



23 December 2008

To: Local Government Pension Scheme
Managers and employers participating in
the scheme

ALAMA'S ADVICE NOTE TO MEMBERS ON MEDICAL CERTIFICATION IN THE LOCAL GOVERNMENT PENSION SCHEME (LGPS)

CLG and the LGE were disappointed to read the ALAMA Committee's 10 December note to its members.

The note contends that CLG is requiring IRMPs to provide certification beyond their professional competence. This is not the case.

We are particularly concerned that ALAMA is advising its members:

1. not to issue a certificate that states a scheme member is permanently incapacitated but does not have a reduced likelihood of obtaining gainful employment; and
2. to refuse to complete medical certificates that refer to the likelihood of obtaining gainful employment.

CLG does not agree that it would be difficult to justify a certificate being issued that states that a member is permanently incapacitated but does not have a reduced likelihood of obtaining gainful employment. There may be many instances where a member could be capable of alternative work immediately they leave their local government employment and the IRMP must consider whether this is the case when setting out their opinion on the medical condition being presented. (See paragraph 28 of the guidance.)

CLG does not consider it unreasonable to ask an IRMP, who is of the opinion that a member is permanently incapable of undertaking their current local authority employment, to also assess the likelihood of, and when, the member is considered able to **obtain** employment in the future. This constitutes the second limb of regulation 20 of the LGPS (Benefits, Membership and Contributions) Regulations 2007¹ (i.e. paragraph (1)(b), but which has to be taken together with the first limb

¹ As amended by the LGPS (Amendment) Regulations 2008.

(paragraph (1)(a)). As paragraph 28 of the guidance states, the word “obtaining” includes the capacity of the individual to undertake gainful employment, taking into account the full medical effects of the condition which gave rise to the retirement on the grounds of permanent ill health.

From the outset, the policy objective has always been to encourage a return to work for those people who have left their local government employment because of ill health but who are otherwise capable of carrying out a wide range of employment elsewhere. This is why the new provisions provide greater benefits for those unlikely to obtain gainful employment for several years but do not provide an ill-health retirement benefit under regulation 20 for those members whose employment was terminated by reason of permanent ill-health or infirmity of mind or body which renders him permanently incapable of discharging efficiently the duties of his current employment, but he does not have a reduced likelihood of obtaining gainful employment (20(1)). In such circumstances, the member would be regarded as immediately capable of obtaining gainful employment as defined in regulation 20(14). “Immediately” means at the point the member’s employment is terminated. It follows that a 1st, 2nd or 3rd tier pension can only be awarded to a member whose likelihood of obtaining gainful employment is reduced because of that permanent incapacity.

The ill health guidance does not specify, as the ALAMA advisory note contends, that the IRMP has a decision making role. The guidance clearly states that the role of the IRMP is to certify whether or not, in their opinion, the criteria for entitlement to an ill health benefit are satisfied. The IRMP is being invited to provide only his professional opinion on the medical condition that the LGPS member is presenting.

The guidance is also quite clear that the IRMP is being asked for an opinion on the medical factors only and not other external factors unconnected with the medical condition such as availability of employment in a particular area. ALAMA has seen fit to overlook this in their iterations of the LGPS ill health regulations despite CLG emphasising this point to them on many occasions.

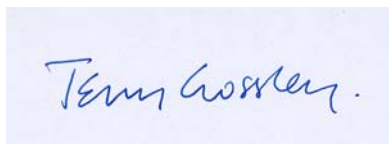
We have noted that ALAMA has developed its own model ill health certificate which it is recommending to its members. It is our view that the certificate is not fit for purpose as it fails to follow the requirements sought of the medical opinion as prescribed by regulation 20(5). It also uses the term “reasonable period” which is not a term prescribed in the regulations.

Accordingly, whilst CLG can only offer an informal opinion and not legal advice, it is our view that LGPS employers risk acting *ultra vires* regulation 20 should they make a determination under regulation 20 and agree to the payment of ill health retirement benefits, in reliance of a medical certificate as proposed by ALAMA. It is suggested that employers take legal advice before relying on such a certificate.

It is also recommended that LGPS employers should secure the IRMP's confirmation that they will do an assessment that complies with the requirements of regulation 20, the certification process and regulatory guidance, before sending an LGPS member for an assessment. Employers may wish to consider the terms of their arrangements with IRMPs, and whether it would be desirable to include such a requirement in the terms of the contract with the IRMP, subject to legal advice.

We would like to know to what extent the ALAMA advisory note is hindering determinations about ill health retirements. Please send your findings to the Secretary of the Ill Health Monitoring Group, Nicola Rochester who can be contacted at: Nicola.rochester@communities.gsi.gov.uk

Yours sincerely,

A rectangular area containing a handwritten signature in blue ink that reads "Terry Crossley".

Terry Crossley