

## Introduction

Newport City Council is committed to providing a high quality range of services to all users, through a healthy, motivated and committed workforce.

## Aims of the Guidance

To provide clear guidelines for managers and employees to follow when managing attendance

## Scope

All employees and managers.

### School Based Employees:

Newport City Council commend the Management of Attendance Policy to individual Governing Bodies for adoption. This guidance has been developed in line with the Management of Attendance Policy.

## To be read in conjunction with:

- Management of Attendance Policy
- Disciplinary Policy
- Equal Opportunities Policy
- Stress Management Policy
- Alcohol, Drug and substance misuse policy
- Health and Safety Policy

## Management Responsibilities

The prime responsibility for managing attendance rests with managers. It is a mandatory part of a managers role to manage and try to reduce sickness absence levels in their area. Any manager failing to do this without good cause may be subject to action under the Council's/School's Disciplinary Policy.

Action to address issues relating to attendance is the responsibility of managers and is dependent on a pro-active consistent approach by all managers. Managers must take appropriate action in line with the Management of Attendance Policy in order to effectively manage the attendance of employees.

Management should raise awareness that good attendance levels are important to the service, to colleagues and to the individual. This can be achieved through normal communication channels and good management practices (including supervision sessions, one to one manager/employee discussions).

Managers should ensure that all employees are made aware of the [Sickness Absence Reporting Procedure](#).

When dealing with attendance issues managers should be particularly mindful of the Equality Act 2010 and should take HR advice where appropriate.

It is the responsibility of the manager, on receipt of the phone call from an employee advising that they will not be attending work due to sickness to:

- (a) record the date and time the employee contacted them;
- (b) arrange suitable cover arrangements where appropriate
- (c) establish future arrangements for maintaining contact with the employee

It is essential that accurate information relating to attendance is available to facilitate line management action and to contribute to the corporate review process.

## Employee Responsibilities

Employees have responsibility to ensure their attendance is at an acceptable level; regular and punctual attendance is an implied term of every employee's contract of employment. Where an employee is off work due to sickness absence

they must follow the agreed procedures. Failure to follow these agreed procedures may result in action under the Council's/School's Disciplinary Policy. The agreed procedures are:

- (a) reporting any non-attendance in line with agreed [Sickness Absence Reporting Procedure](#). It is not permitted to notify absence by sending an email or a text message. At this point employees must indicate whether the absence is as a result of an accident at work (an accident report form must be completed) or is an illness which may be attributed to the nature of their employment \*
- (b) complete a '[Self Certification & Sickness Absence form](#)' for any period of absence regardless of length;
- (c) provide a [Statement of Fitness for Work \(Fit Note\)](#) not later than the eighth calendar day of absence. Any absence, after the 7<sup>th</sup> day, not covered by a Fit Note will be viewed as unauthorised and may be dealt with under the Disciplinary Policy. Employees are expected to provide a Fit Note throughout the entire period of absence. Retrospective Fit Notes are unacceptable. Failure to provide a Fit Note within 3 calendar days of the date due will result in suspension of occupational sick pay. Where this occurs occupational sick pay will only be reinstated from the date the Fit Note is received. \* The provision of a Fit Note must continue for the entire period of the absence without a break, even where the employee is no longer in receipt of occupational sick pay.
- (d) attend appointments made with the Occupational Health Advisor as requested. Where an employee fails to attend without providing 48 notice or a reasonable explanation, occupational sick pay will be suspended until attendance at a rescheduled occupational health appointment and the cost of the missed occupational health appointment will be charged to the employee. \*
- (e) maintain regular contact with their manager through attendance at contact visits and telephone correspondence
- (f) inform their manager where their absence from work is related to participation in professional sport or injury while working in the employees own time on his/her own account for private gain or for another employer;\*\*
- (g) inform their manager if the absence is due to an accident involving a third party and whether damages may be receivable in these circumstances. (See note below)
- (h) not engage in any activity which may be prejudicial to their recovery and fitness to attend work \*
- (i) not go on holiday during a period of long term sickness absence without first seeking authorisation from their manager. Before authorisation is provided the manager may require confirmation from the employee's GP or occupational health that the holiday will not prejudice their recovery. Where authorisation is provided the period will be considered as annual leave and will be deducted from the employee's annual leave entitlement and paid in accordance \*

**\*Occupational sick pay may not be paid when employees do not adhere to this requirement.**

**\*\* Occupational sick pay may not be paid in these circumstances.**

### Failure to report absence

Where an employee fails to attend work and has not notified the manager in line with the Sickness Absence Reporting Procedure the following process will commence:

- The manager will contact the employee on the first day of absence to ascertain the reasons for their non-attendance at work.
- If the employee is absent without explanation for a second consecutive day and the manager has not been able to make contact with them, [the manager must write to the individual asking them to make immediate contact](#) .
- If having written to the employee there is still no contact by the deadline provided [the manager will write to the employee to reiterate the seriousness of their unauthorised](#) absence and failure to contact and advise them that, should they not make contact by the second date provided an assumption will be made that they no longer wish to honour their contract of employment.

### Absences resulting from accident/injury outside of work

Any employee who is absent from work due to an accident/ incident outside of work must advise his/ her manager if damages may be receivable from a third party in respect of the accident. In these circumstances the employee would receive occupational sick pay, however, the employer would seek to recover any occupational sick pay paid to an employee either directly from the third party or from the employee where compensation is received for loss of earnings. The employee should be written to explaining this. Where full recovery of occupational sick pay is achieved the period of absence will not be treated as sickness absence for the purposes of calculating future occupational sick pay and so will not be offset against any future occupational sick pay.

### Short Term Absence

Short term relates to any sickness absence of 14 calendar days or less.

### Long Term Absence

Long term relates to any sickness absence of 15 calendar days or more.

### Managing Long Term Absence

It is entirely reasonable for employees to be contacted at home by their manager during their sickness absence. Employees experiencing long term ill health should receive support through regular contact from their manager which should also ensure that the employee is kept informed of any developments affecting their employment with the Council/School. It is expected that this contact will be made on a regular basis without becoming intrusive. This communication should be followed up in writing by the manager, where appropriate.

The manager should keep a note of all contact made during the sickness absence. The [Keeping in Touch form](#) may be used for this purpose.

Whether contact is maintained, via visits to the office, a neutral venue or by telephone will depend on the circumstances relating to the absence. [Where a meeting is arranged this should be confirmed in writing](#) and the employee will be advised of their right to be accompanied by a work colleague or Trade Union representative. [Confirmation of the discussion held during a contact meeting should be made in writing by the manager.](#)

When an employee is on a period of long term absence, the manager should determine when they feel it is appropriate to refer an employee to occupational health, however in most cases this should be no later than 15 days after the absence start date.

Once the manager has received a report from occupation health the manager should make arrangements to discuss the content of the occupational health report with the employee and refer to the 'Actions Following Occupational Health Appointment' section of this document for guidance

A manager should also refer to the additional guidance on the [Suggested Timescales for Managing Long Term Sickness Absence](#).

Managers should always take advice from Human Resources for exceptional and/or sensitive cases before contacting the employee.

### Statement of Fitness for Work (Fit Note)

A separate guidance note is available on [Fit Notes](#)

## ACTION ON EMPLOYEES RETURN TO WORK

On return to work from all sickness absence regardless of length of absence:

- (a) the employee must complete the '[Self Certification & Sickness Absence form](#)' for all periods of absence.
- (b) the employee must ensure the precise reason for the absence is recorded, phrases such as 'unfit for work' are unacceptable as a reason;
- (c) the manager must conduct a return to work discussion within 7 calendar days.

## Return to Work Discussion

On a return to work from any sickness absence regardless of length, discussion must take place between the manager and employee using the return to work discussion form. Each return to work discussion is a unique opportunity for the manager to discuss with members of their team the reasons for their non-attendance and will hopefully enable them to identify potential problem areas early. Managers should apply good practice skills when conducting the discussion ensuring that it is handled with sensitivity and discretion.

The return to work discussion should take place on the day of return or within 7 calendar days of the employee's return. There may be circumstances where the manager is not able to conduct the discussion within this time e.g. annual leave, or, due to the nature of the absence, the employee may request that the discussion is conducted by a person of the same sex as the employee. In such circumstances managers should make the necessary arrangements for an alternative manager to conduct the discussion.

Prior to the discussion, the manager should collect information relating to the employee's sickness absence record, including whether the employee has complied with the sickness absence reporting procedures and the employee's previous 12 rolling month sickness absence history.

The manager should ensure that the discussion is constructive and that the following points are covered:

- **Welcome** the employee back to work and check they are fit to return to work
  - Acknowledge the employee's return to work as a valued member of the team.
  - If appropriate, provide an update on relevant work related issues and changes that have taken place during the absence
- **Absence**
  - Identify the reason for the period of absence, ensuring the question is asked in a supportive way.
  - Ascertain the likelihood of any recurrence.
  - Establish whether there are any underlying problems that are preventing regular attendance and determine what can be done to remedy those problems – any information given must be kept confidential and if appropriate specific details in relation to medical conditions and treatment need not be recorded on the form.
  - Discuss the employee's previous 12 rolling month absence record.
  - Discuss any observations you have regarding the employee's absence e.g. pattern of absence.
  - Take the opportunity to reinforce the importance of the employee's role in the service area/school and if it is appropriate, according to the nature and severity of their illness/absence, inform them of the effect that their absence has on the service area.
  - Discuss the Council/School's expectation for regular attendance at work and any implications of future absence.
- **Responsibilities**
  - Remind the employee that it is their responsibility to be at work and to find ways to improve their health.
  - Offer support to assist them back to work, if it is appropriate to do so.
  - Is a risk assessment required with regards to the duties of the employee's post and their medical needs?

- Where the absence was as a result of an accident at work the appropriate Health & Safety reporting/recording procedures should have been completed and the manager should ensure this is followed through and the absence recording should indicate accordingly
- **Moving On**
  - Summarise what has been discussed and what will be recorded
  - Confirm whether any action will be taken as a result of the absence

A copy of the return to work discussion form must be placed on the employee's personal file and all paperwork including any Fit Notes must be forwarded to the Transactional HR and Payroll Team.

## Action to be taken

At the end of the return to work discussion the manager must determine whether any action under the Management of Attendance Policy is required. This should be discussed with the employee on the conclusion of the discussion and the implications of the decision should be fully explained. The RTWD form outlines actions to be considered by managers in managing sickness absence and managers should refer to the sickness absence triggers outlined below in determining what action is most appropriate.

Other action to be taken, not covered under the sickness absence triggers, could include a referral to Occupational Health or access to the employee Counselling Service.

NOTE – Where there is clear evidence that the real reason for the absence has not been given i.e. that the employee has not been genuinely sick, action under the [Disciplinary Policy](#) may be more appropriate.

**It is important that the administrative process remains confidential at all stages.**

## Levels of Attendance

Where a manager becomes concerned that an employee's absence is not of an acceptable level / pattern they should follow the following guidance in managing the employee's attendance.

## Sickness Absence Triggers

A referral to Occupational Health should be considered by the manager following any period of sickness absence. However it is not necessary for a referral to have been made before taking management action.

As outlined above, a return to work interview must be undertaken for EVERY period of sickness absence at which the manager should advise the employee of what action will be taken as a result of this sickness absence.

**Employees sickness absence will be monitored according to days lost and number of occurrences and the Management Action will be based on the higher of the two categories.**

Number of days lost in last 12 rolling months	Number of occurrences in last 12 rolling months	Management Action
1-3 days	1 -2 occurrences	• No Further Action
4- 6 days	3 occurrences	• Management Support (please see guidance below)
7-9 days	4 occurrences	• Management of Attendance Interview

10 days or more	5 occurrences	<ul style="list-style-type: none"> <li>Management of Attendance Interview where 10 days or more is linked to 1 occurrence of absence *</li> </ul> <p style="text-align: center;"><b>OR</b></p> <ul style="list-style-type: none"> <li>Management of Attendance Hearing</li> </ul>
3 further absences or 4 further days absence or more whilst in receipt of a First Written Warning		<ul style="list-style-type: none"> <li>Management of Attendance Hearing</li> </ul>
3 further absences or 4 further days absence or more whilst in receipt of a Final Written Warning		<ul style="list-style-type: none"> <li>Management of Attendance Hearing</li> </ul>

The number of days/occurrences in the last 12 rolling months is based on the previous 12 calendar months from the date the employee returns to work from their most current absence.

**Managerial Support** – Following absences of any duration the return to work discussion may result in the identification of support to assist the employee in achieving better attendance, this could include any recommended adjustments made by Occupational Health, dealing with effective working relationship issues, teambuilding, regular support sessions, or a review of working arrangements/patterns. Managers should not commit themselves to any measures that they cannot fulfil. Therefore for some measures there may need to be further discussion with more senior management before commitments can be made and the employee will need to understand this.

In addition to the above triggers, where an employee's sickness absence shows a repetitive pattern, that may become apparent over more than a 12 month period a Management of Attendance Interview should be held.

Where an employee, despite receiving a previous written warning, on to reach a level of sickness absence that would usually result in Management Support, within 6 months of the expiration of the warning, this will be considered as a pattern of absence. In these circumstances the manager should consider progressing immediately to a Management of Attendance Hearing.

Under the Equality Act 2010, a person is disabled if they have a physical or mental impairment which has a substantial and long term adverse effect on their ability to carry out normal day to day activities (ACAS).

The Act puts a duty on the employer to make reasonable adjustments for employees to help them overcome disadvantage resulting from an impairment. If a manager feels that an employee may have a condition that is covered under the Act they should refer the employee to Occupational Health in order to determine whether any reasonable adjustments should be considered and can be accommodated.

Where an employee's absence is related to a condition that is covered by the Act the manager should ensure that reasonable adjustments have been considered to enable the employee to attend and carry out their work.

Absence due to a condition that may be covered under the Act should be recorded using the usual sickness absence reporting procedure, however there may be circumstances where a manager feels it is appropriate to accommodate an increased level of sickness absence in relation to that condition to that outlined in the triggers as a reasonable adjustment. The manager should, however, ensure that the adjustment does not become unreasonable and advice should be sought from HR when this is being considered. Absences not relating to the condition that may be covered under the Act should be managed in line with the triggers outlined above.

When an absence is specifically as a result of a pregnancy related illness it should be recorded using the usual sickness absence reporting procedure however it should be discounted in relation to the sickness



absence triggers outlined above.

\* Where, having attended a Management of Attendance Interview due to one absence of 10 days or more, an employee has a further 1 period of sickness absence, the manager should progress to a Management of Attendance Hearing.

### Management of Attendance Interview

Where a Management of Attendance interview is to be arranged the employee should be provided with a minimum of 24 hours notice and should be advised of their right to be accompanied by a trade union representative or work colleague.

#### The purpose of a Management of Attendance interview is:

- to raise awareness of an unacceptable level of attendance
- explain the impact of the levels of absence on service delivery
- explain that future attendance will be monitored and reviewed
- that the Management of Attendance Interview will be considered when monitoring attendance in the following 12 months
- inform the employee that the future consequences of continuing with this level of attendance will result in a Management of Attendance Hearing.

A [copy of the letter confirming](#) the interview must be kept on the employee's personal file.

### **Management of Attendance Hearings Arrangements**

Where a manager has determined to progress to a Management of Attendance Hearing the employee should be notified of the date and arrangements for the Hearing in writing with a minimum of seven calendar days' notice. [The letter will inform the employee of:](#)

- the reason for the hearing
- the date, time and location of the hearing
- their right to be represented by a Trade Union representative or work colleague
- that the hearing provides an opportunity for the employee to present information in relation to their sickness absence record
- that should the employee fail to attend, the hearing will be held in their absence unless a reasonable explanation is given
- a copy of the Management of Attendance Policy

If an employee is currently on a warning that has not expired, the letter confirming the hearing arrangements should reflect this.

The manager should include a copy of the [Management of Attendance Hearing Report](#) and all supporting documentation with a minimum of seven calendar days' notice, which could include:

- Copy of the employee's job description
- Record of sickness absence over relevant period
- Copies of Return to Work Interviews
- Details of Management of Attendance Interview
- Copies of Occupational Health reports (where applicable)
- Copies of any previous warning letters issued (where applicable)

Should the employee wish to submit any documentation in support of their case, this must be provided to the Chair of the Hearing who will be a Section Head/Head Teacher (or their nominated representative) (with a copy to the manager) no less than 48 hours prior to the date of the Hearing. If this notice is not provided

by the employee, the Chair of the Management of Attendance Hearing will determine whether to accept the information.

### Management of Attendance Hearing

Where a Management of Attendance Hearing is being held to consider the issuing of a warning this should be chaired by a relevant Section Head/Head Teacher (or their nominated representative). Where a Management of Attendance Hearing is being held to consider the potential dismissal of an employee the Hearing must be chaired by a Head of Service/Staff Discipline and Dismissal Committee of the Governing Body.

The format of the hearing will follow the process outlined in the [Management of Attendance Hearing Format](#) Document. At the conclusion of the Hearing, the Chair of the Hearing will determine whether or not to issue the sanction in line with the Sickness Absence Triggers and will determine one of the following outcomes:

- I. [The employee's attendance is satisfactory and no further action will be taken](#). The employee must be reminded of the requirement to maintain a satisfactory level of attendance and the consequences for failing to do so
- II. The employee's attendance is unsatisfactory and therefore the employee will be issued with one of the following:
  - [First Written Warning](#)  
A first written warning will be considered where, despite previous guidance, the employee has failed to attain a satisfactory level of attendance.
  - [Final Written Warning](#)  
A final written warning will be considered either where, despite the issue of a first written warning, the employee has failed to attain a satisfactory level of attendance, OR where the employee's attendance falls so far short of an acceptable level that the issuing of a final written warning is justified.
  - **Dismissal on the grounds of health capability ([Corporate Letter](#)) (School's Letter)**  
Dismissal will be considered either where, despite the issue of a final written warning, the employee has continued to fail to attain a satisfactory level of attendance, OR where the employee is in receipt of a first written warning and their attendance has fallen so far short of an acceptable level that the consideration of dismissal is justified. Dismissal at a Management of Attendance Hearing is not an option to be considered where an employee has not previously been in receipt of a warning.

The outcome of the Hearing should be confirmed in writing within seven calendar days of the Hearing. Where a warning is issued, this will remain live for 12 months. If the Chair of the Hearing determines not to issue a warning, a clear and thorough justification for not doing so must be provided.

Where, as a result of a Management of Attendance Hearing, a decision is made to dismiss the employee, this will be on the grounds of health capability and the employee will be notified of their right of appeal. The employee will receive pay in lieu of notice in line with their contractual / statutory notice period (up to a maximum of 12 weeks), together with any outstanding holiday pay from the current annual leave year.

### Appeals against action as a result of a Management of Attendance Hearing

An employee has the right of appeal against any sanction issued as a result of a Management of Attendance Hearing to the manager immediately senior to the one who has issued the warning, stating their grounds of appeal. If the employee exercises their right of appeal, the Appeal Hearing decision is final and there is no further right of appeal.

Intent to appeal must be notified in writing within seven calendar days of the date of the decision.



An employee who wishes to appeal against dismissal, has the right of appeal to the Members' Appeal Panel. The letter of appeal must be addressed to the Head of People and Transformation and must state the employee's grounds of appeal.

### School-based Employees

*In a school, an employee who wishes to appeal against dismissal, or a warning issued by the Head Teacher, has the right of appeal to the Governing Body's Staff Discipline and Dismissal Appeal Committee. The letter of appeal must be addressed to the Clerk to the Governing Body, and must state the employee's grounds of appeal.*

*An employee who wishes to appeal against a warning issued by a member of the Senior Management Team other than the Headteacher has the right of appeal to the Headteacher.*

## MANAGEMENT OF ATTENDANCE ANNUAL REVIEW

On an annual basis, a review of sickness absence across a team will be carried out by the department manager / Headteacher. [All employees should be sent a briefing](#) to explain that the annual management of attendance review is due to be carried out in their area.

The outcome of this review will categorise an employee's attendance level into the following categories:

Category	Number of days lost per annum	Number of occurrences per annum
100%	0 days	0 occurrence
Excellent	1 – 3 days	1-2 occurrence
A	4-6 days	3 occurrences
B	7 - 9 days	4 occurrences
C	10 days or more	5 occurrences or more

The employee will need to be categorised according to days lost and occurrences and their overall category will be the highest out of the two.

Following the management of attendance review, employees will be advised via a confirmatory letter of one of the following:

- Their attendance at work has been good.
- They will be told that their attendance at work needs improving.
- They will be told that their attendance is unsatisfactory and will be reminded of their responsibilities in managing their attendance at work and future consequences should their absence levels continue to be unsatisfactory.

## OCCUPATIONAL HEALTH

### Occupational Health Referral

A referral to occupational health may be made by a manager for the following reasons:

- Short term intermittent absence
- Long term absence, the manager should determine when they feel it is appropriate to refer an employee to occupational health, however, in most circumstances, this should be no later than 15th day of absence

- Employee request
- Management support where the employee has made them aware e.g. stress related cases
- Where an absence is related to stress or a musculoskeletal condition an immediate referral should be made.
- Medical Suspension

On considering a referral to occupational health, the manager should talk to the employee about their health problems, and explain that they wish them to see the Council's Occupational Health Advisor to gain a clearer picture of the implication of their illness and to ascertain whether the Council/School can offer additional assistance to support the employee either whilst in work or returning to work following a period of long term absence. A referral to Occupational Health does not relieve a manager of their responsibility to manage the employee's absence.

Each time a referral is made the manager should consider what information they need to know in order to manage the absence effectively. The manager may attach a covering letter to explain why the referral is needed and highlight specific issues. The employee should be made aware of the content of the occupational health referral prior to their appointment.

The manager should explain to the employee that when they attend an appointment with the Occupational Health Advisor they will be asked whether they give their consent for information gained during their appointment to be disclosed to the manager. Employees should be reminded that the manager will use the information gained from occupational health to manage the attendance of the employee. Should an employee refuse consent, the manager will continue to manage the employee's attendance based on the information available to them.

The manager should also advise the employee of the need to provide a minimum of 48 hours notice if they are unable to attend their scheduled occupational health appointment and that failure to do this will incur a charge unless a reasonable explanation is provided.

The manager will have to complete an Occupational Health Referral Form which should be sent to the Transactional HR and Payroll Team for processing.

### **Occupational Health Appointment**

On receipt of a letter detailing an appointment with the Occupational Health Advisor the employee must advise the contact named in the letter if they are unable to attend and provide a reasonable explanation. Where the employee gives notice that they cannot attend for an appointment then another appointment will be made. Unless there are exceptional circumstances, 48 hours notice of non-attendance will be expected. Failure to do so will result in the cost of the missed occupational health appointment to be charged to the employee.

When an employee fails to attend an appointment with the Occupational Health Advisor without prior notification then there may also be an immediate suspension of occupational sick pay where no reasonable explanation is provided. Reinstatement will be dependent on attending another appointment and will be effective from the date of the appointment. Failure to attend a second appointment may also result in action under the [Council/School's Disciplinary Policy](#).

Where, due to the nature of an employee's illness, attendance is not possible, a home visit will be arranged. In order for a home visit to be considered the employee must contact their manager detailing why they are unable to attend at the surgery. The Occupational Health Advisor will then decide whether a home visit is necessary, confirmation of a requirement for a home visit may be requested from the employee's GP.

During an occupational health appointment, the Occupational Health Advisor will ask the employee to sign a consent form to give authorisation for their own GP to be contacted, if required.

### **Action following occupational health appointment**

Once an employee has attended an occupational health appointment, the manager will receive a report from the Occupational Health Advisor. The Occupational Health Advisor cannot make decisions on behalf of the Council/School, however the information they provide will help inform any employment decision.

The information obtained from the report should be used by the manager to identify:

- (a) the likely duration of the sickness absence. This will enable the manager to organise cover for the employee and to establish possible additional costs arising from such cover;
- (b) whether the absent employee requires or will benefit from the provision of specific support;
- (c) whether additional appointments with the Occupational Health Advisor will be needed;

The Occupational Health Advisor may also recommend one of the following:

- (a) The employee is fit to return to work. \*/\*\*\*
- (b) The employee is fit to return to work including a recommendation for a period of rehabilitation which may include a limited reduction in hours or duties for a short-term period to assist the employee in returning to normal working. This phased return to work should in most circumstances be for no longer than a two working week period and should commence on no less than 50% of the employees contracted hours. The manager should reassure the employee that there will be no reduction in salary during the short-term rehabilitation period. \*/\*\*\*
- (c) The employee's health condition will require some changes to their duties or work environment before a return to work is possible. In these circumstances a risk assessment may be necessary.

If employee has a condition covered by the Equality Act 2010, the Occupational Health Advisor may suggest specific adjustments to enable them to undertake the duties of their substantive post.

There is a legal requirement on the manager to consider any suggested Reasonable Adjustments. Managers can however make a judgement as to the 'reasonableness' of accommodating these, in line with available resources and the nature of the post. If the manager is considering rejecting the suggested adjustments they should seek HR advice before making a final decision.

- (d) The employee's health condition will make a return to work to undertake their present job unrealistic. If this is the case alternative employment will need to be considered as per the Occupational Health Advisors recommendation. In these circumstances the employee will be asked to complete an [employee profile form](#), and their details will be added to the redeployment list. The standard timescale for a search for alternative employment will be for 4 weeks. In exceptional circumstances the standard timescale may be amended. If there is a vacancy which is a grade match for the employee and they have the necessary skills and experience, or if they match some skills and experience (provision of training must be considered), they will be put forward to the recruiting manager as a match for this. Where the recruitment process has commenced, if there is a potential match, the process will be frozen until an outcome on the potential redeployment has been confirmed.

Employees may wish to be considered for posts at a lower grade and if this is the case they should indicate this on their employee profile and they can then be considered for matching into a lower graded post. They will not receive detriment in these circumstances. Where an employee is interested in a vacant post at a higher grade they will need to apply and be considered along with other applicants.

- (e) The employee is fit to return to work in the future but the Occupational Health Advisor is unable to give a definitive timescale and recommends a review Occupational Health appointment. Where this recommendation is provided the service area will need to determine whether they are able to continue to sustain the employee's absence.

If the manager has determined that the service area is no longer able to sustain the period of absence

the employee should be referred to an Independent Medical Adviser for them to certify whether they recommend the employee is a candidate for ill health retirement. \*\*

Where it is determined that the employee is not a candidate for ill health retirement the manager will need to discuss with the employee about the possibility of dismissal either via a termination by mutual consent or via a formal inability hearing chaired by a Head of Service/Staff Discipline and Dismissal Committee of the Governing Body. Any decision on this matter should take account the length of absence and the up to date prognosis.

- (d) The employee is not a candidate for ill health retirement but is unable to return to work in the foreseeable future and no suitable redeployment is available. The employee should still be referred to an Independent Medical Adviser for them to certify whether they would recommend ill health retirement. \*\*

Where it is determined that the employee is not a candidate for ill health retirement the manager will need to discuss with the employee about the possibility of dismissal either via a termination by mutual consent or via a formal inability hearing chaired by a Head of Service/Staff Discipline and Dismissal Committee of the Governing Body. Any decision on this matter should take account the length of absence and the up to date prognosis.

- (f) The employee's health condition will make a return to work impossible, and ill health retirement is appropriate. The employee will be referred to the Independent Medical Advisor for them to certify whether they recommend ill health retirement \*.

Once the Independent Medical Adviser has informed the Council/School that the employee is medically unfit to return to work and is a candidate for ill health retirement the manager should refer to the 'Ill Health Retirement' section of this document.

If, at any time during the Ill Health Retirement process, there is an indication that an individual case is causing particular problems, a member of Human Resources is available to provide advice and guidance.

***\* Prior to an employee returning to work following a period of long term sickness absence, it is advisable that the manager meets with the employee to discuss any arrangements needed to facilitate the return to work. These can be as a result of recommendations from occupational health, the employee's GP or agreed managerial support.***

***\*\* Referral to an Independent Medical Advisor is only applicable when an employee is in the Local Government Pension Scheme (LGPS)***

***\*\*\* Sometimes the employee is not prepared to return to their original job, even though their own GP and the Council's Occupational Health Advisor has recommended that they are able to do so. If this is the case, after fully discussing the option with the employee, the manager must explain that, by refusing to return to their original job, they are on unauthorised absence and this will be dealt with under the Disciplinary Policy.***

### TERMINATION OF EMPLOYMENT

Should an employee's absence become unsustainable by the service area / school, the manager will have to determine whether or not they can continue to sustain the absence. This action is not to question the genuine nature of the illness, it is as a result of the impact on the service area and therefore the manager will have to consider the options outlined below.

Where the manager is considering termination of employment and the employee is a member of the Local Government Pension Scheme, a view from the Independent Medical Advisor (IMA) should be sought on whether the employee is a candidate for ill health retirement. It is noted that the decision in relation to ill

health retirement will need to be made by an Independent Medical Advisor who has not provided advice or an opinion about the employee previously. This should be undertaken prior to taking any of the following action.

### **Mutual Termination**

Where the employee's health condition will make a return to work unrealistic within the foreseeable future, which cannot be sustained by the Service Area/School a mutual termination will be discussed with the employee on the grounds of the employee's inability to attend work due to illness. The employee will be invited to attend a meeting with their manager where they will have the right to be accompanied by a trade union representative or a work colleague. At this meeting the manager will explain the mutual termination process and that any decision to end the employees contract under mutual termination would be based on their inability to attend work due to their present illness. If they were to become fit again at some point in the future, they would be welcome to apply for any vacancies within the Council/School.

If the employee agrees to a mutual termination of employment they would receive pay in lieu of notice in line with their contractual / statutory notice period (up to a maximum of 12 weeks), together with any outstanding holiday pay from the current annual leave year. Under a mutual termination, any pension would not be released until the employee reached retirement age. [The employee should receive written confirmation of the mutual termination agreement](#), and will be asked to sign and return a copy of the letter to confirm their agreement.

If the employee felt that this decision was unfair and therefore does not agree to a mutual termination, the manager should arrange a formal inability hearing.

### **Inability Hearing**

Inability Hearings are arranged to determine an employee's continued employment with the Council/School on the grounds of their continuing ill –health and its impact on the service area delivery.

An inability hearing will be convened by the manager and chaired by a Head of Service/Staff Discipline and Dismissal Committee of the Governing Body. The employee will receive [written notification of the details of the Inability Hearing](#) along with a copy of the [Inability Hearing Report](#) and accompanying documents. All information must be sent a minimum of seven calendar days before the date of the inability hearing.

At the Inability Hearing consideration will be given to whether the Service Area/School can continue to sustain the employee's absence, taking account the length of absence and the most recent occupational health report.

The employee will be notified in writing of the outcome of the Inability Hearing, Where a decision is taken to dismiss the employee this will be on the grounds of health capability and the employee will be notified of their right of appeal. Where the decision is taken to dismiss the employee, they will receive pay in lieu of notice in line with their contractual / statutory notice period (up to a maximum of 12 weeks), together with any outstanding holiday pay from the current annual leave year.

The format of the hearing will follow the process outlined in the [Inability Hearing Format Document](#).

### **Ill health Retirement**

Where an IMA has advised the Council / School that the employee is medically unfit to return to work and is a candidate for ill health retirement, the manager should arrange to meet employee and advise them of their right to be accompanied by a work colleague or Trade Union representative. At the meeting the manager will discuss the recommendation from the IMA and confirm that the employee's contract will be terminated on the grounds of ill health retirement.



In the exceptional circumstance where an employee is unable to meet with a manager to discuss the recommendation of the IMA, the decision to terminate the contract will be confirmed in writing.

Where an IMA advises that an employee is a candidate for ill health retirement, this means that they feel that the employee is permanently incapable of discharging the duties of their current role. In confirming this advice they will also advise what Tier of ill health retirement the employee would satisfy.

### Tier 1

Tier 1 will be awarded where the IMA certifies that employee is permanently incapable of performing their duties and there is no reasonable prospect of being capable of undertaking gainful employment anywhere before their normal retirement age (a minimum of 65). In these circumstances the employee will receive an enhancement of 100% of their prospective membership from the date of termination to the age of 65.

### Tier 2

Tier 2 will be awarded where the IMA certifies that the employee is permanently incapable of performing their duties and is unlikely to be capable of undertaking any gainful employment within three years but it is likely that they will before reaching their normal pension age (a minimum of 65). In these circumstances the employee will receive an enhancement 25% of their prospective membership from the date of termination to the age of 65.

### Tier 3

Tier 3 will be awarded where the IMA certifies that the employee is permanently incapable of performing their duties but is likely to be capable of gainful employment within three years or before reaching their normal pension age (a minimum of 65) if earlier. In these circumstances the employee's accrued benefits to the date of termination will be released without enhancement and will be paid until either gainful employment is obtained or for a maximum of three years.

The employee's case will be reviewed by the IMA or an Occupational Health Advisor after 18 months to assess if their condition has either improved or deteriorated and again if necessary after 36 months. If their condition has deteriorated they may then qualify for a Tier 2 enhancement. If their condition has improved the payment of pension will cease immediately.

The employee must receive written confirmation that they are retiring from work on the grounds of permanent ill health and the Tier Level and of their right to appeal against the termination of employment and the Tier Level of Ill Health Retirement.

## **Appeals**

Employee's who are advised that their employment is to be terminated following an Inability Hearing or on the grounds of ill health retirement have two rights of appeal:

- 1) Employees have the right to appeal against the decision of the IMA. This right of appeal will either be against the Tier level that they have been ill health retired under or on the basis that they feel they should have been ill health retired i.e. they are questioning the medical opinion of the IMA. The employee has 6 months to exercise this right. Where an employee wishes to exercise this right of appeal this should be done in writing to the Head of People and Transformation. This applies to both Council and School employees.
- 2) Employees have the right to appeal against the decision of the Council to terminate their employment to the Members Appeal Panel. Where an employee wishes to exercise this right of appeal this should be done in writing within 7 calendar days of the date of termination. The letter of appeal must be addressed to the Head of People and Transformation and must state the employee's grounds of appeal. On receipt on this letter an [Inability Hearing Appeal](#) will be arranged.



## School-based Employees

*In a school, an employee who wishes to appeal against the decision of the School to terminate their employment has the right of appeal to the Governing Body's Staff Discipline and Dismissal Appeal Committee. The letter of appeal must be addressed to the Clerk to the Governing Body, and must state the employee's grounds of appeal.*

## **Template Information**

Template information to be used during the Management of Attendance process can be accessed below:

### Sickness Absence Reporting Procedure

#### Keeping in Touch Form (Management of Attendance)

#### Invitation to Contact Meeting Letter

#### Managers Guide – Contact Visits

#### Confirmation of Contact Meeting Letter

#### Failure to Supply Fit Note Letter 1

#### Failure to Supply Fit Note Letter 2

#### Invitation to MoA Interview Letter

#### Guidance on Management of Attendance Interviews

#### Management of Attendance Interview Confirmation Letter

#### Invitation to MoA Hearing Letter

#### Invitation to MoA Appeal Hearing – Warnings Letter

#### Management of Attendance Report Template

#### Management of Attendance Hearing Format

#### Management of Attendance Hearing - No Case to Answer Letter

#### Management of Attendance Hearing - First Written Warning Letter

#### Management of Attendance Hearing - Final Written Warning

#### Management of Attendance Hearing - Dismissal (Corporate) Letter

### Suggested Timescales for Managing Long Term Absence

#### Confirming Mutual Termination Letter

#### Confirming Ill-Health Retirement - Tier 1 Letter

#### Confirming Ill-Health Retirement - Tier 2 Letter

#### Confirming Ill-Health Retirement - Tier 3 Letter

#### Invitation to Inability Hearing Letter

#### Inability Hearing Report Template

#### Inability Hearing Format

#### Outcome of Inability Hearing – Decision Held in Abeyance

#### Outcome of Inability Hearing – Employee Returns to Work Letter

#### Outcome of Inability Hearing – Termination of Employment Letter

#### Inability Hearing Appeal Format

#### Unauthorised Absence Letter 1

#### Unauthorised Absence Letter 2

#### Unauthorised Absence – Termination Letter

#### Medical Suspension Letter

#### Guidance for Absence as a Result of Industrial Injury