
Managing Sickness Absence

Policy and Procedure

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Policy

Aim

- 1 The Council is committed to providing a safe and healthy working environment for all its employees. It recognises that the health and welfare of its employees is key to delivering effective services. Sickness absence has an adverse impact on the efficiency of services provided and affects the workload of other employees.
 - 1.1 The Council requires excellent standards of attendance from all its employees. Prolonged or regular absence through ill health or other reasons prevents this happening and runs counter to its goal of promoting a prudent and well-managed Council.

Scope

- 1.2 This policy applies to all Council employees except employees in locally managed schools and colleges and centrally employed teachers.
- 1.3 This policy does not form part of any employee's contract of employment and may be amended at any time, in consultation with the Employee Side and the recognised Trade Unions. Notwithstanding this point, any dispute arising from the application of this policy, procedure and guidance will be raised with and dealt with in consultation with the ES and resolved at the Council's Employee Joint Committee or escalated to formal dispute resolution procedures with the Local Government Association as appropriate.
- 1.4 The Council's policies and procedures relating to managing sickness absence are compliant with the ACAS Code of Practice on Disciplinary and Grievance Procedures with regard to dismissal and the Council's Equality and Diversity Policy.

General

- 1.5 The Council's Managing Sickness Absence Procedure has been designed to:
 - Enable managers to manage sickness absence effectively;
 - Ensure acceptable standards of attendance at work;
 - Promote a healthy and safe working environment for all employees;
 - Enable fair and consistent treatment of employees;
 - Ensure that employees understand their responsibilities under the procedures;
 - Provide high standards of employee wellbeing and provision of support.

Roles and Responsibilities

- 1.6 Managers and employees must treat all information about any employee's medical or personal situation with sensitivity and in strict confidence. A breach of confidentiality could result in disciplinary action.

Employees

- 1.7 Employees have a responsibility to:
- Attend work;
 - Follow sickness absence reporting procedures;
 - Complete a PSL100 form after any period of absence (if the period of sickness absence is for more than 7 consecutive days a medical certificate is required from the 8th calendar day);
 - Take appropriate steps to assist a return to work by attending meetings or appointments with the Occupational Health Service and providing any information reasonably requested by the Council.
- 1.8 An employee shall, if required by the Council at any time, attend a medical examination by a medical practitioner nominated by the Council, subject to the provisions of the access to Medical Reports Act 1988 where applicable. Any costs associated with the examination should be met by the Council. Where it is necessary to obtain a second medical opinion, it should be provided by an independent medical referee.
- 1.9 Where, for the purpose of qualifying for sick pay under the scheme, the Council requires a doctor's statement from an employee, the Council will reimburse the employee the cost of such a statement on the provision of a receipt.

Managers

- 1.10 Managers have a responsibility to:
- Provide a safe and healthy working environment for employees;
 - Implement the Council's Managing Sickness Absence Procedure;
 - Ensure employees are informed about the sickness absence reporting procedures;
 - Ensure the procedure is applied fairly and consistently whilst taking account of individual circumstances and needs;
 - Have regard to the Council's Equality and Diversity Policy;
 - Accurately record sickness absence and regularly check and act upon sickness information; and
 - Meet with the employee at a 'welcome back' meeting when the person returns to work after sickness and ensure this is recorded.

Human Resources

1.11 Human Resources have a responsibility to:

- Give advice on the implementation of the Managing Sickness Absence Policy, Procedure and Guidance other related policies, such as the Disciplinary Policy, Procedure and Guidance and any implications of the Equality Act (2010).

Occupational Health Service

1.12 The role of the Occupational Health Service is to advise the Council on any medical issues affecting an employee's performance and attendance. If a manager is concerned about an employee's health relating to their performance and attendance at work, the employee will be referred to the Council's Occupational Health Service.

1.13 Where permission is granted by the employee for medical information to be shared with Occupational Health, this information should be handled sensitively and confidentially and subsequent reports and details therein should be treated in strictest confidence, shared with the employee, current manager and HR advisor only, unless explicit permission to share with a wider audience is sought from the employee.

1.14 OHS reports will be held on the employees file but must not be subject to general view and shared on a need to know basis only for the purpose of this procedure.

1.15 Any other viewing of confidential health records must only be shared with the employee's expressed permission.

Procedure

Aim

- 2 The London Borough of Sutton (LBS) is committed to providing a safe and healthy working environment for all its employees. It recognises that the health and welfare of its employees is key to delivering effective services. The aim of this procedure is to help and encourage all employees to achieve and maintain the required level of attendance at work. It is also to ensure that the Council has a fair and effective procedure in place for dealing with short and long term sickness absences in a sympathetic and supportive way, whilst considering the need for the Council to deliver its services.

Scope

- 2.1 This procedure:
- Applies to all employees, except employees in locally managed schools and colleges and centrally employed teachers;
 - Does not apply during an employee's probationary period or to absences where the reason is not ill-health;
 - Does not form part of any employee's contract of employment and may be amended from time to time in consultation with the Employee Side and the recognised Trade Unions;
 - Is compliant with the Council's Equality and Diversity Policy and the ACAS Code of Practice on Disciplinary and Grievance Procedures.

Breaches of the Procedure

- 2.2 Employees must follow the Council's sickness absence procedures.
- 2.3 It is important that every employee is familiar with this policy and procedure and if any part of it is unclear, clarification should be sought from their manager and/or Human Resources. Any breach or abuse of this procedure by an employee may result in disciplinary action being taken in accordance with the Council's Disciplinary Policy, Procedure and Guidance.
- 2.4 Circumstances, in which a failure to follow procedures occurs, that could result in disciplinary action being taken, include:
- Abuse of the sickness absence procedure, including falsification of sickness records and certificates (e.g. altering a sick certificate issued by a doctor);
 - Not following the reporting absence procedure when an employee could reasonably be expected to do so; and/or
 - An unreasonable refusal to explain an absence.

- 2.5 This list is not exclusive and Managers are encouraged to seek advice from HR if they are unsure about what to do.

Health and Safety

- 2.6 The Health and Safety at Work Act 1974 requires all employers to ensure as far as is reasonably practicable, the health, safety and welfare at work of all employees and to maintain a safe and healthy working environment.

Accidents and Industrial Injury

- 2.7 Employees must complete an Accident/Incident Report form as soon as possible after the occurrence, which can be found here:
<https://intranet.sutton.gov.uk/task/report-an-accident-or-health-and-safety-incident/>.

For employees who do not have access to the intranet, please request a hard copy from your manager.

- 2.8 The manager with advice from the HR Manager/Advisor and the Council's Health and Safety Adviser will assess whether the circumstances arising from an incident, accident or verbal/physical abuse should be treated as an industrial injury. The manager will:
- Consider how the accident or incident occurred;
 - Obtain information from any witnesses;
 - Investigate working practices or systems of work including risk assessment;
 - Check training records and level of supervision;
 - Seek advice and guidance from Insurers;
 - Involve the local Health and Safety representatives.
- 2.9 Absences following an accident, incident or instance of verbal or physical violence at work will be recorded as sickness absence but will not affect an employee's normal sick pay allowance. HR will advise on how to record such absences.

Third Party Related Sickness

- 2.10 Third Party Accident Related Sickness Absence An employee who is absent as a result of an accident where damages may be receivable from a third party will be paid Occupational Sick Pay which will be treated as a loan. It is a requirement of receiving this "loan" that an employee signs a form of undertaking to include a special damages claim for the full extent of the "loan" in any claims for damages made against a third party, and to refund the Council the amount of damages received in respect of such payment. Recovery of the 'loan' will not be made should the employee not receive any award or settlement in respect of damages for loss of pay

from a third party claim. Recovery will be made where the employee receives an award, from a court or and/or settlement on behalf of the third party, for loss of pay (i.e. that the employee's sickness absence entitlement is restored wholly or partly as a result of an award). In the event that the award is partial, the employee will only be expected to repay the amount of the award attributable to loss of sick pay, deemed to have been received as a 'loan'. In relation to the "loan" amount, the London Borough of Sutton will produce a statement detailing the payments that have been made and the gross amounts due.

Reporting Sick

- 2.11 If an employee is unable to come to work because they are sick, they must make every effort to contact their manager by telephone within an hour of their normal start time unless other local arrangements apply. In some cases, an employee may be required to make contact before their normal start time. They should only ask someone to make contact on their behalf in extreme circumstances. If the line manager is not available, speak to a nominated officer within your team - your manager is responsible for identifying who this is. For personal reasons you may wish to speak to a manager of the same sex or an HR Adviser.
- 2.12 The employee must inform the manager why they cannot attend work and when they expect to return if known. If the employee considers the absence to be work-related or if they are aware their condition is connected to a disability, they must notify their manager of this.
- 2.13 If an employee is absent for more than 7 calendar days, they must send a doctor's Fit Note within seven days of its issue and contact their manager again with their expected date of return.
- 2.14 For absences of less than 7 days in length, the employee must complete a self-certification form (PSL 100). An employee may, at the manager's discretion, be requested to provide a medical certificate for an absence of less than seven days. The Council will refund the expenses for doing so.
- 2.15 The manager will record the dates and number of working days they are away and the reason why on the Human Resources Information System.

Sickness and Annual Leave

- 2.16 If an employee becomes ill while on annual leave, telephone your manager in the normal way and obtain a medical certificate as soon as you can. When you return to work you will be credited the time which is covered by the medical certificate.

Medical Appointments

- 2.17 Employees are not granted time off for routine visits to the doctor, dentist and opticians. Appointments must be made in the employee's own time or outside core hours for those staff who work within the flexitime scheme. When given a specific appointment during normal working hours e.g. hospital, consultant etc. the employee

must inform their manager. Time off to attend will be given for such appointments subject to production of an appointment card or letter or other evidence. The manager will determine if cover or work reallocation is needed.

Time off Work

2.18 The Equalities Act 2010 allows a disabled person to be absent from work for 'rehabilitation, assessment or treatment'. Employers have a responsibility to allow disabled employees time off work to attend appointments in relation to this. Examples of appointments could include:

- Rehabilitation for someone, who is 'newly disabled' or whose conditions have changed significantly;
- Routine assessment of hearing aids; or
- Hospital or specialist 'check-ups', including monitoring of related equipment or treatment.

2.19 The manager, in consultation with the HR will need to agree in advance whether this is paid or unpaid leave. Further advice is available from HR.

Monitoring Sickness Absence

2.20 Managers will record, monitor and analyse sickness absence to ensure that appropriate action is taken and that all employees are treated consistently.

Return to Work Meeting

2.21 When the employee returns to work the manager will welcome them back, check that they are fit to return, and update them on anything relevant to their role that happened while they were away. The employee will complete a sickness absence certificate (PSL 100). The manager will countersign this and input into the Human Resources information System with any medical certificates.

2.22 If the employee comes to work but the manager considers they are unable to carry out their duties, the manager can send the employee home on full pay.

Managing Short-Term Absence

First Stage Formal Review

2.23 Managers have a duty of care to their employees. Instances of sickness absence will be treated on their merits, and where an employee's sickness absence raises grounds for concern, the manager will meet with the employee to investigate the reasons for concern including any underlying causes. The employee has the right to be accompanied at the Formal Attendance Meeting by either a workplace colleague, Trade Union Representative or Trade Union Official

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- 2.24 No formal action will be taken against an accredited Trade Union Representative or Official until (with their permission) the concerns have been discussed with a full-time Trade Union Official.
- 2.25 The reason for undertaking formal action will include a measure of, in a rolling 12 month period:
- The total of absence i.e.
- A total of 8 days (certified and uncertified) or more; or
 - Less than 8 days if there is clear evidence of concern identified.
- 2.26 There should be an overall cross directorate monitoring of sickness absence, this allows for transparency in the application of the procedure and should ensure a consistent and fair application.
- 2.27 The meeting will be arranged as soon as possible. However, at least 5 days written notice will be provided to the employee. As it is a formal meeting, management notes will be taken.
- 2.28 At the end of the attendance meeting, the manager will conclude either:
- No further action is needed at this stage; or
 - Agree an action plan with the employee for improving attendance. The manager will monitor and review the employee's attendance against the action plan;
 - The action plan may consist of, but is not restricted to, the following;
 - Any support measures (e.g. Employee Assistance Programme);
 - Measurable targets (managers must distinguish between general sickness absence and sickness absence that relates directly to an employee's disability);
 - Timescales and review dates.
- 2.29 The employee should be informed of the consequences should their attendance not improve to an acceptable level.

Conclusion of First Stage Formal Review

- 2.30 The possible outcomes are:
- The employee's attendance has improved to an acceptable standard.
 - They are informed by their manager in a review meeting and advised to maintain an acceptable standard of attendance in the future. If the level of attendance is not sustained during the rolling 12 month period, the manager will meet with the employee to explore the reasons why and decide if any further action is needed.
 - The employee's attendance has not improved to an acceptable standard.
- 2.31 The manager will discuss this with the employee and explain why it is necessary to either:

- Move to the second stage of the procedure (the employee needs to be advised of the seriousness of this matter in moving to a second stage, which could lead to termination of employment); or
- A further period of monitoring and review is undertaken by the manager in exceptional cases. The review period is extended under the first stage formal process where there has been a significant improvement but still below an acceptable level standard. The length of the period will relate to the circumstances.

Second Stage Formal Review

- 2.32 Where an employee has not improved their attendance to an acceptable level after the First stage Formal Review, the manager must progress the process by arranging a Second Stage Formal Review giving 5 working days' notice.
- 2.33 At the meeting, the manager will discuss with the employee their absence record and any underlying causes and explore with them any other reasons, which may be affecting their unacceptable level of attendance.
- 2.34 The employee has the right to be accompanied by either a workplace colleague, Trade Union Representative or Trade Union Official.
- 2.35 The manager will advise the employee that their attendance must improve and confirm any further actions that the employee and manager will take to help the employee's attendance to improve. A date(s) must be agreed at which time progress will be reviewed.
- 2.36 If the employee has been referred to the Occupational Health Service, any reports provided will be shared with the employee in advance of any discussions to allow a reasonable time for the report to be understood.
- 2.37 During the review period, the manager will monitor the employee's attendance and give feedback and support, as necessary.
- 2.38 During and/or at the conclusion of the review the manager will meet with the employee to review their attendance. The manager must have the most up to date attendance figures (a copy will be provided to the employee and any medical information available).

Conclusion of Second Stage Formal Review

- 2.39 The possible outcomes are:

The employee's attendance has improved to an acceptable level;

- The employee is informed by their manager in a review meeting and advised to maintain an acceptable standard of attendance in the future;
- The employee's attendance will continue to be monitored and if the improvement is not sustained over a period of at least 3 months the employee can be progressed to an Attendance Hearing;

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- 2.40 There has been a significant improvement but still below an acceptable level;
- A further period of monitoring and review is undertaken by the manager. The length of the period will relate to the circumstances.
- 2.41 There has been little or no improvement the manager may, depending on the circumstances, move to an Attendance Hearing.
- The employee must be advised that their continued employment with the Council may be at risk.

Attendance Hearing

- 2.42 In reaching this stage of the procedure, the manager must have:
- Thoroughly considered with the employee the reasons for the absences;
 - Explored all the available options to improve attendance and have demonstrated they have provided any support to do so within the remit of the Council's resources;
 - Allowed a reasonable period of time for improvement.
- 2.43 HR will arrange an attendance hearing and ensure that communication with the employee ensures that the potential outcomes are known, including the potential for dismissal.
- 2.44 An Executive Head of Service or Strategic Director who has no prior involvement will be appointed to hear the case. This manager must have the authority to dismiss, if appropriate. An HR Manager will advise the Chair of the Hearing. The purpose of the Attendance Hearing is to consider the employee's attendance record and any actions taken to enable the employee to improve their attendance.
- 2.45 The (HR) manager must ensure that any relevant medical advice and documentation obtained is included within the material available at the hearing. If no recent relevant medical advice is available then consideration must be given as to whether any further information is required, which may include advice from the employee's medical advisers or the Occupational Health Service.
- 2.46 The employee will be given at least 5 working days' notice of the arrangements for the hearing. The Hearing Manager will conduct the hearing and accurate notes will be taken and shared with both parties. The Hearing Manager may adjourn the meeting to carry out further investigations or agree to a reasonable request from either side to adjourn the hearing.

Format for the Attendance Hearing

- 2.47 The Executive Head of Service (or above) hearing the case will explain the purpose of the hearing, how it will be conducted and what the outcomes may be.
- 2.48 The employee has the right to be accompanied by either a workplace colleague, Trade Union Representative or Trade Union Official.
- 2.49 A minimum of 5 working days notice will be given in writing to an employee of the hearing together with any relevant medical advice and documentation which has been obtained and which is included within the material available at the hearing.
- 2.50 The Line manager advised by HR will present information on the circumstances of the case and the actions taken to help the employee to improve their attendance.
- 2.51 The employee will have an opportunity to present information on their attendance record and reasons why they have been unable to attend work.
- 2.52 Both sides will be able to refer to relevant supporting documentation and question and be questioned. At the end of the hearing, both parties may sum up. The Hearing Officer will carefully consider all the information presented and any advice from HR in reaching a decision.

Conclusion of an Attendance Hearing

- 2.53 The possible outcomes of an Attendance Hearing are:
- Dismissal on grounds of capability or some other substantial reason relating to attendance;
 - A further period will be identified in which to improve attendance.
 - The review period will be relevant to the circumstances of the case. The review period will not normally be less than 6 weeks or more than 3 months (depending on the circumstances). Attendance will be monitored and reviewed on an ongoing basis and the employee will be given regular feedback. At the conclusion of the further review period, a meeting will be arranged to consider what action is necessary, including dismissal on the grounds of capability relating to attendance.
 - Redeployment, if recommended by the Occupational Health Service on the grounds it would benefit the employee and enable them to improve their attendance. This should be explored and evidence shown before dismissal is considered.

- 2.54 The decision of the Hearing Officer will be given verbally after the hearing and confirmed in writing within 5 working days. If a decision cannot be given after the hearing, the Hearing Officer will reconvene the hearing at a later date to advise the employee and their representative of the outcome.

Managing Long-Term Absence

- 2.55 As a guideline only, 6 weeks' continuous absence or as a total in a 12-month period, will be considered as long-term absence.
- 2.56 Managers will maintain regular contact with absent employees in order to ensure clear communication and effective support is given. This will be handled sensitively and could be in the form of telephone calls, written communication, group newsletters, work or home visits where requested and/or agreed with the employee. A refusal to accept a home visit will not be held against an employee.
- 2.57 Where a manager is considering referring an employee to the Occupational Health Service, they will explain to the employee the reason for the referral. HR will arrange the referral at the earliest opportunity.
- 2.58 The Occupational Health Service will arrange an appointment for the employee and provide the Council with a report advising on their medical condition in relation to their employment.
- 2.59 The manager in accordance with the procedure, will request that the employee, where able to and where necessary with Occupational Health guidance, attends a Long-Term Absence Review Meeting (at which the employee is entitled to be accompanied) to share the information received from the Occupational Health Service, discuss the report, consult with the employee and to consider whether the continued employment of the employee is reasonable in the circumstances. The Head of HR or their representative will be involved. Additional support may be provided by the Employee Assistance Programme.

Conclusion of a Long-Term Absence Review

- 2.60 At a Long-Term Absence Review Meeting, the possible options are:
- Further review.
 - A return to work (taking into account any recommended temporary or permanent reasonable adjustments;

- The Occupational Health Adviser may suggest a phased return to work. A phased return to work would normally be up to a maximum of 6 weeks (or longer if the circumstances require). This period would be on full pay;
- Redeployment, where the Occupational Health Service advises that an employee is able to perform other duties (with or without any recommended temporary or permanent reasonable adjustments or phased return);
- Early retirement on the grounds of ill-health, where the Occupational Health Service advice is that an employee is permanently unfit to continue in employment;

Note: If early retirement on the grounds of ill health is a possible option to be sought, a LGPS scheme form must be completed.

Redeployment

- 2.61 Where the Occupational Health Service advises that an employee will be unable to return to their current job for health reasons but is able to perform other duties, the Council and will provide advice on any restrictions on the type of work considered to be suitable alternative employment
- 2.62 HR will ensure they are placed on the redeployment register and sent all vacancies.
- 2.63 The HR Adviser will review the employee's skills and advise where they can access development.
- 2.64 The HR Adviser will ensure the employee is aware of the role of the Employee Support Service not only in looking for a suitable alternative work across the councils services but also for personal, confidential support. Any potentially suitable post should be checked with the Council's Medical Adviser before an offer is made.
- 2.65 Where a vacancy is identified and confirmed as suitable by the Medical Adviser, the incoming Manager will prepare an induction and training plan to facilitate the move.
- 2.66 The Council will endeavour to find a suitable vacant position within a period of 3 months. If it is confirmed as suitable, the incoming manager will prepare an induction and training plan to facilitate the move.
- 2.67 If no suitable vacancy is found and the manager is contemplating dismissal, a hearing will be arranged with a Service Manager or more senior manager who will have had no prior involvement in the case. HR will attend to give advice.

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- 2.68 The employee will be written to and given at least 5 working days notice of the arrangements for the hearing.
- 2.69 The Executive Head of Service will conduct the hearing. Notes will be made.
- 2.70 The employee will receive written confirmation of the outcome and advised of their right of appeal within 5 working days

Early Retirement

- 2.71 In cases where a person is confirmed as being eligible for early retirement due to ill health, enhanced pension benefits will be payable. Eligibility will be assessed on referral to a qualified independent registered medical practitioner and if granted would be in accordance with one of the tiers below:
- Tier 1 - as a result of that ill health or infirmity the member is more likely than not to be permanently incapable of discharging efficiently the duties of his / her employment with his or her employer and IS UNLIKELY to be capable of undertaking gainful employment before his / her 'normal pension age'.
 - Tier 2 - as a result of that ill health or infirmity the member IS UNLIKELY to be capable of undertaking any gainful employment within the next three years but IS LIKELY to be capable of undertaking gainful employment at some time thereafter and before his / her normal pension age.
 - Tier 3 - as a result of that ill health or infirmity the member IS UNLIKELY to be capable of immediately undertaking any gainful employment but IS LIKELY to be capable of undertaking any gainful employment within the next three years (reviewed at 18 months) or before his / her normal pension age , if earlier.

For further information:

- ❖ Guidance on Managing Sickness Absence;
- ❖ Sutton's intranet pension page on:
<https://www.sutton.gov.uk/index.aspx?articleid=17400>);
- ❖ LGPS 2014 on internet page -
<http://www.lgps2014.org/content/does-scheme-still-provide-ill-health-cover>.

Further Review

- 2.72 The employee will be requested to attend a Further Review Meeting (at which the employee is entitled to be accompanied) to discuss the medical evidence. Depending on the merits of each case, there may be a need to have one or more Further Review meetings.

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- 2.73 At a Further Review meeting the employee will be invited to make any observations that they feel may be relevant to their case and all the available medical evidence will be discussed. A review meeting for long-term absence cases where dismissal is contemplated will not be arranged until at least one review meeting has taken place.
- 2.74 If the manager is still contemplating dismissal after all avenues have been exhausted, an Attendance Hearing will be arranged with a Executive Head of Service or above (the "Hearing Officer"), who will have had no prior involvement. An HR Representative will attend to give advice to the Hearing Officer.
- 2.75 Human Resources will write to the employee and give at least 5 working days' notice of the arrangements for the hearing. The Hearing Officer will conduct the hearing and an accurate record will be taken. The employee should be notified that dismissal is a possible outcome of the hearing and that they are entitled to be accompanied.
- 2.76 At the Attendance Hearing, the Hearing Officer accompanied by HR will explain the purpose of the hearing, how it will be conducted and what the outcome may be.
- 2.77 The Hearing Officer will briefly summarise the circumstances of the case and both sides will be able to refer to relevant supporting documentation and question and be questioned.
- 2.78 At the end of the hearing, the Hearing Officer and employee or their representative may sum up. The Hearing Officer will carefully consider all the evidence presented and any advice from HR in reaching a decision.
- 2.79 The decision of the Hearing Officer will be given verbally after the hearing if possible and confirmed in writing within 5 working days. The employee will be advised of their right of appeal.

Annual Leave

- 2.80 Employees will accrue annual leave during periods of long-term absence (<https://intranet.sutton.gov.uk/task/employment-policies/annual-leave/>).

Sick Pay

2.81 Strategic Directors have the delegated authority to extend the sick pay allowance in exceptional circumstances. Further information is available from an HR Adviser.

Appeals

2.82 Appeals against dismissal must be made in writing to HR within 10 working days of the date of the letter confirming the decision. Appeals against dismissal on the grounds of capability must be made in writing to the Executive Head of Human Resources within 10 working days of notification of the decision in writing. The Appeals Committee will hear appeals and will be advised by the Executive Head of Human Resources or their nominated representative. Where an employee's appeal relates to medical grounds, the Executive Head of Human Resources will appoint a medical referee assuming that advice from a Specialist Medical Adviser under paragraph below was not obtained or advice is not sufficiently current i.e. the circumstances associated with the original advice may have changed. The Council will pay the fee for a medical report as appropriate.

2.83 The grounds for appeal against dismissal available to employees include:

- Procedural deficiency;
- Suitability of redeployment opportunities;
- Consideration of appropriate reasonable adjustment;
- Medical opinion

This list may not be exhaustive.

The appeal hearing will:

- Consider any new evidence submitted;
- Determine whether the decision to dismiss is upheld, or an alternative outcome is substituted.

2.84 There will be no further internal right of appeal. If further relevant medical information becomes available during the notice period, this should be raised with the Executive Head of Human Resources to consider whether the decision to dismiss will be reviewed.

2.85 Where possible, the decision of the Panel will be given verbally on the day. The decision, together with the reasons for the decision, will be confirmed in writing within 5 working days of the appeal hearing.

Additional Guidance

Aim

- 3 The Council is committed to ensuring that its managers and employees understand the Council's Managing Sickness Absence Procedure and how it is applied. This guidance is designed to aid such understanding.
- 3.1 This guidance does not have contractual status and may be amended by the Council from time to time in consultation with the Employee Side and the recognised Trade Unions.

Scope

- 3.2 This guidance is designed for use by Managers and employees and should be read in conjunction with the Managing Sickness Absence Policy and the Managing Sickness Absence Procedure.

Further Advice and Guidance

- 3.3 This is available from:
- HR who can advise on a range of issues relating to absence and disability;
 - The Occupational Health Service, who can provide advice and information and organise health promotions and health checks;
 - The Employee Assistance Programme (EAP).

Confidentiality

- 3.4 Managers and employees must treat all information about any employee's medical or personal situation with sensitivity and in strict confidence. A breach of confidentiality could result in disciplinary action.

Forms of Unauthorised Absence Other Than Sickness

- 3.5 Employees are reminded that any absence must be authorised. If the reasons for absence are not due to illness, correct authorisation procedures for time-off must be followed. Failure to follow procedures may result in an absence being treated as unauthorised and may render an employee liable to further action.
- 3.6 Managers must ensure that the reasons for absences are recorded accurately and clearly and are fully up to date.

Induction, Supervision and Appraisal

- 3.7 As part of the induction process for new employees, managers will ensure they understand the Council's Managing Sickness Absence Procedure and the importance of attendance at work.
- 3.8 Attendance will be monitored as part of the normal day-to-day management and supervision processes.
- 3.9 A formal appraisal meeting will not be used specifically to review attendance. However, where an employee's attendance is under review, circumstances relating to their health and attendance at work will be considered when reviewing and setting objectives.

Timescales

- 3.10 Any timescales within the Council's Managing Sickness Absence Procedure must be followed. They may only be varied in exceptional circumstances at which time the manager will write to the employee confirming the new timescale and the reason for departing from the timescales within the procedure.

Equality

- 3.11 The Council's Managing Sickness Absence Procedure is to be followed having regard to the provisions of the Equality Act 2010 ("the Act"), in particular the protected characteristic of disability. The Act requires employers to consider all reasonable adjustments in the work place, which would enable an employee to continue working. The Council will ensure that all reasonable adjustments are fully considered. Further advice and information is available from your manager and/or HR teams.

Disability

- 3.12 A 'disability' is a mental or physical impairment which has a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities. The Act covers people, who have (or have had) a disability. Some medical conditions automatically render employees disabled from the point of diagnosis – e.g. partial sightedness, blindness, HIV, multiple sclerosis (MS).
- 3.13 An addiction to alcohol, nicotine or any other substance is not to be treated as impairment for the purposes of the Act, but an impairment which results from an addiction may be covered.

Note: Where absence is related to alcohol or drug use, managers should refer to the Substance Abuse Procedure and seek advice from the Occupational Health Service.

- 3.14 'Normal day-to-day activities' are normal activities most people carry out on a daily or regular basis and include;

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- Mobility;
 - Manual dexterity;
 - Physical co-ordination;
 - Continence;
 - The ability to lift;
 - Carry or otherwise move everyday objects;
 - Speech;
 - Hearing or eyesight;
 - Memory or ability to concentrate, learn or understand;
 - The perception of the risk of physical danger.
- 3.15 The Act makes it unlawful for the Council as an employer to unjustifiably treat 'A' less favourably than 'B' who is not disabled, for any reason related to 'A's' disability.
- 3.16 In respect of disabled employees, the Act imposes a duty on employers to consider reasonable adjustments in the workplace, which would enable an employee to carry out their role. The Council is committed to ensuring that all reasonable adjustments are fully considered at all stages. Further advice and information is available from a line manager.
- 3.17 In deciding whether an adjustment is reasonable, all the following should be considered:
- Effectiveness of the measure to prevent the disadvantage;
 - Practicality for the employer in making the adjustment;
 - Costs of taking this action, including the extent or significance of any disruption caused by it;
 - Financial support
 - Other resources available to the employer; and/or
 - Financial support that is available from outside the Council.eg Access to Work Scheme <https://www.gov.uk/access-to-work/overview>.
- 3.18 When a manager is monitoring and reviewing levels of sickness absence, they must distinguish between general sickness absence and sickness absence that relates directly to an employee's disability. This is important where a manager is seeking to take action under the Council's Managing Sickness Absence Procedure.

E.g.:

It would be reasonable for a manager to follow the absence procedure when an employee with hearing difficulties has frequent but unrelated sickness absences.

Where an employee's poor performance or attendance is because of a degenerative illness which leads to a disability, a manager needs to consider whether reasonable adjustments could be made to improve performance or attendance.

- 3.19 Managers should consider whether different standards of performance apply to an employee because of their disability. Advice is available from Human Resources.
- 3.20 The Equality Act (2010) allows a disabled person to be absent from work for 'rehabilitation, assessment or treatment'. Employers have a responsibility to allow disabled employees time off work to attend appointments in relation to this. Time off in relation to the above and where agreed in advance with managers, will be paid. Examples of appointments could include:
- Rehabilitation for someone who is 'newly disabled' or whose condition has changed significantly;
 - Routine assessment of hearing aids; or
 - Hospital or specialist 'check-ups', including monitoring of related equipment or treatment.

Pregnancy

- 3.21 It is automatically unlawful to discriminate against or dismiss a woman for reasons of sickness absence related to her pregnancy. Further advice is available from HR.

Health and Safety

- 3.22 The Health and Safety at Work Act 1974 requires all employers to ensure as far as is reasonably practicable, the health, safety and welfare at work of all employees and to maintain a safe and healthy working environment.

Stress at Work

- 3.23 The Council is committed to developing stress management strategies and providing training and support for managers and employees to assist them in recognising the causes of stress and ways to manage it. For further information, see Minimising Stress at Work Policy.
- 3.24 Managers and employees should be alert to the signs of stress. Further information and advice is available from the Corporate Health and Safety Unit, the Occupational Health Service and the Employee Assistance Programme.

Occupational Health Service

- 3.25 Circumstances which may give rise to a referral to the Occupational Health Service include:
- Where levels of absence and/or employee's health prompt a review (see Managing Sickness Absence Procedure for absence levels);
 - Where there is a need to identify if there is an underlying medical condition or disability;

- Where there is a need for information and advice about an employee's medical condition;
 - Where an employee raises concerns about their health and the working environment;
 - Accidents in the workplace which may or may not be an industrial injury;
 - An employee's return to work following a long-term absence;
 - A need for information and advice on temporary or permanent adjustments, including the suitability of redeployment, which would enable the employee to return to work;
 - A need for information and advice on disability and reasonable adjustments;
 - The likely duration of an absence and when the employee will be fit to return to work; and/or
 - Ill-health retirement.
- 3.26 The Council may refer an employee to the Occupational Health Service for up to date information and advice at any stage.
- 3.27 Information provided by the Occupational Health Service will be used by the Council to make an informed decision about an employee's employment.
- 3.28 When a referral is made, the manager should brief the employee to ensure they understand:
- the purpose of the referral;
 - the importance of signing a medical consent form;
- 3.29 If an employee either persistently fails to attend an appointment with the Occupational Health Service or to sign the medical consent form, the manager will need to take action based only on the available medical evidence.

Access to Medical Records

- 3.30 The Access to Medical Records Act 1988 allows individuals to check the accuracy of medical reports prepared by a medical practitioner who has responsibility for the care of that individual. Employees will be asked to sign a consent form to allow the Occupational Health Service to approach the employee's GP or consultant for information. Employees can elect to see any medical report before the Occupational Health Service gives advice to the Council based on information contained in the report.
- 3.31 Medical reports will be held on the employees file but must not be subject to general view and shared only on a need to know basis. Any other viewing of confidential health records must only be undertaken with the employee's express permission (see Access to Personnel Files Policy/Procedure and Guidance)

Making the Referral

- 3.32 Managers are responsible for arranging referrals to the Occupational Health Service. They will provide the Occupational Health Service with:

- The employee's job description, person specification and risk assessment and any information relevant to the employee's duties and work context including any risk to the individual, Group or the Council.
- A full record of the employee's absences; and
- Any other relevant information including any special needs.

3.33 Employees can be required to attend Occupational Health or a medical practitioner nominated by the Council. It is in the interest of employees to attend appointments with the Council's Occupational Health Service. This will enable an informed decision to be made regarding an employee's health and their continued employment with the Council. If medical information is not available, the Council may have little choice but to take action in line with the sickness procedures without medical advice on the prospect of recovery.

Reporting Sick

3.34 Employees are required to make every effort to contact their manager by telephone within an hour of their normal start time unless other local arrangements apply. The employee should only ask someone to make contact on their behalf in exceptional circumstances.

3.35 Managers need to know what is wrong and how long the employee is likely to be away, if known. If the employee's manager is not available, the employee needs to speak to a nominated officer within their team - their manager is responsible for identifying who this is. If necessary, they may wish to speak to a manager of the same sex or an HR Advisor.

3.36 If the employee is expected at work and does not arrive, the manager may telephone the employee at home to find out if there is a problem. This will be done sensitively, in liaison with an HR Advisor.

3.37 For employees who report sick during the working day, the absence will be recorded as follows:

- Leaves before completing 1.5 hours - 1 day sickness absence
- Leaves half way through shift or normal working day - Half days sickness absence
- Leaves within final hour of shift or normal working day - No absence recorded

3.38 If employees fail to follow the correct procedure, this may result in disciplinary action in accordance with the Disciplinary Policy, Procedure and Guidance.

3.39 The manager will:

- Take a supportive approach;
- Ensure that the return to work meeting takes place at the earliest opportunity after the employee returns to work;

- Ensure that the employee has completed a sickness absence certificate (PSL 100) on their first day back from sickness, which the manager must countersign;
- Be responsible for checking, scanning and attaching sick note(s) and PSL 100 Sickness Certification form(s) to the sick record on the HR Information System;
- Be responsible for ensuring that sickness details are inputted correctly on the HR Information System.

Attending Medical Appointments

- 3.40 Employees are not granted time off for routine visits to the doctor, dentist and opticians. They must make these appointments in their own time or outside core hours. When given a specific appointment during their normal working hours (e.g. hospital, consultant etc.), they must tell their manager. The employee will be given time off to attend appointments like these subject to production of an appointment card or letter or other evidence.
- 3.41 Time off for hospital appointments by employees with an underlying medical condition or disability will be recorded separately and not as sickness absence. Sickness arising from the medical condition or disability will be recorded separately.

Sickness and Annual Leave

- 3.42 If an employee becomes ill while on annual leave they should telephone their manager in the normal way and obtain a medical certificate as soon as they can. When they return to work they will be credited the time which is covered by the medical certificate.
- 3.43 Employees will accrue annual leave during periods of long-term absence. Taking leave after a period of long-term sickness is at the discretion of the manager and must take into account the needs of the service. Both managers and employees need to be reasonable in determining how the leave will be taken. Executive Heads can authorise a carry forward of annual leave into the following leave year. Managers may seek advice from Human Resources where this may be the case.

Medical Certificates

- 3.44 The Council will normally only accept and pay for medical certificates from a GP/MD. The Council will accept and pay for certificates from other medical practitioners like osteopaths if they are accompanied by a note from the employee's GP confirming that the treatment has been recommended.
- 3.45 Employees must not alter any certificate issued by their doctor. Falsification of a doctor's certificate is a serious disciplinary offence and could result in disciplinary action including dismissal.

Sick Pay

- 3.46 Strategic Directors and Executive Heads of Service have delegated authority to extend the sick pay allowance in exceptional circumstances. Further information is available from HR.
- 3.47 There is no provision that employees need to exhaust both the full and half sick pay allowances before a decision to dismiss is implemented.

Informal Action

- 3.48 The procedure in relation to Informal action is set out above of the Council's Managing Sickness Absence Procedure.
- 3.49 Guidance on how to run sickness absence reports using the Human Resources Information system.

Formal Meetings

- 3.50 Instances of sickness absence will be treated on their merits and where there is cause for concern, the manager will meet with the employee to discuss matters. Examples of a cause for concern under the short term absence procedure might be a pattern of absence, such as regularly taking off certain days of the week (Fridays, Mondays) or at particular times in a year. These examples are not exhaustive.
- 3.51 Managers should not allow action under this procedure to be unreasonably delayed because representatives are not available, and must act in a timely way. Adequate notice in line with the procedure is provided to facilitate the attendance of a representative. If a worker's chosen companion will not be available at the time proposed for the hearing by the manager, the manager must postpone the hearing to a time proposed by the worker provided that the alternative time is both reasonable and not more than five working days after the date originally proposed.

Long-Term Absence

- 3.52 Long-term absence is defined as:
- A specific medical condition or illness which is not expected to be permanent; or
 - Where an approximate return date is given;
 - An unspecified medical condition or illness which is not expected to be permanent but where it is difficult to establish an approximate return date; or
 - A chronic illness*, where it is unlikely that the individual will recover sufficiently to return to their current job.

*Chronic illness is defined as likely to last more than 3 months where it is unlikely that an employee will recover sufficiently to return to their current job.

- 3.53 As a guideline only, 6 weeks' continuous absence, or as a total in a 12-month period, will be considered as long-term absence.

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- 3.54 The monitoring of long-term absence will be handled sensitively and could be in the form of telephone calls, written communication, group newsletters, work or visits in line with the procedure.
- 3.55 It would be inappropriate to visit an employee at home on long term sickness for the purpose of conducting a formal review hearing. Only in exceptional circumstances and with the agreement of the parties concerned would a formal meeting be held, for example in the case of ill health retirement when the employee is unable to come into the workplace.

Outcomes of a First Stage Meeting

Return to Work

- 3.56 Where the Occupational Health Service confirms that an employee is fit to return to work on a specified date, they will also provide details of any temporary or permanent adjustments which will aid the employee's return to work and help their recovery. The manager may also need to consider factors such as the employees access to the workplace and where possible that any reasonable adjustments / arrangements are made to enable this to happen.
- 3.57 The Occupational Health Service may suggest a phased return to work. A phased return to work would normally be up to a maximum of 6 weeks (or longer in exceptional circumstances). This period would be on full pay.
- 3.58 If a phased return to work is suggested by the Occupational Health Service, the manager will discuss with the employee how their phased return to work will be undertaken.

Redeployment

- 3.59 Where the Occupational Health Service advises that an employee will be unable to return to their current job for health reasons but is able to perform other duties, the Council will make every effort to identify a suitable vacancy and Human Resources will monitor any appropriate vacancies.

Early Retirement on the Grounds of Ill-Health

- 3.60 Where the Occupational Health Service recommends that an employee is immediately permanently incapable* of continuing in the Council's employment, the Council will decide whether early retirement can be granted with pension benefits (assuming that the employee is a member of the LGPS – Local Government Pension Scheme and to be considered for immediate payment of LGPS benefits, members must have at least 2 years membership of the scheme). Also see Managing Sickness Absence Procedure.

(*Permanently incapable' means that the person will, more likely than not, be incapable of discharging efficiently the duties of their employment with the employer because of ill health

or infirmity of mind or body until, at the earliest, their 'normal pension age' which is now linked to their individual State Pension Age with a minimum of age 65)

3.61 On referral, a qualified independent registered medical practitioner (Health Management) they must certify whether in their opinion:

- The member is suffering from a condition that, more likely than not, renders him / her permanently incapable of discharging efficiently the duties of his / her employment with his / her employer, because of ill health or infirmity of mind or body

AND

- Because of that ill health or infirmity of mind or body, the employee is (or is not) immediately capable of 'undertaking' any 'gainful employment'.

(The independent registered medical practitioner is providing an opinion on the person's capability of 'undertaking' gainful employment based solely on the effect the medical condition has on the person's ability to undertake gainful employment).

Note: 'Gainful employment' means paid employment for not less than 30 hours in each week for a period of not less than 12 months. It does not have to be employment that is commensurate in terms of pay and conditions with that of the person's current employment.

Note: See Managing Sickness Absence Procedure regarding Tiers of eligibility.

3.62 HR will be informed by Pensions whether the employee is a member of the LGPS and will inform the employee if they are not.

3.63 The relevant procedure to dismiss should be followed.

Further Review

3.64 A further review may be appropriate in circumstances where an employee needs longer to recover, but a return to work date is in sight.

Records and Monitoring

3.65 Managers must record all periods of sickness absence using the Human Resources Information Systems (see here https://lbsutli.webitrent.com/lbsutli_web/wrd/run/etadm001gf.open).

3.66 HR will monitor the procedure to ensure it is properly implemented and is being applied consistently and fairly and report to the Director if there are inconsistencies in its application.

DATE OF IMPLEMENTATION

With effect from: 1st April 2016