

# **AGREEMENT BETWEEN ROYAL MAIL GROUP AND UNITE-CMA AND CWU ON MANAGING EMPLOYEES WITH LONG TERM ILL HEALTH**

This Joint Agreement between Royal Mail Group (or associated employer) the Communications Workers Union and Unite-CMA has been reached in respect of employees who may be unable to continue to undertake their normal duties due to ill health.

## **1. INTRODUCTION**

This Agreement on the procedures and terms to apply in cases of long term ill health applies from 1 May 2009 and replaces the National Ill Health/Retirement Agreement (2000) and the addendum to that agreement (2003).

## **2. AIMS**

2.1 To provide Occupational Health Services (OHS) advice and managerial support to assist employees with Ill Health to recover and where possible to return to work, including on adjusted duties where appropriate or on alternative work within Royal Mail Group.

2.2 To ensure a supportive and fair approach to employees who are unable to continue to undertake their normal duties due to ill health.

2.3 To provide financial support at the agreed level to employees unable to continue in work either permanently or for the foreseeable future.

## **3. SCOPE AND GENERAL**

The agreement applies to all Royal Mail Group (or associated employer) employees with the exception of casual staff where consideration is being given to:

- Alternative or adjusted duties for an employee due to Ill Health
- Termination of an employee's trial on ill health grounds
- Ill Health Retirement

All employees should be reminded of the availability of the services of the Occupational Health Service and offered the opportunity to take advantage of them if they wish.

A proactive approach towards absence management underpins this agreement, for the benefit of both employees and the business, and maintaining contact during periods of absence is key to this.

In the relatively small number of cases where employees fail to cooperate with reasonable requests in relation to their absence such as failing to attend appointments, refusing to give consent or refusing to return to work on

rehabilitation, Royal Mail reserves the right to take appropriate action under other procedures up to and including dismissal

#### **4. DEFINITIONS OF ILL HEALTH RETIREMENT**

4.1 **“Retirement on ill health grounds with immediate pension”** means the cessation of employment as a result of serious physical or mental ill health (not simply a decline in energy or ability) such that, in the opinion of Royal Mail Group or associated employer the member is permanently incapable of:

- a) carrying out his current duties;
- b) carrying out such other duties for the employer as the employer might reasonably expect the member to perform; and
- c) engaging in employment with any other employer of a type which, in the opinion of his present employer, would be reasonable and appropriate for the member.

4.2 **“Retirement on ill health grounds with lump sum payment”** means the cessation of employment as a result of serious physical or mental ill health (not simply a decline in energy or ability) such that, in the opinion of Royal Mail Group or associated employer, the employee is, for the foreseeable future, incapable of:

- a) carrying out his current duties;
- b) carrying out such other duties for the employer as the employer might reasonably expect the member to perform.

#### **5. MEMORANDUM OF UNDERSTANDING**

*The following is an agreed understanding between Royal Mail Group and the Unions on the interpretation of the Ill Health Retirement Definitions contained in Paragraph 4*

Where, through ill health, an individual is unable to perform their normal duties then Royal Mail Group and Trade Unions agree that suitability and reasonableness will be the prime factors in identifying appropriate alternative duties that the employer might expect the individual to undertake. This will enable Royal Mail Group to effectively discharge its obligations under legislation including the Disability Discrimination Act 1995 and the Employment Rights Act 1996.

When assessing suitability and reasonableness, the factors that could be taken into consideration include: job content, skill & aptitude, the person's current status, current pay and future earnings opportunity, hours of work, location and travel arrangements, personal commitments & circumstances, age etc.

Permanent incapacity shall mean until normal retirement age or for at least 10 years from the date of medical opinion, whichever is the sooner.

Foreseeable future shall mean a period of at least 9 months from the date of medical opinion.

Due consideration would also be given to the degree of training required to enable the individual to undertake alternative work, and full support made available to those individuals able to demonstrate the necessary aptitude for acquiring those new skills.

## **6. REPORTING ABSENCE AND MAINTAINING CONTACT**

6.1 The employee has the responsibility to inform the business of their absence as soon as possible as well as telling the business the cause of the absence and their anticipated date of return. It is also important that the employee keeps the business up to date on any changes in their circumstances throughout the absence including the provision of sick certificates in a timely way.

6.2 The employer also has a responsibility to maintain contact with the employee, to ensure that the employee is provided with the support and help necessary whilst off sick. This may be face to face through visiting the employee at home, with prior notice and agreement, on Royal Mail premises, in writing or by telephone as and when appropriate. Contact should be supportive and constructive, but not intrusive, and should consider a range of activities to aid the employee's recovery and return to work.

6.3 The local union representative has a role in facilitating this proactive approach by supporting and encouraging a two-way dialogue between the business and the employee, and – with the employee's permission - discussing with the line manager the most appropriate action to be taken.

## **7. ILL HEALTH PROCESS**

### **7.1 Access to the Process**

Employees will enter the first stage of this process on referral to the OHS. This referral may be via a variety of routes which include an event such as a long illness or accident, a personal request (which if the individual wishes could be via their Trade Union representative, or from one of the other internal procedures e.g. Attendance or IPP including employees under notice of dismissal who are appealing for ill health retirement. A flowchart outlining the procedure is contained in Appendix 1 to this agreement.

### **7.2 OHS Referral/Recommendation (Stage 1)**

7.2.1. The purpose of referral is to seek advice on the employee's health and fitness with a view to determining the way forward. The OHS, taking into

account all the available evidence, will be asked to recommend whether the employee should:

- a) Be able to resume their full normal duty as before
- b) Be able to resume their normal duty after an initial period of rehabilitation or temporary modification of the duty. The OHS would recommend the nature and likely duration of such modifications taking into account both the needs of the employee and the opportunities within the business to provide such modified work
- c) Be able to resume their normal duty with more permanent adjustments to their duty, again taking into account the needs of the employee and the opportunities for adjustment available to the business
- d) Be unable to resume their former duty, but would be able to undertake suitable alternative work in the business following any necessary reasonable adjustments and/or training. In this case the OHS will provide advice on:
  - The type of work that would be suitable e.g. sedentary or fully mobile, and any special requirements e.g. non-driving or chageship responsibilities etc.
  - Aptitude, capability, skill requirements and any other qualifying conditions.
  - The hours of attendance required and whether these are limited to certain times of the day or week.
  - The location of the work and the limitations on daily travel for either attendance or discharging of duties involved.
  - Guidance on disability and implications in relation to the Disability Discrimination Act.
- e) Be unable to work again for the foreseeable future but should recover and be able to be employed in some capacity outside of Royal Mail Group.

In this case the OHS would be concluding that whilst the individual may be able to resume some duties in the future, the time frame involved may be unacceptable to the business, or that the appropriate adjustments necessary are such that suitable alternative duties of this type may not exist or be achievable within the business. The recommendation would therefore be 'Retirement on ill health grounds with lump sum payment'.

- f) Be unable to work again.

The recommendation would therefore be 'Retirement on ill health grounds with immediate pension'.

7.2.2 Adequate notice, which would normally be 2 weeks, of consultation appointments will be given and individuals will be encouraged to gather

together all supporting medical evidence, including any sealed evidence provided by medical advisors, or any other information that may be of assistance at the referral.

7.2.3. It is the aim that the referral discussion between the OHS and the individual will lead to general agreement on the advice being prepared, based primarily on medical evidence. Where this has not been possible and it becomes apparent that additional medical evidence is needed, the consultation will be adjourned to be reconvened upon receipt of the evidence requested.

7.2.4. The practical stages of referral are:

Consultation with the individual to establish the individual's personal circumstances. This may involve a medical examination.

Evaluation of information provided by line management regarding attendance and work performance, which is germane to the referral.

Evaluation of all other relevant information provided by specialist functions e.g. within OHS and HR

Evaluation of any medical evidence supplied by the GP or Consultant, following disclosure authority from the individual concerned.

The OHS practitioner will discuss his/her conclusions with the individual and obtain and record the individual's consent to the release of the report. This will make it clear (in accordance with the Ill Health Definition, Memorandum of Understanding and agreed procedures) which of the six courses of action outlined at paragraph 7.2.1 is being recommended.

7.2.5. If, at or immediately following a referral, an employee produces advice from his or her own medical advisor which conflicts with the advice given by the OHS, this will be considered by the OHS with a view to seeking to resolve the difference either before a firm recommendation is made or - if subsequently produced - before the manager takes a decision.

*NOTE:*

*Where consultation has resulted from self referral, the considerations and outcome will be in accord with those described above, but because the referral is essentially to provide advice on future capability and eligibility for retirement on ill health grounds to the individual, then the advice provided will be confined to the individual, unless they request otherwise. The OHS would however be bound under duties of care to communicate with Line management where the consultation raised an issue that was pertinent to the individual's health and safety at work, or the safety of the public or other employees. The individual would naturally be informed that this communication was necessary.*

### **7.3 Future Referral**

Where in future an individual's condition/circumstances change or new medical evidence becomes available a further referral may be requested and the process effectively restarts at the referral stage.

### **8. MANAGER'S DECISION (Stage 2)**

Following the receipt of the OHS advice, the line manager will consider what action to take, in line with the professional advice. He/she will discuss with the employee the advice received and give the employee the opportunity to respond. The outcome of this review will be either:

- a) an agreed date for a return to work, with a temporary or permanent adjustment to duties if appropriate
- b) a decision to seek alternative work elsewhere in Royal Mail Group and the actions proposed to address this
- c) a decision to progress 'Retirement on ill health grounds with lump sum payment'.
- d) a decision to progress 'Retirement on ill health grounds with immediate pension'.

The responsibility for making the decision based on the advice/recommendation from the OHS rests with Line Management. The Authority Levels contained in the appropriate Conduct Code for dismissal apply.

Where a decision to retire on ill health grounds with an immediate pension or lump sum payment is made this will be confirmed in writing. This confirmation will include the proposed last day of service and a summary of the reasons and basis for the decision, together with details of the proposed financial arrangements provided by the HR Services.

### **9. APPEALS (Stage 2.1)**

#### **9.1 Right of Appeal**

- a) There is a right of appeal against the line manager's decision and where the employee wishes to appeal he/she should inform the manager and confirm this in writing within five days of the written notification of the decision. At the same time the individual should state whether they will be seeking the support of their Union and confirmation from the Union of their support must be provided within a further seven working days.
- b) Where the appeal is against a decision of adjusted or alternative duties the process at paragraph 10.1 applies. Where the appeal is against termination of employment /retirement, the following provisions apply.

- c) The appeal itself, with any supporting medical evidence, must be made before the day on which any notice to terminate the employee's contract of employment is due to expire, or within 12 weeks from the date on which notice of termination of contract was given, whichever is later.
- d) The employee, or the Union if involved, should inform the Line Manager immediately if it is decided not to proceed with the appeal.
- e) All appeals will be concluded with an interview with the line manager who is due to make the decision based on the OHS advice.
- f) These appeal procedures do not apply to cases of refusal to reinstate persons who have been retired on medical grounds and who assert that they have recovered; for cases of rejection on medical grounds for employment with Royal Mail Group; or for disciplinary cases (e.g. where an employee may be suspected of malingering).

## **9.2 Appeal Process**

An appeal may be presented either by the employee or by their Trade Union acting on their behalf. An employee who wishes to appeal will be advised to seek the support of his or her Union but they are not obliged to do so. If, either at the outset or later, a Union decides not to take up his case, the employee is at liberty to proceed on their own behalf.

If an employee wishes to appeal on their own behalf (i.e. without the assistance of a Union) but is not sure what evidence is required to support the appeal, the appellant may ask the OHS to let their doctor know the types of evidence needed.

All appeals will in the first instance be referred via the appropriate Line Manager to the OHS for consideration of any medical evidence furnished by the employee in support of their case. Any medical evidence received under sealed cover from the appellant's medical adviser will be forwarded unopened to the OHS. The OHS will normally communicate directly with the appellant's medical adviser.

The OHS may, at their discretion, seek a second opinion.

The outcome of the appeal based on this additional medical evidence would be further OHS advice to line management on the basis of the alternatives set out at paragraph 7.2.1.

In the event that the appeal is dismissed, the appropriate Line Manager will inform the individual of the reasons for the conclusion. Where requested the OHS will inform the appellant's medical adviser or, if appropriate, the medical adviser to the Union which acted on the appellant's behalf.

### **9.3 Appeal to an Independent Specialist in Occupational Health (Stage 2.2)**

An employee whose appeal for or against retirement on Ill Health grounds has been turned down can request that the case be referred to an independent specialist in occupational health. The employee must notify their intention in writing, either personally or through their Union, within 7 days of the date on which they were formally notified that their original appeal was unsuccessful.

The independent specialist will be appointed by Royal Mail Group (or associated employer). Where the independent specialist decides it is necessary, he/she may ask a specialist in the particular health condition of the appellant to support the independent specialist in making a decision.

It is expected that where the information supplied by the appellant's own specialist conflicts with that supplied by the OHS, dialogue will be established between the independent specialist and the individual's specialist in order to give the matter proper consideration. The employee will normally attend a hearing of the appeal in person and will be given a minimum of 48 hours notice of the date and venue. There may be a need for the individual to have a medical examination during the course of the appeal. Travel and subsistence expenses for attending the appeal will be met by Royal Mail Group.

The outcome from the appeal will be advice to line management in accord with the possible outcomes contained in 7.2.1 above.

At the conclusion of the appeal the appellant will be formally notified of the decision in writing, usually within 5 days.

No further appeal in respect of ill health retirement will be allowed unless arising from a new referral.

### **9.4 Successful Appeals Against Ill Health Retirement**

Where the appeal is against Ill Health Retirement on medical grounds and it is upheld, the notice of retirement will be withdrawn and the appellant will continue to be employed under the terms of their existing contract.

Where the contract of employment has already expired, the appellant will be offered re-employment in his former grade and treated in all respects as if they had never been retired. If however the appellant does not return to duty on the date stipulated in the offer of re-employment and can give no acceptable reason for their absence, the offer will be withdrawn and Royal Mail Group will regard that it has discharged all of its obligations.

Any pension or lump sum payments made prior to re-employment must be repaid.

## **9.5 Successful Appeals for Ill Health Retirement**

Where an employee's appeal is for ill health retirement, it succeeds and the individual is under notice of retirement or has already been retired without immediate pension arrangements will be made to vary the terms of his or her notice accordingly. Any lump sum payment made prior to the successful appeal must be repaid.

## **10. ADJUSTED DUTIES OR ALTERNATIVE WORK IN ROYAL MAIL GROUP**

Where the advice following referral is to offer adjusted duties or suitable alternative work, careful consideration needs to be given to the type of work suggested and the attendance or travel adjustments necessary. These should be discussed by line management with the individual, their TU representative if requested and if necessary the OHS to ensure commonality of understanding on the parameters within which work is being sought.

These discussions should take due account of the "Memorandum of Understanding" and ensure the alternative work meets the employee's capability, aptitude and fully complies with the medical advice received.

Possible roles should be identified, even if there are currently no open positions. If necessary the OHS should be consulted on the suitability of such roles prior to investigating placement opportunities.

All practical and reasonable measures ought to be exhausted by Line Management to secure a placement opportunity within their own sphere of influence in the first instance, especially where the type of work identified already exists under their control. This should extend to other suitable locations and roles within the Business Unit if necessary.

Where no such roles or opportunities are identified, line management should broaden their efforts to other parts of Royal Mail Group in accordance with any geographical or travel adjustments contained in the OHS advice. To accomplish this it is essential that the HR function is formally involved.

Where suitable alternative work is identified in another business, arrangements should be made to enable the individual to undertake their duties without delay. In these circumstances it would be reasonable for the current or releasing Line Manager to meet any necessary training or familiarisation costs including the time involved.

The Line Manager will make the offer of adjusted duties or alternative work following the outcome of the discussions detailed above.

- a) Where the alternative work is accepted this will conclude the process.

- b) Where the alternative work is accepted but later proves unsuitable the employee will be returned to the referral stage of the process.

In the event of a disagreement on suitability of the alternative work identified, the OHS should be consulted again on compliance to the adjustments called for by the underlying ill health condition. In such cases discussion between the Line Management, the individual, the OHS and where requested a TU Representative, would be advisable, to ensure common understanding of the actual position.

In the event that a permanent reduction in contracted hours, agreed as part of an adjustment to duties following ill health, does not work out and the employee is subsequently granted ill health retirement on the basis of the cause of the original referral, the calculation of payments due will be based on full time grade equivalent pay.

### **10.1 Appeals in Respect of Work Offers (Stage 3.1)**

- a) Where an offer of alternative work is not acceptable to the individual there will be an opportunity to appeal against the suitability of the work being offered. If the employee intends to appeal they should inform the Line Manager as soon as possible and confirm this in writing within 5 days of the offer of work being notified.
- b) The employee may seek representation from their trade union to assist them or present their case at the appeal.
- c) These appeals will be heard at the next level of authority from that which the original decision was made. As the appeal is concerned with the suitability of work offered, which may be in a different Royal Mail Group business, HR Services will take responsibility for identifying the appropriate senior managers(s) to be involved.
- d) Employees will be encouraged to attend a personal appeal hearing but they may appeal in writing if they so wish. As part of the process it may be necessary to seek further advice from the OHS on the suitability of the work being offered.
- e) Appeal Hearings would normally be held within 2 weeks of the request from the employee being received. 48 hours notice of the date and venue of the appeal will be given. Decisions would be conveyed face to face at an interview normally within 5 days of the hearing.

### **10.2 Appeal Decision**

The outcome of the appeal will be one of the following:-

- a) The appeal is upheld and further discussion will take place as detailed in paragraph 10 to identify appropriate and suitable work.

- b) The appeal is upheld but no suitable alternative work can be identified as confirmed by HR Services and senior operational management. The OHS would be advised in order to provide the opportunity to review the adjustments proposed if appropriate. Where no suitable alternative work is identified and no further adjustments can be made the OHS will confirm their support to retirement on ill health grounds with lump sum payment.
- c) The appeal fails and the job is formally offered for a final time. If refused the process will be considered complete and the individual subject to normal procedures.

## **11. RE-EMPLOYMENT FOLLOWING ILL HEALTH RETIREMENT**

Where an individual has been retired for Ill Health they will have opportunity to request re-employment within Royal Mail Group when/if they are again able to carry out their previous duty or another duty for the employer and there will be no artificial barriers to their re-employment.

Royal Mail Group is an equal opportunities employer and will consider all applications on their merit, including those from previous employees. Experience gained from working within the Group in the past is an advantage in any recruitment process, and this applies equally to individuals that have been retired on ill health grounds. In such cases however, it would be essential for an individual to demonstrate that they have recovered sufficiently to be able to perform a normal range of duties.

Re-employment will be subject to a referral to the OHS to confirm the individual has recovered from the ill health that supported the recommendation for retirement. The individual will be required to provide supporting evidence that they have recovered from their ill health and may be required to have a medical examination.

Their previous overall attendance record will be considered in the normal way but they will not be disadvantaged due to absences related to their ill health retirement.

It is also important to recognise that:

- It will be unlikely individuals will be able to return to their original former job.
- It will be dependent on an appropriate vacancy being available.
- They may be expected to be flexible in terms of job location and date of return.
- Where retraining is required it will be given.
- On their return they will be eligible to join the appropriate Pension Scheme for new employees.

## **12. ILL HEALTH RETIREMENT BENEFITS**

**12.1. General** References to 'normal retirement age' below mean 'normal retirement age for pension purposes'.

### **12.2 Retirement on Ill Health Grounds with Immediate Pension**

Active members of the Royal Mail Pension Plan with 5 years service or more and at least two years qualifying service in the Pension Plan meeting the criteria for retirement on ill-health grounds will have their pension based on their full benefits calculated up to their last day of service plus 75% of future pensionable service up to normal retirement age.

In addition, the 75% projection of prospective service will apply equally to the widow(er)'s and children's pensions payable in the event of death in service of an employee in accordance with the provisions outlined above.

Alternatively for active members with more than 10 years' service, if it gives higher benefits, the enhancement will be to 20 years' service, or by an additional six and two thirds years or up to normal retirement age if earlier. For active members with between 5 and 10 years' service, enhancement will be to double service or up to normal retirement age if sooner and if this gives higher benefits.

Members with over 2 but less than 5 years reckonable service will receive a pension based on their full benefits calculated up to their last day of service.

Employees must be active members of the Royal Mail Pension Plan (RMPP) to receive an immediate pension under these provisions. Where an employee meets the criteria for Medical Retirement due to permanent incapacity but is not a member of the RMPP, then they will be eligible to the benefits applicable for Retirement on Ill Health Grounds with Lump Sum Payment, or if eligible and more beneficial a benefit from the discretionary company insurance scheme.

### **12.3 Retirement on Ill Health Grounds with Lump Sum Payment**

Where an employee has at least one year's service and meets the criteria for retirement on ill health grounds with a lump sum compensation payment, a payment equivalent to 34 weeks' pay will be made.

A deferred pension will also be payable to all pensionable employees.

### **12.4 Formal Notice Period**

Retirement on ill health grounds in both cases will be subject to normal contractual notice of termination of employment or 9 weeks notice whichever is the greater (9 weeks notice will also apply to employees on trial where they are being terminated on ill health grounds). This will be with pay.

## **12.5 Pension entitlements**

These ill health retirement benefits will not reduce or affect any of the other members' pensionable benefits due under the pension schemes.

## **12.6 Misconduct**

An individual under investigation for gross misconduct who subsequently applies for ill health retirement will not be eligible for the above benefits should they be dismissed for gross misconduct.

## **12.7 Calculation and Payment of Lump Sum Payments**

The pay to be used for calculating lump sum payments is the basic weekly or monthly wage/salary of the individual's grade (i.e. the rate of pay that they would have been in receipt of but for sickness absence or leave purchase arrangements) on the date of retirement plus any personal reserved rights payment and geographical supplement (e.g. London/RRIS) where applicable. No other elements of 'pay' should be included. Confirmation of inclusive elements within basic pay is available from HR Services.

Employees who are ill health retired with a lump sum will receive the payments within seven days of the end of the notice period irrespective of any appeal that may be lodged, unless they opt to defer receipt pending an appeal. If they receive the money in advance of an appeal, they will be informed at the time of payment that they will be required to pay back the lump sum, in the event that the appeal is successful and they are subsequently re-employed or gain ill health retirement with immediate payment of pension.

## **12.8 Annual holidays and notice periods**

12.8.1 In accordance with existing provisions Annual Holiday should be taken in the year which it is due. However, in the event that an individual is unable to take their holiday entitlement due to sickness it will carry forward to the following holiday year (subject to 12.8.4 below)

12.8.2 Individuals on long term sickness absence may, with appropriate notice, take any outstanding holiday entitlement that they have, and receive normal basic pay and assigned allowances for such days.

12.8.3 Contractual annual holidays cease to accrue once full and half rate sick pay has been exhausted. They are replaced by statutory leave entitlements.

12.8.4 Where ill health retirement is authorised, the notice period will be extended to cover pro-rata contractual pay due during the leave year plus up to 5 days' carryover leave from the previous year if appropriate.

12.8.5 The arrangements outlined within this section take precedence over any other agreed arrangements for the taking of annual holiday.

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Peter Walls  
Director Group IR  
Royal Mail

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Brian Scott  
Assistant Secretary  
Unite-CMA

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Ray Ellis  
Assistant Secretary  
CWU

Date.....

Date.....

Date.....

**Various Routes of Referral**

- . Long Term Illness
- . Accident
- . Personnel Procedures
- . Personal Referral

