

# Attendance management and ill health capability procedure for teachers employed by the local authority and not attached to schools and managers guidance



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Attendance management and ill health capability procedure for teachers employed by the local authority and not attached to schools

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Version	Date	Detail	Author
V.01	09.12.22	Version tabled and agreed at SJCC	Ian Stonehouse

## Managers' guidance

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**Appendix 1 – Causes of absence**

**Appendix 2 – Manager' guidance on meetings held in accordance with the Absence Management procedures**

**Appendix 3 – Guidance on the arrangement of formal meetings with staff involving union / professional association representatives**

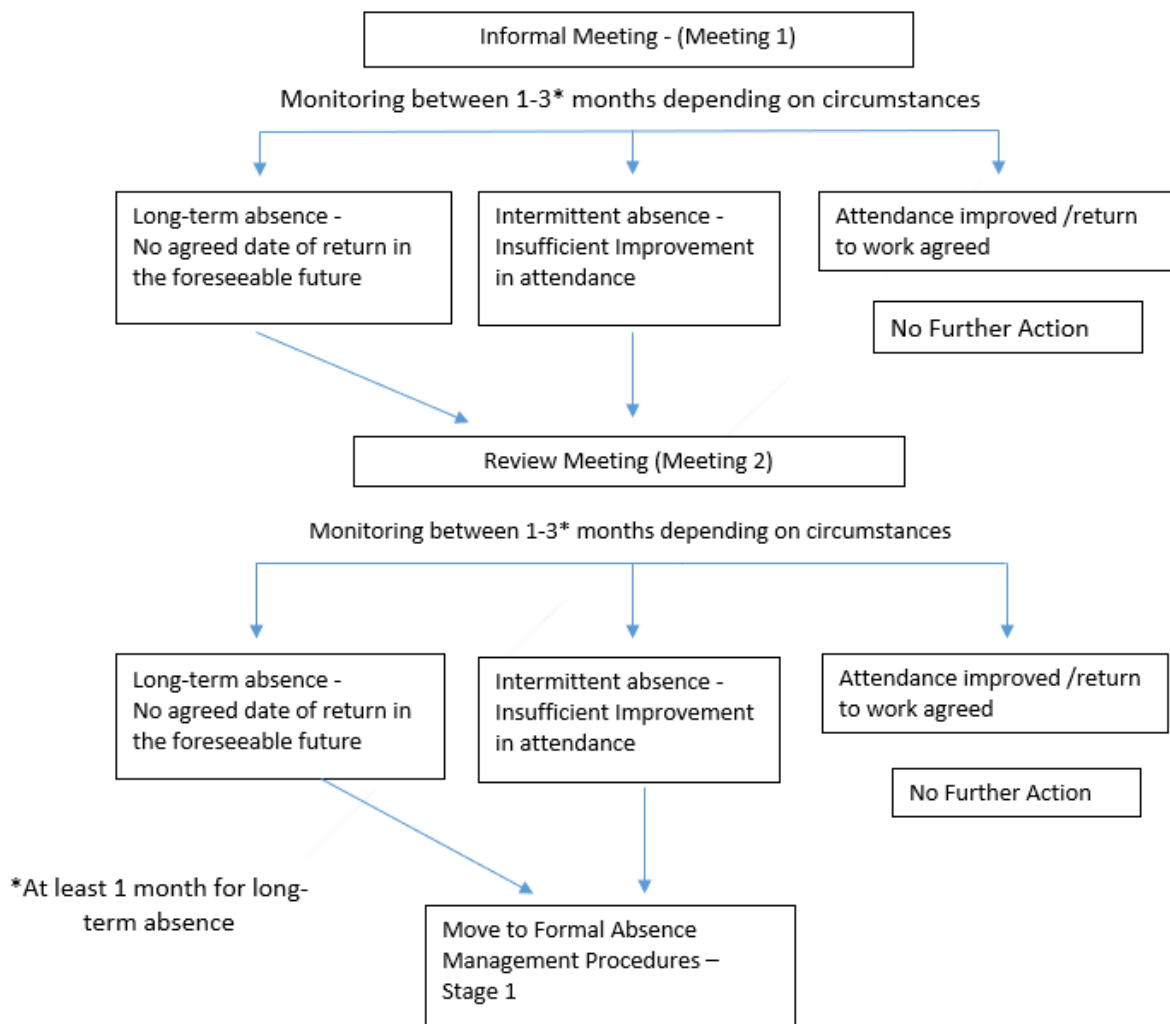
**Appendix 4 – Guidelines on phased return to work**

## Informal action

An employee hits an absence trigger if one or more of the following apply:

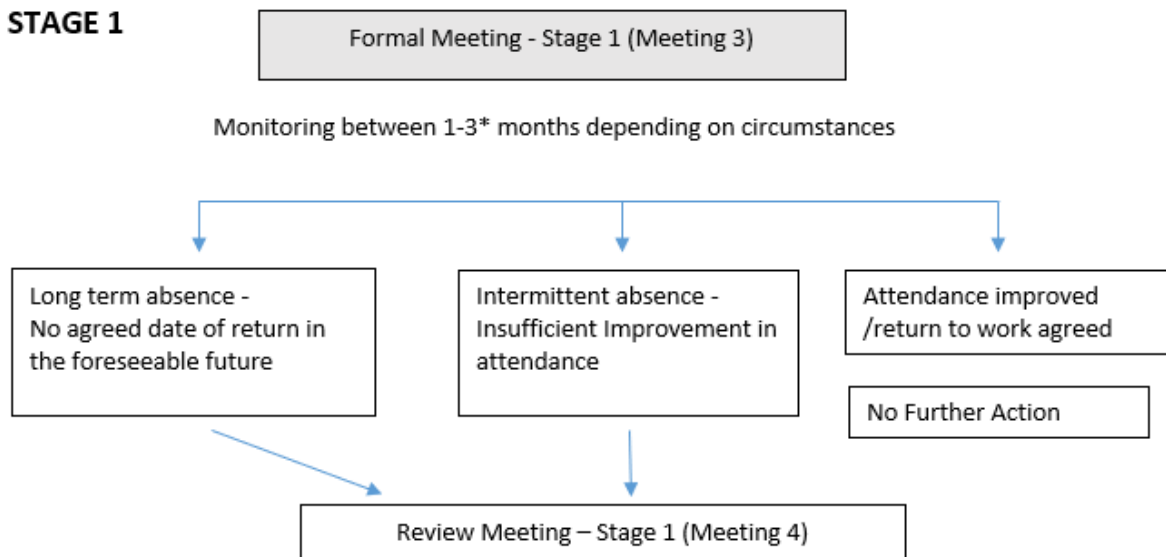
- 8 working days over in any rolling 12-month period\* or
- A continuous absence of over 20 working days or
- Where there is other cause for concern on the level or pattern of absence.
- An employee is unable to carry out the full duties of their post although they are able to attend work

\*To hit the trigger the employee must have at least 8 days of absence **and** at least 2 periods of absence

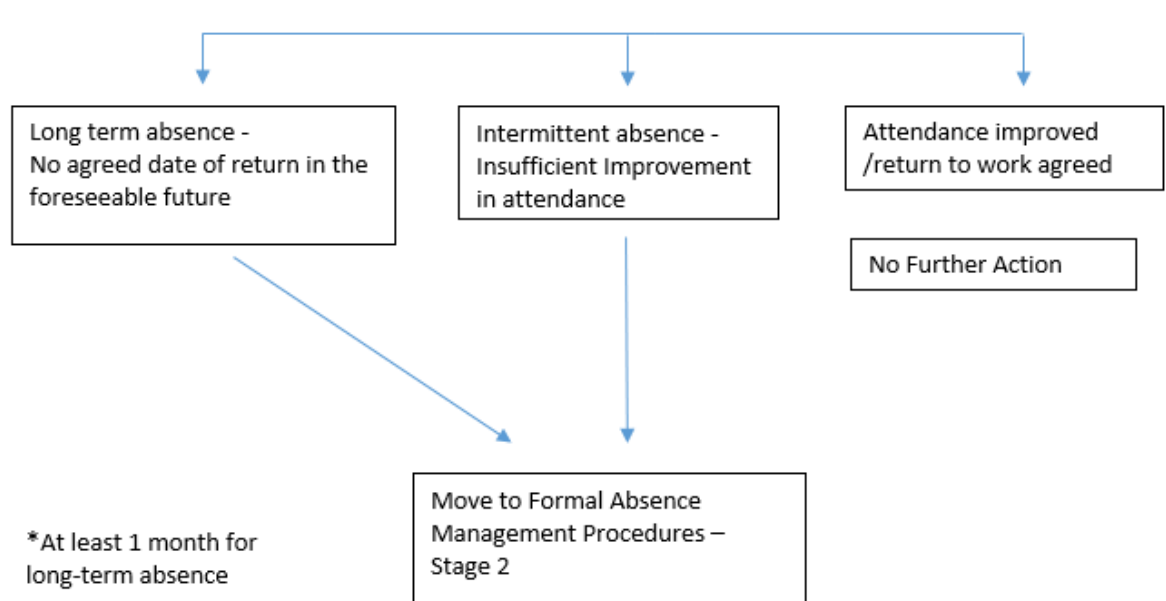


## Formal Absence Management Procedures

### STAGE 1



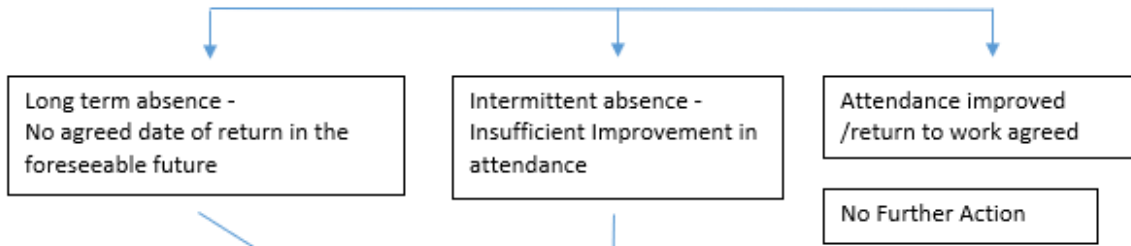
Monitoring between 1-3\* months depending on circumstances



**STAGE 2**

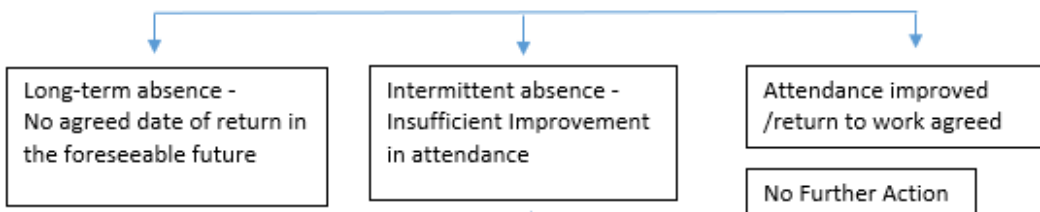
Formal Meeting - Stage 2 (Meeting 5)

Monitoring between 1-3\* months depending on circumstance



\*At least 1 month for long-term absence

Review Meeting – Stage 2 (Meeting 6)



**Stage 3**

III – Health Capability Hearing

Dismissal

Further Review meeting at Stage 2

Appeal

# 1. Background

The Council is fully committed to the health and welfare of all employees. It is implicit within these procedures that the Council will, do all it can to support any member of staff who suffers from ill health.

Heads of Service will encourage and support employee with health problems to seek help through occupational health, wellbeing services, or external sources.

Employees will be encouraged to declare if they have a health condition or a disability, so they can access the necessary reasonable adjustments and support.

The aim of the policy is to promote high levels of attendance at work and to enable employees to fulfil all aspects of their role however, it is not the intention of this sickness absence policy to deter those who are genuinely sick from taking appropriate sick leave.

The Management of sickness absence procedure is supplemented by Managers Guidance, which provides more detail of the process as well as guidance to Managers in respect of sickness absence matters.

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## 2. Scope

This Procedure is consistent with the Advisory, Conciliation and Arbitration Service (ACAS). It applies to all Teachers employed by the Local Authority and not attached to Schools.

### Key principles

- 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 fulfil 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 any 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 5 working days' notice, in writing, of all 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.



### 3. Objectives

The aim of this procedure is to provide support for teaching staff employed by the Local Authority and not attached to schools in their absence and the Council with a fair and consistent means by which short-term and long-term sickness absence and ill health capability is addressed. It aims to support these 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

Regular Monitoring and Support underpins this Procedure.

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### 4. Reporting sickness absence

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

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

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

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### 5. Contractual sick pay entitlements

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

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

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

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

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

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

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

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

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

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

- b) Extensions of the allowances in (a) above for teachers with long service (full and half pay not to exceed 200 working days in total):
  - i. 10 years full-time service but less than 20 years – additional 23 working days at full pay \*
  - ii. 20 years’ full-time service but less than 30 years – additional 46 working days at full pay \*
  - iii. 30 years’ full-time service and over – additional 69 working days at full pay \*

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## 6. Maintaining contact

The Council has a responsibility to maintain contact throughout an employee’s absence in order to provide a supportive framework to facilitate a successful return to work. Where an employee fails to contact their line manager within the prescribed timescales, the line Manager will contact the employee.

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

In some circumstances and where agreed by the employee, it may be preferable for contact to be maintained via third parties, where appropriate. Where an employee or their trade union informs the Head of Service that the direct contact is causing distress and requests contact via their trade union representative this should be accommodated. Any contact will be reasonable and sensitive and will not require employees to set work for pupils or classes they would normally be teaching or

undertake any contractual duties for which they are absent with ill-health unless the employee wishes to do so.

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## 7. Return to work discussion

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

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

During the discussion the line manager should:

- Ascertain whether the employee has made a full recovery.
- 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 where used, 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 it is felt 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
- Complete the return to work form discussion form where appropriate. The return to work discussion form should only be completed where:
  - The employee is having frequent periods of short-term intermittent absence.
  - Where a pattern of absence is of concern
  - The absence is covered by medical certification.

- The employee is in the capability review process.
- Adjustments to the job are required.

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

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

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

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

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

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## 9. Informal Action

Line managers are responsible for monitoring the absence of their employees. The Council considers that sickness absence is a concern when the following triggers are reached

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

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

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

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

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

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

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

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

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## 10. Ill 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 Ill Health Capability procedures. For further information see manager guidance.

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## 11. Informal Support

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

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

The purpose of the discussion will be to: -

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

The following courses of action may be considered: -

- i. where relevant, inform the employee what reasonable adjustments have been agreed and/or seek further advice from Occupational Health regarding any reasonable adjustments
- ii. inform the employee that no further measures will be implemented as the manager is satisfied with the explanation of the necessity for the absence.
- iii. inform the employee that their absence may be monitored for the next 1-3 months depending on the circumstances. For long term absences

this will be at least 1 month\*.

- iv. Where the absences are intermittent require, for a period of three months, the production of an NHS medical certificate from the first day of each period of sickness absence. (Costs incurred will be reimbursed in full by the Council).

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

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

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

Where relevant the purpose of this further meeting will be:

- a) discuss with the employee their absence record.
- b) discuss with the employee what steps the employee and/or the service can take to support them to return to work or to improve their attendance, including the consideration of reasonable adjustments on a temporary or permanent basis; (see Managers Guidance or review the current reasonable adjustments, if in place.
- c) consider current available medical and welfare information. If the employee's absence record suggests that a report from the Occupational Health Physician is warranted, and one has not yet been obtained, seek agreement for the employee to be referred. Where an employee refuses to undergo further medical examination they should be advised that a decision may be taken on the information already available.
- d) reinforce the expectation regarding attendance at work where appropriate.
- e) Following meeting 2 management should determine
  - whether temporary or permanent reasonable adjustments would enable an employee to return to work or sustain an acceptable level of attendance.
  - Whether a return to work following a period of long-term absence has been agreed
  - whether the possibility of redeployment should be considered
  - whether the absences are not genuine and disciplinary action may be appropriate.
  - if none of the above are clear, consideration should be given to a further review period.



The following courses of action may be considered:

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

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

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## 12. Referral to Occupational Health

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

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

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## 13. Formal Absence Management Procedures

Where an employee has been continuously absent or where there has been no or insufficient improvement of attendance following at least two monitoring periods of informal action a formal meeting at Stage One of the Formal Management of Sickness Absence Procedures will be held.

### **Stage 1 – first formal meeting – Meeting 3**

The first formal meeting (Meeting 3) will be held with the Head of Service and the employee.

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

At the meeting considerations will include:

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

Other agreed action may include:

- i) Agree appropriate programme of support for anticipated return to work or
- ii) Set an improvement target and timescale for the required level of sustained attendance to be achieved.
- iii) Consideration of ill health retirement.

On conclusion of the meeting a letter warning that failure to attain/maintain the required level of attendance or ability to carry out the requirements of the role may lead to consideration by the Council of whether the employee's continued employment at the Council can be sustained will be issued.

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

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

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

- A review of the actions taken at Stage 1(Meeting 3)
- Steps the employee has taken to improve his/her attendance.
- Current available medical information, including information from the employee and any Occupational Health report where appropriate.
- Reasonable adjustments if these would help the employee to return to work or improve their attendance at work or ability to carry out requirements of the role
- Referral to Occupational Health where this has not previously been done.

- Emphasis of the expectation regarding attendance at work where appropriate
- Consideration of an extension of the review period where attendance has improved but there are still concerns about the employee's overall pattern of attendance, or where further information is awaited
- Removal from the process where attendance has improved to a satisfactory level or the employee has returned to work.
- Where an expected date of return from Long-term absence in the foreseeable future has not been agreed, or where attendance has not improved within the agreed period of monitoring a meeting at Stage 2 of the formal absence management procedures will be arranged.
- Consideration of whether the employee wishes to pursue ill-health retirement under their pension scheme and the next steps

## Stage 2 - Meeting 5

The stage 2 meeting (Meeting 5) will be held with the Head of Service or relevant Senior Leader and the employee where there has been continued absence for at least one month since Stage 1 review meeting, OR there has been no or insufficient improvement of attendance or ability to carry out the role within the agreed period of monitoring

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

At the meeting considerations will include:

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

On conclusion of the meeting a final warning letter will be issued stating that failure to attain/maintain the required level of attendance or ability to carry out the role may lead to consideration by the Council of whether the employee's continued employment can be sustained

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

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

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

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

The Stage 2 Review meeting should include:

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

### **Stage 3 – Ill-Health Capability Hearing**

A hearing should be arranged if attendance at work has not improved to the required standard or if a return to work date has not been agreed or the employee is unable to carry out the full duties of the role with reasonable adjustments as appropriate following the review meeting of stage 2.

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

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## **14. Dismissal Procedures**

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

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

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

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

## **b) The Ill-Health Capability Hearing**

The ill-health 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. will be supported by the Advice & Support team.

- The Head of Service or nominated representative will present the case.
- The employee and their representative will have the opportunity to ask questions. The Chair will have the opportunity to ask questions.
- The employee and/or representative will present their response.
- The Head of Service or nominated representative will have the opportunity to ask questions. The Chair will have the opportunity to ask questions.
- The Head of Service or nominated representative will sum up.
- The employee and/or representative will sum up.
- The person presenting the case, the employee and representative will withdraw.
- The Chair will consider all the evidence and decide the outcome. The options will be:
  - i. A further review period with any appropriate warning (repeat of the review meeting at stage 2)
  - ii. Final written Warning
  - iii. Dismissal with notice (redeployment may be sought in appropriate circumstances)

The outcome of the hearing and the right of appeal will be communicated in writing to the employee within 5 working days.

## **a) Appeal**

The employee has a right of appeal. Appeals against dismissal are to Executive Directors and must be registered in a letter to the Director of Organisational Development & Policy. The employee should write to the Executive Director of Children's Service to register their appeal within 10 working days from the receipt of the written confirmation of the relevant decision.

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

There will be a minimum of 10 working 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 5 working days prior to the hearing.

A legal adviser will be present at any appeal against dismissal

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

The format of the appeal hearing will be the same as the ill-health capability hearing above but the order of business in the appeal hearing may begin with the appellant stating their case, rather than the chair of the stage 3 ill-health capability hearing depending on the grounds of the appeal.

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

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

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

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# ATTENDANCE MANAGEMENT AND ILL HEALTH CAPABILITY PROCEDURE FOR TEACHERS EMPLOYED BY THE LOCAL AUTHORITY AND NOT ATTACHED TO SCHOOLS – MANAGERS GUIDANCE

## 1. Background

The Council in consultation with the recognised teaching Trade Unions, has agreed a number of measures that together constitute a comprehensive approach to enable employees to maximise their attendance and reduce absence levels.

The aim of this managers guidance is to provide practical support, advice, and guidance to enable designated line managers, to fulfil their role in the management of sickness absence to ensure the fair treatment of all teachers employed by the local authority and not attached to schools consistent with good management practice. In addition, they seek to raise designated line managers awareness of issues relating to employee absence, in order that they will feel more confident in dealing with what is a very complex issue, sensitively, consistently, fairly and in a confidential manner.

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## 2. Scope

These guidelines and the procedures should be applied to all teachers employed by the Local Authority and not attached to schools. All other employees employed by the Council fall under the scope of the Councils Attendance Management and Ill-health Capability procedures.

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## 3. Responsibilities

### a. The Council will:

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

### b. Line Managers

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.

### c. Human Resources, Occupational Health, Health and Safety:

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

**d. Employees are encouraged to:**

- adopt a healthy lifestyle and registering with a GP, dentist, and optician, and taking advantage of vaccination programmes for infectious disease prevention
  - seek advice promptly about fitness to work when symptoms arise
  - seek professional advice about staying healthy, managing ill health, and accessing appropriate advice, support, and treatment
  - return to work as part of a supportive recovery programme
  - proactively attend training/programmes to support their health
  - share ideas and actively contribute to promoting health and wellbeing in their place of work
  - raise issues that affect their health, safety, and wellbeing or that of their colleagues with their line manager
  - and expected
    - to engage with management and occupational health to create a Wellness and Recovery Action Plan (WRAP) where needed
    - to engage with Occupational Health as required by management to support health and attendance at work or a return to work
    - to comply with timescales, regarding notification of sickness absence, and make themselves aware of how to contact their manager.
    - to Provide documentation in a timely manner.
    - to maintain regular contact with manager in accordance with agreed procedures. Managers with access to Microsoft Teams telephony can be contacted from any telephone.
    - to attend return to work discussions and absence review meetings as appropriate.
    - to Understand that failure to comply with the attendance management procedure may affect eligibility for sick pay
    - to accept / be willing to discuss reasonable adjustments to working arrangements to facilitate a return to work.
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## 4. Employee Unable to Carry Out Their Normal Role / Ill Health Capability

There may be cases where employees do not have any absences but are suffering from a health condition which leaves them unable to carry out their normal role.

In these cases, it may be necessary to manage the situation in accordance with this procedure. For example, if the employee's illness / condition means they would be likely to be considered for ill health retirement.

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 this 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.

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## 5. The Costs of Sickness Absence

Managers will be aware of the impact of absence on the service users and are recommended to apply the Management of Sickness Absence procedures to address each situation as effectively as possible, for the benefit of the individual and the service.

The potential 'costs' of absence can be listed as follows:

- a) Disruption to service users – potential fall in service standards.
  - b) Costs of replacement/temporary staff.
  - c) Reduced range or standard of service/job performance, as absent employee's work is covered by others.
  - d) Low morale and increased demand on other staff to maintain the quality of provision and support temporary staff.
  - e) Difficulty retaining staff.
  - f) Deterioration in reputation of the service
-

## 6. A Comprehensive Approach

The following measures can assist in the monitoring of absences:

- a) It must be recognised that while procedures are important, in themselves they are not sufficient to control absence levels. Accordingly, a number of complementary measures are also recommended which support the health and wellbeing of staff and assist in creating a supportive work culture where positive health and attendance are promoted.
- b) The responsibility for the managing of absence control being devolved as far down the management structure as practical.
- c) The training and briefing of designated staff and the production of these guidelines to ensure that Management apply the procedures fairly and consistently.
- d) That absence level statistics should be regularly reviewed at Management meetings.

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## 7. Role of Management

Lowest possible levels of absence are crucial to the success of any organisation. Absence levels reflect management expertise in providing conditions which motivate employees and engender a feeling of commitment from them.

The Health and Safety at Work Act 1974 requires that employers are responsible "so far as is reasonably practicable" for the health, safety, and welfare at work of all their employees. Therefore Management, as well as providing a safe and practicable system of work, information, and training, etc., also has a responsibility to keep abreast of the health and welfare of employees. The Informal action and the "trigger" it contains are designed to identify those employees whose absence record requires close examination and ensures that designated line Managers take the appropriate action.

The Council have a particular statutory responsibility to enable staff to maintain a reasonable work/life balance and to both monitor and seek to reduce the incidence of workplace stress. This can be achieved by tackling the workload burden on employees and promoting workplace wellbeing.

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## 8. Reporting sickness absence

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

## **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 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.

## **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.

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

## **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.

### **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.

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## **9. Long-Term Absence**

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

Employees are sometimes off work for significant periods of time due to ill health. The procedures outlined in the management of sickness absence procedures are intended to enable the Council to address these situations in a supportive way while recognising they cannot be prolonged indefinitely. Following a period of support and review the Council may feel they wish to consider dismissing an employee on the grounds of ill-health capability. There may be a number of reasons for this, including the need to attract a permanent replacement and minimise ongoing disruption to classes service delivery. While there are no specific rules about the length of time that should elapse before the Council consider dismissal on the grounds of ill-health

capability, the key consideration is whether, in the circumstances, the Council could reasonably be expected to wait any longer. It should be noted that the Council do not have to wait until any sick pay entitlement has been exhausted, to consider dismissal. It must also be emphasised that dismissal is not obligatory once any sick pay entitlement has been exhausted. Dismissal on the grounds of ill-health, following a long-term absence would only take place before the expiry of sick pay where there is a clear diagnosis that sufficient improvement for a sustained return to work will not occur within the foreseeable future. Paid sickness leave is intended to provide for a period of recovery.

### **Equality Considerations**

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

### **Dismissal Considerations**

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

### **Right to Representation**

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

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

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

- Just how much disruption is being caused by this absence? Is there an immediate crisis; or could the organisation afford to continue for some time without a replacement, for example, with some reorganisation?
- In the view of the individual's General Practitioner, or of the Occupational Health Physician, when will a return to work be possible? Will there be a full recovery or will a return to the same work be inadvisable?
- Could the employee return if some assistance were provided? Could some reorganisation or redesign of the job speed up a return to work?
- Is alternative, lighter, or less stressful work available, with retraining if necessary?

- Could reorganisation of the work group produce a more suitable job?
- Has early retirement, being considered by the Council and employee?
- Have all possibilities been discussed with the employee and their representative?

### **Documentation**

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

### **Medical Information**

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

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

### **Teachers**

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

## **10. 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.
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## 11. 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 Managers 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 this should be done as and when appropriate. Managers 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, where appropriate

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 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, the manager should provide:

- The individual employee's periods of absence during at least the last two 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 notification of appointment will be issued directly to the home address. and a text message confirming the date.

If a workplace assessment is required 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 that you have indicated are relevant. Advice from the Advice & Support Team should be sought where necessary.

These 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.
- Give 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 alternate 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 and a copy of the report should be given to the employee as they do not automatically receive a copy.

It is the managers 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 your 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 HR 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.

Employees are entitled to receive a copy of their OH report, and to check it for factual errors before it is sent to the employer. Employees wishing this should request it at their OH appointment.

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## 12. Employee Counselling Service

There will be circumstances when an employee may benefit from access to talking therapies such as counselling to help them deal with either personal or work-related issues. Heads of Service are advised to ensure that their employees are able to access the council's counselling service to help them deal with their problems before they impact on their health.

The Counselling service is confidential and is accessed on a self-referral basis.

DCC Counselling service cannot assist with legal and financial issues. However, there are organisations such as Citizens Advice who can offer help and advice in these areas. Most trade unions also offer support for members.

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## 13. Return to work discussion

The Management of Sickness Absence procedure includes the expectation that Line Managers should, on the return to work of an individual, enquire about the absence.

In such cases the discussion should be carried out sympathetically and in private. These discussions are outside of the formal procedures contained in the Management of Sickness Absence procedures. Care will need to be exercised to ensure that the discussions provide and continue to provide a useful means to assist in the reduction of sickness absence levels. The opposite could easily become the case if the discussions are seen as an empty formality without having any real purpose, or a threat to employees, overriding the formal procedures.

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## 14. Keeping in Touch during Absence

It's important that both the service and the employee stay in regular contact during absence, especially if it is long term.

There should be agreement about:

- how often the contact should be
- if and when the contact will be by email, phone, or face-to-face meetings
- who the employee is to be in contact with?

Keeping in contact is a good chance to:

- check on the wellbeing of the employee
- see if the employee needs any support
- talk about any relevant updates or changes happening at work

Where an employee's absence is due to a mental health condition, it's particularly important to consider an appropriate level of contact.

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## 15. Absence Monitoring

The successful implementation of the Attendance Management procedures rests on the information available to Managers.

The statistics produced need to reflect the incidence of absence and show whether or not a large proportion of the total time loss is caused by a large number of separate absences or only a few, and whether a small number of employees are responsible or whether absence is spread amongst a wide group of employees.

These absences will not include absences granted through the Leave of Absence policy, but Managers should be aware of the impact of a combination of both categories of absence. It is important that absences are correctly coded to ensure absences are dealt with appropriately. The Leave of Absence policy outlines the circumstances in which leave of absence, with and without pay, may be granted to all employees.

It is expected that those employees identified by the report will be invited to a meeting with the appropriate Manager under the informal part of the Attendance Management and Ill-health capability procedures for Teachers employed by the Local Authority and not attached to schools. Employees will have the opportunity for a trade union representative, friend, or colleague to be in attendance at all meetings.

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## 16. Meeting and Record-keeping Protocols

Further guidance on setting up meetings with trade union representatives is attached as Appendix 3.

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

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

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, 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.

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## 17. Confidentiality

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

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

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## 18. Informal Action

How the absence triggers identified in the policy should be applied to part-time staff should be considered carefully taking into account the working pattern of the employee. A part-time employee working less than a full week should have the trigger adjusted accordingly to ensure that it is fairly applied e.g., an employee who is contracted to work for 3 days out of 5 will have the triggers adjusted from 8 working days for intermittent absences to  $\frac{3}{5}$  of 8 working days = 4.8 working days.

The trigger for an employee who works part-time over a 5 day working week does not need to be adjusted and should be consistent with full-time staff as it takes into account the fact that their working day is of shorter length

When an individual who has been identified as triggering the Management of Sickness Absence procedure, the first step is to ascertain the circumstances of the individual's absence to determine whether a meeting under the procedure would be appropriate in the circumstances.

It is possible to have one or more spells of absence exceeding the 'triggers' as set out in the procedure, which is unlikely to reoccur. A discussion in such circumstance is unlikely to serve any purpose unless the employee requests it.

In considering an employee's reasons for absence, it is necessary to be aware that in some cases the medical reason given on a self-certification form or Doctor's certificate may not indicate the underlying reason, e.g., job satisfaction. Therefore, in brief, attached at Appendix 1 are possible non-medical reasons for absence of employees.

Managers should be aware that there may, on occasions, be an individual who is not prepared to discuss his/her absences with them. In such circumstances the individual's wish should be respected and alternative arrangements made, e.g., another designated Manager.

The procedure as outlined in these procedures gives some indication of the issues that need to be discussed with the individual, although how the meeting is conducted is also crucial. See Appendix 2 for the major points to be considered when carrying out such a discussion. The purpose of the discussion is to ensure that the employee takes the matter seriously. The correspondence inviting them to the informal discussion should reassure the individual that it is not a disciplinary matter and that they have the right to be accompanied by a trade union representative, friend, or colleague.

If, following a period of monitoring, there has been no significant improvement, a review meeting should be arranged as soon as practically possible.

It is recommended that notes are taken of the discussion which takes place at the review meeting. These notes should be provided as soon as possible after the meeting. A copy should be forwarded to the individual for their information, with a second copy retained on the personal file in accordance with the requirements for processing Special Category data as outlined in the General Data Protection Regulation and Data Protection Act 2018. If possible, notes should be agreed by all parties. If, however, agreement cannot be reached, the employee does have the right to append a note of disagreement to the Manager's notes.

If the Manager is happy with the reasons given for the absences or arrangements are agreed for a return to work following a period of long-term absence in the foreseeable future, no further action is necessary. However, if there is still some cause for concern the employee should be informed that their absence will be monitored.

The following courses of action may be appropriate depending on the circumstances:

- If there is a known medical condition or concern that there is an underlying medical problem referral to the Occupational Health Service for medical advice should be sought. If the employee refuses to attend an appointment with the Councils Medical Adviser for a medical examination, you can insist. If the refusal is sustained, you should inform the employee that his/her refusal can be regarded as misconduct and that disciplinary action may result.
- If there is a concern that there is a welfare issue, they should be referred to the Counselling Service.
- Where absences are discontinuous the requirement for the production of a first day NHS fit note for a period of time. Charges incurred by the employee are reimbursable by the Council. This course of action is most applicable where there are reasonable grounds to suspect that the sickness notification or self-certification rules are being abused.

If appropriate, the Manager should indicate what the implications may be if the employee does not return to work or reach the required improvement in levels of attendance. Where absences are intermittent the expectations for levels of improvement should be clearly set out. In all cases, particular consideration should be given to how an individual who is defined as disabled under the Equalities Act 2010 can be supported.

The period between the informal discussion and the review meeting will be between 1 and 3 months and will depend on the priority of each meeting, which will be to identify and initiate practical steps to support the employee's return to work or sustained attendance.

At the conclusion of the review meeting, the Manager will need to consider what, if any, further action is required, if the employee does not return to work or if expectations for improvement in relation to a sustained attendance are set and the relevant level of improvement in attendance is not met, and this is not the result of particular extenuating circumstances. It may be necessary to proceed to the formal absence management procedures at the end of the monitoring period following the review.

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## 19. Formal Absence Management Procedures

At each stage (Formal or Informal) the arrangement of a meeting at the next stage of the procedure will be dependent on the level of absence during the review period. Judgements will be made on the basis of "reasonableness" taking into consideration the target for attendance set and any relevant contextual factors.

The aim of the formal part of the procedure is to:

- identify what will be regarded as unacceptable levels of absence.
- take action that will promote the highest possible levels of attendance and maintain that level.
- identify who is responsible for taking action.
- communicate to employees, Management and trade unions, the rules to be applied to employee absence.

At the review of each stage,

- a. if the expected level of attendance has been met the meeting should:
  - review progress
  - identify any relevant strategies and actions that may support sustained improvement in attendance

This meeting should take place as a further dialogue at the stage of the procedure already reached.

- b. If an employee is not able to agree a return to work in the foreseeable future a further review period should be agreed.

For discontinuous absences, where a further improvement in attendance is still required the meeting should also consider whether a new 'target' for attendance should now be set in order for the employee to achieve a level of attendance within the usual expectations for the Councils employees.

The measure of achieving a return to work at the earliest opportunity or absences within the targets identified in the policy is a goal. In particular cases an interim return to work target date or discontinuous absence level target may be set for reasons relating to the individual's situation/condition.

**It is also permissible to set a discontinuous absence target which takes account of the pattern of absence and that makes specific reference to the reduction in incidences of absence and/or the total number of days. It will also arise from consideration of any identifiable causes of the absences and what is being done to address these.** If a repeated pattern where the staged procedure is triggered but then the attendance target is met is identified, then the person's total absences over the current and previous academic years should be considered. The target set should include sustaining the required level of attendance for a longer period.

At the review meetings it will be important to consider the particular circumstances before determining whether to move to the next stage in the procedure. A return to work or a reasonable and significant level of improvement in the attendance that was identified at the previous meeting, may not have been met owing to a type of absence that is unlikely to reoccur and does not fit the usual pattern of employee's absences.



In applying a 'target' for improvement in attendance to individual employees it is also important to treat all staff fairly balancing:

- i. The individual circumstances and any medical condition of the employee, particularly if the Equality Act 2010 in relation to disability applies
- ii. The need to be equitable to all employees and not to discriminate
- iii. The effect of the absences on the quality of service delivery
- iv. The impact on other staff of the absences and the overall efficient running of the organisation

After the final review meeting, which is a meeting to review Stage 2, the Head of Service will consider whether to refer the matter to a capability hearing

Referral to a capability hearing is more likely to be appropriate in cases where:

- there is little prospect of a sustained return to work in the foreseeable future
- there is a pattern of significant absence over 1 academic year or more
- there is little or no sign of an appropriate improving trend
- the employee has not met their targets for attendance, following application of the staged procedure. (Targets for individual attendance will take account of the application of the Equalities Act 2010)
- there is little or no information, from the GP and Occupational Health Physician, to indicate that there are reasons why attendance is likely to improve sufficiently in the future
- the Head of Service has identified contextual circumstances in the service (for instance, effects on students' education, on colleagues and/or on the service's budget/resources), the likelihood of referral to an ill-health capability hearing for consideration increases

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## 20. Guidance on the Dismissal Procedure

Before determining that referral to an ill-health capability hearing is appropriate the Head of Service should consider and record the following:

- The final stage of the Absence Management procedures has been completed without a date for a return to work/sustained pattern of attendance being identified and appropriate warnings have been issued.
- The employee has been offered the support of the Counselling Service as outlined in the procedure and reports from an Occupational Health provider have been obtained.
- The Head of Service is satisfied that in referring the case for consideration of potential dismissal on grounds of Ill-health Capability, their view is that there is no indication that a resolution to the absence(s) will be reached in the predictable future and the impact of the absences on the functions of the organisation is of significant detriment.

- The employee has exhausted their contractual sick pay entitlement or will have by the time any dismissal takes effect.

Where this is the case and the Head of Service has undertaken the Absence Management procedures thus far, they should be asked to arrange a meeting where this is heard by a manager from the leadership job family (grade 15 and above), the Chair of this meeting will also need to be available for the potential Appeal Hearing and an initial timetable drawn up.

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.

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## 21. The Ill-Health Capability Hearing

The letter to the employee informing them of the ill-health capability hearing should:

- Give 10 clear working days' notice of the meeting
- Have the documentary evidence including all OH reports enclosed (alternatively this can be forwarded separately, but no later than 5 working days before the meeting)
- Be signed by the Head of Service

The chair of the ill-health capability hearing should be sent:

- The Management of Sickness Absence Procedure
- Documentary evidence and a Statement of Case
- A copy of the letter to the employee

It should be noted that, the Chair of the ill-health capability hearing will need to be available in the days following the hearing to sign the appropriate letter.

There are a number of factors the chair must take into account when considering whether dismissal on grounds of ill-health capability is appropriate. These include:

- a) The nature, length and effect of the illness or disability
- b) The employee's past and likely future length of service with the organisation
- c) The importance of the job and the feasibility of employing a temporary replacement
- d) The effect continued absence or illness is having or might have on pupils' education and attainment and the effect on other employees
- e) The general effect on the organisation
- f) Whether sick pay is being provided, although it would be unfair to dismiss only because the sick pay entitlement has expired

The chair must also ensure that there has been:

- i. A fair review by the employer of the employee's attendance record, prognosis, and potential return to duties
- ii) An opportunity for the employee to make representations

- iii) Appropriate warnings of potential outcomes, including dismissal on grounds of ill-health capability, if there has been no significant change in circumstances or the situation

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.

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## 22. The Appeal Hearing

In the event of the employee appealing against the initial decision, 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 10 working days, acknowledging the registering of the appeal. The appeal will take place as soon as practicable. There will be a minimum of 5 working days' notice of the appeal date.

The Chair of the Capability Hearing also needs to attend the hearing in order to respond to any relevant questions.

The appeal hearing officer should be sent:

- The procedure for dealing with the Management of Sickness Absence
- Documentary evidence including all OH reports
- A copy of the letter to the employee
- Employee's statement of case (if available and with the employee's agreement)
- Minutes of the ill-health capability hearing

The Appeals hearing officer will need to be available to sign the appropriate letter within 5 working days.

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## 23. III- Health Retirement

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

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

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## 24. Reasonable adjustments

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

- Adjustments to premises. There might be structural or other physical changes such as widening a doorway, providing a ramp, or moving furniture for a wheelchair user which can be undertaken.
- Allocating some of the person's duties to another person. Appropriate duties might be reallocated/swapped/re-arranged with another employee if the individual is currently having difficulty in doing them because of the health.
- Altering the person's working hours. This may include allowing the person to work more flexible hours or to enable additional breaks to overcome fatigue arising from the health concerns or agreeing a change to the person's hours to fit with on-going regular treatment. It is important that the service does not attempt to impose any reduction in hours/pay, any proposal should arise from positive dialogue with the employee and their representative to seek a mutually suitable and amicable agreement.
- Allowing the person to be absent during working hours for rehabilitation, assessment, or treatment. The employee may need time off to receive physiotherapy or psychoanalysis or undertake employment rehabilitation. A similar adjustment might be appropriate if a condition worsens or if an individual needs occasional treatment.
- Giving the person, or arranging for them to be given, training. This could be training in the use of particular pieces of equipment to meet their needs.

- Equipment. A service might have to provide special equipment. Examples are a specific chair to provide support to someone with a back problem, an adapted keyboard for someone with arthritis, or specialist sound system for someone with a hearing impairment.
- Modifying instructions. The way instruction is normally given to employees might need to be revised
- Providing a reader or a sign language interpreter. For example, for reading information to a visually impaired person at particular times during the working day.
- Seeking support/provision/funding from agencies/charities to provide a support worker or specialist equipment.
- Considering modification of the implementation of employment policies, for example disciplinary, redundancy, appraisal where relevant
- Changing the location, the person is required to work within school. This could include ensuring that a teacher with mobility difficulties that prevents them from using stairs can hold all their lessons in a classroom on the ground floor.
- Adjustments to the “triggers” for action for moving through the management of sickness absence procedures
- 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 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 resume review meetings and progress through the stages of the attendance management and ill health capability procedure.

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## 25. Abuse of the Sickness Absence Procedures

Abuse of the sickness scheme will be dealt with under the disciplinary procedure for teachers employed by the Local authority and not attached to schools.

In cases where abuse of the scheme is suspected, sick pay may be suspended. Examples of abuse may include:

- Non-attendance at an In-Service Medical without reasonable cause.

- Failure to submit Doctor's Fit Notes at the appropriate time.
- Conduct prejudicial to the employee's recovery
- Employee's own misconduct or neglect.

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

### **Disciplinary Action**

If the employee is an accredited trade union representative it is necessary to discuss/inform the full-time district or area official of the union concerned before any action is taken.

## Specific Circumstances

### 26. Disability under the Equality Act 2010

An individual is defined to be disabled under the Equalities Act 2010 if all the following apply:

- it has a 'substantial adverse effect' on the life of an employee
- it lasts at least 12 months, or is expected to
- it affects their ability to do their normal day-to-day activities

Under the terms of the Equality Act, the council has a duty as an employer to consider making 'reasonable adjustments' to ensure that disabled employees are not put at a substantial disadvantage by employment arrangements or any physical feature of the workplace. Expert advice from an Occupational Health provider which may include a workplace assessment should be sought to provide specific information and advice about potential adjustments

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

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

Disability related sickness absence should be recorded separately to ensure this can easily be identified.

Consideration should be given to whether a reasonable adjustment can be made in order to assist the employee to return to or remain at work at any stage. This should include careful consideration of whether the 'triggers' for action in relation to levels of

absence should be extended. However, this should not automatically be the case. Using a longer period of absence before triggering a meeting could mean that the opportunity to explore potential adjustments and strategies to improve attendance, identified through formal discussion and reference to Occupational Health advice, is delayed.

The triggered meetings also provide an opportunity to consider the effectiveness of any approaches implemented, and review of these where appropriate. The focus for both employer and employee should be on seeking to enable the employee to maintain attendance. Extending the period before considering dismissal on the grounds of poor attendance may still be appropriate for an employee with a disability but taking account of the specific factors in each individual case.

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.

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.

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## 27. 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.

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## 28. 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.

Consideration of Redeployment on Non-Medical Grounds will be appropriate in a minority of cases where, through the Informal meeting, the employee has identified that the reason for their absence relates to their current employment (note - see Appendix 1 - Causes of Absence). Issues of conduct of the employee or colleague(s) and performance should be addressed through the appropriate procedures. It may, of course, be difficult to arrange redeployment.

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## 29. Menopause

Managing absence from work due to menopausal symptoms should be handled sympathetically because the menopause is a long-term and fluctuating health change.

Heads of Service should be prepared to make changes to help the employee continue to work, and minimise, reduce, or remove any dips in their job performance because of symptoms.

An employee should be given a reasonable amount of time to adjust to changes.

It is advisable, as well as being good practice to consider making changes for a worker experiencing perimenopausal or menopausal symptoms

Particular care should be taken to monitor and record sickness absence due to the menopausal or perimenopause separately.

Derbyshire County Council have agreed a menopause policy which provides more detailed advice.

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## 30. 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.

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## 31. Elective Surgery

Elective surgery should be arranged out of term-time in the first instance. This includes cosmetic procedures. Should an employee become ill and unfit for work following such procedures, the usual attendance management procedures will apply.

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## 32. Dying to Work Charter

Derbyshire County Council have signed-up to the Dying to Work Charter which sets out its commitments to employees who are diagnosed with a terminal illness. The manager guidelines provide practical support and advice for Managers to support staff with a terminal illness.

Additional resources are available to support staff and their managers when an individual is diagnosed with a terminal illness as follows:

- Talking about death and dying
  - Employee guidance, coping with a terminal illness
  - Supporting employees at the end of life
  - Support - with a terminal illness
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## 33. Employee Mental Health Support

Heads of Service need to create an environment where staff feel able to talk openly about their mental health. It is important to treat mental and physical health as equally important so that mental health problems are less likely to build up. Training and support for Managers in dealing with mental health issues will help to create a service-culture which is able to respond appropriately to mental ill-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](#)

Managers need to be able to recognise the signs of a mental ill-health issue. An issue can happen suddenly, because of a specific event in someone's life, or it can build up gradually over time. If a Head of Service thinks an employee is showing some signs of early mental ill-health, they should not be afraid to take appropriate actions to support the individual. The impact of a mental health issue will vary. For example, an employee may regularly be unable to focus on a task, or it may take them longer to complete tasks. It may affect their ability to interact with people, follow instructions or keep to set working times

Talking to an employee and finding out what they may be struggling with in the workplace and what might help is the first step to addressing any concerns that a manager may have about an employee. A Manager may need to encourage an individual to see their GP or look at ways to offer more support in the workplace—perhaps through the council's Occupational Health or counselling service

Heads of Service should take into account that, in the context of employment law, a mental health issue can be considered a disability even if there are not symptoms all the time, or the symptoms are better at some times than at others. They should, therefore, work with the employee to make the right adjustments for them. Simple changes to the person's working arrangements or responsibilities could be enough.

If an employee needs to take time off for their mental health it is important to maintain regular contact as keeping communication lines open can help prevent staff feeling isolated at home. Managers should establish contact which can be maintained in accordance with the employee's wishes. Some Managers may feel reticent about keeping in touch because they worry about doing or saying the wrong thing, but Heads of Service should ensure that line managers clearly understand that regular contact is really important and needs to be maintained in a professional, supportive, and constructive way. Heads of service should ensure that line Managers receive the appropriate support and training to undertake this role.

When planning the return to work of an employee following a long-term absence due to issues surrounding mental health, advice from an Occupational Health advisor will

be helpful in providing context. Where appropriate, the return to work discussion should include the development of an action plan which can be discussed and agreed with the member of staff. This might, for example, help identify triggers and outline more general support that the staff member might need to help them to sustain their return to work.

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## 34. 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

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## 35. Monitoring & Review

The Council will monitor the operation and effectiveness of this procedure periodically annually. In developing, applying, and evaluating this procedure the Council will monitor the impact on staff by reference to their protected characteristics and the outcomes will be provided to unions

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# Appendix 1

## Causes of Absence

The pattern of absence within organisations, including Derbyshire County Council, is influenced not just by levels of health, but also by other factors such as management style, working conditions, traditions of behaviour and personal circumstances

However, it must be stressed that the reasons for absence suggested below have been inferred as the most likely explanations for some statistical relationship found between particular factors and absence returns. There is unlikely to be one single cause explaining why an employee is absent from work, and even stated causes of absence may not represent the true reason. For example, both employees and Managers will recognise that some individuals will be absent from work, sometimes giving sickness as the reason, when other reasons may be the real cause.

### (a) **Job Satisfaction**

The impact of the job and the employee's attitude to work has been found to be important in affecting absence levels. The job in this context refers to the type of working conditions under which it is performed and the responsibilities towards other employees inherent in the job.

An explanation often given of why absence levels are higher amongst unskilled manual workers than craft and clerical workers, with the lowest rates being amongst managerial and professional workers, is that there is a greater sense of personal involvement in the work, and of responsibility to other employees in the organisation or work group, and generally more interesting varied and challenging work.

### (b) **Management Attitudes/Behaviour**

Studies have shown that the job satisfaction of employees experiencing a "democratic" management style is associated with low absence and labour turnover. Important attributes of a "Democratic Manager" are, showing an appreciation of good work, having the time and the inclination to help subordinates in their work and consulting with employees before decisions are made. Other important aspects of supervisory behaviour are for Managers to set specific standards of performance, be consistent in their action and explain to employees what their job is and how it fits in with the work of the Department and organisation. Employees who work with a difficult and unpleasant Manager/Supervisor will not be inclined to co-operate with him/her or to come to work unless necessary.

### (c) **Financial Considerations**

Evidence concerning the effect of income level on absence rates is conflicting. Absence is less in the higher earning occupations, but within the same occupation there is evidence to support the view that the higher the earnings, the more likely that employees are to be absent - why work five days when you can earn the same amount in four days. This is particularly the case

when an employee can influence his earnings through a bonus scheme or by the amount of overtime worked.

(d) **Stress**

*See Management of Stress Policy and Guidelines*

It is estimated that stress accounts for a significant per cent of employee absence and can be caused either by situations at the workplace or at home.

Stress at work can be caused by:

**Excess Workload** - a never ending backlog of work which can affect all levels of staff, and which can lead to feelings of frustration, failure, and futility.

**Tight Deadlines** - Supervisors wanting work completed in unrealistically short periods of time which can only be achieved if the employee either takes work home or works excessively long hours. Although tight deadlines do motivate some employees, many employees will feel put upon and as though they are being thwarted in producing good work which leads many to feel demoralised.

**Personality clashes between colleagues and supervisors** - employees who are experiencing personality clashes may experience feelings of fear, anxiety, frustration, and low morale. Personality clashes, as well as affecting the people immediately concerned, can also cause feelings of worry and unhappiness to fellow colleagues.

**Introduction of new working practices** - the introduction of new working methods brought about by the introduction of new technology, and systems. A more competitive way of working may cause staff to feel pressurised, under threat and generally anxious about the service they are providing. New technology, which is seen as an exciting addition to the office environment for some members of staff, will be viewed as a whole new area of potential failure to others.

**Poor Management** - Managers who are unable to offer the correct level of guidance and direction to communicate effectively with staff cause the staff they supervise to feel poorly motivated, resentful, and lacking in self-worth.

**Lack of control and/or involvement in work activities** - employees who do not feel either part of a team, or who feel overlooked when information is being distributed, or who do not feel that their views, ideas, and opinions are being considered suffer from feelings of inadequacy, resentment, and suspicion.

**Poor relationships with service users** – poor relationships with service users sometimes as a result of behavioural issues can affect an individual's emotional wellbeing.

Stress at home can be caused by:

**Financial difficulties** - caused by many different factors, all of which may result in an employee's inattentiveness at work which leads to feelings of inadequacy and failure. Feelings that they are unable to confide in colleagues puts extra pressure on work relationships.

**Marital difficulties** - this may cover divorce, separations, violence, neglect, and arguments and will often involve the employee in immense feelings of failure, incompetence, and anger. However, it may be that after divorce or separation some people will experience feelings of relief and feel that their life has a new purpose and meaning.

**Bereavement** - an enormously harrowing time for those concerned resulting in a fall in productivity at work leading to feelings of inadequacy and failure.

**Moving house** - employees may feel very anxious about the move causing inattentiveness and irritability which affects their own work productivity and that of their colleagues.

**Conflict between commitment to home and job** - can cause resentment towards the job and feelings of guilt towards the family resulting in inattentiveness and a feeling of unsuitability.

**Childcare difficulties** - often affect one parent more than another. An employee who takes the main childcare responsibilities often has to take time off when their childcare arrangements break down and rather than use up annual leave or request discretionary absence, they may take time off sick. This causes feelings of guilt and inadequacy.

**Caring for sick and/or aged relatives** - members of staff who are unpaid carers will often have extreme anxieties and worries that will impinge on their work time. Tiredness worry and guilt all help their work productivity to fall and for feelings of failure and inability to cope to rise.

**Drink and/or drug problems** - employees with an addiction will suffer a drop in efficiency and work output - this coupled with the added pressure of trying to keep the addiction a secret results in feelings of failure, guilt and often anger. Some addictions will cause employees to steal from colleagues at work which causes tension and a bad working environment.

**Social expectations** - peer group and family pressures on employees to succeed can lead to feelings of anger and breakdown.

**Lack of influence** - employees who feel that they have very little influence or power in the decision and policy making process. This leads to feelings of frustration, inadequacy, and low morale.

The stress experienced by minority groups can be heightened by:

**Stereotyping** - the view that members of a minority group have only reached positions of responsibility by tokenism may cause them to experience anger and resentment.

**Sexual harassment** - although mainly a problem for women, sexual harassment, has been experienced by men and can lead to feelings of fear, frustration, humiliation, and powerlessness.

**(e) Menopause related issues** – see section 29 for further details

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## Appendix 2

### **Managers' Guidance on meetings held in accordance with the Management of Sickness Absence Procedures**

#### i. Environment

Arrange for the interview to take place in normal circumstances at the employee's place of work in a quiet, comfortable and, where possible, an informal room or setting. Ensure that there will be no interruptions either by colleagues or by the telephone. Arrange for the meeting to take place at a time that is convenient for the employee. Set a time limit (normally not more than an hour). This will help you to keep to the issues.

#### ii. Note taking

Confirm that notes will be taken so that you can both recall what has been discussed and the actions that need to be taken. Try to record key words during the meeting to be recorded-formally when the meeting has finished but while the discussion is still fresh in your mind. Notes are confidential and should be kept securely in accordance with the requirements for processing special category data as outlined in Data Protection Regulation and Data Protection Act.

#### iii. Questioning

Use open-ended questions which will encourage the employee to speak. Encourage the employee to speak freely, do not use your preconceived ideas to follow a line of questioning. Encourage the employee to give their opinions. Do not be judgemental, as this may cause the employee to withdraw and no longer want to participate in the problem solving process.

#### iv. Listening

Be non-judgemental (i.e., avoid negative body language). Listen to the employee but be aware that there might be an underlying problem, to which reference is not made.

Repeating back - this ensures that you clarify any points that are unclear and that the employee feels confident that he/she has been understood. Paraphrasing ensures that the same points of reference are being used by both the employee and the Manager/Supervisor. Do not be afraid of silence. Allow space to encourage the employee to expand on a point.

#### v. Supporting

Encourage a trusting/confidential atmosphere, in which the employee feels that they can be open, not threatened but reassured. Try not to be directive but offer information about sources of specialist advice.

Do not give your opinion of the employee's personal problems. Encourage the employee to take ownership of the issues affecting them and identifying their own situations.

vi. Further Action

Agree where possible with the employee on the next step to be taken.

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## Appendix 3

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

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

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

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

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

"If:

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

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

An alternative time must:

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

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

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

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

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

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

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

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

Line Managers/ Heads of Service may wish to contact the Advice and Guidance Team if they are having difficulty in working with the unions on these matters.

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## Appendix 4

### **Guidelines on Phased Returns to Work**

#### **Reasonable Adjustments/Full Duties**

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

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

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

- A phased return should be on the recommendation of Occupational Health practitioners or GP or another medical practitioner
- The GP or Consultant must provide a medical certificate which states that the employee “is fit to return on a phased basis over .... weeks.” The weeks will be specified
- Phased returns are, in most cases, for a relatively short period - however the advice of the GP or consultant should be followed
- The working pattern should be agreed by the Head of Service, the employee prior to implementation. The length of the phased return and work pattern agreed in each case will be based on the needs of the individual and the operational limitations of the service and can be unique in each circumstance. Any variation from the recommendation of the GP or consultant should be agreed between the Head of Service and the employee.
- In the event of failure to reach an agreement a further meeting with trade union and HR may need to take place.
- Employees receive full pay for time/days worked and occupational sick pay for non-working time/days. Guidance on sick pay entitlements should be sought from HR.
- Payroll will need full details of the phased return including the hours worked, and notification if the phased return will continue into the next pay period.

- Towards the end of the agreed phasing period the employee should confirm their intention to return to full-time working. In some exceptional circumstances, and on the advice of their GP and Occupational Health, the agreed phasing period may be extended, subject to the agreement of the Head of Service
- Where the recovery requires the employee to work reduced hours over a significant period of time rather than a “phased” return to the full contracted hours this should be considered as a reasonable adjustment. A reduction of contractual hours would require mutual agreement between the employer and the employee, including the duration of the arrangement, when and how it will be reviewed further advice on other reasonable adjustments which may need to be considered is contained in the managers guidance.
- It is good practice to review the progress of employees on phased returns. This can be done on a formal or informal basis during, and at the end of, the process.