

LONDON BOROUGH OF SOUTHWARK PENSION FUND

Internal Dispute Resolution Procedure (IDRP) →

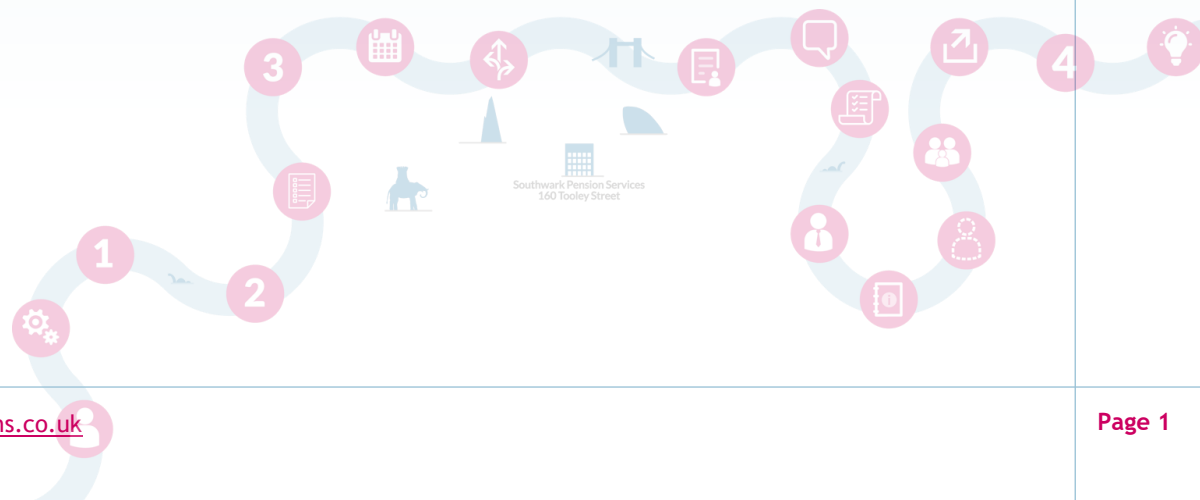
A formal procedure which is in place to resolve disagreements in relation to decisions taken regarding Local Government Pension Scheme (LGPS) pension matters.





WHAT IS THE IDRП?

- ➔ This presentation has been created for Employers/HR/Pension Practitioners to familiarise themselves with the Local Government Pension Scheme (LGPS) IDRП arrangements.
- ➔ Over the course of a LGPS member’s employment, and after they have left, certain decisions are taken that can have an effect on their pension benefits. Because of this, where decisions are taken, and the member disagrees with them, the law provides them with the opportunity to challenge the decision.





WHAT'S THE PROCESS?

- The IDRП is a formal procedure which is in place to resolve disagreements in relation to decisions taken regarding LGPS pension matters. It forms part of an overall process where disagreements occur which can be put simply as:
 - Step **1** a decision is taken that affects benefits (a 'First Instance Decision');
 - Step **2** an informal approach to resolving a disagreement about that decision;

- *'A copy of the stage 1 appeal should be sent to the pensions manager who has the opportunity to make their own appeal to the AA against the stage 1 decision'.*
 - Step **3** the instigation of the formal, two stage IDRП (the internal 'appeal'); and
 - Step **4** application to The Pensions Ombudsman for a determination (the external 'appeal').

→ First Instance Decisions - general

→ Under the LGPS regulations, employers and the administering authority for the Fund have different decisions to make that could affect member or dependants' pension benefits (First Instance Decisions).

→ Administering authority First Instance Decisions

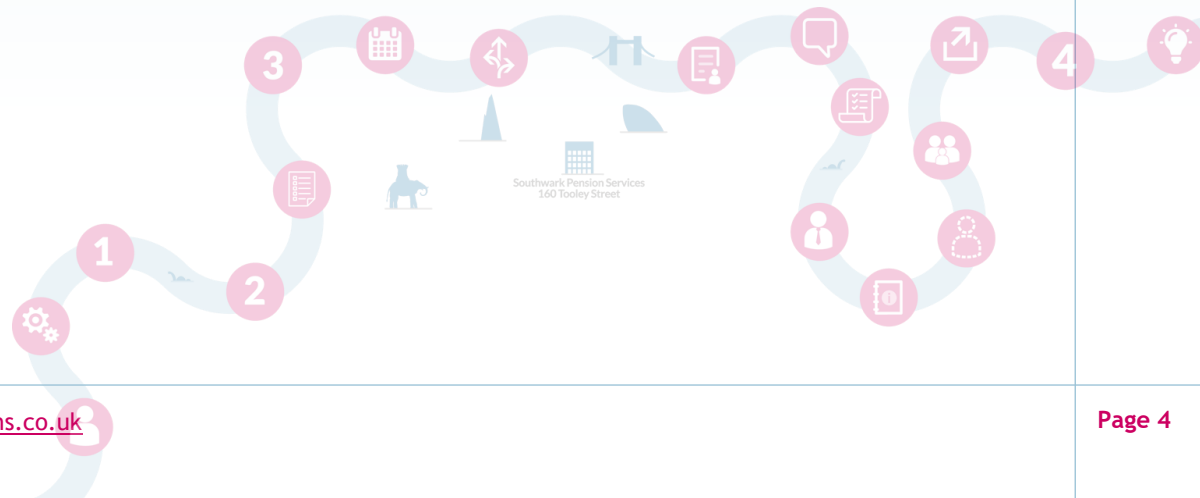
- Any question concerning the person's previous service or employment;
- Any question about counting additional periods as membership or crediting additional pension; and
- The amount of any benefit, or return of contributions, the member becomes entitled to under the regulations.

→ Employer's First Instance Decisions

- Eligibility for membership;
- Pensionable Pay;
- Final pay;
- Employee's contribution rate;
- Entitlement to benefit on termination of membership;
- Entitlement to early release of pension benefits; and
- EVERYTHING ELSE - Regulation 72(4)- 'A person's Scheme employer must decide any question concerning any other matter relating to the person's rights or liabilities under the Scheme.'

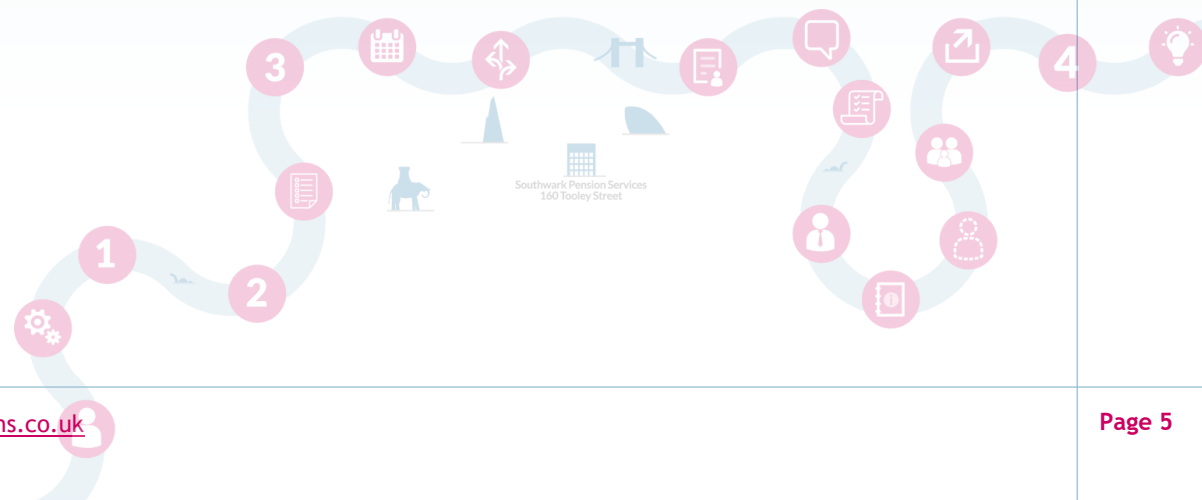
Avoiding appeals

- Where a member is clearly unhappy with a decision and may resort to the formal IDR in the absence of any further action by the body that took the decision, it makes sense for an appropriate person from the employing authority to offer the member further information on the reasons for the decision, perhaps at an informal meeting with their advisers, if necessary. In some instances where the issues are not complex, this recognition of their concerns, and the opportunity to understand more about the decision, may be sufficient to satisfy the complainant.
- Being able to demonstrate that a First Instance Decision has been made in a consistent manner to other decisions in accordance with a clear policy statement can also help the member to understand why the decision has been reached and that it is 'nothing personal'. Carefully recording your decision making also makes this process much easier.



The next step

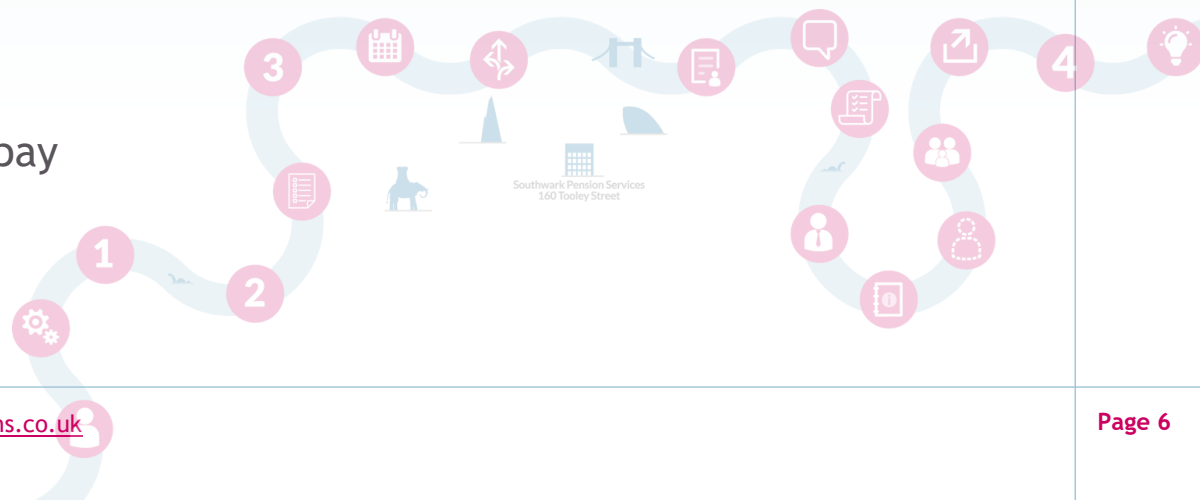
- ➔ Sometimes, informal attempts to resolve disagreements fail. The member has a statutory right to then instigate the formal IDR which we will cover in the next sections. Once this course of action is embarked upon, detailed investigations will take place into not only the decisions made but the processes involved in reaching those decisions.





THE IMPORTANCE OF RECORD KEEPING

- These investigations at the formal appeal process will require evidence of how and why first instance decisions were reached. It is important that employers keep detailed records of first instance decisions taken, including (but not limited to):
 - Dates of scheme entry;
 - Reductions/restrictions in pay;
 - Elections to opt-out of the scheme;
 - Elections to re-enter scheme;
 - Changes in hours and/or weeks;
 - Breaks in service and elections to pay or not to pay contributions;
- Policy on exercise of discretions, including previous versions and dates of publication;
- Publicity materials , publications and other notifications issued to members and the dates of issue;
- Minutes of meetings to determine eligibility for benefits; or
- Committee reports or minutes on release of benefits or retirement decisions.



General right of appeal

The right to invoke the formal appeal process is open not only to members themselves.

Who may appeal?

- ➔ A member or a prospective member;
- ➔ A widow or widower of the member;
- ➔ A surviving civil partner of the deceased;
- ➔ A cohabiting partner;
- ➔ The deceased member's dependants; or
- ➔ The member's representative.

Please note that throughout this presentation, whoever invokes the IDRP is referred to as the 'applicant'.



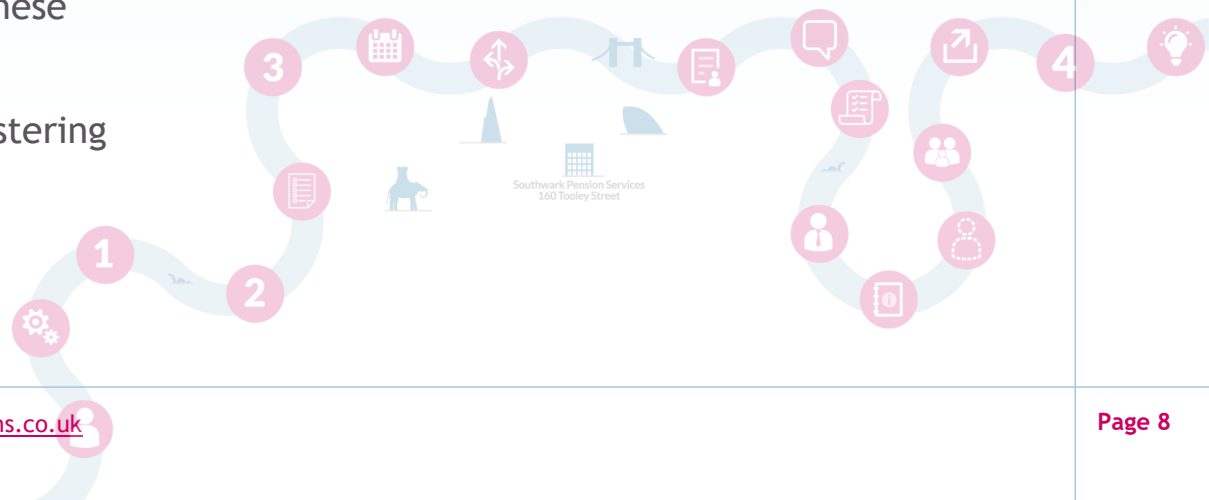


WHEN AND WHY CAN THE APPLICANT APPEAL?

- A member (or alternative applicant) may appeal against any decision made by an administering or employing authority that affects that member's rights or benefits under the scheme, or against any other act or omission by these bodies.
- The member must appeal **within six months** of the date they are notified of that decision, or from the date of the act or omission - the adjudicator has discretion to extend this time limit.
- The member has a further right of appeal to the administering authority if dissatisfied with the adjudicator's decision.
- The formal internal appeal process is in two stages:

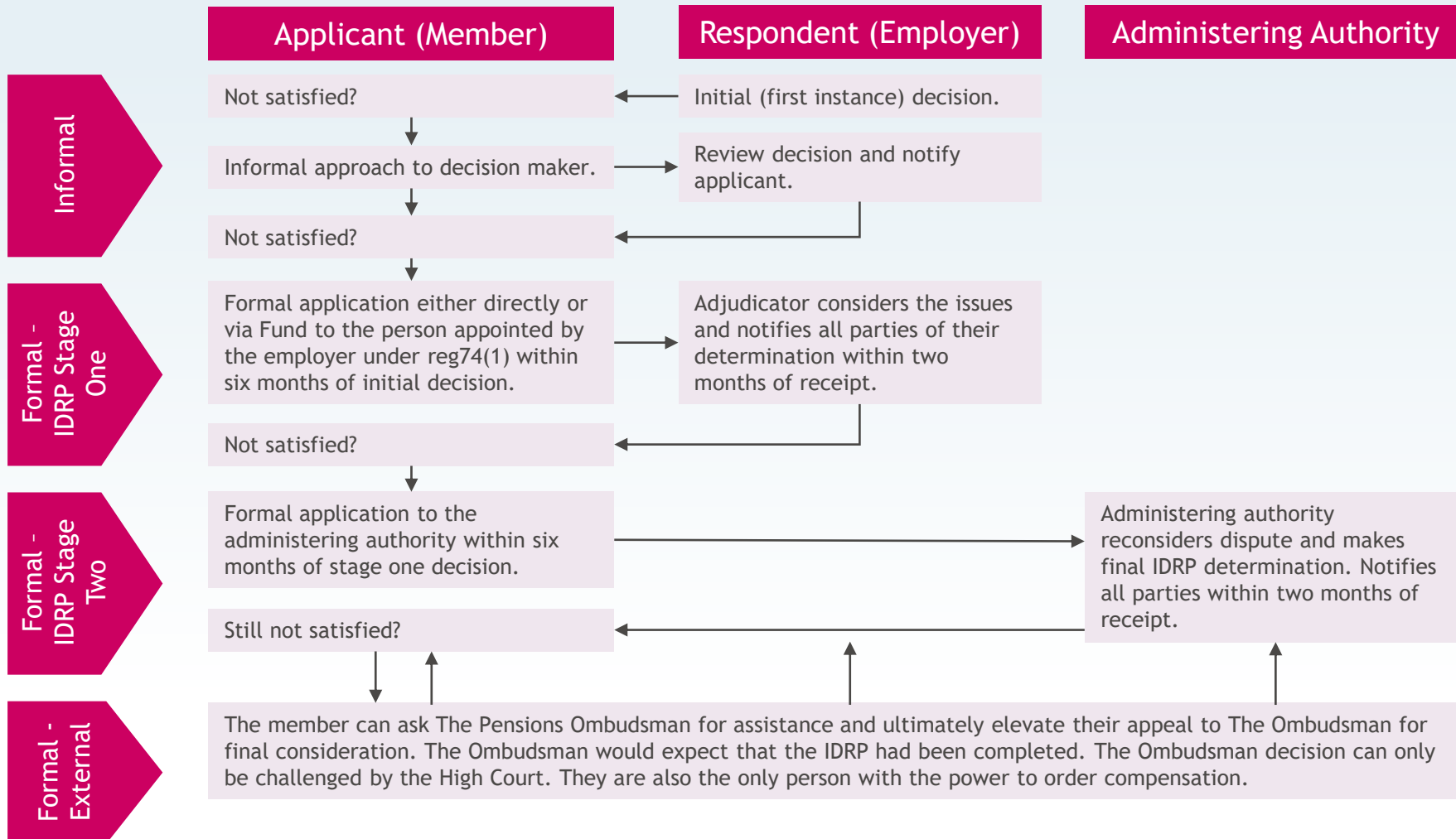
Stage **1** is looked at by a person who the First Instance Decision maker has appointed to look at these cases; and

Stage **2** is looked at by the administering authority.





FLOW CHART OF APPEAL PROCESS





EXAMPLE OF AN ACKNOWLEDGEMENT LETTER

Dear Mrs Jones

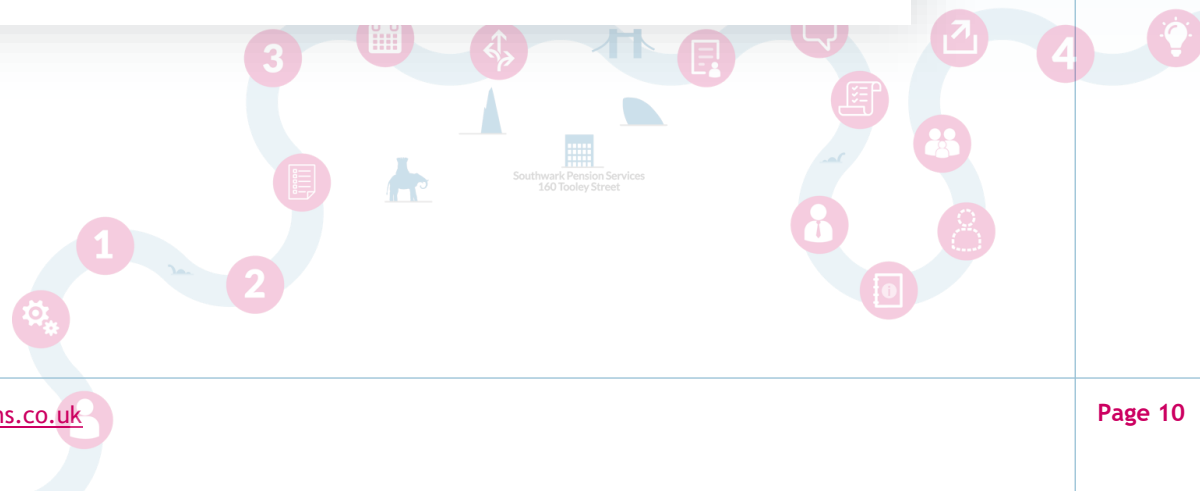
Local Government Pension Scheme: Internal Dispute Resolution Procedure (IDRP)

Thank you for your application received on [date], enclosing information on your disagreement with [name of relevant body]. I have been appointed by [name of body] to make the stage one decision under the internal dispute resolution procedure.

I am required to make a decision within two months of receiving your application. If, for some reason, I am unable to comply with that timescale, I will write to you explaining the reason and the date by which I expect to make my final determination.

You can also ask the Pensions Ombudsman for assistance. The Ombudsman help members and beneficiaries of pension schemes with disputes they cannot resolve.

The Pensions Ombudsman can be contacted at...





EXAMPLE OF A STAGE 1 DECISION MADE LETTER

Dear Mrs Jones

Local Government Pension Scheme: Internal Dispute Resolution Procedure (IDRP)

I have looked at the details of your disagreement and reached a decision under stage one of the IDRP.

Details should include:

- Question for determination

Details of the disagreement

- My decision
The decision itself

- Relevant facts

- Evidence received/considered

- Regulations considered and reason for decision

If the decision is based on a discretionary power contained in a policy made by the employer, include a copy of the policy or the relevant part of it, and a reference to the scheme regulation that allows the policy.

This concludes the first stage of the internal dispute resolution procedure. If you are not happy with my decision, you have the right to ask the Cheshire Pension Fund to look at your complaint again. You must do this in writing, within six months from the date of this letter.

You can also ask the Pensions Ombudsman for assistance. The Ombudsman help members and beneficiaries of pension schemes with disputes they cannot resolve.

The Pensions Ombudsman can be contacted at:

10 South Colonnade
Canary Wharf
E14 4PU

Tel: 0800 917 4487

Email: enquiries@pensions-ombudsman.org.uk

Website: www.pensions-ombudsman.org.uk

Copies of this determination have been sent to [name of body] as your employer/former employer and the Cheshire Pension Fund.

Yours sincerely





Lodging an appeal

- Where an applicant wishes to appeal against a first instance decision (or lodge another valid appeal against an act or omission), this should be done in writing, with a copy of the decision they wish to appeal against if possible. The Pension Fund will provide any member wishing to make an application with a guide and application form if they wish.
- The stage 1 appeal is then submitted to the ‘adjudicator’.

The adjudicator

- Each employing authority must appoint a person to consider appeal cases at stage 1 of the IDRP (their adjudicator). The Pensions Act 1995 does not stipulate any particular requirements about who should determine complaints at the first stage. The LGPS regulations, similarly, do not elaborate on who the adjudicator should or might be.
- In practice, as the person will need to understand the details of the dispute, the employer is likely to ask someone with relevant expertise to decide it, although this does not have to be an employee or elected member of the authority. Depending on the circumstances, a suitable person could be a human resources manager, payroll manager or a solicitor.

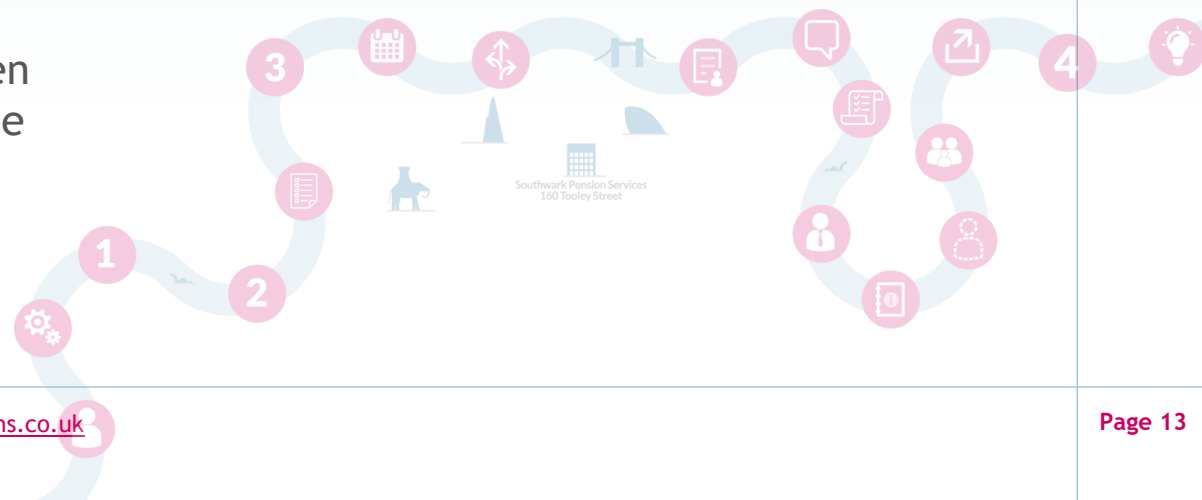


CONSIDERING STAGE 1 APPEALS

- The purpose of the first stage is to carry out a formal review of the initial decision by the authority or body which took that decision. It is an opportunity to reconsider the question and, where appropriate, to alter the decision if it was not a reasonable one to reach based on the relevant procedures, legislation and evidence; e.g., where certain relevant facts or evidence were not taken into account, or where there has clearly been a mistake or oversight.
- Check that the application has been submitted **within six months** of the relevant date and send an acknowledgement (a specimen acknowledgement letter is

seen earlier).

- Consider all facts, reports, background information before reaching a determination.
- Request further evidence if necessary.
- Issue a copy of the determination to the applicant/representative, the employer and the administering authority.

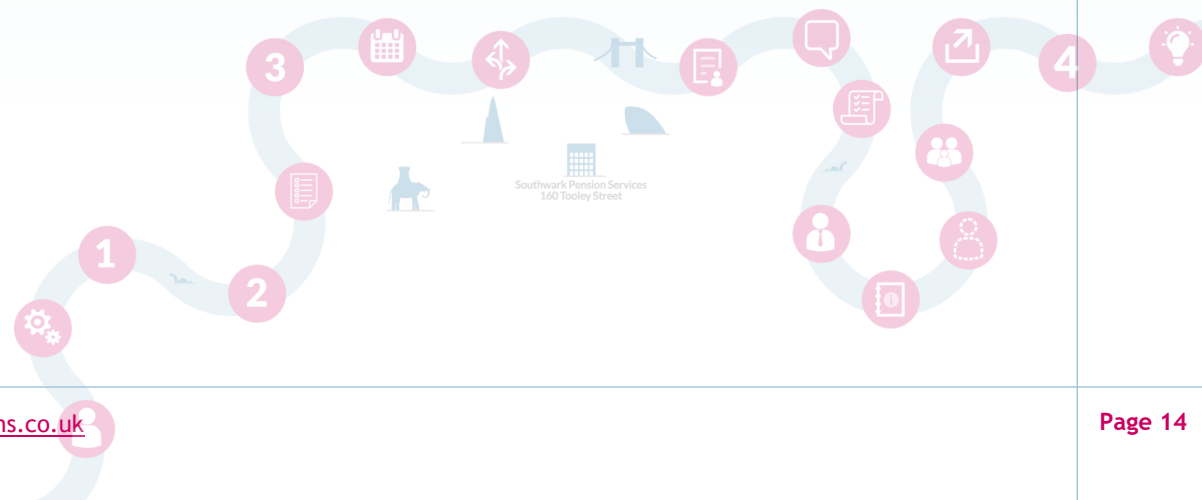




CONSIDERING STAGE 1 APPEALS (cont.)

- The adjudicator must provide a determination **within two months** of receipt of the appeal.
- If not, the adjudicator must write immediately to the member explaining the reason and when a determination will be made.
- The member may refer the dispute direct to the administering authority where the specified person fails to make a determination within the prescribed or extended time limits.

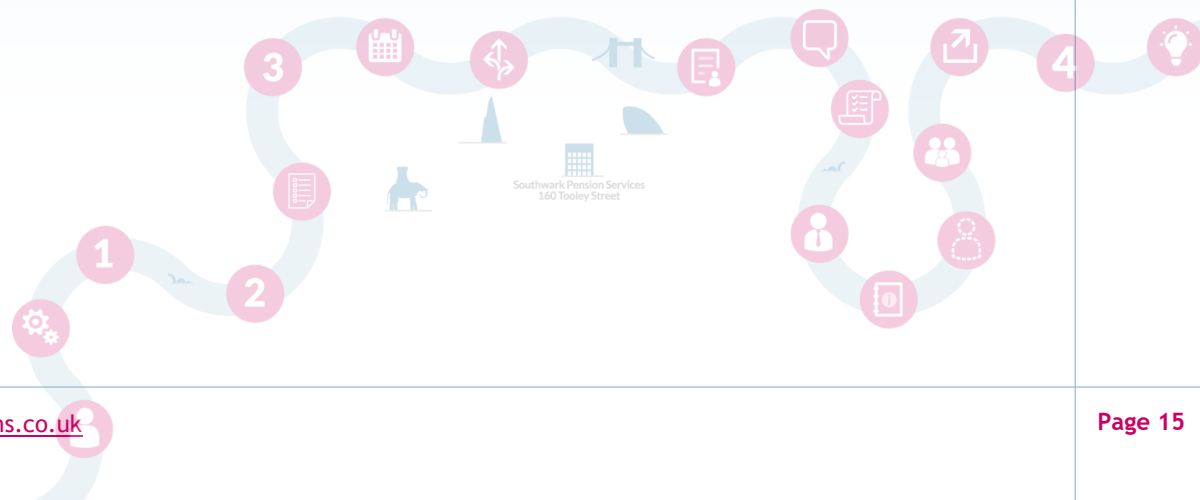
- Although in most cases the stage 1 decision will be a final one, there may be circumstances where the adjudicator may wish to issue a provisional decision so that the views on interested parties, in particular, that of the administering authority, can be obtained before a final decision is taken. Because the two month time limit relates to the final decision, a letter of explanation should be sent if the issue of a provisional letter delays the final decision beyond the time limit.





Statement of policy on the exercise of discretions

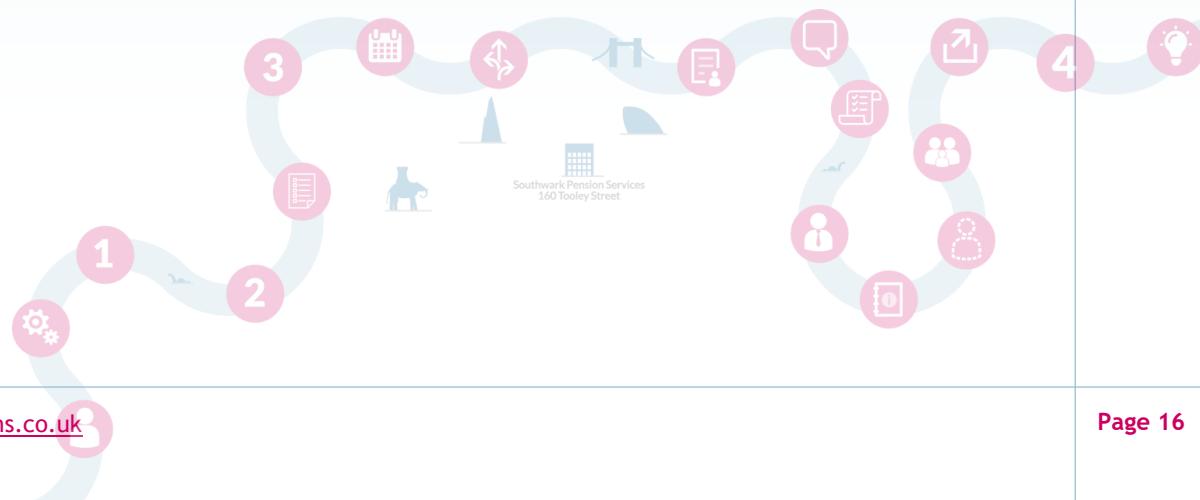
- Employers and administering authorities when making first instance decisions are exercising various discretions within the LGPS regulations. These regulations require that employers **MUST** prepare and publish a statement of policy in respect of how they exercise some (though not all) of these discretions. Not to do so is a breach of the employer's statutory obligation.
- Apart from being a statutory requirement to have a bare minimum published statement, it is good practice to have a comprehensive and regularly revisited statement in place. Being able to demonstrate a clear and consistent approach when making First Instance Decisions is one of the first steps to avoiding challenges to those decisions and a vital part of defending a position when the matter is escalated.





FURTHER POINTS ON APPEALS

- The adjudicator cannot make a determination outside the provisions of the regulations.
- The specified person cannot consider cases of alleged maladministration.
- The adjudicator cannot make an award of compensation.
- A right of appeal against a decision on entitlement to a benefit only arises after the earlier of - the date employment ends, or the date specified in a notice to opt-out.
- A successful appeal only applies to that particular case.
- Unless the applicant refers the decision of the adjudicator to the administering authority for determination under regulation 60, the decision reached by the adjudicator is final and binding on the scheme employer.





Considerations of medical appeals

- If a dispute over ill-health has emerged, it would be sensible for an employer to first check that all the regulatory requirements have been complied with. If they have not, a fresh decision needs to be made.
 - Has a qualified, approved doctor been used to assess the member's eligibility?
 - Has the doctor clearly stated that the member is not assessed as permanently incapable?
 - Has the medical practitioner paid due consideration to the duties of the post?
 - Has the doctor considered reports from the member's GP, consultants etc. in arriving at that decision?
- Has the doctor made a recommendation in accordance with the LGPS regulations?
- Has the employer made their decision having considered all relevant evidence?
- Has the employer asked all of the necessary questions to have satisfied themselves before reaching any decision?
- It is not the role of the adjudicator to question the opinion of a suitably qualified, approved medical practitioner. But the assessment must be in accordance with the eligibility criteria in the regulations.



Other potential appeal applications

- Tiered contributions;
- Pensionable Pay - e.g. exclusion of certain items;
- Final pay for calculation purposes;
- Date of scheme entry - especially at the end of a member's service;
- Claim of not being informed of right to pay back for lost pension; or
- Claim of not being informed of right to transfer in previous rights or aggregate earlier LGPS membership within 12 months of joining.

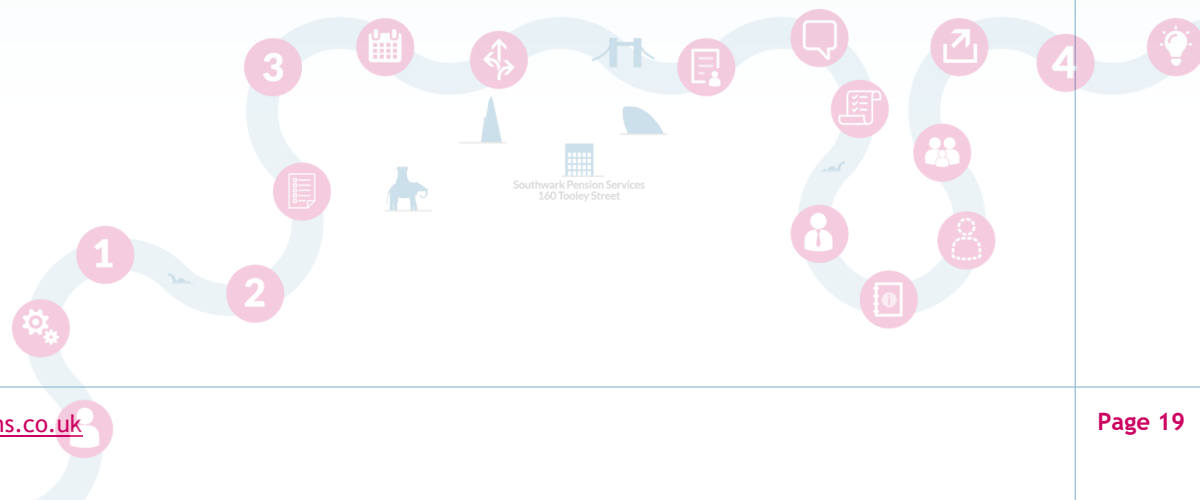
Exercise of discretionary powers

Due to the scope of the Pensions Act 1995, the adjudicator may be asked to consider a disagreement about the way in which a scheme employer has exercised a discretionary power under both the main scheme regulations and the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006. In such cases, the role of the person deciding the disagreement is not to overturn the initial decision but to ensure that the discretion has been exercised reasonably, and in cases where this is found not to be the case, to determine that the matter should be reconsidered in a proper manner.



IDRP STAGE 1 PROCESS SUMMARY

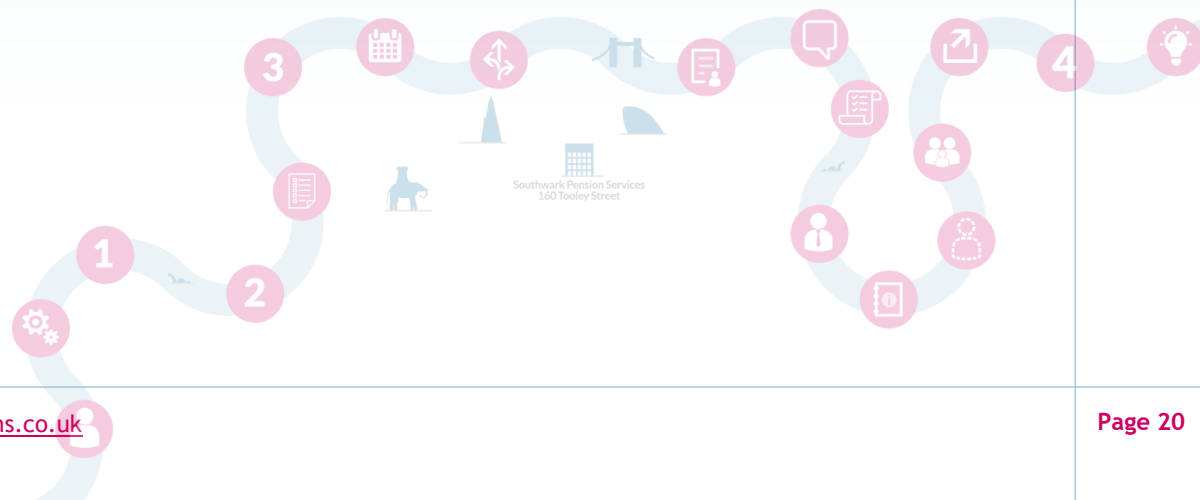
- Member notified of decision/benefit;
- Member submits appeal, in writing **within six month** time limit;
- Appeal considered by adjudicator **within two months**;
- Member, employing authority AND administering authority notified of outcome; and
- Member has the right of appeal to the administering authority (**within six months** of the adjudicator's determination).





STAGE 2 APPEALS - REFERRAL OF DISAGREEMENT TO ADMINISTERING AUTHORITY

- ➔ Referrals to the administering authority against the decision of the adjudicator may be made by the applicant. A disagreement may also be referred in cases where:
 - ➔ The adjudicator has failed to issue either a decision, or a letter of explanation, **within two months** from the date on which the application was made; or
 - ➔ An interim letter of explanation was sent, but the adjudicator has failed to subsequently issue a decision.





- The person determining appeals at stage 2 will, in many respects, undertake that function in the same way that the adjudicator did under stage 1.
- The applicant's complaint must be considered in depth and in a formal way; the administering authority need to satisfy themselves that the first stage decision was reasonable, had considered all relevant facts and regulations, was consistent with other decisions reached and that it would stand up to external scrutiny.

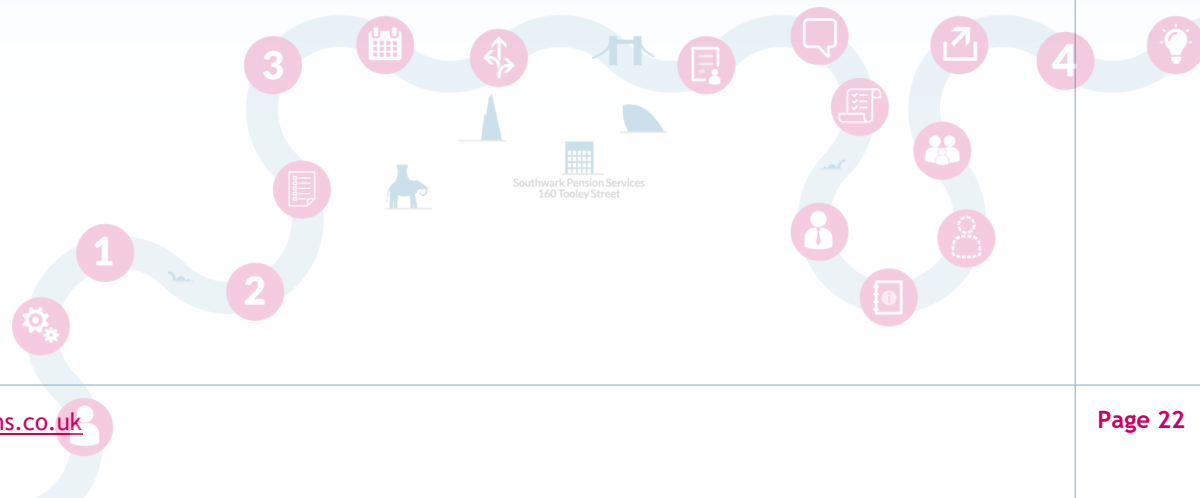
The administering authority should:

- Reconsider the decision, taking full account of the facts of the case and any evidence submitted, or relied on, by either party in the determination at stage 1;
- Check that the regulations were applied correctly; and
- 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.



Limit of administering authority powers at stage 2

- Cannot replace an employer First Instance Decision, but can only instruct to reconsider where discretion is exercised;
- No awards for maladministration even where found;
- No power to act outside of the regulations nor to instruct any party to do so; and
- No power to award compensation for any reason, including where an appeal is upheld against the amount of a benefit due - limited to placing the affected party in the position they would have been in.

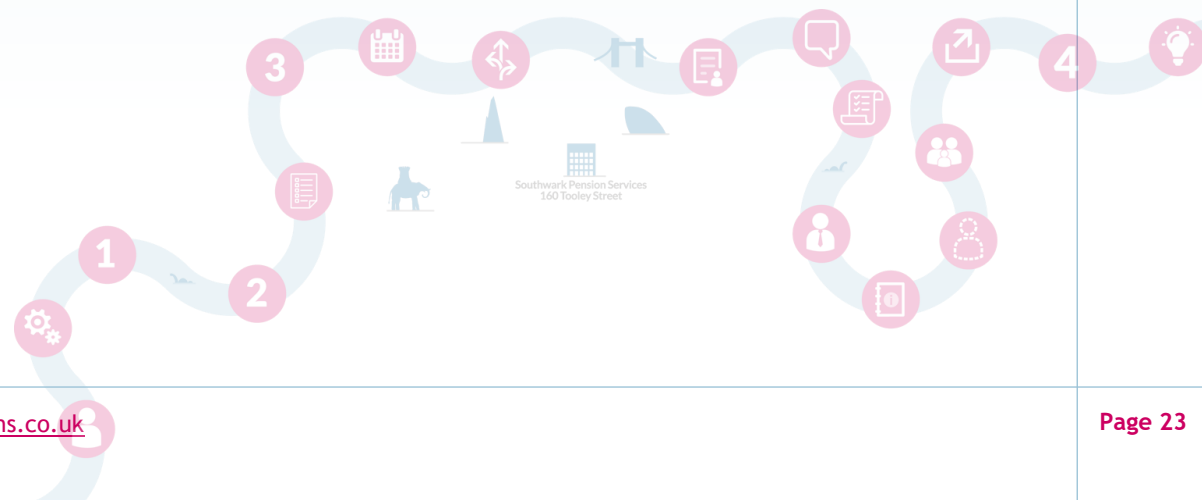




IMPARTIALITY

- ➔ By definition, an *internal* resolution procedure must be carried out by those responsible for the scheme; an entirely independent judgement is available via The Pensions Ombudsman.
- ➔ However, the decision must be fair-minded and impartial having regard to the following principles:
 - ➔ Not representing any party or interest; and
 - ➔ No previous personal involvement with the case.

- ➔ In practice, even where the appeal is against a decision that has been taken by the administering authority, there will always be sufficient senior officers that have not had any personal interest and who can give an impartial decision without deference to the position of the administering authority at an earlier stage.





RIGHTS OF REPRESENTATION - STAGES 1 AND 2

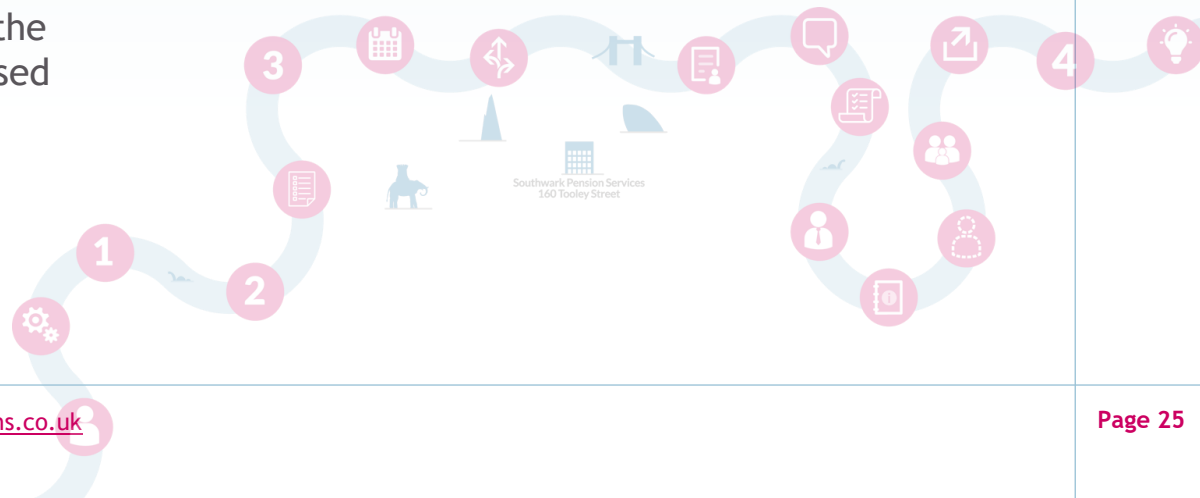
- A person who is entitled to make an application under the procedure can nominate a representative to make the application on their behalf. They can use the representative to make a first stage or second stage application. They can also use the representative to continue the appeal.
- If a person dies and they had a right to make an appeal, or they had made an application at either the first or second stage, their personal representative may continue the appeal on behalf of the deceased.
- If a person who has a right to make an appeal is a minor, or they are otherwise incapable of acting for themselves, the appeal may be made/continued on their behalf by a member of their family or some other suitable representative.
- If a person who has made an appeal at either the first or second stage, is or becomes otherwise incapable of acting for themselves, the appeal may be made/continued on their behalf by a member of their family or some other suitable representative.
- Where a representative is nominated before an appeal is made, the appeal must specify their full name and address and whether that address is to be used for service on the applicant of any documents in connection with the appeal. If the representative's address is not used in that way, they must nevertheless be sent a copy of any notification of a first stage or second stage decision. If an interim reply was sent at either the first or second stage, the representative must be sent a copy.



NOTICE OF A STAGE 2 DECISION

- ➔ The administering authority must respond to a stage 2 appeal within the same time limits that apply to stage 1 appeals, i.e. within two months of the receipt of the appeal. A notice of the decision must be in writing and contain:
 - ➔ The question for determination;
 - ➔ Evidence received and considered;
 - ➔ The decision;
 - ➔ A reference to any legislation or scheme provisions that it relies on;
 - ➔ Where relevant, a reference to the scheme provisions conferring the discretion whose exercise has caused the disagreement; and

- ➔ A statement that The Pensions Ombudsman is available to assist the member with any difficulty with the scheme which remains unresolved, and may investigate and determine any complaint or dispute of fact or law and The Pensions Ombudsman's address.





EXAMPLE OF A STAGE 2 DECISION MADE LETTER

Dear Mrs Jones

Local Government Pension Scheme: Internal Dispute Resolution Procedure (IDRP)

I refer to your appeal, under stage 2 of the Internal Disputes Resolution Procedure, against the decision at stage 1 by [insert name, job title and body], the adjudicator, not to uphold your complaint.

My role in making a determination on your complaint is to determine whether your employer has made their decision in accordance with the pension scheme regulations, that all relevant evidence has been taken into account and that the decision reached is not perverse. I have no powers to implement my own decision; however I can require the employer to reconsider their decision if I consider that they have misdirected themselves or that their decision is perverse. In addition, I have no power to direct the employer to act outside the provisions of the regulations.

Details should include:

Question for determination:

Details of the disagreement

My decision

The decision itself

Relevant Facts

Evidence received/considered

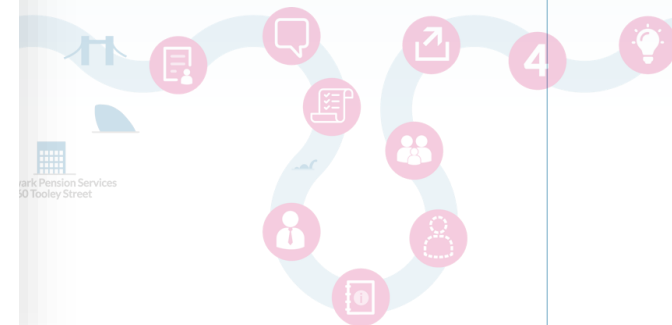
Regulations considered and reason for decision

This concludes the second stage of the internal dispute resolution procedure. The Pensions Ombudsman is available to assist members and beneficiaries of pension schemes in connection with difficulties you may have. Their address is 10 South Colonnade, Canary Wharf, E14 4PU. (telephone 0800 917 4487).

Having made my decision, I cannot enter into further correspondence with you; the decision can only be overturned by a judgement of the High Court or the Pensions Ombudsman. The Pension Ombudsman may investigate and determine any complaint of maladministration or dispute of fact or law or referred to him in accordance with the Pensions Schemes Act 1993. His address is: Office of the Pensions Ombudsman, 11 Belgrave Road, London SW1V 1RB (telephone 020 7630 2200).

Copies of this determination have been sent to [name of body] as your employer/former employer and the Cheshire Pension Fund.

Yours sincerely





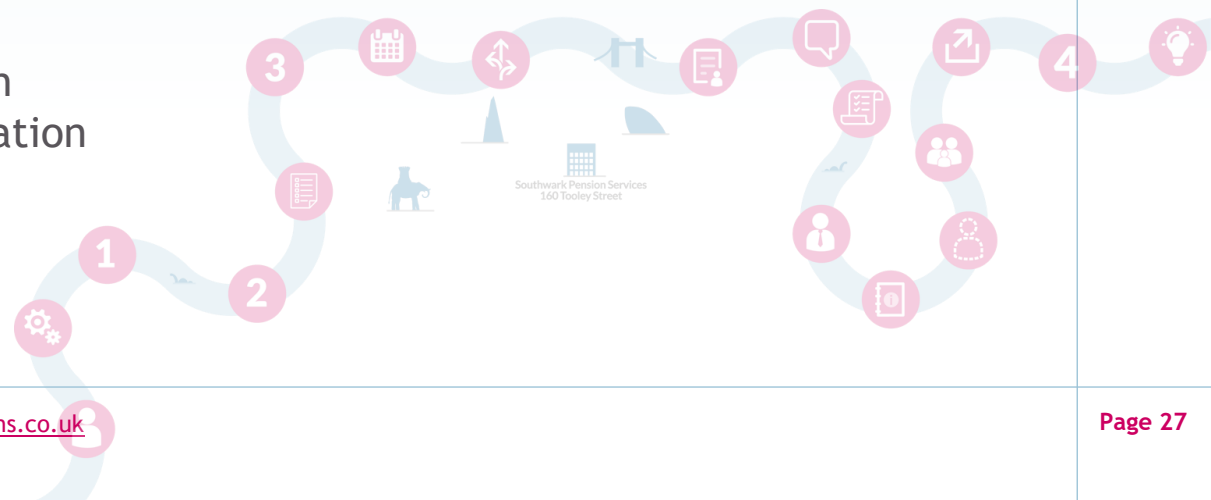
Appeal not upheld

- The stage 2 decision maker has reviewed the facts and the evidence in the case and has not found that any decision reached is either incorrect or inconsistent with the appropriate application of the regulations and any discretion applied.

Appeal upheld

- The decision maker may not be satisfied that the initial decision was properly reached or that the appropriate legislation has not been correctly applied or adhered to. The stage 2 decision maker cannot impose any alternative decision upon the original decision maker wherein a discretion was exercised - they can only remit the case for reconsideration highlighting his areas of concern or where fault was

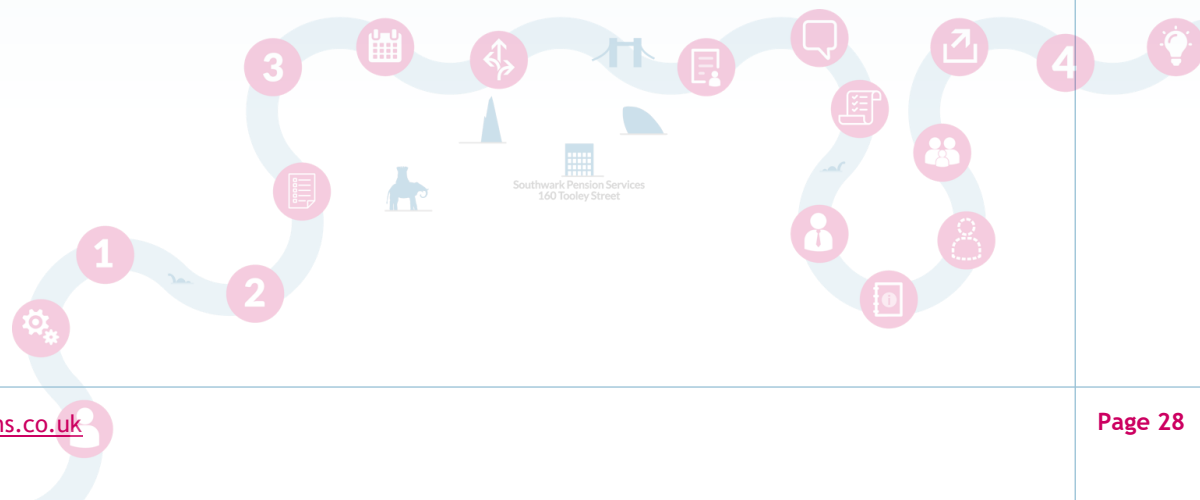
found in law or in fact. Where it is found that the decision was incorrect in the application of regulations or in calculating benefits due, they can instruct that the correct position be applied in relation to the member.





Appeal partially upheld

- Occasionally, an appeal may have more than one head of argument or may rest on more than one determining factor. Where this is the case, the administering authority may find that the appeal should be upheld in part rather than wholly and a combination of the possible outcomes above be applied.
- The decision of the administering authority is binding and can only be overturned by The Pensions Ombudsman or the High Court. The administering authority will not enter into further correspondence in relation to the appeal.



Where a member remains dissatisfied after the IDRП has been exhausted, they can seek an independent review of their appeal. The body responsible for the review of appeal decisions beyond the IDRП.

The Pensions Ombudsman

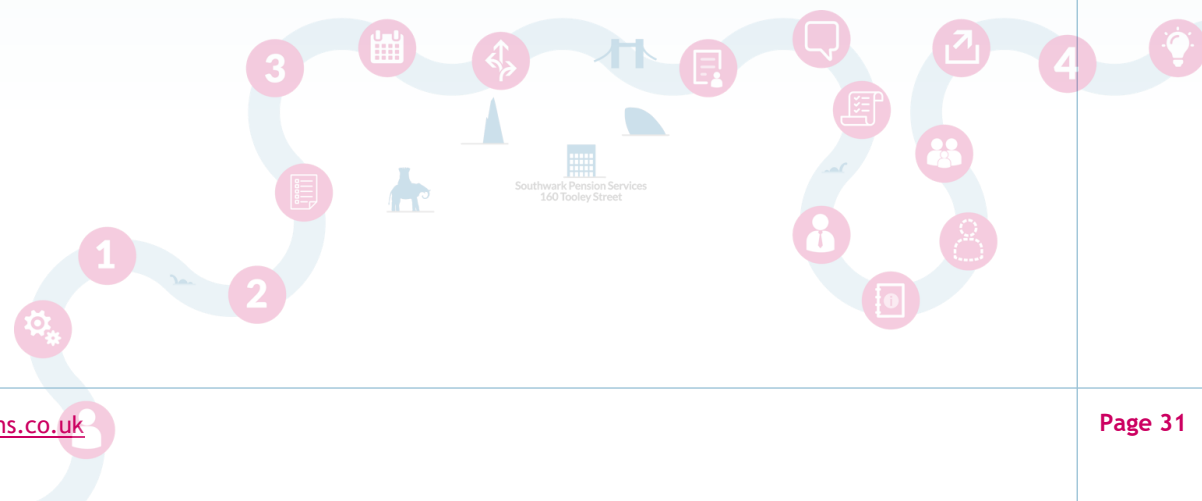
- Will only normally consider cases after the member's case has been through the scheme's two-stage IDRП.
 - May investigate and determine any complaint or dispute of fact or law in relation to the scheme made or referred in accordance with the Pension Schemes Act 1993.
 - The Ombudsman can make awards of compensation for loss and for distress and inconvenience.
 - The determination of the Ombudsman is final and binding on all parties,
- subject only to an appeal on a point of law to the Chancery Division of the High Court.
- Cases sent to the Ombudsman's office are initially assessed by their staff to determine whether the appeal or dispute can, or should, be referred for consideration by the Ombudsman. Further information may be sought at this stage from both the administering authority and the employing authority, as well as from the individual.

- Where the Ombudsman does make a determination in respect of a case that they feel can and should be before them, the possible outcomes are the same as set out at stage 2 of the IDRП.
- The appeal may be wholly, or partially, upheld or they may determine that the appeal should not be upheld against the respondents at all. When making their determination, the Ombudsman will have regard to former cases, but these are not precedent, as at law. Consequently, parties to an Ombudsman investigation should concentrate on the facts and law applicable in their circumstances rather than rely upon the outcome of previous cases that were prima facie the same. A history of former determinations is available on the Pensions Ombudsman's website at www.pensions-ombudsman.org.uk/our-decisions
- The Ombudsman's determination can only be challenged on a point of law. The appeal against the decision of the Ombudsman needs to be made to the High Court within 28 days of the date of the decision that is being appealed against.



AND, FINALLY...

- Determining appeals is anything but straightforward.
- The Pension Fund is available to assist employers with this task and will provide information on the process and regulations that may be involved.
- The Pension Fund cannot draft responses, advise upon decisions or become otherwise directly involved with an employer/adjudicator function.
- It is important that employers keep comprehensive records in the event of an appeal from members.
- Members must not be discouraged from submitting an appeal.





THANKS FOR WATCHING



For a helping hand, please contact us via:



@ lbspensions@southwark.gov.uk

📞 0207 525 4924



Don't forget to visit your new website at:
www.southwarkpensions.co.uk



For the national Local Government Pension Scheme website, it's:
www.lgpsmember.org

