

**GUIDANCE FOR MEMBERS OF THE LGPS RE:
PAYMENTS WHEN LEAVING EMPLOYMENT
(Sept 2019)**

NOTE: All of the following applies to Napo members who are also members of the LGPS employed in Cafcass, the CRCs or on other contracts - with the exception to references concerning Civil Service Compensation Payments, which only apply to NPS employees.

There is a chronic national shortage of experienced and/or qualified probation and family court staff at all grades. Thankfully this means there is very little prospect of Napo members currently facing a risk of redundancy.

However, members can find themselves in a position where they are unwell and think they may not be able to maintain their employment for health reasons. This short briefing aims to point members (and Representatives) facing this situation towards what they should do; and what compensation they're entitled to if they do lose their employment due to poor health.

A separate briefing is being produced relating to compensation for LGPS members who may be facing redundancy, which also considers current challenges from the Government around seeking to cap exit payments.

The LGPS Retirement Threshold

The threshold for "gainful employment" in IHR assessments was changed in 2014. Until then the LGPS had no clear definition of reasonable, gainful employment and so an ability (or potential) to do any work could have disqualified you from getting IHR. However, since 2014, the LGPS has recognised "gainful employment" as meaning ***an average of 30 hours a week for 12 months or more***. This is very helpful, in that more members qualify, whilst also allowing some to draw a pension without loss whilst doing some work.

Ill-Health Retirement Tiers

There are three tiers of Ill-Health Retirement (IHR). These are:

Tier One: Where it's agreed a member will not be able to sustain gainful employment before their Normal Retirement Age (NRA). They will gain immediate access to their pension benefits, these being enhanced to match what they would've expected them to be if they had worked up to their NRA. E.g. if someone aged 55 was awarded Tier 1 IHR they would have 11 years added to their pension as their NRS would (currently be) 66.

Tier Two: Awarded where someone doesn't qualify for Tier 1 but is not expected to be able to meet the gainful employment threshold within 3 years of leaving their employment. They will receive their pension as accrued up to that point with no loss for taking it early plus 25% of the

pension that would have been built-up if they worked to their NRA. In a majority of cases, Tier 2 decision will be challenged with further medical evidence seeking to clarify why a recovery is reasonably anticipated but not for such a long period.

Tier Three: Where someone is not presently able to continue gainful employment but where it is LIKELY that they will recover within 3 years of leaving or their NRA if this is sooner. The member draws their accrued pension with no reduction but no added years. This is in effect a temporary retirement. Payment will stop after three years, unless they're reassessed in and found not to have experienced the anticipated recovery. If that is the case, then the pension can be upgraded to Tier 1 or renewed at Tier 3, depending upon the OH assessments and IRMP considerations.

Step One: Assessing for Ill-Health Retirement (IHR)

Any Napo member being assessed for IHR should contact Napo for help and support, including having Representation in any meetings relating to their possibly leaving the service.

Before anyone leaves due to absence, IHR should be considered. This is an assessment to see if the member is expected to be able to engage in reasonable, gainful employment before their Normal Retirement Age (NRA). In the NPS, it is especially important to agree to an IHR assessment even if you think there is little prospect of meeting the criteria. This is so that the member qualifies for the Civil Service Compensation Scheme payment (see below), which can usually only be awarded where IHR has been considered.

An IHR assessment can be triggered in 3 ways:

- the member can ask for an assessment;
- the line manager can ask the member to agree to an assessment; or
- someone from HR supporting the line manager can ask the member to agree to an IHR assessment.

In all cases, the member must agree to the process starting. However, it is also reasonable to expect line managers to be proactive.

IHR involves the member providing any relevant medical information to an Independent Registered Medical Practitioner (IRMP), who has not previously been involved in any assessment of them. If the member prefers, any medical information ***can be provided confidentially and not shared more widely with the employer.***

The outcome of the assessment must also be shared with the member first and should only be shared with the employer with the member's permission.

IHR exercises are usually paper exercises. This is important, as the quality of relevant, up-to-date medical evidence is amplified. Members and Representatives are therefore encouraged to prepare for this and try to help members compile reports in advance from the most senior medical advisors they can – e.g. consultants, specialists, as well as GPs. In assessing the scale of any likely improvement over-time, the IRMP will be especially interested in:

- clear diagnosis;
- treatment plans; and
- treatment history.

If the evidence is light then IHR is less likely to be awarded.

The NPS also generally insist on there being an up-to-date OH assessment included in the evidence to the IRMP. This will likely involve a face-to-face assessment and could be required alongside the paper exercise by the IRMP. This may seem confusing if it's not explained as being to provide additional evidence to the IRMP, rather than specifically part of their assessment.

If the result comes back and ***the member thinks the IRMP decision is wrong***, possibly because they have more medical evidence that hasn't been considered, then they can ***challenge this before the outcome is passed to their employer*** and provide the further medical evidence. This step has often been missed or confused by the NPS.

Likewise, in cases where a diagnosis is unclear but where a Consultant's assessment is due, then the IRMP can be informed and asked to delay their final decision, treating the awaited assessment as further medical evidence. The IRMP can also make reference to a reassessment when this is available to them in their report. This helps keep the assessment "live" and reduces the risk of a premature dismissal by the employer.

Active vs Deferred

It is important the member does not leave before the outcome of an on-going IHR assessment. If they are still employed and they qualify for Tier 1 IHR their pension will be significantly enhanced. The employer will have to pay to have the pension made up to the same amount as if the member had worked up to their Normal Retirement Age.

However, if someone has resigned or left employment before the outcome of the IHR then a deferred member certificate will be issued. This means they will only get access to their existing pension at the Tier 3 rate even if the IRMP says they will not be able to do gainful employment before their NRA.

Likewise, if you have already left and believe you may now meet the criteria you can contact your old employer and ask for them to commission an IHR assessment with an IRMP. The NPS is obliged to do so and if you are successful then you would get immediate access to your pension under the same terms as a Tier 3 IHR.

The GMPF also have very good user-friendly guides to the process that members, Representatives and Line Managers can access, and will also answer most questions about the process. Their website can be accessed via www.gmpf.org.uk

Step Two: Civil Service Compensation for Dismissal on Capability Grounds

Where IHR has been unsuccessful and the member's return to work is unlikely in a reasonable time period, even with reasonable adjustments being implemented, then their employment could be at risk.

If you find yourself in this position contact Napo for help and support, if you have not already done so. In Napo, any member who is clearly at risk of losing their employment is able to request, via their local Branch, support from one of Napo's experienced paid ***National Representatives***. This is done by the local branch emailing or calling Napo HQ.

It is very important to be represented at any meeting that could be discussing your potential dismissal. In reality, most line managers and even HR advisors will welcome the presence of an experienced Napo Representative guiding the process.

Napo will do all it can to support members who want to retain their employment in such circumstances, including arguing for reasonable adjustment that may not have been tried, more time for clearer medical diagnosis, etc. However, in the NPS where a dismissal happens and the member has not qualified for IHR, then the member will be entitled to compensation for the loss of their employment, under the rules of the Civil Service Compensation Scheme. This is an additional benefit arising from being a civil servant. Outside of the civil service, Napo would try to negotiate some exit package with the employer.

The terms of the civil service compensation scheme award are set out in section 3.3 of the Scheme (see below). The term "reckonable service" has been legally defined in this context as meaning time as a civil servant – as opposed to its more general meaning in pension terms. Currently (June 2019) the maximum award for someone in probation would be **20 weeks pay** (5 x 2 weeks under a) plus 5 x 2 weeks under d) in most cases. Someone who transferred to the NPS at the TR split in 2014, they will soon also qualify under points b) as well from 1st July 2019.

Staff starting as civil servants when they transfer into the NPS from a CRC or elsewhere will only start accruing time for these payments from the point they transfer – this is not covered by wider "continuity of service" rules and regulations.

Someone who is within 3 years of their NRA will have their compensation reduced under the tapering mechanism contained within the regulations (see below in Annex 1).

In some cases, the employer has sought to reduce this entitlement using a caveat that allows reduction where an employee has sort to frustrate the process – e.g. by refusing to participate with Occupational Health Assessments. Napo will almost always seek to challenge reductions, which can rarely be justified and usually take little to no account of the emotional challenges that come with being on long-term sickness. ***This is another excellent example of why any Napo member in this situation should contact us for support.***

DISMISSAL PROCESS

Any member leaving on grounds of either IHR or ill-health related capability will need to be formally dismissed by the employer. This can be emotionally challenging for the member and feel unfair – however, it is important for members' to understand this is a necessary process. ***The context is not one where you are being "sacked"***.

A formal dismissal provides evidence for the member that they're no longer employed. This evidence is necessary for the member to access their pension and/or other benefits immediately (e.g. disability benefits from the DWP).

There should be a formal meeting (which a Napo Rep can attend on the member's behalf if they are too unwell to do). At the meeting, ***the employer must present any compensation figure or pension. Failure to do so could render the dismissal unfair and prompt continued payment until this figure is available and the dismissal can be exercised fairly.***

The IRMP is technically only making a recommendation and this must be acknowledged and agreed by the employer. This is so they recognise their obligations under the dismissal. This step also allows the employer to make a decision in the relatively rare cases when the IRMP's decision isn't clear – or to clarify where a decision has changed or an appeal is being sought. This stage has also been important in the employer considering whether to re-instate elements of sick pay by re-assessing the management of the process before a final dismissal, informed by the IRMP report and submissions from the member / Napo.

However, it is important that, where and IRMP has recommended IHR, there is not an unreasonable delay in processing the retirement. That is, the employer should not take an unreasonable amount of time to meet to confirm their decision or to arrange the dismissal meeting. If this happens and the member suffers any losses or detriment as a result (e.g. exhausts their sick-pay and so suffers additional stress and financial hardship) then it is possible to prosecute to recover these losses under Breach of Contract legislation and/or the Pension Ombudsman Regulations.

If a member is dismissed after an unsuccessful IHR assessment but they then successfully appeal and the IRMP changes their recommendation after the dismissal then their retirement can still be considered as an Active retirement – i.e. they can still get Tier 1 enhancements. To do this, the employer will need to formally accept the IRMP decision and confirm to both the member and the GMPF that the reason for dismissal has changed to IHR. This should be a formality. If the employer frustrates this then Napo would want to help members challenge this via the Pension Ombudsman appeals process.

The retirement does not take effect until it is confirmed by the employer. This means where IHR is granted the pension can only be paid from the date of the dismissal. ***If someone loses additional monies as a consequence of any delay Napo will argue for this loss to be recovered.***

Additional Exit Pay

In addition to any pension award or compensation payments for losing their job in these circumstances, all members being dismissed are also entitled to receive:

- ✓ **Payment for any untaken accrued holiday leave**, including up to 20 days from previous years that may have been untaken due to illness; and
- ✓ **Payment in Lieu of Notice (PILON)** – this can be up to **12 weeks** based upon length of service. After Napo successfully won an ET case in May 2019 (Tebbutt v Secretary of State for Justice), this must be paid at someone's **normal full rate of pay** even if they are on reduced pay at the point of dismissal.

PARTIAL RETIREMENT...

Many members often seek to reduce their hours as they get older. This is legitimate. Indeed, the new CARE Pension Scheme is designed with this in mind, as it reduces the relative impact of pension by minimising the importance of the final salary.

Members can seek to draw some of their pension and carry on working by applying for “partial retirement”. This will require the employer’s permission.

Members who are unwell, including some who have a disability but who think they will not qualify for IHR – or who want to carry on working for as long as possible, often come to Napo and ask about “partial retirement”. This is NOT designed for these circumstances and members should get careful independent financial advice about if this is in their best interests. Drawing your pension early will lead to a reduction in the amount of pension per year unless you are assessed for IHR. Since the introduction of the 30-hour threshold, you may also be able to continue working for less than 30 hours a week whilst qualifying for their pension.

Annex 1.

COMPENSATION TERMS

3.3 CIVIL SERVICE COMPENSATION SCHEME

Early severance (or leaving with less than 5 years' service)

Subject to rule 3.4, where a civil servant who is retired early under the Flexible category has less than five years' qualifying service, or is under the age of 50, he or she is eligible for benefits under rule 2.7. In addition, and provided the civil servant has at least one year's qualifying service, a compensation payment may be paid, subject to rule 5.1, calculated as follows:

- (a) two weeks' pensionable earnings for each of the first five years of reckonable service; plus

- (b) three weeks' pensionable earnings for each of the next five years of reckonable service;
plus

- (c) four weeks' pensionable earnings for each year of reckonable service after the first ten years; plus

- (d) two weeks' pensionable earnings for each year of reckonable service after the fortieth birthday;

up to a maximum of two years' pensionable earnings. In the case of a prison officer to whom rule 2.27 of the 1972 Section applies, reckonable service for the purposes of calculating compensation under this rule shall be reckonable service determined in accordance with that rule.

Section 5 Further provisions Civil servants within 3 years of the pension age

- 5.1 Subject to rule 5.1a, for a civil servant, or a person who at any time has opted out of the 1972 Section who is within three years of the pension age, the lump sum compensation payment under rule 2.3, 2.6a, 2.8, 3.2a, 3.3, 11.1 or 11.3 will be reduced by one thirty sixth for each month of service within that three year period, counting any part of a month as a full month.
- 5.1a Rule 5.1 shall not apply to—
- (a) a prison officer whose pension age is 55 under rule 2.27 of the 1972 Section if the lump sum compensation payment is made under rule 2.8, 2.9, 3.3, 3.4, 11.1 or 11.3; or
 - (b) a person whose last day of service in the Civil Service is on or after 16th July 2008 if the lump sum compensation payment is made under rule 2.3 or 2.6a.