



Mellers Primary School

Attendance Management Policy

January 2017

INTRODUCTION

- 1.1 The aim of attendance management is not to prohibit sickness absence but to improve the overall employee attendance levels. The policy is intended to be supportive rather than punitive.

The health and welfare of all employees is vital to ensure high levels of attendance, the delivery of quality education and to minimise the disruption of pupils' education. This section is designed to provide advice and support to head teachers and governing bodies in managing employee attendance.

High levels of absence have a cost to the school in terms of direct costs – through the payment of statutory sick pay, occupational sick pay and supply cover, and indirect costs such as the impact on management time, the effect on morale, goodwill and performance of other staff who may take on additional work during the absence.

- 1.2 Key objectives for achieving improved attendance at work include:

- a) establishing an 'attendance culture' – where sickness absence is recognised as an important factor affecting the efficient running of the school;
- b) promoting occupational health and staff welfare;
- c) addressing issues such as health and safety at work, stress and de-motivation that can lead to either problems at work or sickness absence; and
- d) establishing and reviewing policies and procedures for monitoring and managing sickness absence levels.

1.3 **Implications of the Education Act 2002**

In the minority of cases an employee may be dismissed on the grounds of capability due to poor attendance. The governing body has overall responsibility for all staff dismissals in school, however it may delegate these responsibilities to the head teacher, an individual governor, or a group of governors with or without the head teacher (Section 35 (8) and 26 (8) of the Education Act 2002).

Head teachers will normally be expected to lead in all staff dismissals (with the exception of the dismissal of the head teacher, where the governing body will be responsible).

In certain circumstances the governors should apply alternative arrangements, for example where:

- a) the head teacher is unwilling to perform these functions and whose previous history of service at the school did not include any such responsibilities;
- b) the head teacher is subject to suspension, disciplinary procedures (including capability), or disciplinary sanction;
- c) the LA has made representations to the chair of the governing body on the grounds of serious concerns about the performance of the head teacher;
- d) the head teacher has failed to abide by financial limits agreed by the governing body for any school purpose;
- e) the governing body of a faith school has agreed staffing policies which provide for governor involvement in the interests of preserving the school's religious character;

f) the head teacher has been directly involved in the procedures leading to dismissal or has instigated a proposal to dismiss.

1.4 Governing bodies should have a decision minuted as to whether or not the first decision on dismissal will be taken by the head teacher or the Staff Dismissals Committee.

1.5 The governing body should review, at least annually or otherwise where necessary, the continuation of any circumstances where the head teacher does not lead on dismissals. Where a head teacher is on long-term sick leave, secondment or some other long-term absence the governing body should consider whether it is appropriate to pass delegated responsibility to the person appointed to act in the head teacher's place. The head should have an opportunity to make representations on any decisions to discontinue or continue delegated responsibility.

1.6 In cases where there are concerns regarding the attendance of the head teacher the Chair of the Governing Body should contact Children's Services Human Resources. An appropriate investigating officer should be appointed.

1.7 **Representation at formal meetings and dismissal hearings**

At all formal meetings staff have a legal entitlement to be accompanied by a trade union representative or a work colleague. If the chosen companion is not available at the time proposed and a reasonable alternative is proposed which falls within 5 working days of the day proposed for the interview, the school must rearrange the event to the time proposed.

If the employee is unable to attend a meeting s/he should notify the Head/Chair of panel and give the reason for non-attendance. Where the employee fails to attend because of circumstances outside his/her control, the head/chair should invite him/her to another meeting. Where there is no valid reason for non-attendance the head/chair may inform the employee that the meeting will continue in his/her absence.

1.8 **Legal Requirements**

In addition to the above requirements, under the Employment Act 2002 (Dispute Resolution) Regulations 2004, employers are required to follow a statutory three-step 'Dismissal or Disciplinary Process' (DDP) in all cases where dismissal or formal action are contemplated. This is as follows:

- Step 1 – The employer must provide a statement of grounds for action and an invitation to a meeting
- Step 2 – The meeting to discuss the issue, the employer must inform the employee of his decision
- Step 3 – The employee must be given an opportunity to appeal against the employer's decision

It should be noted that if an employee were to submit a grievance to an Employment Tribunal claims could be subject to award adjustment (between 10 and 50 %) if statutory procedures were not followed. The above requirements are incorporated in the following policy.

1.9 These model procedures do not relieve the governing body of its responsibility for the control of staff conduct and discipline.

- 1.10 Governing bodies that do not adopt the model procedures are required to consult with trade union representatives and provide Children's Services Human Resources with a copy of their own procedure having considered the statutory requirements detailed above.

2. IMPROVING ATTENDANCE

2.1 Promoting Employee Welfare

Employee welfare is concerned with the physical and emotional well-being of employees, helping to prevent problems arising, or if they do, helping employees cope with them as well as possible – and so minimising the impact on their work.

Providing support demonstrates the school's concern for the well being of employees and its commitment to them. This in turn can generate loyalty and aid good employee relations. A positive approach to employee welfare can create, maintain and improve performance and school achievement.

There is a range of support available to employees, for example:

- a) BUPA Employee Assistance Programme – the Nottingham City Council 24 hour confidential counselling service. They offer a number of services including individual sessions and a telephone support line;
- b) Teacher Support Line – a telephone service providing support, advice and counselling for teachers;
- c) Employees' 'Stress Guide' – advice and support in managing stress;
- d) Occupational Health Service – medical advice via a referral process;
- e) Westfield Health Scheme – an insurance health scheme for employees;
- f) reduced gym membership – to all Nottingham City Council Leisure Centres, the YMCA gym and Formula One gym; and
- g) trade union representatives.

Flexible working practices and family friendly policies such as part-time and job share can have a positive impact of employee welfare.

The head teacher and line manager play key roles in promoting staff welfare, for example:

- a) creating a climate in which all employees feel valued;
- b) ensuring an open culture promoting open and honest discussion;
- c) providing training and development to ensure employees have the necessary skills to do their job;
- d) organising work to motivate staff and minimise undue stress;
- e) looking for signs that an employee may need help and supporting and offering this;
- f) encouraging employees to support and help each other; and
- g) helping employees gain full advantage of the support available.

2.2 Return to Work Support

As part of creating a more open culture managers should offer support to staff when they return from a period of sickness absence. Evidence indicates that managers' concern for staff is a key element in reducing sickness absence levels.

The discussion should be confidential and held somewhere private. It should be part of the routine contact between managers and their staff – the discussion may only last a few minutes but it gives the opportunity to acknowledge that the employee has been off work and to offer them support in their return to work. [Appendix 1](#) outlines a suggested discussion format.

The return to work support should focus on the employee's welfare, their health and the reason for his/her absence e.g. is it a recurring problem? What help and support may be needed? Are there any health and safety issues? Has the employee sought the appropriate medical care and treatment? Advice should be sought from Human Resources regarding any disability issues ([Appendix 2 – Absence Involving a Disability](#)).

It is also an opportunity to discuss any work related issues that are causing the employee concern. There may also be personal or home-related issues. Support from the BUPA Employee Assistance Programme, their trade union or assistance from Occupational Health may be appropriate.

The return to work support is an informal discussion and is not a means of cautioning the employee about their attendance. As such there is no right to representation, but employees may be accompanied by a union representative or colleague. The supportive discussion will not be unduly delayed if a representative is not available. The union representative will not attend to represent the employee as such but to support him/her.

3. ACCIDENTS AT WORK

If any absence is a result of an accident at work then the incident must be recorded on an Accident Report form and sent to the Health and Safety Section at Lawrence House. Human Resources can provide further advice on dealing with and the implications of an accident at work.

4. MONITORING ABSENCE

The basic tool of managing absence is a record that details the absence of an individual employee. Absence must be recorded for payroll purposes and the school should keep a record on the personal file of the length, frequency and stated reason of the absence. The school is also required to provide absence returns to the LA and DCSF.

5. SHORT-TERM PERSISTENT ABSENCE PROCEDURE

- 5.1 Short-term persistent absence can be defined as cases where an employee has regular periods of absence, usually on health grounds, interspersed by periods at work or where an employee has odd days off, reported as sickness but uncertified by a doctor. From the monitoring records, the absences may or may not reveal a pattern.

If an employee declares that they are absent through ill health, whether that absence is certified or not, it should be assumed that the illness is genuine. However, on-going persistent absences are a cause for concern. In extreme cases once this procedure has been followed an employee can be dismissed for persistent short-term sickness absence.

In managing short-term persistent absence the following procedure should be adopted (see flowchart in [Appendix 3](#)):

- a) undertake an analysis of the individual's absence records – considering the total absences over a defined period, the reasons for absence, whether the absences were certified, whether there are identifiable trends/patterns and whether there are any disability issues;
- b) consider the outcomes of any return to work discussions;
- c) record initial views and concerns of the operational effects of the absences; and
- d) meet with the employee to provide an opportunity to discuss the reasons for the absences and whether any support or further action is required.

5.2 Triggers

In dealing with frequent short-term absence it is important to determine what is an acceptable standard of attendance in school. The aim is to reduce the amount of absence over a period and it is suggested that schools take a long-term approach to reducing absence. It is recommended that schools adopt the following trigger levels:

Year 2006/7 Onwards

12 days (pro-rata for part-time employees) or 4 occasions within a rolling 12 month period (both self-certified absences and absences certified by a GP are counted towards the triggers).

While triggers will be new to Nottingham City schools they are used by Nottingham City Council and extensively across many public services.

5.3 Stage 1

Where an employee's level of sickness absence exceeds the trigger level s/he should be formally interviewed. In circumstances where any disciplinary decision remains with the head teacher the interview should be undertaken by a member of the senior management team. In circumstances where any disciplinary decision remains with the Staff Dismissal Committee the interview should be undertaken by the head teacher.

The member of the senior management team/head teacher should write to the employee inviting them to the meeting ([see Model Letter 1](#)) including a copy of their sickness absence record and detailing the reasons why this could result in formal action being taken. The employee must be given ten days notification of the meeting and be advised that they may be represented by a trade union representative or work colleague.

The meeting should seek to establish the facts, examine the employee's sickness record, look for patterns of absence or the causes of it and seek to resolve problems where possible. The member of the senior management team/head teacher should discuss the support and guidance available to the employee and, as appropriate, ensure that the employee is made aware of the support available from the BUPA Employee Assistance Programme and the Occupational Health Service.

At the end of the interview the member of the senior management team/head teacher should consider all the issues, for example:

- a) how many absences have there been overall? The case should be considered on its own merits but bear in mind how it compares to other employees in school;
- b) is there a pattern that suggests what help could be given to enable the employee to reduce sickness absence? Has the employee been given the chance to explain?

- c) has consideration been given to reviewing the employees work load/timetable/ working conditions?
- d) was it a temporary problem that has now passed?
- e) is the employee making reasonable efforts to reduce the level of absence?
- f) is advice from Occupational Health needed?
- g) would counselling be beneficial to the employee?
- h) has the interview been conducted in a fair and non-discriminatory manner? and
- i) would a warning be fair and reasonable in the circumstances?

The member of the senior management team/head teacher may decide that a warning is not appropriate and [Model Letter 2](#) should be issued.

However, the member of the senior management team/head teacher may decide to give the employee a formal written warning that, notwithstanding the reasons for the absence(s) particular effort is required to reduce the level of absence and failure to do so may ultimately lead to dismissal for capability due to poor attendance ([see Model Letter 3](#)).

The employee may appeal against the decision to a committee from the governing body within 10 working days ([see Model Letters 4 & 5](#)). The committee should comprise of three governors who are not members of the Staff Dismissal Committee or the Dismissal Appeal Committee. Where there are not three available the appeal can be heard by two governors.

5.4 **Stage 2**

The employee's absence should continue to be reviewed regularly and if attendance is satisfactory over a six-month period the warning will be considered to have lapsed and it will be treated as spent. The documentation should be removed from the employee's personal file. However, if the absence remains above the trigger level and there has been further absence after a first written warning has been given, the member of the senior management team/head teacher should move to Stage 2 of the procedure.

In cases where an Occupational Health appointment has not already taken place the employee should be referred at this point ([Appendix 4 – Occupational Health Referral Process](#)). This is to obtain a qualified opinion on the employee's medical condition or establish if there is an underlying medical reason affecting the level of attendance. Following the appointment, a welfare meeting should be arranged to discuss the report, any issues that need to be addressed and any support that the school can put in place. Human Resources can attend such meetings to provide advice.

The member of the senior management team/head teacher should write to the employee inviting them to a further formal meeting ([see Model Letter 6](#)) including a copy of their sickness absence record, and detailing the reasons why this could result in formal action being taken. The employee must be given ten days notification of the meeting and be advised that they may be represented by a trade union representative or colleague.

At the end of the interview the member of the senior management team/head teacher should consider all the issues and may decide that a further warning is inappropriate ([see Model Letter 2](#)).

However, the member of the senior management team/head teacher may decide to give the employee a second formal written warning that if the absence(s) continue to be a source of concern and that, notwithstanding the reasons for the absence(s), particular effort is required to

reduce the level of absence and that failure to do so may lead to dismissal on the grounds of capability due to poor attendance ([see Model Letter 7](#)).

The employee may appeal against the warning to a committee from the governing body within 10 working days ([see Model Letters 4 & 5](#)). The committee should comprise of three governors who are not members of the Staff Dismissal Committee or the Dismissal Appeal Committee and who have not previously been involved in the case. Where there are not three available the appeal can be heard by two governors.

This second warning will remain in force for 12 months during which time the employee's attendance should be regularly reviewed. If the employee's sickness absence has reduced below the trigger level after 6 months, the warning should be regarded as having reduced to the status of a first warning. If the employee's sickness absence remains below the trigger level after a further 6 months the warning will be regarded as lapsed and it will be treated as spent. The documentation should be removed from the employee's personal file.

5.5 Stage 3

5.5.1 Consideration of Dismissal

The case should be reviewed regularly, around three monthly intervals and further action considered if the absence level remains above the trigger level and where there has been further absence after a second warning has been given.

The employee should be re-referred to the Occupational Health Service to obtain a qualified medical opinion on the employee's health before any consideration to dismiss is taken.

Based on the information the member of the senior management team/head teacher may wish to refer the case to the head teacher/Staff Dismissal Committee to consider the employee's employment.

The date of the hearing should be given, in writing to the employee as soon as possible and at least 10 days before the due date. The letter should detail the reasons why formal action could be taken ([see Model Letter 8](#)).

The hearing should take place on a mutually convenient day and time. This is to ensure that the hearing does not have to be delayed or postponed at the last minute. Where the trade union representative or work colleague cannot attend on the proposed date the hearing should be rearranged at a suitable time for all. Failure to arrange a mutually convenient date may result in the employee presenting a complaint to an employment tribunal.

The employee should be given the opportunity to send any written submission or evidence to the committee prior to the hearing. A copy of any submission should also be made available to the member of the senior management team/head teacher. The member of the senior management team/head teacher should always submit the evidence in writing to the head teacher/Staff Dismissal Committee with a copy to the employee. It is not for the member of the senior management team/head teacher to make any recommendations for action, this is a decision for the head teacher/Staff Dismissal Committee. The evidence must be sent at least 10 days before the date of the hearing ([with Model Letter 8](#)).

The date of the hearing should always be notified to Human Resources who will try to ensure that an appropriate officer is available to attend to advise the committee on any procedural aspects or matters of employment law.

5.5.2 The Hearing

The hearing will be conducted according to [Appendix 5](#).

The head teacher/Staff Dismissal Committee should consider the following factors when reaching a decision as to dismissal:

- a) has the procedure been followed correctly?
- b) has the advice of Human Resources been taken account of?
- c) has there been any improvement in the level of absence following the warnings?
- d) would it be reasonable to wait before deciding to dismiss to see whether there has been an improvement?
- e) what is the employment history like? Is this only a recent problem?
- f) is there a pattern to the absences? If so, does it suggest an alternative to dismissal?
- g) how does the employee's attendance record compare to others?
- h) has any help or assistance been offered e.g. has consideration been given to reviewing the employees work load / timetable / working conditions?
- i) has a recent, clear medical opinion been obtained?
- j) are any of the absences attributed to a disability?
- k) have all alternatives been considered?
- l) what is the impact on those who work with the staff member and the overall effect on the school? and
- m) what is the impact on the education of pupils in the school?

Any decision of the head teacher/Staff Dismissal Committee must be confirmed to the employee in writing within three working days ([see Model Letter 9](#)).

The head teacher must provide written confirmation of the decision to the LA (if appropriate [Model Letter 10](#)).

If the decision is taken to terminate the employee's contract of employment the following action must be taken:

For community, voluntary controlled, community special and maintained nursery schools

As the member of staff is employed by the LEA it must within a period of 10 working days either withdraw that person from the school or issue notification of termination of the employment contract. If a subsequent appeal reverses the dismissal decision the withdrawal or termination notice must be rescinded. In cases where the LEA is entitled to terminate the contract without notice because of the conduct of the member of staff in question, any such termination may be rescinded if an appeal is upheld.

For foundation, voluntary aided and foundation special schools

In cases where the member of staff is employed by the governing body, notification of termination of the contract should be issued following the initial dismissal decision, and may be rescinded if a subsequent appeal is upheld. In cases where the governing body is entitled to terminate the contract without notice because of the conduct of the member of staff in question, any such termination may be rescinded if an appeal is upheld. In the case of staff employed by the LEA the arrangements set out above should apply.

5.6 Stage 4 - Appeal Hearing

An employee has a right to appeal against any decision. The employee will be told that s/he has 10 working days from receipt of the letter confirming the decision. ([see Model Letter 11](#)).

An appeal will be heard by the Dismissal Appeals Committee. The panel of governors should not have played any part in the disciplinary hearing itself. The number of governors should not be less than those that took the original decision and this will normally be three.

The procedure for hearing an appeal will be the same as that for the disciplinary hearing itself. There is no further right of appeal other than to an Employment Tribunal. The chair of the Dismissal Appeals Committee should write to the employee with the decision of the committee ([see Model Letter 12](#)).

6. LONG-TERM SICKNESS ABSENCE PROCEDURE

6.1 Whilst each absence case must be viewed individually, a long-term absence may generally be considered to be a continuous absence of four weeks or more. It can usually be traced to an underlying condition or a specific reason. The member of the senior management team/head teacher will need to give consideration to:

- a) the nature of the illness and when a return to work is likely;
- b) the welfare of the individual;
- c) whether there are measures which could be undertaken within the school or from outside bodies, which may speed up a return to work;
- d) whether the employee has a disability;
- e) if ill health retirement is being considered by the employee; and
- f) whether the absence is due to an accident at work.

The objective in any long-term absence is to assist the employee to recover and return to work. Every case is individual but if an employee is unable to attend work for health reasons on a long-term basis Human Resources should be contacted for further advice.

The procedure for managing a long-term absence case is summarised in the flowchart in [Appendix 6](#).

6.2 Keeping In Touch

Throughout the absence it is important for the school to keep in touch with the employee in order to offer any support and assistance and also to facilitate a return to work. This may be through the member of the senior management team/head teacher although in some circumstances it may be more appropriate for it to be someone else, for example a work colleague or trade union representative. The frequency of contact will depend on the individual circumstances and it may be by phone, letter or personal visit. Some employees may request that the school does not contact them and further advice is available from Human Resources in these circumstances.

6.3 Considerations

After the first month of the absence the member of the senior management team/head teacher should consider:

- a) contacting the employee again and making further enquiries regarding their health. Depending on the nature of their absence it may be appropriate to update them on work issues and happenings in school; and

- b) explore the likelihood of a return to work and the timescale.

As appropriate the member of the senior management team/head teacher may:

- a) leave the situation as it is for a period but maintaining regular contact and regularly reviewing the situation; and
- b) refer the employee to the Occupational Health Physician for a medical examination for those cases where the absence is likely to continue in the longer term. Advice and arrangements for this can be made by Human Resources ([Appendix 4](#)).

The member of the senior management team/head teacher should continue to provide support and explore ways of facilitating a return to school when the employee is fit to do so. In some cases and particularly those where the employee was referred to Occupational Health, a welfare visit should be arranged. It is advised that these meetings are attended by a member of staff from Human Resources to offer advice. The employee should also be given the opportunity to have a partner, colleague or trade union representative attending as support.

6.4 Phased Return To School

In long-term absence cases a phased return may be beneficial. The employee and member of the senior management team/head teacher should meet with a member of Human Resources and the trade union representative, to devise a supportive return to work programme. This is normally for a limited period (up to 4 weeks) during which there will be regular reviews, the intention being that by the end the employee feels able to return to their substantive position.

Prior to a return to school the employee must be signed fit by their GP and a further referral to Occupational Health may be necessary. It is recommended that the employee receives full pay for the phased return although they are working less hours; this is because the phased return is a supportive measure to facilitate the return to normal duties. The Staff Absence Scheme offered by Human Resources seeks to support schools in the costs incurred and full details of the agreed phased return should be provided to the Staff Absence Support Officer. Clarification should be sought for the terms relating to the financial support under the Scheme.

Other considerations when planning the return may include reviewing responsibilities, duties, an agreed variation in contract or redeployment to another post within school.

6.5 Other Opportunities

6.5.1 Other Opportunities with the City Council

For a number of reasons the employee may feel that they cannot return to school and the medical advice is the same. In these circumstances it may be possible for Human Resources to help facilitate in the process of securing a further position with a Nottingham City Council school. There is **no guarantee of employment** and it is dependant on the employee being medically fit.

6.5.2 Ill Health Retirement

For Teachers

For applications for ill health retirement submitted after 1 January 2004 the LEA and schools are required to be actively involved in assessing the adequacy of the medical evidence supplied to Teachers' Pensions. This involves advisers from the Occupational Health Service and schools being required to confirm the measures that have been taken to help the teacher to return to work, including consideration of redeployment within school, stepping down to a less demanding

post or part-time working. Only where appropriate alternatives have been fully explored and exhausted can an application for ill health retirement be considered.

Human Resources will provide advice and support and liaise with the Occupational Health Team. The process is summarised in [Appendix 7 – Ill Health Retirement Applications – Summary of Arrangements](#).

If the teacher's application is not supported by Teachers' Pensions the school may wish to consider the teacher's continued employment on the grounds of capability.

For Support Staff

Support staff have similar access to ill health pensions through the Local Government Pension Scheme. The employee can be referred to the Occupational Health Adviser to confirm whether they meet the criteria for ill health retirement.

6.6 Formal Procedures

If the employee remains unfit to return to work or any strategies to support a return have failed then the situation should be reviewed again taking into consideration:

- a) the medical advice from Occupational Health;
- b) the impact of the absence on the school; and
- c) any other influencing factors.

In cases where it is likely that formal procedures will be followed, the member of the senior management team/head teacher should:

- a) re-refer the employee to Occupational Health to ensure that there is up to date, relevant medical information; and
- b) arrange a welfare meeting with the employee to discuss the medical advice and warn them that due to the length of their absence the governors may wish to consider their capability to undertake their duties and as a result of this, their continued employment ([see Model Letter 13](#)). These meetings should be attended by a member of staff from Human Resources. The employee should be given the opportunity to have a colleague or trade union representative in attendance.

In carrying out any formal procedure the member of the senior management team/head teacher must be able to demonstrate the support given to the employee throughout the absence. They will need to be conscious of the potential need to demonstrate reasonableness to a governors hearing, appeal hearing and Employment Tribunal (if a claim for unfair dismissal is made).

The member of the senior management team/head teacher should have evidence that through the process they have

- a) maintained regular contact with the member of staff (as appropriate);
- b) sought advice from Human Resources;
- c) retained notes of all the discussions and meetings throughout the absence and provided copies of the outcomes of the meeting to the employee;
- d) referred the employee to Occupational Health; and
- e) discussed strategies to facilitate a return to work e.g. phased return, change in responsibility, redeployment within the school etc.

Where the member of the senior management team/head teacher wishes to pursue the formal procedures s/he should write to the employee inviting them to a hearing. This should be done as soon as possible and at least 10 days before the due date. The letter should also detail the reasons why formal action could be taken. ([see Model Letter 8](#)). The hearing should take place on a mutually convenient day and time. This is to ensure that the hearing does not have to be delayed or postponed at the last minute. Where the trade union representative or work colleague cannot attend on the proposed date the hearing should be rearranged at a suitable time for all. Failure to arrange a mutually convenient date may result in the employee presenting a complaint to an employment tribunal.

The employee should be given the opportunity to send any written submission or evidence to the committee prior to the hearing. A copy of any submission should also be made available to the member of the senior management team/head teacher. The member of the senior management team/head teacher should always submit the evidence in writing to the head teacher/Staff Dismissal Committee with a copy to the employee. It is not for the member of the senior management team/head teacher to make any recommendations for action, this is a decision for the head teacher/Staff Dismissal Committee. The evidence must be sent at least 10 days before the date of the hearing ([with Model Letter 8](#)).

The date of the hearing should always be notified to Human Resources who will ensure that an appropriate officer is available to attend and advise the committee on any procedural aspects or matters of employment law.

6.7 The Hearing

The hearing will be conducted according to [Appendix 5](#).

The head teacher should consider the following factors:

- a) has the procedure been followed correctly?
- b) has the advice of Human Resources been taken account of?
- c) has a recent, clear medical opinion been obtained?
- d) would it be reasonable to wait before deciding to dismiss to see whether there is improvement in the employee's health?
- e) what is the employment history like? Is this only a recent problem?
- f) has any help or assistance been offered?
- g) have all alternatives been considered e.g. phased return?;
- h) is the absence attributed to a disability?
- i) what is the impact on those who work with the staff member and the overall effect on the school?

Any decision of the head teacher/Staff Dismissal Committee must be confirmed to the employee in writing within three working days ([see Model Letter 9](#)).

The head teacher must provide written confirmation of the decision to the LEA (if appropriate [Model Letter 10](#)).

If the decision is taken to terminate the employee's contract of employment the following action must be taken:

For community, voluntary controlled, community special and maintained nursery schools

If the member of staff is employed by the LEA, it must within a period of 10 working days either withdraw that person from the school or issue notification of termination of the employment

contract. If a subsequent appeal reverses the dismissal decision the withdrawal or termination notice must be rescinded. In cases where the LEA is entitled to terminate the contract without notice because of the conduct of the member of staff in question, any such termination may be rescinded if an appeal is upheld.

For foundation, voluntary aided and foundation special schools

In the case of the staff employed by the governing body, notification of termination of the contract should be issued following the initial dismissal decision, and may be rescinded if a subsequent appeal is upheld. In cases where the governing body is entitled to terminate the contract without notice because of the conduct of the member of staff in question, any such termination may be rescinded if an appeal is upheld. In the case of staff employed by the LEA the arrangements set out above should apply.

6.8 Appeal

An employee has a right to appeal against any decision. The employee will be told that she/he has 10 working days from receipt of the letter confirming the decision. ([see Model Letter 11](#)).

An appeal will be heard by the Dismissal Appeals Committee - a panel of governors who have played no part in the disciplinary hearing itself. The number of governors should not be less than those that took the original decision and this will normally be three.

The procedure for hearing an appeal will be the same as that for the disciplinary hearing itself. There is no further right of appeal other than to an Employment Tribunal. The chair of the Dismissal Appeals Committee should write to the employee with the decision of the committee ([see Model Letter 12](#)).

7. USEFUL DOCUMENTS

Physical and Mental Fitness to Teach of Teachers and of Entrants to Initial Teacher Training (DfES Circular 4/99).

Employing Disabled People – A Good Practice Guide for Managers and Employers (DfES Guide)

Both documents can be found at <http://www.dcsf.gov.uk/>.

Approved by Governors

January 2017

Return to work support discussions should focus on the employee's welfare and their health. The discussion should be confidential and held somewhere private. The discussion itself may only last a few minutes but it gives the opportunity to recognise that an employee has been off work and to offer them support and encouragement in their return to work.

Managers should show their concern for the employee and provide support as appropriate.

Considerations during the discussion should include:

1. A Review of the Employee's Health

- Is the absence a result of a recurring health problem?
- Is the employee receiving the appropriate medical care and treatment?
- Are there any health and safety issues?
- Are there any disability issues?
- Would a referral to Occupational Health be beneficial?

2. Support Available

Does the employee need any help and support:

- With issues/concerns at school?
- With issues/concerns at home?

Respond to concerns and as necessary provide information on:

- Employee Assistance Programme
- Teacher Support Line
- Trade union contacts
- Stress management
- Support groups

When considering the needs of a member of staff with a disability it is important that the head teacher seeks advice from Human Resources and consults the DfES Circular 20/99 'What the Disability Discrimination (DDA) Act means for schools and LEAs' (www.dcsf.gov.uk).

The Disability Discrimination Act defines a disabled person as someone who has 'a physical or mental impairment which has a substantial and long-term adverse effect on his/her ability to carry out normal day to day activities'.

An impairment is seen as having a long-term effect if it has lasted for or is expected to last for 12 months or more. A person who has had a disability within the definition is protected from discrimination even if he or she has since recovered or the effects have been less substantial.

The elements of the definition include:

- a) Impairment – may be physical or mental e.g. physical, sensory or mental impairment, people with progressive conditions such as cancer, MS, HIV.
- b) Substantial – going beyond the normal differences in ability which may exist among people for example the time it takes someone with an impairment to carry out normal day-to-day activities compared with someone who does not have that impairment and the way in which the activity is carried out.

Implications

An employer cannot unlawfully discriminate against a disabled person – this may occur:

- a) if a disabled person is treated less favourably because of a reason connected with the disability than how any other would be treated; or
- b) if there is a failure to make a reasonable adjustment.

Reasonable Adjustments

The school is legally required to make reasonable adjustments to the employment arrangements or premises if these substantially disadvantage a disabled person compared with a non-disabled person.

If a member of staff has a disability then the head teacher should consult them about their needs. Advice can be obtained from Children's Services Human Resources who can link in with the Access to Work Team at the Employment Service to arrange for a specialist workplace assessment. There are no fixed rules about the number or type of adjustments needed, as each case is very individual.

	EXAMPLES OF REASONABLE ADJUSTMENTS WHICH EMPLOYERS MIGHT HAVE TO MAKE:
•	Altering premises – e.g. widening a doorway, providing a ramp, stair-climbing chairs or non-slip flooring, moving classrooms or corridor furniture, altering lighting, or providing parking spaces for disabled drivers.
•	Allocating some duties to another employee – e.g. asking a non-disabled teacher to assemble a slide projector and screen for a disabled teacher, providing ancillary support in the classroom, arranging a supervision duty roster to take account of mobility, e.g. library supervision may be more appropriate than playground supervision for a disabled teacher,
•	Transferring the person to fill an existing vacancy – e.g. if a teacher becomes disabled and there is no reasonable adjustment which can enable them to continue in their post they might be considered for another suitable post at their current school or a different school.
•	Altering working hours – e.g. allowing an employee who becomes disabled to work part-time or to job-share or making adjustments to the timetable.
•	Changing the person's place of work – e.g. ensuring that a member of staff with mobility difficulties which prevents them from using the stairs can hold all of their lessons in classrooms on the ground floor.
•	Allowing absences during work hours for rehabilitation, assessment or treatment – e.g. allowing an employee who becomes disabled time off during work to receive physiotherapy or other treatment.
•	Supplying additional training – e.g. training in the use of particular pieces of equipment unique to the disabled person or re-training a teacher in a new subject area in order for them to continue teaching.
•	Acquiring or making changes to equipment – e.g. providing an induction loop in the school hall and other assembly areas, providing magnifying facilities, a pager that vibrates, a visible fire alarm system, voice activated software or an adapted telephone.
•	Providing a reader or signer – e.g. reading information to a visually impaired person at particular times during the working day.

Payment For Reasonable Adjustments

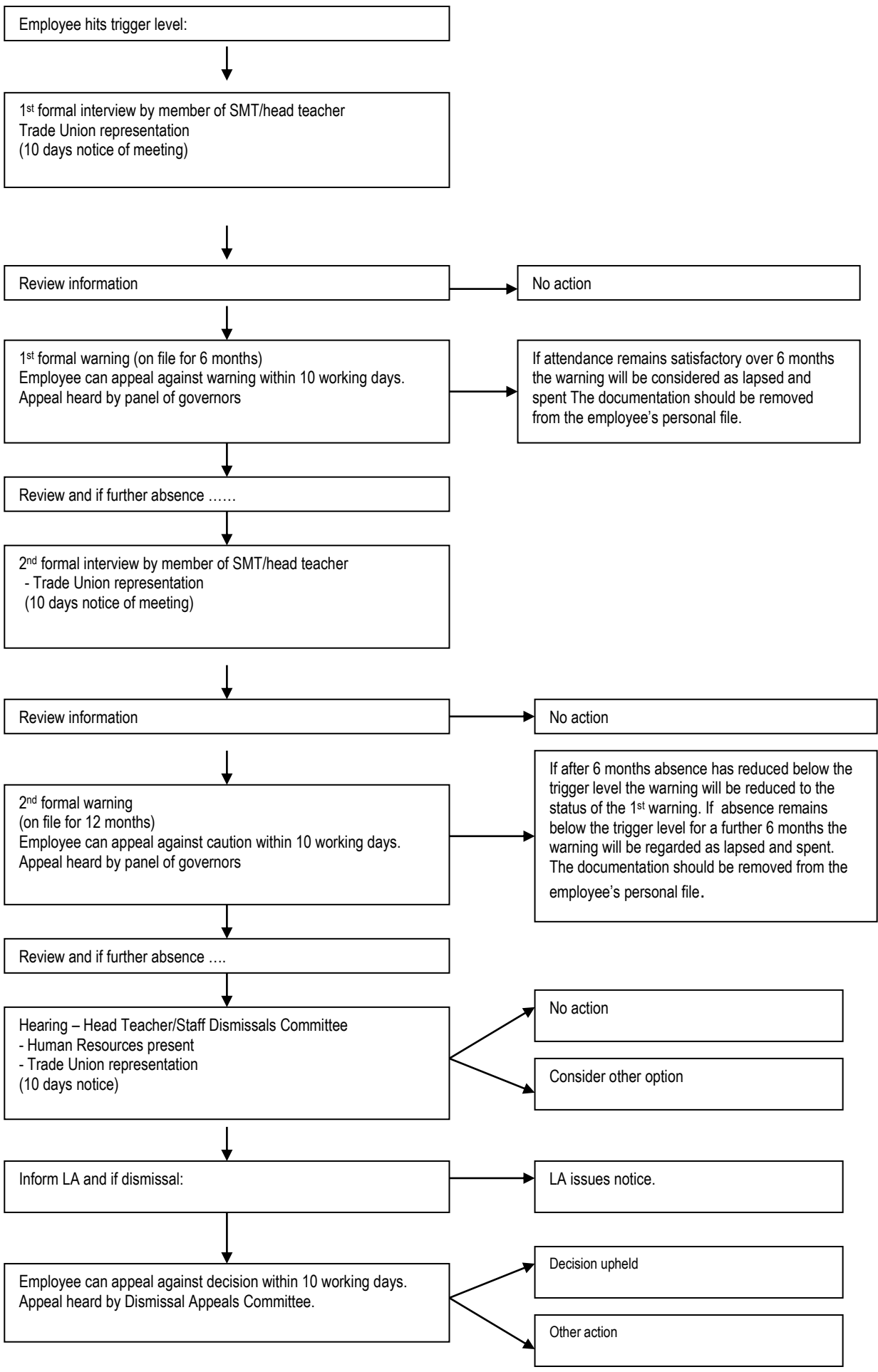
Many adjustments may involve little or no financial cost and many are also likely to benefit other groups of people. Advice on obtaining financial help to make reasonable adjustments can be gained from Human Resources.

Disability and Sickness Absence

Disability leave should be viewed in terms of reasonableness.

If a governing body decide to dismiss a disabled employee for a reason connected with their disability they may need to justify their decision if it was challenged at an Employment Tribunal. The reason for dismissal would have to be one that could not be removed by any reasonable adjustments.

Flowchart for Short-Term Sickness Absence



Occupational Health Referral Process

Referrals to Occupational Health are arranged by Human Resources. The cost of the appointment and any charge for GP or consultant reports are met by the school.

Procedure

The following information must be provided to Human Resources:

- Name
- Address
- Job title
- Date of birth
- First date of continuous service
- Sickness record over the past two years (dates and reasons)
- Reasons for the referral
- Any specific issues which the doctor should address.

It is also helpful to attach information such as job descriptions, recent medical certificates and any other relevant details e.g. support that has already been offered.

The school must discuss the referral with the employee.

Human Resources will liaise with Occupational Health who in turn will provide the employee with the details of the appointment and information on the Access to Medical Records Act 1988 – this gives the employee the right to have sight of any report supplied by the doctor.

If the doctor wishes to approach an employee's GP s/he will be asked to sign a consent form at the appointment.

The head teacher should discuss the referral with the employee so that they are aware of the appointment. Where an employee refuses to co-operate in providing medical advice or to undergo a medical examination, they should be reminded of the requirements under their Conditions of Service (concerning the need to be medically fit to undertake your duties) and be informed, in writing, that any decision relating to their situation will be taken on the basis of the information available.

On Receipt of the Medical Report

Once a report has been received from the doctor it will be shared with the head teacher in the strictest confidence.

The opportunity should then be taken to visit the employee - the purpose of this meeting is to discuss the medical report, explore the support that the school and the Children's Services Department can provide to facilitate a return to school. It is recommended that a Human Resources Officer be present and the employee be invited to have his/her trade union representative or partner or colleague present for support.

Procedure for Hearing/Appeals

HEARING

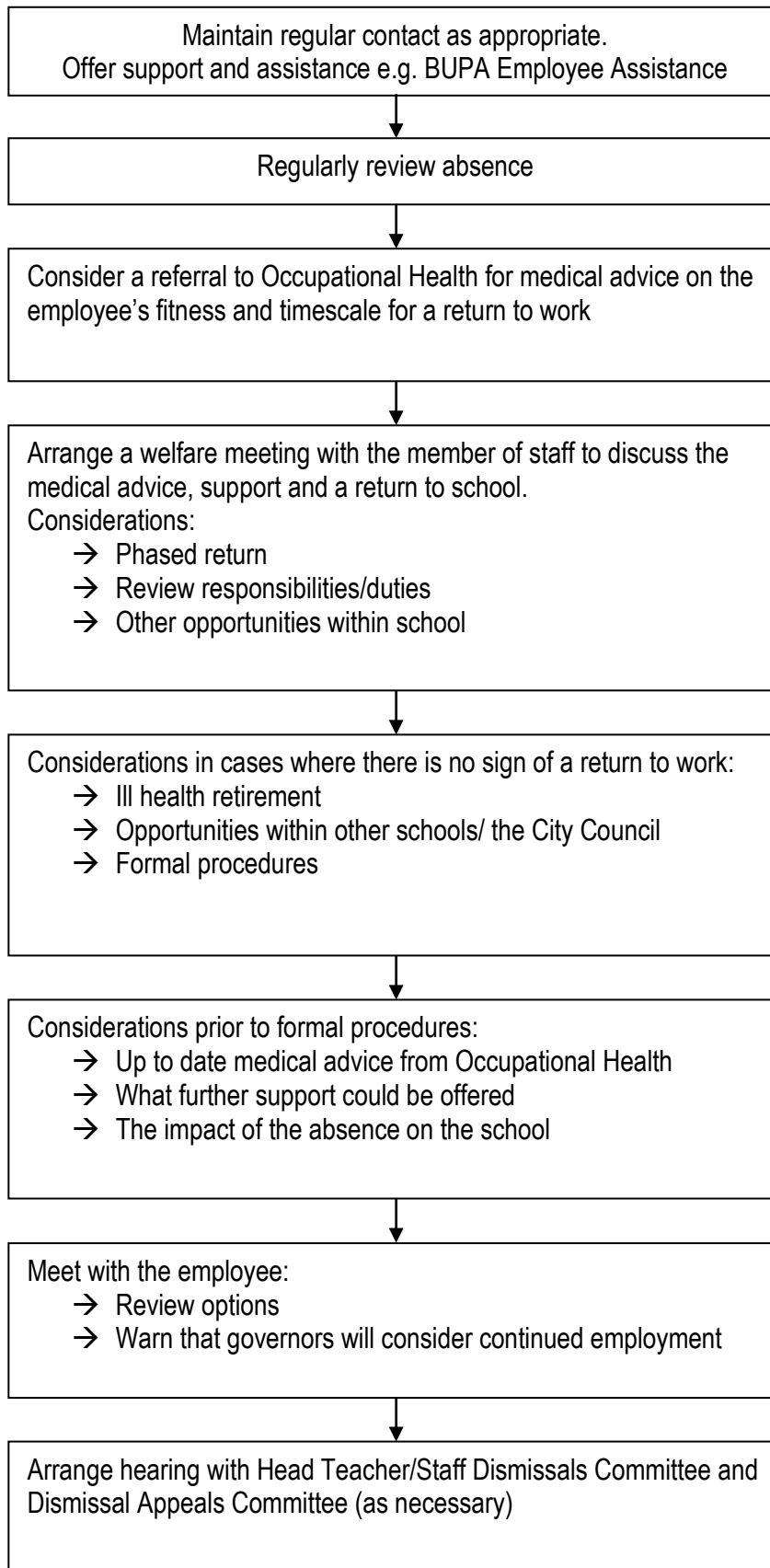
1. Member of the senior management team/head teacher presents the case.
2. Questions from employee and/or trade union representative (or colleague).
3. Questions from the head teacher/Staff Dismissal Committee.
4. Employee (or trade union representative/work colleague) presents their case.
5. Questions from the member of the senior management team/head teacher to the employee and/or representative.
6. Questions from the head teacher/Staff Dismissal Committee to the employee and/or representative.
7. Member of the senior management team/head teacher sums up.
8. Employee (or trade union/work colleague) sums up.
9. Both parties withdraw.
10. Head teacher/Staff Dismissal Committee decision. Advice provided by HR Officer.
11. All parties reconvene. Decision given.
12. Individual informed of right of appeal within 10 working days of receipt of the letter confirming the decision. Confirmation in writing from the head teacher/chair of the committee will be sent within 3 working days.

APPEAL

Same procedure but with the Dismissals Appeal Committee.

No further appeal.

Flowchart for Long-Term Sickness Absence



Ill Health Retirement Applications – Summary of Arrangements

<p>The main aspects of the arrangements are summarised below. They have been developed following the DfES consultation in 2002 on ill-health arrangements for teachers. In developing the arrangements the DfES have built on the outcomes of the consultation, culminating in a 12 month pilot exercise with a number of LAs, with the involvement of employer organisation and unions.</p>
<ul style="list-style-type: none"> • Employers and their occupational health advisers should become involved at the earliest possible stage in supporting all teachers' health and welfare. <i>It is the responsibility of the head teacher to manage staff absences within school.</i> <i>Support and guidance is available from Human Resources and they will link with Occupational Health on behalf of the school.</i>
<ul style="list-style-type: none"> • Where appropriate alternatives have been fully explored and an application for ill health retirement is being considered, the employer will provide the teacher with application forms and guidance notes. <i>Human Resources will work with the school and employee (and their trade union representative) to consider appropriate alternatives. Human Resources can provide the teacher with the necessary Teachers' Pensions forms.</i>
<ul style="list-style-type: none"> • The teacher should work with their employer's occupational health adviser to complete the application process and determine what additional medical evidence may be needed. This should be supported by the knowledge of the teacher's case that the occupational health adviser has built up through their earlier support to the teacher. The teacher should then commission any relevant medical evidence. <i>In managing a long term absence it is likely that a referral to Occupational Health will already of taken place and as necessary further appointments can be made. The teacher should commission any further relevant medical evidence – e.g. reports from GP / consultant (the Teachers' Pensions Medical Adviser will no longer seek further medical evidence to support the application).</i> <i>Occupational Health, with the teacher will collate the medical advice.</i>
<ul style="list-style-type: none"> • Application forms (both the general information form and the medical evidence form) will be checked for completeness by the employer and their occupational health adviser, before being passed to Teachers' Pensions for processing. <i>Human Resources will liaise with Occupational Health to ensure the forms are complete.</i>
<ul style="list-style-type: none"> • If the employer has concerns about either the completeness of the application or over the level of medical evidence provided, the applicant and the employer should work

together

to address these before completed applications are submitted to Teachers' Pensions.

Ultimately, however, it will be the teacher's decision to submit the application.

The school, Human Resources and Occupational Health will work with the teacher to

ensure that the application is as complete as possible.

- Following receipt of the application, cases will be considered by the DCSF's medical advisers in line with existing criteria.

- Based on the medical adviser's opinion, the application will be either accepted or rejected.

If the application is rejected due to insufficient medical evidence, the employer and the

teacher will be advised of the medical adviser's opinion. They should then work together

to consider commissioning further medical evidence and whether to submit a fresh

application.

The school, Human Resources and Occupational Health will work with the teacher as

appropriate

- The new arrangements will not apply where a teacher is terminally ill and commutation of

benefits may be a consideration. In such cases, employers should forward application

forms to Teachers' Pensions without delay.

- Where an ill health application is not accepted, it does not interfere with the employer's

right to consider the possible dismissal of the teacher on the grounds of ill health.

- Further information is available from Human Resources and at www.teacherspensions.co.uk