

**Decision Maker:** GENERAL PURPOSES AND LICENSING COMMITTEE

**Date:** Tuesday 22 March 2016

**Decision Type:** Non-Urgent Non-Executive Non-Key

**Title:** LOCAL GOVERNMENT PENSION SCHEME (LGPS)  
ILL HEALTH RETIREMENTS

**Contact Officer:** Tammy Eglinton, HR Consultancy Manager - Corporate Services  
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**Chief Officer:** Director of Human Resources

**Ward:** (All Wards);

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1. Reason for report

The Pensions Investment Sub-Committee, at its meeting on 19 May 2015, requested that General Purposes and Licensing Committee review the existing arrangements for ill health retirement. This reports sets out the current arrangements for dealing with ill health retirement cases within Bromley's Pension Fund. The Council's Pension Fund is a defined benefit schemed operated under the provisions of the Local Government Pension Scheme (LGPS) Regulations 2013, for the purpose of providing pension benefits for its employees. This report also provides information about the employees who have retired early on grounds of ill health within the last three years. This report does not include information about members of the Local Government Pension Scheme who are not employed by Bromley Council.

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2. **RECOMMENDATION(S)**

**The General Purposes and Licensing Committee is asked to note the details of this report.**

### Corporate Policy

1. Policy Status: Existing Policy:
  2. BBB Priority: Excellent Council
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### Financial

1. Cost of proposal: Not Applicable:
  2. Ongoing costs: Recurring Cost Non-Recurring Cost Not Applicable: Further Details
  3. Budget head/performance centre:
  4. Total current budget for this head: £
  5. Source of funding:
- 

### Staff

1. Number of staff (current and additional): total headcount 3,291 (1837 corporate employees 1,354 employees within community and voluntary controlled schools)
  2. If from existing staff resources, number of staff hours:
- 

### Legal

1. Legal Requirement: Statutory Requirement:
  2. Call-in: Not Applicable:
- 

### Customer Impact

1. Estimated number of users/beneficiaries (current and projected):
- 

### Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments:

### 3. COMMENTARY

3.1. Ill health retirements within the Local Government Pension Scheme (LGPS) are governed by a statutory framework, most recently updated by the Local Government Pension Scheme Regulations 2013, which came into effect on 1 April 2014. The regulatory provisions governing ill health retirements under the Local Government Scheme are set out in regulation 35 to 39 of the 2013 and regulation 12 of the Transitional Regulations.

3.2. Employees of the Council, who are eligible, are automatically enrolled into the Local Government Pension Scheme when they commence employment with the Council. If eligible employees decide to opt out of the scheme, they may decide to join at a later date. The scheme is a defined benefits scheme.

3.3. The normal retirement age within the LGPS scheme is linked to the State Pension Age, however there are some protections for employees who were within 10 years of their Normal Pension Age on 1 April 2012 who may have an earlier protected retirement age, normally age 65.

3.4. The pension scheme regulations make provision for employees to receive their pension benefits before normal retirement age if it is decided that they meet the conditions for an ill-health retirement pension. In order to determine whether an employee meets the criteria a certificate has to be obtained from an Independent Registered Medical Practitioner (IRMP), who has been approved by Bromley Council.

3.5. Cases of employee ill health are managed through the Council's formal HR procedures; Managing Employee Ill Health. The process will include one or more formal meetings conducted by management, who are supported and advised by HR Consultancy. The employee may be accompanied at these meetings. Professional occupational health advice is obtained from the Council's Occupational Health Physician, who will provide a prognosis, if possible, as to the likely length of illness/absence and of any effects of the employee's ability to carry out the full duties of their job. They will also advise as to whether there are any reasonable adjustments that could be considered in order to enable the employee to continue working, or possible redeployment. This is an essential part of the process and recognises an employer's responsibilities having due regard for the Equality Act 2010 in relation to disabilities.

3.6. In the event that a manager considers they are unable to sustain the absences and/or adjustments that have been put in place the matter would then be referred to the Chief Officer of the Department who will review the case. A Chief Officer hearing, as part of the formal procedures, may be convened to fully consider matters; one outcome of which is dismissal on grounds of ill health capability.

3.7. Whilst the dismissal itself would be the responsibility of the Chief Officer, responsibility for determining whether the employee meets the criteria for ill-health retirement under the LGPS sits with the Director of Human Resources, having due regard for the recommendations set out in the IRMP's certificate. The criteria set out in paragraph 3.8 and 3.9 below. The Director of Human Resources will consider whether the employee was genuinely medically incapacitated from undertaking their current employment or any other employment at the point of dismissal.

3.8. Under regulation 35 of the LGPS, Bromley Council, as the employing authority, is required to consider and decide a number of questions before entitlement to an ill health retirement benefit under that regulation can be awarded. These include:

- a) does the member meet the 2 years vesting period (Regulations 3(7) and 35(1)); and
- b) does an IRMP consider that the member's ill health or infirmity of mind or body render him or her permanently incapable of discharging efficiently the duties of the employment the member was engaged in (Regulation 35(3)). For example, would the member ever be able to do the old/former job; and
- c) does the independent registered medical practitioner consider that the member's ill health or infirmity of mind or body render him or her not immediately capable of undertaking any gainful employment. (Regulation 35(4)). For example, would the member, at the time of the medical assessment, be able to do a different job which satisfies the definition of "gainful employment".

3.9. If the answers to all three questions are yes, there is a prima facie entitlement to payment of an ill-health benefit under regulation 35. To decide the level of benefit, the employer, having due regard to the recommendations of the IRMP must further decide which of the following three tiers applies:-

a) Tier One:

is the member unlikely to be capable of undertaking gainful employment before reaching his or her normal pension age?

b) Tier Two:

is the member unlikely to be capable of undertaking any gainful employment within three years of leaving local government employment, but it is thought likely that he or she would be able to do so before reaching his normal pension age?

c) Tier Three:

is the member likely to recover sufficiently from the incapacity to enable him or her to be capable of undertaking gainful employment within three years of leaving local government employment or before reaching normal pension age if earlier?

3.10. The number of employees, where Bromley Council is the employer and who met the above criteria are set out in the attached Appendix to this report, which is a Part Two Item.

#### **4. POLICY IMPLICATIONS**

The Council's Sickness management Procedure is consistent with good HR practice and the relevant employment laws including the Equalities Act 2010. Effective sickness management, as part as of the wider HR strategy, is key to achieving an 'Excellent Council' – a top Building a Better Bromley strategy priority.

#### **5. FINANCIAL IMPLICATIONS**

Nothing specific save for the above information in the attached Part Two Appendix.

#### **6. LEGAL IMPLICATIONS**

As covered elsewhere in this report.

#### **7. PERSONNEL IMPLICATIONS**

7.1 Under the provisions of the Employment Rights Act 1996, an employee has the right not to be unfairly dismissed by his or her employer (s.94 of the Employment Rights Act 1996). If an

employee were to be dismissed due to ill health and if they were to subsequently bring a claim for unfair dismissal, Bromley Council would be required to show that the reason for the dismissal was capability on grounds of ill health and that the dismissal was fair in all the circumstances.

7.2. The decision to dismiss is not a medical question but one for the Bromley Council to take in the light of the medical evidence available, see paragraph 3.7, 3.8 and 3.9. above. Whilst the Council may have obtained medical evidence there is also a requirement to meet with the employee and consider whether any reasonable steps could be taken to enable them to return to work. Any ill health dismissal that has not met these requirements may be liable for disability discrimination as well as unfair dismissal, if the employee is disabled within the meaning of the Equality Act 2010.

7.3. Bromley Council's Human Resources team, and in particular HR Consultancy, supported by the Council's Occupational Health Physician, will provide appropriate support and advice to managers dealing with potential ill health retirement cases to ensure that the Council's HR Procedures along with adherence to employment legislation is maintained throughout the process.

<b>Non-Applicable Sections:</b>	
Background Documents: (Access via Contact Officer)	LBB HR Procedure: Managing Employee Ill Health LGPS Regulations 2013