

# **Dore Primary School**

## **Policy and Procedure for the Management of Sickness Absence for Teachers and Support Staff in Schools**

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## **SECTION 1      POLICY**

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The Governing Body of **Dore Primary School** adopted this policy for teaching and support staff on **8<sup>th</sup> February 2018**.

It will review it in **3 years time**.

### **1.1 Introduction**

The school is committed to improving the health, wellbeing and attendance of all employees. This absence policy explains

- What we expect from managers and employees when handling absence
- How we will work to reduce levels of absence

This policy has been written in consultation with employee representatives. We welcome the continued involvement of employees in implementing this policy.

This procedure applies to all school employees.

References to Managers mean

- Manager or Headteacher as applicable
- Chair of Governors where the employee concerned is the Headteacher.

Absence may occur for the following reasons

- a. Short term ill health, physical and/or mental
- b. Disability
- c. Long term ill health, physical or mental

Early intervention and good communication are key to managing attendance, they can help identify solutions and arrangements such as

- Use of the Management of Sickness Absence Procedure, or other policies
- Compassionate leave or flexible working arrangements
- Reasonable adjustments to the role or workplace

The school will comply with relevant statutory requirements including the Equality Act 2010, Access to Medical Reports Act, Safety, Health and Welfare Legislation, Working Time Regulations, The Education (Health Standards)(England) Regulations 2003.

Under the Education Act 2009 School Staffing Regulations the Headteacher or other delegated manager can issue Formal Improvement Notices to employees. The Governing Body can also delegate to the Headteacher the responsibility to make an Initial Dismissal Decision (IDD).

Governors are advised to make a policy decision when adopting this procedure as to whether the Headteacher will normally be delegated with the responsibility to make an Initial Dismissal Decision. Appendix 12 identifies the circumstances in which

governors will make the IDD.

The school is committed to supporting employees who have genuine grounds for absence and is willing to make reasonable adjustments to working arrangements if and when appropriate

The arrangements for appeal are set out in this procedure, employees should use the Management of Sickness Absence Appeals process to challenge any actions or decisions relating to the application or use of this procedure.

This procedure does not apply to issues of conduct including unauthorised absence which should be managed within the Schools Disciplinary procedure.

Managers are responsible for setting standards for attendance as these directly impact upon the schools aim to continuously improve standards of education.

The school has an obligation to consider their duty of care to employees, but also to consider the effects of sickness absence on other employees and the provision of education to its pupils.

Under their duty of care managers will take reasonable steps to mitigate against any individual or collective causes of illness (e.g. stress related illness) in order to achieve a healthier and happier workforce.

It should be noted however that it may not be reasonable or feasible to sustain employment in all circumstances. Consequently, persistent, frequent or long term absence or ill health may, after due consideration, lead to termination of employment.

## 1.2.Roles and Expectations

Managers/Headteacher/Chair of Governors	Employees	Governors	Occupational Health Service	Trade Unions	Human Resources
Monitor and record sickness absence accurately	Contribute to meeting the objectives of the school in terms of attendance	Make a policy decision when adopting this procedure as to whether the Headteacher will be delegated the responsibility to make an Initial Dismissal Decision.(see Appendix 12)	Provide guidance to managers based on medical advice to assist them to make informed decisions and take appropriate action where attendance and performance problems are affected by health issues.	Represent members at all stages of the procedure	Offer guidance and support to employees and managers
Communicate regularly with their staff about health issues and problems that may affect work so that efforts to resolve these can be made.	Communicate with their manager about health issues and problems that may affect work so that efforts to resolve these can be made	Make fair and objective decisions relating to dismissal where the Headteacher has presented a case for dismissal		Offer advice and support to members	Offer guidance and support to Governors during hearings/appeals
Identify where a problem exists or may arise that impacts on an employee's attendance.	Co-operate fully in resolving difficulties by taking advantage of support offered, referral to other agencies etc	Determine whether appeals against Improvement Notices and dismissal will be upheld			Liaise where appropriate with Occupational health services and other agencies
Manage and provide support in order to resolve sickness absence appropriately.	Comply with sickness reporting requirements	Notify the Executive Director CYPS where there is a decision to dismiss an employee after the Hearing and before the appeal stage at Stage Three.			Assist with seeking redeployment where appropriate
Meet with employees to discuss issues that may affect their attendance at work as soon as they become apparent.	Attend return to work interviews	Notify the Executive Director CYPS in writing if the Appeal Panel upholds the Appeal against dismissal in order that the dismissal notice can be withdrawn.			HR advice will be based on good practice, which takes account of service delivery, the contractual rights of employees and the School's legal obligations
Hold 'return to work interviews'	Attend Occupational Health appointments				
Undertake formal review meetings and appeals					
Prepare a 'statement of case' for dismissal hearings and appeals					
Be the manager unless responsibility has been delegated					

### **1.3 Recruitment and Induction**

The school should ensure that information is provided to prospective employees at the recruitment stage where health challenges exist in jobs so that candidates can make an informed choice about their suitability for the post, and raise issues about reasonable adjustments that are required.

The school should provide information to employees as part of their induction about standards, procedures and arrangements for reporting sickness absence, including trigger points, return to work arrangements and the Management of Sickness Absence Procedure.

### **1.4. Trigger Points**

The following trigger points may lead to a manager taking up the matter at an informal level of the Management of Sickness Absence Procedure.

- a. Any pattern of absences that give cause for concern
- b. Short Term absence (1-3 day, self certified, or medically certified absence up to 4 weeks)

Following the third period of absence in a term and/or any 4 absences in the previous 12 months

- c. Long term absence

Following 6 weeks absence or where it is apparent that absence will extend beyond this period.

Managers should consider employee's individual circumstances, medical opinion (where available at this stage) and previous absence record when considering appropriate action and application of the trigger points, whilst maintaining fair and consistent application and interpretation of the policy within school. Factors to consider include

- The nature and seriousness of the condition
- Patterns of absence
- Medical evidence/information/treatment available at this point in time, e.g. likely prognosis for recovery

It is not automatic to refer to Occupational Health on reaching a trigger point. Discussion with the employee may be relevant and guidance is available from Human Resources.

Further sickness absence during a monitoring period may not automatically trigger further management action. The appropriateness of this should be considered by the manager taking into account the employee's individual circumstances.

### **1.5 Resignations**

Where an employee voluntarily resigns at any stage in the procedure the manager must exercise care when writing employment references not to include the sickness absence record.

### **1.6 Setting Review periods**

Managers should consider when setting review periods within the procedure that they consider

- The length of the review period is equitable with other cases within the school
- The review period gives the employee a reasonable period in which to improve their attendance
- The review period takes into account medical evidence and treatment and the likely impact of

this on an employees recovery

Where attendance is satisfactory during the review period, further review periods should not be necessary.

Managers should note that if they bring an employee out of this procedure and resume normal monitoring, they can then re-enter the Management of Sickness Absence procedure at an appropriate level should further absence concerns arise, **they do not need to return to the informal stage.**

## **1.7 Specific considerations**

### **1.7.1 Long term absence (minimum 6 weeks)**

In cases of long term sickness, we will

- consult with the employee
- obtain medical information through Occupational Health
- consider (where appropriate) alternative employment/job adjustment
- consider other specialist medical information and prognosis (where available)

Where employees are absent or likely to be absent for a prolonged period, the Manager should contact the employee to assess the expectations for a return to work, employees can be contacted via a third party if appropriate. This is to support the employee, and gather information about their medical situation. Any third party should pass on relevant information to the Manager.

Every attempt should be made to seek suitable arrangements with the employee to facilitate some kind of return to work. This should be done with advice from Occupational Health and Human Resources provider, other specialist medical information should also be considered (where available) in particular where this could inform timescales for recovery and a return to work.

See Appendix 1 for examples of options to consider to support a return to work

If those options are not viable or have been unsuccessful, taking into account appropriate medical advice and support, and having explored the options available with the employee the Manager may move straight into the formal stages of the procedure.

It is not expected that cases and timescales are extended repeatedly and/or indefinitely where long term illness is a factor as this is often not in the interests of either the employee or the school.

### **1.7.2 Persistent short term absence**

Referral to occupational health service is recommended to identify any potential underlying medical reasons for the absence, where there are concerns about persistent absence or patterns of absence this procedure should be used to secure, where possible an improvement in attendance.

When dealing with short term absence managers will give consideration to the support that can be offered to the employee, the nature and frequency of the illnesses, the likelihood of recurrence, as well as the impact on the organisation and other employees and the education

of pupils. Managers will also give consideration to support measures that will assist the employee in reducing their absence, such as those outlined in Appendix 1.

### **1.7.3 Occupational Health Service**

Managers are advised to make a referral to Occupational Health where;

- There is a health or disability issue to be considered
- Appropriate support is required for an employee with a physical or mental health issue
- Advice or assessment is required on whether the employee can perform safely in a role
- Advice is required to assist with managing an absence problem
- A referral from O/H to other agencies may be beneficial

The Occupational Health Service can offer information and advice on an employee. However the manager has a duty to manage the employee and take into account the wider circumstances and impact of the employee's ill health. While every consideration will be given to any recommendations it may not be reasonable to implement all actions. The manager needs to balance factors including the;

- prognosis and timescales for improvement or recovery
- reasonableness of implementing adjustments, including resource implications
- employee's views and preferences
- impact on the school and on other staff

Employees should be provided with the O/H information leaflet when a referral is made, and be informed that medical information regarding their condition remains confidential to O/H.

Managers should have regard to medical advice when determining how a case should be managed.

### **1.7.4 Disability**

The Equality Act 2010 confirms that it is unlawful for an employer to treat a disabled person less favourably than someone who is not disabled, because of their disability. This applies to someone who has a disability when they are appointed and to those who develop a disability during their employment. Schools have a responsibility to provide reasonable adjustments and to take all reasonable steps to retain employees with a disability in employment.

The Employment Rights Act 1996 confirms that dismissal on the grounds of ill health is a potentially fair reason for dismissal since it relates to an employee's capability to perform their job.

Schools can be justified in dismissing employees with a disability in circumstances where they would also have dismissed a non-disabled employee in comparable circumstances (e.g. on sick leave with comparable level of absence), however the school must have considered reasonable adjustments that might have avoided the dismissal.

### **1.7.5 Trade Union Representation**

The school will encourage employees to seek representation by relevant, recognised Trade Unions at every stage of the procedure, including the informal stage. However processes will not be unreasonably delayed to accommodate their representation

No action should take place with regard to any employee who is a recognised representative of

a Trade Union until, following notification to the employee, the circumstances of their case have been discussed with a full-time official or other appropriate official of the employee's Trade union. Should the employee not wish their Trade Union official to be involved the procedure will be followed normally.

#### **1.7.6 Use of witnesses/New evidence**

Where either side intends to call witnesses they should notify the other party and submit any statements 5 days in advance of any review meeting/hearing.

New evidence can be submitted at a review meeting/hearing where this was not known or available at the time of the hearing provided the appropriate manager is notified and any relevant information is submitted 5 days prior to the review meeting/hearing.

#### **1.7.7 Redeployment**

Support for redeployment will be considered where the evidence suggests an employee's attendance will improve to a satisfactory level if they moved to another post.

There can be no guarantee of redeployment under this procedure.

Where appropriate and where suitable posts are available an employee will be nominated for redeployment.

#### **1.7.8 Communicating with employees**

Throughout any prolonged period of absence it is important to maintain good communications with employees, whilst adhering to individual school absence reporting requirements employees and managers should agree through what means ongoing communications will take place and how frequent they will be during the period of absence, This may avoid employees who are long term sick feeling isolated and unsupported and provide managers with a better understanding of the employees condition.

Managers should also consider when entering an employee into any stage of the procedure that the communications are handled sensitively, it is expected that prior informal discussions have taken place between the manager and the employee before being invited to a meeting at any stage of the procedure.

Employees should also be made aware that if they have questions or concerns about any stage of the process they can also contact the schools HR provider (where such support is available).

#### **1.7.9 Discussing health concerns with a third party**

Staff may be unwilling to discuss personal details about their condition with a particular individual, where this is the case staff should be able to request an interview with another senior member of staff for example of the same gender. Such requests should be handled sensitively and with due consideration to how such information remains confidential. However it should be noted that there is still an obligation on behalf of the employee to discuss concerns about their absence and its management with their Manager.

## SECTION 2 PROCEDURE

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### 2.1 Scope

This procedure will be used where a manager has identified problems in a employee's attendance at work which may be caused by

- Physical or mental incapacity impacting on attendance
- Disability
- Long term ill health
- Ill health absence

### 2.2 Stages of the process

Employees will be given 10 days notice of all meetings under the procedure.

#### 2.2.1 Informal stage. Management Intervention.

Managers are entitled and have a duty to raise concerns about an employee's absence. Where attendance does not meet the required standard, or has reached a trigger point the employee will be required to attend a meeting with the manager to draw attention to the sickness absence and try to resolve informally.

#### **In attendance:**

- The meeting will be held with the Manager supported by a HR representative.
- The employee
- The employee's TU representative or a colleague
- Witnesses (if required)

#### **Process:**

- The manager will invite the employee
- The employee will have the opportunity to challenge facts or evidence and can submit their own facts or evidence for consideration

At the meeting the following will be discussed

- sickness absence record and any patterns
- perspective of the employee
- reason for the manager's concerns
- impact on the organisation
- expectations regarding attendance
- support that can be offered and Occupational Health referral if appropriate
- monitoring to be undertaken by the manager and timescales
- review to be undertaken by the manager
- impact of failure to meet the targets, i.e. the possible outcomes of the procedure

The Employee will be asked to attend a Review Meeting at the end of the Monitoring period.

### **MANAGEMENT CONSIDERATION**

The manager will consider at which stage of the procedure the review meeting will be held (the review meeting can be held at the informal stage or where there has not been an adequate improvement in attendance the manager can progress to stage one) and inform the employee accordingly.

## **2.2.2 STAGE 1 – FIRST FORMAL REVIEW**

On the appointed review date the first formal review will take place

### **In attendance:**

- The case will be heard by either the Manager or Headteacher supported by a HR representative.
- The employee
- The employee's Trade Union representative or a colleague
- Witnesses (if required)

### **Process:**

- The manager will invite the employee in writing
- The employee will have the opportunity to challenge facts or evidence and can submit their own facts or evidence for consideration

At the First Review Meeting the manager will consider the sickness record and whether the attendance is satisfactory, and the employee will be given the opportunity to present any information relating to their absence. In some circumstances the employee may not attend the meeting, in which case it will normally continue in his/her absence. The manager will consider the time and location of the meeting in order to facilitate attendance however meetings will not be unreasonably delayed.

### **Potential Outcomes**

- Where the manager considers that the matter is resolved or can be managed within the informal stage the manager will confirm this in writing to the employee and continue to monitor normally.
- In some cases, a further review period may be arranged.
- If improvement is not adequate at the end of the specified period the employee will be issued with a formal improvement notice. This would normally be at stage 1 but there may be some circumstances where the manager moves to Stage 2 or 3 of the procedure. In particular this may apply where a temporary improvement has not been sustained or where an employee's ill health is such that all available evidence suggests they are not able to return to work or will be unlikely to do so in the foreseeable future.
- In some circumstances (e.g. following a failed application for Ill health retirement), depending on the circumstances of the case, and if all other options are found to be unsuitable, it is appropriate to move straight to Stage 3 of the procedure (dismissal)
- A letter confirming a Formal Improvement Notice will outline a further monitoring period, targets and further review date. It will also state any support that is being offered to the employee.

## **MANAGEMENT CONSIDERATION**

The manager will consider at what stage of the procedure the meeting will be held and inform the employee accordingly (either remain in stage 1 or progress to stages 2 or 3).

The manager should consider when determining whether or not to progress an individual to a higher stage in the procedure if there is any specialist medical advice/planned treatment that may have a bearing on their level of absence and the likelihood of a return to work.

If after the defined monitoring period, the Manager believes the problem is satisfactorily

resolved or controlled, the review will take place in Stage 1 of this procedure. This will be confirmed in writing.

If after the defined review or monitoring period following a Stage1 Improvement notice the manager believes the problem is not adequately resolved or controlled or the manager assesses a case is so serious, the review will take place at either stage 2 or 3 of the procedure

The written confirmation of the arrangements for the review meeting will clearly state the formal stage at which the review is to be held.

If the employee is dissatisfied with the issue of the Formal Improvement Notice they have the right of appeal. Any appeal will be heard by one governor in accordance with the attached procedure.

### **2.2.3 STAGE 2 - SECOND FORMAL REVIEW**

On the appointed review date a second formal review will take place

#### **In attendance:**

- The case will be heard by either the Manager or Headteacher supported by a HR representative.
- The employee
- The employee's Trade Union representative or a colleague
- Witnesses (if required)

#### **Process:**

- The manager will invite the employee in writing
- The employee will have the opportunity to challenge facts or evidence and can submit their own facts or evidence for consideration

At the Second Review Meeting the manager will consider the sickness record and whether the attendance is satisfactory, and the employee will be given the opportunity to present any information relating to their absence. In some circumstances the employee may not attend the meeting, in which case it will normally continue in his/her absence. The manager will consider the time and location of the meeting in order to facilitate attendance however meetings will not be unreasonably delayed.

The employee will also be advised that continued failure to attain the standards expected may lead to a third and final review meeting. The outcomes of this could be that the employee will be required to attend a hearing where termination of employment will be considered.

#### **Potential Outcomes:**

- If the manager is satisfied that the concerns have been addressed the employee will be informed of this in writing and will then be subject to normal sickness monitoring.
- In some circumstances a further review period may be arranged.
- If attendance is not satisfactory the employee will be issued with a Stage 2 Formal Improvement Notice.

- The letter confirming the Stage 2 Formal Improvement Notice will outline a further monitoring period, targets and further review date. It will also state any support that is being offered to the employee.

If the employee is dissatisfied with the issue of the Formal Improvement Notice they have the right of appeal..Any appeal will be heard by one governor in accordance with the attached procedure.

If redeployment is agreed as a possible solution, opportunities will be actively pursued by the employee, manager and the Human Resources provider.

### **MANAGEMENT CONSIDERATION**

The manager will consider at what stage of the procedure the meeting will be held (either stage 2 or stage 3) and inform the employee accordingly.

The manager should consider when determining whether or not to progress an individual to a higher stage in the procedure if there is any specialist medical advice/planned treatment that may have a bearing on their level of absence and the likelihood of a return to work.

If during the monitoring period the manager believes the problem is satisfactorily resolved or controlled, the Manager will conduct the review within Stage 2 of the procedure. Where the manager believes attendance has improved to the required standard this will be confirmed in writing.

If after careful consideration, assessing the overall process and any outstanding issues the Manager determines the matter is not satisfactorily resolved or controlled, or other solution in place the Manager will offer to meet with the employee for a third and final review meeting.

### **2.2.4 STAGE 3 – THIRD FORMAL REVIEW**

On the appointed review date a third formal review will take place

#### **In attendance:**

- The case will be heard by either the Manager or Headteacher supported by a HR representative.
- The employee
- The employee's Trade Union representative or a colleague
- Witnesses (if required)

#### **Process:**

- The manager will invite the employee in writing
- The employee will have the opportunity to challenge facts or evidence and can submit their own facts or evidence for consideration

At the Third Review Meeting the manager will consider the sickness record and whether the attendance is satisfactory, and the employee will be given the opportunity to present any information relating to their absence. In some circumstances the employee may not attend the meeting, in which case it will normally continue in his/her absence. The manager will consider the time and location of the meeting in order to facilitate attendance however meetings will not be unreasonably delayed.

The manager should consider when determining whether or not to progress an individual to a higher stage in the procedure if there is any specialist medical advice/planned treatment that may have a bearing on their level of absence and the likelihood of a return to work.

The purpose of the meeting will be for the employee to understand the situation reached to give them the opportunity to make any final comment before the manager confirms whether it is their intention to move to Stage 3 of the procedure.

### **Potential Outcomes**

- If the manager is satisfied that the concerns have been addressed the employee will be informed of this in writing and will then be subject to normal sickness monitoring.
- A further review period may be arranged.
- If attendance is unsatisfactory the manager will convene a Stage 3 - Dismissal Hearing where termination of employment will be considered

### **2.2.5 STAGE 3 – DISMISSAL HEARING**

The manager will refer the matter to the Headteacher or a panel of Governors (depending on who has been given responsibility for making any IDD in the school) requesting a Stage 3 dismissal hearing at which termination of employment will be considered. In the interim, support, identification of redeployment opportunities etc will continue as appropriate.

#### **In attendance:**

- Stage 3 hearings will be heard by the Headteacher or a panel of 3 Governors (where responsibility for making an IDD has not been delegated to the Headteacher) supported by a HR representative, this can be reduced to 2 governors if not reasonably practicable
- The Executive Director CYPS is entitled to be represented to offer advice to the Headteacher/Governors body.
- The employee
- The employee's Trade Union representative or a colleague
- The manager and their HR representative

In line with the Education Act 2002, Governing bodies of maintained schools must appoint 2 separate sub-committees of at least 3 governors each to consider Stage 3 dismissal hearings where dismissal is being considered. Where this number is not reasonably practicable panels of 2 governors are acceptable, however the appeal panel must not have fewer governors than the original hearing. To ensure a fair process the sub-committees must be made up of different governors, and it is recommended these are not school employees.

#### **Process:**

- The manager will give 10 working days notice of the dismissal hearing
- The manager will invite the employee in writing
- Manager will send the Statement of Case to the employee (and their representative )

- The employee will have the opportunity to challenge facts or evidence and can submit their own facts or evidence for consideration. (Any evidence should be submitted 5 days prior to the hearing)

### **Potential outcomes**

- The employee will be dismissed
- The dismissal will not be approved, and the panel may issue a lesser sanction, and apply further targets, timescales or support to assist the employee to meet the required standards. The process for the dismissal hearing is outlined below.

The Headteacher will

- Set up a meeting to which the employee and manager will be invited formally in writing. The letter will advise that dismissal will be considered and will remind the employee of their right to representation. The purpose of the hearing will be for the Headteacher/Governors to consider whether the employee's employment should be terminated.
- Hear both sides of the case, then adjourn to give full consideration of the evidence presented, the Headteacher/Chair of the Panel will then give their decision
- Ensure any dismissal for reasons of incapability will be with notice or paid in lieu of notice as determined by the Headteacher/Governors manager.
- Issue (where appropriate) a dismissal letter within 3 working days of the hearing that confirms
- The reason(s) for dismissal
- Appeal rights internally and externally, along with time limits for each.
- Send dismissal letters to the employee's home address by recorded delivery as appropriate. Recorded delivery letters will be deemed to have been received.
- Communicate the dismissal decision to the Executive Director CYPS after the outcome of the hearing is confirmed.

Full pay in lieu of notice may be offered to employees dismissed on grounds of ill health absence, this has to be justified by the manager. Pay in lieu is not a contractual right and must be mutually agreed.

If payment in lieu of notice is not mutually agreed the employee serve their period of notice.

If the employee is dissatisfied with the outcome of the dismissal hearing they have the right of appeal. The process to follow is outlined in section 8.7 Appeals

### **2.3 Ability to suspend**

Where, after investigating and considering the evidence, a manager decides an employee's continued presence in school presents a health and safety risk to either the employee or students, the employee may be suspended on medical grounds on full pay. Section E2.1 of the DfE Circular 4/99 Physical and Mental Fitness to Teach requires that suspension on medical grounds is only carried out on the advice of an appropriately qualified medical adviser. (This includes advice from the Occupational Health Service)

The suspension may only be lifted by the governing body where it is then felt the employee is medically fit to resume their teaching duties.

Suspension should not take place if the employee is on long term sick leave.

## 2.4 APPEALS

Appeals should be made to the next level depending on who heard the review, the order of appeal should be

Manager/Headteacher review      →      Governor      →      Panel of Governors

### **In attendance:**

- Stage 1 and 2 appeals - 1 governor will hear the case,
- Stage 3 appeals - are heard by a panel of 3 governors. (This can be reduced to 2 where this number is not reasonably practicable or where there were 2 on the original panel, however there must not be fewer governors than were involved at the original panel/dismissal hearing)
- Human Resources support - to advise the panel and manager/governor. A different HR officer should be available to advise each.
- To ensure a fair process the sub-committees/panel must be made up of different governors who have had no prior involvement in the process, it is recommended these are not school employees.

### **Process:**

- The Manager/Headteacher/Governors will give 10 working days notice of the appeal meeting
- The Manager/Headteacher/Governors will invite the employee in writing
- Manager/Headteacher will send the Statement of Case to the employee (and their representative ) in the case of a dismissal hearing.
- The employee will have the opportunity to challenge facts or evidence and can submit their own facts or evidence for consideration.
- In exceptional circumstances or complex cases, a longer time scale may be agreed by all parties.

To register an appeal the employee needs to write to the Headteacher or Chair of Governors as appropriate within 5 working days of the review meeting/hearing and must specify reasons for the appeal. Appeals should normally be restricted to

- The reasonableness of the decision
- Any relevant new evidence
- Procedural irregularities

Appeals against dismissals are rehearings, no new evidence will be presented unless this was not known or available at the time of the hearing and this is notified and submitted 5 days in advance of the appeal.

The Executive Director CYPS must give notice of dismissal within 14 days of receiving the IDD (Initial Dismissal Decision). Where the panel upholds the appeal, the Chair must inform the Executive Director CYPS in writing to ensure the dismissal notice is withdrawn.

The Manager/Headteacher/Governors decision will be confirmed in writing within 3 working days of the hearing.

### **Purpose of the Appeal**

#### **Stage 1/2**

- To consider appeals against the reasonableness of the decision to issue formal written Improvement Notices
- To consider allegations of unfair and unreasonable management practice

- To consider any relevant new evidence. The presentation of any new evidence must be agreed and submitted in advance.

### **Stage 3**

- Appeals against dismissals are rehearings, no new evidence will be submitted unless agreed and presented in advance.
- To consider appeals against the reasonableness of the decision to dismiss employee
- To consider allegations of unfair procedure or unreasonableness of management practice.

### **Potential Outcomes**

- Confirmation that the Initial dismissal decision is upheld
- Confirmation that the Appeal is upheld
- Confirmation of a further monitoring period, at an appropriate stage of the procedure

See Appendix 7 for **Conduct of the Appeal Hearing**

## **2.5 NOTICE PERIODS**

An employee who is dismissed is entitled to contractual notice in accordance with their conditions of service.

For teaching staff, notice can only be effective from the end of each term i.e. 30 April, 31 August, 31 December. The Conditions of Service for School Teachers states the final date each term when notice can be issued. It must also be ensured that a teacher is given contractual notice, which is 1 week's notice for every year of service, up to a maximum of 12 weeks.

For support staff, the notice period is dependant upon the length of continuous service. The Conditions of Service gives a minimum entitlement of 1 weeks notice for every year of service, up to a maximum of 12 weeks.

## SECTION 3 APPENDICES

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### Appendix 1

#### Options to support a return to work

<b>Short term measures</b>	<b>Long term measures</b>
<ul style="list-style-type: none"><li>○ Phased return to work and/or temporary reduction in duties</li><li>○ Temporary reduction in hours and/or responsibility points/grade following the phased return to work (with corresponding reduction in salary)</li><li>○ Reasonable adjustments under the Equality Act. See also the Model Disability Leave Policy.</li></ul>	<ul style="list-style-type: none"><li>○ Reasonable adjustments under the Equality Act. See also the Model Disability Leave Policy.</li><li>○ Permanent reduction in hours</li><li>○ Permanent reduction in hours and stepping down from a post of responsibility (teachers) at no cost to the school or Local Authority, if a suitable post is available.</li><li>○ Application for Ill health retirement benefits</li></ul>

### Return to work interviews

Return to work interviews can play an important role in resolving problems of sickness absence from work.

The level of formality and length of interview will depend on the individual circumstances ranging from a brief overview and welcome back to work, to a more structured approach for those requiring more support, e.g. return to work after a succession of frequent intermittent absences or long term absence. This is a matter of judgement by the manager.

A return to work interview should be held ideally on the day of return to work, no later than 2 days later. It should be supportive and sensitive but also emphasise the point that the period of absence, no matter how brief has been noted.

<b>Areas to discuss during the 'Return to Work Interview' – Manager checklist</b>
<ul style="list-style-type: none"><li>○ Reason for sickness absence and how the individual is feeling</li><li>○ If there are specific problems</li><li>○ A review of the sickness absence period</li><li>○ If the employee has followed procedures</li><li>○ Reminder of previous sickness absence (if applicable)</li><li>○ The importance of regular attendance at work</li><li>○ Anything they have missed whilst on sick leave</li><li>○ Action, including support, and time scales (where applicable)</li><li>○ A written record of the meeting should be shared, including outcomes</li></ul>

### Options available

At any stage in the procedure the manager may wish to consider the following options to help employees resolve their absence problem

- Retraining and/or help from a skilled worker
- Referral to Occupational Health
- Any other appropriate counselling or advice
- Job design or other changes to working arrangements

### Conduct of the meeting – stages 1 and 2

- The manager introduces all parties and outlines the purpose of the Review Meeting
- The manager outlines concerns about absence using information shared
- The employee/representative asks questions
- The employee has the opportunity to respond to concerns raised
- The manager asks questions
- An adjournment to consider the next steps
- The manager reports their decision

### Conduct of the meeting – Dismissal hearing

- The Headteacher/Chair of Panel introduces all parties and outlines the purpose of the Hearing
- The manager (or CYPS representative in the case of Headteachers) present the case to justify why an employee should be dismissed at Stage 3
- The employee and their representative will have the opportunity to ask questions of the manager/CYPS representative and any witnesses.
- The Headteacher/Governor(s) hearing the case to have the opportunity to ask questions of the Manager/CYPS representative and any witnesses.
- The employee and their representative will then have the opportunity to present their case.
- The manager/CYPS representative to have the opportunity to ask questions of the employee and any witnesses.
- The Headteacher/Governors hearing the case to have the opportunity to ask questions of the employee and any witnesses
- The parties will have the opportunity of summing up following a short adjournment if required: the Headteacher/ CYPS representative first, followed by the employee and their representative. The parties will then withdraw while the headteacher/Governors considers the information presented.
- The parties will be called back into the meeting to hear the decision of the Headteacher/Governors which will be confirmed in writing to the parties within 3 working days of the meeting.
- If at a Stage 3 Hearing the Headteacher/Panel decide to uphold a decision to dismiss an employee, they will notify the Executive Director CYPS in writing at the same time that they notify the employee of their decision as this will be the effective date of dismissal (not after an appeal). The Executive Director CYPS will issue the dismissal letter following receipt of this notification. The right of appeal to an Employment Tribunal will also be confirmed in this letter.

### Conduct of the meeting - Appeal hearing

- Chair introduces all parties and outlines the purpose of the meeting
- Manager/Chair of Governors (in the case of Headteachers) presents the management case to justify either
  - Why the Stage 1/2 formal warning issued should remain in place
  - Why an employee should be dismissed at Stage 3
- Employee and their representatives can ask questions of the manager/chair of governors
- Employee and their representative presents their case
- Manager/Chair of Governors have the opportunity to ask questions of the employee
- Manager/Governor(s)/Adviser hearing the case have the opportunity to ask questions of the employee
- Parties can sum up following a short adjournment (if required) in the following order
  - Headteacher/CYPS representative
  - Employee and their representative
- Manager/Chair of Governors and the employee and their representative withdraw to allow the Manager/Governor or panel of Governors hearing the case to deliberate
- Manager/Governor or Chair confirms the decision in writing within 3 working days of the date of the hearing

**NOTICE PERIODS FOR TEACHER AND HEADTEACHERS**

<b>DATES</b>	<b>HEADTEACHERS</b>	<b>TEACHERS</b>
31 January	Last day for issuing notice of dismissal for 30 April dismissal	Last day for issuing notice of dismissal for those with 12 or more years continuous of service
February 7		Last day for issuing notice of dismissal for 30 April dismissal for those with 11 years' continuous service
February 14		Last day for issuing notice of dismissal for 30 April dismissal for those with 10 years continuous service
February 21		Last day for issuing notice of dismissal for 30 April dismissal for those with 9 years continuous service
28 February		Last day for issuing notice of dismissal for 30 April dismissal for those with 8 years or less continuous service
30 April	Effective date of dismissal if notice issued on or before 31 January. Last day for issuing notice of dismissal for 31 August dismissal	Effective date of dismissal if appropriate statutory or contractual notice given
31 May		Last day for issuing notice for 31 August dismissal
August	<b>SCHOOLS CLOSED</b>	<b>SCHOOLS CLOSED</b>
31 August	Effective date of dismissal if notice of dismissal issued on or before 30 April	Effective date of dismissal if notice of dismissal issued by 31 May
30 September	Last day for issuing notice for 31 December dismissal	
October 3		Last date for issuing notice of dismissal for 31 December dismissal for those with 12 years continuous service

October 10		Last date for issuing notice of dismissal for 31 December dismissal for those with 11 years continuous service
October 17		Last date for issuing notice of dismissal for 31 December dismissal for those with 10 years continuous service
October 24		Last date for issuing notice of dismissal for 31 December dismissal for those with 9 years continuous service
31 October		Last day for issuing notice for 31 December dismissal for those with 8 years or less continuous service
31 December	Effective date of dismissal if notice issued on or before 30 September	Effective date of dismissal if appropriate statutory or contractual notice given

**Model Informal Stage Letter – Outcome of a Meeting at the Informal Stage of the Managing Sickness Absence Procedure**

Dear #

Management of Sickness Absence Procedure - Informal Stage

This letter confirms the outcomes of our meeting held on # at the informal Stage of the above Procedure. At the meeting I discussed my concerns about your sickness absence with you and your representative.

As identified at the meeting, I confirm that my specific concerns about your sickness absence are as follows:

#  
#

In determining the above I have taken account of:

#  
#

A period of monitoring and support will be provided between # and # and a further review meeting will take place on #.

If, at the end of the review meeting I am satisfied that the problems are resolved, then I will confirm this to you in writing and provide ongoing support and monitoring.

If however, I feel that significant problems remain, I may have no alternative but to progress to the appropriate formal stage of this Procedure.

Meanwhile do not hesitate to contact me if you have any further queries about this letter, or the monitoring and support process.

Yours sincerely

cc trade union rep  
Human Resources

### Model Letter requiring attendance at a Formal Review Meeting

Dear #

Sickness Absence Review meeting (Formal Stage One/Two/Three)

I am writing to confirm that you are required to attend a review meeting at formal stage one/two/three of the school's Sickness Absence Management Procedure. At the review meeting I want to discuss the continuing concerns I have about your attendance.

This review meeting will be held on (date) at (time) in (venue).

You are entitled to be represented at the meeting by either your trade union representative or other Sheffield City Council employee. At the meeting the following people will be present: (list names).

You are entitled to present information at the meeting and you will have the opportunity to respond to my concerns. The agenda for the meeting is as follows:-

- Introductions and purpose of interview.
- My concerns about your sickness absence
- An opportunity for you or your representative to ask me questions.
- Your response to my concerns.
- An opportunity for me to ask you questions.
- An adjournment whilst I consider the next step(s).
- My decision and the next step(s).

I must advise you that a possible outcome of this meeting is that I will issue you with a formal stage1/formal stage 2 written Improvement Notice which will be recorded on your personal file.

**or**

I must inform you that a possible outcome of this meeting will be that I will convene a dismissal hearing.

If you do not attend this meeting, a decision may be taken in your absence.

At the above review meeting, progress/new developments/evidence/information will be discussed. If you have any new evidence to present this must be agreed and submitted 5 days in advance of the review meeting.

If you have any queries please do not hesitate to contact me.

Yours sincerely

cc trade union rep/human resources

## Appendix 10

### Model Letter - Decision to Issue a Formal Improvement Notice Following a Formal Review Meeting

Dear #

Formal Stage 1/Stage 2 Improvement Notice in accordance with the Sickness Absence Procedure

This letter confirms the outcomes of the review meeting held on # at the end of **the informal Stage/Stage 1** review period of the above Procedure. You were present and were represented by #. Also present at the meeting were # (eg HR). At the meeting I discussed my continuing concerns about your sickness absence with you and your representative.

Following the meeting, I confirm my decision to **issue you with a formal stage 1/stage 2 Improvement Notice** under the Management of Sickness Absence Procedure. This letter constitutes this Improvement Notice.

My decision takes account of:

- Concerns about your sickness absence (summarise)
- How your attendance does not meet the required standard
- The support programme provided by the school and the CYPS (where appropriate - summarise)
- Previous Improvement Notices (specify as appropriate)

A further period of monitoring and support will be provided between # and #, with a formal/final review meeting on # at #.

If the problems are resolved and there are no longer concerns about your sickness absence, I will confirm this to you in writing and provide ongoing support and monitoring to avoid any future recurrence of these problems.

If however, I feel that significant problems remain, I may have no alternative but to progress to Stage 2 of this procedure/Stage 3 of this Procedure where your dismissal will be considered by the Headteacher/a Panel of Governors.

You have the right of appeal against this decision by writing to the Headteacher/Chair of Governors within 5 working days of receiving this letter and will need to specify the reasons for your appeal.

Please do not hesitate to contact me if you have any further queries about this letter, or the support and monitoring process.

Yours sincerely

cc trade union rep/human resources

## **Model Letter to Convene a Dismissal Hearing at Stage 3 under the Management of Sickness Absence Procedure**

This letter confirms the outcome of the review meeting held on # at the end of the formal **Stage 2** review period of the above Procedure. You were present and were represented by #. At the meeting I discussed my continuing concerns about your sickness absence with you and your representative.

Following the meeting, I confirm my decision to convene a Stage 3 Hearing under the above Procedure where your dismissal will be considered by the Headteacher/a Panel of Governors.

My decision takes account of:

- Concerns about your sickness absence (summarise)
- How your attendance does not meet the required standard
- The support programme provided by the school and the CYPs (where appropriate - summarise)
- Previous Improvement Notices (specify as appropriate)

At the Hearing I will be asking the Headteacher/a panel of Governors of # School (with advice provided by a Human Resources Representative) to dismiss you from your post of # because of your continued failure to reach the required standards of attendance.

The details will be contained within a statement of case which will be shared with you 5 days in advance of the hearing. If you have any new evidence to present this must be agreed and submitted 5 days in advance of the hearing.

I must advise you that should the Management case be upheld, you may be dismissed from your post of # at # with effect from #, or earlier by agreement with payment in lieu of notice. You would have the right of appeal against a decision to dismiss you by writing to the Chair of Governors and you will need to specify the reasons for your appeal.

May I strongly advise you of your right to be represented at the Hearing by a trade union or other City Council employee representative. If you do not attend, a decision may be taken in your absence.

Meanwhile do not hesitate to contact me if you have any further queries about this letter.

Yours sincerely

cc trade union rep/human resources

## **Fitness to work notes**

In April 2010 sick notes were replaced by Statement of Fitness for work (Fit notes), these give doctors two options, the employee is

- Not fit for work
- May be fit for work

Where an employee assessed as may be fit for work, the manager should meet with the employee to discuss appropriate ways to manage the return to work such as

- Phased return to work
- Amended duties
- Altered hours
- Workplace adaptations

Where it is not possible to provide the support an employee needs to return to work then the Statement will be used in the same way as if the GP had advised the employee was 'not fit for work'.

The GP should give advice about the effects of the employee's health condition and some suggestions for the type of adjustments an employer could consider to help the employee back to work. The fit note should state how long their advice will last for, the maximum period a GP can issue a fit note for is three months.

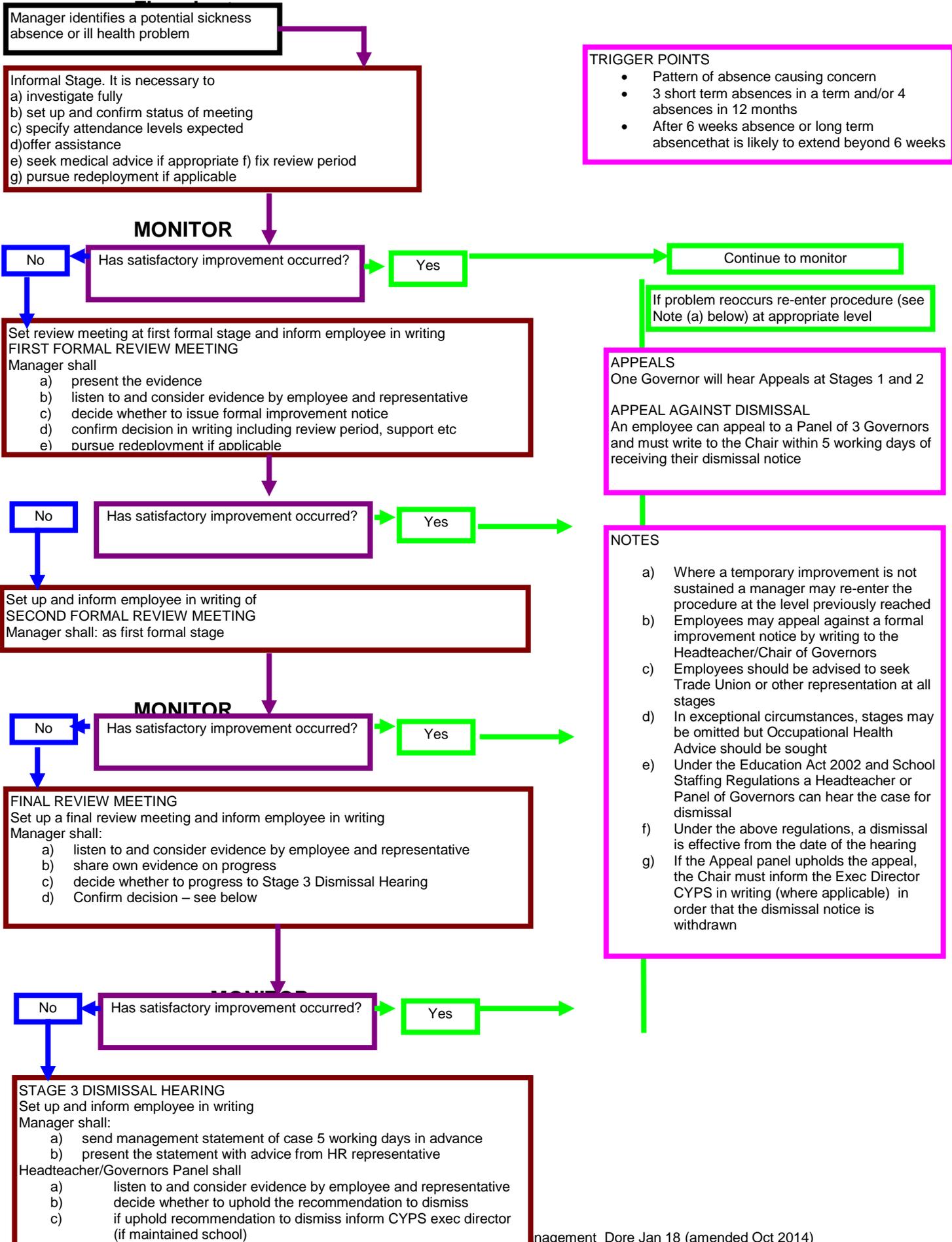
Where there is a conflict of opinion between the medical evidence and the school, e.g. a fit note states an employee is fit for work but the manager does not feel they can return to work the school will have to suspend the employee (on full pay)

Where occupational health advice has recommended a phased return to work but the school has refused this, the school should ensure it can objectively justify such a refusal as this could be considered a reasonable adjustment under the Equality Act. If the school is unable to support an employee in returning to work under a phased return it needs to take into account their intention to return to work when determining how their absence is managed via this procedure.

### Legal Framework

<p><b>The Employment Rights Act 1996</b> - confirms that dismissal for ill health/sickness is a potentially fair reason for dismissal as it relates to an employee's capability to do the job.</p>
<p><b>The Education (Health Standards) (England) Regulations 2003</b></p>
<p><b>The Conditions of Service for School Teachers in England and Wales</b> (Burgundy Book) lays out entitlements to sick pay allowances for teachers.</p>
<p><b>The National Joint Council for Local Government Services</b> - National Agreement on Pay and Conditions of Service (Green Book) lays out the entitlements to sick pay allowances for Support Staff.</p>
<p>Employees are entitled to the relevant conditions of service for their employee group.</p>
<p><b>However, the above are maximum entitlements that do not prevent action being taken under the Sickness Absence Management Procedure before the expiry of these entitlements.</b></p>
<p><b>Equality Act 2010</b> - This Act makes it is unlawful for an employer to treat a disabled person less favourably than someone else because of their disability. This applies to employees who have a disability when they are appointed and employees who develop a disability during their employment. The Act also requires an employer to remove disabling barriers by making 'reasonable adjustments' where possible.</p>
<p>Education Act 2002 - School Staffing Regulations - <b>the Headteacher or other delegated manager can issue Improvement Notices to employees at the end of First and Second stage review meetings. They can also be given delegated responsibility to make an initial dismissal decision (IDD) at Stage 3. However, there will be circumstances when the Governors will make the IDD. These include:-</b></p> <p>In line with the Education Act 2002</p> <ul style="list-style-type: none"> <li>• in a small school</li> <li>• where there are allegations against the Head by the employee</li> <li>• where the Head has had prior involvement in the case</li> <li>• where the Head has carried out the investigation</li> <li>• where the Head is unwilling to perform this function or does not have the necessary skills or capability</li> </ul> <p><b>where the Head is subject to an investigation</b></p>
<p><b>Access to Medical Records Act 1998</b></p>
<p>Data Protection Act 1998</p>
<p>This policy and procedure was also developed in reference with the <b>Acas Code of Practice – Disciplinary and grievance procedures</b> and <b>Managing Attendance and Employee Turnover Guidance</b>.</p>

## Appendix 13 Management of Sickness Absence Procedure



**TRIGGER POINTS**

- Pattern of absence causing concern
- 3 short term absences in a term and/or 4 absences in 12 months
- After 6 weeks absence or long term absence that is likely to extend beyond 6 weeks

**APPEALS**  
One Governor will hear Appeals at Stages 1 and 2

**APPEAL AGAINST DISMISSAL**  
An employee can appeal to a Panel of 3 Governors and must write to the Chair within 5 working days of receiving their dismissal notice

**NOTES**

- Where a temporary improvement is not sustained a manager may re-enter the procedure at the level previously reached
- Employees may appeal against a formal improvement notice by writing to the Headteacher/Chair of Governors
- Employees should be advised to seek Trade Union or other representation at all stages
- In exceptional circumstances, stages may be omitted but Occupational Health Advice should be sought
- Under the Education Act 2002 and School Staffing Regulations a Headteacher or Panel of Governors can hear the case for dismissal
- Under the above regulations, a dismissal is effective from the date of the hearing
- If the Appeal panel upholds the appeal, the Chair must inform the Exec Director CYPS in writing (where applicable) in order that the dismissal notice is withdrawn

**GUIDANCE ON COMPLETING A MANAGER REFERRAL FORM TO OCCUPATIONAL HEALTH AND EXAMPLES OF QUESTIONS**

*(To be used in conjunction with Occupational Health Referral Form)*

Before referring any employee to the Occupational Health Department, you should explain to them why you are asking them to attend for assessment.

To ensure that employees are clear regarding your reason(s) for the referral, you should complete all sections of the Manager's Referral Form, including the section which asks for the 'Reason for Referral', before asking the employee to sign the form.

You should also ensure that you remind employees that they will be sent a copy of the report and ask them to read and sign Page 2 of the form to confirm that they understand the reason for referral and agree to attend an appointment.

You may wish to request specific assistance for the member of staff e.g. counselling.

### **Information provided**

**In addition to the details specified on the form the following information should be given if appropriate:-**

- ❖ Date absence started.
- ❖ Diagnosis as stated on medical certificates.

### **Sample Questions – Short-term Sickness Absence**

- ❖ I would like you to assess xxx who has a persistently poor attendance record. These absences are attributed mainly to *<state reasons>*. Are there any underlying health problems which may account for the instances of non-attendance over the past *<time period>*.
- ❖ Are there any work-related factors which may be contributing to xxx's non-attendance or any minor illnesses from which he/she suffers.
- ❖ Please advise whether xxx is currently fit to undertake the full range of his/her duties as a *<post title>*. In this role xxx is required to *<outline duties performed and attach a copy of an up to date job description>*.
- ❖ Please advise on any reasonable adjustments that could be put into place within his/her workplace that would help to improve xxx's medical condition(s) / attendance.

## **Sample Questions – Long-term Sickness Absence**

- ❖ What is the likely duration of xxx's absence from work as a result of their present medical condition?
- ❖ What is the prognosis of xxx being able to return to work in the foreseeable future to perform their full range of duties? What is the timescale involved?
- ❖ Would xxx be able to return to work in the near future if his/her duties or work place environment were adjusted or modified? If so, what changes need to be made?
- ❖ Do you consider that xxx's condition is likely to be subject to employment consideration under the Equalities Act 2010?
- ❖ At this stage in xxxx rehabilitation would it be appropriate for the schools management to consider an application for Early Ill Health Retirement?

## **Sample Questions – When sickness absence is not a feature**

- ❖ xxx has disclosed that they have an alcohol/drug problem. Please advise on what support is available.
- ❖ xxx has developed a ? (ie back, personal stress, skin) problem and is finding certain aspects of their job difficult (outline these). Please advise on any reasonable adjustments, and indicate if this is likely to be temporary or permanent.

**Please note that the above questions are not exhaustive. Therefore, when seeking a medical evaluation from the Occupational Health Department you should ensure that the questions you ask are relevant to the employee's medical condition(s), the individual circumstances of the case and the stage of the Sickness Absence Policy you are currently at.**

