

LONDON BOROUGH OF BRENT

Meeting of the General Purposes Committee 24th November 2004

Report from Director of Finance

For action

Wards affected:
All

Report Title: Internal Disputes Resolution Procedure

1.0 Summary

- 1.1 The Pensions Act 1995 requires that the trustees or managers of a pension scheme have in place a two-tier procedure for resolving disputes. This report details changes to the Internal Dispute Resolution Procedure brought about by the Local Government Pension Scheme (Amendment) Regulations 2004 and informs members of the two-tier procedure in place in the Council. This report also asks members to agree that the Director of Finance have power to designate "Specified Persons" for the purposes of stage 1 of the procedure and to determine how decisions under stage 2 of the procedure will be made.

2.0 Recommendations

- 2.1 That Members note the current procedure in Appendix 1.
- 2.2 That Members authorise the Director of Finance to nominate additional or alternative individuals to be "Specified Officers" under Regulation 98(5) of the Local Government Pension Scheme Regulations 1997 (the "Regulations") for the purposes of the Internal Dispute Resolution procedure from time to time.
- 2.3 Delegate to the Deputy Director of Corporate Services determination of "stage 2" applications under regulation 102 of the Regulations.

3.0 Detail

- 3.1 Section 50 of the Pensions Act 1995 requires the trustees or managers of an occupational pension scheme to put in place an Internal Disputes Resolution (IDR) Procedure to permit disagreements to be considered and a decision to be given in respect of the disagreement. The Local Government Pension

Scheme Regulations 1997, as recently amended by the Local Government Pension Scheme (Amendment) Regulations 2004 with effect from 1 June 2004, detail the form this internal procedure should take. When a LGPS employer makes a decision under the LGPS Regulations, the notification of that decision must include details of the IDR Procedure specified in the Regulations.

- 3.2 A scheme member may also contact the Pensions Advisory Service (OPAS) at any time and they will give independent advice on pensions matters.
- 3.3 The main features of the new arrangements are:
 - Responsibility for determinations under the first stage of the procedure are to be vested in a "specified person"
 - Responsibility for determinations under the second stage of the procedure rests with the Administering Authority; and
 - The Secretary of State no longer has a role in the IDR Procedure.
- 3.4 The IDR applies where a relevant LGPS employer makes a decision under the provisions of the LGPS which affects the pension position of a person who falls within the broad categories of "applicant" or "alternative applicant". If the applicant or alternative applicant is dissatisfied with the decision taken by the body that made it, he or she may refer the disagreement to a person specified by the Scheme employer; or, where a first instance decision has been made by an administering authority, to a person specified by that authority. To ensure that there is always a pool of persons available to whom a first stage dispute can be referred, one of the recommendations of this report is that the responsibility for appointing specified officers in addition to or instead of those currently identified in the procedure in Appendix 1 be delegated to the Director of Finance.
- 3.5 The specified person is required to issue his or her decision on the disagreement within two months of receiving the applicant's written appeal and in the event of delay must explain in writing the reasons for this and the expected date for issuing the decision.
- 3.6 Where the applicant is dissatisfied with the specified person's decision, the applicant may apply in accordance with the Regulations for the matter to be referred to the administering authority for determination at the second stage of the procedure. Unless the matter is referred in this way, the decision of the specified person is binding on the LGPS employer/Administering Authority who took the initial decision.
- 3.7 Under the new arrangements, it is the administering authority's responsibility to determine Stage 2 disputes. Each administering authority is required to determine the procedure to be followed by them when exercising their functions, and the manner in which those functions are to be exercised. The Director of Finance has power under the Constitution to determine the detail of the procedure to be followed in accordance with legislation but members

are asked in this report to determine what person or body will make decisions on behalf of the Council at stage 2.

- 3.8. The second stage of the IDRP should be carried out by a person/persons senior to the day-to-day scheme administrator. The Government guidance states that 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. The Guidance also states that 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
- And they 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.
- 3.9 The Director of Finance recommends that the Deputy Director of Corporate Services, who made decisions as the Appointed Person under the old IDR Procedure, be given power to determine stage 2 applications.
- 3.10 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.
- 3.10 The IDR procedure is not limited to the LGPS regulation. The Pensions Ombudsman recently recommended that the procedure should also be applied to decisions made under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000 (and earlier equivalent regulations). These regulations govern the provision of unfunded payments such as compensation and severance, Injury Allowances and gratuities. In these cases however, the 2nd stage application will need to be dealt with by the employer of the applicant and not the Council as Administering Authority, unless the Council is also the employer.
- 3.11 If the applicant is dissatisfied with the outcome of the IDR process they may take their grievance to the Pensions Ombudsman whose decision can only be overturned by the courts.

4.0 Financial Implications

- 4.1 There are no financial implications where Council Officers will be involved in IDR. There will be a charge to the Council where London Pension Fund Authority (LPFA) make decisions under the process however. This cost will be minimal.

5.0 Legal Implications

- 5.1 The Pensions Act 1995 requires trustees and managers of an occupational pension scheme to have arrangements in place for the resolution of disagreements between (i) managers of schemes and (ii) active, deferred and pensioner members, their widows, widowers and dependants, their nominated representatives and prospective members. The Local Government Pension Scheme Regulations ("the 1997 Regulations") address this requirement and set out the procedure for resolution of such disagreements. The Local Government Pension Scheme (Amendment) Regulations 2004 have, with effect from 1st June 2004, implemented amendments to the internal dispute resolution procedures of the 1997 Regulations.
- 5.2 The Local Government Pensions Division of the ODPM has issued a Practitioner's Guide giving general guidance concerning the IDR Procedure.
- 5.3 Under the Constitution all functions relating to Local Government Pensions are delegated to the Director of Finance, unless they fall within the terms of reference of the General Purposes Committee or its Pension Fund sub-committee or the Director of Finance chooses to refer a matter to either committee.

6.0 Diversity Implications

- 6.1 Officers have screened this report and there are no diversity implications arising from it.

7.0 Staffing

- 7.1 There are no staffing implications arising from the IDR procedure other than the diversion of deciding officers' time and resources from regular duties. This will not be significant.

Background Papers

- The Pensions Act 1995
- The Occupational Pension Schemes (Internal Dispute Resolution Procedures) Regulations 1996
- The Local Government Pension Scheme Regulations 1997
- Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000
- Local Government Pension Scheme (Amendment) Regulations 2004

Contact Officer

Andrew Gray, Pensions Manager
Tel: 020 8937 3157 E-mail andrew.gray@brent.gov.uk

Duncan McLeod
Director of Finance

APPENDIX 1

Internal Dispute Resolution Procedure

STAGE 1 – decided upon by a person (the “Specified Person”) specified by your employer or former employer (the “Employer”)

Stage 1 applications must be made within six months from the date of the original decision to your Employer or the administering authority (any extension to this time limit is at the Specified Person’s discretion).

In the first instance please forward your written application to:

**Andrew Gray, London Borough of Brent, Payroll and Pensions, Chesterfield House, Wembley, Middlesex, HA9 7RW.
Phone 020 8937 3157**

Your application will be allocated to an appropriate Specified Person. You will receive a letter detailing who will be dealing with your case. Your application will only be valid if certain relevant information is provided. A proforma application that includes a check list of the information required may be downloaded from our web site www.brent.gov.uk/pensions or available from the pension team on 020 8937 3160.

The Specified Person will write to you, informing you of their decision within 2 months of receipt of all relevant information and will also inform your Employer. If there is a delay you will receive a letter explaining the reasons for this and stating when a decision will be made (the “interim response”).

The Specified Person chosen to decide upon the dispute will be an individual who has not previously been involved in your case. Specified Persons for Brent Scheme Employers are:

Andrew Gray	Pensions Manager	Brent Council
Duncan Mcleod	Director of Finance	Brent Council
Peter Stachniewski	Deputy Director of Finance	Brent Council
Mike Allen	Deputy Director of Operations	LPFA
AnneMarie Allen	Deputy Director of Support Services	LPFA
Jeff Houston	Deputy Director Client Services	LPFA

STAGE 2 – decided upon by Brent Council as your administering authority

If you are not satisfied with the decision of the Specified Person under **STAGE 1** you may apply for the matter to be referred for reconsideration under **STAGE 2**. **The application must be made within 6 months from:**

- the date of the stage one decision; or
- where a date has been notified to you in an interim response, the expiry of 1 month from the date notified
- where there has been no decision or interim response, 3 month have expired from the date you made your application under stage 1.

These time limits may be extended at the discretion of the stage 2 deciding officer (the “Stage 2 Deciding Officer”).

Please forward your written application to:

**Andrew Gray, London Borough of Brent, Payroll and Pensions, Chesterfield House,
Wembley, Middlesex, HA9 7RW.**

Phone 020 8937 3157

The Stage 2 Deciding Officer is:

Stefan Samek Deputy Director of Corporate Services Brent Council

The Stage 2 Deciding Officer will write to you to let you know their decision within 2 months of receipt of all relevant information and will also write to your Employer. If there is a delay you will receive a letter explaining the reasons for this and when a decision will be made.

*N.B. **For non-Brent employees:** Your Employer is required to make the stage 2 decision with regard to the exercise of its discretion under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000.*

STAGE 3

If you are still dissatisfied then you can contact the Pensions Ombudsman.

In many cases the Pensions Ombudsman will only consider your case if you have contacted the **Occupational Pensions Advisory Service (OPAS)** at the same address. This is an independent body, which gives free advice on the best way to proceed and can act as an arbiter in cases of dispute. OPAS is available at any time to assist members & beneficiaries of the Scheme in connection with any pensions query they may have or any difficulty they have failed to resolve with the administrators of the Scheme.