

Woodchurch High School

A Church of England Academy



Management of Attendance (Capability) Policy and Procedure

Reviewed by the Business & Operations Committee:
16th March 2023

Ratified by the Full Governing Body
23rd March 2023

Note – As Woodchurch High School is an Academy, any reference to GB and LA, the responsibility is that of the Governing Body only.



Attendance Management Policy and Procedure

*Authority Guidelines on Staffing Procedures for Community, Voluntary Controlled, Community Special Schools and Maintained Nursery Schools
(and those adopted by Governing Bodies of other maintained or non-maintained schools)*

**Please read this document in conjunction with the
Attendance Management Operational Guidance and
Appendices.**

Updated: November 2022

Adopted by the Governing Body

School:

Date:

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Attendance Management Policy

1. Policy Statement

The Governing Body wants to work with all staff to promote the health and wellbeing of its employees by creating a happy and safe environment to enable everyone to perform to the best of their abilities.

The School is committed to ensuring that they have employees who have good physical and mental health with maximum levels of attendance so that they are more resilient and engaged to deliver excellent services and outcomes for the pupils of the school.

The Attendance Management Procedure provides advice and guidance on dealing with absence through an informal or formal process. The procedure also outlines the sickness absence trigger points for short term or persistent absence, long term and other absence issues and highlights some of the main causes of absence and provides practical information on managing sickness absence effectively. Sickness absence management does not aim to prohibit sickness absence but to achieve improved employee attendance at school. The key objectives are:

- a) To establish proper management systems for reviewing individual sickness records.
- b) To review compliance with sickness reporting rules and conditions.
- c) To identify causes of sickness absence in order to prevent or deter absence recurring where possible.

2. The Legal Framework

2.1 The Employment Act 2002 and the Employment Act (Dispute Resolution) Regulations 2004 provide the main legal tools for facilitating absence management. This guidance has also taken account of the guidelines produced by ACAS.

Other pieces of legislation which have an impact on absence management are:

- Equality Act 2010
- Employment Rights Act 1996 as amended
- Employment Rights Dispute Resolution Act 1998
- Employment Relations Act 2004
- Access to Health Records Act 1990 (see below)
- Data Protection Act 2018 (see below)

In some circumstances sickness absence may fall under the statutory definition of disability which is:

Someone is disabled under the Equality Act 2010 if they have a physical or mental impairment that has a 'substantial' and 'long term' negative effect on their ability to do normal day to day activities.

Employment law identified the following types of disability discrimination:

- a. **Direct disability discrimination:** this occurs where a disabled person is treated less favourably because of the disability itself.

- b. **Indirect disability discrimination:** this occurs where a provision, criterion or practice (PCP) applied by the employer puts disabled persons (and the individual) at a particular disadvantage and the PCP is not a proportionate means of achieving a legitimate aim.
- c. **Harassment relating to disability:** this occurs where a person is subjected to unwanted conduct related to a disability (their own or someone else's).
- d. **Victimisation:** this occurs where a person is subjected to detrimental treatment because they have done (or may do) "protected acts" such as complaining about disability discrimination, bringing a disability discrimination claim or getting involved in some way with another person's complaint or claim.
- e. **Discrimination arising from disability:** this occurs where a disabled person is treated unfavourably due to something arising as a consequence of their disability and the treatment is not a proportionate means of achieving a legitimate aim. This form of protection is only available to disabled individuals and does not apply to any of the other protected characteristics covered under the Act.

2.2 Access to Health Records Act 1990

- individuals have a statutory right to see any medical report prepared for employment or insurance purposes
- no-one, including the Occupational Health Physician, can access a person's records or contact his/her GP without the individual's written consent
- every individual has a right to see his/her medical records, prepared after 1 November 1991

2.3 General Data Protection Act/GDPR 2018

- employers have a statutory duty to keep personal data secure and confidential.
- employees have extensive rights of access to computerised medical data which can be identified as relating to them specifically – but not to data which has been anonymised or aggregated so that information about individuals is not identifiable.

3. Purpose of the Attendance Management Policy and Procedure

- a. To meet statutory obligations and the school's aim of ensuring fair and effective management of sickness.
- b. To enable expected standards of attendance to be specified and monitored fairly and effectively.
- c. To establish arrangements for dealing with sickness absence which comply with statutory requirements and good practice.
- d. To ensure all arrangements for managing sickness absence are conducted fairly and consistently without bias in relation to age, disability, ethnicity, sex, religion or belief, or sexual orientation.
- e. To ensure that employees' sickness records are regularly reviewed, and action taken to reduce absence where practicable.

- f. To ensure that employees are clear about the standards of attendance required of them, the time scales over which these are to be achieved and the management for monitoring and review.
- g. To ensure the school encourages and promotes appropriate support and assistance to employees who need to improve their attendance
- h. To ensure appropriate HR and Occupational Health advice is obtained.

4. Roles and Responsibilities

4.1 Role of the Headteacher (or another relevant senior leader)

- a. To ensure that all staff are made aware of the attendance management policy and procedure and the operational guidance.
- b. Responsible for the management of sickness absence of all school employees including implementing controls and ensuring consistency in respect of sickness absence.
- c. To ensure levels of attendance are monitored, individual sickness is monitored.
- d. Confidential records of sickness are kept, and the employee concerned has reasonable access to them.
- e. To report annually to the Governing Body about school sickness absence statistics and the effectiveness of the school's absence capability procedure, ensuring confidentiality of employees.
- f. To identify any problems and assist in meeting targets for levels of attendance.
- g. To inform the employee of any meeting dates and where the date is changed a further notification should be sent.
- h. To be responsible for ensuring notes of welfare meeting are produced and a copy given to the employee.
- i. Ensure 'return to work' interviews are conducted after each period of absence and recorded appropriately.
- j. To discuss sickness absences with employees and to set standards for improvement, where appropriate.
- k. To seek advice from your occupational health provider, with support where appropriate from your HR Provider.
- l. To maintain contact and undertake welfare meetings with employees who are absent due to sickness.
- m. To consider reasonable adjustments in the case of an employee with a disability and/or redeployment and/or change to existing duties.

- n. To consider any mitigating circumstances, eg personal problems.
- o. To ensure all employees are aware of their responsibilities, when reporting sickness absence and consequences for not reporting sickness absence appropriately.
- p. To notify employees, when not adhering to reporting procedures, including consideration of suspension of pay and or disciplinary action (please seek advice from your HR provider).
- q. To ensure that there is regular contact with the employee who is absent due to sickness.
- r. To ensure all employees are aware of trigger points for the investigation of sickness absence.
- s. To treat all employees with sympathy, compassion and understanding.
- t. To consider any recommendations on the 'Fit Note' from a GP.

4.2 Role of the employees

- a. To attend "return to work" interviews where requested
- b. To follow the procedure about notification of absences and producing medical certificates (Fit Notes).
- c. To attend appointment(s) arranged with an occupational health practitioner, if required.
- d. To participate in welfare meetings arranged during sickness absence
- e. Attend meetings arranged under the sickness absence management procedure.

4.3 Role of Professional Association/ TU representative or work colleague

A Professional Association or Trade Union representative will offer support to employees who are members through the formal attendance management process, including representing employees at relevant formal meetings.

If an employee is not a member of a trade union or professional association, they can be supported by a work colleague.

4.4 Role of the Governing Body

- a. To adopt the Attendance Management Policy and Procedure and Operational Guidance.
- b. To regularly consider school sickness absence statistics at Governing Body meetings

- c. The Chair of Governors is responsible for management of sickness absence of the Headteacher.
- d. To establish relevant Staff Dismissal and Staff Dismissal Appeal Committee's to consider final stage attendance management hearings and/ or appeal hearings, where dismissal is being considered.
- e. Members of the Staff Dismissals Committee and Staff Dismissal Appeals Committee will make decisions on appropriate action for sickness absence cases.

NB It is advised that the Chair of Governors of maintained schools should inform the Director of Children's Services of Headteacher's absences of ten days or more; the Chair of Governors will be advised by the Director of Children's Services (or his nominated officer) as to the appropriate course of action.

4.5 Role of HR Consultancy Adviser

- a. Will advise the Headteacher and/or Governing Body on matters concerning sickness absence.
- b. Will provide a point of contact for the schools, teachers' professional associations and trade unions for sickness absence.
- c. Will provide training as appropriate for the Headteacher and Governors on matters relating to sickness absence.
- d. Will support in making referral of cases to the school's Occupational Health provider.

4.6 Role of your Occupational Health Service Provider

The occupational health service is an independent professional qualified practitioner who can:

- a. Provide an independent opinion as to the fitness of an employee to carry out his/her duties.
- b. Provide advice on whether the employee is fit to engage in the any meetings with the employer.
- c. Identify and recommend additional support such as counselling, therapy etc where appropriate.
- d. Advise on temporary and/or permanent changes in duties and responsibilities which might be required to enable the employee to return to his/her duties ore redeployment to another post in the school where appropriate.
- e. Advise on periods of rehabilitation if appropriate.
- f. Advise on retirement on health grounds.
- g. Assist the Governing Body, Headteacher, and where appropriate the Local Authority, in reaching decisions about employees' health issues.

- h. Assist the Governing Body, Headteacher, and where appropriate the Local Authority in reaching decisions about alcohol, drug or substance abuse.
- i. Assist in differentiating between illness and capability, competence or conduct, where relevant.

4.7 Role of Vocational Rehabilitation Consultant (Access to Work Mental Health support)

- a. Provision of confidential and vocational support for employees with mental illness to retain or regain their ability to participate at work.
- b. Provision of specialist advice and guidance to managers from Vocational Rehabilitation Consultants. (for further information see operational guidance)

5. Sick leave and pay (contractual requirements)

5.1 Teachers

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

Length of continuous service	Sick Pay Entitlement
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 then 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

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

5.2 School support staff

Employees are entitled to receive sick pay for the following periods:

Length of continuous service	Sick Pay Entitlement-
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 and 5th year of service-	5 months' full pay and 5 months' half pay
After 5 years' service	6 months' full pay and 6 months' half pay

Authorities shall have discretion to extend the period of sick pay in exceptional cases.

For the purpose of the sick pay scheme, 'service' includes all aggregated service with one or more local education authorities and academies (for those employed under Teacher Pay & Conditions)

In exceptional circumstances, the school may consider extending sick pay provision. You should contact your HR consultancy adviser to discuss before making the final decision.

6. Attendance Management Procedure

6.1 Types of sickness absence and sickness absence triggers

The employee must be made aware that their absence is causing concern, prior to the sickness absence triggers below being formally implemented.

'Working Day' is defined as a day that an employee works regardless of the number of hours, the triggers are applied on a pro-rata basis

6.2 Any unacceptable patterns of absence

- a. absences which are causing a concern for the school**
or
- b. regular patterns of absences** such as:
 - regularly taking Mondays and/or Fridays off
 - absent adjacent to school holidays
 - taking the same period of sickness absence each year

6.3 Frequent and persistent sickness absence triggers

Frequent and Persistent Sickness Absences can normally be defined as those of 5 working days (seven calendar days) or less which are self-certificated by the individual, ie not supported by a qualified medical practitioner. It can also be defined as absences of up to 20 consecutive days that require a medical certificate (Fit Note).

The sickness absence triggers are:

3 spells of absence in a 6-month period (rolling 6 months*)

or

10 days of absence over a 12-month period (rolling 12 months*)

** A rolling period of absence includes **all sickness absence**, irrespective of whether they have been considered in any previous meeting.*

6.4 Long-term certificated absences

Long-term absence can be defined as:

- **medically certificated** absences (Fit Notes)
- normally lasting for a continuous period of **twenty working days** (or over a 4-week period) or more

In these cases, it may be appropriate to inform the employee during their sickness absence, as part of their welfare meeting, that they have hit an absence trigger. The school may then proceed with formal stages.

6.5 Any continuous period of absence over 20 working days (4 working weeks)

When employees are absent from school due to long-term sickness, they need sympathy and support. It is important that the Headteacher (or his/her nominee) takes an interest in their welfare and keeps them informed about any developments in school so that they do not feel isolated and forgotten.

It is the Headteacher's (or his/her nominee) responsibility to ensure they are aware of any changes and/or updates with each employee, and to take the appropriate action.

Should a case become complex in any way, and the skills of specialist agencies such as occupational health are required, Headteachers are recommended to discuss the case with your HR provider for guidance and support on the recommended steps to follow.

NB 'Working Day' is defined as a day that an employee works regardless of the number of hours. NB The above triggers are applied on a pro-rata basis.

6.6 Unauthorised Absence

Any period of unauthorised absence may include:

- when an employee has been absent and not submitted a medical certificate
- when an employee has failed to report an absence from work
- when an employee has failed to follow sickness absence reporting procedures

NB Under these circumstances, the school may consider suspending occupational sick pay and/or take disciplinary action for failure to comply with the sickness absence reporting procedures.

7. Supporting employees with Disability

7.1 Support

Where an employee has been identified as having / or likely to be defined as having a disability, as defined by the Equality Act, school should:

- a) Discuss with the employee, the impact that the medical conditions have on their ability to carry out their duties.
- b) Consider making reasonable adjustments, taking into account the following:
 - Does it reduce or remove the disadvantage for the person with the disability?
 - Is it practical to make/implement the adjustment?
 - Is it affordable to the school to make?
 - Could it harm the health and safety of or have an adverse impact on others?

In most cases advice on reasonable adjustments should be sought from your OH provider, and in some cases further advice and assessment may be sought from the Department of Work and Pensions – Access to Work Scheme. More information on these issues is contained in the operational guidance.

7.2 Consideration reasonable adjustments

Where OH have indicated that an employee has/ or is likely to have a disability, as defined under the Equality Act, the school should consider making reasonable adjustments.

This could include:

- Hours
- Location
- Duties
- Job role
- Consideration on whether to move into formal review and monitoring of absence, taking into account that some absence(s) may be related to their disability

7.3 Mental Health

If an employee has a mental health issue, it's important their employer takes it seriously. There are many types of mental health issue. An issue can happen suddenly, because of a specific event in someone's life, or it can build up gradually over time. Common mental health issues include:

- depression
- anxiety
- low mood

and in many cases medical conditions are likely to be covered by the Equality Act 2010 (Disability Discrimination).

However, in many cases mental illness will start with a stress related absence and schools should take appropriate action to support the employee at the early stages of the sickness absence, or ideally before they are absent from work.

If an employee becomes absent from work due to **stress or anxiety** a head teacher should immediately (within 48 hours of the start of the absence) make a referral to the Health Assured Active Care Service.

For any other mental health absence, the Headteacher should consider a referral to occupational health.

Where an employee has been identified to have a mental health issue, the school should ensure that a 'Stress' Risk Assessment (Wellbeing Assessment) is completed with the employee. The purpose of the assessment is to identify risks and put in place measures to minimise the risk (where possible). A copy of a model stress risk assessment can be obtained from your health and safety provider.

NB This service is free when bought with the OH and EAP package from the Local Authority.

Attendance Management Process

8. Monitoring of sickness absence

In order to ensure the effective management of sickness absence, Headteachers/ School leaders are advised that: they should

- maintain accurate records of an employee's sickness absence
- maintain accurate records of discussion with the employee, whilst they off sick (Keep in Touch Form in Operational Guidance)
- meet with the employee on their return to work and record the discussion (Return to Work Form in Operational Guidance)

8.1 Informal Discussion

It is a principle of the school's policy that an employee is advised that their attendance is a concern at the Return-to-Work Interview or welfare meetings before any formal procedure is undertaken.

As part of the Return to Work Interview a manager must inform an employee if they have any concerns about their levels/ patterns of attendance and/or if further absence within a specified period may mean they will breach one of the triggers as specified above.

The headteacher should:

- Point out the impact of the individual's absence on their work and their colleagues and encourage improvement.
- Explore any work, disability, welfare or domestic problems underlying the absence.
- Explore different working patterns (if appropriate).
- Ensure the employee clearly understands what improvement is required, how their attendance will be reviewed and over what time period.
- Advise the employee that if their attendance does not sufficiently improve, or if any improvement is not maintained, they would move to the formal procedure and ultimately, they could be dismissed on grounds of sickness absence capability
- Ensure the employee is aware of and has a copy of the attendance management policy and procedure.

NB In the case of long-term sickness absence (normally over 20 working days/ 4 working weeks) this can be undertaken as part of an Initial Welfare meeting.

8.2 Formal Review and Monitoring of Attendance

If, **following the informal action meeting**, the employee's attendance continues to cause concern and/or the 'triggers' referred to have been met, the employee will be required to attend a formal meeting

NB Absence records considered at any meeting should only highlight absences relating to sickness, not any other types of absence.

8.3 Managing frequent and persistent absence

There are three formal review and monitoring periods and a final attendance management hearing in the Attendance Management procedure, which would 'normally' be followed:

- First Attendance Review Letter**
 - which would be subject to review and monitoring for a period up to six months
- Second Attendance Review Letter / Further Sickness Review Letter**
 - which would be subject to review and monitoring for a period of up to 12 months
- Final Attendance Review Letter**

- which would be subject to review and monitoring for a period of up to 18 months *N.B. At this meeting the employee should be informed that if their attendance does not improve consideration will be given to the termination of their contract.*

□ **Consideration of capability dismissal due to sickness absence**

- This will normally be the final meeting to consider termination of employment on the grounds of medical incapability.

8.4 Procedure for attendance management and review monitoring meetings

a) Arranging a formal review and monitoring meeting

The employee must be notified in writing and (unless varied by mutual agreement) given a minimum of normally **five working days' notice** (excluding weekends), that the meeting will be held under the terms of the school's Attendance Management Procedure and will be considered by the Headteacher or their nominated person.

The invitation to any formal meetings must include the following information (where relevant):

- invitation to the meeting, informing him that they are entitled to be represented by a teacher professional association/ trade union representative or work colleague if they wish (see operational guidance)
- employee sickness absence record over the last three years.
- notes of discussions with the employee e.g. return to work /keep in touch discussions /reasonable adjustments
- any relevant medical evidence such as occupational health reports
- any letters or correspondence previously sent to the employee including previous review and monitoring letters or letters relating to the previous policy and procedure
- a copy of the attendance management procedure

b) Non-attendance at attendance management meeting

There may be occasions when the employee is unable or unwilling to attend a meeting. In such cases, the employer may conclude that a decision should be made on the evidence available. In such circumstances the employee should be informed, in writing, that the case may be heard in their absence. If the employee and / or the employee's chosen representative cannot attend they must offer an alternative date within 5 working days of the original date. If the employee fails to attend the postponed meeting, then, depending on the circumstances, a decision may be taken in their absence, if that is a reasonable course of action.

An employee may make written submissions instead of attending the meeting should they wish to do so.

c) Format for a formal sickness absence meeting

- i. Point out the impact of the individual's absence on their work and their colleagues and encourage improvement.
- ii. Explore any work, disability, welfare or domestic problems underlying the absence.
- iii. Explore different working patterns (if appropriate).
- iv. Ensure the employee clearly understands what improvement is required, how their performance will be reviewed and over what time period.

- v. Advise the employee that, if their attendance does not sufficiently improve, or if any improvement is not maintained, this may result in a formal review meeting being considered earlier than the end of the review and monitoring period agreed and could lead to dismissal on grounds of attendance management capability.

d) Possible outcomes of a formal sickness absence meeting

The decision of the Headteacher or Staff Dismissal Committee should be one of the following:

- no further action, but absence will continue to be reviewed
- a referral to occupational health or other appropriate support e.g. Counselling and a follow-up meeting with the manager
- adjustments to the role, hours, or duties, including consideration of reasonable adjustments where someone has a disability, as defined by the Equality Act 2010.
- Temporary Adjustments could be agreed, where recovery for injury or illness, could allow the employee to return to work sooner,
NB where temporary this must be reviewed on at least a monthly basis) or in certain circumstances on a permanent basis. (See operational Guidance for advice.
- The Headteacher sets a review period and defines the required level of improvement. (See Operational Guidance).
- Throughout the review period, the manager will monitor absence levels and may decide to call a meeting earlier than the end of the specified review period, where there is an absence which meets a trigger/ or unacceptable patterns have been identified.

NB Where Occupational health advice has been sought, managers may escalate to a further review and monitoring period. where it is apparent that the employee is unlikely to return to work in the foreseeable future.

9. Managing Long Term Sickness Absence (20 working days or 4 working weeks)

9.1 Welfare Meetings

It is a requirement that regular welfare meetings are undertaken with the employee to ensure advice and support is offered in order facilitate a return to work as soon as practicable. This may include seeking advice from Occupational Health.

NB Personal circumstances e.g employee is in hospital, the manager should endeavour to maintain contact with the employee, which may not be a face to face meeting

9.2 Review and Monitoring Meetings

Where appropriate, Headteachers should ensure that employees are clear about the impact that their absence is having on School. Headteachers should consider the appropriateness of setting defined expectations on the improvement of their attendance, this would include the following (where appropriate):

Case reviews may be appropriate in certain long term attendance management case (refer to operational Guidance)

- 1st attendance review letter** (normally after 3 months absence)
 - which would be subject to review and monitoring for a period of

6 months. However, this may be reviewed earlier if the absence continues.

- **2nd attendance review letter/ Further attendance review letter** (normally after 6 months absence *, unless OH advise that there is no likelihood of return in the foreseeable future).
 - which would be subject to review and monitoring for a period of up to 12 months. However, this may be reviewed earlier if the absence continues.
- **Final attendance review letter** normally after 9 months absence*, unless OH advise that there is no likelihood of return in the foreseeable future)
 - which would be subject to review and monitoring for a period of up to 18 months. However, this may be reviewed earlier if the absence continues.
NB At this meeting the employee should be informed if their attendance does not improve that consideration will be given to the termination of their contract.

*** Where OH confirm that there is no likelihood of a return to work in the foreseeable future the Headteacher may progress to the final attendance review/capability dismissal.**

NB In the cases of long term sickness absence, particularly when the employee remains absent from work, but also if they have returned to work, it may be appropriate to move to a higher stage of the Procedure, without holding previous review and monitoring meeting(s). When employee has been off long term sick and returns to work the council may still choose to set a review and monitoring. In line with the length of the absence. Except where, the employee has returned to work before a Capability Dismissal Hearing, in which case they will still be subject to a monitoring and review period.

9.3 Consideration of capability dismissal due to sickness absence

This will normally be the final meeting to consider termination of employment on the grounds of serious medical incapability. This will normally be after 12 months, unless OH advise that there is no likelihood of return in the foreseeable future. However, this may be reviewed earlier if the absence continues.

9.4 Preparation for final attendance management hearing

The employee should be notified by the Headteacher/ manager in writing and (unless varied by mutual agreement) giving a **minimum of 5 working days' notice** that the hearing is to be held under the terms of the Attendance Management Policy and Procedure.

The invitation to the final Attendance Management Hearing should include the following relevant information:

- **Letter inviting the employee to the meeting**
Informing that they are entitled to be represented by a teacher professional association, trade union representative or work colleague if they so wish (see sample letters).
- **A formal Attendance Management Report** is required when considering termination of a contract due to attendance and should include the following appendices: (see operational guidance for format:

- employee's sickness absence record over the last 3 years
- Notes of discussion with the employee e.g. return to work/ keep in touch discussions /reasonable adjustment
- Any relevant medical evidence e.g. Occupational Health reports including recent and up to date OH report
- Any letters or correspondence previously sent to the employee
- enclose a copy of the Attendance Management Policy and Procedure

A copy of the above letter should be forwarded by the Headteacher to the Clerk of the Governing Body and to the Director of Children's Services or their nominated officer in advance of the hearing.

Documentation from both parties should be given to the Staff Dismissal Committee 3 working days prior to the hearing for the Committee to be better informed about the issues of the case.

In the case of Maintained Community or Voluntary Controlled schools, The Director of Children's Services, or their nominated HR officer and in specific circumstances, the Authority's Head of Legal Services, or his nominated representative, should be invited to attend the attendance management hearing for the purpose of giving advice. The Committee must consider any advice given before reaching a decision.

Any employee wishing to appeal against a decision to dismiss made by the staff dismissal committee can use the appeal procedure set out below.

9.5. Escalation to Final Attendance Management Hearing

There may be cases of long-term sickness absence where there is **little or no likelihood** of:

- The employee returning to work within the reasonably foreseeable future due to an underlying health condition
- The employee being suitable for any available alternative roles
- The occupational health advice is that the employee is not fit to return and the employee has remained off sick for a substantial amount of time

In such circumstances the Headteacher should consider taking formal action under this procedure. Under these circumstances the attendance management matter can be normally referred directly to the Staff Dismissal Committee (for a Final Attendance Management Hearing).

Where an employee has experienced long term sickness absence a school must maintain regular contact and welfare visits should be made, in accordance with the Attendance Management Operational Guidance.

It is also strongly advised that you seek advice from your HR provider, in the management of long-term absence and involve them in discussions with the employee and the employee's professional association, trade union representative or work colleague.

Advice should also be sought from your occupational health provider on issues such as:

- a. Prognosis of the current absence.
- b. Likelihood of return to work.

- c. Time frame for return to work.
- d. Phased return to work.
- e. Could the Equality Act apply?
- f. Is the absence related to pregnancy?
- g. Are there any reasonable adjustments, amendments to current duties and/or redeployment to another role within the school (if possible) that could facilitate the employees return to work?
- h. Fitness to attend meetings.
- i. Whether the employee could be eligible for ill health retirement or will continue to be unfit for work for the foreseeable future.

It will not normally be necessary for the Staff Dismissal Committee to meet and issue a final warning in such cases.

NB It may be appropriate to refer the employee to your OH provider on more than one occasion if the absence is prolonged to seek up to date information.

9.6 Possible Outcomes in the Management of Long-Term Absence

Possible outcomes in the management of Long Term Absence

Long term sickness absence generally falls into three potential categories, namely:

a) Definition of Serious Medical Incapability (Incapable of returning to work within in a reasonable time frame)

Medical incapability is normally an illness or medical condition where there is no likelihood of a return to work within a reasonable period and this has been confirmed by Occupational Health.

The school can deal with this within the Attendance Management Procedure under Capability of the employee to undertake the role for which they were employed.

In these circumstances the employee might ultimately recover over time, however the Governors can consider dismissal on the grounds of medical capability due to sickness absence.

NB where there is or could be a disability (as defined in the Equality Act) the school should seek advice from occupational health on whether the employee is likely to meet the criteria for ill health retirement

b) Ill Health Retirement 'Local Government' Staff including School Support Staff

Ill health retirement may be recommended by the Local Authority occupational health provider, where an occupational health physician considers that the employee is unfit to undertake their duties for a significant amount of time or permanently.

There are 3 tiers of ill health retirement that can be recommended:

Tier 1 - If you are unlikely to be capable of gainful employment before your Normal Pension Age

Tier 2 - If you are unlikely to be capable of gainful employment within 3 years of leaving, but are likely to be capable of doing so before your Normal Pension Age

Tier 3 - If you are likely to be capable of gainful employment within 3 years of leaving, or before your Normal Pension Age if earlier.

In the case of ill health retirement for support staff, the Staff Dismissal Committee will still be required to meet in order to terminate the contract of employment formally due to ill health retirement (medical capability), in order that the employee can access their pension.

c) **Ill Health Retirement (Teachers)**

Teachers apply to the Teachers' Pension Scheme, who then seek advice from a panel of medical advisers, which makes the final decision on whether a teacher is eligible for:

- **Partial Incapacity Benefit (PIB)** – unfit to teach (but could undertake other employment) or
- **Total Incapacity Benefit (TIB)** – incapable of undertaking any gainful employment

NB. Ill Health Retirement is an alternative to Medical Incapability for teachers

9.7 Preparation for Final Attendance Management Hearing

The employee should be notified by the manager in writing and (unless varied by mutual agreement) giving a **minimum of 5 working days' notice** that the hearing is to be held under the terms of the Attendance Management Policy and Procedure.

The invitation to any formal meetings should include the following relevant information:

- **Letter inviting the employee to the meeting** informing that they are entitled to be represented by a teacher professional association, trade union representative or work colleague if they so wish (see sample letters).
- **A formal Attendance Management Report** is required when considering termination of a contract due to attendance and should include the following appendices: (see operational guidance for format:
 - employee's sickness absence record over the last 3 years
 - Notes of discussion with the employee e.g. return to work/ keep in touch discussions /reasonable adjustment
 - Any relevant medical evidence e.g. Occupational Health reports. This should include a recent and up to date occupational health report.
 - Any letters or correspondence previously sent to the employee
 - enclose a copy of the Attendance Management Policy and Procedure

Documentation from both parties should be given to the panel hearing the case at least 3 working days prior to the hearing for the panel to be better informed about the issues of the case.

Any employee wishing to appeal against a decision to dismiss can use the appeal procedure set out below.

An employee is entitled to be represented by a trade union representative or work colleague, and this entitlement should be included in the above letter.

9.8 Final Attendance Management Hearing (conducted by the Staff Dismissal Committee)

Normally, following a final attendance review meeting, any of the sickness absence triggers are met or attendance continues to cause concern, a formal hearing should be arranged. This Hearing will be conducted by **Staff Dismissal Committee**. (See Operational Guidance & Appendices document for the format of the hearing.)

Possible Outcomes:

- further review period,
- reasonable adjustments with a further review period
- redeployment (where appropriate and possible)
- Capability dismissal due to sickness absence
- ill health retirement

The Headteacher may reconvene a hearing at the end of any review period, or earlier if deemed appropriate. It may be determined by whether:

- An employee has returned to work / their attendance has improved.
In such cases there should be a **18-month monitoring period**, and the manager will encourage the employee to sustain their attendance. NB if absences recur the Manager may decide to revert to the last review period of absence monitoring
- Or
- Capability Dismissal, if there has been no improvement or return to work.

The Staff Dismissal Committee may consist of up to 3 but not less than 2 members of the Governing Body (excluding the Headteacher and staff Governors) who have not previously been involved in the case, or have any other involvement, e.g. relationship to the employee subject to sickness absence action.

NB Governing Bodies should ensure that at the first meeting of the School Governors in Autumn Term that both a Staff Dismissal Committee and a Staff Dismissal Appeal Committee are properly constituted and have appropriate powers delegated to them.

An employee is entitled to be represented by a teacher professional association, trade union representative or work colleague, and this entitlement should be included in the above letter.

NB Where an appeal is not lodged against a decision of the Staff Dismissal Committee (in maintained community and voluntary controlled schools) that the employee should cease to work at the school, the Local Authority must formally terminate the contract of employment within 14 days of the initial dismissal decision (IDD).

10. Trade union /professional association representative subject to formal attendance management procedure

In the case of an attendance management hearing being conducted with an employee who is an accredited official of a recognised trade union, consultation should take place prior to the above letter being sent with a senior TU official of their trade union.

**11. Non-Attendance at Final Attendance Management Hearing
Inform the employee in writing.**

There may be occasions when the employee is unable or unwilling to attend a hearing. In such cases the employer may conclude that a decision should be made on the evidence available, in such circumstances the employee should be informed

in writing, that the case may be heard in their absence. If the employee and/or the employees chosen representative cannot attend they must offer an alternative date within five working days of the original date. If the employee fails to attend the postponed meeting, depending on the circumstances, a decision may be taken in their absence, if that is a reasonable course of action.

NB Format for Attendance Management Dismissal Hearing is provided as in the Operational Guidance & Appendices document.

12. Attendance Management Appeal Process (Only for final attendance management hearing)

12.1 Attendance Management Appeal Hearing

The Employee has the right of appeal the decision to dismiss them.

The employee should send a written appeal for the attention of the Clerk to the Governors **within 10 working days** of receiving the letter from the Chair of the Staff Dismissal Committee, with a copy to the Director of Children's Services.

An attendance management dismissal on the grounds of serious incapability should normally be arranged within 10 working days, and the outcome of the appeal hearing should normally be provided within 5 working days of the appeal hearing. The employee should be given the opportunity to be represented by a Professional Association/ Trade Union Representative or work colleague.

Possible Outcomes:

- Confirm capability dismissal due to serious incapability / ill health retirement
- Agree a further review period,
- Implement any reasonable adjustments with a further review period
- Seek redeployment opportunities (where appropriate and possible)

NB Format for Attendance Management Appeal Hearing is provided as in the Operational Guidance & Appendices document.

12.2 Decision of the Staff Dismissal Appeal Committee

Where the decision of the Staff Dismissal Appeal Committee confirms that an employee should cease to work at the school, a copy of the written notification to the employee setting out the reasons for the decision must be sent to the Director of Children's Service (for maintained community and voluntary controlled schools).

NB Any Dismissal is effective from the initial dismissal decision (IDD) with reinstatement should an appeal be successful.

13. Capability, Disciplinary and Grievance Procedures

Governors should note that no procedure should automatically take precedence over another. Complaints from an employee under the school-based Grievance Procedure should not, as a rule, be taken as a justification for delaying the Attendance Management Capability Procedure. Equally the Grievance Procedure should not be delayed by the Attendance Management Capability Procedure.

If an employee's level of absences, whether covered by self-certification or certified by a Doctor, is such that it causes serious concern, action can be taken in

accordance with the school's Management of Attendance (Capability) Policy and Procedure.