

## **III health retirement guide for employers**



**This guide is to help employers understand what constitutes ill health retirement within the Local Government Pension Scheme regulations and details their role in supporting members through the process**

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## I. Types of ill health retirement

Taking retirement on the grounds of Ill health from a Local Government Pension Scheme is available to employees or ex-employees who satisfy certain criteria.

There are two types of members who can take ill health retirement:

1. Active members – members with LGPS benefits who are currently employed.
2. Deferred members– members no longer in the LGPS with deferred/preserved pension benefits.

### Active members

The conditions required for immediate retirement on ill health grounds are:

- **Qualifying period** - A member must have at least two years' scheme membership.
- **Permanent incapacity\*** - The employer must terminate the member's employment on the grounds that their ill-health, or infirmity of mind or body, renders them permanently incapable of efficiently discharging the duties of their current employment if they are yet to reach normal pension age. 'Permanently incapable' means the member will, more likely than not, be incapable until their State Pension Age, at the earliest.
- **Not immediately capable of undertaking any gainful employment** - The member must not immediately be capable of undertaking any gainful employment. 'Gainful employment' means paid employment for not less than 30 hours a week, over a period of not less than 12 months.

If the member satisfies the above criteria, then an ill health pension is payable.

\*The test for permanent incapacity is based on the employee's ability to undertake the duties of their current employment. If the employee has more than one contract of employment separate tests for each post must be made as it is possible to satisfy the criteria for one post, but not the other.

## Deferred members

The conditions for early payment of deferred pension benefits are dependent upon the date the member left the LGPS.

### Scenario 1

Those who **left the LGPS before 1st April 1998** (Covered by the Local Government Pension Scheme Regulations 1995)

The ex-employee must be permanently incapable, by reason of permanent ill-health or infirmity of mind or body, of discharging efficiently the duties of the employment the member has ceased to hold.

Benefits are payable from any date on which the ex-employee becomes permanently incapable, by reason of ill-health, or infirmity of mind or body, of discharging efficiently those duties. This means that if a medical opinion indicates that the permanent incapacity arose earlier, pension benefits can be paid from a date earlier than that on which the ex-employee applies for them.

### Scenario 2

Those who **left the LGPS on or after 1st April 1998 but before 1st April 2008** (Covered by the Local Government Pension Scheme regulations 1997)

As above, the ex-employee must be permanently incapable of discharging efficiently the duties of their former employment because of ill health, or infirmity of mind or body. Benefits are payable from any date when the ex-employee applies for the early payment of benefits or, from the date permanent incapacity is judged to have arisen, whichever is the sooner.

### Scenario 3 - Exceptional ill health

Where the ex-employee **left before 1st April 2008** and are certified as seriously ill with a life expectancy of less than one year, under both the 1995 & 1997 regulations, East Sussex Pension Fund may choose, subject to HMRC rules, to allow the ex-employee to commute the pension benefits into a single lump payment.

### Scenario 4

Those who **left the LGPS on or after 1st April 2008 but before 1st April 2014** (Covered by the LGPS (Benefits, Membership and Contributions) Regulations 2007)

The ex-employee must be permanently incapable of discharging efficiently the duties of the former employment because of ill-health, or infirmity of mind or body and, if so, whether because of that condition the member has a reduced likelihood of being capable of undertaking any gainful employment before reaching normal retirement age (65), or for at least three years, whichever is the sooner. Benefits are payable from any date when the ex-employee applies for the early payment of benefits or, from the date permanent incapacity is judged to have arisen, whichever is the sooner.

## Scenario 5

Those who **left the LGPS on or after 1st April 2014** (covered by the LGPS Regulations 2013)

The ex-employee must be permanently incapable of discharging efficiently the duties of the former employment because of ill-health, or infirmity of mind or body and the condition is likely to prevent them from undertaking gainful employment before reaching normal retirement age or for at least three years, whichever is the sooner.

Benefits are payable from the date when the ex-employee applies for the early payment of benefits.

Note: There are different ill health certificates required depending on whether the member is active or deferred. If deferred there are further certifications needed depending on when the member left the scheme. Please see [Appendix I](#).



## 2. Your role as an employer

### Decisions about eligibility

There is no requirement within the Scheme Regulations for active members to personally apply for early access to their pension benefits on the grounds of ill health. The employer, or a doctor consulted by the employer, would usually instigate the ill health retirement process on behalf of an active member.

**Note:** Once the process starts, it is the employer's responsibility for reaching a decision on pension entitlement.

If an employee has been absent from work for a considerable period or has suffered an injury that prevents them from working, then the employer should decide if employment should be terminated. The decision should be taken entirely for human resource reasons and should be considered against the conditions for ill health retirement stipulated in section 1.

If the conditions for ill health retirement are met, then the member should be referred to an Independent Registered Medical Practitioner (IRMP).

Deferred members need to apply to their former employer to gain early access to the pension benefits on the grounds of ill health (the opposite to active members). If their employer no longer exists or has ceased within the Scheme, then the member would need to apply directly to the [East Sussex Pension Fund](#) as the Administering Authority for the Scheme.

### Referral to an Independent Registered Medical Practitioner (IRMP)

An IRMP who is qualified in Occupational Health medicine must certify whether an employee meets the criteria. An IRMP is defined as; a practitioner who is registered with the General Medical Council and...

- a) holds a diploma in occupational health medicine (D Occ Med) or an equivalent qualification issued by a competent authority in an EEA state; and for the purposes of this definition, "competent authority" has the meaning given by section 55(1) of the Medical Act 1983.  
or
- b) is an Associate, a Member Fellow of the Faculty of Occupational Medicine, or an equivalent institution of an EEA state."

For more information, please refer to our [Appointments of Independent Registered Medical Practitioners](#) policy.

**Important:** Prior to referring a member onto an IRMP please make sure that you have registered and obtained approval for your choice of IRMP with East Sussex Pension Fund by contacting the following email address [employer.engagement@eastsussex.gov.uk](mailto:employer.engagement@eastsussex.gov.uk) .

Employers will refer both active and deferred members for medical opinions under the Scheme. It is likely that members who have had lengthy periods of sick leave, have already been in contact with the employer's occupational health advisers. However, a lengthy period of sickness is not required before a member referral. For example, an employee may not have been off sick, but has been diagnosed with a terminal illness\*. The occupational health provider acting for the employer should ensure all relevant information is available for the IRMP.

\*Please contact the admin team regarding terminal cases as they could be eligible for a range of benefits.

If the member's employer no longer exists or has ceased within the scheme then it is the responsibility of the Administering Authority, East Sussex Pension Fund, to arrange the IRMP appointment.

### **Information to provide to the IRMP**

To ensure that the application is dealt with quickly with minimum disruption, the IRMP requires a fully worked case to review which should include:

- Details of illness/medical condition
- Absence record for the previous two years
- Medical reports from your occupational health practitioner
- Medical reports from the individual's GP or specialist consultant or similar
- Accident report forms and risk assessments
- Job description for role in question
- Details of any adjustments/adaptations that have been made to help the individual do their job. This includes adjustments to hours worked, which can affect the level of ill health enhancement awarded. In practice, sending the entire occupational health record is the best way to ensure all relevant information is passed on.

### 3. The role of the Independent Registered Medical Practitioner (IRMP)

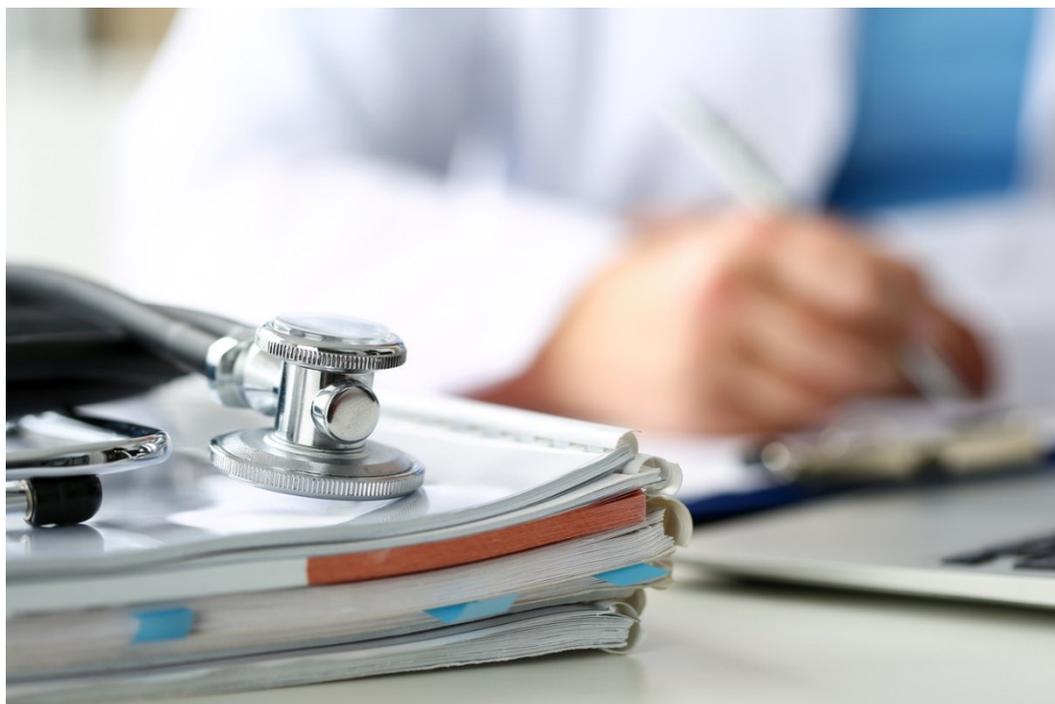
For deferred members, the IRMP must certify whether the member satisfies the relevant criteria set out in section 1 by completing an ill health certificate.

For active members, the IRMP must not only certify whether in their opinion that the member satisfies the relevant criteria set out in section 1 but also to what degree or tier of ill health the member satisfies. This will be covered further in [Section 5](#).

If the member is still an active employee and works part time, it may also be necessary for the IRMP to provide an opinion stating whether any reduction in hours is because of the condition for which ill health retirements may be paid. This will have an impact on the calculation of any enhancement.

To comply with the Access to Medical Reports Act 1988, it is essential that the individual gives their informed consent before any medical records are disclosed to the IRMP. The employer and their own Occupational Health doctor should obtain this authority when they decide to refer the individual to the IRMP.

When the IRMP receives the referral papers they will decide whether it is necessary to see the member. An appointment, where appropriate, will be arranged. The member will be informed by letter and copies sent to the referring employer. If the member fails to attend, the employer will be notified by letter. No further action will be taken until the employer requests a new appointment. The member has the right to refuse to attend any appointment offered by an IRMP and have their case assessed on a paperwork only basis. Members can also request the results of the IRMP's assessment prior to it being sent to employer.



## 4. The Decision

Once the IRMP has made their medical opinion, the certificate will be completed and returned with a narrative report to the employer. The employer should look at these documents in conjunction with any other information they have. Senior management at the employer will then need to decide on pension entitlement, including which tier of ill health award the member is entitled to.

East Sussex Pension Fund's medical certificates include explanatory notes to help guide employers through the decision-making process. Please make sure the correct certificates have been used. A full list of our certificates can be found on the '[Resources](#)' page of the East Sussex Pension Fund website.

### **Who to tell about your decision?**

When a decision has been made, a [LGPSRET2- Ill Health- OA form](#) should be submitted to the [Pensions@eastsussex.gov.uk](mailto:Pensions@eastsussex.gov.uk) alongside the relevant ill health certificate.

If you are an employer covered by the East Sussex Pension Fund's ill health insurance policy, please see Section 6 '[East Sussex Pension Fund's Ill Health Insurance Policy – Legal and General](#)'.

For deferred members, when a decision has been made by the employer, only a relevant ill health certificate is required completed by an authorised IRMP.

You must also inform the member of your decision, in writing, setting out which tier of benefits they are entitled to (if any) and their right of appeal. For further information regarding appeal's please see Section 7 '[Appeals - Internal Dispute Resolution Procedure \(IDRP\)](#)'

## 5. Benefits payable

For active members there are opportunities for enhancements to the pensionable pay accrued based on the likelihood of the individual being able to undertake further gainful employment. These are determined by the following three tiers which correspond to three distinct levels of payable benefits:

**Note:** Gainful employment here refers to paid employment for at least 30 hours per week for at least a year.

Tier	Degree of ill health	LGPS pension and level of enhancement
1	The member is unlikely to be capable of undertaking any gainful employment before normal retirement age.	Accrued pension rights plus an enhancement of membership of 100% of prospective benefits up to normal retirement age.
2	The member is unlikely to be capable of undertaking any gainful employment within 3 years of leaving employment but likely to be capable before normal retirement age.	Accrued pension rights plus an enhancement of membership of 25% of prospective benefits up to normal retirement age.
3	The member is likely to be capable of undertaking gainful employment within 3 years of leaving employment or normal retirement age if sooner.	Accrued pension rights only with no enhancement, with award subject to review and suspension.

**Note:** Active members aged forty-five or more on 31 March 2008 who were in the LGPS at that date, would receive the membership increase that would have been awarded under the LGPS Regulations 1997 if this would be greater than the current scheme award

As previously mentioned for deferred members no enhancement or reductions apply. They will receive their pensionable pay accrued at the date their ill health retirement was determined.

### The Severe Ill Health Test

Ill health retirement has the potential of providing enhanced benefits, therefore members awarded ill health retirement may be subject to tax charges when the growth to their benefits is assessed against the Annual Allowance. Her Majesty's Revenue and Customs (HMRC) service does however have a 'severe ill health' test which, if met, will mean that benefits due because of ill health retirement will not be subject to certain tax implications and penalties that would otherwise be incurred.

The independent registered medical practitioner (where the criteria is met for tier one) will be asked to give an opinion on HMRC's 'severe ill health' test. The test is whether the individual is suffering from ill-health which makes the individual unlikely to be able (otherwise than to an insignificant extent) to undertake gainful work (in any capacity) before reaching pensionable age.

There is an option on the ill health retirement certificate for the independent registered medical practitioner to indicate the test has been met.

**Note:** This test applies to those awarded tier one pension benefits only. It is not guaranteed that a member awarded tier one benefits under the LGPS scheme would also meet the criteria for HMRC's 'severe ill health' test. This is because the criteria for this test is stricter than the tier one criteria.

### Tier 3 ill health benefits

When the employer determines that a member is entitled to a Tier 3 ill-health benefit the employer is responsible for reviewing the pension during the period of payment.

Employers should ensure that the following information is given to the member, in writing, on leaving:

- The latest date the pension will cease in 3 years' time.
- If still in payment, that the pension will be reviewed after 18 months.
- The member must inform the previous employer if they obtain gainful employment (30 hours or more per week for a period of not less than 12 months) as the pension will cease.

What the employer must do once the pension is in payment:

- Review the medical condition of the member after 18 months of pension, by referring them to the IRMP for re-assessment.
- Following the 18-month review, inform East Sussex Pension Fund whether the:
  - Tier 3 conditions still apply, or
  - Whether the pension should cease, or
  - Be upgraded to Tier 2 (a copy of the IRMP medical certificate is required in this instance). **Note:** Any upgrade in benefit will be backdated to the initial point of retirement originally awarded under Tier 3 benefits.
  - Inform East Sussex Pension Fund if the pension must cease, for example, on obtaining gainful employment or medical re-assessment.
  - Inform the member in writing when the pension is ceasing.
  - Inform East Sussex Pension Fund if they need to recover an overpayment of pension.

East Sussex Pension Fund will support the employer in this process by:

- Informing the employer when the member has been in pension for nearly 18 months and confirm the member's current home address held on the payroll record.
- Inform the employer when the member has been in pension for nearly 36 months and confirm the member's current home address held on the payroll record. This letter will confirm that East Sussex Pension Fund will cease at 36 months.
- Recover any overpayment as instructed by the employer.

**Note:** If the member applies for early release of their suspended Tier 3 pension, within 3 years of it being suspended and they meet the ill health criteria due to the same condition that triggered the original ill health pension, they can be uplifted to a Tier 2 pension.

## Cost to employer

Unlike other forms of early retirement (such as redundancy) there is no immediate cost payable by an employer. However, an employer will have to pay the cost of any medical referral. All pension costs associated with ill health are included in the normal employer contribution rate determined by the actuary every three years. Please note that the associated costs may potentially increase contribution rates when revalued.

This will differ for those covered by East Sussex Pension Fund's ill health insurance policy. For more information, please read the 'Ill Health Insurance – Legal and General' section.

**Important:** A deferred member can apply for ill health retirement as many times as they wish. The Pensions Ombudsman has made it clear that the employer has a statutory duty to decide on each request. They can only do after obtaining the IRMP certificate, and could therefore face multiple referral costs, which cannot be passed on to the ex-employee.

## 6. East Sussex Pension Fund's Ill Health Insurance Policy – Legal and General

East Sussex Pension Fund offers an ill health insurance policy provided by Legal and General. This is currently in place on an auto-enrolment basis\* for all small to medium employers (those with two hundred active members or less) and for some larger employers who have opted into the policy. The policy is effective from 1<sup>st</sup> April 2021.

\*The only exception is for employers who had pre-existing policies with Legal and General (please refer to the terms of your prior policy as coverage will commence from the start date of this agreement).

**Note:** All new employers and employers who joined the Scheme post 1<sup>st</sup> April 2021 have been automatically enrolled into the insurance policy. Some employers have chosen to opt-out of the policy. If you are unsure if you are covered by the policy, please contact the Fund.

**Important:** Any claim where the ill health retirement process was initiated prior to the 1<sup>st</sup> of April 2021 will not be covered under the policy. Only those employers with a pre-existing policy with Legal and General would be covered subject to the terms and conditions of the policy they have in place.

### What is required to make a claim?

For those employers covered by the insurance Legal and General will require additional information to approve a claim. This information is as follows:

- Part A of the IHLI Claim Form. These forms are required for Legal and General to initiate the claims process on the insurance cover for ill health retirement (subject to paragraph 2 of the '[Costs](#)' section below). This will be the process to follow initially. We will advise you after calculating the strain cost if the claim will be £500,000 or more.

**Note:** East Sussex Pension Fund will complete the Part A of the IHLI Claim Form on behalf of all employers. You will not require a blank copy of the form to initiate the claim.

- For any claim over £500,000 we would require both Part A and Part B of the form to be completed. This will require involvement from both employer and employee and may well require comment from the IRMP who approved retirement on the grounds of ill health. As part of the policy Legal and General reserve the right to seek medical guidance themselves on claims worth £500,000 or more, which will require access to relevant additional reports from the member's doctor and/or the IRMP. The Fund will inform you as soon as possible if this further information is required.

**Important:** The additional information required is for the insurance claim only and will not affect the member receiving their ill health retirement benefit, if the information outlined in Section 4 has been correctly submitted to the Fund. Please be aware that there is a 90-day deadline starting from the date of retirement for the member in question to submit the insurance claim.

Failure to submit a completed claim form may result in the claim being rejected. As a result, you will be liable to cover the cost via employer contributions.

## Costs

The policy is designed primarily to protect those smaller employers who may potentially experience large strain costs associated with ill health retirement and work is covered by the contribution cost as the premium payment for the Legal and General policy. This will be taken out of existing contribution rates so will not increase these payments.

**Important:** The claims covered by the insurance only apply to active members and for strain costs arising from awarding of Tier 1 and 2 benefits. Employer contribution rates are expected to cover payments for Tier 3 benefits and deferred members much the same as it would if an employer was not part of the policy.

For more information, please refer to the [‘East Sussex Pension Fund IHLI Policy’](#).

## 7. Appeals - Internal Dispute Resolution Procedure (IDRP)

In all cases the member should be given the right to appeal under the [Internal Dispute Resolution Procedure \(IDRP\)](#).

The appeal can relate to the decision to grant retirement and/or the benefits paid. It is the scheme employer, not the IRMP that the appeal is made against, as it is the responsibility of the employer to decide on, if and what benefits to award. The IRMP is only there to give a medical opinion.



### Contact us

Details of how to contact the East Sussex Pension fund are [available on our website](#).

## Appendix I – List of certifications

List of certifications (please [refer to website](#) for most up-to-date versions).

LGPS IH-1 – Certificate for active members.

LGPS IH-2A – Certificate for deferred members who **ceased membership on or after 1<sup>st</sup> April 2008.**

LGPS IH-2B – Certificate for deferred members who **ceased membership on or after 1<sup>st</sup> April 1998 and before 1<sup>st</sup> April 2008.**

LGPS IH-2C – Certificate for deferred beneficiaries who **ceased membership before 1<sup>st</sup> April 1998.**

LGPS IH-2D – Certificate for deferred members who **ceased membership before 1<sup>st</sup> April 1998.**

LGPS IH-3A – Certificate for an **Active Councillor member.**

LGPS IH-3B – Certificate for a **Deferred Councillor member.**

LGPS IH-4A – Certificate for a **tier 3 review of a current pensioner member who left employment after March 2014.** 18-month review undertaken before normal pension age.

LGPS IH-4B – Certificate for a **tier 3 review of a suspended pensioner member who left employment after March 2014.** Review requested by pensioner whilst pension is in payment or within 3 years of payment being discontinued and before normal retirement age.

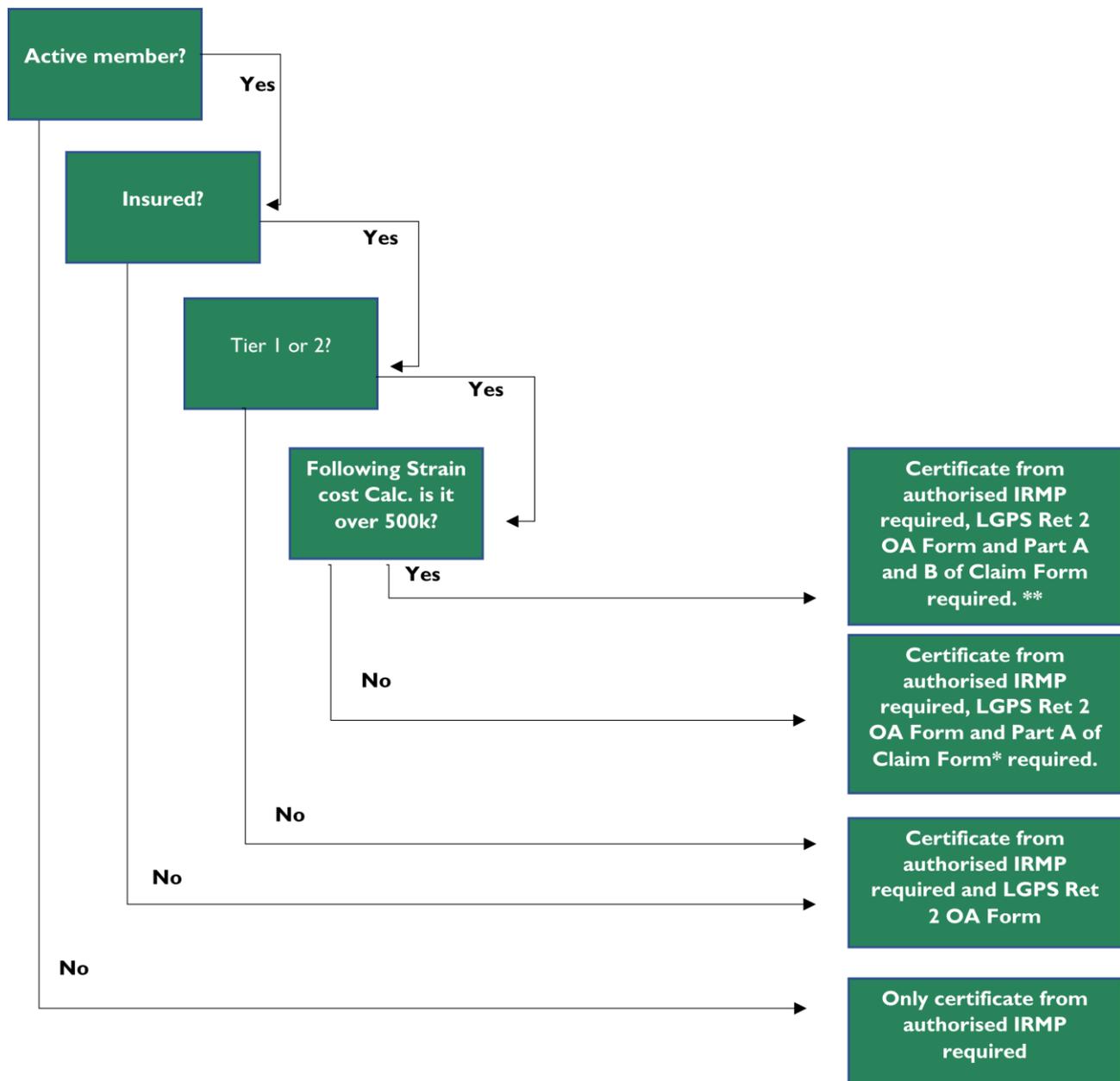
LGPS IH-4C – Certificate for a **tier 3 review of a suspended pensioner who left employment after 31 March 2014.** Review requested by pensioner 3 or more years after cessation of payment and before normal retirement age.

LGPS IH-4D – Certificate for a **tier 3 review of a current pensioner who left employment before 31 March 2014.** 18-month review undertaken before normal pension age.

LGPS IH-4E – Certificate for a **tier 3 review of a suspended pensioner who left employment before 31 March 2014.** Review requested by pensioner whilst pension is in payment or within 3 years of payment being discontinued and before normal retirement age.

LGPS IH-4F – Certificate for a **tier 3 review of a suspended pensioner who left employment before 31 March 2014.** Review requested by pensioner 3 or more years after cessation of payment and before normal retirement age.

## Appendix 2 – Document Flow chart



\*Please note Part A of the claim form will be completed by East Sussex Pension Fund on behalf of the employer.

\*\*Once the Strain Cost has been calculated we will notify you if Part B is required (if over £500,000).