



**CAPABILITY:  
MANAGING SICKNESS ABSENCE  
PROCEDURE FOR SCHOOLS**

FINAL JUNE 2007

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## **SECTION 1: THE PURPOSE, SCOPE AND PRINCIPLES**

### **PURPOSE**

- 1.1. To provide a fair and consistent method of dealing with short term and intermittent or persistent periods of absence relating to ill health.
- 1.2. To provide a fair and consistent method of dealing with longer-term absence relating to ill health, where there may be no, or any imminent, likelihood of a return to work.
- 1.3. To meet statutory requirements.
- 1.4. The School aims to secure the attendance of all employees in order to maintain high standards of safety, security and service. Since all employees will be treated in line with good employment practice, absence should be kept to a minimum, although a certain level of absence due to sickness may be inevitable.

### **SCOPE**

#### **Employees covered by the procedure:**

- ALL staff employed at [name of school] with the exception of employees serving a probationary period where separate procedures apply.

The procedure does not apply to matters relating to an employee's conduct, or capability, as assessed by reference to skill, aptitude or job performance as these will be covered in separate procedures.

### **PRINCIPLES**

- 1.5. The following important principles are encompassed within this procedure:
  - a. it is based on established case law and has been agreed between the council and the recognised trade unions
  - b. it will not contradict any current or future national agreement
  - c. employees will be informed of the School's procedure, in particular through the induction process. A copy of the procedure will be included with an employee's statement of main terms and conditions of employment
  - d. employees will be informed of the standards expected of them
  - e. employees will be given an opportunity to state their case before any decision is reached
  - f. the informal process will have been exhausted before this procedure is initiated
  - g. an employee may be accompanied by a trade union representative or a person of his/her choice
  - h. there will be a right of appeal against formal action taken

## 2. SECTION 2: PREAMBLE - GENERAL PRINCIPLES

### Designated Officers

- 2.1. Designated Officers shall be responsible for ensuring that the Capability Procedure is properly followed and, in particular, shall have the right to hold capability hearings and take action up to and including the issuing of final written warnings. Any decision to dismiss must be taken by a Panel of the Governing Body.
- 2.2. The list of Designated Officer posts for each school should be decided by the Governing Body and should be reviewed regularly and updated to reflect changes in staff and structure. The list will always include the Head teacher. It is a matter for the Governing Body as to whether it wishes to appoint other Designated Officers. A Designated Officer will usually be a senior member of the School's management structure.
- 2.3. It is expected that all Designated officers will have had appropriate training in dealing with ill health capability issues. Where a Designated Officer has not yet had training, then advice and guidance in following this procedure must be sought from the relevant HR Advisor.

### Time Limits

- 2.4. 'Working day' in this procedure refers to Monday to Friday (excluding weekends and public holidays). Unless there are exceptional circumstances, no member of staff shall be expected to attend a meeting under this procedure on a day when they are not contracted to work. These limits may be varied by agreement between the parties involved in any capability (ill health) case and such agreement shall not be unreasonably withheld by either side.

Where a period for improved performance (including attendance) is set, this period shall have regard for the circumstances of the individual's contract of employment and the pattern and frequency of days on which the employee is contacted to work. Such periods for improvement must be reasonable in all the circumstances of the case. Timescales may be varied by agreement between the parties, and a request for deferment by either side will not be unreasonably refused

### Trade union representatives

- 2.5. Where the capability procedure is to be applied to accredited trades union representatives (stewards), no formal action will be taken until the case has been discussed with a full-time official of the recognised trade union. The Head of Human Resources **must** be informed of these cases and the appropriate Designated Officer **must** ensure the trade union official is informed as quickly as possible.

### Refusal to take part in the procedure

- 2.6. If an employee refuses to take part in the capability procedure, the School will write explaining that capability action may have to be taken in his/her absence, based on the information available.
- 2.7. It is in the interest of all parties involved in any matters of unsatisfactory attendance to co-operate as fully as they can, to ensure the process is completed as quickly and fairly as possible.

### Capability Records

- 2.8. Records of action under this procedure will be kept on the employee's personal file held in the Reading Borough Council Human Resources Service. Managers must ensure that records of action taken under this procedure are reviewed in the light of the employee's subsequent attendance. Records of action will be automatically disregarded (i.e. not counted in any future action under this procedure) and expunged from the personal file after 15 months satisfactory attendance, unless already removed on review. Records will not be kept for more than 15 months before being disregarded and expunged from file, except in exceptional circumstances when the records may be retained. In such cases the employee must be informed and told the reason.
- 2.9. Records will be kept under confidential conditions by HR. Employees can examine their own personal records by arrangement.

### The Disability Discrimination Act 1995

- 2.10. The *Disability Discrimination Act 1995* gives disabled employees the right not to be treated less favourably than others without a disability. A disabled person is one with a 'physical and/or mental impairment which has a long term adverse effect on his/her ability to carry out normal day to day activities'.
- 2.11. The Act effectively gives the disabled person the right not to suffer unjustifiable discrimination and to claim **reasonable adjustments** to the workplace or working arrangements. However, decisions concerning needs and adjustments must take place in the light of operational requirements. Managers should be aware that the provisions of the Act may apply in certain situations and should seek advice from the Directorate HR Support Team.

### Role of Human Resources

- 2.12. Managers are advised to seek advice from their HR provider especially in more complex cases. Designated Officers (or panel of Governors acting in this capacity) will decide whether they wish to be accompanied at a hearing by a HR adviser. However, for cases involving final written warnings and dismissal or where the Designated Officer has not received the appropriate training a HR adviser must be present. Similarly, appeals to the Appeals Panel of the Governing Body will also require a HR adviser to be present.
- 2.13. It is important to note that the HR adviser will attend any capability or appeal hearing in an advisory capacity only. All capability or appeal decisions remain

the responsibility of the Designated Officer or Panel of the Governing Body. The HR adviser is there to advise on matters such as employment law, precedent and good practice and procedure.

### **Role of Occupational Health**

- 2.14. Reading Borough Council provides an occupational health service for its employees who are experiencing short or long term absence from work as a result of ill health. Any referral made to the Occupational Health service will be treated with sensitivity and will be confidential between the parties concerned.

### **Role of the Council's Employee Assistance Programme**

- 2.15. The Council offers an employee assistance programme (EAP) for its employees. The EAP provides a free, independent, confidential advice and support service to staff on a range of issues which could impact during a period of ill health.

### **Sickness whilst on holiday**

- 2.16. If an employee is absent due to sickness whilst they have booked annual leave, (i.e. during term time) they are required to submit a medical certificate for any period of absence if they wish their leave to be reinstated. The cost will be borne by the employee.
- 2.17. If an employee has a period of sickness absence during part of the school holidays he/she is not required to submit a medical certificate and this does not count towards the individual's attendance record. However if an individual has a period of sickness absence which extends over more than one term and includes the school holidays the whole period should be covered by a medical certificate.

## **NOTIFYING AND MONITORING SICKNESS ABSENCE:**

- 2.18. This section sets out the process for dealing with sickness absence and the reasons for monitoring it.

### **Notification and Return to Work Procedure**

- 2.19. Each school must make its own arrangements to ensure that employees notify when they are unable to attend work due to illness. These should include:
- How to notify if the employee does not have a telephone at home
  - Whom the employee should notify
  - What the Notification Officer should ask and how this should be recorded
- 2.20. Notification can be made by a friend, relative or the employee. Where appropriate the employee should identify any appointments, etc that may have to be rearranged.
- 2.21. If the employee is unable to return to work on the expected date as notified, s/he must ensure s/he contacts his/her school and let them know.

- 2.22. If the employee's sickness extends beyond seven calendar days, s/he will have to submit a doctor's certificate on the eighth calendar day.
- 2.23. In cases where the first doctor's certificate covers a period exceeding fourteen days, or where more than one certificate is necessary, a final certificate must be obtained to certify fitness to resume duties.
- 2.24. On returning to work, the team leader/line manager should see the employee to:
- Confirm the reason for absence;
  - Check the employee considers s/he is fit to return to work;
  - Discuss issues outstanding whilst sick.
- 2.25. The team leader/line manager must ensure that the meeting is informal, constructive and sympathetic. S/he must make it clear in a positive way, that the employee has been missed.

### **Monitoring Absence**

- 2.26. Team leaders/line managers should regularly examine the sickness absence statistics for their teams, sections or service. They should look carefully at short, persistent illness and identify any patterns, which may be developing.
- 2.27. They should counsel their employees once their sickness records appear to deteriorate to discuss it, having previous records available for reference. They will need to consider the following:
- Is the sickness work related?
  - Is it stress related?
  - Is it affecting work performance, both individual and team?
  - How is it affecting others?
- 2.28. School managers and the Governing Body should monitor sickness absence regularly. The cost of sickness absence is not only financial. It affects service delivery, team performance, staff morale and, in some cases, their health.

### **Verbal Reprimands and Verbal Warnings**

- 2.29. Any supervisor or manager with supervisory responsibility may have occasion to reprimand an employee verbally in the normal course of managing performance and attendance. A **verbal warning** may be given, which would need to be authorised by a Designated Officer and may be recorded as part of the supervision record or in a confidential work diary. The employee will be informed that failure to return to work on a regular basis following a verbal warning would leave them open to action being taken under the capability procedure.

- 2.30. There will be no right of appeal against verbal warnings as they are given outside the formal procedure. Similarly, although an employee **may** be given the opportunity to be accompanied or represented when a verbal warning is given this is not an **entitlement** at this stage under this procedure. However, the employee should be advised that s/he may seek advice from his/her trade union representative. The employee may record a response to be kept with the record of the verbal warning. Verbal warnings will not be given as a result of a formal Capability Hearing.
- 2.31. Schools should monitor sickness absence regularly to identify the need for action to address issues of particular concern.

### **3. SECTION 3: MANAGING FREQUENT SHORT TERM ABSENCE**

- 3.1. If the periods of absence are frequent or forming a pattern and causing concern, further action must be considered.
- 3.2. Cases should be judged on their own merit and the School will not set levels of acceptable absence as this may deem automatic entitlement. However, **as a guide**, the following will normally be regarded as persistent short-term absences and should trigger review meetings:
- Time lost over a period (eg 3 separate absences in three months; or 10 working days made up of short-term repeated absences in a 12 month period)
  - Patterns emerging (eg regular Mondays/Fridays or sickness after holiday or rest days for shift workers)
  - Combination of odd days, longer periods and patterns of absence emerging which cause the manager concern
- 3.3 Further guidance on managing frequent short-term absence is contained in the Guidance Notes to this Procedure, on the intranet or via your HR Advisor.
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### **4. SECTION 4: THE CAPABILITY PROCEDURE**

- 4.1. [name of school] accepts that, inevitably, some of its employees may experience ill health from time to time.
- 4.2. However, problems can arise and interfere with the working of the organisation when an employee either is absent for long periods, or is regularly absent for numerous short periods. It is, therefore, important that sickness absence is monitored so that organisational problems can be resolved and the service does not suffer.

- 4.3. Supervisors must follow the sickness notification and absence monitoring procedure. They should ensure that employees also understand their responsibilities under this procedure. The immediate supervisor should see his/her employee on return from sick leave. S/he will always look at the staff member's sick leave record before this interview takes place, in order to be aware of a developing problem. The approach the supervisor takes to the return to work interview will depend on the nature of the illness. The return to work interview must be confidential. It is important to interview the employee as soon as possible after his/her return to work as it:
- shows concern about the illness
  - lets the employee know that s/he has been missed
  - allows the employee to be brought up to date
- 4.4. Where problems continue, the supervisor should decide the course of action depending on the nature of the absence and illness, i.e. are there regular patterns of absence or is the absence longer term.

### **Dealing with Persistent Short Term Absence**

#### **Stage 1 - Initial Investigation/Informal Action**

- 4.5. The timing of the initial investigation interview will depend on the nature of the illness, the pattern and number of absences and the effect on the service. The interview will be separate to the normal 1:1/supervision and take the form of pointing out to the employee his/her poor sickness record, and explaining that it is poor in relation to other workers in the section/shift/unit. The supervisor will reinforce the need for the employee's regular attendance. S/he will ask the employee if there are any factors contributing to his/her absence and explore the problem in a positive and constructive way.
- 4.6. The supervisor and employee will discuss the action required to improve attendance and set a date for a review, during which time the employee's attendance will continue to be monitored.
- 4.7. At the end of the review period the supervisor and employee will discuss the attendance. If the sickness absence has improved sufficiently then this will be monitored at 1:1/supervision.
- 4.8. However, if the sickness absence has not improved, the supervisor will discuss any reasons for the continued sickness absence. It may be necessary to obtain an assessment from the Council's Occupational Health Advisor to ensure that there are no underlying medical conditions, which could be affecting the employee's attendance.
- 4.9. If no reasonable explanation has been provided for the absences or any underlying medical issues identified, then the supervisor will decide whether to give a Verbal Reprimand or to ask the Designated Officer to authorise a Verbal

Warning. If a Verbal Reprimand or Verbal Warning has been given, the supervisor should let the employee know that if there is no improvement, at the end of the next review period, s/he may have to refer the matter to an appropriate Designated Officer under Stage 2 of the Council's Capability Procedure.

- 4.10. The supervisor will set a further review period under Stage 1 of the Capability Procedure, discuss the action required to improve attendance and set a date for the attendance to be reviewed, during which time the employee's attendance will continue to be monitored.
- 4.11. The matters discussed, any reprimands or warnings issued and the proposed actions should be noted in writing and placed on the employee's supervision file.
- 4.12. If, at the end of the further review period, regular attendance is not achieved, the supervisor should refer the matter to the appropriate Designated Officer.
- 4.13. If the Designated Officer feels that it is not appropriate to invoke Stage 2 of the procedure, s/he can decide to agree a further review period and the necessary support to improve attendance. S/he must make it clear that a failure to improve attendance could result in further action being taken under the Capability Procedure.

#### **Stage 2 - Formal Action**

- 4.14. If the Designated Officer feels it is appropriate to invoke Stage 2 of the Capability Procedure s/he will arrange a formal meeting, giving the employee at least 5 working days notice. The letter should include the following details:
  - the date, time and location of the meeting
  - the fact that the meeting is within the capability procedure
  - the nature and details of the unacceptable level of absence
  - the employee's right to representation / be accompanied
  - identity of the person conducting the meeting and any HR Advisor
  - any relevant documentation
  - a copy of the capability procedure
- 4.15. The Designated Officer will meet with the employee, his/her representative and the supervisor, as soon as possible, to investigate the matter. This meeting will discuss the reasons for the absences and the steps taken so far to remedy the situation.
- 4.16. At the meeting, the Designated Officer should restate the problem. The employee will be asked to provide an explanation for the continued sickness absence and asked how s/he will improve his/her attendance. S/he should make clear to the employee that consideration is being given to his/her ability to do the job adequately.

- 4.17 In order to reach a decision, the Designated Officer will need to be satisfied that s/he has all the necessary information before him/her to inform that decision - including, but not restricted to, medical advice from the Council's Occupational Health Advisor.
- 4.18 Each case will be decided on the basis of the facts presented and it is open to the Designated officer to seek further medical (or other) advice prior to making a final decision. It is important that decisions on ill health related matters are taken in conjunction with medical advice where this is relevant (eg where the case involves a disclosed or potential underlying medical condition).
- 4.19 In the event of further medical or non-medical information being required, the Designated Officer will adjourn the meeting until this information is available.
- 4.20 Once the Designated Officer is satisfied that all the relevant information has been obtained, 3 sets of circumstances will present themselves (described as Options 1 to 3 below). In summary, these are -
- Option 1** - Cases where medical advice has been sought and an underlying medical condition has been identified.
- Option 2** - Cases where medical advice has been sought but no underlying medical condition has been identified
- Option 3** - Cases where no medical advice has been sought as the case does not involve a declared or potential underlying medical condition
- 4.21 The above options 1 to 3 are set out below in more detail -
- 4.22 **Option 1 - Medical advice requested- health issue**
- The Designated Officer will discuss the medical report with the employee. If the employee wishes to challenge the report, then s/he should be given the opportunity to produce further medical opinion for the Designated Officer to consider at a later meeting.
  - If the medical advice requires the School to consider 'reasonable adjustments' to the employee's working environment, then the Designated Officer needs to consider if there are any adjustments to the workplace or working arrangements available, bearing in mind practicalities, costs etc. (See the Guidance Notes for factors to consider and examples of reasonable adjustments). In the event that adjustments are made, then a reasonable period of time should be allowed for these changes to take effect and for attendance to improve before moving to Stage 3 of this procedure.
  - If the medical advice precludes the employee from continuing in this role and bearing in mind any reports submitted by the employee, the Designated Officer will consider:
    - whether alternative employment is appropriate and available and, if so, whether it can be offered to the employee

- ❑ if so, make the offer in writing, giving the employee a maximum of 5 working days to consider the offer; if accepted, arrange a four week trial period
- ❑ whether the employee has grounds for an ill health retirement
- ❑ if it is impractical to offer alternative employment, or the employee has rejected the offer, or ill health retirement is not recommended, the matter will be referred to the Head teacher (or panel of the Governing Body if the Head teacher was the Designated Officer) to proceed to Stage 3.

#### 4.23 Option 2 - Medical advice requested- no health issue

- The Designated Officer will discuss the medical report with the employee. If the employee wishes to challenge the report, then s/he should be given the opportunity to produce a further medical opinion for the Designated Officer to consider at a later meeting.
- If the Occupational Health report does not identify a medical concern which would prevent the employee achieving the required level of attendance, then the Designated Officer may issue a **written warning**. The employee will be notified that failure to return to work on a regular basis could result in further action being taken under the Capability Procedure.
- The Designated Officer must then set a further period during which the employee's attendance will be monitored.
- The Designated Officer must confirm this warning in writing within 5 working days of the reconvened meeting
- The letter should include:
  - ❑ the decision and the reason for it
  - ❑ the period over which attendance must improve
  - ❑ any rights of appeal, to whom the appeal should be made and within what timescale
  - ❑ a copy of any notes taken at the meeting
  - ❑ reference to the fact that if attendance does not improve, then the question of continued employment may be considered.
- Subsequent attendance should be monitored as objectively and as frequently as appropriate, bearing in mind the length of time that could be considered reasonable for the employee to improve attendance.
- At the review meeting, if sufficient improvement has been made, the employee should be told that, provided it continues, no further steps will be taken. Any return to unacceptable levels of absence will, however, result in the procedure continuing from the point previously reached.

- If the Designated Officer feels that sufficient improvement has not been made, the Designated Officer, if permitted, will decide if it is appropriate to issue a **final written warning** and this will be confirmed in writing. The letter should include:
  - ❑ the decision and the reason for it
  - ❑ the period over which attendance must improve
  - ❑ any rights of appeal, to whom the appeal should be made and within what time scale
  - ❑ reference to the fact that if attendance does not improve, then the question of dismissal with notice will be considered
  - ❑ remains on their personnel file for 15 months
- If the Designated Officer is not permitted to issue a final written warning then they will need to ask a Designated Officer with appropriate authority to approve this sanction.
- If at the final review meeting the Designated Officer feels that sufficient improvement has been made, the employee should be seen and told that, provided it continues, no further steps will be taken. Any return to unacceptable levels of absence will, however, result in the procedure continuing from the point previously reached, if they occur within the review period.
- If the Designated Officer feels that sufficient improvement has not been made the Designated Officer will consider:
  - ❑ whether alternative employment is appropriate and available and, if so, whether it can be offered to the employee
  - ❑ if so, make the offer in writing, giving the employee a maximum of 5 working days to consider the offer; if accepted, arrange a four week trial period
  - ❑ if it is impractical to offer alternative employment, or the employee has rejected the offer, or ill health retirement is not recommended, the matter will be referred to the Head teacher (or Panel of the Governing if the Head teacher was the Designated Officer) to proceed to Stage 3.

#### 4.24 Option 3 - No medical advice requested

- If no medical advice has been requested the Designated Officer may issue a **written warning** and the employee notified that failure to return to work on a regular basis could result in further action being taken under the Capability Procedure.
- The Designated Officer must then set a further period during which the employee's attendance will be monitored.

- The Designated Officer must confirm this **warning** in writing within 5 working days of the meeting
- The letter should include:
  - ❑ the decision and the reason for it
  - ❑ the period over which attendance must improve
  - ❑ any rights of appeal, to whom the appeal should be made and within what timescale
  - ❑ a copy of any notes taken at the meeting
  - ❑ reference to the fact that if attendance does not improve, then the question of continued employment may be considered.
- Subsequent attendance should be monitored as objectively and as frequently as appropriate, bearing in mind the length of time that could be considered reasonable for the employee to improve attendance.
- At the review meeting, if sufficient improvement has been made, the employee should be told that, provided it continues, no further steps will be taken. Any return to unacceptable levels of absence will, however, result in the procedure continuing from the point previously reached.
- However, if the Designated Officer feels that sufficient improvement has not been made s/he, if permitted, will decide if it is appropriate to issue a **final written warning** and this will be confirmed in writing. The letter should include:
  - ❑ the decision and the reason for it
  - ❑ the period over which attendance must improve
  - ❑ any rights of appeal, to whom the appeal should be made and within what time scale
  - ❑ reference to the fact that if attendance does not improve, then the question of dismissal with notice will be considered
  - ❑ remains on their personnel file for 15 months
- If the Designated Officer is not permitted to issue a final written warning then they will need to ask a Designated Officer with appropriate authority to approve this sanction.
- The Designated Officer must then set a further period during which the employee's attendance will be monitored.
- If at the final review meeting the Designated Officer feels that sufficient improvement has been made, the employee should be seen and told that, provided it continues, no further steps will be taken. Any return to

unacceptable levels of absence will, however, result in the procedure continuing from the point previously reached.

- If the Designated Officer feels that sufficient improvement has not been made the Designated Officer will consider:
  - whether alternative employment is appropriate and available and, if so, whether it can be offered to the employee
  - if so, make the offer in writing, giving the employee a maximum of 5 working days to consider the offer; if accepted, arrange a four week trial period
  - if it is impractical to offer alternative employment, or the employee has rejected the offer, the matter will be referred to the relevant Head of Service (or Corporate Director if the Head of Service was the Designated Officer) to proceed to Stage 3.

### **Stage 3 - Referral to Head teacher or Panel of the Governing Body**

- 4.25 If the employee fails to achieve the required levels of attendance within the allotted time period, retirement on the grounds of ill health is not recommended or if the offer of alternative employment is rejected, the case will be referred to the Head teacher or Panel of the Governing Body, who will arrange a Hearing as set out previously. At this meeting, on the basis of the employee's explanation, the medical evidence, past records and the interests of the School the Head teacher or Panel of the Governing Body shall be satisfied:
- ◆ That all relevant medical or other information has been obtained
  - ◆ That active consideration has been given to the possibility of making adjustments to work processes or duties where an underlying medical condition has been identified
  - ◆ Whether alternative employment is available and has been offered to an employee who has an identified medical condition
  - ◆ That any explanations or submissions made by the employee or his/her representatives have been fully considered and taken into account
  - ◆ Whether the employee has grounds for ill health retirement.
- 4.26 In the event that the Head teacher or Panel of the Governing Body requires further information on any or all of the above areas, then s/he shall adjourn the meeting until the information is available.
- 4.27 The Head teacher or Panel of the Governing Body, having considered these elements, can decide:
- ◆ To take no further action and to dismiss the case

- ◆ To apply a further period of time within which the employee's attendance will be monitored and reviewed before making a final decision.
- ◆ To take no further action whilst issues connected with possible redeployment are explored with the employee and/or other managers
- ◆ To dismiss the employee on the grounds of Capability Ill Health

4.28 In the event that Head teacher or Panel of the Governing Body decides to dismiss the employee, this will be confirmed in writing and the employee shall be advised of his/her right of appeal against the decision to dismiss.

## **PANEL OF THE GOVERNING BODY**

All recommendations to dismiss an employee on the grounds of ill health as a result of either persistent short term absence or long term absence shall be considered by a Panel of the Governing Body convened for that purpose.

This Panel shall consist of at least 2 (and not more than 4) members of the Governing Body and shall consider, on the basis of the recommendation of the Designated Officer, the employee's explanation, the medical evidence, past records and the interests of the school, the following:

- Whether alternative employment is available and, if so, whether it can be offered to the employee. This should take into account any previous offer of employment.
- Whether any adaptations can be made to the existing working environment that will enable the employee to return to work within a reasonable timescale.
- if it is impracticable to offer alternative employment, or if an offer has been made that has been rejected by the employee, then the Panel should decide whether dismissal on the grounds of ill health (or retirement on the grounds of permanent ill health) is appropriate. Retirement must be endorsed by formal written medical assessment and the Panel is not empowered to make this decision without such certification.

The decision will be confirmed in writing and the employee will be advised of his/her right of appeal against the decision to dismiss.

### **Dealing with Chronic or Long Term Ill Health Absence**

4.29 Absence from work as a result of chronic or long-term ill health poses a different problem. Often an employee's health is not likely to improve and is more likely to deteriorate. It is difficult to define specific stages to deal with these types of cases but the following steps should be included in the supervisor's approach to these problems. The timings set out below are **recommendations** but may be varied depending on the circumstances involved, the interests of the employee and the service.

- 4.30 In deciding how to handle such cases, managers may want to discuss them with HR, Occupational Health Service or Employee Assistance Programme (EAP) Service advisor. It may also be useful to make the local trade union representative aware that there is a problem. Such contact with 3<sup>rd</sup> parties, however, will need to be consistent with the need to maintain confidentiality and, depending on the information being disclosed, the consent of the employee. If in doubt managers should seek advice from the HR Service.

#### **Step 1 - Meeting**

- 4.31 A meeting with the employee will be arranged in order to discuss his/her health problems and how they are affecting work. Depending on the circumstances, this could be with the supervisor or manager, a member of the Directorate HR Support Team or the trade union representative. S/he will need to keep in touch with the employee so that assistance can be offered, if appropriate, and the employee's expectations for a return to work assessed. It is recommended that this first interview should be conducted after six weeks where there is no indication of a likely date of return to work.

#### **Step 2 - Monitoring and investigation**

- 4.32 The employee's absence should be monitored. If, after a further four weeks, there is no indication of a return to work in the reasonably foreseeable future, the supervisor should advise the employee that it is proposed to seek an independent medical opinion of his/her medical condition.
- 4.33 The employee should then be referred to the Council's Occupational Health Service, who will in turn seek the employee's permission to consult his/her GP or specialist. The resulting report(s) will indicate whether or not the condition is likely to improve, whether there is likely to be a return to work and when, and what sort of problems the employee is likely to have in his/her working life. This stage could take a significant amount of time and may happen more than once. During this time there should be regular contact with the employee or his/her representative.

#### **Step 3 - Further meeting and decide what action to take:**

- 4.34 The manager and employee and/or representative should meet to discuss the medical report(s) and the effect his/her absence is having on the performance of the job. This should be a formal meeting but it will depend on the nature of the illness and the sensitivity of the situation as to how this meeting takes place. For instance, it may be more appropriate for the employee to be represented rather than to attend in person. Again this stage could incorporate more than one meeting depending on the circumstances and whether it is appropriate to agree further review periods. All meetings should be treated with appropriate formality and sensitivity and should be documented. The following areas should be explored:
- a) the likelihood of return to work
  - b) the offer of alternative employment
  - c) retirement on the grounds of ill health

In order that the employee is aware of all the possible outcomes, it may be appropriate at this stage to raise the possibility of the termination of the employee's contract.

a) **Likely return to Work**

- 4.35 The medical report may conclude that a return to work is likely within a specified time period, which may be on a part time basis initially. In this case every support should be given to the employee to help him/her to return.
- 4.36 However the report may be vague about an improvement "in the future" and the manager may have to ask for further details - whether "future" means two months or two years. The decision as to whether or not to dismiss is a management decision and will obviously depend on the circumstances:
- How the employee feels
  - The job itself
  - The ability of the team to provide support
  - The requirements of the service
  - Whether the medical condition is one which has stabilised, will stabilise or is known to deteriorate.
- 4.37 It is important to consider whether the condition could be a disability as defined under the *Disability Discrimination Act 1995* and what reasonable adjustment might be made to allow the employee to return to work. Whatever is decided, the employee must not be discriminated against on the grounds of a disability.
- 4.38 Consideration should be given to a phased return to work following a long period of sickness absence. As a guide, this rehabilitation period would not normally be more than 6 to 8 weeks and the employee would be entitled to normal salary for this period.

b) **The Offer of Alternative Employment**

- 4.39 If the report suggests alternative employment may be an option, the supervisor or manager should find out what is available, internally within his or her own service or wider through the Directorate HR Support Team. The employee will need reasonable time to decide whether to accept the offer and a trial period will need to be agreed. This should not be less than four weeks, but may be shortened at the request of the employee.

c) **Retirement on the Grounds of Ill Health**

- 4.40 Retirement on the grounds of ill health requires a formal written medical assessment. This must be investigated via the Occupational Health service and be agreed by a further physician.

If Teacher's Pensions agree that the individual is permanently incapable of undertaking his or her job in the Authority or any other comparable employment

the contract of employment will end on the date that this decision is confirmed. It is not a dismissal and therefore there is no right of appeal.

For all ill-health retirements where application is made to the Local Government Pension scheme, the employee must be informed in writing of the decision that they are to retire on the grounds that he or she is permanently incapable of undertaking his or her current job or any other comparable employment within the Authority and of their right to appeal

#### 4.41 d) Dismissal

Where Occupational Health will not support retirement and alternative employment is not appropriate or is unavailable, the manager must make a decision whether to dismiss. The decision must be made by a Panel of the Governing Body (see section 4.28).

4.42. A final decision to terminate employment on health grounds would not **normally** occur until the employee's entitlement to all sick pay has been exhausted (including consideration of previous periods of absence). However, this does not preclude earlier agreed termination of employment. In all cases, managers must ensure that the needs of the service are not compromised by a decision to delay retirement or dismissal.

4.45 The decision will be confirmed in writing and the employee will be advised of his/her right of appeal against the decision to dismiss.

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## 5. SECTION 5: THE APPEALS PROCESS

### Appeal Arrangements

5.1. Appeals can be made against written warnings, final written warnings and dismissal. An appeal must be made in writing and addressed to the Designated Officer who dealt with the action or to Clerk to the Governors if it was a panel of the Governing Body, within 5 working days of the decision of the capability hearing. The letter requesting an appeal hearing must state clearly, and in full, the grounds on which the appeal is being requested, in relation to the findings and decisions confirmed in writing to the employee, following the capability hearing.

5.2. Employees have the right to be accompanied at any stage in the appeal process by a Trades Union Representative or other representative of their choice. A HR Advisor, who will act in an advisory capacity only, may accompany the officer or

panel hearing the appeal. The appeal decision will rest with the Appeal Officer or Panel.

- 5.3. The Designated Officer will arrange the appeal, which will be heard by a panel of Governors without previous involvement in the case. The employee will be notified, within 5 working days of receipt of the appeal request, of the date and arrangements for the appeal, which will be heard as soon as is reasonably practicable.
- 5.4. The principle of any appeal is that a higher level of management than at the original hearing should hear it.
- 5.5. The appeal hearing will not be a re-hearing of the whole case. However, if the employee contends that the earlier proceedings were fundamentally flawed, the Appeal Panel will have discretion to arrange for a re-hearing of the case at appeal stage. It will be for the employee and/or his/her trades union representative to state clearly why they believe the proceedings were fundamentally flawed if this is alleged.
- 5.6. The Designated Officer or Chair of the Panel of the Governing Body who made the original decision should present the response to the appeal.
- 5.7. The employee and management side must supply each other with any relevant documents not less than 3 days before the appeal date. New documents will not normally be admissible unless new information has come to light, which was not available at the original hearing. In exceptional circumstances, genuinely new evidence may become available, which the Appeal Panel may accept at the hearing.

#### **Grounds of Appeal**

- 5.8. The grounds of appeal may constitute one or more of the following:
  - a. The procedure - e.g. the procedure was not followed and a procedural failure affected the decision
  - b. The decision - e.g. the Designated Officer or previous panel did not come to the right conclusion because the evidence did not support a finding of incapability
  - c. The penalty - e.g. the penalty was too harsh taking into account the level of poor attendance and performance, the mitigating circumstances and/or the employee's previous service.

#### **The Appeal Hearing**

- 5.9. The Chair of the Appeal Panel will introduce all parties and state the purpose of the hearing. S/he will then summarise the order of proceedings and answer any issues with regard to procedure. Notes must be taken of the appeal hearing.
- 5.10. The employee or his/her representative begins by presenting his/her case based on the grounds of the appeal, calling any witnesses.

- 5.11. The Designated Officer/Chair of previous panel, the Appeal Panel and HR Advisor may ask questions of the employee and any witnesses, including any questions on the documents presented.
- 5.12. The Designated Officer/Chair of previous panel will then present the response, call any witnesses and use relevant documents.
- 5.13. The employee or his/her representative, the Appeal Officer and HR Advisor may then ask questions of the Designated Officer/Chair of previous panel and any witnesses.
- 5.14. The Designated Officer/Chair of previous panel will summarise his/her case, followed by the employee or his/her representative.
- 5.15. The appeal hearing will then be adjourned for the Appeal Panel to consider their decision.
- 5.16. The parties will be recalled and given the decision. The decision must state whether the employee's appeal has been upheld or not upheld, in full or in part. If the employee's appeal has been upheld in full or in part, the decision must also state whether the capability action is upheld or overturned. If the original capability action is overturned, the Appeal Panel must advise the employee whether a different course of action is substituted (although this cannot be more severe than that originally imposed). The Appeal Panel retains the right to overturn the decision(s) of the Designated/Chair of previous panel at the original capability hearing.

Within 5 working days of the hearing, the Appeal Panel will confirm, in writing, the appeal decision, the reasons for it. There is no further right of appeal.

The contents and operation of this procedure will be reviewed by management and the joint trade unions, every 3 years following its introduction. The first review will be undertaken one year after the formal implementation date.

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## **CAPABILITY: MANAGING SICKNESS ABSENCE PROCEDURE**

Agreed between the Council and the recognised trades unions.

Signed:

.....	Trish Haines	Chief Executive
.....	Anne Burton	Head of Human Resources
.....	Brian Jones	Joint Shop Stewards
.....	Rob Ketley	Education & Community Unions
.....	Paddy Bunch	Staff Side

Date: