



**ATTENDANCE
MANAGEMENT AND
ILL HEALTH
CAPABILITY**

**PROCEDURE &
GUIDANCE**

November 2021

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Links and Dependencies

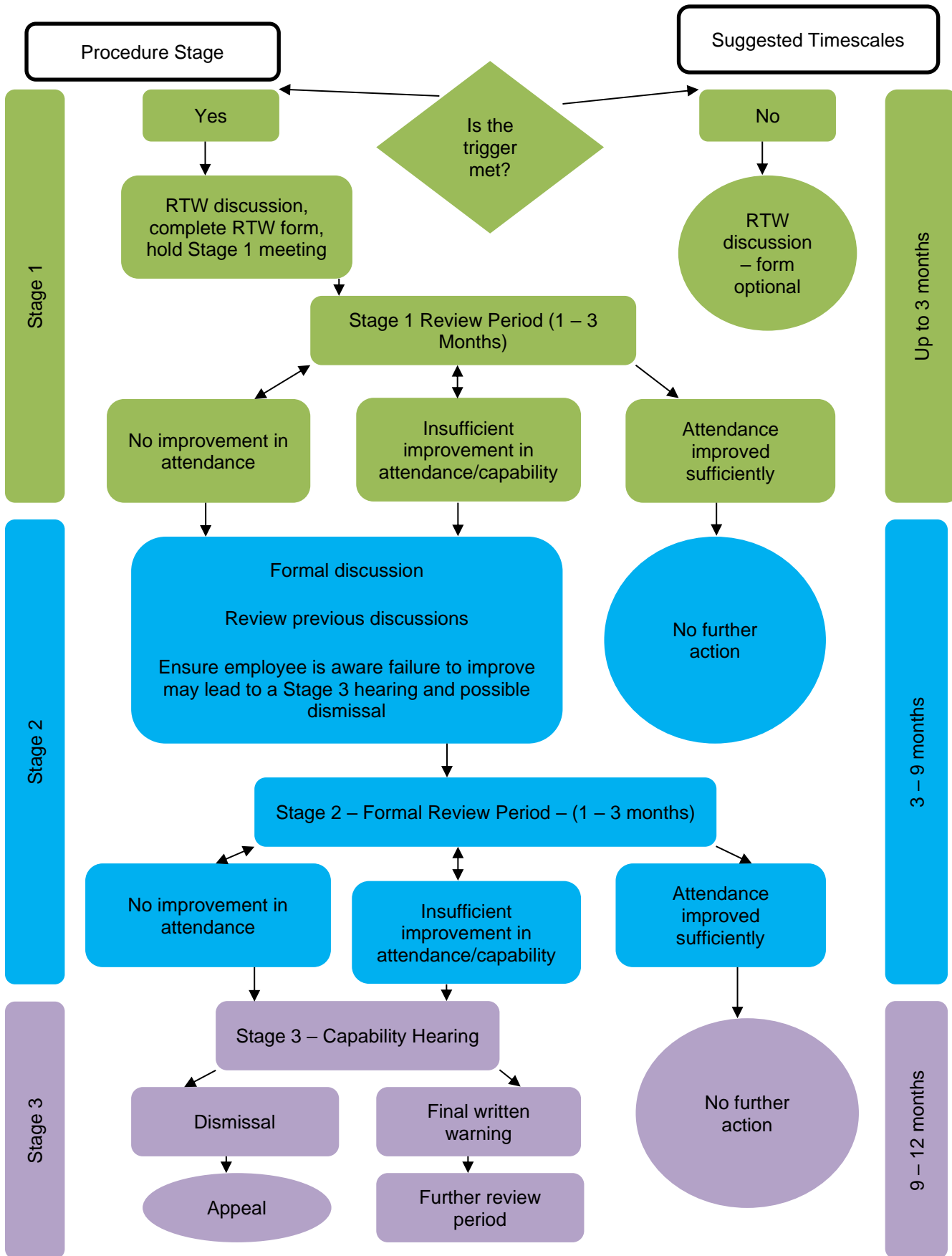
ACAS – Managing Attendance and Employee Turnover
Equality Act 2010 Code of Practice

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III Health Capability Procedure and Guidance
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Attendance Management & Ill Health Capability Procedure



Attendance Management and Ill Health Capability Procedure

1. Purpose

The purpose of this procedure is to set out the framework by which short-term and long-term sickness absence and ill health capability is addressed. It aims to support employees in achieving and maintaining good levels of attendance and to enable employees to fulfil all aspects of their role. It also aims to provide practical support, advice, and guidance to enable those involved to fulfil their roles in the management of employees' attendance and sickness absence.

The use of this procedure will ensure the fair treatment of all employees consistent with good management practice.

2. Scope

This procedure applies to all employees except those employed by schools where the Governing Body performs the function of the employer.

3. Key Principles

The Council's Attendance Management and Ill Health Capability Procedure and Guidance has been reviewed in the light of and is consistent with ACAS guidance and current legal precedents. The document will be updated in line with changing advice and codes of practice and Our Derbyshire, or the website should be referred to for the most up to date version.

- The aim of the procedure is to promote high levels of attendance at work which will in turn lead to better levels of service provision.
- Following this procedure will enable sickness absence issues to be addressed in a fair and consistent manner so that employees can achieve and maintain a satisfactory level of attendance at work.
- The Council will provide appropriate support for employees who are absent due to sickness or unable to fulfill their duties due to ill health.
- Abuse of the sickness scheme may be dealt with under the Councils disciplinary procedure.
- Employees have a right to be accompanied at formal meetings, held as part of this procedure, normally by a trade union representative, an official employed by the trade union or a colleague. Consideration will also be given to allowing additional support in appropriate cases.
- Employees will be given a minimum of 7 calendar days' notice, in writing, of all formal meetings held under this procedure.
- Reasonable adjustments should be considered for employees where relevant in accordance with the Equality Act 2010.

- 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.
- All sickness absence must be recorded accurately and in a timely manner and kept up to date in Workplace. See 'Our Derbyshire, Working Here, Sickness Absence, Absence Recording' for details on how to categorise sickness and record it in Workplace. Records of all contact should be kept on the employee's HR EDRM record, and held securely and in accordance with the employee privacy policy.

4. Managing Sickness Absence and Ill Health Capability

Sickness reporting

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

- Day 1 – Employee reports absence to their manager in line with agreed timescales
- Day 4- Employee updates manager on nature / duration of the absence
- Day 7 – 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

Further detail regarding the reporting of absences can be found in the guidance accompanying this document.

Return to work discussion

- Return to work discussions will take place within 2 working days of an employee returning to work regardless of the length of absence
- The discussion will be 'face to face' wherever possible. Where this is not practicable, the discussion may take place via telephone
- After the meeting, the return to work documentation will be completed where appropriate
- Consideration should be given as to whether a review meeting is appropriate, as detailed below.

Review Process

- Managers should review absences when the triggers have been reached:
 - Short term absence including intermittent absence – 8 working days in any rolling 12-month period (pro rata for part time staff – further detail in the guidance accompanying this document).
 - Long term absence – 28 calendar days in any 12-month period; or
 - Where there is other cause for concern on the level of patterns of absence.
- Managers will complete a record of all discussions, meetings and actions taken, ensure they are placed on the employees EDRM file, and give a copy to the employee.

III Health Capability

There may be occasions when an employee is unable to carry out the full duties of their post although they are able to attend work. Advice should be sought from the Advice and Support team and Occupational Health on the most appropriate procedure to follow

In these cases, it may be necessary to continue or commence with the Attendance Management and III Health Capability procedures and further guidance can be found in appendix 1.

Stage 1 Informal Meeting

Employees may be accompanied by an official employed by the trade union, a trade union representative or colleague if they choose.

At the meeting considerations will include:

- The employee's absence record.
- The reasons for absence.
- The effects of the employee's health on their ability to carry out the role
- Up to date medical information provided by the employee.
- Referral to occupational Health, physiotherapy or counselling where appropriate.
- Temporary alternative duties where these would allow an employee to return to work – these should be clearly recorded on the meeting notes with an indication as to when the employee will be able to return to full duties.
- Ending the process where the employee has returned to work and no further action is necessary.
- Setting a review period of between 1 and 3 months, dependent on circumstances

Stage 1 Review Informal Meeting

At the end of the review there must be a discussion with the employee which should include:

- The actions taken at Stage 1.
- Steps the employee has taken to improve their attendance.
- Current available medical 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, or ability to carry out their role.
- Referral to Occupational Health where this has not been done previously.
- Reinforcement of the operational effects of absence from work.
- Removal from the process where attendance has improved to a satisfactory level or the employee has returned to work.
- Extending 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.
- Moving to a Stage 2 meeting

Stage 2 Meeting

The employee should be invited to a formal meeting to discuss their sickness absence. They may be accompanied by an official employed by the trade union, a trade union representative or colleague. At the meeting considerations will include:

- Reviewing information in relation to the employee's absence or ability to carry out the role.
- Reviewing the outcomes of all earlier meetings.
- Further referral to Occupational Health.
- Reasonable adjustments where appropriate.
- Redeployment where the Occupational Health Physician has stated the employee is fit for alternative duties.
- Discussion about 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) it may be necessary to arrange a Capability hearing, the outcome of which may be dismissal.

Stage 2 Review Formal Meeting

At the end of the review period there must be a discussion with the employee which should include:

- Reviewing information about the employee's sickness or ability to carry out the role.
- Reviewing the outcomes of all earlier meetings.
- Discuss the potential implications of their continued absence, which may lead to a Capability Hearing.
- Extending 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.
- Consideration of removal from the process where attendance has improved to a satisfactory level or the employee has returned to work.

Stage 3: Capability Hearing

A capability hearing should be arranged if attendance at work has not improved to the required standard or if a return to work has not been agreed, or if the council is not able to sustain reduced or adjusted duties beyond the timescales agreed to return to full duties.

The employee should be advised in writing of the requirement to attend a formal hearing and be provided with a statement of case a minimum of 14 calendar days prior to the hearing.

The hearing will be chaired by a manager from the Leadership job family (Grade 15 and above) and an HR representative will advise. The decision of the Chair will be notified at the hearing.

Outcomes may include:

- Dismissal with notice (redeployment may be sought in appropriate circumstances).
- Final written warning.
- Further review period to allow time for attendance to improve.

A letter confirming the outcome of the hearing will be sent to the employee within 7 calendar days.

5. Appeal

The employee has a right of appeal:

- Appeals against dismissal are to Executive Directors and must be registered in writing to the Director of Organisation Development and Policy within 7 calendar days of receipt of the written notification of the hearing decision.
- Appeals against any other outcome will be heard by a member of the Leadership job family (Grade 15 and above) and must be registered in a letter to the appellants Executive Director within the same timescales.

The employee will receive a reply to the appeal letter within 7 calendar days, acknowledging the registering of the appeal which will take place as soon as practicable. There will be a minimum of 7 calendar days' notice of the appeal date.

Any statement of case or evidence on which either management or the employee wishes to rely, will be provided to the Appeal hearing Officer and other party at least 7 calendar days prior to the hearing.

A legal advisor will be present at any appeal against dismissal.

The employee has a right to be accompanied at the appeal, normally by an official employed by the trade union, a trade union representative or a colleague.

The employee will be informed of the outcome of the appeal in writing within 7 calendar days. That outcome is the final stage within the Council's procedures.

Appendix 1 – Attendance Management and Ill Health Capability – Manager Guidance

1. Roles and Responsibilities

Line managers have responsibility for managing the sickness absence of their employees. This includes:

- Taking time to read the procedure and guidance.
- Ensure employees know how to make contact when reporting sickness absence
- Undertaking relevant training – including completing the ‘Managing Attendance and Sickness Absence’ E-Learning course on an annual basis.
- Carrying out Return to Work interviews.
- Holding regular review meetings in a timely manner for employees in the procedure and take appropriate actions, consider adjustments, and refer to Occupational health in line with the guidance.
- Monitor progress and discuss with the employee.
- Maintain evidence of targets and progress, confirm them in writing and keep accurate records.
- Recording sickness absences in Workplace promptly and ensuring they are kept up to date and input in accordance with the manager guidance on ‘inputting sickness for an employee’.
- Ensuring all relevant documentation is retained on the employee’s EDRM HR file.

The Advice & Support Team will provide advice, support and guidance to managers throughout the process, including:

- Support with wording of documents and correspondence where necessary.
- Attendance at hearings and appeals to support the hearing officer.
- Advice, support, and guidance in complex cases or where the case presents precedents.
- Support to the Presenting Officer with preparation of the statement of case.
- Advise on the hearing arrangements and process, and related correspondence.

The Advice and Support team advise management and therefore do not provide advice to employees on their individual situation.

Occupational Health will:

- Provide advice and guidance on employee health and sickness issues to managers, the employee and HR.
- Meet with employees and assess their fitness to work and provide appropriate reports following a referral from their line manager.
- Provide advice and recommendations on appropriate adjustments and support to assist an employee back to work.
- With the employee’s consent, obtain additional information from the employee’s GP, consultant, or other specialist.

Employees will:

- Comply with timescales, regarding notification of sickness absence, and make themselves aware of how to contact their manager.
- Provide documentation in a timely manner.
- Maintain regular contact with manager in accordance with agreed procedures. Managers with access to Microsoft Teams telephony can be contacted from any telephone.
- Attend Occupational Health appointments if reasonably requested to do so.
- Attend return to work discussions and absence review meetings as appropriate.
- Understand that failure to comply with the attendance management procedure may affect eligibility for sick pay as detailed in section 6.
- Accepts / be willing to discuss reasonable adjustments to working arrangements to facilitate a return to work.

Employees who are trade union members can seek advice on the Attendance Management and Ill health Capability Procedure from their trade union. Information in relation to the procedure can also be found on Our Derbyshire – Working Here – Sickness Absence – Attendance Management. Additionally, information regarding workplace rights, rules and best practice is available on the ACAS website.

The wellbeing strategy is available on Our Derbyshire which sets out our approach to managing and improving the wellbeing of all our employees and brings together all initiatives currently in place within the council that support and maximise the health, safety, and wellbeing of our employees.

2. Managing Sickness Absence

2.1 First Day Contact

Day 1 – Employee reports absence to manager in line with agreed timescales.

Employees should notify their immediate manager, personally, of their absence and the nature of their illness. 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 their manager outside of normal working hours. However, this should be followed up as soon as possible with a telephone call or personal conversation.

It is acknowledged that in exceptional circumstances, for example if an employee is hospitalised, it may be necessary for another person to contact the manager on the employee's behalf.

Employees are required to provide the information necessary for the manager to complete section 1 of the self-certification form. The manager should ask if the absence is due to industrial injury or disease or a disability. If so, this should be noted on the Self-Certification Form.

Employees should endeavor to report their absence, giving as much notice as possible, and by no later than their normal start time on the first day of absence.

Employees who are employed on a part-time basis or are shift workers or who have irregular working patterns should report their absences as determined by local guidance.

Managers are responsible for reporting/recording the absence either into the appropriate pay system or by sending monthly absence returns to HR Services.

This should be done on the first day of absence and kept up to date. Further guidance on recording absence can be found on 'Our Derbyshire, Working Here, SAP Guidance, Workplace for Managers'. It is a manager's responsibility to record sickness absence and employees should not input their own sickness via Workplace.

2.2 Fourth Day Contact

If absence continues for more than 3 calendar days, then the employee should contact their manager personally on the 4th calendar day and provide further information about the nature and likely duration of their illness. Where day 4 falls on a non-working day, the employee should contact their manager on the first available day after this.

2.3 Day 8 - Doctor's Statement of Fitness for Work (Fit Note)

If the employee is still absent after 7 calendar days, on Day 8, they must obtain a Fit Note which must be sent immediately to their manager. The sickness absence will date from the first day as recorded on the Fit Note i.e., any gap between the end of the self-certificate and the start of the Fit Note will be unauthorised absence.

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

The manager should return the original Fit Note to the employee and retain a copy securely on the employee's EDRM file.

2.4 Return to Work - Self Certification Form

If an absence does not exceed 7 days, the employee is required to complete the appropriate sections of the Self-Certification Form on their return.

Where an absence is long term, the manager should ensure the form is posted to the employee and that it is returned. Failure to return the form may be classed as an abuse of the scheme and may lead to sick pay being withheld.

The form should be completed in full, and employees will be asked to provide details of their illness.

Completion of the Self-Certification Form applies to all periods of sickness absence including single days.

The manager should retain the self-certification form securely as part of the employee record.

2.5 Maintaining Contact

A successful return from an extended period of absence can only be achieved when contact has been maintained between the manager and the employee throughout the absence.

Keeping in touch is a good opportunity to:

- Check on the employee's wellbeing and progress.
- Support the employee and maintain their engagement.
- Talk about any relevant updates happening at work.
- Provide relevant information, e.g. in relation to sick pay.

The manager and employee should agree between them how often the contact should be and how contact should be maintained – e.g. face to face, Teams, telephone, home visits. Home visits must only be with the prior consent of the employee.

Where an employee fails to contact you within the prescribed timescales, you should contact the employee. If unsure how to proceed, contact Advice & Support Team for further advice.

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.

There may be occasions when an employee is too ill to be able to maintain contact directly and may ask for contact to be maintained via a third party, normally a trade union representative or a close family member. Managers should seek advice from Advice and Support and from Occupational Health in such cases.

2.6 Return to Work Discussion

You should hold a return to work discussion with every employee on their return to work after a period of sickness absence, regardless of the length of that absence. Ideally, this discussion will take place on the day the employee returns to work. However, if it is not possible to do this, then the conversation should take place within 2 working days. If a face to face meeting is not possible, other methods of conducting the discussion, such as a telephone discussion, or a remote meeting are acceptable. The discussion should be appropriate to the circumstances and duration of the employee's absence. During your discussion you should:

- Ascertain whether the employee has made a full recovery. (there are specific procedures established in respect of employees who are food handlers. You should ensure these procedures are adhered to.)
- Discuss whether there are any actions required, for example, adjustments either short or long term that are required to enable the

employee to carry out the job role, a workplace assessment, referral to Occupational Health, expected improvements, and if so, record them on the return to work discussion form, with the appropriate timescales for you to action.

- Bring the employee up to date on work-related issues and developments that have occurred during their absence.
- If you feel that the reason for absence requires medical investigation or if the level of absence is a cause of concern, then refer immediately to Occupational Health, using the Occupational Health referral form available on Our Derbyshire and the website. Tell the employee if you decide to do this.
- Advise the employee that they will be asked to attend a review meeting if they have hit the absence trigger of 8 days in any 12-rolling calendar month period.
- Where appropriate, remind the employee of the Council's wellbeing policies and guidance on Our Derbyshire. These include information on physical and mental health, work life balance, the counselling service and other wellbeing support. It may be appropriate to refer for physiotherapy.

You do not have to complete a return to work discussion form for every absence, but you should complete one where:

- The employee is having periods of short-term intermittent absence.
- The absence is covered by medical certification.
- The employee is in the attendance management and ill health capability review process.
- Adjustments to the job are required, in which case details of the adjustments must be documented.

When the form is completed, one copy should be retained by you on the employee's EDRM file, and one copy given to the employee.

It is good practice to hold return to work discussions after all absences, however the paperwork need only be completed in the circumstances shown above.

2.7 Disciplinary Suspension

If an employee has sickness absence during a period of disciplinary suspension, they must notify their department on the first day of sickness and submit Fit Notes in the normal way. Sickness payments will be made in accordance with normal procedures.

This does not automatically mean that the disciplinary process is put on hold and you should contact the Advice & Support team for guidance on how to proceed.

2.8 Sickness Absence and Annual/Flexi Leave

An employee who falls sick before or during annual leave, and the sickness

absence therefore coincides with booked leave, has the right to cancel that leave and retake it later. This right depends on the sickness absence being reported on the first day it occurs, as set out in section 2.1 and, where the sickness period starts before booked leave, the continuing sickness should also be reported on the first day it coincides with the booked leave. A fit note should be supplied where appropriate. These conditions also apply to flexi leave, but do not override the parameters of the flexible working hours scheme regarding carry over of hours.

Employees who are on long-term sickness absence continue to accrue annual leave whilst they are off and can carry over a proportion of this into the following leave year.

Additionally, employees on long-term sickness absence, have a right to apply for annual leave during their sickness absence and to be paid for it once they are on either half pay or no pay.

Further guidance and application forms on the above are available on 'Our Derbyshire, Working Here, Sickness Absence'.

3. Abuse of the Sickness Scheme

In cases where abuse of the scheme is suspected, sick pay may be suspended. Employees must be notified beforehand, and the reasons explained to them. Example of abuse may include:

- Non-attendance at an In-Service Medical without reasonable cause.
- Failure to submit Doctor's Fit Notes within a reasonable time frame.
- Conduct prejudicial to the employee's recovery.
- Employees own misconduct or neglect.

Abuse of the sickness scheme can lead to disciplinary action. You must seek advice from the Advice & Support Team in these cases.

4. Ill Health Capability Procedure – Support Measures

This section of the guidance advises you on fair and consistent means of dealing with employees identified as having either short-term or long-term sickness absence.

- Short term sickness absence including intermittent absence is defined as 8 working days or more sickness in any rolling 12-month period or where absence is giving management cause for concern. This is pro rata for part time staff and separate guidance is attached as appendix 6.
- Long term sickness absence is defined as being 28 consecutive calendar days or more.

The purpose in establishing these triggers is to identify those employees whose absence may be of concern. There may be cases where an employee does not meet a trigger but whose absence or health is still a cause for concern. In these cases managers should seek advice from the Advice and Support Team on the

most appropriate process. If implementing the ill health capability process, the reasons for this should be explained to the employee the reasons for this. Some examples might be:

- Employees with unusual patterns of absence.
- Employees with a deteriorating mental health condition who may benefit from Occupational Health advice.
- Employees for whom reasonable adjustments could be considered to take account of their health condition.

At all stages of the process consider whether the employee is covered by the provisions of the Equality Act 2010. If so, it is good practice to meet with the employee to ensure the appropriate support is made available. Following discussion with the Advice and Support Team, it may be considered that a reasonable adjustment may be to extend the trigger periods prior to moving into the procedure or alternatively to extend the review periods if some or all of the absence is related to a disability. Further advice on this can be obtained from the Advice & Support Team or Occupational Health.

Where an employee has a terminal or life-threatening illness or palliative care is being provided, you should contact the Advice & Support Team immediately for urgent advice.

There may be cases where continuing and progressive ill health allows attendance at work but leads to a decline in performance. Further guidance is provided in section 4.7, but in such a case, advice should be sought from the Advice & Support Team on use of the appropriate procedure.

4.1 Review Process

As the manager of an individual who has been identified as meeting a trigger or whose absence gives you cause for concern, your first step is to ascertain the details of the absence, including timings and reasons. To do this you should access individual records which should be on the employee's EDRM file

Reasons for absence can be found on the self-certification forms and Doctor's Fit Notes submitted by the individual or return to work discussion forms as appropriate.

In most cases where employees meet a trigger within the procedure, there will be sufficient grounds for concern to make a review meeting necessary. However, there may be occasions when the trigger may be exceeded and a review meeting may not be appropriate, for example where the sickness is due to an event such as hospitalisation, a significant family event or where all issues have been covered as part of the return to work discussion. However, the absence should be monitored and should it become long term, a review meeting should be arranged.

In the review meeting you are looking to establish whether there are any:

- Common reasons for absence.
- Common patterns such as links to weekends/bank holidays.
- Persistent or continuing illness.

- Underlying causes.

Other issues that may also need to be considered are:

- Previous attendance record.
- Any general problems with sickness in their place of work
- Any domestic problems.
- The demands of the post and the need to cover workload.
- Re-deployment - where Occupational Health have advised that the employee is unfit to undertake certain aspects of their current role but may be able to undertake different job tasks.

In cases of intermittent absences, managers will usually be faced with absences where there appears to be no single underlying medical cause. The review process should still be followed but advice from Occupational Health may be sought, where appropriate, to ensure that there is no linked medical reason.

There may be exceptional circumstances when an individual is not prepared to discuss his/her absences with you. In such circumstances alternative arrangements should be made e.g. the employee discusses with another manager.

Managers should securely retain any documents relating to the review meeting including review form, notes, and letters as part of the employee's EDRM record, providing the employee with copies as appropriate.

4.2 Referral to Occupational Health

Referrals to Occupational Health can be made at any time if you have specific concerns regarding an employee's health or wellbeing.

In cases of long-term sickness absence, you should refer the employee to Occupational Health when they have been absent continuously for 4 weeks, and you should involve the Advice and Support Team to provide guidance on the completed form. There may be occasions in respect of the following categories where it may be appropriate to defer a referral:

- Fractures which are healing normally with no complications
- Operations with no complications.
- Employees receiving chemotherapy and/or radiotherapy who are expected to return to work.
- Sickness absence relating to anxiety arising from a significant family event.
- Imminent consultation referral.
- Imminent return to work.

In all cases of long-term sickness absence, a referral to Occupational Health should be made after an employee has been absent from work continuously for three months.

In cases of intermittent sickness absence referrals should be made as and when appropriate.

You should advise the employee verbally that a referral is being made and/or issue a letter notifying employee of referral if appropriate, complete the Occupational Health referral form and forward to Occupational Health, with a copy to the Advice & Support Team.

A prompt referral is essential to ensure that:

- Any assistance required by an employee is offered quickly.
- Consideration is given to the employee returning to their substantive job by making temporary reasonable adjustments.
- Consideration is given to suitable alternative employment after medical consideration, should such a job be available.
- Management information is available to inform the review meeting which follows.

On the referral, you as manager/supervisor should provide:

- The individual employee's periods of absence over the last 2 years.
- The reasons in detail for the referral and as much factual, relevant background information as possible.
- Information provided by the employee to management about the reasons for the absence.

Also, where appropriate:

- A description of the physical and mental demands of the job on the employee.
- The frequency of such demands of the job on the employee.
- Whether the demands are likely to increase or decrease in the future.
- To which of the set questions on the referral form you require answers.

The better the quality of the information you provide to Occupational Health, the more detailed advice they will be able to provide.

The notification of appointment will be issued directly to the employee's home address and a text message confirming the date.

If you require a workplace assessment for an employee, please indicate this on the referral form. This can help identify if an issue in the workplace is affecting an employee's health, or if their health is affecting their work.

Following the in service medical, Occupational Health will provide a report to the manager who made the referral with a copy provided to the Advice & Support Team. The medical advice will provide answers to the questions indicated as relevant. Advice should be sought from the Advice & Support Team where necessary. This may include:

- That the employee is fit to return to their job.
- That the employee is unfit to work at present.
- That the employee requires a medical review at some future date.
- Whether there are underlying medical conditions necessitating absence.
- When the employee is likely to recover/return.

- Advice and guidance on support to improve attendance.
- Whether the employee is permanently incapable of carrying out their job.
- What aspects of the current role the employee can / cannot do.
- Whether the employee is fit to undertake an alternative role (should examples of such roles be provided by management).
- Whether a medical report from his/her General Practitioner / specialist is required.
- State whether the employee may be a disabled person in accordance with the Equality Act. If so and more specific advice is required contact the Advice & Support Team.

If further clarification is required, Occupational Health will provide as much advice and assistance as possible, consistent with medical confidentiality.

The content of the medical report should be discussed with the employee who will have received a copy of the report at the same time or prior to the manager.

It is your responsibility to decide on an appropriate course of action following receipt of Occupational Health advice.

In making any decision you will need to consider the following:

- The absence of a medical diagnosis or prognosis does not prevent you from taking action.
- You should not make medical judgements.
- You should not ignore medical opinion or draw conclusions at odds with medical advice.
- The operational needs of the service.
- The right of the employee to seek an independent medical opinion. Where an employee does this, it should not delay you taking the appropriate action based on the information you have already received.
- Whether the employee is a disabled person under the Equality Act, and if so, is more specific advice required from either Advice & Support or Occupational Health.

Managers should securely retain any documents relating to the occupational health referral, including forms, notes, and letters, as part of the employee record on EDRM, and provide the employee with a copy as appropriate.

4.3 Return to work – Phased Returns

Prior to any phased return, advice should be sought from the Advice and Support Team. The best outcome for employees and managers is a successful return to work. Where appropriate this may be on a phased basis to integrate the employee back into the working environment. This can be a combination of working days and continued sickness absence (supported by a GP Fit Note) unless the employee specifically requests to use annual leave.

Where a phased return is implemented, there should be agreed timescales regarding how long the phased return will last. It would normally be expected that an employee would increase their working arrangements on a weekly basis until

they can fulfill their contractual hours, and this would be expected to be achieved within a four week period.

Where an employee is fit to return to work but not ready to resume their full contracted hours at the end of this period, they may wish to consider the following options:

- Reducing contractual hours on either a temporary or permanent basis (with associated reduction in pay).
- Utilising annual leave.
- Taking unpaid leave.

Return to work can be before the Fit Note expires if the employee recovers more quickly than expected and the employee does not need formal confirmation of this from their doctor. They may need some help or adjustments to return to work. If there is any uncertainty about an employee's fitness to return to work, you should contact Occupational Health for further advice.

A return to work discussion should take place to agree any rehabilitation programme that will best meet the needs both of the employee and of the service. An agreed timeframe for their implementation and how long they are expected to last should be included where appropriate. It would normally be expected that an employee can return to their full contractual hours within a four to six week period.

4.4 Reasonable Adjustments

Where an employee is unable to undertake the full job role, consider whether adjustments can be made which are practical, reasonable, and financially viable to enable the employee to continue in that job. These may be short term (temporary)_or permanent. In the case of short term (temporary) adjustments ensure that:

- the reasons for this are explained to the employee and documented in the employee's record.
- The date of the introduction of adjustments is clearly recorded
- In the case of temporary adjustments, end dates are clear, by which the employee is expected to have returned to full duties, and details of why the arrangement cannot be considered a permanent reasonable adjustment.
- regular reviews take place to monitor progress, suggested as 4 weekly reviews.
- Details of restrictions / duties are clearly recorded
- If a permanent adjustment is being considered, the adjustments must be in relation to the substantive role. An alternative role should not be created that is surplus to establishment.

Regular one-to-one meetings and return to work meetings are useful points to review arrangements and ensure the adjustments can continue to be viable. Advice regarding adjustments and/or equipment may be sought from Occupational Health.

The duty to make reasonable adjustments requires the council to take positive steps to ensure that disabled people can access and progress in employment. This means more than avoiding treating disabled workers less favorably and taking additional steps to which non-disabled workers are not necessarily entitled. There is no requirement for the disabled person to provide a comparator. The employee concerned should always be part of the discussion around reasonable adjustments.

The council is in breach of its duty under the Equality Act 2010 if we do not apply a reasonable adjustment, once it has been identified. Where an adjustment is required it is the question of 'reasonableness' which determines if it must be made. When considering 'reasonableness' aspects to consider include:

- The effectiveness of the adjustment.
- The practicalities of the adjustment.
- The costs of the adjustment. Access to Work provides support to employees who have a disability or health condition and may be able to assist with funding. The application is submitted by the employee and managers may need to provide support.

It is good practice to undertake a workplace assessment, with Occupational health and in consultation with the individual concerned, and to agree any adjustments with the individual concerned prior to implementing them. Managers should maintain written records regarding discussions about reasonable adjustments and any resulting support put in place.

The Advice and Support team can provide further guidance.

Some examples of reasonable adjustments can be seen at Appendix 1.

4.5 Temporary Alternative Work

This may be considered in cases where medical evidence supports the view that an employee is unable to perform the full job role but is able to attend work and undertake a limited role within their job or alternative role for a temporary period.

Where temporary alternative work is identified this will normally be as part of a planned and timetabled rehabilitation package. Ensure that end dates are clear and regular reviews take place to monitor progress. Any alternative work should support the operational requirement of the service and support the individual's recovery.

The expectation is that a return to full duties of the employee's substantive role should be achieved within a three-month period. If this is not achieved, and the alternative arrangements cannot be sustained indefinitely, it may be necessary to continue to hold review meetings and progress through the stages of the attendance management and ill health capability procedure.

4.6 Redeployment

In cases where an employee is permanently unable to continue in their substantive job and it is not possible to make reasonable adjustments,

redeployment may be considered.

Redeployment should be considered where the Occupational Health Physician has advised that the employee is unfit to undertake certain aspects of their current role but may be able to undertake different job tasks. The manager, in consultation with the employee, should then take a decision as to whether redeployment is a viable option, based on an initial discussion regarding the employee's skill set.

For redeployment to be viable there needs to be a suitable redeployment opportunity i.e. a job available. This can be ascertained using the Council's job vacancy information. Employees have a shared responsibility to seek redeployment opportunities. Please take advice from the Advice and Support Team.

An employee who accepts a formal offer of redeployment under these circumstances may be covered by the Council's Redundancy, Redeployment and Protection of Earnings Policy.

4.7 Employee Unable to Carry Out Full Duties of the Post / Ill Health Capability

There may be occasions when an employee is fit to return to work or has not been absent but cannot carry out the full duties of their post although they are able to attend work. There may be other cases where employee's do not have any absences but are suffering from a health condition which leaves them unable to perform the duties of their post.

In these cases, it may be necessary to continue or commence with the Attendance Management and Ill Health Capability procedures. For example, if the council is no longer able to sustain reduced or adjusted duties, or if the employees illness / condition means they would be likely to be considered for ill health retirement.

There are also likely to be adjustments that can be made to the employees' role to enable them to remain in employment whilst ever this is possible. Regular review meetings should be held in accordance with stages 1 and 2, and details of discussions recorded. You should ensure the employee fully understands the reasons they are being seen under the Attendance Management and Ill Health Capability procedure, even though they may have had little or no absence

Each case should be dealt with on an individual basis. Initially an informal discussion must be held, ideally as part of a 1:1 or supervision meeting. The Advice and Support Team should be contacted for further guidance on the most appropriate procedure to follow, including consideration of other options prior to the employee being brought into this procedure.

4.8 Ill Health Retirement

Where, in the opinion of an independent registered medical practitioner, an employee meets the criteria for ill health retirement, it will be the responsibility of the relevant DMT member to consider this opinion, before making a final

decision. A meeting should be held with the relevant Service Director, Advice and Support Lead, Occupational Health and Line Manager, but the decision lies with the Service Director. The Advice and Support team will provide guidance on the ill health retirement process, and more information is provided in Appendix 3. However, it should be noted that in order for ill health retirement to be approved, an employee must have first been dismissed from their employment. This is a requirement of the local government pension scheme.

4.9 Case Conference

In complex cases where an employee's absence is prolonged and no return to work is planned, or adjustments are requested that may not be reasonable you may ask the Advice & Support Team if a case conference would be appropriate. Representatives, as appropriate, from management, HR, Occupational Health, Health and Safety and Legal Services may be asked to attend to explore the issues of the case and decide the most appropriate course of action. You should ensure that, where appropriate, outcomes of any such meeting are shared with the employee at a subsequent review meeting.

5. Attendance Management & Ill Health Capability Procedures - Stages

5.1 Timescales

Review periods should be at least four weeks but not longer than three months. However, in cases of short-term intermittent absence, a longer review period may be required to ensure employees are able to sustain improved attendance.

5.2 Meeting and Record-Keeping Protocols

Prior to the meetings at stages 1, 2 and 3, you should write to the employee inviting them to the meeting giving:

- A minimum of seven days' notice.
- The opportunity to be accompanied by an official employed by the trade union, a trade union representative or colleague.

It is important, and in both the employer and employee's interest to keep written records during the capability process. Capability records should be maintained in the strictest confidence and kept no longer than necessary. See the Human Resources Retention Schedule on Our Derbyshire – Information Security – Confidential Information – Records retention schedules website for guidance on how long documents associated with the capability process should be kept.

Copies of meeting records should be given to the employee and their representative (if applicable) and stored on the employees HR EDRM file.

A copy of letters relating to the capability process, from Stage 2, should be sent to the Advice & Support Team who will maintain the Case Management log of all formal capability warnings, dismissals and actions taken detailing:

- The substance of the case

- The outcomes of meetings and hearings.
- Actions taken, the date and reasons for that action.
- Whether an appeal was lodged.
- The outcome of the appeal.
- Any subsequent developments.

Please ensure that the correct documentation is issued at all stages of the process as this will evidence your actions should the outcome lead to a Capability Hearing and possible dismissal.

Template letters and statement of case are available on Our Derbyshire – Working Here- Absence – Attendance Management.

5.3 Stage 1 – Informal Meeting

The initial review meeting will either take place when an employee returns to work or, where the absence is long term, whilst the employee remains absent from work. In these circumstances' meetings can take place at any mutually agreed place.

The employee should be given the opportunity to be accompanied by an official employed by the trade union, a trade union representative or a work colleague.

The purpose of the initial review meeting will be to:

- Discuss the individual's sickness absence record.
- Identify the reason for the period/s of absence and ascertain whether there are related reasons.
- Consider whether there are issues affecting the employee's attendance which you may be unaware of, both work related or in their home life
- Offer any support available, including ensuring the employee is aware of the wellbeing options available to them

Consider where applicable:

- Up to date medical information provided by the employee.
- Prospects for a phased return to work.
- Work related issues.
- Is there an acceptable explanation of the reason for absence?
- Is further monitoring required?
- Temporary alternative duties where these would allow an employee to return to work.

In addition, you should:

- Reinforce the need for good attendance.
- Where appropriate, set a date for a review meeting at the end of the monitoring period.

The following courses of action may be considered:

- Satisfactory outcome with no further action needed.
- Continue to monitor attendance at work for a stated period (between 1- 3 months).
- Occupational Health referral, physiotherapy, or counselling where appropriate.
- Where an employee is absent due to long term sickness, maintain contact during the review period and keep a log of all contact made.

For advice on completing an Occupational Health referral form, please see pages 18 and 19 of these guidelines.

Following the meeting, complete either a review meeting record form or send the employee a letter outlining the content of the discussion. The manager should keep a copy of the paperwork on the employee's EDRM record, and one copy should be given to the employee. Please ensure that there is enough information on the form to link it to the employee record (minimum requirement is a payroll number).

5.4 Additional Support Available

It is important to remember when conducting review meetings that there are several resources available which might assist an employee to return to work. These include:

- The role of Health and Safety Officers in advising on risk assessment and safe working practices.
- Support from the Council's Occupational Health Service and the Counselling Service.
- Wellbeing support – ensure the employee is aware of the wellbeing support available on Our Derbyshire or provide copies of documents for those employees without access to Our Derbyshire.
- Reasonable adjustments which might be necessary or desirable, especially where disability is involved.
- Physiotherapy services to help people remain at work/ return to work sooner.
- Rehabilitation to assist a return to work / phased return to work.
- Advice is also available on adaptations to equipment and the provision of specialist equipment as well as available funding through the DWP - Access to Work Scheme. Employees should apply to access to work themselves but will need the employer's support to do this.

5.5 Review Period

During the review period continue to monitor the employee's levels of sickness absence. Where the absences are intermittent, ensure that return to work discussions take place after each absence and that the return to work paperwork is completed.

At the end of the review period, a discussion should take place with the employee. Consideration should be given to:

Where attendance has improved to a satisfactory level –

- Advising the employee of this and that the matter is now closed.

Where the attendance has not improved-

- Reconsider the actions referred to at stage 1.
- Ascertain what steps the employee has taken to improve his/ her attendance.
- Review current available medical information from both the employee and an Occupational Health report where appropriate.
- Refer to Occupational Health if this has not already been done.
- Reinforce the expectation regarding attendance at work and the operational effects of the absence.
- Reasonable adjustments if these would help an employee to return to work or improve their attendance at work: including consideration of further review periods if some or all of the absence is related to a disability to allow for consideration of further adjustments.
- Set a further review period or consider moving to stage 2 of the process. If the intention is to move to stage 2, provide the employee with details of the process and take advice from the Advice & Support Team.
- A further review period should normally be 1 - 3 months. However, a longer review period may be deemed appropriate, for example, in cases of short-term intermittent absence

After the discussion, where appropriate confirm the outcomes to the employee in writing and retain a copy on the employees HR EDRM file.

5.6 Stage 2 – Formal Meeting

From this stage of the process onwards, support will be available from the Advice & Support Team. However, you as manager will still manage the process.

Prior to any formal review meetings:

- Write to the employee giving a minimum of seven days' notice.
- Inform the employee of their right to be accompanied by an official employed by the trade union, a trade union representative or colleague.

At the meeting:

Unless the review meeting date has already been set, you should write to the employee as above.

- Ensure the employee understands the stage of the process they are at – Stage 2.
- Reconsider the actions referred to previously.
- Consider any mitigating circumstances that may be affecting the employee's attendance.

In addition, where appropriate:

- Ensure that reasonable adjustments are considered for an employee with a disability.
- Consider redeployment where the Occupational Health Physician has advised that the employee is unfit to undertake certain or all aspects of their current role but may be able to undertake different job tasks. If it is felt appropriate to seek redeployment, the following actions need consideration:
 - Working with the employee and the advice and support team to identify suitable alternative job roles, throughout the council.
 - Advising the employee to check Our Derbyshire and the DCC website for details of vacancies or arrange for the internal vacancy bulletin to be sent if access is not available.
 - Considering whether it is appropriate at this stage to ask Occupational Health to refer the case to an Independent Registered Medical Practitioner for an opinion on whether the criteria for ill health retirement are met.
 - In appropriate cases inform the employee of the Ill Health Retirement Procedure and provide a copy of the Employee Guide to it. The employee should be made aware that certain criteria have to be met and under Local Government Pension Regulations the decision on ill health retirement is subject to the opinion of an independent medical practitioner.
- Notify the employee that the level of absence cannot be contained and that failure to improve their attendance may lead to dismissal.
- Set a review period of between 1 and 3 months.

After the meeting confirm the outcomes of the meeting to the employee in writing and retain a copy.

5.7 Review Period

During the review period continue to monitor the employee's sickness levels. Where the employee is absent due to long term sickness, ensure contact is maintained in a mutually agreed way. Hold return to work discussions after all sickness absences and complete the return to work discussion form.

Following the review period an informal discussion should take place with the employee to consider: -

Where attendance has improved:

- Advising the employee of this and recording that the matter is now closed.
- Holding the employee at stage 2 of the process for a further monitoring period.

Where the attendance has not improved:

- Reconsider the actions referred to previously.
- Ensure up to date medical information is available from Occupational Health (within the last 3 months in most circumstances).
- In cases of long-term sickness absence consider setting a further review period where you are:

- Waiting for a response from the Independent Registered Medical Practitioner in relation to ill health retirement.
- Waiting for completion of treatment or recovery from an operation that may allow the employee to return to work.
- Allowing further recovery time where it is anticipated that this will allow the employee to return to work.
- In these situations it may be appropriate to hold a further informal review/ discussion to revisit outcomes and continue to consider suitable alternative employment.
- Advise the employee that a Capability Hearing will now be arranged.

After the discussion, where appropriate, confirm the outcomes of the meeting to the employee in writing and retain a copy.

5.8 Stage 3 – Capability Hearing

This should only be arranged if stages 1 and 2 of the process have been completed.

The capability hearing will be chaired by a manager from the Leadership Job Family (Grade 15 and above), who has had no previous involvement in the case. He/she will be supported by the Advice & Support team.

The Hearing Officer must make arrangements for the hearing including:

- Room booking.
- Arrangements for a notetaker.

They will also:

- Chair the hearing.
- Decide on the outcome and
- Confirm the decision in writing.

A member of the Advice and Support Team will provide support to the Hearing Officer, before, during and after the hearing.

The employee should be notified in writing of the following, giving a minimum of 14 calendar days' notice:

- A formal hearing is being held and of the requirement to attend.
- Purpose of the hearing and details of the ill health capability case.
- Location, date, and time of hearing.
- Name of officer chairing the hearing.
- That a decision may be taken to dismiss on the grounds of capability.
- The right of accompaniment by his/ her nominated representative.
- The right of appeal against any decision taken.

Two copies of the statement of case should also be provided to the employee prior to the hearing date, allowing enough time for the employee to discuss matters with their nominated representative.

Options for delivering the letter are:

- Handed to the employee
- Delivered by hand to the home address
- Sent to home address by recorded delivery

Copies may also be emailed to the employee's email address to supplement the above options

The case will be presented by you as the manager who has been involved in the case.

At the hearing the manager will detail the actions taken to improve the employee's attendance, including details of all the support given. Witnesses may be called where appropriate. The employee will also have opportunity to submit a statement or make a verbal presentation in support of his/her case. The procedure for the hearing is set out in Appendix 2.

The outcomes of the hearing may be:

1. Dismissal with contractual notice (During the notice period seek suitable alternative employment in cases where the employee wishes to be considered for this and medical grounds support it).
2. Final written warning with a further review period normally of up to 3 months in cases of long-term sickness.
3. Final written warning with a further review period which may be more than 3 months in cases of short-term intermittent sickness.

The employee has the right of appeal against these outcomes.

The decision may also be taken that none of the above actions are appropriate and that the employee should have a further review period.

Where there is a further review period under outcomes 2 and 3 and a return to work is not achieved or if alternative employment has not been identified, a further hearing will need to be convened to consider appropriate action including dismissal.

The outcome should be confirmed in writing to the employee and a copy provided to HR Services for the employees' personnel file.

6. Appeal

An employee may appeal within 7 calendar days of receiving written notification of the Capability Hearing decision.

- An appeal against dismissal must be registered in a letter to the Director of Organisation Development & Policy within 7 calendar days of receipt of the written notification of the hearing decision.
- An appeal against any other outcomes must be registered in a letter to the appellant's Executive Director within the same timescales.

Appeals will be heard by an Executive Director or a member of their Departmental Management Team, normally from a different Department to that in which the original hearing was heard.

The employee will receive a reply to the appeal letter within 7 calendar days, acknowledging the registering of the appeal. The appeal will take place as soon as practicable. There will be a minimum of 7 calendar days' notice of the appeal date.

An appeal against an outcome other than dismissal will be heard by a member of the Leadership Job Family (grade 15 and above).

Any statements of case or evidence on which either management or the employee wishes to rely, will be provided to the Appeal Hearing Officer and other party at least 7 calendar days prior to the hearing.

The Presenting Officer will call witnesses where appropriate. Legal and HR advisers may attend the appeal. The employee will be entitled to be accompanied at the appeal, by a trade union representative or colleague and will also be able to call witnesses.

The appeal may be upheld in the employee's favour or the original decision confirmed. The employee nominated representative and the Presenting Officer should be informed in writing of the decision within 7 calendar days. The decision will be final.

7. Specific Circumstances

7.1 Disability Related Absences

Disability is defined under the Equality Act 2010 as a physical or mental impairment that has a 'substantial' and 'long term' negative effect on an individual's ability to carry out normal daily activities.

It is often appropriate to manage disability related absences differently to other types of absence, and for that reason, these should be recorded separately to assist in that process.

Detail of recording process to follow

The council is not obliged to disregard disability related sickness absences as part of the attendance management procedure; however, it may be a reasonable adjustment to treat some or all such absences with particular consideration depending on each individual circumstance including making reasonable adjustments to the application of the attendance management procedure.

Disability related sickness absence is counted as sickness absence but should be recorded separately to ensure this can easily be identified.

Whilst managers are still expected to meet employees in line with normal attendance management procedures, to ensure we are doing everything possible

to secure their return to work, in some cases it may be reasonable to extend review periods prior to moving individuals into the next stage of the process. As part of that dialogue, line managers should encourage employees who consider themselves to have a disability, to record this on SAP to ensure they are offered the appropriate support. Any such discussion should focus on how the employee's disability may impact on their ability to carry out their role, rather than the nature of the disability.

This does not mean disability related absences should be ignored for the purposes of attendance management.

For example, an employee who is diagnosed with a long-term health condition may take a number of short-term absences after diagnosis whilst they learn to manage their condition. The expectation would be that they need to be seen under attendance management procedures to ensure they are receiving all the support they need, but it may be appropriate to keep the individual in stage 1 of the procedure and not to escalate to stage 2.

An employee with a long-term condition who cannot attend work even after considering all reasonable adjustments, would still be expected to progress through the procedure, and in some cases, will progress to a stage 3 hearing.

It should also be kept in mind that the council has a separate disability leave policy specifically for employees covered by the Equality Act 2010, for appointments in relation to assessment, treatment, rehabilitation, or training for a condition covered by the Act.

7.2 Pregnancy Related Absences

If an employee's sickness absence is pregnancy related, the council 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.

Managers should bear in mind that if such an absence occurs after the beginning of the employee's fourth week before their expected week of childbirth, then the employee's maternity leave will be automatically triggered.

7.3 Elective Surgery

In cases of elective surgery annual leave should be utilised in the first instance. This includes cosmetic procedures for example laser eye treatment. Should an employee become ill and unfit for work following such procedures, the usual attendance management procedures will apply.

7.4 Mental Health Support

The council aims to create a culture of positive mental wellbeing through raising

awareness, providing support, training and risk assessment to assist with employee's mental health. The Our Derbyshire, your wellbeing page has a number of links and a wide range of information and support regarding mental health, including mental health first aiders.

Additionally, Public Health plays an important role in the prevention of mental health issues and the promotion of good mental wellbeing. A range of information, resources and contacts to support mental health and wellbeing can be found on the Council website. The link can be found here – Social care and health – Health and Wellbeing – Mental health and wellbeing

7.5 Failure to engage with the procedure

Where an employee refuses to engage in the process, advice should be sought from the Advice and Support Team. It may be that any meetings or hearings go ahead in the employee's absence, but this should only happen once other options have been exhausted.

Appendix 2

Examples of some reasonable adjustments

Making adjustments to premises – for example, widening doorways or moving furniture for a wheelchair user.

Allocating some of an individual's duties to another worker – for example the occasional requirement to use a step ladder to reach high places could be allocated to another employee for someone suffering from vertigo.

Transferring the employee to fill an existing vacancy – for example considering redeployment where no reasonable adjustment would enable the employee to continue in the current role.

Altering working hours – for example, considering part time working, or amended start times to avoid rush hour travel.

Assigning the employee to a different place of work – for example, relocating a workstation to an accessible location.

Arranging for training in the use of equipment – for example, additional software for a visually impaired employee.

Arranging for training for other employees – for example, training on conducting meetings to allow a hard of hearing employee to participate fully.

Providing information in accessible formats – for example, modifying instructions into braille or audio tape, or arranging for instructions for individuals with learning disabilities to be conveyed orally or in Easy Read.

Acquiring or modifying equipment – for example, adapted keyboards for employees with arthritis, a large screen for a visually impaired employee, or an adapted telephone for someone with a hearing impairment.

Providing a reader or interpreter – for example, an employer arranges for a colleague to read hard copy post to a worker with a visual impairment at times during the working day. Alternatively, the employer might hire a reader.

Providing supervision or other support – for example, an employer provides a support worker or arranges help from a colleague, in appropriate circumstances, for someone whose disability leads to uncertainty or lack of confidence. These are examples only and are not intended as a definitive list.

Allowing another person to attend meetings held under the procedure, for example a support worker or someone with knowledge of the disability and its effects

Appendix 3

The Capability Hearing – Procedure

The Capability Hearing is chaired by the Hearing Officer and proceeds as follows: -

- i) The Presenting Officer puts the case in the presence of the employee and may call witnesses.
- ii) The employee (or representative) has the opportunity to ask questions of the Presenting Officer regarding the evidence given by him/her and any witnesses whom he/she may call.
- iii) The Hearing Officer has the opportunity to ask questions of the Presenting Officer and witnesses.
- iv) The employee (or representative) puts his/her case in the presence of the Presenting Officer and calls such witnesses as he/she wishes.
- v) The Presenting Officer has the opportunity to ask questions of the employee and his/her witnesses.
- vi) The Hearing Officer has the opportunity to ask questions of the employee and his/her witnesses.
- vii) The Presenting Officer and the employee have the opportunity to sum up their case if they so wish, with the Presenting Officers submission being received first
- viii) The Presenting Officer and the employee withdraw.
- ix) Any advisors to the Hearing Officer should remain in the room while a decision is made.
- x) The Hearing Officer deliberates, only recalling the Presenting Officer and the employee to clear points of uncertainty on evidence already given. If recall is necessary, both parties are to return even if only one may be concerned with the point giving rise to doubt.
- xi) After careful consideration of all the information the Hearing Officer recalls both parties and states the action deemed appropriate. Should there be occasion where this is not possible due to the need to review details of the case, the Hearing Officer may defer the decision.

Appendix 4

III Health Retirement

Under Local Government Pension Regulation (LGPS), an Independent Registered Medical Practitioner will be asked to provide an opinion on whether an employee is, on the balance of probabilities:

‘permanently incapable of discharging efficiently the duties of their employment because of ill health or infirmity of mind or body’

In some circumstances the Independent Registered Medical Practitioner may certify that a permanent incapacity prevents an employee from undertaking their normal role but does not lead to a reduced likelihood of being incapable of undertaking any *gainful employment. In these circumstances, pension benefits are **not** payable.

Where there is a reduced likelihood of undertaking gainful employment, there are 3 Tiers of Ill Health Retirement which allow for differing levels of pension payments:

Tier 1:

Where an employee is permanently unable to carry out their own job and has no reasonable prospect of being capable of undertaking any gainful employment before the age of 65.

Benefits payable under Tier 1

Based on the period of membership enhanced up to the age of 65.

Tier 2:

Where an employee is permanently unable to carry out their own job, and is unlikely to be capable of undertaking any gainful employment within 3 years of leaving, but likely to be able to do so after that period, but before the age of 65.

Benefits payable under Tier 2

Based on the period of membership, plus an enhancement of 25% of the remaining years up to the age of 65.

Tier 3:

Where an employee is permanently unable to carry out their own job but is likely to be capable of undertaking any gainful employment within 3 years of leaving, unless they have by then reached the age of 65, if this is sooner. Tier 3 is subject to review after 18 months and will normally cease in any case after 3 years, (unless aged 65 within that 3 year period).

Benefits payable under Tier 3

Based on the period of membership only, with no enhancement, and payable for a maximum of 3 years.

*Under LGPS regulations, '**Gainful Employment**' means any paid employment for not less than 30 hours a week for at least one year.

The role of the Independent Medical Practitioner

The LGPS states that a Certificate of Permanent Incapacity shall be issued by an independent registered medical practitioner who:

- Is qualified in Occupational Health medicine.
- Is approved by the appropriate Administering Authority.
- Has not previously been involved in the case.
- Is not or never has been the representative of any party in that case.

It is the role of the Independent Registered Medical Practitioner to give an opinion, having considered all the medical evidence available, on whether an employee meets the criteria for ill health retirement.

The council will then consider all the evidence available, including the opinion of the Independent Registered Medical Practitioner, before coming to a decision on the continuing employment of the employee and consequent payment of retirement benefits where applicable.

When is Ill Health Retirement Considered?

The Independent Registered Medical Practitioner's opinion is normally sought before ill health capability dismissal is considered.

To reach this point, it would need to be established that:

- There is no apparent prospect of a return to the existing post in the foreseeable future.
- The possibility of redeployment has been fully explored and none has been found.

and the following actions would need to have been taken:

- Advice of a medical prognosis will have been requested from occupational Health.
- Possible further referrals for medical guidance from Occupational Health have taken place and further reports on the employee's progress and on Equality Act implications have been considered.
- A series of reviews and meetings will have taken place under the Attendance Management and Ill Health Capability Procedure.

Appendix 5

Can I Appeal Against the Council's Decision Not to Agree to the Payment of Ill Health Retirement Benefits, or to the Level of Benefits Payable?

If you are dissatisfied with the council's decision, there is a **right of appeal** via the Internal Disputes Resolution Procedure under the LGPS.

You can exercise this right of appeal following confirmation of the council's decision. The appeal considers whether the LGPS provisions have been applied correctly and whether the appropriate procedures have been followed in reaching a decision. Any appeal must be registered within 6 months of notification of the decision.

To appeal you need to follow the stages below (please see flow diagram at page 38)

Stage 1

Obtain a factsheet and a form to complete from the Pensions Section at County Hall who will be able to help you with any queries you may have about your rights. You should send the form directly to the Director of Legal Services with a covering letter setting out the grounds of your appeal.

This stage is a formal review of the initial decision and an opportunity to reconsider the matter and, where appropriate, change the decision, for example where certain relevant facts or evidence were not taken into account or where there has been a mistake or oversight.

Stage 2

If you are still dissatisfied after receiving the Stage 1 decision, you should complete a second copy of the form and send it to the council's Pensions Section.

Pensions Committee will consider appeals at this stage or, where the Committee has some previous involvement in the case, members of the Licensing and Appeals Committee will consider the appeal. The Committee will reconsider the decision and check the Regulations have been applied correctly and that sound impartial procedures were used to reach the decision.

Further Stages – if you are still dissatisfied you may choose to contact:

1. The Pensions Advisory Service (TPAS) which is available to assist you with a difficulty you have been unable to resolve with the council.
2. The Pensions Ombudsman who settles disputes and investigates complaints that TPAS has not been able to resolve.

Preserved Benefits

If you leave your job and have preserved pension benefits you will be notified of the value at the date of leaving by Pensions Section. Preserved benefits can be

paid from the age of 60, but may be actuarially reduced, depending on your age and the number of years' service in the Pension Scheme.

Payment of preserved pension benefits before the age of 60 can be made on the grounds of permanent ill health. If you develop a medical condition, or you have a medical condition that deteriorates following the end of your employment, a medical assessment will be undertaken to determine whether you have a permanent incapacity which would prevent you from undertaking the role in which you were working when you left the council.

You should contact the Pensions Section at County Hall for details of how to proceed with a request for payment of preserved benefits on the grounds of ill health.

If the application is refused, you may appeal under the Internal Dispute Resolution Procedure.

Useful Addresses:

Pensions Section
Finance & ICT Division
Commissioning, Communities and Policy Department
Derbyshire County Council
County Hall
Matlock
DE4 3AG

Director of Legal Services
Commissioning, Communities and Policy Department
Derbyshire County Council
County Hall
Matlock
DE4 3AG

The Pension Advisory Service
120 Holborn
London
EC1N 2TD

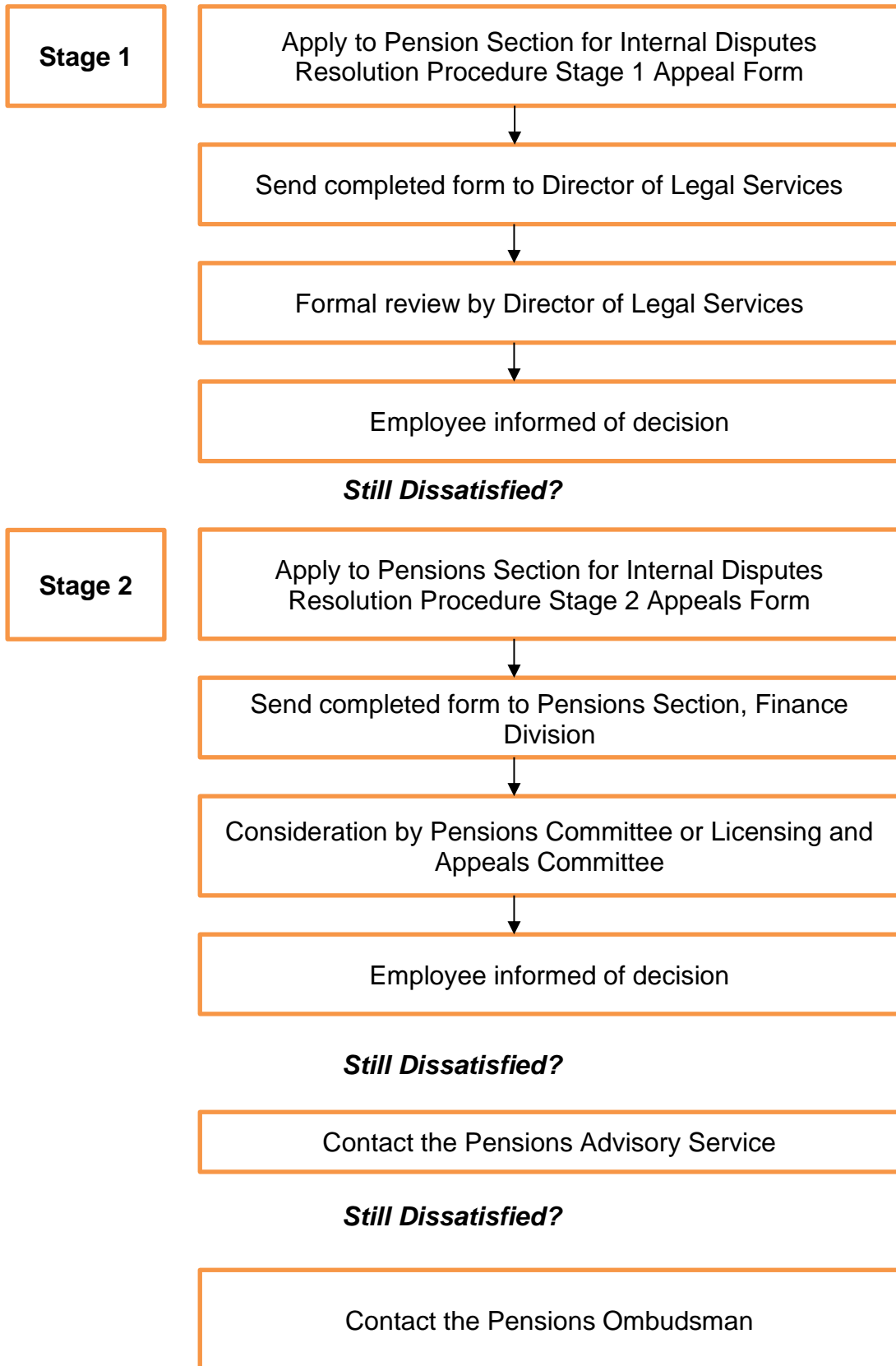
Pensions Ombudsman
10 South Colonnade
Canary Wharf
London
E14 4PU

THIS GUIDE IS PROVIDED TO ASSIST AND INFORM EMPLOYEES ABOUT ILL HEALTH RETIREMENT.

NOTHING IN IT OVERRIDES THE REGULATIONS OF THE LGPS, THE PROVISIONS OF WHICH MAY BE AMENDED FROM TIME TO TIME.

LOCAL GOVERNMENT PENSION SCHEME

**Internal Disputes Resolution Procedure
Employee Appeals Against IHR Decision**



Appendix 6

Guidance and examples for part time workers – pro rata triggers

The trigger for a full-time worker (37 hours) is 8 **working** days and this is pro rata for part time workers. However, due to differing work patterns, for example a worker contracted for 18.5 hours per week may work 2.5 days per week (2 full days plus a half day), 3 part days per week or 5 half days a week, it can be difficult to work out the actual trigger using working days, and a more useful method can be to base it on working weeks.

Non-working days do not count towards triggers.

Basing the calculation purely on working days can be inaccurate for those employees working a small number of hours but working every day if based on FTE.

For an employee working 37 hours over 5 days, the trigger is 8 working days which equates to 1.6 weeks.

The calculation is 8 (trigger days) multiplied 7.4 (hours per day) divided by 37 (contracted hours) = 1.6 weeks.

In the scenarios below, assume all employees are off sick from 1 November onwards.

Days per week worked (Regardless of hours)	Trigger days
5	8
4	6.4
3	4.8
2	3.2
1	1.6

Scenario 1 – full time

Daily hours are 7.4

Trigger days for full time – 8

Contracted hours – 37

$7.4 \times 8 / 37 = 1.6$ weeks

Therefore, this employee would meet a trigger on the 8th **working** day of absence

Scenario 2 – 18.5 hours per week, 5 mornings per week

Daily hours are 3.7

Trigger days for 5 days per week = 8

Contracted hours – 18.5

$3.7 \times 8 / 18.5 = 1.6$ weeks

Therefore, this employee would meet a trigger on the 8th **working** day of

absence

Scenario 3 – 18.5 hours per week, Monday Tuesday, Wednesday morning

Daily hours are 6.16 (average)
Trigger days for 3 days per week = 4.8 days
Contracted hours – 18.5
 $6.16 \times 4.8 / 18.5 = 1.6$ weeks

Therefore, this employee would meet a trigger on the 5th **working** day of absence

Scenario 4 – 14.8 hours per week – working Thursday and Friday

Daily hours are 7.4
Trigger days for 3 days per week = 3.2 days
Contracted hours – 14.8
 $7.4 \times 3.2 / 14.8 = 1.6$ weeks

Therefore, this employee would meet a trigger on the 4th **working** day

Scenario 5 – 24 hours per week – rota system, 4 from 7

Daily hours are 6
Trigger days for 4 days per week – 6.4 days
Contracted hours – 24
 $6 \times 6.4 / 24 = 1.6$ weeks

Therefore, this employee would meet a trigger on the 7th **working** day

Scenario 6 – 5 hours per week – 1 hour a day Mon - Fri

Daily hours are 1
Trigger days for 5 days per week – 8
Contracted hours – 5
 $1 \times 8 / 5 = 1.6$ weeks

Therefore, this employee would meet a trigger on the 8th **working** day

Scenario 7 – 5 hours per week – 5 hours per day on a Monday

Daily hours are 5
Trigger days for 1 day per week – 1.6 days
Contracted hours – 5
 $5 \times 1.6 / 5 = 1.6$

Therefore, this employee would meet a trigger on the second **working** day

Part time workers - Sickness absence triggers - examples

Day	Date	Contracted hours						
		Scenario 1	Scenario 2	Scenario 3	Scenario 4	Scenario 5	Scenario 6	Scenario 7
		37 (M-F)	18.5 (mornings only M-F)	18.5 (Monday, Tuesday, Wednesday am)	14.8 (Thursday, Friday)	24 (rota - 4 from 7)	5 (Mon - Fri am)	5 (Mondays only)
Mon	01-Nov	7.4	3.7	7.4	7.4	6	1	5
Tues	02-Nov	7.4	3.7	7.4	7.4	6	1	0
Wed	03-Nov	7.4	3.7	3.7	0	0	1	0
Thurs	04-Nov	7.4	3.7	0	0	6	1	0
Fri	05-Nov	7.4	3.7	0	0	6	1	0
Sat	06-Nov	0	0	0	0	0	0	0
Sun	07-Nov	0	0	0	0	0	0	0
Mon	08-Nov	7.4	3.7	7.4	7.4	6	1	5
Tues	09-Nov	7.4	3.7	7.4	7.4	6	1	0
Wed	10-Nov	7.4	3.7	3.7	0	0	1	0
Thurs	11-Nov	7.4	3.7	0	0	6	1	0
Fri	12-Nov	7.4	3.7	0	0	6	1	0
Sat	13-Nov	0	0	0	0	0	0	0
Sun	14-Nov	0	0	0	0	0	0	0
Mon	15-Nov	7.4	3.7	7.4	7.4	0	1	5
Tues	16-Nov	7.4	3.7	7.4	7.4	0	1	0
Wed	17-Nov	7.4	3.7	3.7	0	0	1	0
Thurs	18-Nov	7.4	3.7	0	0	6	1	0
Fri	19-Nov	7.4	3.7	0	0	6	1	0
Sat	20-Nov	0	0	0	0	6	0	0
Sun	21-Nov	0	0	0	0	6	0	0
Mon	22-Nov	7.4	3.7	7.4	7.4	0	1	5
Tues	23-Nov	7.4	3.7	7.4	7.4	0	1	0
Wed	24-Nov	7.4	3.7	3.7	0	0	1	0
Thurs	25-Nov	7.4	3.7	0	0	6	1	0
Fri	26-Nov	7.4	3.7	0	0	6	1	0
Sat	27-Nov	0	0	0	0	6	0	0
Sun	28-Nov	0	0	0	0	6	0	0
Mon	29-Nov	7.4	3.7	7.4	7.4	0	1	5
Tues	30-Nov	7.4	3.7	7.4	7.4	0	1	0

Trigger hit