pensions manager	Independent person at stage one (currently West Yorkshire Pension Fund)	Pensions Manager
East Sussex	Assistant Director of the Legal and Democratic Services Department	Advised as necessary	Monitoring officer
Essex	County solicitor		Monitoring officer
Gloucestershire	Director of Strategic Finance		Finance and Resources
IOW	Director of Resources	Stage one by heard by Pensions and Payroll manager	Finance and Resources
Lancashire	Deputy Treasurer	Advised as necessary	Finance and Resources
Lincolnshire	Senior lawyer		Monitoring officer

<b>Authority</b>	<b>Decision maker for Stage 2 appeals</b>	<b>Comments</b>	<b>Category</b>
North Yorkshire	Corporate Director, Strategic Resources	Advised by the Pension Fund's legal advisors and professionals	Finance and Resources
Northumberland	Head of legal services	Stage one heard externally by another AA	Monitoring officer
Nottinghamshire	Local employment law firm advice and then decision signed off by internal legal		Monitoring officer
Oxfordshire	Lead Officer for Pensions	Previously heard by an independent advisor, but has since retired.	Pensions Manager
Shropshire	Head of legal services	Supported by senior officer from pensions admin team	Monitoring officer
Suffolk	Head of legal services		Monitoring officer
Surrey	One of: Monitoring officer \ Head of Pensions Admin \ Deputy Director of HR or Chief Finance Officer		Monitoring officer or Finance and Resources
Warwickshire	Chief Executive	Employee relations manager does the ground work and advice provided by pensions manager and senior solicitor	Chief Executive