

# **Ill Health Retirement from the Local Government Pension Scheme – Guidance for Schools**

**Issued by the KCC Human Resources Team**

Before reading this document, please ensure you have read the Ill Health Retirement for the Local Government Pension Scheme – Employee Guidance (Schools Staff). The employee guidance document explains what ill health retirement is, the criteria, the tiers of award and process for considering an employee for ill health retirement.

This guidance for schools document outlines your role as the employer in the ill health retirement process and the specific actions you need to take.

# **How will I know when it is appropriate to make a referral for ill health retirement?**

A referral for ill health retirement should be made when the employee is likely to meet the ill health retirement criteria. The two main conditions that must be satisfied are that the employee is, due to infirmity of body or mind:

1. *Permanently incapable* of doing their current job, and
2. They are not immediately capable of carrying out any type of *gainful employment*.

*‘Permanently incapable’*, is until normal pension age. *‘Normal pension age’* is your state pension age. You can find out your state pension age here: [Check your State Pension age - GOV.UK (www.gov.uk)](https://www.gov.uk/state-pension-age). For example, an employee who is currently aged 40 has a normal pension age of 68. To be eligible for ill health retirement this employee must be incapable of their current role for the next 28 years. If at any point before age 68 they are likely to be capable of their current role, they will not be eligible for ill health retirement.

*‘Gainful employment’* means any paid employment for not less than 30 hours in each week for a period of not less than 12 months. It does not have to be employment that is equivalent in terms of pay and conditions with the current Local Government Pension Scheme employment.

An employee who is at their normal pension age, will not gain any advantage from making an application for ill health retirement. They will be able to retire and receive the same benefits.

More information on the criteria can be found in the Ill Health Retirement from the Local Government Pension Scheme – Employee Guidance (Schools Staff).

In most cases, an employee will be absent from work due to ill health when a referral for ill health retirement is made. As part of the normal support provided to employees who are on long term sick leave, an Occupational Health referral will be made. The Occupational Health Physician should recommend a referral is made for ill health retirement within their report if they feel it is appropriate, you can also ask this as a specific question in the referral.

From your regular communications with the employee, you will have an understanding of their medical condition/s and their prognosis. At the point it becomes clear they are unlikely to recover from their medical condition/s, an ill health retirement referral should be considered.

Should an employee become suddenly or unexpectedly seriously unwell, they will not have a recommendation from an Occupational Health Physician, but a referral can still be made for an ill health retirement assessment.

There may be instances where an employee has previously been considered for ill health retirement, but it was declined. A referral can be made if there is new medical evidence that supports permanent incapacity to undertake their current role and immediate incapacity for gainful employment. An example of this would be if they were receiving treatment and it was unclear whether the treatment would be successful, therefore the application was declined. They have now received the treatment, but their medical condition/s have not improved, and they have exhausted all other treatment options. In this case a new referral should be made.

The employee themselves are able to request a referral through their employer if they believe they meet the criteria for ill health retirement.

**Who decides whether to grant ill health retirement?**

Awarding ill health retirement is an employer decision, so the school must make the decision, however The Local Government Pension Scheme Regulations state that the employer must seek the opinion of an ‘*Independent Registered Medical Practitioner (IRMP)’* when considering a case. The Independent Registered Medical Practitioner (IRMP) will provide an ill health retirement declaration that gives information on whether, in their opinion, the employee meets the criteria for ill health retirement.

*‘Independent Registered Medical Practitioner (IRMP)’ -* This is a practitioner who is approved by the Kent Pension Fund to carry out medical assessments for pension purposes, and to provide the necessary ill health retirement declaration. The Independent Registered Medical Practitioner (IRMP) must be suitably qualified in Occupational Health, be registered with the General Medical Council, and have an understanding of the ill health regulations in the Local Government Pension Scheme. The Independent Registered Medical Practitioner (IRMP) must not have previously advised, or given an opinion on, or had any previous involvement in your particular case.

Once the Ill Health Retirement declaration and the report is received from an Independent Registered Medical Practitioner (IRMP), the schoolmakes the decision whether to release the employee’s pension benefits on the grounds of ill health having taken all relevant evidence in to consideration.

**Does the employee have to agree to the referral?**

Yes, the employee will need to give their consent for the referral to be made for Ill Health Retirement. You should ensure they have access to the Ill Health Retirement from the Local Government Pension Scheme – Employee Guidance (Schools Staff) so they are able to make an informed decision about the referral.

**Ask the employee if they have any deferred Local Government Pension Scheme (LGPS) Pensions**

If the employee has previous employments with a LGPS Pension, they may have a deferred Local Government Pension Scheme (LGPS)Pension. If the employee does have a deferred pension, a separate application will need to be made to release the benefits early on the grounds of ill health. The employee will need to complete the “request for early payment of deferred benefits” form found on the Kent Pension Fund website. Please ask the employee to make a note in their application that they are also making an application for ill health retirement from their current role.

If the employee is unsure if they have a deferred Local Government Pension Scheme (LGPS) Pension, they can register or log in to ‘My Pension Online’ on the Kent Pension Fund website or check their annual benefits illustrations. If after taking these steps they are still unsure if they have deferred pension, they should contact the Pension Section.

**The employee has multiple assignments. What should I do?**

If the employee has more than one role at the school, a separate Ill Health Retirement referral and decision will need to be made for each role. Each role will require a signed Ill Health Retirement declaration from the Independent Registered Medical Practitioner (IRMP). For each role the employee holds, the Independent Registered Medical Practitioner (IRMP) will need to receive the documents outlined below.

**What paperwork and information will I need to provide the Independent Registered Medical Practitioner (IRMP)?**

Your Occupational Health provider will be able to advise on the exact paperwork they wish to receive, but it is likely they will ask for the following information:

* **Ill Health Retirement Declaration** – This is the Declaration the Independent Registered Medical Practitioner (IRMP) will use to certify their opinion on the case. You will complete Part A of this form. This document is sent to the Independent Registered Medical Practitioner (IRMP) with the referral and is not sent to the employee. The ill health retirement declaration isdownloaded from the Kent Pension Fund Website.
* **Ill Health Retirement Referral form –** Depending on your Occupational Health provider, they may have a referral form you will need to complete.
* **A current job description or outline of the duties of the role** – if any additional tasks/changes have been made to the role since the last job description review these should be added.
* **Copies of up to date risk assessments within the last 12 months –** If you have undertaken any risk assessments with the employee within the last 12 months these should be sent with the referral.
* **Details of any adjustments made to the role and support provided –** If any adjustments have been made to the role, these will need to be outlined. Examples of this are reduction in hours, change in duties, restrictions on travel, flexible working etc.
* **Sickness record for the last 3 years**
* **Date of last referral to Occupational Health –** If the employee has been seen by Occupational Health you will need to provide the details of this.
* **Multiple Assignments –** If the employee has multiple assignment, please inform Occupational Health so they know they are providing more than one opinion for the employee.

**What do I do if the employee is too unwell to complete the forms?**

If the employee is too unwell to sign the form, a third party with Power of Attorney or Court of Protection Order can sign but will need to provide a copy of the relevant document to support their acting on the members behalf.

**The employee is currently under the formal performance and capability procedure. Should this continue while the ill health retirement referral is made?**

This will be decided on a case-by-case basis. Your HR provider will discuss this with you.

**What information does the employee need to provide?**

Once you have made the Ill Health Retirement referral to Occupational Health, they will contact the employee and will request their written consent to obtain medical information from their GP and/or Consultants. The employee will have the opportunity to provide any relevant (ideally within the last 12months)documents they hold in relation to their medical condition/s. The Independent Registered Medical Practitioner (IRMP) will be particularly interested in any reports from their GP and/or treating specialists that contain information on diagnosis, prognosis, treatments received (and their effectiveness) and treatments that they are yet to try (and their likely effectiveness).

It is in the employee’s interest to help the Independent Registered Medical Practitioner (IRMP) understand their medical condition as fully as possible. We recommend that the employee is fully involved in gathering together the information about their case. If the employee does not consent or does not provide contact details for their GP and/or Consultant/s or provide relevant medical evidence, this will affect the Independent Registered Medical Practitioner (IRMP)’s understanding of their medical condition/s and is likely to result in the Independent Registered Medical Practitioner (IRMP) giving the opinion that they do not meet the criteria for an ill health pension as they will have insufficient evidence.

**What happens after the referral is made?**

When Occupational Health receive the referral, they will make direct contact with the employee to seek their consent to obtain medical reports on their behalf. The employee can also provide medical information they already have.

Obtaining medical reports can be time consuming and will usually take a minimum of 6-8 weeks but can often take 12 weeks or longer.

Once all medical evidence has been received, the case will be passed to an Independent Registered Medical Practitioner (IRMP) or a file opinion. In most cases, this will not involve a face to face consultation with the employee. The Independent Registered Medical Practitioner (IRMP) will write a report providing an opinion on whether the employee meets the criteria for ill health retirement and complete the Ill Health Retirement declaration. Please note, this report and declaration is not the final decision in the case. The decision on whether to award ill health retirement must be made by the school.

**What happens when the Independent Registered Medical Practitioner (IRMP) opinion is returned?**

When the report is ready, it will be sent to the employee if they have requested to see it, and you will also receive a copy along with the completed Ill Health Retirement Declaration. The school will then consider the case and make a decision whether to grant ill health retirement. The employer must not blindly follow the Independent Registered Medical Practitioner (IRMP) opinion and should take steps to ensure the Independent Registered Medical Practitioner (IRMP) has considered the case correctly.

The statutory guidance for the Local Government Pension Scheme (LGPS) regulations provides information on what they employer should consider before making their decision. The school must be able to evidence they have answered the following questions before making a decision:

* + **Does the employee meet the vesting period –** To be eligible for ill health retirement the employee must have 2 years membership in the Local Government Pension Scheme (LGPS) (this includes amalgamated service). If you are unsure, please contact the pension section.
	+ **Does the Independent Registered Medical Practitioner (IRMP) report demonstrate the correct test has been applied? –** You are looking for the Independent Registered Medical Practitioner (IRMP) report to demonstrate that the criteria have been considered i.e., permanent incapacity (until normal pension age) and if permanent incapacity is identified, consideration of the appropriate tier of award in relation to gainful employment.
	+ **Has the Independent Registered Medical Practitioner (IRMP) considered permanence correctly? -** The relevant point is the permanence of the incapacity, not the permanence of the medical condition itself. Ideally, the Independent Registered Medical Practitioner (IRMP) report should indicate how long the scheme member has until normal retirement age to demonstrate consideration.
	+ **Has the Independent Registered Medical Practitioner (IRMP)**  **referenced all of the medical evidence obtained and demonstrated they have taken each of them into consideration? –**Check all medical evidence/documents/reports are referenced and discussed within the report. If it is not clear that all reports have been considered, you will need to clarify with the Independent Registered Medical Practitioner (IRMP).
	+ **Was there any conflicting medical evidence? –** The Independent Registered Medical Practitioner (IRMP) will identify if there have been any conflicts in medical evidence within their report. A good report will provide a short summary of each of the reports so you will also be able to see if there are any conflicts e.g. one doctor giving a prognosis that is different to another doctor.

A common conflict would be a report from a doctor that states they recommend Ill Health Retirement and our Independent Registered Medical Practitioner (IRMP) provides the opinion the employee is not, on the balance of probabilities, permanently incapable of their role. The School may choose to give more weight to the opinion of the Independent Registered Medical Practitioner (IRMP) as you know they have considered the case in relation to the specific criteria outlined in the Local Government Pension Scheme (LGPS) regulations, whereas there is no evidence the employee’s doctor has done so.

* + **If yes, is it clear why the Independent Registered Medical Practitioner (IRMP) has chosen to give more weight to one over the other? –**  If a conflict is identified, the Independent Registered Medical Practitioner (IRMP) should provide a narrative as to why they have given more weight to one piece of evidence over another.

The School are not expected to be medical professionals and interpret complex medical information, but they should look to the Independent Registered Medical Practitioner (IRMP) for an explanation if it appears that the Independent Registered Medical Practitioner (IRMP)’s opinion is significantly at odds with those expressed by the employees’ physicians. The differences in opinion would need to be obvious to a ‘lay person’.

* + **Does the Independent Registered Medical Practitioner (IRMP)** **report outline how the members medical condition affects their ability to undertake their current role? –** The report should contain specific narrative around how the employee’s medical condition/s affect their ability to undertake the duties as outlined in the job description.
	+ **Does the Independent Registered Medical Practitioner (IRMP) report contain information about the treatments that have been tried and their effectiveness? –** The report should contain information on the treatments that have been tried and whether they have been effective e.g. if they have a musculoskeletal condition you might see that they have received physiotherapy, but this has not improved their condition and that they have undergone surgery but this has also not improved their condition. Ultimately what the Independent Registered Medical Practitioner (IRMP) (and the school) are looking to establish is whether the employee has exhausted all treatment options and therefore their condition is unlikely to improve before their normal pension age.
	+ **Does the Independent Registered Medical Practitioner (IRMP) report contain information about untried treatments and their likelihood of success? –** It is not enough simply to say that treatment options exist or that it is premature to conclude that the condition is permanent. The Independent Registered Medical Practitioner (IRMP) must give a view as to their likely effect and whether, on the balance of probabilities, the condition renders the member permanently incapable.

If we take our example above and our employee has a musculoskeletal condition. They have tried physiotherapy, which has not been successful, and they have also undergone surgery that has not been successful. The report outlines that there is a further surgical intervention that can be used to treat this condition and this employee would be a good candidate for this surgery. Statistically speaking, in 70% of cases, this surgery is successful in treating the condition and normal function can be expected after a period of 3 years. This employee has 7 years until their normal pension age. In this instance the employee would not be deemed permanently incapable, as on the balance of probabilities, the treatment option still available to them will improve their condition to the point they would be able to return to their current role before their normal pension age.

* + **Has the Independent Registered Medical Practitioner (IRMP)** **completed an Ill Health Retirement Declaration?** Check the Independent Registered Medical Practitioner (IRMP) has completed the correct sections of the declaration.
	+ **Does the Independent Registered Medical Practitioner (IRMP) report provide enough information to make a decision?** - If the Independent Registered Medical Practitioner (IRMP) report does not provide all of the information outlined above, please refer back to them with specific questions before making a decision.

Where someone is gravely unwell with a life limiting condition e.g. stage 4 terminal cancer the report may not be as extensive as others. This is because a prognosis of weeks/months to live in itself clearly demonstrates eligibility for Ill Health Retirement. In these cases, it would not be necessary to go back to the Independent Registered Medical Practitioner (IRMP) with additional questions if they do not cover all of the points above.

It is particularly important to evidence that the case has been considered correctly by the Independent Registered Medical Practitioner (IRMP) when you are declining the application or awarding tier 2 or tier 3 as these are the cases that are more likely to go to appeal and the adjudicator considering the appeal would be looking for evidence of your consideration of the above.

**What actions do I need to take if Ill Health Retirement is granted?**

You will need to communicate your decision in writing to the employee clearly outlining the reasons for your decision. Your HR provider may be able to provide template letters or you can find sample letters on the Kent Pension Fund website.

You will need to process the employee as a leaver for reason of ill health and undertake your usual leaver process ensuring that both the decision letter to the employee and the retirement declaration are provided to the Pension Section.

**Does the employee have the right of appeal against the decision not to award Ill Health Retirement?**

While the employee is a scheme member of the Local Government Pension Scheme (LGPS) (ie they are still in employment), any appeal against the decision not to award Ill Health Retirement would be to the school.

Once they leave the Local Government Pension Scheme (LGPS) and pension benefits have been awarded (they will be awarded deferred benefits or receive voluntary retirement benefits upon leaving if ill health retirement is not granted), in the first instance, they should contact Kent County Council as the Administering Authority of the Kent Pension Scheme at pensionappeals@kent.gov.uk outlining the issues. There is also a two-stage formal appeal process under the Internal Dispute Resolution Procedure. Details of the procedure and an application form can be found at [www.kentpensionfund.co.uk/idrp](http://www.kentpensionfund.co.uk/idrp). The completed application form should be sent to Pensions@kent.gov.uk, within 6 months.

Example:

An application is made for Ill Health Retirement for an employee. Following the Independent Registered Medical Practitioner (IRMP) opinion, the employer decides not to grant Ill Health Retirement. The employee does not agree with the decision and contacts the school outlining their concerns with the process. The case is reviewed by the school and they confirm the decision has been made correctly and Ill Health Retirement is not granted. There is no further right of appeal whilst the employee is still a Local Government Pension Scheme (LGPS) scheme member.

The employee is then dismissed on the grounds of Ill Health. Once the employee has left the Local Government Pension Scheme (LGPS) ie following the end of their employment, they can raise an IDRP appeal on the grounds that they believe their pension benefits should have been brought into payment on the grounds of Ill Health and not on a deferred basis.

**Does the employee have the right of appeal if they do not think the tier they have been given is appropriate?**

Yes. It is recommended that the employee initially contacts Kent County Council as the Administering Authority of the Kent Pension Scheme on an informal basis at pensionappeals@kent.gov.uk . If this does not resolve the matter to the employees satisfaction there is a two-stage formal appeal process under the Internal Dispute Resolution Procedure. Details of the procedure and an application form can be found at [www.kentpensionfund.co.uk/idrp](http://www.kentpensionfund.co.uk/idrp). All appeals must be within 6 months of the date of the decision letter.

**The employee has been awarded tier 3 Ill Health Retirement. Am I involved in the review process?**

If a tier 3 Ill Health Retirement award is granted you will need to undertake a review after 18 months.

**What actions do I need to take if Ill Health retirement is not granted?**

You will need to communicate your decision in writing to the employee clearly outlining the reasons for your decision. Your HR provider may be able to provide template letters or you can find sample letters on the Kent Pension Fund website.

The employee may be disappointed they have not been awarded ill health retirement. You can signpost them to your employee assistance programme.

Your HR provider will discuss next steps with you, but it is likely the formal performance and capability procedure will be appropriate if the employee is not well enough to return to work.

**Can the employee be dismissed on the grounds of ill health if Ill Health Retirement is not granted?**

If the employee will not be fit to return to work within a reasonable timescale it may be appropriate to use the performance and capability (ill health) process, which could result in the employee being dismissed on the grounds of Ill Health.

**Can the employee apply for Ill Health Retirement again if their application is declined?**

Yes, there is no limit to the number of times an employee can apply for Ill Health retirement, however we would expect there to have been a decline in their condition, and/or they have exhausted all treatments and/or new medical evidence has become available.

If an employee has left the Local Government Pension Scheme (LGPS), they can apply for early release of their deferred benefits on the grounds of Ill Health at any time. They do this directly to the Pension Section via the Kent Pension Fund website.

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