

### **III-Health Retirement Procedure**

#### **Application of this section to Community, Voluntary and Foundation Schools**

This section sets out the requirements for all schools in respect of premature retirement on ill health grounds, and good practice in the management of this.

#### **Responsibilities of the LA and Governing Bodies**

Schools need to be aware that where the Occupational Health Physician or, in the case of voluntary and foundation schools, other medical adviser employed by the Governing Body declares an employee permanently unfit, a decision on ill health retirement rests with the school in consultation with the LA .

#### **Support Staff**

In the case of support staff facing ill health retirement, who are members of the Local Government Pension Scheme, there is likely to be a mandatory pension cost involved. Unless the school is prepared to bear this mandatory cost from within their school budget, they will need to seek the agreement of the LA to fund this cost.

In such cases, the school should request the LA's Human Resources Section to obtain pension cost estimates and to agree funding of the Premature Retirements

Following a review by the Audit Commission of pensions and early retirement in local government, from the 10th February 1998 the Council adopted revised procedures for the management of entitlement to premature retirement.

From that date Business Units (schools or the LA) have to fund all early retirements which would otherwise result in a cost to the pension fund or other funds of the Council.

Unless the school is prepared to bear this mandatory cost from within their school budget, they will need to seek the agreement of the LA to fund this cost. This is in line with the School Standards and Framework Act 1998 Section 57(4) which states that "Costs incurred by the local education authority in respect of any premature retirement of a member of staff of a maintained school shall be met from the school's budget share for one or more financial years except in so far as the authority agree with the governing body in writing ... that they shall not be so met".

The LA has considered the impact of the legislative changes that now make schools responsible for the costs of ill health retirement. It recognises that these costs can fall unequally between schools and that in many cases schools may find the costs an excessive drain on already stretched resources. It is therefore

proposed that a partnership approach be taken to dealing with such issues with schools contributing on the basis of prudent budget management and the LA providing protection against excessive costs. In practice, this means that schools meet the costs up to a limit of 0.5% of their average budget share within their particular band as shown in the table below. Any costs above the school contribution will be met by the LA provided the appropriate procedures have been followed.

<b>Support Staff - Health Retirement Pension Costs 2008-09</b>		
<b>Formula Roll Pupils</b>	<b>Average SBS £</b>	<b>Contribution Limit £</b>
Up to 350	1,000,000	5,500
351 - 450	1,500,000	8,500
451 - 550	2,000,000	10,500
551 - 650	2,500,000	12,500
651 - 750	3,000,000	17,000
751 - 850	4,000,000	20,000
851 - 950	5,000,000	22,000
951 - 1050	6,000,000	28,000
1051 and above	Over 6,000,000	31,000

The governing body will need to submit the background information on the Ill Health retirement as the business case with Appendix 1 to the Strategic Director of Children's Service's for consideration. It may then be referred to a Discretionary Costs Panel to make a recommendation. The school will be given the opportunity to make representation to the Panel.

### **Teaching staff**

From 1 January 2004 the arrangements for ill health applications under the Teachers' Pension Scheme (TPS) are as follows

- Employers and their occupational health advisers should become involved at the earliest possible stage in supporting all teachers' health and welfare.
- Where a teacher becomes ill, employers should work with their occupational health adviser and the teacher, to explore all appropriate alternatives to assist the teacher in returning to work, e.g. redeployment, part-time working or stepping down. Employers will be required to confirm that they have done this when submitting application forms for ill health retirement.
- Where appropriate alternatives have been fully explored and an application for ill health retirement is being considered, the employer will provide the teacher with application forms and guidance notes.

- The teacher should work with their employer's occupational health adviser to complete the application process and determine what additional medical evidence may be needed. This should be supported by the knowledge of the teacher's case that the occupational health adviser has built up through their earlier support to the teacher. The teacher should then commission any relevant medical evidence.
- Application forms (both the general information form and the medical evidence form) will be checked for completeness by the employer and their occupational health adviser, before being passed to Teachers' Pensions for processing.
- If the employer has concerns about either the completeness of the application or over the level of medical evidence provided, the applicant and employer should work together to address these before completed applications are submitted to Teachers' Pensions. Ultimately, however, it will be the teacher's decision to submit the application.
- Following receipt of the application, cases will be considered by the Department's medical advisers in line with existing criteria.
- Based upon the medical adviser's opinion, the application will be either accepted or rejected. If the application is rejected due to insufficient medical evidence, the employer and the teacher will be advised of the medical adviser's opinion. They should then work together to consider commissioning further medical evidence and whether to submit a fresh application.
- Employers can claim a lump-sum (£200 initially for each case), via Teachers' Pensions, to cover the average costs of occupational health and medical advice. Funding per case will reduce by £50 each year until January 2008.

The new arrangements will not apply where a teacher is terminally ill and commutation of benefits may be a consideration. In such cases, employers should forward application forms to Teachers' Pensions without delay.

### **Scope of guidelines**

These guidelines will enable school managers to treat all employees fairly and consistently in relation to the Procedure within the spirit and requirements of the Council's and the school's equal opportunities policies. They also comply with good practice and employment law requirements, including those contained within the Education Act in respect of employee dismissals.

It is important that copies of the Procedure are readily available and understood by management and staff at the school.

For services undertaken within LA directly managed establishments (including schools which have been subject to removal of delegation) the Council's Corporate Procedure applies.

## **Medical Referrals**

Where an employee's sickness absence gives cause for concern the school should refer the employee to their Occupational Health Service (OHS) to undertake an occupational health assessment.

When an employee is referred the school must provide the following information:

- name, post, date of birth, home address and home tel no.
- GP name and address
- member of pension scheme (LGPS or Teachers Pensions)
- description of work duties and work hours each week
- details of sickness spells and other health concerns
- specific questions and general comments
- name of authorised manager and telephone no.

Generally, it is useful to provide a job description

In addition, the school should raise questions that are important in determining how to manage the employee's health condition presented. Likely questions are:

*What is the likely date of return to work?*

*Is there likely to be any residual problem that may either impact on work or require support?*

*Is there an underlying medical reason that may contribute to an unsatisfactory attendance record?*

*Is the employee likely to be capable of regular and efficient service in the future?*

## **Teaching Staff**

Where an application for permanent unfitness is agreed by the Teachers' Pensions then a mutually agreed termination could be arranged without the need for a formal dismissal decision by the school governing body's appropriate sub-committee.

## **Support Staff**

From April 2008, the LGPS has introduced the tiering system for ill health retirement. In broad terms the financial benefits of the tiering is as follows; albeit protection applies for those above 45 years at the point of introduction.

- Tier 1, pension as earned plus up to 100% of potential service up to the age of 65 years. Potentially more generous than the current scheme, but application is proposed to be exceptional.
- Tier 2, pension as earned plus up to 25% of potential service up to the age of 65 years.

- Tier 3, pension as earned but ceases on finding other gainful employment or reviewable after 18 months with a potential to cease, (whichever is earlier). Unless the person moves to tier 2 at the 18 month review, pension will cease after 3 years from commencement. Putting aside protection arrangements, benefits under tier 3 are worse than the existing scheme and the option of remaining in employment, (with the financial benefits this accrues), may realistically become an item of appeal.

## Scope of Appeal

Taking account of the changes effective from 1<sup>st</sup> April 2008, the employee may appeal against the following:-

- ***The termination itself.*** It is still felt that the frequency of appeals of this nature will be rare as ill health decisions are generally arrived at with full consultation of the employee and their medical practitioners. However, including the right of appeal against the decision itself concurs with the statutory procedure on dismissals and would enable a proper review of whether reasonable adjustments had been made to reflect an employee's disability, whether appropriate redeployment slots had been pursued etc.
- ***The tiering and/ or the effective date.*** Appeals against tiering are the most likely outcome, e.g. in reaching a decision the OHP and independent practitioner failed to take account of x consultants report who is an expert in this area, etc. The consultant report suggests that the employee can never work again in any employment, whilst the Council has placed the employee in tier 2, etc.

Appeals against the effective date could apply; where the school terminates prior to an employee's birthday/service anniversary, and that the speed of termination is outside normal practice, or where the school terminates prior to a due report on an employee's condition, and that the speed of termination is outside normal practice. If the school continues to universally terminate with pay in lieu of notice both instances are deemed unlikely.

## Handling and Timing of Appeals

The principles of the statutory procedures around dismissal be followed, i.e.

- Informing the employee of the fact that their dismissal is being considered.** In practice this will be correspondence confirming the outcome of discussions on ill health retirement and should be the final stages of a continued dialogue, however, in this instance the implication of the dismissal will need to be clearly stated, i.e. were the termination to occur the proposed tiering assigned and the financial implications.
- Inviting the employee to a meeting to discuss the situation.** Employees may not exercise their right to attend, or may be too unwell to

do so, but the invitation should occur, with a date and time. Those too unwell to attend may be invited to provide any written submissions for consideration. After the meeting or the submission, a letter confirming the termination (if appropriate) should be sent with the termination date and the rights of appeal, i.e. you have the right to submit an appeal against the ***decision to termination, the tiering and date of dismissal. You will be expected to substantiate any grounds of appeal in writing by submission to.... and will be called to attend an appeal hearing to discuss.***

Arrangements for the convening and conduct of the appropriate committee of governors will need to accord with the requirements of the School Staffing Regulations and the relevant school procedure (e.g. Capability Procedure). For Community Schools the LA's Head of HR **must** be notified in good time to allow her/him to arrange for a representative of the Strategic Director of Children's services to attend the appeal hearing, for the purpose of giving advice.

Final decisions will be confirmed by the Chair of the panel..

c) **Following the outcome of the meeting, allowing the employee to exercise their right to appeal against any decision to dismiss.** It is proposed that:-

- Employees have 10 working days to submit an appeal from the date of the letter confirming termination, substantiating the grounds.
- That appeals should be submitted to the Clerk of the Governors , with a copy to the Headteacher..
- Appeals would need to be on the basis that; proper consideration had not been taken of opportunities to remain in employment, e.g. redeployment, work adjustments on the grounds of disability (instances are considered rare), on the basis of new medical evidence that was not available at the time of the OHS's report leading to the management decision, or expert and substantiated medical opinion conflicts with the OHS's report leading to the management decision.
- The instance of an appeal being lodged will not halt the termination itself. Were the outcome of an appeal alternative / adjusted employment the appellant would be re-instated.
- The appeal will outlive the termination date, i.e. the complaint does not cease because the employment contract has ceased.

In line with appeals on the basis of age or redundancy it is proposed that:-

- Appeals are heard by a panel of Governors.

- Appeals are heard as soon as practical, albeit it is noted that more than one hearing may be required and / or the timescale to consider may be extended where further medical advice is required from the OHS.
- Employees will have standard rights of representation at the appeal; i.e. trade union representative or work colleague.
- For Community Schools the LA's Head of HR **must** be notified in good time to allow her/him to arrange for a representative of the Strategic Director of Children's services to attend the appeal hearing, for the purpose of giving advice.

In the case of ill health retirement an Occupational Health Physician must agree that the employee is incapable of discharging efficiently the duties of his/her employment on medical grounds specifying the relevant tier . The school will request that the OHP confirm:

- Whether the person is permanently incapable of discharging efficiently the duties of his/her employment with the Council on medical grounds
- If yes, the classified tier - 1, 2 or 3
- If tier 3, when is the person likely to be fit again
- Whether the person has a life expectancy of less than 1 year, or has a life expectancy of 1 year or more

The decision making process will always involve an independent doctor. This needs to be certified by the completion of the Occupational Health Ill health Retirement Certification for a Current Employee (Appendix 1)

Where ill health retirement is being considered the LAs HR team will request information from the Pension Service on the benefits that would be payable. The Pensions Service will provide estimate of Pension as earned plus enhanceable benefits as a separate entry. A reconfirmation of the figures should be sought once the specific tier has been confirmed from OH

In the case of ill health retirement an Occupational Health Physician must agree that the employee is incapable of discharging efficiently the duties of his/her employment on medical grounds specifying the relevant tier . The school supported by the departmental HR team will request that the OHP confirm:

- Whether the person is permanently incapable of discharging efficiently the duties of his/her employment with the Council on medical grounds
- If yes, the classified tier - 1, 2 or 3
- If tier 3, when is the person likely to be fit again

- Whether the person has a life expectancy of less than 1 year, or has a life expectancy of 1 year or more

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## Appendix 1

### **OCCUPATIONAL HEALTH ILL HEALTH RETIREMENT CERTIFICATE FOR A CURRENT EMPLOYEE**

**PA** *CERTIFICATE OF PERMANENT INCAPACITY BY AN INDEPENDENT, APPROVED, DULY QUALIFIED  
REGISTERED MEDICAL PRACTITIONER IN ACCORDANCE WITH REGULATION 20 OF THE LOCAL GOVERNMENT  
PENSION SCHEME (BENEFITS, MEMBERSHIP AND CONTRIBUTIONS) REGULATIONS 2007 (AS AMENDED) IN  
RESPECT OF A CURRENT EMPLOYEE.*

Mrs ☐ Ms ☐ Miss ☐ Mr ☐

Surname of employee:

Forenames of employee:

Date of Birth:

Employer:

NI Number:

Nature of employment:

Place of work:

Have the employee's contractual hours been reduced as a result of their ill health or infirmity  
or mind or body?

No      Yes

**PART B: TO BE COMPLETED BY THE APPROVED REGISTERED MEDICAL PRACTITIONER** (Please tick appropriate boxes)

I certify that, in my opinion, the person named in Part A

Is      Is not      (If not, go to General Statement)

on the balance of probabilities, **(2)** permanently incapable of discharging efficiently the duties of his/her employment with his/her employer because of ill health or infirmity of mind or body.

I certify that, in my opinion, as a result of that ill health or infirmity the person named in Part A

Does      Does not

have a reduced likelihood of being capable of obtaining other gainful employment **(3)**, whether in local government or elsewhere, before age 65

I further certify that in my opinion:

As a result of their ill health or infirmity, there is no reasonable prospect of the person named in Part A being capable of obtaining gainful employment before age 65.

OR

Although, as a result of their ill health or infirmity, the person named in Part A cannot obtain gainful employment within the next three years he/she is likely to be capable of gainful employment at some time thereafter and before age 65.

OR

Having considered their ill health or infirmity, the person named in Part A is likely to be capable of obtaining gainful employment within the next three years (or, if he/she attains age 65 within the next three years, the person is likely to be capable of obtaining gainful employment before age 65).

Please complete if the person named in Part A “does” have a reduced likelihood of being capable of obtaining other gainful employment, whether in local government or elsewhere, before age 65 and their contractual hours have been reduced by the employer (as indicated in Part A)

I certify that, in my opinion, the person named in Part A

Is            Is not

in part-time service wholly or partly as a result of the condition that has caused him / her to be permanently incapable of discharging efficiently the duties of his/her employment.

**GENERAL STATEMENT**

I certify that:

I have not previously advised, or given an opinion on, or otherwise been involved in this case

AND

I am not acting, and have not at any time acted, as the representative of the person named in Part A, the employer or any other party in relation to this case

AND

I hold a diploma in occupational health medicine (D Occ Med) or an equivalent qualification issued by a competent authority in an EEA State, which has the meaning given by the General and Specialist Medical Practice (Education, Training and Qualification) Order 2003, or I am an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or of an equivalent institution in an EEA State

AND

I have given due regard to any guidance issued by the Secretary of State when completing this certificate.

Signature of independent registered medical practitioner

Date

Printed name of independent registered medical practitioner:

### Important Notes

(1) Certification under the regulations may only be provided by an independent registered medical practitioner who is qualified in occupational health medicine. This means holding a diploma in occupational health medicine (D Occ Med) or an equivalent qualification issued by a competent authority in an EEA State (which has the meaning given by the European Specialist Medical Qualifications Order 1995) or being an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA State

(2) 'Permanently incapable' means incapable until, at the earliest, the member's 65th birthday.

Where the authority determines to terminate local government employment on the grounds that the person is incapable of discharging efficiently the duties of his/her current job and has a reduced likelihood of obtaining gainful employment (in local government or elsewhere) before normal retirement age, he/she would be classified under the following tiers:

**Tier 1** - the member has no reasonable prospect of obtaining gainful employment before age 65. Benefits would be based on accrued membership + 100% of prospective membership between leaving and age 65

**Tier 2** - the member is unlikely to obtain gainful employment within a reasonable period of time but is likely to be able to obtain gainful employment before age 65. Benefits would be based on accrued membership + 25% of prospective membership between leaving and age 65.

**Tier 3** - the member is judged to be permanently incapable of their local government authority employment but is capable of undertaking gainful employment elsewhere in the workforce in a reasonable period after cessation. It is reviewable.

**Gainful employment** means paid employment for not less than 30 hours in each week for a period of not less than 12 months. The judgment is whether the person's condition prevents them obtaining gainful employment, other factors, e.g. economic climate, motivation, skill, do not apply.

**Reasonable period** means a period of 3 years.