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Date 06 June 2022

Dear Colleagues

### **Management of Sickness Absence Procedures and Advice and Guidance**

Please find attached a revised procedure which replaces the previously agreed Management of Sickness Absence policy. The document has been the subject of formal negotiation and consultation with the recognised Trade Unions and Professional Associations. I am pleased to confirm that the guidance and related material were agreed and adopted by the Schools' Joint Consultative Committee.

The model procedure is recommended to the Governing Boards of all Maintained Schools where the Local Authority is the employer and to the Governing Boards of those Academies, Aided and Foundation Schools which purchase the Human Resources Advisory Services. The basis of the recommendation is that the model Absence Management procedure provides a sound and fair framework for managing staff absence.

The final document is the product of significant joint working through SJCC with the shared focus of creating an environment which enables employees to maximise their attendance through solution focused support and effective dialogue. The procedure has been updated to address any issues that have been identified in implementing the previous procedure, as well as taking account of ACAS advice and case law.

There have been some significant changes from the previous procedures, and you should ensure that all staff and Governors responsible for the management of staff absence in the school are familiar with the new arrangements. To assist schools with the implementation of the new arrangements a flowchart describing the process has been included.

Alongside the new procedure we have produced an e-learning course on sickness absence management. Headteachers and School Business Officers who buy into any of the HR Advisory Service packages can access this for free. It provides an introduction

to managing sickness absence and using the new procedure. This training is available on the following [LINK](#)

The revisions include:

- Inclusion of updated sickness triggers for action under the Absence Management procedures as follows:
  - 12 school working days over 3 or more occasions in any rolling 12 month period
  - or
  - A continuous absence of over 20 school working days
  - or
  - Where there is other cause for concern on the level or pattern of absence over a longer period of time
- The points formula for identifying a concern in relation to intermittent absence has been removed and replaced by a trigger based on working days lost and occasions as above.
- The terminology has been updated to stages instead of steps. The informal Stage 1 of the procedures and the review meeting are informal but do require discussion at a meeting.
- The informal Stage, formal 1 and formal Stage 2 meetings should always be followed up with a review meeting after a period of monitoring.
- Stage 3 is a formal ill-health capability meeting.
- Once Stages 1 and 2 have been exhausted, there is no longer a requirement to consult with Governors before determining that an ill-health capability hearing is necessary. This should be discussed with the employee and the representative at a review meeting at the end of Stage 2 of the procedures.
- If, the outcome of an ill-health capability hearing is that the school can no longer continue to employ the employee the employee will be issued with notice of dismissal pending appeal. Any appeal can be heard during the notice period.
- General updating in terminology and references.

The Governing Board needs to formally adopt the procedure. It is essential to adopt the policy in its entirety and follow the requirements set out in the Advice and Guidance which provides more detail of the procedure as well as guidance to Governing Boards in respect of absence management matters. The Governing Board of any school wishing or intending to adopt an alternative Absence Management procedure must conduct its own formal consultations with trade union representatives and staff.

Once adopted it is important to share the procedure with staff and schools are advised to apply this procedure with immediate effect. Any staff who are currently being

managed under the previous procedures should be transferred to the new arrangements at an equivalent point in the new procedures at the earliest opportunity.

Any remaining copies of the former Management of Sickness Absence policy for schools should be destroyed/deleted to avoid confusion.

For any queries about the procedure, please contact the HR Advisory Service through [Schools.HRAdvisory@derbyshire.gov.uk](mailto:Schools.HRAdvisory@derbyshire.gov.uk).

All Consultants and Senior Consultants in the Schools' team can be contacted for support in the application of the procedure. Contact details are available for subscribers on [S4S](#)

Yours sincerely



Ian Stonehouse  
Senior HR Business Partner – Schools

**Restricted**

Date last updated	May 2022
Confirmed current	November 2022

# **DERBYSHIRE LA**

## **MANAGEMENT OF SICKNESS ABSENCE PROCEDURE**

*Swanwick School & Sports College*

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## 1. Background

The School is fully committed to the health and welfare of all employees.

It is implicit within these procedures that the Governing Board will, do all it can to support any member of staff who suffers from ill health.

Senior Leaders will encourage and support employee with health problems to seek help through occupational health, wellbeing services, or external sources. Employees will be encouraged to declare if they have a health condition or a disability, so they can access the necessary reasonable adjustments and support.

The aim of the policy is to promote high levels of attendance at work; however, it is not the intention of this sickness absence policy to deter those who are genuinely sick from taking appropriate sick leave.

The management of sickness absence procedure should be adopted in its entirety and schools should follow the requirements set out in the advice and guidance, which provides more detail of the process as well as guidance to Governing Boards in respect of sickness matters.

## 2. Scope

This School Absence Management Policy has been determined by the Governing Board of Swanwick School & Sports College School and is consistent with the Advisory, Conciliation and Arbitration Service (ACAS). It applies to all staff employed within the staffing complement of the School/Academy.

## 3. Objectives

The aim of this procedure is to provide support for staff in their absence and the School/Academy with a fair and consistent means of addressing sickness absence, so that employees can achieve and maintain an appropriate level of attendance at work. Regular Monitoring and Support underpins this Policy.

## 4. Responsibilities

### a. The Employer/ Governing Board will:

- promote a positive and supportive working environment
- enable individual employees' good attendance
- ensure fair and effective measures are in place to monitor and manage sickness absence
- provide access to occupational health, health and safety, and other advisory services

**b. The Co Headteachers and Senior Leaders will**

- seek advice from Human Resources when dealing with complex employee health issues
- encourage and support employees with health problems to seek help through occupational health, wellbeing services, or external sources e.g., counselling, talking therapies, physiotherapy, stress management.
- encourage employees to declare if they have a health condition or a disability, so they can access the necessary reasonable adjustments and support

**c. Human Resources, Occupational Health, Health and Safety can support schools by:**

- developing and providing model policies and procedures which promote, improve, and maintain the health, safety, and wellbeing of employees
- helping school leaders and their employees identify reasonable adjustments in the workplace where appropriate
- assisting in preparing rehabilitation plans, person specific risk assessments and Wellness Recovery Action Plans (WRAP) for employees returning to work after absence

**d. Employees are encouraged to:**

- adopt a healthy lifestyle and registering with a GP, dentist, and optician, and taking advantage of vaccination programmes for infectious disease prevention
- seek advice promptly about fitness to work when symptoms arise
- seek professional advice about staying healthy, managing ill health, and accessing appropriate advice, support, and treatment
- return to work as part of a supportive recovery programme
- proactively attend training/programmes to support their health
- share ideas and actively contribute to promoting health and wellbeing in their place of work
- raise issues that affect their health, safety, and wellbeing or that of their colleagues with their line manager
- and expected
  - to engage with management and occupational health to create a Wellness and Recovery Action Plan (WRAP) where needed
  - to engage with Occupational Health as required by management to support health and attendance at work or a return to work



## 5. Reporting sickness Absence

Employees have a responsibility to report their sickness absence as set out Below:

- Day 1 - Employee reports absence in line with agreed timescales and procedures.
- Day 4 - Employee updates manager on nature / duration of the absence.
- Day 8 - Employee, if still absent, provides a Fit Note.

Where an employee fails to comply with these timescales managers should contact the employee to discuss the absence.

## 6. Maintaining Contact

Schools/Academies have a responsibility to maintain contact throughout an employee's absence in order to provide a supportive framework to facilitate a successful return to work. Where an employee fails to contact their manager within the prescribed timescales, the Manager will contact the employee.

Employees also have a duty to keep their manager informed of any development whilst absent from work and should indicate, where possible, when they are likely to return to work. To maintain contact, an employee who is to be away from home for an extended period (two weeks or more) during sickness absence should inform their manager of their contact details before departure

In some circumstances and where agreed by the employee, it may be preferable for contact to be maintained via third parties. In any circumstances where an employee or their trade union informs the school that the direct contact is causing distress and requests contact via their trade union representative this should be accommodated. Any contact will be reasonable and sensitive and will not require employees to set work for classes or undertake any other contractual duties for which they are absent with ill-health unless the employee wishes to do so.

## 7. Return to work discussion

After any absence an approach from the manager, to ascertain recovery and explore any follow-up action, presents an informal opportunity to exercise interest in the welfare of employees

A return to work discussion will be held with every employee on their return to work after a period of sickness absence, regardless of the length of that absence. In most cases a brief friendly low-key discussion is all that is required. This discussion should take place on the day the employee returns to work. If it is not possible to do this, then the conversation should take place within 2 working days, the discussion should be appropriate to the circumstances and duration of the employee's absence. In appropriate circumstances, (see below) a short, simple record will be produced to ensure clarity about the nature of the discussion and ensure that the perceptions of both parties, as to any

conclusions, are understood. A recording form for this discussion is included as appendix 2

During your discussion the manager should:

- Ascertain whether the employee has made a full recovery.
- Discuss whether there are any adjustments either short or long term that are required to enable the employee to carry out the job role and, if so, record them on a return to work discussion form, with the appropriate timescales.
- Bring the employee up to date on work-related issues and developments that have occurred during their absence.
- If it is felt that the reason for absence requires medical investigation or if the level of absence is a cause of concern, then a referral to Occupational Health may be appropriate. This should be discussed and agreed with the employee.
- Where appropriate, remind the employee of where and how they can access independent Health advice such as a counselling service, physiotherapy, or access to work.
- Complete the return to work form discussion form where appropriate. The return to work discussion form should only be completed where:
  - The employee is having frequent periods of short-term intermittent absence.
  - Where a pattern of absence is of concern
  - The absence is covered by medical certification.
  - The employee is in the capability review process.
  - Adjustments to the job are required.

Where the form is completed then one copy should be retained by the manager and one copy given to the employee. There should be adequate information on the form to link it with the employee record. If the form is to be used the employee should be offered the opportunity to have a colleague or local trade union rep unless this would cause unreasonable delay.

## **8. Returning to work following long-term absence**

A return to work discussion will be held with every employee on their return to work following a period of long-term sickness absence. It may be necessary to meet prior to the return to work to fully explore any medical recommendations e.g. From a GP, medical specialist, or Occupational Health about any adjustments necessary to enable them to return to work. The discussion should be appropriate to the circumstances and a record kept to ensure that any agreements are understood and actioned in line with the timescales agreed. The employee should be offered the opportunity to have a colleague or local trade union representative unless this would cause unreasonable delay. The recording form as appendix 2 can be used to record the conversation which should include.

- Discussion about the reason for the absence and any on-going medical investigations or treatment plans
- Discussion about any on-going support the employee will need.
- Discussion about whether there are any adjustments either short or long term, including phased return which will be required to enable the employee to carry out the job role and, if so, the appropriate timescales.
- Where appropriate, reminding the employee of where and how they can access independent Health advice such as a counselling service, physiotherapy, or access to work.
- Bringing the employee up to date on work-related issues and developments that have occurred during their absence

One copy of the form should be retained by the manager and one copy given to the employee. There should be adequate information on the form to link it with the employee record.

## 9. Informal Action

Managers are responsible for monitoring the absence of their employees. The school/Academy considers that sickness absence is a concern when the following triggers are reached

- 12 school working days of intermittent absences which are over three or more occasions in any rolling 12-month period or
- A continuous absence of over 20 school working days or
- Where there is other cause for concern on the level or pattern of absence over a longer period of time.

The trigger points are pro rata for part-time employees working their hours over a reduced number of days. See advice and guidance for further information.

When an individual who has been identified as triggering the management of sickness absence procedure, the first step is to ascertain the circumstances of the individual's absence.

To do this the line manager/ supervisor needs to check the reason for the absences given on the self-certification forms, or Doctor's Certificates submitted by the individual, over the period or throughout their employment, if appropriate.

The purpose is looking to establish whether there are any common themes, persistent or continuing illness, or whether it is merely an unrepresentative period with no underlying cause or pattern.

If an employee's sickness absence is pregnancy related, the school must ensure that it complies with its duties towards pregnant employees. So, although the absence is taken into account for sick pay purposes, such absences would not normally be taken into account in respect of meeting triggers and progressing through the attendance

management procedure. However, it is good practice to meet with employees after a period of pregnancy related sickness absence to ensure that appropriate support is offered. A pregnancy risk assessment should be completed as soon as an employee notifies you that they are pregnant.

Once the above information is ascertained whether or not there are grounds to warrant calling the individual to an informal discussion should be considered.

Where employees meet the 'trigger' within the procedure, there are often sufficient grounds for concern to make an informal discussion necessary.

### **Informal Discussion - 1<sup>st</sup> Meeting**

Where, after consideration of an employee's absence record and taking into account the trigger points a meeting is felt necessary the employee will initially be asked to meet with the appropriate designated Manager for an informal discussion. Employees will have the opportunity for a trade union representative, friend, or colleague to be in attendance. The priority of each meeting will be to identify and initiate practical steps to support the employee's return to work or sustained attendance. It may be necessary to set expectations for improvement.

The purpose of the discussion will be to: -

- a) discuss the individual's absence or absence record.
- b) clarify the reason for the absence/ periods of absence and signpost or offer appropriate support. This may include issues in the employee's personal life or workplace issues.
- c) Discuss, if relevant, the impact of any medical condition or underlying health issues and how impact on attendance might be minimalised
- d) discuss how a disability may be impacting on attendance and any short-term or long-term reasonable adjustments that might improve attendance.
- e) discuss whether any reasonable adjustments would help the employee to return to work or improve their attendance at work. (See paragraph 17 – reasonable adjustments)

The following courses of action may be considered: -

- i. where relevant, inform the employee what reasonable adjustments have been agreed and/or seek further advice from Occupational Health regarding any reasonable adjustments
- ii. inform the employee that no further measures will be implemented as the manager is satisfied with the explanation of the necessity for the absence.

- iii. inform the employee that their absence may be monitored for the next 1-3 months depending on the circumstances. For long term absences this will be at least 1 month\*.
- iv. Where the absences are intermittent require, for a period of three months, the production of a NHS medical certificate from the first day of each period of sickness absence. (Costs incurred will be reimbursed in full by the school).

*\* Where a period of absence includes a school closure period it will be normal for absence to be monitored for a period of longer than 1 month taking into account the length of the school holidays.*

## **Informal Discussion – Review Meeting – Meeting 2**

If, following the monitoring period the long term absence is continuing or the relevant level of attendance is not met, and this is not the result of particular extenuating circumstances, then a further informal review meeting should be arranged as soon as practicable.

Where relevant the purpose of this further meeting will be to:

- a) discuss with the employee their absence record.
- b) discuss with the employee what steps the employee and/or the school can take to support them to return to work or to improve their attendance, including the consideration of reasonable adjustments on a temporary or permanent basis; (see Section 17) or review the current reasonable adjustments, if in place.
- c) consider current available medical and welfare information. If the employee's absence record suggests that a report from the Occupational Health Physician is warranted, and one has not yet been obtained, seek agreement for the employee to be referred. Where an employee refuses to undergo further medical examination they should be advised that a decision may be taken on the information already available.
- d) reinforce the expectation regarding attendance at work where appropriate.
- e) Following meeting 2 management should determine
  - whether temporary or permanent reasonable adjustments would enable an employee to return to work or sustain an acceptable level of attendance.
  - Whether a return to work following a period of long-term absence has been agreed
  - whether the possibility of redeployment (**in school**) should be considered
  - whether the absences are not genuine and disciplinary action may be appropriate.

- if none of the above are clear, consideration should be given to a further review period.

The following courses of action may be considered: -

- inform the employee that no further measures will be implemented as the manager is satisfied with the explanation of the necessity for the absence.
- inform the employee that his/her absence may be monitored for the next 1-3 months depending on the circumstances. For long term absences this will be at least 1 month\*.
- Where the absences are intermittent require, for a period of three months, the production of a NHS medical certificate from the first day of each period of sickness absence. (Costs incurred will be reimbursed in full by the school).
- Dependent upon the circumstances and/or introducing reasonable adjustments if appropriate consideration should be given to referring the employee to the School's Occupational Health Provider.

*\*Where a period of absence includes a school closure period it will be normal for absence to be monitored for a period of longer than 1 month taking into account the length of the school holidays-*

## 10. Referral to Occupational Health

Guidance should be sought from Occupational Health as part of the management of sickness absence procedures. The advice provided by Occupational Health will include recommendations in relation to reasonable adjustments and may include advice on the ability of an individual employee to participate in the attendance process.

At any stage formal or informal, where occupational health advice has been sought, it would normally be necessary to delay a meeting under the absence procedures until the report has been received

## 11. Long-Term Absence

The Governing Board will take, as far as is practicable, reasonable measures to assist any employee who has been on long-term absence to return to work at the earliest opportunity. In this respect progress from informal action to formal absence management procedures is not seen as automatic. The first priority is to agree an expected date for return and an appropriate work schedule including reasonable adjustments see Section 17. The Governing Board will, however, be mindful of its responsibilities and obligations to pupils and other staff as well as its duty to ensure the effective and efficient management of the school. If, therefore, an expected date for return and appropriate work schedule is not agreed the procedure will move from Informal action to formal absence management procedures.



Employees are sometimes off work for significant periods of time due to ill health. The procedures outlined in the management of sickness absence procedures are intended to enable a school to address these situations in a supportive way while recognising they cannot be prolonged indefinitely. Following a period of support and review the Governors may feel they wish to consider dismissing an employee on the grounds of ill-health capability. There may be a number of reasons for this, including the need to attract a permanent replacement and minimise ongoing disruption to classes. While there are no specific rules about the length of time that should elapse before Governors consider dismissal on the grounds of ill-health capability, the key consideration is whether, in the circumstances, the Governors could reasonably be expected to wait any longer. Governors should note they do not have to wait until any sick pay entitlement has been exhausted, to consider dismissal. It must also be emphasised that dismissal is not obligatory once any sick pay entitlement has been exhausted. Dismissal on the grounds of ill-health, following a long-term absence would only take place before the expiry of sick pay where there is a clear diagnosis that sufficient improvement for a sustained return to work will not occur within the foreseeable future. Paid sickness leave is intended to provide for a period of recovery.

- **Equality Considerations**

Governors need to be aware that when dealing with absence due to the ill-health of an employee, they must have regard to their obligations under the Equality Act 2010. This Act places a duty on employers including Local Authority's and Governing Boards not to discriminate against current employees on the grounds of disability. To enable a disabled person to do their job, Governing Boards may have to make reasonable adjustments to their employment arrangements or premises if substantial disadvantage to a disabled person exists. An employee who may be defined as "disabled" under this act could also experience long-term absence.

- **Dismissal Considerations**

Dismissal on any grounds will have a significant effect on the individual concerned, not least of which is potential future employment in a similar capacity. It is therefore important that all options are explored, and governors give serious consideration as to the appropriateness and consequences of their actions relating to long-term sickness.

- **Right to Representation**

Employees may choose to be represented by a Trade Union or Professional Association representative, or friend, at any or all stages of the procedure.

- **Decision-making in relation to Long-term absence**

It is recommended that employers give careful consideration to the following factors, to ensure the fairness of their decisions: -

- Just how much disruption is being caused by this absence? Is there an immediate crisis; or could the organisation afford to continue for some time without a replacement, for example, with some reorganisation?
- In the view of the individual's General Practitioner, or of the Occupational Health Physician, when will a return to work be possible? Will there be a full recovery or will a return to the same work be inadvisable?
- Could the employee return if some assistance were provided? Could some reorganisation or redesign of the job speed up a return to work?
- Is alternative, lighter or less stressful work available, with retraining if necessary?
- Could reorganisation of the work group produce a more suitable job?
- Has early retirement, been considered by the Governors and employee? For employees in the Local Government Pension Scheme, has the employee discussed with Occupational Health whether an application for ill-health retirement under the Local Government Pension scheme could be considered. In the case of teachers, whether an application has been submitted and decided by the Teachers' Pension Agency.
- Have all possibilities been discussed with the employee and their representative?

- **Documentation**

It is important that appropriate documentation is kept at all stages of the procedure, particularly the agreed outcomes of all meetings. The agreed outcomes of all review meetings will be communicated, in writing, to the employee as soon as practicable after the review meeting.

- **Medical Information**

Where an employee is absent from duty for a lengthy period owing to certificated ill-health or injury and regardless of sickness or injury pay entitlement, the situation should be reviewed once the position is known, at early and regular intervals. This is to ensure that any assistance required by an employee can be offered promptly and consideration given to possibilities of return to suitable alternative employment.

To this end, employees absent owing to sickness or injury should be referred by the school for OH advice, within a three month period from when the absence started.



- **Teachers**

In accordance with DfES Circular 4/99 if a teacher is suffering from an illness referred to in the Circular e.g., a stress related disorder such as anxiety or depression, Governing Boards and Headteachers have the power to suspend a teacher from duty, on full pay, but only on the advice of an appropriately qualified medical adviser. The advice of the Schools HR advisory service should be sought before this course of action.

## **12. Formal Absence Management Procedures – Meeting 3**

Where an employee has been continuously absent or where there has been no or insufficient improvement of attendance following at least two monitoring periods of informal action a formal meeting at Stage One of the Formal Absence Management Procedures will be held. Governors are responsible for the management of staff absence in the school, However, as this is an operational matter this role would normally be delegated to the headteacher. It would not be appropriate for the absence management procedures to be delegated where the procedure is being applied to the Headteacher themselves. In these circumstances the role of the Headteacher or relevant SLT member as outlined in the procedures can be delegated to a single Governor normally the Chair of Governors.

### **Stage 1 – first formal meeting**

The first formal meeting (Meeting 3) will be held with the Headteacher or relevant SLT member and the employee.

The employee will be given a minimum of 5 working days' notice, in writing, of a Stage 1 meeting held under this procedure.

The employee may be accompanied by a friend, colleague, or trade union representative if they choose.

At the meeting considerations will include:

- The employee's absence record.
- The reasons for absence.
- Up to date medical information provided by the employee.
- Referral to Occupational Health, physiotherapy, or counselling where appropriate.
- Temporary or permanent adjustments where these would allow an employee to return to work. See Section 17
- Setting a review period of 1 to 3 months, dependent on circumstances. A review period of at least 1 month\* will be normal for long-term absence.

Other agreed action may include:

- i) Agree appropriate programme of support for anticipated return to work or

- ii) Set an improvement target and timescale for the required level of sustained attendance to be achieved.
- iii) Consideration of ill health retirement.

On conclusion of the meeting a letter warning that failure to attain/maintain the required level of attendance may lead to consideration by the Headteacher/Governing Board of whether the employee's continued employment at the school can be sustained will be issued.

*\* Where a period of absence includes a school closure period it will be normal for absence to be monitored for a period of longer than 1 month taking into account the length of the school holidays. Following a lengthy period of school holidays, it may be appropriate to meet at the beginning of a new term outside of the formal procedures to re-establish contact and assess progress before a formal review of progress is made under the formal absence management procedures.*

### **Stage 1 Review Meeting – Meeting 4**

At the end of the review period there will be a review meeting with the employee (Meeting 4) which should include:

- A review of the actions taken at Stage 1 (Meeting 3)
- Steps the employee has taken to improve his/her attendance.
- Current available medical information, including information from the employee and any Occupational Health report where appropriate.
- Reasonable adjustments if these would help the employee to return to work or improve their attendance at work.
- Referral to Occupational Health where this has not previously been done.
- Emphasis of the expectation regarding attendance at work where appropriate
- Consideration of an extension of the review period where attendance has improved but there are still concerns about the employee's overall pattern of attendance, or where further information is awaited
- Removal from the process where attendance has improved to a satisfactory level or the employee has returned to work.
- Where an expected date of return from Long-term absence in the foreseeable future has not been agreed, or where attendance has not improved within the agreed period of monitoring a meeting at Stage 2 of the formal absence management procedures will be arranged.
- Consideration of whether the employee wishes to pursue ill-health retirement under their pension scheme and the next steps

### **Stage 2 - Meeting 5**

The stage 2 meeting (Meeting 5) will be held with the Headteacher or relevant Senior Leadership Team member and the employee where there has been continued absence for at least one month since Stage 1 review meeting, OR there has been no or insufficient improvement of attendance within the agreed period of monitoring

The employee will be given a minimum of 5 working days' notice, in writing, of any Stage 2 meeting held under this procedure.

The employee may be accompanied by a friend, colleague, or trade union representative if they choose

At the meeting considerations will include:

- A review of the information in relation to the employee's sickness.
- A review of the outcomes of all earlier meetings
- Agreeing an appropriate programme of support for anticipated return to work
- Set an improvement target and timescale for the required level of sustained attendance to be achieved
- It would be usual for a further referral to occupational health to be undertaken
- Reasonable adjustments where appropriate. See Section 17
- Redeployment where the Occupational Health Physician has stated the employee is fit for alternative duties.
- Whether the employee wishes to pursue Ill health retirement where appropriate.
- Setting a further review period and advising the employee that if their attendance at work does not improve or there is not a return to work within a set timescale (1 to 3 months, dependent on circumstances. At least 1 month\* will be the normal review period for cases of Long-term absence),

On conclusion of the meeting a final warning letter will be issued stating that failure to attain/maintain the required level of attendance may lead to consideration by the Headteacher/Governing Board of whether the employee's continued employment at the school can be sustained

At the end of the review period (minimum 1 month since the Stage 2 Meeting) there must be a further, possibly final review meeting with the employee.

*\* Where a period of absence includes a school closure period it will be normal for absence to be monitored for a period of longer than 1 month taking into account the length of the school holidays. Following a lengthy period of school holidays it may be appropriate to meet at the beginning of a new term outside of the formal procedures to re-establish contact and assess progress before a formal review of progress is made under the formal absence management procedures.*

## **Stage 2 Review Meeting – Meeting 6**

At the end of the review period there will be a review meeting. The employee will be given a minimum of 5 working days' notice, in writing, of the formal review (Meeting 6) meeting held under this procedure.

The employee may be accompanied by a friend, colleague, or trade union representative if they choose

The Stage 2 Review meeting should include:

- A review of information about the employee's sickness.
- A review of the outcomes of all earlier meetings.
- A second referral to OH if not done already. This report should be received before any capability hearing
- A discussion on the potential implications of their continued level of absence, which may lead to a Capability Hearing.
- Consideration of an extension of the review period where attendance has improved but there are still concerns about the employee's overall pattern of attendance, or where further information is awaited.
- Removal from the process where attendance has improved to a satisfactory level or the employee has returned to work which may include the implementation of reasonable adjustments

### **Stage 3 – Dismissal Hearing**

A hearing should be arranged if attendance at work has not improved to the required standard or if a return to work date has not been agreed following the review meeting of stage 2.

If the employee is an accredited TU Representative, it is necessary to discuss/inform the full-time district or area official before action is taken.

### **13. Dismissal Procedures**

If it becomes necessary to refer the case for consideration of potential dismissal an agreed dismissal procedure will be followed and will include:

#### **a) Delegation of the responsibility for hearing the case to: -**

- i. the Headteacher - if the procedure so far has been conducted by another SLT member. It is advised that even where the Governing Board has decided the Headteacher will make this decision at least one Governor is included in the process, if dismissal is a likely outcome, as allowed by the Staffing Regulations 2009
- ii. a Governors' Committee, where the Headteacher has conducted the procedure to this point. The Committee should consist of 3 Governors and should not include any governor who has been involved in any previous stage of the procedure.

#### **b) Notice of Ill-health Capability Hearing**

The employee should be advised in writing of the requirement to attend a formal hearing.

At least ten working days' notice will be given for the hearing and documentary evidence including all OH reports, will be provided within at least five working days before the hearing.

### **c) The Capability Hearing**

The hearing will be chaired by the Headteacher/Committee in accordance with delegations outlined above.

- The Headteacher/SLT member or nominated representative will present the case.
- The employee and their representative will have the opportunity to ask questions. The Headteacher/Committee will have the opportunity to ask questions.
- The employee and/or representative will present their response.
- The SLT member/Headteacher or nominated representative will have the opportunity to ask questions. The Headteacher/Committee will have the opportunity to ask questions.
- The SLT member/Headteacher or nominated representative will sum up.
- The employee and/or representative will sum up.
- The person presenting the case, the employee and representative will withdraw.
- The Headteacher/Committee will consider all the evidence and decide the outcome. The options will be:
  - (1) A further review period with any appropriate warning (repeat of the review meeting at stage 2)
  - (2) Dismissal.

The outcome of the hearing and the right of appeal will be communicated in writing to the employee within forty eight hours. If it is determined that the employee of a maintained school should be dismissed, the governors, will inform the Local Authority within twenty-four hours.

### **d) Appeal**

The employee has a right of appeal. The employee should do so in writing within 10 working days from the receipt of the written confirmation of the relevant decision.

The employee, or their named Representative, should set out clearly the grounds of the appeal. The employee will receive a reply to the appeal letter within 5 working days, acknowledging the registering of the appeal, which will take place as soon as practicable.

The meeting will be held within 15 working days (or by mutual agreement as soon as practicable thereafter) of the receipt of the formal notice of appeal. The employee will be informed of the place, date, time, and purpose of the meeting with a minimum of 10 working days' notice. Any documentary evidence on which either party wish to rely, will be provided to the appeal hearing and employee at least 5 working days prior to the appeal.

The appeal will be heard by 3 governors who were not members of any Governors' Committee and who have not been involved in any previous stages of the procedure.

The employee will be entitled to attend before the Governing Board with their Professional Association/Trade Union representative, colleague, or friend if they so wish to present their appeal.

The Governors will consider all the evidence and decide the outcome of the appeal. The options will be:

- i. To uphold the appeal and advise on a further review period with any appropriate warning.
- ii. Not to uphold the appeal and uphold the decision to dismiss the employee.

The decision of the appeal to governors will be final and communicated in writing to the employee within forty eight hours. The format of the appeal hearing will be the same as the capability hearing above but the order of business in the appeal hearing may begin with the appellant stating their case, rather than the Headteacher/ chair of the first committee, depending on the grounds of the appeal.

**Advice needs to be sought from the Local Authority prior to any dismissal from a maintained school.**

#### 14. III- Health Retirement

Any decision regarding access to pension due to ill-health is separate to the decision taken to dismiss the employee

Where, in the opinion of an independent registered medical practitioner, an employee who is a member of the Local Government Pension Scheme meets the criteria for ill health retirement, it will be the responsibility of the employer e.g. The Local Authority or the Trust. to consider this opinion, where this is available before making a final decision on dismissal.

There is a right to appeal against the decision in relation to the release of benefits on health grounds. This should be in accordance with the appeals process provided by the relevant pension Scheme.

## 15. Meetings

Further guidance on setting up meetings with trade union representatives is attached as Appendix 5

Any reference to “days” or “working days” within this Policy or the Advice and Guidance shall mean Monday to Friday normally during term-time, excluding bank holidays. With the agreement of all parties, it may be possible to expedite the process.

Neither party is allowed to electronically record meetings held as part of this procedure. The use of recording equipment by either party without consent may constitute a disciplinary matter

## 16. Disability under the Equality Act 2010

Under the Equality Act a person is disabled if they have a physical or mental impairment which has a ‘substantial’ and ‘long-term’ negative effect on person’s ability to carry out normal daily activities. ‘Long-term’ means that the condition must last, or be likely to last, for 12 months or more, or is likely to last for the rest of the life of the person affected. ‘Substantial; means more than minor or trivial, for example it takes much longer than usual to complete a daily task like getting dressed.

An employee covered by the Equality Act 2010, can take disability leave if it is **specifically** for appointments for assessment, treatment, rehabilitation, or training for a condition covered by the Act.

Reasonable adjustments will be considered for employees where relevant, in accordance with the Equality Act 2010.

Consideration should be given to whether a reasonable adjustment can be made in order to assist the employee to return to or remain at work at any stage. This should include careful consideration of whether the ‘triggers’ for action in relation to levels of absence should be extended. However, this should not automatically be the case. Using a longer period of absence before triggering a meeting could mean that the opportunity to explore potential adjustments and strategies to improve attendance, identified through formal discussion and reference to Occupational Health advice, is delayed.

The triggered meetings also provide an opportunity to consider the effectiveness of any approaches implemented, and review of these where appropriate. The focus for both employer and employee should be on seeking to enable the employee to maintain attendance. Extending the period before considering dismissal on the grounds of poor



attendance may still be appropriate for an employee with a disability but taking account of the specific factors in each individual case.

## 17. Reasonable adjustments

Reasonable adjustments that a school will need to consider on a temporary or permanent basis may include but are not limited to -

- **Adjustments to premises.** There might be structural or other physical changes such as widening a doorway, providing a ramp, or moving furniture for a wheelchair user which can be undertaken.
- **Allocating some of the person's duties to another person.** Appropriate duties might be reallocated/swapped/re-arranged with another employee if the individual is currently having difficulty in doing them because of the health.
- **Altering the person's working hours.** This may include allowing the person to work more flexible hours or to enable additional breaks to overcome fatigue arising from the health concerns or agreeing a change to the person's hours to fit with on-going regular treatment. ***It is important that the school does not attempt to impose any reduction in hours/pay***, any proposal should arise from positive dialogue with the employee and their representative to seek a mutually suitable and amicable agreement.
- **Allowing the person to be absent during working hours for rehabilitation, assessment, or treatment.** The employee may need time off to receive physiotherapy or psychoanalysis or undertake employment rehabilitation. A similar adjustment might be appropriate if a condition worsens or if an individual needs occasional treatment.
- **Giving the person, or arranging for them to be given, training.** This could be training in the use of particular pieces of equipment to meet their needs.
- **Equipment.** A school might have to provide special equipment. Examples are a specific chair to provide support to someone with a back problem, an adapted keyboard for someone with arthritis, or specialist sound system for someone with a hearing impairment.
- **Modifying instructions.** The way instruction is normally given to employees might need to be revised
- **Providing a reader or a sign language interpreter.** For example, for reading information to a visually impaired person at particular times during the working day.



- **Seeking support/provision/funding from agencies/charities** to provide a support worker or specialist equipment.
- **Considering modification of the implementation of employment policies**, for example disciplinary, redundancy, appraisal where relevant
- **Changing the location, the person is required to work within school.** This could include ensuring that a teacher with mobility difficulties that prevents them from using stairs can hold all their lessons in a classroom on the ground floor.
- **Adjustments to the “triggers” for action** for moving through the management of sickness absence procedures

## 18. Abuse of the Sickness Absence Procedures

Abuse of the sickness scheme will be dealt with under the School/ Academy’s disciplinary procedure.

## 19. Confidentiality

At all times Managers will ensure that all matters referred to in this procedure are handled sensitively and held confidential.

Administrative systems have been reviewed to ensure that personal information relating to individual employees is treated confidentially. Access to medical records, including medical certificates, reports, individuals' absence records and meeting notes will be restricted to those employees who require such access to carry out their legitimate and authorised duties necessary for effective management. Designated managers who have access to an individual's medical and absence records have the responsibility to ensure that such information remains confidential and is only disclosed to those who have a genuine need for such information.

## 20. Monitoring & Review

The Governing Board will monitor the operation and effectiveness of this policy & procedures annually. In developing, applying, and evaluating this policy the school/ academy will monitor the impact on staff by reference to their protected characteristics and the outcomes will be provided to unions.

## Reporting sickness Absence

Employees are required to notify the school of any absence caused by sickness or injury.

### (a) Day 1

- (1) The employee should notify the school, in person, of their absence and the nature of their illness. The information necessary to complete Part 5 of the Self-Certification Form will be required. The employee should endeavour to ensure that their absence is reported before the start of the working day on the first day of absence.
- (2) All employees should be aware of the name of the person to be contacted to report their absence. Ideally, this should be one person although this will not always be possible. Texting managers is not normally acceptable practice, however, there may be occasions when this is the most practical option, e.g., if they are contacting the school outside of normal working hours. However, this should be followed up as soon as possible with a telephone call. The practice of asking a colleague to ring the contact officer on their behalf should be discouraged as it can result in late notification, incomplete or distorted information and /or, at worst, a failure to report absences.

Managers should ask if the absence is due to industrial injury or disease. If so, this should be noted on the Self-Certification Form.

Employees who are employed on a part-time basis or who have irregular working patterns should report their absences in accordance with the process agreed by the School/ Academy Governing Board.

Managers are responsible for ensuring that the absence is reported /recorded into the appropriate pay system.

### Day 4

- (3) If the absence continues after the third day (including non-working days), the employee will ensure further notification is provided as to the nature and the probable duration of the illness. Where day 4 falls on a non-working day, the employee should contact the school on the first available day after this.

The contact officer should inform the employee of the need to produce a medical certificate if the absence continues beyond seven days.

## **(b) Return to Work - Self-Certification**

If an employee returns to work within seven days, they are required to complete Employee Self-Certification Statement, a copy of which they can obtain from the Governing Board or its representative.

The information contained in the Employee Self-Certification Statement is confidential and should therefore be treated appropriately.

It is essential that the form is completed in full and that the nature of the illness or injury is stated, otherwise payment of sick pay may be withheld. (Comments such as "feeling poorly" should not be accepted). If the employee feels unable to divulge on the form the nature of their illness, they should speak to a designated manager who can endorse the form to the effect that they are satisfied with their explanation, and in these circumstances, it will not be necessary to give the nature of illness or injury on the form.

Completion of the Self-Certification Form applies to all periods of sickness absence including single days. The school should retain the self-certification form securely as part of the employee record.

## **(c) Day 8 - Doctor's Statement of Fitness for Work (Fit Note)**

If the employee is still absent on, or after, Day 8, they will require a doctor's certificate. A certificate covering the absence from Day 8 must be sent at the earliest opportunity to the employee's normal administrative base after they have filled in those parts of the Statement which may require completion. The school will, by return, send the employee the Self-Certification Form, which they must complete and return at their earliest convenience. Failure to return the form may be classed as an abuse of the scheme and may lead to sick pay being withheld

Under normal circumstances a doctor should not back-date a medical statement, however there are circumstances where this can be done, i.e., where an employee has an ongoing medical problem and has been unable to obtain an appointment to see their GP, then a retrospective Fit Note can be issued.

If there are any queries on state benefits at any stage of absence, the employee should be encouraged to seek help from an appropriate organisation e.g., job centre plus, citizens advice service.

The school should return the original Fit Note to the employee and retain a copy securely as part of the employee record.

**Appendix 2**

**PERSONAL AND  
CONFIDENTIAL**

**Return to Work Discussion**  
*(To be complete after periods of sickness absence)*

Name: Employee No.	Post:	Date of Discussion:
Reason for Recorded Absence:		
Absence Period <i>from</i> ..... <i>to</i> ..... No. of working days lost .....		
Action/Monitoring/Comments:	<p style="text-align: center;"><b>Checklist</b> (✓ where applicable)</p> <p>Welcome back <span style="float: right;"><input type="checkbox"/></span></p> <p>Ascertain recovery <span style="float: right;"><input type="checkbox"/></span></p> <p>Need for any adjustments <span style="float: right;"><input type="checkbox"/></span></p> <p>General update <span style="float: right;"><input type="checkbox"/></span></p> <p>4<sup>th</sup> day contact established <span style="float: right;"><input type="checkbox"/></span></p> <p>Need for Employee Review Meeting <span style="float: right;"><input type="checkbox"/></span></p>	
Name of person conducting discussion: .....		
Position: ..... Signature: .....		
Trade Union Representation                      YES <input type="checkbox"/> NO <input type="checkbox"/>		
Name: .....                      Union .....		

Copy to:      Employee

## CONTRACTUAL SICK PAY ENTITLEMENTS

### 1. Teachers

The entitlements set out in Sick Pay Scheme Section of the Burgundy Book will apply, augmented by any additional entitlements (b) as set out in this policy.

#### a) Burgundy Book Sick Pay Scheme Section Extract

Provided the appropriate conditions are met, a teacher absent from duty because of illness (which includes injury or other disability) shall be entitled to receive in any one year sick pay as follows:-

During the first year of service – full pay for 25 working days and after completing four calendar months' service, half pay for 50 working days.

During the second year of service – full pay for 50 working days and half pay for 50 working days.

During the third year of service – full pay for 75 working days and half pay for 75 working days.

During the fourth and subsequent years of service – full pay for 100 working days and half pay for 100 working days.

This scale is to be regarded as a minimum and the Authority may extend its application in any individual case.

For the purpose of the sick pay scheme, “service” includes all aggregated teaching service with one or more local education authorities.

Currently Derbyshire County council uses its discretion to also recognise “service” with academies in relation to the provision of sickness pay.

#### b) Extensions of the allowances in (a) above for teachers with long service (full and half pay not to exceed 200 working days in total):

I. 10 years full-time service but less than 20 years – additional 23 working days at full pay

II. 20 years' full-time service but less than 30 years – additional 46 working days at full pay

III. 30 years' full-time service and over – additional 69 working days at full pay

## 2. Support Staff

Entitlement to sickness leave with pay is calculated as follows:

During first year of service 1 months' full pay and (after 4 months' service) 2 months' half pay.

During second year of service 2 months' full pay and 2 months' half pay.

During third year of service 4 months' full pay and 4 months' half pay.

During fourth- and fifth-years' service 5 months' full pay and 5 month's half pay.

After 5 years' service 6 months' full pay and 6 months half pay.

Calculations of Continuity of Service for purposes of sick pay entitlement: If there is less than a 6 week break from a previous employment with Derbyshire County Council this shall be counted as continuous service. The payment of sick pay to those below the minimum earnings level for National Insurance Contributions will be made where applicable.

## Guidelines on Phased Returns to Work

### Reasonable Adjustments/Full Duties

An employer has a duty to make reasonable adjustments to the workplace or to working conditions for employees who are covered by the Equality Act.

However, an employer may also make temporary adjustments to the workplace or working conditions for employees who are not covered by the Act, but who require some modifications to be made on a temporary basis in order to enable them to return to work. These may include the provision of specialist equipment, a temporary reduction in additional responsibilities or a temporary transfer to a more convenient working location. Occupational Health Service staff are able to carry out workplace assessments and provide appropriate advice to schools.

In recent years Occupational Health professionals have also identified that, in some circumstances, phased returns to work are a useful way of assisting employees to return to work. A phased return can help employees adjust to a working routine, whilst at the same time ensuring that they are, in fact, fit enough to return. Pursuing this option often enables employees to return to work earlier than if they had been allowed to return only when they were capable of performing the full duties of the post. However, cases should be considered on an individual basis and discussion and agreement should take place with the employee before a phased return is implemented. The following are recommended guidelines: -

- A phased return should be on the recommendation of Occupational Health practitioners or GP or another medical practitioner
- The GP or Consultant must provide a medical certificate which states that the employee “is fit to return on a phased basis over .... weeks.” The weeks will be specified
- Phased returns are, in most cases, for a relatively short period - however the advice of the GP or consultant should be followed
- The working pattern should be agreed by the headteacher acting with the approval of the governing board of the school, the employee prior to implementation. The length of the phased return and work pattern agreed in each case will be based on the needs of the individual and the operational limitations of the school and can be unique in each circumstance. Any variation from the recommendation of the GP or consultant should be agreed between the school and the employee
- In the event of failure to reach an agreement a further meeting with trade union and hr may need to take place.

- Employees receive full pay for time/days worked and occupational sick pay for non-working time/days. Guidance on sick pay entitlements should be sought from HR.
- The payroll provider will need full details of the phased return including the hours worked, and notification if the phased return will continue into the next pay period.
- Towards the end of the agreed phasing period the employee should confirm their intention to return to full-time working. In some exceptional circumstances, and on the advice of their GP and Occupational Health, the agreed phasing period may be extended, subject to the agreement of the headteacher.
- Where the recovery requires the employee to work reduced hours over a significant period of time rather than a “phased” return to the full contracted hours this should be considered as a reasonable adjustment. A reduction of contractual hours would require mutual agreement between the employer and the employee, including the duration of the arrangement, when and how it will be reviewed. See section 17 for further advice on other reasonable adjustments which may need to be considered.
- It is good practice to review the progress of employees on phased returns. This can be done on a formal or informal basis during, and at the end of, the process.



### **Guidance on the arrangement of formal meetings with staff Involving Union/Professional Association representatives**

The arrangement of a formal meeting with a member of staff is a fairly occasional event. This will particularly be the case in small schools.

Such meetings are likely to be in connection with one of the Human Resources policies, e.g., Disciplinary Policy, Absence Management, Competence Procedure. When the need arises to meet with a member of staff in connection with such processes or to arrange a hearing, there is an entitlement for them to be accompanied by a chosen representative. This representative will usually be from one of the trade unions or teachers' professional associations.

Senior Leaders are advised to ask for the name/organisation of the representative, where possible, and make contact to ascertain their availability before setting dates and times. It can be very unsettling and disruptive to relationships, at an already difficult time, when a date is set and then has to be postponed owing to the unavailability of the representative: -

The legal position is as follows (The Employment Relations Act 1999 Section 10, paragraph 4)

“If:

- (a) a worker has a right under this section to be accompanied at a hearing,
- (b) their chosen companion will not be available at the time proposed for the hearing by the employer, and
- (c) the worker proposes an alternative time which satisfies subsection (5),

the employer must postpone the hearing to the time proposed by the worker.

5 An alternative time must—

- (a) be reasonable, and
- (b) fall before the end of the period of five working days beginning with the first working day after the day proposed by the employer”.

Unions/associations are likely to quote this when they are presented with a date they cannot accommodate. The school will have no choice, at this point, but to make new arrangements. This can cause considerable inconvenience for everyone concerned. A further difficulty is likely to be caused because the legal requirement calls for the representative to set a new date, within 5 days, and this will probably not be convenient for other people involved.

It is best to try and avoid a difficult period where parties struggle to set a mutually suitable date, colleagues (and sometimes pupils) in service may suffer because of the delay and resentment may develop.

School leaders need to consider the perspective of the employee and their representative. Most employees would not expect to be called to a formal meeting, or any other management process, outside of working hours. The representatives themselves are sometimes employees of the union/association, who have scheduled working time, and branch officials are allocated particular times away from their 'day job' for their union duties. They may struggle to obtain release at other times.

It has been possible, on occasions, to arrange such hearings/meetings in the evenings but Headteachers should expect to be challenged if making such arrangements. If at all possible, meetings in working hours are also preferable because the participants are more likely to be able to contribute effectively, than at the end of the day.

When informed that a representative cannot attend a meeting and a considerable number of other stakeholders have been assembled (Headteacher, witnesses, HR Consultant, minute taker), Headteachers have sometimes challenged the union to send a different representative to facilitate the process and save the impact of further delay on the employee. This is not easy for some associations to accommodate. They may have an agreement where only an individual union representative is authorised to receive the details of the case and to act on the member's behalf.

Headteachers are advised to take these factors into consideration, in order to enable arrangements to be made in co-operative fashion. Alongside this guidance there has also been correspondence to the unions/associations seeking a similarly collaborative approach from their representatives. For instance, in recognising the requirement to co-operate with the process and offer a reasonable number of possible dates when meetings are needed. We reminded the association that just asserting their rights can foster a defensive response.

The need for formal meetings invariably means that there are challenging situations to manage, not just with the employee concerned but also possibly colleagues and the wider school. The 'tone' of all actions in connection with progressing the issue of concern will play a large part in minimising disruption, negative relationships, and the ability to re-establish normal working practice afterwards.

Headteachers may wish to contact their HR provider, if they are having difficulty in working with the unions on these matters.



### Dying to Work Charter

Derbyshire County Council have signed-up to the Dying to Work Charter which sets out their commitments to employees who are diagnosed with a terminal illness.

The charter sets out an agreed way in which employees will be supported, protected, and guided throughout their employment following a terminal diagnosis.

It is recognised that terminal illness requires support and understanding and not additional and avoidable stress and worry.

Terminally ill workers will be secure in the knowledge that they will be supported following their diagnosis and it is recognised that safe and reasonable work can help maintain dignity, offer a valuable distraction and can be therapeutic in itself.

Employees will be provided with the security of work, peace of mind and the right to choose the best course of action for themselves and their families which helps them through this challenging period with dignity and without undue financial loss.

Derbyshire County Council support the TUC's Dying to Work campaign so that all employees battling terminal illness have adequate employment protection and have their death in service benefits protected for the loved ones they leave behind.

The Schools HR Advisory Service is able to provide advice and signpost support for Headteachers and Governors to ensure that the charter commitments are fulfilled consistently.

Please contact: [schools.HRadvisory@derbyshire.gov.uk](mailto:schools.HRadvisory@derbyshire.gov.uk) for more information or visit the HR Advisory Service [S4S resources page](#).