

John Scurr Primary School

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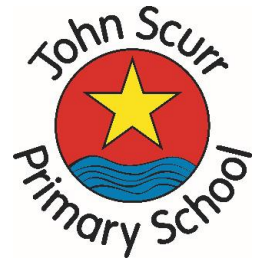
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Attendance Management – Guidance for Headteachers

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1. OVERVIEW

- 1.1 The aim of this guidance is to provide practical advice and guidance to Headteachers about the issues they need to consider and actions they may need to undertake when managing sickness absence. The Headteacher should always seek support from their Human Resources provider when implementing the formal stages of this procedure.

2 INTRODUCTION

- 2.1 In order to manage sickness absence, it is important to understand the nature of the absence(s). This should include whether the absence may be linked to personal or workplace issues, to distinguish between short-term and long-term absences, and whether there is an underlying condition. This will ensure that appropriate action is taken.
- 2.2 When an employee is absent from work through sickness, the absence may be short term in nature e.g. a bad cold from which they can return after a brief period of absence, or there may be a longer term absence where the employee may require a higher level of support.
- 2.3 The procedure recognises that sickness absence may either be categorised as:
- Short-term (short but persistent and apparently unconnected absences);
- or
- Long term (either a period of absence of 4 continuous weeks or more, or short, frequent periods of absence which are related).
- 2.4 Long-term absence which is on-going may be due to an underlying medical condition of an acute or chronic nature, which may be a serious, continuing or worsening illness or disease. Such absence may be disability related (as defined within the Equalities Act 2010), which will usually be confirmed by the School's Occupational Health provider.
- 2.5 Most sickness (long or short-term) should be treated as genuine unless there is evidence to suggest otherwise, in which case it may be a disciplinary matter. Should there be grounds to believe that an employee's sickness absence is not genuine, then Human Resources Advice should be sought before any action is taken.

- 2.6 Regardless of the nature of the sickness absence it should always be monitored and managed appropriately. High absence levels affect everyone in the school and the effects of this should not be underestimated.
- 2.7 It is important to remember that managing absence is a supportive process and is in place for the benefit and support of the employee, as much as it is necessary for the school to maintain an effective provision, and for the welfare of other employees.
- 2.8 Whilst the outcome of managing absence may in some circumstances lead to dismissal on the grounds of ill health, this is not the focus of the process.

3. CREATING A CULTURE TO SUPPORT GOOD STAFF ATTENDANCE

3.1 Good attendance may be achieved by working with employees (and their representatives) to ensure that:

- good physical working conditions are provided;
- health and safety standards are rigorously maintained – including stress management standards;
- new starters are given sufficient training and receive particular attention during the initial period of their work;
- there is transparent and open communication;
- regular supervision and 121s.
- welfare support is provided maybe via an Employee Assistance Programme;
- there is an ethos of teamwork and positive employee engagement;
- jobs are designed so that they provide motivation and job satisfaction;
- Headteachers/managers are aware of their 'duty of care' responsibility for their employee's health and welfare.

3.2 There are a number of possible support measures for employees which Headteachers/managers may consider throughout the process of managing sickness absence, even at the early stages, these include;

- A referral to Occupational Health for guidance and recommendation, which can also be requested by the employee
- Phased return to work
- Reasonable adjustments -where the absence is related to a disability this must be considered
- Risk Assessments (disability, lone working, stress, DSE)
- Consideration of Flexible Working

- Consideration of flexible retirement
- Medical redeployment

3.3 It should be noted that an employee can be referred to Occupational Health outside the procedure, if the school and the employee feel it would be beneficial.

4 RECORDING AND MONITORING ABSENCE

4.1 In order to manage absence effectively it is essential to have accurate, timely and accessible information and statistics to fully recognise the pattern and reasons for absences, for individual employees as well as the workforce as a whole.

4.2 Monitoring up to date and accurate records will enable the school to identify when absence levels are becoming of concern, so that appropriate action can be taken either informally, or in accordance with the absence trigger levels.

4.3 Regularly reviewing absence records may help to highlight if there are any other concerns going on in the school, which can be addressed early before issues escalate, such as low morale, workplace stress, etc.

4.4 In the case of accidents at school / injury in the course of employment, there is a separate Health and Safety reporting procedure that needs to be followed in accordance with the school's own monitoring systems.

4.5 Payroll should be informed of all absence in accordance with the absence records, so that the correct levels of payment are made to the employee.

4.6 Records of absence management meetings, including appeals hearings, will be kept and remain on file as part of the employee's overall record of employment. These records will be kept confidential and retained in accordance with the Data Protection Act 2018, which includes the rules set out in the General Data Protection Regulations.

5 MANAGING EMPLOYEES DURING THE PROBATIONARY PERIOD

5.1 Poor attendance during the probationary period may constitute a failure to perform to the required standards and could prompt the final review to be brought forward. Although poor attendance will be managed through the probationary

procedure, the supporting attendance procedure should be referenced to ensure employees are supported to remain in work wherever possible, including the consideration of reasonable adjustments.

- 5.2 Employees must still have return to work interviews after every period of absence and although they won't enter the formal stages of the supporting attendance process or have agreed attendance targets, attendance should be discussed and documented at review meetings.

6 MANAGING EMPLOYEES WITH DISABILITIES

- 6.1 Where an employee is absent from work due to a disability for what might be a lengthy period of time, the Headteacher/manager should do whatever can reasonably be done to retain the employee. Referral to Occupational Health should be made on a regular basis with sickness absence meetings held in accordance with the procedure but with the emphasis on support and assistance.

- 6.2 At an early stage of the employee's sickness absence, advice should be sought from Human Resources. However, the meetings at informal and then at formal levels have to be followed with discussions on Occupational Health reports, the employee's condition, its effects, the likelihood of an improvement or recovery, relevant/reasonable timescales and any potential adjustments that the employee's GP and/or Occupational Health considers are reasonable to help the employee resume work. One option would be redeployment if adjustments to the employee's job prove unreasonable.

- 6.3 If an employee can no longer fulfil their duties because of their disability, care should be taken in following appropriate procedures and advice must be sought from Human Resources. Some of the key steps are:

- refer the employee to Occupational Health and, if appropriate, seek consent to send for a medical report from the employee's GP;
- in the Occupational Health referral letter, which should be copied to Human Resources and the employee, specific questions should be asked about the employee's capabilities and difficulties, and to explain about the job's tasks and responsibilities, a job description should be attached to the letter
- possible reasonable adjustments, which could be made to facilitate the employee's return to work, must be considered, including reduction of working hours, reallocation of tasks, more time off, etc.
- if an Occupational Health report indicates that the employee is not fit to do the job, and reasonable adjustments would not improve their ability to perform their duties/tasks, the manager should discuss all implications with the employee;

- redeployment should be considered wherever possible. If alternative work is available, then this should be offered in priority to other job applicants;
- all relevant policies and procedures must be followed with due consultation at the appropriate stages;
- if no alternative role can be found and all options have been discussed/considered, then dismissal of a disabled employee will be appropriate.

6.4 If a disabled employee is dismissed due to their inability to perform the job, the dismissal may give rise to both an unfair dismissal complaint and a claim for disability discrimination. Dismissal, therefore, should be seen as a last resort. To succeed in defending a claim for disability discrimination following a dismissal, the employer would have to convince any tribunal that:

- there were no further adjustments, including redeployment, that it could reasonably have made, or that any possible adjustments would not have helped the employee;
- it had sought and considered appropriate and sufficient up to date medical advice;
- prior to the decision to dismiss, the employee was given a full opportunity to put forward representations about her or his condition, its effects and their abilities;
- the dismissal was a course of action that was justified on the grounds that were material and substantial.

The school would also have to make certain that the necessary dismissal procedures under the Managing Attendance Procedure were followed to ensure that the dismissal was fair.

7 OCCUPATIONAL HEALTH

7.1 When to refer staff to Occupational Health

7.1.1 A referral to Occupational Health may arise from a number of circumstances, including but not limited to:

- when an employee's absence is becoming a concern / they are nearing a trigger,
- where an employee requests to be referred,
- cases where there has been minimal or no absence due to sickness, but where it is used as a preventative measure, to provide support to the employee before absence levels become a concern.

7.1.2 Headteachers/managers are recommended to make an early referral to Occupational Health Services where an employee exhibits conditions such as:

- workplace stress
- repetitive strain injury
- memory problems
- alcohol misuse
- drug misuse
- unusual behaviour or acting out of character
- work related accidents

7.1.3 It is not necessary for an employee to have seen Occupational Health prior to attending a formal sickness review meeting. A referral to Occupational Health can be made any stage of the process as appropriate and re-referrals can also be requested if and/or when necessary.

7.2 How to do a referral to Occupational Health

7.2.1 Before a referral is made, the employee should be notified that this is the intention, either at a meeting or in writing where the employee is absent from work.

7.2.2 Where it is determined that a referral should be made the information filled in the referral form will be shared with the employee and a consent form should be given to the employee, which they can sign if they wish to give consent.

7.2.3 A referral form should be complete and supporting information such as the job description, working patterns, medical certificates, sickness record, and other details as applicable should be attached to the form. Any information provided on or with the referral form will be made available for the employee to see.

7.2.4 All paperwork can be sent to Human Resources who will make arrangements for the appointment to be set up.

7.2.5 Follow-up appointments made need to be arranged, particularly in the case of long-term sickness absence where an update is required. If this is for the same absence, usually a further referral form is not required unless there has been a significant lapse in time.

7.2.6 The Occupational Health service will write to the employee giving details of the arrangements that have been made for the employee to be seen by the Occupational Health Physician or Adviser.

7.2.7 Employees will be expected to attend Occupational Health appointments unless there are accepted extenuating circumstances. Appointments can be made in school closure periods with the agreement of the employee.

7.2.8 If an employee is unable to attend Occupational Health, then, with the employee's consent medical information should be obtained from the employee's consultant and/or GP.

7.3 The Occupational Health report

7.3.1 Following on from the medical appointment and having taken account of any medical evidence submitted by the employee's GP/Consultant, the Occupational Health Physician/Adviser will produce a medical report, a copy of which will be provided to both the employer and the employee.

7.3.2 At the point of completing the consent form, the employee will be asked to specify whether they are prepared to receive the report at the same time as the employer, or whether they wish to receive a copy of the report before the employer.

7.3.3 Where the employee agrees that the employer can receive the report at the same time, it will usually be provided to the school within 5 working days of the date of the appointment. If the employee requests to see the report before the employer, a copy will be received after 8 working days.

7.3.4 The report should provide the manager with information on:

- the nature of the illness where appropriate
- the likely impact on employment of any underlying medical condition and treatment
- whether a date for return to work can be anticipated or whether further appointments need to be made before an assessment can be made
- whether a phased return to work is more appropriate and what the physician would recommend, in order for the Headteacher/manager to consider and discuss and agree with the employee
- whether the illness may be related to a disability which is covered under the Equality Act
- if it might be appropriate to seek to find alternative work/temporary alternative work for the employee or make reasonable adjustments to the employee's job. This may be particularly important where the employee is suffering from a work-related condition. For example, the employee may be allergic to a product used

in the workplace, or perhaps is unable to undertake lifting for a temporary period of time

- whether the employee is permanently incapable of discharging his or her current job or any other comparable employment, in which case the ill health retirement procedure will be initiated in the case of non-teaching staff, teaching staff have a separate process

7.4 Non-attendance at Occupational Health appointment

7.4.1 If the employee fails to attend an Occupational Health meeting the Headteacher/manager should seek to find out why, this may be by telephone or in writing. The Headteacher/manager should write to the employee, even if they have already spoken to them about their non-attendance, explaining that the cost of the appointment with Occupational Health will still be charged to the school.

7.4.2 It must be made clear to the employee that the Headteacher/manager can request them to attend a medical appointment under the Managing Sickness Procedure. It should also be made clear to the employee that in order to assist their eventual return to work the Headteacher/manager must have all relevant information relating to their illness.

7.4.3 Failure to attend an Occupational Health appointment must be recorded on the employee's personal file. A further appointment should be arranged. If the employee fails to attend a second meeting, unless in extenuating circumstances, a third appointment will NOT be made.

7.4.4 The Headteacher/manager will write to the employee explaining that they have failed to attend a second appointment and that they must make a decision about their ongoing absence based on the information they have; which may or may not include any information or recommendations from an Occupational Health Practitioner.

8 ILL HEALTH RETIREMENT

8.1 Support Staff

8.1.1 In accordance with the Local Government Pension Scheme [LGPS] the request for an assessment under the ill health retirement rules is instigated by the employer.

- 8.1.2 The decision to grant an ill health retirement is made by Occupational Health and is made on 'the balance of probabilities that the employer will be permanently unfit [until retirement age of 65] to undertake his/her substantive and equivalent duties due to permanent ill health'.
- 8.1.3 The employer has to satisfy themselves that they have exhausted all reasonable options in accordance with this procedure, including consideration of a phased return/adaptations to duties/working patterns/alternative employment. If on the basis of the facts it is evident that there is not likely to be a foreseeable return to work in the future and no likelihood of being fit, the employer may consider making a referral to Occupational Health for ill health retirement.
- 8.1.4 The school would normally have met with the employee and their representative to discuss the options including the ill health retirement process. If ill health retirement is confirmed by Occupational Health the school will need to advise the employee of the decision in writing.

8.2 Teachers

- 8.2.1 In accordance with the current Teachers Pension Scheme, the ill health retirement process for teachers is instigated by the teacher themselves. Teachers who may be eligible to apply for ill health retirement should initially advise their Headteacher of their situation.
- 8.2.2 In the case of a Headteacher in this situation, the Governing Body and the local authority should be advised.
- 8.2.3 The Head Teacher may arrange for the employee concerned to speak with the local authority concerning procedures and possible retirement benefits.
- 8.2.4 The employee may be accompanied by a union representative or work colleague at the interview.
- 8.2.5 There are two different levels, total and partial, dependent on the teacher being judged either 'permanently unfit to teach' (incapacity) or 'permanently unable to teach and unable to undertake any other gainful employment' (total incapacity). The local authority can provide full details.

- 8.2.6 The teacher will complete an application form obtainable from the local authority. The Occupational Health Physician, the teacher's GP and/or Consultant will complete another application form.
- 8.2.7 Both completed forms will be sent by the local authority to Teacher's Pensions who will then advise the teacher whether or not ill health retirement benefits can be awarded based solely on the medical evidence presented to them with the application and will communicate the decision directly to the employee and the local authority.
- 8.2.8 An application for ill health retirement benefits can be made by an employee at any time, including after they have left the employ of the local authority.
- 8.2.9 There is a right of appeal if retirement is not granted. Details are available from the local authority. The decision to grant the retirement will mean that the teacher retires immediately on grounds of ill health. The school should contact the local authority for details of how to arrange this.

9 STATEMENT OF FITNESS FOR WORK - FIT NOTE

- 9.1 Fit notes tell you whether or not the employee's Doctor thinks they are fit to attend work. They will normally advise that the colleague:
- Is not fit for work, where the medical opinion is that the colleague should refrain from undertaking their duties, or
 - May be fit to work, taking in to account their advice which may include recommendations such as phased return, altered hours, amended duties or workplace adaptation.,
- 9.2 On receipt of a Fit Note, the Headteacher/manager should have a discussion with the employee as soon as possible, and ideally before they return to work (or alternatively as part of a return to work meeting), so that the Doctor's recommendations can be discussed.
- 9.3 The Fit Note is advisory only. The recommendations are considered to be temporary measures, and where possible they should be accommodated for an agreed timescale. If it is not possible to accommodate them, the reasons for this should be explained to the employee, and the statement should then be treated as if the doctor had advised the employee was not fit to work.

9.4 Where an employee requests a return to work before the fit note expires, there is no requirement for them to get confirmation that they are fit to be in the workplace from their Doctor. However, their return is subject to the approval of the school. Where such a request is received, consideration should be given to carrying out a workplace risk assessment – and if there are any concerns about the employee returning to work then Occupational Health advice should be sought.

9.5 Further advice and information on fit notes can be found here:
<https://www.gov.uk/government/publications/fit-note-guidance-for-employers-and-line-managers>

10 HOW TO MAINTAIN CONTACT WITH ABSENT EMPLOYEES

10.1 It is the responsibility of both the manager and individual employee to ensure contact is maintained during a period of sickness absence.

10.2 Maintaining contact can help to reduce the natural anxieties that the employee may have about being absent or returning to work. Also, the employee can provide up to date information on their condition/circumstances, which can enable the Headteacher/manager to plan work during the absence and support the employee's subsequent return to work.

10.3 For longer term periods of absence, it is a good idea to agree with an employee the method of contact and frequency; whether telephone, email or in person, or a mix, and weekly or fortnightly etc.

10.4 It is important that employees should not feel they have been forgotten or excluded when they are ill, particularly if they are absent for a long period of time, on the other hand it is also important that the employee does not feel harassed whilst they are unwell.

10.5 At the early stage of long term absence, the Headteacher/Line Manager may choose to make initial contact by telephone in order to ask about progress and keep the employee informed of news regarding the workplace, at which point they can seek to reach agreement with the employee on the appropriate level of contact i.e. weekly, fortnightly etc. whether this will be via telephone, email etc.

- 10.6 Where absence is planned, (e.g. operation) contact may be planned in advance with the employee.
- 10.7 It is not expected that contact would be less than fortnightly, unless in exceptional circumstances and the Head teacher / line manager is confident that more regular contact is not required.
- 10.8 Any contact, either by letter or telephone should be sensitive and take account of the individual circumstances so that it cannot be perceived by the employee as harassment.
- 10.9 In respect of long-term absence (absence of 4 weeks or more), in addition to informal contact with the employee, the school may also schedule formal sickness review meetings at reasonable intervals, to review the absence, to discuss prospects for recovery including the content of any medical reports or fit notes containing advice on enabling a return to work, and other considerations, including but not limited to reasonable adjustments, redeployment, a period of a phased return, light duties, etc.).
- 10.10 Where a formal review meeting is arranged by the Headteacher/manager, it is expected that the employee will make every effort to attend. If this is not possible, they may send a representative on their behalf. In such circumstances, the information relating to the meeting should be forwarded to the trade union representative in good time to enable them to prepare for the meeting and they may need to consult the employee concerned. It is not expected that the meeting will be indefinitely postponed due to non-attendance. A formal sickness review meeting will be rearranged on one occasion only. On no account should employees be asked to undertake any kind of work related tasks whilst off sick.

11 RETURN TO WORK INTERVIEWS

- 11.1 Headteachers/managers are required to acknowledge and discuss each period of sickness absence with an employee following their return to work. In many cases this is likely to need only a 'light touch' discussion, and a brief note to record that this has been undertaken. This will be recorded on a return to work pro forma which is signed by the Headteacher/manager and the employee.
- 11.2 Where the absence is becoming a cause for concern e.g. if an absence 'pattern' is evident or there is a potential underlying health issue or where there is persistent short term absence or work related issues it may be necessary to have a more structured return to work (RTW) interview.

11.3 To carry out an effective RTW interview, Headteachers/managers should consider the following:

- In advance, review the employee's attendance record over the previous 12 months and notes/action points arising from any previous return to work discussions/meetings.
- Meet with the employee on the first day back at work, or shortly afterwards. Make sure that the meeting is held in a private space, out of the earshot of colleagues or students.
- It is important that a record of the RTW interview is kept by the Headteacher/manager.
- Welcome the employee back to work. Explain the purpose of the meeting and that it is informal. Encourage a two-way discussion.
- Seek confirmation that the individual is fit to work – if there is any doubt as to this, seek advice from Occupational Health.

11.4 Where there are ongoing health issues:

- Be clear that the purpose of the meeting is to provide support the individual in his/her return to work.
- Review with the employee their attendance record/previous RTW interviews and establish what help/support/treatment the employee is currently receiving (from their GP etc). If appropriate, discuss and agree a referral to Occupational Health.
- Establish whether there are any underlying personal or work-related concerns. If there are personal issues, discuss whether there are any support mechanisms/actions that the employee or the manager may reasonably take to seek to alleviate the problems, e.g. access to counselling, staff helpline etc. If the problems are work-related (see also section 9.6 below for additional considerations).
- Establish if any 'reasonable adjustments' are required to their role or work environment.
- If appropriate, agree a review period and/or any actions required.
- If absences relate to disability, pregnancy or a work related accident, undertake a risk assessment – seek Human Resources advice on this if necessary.

11.5 Where there is persistent short-term absence, or a pattern of absence is developing:

- Discuss the cause(s) of absence and the likelihood of the illness recurring and give the employee the opportunity to highlight any relevant issues.

- Try to offer solutions to any issues raised. Refer to employee support mechanisms if appropriate, for example Staff Counselling:
- Remind the employee of the mutual obligations – i.e. that it is the individual's responsibility/contractual obligation to attend work, and the employer/manager has a corresponding responsibility and concern for the employee's wellbeing.
- Explain the effect their absence has had on colleagues and the school/department's ability to deliver the service/meet its broader objectives.
- Re-establish the expectations regarding attendance at work and any associated actions (e.g. method for reporting sickness absence). Set a date to review the absence. Discuss the next steps within the sickness absence management procedure should there be further absence during the review period.

11.6 Where the employee believes the absence is work related (e.g. stress, relationship issues):

- Discuss the cause(s) of absence and the likelihood of the illness recurring and give the employee the opportunity to highlight any relevant issues.
- Listen carefully. You will need to elicit sufficient information for you to be able to understand/articulate the main issue(s). Explain that you will reflect on the matter and consider next steps/options. Seek advice from Human Resources after the meeting.
- Undertake a risk assessment, if appropriate –seek Human Resources advice if necessary.
- Agree with the individual any appropriate action/review periods, if appropriate

11.7 After the Meeting

- Update/amend electronic records if relevant.
- Use the RTW form to capture relevant factual information (avoid assumptions) and note the agreed actions/timeframe. Both parties should sign the form if actions have been agreed. Mark this confidential and store the form securely.
- Ensure you undertake action points you are responsible for and let the employee know.
- Be available to talk to/meet with the employee, should they have any issues following the RTW.

11.8 If at any stage it becomes apparent that absence from work could be a matter of misconduct or performance capability rather than ill-health, seek advice from Human Resources.

12 ATTENDANCE REVIEW MEETINGS

- 12.1 The Headteacher/manager should prepare for this meeting by gathering all the facts they have about the employee's current absence record and the reasons for concern, including number of days sickness and reasons for absence and any other documentation including RTW forms, fit notes etc.
- 12.2 At the meeting, the Headteacher/manager should advise the employee that this is an informal meeting aimed at supporting them in reaching and maintaining sufficient attendance levels. The employee should be given the opportunity to put forward any mitigating circumstances and/or any supportive measures they might like to have considered.
- 12.3 There should be a discussion about any possible reasons, specific problems, underlying issues, which may be preventing the employee from attaining sufficient attendance levels (e.g. work related or personal issues) and the Headteacher/manager should try to identify with the employee, how issues could be addressed to assist the employee in maintaining their attendance at work.
- 12.4 If the employee has not already had a referral to Occupational Health, this may be done at this point.
- 12.5 The Headteacher/manager should reaffirm any required standards or expectations which are not being met and explain the need for sustained improvement and that insufficient sustained improvement may lead to more formal action under the procedure.
- 12.6 A letter setting out the discussion and the monitoring period should be sent to the employee after the meeting and copy kept on the personal file.

13 PREPARING FOR A FIRST FORMAL REVIEW MEETING

- 13.1 Where it is decided to proceed with a First Formal meeting, the employee will receive a written invitation giving five working days' notice of the meeting. They will be advised in the letter of the reasons for the meeting, the nature of the proposed discussion and possible outcomes and provided with copies of any documentation to be considered at the meeting.

- 13.2 This documentation may include the employee's sickness record, including number of days absence and reasons for absence, any Occupational Health reports and copies of any previous correspondence, which may include copies of return to work information.
- 13.3 Every effort should be made by the employee to attend the first formal meeting. Meetings will be held at date/times that are mutually acceptable, wherever possible.
- 13.4 If the employee considers they are unable to attend a hearing by reason of their ill health, then advice should be sought from Occupational Health. Adjustments to the format of the hearing may be possible to facilitate attendance. Appropriate arrangements (including reasonable adjustments for employees covered by the Equality Act), including travel arrangements, will be made to ensure that this is possible.
- 13.5 In exceptional circumstances where an employee is unable to travel to the school, reasonable efforts will be made to enable the meeting to take place at a mutually agreed alternative location which may be the employee's home.
- 13.6 Where an employee fails to attend on more than two occasions, the school may decide that a decision should be made in their absence on the evidence available, at the third scheduled hearing.
- 13.7 During formal proceedings, the employee is entitled to be accompanied by Trade Union representative or a work colleague.
- 13.8 At the meeting the headteacher/manager should outline to the employee the nature of the attendance/ill health issue, the impact of absence(s) and the actions and support already implemented and/or considered and improvements in attendance required. Reference should also be made at this stage to any medical opinion relevant to the case.
- 13.9 The employee will be given the opportunity to state their case.

14. MONITORING PERIODS

- 14.1 The monitoring period should be used as an opportunity to action the agreed outcomes from the First Formal meeting or any subsequent formal review meeting.
- 14.2 The monitoring period will be different dependent on whether the employee remains absent from work due to long-term sickness absence, or whether the employee has returned to work.

- 14.3 Where the employee remains absent from work, the monitoring period may be used to allow further time for recovery in the hope that the employee will reach a point where they are able to consider a return to work, to either their current role or a redeployment role.
- 14.4 In the case of short-term absence, or where the employee has returned to work following long-term absence, the monitoring period will be used to ensure that there is a sustained improvement in attendance.
- 14.5 During the period of monitoring, where applicable, the Headteacher/manager should discuss all sickness absence with the employee. At the end of the specified period, the Headteacher/manager should again meet with the employee and consider their attendance during the monitoring period.
- 14.6 Where there has been a clear improvement, the employee should be advised of this in writing and told that as long as the improvement is maintained, there will be no need for a further formal review. However, following a successful monitoring period, a repeat breach of the absence triggers within the following 12 month period may result in moving straight to a First Formal meeting.
- 14.7 The Headteacher/manager will consider whether to extend the monitoring period if there has been a clear reason why an improvement in attendance has not been possible, or where there is other good reason. Otherwise, consideration should be given to setting up a Contractual Review.
- 14.8 Where a satisfactory improvement in attendance has not taken place, or if there has been a significant deterioration before the end of the monitoring period, the employee's attendance record should be noted, and this will normally result in a Contractual Review being arranged immediately.
- 14.9 In the case of long-term absence, consideration will be given to proceeding to Contractual Review where the absence has been for a significant period and there is no clear indication of a forthcoming return to work.
- 14.10 Failure to maintain a satisfactory level of attendance, or to achieve a return to work within a suitable timeframe, will normally result in a Contractual Review being arranged immediately. This Contractual Review could lead to the termination of the employee's contract on the grounds of incapability due to ill health.

15. PREPARING FOR A CONTRACTUAL REVIEW MEETING

15.1 Prior to a contractual review, a report should be prepared by the Headteacher/manager, usually with assistance from the Human Resources provider. This report will contain all the facts relating to an individual's health situation and the previous informal and formal management processes undertaken within the sickness procedure to address concerns and support the employee. This would include Occupational Health reports and any other medical information that has been considered plus copies of all correspondence and sickness records. The report should contain a contents list and a chronology. If appropriate, the report may cover the previous 3 years history.

15.2 One mechanism that may also be relevant in some sickness absences cases to support the exploration of the situation, is the use of a case management meeting. This can be an effective means of supporting a co-ordinated approach, to discuss and make decisions about a range of issues affecting an employee with ill health/disability or capability issues, including the identification of potential ways forward/action plans. Such an approach may involve a number of relevant parties e.g. Workplace Health & Wellbeing, Counselling, Health & Safety, Human Resources

15.3 Arranging a Contractual Review meeting

15.3.1 An appropriate panel will need to be arranged for the Contractual Review meeting. This will usually consist of the Headteacher and a governor, unless the Headteacher has been involved in earlier stages, in which case it will be two governors excluding the Chair of Governors.

15.3.2 A Human Resources adviser should attend to advise the panel.

15.3.3 It is important that the employee is aware that they may be accompanied at the meeting by a trade union representative or work colleague.

15.3.4 When arranging a Contractual Review meeting, the employee should receive notice in writing allowing at least **10 working days' notice** (unless otherwise agreed).

15.3.5 The following information should be included:

- The date, time and venue
- The name of who will be conducting the meeting
- The purpose of the meeting
- Right to representation (A Trade Union Representative or a work colleague)
- An instruction that the employee's paperwork and any details of witnesses (where appropriate) should be submitted in writing no later than 3 working days prior to the date of the hearing.
- A copy of the Management Case Report
- A copy of the employee's sickness absence record and Return to Work Interview Record(s)
- Any letters confirming the outcome of previous reviews
- Any other evidence relating to their sickness absence that may be relied on at the meeting, such as Occupational Health reports
- A copy of the Sickness Absence Management Policy and Procedure

15.3.6 The purpose of the meeting is to consider medical evidence where it is available or appropriate. Should the employee wish the panel to consider additional evidence such as further medical reports, this should be supplied by the employee at least 3 working days in advance of hearing.

15.3.7 The employee may notify the school in advance of the hearing that they are unable to attend the hearing because of the nature of their illness. In such cases the employee should be informed that they can nominate a union representative/friend or relative to attend on their behalf.

15.3.8 Every effort should be made by all parties to attend the meeting, however, where this is not possible, meetings can be postponed on one occasion, for example, if it clashes with a hospital appointment. The hearing will not normally be postponed more than once by either party.

15.3.9 Where it is agreed to reschedule a meeting, the rescheduled meeting should take place within 5 working days of the originally agreed date.

15.3.10 Depending on individual cases, it may be appropriate to arrange the meeting at another venue by agreement.

15.3.11 If the employee is not fit enough to attend the hearing, their representative can attend and speak on their behalf. In some circumstances it may be appropriate to invite the employee to make written submissions in respect of their case.

15.3.12 If the meeting has to be rescheduled and the employee and/or union representative/work colleague do not attend the rescheduled meeting, then the meeting can be held in their absence. Although in such circumstances reasonable effort should be made to find out why the employee or their representative did not attend before making this decision.

15.4 Conducting the Contractual Review meeting

15.4.1 The purpose of the Contractual Review meeting is to hear the case of both the employee and the management representative (Headteacher or manager), consider all of the evidence and determine an appropriate outcome.

15.4.2 The panel may, if appropriate, defer any decision in order to seek further advice.

15.4.3 Both parties should present their case using any appropriate documentation and calling any pertinent witnesses if required.

15.4.4 The management representative will state their case and make representations to the Contractual Review panel based on the relevant factors. They can call any witnesses (who must withdraw after questioning) and refer to any appropriate documentation in their pack.

15.4.5 The Contractual Review panel and the employee and/or their representative can ask questions of the management representative and the witnesses.

15.4.6 The employee and/or their representative will then present their case outlining the reasons for the decision normally based on the same criteria and produce any relevant witnesses, following the same order as above.

15.4.7 The Contractual Review panel, and the management representative, can ask questions of the employee and/or their representative and the witnesses.

15.4.8 After a suitable adjournment, (if requested by either side), both sides shall sum up, if they wish, with the case for the school/management being summarised first, followed by the employee's summary.

- 15.4.9 Any witnesses may be recalled to clear up points of uncertainty, but only in the presence of a representative of both sides.
- 15.4.10 Both parties will be asked to withdraw whilst the Contractual Review panel consider their decision.
- 15.4.11 In reaching a decision the Contractual Review panel will consider a reasoned assessment of all the relevant factors including any representations and recommendations made by the school and representations by the employee or their representative. The employee has the right of appeal against the decision
- 15.4.12 By the end of the hearing the following should have been reviewed:
- Whether the level of sickness absence / length of the absence has been unacceptable
 - the likely duration of the absence or continuation of the condition.
 - Whether the employee has been given the opportunity to address the problems and that there are no overriding mitigating circumstances,
 - what medical advice has been sought to find out the nature of the employee's ill health
 - what are the possible solutions for improved attendance / return to work, including the potential for redeployment/job redesign or any other reasonable adjustments that may still need to be considered.
 - the appropriateness of ill-health retirement
 - the impact on the school
 - Where a full return is expected but not within the near future, where the prognosis is indeterminable, or where there is an underlying medical condition causing persistent short term sickness, the panel should have assessed whether in all the circumstances the employee's continued absence is tolerable.
- 15.4.13 In reaching their decision the basic question which has to be determined in every case is whether in all the circumstances, the employee will again provide a regular and efficient service to the school.
- 15.4.14 Where there is an underlying medical condition and there appears to be no prospect of recovery and there are no reasonable adjustments that can be made (such as in the case of an employee with a degenerative condition), the employer may have no alternative but to consider termination of employment.

15.4.15 In the final analysis, and without becoming unsympathetic, the need to consider the operation of the school may override the need to provide long term security of employment. So, although it will not be the aim of the procedure, one outcome of it will be that an employee can be dismissed.

15.4.16 If the Contractual Review panel decide to terminate the services of an employee who has a disability, they will need to demonstrate that every consideration was given to the employee's rights under the Equality Act and that the decision is justifiable. The decision will not be justifiable where a reasonable adjustment could have been made.

15.4.17 In the case of long term sickness, dismissal can take place where an employee has been off sick continually and the procedure in managing absence has been followed and where there is no reasonable or anticipated date for return to work. Sick pay does not need to be exhausted before dismissal can take place. The decision should be based on incapacity to perform the job.

15.4.18 Alternatively, the Contractual Review panel may decide to:

- to keep the job open until the employee recovers from the illness
- to keep the situation under review for the time being and accept the level of sickness
- to consider alternative employment if this has not already been explored and in that context to consider whether retraining will be required for the employee to perform effectively in the new role
- to terminate employment on the grounds of incapability due to ill health with notice in line with appropriate National Conditions of Service and give the employee the right of appeal
- the employee can agree to their contract being terminated on the grounds of incapability due to ill health with notice in line with appropriate National Conditions of service now, or prior to this stage of the proceedings if appropriate.

15.5 Processing a Dismissal

15.5.1 Where dismissal is the outcome, the employee should be given appropriate contractual notice in line with appropriate National Conditions of Service. They will be entitled to receive full pay during their notice period. This decision will be confirmed in writing by the Contractual Review panel and the employee must be advised of the right of appeal.

16. APPEALS

- 16.1 The Governing Body Appeal Panel will hear any appeal against a decision to terminate the employment on the grounds of sickness capability.
- 16.2 Whether the employee has been dismissed because of frequent absence or after long term sickness absence, they will be given a right of appeal and the opportunity to present their case to a sub-committee of at least three Governors not involved in the initial decision. This appeal panel will usually be chaired by the Chair of Governors.
- 16.3 A right of appeal must be exercised within 10 working days from the date of any letter terminating employment, specifying the grounds of appeal.
- 16.4 The appeal must be made in writing and must clearly and specifically state in detail the ground or grounds for appeal and the detailed basis for each ground of appeal relied on. The ground(s) for appeal must fall within one or more of the following:
- There was a procedural irregularity which had a material effect on the dismissal decision;
 - The hearing officer came to a conclusion on a material point of fact which no reasonable person could have come to;
 - The decision to opt for dismissal rather than an alternative option was one that would not have been reached by any reasonable person;
 - There is new evidence which the employee wishes to introduce for the first time at the appeal which could not reasonably have been raised at the original hearing and the absence of which had a material effect on the dismissal decision.
- 16.5 It is not sufficient for the employee to say that they are unhappy with the outcome. In order to appeal, the employee must specifically state in writing the reasons for the appeal, providing clear grounds of the basis of the appeal and all documentation which they intend to rely on in the hearing. It is essential that the documentation is provided at this stage in order for the appeal to proceed.
- 16.6 Where the letter of appeal does not provide the necessary information to allow it to be processed, Human Resources advice will be sought, and they should write to the employee seeking clarification.
- 16.7 Arranging an appeal hearing

- 16.7.1 The appeal hearing will be convened within 20 working days or as soon as is practicably possible after receipt of letter confirming the appeal grounds, with all supporting documentation.
- 16.7.2 If possible, a date should be agreed with both the employee and the management representative, although where this is not possible, they will be notified of the date via the invite letter.
- 16.7.3 In either case the employee will be provided with written notification confirming the date and time of meeting, usually 10 working days prior to the hearing, unless otherwise agreed.
- 16.7.4 The letter will also advise the employee:
- of their right to be accompanied by a Trade Union Representative or a work colleague.
 - the names of those who will be present at the hearing.
 - that the appeal hearing will not be a full re-hearing of the case. It will only address the specific grounds of appeal set out in the letter of appeal.
 - that the hearing may be postponed by up to 5 working days to enable the employee's chosen representative to attend.
 - that both the employee and the employer must provide each other with any documents to be used by them and the names of any witnesses to be called, no later than three working days before the appeal hearing.
 - The Chair of Governors will chair the meeting and Human Resources and a note taker will be in attendance.
 - The Appeal Panel's decision will be final and there shall be no further internal right of appeal.
- 16.7.5 The school management representative (usually the Headteacher) will be asked to provide their paperwork in response to the employee's appeal documentation no later than 3 working days prior to the date of the appeal hearing.

16.8 Conducting the meeting

- 16.8.1 The purpose of the appeal is to examine the grounds of appeal that the employee may raise, to decide if termination of employment was reasonable in the circumstances and to take the opportunity to remedy any procedural defects.

- 16.8.2 It is not the purpose of the appeal to restate the original case/facts, but any new evidence that may be available may be included in an appeal case.
- 16.8.3 The Appeal Panel will have the authority to confirm the dismissal decision or to overturn it. In the latter event, re-instatement or re-engagement with continuous service will apply.
- 16.8.4 The employee and/or their representative will state their grounds of appeal and make representations to the Appeal Panel based on the relevant factors.
- 16.8.5 The employee can call any witnesses (who must withdraw after questioning) and refer to any appropriate documentation in their pack.
- 16.8.6 The Headteacher/Chair of Hearing Sub Committee, Appeal Panel and local authority representative to the Appeal Panel can ask any relevant questions of the employee and the witnesses.
- 16.8.7 The school will then respond to the grounds of appeal with their 'management case' outlining the reasons for the decision normally based on the same criteria and produce any relevant witnesses, following the same order as above.
- 16.8.8 After a suitable adjournment, (if requested by either side), both sides shall sum up, with the case for the employee being summarised first, followed by the school/management summary.
- 16.8.9 Any witnesses may be recalled to clear up points of uncertainty, but only in the presence of a representative of both sides.
- 16.8.10 Both parties will be asked to withdraw whilst the Panel consider their decision.
- 16.8.11 The decision of the Appeal Panel shall be final and there shall be no further right of appeal. The decision will be confirmed in writing within 5 working days of the hearing.
- 16.8.12 In reaching their decision the panel should consider whether the decision to dismiss was fair and justified, by taking into account:

- Whether the level of sickness absence / length of the absence has been unacceptable
- that the employee has been given the opportunity to address the problems and that there are no overriding mitigating circumstances,
- what consultation has there been with the employee
- has medical advice been sought to find out the nature of the employee's ill health
- in the case of long-term absence, when was the employee likely to be fit to return to work
- has consideration been given to alternative employment, if available.
- Has ill-health retirement been considered
- Was the employee supported during their absence
- Was there any other reasonable support or adjustments that the school could have offered / put in place

16.9 Outcome of the Appeal Hearing

16.9.1 Some of the options for the Appeal Panel to consider will be to:

- confirm the termination of employment
- adjourn the case in order to obtain more information
- determine if alternative employment is available. If this option is decided on, then the Appeal Panel should state the time period for seeking alternative employment and set a date to reconvene to consider whether Management have been able to achieve this
- grant the appeal and reinstate the employee subject to any conditions regarding the employee's attendance.

16.9.2 The Panel will recall both parties and announce their decision. If this is not possible, the Panel will convey the decision in writing as soon as is practicable. In all cases the decision will be confirmed in writing to both sides within 5 working days.

17. OTHER CONDITIONS RELATING TO SICKNESS ABSENCE AND PAY

17.1 Contact with infectious diseases

An employee who is prevented from attending work because of contact with an infectious disease shall be entitled to receive normal pay. The period of absence on this account shall not be reckoned against the employee's entitlements under the scheme. Where a teacher is absent due to pulmonary tuberculosis, and is undergoing approved

treatment, twelve months of full salary shall be paid, with further half pay at the discretion of the governing body.

17.2 Industrial injury or disease

17.2.1 Support employees

Periods of absence in respect of industrial disease, accident or assault arising out of or in the course of employment with the school shall be treated as entirely separate from normal sickness absence (providing the conditions below have been complied with). Periods of absence in respect of one shall not be set off against the other for the purpose of calculating entitlements under the scheme.

Any accident arising out of and in the course of employment with the school must be reported and recorded in accordance with the laid down procedures and may be investigated by Health & Safety. Absence arising out of industrial disease or accident should be reported and certificated as for other sickness, and the employee should notify the school/Local Authority if seeking medical advice about an illness which is suspected or alleged to result from the nature of his/her employment.

17.2.2 Teachers

In the case of absence due to an accident attested by an approved medical practitioner to have arisen out of and in the course of the teacher's employment, including attendance for instruction at physical training or other classes organised or approved by the school/Local Authority or participation in any extra-curricular or voluntary activity connected with the school, full pay shall in all cases be allowed. Such pay being sick pay for the purposes of calculation and entitlement, subject to the production of self- certificates and/or doctors statements from the date of the accident up to the date of recovery, but not exceeding six calendar months, after which the case will be reviewed before an extension of the sick pay period should be reached. Absence resulting from such accidents shall not be reckoned against the teacher's entitlement to sick leave, though such absences are reckonable for entitlement to SSP.

17.3 Where an employee is absent from work because of an injury in respect of which a claim will lie to the Criminal Injuries Compensation Board (CICB) and the employee is otherwise qualified to receive sick pay in accordance with this scheme, such sick pay shall be made to him/her without his/her being required to refund any proportion of it from the sum which the CICB may award. The school has the discretion to discount wholly or partly any sick leave occasioned by the injury when calculating the employee's entitlement to sick pay.

17.4 **Sickness and school holidays**

(Applies to staff not required to attend work during school closure periods)

17.4.1 When a teacher is ill immediately before a period of school closure, the rate of sick pay applicable to the teacher during closure is the rate applicable to him/her on the last day before the closure. Where a teacher is in receipt of half pay or nil pay and recovers during the closure period, normal pay will be restored from the date of a doctor's certificate which certifies the teacher's fitness to return to work. Sickness during school holidays shall not count against a teacher's entitlement to sick leave.

17.4.2 Other employees for staff employed on term-time only contracts, sickness during school closure periods counts against entitlement to sick leave. For an employee sick during a closure period, normal pay will be restored from the date of a doctor's certificate which certifies the employee's fitness to return to work.

17.5 **Sick pay and public holidays**

Where an employee is receiving sickness pay, he/she should continue to receive such pay if a public holiday occurs during sick leave. Where an employee has exhausted his/her entitlement to sickness pay, no payment should be made (other than SSP if applicable) in respect of a public holiday occurring during his/her period of sick leave.

17.6 **Sickness during annual leave**

(Applies to staff who are employed on a 52 week contract only). An employee who falls sick during the course of annual leave shall be regarded as being on sick leave from the date of a doctor's certificate and shall be entitled to take the balance of holiday at a later date, provided the holiday is taken before 31 March following the absence.

17.7 **Termination of employment**

Where notice is given by the school/Local Authority of termination of employment, on the grounds of incapacity or some other reason, to an employee who has exhausted his/her entitlement to full or half pay, he/she shall be paid full salary for the notice period.

17.8 **Third party claims**

If an employee is unable to work following an accident off duty involving a third party and will receive sickness allowance, any claim made against the third party should include an amount in respect of loss of earnings, the amount to be advised by the payroll

department. If the employee receives compensation, the sickness allowance paid to the employee must be repaid to the school/Local Authority, subject to the amount being recovered not exceeding the amount of the compensation or damages paid.

17.9 Disqualification from sickness allowance scheme

The employee may be disqualified from receiving sickness allowances under the scheme where sickness absence is attributable to;

- active participation in professional sport.
- the employee's own misconduct.
- injury whilst working in the employee's own time for private gain, or for another employer.
- where it is reported to the school/Local Authority that the employee has engaged in action likely to hinder his/her recovery, subject to proper investigation of the report.

Disqualification may also occur if the employee has failed to comply with the notification requirements of the scheme.

17.10 Medical examination during a period of sickness absence

The school/Local Authority may at any time require an employee who is unable to perform his/her duties as a consequence of illness, to submit to an examination by a medical practitioner nominated by the school/Local Authority, subject to the provisions of the Access to Medical Records Act 1988 where applicable. Any expenses incurred in connection with such an examination shall be met by the school/Local Authority (in practice the costs will be met from the school budget).