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| **9a** |  | **ILL HEALTH RETIREMENT:** **MODEL GUIDANCE FOR SCHOOLS** |

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1. Introduction

One of the many benefits of being a member of either the Teachers’ Pension Scheme or the Local Government Pension Scheme is that benefits can be paid early on the grounds of ill health. This is known as ill health, or medical retirement.

There are strict qualifying criteria, and the process for teachers is slightly different to the one for support staff.

For all cases, ill health retirement should be managed as part of the managing sickness procedure, and in most cases will emerge as a potential way forward with absences that are already being managed under this procedure.

For roles in schools that fall into the category of teaching (potentially TAs as well as teachers) there are health standards that have to be met and they provide further context for the management of sickness, sickness absence and ill health retirement in schools.

1. Decisions

With ill health retirement, there are two decisions that need to be made:

* A decision about dismissal on the grounds of capability due to ill health
* A decision about whether ill health retirement should be awarded

All decisions will be informed by specialist medical opinion.

For **teachers**, the dismissal decision is made by the school/LA (according to school status)/academy and the ill health retirement decision is made by Teachers’ Pensions. (Note: the Teachers’ Pensions scheme does provide for the rare circumstances where a teacher is granted ill health retirement while they are still working. In these circumstances, the teacher should agree a mutually acceptable date for their last day of employment with their employer).

For **support staff**, the dismissal decision and the ill health retirement decision is made by the school/LA (according to school status)/academy.

1. Links between managing sickness absence, occupational health (OH) and ill health retirement

In the majority of cases, the question of ill health retirement will arise as a result of a long period of absence that is being managed under the sickness absence procedure, and OH advice will have been sought as part of this process.  There will unfortunately also be cases where there has been a rapid deterioration/prognosis of short life expectancy: these cases would still initially be handled under the sickness absence procedure but an ill health retirement application could occur at a much earlier stage in the process.

For both teachers and support staff, the school/academy must continue to manage the process under the sickness absence procedure (and they should be cognisant that an application for ill health retirement does not mean it will be granted and that they may need to proceed to a dismissal hearing which results in an ill health dismissal without ill health retirement).  Given the circumstances of ill health retirement and the inevitable anxiety of being in that situation, wherever possible the dismissal hearings should not take place until the outcome of ill health retirement applications are known.

OH advice is an essential part of the managing sickness absence process and of applications for ill health retirement.

1. Teacher ill health retirement

For teacher ill health retirement, the individual and the school will make the application to Teachers’ Pensions, providing the necessary medical documents which will include OH reports.

The school will then arrange for the dismissal hearing to take place as described in the managing sickness absence procedure.  This will normally be after the Teachers’ Pensions decision about ill health retirement has been received. (Note: the Teachers’ Pensions scheme does provide for the rare circumstances where a teacher is granted ill health retirement while they are still working. In these circumstances, the teacher should agree a mutually acceptable date for their last day of employment with their employer).

In VA and Foundation schools and academies the governors/directors will reach their decision and inform the employee.

In Community schools, the Council will be invited to attend the hearing to give advice, and the governors will make a recommendation to the Council about the dismissal. The Council will then enact the process.

As with any dismissal hearing, there will be the right to appeal and this is described in the managing sickness absence procedure.

Note: In the unfortunate circumstances where an individual with a terminal diagnosis has to make a decision about whether to pursue ill health retirement or give their surviving relatives the benefit of an in service death grant, they should be cognisant that the death grant can only be paid if they pass away while in receipt of pensionable pay or within one year of having been in receipt of pensionable pay (ie in receipt of full or half pay). Scheme members who have a life expectancy of less than one year can also make a written application for their benefits to be commuted into a lump sum. Further information is available from Teachers Pensions.

1. Support staff ill health retirement

*Note: To qualify for ill health retirement, an employee must have 2 years membership of the scheme*

* 1. Independent Medical Advice

For support staff ill health retirement, a management referral must have been made to the Council’s OH provider (currently Medigold) and the OH provider must have recommended that ill health retirement be considered. To expediate the process, it is recommended that all clinical reports are included when the referral is made.  Schools/academies that do not buy their OH advice from the Council, must make an additional management referral to Medigold if they believe someone should be considered for ill health retirement.  The Council will make a one off charge for this\*\*. Once the recommendation has been received, a separate application for ill health retirement must be made. This separate application will be considered by the independent medical practitioner. There is an additional charge for this if the school/academy does not buy OH advice from the Council.

There are three tiers of ill health retirement, tiers 1,2 and 3. (See appendix 1 for a description of the tiers). The independent medical practitioner will advise as to whether the criteria for any, or none, of these has been met.

Once the Ill health certificate from the independent medical practitioner has been received, the governors/directors must form a panel to consider the case for the dismissal on the grounds of ill health\* and the case for ill health retirement.  The decision about ill health retirement should not be to rubber stamp the recommendation but should look at all of the evidence that has been provided e.g. other medical opinion, the nature of the work, other options that have been considered. It is essential that the decision takers reach their own opinion based on all of the evidence and not just the medical opinion and that this is made clear in the resulting communication with the individual. This applies equally to cases where an ill health retirement is being agreed and to cases where ill health retirement is turned down. Appendix 2 has further guidance about the type of issues that should be considered.

In VA and Foundation schools and academies the governors/directors will reach their decision and inform the employee.

In Community schools, the Council will be invited to attend the hearing to give advice, and the governors will make a recommendation to the council about the dismissal and the ill health retirement. The Council will then enact the process. The Chair of Governors or Chair of the Board of Trustees should review decisions before they are finalised. In the case of Community Schools this should happen prior to the recommendation to the Council being made.

The arrangements for the hearings are described in the managing sickness procedure. There is a right to appeal the dismissal decision and the ill health retirement decision (including the level of ill health retirement benefit awarded). The Chair of Governors or Chair of the Board of Trustees should not be involved in panels as they have a separate review role in the process.

\*These will normally be heard at the same time, but there may very rarely be circumstances where it is appropriate for the dismissal hearing to have happened before the ill health retirement advice has been received.

\*\*At the time of issue, schools who do not use the Council’s OH provider should contact Ritika Singh, ritika.singh@croydon.gov.uk in the first instance.

5.2 Internal Disputes Resolution Procedure (IDRP)

If the employee is unhappy with any decision made by their employer concerning their rights and liabilities under the Scheme, they can make an application for the resolution of any disagreements through the IDRP process. This includes the employer’s decision regarding entitlement to an ill health retirement pension at the date employment was terminated. The employee can also disagree with the entitlement level of Tier 1, 2 or 3 decided by the employer.

An employee, who has left local government employment and who was awarded deferred retirement benefits can appeal the employer’s decision regarding an entitlement to an ill health retirement pension through the IDRP process.

The IDRP application form and guidance can be obtained from the Croydon Council pension website by clicking on about us > compliments, complaints and disputes. <https://www.croydonpensionscheme.org/>

The Statutory Ill health retirement guidance to accompany the regulations can be found through this link: [Local Government Pension Scheme Regulations 2013](https://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&cad=rja&uact=8&ved=0CDoQFjAE&url=https%3A%2F%2Fwww.lpfa.org.uk%2FFiles%2FFiles%2FEmployers%2520Section%2FIll%2520Health%2520Section%2FLGPS%2520Statutory%2520Ill%2520Health%2520Guidance%2520as%2520at%2520SEPT%252014.pdf&ei=ykqVVc3NAqKa7gaIh46QAQ&usg=AFQjCNFTEN3e2CGgCpxNX3iDK7ZXcYF1jQ&sig2=GtA_jVjVuRGQSzSQSeA8-w).

Any appeal against the decision of the Scheme employer is required within 6 months of the date the original decision.

* 1. Financial implications

There is a cost to the employer for awarding ill health retirement although the cost is met through employer contributions rather than an upfront payment. During the valuation year, actuaries re-evaluate the pension scheme and the number of ill health retirements granted in the valuation period are taken into account in this process. This may mean that the employer contribution rate may change, although it should be noted that this is not the only factor that will affect the contribution rate.

There is insurance through Legal & General for employers concerned about the cost impact. For further information please contact Hymans Robertson at IHLI@hymans.co.uk.

Once confirmed the school will complete a leaver form and send it together with a copy of the ill health certificate, and a letter from the employer confirming the member’s employment has been terminated on ill health grounds and the tier to the pensions team.

1. Further information and guidance

More information about ill health retirement under the Teachers’ Pensions Scheme or the Local Government Pension Scheme can be found on their respective websites:

Teachers Pensions - [www.teacherspensions.co.uk](http://www.teacherspensions.co.uk)

Local Government Pension Scheme - [www.lgpsmember.org](http://www.lgpsmember.org)

LGPS Regulations website regulations 35-39 – [www.lgpsregs.org](http://www.lgpsregs.org)

Link to the Statutory Ill Health Guidance from the regulations website - <http://lgpslibrary.org/assets/statgui/ew/20140917IHG.pdf>

Pensions Ombudsman website - <https://www.pensions-ombudsman.org.uk/guidance/ill-health/>

Croydon Pension Fund contact details:

Address: Croydon Council, Pensions Team, Floor 5A, Bernard Weatherill House, 8 Mint Walk, Croydon CR0 1EA

Email: pensions@croydon.gov.uk

Telephone number: 020 8726 6000 dial 1 extension 62892

Appendix 1

**Ill health retirement tiers in the Local Government Pension Scheme**

***Tier 1***

A Tier 1 Ill Health Retirement is awarded where the employee has no reasonable prospect of being capable of obtaining gainful employment in local government or elsewhere before state retirement age.

(Pension benefits are payable based on benefits already built up plus the pension you would have built up between leaving and state retirement age).

If this level is awarded there is no review of pension benefits required and the employee continues to receive this pension.

***Tier 2***

If the employee is unlikely to be capable of obtaining gainful employment within three years of leaving, but is likely to be capable of obtaining gainful employment before state retirement age then Tier 2 may be recommended.

(Pension benefits are payable based on the benefits already built up plus 25% of the pension you would have built up between leaving and state retirement age).

Tier 2 is not reviewed.

***Tier 3***

This is applied if the employee is capable of obtaining gainful employment within three years of leaving or before state retirement age if earlier.

A Tier 3 benefit is paid for a maximum of three years from the date the employee left the employment, for so long as the employee is not in gainful employment or if the employee attains state retirement age before the 18 month review, the pension will continue to be paid as a normal retirement pension and ceases being regarded as a Tier 3 pension from that date and therefore the 18 month review will not be required.

(Pension benefits are based on the benefits already built up at leaving).

Tier 3 is an interim pension as the view is the employee can return to other work within 3 years of leaving or before state retirement age. The member must inform the (former) employer of any employment which is commenced whilst the Tier 3 pension is in payment.

There will in any case be a review of the situation by the former employer after 18 months if employment has not been commenced already or the employee has not attained state retirement age. The former employer must obtain a certificate from an Independent Registered Medical Practitioner (who can be the same Independent Registered Medical Practitioner who provided the certificate for the initial Tier 3 ill health retirement) as to whether, and if so when, the member will be likely to be capable of undertaking gainful employment. As a result of the review, the former employer may:

* cease payment; or
* continue payment for any period up to a total period of 3 years from the date the employee left employment (or to the member’s Normal Pension, if earlier); or
* award a Tier 2 ill health pension if the (former) employer is satisfied that the member is permanently incapable of discharging efficiently the duties of the employment the member held with the (former) employer and is either:

a) unlikely to be capable of undertaking gainful employment before their Normal Pension Age, or

b) unlikely to be capable of undertaking gainful employment within 3 years of leaving but is likely to be able to undertake such employment before reaching their Normal Pension Age.

The former employer should inform the member and the appropriate Pension Fund administering authority of their decision.

Any pension benefits are stopped if the ex-employee is in gainful employment or becomes capable of such employment.

Appendix 2

**Factors that should be considered when making a decision to award ill health retirement under the LGPS:**

* Does the employee have 2 years qualifying service in the LGPS (check with the pensions team)
* Has the IRMP applied the correct test? 
* Has the IRMP considered permanence correctly? The relevant point is the permanence of the incapacity, not the permanence of the medical condition itself. 
* Has gainful employment been considered properly? 
* Has the scheme employer made a decision or simply adopted the IRMP’s opinion without question? Where there is insufficient information or any uncertainty, has the scheme employer sought clarification from the IRMP? 
* How is conflicting medical evidence addressed? If the IRMP’s evidence is preferred over other medical evidence, is it clear that both have been considered; and is it clear why one has been given more weight than the other? 
* Has the question of untried treatments been addressed properly? It is not enough simply to say that treatment options exist or that it is premature to conclude that the condition is permanent. The IRMP must be asked to give a view as to their likely effect and whether, on the balance of probabilities, the condition renders the member permanently incapable of discharging the duties of the employment they were engaged in (along with the other criteria set out in regulations 36(1) or 38(3), as relevant). The same approach applies if there has been no diagnosis for the member’s condition

Note: This list is intended to provide guidance about the factors that should be considered and is not intended to be an exhaustive list.

Appendix 3

**Former employees who wish to apply for ill health retirement**

Former employees who were members of the Teacher Pension Scheme who become unfit to work prior to reaching state pension age may apply to Teachers Pensions for an ill health retirement. If the application is made within 12 months of having left pensionable employment, the former employer will need to complete the medical sections of the application.

Former employees who were members of the Local Government Pension Scheme may become unfit to work prior to reaching the state pension age, and in these circumstances can make an application to the scheme via their former employer.

The former employer is the school where the individual was employed unless:

i. They were employed by a school that has now become an academy in which case they should apply to the Council

ii. Their school or academy is no longer a scheme employer, in which case they should apply to the Council