

Managing Attendance Procedure

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The Governing Body are required to ensure that when applying this procedure, they must refer to and work in conjunction with the BCC Ongoing Statutory Duties document. Schools are required to comply with the statutory obligations as outlined in the document, some of which enable the Council to fulfil its requirements as the employer.

Non-compliance may lead the Council to pass liability for any costs relating to employment issues that arise, to the school. Such matters of non-compliance will be referred to the Strategic Director of Children and Families to determine appropriate action

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1.0 Introduction

1.1 The ultimate purpose of this procedure is to help schools manage sickness absence. To ensure positive outcomes, it must be recognised that employees are the most important asset. Enabling them to return to work as soon as possible after a period of illness or injury can not only help maintain their health and wellbeing, but also help improve the effectiveness of a school. Whilst regular, punctual attendance is an implied term of every employee's contract of employment, employers and employees have a shared responsibility for maintaining excellent attendance, health and well-being.

1.2 The aims of this procedure are also:

- to manage sickness absence effectively, fairly and consistently; and
- to promote good health and well-being.

Head teachers and governors should adopt a procedure for the effective management of attendance and ill-health. This should include implementing early intervention strategies, such as an occupational health referral, regular welfare meetings, clear contact arrangements, counselling, physiotherapy and implementing reasonable adjustments where necessary. Early intervention is also at the heart of health and safety.

1.3 This procedure recognises the importance of management support, duties under health and safety and equality legislation and an employee's statutory and contractual entitlements (*see further at paragraphs 4, 5, 9 and 10*).

1.4 Most periods of sickness absence result in the employee being able to return to work. However, there are some occasions when the level and duration of an absence is such that this may ultimately result in the termination of an employee's contract of employment on the grounds of unsatisfactory attendance (where frequent short term sickness absence is a concern) or ill health capability (where long term sickness absence is a concern).

1.5 In this procedure :-

- 'Local Authority' means Birmingham City Council acting in its capacity as a Local Education Authority;
- Any reference to a 'school' includes community, community special, voluntary controlled, LA maintained nursery school and LA pupil referral unit';
- 'Employee' means any person who is employed by the school under a contract of employment.
- The employee's "chosen companion" is defined in employment law as a trade union representative or a co-worker at the same workplace chosen by the employee.

2.0 When this procedure should be used?

2.1 This procedure should be used when dealing with an employee's sickness absence (including long term sickness absence, frequent short term sickness absence or a

combination of both). Long term sickness absence is usually defined as 4 continuous weeks or more. Frequent short term sickness absence usually takes the form of minor one-off absences or minor absences that occur more regularly.

- 2.2 This procedure may also be used in rare cases when a particular health condition does not lead to an employee's absence but may mean that the employee is not fit to work with children (*see further at paragraph 25*).

3.0 When this procedure should not be used?

- 3.1 Alleged unauthorised or fraudulent absence should be treated as a conduct issue and be dealt with under the Disciplinary Procedure adopted by the school.
- 3.2 Absence not related to sickness such as special leave of absence or flexible working requests should not be managed under this procedure but should be dealt with using appropriate procedures adopted by the school.

4.0 Health and Safety at work

- 4.1 The Health and Safety at Work Act 1974 and associated regulations explain what employers must do to protect the health and safety of all employees. It is the duty of the employer to protect, as far as is reasonably practicable, the health, safety and welfare of employees, and the health and safety of others involved in its activities.
- 4.2 Regardless of whether the local authority or the governing body is the employer; the head teacher and governing body must ensure that there is an effective health and safety policy which includes specific arrangements for implementing health and safety requirements. The governing body is responsible for ensuring that the head teacher implement the policy fairly and that they are encouraged to involve employees to ensure a collaborative approach. Implementing and following an effective health and safety policy should help to minimise levels of sickness absence under this procedure.
- 4.3 A health and safety policy is not simply a statement. It must include arrangements to implement the policy. It should set out the various responsibilities of employers in respect of health and safety in the workplace.
- 4.4 Details of the support schools can get with Health and Safety can be found in the Working in Schools section of Birmingham City Council's website.

5.0 Sickness Absence and the Equality Act 2010 ("Equality Act")

- 5.1 The Equality Act protects employees from unfavourable treatment relating to a number of protected characteristics including age, disability, race, sex, sexual orientation, pregnancy and maternity, gender reassignment, marriage and civil partnership status.

Schools must ensure that the provisions of the Equality Act are taken into account when managing sickness absence.

Disability-related absence

- 5.2 An employee who is absent for a lengthy period of time may be considered disabled for the purposes of the Equality Act. If this is the case they will be entitled to protection against discriminatory treatment and the employer is obliged to make reasonable adjustments. If the recommended or requested adjustments are not considered reasonable, this should be discussed with the employee and an explanation provided. Alternatives for the employee if adjustments cannot be accommodated may include alternative employment, and/or an agreed temporary or permanent reduction in hours. The dismissal of a disabled employee due to ill-health capability/unsatisfactory attendance may be lawful if the head teacher or committee of governors can demonstrate that it was necessary to meet the needs of the school and that reasonable adjustments were considered and, where possible, were implemented.
- 5.3 Employers are not automatically obliged to disregard all disability-related sickness absences when monitoring and managing employee attendance provided this can be objectively justified. However, depending on the individual circumstances, it may be a reasonable adjustment to disregard some disability-related absence. For example, in the case of an employee who has recently developed a disability and who is having a number of short periods of sickness absence as they learn to manage the condition, it may be reasonable to disregard these periods of absence in the short term. A process for carefully monitoring and recording the duration and reasons for the absence on each occasion is required.

Pregnancy and maternity related absence

- 5.4 All pregnancy and maternity-related absence should be disregarded when monitoring and managing attendance under this procedure, namely all management action up to and including dismissal. Pregnancy and/or maternity-related illness should be considered separately from other types of illness and it should not count towards an employee's overall attendance record. Sickness absence associated with a miscarriage should also be treated as pregnancy-related and be disregarded for the purposes of this procedure. However, it is still advisable to meet with the individual employee to discuss the reasons for their absence and their wellbeing as part of a return to work meeting, to carry out any appropriate risk assessment and to enquire about whether reasonable adjustments are necessary. Further useful guidance on avoiding discrimination and reasonable adjustments can be found in the [Equality and Human Rights Commission's Code of Practice \("EHRC"\)](#).

6.0 Who should manage sickness absence?

- 6.1 Employee sickness absence is the day-to-day management responsibility of the head teacher or who may then delegate to a nominated manager (designated manager) as appropriate.
- 6.2 The absence of a head teacher should be managed by the chair of governors with advice and support from the school's chosen ER provider and School and Governor Support.

- 6.3 A head teacher may hear the case for possible dismissal provided that they have not been directly involved in the management of the employee's sickness absence and that they have been given delegated authority to dismiss prior to the hearing. Delegated authority should be properly recorded in the relevant committee's minutes in case this is challenged (*see further at paragraph 27 below*).

7.0 Reporting and Monitoring Sickness absence

- 7.1 There must be clear and reasonable arrangements for employees to notify the school about sickness absence. These arrangements should be included as part of the employee induction process, with regular updates at staff meetings and/or reminders available in the staff room.
- 7.2 The arrangements for reporting employee absence should include certain basic principles as follows:
- a) If the employee is unable to attend work due to sickness, they must report this to the person designated in the school's sickness reporting arrangements as soon as possible on the first working day of the absence.
 - b) They should state the reasons for their absence, the likely duration and confirm the actual date they became unwell. In exceptional circumstances, if the employee is not well enough to make contact personally, it may be appropriate for a close relative or friend to facilitate contact, but they must have the appropriate information available to provide an informed update. They need to specify exactly when the illness started as this relates to their sick pay entitlement and to statutory sick pay.
 - c) Employees are asked to provide a self-certificate for sickness absence lasting between 4 and 7 calendar days; self-certificate forms are normally available from the school office or through the HR Portal.
- 7.3 Head teachers must ensure that there is a suitable system for recording employee absence and reporting this to their payroll provider. All sickness information must be kept confidential and managed in accordance with data protection legislation. A head teacher's absence must be recorded in the same way as for all other employees. It may be appropriate for the acting head teacher, deputy or assistant head teacher to be given responsibility for ensuring that the absent head teacher's absence is recorded.
- 7.4 The requirement for the employee to report sickness absence and to provide appropriate medical certification is a requirement of the respective national and/or local sick pay schemes. Consideration may need to be given to unforeseen personal circumstances which are preventing an employee from complying with this requirement. Schools are advised to take a reasonable and considerate approach.
- 7.5 Self-certificates and fit notes are considered to be personal records and as such the school is responsible for such information. The head teacher is considered to be the 'data controller' for retaining such records securely in accordance with data protection legislation. Absence and other personal records relating to sickness should be kept in a secure lockable cabinet to ensure confidentiality. The head teacher is also responsible for ensuring that the necessary information about an employee's sickness absence is

kept up to date with the school's payroll provider to ensure that the employee receives any sick pay entitlement in accordance with the relevant sick pay schemes.

- 7.6 Informal discussions with absent employees may be appropriate before consideration is given to formal stages below. Early support may take the form of preventative action, including referrals to occupational health, physiotherapy counselling, mediation, or risk and/or stress risk assessments as appropriate.

8.0 Fit Notes

- 8.1 If a Statement of Fitness for Work ("fit note") has been issued by a General Practitioner ("GP"), there is an expectation that the illness and recovery will last more than seven calendar days.
- 8.2 A copy of a fit note must be submitted by the employee if the illness lasts more than seven calendar days and must cover sickness during school holiday periods as well as during term time. The employee should retain the original for the purpose of claiming benefits or for other purposes. The GP has two options on the fit note. They can recommend that an employee is "not fit for work" or that an employee "may be fit for work subject to certain adjustments" such as a phased return to work, altered hours, amended duties or workplace adaptations. Employees do not need to be signed back to work and there is no option on the fit note to do so. If the GP believes that an employee is fit for work, they will not be issued with a fit note. In addition, an employee can come back to work before their fit note expires without returning to their GP beforehand.
- 8.3 If the fit note recommends that an employee is "not fit for work", you should treat this as evidence for contractual sick pay. It is advisable to record the date that the fit note expires and to keep in touch with the employee during their absence so that you are aware of a likely return date.
- 8.4 If the fit note includes a recommendation that an employee "may be fit to return to work, subject to certain adjustments", the employee should contact the school to discuss the GP's recommendations **before returning to work**. Although there is no statutory requirement to allow such representation, it may be helpful in certain circumstances for a chosen companion to be present at these discussions. After careful consideration and discussion with the employee, the head teacher, or designated manager needs to decide whether the GP's recommendations are feasible and reasonable for the school to implement having regard to the requirements of the Equality Act. If the school is unable to agree to the recommendations, it should treat the fit note as if it says that the employee is "not fit for work" and they will remain on sick leave.

9.0 Accidents, Injuries and Assaults

- 9.1 If an employee considers their illness and/or sickness absence to have been caused by an accident, injury or assault at the school, they must explain that when notifying the head teacher of their absence. The usual arrangements for reporting and recording employee sickness absence must be adhered to. In addition, the head teacher, and governors must take immediate action to meet health and safety requirements including recording and reporting the accident by completing an accident form, and

consulting occupational health. Necessary and proportionate actions need to be undertaken to prevent similar accidents in the future. There are special provisions in the national and/or local sick pay schemes in relation to accident and injury allowances which include special arrangements for medical advice (Teachers) and (Support Staff).

10.0 Contact with absent employees

- 10.1 There is a shared responsibility between managers and employees to maintain reasonable contact during periods of sickness absence. If a sick employee fails to contact the school, it is reasonable for the head teacher, or designated manager to initiate communication as part of their duty of care. This may prevent the employee from feeling isolated and may provide the opportunity to:
- a) discuss their welfare and offer support as appropriate (e.g. referral to OH, risk assessments); and/or
 - b) find out about a likely return date (if known) so cover can be arranged; and/or
 - c) agree the method and frequency of on-going contact whilst the employee remains sick; and/or
 - d) provide key work updates as necessary.
- 10.2 Any contact arrangements should be sensitive to the employee's needs and circumstances. In some cases, for example serious and/or terminal illnesses, it may be appropriate for contact to be made via a trade union, work place colleague, close relative or family friend rather than direct contact by the head teacher or the designated manager.
- 10.3 It must not be assumed that an employee who is suffering from a terminal illness or one whose sickness is described by the GP as stress or depression is incapable of discussing their condition with a manager or occupational health. A referral to occupational health may be necessary if the employee and their GP are stating that they are unfit to attend a meeting. Schools should contact their chosen ER provider for advice.
- 10.4 The chair of governors must also ensure that the school has appropriate arrangements for reporting and managing a head teacher's sickness absence (including maintaining reasonable contact) to ensure consistency with other employees.

11.0 Absence related to stress or mental health

- 11.1 As part of their duty of care, head teachers or designated managers should still endeavour to maintain reasonable contact with employees who are absent with stress or mental health issues, ensuring that the principles in paragraph 10 above are taken into account. If a school is aware that an employee who is suffering from work related stress perceives a particular manager to be the cause of that stress, it is recommended that an alternative suitable manager be allocated to maintain contact during the period of sickness absence. This may reduce the risk of further stress to the employee at that time. Depending on the circumstances of the case, it may be appropriate for contact to be made via a trade union representative.

- 11.2 It is advisable to establish whether an employee's stress is work-related, and/or personal. In fact, head teachers or designated managers have a duty under this procedure and under health and safety law to assess the risk of stress-related ill-health arising from work activities and to take measures to control that risk using appropriate risk assessments. Other early intervention strategies may be advisable through dialogue with the employee such as referral to occupational health or counselling providers, agreed temporary or permanent reduction in working hours, additional support and/or training or temporary or permanent re-allocation of duties.
- 11.3 Further guidance on the stress risk assessment process and supporting employees with mental health issues is available.

12.0 Occupational health referrals

- 12.1 Referrals to occupational health may be appropriate for a variety of reasons but are primarily obtained to:
- a) provide schools with their own expert medical advice about how an employee's health is impacting on their ability to perform their responsibilities; and/or
 - b) support relevant pension schemes with requests for ill-health retirement; and/or
 - c) comply with requirements of the relevant sick pay scheme in cases of absence due to accidents at work (there are specific statutory arrangements in cases of injury allowances for support staff as well as relevant conditions of service for teachers in the Burgundy Book).
- 12.2 An occupational health referral can be made at any stage of the absence. However, an early referral is often beneficial for musculoskeletal disorders and also for some mental health and stress issues (*see section 11*). This is because prolonged absence in these circumstances has been shown to reduce the potential of the employee successfully returning to the workplace.
- 12.3 It is necessary to obtain an employee's consent to a referral before it is made. It can be useful to stress to the employee the reasons for obtaining impartial medical advice from occupational health. An employee consents to the referral by signing the occupational health referral form(s). If an employee refuses to attend, they should be advised that any subsequent management action may be less beneficial to them as any decisions taken will be limited to other available medical advice/sources, which may not relate directly to the employee's job, and their potential fitness to return to work.
- 12.4 Under the conditions of service for teachers (Burgundy Book), a teacher who has prolonged or frequent absence levels due to sickness is not entitled to be paid sick pay unless, at the school's request, they attend an examination by an approved medical practitioner (such as an occupational health provider). The Green Book requires support staff to attend a medical examination with a medical practitioner nominated by the authority (such as an occupational health provider) at any time.
- 12.5 The usefulness of the report provided by occupational health will depend greatly on the factual information provided by the school and the specific questions that they seek advice on. A report will usually provide advice on what the underlying health

issues are, if and when the employee is likely to return to the workplace and whether any adjustments can be made to support that return. Advice and guidance on making the referral and dealing with the report once received can be provided from the school's chosen ER provider. In accordance with the BCC's Ongoing Statutory Duties document, the school **must** inform the Local Authority if termination of employment is a possibility at the required stage.

13.0 Return to work meetings

- 13.1 A return to work meeting should be carried out after **every** period of absence regardless of the duration or the reason for the absence. This includes absences related to pregnancy, disability, injury/accident at work or hospitalisation. When an employee is returning after a long period of absence or when other reasonable adjustments are under consideration (such as phased returns) the return to work meeting should take place **before the return to work**. For short periods of absence, a brief informal discussion on the employee's return will suffice.
- 13.2 If one of the absence indicators at paragraph 15 has been met, the head teacher, or designated manager may combine the return to work meeting with an informal discussion about attendance (*see further at paragraph 17 below*).
- 13.3 The purpose of the return to work meeting is to:
- a) welcome the employee back and discuss their fitness to return to work;
 - b) clarify the reason(s) for the absence;
 - c) ensure all relevant paperwork is complete (usually self-certificate and/or Fit Note);
 - d) discuss any support or adjustments that may be appropriate;
 - e) where necessary, complete the appropriate risk assessment (see further guidance at [\[insert link to portal\]](#));
 - f) provide an update on work matters;
 - g) where appropriate, for example where the return to work meeting is being combined with an informal discussion under paragraph 17 below, discuss any previous absences (including any concerns about patterns or levels of attendance over the previous 6 working months), ensure that the absence record is accurate and updated on the HR portal and discuss interventions aimed at improving attendance/avoiding formal action. If an informal discussion about patterns or levels of attendance is taking place at this meeting, the school should ensure that the employee is provided with an up to date record of their sickness absences prior to the meeting.
- 13.4 Whilst employees do not have a statutory right to be accompanied by a chosen companion at return to work meetings, this support may be beneficial to the parties in contentious or difficult cases.

- 13.5 All return to work meetings should be held in a confidential manner. A summary of the discussion with brief notes taken may suffice. For longer periods of absence, or in the case of frequent short-term absences or other patterns of concern, a longer discussion (with notes taken) is advisable.

14.0 Phased return to work arrangements

- 14.1 Depending on the nature and length of an employee's absence a phased return to work on full pay may be appropriate. Such an arrangement should be considered and discussed with the employee **before** they returns to work and advice sought from occupational health where appropriate.
- 14.2 If the employee plans to return to work **having fully recovered** after a long period of absence, it may be reasonable for either party to propose a short period of adjustment through a phased return to work. This allows the employee to build up their hours of work, responsibilities and duties gradually. In these circumstances, a phased return would not normally last for more than 5 working weeks, although the head teacher, or designated manager may agree with the employee to extend this period on a case by case basis and taking into consideration any other advice. A phased return may not be necessary or appropriate in every case.
- 14.3 The phrase "phased return" is also used by GPs when advising that an employee, **whilst not fully fit, may be fit for some duties**. During the first six months of an employee's absence a GP can recommend in a fit note that an employee may be fit to work if certain adjustments are made before the employee returns, including a phased return of up to three months. This provision was introduced to help employees return to work sooner than might otherwise have been the case. Occupational health can also make recommendations about the type and duration of a phased return to work.
- 14.4 If based on the school's needs, it is not possible to accommodate the proposals made by a GP or occupational health about a phased return to work, it may be necessary to treat the fit note as if it says the employee is not fit for work (so that the employee remains on sick leave until they have fully recovered) or to agree a mutually agreed and convenient alternative such as a temporary reduction in hours.
- 14.5 A record of discussions with the employee about either type of phased return should be retained with a copy issued to the employee. It is often helpful to include the employee's chosen companion in these discussions. If a phased return is agreed, it is useful to provide for review meeting(s) at suitable points to ensure that the employee is coping.
- 14.6 Further guidance on fit notes can be found at [paragraph 8](#).

15.0 Absence Indicators

- 15.1 Absence indicators can help manage attendance by:

- alerting a school that an employee is having frequent and regular sickness absence; and/or
 - encouraging early dialogue with employees in order to improve attendance levels and establish clear expectations; and/or
 - providing a consistent approach when monitoring attendance levels; and/or
 - helping schools identify possible trends so that preventative measures can be put in place.
- 15.2 Whilst each case of sickness should be considered individually and may not result in formal action, the following absence indicators should prompt a review of the absence(s) and an informal discussion with the employee. Depending on the circumstances, it may also be appropriate for schools to have an informal discussion and to offer support to an employee before the absence indicators below have been reached.
- 15.3 For consistency, the following absence indicators should be used:
- a) 2 or more separate episodes of sickness absence within a term (an episode is any period of sickness absence lasting a working day or more); and/or
 - b) A continuous absence due to sickness lasting 4 continuous weeks or more; and/or
 - c) Any other sickness absence trend which is giving cause for concern e.g. the persistent Friday and/or Monday absentee or an employee who is repeatedly on sick leave at certain points in the year.

16.0 Ill Health Retirement ("IHR")

- 16.1 Fairness requires a school to consider an employee's eligibility for IHR **before** consideration is given to dismissing an employee for lack of capability due to ill health.
- 16.2 IHR for support staff in the Local Government Pension Scheme ('LGPS') must be certified by an independent occupational health adviser. For teachers, applications are assessed by medical advisers appointed by the DfE.
- 16.3 Support staff who are granted IHR under the LGPS still need to be dismissed at a hearing in order to access their benefits (*see paragraph 27 below*). However, dismissal is not required for teachers and they just need to agree an end date with the school once IHR has been granted and their pension has been awarded.

17.0 Managing Frequent Short Term Sickness Absences

Informal Discussions

- 17.1 In most cases, early informal discussions with employees about frequent short term sickness absence (i.e. during the return to work meeting) with appropriate support and interventions will suffice. Head teachers or designated managers may arrange an informal discussion with an employee if they are approaching or have met any of the indicators at 15.3 above. However, in those cases where an employee's attendance

levels remain unsatisfactory despite informal support and discussion, the formal stages may be started (*see paragraphs 18 to 21*).

- 17.2 An informal discussion about attendance may be combined with a return-to work meeting if an employee is approaching or has met one of the absence indicators at 15.3 above. Depending on the circumstances, it may also be appropriate for schools to start informal discussions and support with an employee before the absence indicators at 15.3 have been reached. There is no statutory right to representation by a chosen companion at these discussions as they are informal management meetings and held with a view to improving the employee's attendance levels before any formal process is commenced.
- 17.3 In preparation for the discussion, the head teacher or designated manager should obtain and verify the employee's absence records and provide a copy to the employee in advance of the meeting. Time off for agreed medical appointments and pregnancy or maternity-related sickness should not be counted towards the absence indicator but may be discussed. Disability-related absence may count towards the absence indicator if there is objective justification; for example, where the impact of the absence on teaching and learning cannot be reasonably tolerated. Leave granted to employees under the school's special leave scheme should not be counted towards the indicator as this is not sickness related.
- 17.4 Suggestions of what to discuss include:
- a) Accuracy of absence record;
 - b) Reasons for the absence and strategies, actions or support to help improve and maintain attendance levels (for example counselling, referral to occupational health, suggestions on how to achieve a work-life balance);
 - c) Clarification by head teacher or designated manager that sustained improvement in absence levels will need to be demonstrated;
 - d) A clear explanation that if satisfactory improvement is not made during the informal period, the employee may be invited to a **First Formal Attendance Meeting** under paragraph 18 where formal action may be considered.
- 17.5 To assist the employee and the manager, it is recommended that a brief note is kept of matters covered during any informal management discussions.
- 17.6 If satisfactory progress has been made by the employee during the informal period, the process will not be continued, and the employee should be notified of that fact in writing as soon as possible.
- 17.7 If satisfactory progress has not been made, the head teacher or designated manager will consider whether to arrange a First Formal Attendance Meeting with the employee (*see further below*).

18.0 First Formal Attendance Meeting – Frequent Short Term Sickness Absence

- 18.1 A First Formal Attendance Meeting should be arranged with the employee as soon as possible after it has been established that the employee's attendance levels are still a cause for concern despite previous informal discussion(s)/support.
- 18.2 The meeting should be carried out at a suitable location in the school other than in exceptional circumstances. From this stage onwards, the employee has a right to be accompanied or represented by a chosen companion.
- 18.3 Prior to the meeting, the head teacher or designated manager shall review the employee's up-to-date absence record and write to the employee to advise them of the purpose of the meeting. A copy of the Managing Attendance Procedure and a breakdown of their attendance record should also be attached to the letter for discussion at the meeting. The letter plus supporting paperwork should be sent to the employee at least 10 working days before the meeting to ensure that they have enough time to prepare their response and to seek appropriate advice from a chosen companion. A copy should be included for the employee's representative.
- 18.4 Suggestions of what to discuss include:
- a) accuracy of employee's absence record as this will form the basis of the meeting (see comments at paragraph 17.3 above for details of absences that should not be included for the purposes of monitoring frequent short term sickness absence);
 - b) the reasons for the employee's frequent short term sickness absence (including mitigation raised by the employee) and agreeing strategies, actions or support to help improve attendance levels for example counselling, suggestions on how to achieve a work-life balance or referral to occupational health if there is believed to be an underlying health condition;
 - c) making the employee aware of the current overall staff attendance levels in the school and explaining the extent to which the employee's attendance levels currently fall short of this standard. The emphasis should be on agreeing positive steps together which will enable the employee's attendance levels to improve during the **First Formal Attendance Monitoring Period** of 13 working weeks.

19.0 Outcome of First Formal Attendance Meeting – Frequent Short Term Sickness Absence

- 19.1 During the First Formal Attendance Meeting, the head teacher or designated manager will talk through points a) to c) at 18 above. The employee (or appropriate chosen companion) should have a chance to present their responses and any relevant mitigation. A brief adjournment may be needed to consider all of the available evidence and to decide whether any further action shall be taken. Outcomes may include:
- a) Deciding to take no further action at this stage as the employee has given a reasonable explanation for reaching the particular attendance levels and the school is satisfied with this explanation; or
 - b) Confirming that the employee's attendance levels due to frequent short term sickness absence are still a concern and setting out agreed actions/strategies

for improving attendance levels in an **Attendance Improvement Plan** ("AIP") for a period of 13 working weeks from the date of the First Formal Attendance Meeting. This is known as the **First Formal Attendance Monitoring Period**. If there is believed to be an underlying health condition or disability which may be causing the employee to have so much frequent short term sickness absence, a referral to occupational health is recommended. It should also be clarified that if insufficient improvement in attendance levels is not made during the First Formal Attendance Monitoring Period, the employee may be subject to a further formal monitoring period of 13 working weeks (known as the **Second Formal Attendance Monitoring Period**).

- 19.2 In the case of outcome b) above, a date and time for the **Second Formal Attendance Meeting** should be agreed at the end of the First Formal Attendance Meeting.
- 19.3 The head teacher or designated manager should also confirm in writing within 3 working days of the First Formal Attendance Meeting, a summary of the key points discussed, confirmation of outcome reached (including copy of AIP where appropriate) and the date and time agreed for any Second Formal Attendance Meeting as appropriate.

20.0 Second Formal Attendance Meeting – Frequent Short Term Absence

- 20.1 The head teacher or designated manager should arrange a Second Formal Attendance Meeting with the employee to review their absence levels during the First Formal Attendance Monitoring Period on the date agreed at the First Formal Attendance Meeting (the previously agreed date may be altered if it is agreed that there is a compelling need). The principles at 18.2 and 18.3 above should be followed equally for this meeting.
- 20.2 The purpose and outcome of this meeting will vary depending on whether attendance levels remain a concern at the end of the first period of 13 working weeks (known as the First Formal Attendance Monitoring Period):
 - a) For an employee whose frequent short-term absence levels are no longer a concern (perhaps because they have had few or no absences due to sickness between the First and Second Formal Attendance Meetings), this will be an opportunity for the head teacher or designated manager to discuss improvements that have been made and the positive impact that this is having on the school. The employee shall be reminded that whilst they have demonstrated a significant improvement during the First Formal Attendance Monitoring Period, their attendance levels will continue to be monitored in accordance with the absence indicators for all staff and that if they meet an absence indicator within the next 6 working months from the date of the Second Formal Attendance Meeting, that the process may continue from the beginning of the Second Formal Attendance Meeting stage.
 - b) For an employee whose attendance remains unsatisfactory despite receiving monitoring and support via an Attendance Improvement Plan

during the First Formal Attendance Monitoring Period (i.e. the first 13 working weeks), the meeting will normally cover:

- i) Accuracy of employee's current absence record as this will form the basis of the meeting (*see comments at paragraph 17.3 for details of absences that should not be included for the purposes of monitoring frequent short term absence against targets*);
- ii) Reasons for/circumstances surrounding the employee's absences during the First Formal Attendance Monitoring Period (including mitigation raised by the employee) and agreeing any additional strategies or actions to help improve attendance levels during the Second Formal Attendance Monitoring Period (for example risk assessments, counselling or referral to occupational health if there is believed to be an underlying health condition);
- iii) The current overall staff attendance levels in the school and explaining the extent to which the employee's attendance levels currently fall short of this standard. Again, the emphasis should be on agreeing positive steps together in an Attendance Improvement Plan, which may enable the employee's attendance levels to improve during a further period of 13 working weeks. However, the employee should also be formally warned that, unless attendance levels improve significantly during the Second Formal Attendance Monitoring Period consideration will be given at a **Decision Meeting** to referring the employee's case to governors with the possible outcome of termination of employment due to unsatisfactory attendance.

20.3 During the meeting, the head teacher or designated manager may wish to adjourn briefly to consider all of the available evidence and to decide on an appropriate outcome. If further monitoring is deemed necessary, a date and time for a **Decision Meeting** shall be agreed during the Second Formal Attendance Meeting to coincide with the end of the Second Formal Attendance Monitoring Period.

20.4 The head teacher or designated manager should also confirm in writing within 3 working days the outcome of the Second Formal Attendance Meeting, including a summary of the key points discussed, confirmation of outcome reached (including copy of AIP where appropriate) and the date and time agreed for the Decision Meeting if further action is necessary.

21.0 Decision Meeting – Frequent Short Term Absence

21.1 In cases where frequent short term sickness absence is the main cause for concern, a Decision Meeting will usually take place to review an employee's attendance levels in line with previously agreed Attendance Improvement Plan(s) at the end of the Second Attendance Monitoring Period of 13 working weeks (i.e. 26 working weeks from commencement of formal monitoring under this procedure).

21.2 The Decision Meeting should be arranged in line with the process set out at paragraphs 18.2 and 18.3. The previously agreed date may be altered if it is agreed that there is a compelling need. Good reasons to postpone and arrange a further date for this meeting will usually include sickness or emergencies. However, if without good

reason the employee or their representative are unable to attend the Decision Meeting on the time and date previously agreed, the head teacher or designated manager may review all of the available evidence (including the employee's absence record and any other supporting evidence) and confirm next steps in writing to the employee.

- 21.3 The options available to the head teacher or designated manager following the meeting are as follows:
- a) To take no further action as the employee's absence has substantially improved during the Second Formal Attendance Monitoring Period (but see note about new absence concerns at 20.2(a) above); or
 - b) Writing to the employee to summarise the current overall staff attendance levels in the school and explaining the extent to which the employee's attendance levels still fall short of this standard despite the support put in place during the First and Second Formal Attendance Monitoring Periods. The letter should also warn the employee that, (subject to medical advice from occupational health and a meeting to discuss advice received where appropriate), the case may now be referred to a committee of governors (or head teacher) for a hearing which may lead to termination of their employment due to unsatisfactory attendance (see paragraph 27 below on hearings).
 - c) If the head teacher or designated manager feels that some improvement in attendance levels has been made during the Second Attendance Monitoring Period but not enough to justify taking no further action, writing to the employee to confirm that the Second Formal Attendance Monitoring Period will be extended for a further reasonable period on a case by case basis.
- 21.4 The head teacher or designated manager should also confirm in writing within 3 working days the outcome of the Decision Meeting, including a summary of the key points discussed (including updated AIP where appropriate), confirmation of outcome reached and next steps.

22.0 Managing Long Term Absences

- 22.1 Sickness absence will be considered long term if an employee has been absent for 4 continuous weeks or more.

Informal Discussion(s)

- 22.2 If an absence has lasted for 4 continuous weeks or more and there is no likelihood of an early return to work, a welfare meeting should be arranged with the employee either at the school, at their home or at a neutral location with the employee's agreement. There may also be special circumstances during which an earlier welfare visit should be arranged. The employee should be invited to provide any further documents that would aid the discussion, including medical evidence. In cases of stress and mental health, the principles in paragraph 10.2 above regarding contact arrangements should apply.
- 22.3 During the welfare meeting, the employee will be invited to discuss all or some of the following according to the circumstances:

- a) the cause of the absence and relevant details of the diagnosed illness if known;
- b) how long the absence is likely to last (if known);
- c) any other factors at work or at home which might be contributing to the absence;
- d) suggestions of support/actions/reasonable adjustments/risk assessments that could be put in place by the employee or the school to help the employee return to work (including ergonomic assessments from other external agencies where appropriate);
- e) the benefits of referral to occupational health and review of referral paperwork if the school has prepared this in advance (*see further at paragraph 12*);
- f) date for future meetings/contact;
- g) where appropriate, possible alternatives if the employee is unable to return to work e.g. mutually agreed reduction in working hours by a temporary or permanent variation in contract and/or stepping down of responsibilities. If an employee wishes at this early stage to discuss the possibility of ill-health retirement or otherwise leaving employment, these matters may also be discussed.

- 22.4 After the initial welfare meeting, further informal meetings may be arranged as appropriate with the employee in order to discuss and re-evaluate the situation. Medical information (whether from a fit note, occupational health or other relevant consultants/medical specialists as appropriate) will be essential to discussions about appropriate action and should form the basis of regular communication between the employee and the head teacher or designated manager. It is often useful for occupational health to review an employee's medical situation at appropriate periods and for the school to discuss the latest report with the employee.
- 22.5 If it appears from regular communication with the employee and consideration of latest fit notes that they are fully fit to return or that they may be fit to return, subject to specific adaptations (such as a phased return to work), a return to work meeting should be arranged by the head teacher or designated manager prior to the return to work to discuss any support that can be offered and/or updates on work matters (*see further at paragraph 13*).

23.0 First Formal Attendance Meeting – Long Term Absence

- 23.1 If, despite attempts at informal contact/welfare support, it is apparent from an occupational health report (or from other relevant medical evidence) that the prognosis for an employee's return to work is uncertain or unknown, consideration should be given to inviting the employee to a **First Formal Attendance Meeting**.
- 23.2 The purpose of the meeting will be to determine:

- a) the medical treatment that the employee is receiving and the prognosis for recovery;
- b) the employee's views on how much longer they will be off work and their expectation of being able to return to work within a reasonable period;
- c) what additional adjustments or supportive measures the school could put in place to facilitate their return to work. (the employee should be encouraged to suggest these but advice may also be sought from occupational health and/or the chosen ER provider);
- d) any additional available support for the employee e.g. mutually agreed reduction in working hours by a temporary or permanent variation in contract and/or stepping down of responsibilities (if an employee wishes to discuss the possibility of ill-health retirement or otherwise leaving employment at this stage, these matters may also be discussed);
- e) the impact that the current period of long term sickness absence is having and whether in all the circumstances, the school can reasonably be expected to wait any longer for the employee to return to work;
- f) to advise the employee that as a last resort, and once all other possible suggestions have been considered (i.e. consideration for ill-health retirement by occupational health, mutually agreed reduction in working hours by a temporary or permanent reduction in working hours, stepping down of responsibilities) that their case will be referred to a committee of governors (or to a head teacher where appropriate) and that the outcome may be dismissal due to ill-health capability.

23.3 Following the discussions, the head teacher or designated manager will adjourn to consider the evidence and the options available, which may include:

- a) Setting up a date for a return to work meeting with the employee as a return to work is now possible within a specific reasonable timescale (*see further at paragraph 13*); At this point, the employee is reminded that their attendance levels will continue to be monitored in accordance with the absence indicators for all staff and that if they meet an absence indicator within the next 6 working months from the date of the First Formal Attendance Meeting, that the process may continue from the Decision Meeting stage.
- b) Setting a further reasonable period to allow for additional management support and/or recovery. During this period, the school will consider to consult with the employee and to review appropriate medical advice. This option to be supported with a warning that if the employee is unable to guarantee a return to work date within a reasonable defined period, they will then be invited to a decision meeting, where the outcome could be that the case is referred to then they may still need to be referred to a committee of governors for consideration of future employment;

- c) If the employee has been granted ill-health retirement, either agreeing an end date (in the case of teachers) or explaining that their case will now need to be referred to a committee of governors for lack of capability due to ill health (in the case of support staff). Support staff cannot access benefits under their pension scheme until they have been formally dismissed.
- 23.4 The head teacher or designated manager should confirm in writing within 3 working days the outcome of the First Formal Attendance Meeting, including a summary of the key points discussed/action points, confirmation of outcome reached and next steps.
- 23.5 The point at which dismissal on grounds of ill-health may be appropriate will vary depending on the individual circumstances of a case. Dismissal should always be a last resort once all reasonable alternatives have been considered. The key question for the school (and which a Tribunal would examine) will be whether or not in all the circumstances, it can reasonably be expected to wait any longer for the employee to return to work. Each case should therefore be considered individually and early advice should be sought from the chosen ER provider before an employee is invited to a hearing at paragraph 27 below.

24.0 Decision Meeting – Long Term Absence

- 24.1 If following the First Formal Attendance Meeting, the head teacher or designated manager has established through on-going consultation with the employee (including recent medical advice and/or the impact of additional management support) that a return to work date remains unknown or uncertain, the employee will be invited to a **Decision Meeting**. If possible, the meeting should be held at the school. However, it may be appropriate for the meeting to be held at the employee's home or at a neutral venue with their consent.
- 24.2 The purpose of the meeting will be to review all of the points listed at paragraph 23.2 above and to gauge if and when the employee is in a position to return to work based on latest medical advice and/or the employee's own views.
- 24.3 Following the discussions, the head teacher or designated manager will adjourn to consider the options available having regard to paragraph 23.5 above. The options may include:
 - a) Setting up a date for a return to work meeting with the employee as a return to work is now possible within a specific reasonable timescale;
 - b) Setting a further period to allow for additional management support. This option to be supported with a warning that if the employee is unable to guarantee a return to work date within a reasonable defined period, then they may be referred to a committee of governors for consideration of future employment;
 - c) Confirming to the employee that their case will now be referred to governors for lack of capability due to ill-health on the basis that there is no prospect of their return within a reasonable timeframe and that all reasonable alternatives to dismissal have been considered.

- 24.4 The head teacher or designated manager will normally refer a case to a committee of governors (or head teacher) for a hearing with a recommendation that they consider termination of employment if:
- a) there is little or no likelihood of an employee who has undergone a period of long term sickness absence returning within a reasonable period, and this absence is having a detrimental impact on pupils' education and/or on fellow colleagues; and/or
 - b) recommended or implemented adjustments are not considered reasonable for the school in the long term.
- 24.5 The head teacher or designated manager should confirm in writing within 3 working days the outcome of the Decision Meeting, including a summary of the key points discussed/action points, confirmation of outcome reached and next steps.

25.0 Health Concerns Unrelated to Absence

- 25.1 Whilst the vast majority of cases considered under this procedure will relate to attendance, there may be rare cases of employees who are attending work but who appear to be unfit because of a particular medical condition. These medical conditions may lead the relevant pension scheme to grant ill-health retirement (see further paragraph 16). However, it should not be assumed that an employee is unfit for work just because they suffer from a particular medical condition.
- 25.2 If a school becomes aware of erratic behaviour which appears to be linked to a medical condition, urgent advice should be sought from the chosen ER provider. Depending on the circumstances, it may be advisable for the employee to be asked to go home and to make an appointment with their GP as soon as possible. However, if the employee refuses and/or their health or the health, safety and welfare of others in the school may be at risk, suspension may prove necessary, and the chosen ER provider will advise accordingly. It is likely that an urgent referral to occupational health will also be necessary. Discussions with a trade union representative may be helpful in these circumstances. In accordance with the BCC Ongoing Statutory Duties document, the school must notify the Local Authority of the suspension in a set timescale.
- 25.3 Informal discussions may be the best way of managing difficult cases of this nature and formal meetings should not take place unless advice has been sought from the chosen ER provider. Ultimately, however, it may be necessary to start the formal stages under this procedure. As a last resort, this may include a hearing before a committee of governors, a head teacher (as appropriate) where termination of employment will be considered.

26.0 Managing a Combination of Frequent Short Term Absence and Long Term Absence

- 26.1 Where a combination of frequent short term sickness absence and long term sickness absence is a cause for concern, the school should manage this by reference to the latest or current type of absence. For example, paragraphs 17 to 21 should be followed if frequent short term sickness absence is the latest concern, or paragraphs 22 to 24 if long term sickness absence is the latest concern. However, it may be necessary in informal and formal management meetings to refer to the impact that both types of sickness absence are having and to offer appropriate support.

27.0 Hearing

General Principles

- 27.1 The dismissal of an employee on the grounds of ill-health capability or unsatisfactory attendance should be a last resort only after all other options have been fully considered and after all possible adjustments have been considered to support the employee's continuing employment.
- 27.2 Prior to arranging any hearing which may result in a determination that the employee should cease to work at the school, the head teacher and/or the Governing body must refer to the BCC Ongoing Statutory Duties document and inform the Local Authority accordingly.

Preparation

- 27.3 In preparation for the hearing, current medical advice should be sought from an occupational health provider. If the latest medical advice is 1 or 2 months old and there have not been significant changes to the employee's medical condition, new medical advice will not be necessary. Regardless of the type of absence causing concern, it is essential to verify whether or not there is an underlying illness or disability that is causing the employee to have so much time off, and to obtain a prognosis of the illness, before an employee is considered for dismissal for ill health capability or unsatisfactory attendance.
- 27.4 A formal notice to an employee inviting them to attend a hearing should be issued in writing, with an explanation of the hearing's purpose, the reasons for the hearing and its place in the procedure. Copies of any relevant documents should be attached to the notice. The letter must remind the employee of their right to be accompanied or represented. To ensure that the employee has enough time to prepare and to seek advice, at least 10 working days' notice must be given.
- 27.5 The employee should be asked to confirm that they will be attending the hearing, who will be representing him or her, and a list of any witnesses they intend to call. The employee should also be reminded to provide this information along with any documentation they wish to rely on at least 5 working days before the hearing. Names of any witnesses from both sides should be circulated in advance and all witnesses should be asked to provide a written statement for consideration at the hearing.
- 27.6 It is useful to agree a date with the employee's representative before sending the formal notice at 27.3 above. The employee may suggest an alternative time and date for the hearing as long as it is reasonable and is not more than 5 working days after the original date. The committee, head teacher or (as the case may be) may reject the suggestion but will only do so if it is unreasonable, when they may proceed to hear the case in the employee's absence. Advice on what is reasonable may be sought from the ER provider.

Who conducts the hearing?

- 27.7 The hearing will be conducted by an appropriate committee of governors or by the head teacher (provided that they have not been previously involved in the case and they have obtained the necessary delegations from the governing body prior to the hearing (*see paragraph 6.3*)).

Who presents the hearing?

- 27.8 The head teacher will usually present the case if it is being heard by a committee of governors. If the head teacher is hearing the case, another member of the senior

leadership team will need to present the case (ideally the manager who carried out the formal attendance meetings under this procedure). If the head teacher is the subject of the hearing, the chair of the committee should seek advice from the chosen ER provider on who is to present.

Representation

27.9 The employee can be accompanied and represented by a chosen companion.

Order of Hearing

27.10 The head teacher, or committee, will have regard to any guidance issued from time to time by the LA on conducting a hearing. (See separate document on the behaviour at meetings and hearing guidance.)

The Local Authority's ("LA's") Role

27.11 In accordance with the BCC's Ongoing Statutory Duties document, The Local Authority must be informed immediately if a community, community controlled, voluntary controlled or maintained nursery school intends to recommend a case to a committee of governors for dismissal. Education law requires the actual employer (the Local Authority) to dismiss an employee once a governing body has determined that an employee should cease to work at the school. An representative of the Local Authority therefore has a right to be represented at any hearing.

Decision

27.12 The committee of governors (or the head teacher if they are hearing the case) will consider all of the evidence about non-attendance, including mitigation presented by the employee, and decide on one of the following options:

- a) To take no further action in relation to the employee; or
- b) To determine that the employee should be given notice and cease to work at the school due to ill health capability (long term sickness) or unsatisfactory attendance (frequent short term sickness). or
- c) To set a final reasonable review period to allow for additional formal monitoring and/or management support. This option to be supported with a warning that if the situation has not been resolved satisfactorily by the end of a reasonably defined period, then the committee of governors will reconvene to reconsider the employee's continued employment. The notice provisions at paragraph 27.3 above should apply equally to any hearing that is reconvened.

27.13 The committee of governors or the head teacher shall announce the decision to the parties in person or subsequently in writing. Any oral announcement shall be confirmed in writing within a reasonable period, including the right of appeal.

- 27.14 The committee of governors (or the head teacher where appropriate) should take advice from their chosen ER provider on the duties to be undertaken by the employee during the notice period.

28.0 New Attendance Concerns following Hearing

- 28.1 The head teacher may refer a case back to the original committee of governors if, following the completion of a final reasonable review period to allow for additional formal monitoring and/or management support as specified at 27.12(c) above:
- a) the employee's attendance levels have not improved to a satisfactory level; and/or
 - b) there is still little or no likelihood of an employee who has been sick for 4 continuous weeks or more returning within a reasonable period; and/or
 - c) recommended or implemented adjustments are not considered reasonable for the school in the long term
- 28.2 The outcome of any reconvened hearing will be:
- dismissal or cease to work with notice due to unsatisfactory attendance (frequent short term sickness); or
 - dismissal or cease to work with notice due to ill-health capability (long term sickness absence); or
 - no further action taken/process withdrawn.

29.0 Appeals

- 29.1 An employee has the right of appeal against the decision of the committee of governors (or head teacher who conducted the hearing). An appeal shall be made to the appeals committee established by the governing body.
- 29.2 The appeal may be against:
- a) a determination that an employee should cease to work at the school/or be dismissed; or
 - b) a determination that an employee should be set a final reasonable review period to allow for additional formal monitoring and/or management support.
- 29.3 The purpose of the appeal is to give the employee the opportunity to have their grounds of appeal considered by a committee of governors who have had no previous involvement in the case (known as the appeals committee).
- 29.4 An employee may appeal by giving written notice of the appeal (including grounds and all relevant supporting evidence) to the clerk to governors within 10 working days of receiving notification of the outcome of the hearing at 27. An employee must clarify the exact reasons for the appeal, which must be relevant to the outcome of the hearing.
- 29.5 Prior to arranging the appeal hearing against the determination to cease from work outcome, the head teacher and/or the Governing body must refer to the BCC Ongoing Statutory Duties document and inform the Local Authority accordingly.

The clerk will arrange the appeal as quickly as possible. The clerk should make every effort to agree a date with the employee's representative if they are already involved in the case, before sending out the formal invite letter and supporting paperwork to the relevant parties.

- 29.6 The employee may suggest an alternative time and date as long as it is reasonable and is not more than 5 working days after the original date. The appeals committee may reject the suggestion if it is unreasonable and may proceed to hear the case in the absence of the employee or the employee's representative. The appeals committee may also defer the date of the hearing to reach mutual agreement on a particular date.
- 29.7 The clerk shall give reasonable notice of the hearing to all participants.
- 29.8 The appeals committee will have regard to any guidance issued from time to time by the Local Authority on conducting an appeal hearing and ensure that good personnel practice is adhered to.
- 29.9 Following an adjournment to consider the evidence, the appeals committee may:
 - a) dismiss/reject the employee's appeal (so that the original decision stands); or
 - b) uphold/accept the employee's appeal and determine what further action should be taken; or
 - c) uphold/accept the appeal and amend the period defined for further improvement and/or management support as decided at the original hearing at 27.
- 29.10 The appeals committee may announce the decision orally to the parties or may notify the employee of the decision within 5 working days of the hearing.
- 29.11 If an appeal against a determination to cease to work is successful at a community, community special, voluntary controlled or maintained nursery school, the school must inform the Local Authority immediately so that the letter of dismissal can be withdrawn and the employee can be reinstated without a break in service.
- 29.12 The decision of the appeals committee is final within this procedure.