

WINTERBOURNE NURSERY & INFANT SCHOOL



Sickness Monitoring Procedure (7-day trigger points)

Includes agreed commentary

Agreed by governors: 19th April 2018
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Commentary

All parties to this commentary agree that it is important to maintain and support a highly effective workforce of teaching and support staff which provides first rate teaching and learning. To achieve this, staff must attend work regularly and absence from work needs to be tackled. It is also accepted, however, that staff do at times fall ill and – despite the inconvenience and cost to the school and impact on pupils - genuine illness must be treated sensitively, with the intention of supporting staff to return to work. Most teaching and non-teaching staff have an entitlement to sick pay built into their contracts.

The attached policy has a number of functions. It is helpful to staff in that it ensures that schools become aware of, and are able to respond supportively to, issues affecting their health. For example, management would be able to vary the working pattern of someone who suffered from arthritis or, at a simpler level, would avoid using a member of the teaching staff for duties other than their core teaching commitments on their return from an illness. It also allows employers to become aware of – and respond to – issues in the workplace which were contributing to a colleague's illness.

The policy also provides a framework under which management may respond openly, fairly and consistently to sickness absence and ill health in the workplace. In addition to supporting employees to return to work, the procedure provides a mechanism to help managers meet their duty of care and other legal responsibilities, including those under the Equality Act 2010. The procedure also provides a process that may eventually be used to end the employment of an employee who is unable to fulfil their contract through sickness absence or ill-health.

Under the policy, managers are required to have return-to-work discussion with anyone who returns after a period of illness. Normally this would be no more formal than a chat to welcome the worker back and to enquire after their health. This chat would enable the employer to discuss any future impact on work and put in place any measures of short-term support needed. It also gives the opportunity for managers to raise concerns and take any appropriate action in those circumstances where sickness absence or ill health is seen to be a potential problem. The outcome of the chat is recorded on the Return to Work Form.

The policy is based on a system of “Trigger points” which **may** prompt more formal action. These trigger points are designed to prompt managers to consider whether there is a clear need to proceed to more formal actions. The fact that a trigger point has been reached does not necessarily mean that formal action would be appropriate and managers should apply them sensibly, sensitively and according to the circumstances of each individual case.

It is unlikely to be appropriate, for example, to issue a formal warning to an employee who had a previous good attendance record who then needed extended time off as a result of a car accident, or who was recovering from one-off surgery, or who had a period of illness from which they then recovered. It would, however, be appropriate to carry out a formal review of a member of staff on long term sick leave for whom it was uncertain when they might be fit to return, or if they had a condition which caused a number of long-term absences and it was uncertain when - or if - they would be fit to resume normal duties.

If an employee had a number of short-term absences (and therefore reached a trigger point) the manager will have to consider whether the absence is acceptable. The manager will have to consider the employee's previous absence record, any disability and any underlying medical condition which may contribute to short term periods of illness. If the employee was thought to be abusing the system the disciplinary procedure should be used.

1. Scope

- 1.1. This procedure applies to all teachers and school-based staff employed by the London Borough of Croydon or the School.
- 1.2. In certain instances individual groups or categories of staff have conditions of service unique to them, and this is reflected in this policy.
- 1.3. The Headteacher will be responsible for ensuring that appropriate action is taken where there are concerns regarding an employee's level of sickness absence and may delegate responsibilities to other senior members of staff as appropriate. Where the Headteacher's attendance is a matter of concern, the role of the Headteacher in relation to the management of the sickness absence will be undertaken by the Chair of Governors.
- 1.4. The procedure will apply in full to all teachers and school-based employees on satisfactory completion of their probationary period. Sections 2, 3, 4, 6 and Appendix 1 will apply to these employees from their first day of service.

2. Introduction

- 2.1. This document explains what employees must do when absent from work due to sickness and what procedures will be followed when absence occurs.
- 2.2. Regular and punctual attendance is a contractual condition on all employees. The governing body is committed to maintaining good attendance levels. The governing body will also manage sickness with sensitivity bearing in mind the occupational sick pay entitlement. However, nothing in this policy will prevent or restrict the governing body's right to terminate employment before entitlement to sick pay is exhausted.
- 2.3. Employees who abuse this procedure, or the provisions of the sick pay scheme, may have their sick pay withheld and/or be subject to disciplinary action. Examples of abuse include: not reporting sickness or providing statements of fitness to work (fit notes) as required; failing to attend meetings with management or the Occupational Health Service (OHS) and engaging in activities which are inconsistent with the alleged illness or which may aggravate the illness or delay recovery (such as undertaking employment or participating in sport).

3. Responsibilities of Employees

All employees have a responsibility to:

- attend work when fit to do so and not incur sick leave unless medically unfit to attend work or remain at work;
- attend appointments arranged with management or the Council's Occupational Health Service (OHS) as part of this procedure;
- report their sickness in accordance with this procedure (see Appendix 1);
- inform their Headteacher/manager as soon as possible of any changes in their condition that affects their ability to do their job or alters the timescales for their return to work;
- leave contact details when off work due to sickness and be available to attend meetings about their absence;

- submit statements of fitness to work (fit notes) promptly (see Appendix 1);
- complete a Return to Work form following each period of sickness absence
- meet with their Headteacher/manager when requested to discuss their absence.
- Employees must notify the Headteacher if an infectious disease occurs in the home where the employee is living and await advice from the Headteacher as to whether they should refrain from school duties (following advice from the OHS). The employee would usually expect to continue school duties pending receipt of instructions from the OHS except in the event of a notifiable disease.

4. Responsibilities of Management

Headteachers/managers are responsible for:

- regularly reviewing the level of sickness absence and applying the provisions of this policy when sickness absence is unsatisfactory or when health concerns are impacting on performance;
- treating all employees individually, consistently, with dignity, sensitivity and in confidence, striving to ensure their health and welfare;
- contacting employees on their return from sick leave in order to discuss their absence, ensure that Return to Work forms are completed and take any other action as appropriate;
- contacting employees who have not reported their absence as required (see Management Guidelines for dealing with unauthorised absence from work);
- maintaining regular contact with those on long term sick leave;
- referring employees to the School/Council's Occupational Health Service for a medical assessment as appropriate;
- dealing fairly but firmly with employees whose level of sickness absence is unsatisfactory.
- Where a teacher has returned and there are concerns about their fitness to take up their duties, this should be raised, where appropriate. This may include placing the teacher on special leave pending confirmation from OHS of their fitness to resume duty.
- Headteachers/managers are also responsible for ensuring that the Education (Teachers) Regulations are applied and that a teacher or other worker with children and young persons should not continue in their post if the person does not have the health or physical capacity to perform the duties of the post.

5. Link With Other Procedures

- Unsatisfactory performance not attributed to genuine sickness or health issues will be addressed under the appropriate school Capability Procedure.
- Where the OHS has advised that an employee should be redeployed to alternative work, regular monitoring and review under this procedure should continue.

6. Relevant Considerations

In implementing this procedure, Headteachers and managers will give due consideration to:

- the governing body's responsibilities under the Equality Act 2010 and the need to consider reasonable adjustments for employees with a disability.
- employees who are pregnant; have recently given birth, are undergoing gender reassignment or are suffering a terminal illness;
- absence which is due to a one-off operation or illness;
- employees with identified mental health conditions e.g. depression etc.;
- absence due to a recognised industrial injury sustained whilst working for the school;
- employees' previous work record and attendance history;
- the need to redeploy someone specifically into a different work environment (if possible) either due to medical reasons or as a result of particular employee relations issues;
- the specific requirements relating to the continued employment of or return to work by teachers suffering from pulmonary tuberculosis, epilepsy or psychiatric disorder.

7. Early Informal Action

7.1 Return-to-Work Discussion

7.1.1 The Headteacher/manager should contact an employee as soon as possible following every return from sickness absence. This may take the form of an informal discussion or be a more structured meeting, depending on individual circumstances. If there is concern about the pattern of absence or health, this should be raised informally with the employee at the earliest opportunity. Headteachers/managers should use this opportunity to ensure that the return to work form is completed.

7.1.2.1 In recognising the governing body's duty of care to employees, Headteachers/managers are expected to address concerns as soon as they arise. Informal reviews, including home visits and referral to the OHS, may therefore take place before the trigger points mentioned in section 8 are reached. Where stress or depression is given as a reason for sickness, employees should be referred to the OHS so that early interventions can take place to address any underlying work-related issues.

7.1.2.2 Where short-term intermittent absence is a concern, managers may require employees to produce a statement of fitness to work for each period of absence. Reasonable costs incurred by the employee for doing so will be reimbursed upon production of a receipt.

7.2 Underlying Medical Conditions and Reasonable Adjustments

7.2.1 Where the employee has an underlying medical condition appropriate consideration will be given to: job redesign; temporary adjustment to duties

or workload and/or a phased return to work on full pay. These, and other reasonable adjustments, will also be considered for employees with a disability.

8. Monitoring And Reviewing Sickness Absence

8.1 Trigger points act as a prompt to review absence on a regular and consistent basis and initiate formal action as necessary. The trigger points are:

- 7 working days sickness absence in the previous 12 months
(Note: The previous trigger was previously 9 days. For staff who have had 7 or 8 days absence in the rolling year as at the date the School adopted this new policy: take sickness management action on the next sickness related absence or if there are concerns)

or

- sickness absences on 5 separate occasions in the previous 12 months

*Meetings will **only** be held when the manager is satisfied that a meeting is justified and necessary or when requested by the member of staff.*

These trigger points will be kept under review and may be changed from time to time.

9. Representation

9.1 Employees have the right to be represented by a representative of a recognised professional association/trade union, or a workplace colleague, at all formal meetings under this procedure. It is the responsibility of the employee to arrange for their representation. Legal representation is not allowed. If the employee's chosen companion is not available at the time fixed for the meeting, it must be rescheduled to accommodate the availability of the companion, as long as a reasonable alternative date is offered which is within 5 working days of the originally proposed date. If the meeting is postponed twice at any one stage, the case may proceed to be considered on the basis of the information available.

10. Timescales and Definition of a Working day

10.1 For the purposes of the operation of this Procedure, timescales are expressed in working days. In the case of teachers or other staff that work a term time pattern, a working day should be regarded as a day that the school is open for pupils. For staff that work all year round, a working day should be regarded as a day that they would normally be required to attend for work. Where a sickness case arises just before a school holiday, arrangements to resolve the matter speedily should be discussed between the parties. An

intervening school holiday should not of itself be a cause for an undue delay in resolving the case.

11. Formal Stages

11.1 The following applies to all formal meetings (see sections 12, 13 and 14 below):

- employees will be given at least 7 working days written notice of meetings that they are required to attend.
- the outcomes of all formal meetings and reviews will be confirmed in writing.
- headteachers may make decisions and take actions in the absence of the employee but should seek specific advice from Occupational Health and HR and OD (or the School's HR provider) before doing so. Employees who are unable to attend may arrange for a representative to attend on their behalf, and/or submit written representation in advance.

11.2 Head teachers/managers should consider any medical advice they have been given before making decisions. Whilst decisions are taken in light of medical advice, the decisions themselves are management responsibilities, not medical ones.

11.3 If, during the 12 months following a successful review period, the employee's absence reaches one of the trigger points, or further health concerns arise, the Headteacher/manager will consider whether it is appropriate to refer to the Final Stage (see section 14).

11.4 If at any stage the OHS (or the employee) indicates that the employee can no longer carry out their current duties, or will not be able to return to work or sustain regular attendance within a reasonable period, the matter should be referred immediately to the Final Stage. This includes the limited circumstances in which the OHS may recommend early retirement on the grounds of ill health.

12. Short-term/Intermittent Sickness Absence: First Formal Stage

12.1 The following procedure will apply for short-term sickness absences or health concerns. See section 13 for the procedure to manage long-term absence.

12.2.1 A first formal meeting may be arranged with an employee whose absence has reached one of the trigger points or whose pattern of absence or health is a concern to Headteacher/manager although none of the trigger points has been reached. Meetings will only be held when the manager is satisfied that a meeting is justified and necessary or when requested by the member of staff.

12.2.2 Where the level of absence (or the effect of ill health) is considered unacceptable the Headteacher/manager will:

- refer the employee to the OHS service if not already done so;
- set a review period of 3 working months, during which the employee's attendance (or effect of ill health) will be monitored on a monthly basis;
- in cases where the employee has returned to work, the review period should commence from the date they returned, and not from the date of the formal meeting
- set a target for improvement of no more uncertificated absence in the 3 working month review period. If any absence occurs during this period, the employee will be required to provide a fit note and the headteacher/manager will consider the reasons, duration, frequency and pattern of absence before taking further action.

NB: an additional day's absence due to sickness during this period does not automatically mean a referral to the final stage, although the employee's absence will continue to be monitored;

- inform the employee that a meeting under the Final Stage will be arranged if, during or at the end of the review period, the required improvement has not been made or if further health concerns arise;
- formally caution the employee that if the required improvement is not made, a meeting under the Final Stage will be arranged which could lead to the employee's dismissal (see section 14);
- maintain a sensitive, supportive manner when dealing with cases of sickness and ill health.

12.2.3 If, at the end of the review period, there has been a satisfactory improvement in the employee's level of sickness absence the employee will be advised of this in writing and reminded of the need to sustain the improvement (also see section 11.2).

13. Long-Term Absence: First Formal Stage

13.1 The following procedure will apply to employees whose absence or illness is expected to last or has lasted for more than 4 weeks. During the first four weeks, Head teacher/managers will normally have reviewed the employee's absence and sought advice from the OHS.

13.2 Once the relevant OHS advice is received, a meeting with the employee will be arranged. Action, informed by the OHS advice, may include:

- a) establishing a time-limited sickness rehabilitation programme to support a return to work, or a
- b) referral to the Final Stage if the matter is sufficiently serious and the employee is unable to return to work within a reasonable timeframe, taking into account service needs.

Option (a) will also be accompanied by a formal caution that if the required improvement is not made, a meeting under the Final Stage will be arranged

13.3 If a return to work or normal duties within the time specified in 13.2(a) is achieved the employee will be advised in writing and reminded of the need to sustain the improvement (also see section 11.3).

14. Final Formal Stage (*applicable to short-term and long-term absence*)

14.1 A final stage meeting will be arranged to decide on the employee's future employment, if:

- the targets or timescales set during the First Formal Stage have not been met; or
- the initial improvement made at the end of the First Formal Stage has not been sustained over the following 12 months; or
- medical advice suggests that the employee will not, within a reasonable period, be able to return to work or undertake the full duties of their post and is unsuitable for medical redeployment.

14.2 Meetings at the Final Stage will be before a panel of at least three members of the governing body, advised by a representative from the HR and OD Service (or the School's HR provider).

14.3 The Executive Director for Children, Families & Learning has a right to be represented at both the Final Formal Stage and Appeal meeting.

14.4 Before any decision is taken by the governing body, the employee should be consulted fully. This should include an opportunity for the employee to take advice from his/her professional association or trade union.

The panel will:

- confirm the facts of the case, the action taken to date, any developments since the last meeting and the latest medical advice.
- consider any representations made by or on behalf of the employee and any statement of intent they may wish to make regarding their future attendance.
- ensure that proper consideration is given to the factors referred to in section 6.

The options which may be considered could be:

- the employee continues in their job with support, monitoring and review;
- transfer to alternative work (if applicable) where this would be more suitable to the employee's health condition and where such alternative work is available;
- premature retirement;
- a recommendation to the LA of dismissal, with notice, on the grounds of incapability due to ill-health.

A recommendation for dismissal may be considered in the case of:

- any teacher who has not applied, refuses to apply or whose application for an ill health pension has been rejected by the Teachers' Pensions;
- any employee who refuses to acknowledge that s/he has an ill health problem and is medically unfit to carry on working;
- any employee who, despite being aware that they are medically unfit to carry on working, indicates an unwillingness to pursue premature retirement at that time.

14.5 Where the panel consider that the level of absence is unacceptable, that sufficient opportunity to improve has been provided and adequate warnings of the consequences given, the employee shall be given notice of dismissal. In cases of long-term absence, the panel will also consider: the timescales within which the employee may be able to return to work; the impact of the continuing absence on the school, particularly pupils and colleagues; and what alternatives to dismissal may be appropriate under the circumstances.

14.6 In **exceptional circumstances**, such as new information becoming available, the panel may set a final review period of 3 working months (during which the employee's attendance will be monitored on a monthly basis) and issue a final caution that employment is at risk unless a satisfactory improvement is made. If the required improvement is not met, the panel will reconvene to consider giving the employee notice of dismissal.

15. Teacher's Termination of Employment on Ill-Health Grounds

15.1 A teacher who contributes to the Teachers' Pension Scheme is able voluntarily, at any age, to apply to the Teachers' Pensions for an infirmity benefit. The teacher will be notified by the Teachers' Pensions whether infirmity benefit will be granted. Normally, therefore, the decision to retire prematurely on ill health grounds is taken by the teacher and not the school. The governing body should seek to secure agreement with the teacher that the retirement takes effect within six months of the decision by Teachers' Pensions.

In all other cases, the decision to terminate employment on medical or ill-health grounds will be taken by the appropriate committee of the governing body.

The employee and his/her representative must have the opportunity to appear before that committee to make representations on his/her behalf before a decision is made.

16. Sick Pay and Entitlements

16.1 Sick Pay and Entitlement for Teachers

Within any span of 12 months, commencing 1st April each year, a teacher may receive an occupational sickness allowance in accordance with:

- During 1st year of service - full pay for 25 working days and, after completing 4 calendar months' service, half pay for 50 working days.
- During 2nd year of service - full pay for 50 working days and half pay for 50 working days.
- During 3rd year of service - full pay for 75 working days and half pay for 75 working days.
- During 4th and subsequent years - full pay for 100 working days and half pay for 100 working days.

16.2 Sick Pay and Entitlement for Support Staff

Within any span of 12 months, an employee may receive an occupational sickness allowance in accordance with:

- During 1st year of service - 1 month's full pay and, after completing 4 months' service, 2 months' half pay.
- During 2nd year of service - 2 months' full pay and 2 months' half pay.
- During 3rd year of service - 4 months' full pay and 4 months' half pay.
- During 4th & 5th year of service – 5 months' full pay and 5 months' half pay.
- After 5 years – 6 months' full pay and 6 months' half pay.

16.3 Where a teacher is ill immediately preceding a closure period and is on full sick pay, they shall continue on full sick pay, but the closure period is not counted against their entitlement under sick leave and pay. If they are on half sick pay, they shall continue on half sick pay, but the closure period is not counted against their entitlement. If they have exhausted their pay entitlement and are not receiving any pay, they shall continue to receive no pay.

16.4 Sick leave can end during a closure period, in which case normal full pay will be reinstated from the date the teacher is certified fit to work. The exception to this is if the teacher is declared unfit again so that they are unable to start the next term at work.

17. Appeals

17.1 Employees may appeal to the governing body against a decision under this procedure to:

- set targets or timescales for improvement;
- give a formal caution;
- or to terminate employment

Appeals must be submitted in writing to the Chair of the Governing Body within 10 working days from the date of receiving written confirmation of the outcome and must specify the grounds of appeal.

- 17.2 Appeals against anything short of dismissal should be heard by the same number of people that reached the original decision that is being appealed against.
- 17.3 Appeals against dismissal should be heard by a panel of three governors.
- 17.4 The appeal hearing will not be a rehearing of the case and the appeal decision is final.
- 17.5 Employees may appeal on the following grounds:
- a) the proper procedure was not followed and the appeal panel will consider whether this materially affected the decision.
 - b) the decision reached was unreasonable considering the information provided.
 - c) new evidence has become available.
- 17.6 Decisions made at the Final Stage are not stayed pending the outcome of an appeal. Employees who are dismissed will therefore be taken off the payroll unless the decision is over-turned on appeal.
- 17.7 This policy will be reviewed 12 months after its introduction.
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End

Appendix 1: Reporting Sickness Absence

Sickness procedure for reporting sickness absence. Headteachers may issue local variations where this procedure is not practical e.g. for some staff working non-term time or weekends. Employees whose are subject to formal review should provide a fit note for each period of sickness absence, even where the absence is less than 8 days

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|--|--|
| 1 st Day of absence: | <p>Contact your ¹ <i>designated contact</i> to report your absence, as near to your usual starting time as possible or according to timescales set by the school regulations. You should give the nature and probable duration of your absence.</p> <p>Always report your absence yourself rather than asking a friend or relative to do it, unless there is a good reason, which is explained to your headteacher/manager.</p> <p>If your designated contact is not available, you should contact the deputy headteacher or a senior manager directly. If neither of these are available, leave a message stating that you are sick and either ring back later the same day or leave your telephone number so that your designated contact can ring you back. Details about your sickness should not be left with colleagues.</p> |
| 4 th calendar day. | If you are still absent (or are absent for longer than first indicated) you should telephone your designated contact to provide them with an up-date on your health. |
| 8 th calendar day: | <p>You must telephone your designated contact.</p> <p>You must also obtain a fit note from your doctor. This must be sent in no later than the 8th calendar day of absence to the head teacher/ designated contact. Further fit notes must be sent in regularly and must cover you for the entire period of your absence. Failure to provide a fit note/certificate may result in loss of pay.</p> |
| Absence longer than 8 days: | Every working week, or as agreed with your headteacher/manager, you should contact your designated contact to report on your health and to indicate when you expect to return to work. In cases of serious illness then different arrangements will clearly need to apply. |
| On return to work: | <p>You will be required to fill out a return to work form for each period of sickness. Failure to complete this form may result in loss of pay.</p> <p>If you have been absent for more than 14 days, or have submitted more than 1 fit note, you will need a certificate from your doctor confirming that you are fit to return.</p> |
| <p>Where exceptional circumstances (e.g. an accident on the way to work) prevent you reporting your absence within the normal timescales you should ring your designated contact as soon as you are able to do so.</p> | |

If required by your headteacher/manager, you should report your absence each working day for the first week. This may be considered appropriate for operational reasons or where an employee has a history of not reporting their absence.

¹Designated contact is as agreed by school.

Appendix 2 - Stress Awareness Advice

In managing staff attendance, headteachers/managers should be aware of how stress can trigger or exacerbate sickness absence. Under the Health & Safety at Work Act headteachers/managers have a duty to protect the physical and mental health of their staff at work.

You can help prevent stress-related sickness absence by:

- Monitoring sickness absence, general performance, accidents and mistakes for signs of stress;
- Ensuring that staff have the skills, training and resources they need to do the job;
- Treating staff in a fair and consistent manner and not tolerating harassment or bullying of any kind;
- Communicating with your staff and ensuring that they are able to communicate with you; good communication is especially imperative in times of restructuring and change;
- Ensuring that your staff work in a safe and comfortable environment;
- Where service delivery allows, looking at more flexible working patterns and modifications to the working day, to enable staff to integrate their work and outside commitments and interests;
- Making sure all your team has clearly defined objectives and responsibilities ;
- Encourage staff the chance to be innovative and to own and take pride in their work; giving praise whenever a good job is done; avoiding a culture of blame;
- Referring staff to the OHS and/or counseling service wherever appropriate for additional support and working with them to overcome the problems.

End

Appendix 3 - Occupational Health Assessment

Introduction

The Council employs a team of medical and nursing staff with specialist qualifications to provide occupational health advice to headteachers/managers and employees.

This guidance clarifies the roles and responsibilities of those involved when a formal referral is made to the Occupational Health Service and clarifies the procedure to be followed.

The Role of the Occupational Health Service

The role of the Occupational Health Service is to provide specialist medical advice to the Council/School to assist headteachers/managers to ascertain the true medical position on which to base decisions about their staff.

Occupational Health provide an independent, impartial advisory service. They are responsible for the provision of clear medical advice to headteachers/managers about the individual cases referred to them. Their advice is based on factual evidence obtained from the following:-

- full background to the case e.g. absence records, job demands
- medical assessment including physical examination where relevant
- workplace assessment where relevant
- monitoring of the progression of a case over a period of time
- reports from an employee's GP or specialist

The Occupational Health Service advises on, but does not make decisions about an employee's continuing employment, redeployment or future deployment. These decisions are made by management and should take into account the advice of the Occupational Health Physician, but they may also be based on other factors such as service demand, risk assessment of health and safety considerations, and financial constraints.

Referrals For Occupational Health Assessment

Employees may be referred for an occupational health assessment in the following situations:-

- When a planned sickness absence is known; e.g. an operation date is known.
- Long term or continuing sickness absence where there is not a clear indication of a likely date for return to work.
- Persistent or recurrent short term absence.
- Where there is concern that the employee may have work related health problems or that existing health problems are being aggravated by the duties of the post.
- Where health may be an underlying or contributory factor in performance or disciplinary issues.
- If the employee or headteacher/manager wishes to consider re-deployment, dismissal, or retirement because of health reasons.
- In order to identify how the school can help an employee manage a health problem e.g. advice on working patterns, modification of equipment, provision of assistance at work.

- To identify whether an employee's ill health is a disability

Authorisation Under the Access to Medical Reports Act 1988

The employee's consent is required to authorise their medical adviser to release medical information to the OHS. Headteachers/managers should obtain this when requesting employees to complete a consent form when the referral decision is taken. This form should be sent to OHS with the referral request, or be sent to OHS directly by the employee. If employees withhold their consent, managers should explain that this will limit the OHS's ability to give as full advice as possible. However, decisions will still be made in light of the advice obtained.

Written referral with consultation

All formal referrals to the Occupational Health Service must be made via the COHORT on line system and the reasons for referral should be discussed with the employee. It is important to ask specific questions otherwise OHS may not be able to accurately address the issues that you have. Although cases will vary, examples may include:

- is it likely the individual will be able to return?
- when is the likely date of return?
- could a phased return to work assist the individual's return?
- could a phased return to work assist with an earlier return?
- if there is an underlying condition, what likelihood is there of it recurring?
- will the individual be fit to return to work as she/he plans to on **(date)** and carry out the full range of his duties and on a full time basis?
- is there any possibility of any aspect of the work having an adverse affect on the individual's health or further aggravate any condition she/he may have?
- is there likely to be any residual difficulty/disability that requires modification to the individual's work? i.e. pattern of work, duties, equipment etc.?
- if the individual cannot return to their current post, in what capacity could the individual be employed?
- would redeployment on a permanent/temporary basis assist a return to work?
- in view of the fact the individual's health has been poor for some time would you consider retirement on health grounds a realistic option?
- should the employee be classified as disabled?

Background information

In order for the Occupational Health Physician to provide a full opinion to managers, he/she should be fully informed of the background to each case including:-

- ◆ precise nature of duties including details of any hazards (e.g. copies of risk assessments) and a job description.
- ◆ relevant employment details, length of service, nature of working environment, any capability, disciplinary or industrial injury issues.
- ◆ main concerns and reasons for the referral (care must be taken as far as possible to present facts rather than opinions).
- ◆ details of absence. Of particular importance is a summary of dates, durations and reasons for absence. A sheaf of photocopied certificates is not helpful.
- ◆ if termination of employment/medical retirement is being contemplated as a possible action, this must be made clear in the referral so that a firm prognosis can

be provided.

Appointment for Assessment

Following receipt of a referral an appointment may be arranged by the Occupational Health Service for the employee to be assessed. Any appointment will normally be scheduled after the receipt of all relevant information e.g. any medical reports which have been requested, dates for planned return to work or completion of investigations or treatment. Appointments to see the Occupational Health Physician may not be necessary in every case e.g. severe or terminal illness or where recommendations may be made on the basis of medical reports received from doctors responsible for the employees general medical care.

Informal Discussion and Advice

Headteachers/managers are encouraged to discuss difficult or complicated referrals with Occupational Health on an informal basis, so that they can establish how the Occupational Health service can help in a particular case.

Occupational Physicians Report

Following assessment, the Occupational Health Physician will provide a written report detailing his/her opinion and recommendations as appropriate. This may include:-

- ◆ an opinion about fitness to work.
- ◆ a prediction about the likelihood of a return to work.
- ◆ an opinion about whether work factors or hazards have contributed to ill-health or absence and how these could be modified.
- ◆ recommendations about restrictions or modifications which could be made in job content or arrangement.
- ◆ advice about fitness for alternative duties.
- ◆ suggestions regarding help or support which could be offered by the School or other agencies.
- ◆ advice about the necessity of further assessment or monitoring.
- ◆ an opinion about whether or not previous sickness absence was genuine will not be provided as it is impossible to ascertain this retrospectively.
- ◆ an opinion about whether or not the employee should be classified as disabled

Where relevant the Occupational Health Physician will make reference to regulations etc. Normally, clinical information will not be included in the report. There may be exceptions to this where some information may be included at the employee's request and the OHS's approval.

A full report may not be available after one consultation and where the occupational health assessment process is likely to be prolonged an indication of the likely timescales and any delays will be given in so far as is possible. A copy of the written report will be provided to the employee by OHS.

Ill Health Retirement

The Council's Occupational Health Physician may provide an opinion about whether or not an individual meets the criteria for ill health retirement. There may be employees who are

on prolonged sick leave with no prospect of returning to work within a foreseeable date but who do not meet the criterion of permanent incapacity.

(The Council's Occupational Health Physician will follow guidance developed by the Association of Local Authority Medical Advisers on Ill Health Retirement).

Summary

The quality and clarity of advice provided by the Council's Occupational Health Service depends upon the background, detail, and specific questions asked in the referral and the information provided by the employee and their medical advisors. It is essential that the role and responsibility of the Occupational Health Service is clearly understood by those involved in the referral process and this must be explained by the headteacher/ manager to the employee each time a referral is made. Headteachers/managers can help the process by ensuring that information they provide is clear, detailed and focused on what the issues are.

End

Appendix 4 - Disability Discrimination

Treating employees who are disabled the same as non disabled employees is potentially discriminatory and unlawful. Employers have a duty to be aware of any disability, provide support, and make reasonable adjustment to jobs, processes, premises etc. In the case of sickness and ill health an employer cannot treat a disabled employee in the same way that they would treat a non disabled employee in the same situation.

- The obligation to consider and make adjustments is greater
- The obligations to consider and provide supportive and potentially remedial arrangements are greater.

It may be that an employee not currently categorised as disabled may have become so by virtue of their ill health. The length of time the condition has existed and the effects are key factors.

When making referrals to the OHS, consideration should be given to seeking a view on whether the employee has a disability and if so the impact such a disability and what reasonable adjustments may be appropriate . This should particularly apply to long term sickness/ill health cases where there may be a strong likelihood that the employee has crossed over to disabled status and thus attract different consideration.

The definition of 'disability' under the Equality Act 2010

A person has a disability if:

- they have a physical or mental impairment
- the impairment has a substantial and long-term adverse effect on their ability to perform normal day to day activities.

For the purposes of the Act, these words have the following meanings:

- 'substantial' means more than minor or trivial
- 'long term' means that the effect of the impairment has lasted or is likely to last at least twelve months (there are special rules covering recurring or fluctuating conditions).
- 'normal day-to-day activities' include everyday things like eating, washing, walking and going shopping.

People who have had a disability in the past that meets this definition are also protected by the Act.

Progressive conditions considered to be a disability

There are additional provisions relating to people with progressive conditions. People with HIV, cancer or multiple sclerosis are protected by the Act from the point of diagnosis. People with some visual impairments are automatically deemed to be disabled.

Main Employment Provisions

It is unlawful for an employer to discriminate against a disabled person.

It is unlawful for an employer to discriminate in two interrelated ways;

- Unjustified less favourable treatment of a disabled person for a reason related to disability
- Unjustified failure to comply with a duty to make a reasonable adjustment

Duty to make Reasonable Adjustments

Employers are obliged where: any arrangements made by or on behalf of the employer, cause a substantial disadvantage to a disabled person compared to non-disabled people; or, any physical feature of premises occupied by the employer: “to take such steps as are reasonable in all the circumstances” to prevent the disadvantage – this is to make a “reasonable adjustment”.

Justifiable Discrimination

Discrimination against a disabled person will be unlawful unless it is justified. In order to justify “less favourable treatment” an employer must comply with any obligation to make “reasonable adjustment”.

Employers Liability

An employer will be (corporately) liable for the discriminatory actions of their employees or agents – even where they took place without their knowledge – unless they can show they took all reasonable practicable steps to avoid discrimination within their employment.

Remedies and Enforcement Procedures

A disabled person has a right to take a complaint to Employment Tribunal. Where a complaint is upheld, a tribunal may award compensation and damages. As with race and sex discrimination, there is no upper limit for compensation for disability.

Reasonable Adjustments

What does "reasonable" mean?

There are a number of factors which may have a bearing on whether it will be reasonable for the employer to have to make a particular adjustment. These are the:

- **effectiveness** of the particular adjustment in preventing the disadvantage;
- **practicability** of the adjustment;
- **financial** and other costs of the adjustment and the extent of any disruption caused;
- extent of the employer's financial and other **resources** ; and
- **availability** to the employer of financial or other assistance to help make an adjustment.

Failure to make reasonable adjustment can only be justified if the reason for failing to do so is relevant to the circumstances of the particular case, and substantial.

What steps need to be taken?

Examples of the steps employers may have to take to prevent their arrangements or premises placing people with disabilities at a substantial disadvantage (in comparison with people who are not disabled) include:

- making adjustments to premises;
- allocating some of the disabled person's duties to another person;
- transferring the person to fill an existing vacancy;
- altering the person's working hours;
- assigning the person to a different place of work;
- allowing absences during working hours for rehabilitation, assessment or treatment (in some circumstances, OHS may be approached for advice on whether treatment should be paid for i.e. acupuncture);
- giving or arranging training for the person;
- acquiring or modifying equipment;
- modifying instructions or reference manuals;
- modifying procedures for testing or assessment;
- providing a reader or interpreter;
- providing closer supervision.
- setting higher targets or longer timescales for improvements that may be set for employees. Discounting disability-related sickness absence altogether is not considered to be a reasonable adjustment.

More than one of these steps, or other adjustments, will sometimes have to be taken.

End

Appendix 5
SICKNESS ABSENCE MANAGEMENT

