



## Managing Attendance Policy & Procedure (Sickness Absence)

*This policy & procedure has been agreed by the following professional associations / trade unions representing School Based Staff*

- *National Union of Teachers*
- *National Association of Schoolmasters Union of Women Teachers*
- *Association of Teachers and Lecturers*
- *National Association of Head Teachers*
- *Association of School and College Leaders*
- *Unison*
- *GMB*

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## Managing Attendance Policy Statement

### 1. Introduction

1.1. School employees are paid on the basis of satisfactory attendance and performance. While it's recognised that most employees will occasionally have genuine and acceptable reasons to be absent from work, any absence will cause operational difficulties, undermine quality and efficiency, and increase costs. The Disciplinary Procedure may be evoked for abuse of the Managing Attendance Policy. It recognises that whilst a certain level of sickness may be inevitable, a reasonable balance must be maintained between the needs of the school and those of employees who take time off from work due to sickness absence.

### 2. Aims of the Policy

2.1. The aims of this policy is to encourage and assist all employees to achieve and maintain acceptable standards of attendance at work by:

- (a) Ensuring that all employees understand their obligations and entitlements when they are unable to work because of illness.
- (b) Providing a safe and healthy working environment and where possible, enhance the health and well-being of employees.
- (c) Achieving high standards of sickness absence management through the actions and awareness of individual Headteachers with support as necessary from governors.
- (d) Ensuring all employees experiencing ill health problems are treated in a fair and consistent manner and receive the necessary support wherever possible to enable them to improve their health and to maintain their employment.
- (e) Providing 'Staff Support Services' to deliver professional advice to employees, Headteachers, Managers and Governors responsible for personnel matters or ill health matters i.e. Occupational Health and Safety, Human Resources and Trade Unions.
- (f) Setting out a clear statement of the standards of attendance expected by the school, through the provision of procedures and guidance and to reduce sickness absence levels whenever possible and therefore the impact of such absence on the good running of the school/education service.
- (g) To equip all Headteachers and Managers to deal with sickness absence more effectively through the foundation of clear procedures and guidelines on how to manage sickness absence within school.

### 3. Responsibilities



### 3.1. **Employees**

The school expects its staff to take responsibility for managing their own health to ensure regular attendance at work, and to engage fully in the attendance management process when ill health and absence occurs.

Staff will be expected to follow reasonable requests to attend Occupational Health appointments during their employment with the school.

### 3.2. **Headteachers, Senior Leadership Teams and Governing Bodies**

Shropshire Council expects Headteachers and Managers to provide support and guidance to staff in accordance with the Managing Attendance procedure and also to monitor, report and investigate attendance and maintain accurate records.

Headteachers/Managers should also provide a safe and healthy working environment and where possible, enhance the health and well-being of employees.

The management of attendance and sickness absence is very much a line management responsibility and where appropriate, Headteachers/Managers and Governor Committees responsible for personnel matters, will be provided with training, support and guidance to help them meet these responsibilities.

### 3.3. **Trade Union Representatives**

Trade Union Representatives are responsible for advising and supporting their members during formal processes when requested. Members may also wish to seek advice at the informal stage.

### 3.4. **Schools HR Advice Team**

Human Resources (HR) will advise and support both managers and employees in the application of the Managing Attendance Policy.

### 3.5. **Occupational Health Services**

Occupational Health Services will provide medical advice, reports for consideration on any reasonable adjustments and on various health, safety and wellbeing initiatives.

### 3.6. **Health & Safety**

In order to manage effectively the various risks associated with the work activities, Headteachers/Managers may need to seek specialist help from the Health & Safety Team to help identify and assess risks, and to find practical and effective means of eliminating or controlling risks.

## 4. **Managing Attendance Procedure**

4.1. "Sickness" is defined as incapacity to carry out the duties and responsibilities which the employee is contractually obliged to do because of their own illness or accident. This Policy and Procedure therefore applies to absence caused by personal illness or accident, not for the purpose to take time off work because of the illness or accident of others e.g. children, dependent or partner.

4.2. It is not the intention to lay down a rigid definition of what constitutes an acceptable or unacceptable level of sickness absence as each case is unique and will be treated on its own merits. However, it is important that the pattern of absence is recognised and that the employee is made aware of management concerns.



4.3. Where there is a reason to believe an absence is not genuine, the school reserves the right to challenge reasons for absence whether the absence is certified by a Doctor or not.

## 4.4. Special Considerations

### 4.4.1. Cosmetic Surgery (Elective/Reconstructive)

- When an employee elects to undergo cosmetic surgery, Occupational Sick Pay will not be payable in accordance with this Policy. However, Occupational Sick Pay may be payable in cases where written confirmation is received from the employee's medical practitioner that the surgery is essential for the physical and/or mental wellbeing of the individual.
- Whilst Occupational Sick Pay is not normally payable for elective cosmetic surgery, it may be paid if an employee develops serious complications following surgery necessitating in hospital treatment.
- Where an employee is undergoing cosmetic surgery for the purposes of reconstruction (for example following a previous illness, accident or defect of birth), Occupational Sick Pay may be payable in accordance with this Policy.

### 4.4.2. Dangerous/Extreme Sports

- The school reserves the right to suspend Occupational Sick Pay if the employee regularly participates in a professional or dangerous/extreme sport likely to result in higher levels of sickness absence. Under such circumstances, employees may wish to take out insurance to cover loss of earnings arising from such an event. Headteacher discretion should be used on a case by case basis. For further advice please contact HR.

### 4.4.3. Absences arising from accidents, injury or assault at work

- For teaching staff, in the case of absence due to accident, injury or assault attested by an approved medical practitioner to have arisen out of and in the course of the member of staff's employment, including attendance for instruction at physical training or other classes organised or approved by the school or participation in any extra-curricular or voluntary activity connected with the school, full occupational sick pay shall in all cases be allowed, subject to the production of self-certificates and/or doctors' certificates from the day of the accident, injury or assault up to the date of recovery, but not exceeding six calendar months.
- After that maximum period of six months' full pay, in the event of the teacher not returning to duty he/she shall be entitled to normal sick leave and pay under the terms of Section 4, paragraph 2.1 according to his/her length of service as prescribed by the Conditions of Service for School Teachers In England & Wales (Burgundy Book), also see paragraph 7.5, page 8 of this policy.

## 5. Notification and Certification Procedure

5.1. Responsibility for these actions sits clearly with employees. Failure to follow these procedures without good reason is likely to result in disciplinary action and will be considered as unauthorised absence. Unauthorised absence may result in the suspension of pay.



5.2. All periods of sickness must be covered by either a self-certificate and/or fit note (medical certificate); employees are responsible in ensuring these are passed to headteachers/managers within 48 hours of issue.

5.3. The school must establish procedures for reporting sickness absence, however the Table of Contact and Certification requirements below sets out the minimum requirements.

Days	Contact Requirements	Certification Requirements
1	<p>Where an employee is unwell and unable to attend work, they should make contact with their school's designated person responsible for recording absence as soon as possible but no later than one hour before their expected start time and explain:</p> <ul style="list-style-type: none"> <li>• Why they are unable to attend work.</li> <li>• How long they anticipate the sickness absence may last.</li> <li>• What action they are taking to mitigate the effects of the illness e.g. visiting the doctor.</li> <li>• Any handover of work required, as appropriate, e.g. pre-planned meeting, case notes, deadlines</li> </ul>	<p><b>Self-certification forms</b></p> <p>The first seven calendar days* of any absence due to ill health requires an employee to self-certify their absence using the Employee's statement of sickness form unless they are covered by a fit note (medical certificate).</p> <p>Employee's statement of sickness (self-certification) forms can be found online at:  <a href="https://www.gov.uk/taking-sick-leave">https://www.gov.uk/taking-sick-leave</a></p> <p>Failure to complete a self-certification of sickness may result in the suspension of sick pay for which employees may be eligible.</p> <p>* Please note: Seven calendar days includes those days on which an employee does not normally work, e.g. weekends, school and public holidays.</p>
	<p>If necessary the headteacher/manager may need to contact the absent employee to clarify one or any of the above requirements, therefore a contact telephone number should be given in the initial contact.</p>	<p>All medical certificates should be concurrent.</p>
2, 4 & 6	<p>The employee should keep in touch with their headteacher/manager at least every other day or within an agreed frequency/method to keep them informed of their progress.</p>	
8	<p>Where absence exceeds 8 calendar days or is likely to result in long term absence, a reasonable contact agreement should be reached between headteacher/manager and employee.</p> <p>It is expected contact will be maintained <b>at least once a month</b> or as mutually agreed</p>	<p><b>Fit notes</b> (medical certificate)</p> <p>Employees absent for more than seven calendar days (consecutive days including weekends and public holidays), are required to submit a medical certificate from their doctor/consultant. This should explain the nature of their illness and confirm when the employee will be fit to return to work.</p> <p>Employees should contact their headteacher/manager, prior to returning to work,</p>



	<p>between the headteacher/manager and absent member of staff.</p> <p>This will vary by case to avoid potential issues of feeling under pressure or abandoned.</p>	<p>where a medical certificate states an employee "may be fit for work".</p> <p>Headteachers/managers will discuss with their employee any reasonable adjustments that may be needed to facilitate a return to work, taking into account the medical advice.</p> <p>Where reasonable adjustments cannot be taken, employees will remain on sick leave but will need to be covered by appropriate certification and a date to review the situation will be agreed between the employee and headteacher.</p>
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Headteachers are expected to notify absent employees of changes within the workplace and keep them informed of essential information.

## 6. Planning a return to work

<p><b>Before returning to work</b></p>	<p>After any period of absence, before returning to work, employees should inform their headteacher/manager of their intention to return to work and supply a fit note where applicable.</p> <p>Headteachers/managers will discuss any reasonable adjustments that may be needed to facilitate a return to work, taking into account medical advice received.</p> <p>If a return to work program is agreed the headteacher/manager will set out this agreement in writing.</p> <p>If an agreed return to work program is likely to exceed 4 weeks, then pay implications will be discussed. See section 7.8.</p> <p><b>Guidance for Return to Working Meetings – Appendix 4</b></p>
<p><b>On the first day back</b></p>	<p>On returning to work, employees should report to their headteacher/manager before they begin work. Or if not possible, sometime during that day.</p> <ul style="list-style-type: none"> <li>• Headteachers/managers are expected to conduct a return to work discussion following every episode of sickness absence regardless of length, by the employee being seen personally, or in some cases, if this is not practicable, spoken to by telephone.</li> </ul>



	<ul style="list-style-type: none"> <li>• Headteachers/managers are required to countersign the self-certificate which may form part of the return to work discussion in cases of short term absence.</li> </ul>
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## 7. Entitlement to Sick Pay

7.1. The School's policy is as follows:

- a) To apply nationally agreed provisions on sick pay allowances.
- b) To ensure that during periods of sickness absence medical opinions are sought on employees.
- c) To deal promptly with any cases of suspected abuse of sickness rules, by use of the formal disciplinary procedure.
- d) That in exceptional circumstances and in accordance with Conditions of Service provisions sick pay may be extended where there is every likelihood of an employee returning to work after prolonged sickness absence or in the case where a teacher is still absent due to accident, injury or assault after the initial six months' period, the question of any extension of payment under paragraph 4.4.3 above shall be considered.

7.2. If an employee abuses the sick pay scheme, sick pay can be suspended, subject to a right of appeal. Repeated or serious abuse of the scheme will be dealt with as a disciplinary matter. For teachers, this procedure is outlined at paragraph 11.2 of the Conditions of Service for School Teachers in England and Wales.

7.3. Examples of employee behaviour in relation to sickness absence, which will be dealt with as misconduct within the disciplinary procedure (and may also lead to the suspension of sick pay), include:

- (a) Failure to notify absence.
- (b) Failure to provide necessary certification.
- (c) Reporting absence for a false reason.
- (d) Taking up paid employment elsewhere whilst on sickness absence.

7.4. In exceptional circumstances the governing body may, at their discretion and on the basis of medical opinion(s), extend the period of an employee's sick pay. This will only be in circumstances where the employee is likely to return to work within a reasonable period of time e.g. three months. Advice on individual cases should be obtained from HR.

### 7.5. Teaching staff pay

The sick pay entitlement for teachers, in accordance with the Burgundy Book, is as follows:

During 1 <sup>st</sup> year of service	25 working days' full pay and (after 4 months service) 25 working days' half pay
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During 2 <sup>nd</sup> year of service	50 working days' full pay and 50 working days' half pay
During 3 <sup>rd</sup> year of service	75 working days' full pay and 75 working days' half pay
During 4 <sup>th</sup> year of service and subsequent years	100 working days' full pay and 100 working days' half pay

## 7.6. Non-teaching staff pay

The national scheme of sick pay allowances for non-teaching staff is as follows:

During 1 <sup>st</sup> year of service	1 month's full pay and (after 4 months service) 2 months' half pay
During 2 <sup>nd</sup> year of service	2 months' full pay and 2 months' half pay
During 3 <sup>rd</sup> year of service	4 months' full pay and 4 months' half pay
During 4 <sup>th</sup> and 5 <sup>th</sup> year of service	5 months' full pay and 5 months' half pay
After 5 years' service	6 months' full pay and 6 months' half pay

7.7. The pay implications of a partial return to work will be agreed between the school and employee but, in the majority of cases, schools may continue to pay the employee for their full contracted hours for the first two to four weeks of their rehabilitation into work.

7.8. Schools which have opted in to the Authority's Sickness and Other Absence Insurance Scheme may be able to claim back the extra cost of supply cover incurred during the first four weeks of any agreed and approved rehabilitation plan. Lengthier return to work programmes will need to be managed through either annual leave (if applicable) or a temporary reduction in paid contracted hours. The latter must be in agreement with the individual and will need to be reviewed after a set time i.e. one to three months, depending on the length and nature of the absence.

## 8. Monitoring of absence

8.1. Headteachers are responsible for maintaining accurate records and for regularly monitoring and reviewing the absence of their staff.



- 8.2. To assist schools in monitoring sickness absence, regular reports will be made available to headteachers which will show the pattern of sickness absence amongst employees. Headteachers (supported by HR) must take appropriate steps to deal with issues of absence in line with these guidelines.
- 8.3. HR will support headteachers/managers with any patterns of sickness absence within schools which may be an indicator of issues such as working relationships, work pressures, organisational change etc. Where such patterns are detected Headteachers/managers are expected to take appropriate advice from HR on possible actions.

## 9. Management of absence – Management interviews and investigations

### 9.1. Informal interview

- 9.1.1. After any episode of sickness absence, irrespective of length, all employees can expect to have a discussion with their headteacher/manager.
- 9.1.2. In conjunction with the return to work discussions, absence management forms part of day to day management responsibilities, particularly where there is a concern about the level of sickness absence.
- 9.1.3. These informal discussions are expected to:
- Establish the nature of the sickness
  - Establish if the employee is fully recovered and capable to carry out their role safely
  - Determine whether further support, assistance or counselling is required
  - Give the employee the opportunity to discuss their sickness record and any other relevant details
  - Draw to the attention of the employee any management concerns relating to their attendance e.g. emerging patterns of absence, failure to follow absence management procedures and any expectations for improvements
  - Inform the employee that these concerns require further investigation which may result in a formal interview
- 9.1.4. At this stage the informal discussion may be sufficient to prevent a problem from developing further.
- 9.1.5. It is an employee's responsibility to inform their headteacher/manager if they have any health concerns which may impact on their ability to perform the duties expected of them within their role.

### 9.2. Implementing the Formal Procedure (Absence Triggers)

(Please refer to Appendix 1: Formal Procedure Flow Chart)

When any one or more of the following trigger points below are activated the headteacher should commence the process of investigation into sickness absence through the formal procedures:

- a) Receipt of a Doctor's note certifying the employee will be absent for at least 4 weeks.
- b) The employee has a continuous spell of absence of 4 weeks or longer covered by a series of Doctors notes.
- c) The employee has 3 or more absences in a rolling 12 month period.



- d) The headteacher/manager has identified pattern of sickness "habits" emerging.
- e) Where the headteacher's previous discussions with employees have not resulted in improvements.
- f) Where the headteacher has reasonable doubt that the employee's absence is not genuine.

## 9.3. Stage 1: First Formal Interview

9.3.1. At this stage the headteacher will write to the employee inviting them to attend a First Formal Interview; providing a minimum of 5 days' notice to attend (**Template in Headteacher's Toolkit – template letter 2b**).

9.3.2. The employee may be accompanied by a union representative or colleague of their choice to this interview (and any subsequent review interviews held at the First Formal Stage); a representative from HR may also attend.

9.3.3. Although this is the first formally recorded interview, the discussion should be as relaxed and informal as possible. The objective is to clarify precisely the facts and circumstances surrounding the employee's absence. It is essential that the employee is given the opportunity to explain the reasons for poor attendance.

9.3.4. The headteacher should reassure the employee that the purpose of the interview is to express management's concern and is not a disciplinary interview.

The headteacher must consider the following points for discussion in the meeting:

- The exact number of days/occasions of sickness in the last 12 months
- The nature of the illness(s) - list if necessary
- Whether the employee followed the reporting/certification procedures?
- Whether the period(s) of absences form a pattern?
- Whether there are any personal or domestic circumstances which may be the cause?
- Whether there any work related circumstances which may be the cause
- Whether there been a deterioration in job performance?
- Whether medical advice has been previously sought e.g. from Occupational Health?

9.3.5. Where appropriate, changes in working arrangements should be explored, however these arrangements should not detract from the prime concern of attendance improvement.

9.3.6. The headteacher should provide details of the current level of absence, an explanation of the impact on the School of their absence(s) and inform the employee of the expected improvement required.

9.3.7. A monitoring period will be agreed which should be reviewed no later than 2 months from the date of the First Formal Interview. Details of the First Formal Interview should be recorded and a copy of the record should be given to the employee (**Template in Headteacher's Toolkit – Template letter 2c**).

9.3.8. A review interview will be held at the conclusion of the monitoring period. The employee will be advised whether or not the attendance has improved to the level required, and the outcome confirmed in writing (**Template in Headteacher's Toolkit – Template letter 2d**).

9.3.9. Where there has been significant sustained improvement the process will conclude.



9.3.10. If however there has been little or no improvement in attendance a medical report will be sought; the employee may be referred to Occupational Health to establish whether there are any underlying causes for the absences.

## 9.4. Stage 2: Second Formal Interview

9.4.1. On receipt of a medical report the headteacher will invite the employee to discuss the content of the report in a Second Formal Interview, providing a minimum of 5 days' notice to attend. **(Template in Headteacher's Toolkit – template letter 2b).**

9.4.2. The employee may be accompanied by a union representative or colleague of their choice to this interview (and any subsequent review interviews held at the Second Formal Stage); a representative from HR may also attend.

9.4.3. Dependent upon the medical advice received the employee may:

- a) Be given further time to improve attendance with a further monitoring period.
- b) Be informed that an investigation report of their absence will be compiled in preparation for a Case Review Meeting.

9.4.4. In cases where an underlying medical reason has been identified, a further monitoring period may be agreed and a review interview should be held no more than 2 months from the date of the Second Formal Interview. Workplace adjustments should also be considered. Details of the interview should be recorded and a copy of the record given to the employee **(Template in Headteacher's Toolkit - Template letter 2c).**

9.4.5. A review interview will be held at the conclusion of the monitoring period. The employee will be advised whether or not the attendance has improved to the level required, and the outcome confirmed **(Template in Headteacher's Toolkit - Template letter 2d).**

## 9.5. Stage 3: Case Review Meeting

The headteacher may conclude at the review of the First Formal Interview or at either stage of the Second Formal Interview that it is necessary to progress the matter to Stage 3; Case Review Meeting. Examples of when this may be necessary include:

- When there is a deterioration of the employees absence;
- When there is no improvement to the employees attendance;
- When a medical report does not indicate any underlying causes for the absence(s);
- When there is no prospect of a return to work;
- When sick pay entitlements have been exhausted;
- When there is evidence of repeated patterns of absence; or
- a combination of these examples.



- 9.5.1. The headteacher will produce a report of their findings. The report should include evidence of all support measures offered to employees, the outcome of formal review meetings and any medical advice given in relation to the employee's health.
- 9.5.2. On completion of this report the headteacher will call a Case Review Meeting. The employee will be given 5 days' notice to attend and be offered the right to representation by a union representative or a colleague of their choice (**Template in headteacher's toolkit – Template letter 2e**). A representative from Human Resources will also be entitled to attend.
- 9.5.3. The headteacher will summarise the main points of the report and the employee will be given the opportunity to respond. Details of the interview should be recorded and a copy of the record should be given to the employee (**Template in Headteacher's Toolkit – Template letter 2c**).
- 9.5.4. At this stage consideration will be given to addressing attendance concerns by way of capability on medical grounds which may include termination of employment on grounds of capability due to ill health. Consideration of termination of employment in such cases will be referred to the School's Staff Dismissal Committee (See Section 10).
- 9.5.5. The Headteacher's decision will be communicated to the employee within 2 working days of the meeting (**Template in Headteacher's Toolkit – Template letter 2f**).

## 9.5.6. Case Review Meeting Outcomes

The following considerations/sanctions may be imposed by the headteacher at the outcome of a Case Review Meeting and prior to any consideration of termination of employment.

### a) First Written Warning

Poor attendance is considered to be serious, and therefore if deemed a breach of unacceptable conduct a **FIRST WRITTEN WARNING** will be issued to the individual by the headteacher. It will detail the complaint/concerns, the improvement required and the timescale. It will make reference to actions which may be taken if the desired improvements are not made.

A copy of the **FIRST WRITTEN** warning will be retained by the headteacher and disregarded for disciplinary purposes after 6 months, subject to satisfactory improvement.

### b) Final Written Warning

Where attendance is of a sufficiently serious nature to warrant more than a written warning, or where there has been insufficient improvement following the issue of a First Written Warning, but is insufficient to warrant dismissal, then a **FINAL WRITTEN WARNING** will be given.

This will detail the concern and will warn that, without the desired improvement in attendance within the timescale indicated, then further action in line with the policy may be taken.



A copy of the **FINAL WRITTEN** warning will be retained by the Headteacher and disregarded for disciplinary purposes after a specified period of at least 12 months, subject to satisfactory improvements.

**c) Temporary or permanent transfer to another role, or location, permanent demotion or permanent removal of some of the employee's existing duties and/or re-assignment of new duties to the employee (with agreement of a Headteacher)**

Any transfer to another role or location, which can be agreed on a temporary or permanent basis, will normally be on the employee's existing pay and benefits (except for any change in grade which would result in a loss).

Any demotion, which may be agreed on a temporary or permanent basis, to another role will involve a change in the employee's terms and conditions of employment for the duration. The duration of any agreed demotion and the new role and its terms and conditions will be set out in writing.

The school may remove some of the employee's existing duties and may require them to carry out other duties instead on a temporary or permanent basis. This will not normally involve any change to the employee's pay and benefits. The duration of any removal/re-assignment of duties and the duties varied will be set out in writing.

In the case of any agreed temporary or permanent transfer to another role or location, permanent demotion/or permanent removal of some of the employee's existing duties and/or re-assignment of new duties will be notified to the employee in the outcome letter of the Case Review Meeting.

**d) Cases to be considered by the Schools Staff Dismissal Committee – See Section 10.**

## **10. Termination of employment on grounds of capability due to ill health.**

Whilst the school will seek to support employees who are genuinely sick, it cannot offer indefinite support.

10.1. Where the criteria for Ill Health Retirement is not applicable or cannot be justified and there is no prospect of a return to work, the headteacher will need to consider at a Case Review Meeting whether there are grounds to terminate employment on grounds of capability due to ill health.

10.2. Dismissal on the grounds of capability related to ill health will be regarded as a measure of last resort only to be considered in the absence of other reasonable alternatives. Such a decision will consider all circumstances including the medical assessment of the employee, the length of the absence, the impact of the absences on others who work with the employee and on the school, and the steps taken to resolve the issue thus far.

10.3. Before any recommendation to dismiss is made, consideration should be given to the following questions:

- (a) Has the employee been contacted and the possibility of dismissal been raised, in the light of the length of absence, the medical opinions received and the effect of their continuing absence on the service?



- (b) Has the feasibility of redeployment/alternative work been considered and discussed?
- (c) Has it been made clear to them, at an appropriate point, that if they are unable to return, their job is at risk?
- (d) Has recent medical advice been taken and does it take into account any current treatment the employee is, or is about to receive?
- (e) Has the employee seen and been able to comment on the medical opinion(s) received?
- (f) What is the effect on the school and/or the employee's team of the continuing absence? Are there cost issues? Can a reasonable employer be expected to wait any longer?
- (g) Does the headteacher, based on the facts of the case, have reasonable grounds to conclude that it is unlikely that the employee can achieve satisfactory performance of their contract in the foreseeable future?
- (h) Has the employee (and any representative) been given the chance to comment on any points relevant to the decision on their employment?
- (i) And would a decision to dismiss fall within the band of reasonable responses of a reasonable employer in all the circumstances?

## 10.4. Consideration of Dismissal

10.4.1. Where, following consideration of points a to i above, the headteacher concludes that dismissal is warranted the matter will be referred to the school's Staff Dismissal Committee for a decision and the employee will be invited, in writing, to attend a meeting of this Committee in order to make representations.

10.4.2. In order to allow sufficient time for preparation, the employee will be given at least ten working days' notice of the Staff Dismissal Committee meeting and will be informed of their right to be accompanied by their professional staff association/trade union representative or friend or colleague. The headteacher and a representative from HR will also be in attendance at the meeting to present a report, a copy of which will have previously been sent to the employee at least 5 days before the meeting, setting out the steps taken thus far, the employee's full absence record and a medical assessment obtained via the Council's Occupational Health Unit.

During the meeting the Headteacher/HR representative will present reasons for the proposal to dismiss the employee, who will have the opportunity to ask questions and to respond to the case presented.

In exceptional circumstances the employee can waive their right to 10 days' notice of the meeting if they choose not to attend the meeting due to the nature of the medical condition or facts of the case.

10.4.3. The procedure to be followed at this meeting is summarised at **Appendix 5** of this policy. The Staff Dismissal Committee should consider points a to i above as a minimum when giving consideration to dismissal of the employee.



10.4.4. If, following the meeting, the Staff Dismissal Committee is satisfied that dismissal should proceed, they will confirm the grounds of dismissal in writing including their right of appeal to the school's Staff Dismissal Appeals Committee, notice, pay and any other conditions of service which need to be resolved.

Two copies of the letter will be sent to the individual who will be required to sign and return one as an acknowledgement of receipt. Copies of the letter will also be sent to the HR representative and the employee's Trade Union representative.

10.4.5. The employee must be issued appropriate notice by the school (or by the Local Authority where Shropshire Council is the employer) as soon as possible.

The notice periods for teachers and non-teaching staff are as set out in their written statement of particulars/terms and conditions of service.

## 10.5. Consideration of Dismissal

10.5.1. The schemes of sickness allowances do not give an entitlement to employees to remain off sick for the whole of this period, irrespective of medical opinions, and prognosis, or for any termination to automatically coincide with the end of half pay.

The timing of any interventions and decisions on the contrary must depend on the progress and circumstances of each case.

10.5.2. An employee is entitled to formal notice if being dismissed on grounds of capability based on the longer of statutory or contractual notice entitlement and is entitled to receive their contractual pay during their notice period.

10.5.3. For employees who belong to a pension scheme but are not in receipt of an ill health retirement pension, pension benefits will be deferred in accordance with the employees' pension scheme arrangements.

If a teacher is to be dismissed under this section, a dismissal must be made in accordance with provisions of the Burgundy book meaning dismissal must be in line with teacher resignation deadlines.

## 11. Appeals

11.1. Appeals must be received in writing within 5 working days of the letter of termination and sent to the Clerk to the Governors. A meeting of the Staff Dismissal Appeals Committee will be convened as soon as possible and giving 10 working days' notice.

11.2. The employee may be represented by a union representative or colleague of their choice at this meeting; a representative from HR may also attend.

11.3. Dismissal and the notice period will take effect from the initial dismissal decision. In the event of a subsequent successful appeal, the employee will be reinstated.

## 12. Suspension on grounds of ill-health (Teachers)





12.1. Under Regulation 10 of the Education (Teachers) Regulations 1993, the Secretary of State has power to direct on medical grounds that teachers shall be suspended, or that their employment shall be terminated or made subject to conditions. In the first instance it is for the employing authority to take whatever action may be necessary when they have reason to think that a teacher may have become medically unfit to perform teaching duties, particularly where there may be a risk to the pupils or students in that teacher's care.

12.2. Suspension is undertaken in the interests of the school and of the pupils or students in the teacher's charge. If the teacher is either unable to continue teaching duties or has no intention of resuming them until declared fit to do so, suspension will be a formality pending further medical advice. In certain cases suspension may be necessary in order to ensure that the teacher does not stay at work or resume duties whilst there is a risk to pupils or students or to other members of the staff or if the teacher is unable to give efficient service.

## 13. Home visits

13.1. With the agreement of the individual, where employees are absent from work and are unable to attend a Formal Interview or Formal Review meeting, a home visit can be arranged.

13.2. Home visits should involve a minimum of two people, one of whom should be from HR. In addition the employee should be given the opportunity to have a friend/colleague or trade union representative present if they so wish.

## 14. Ill Health Retirement

The process to follow in the event of ill health retirement can be found at **Appendix 2**.

### 14.1. The policy of the School is:

- (a) To apply on a consistent basis the requirements of the Local Government Pension Scheme in relation to ill-health retirement issues.
- (b) To ensure that all possible alternatives to ill-health retirement are considered, where practicable.
- (c) To ensure that employees whose retirement on grounds of ill-health is a possibility, are fully consulted before any such employer decision is taken, and are made aware of the pension implications of this outcome.

### 14.2. The following stages will arise in such cases:

If the employee's absence from work becomes prolonged and there is no indication from medical opinions received of an early return to work, Occupational Health should be asked specifically by the employing Service whether the employee can be regarded as:

**“Permanently incapable of discharging efficiently the duties of the relevant local government employment because of ill-health or infirmity of mind or body”**

As a general rule, employees within the Teachers or Local Government Pension Scheme (LGPS) who have to cease work through ill health as set out above will qualify, subject to age and service requirements, for the payment of pension benefits.



## 14.3. Local Government Pension Scheme

14.3.1. Where Occupational Health reaches the conclusion and notifies the school concerned that the employee is deemed incapable of discharging their duties because of ill health, the employee will be referred to an independent medical practitioner in order to determine whether they are deemed medically incapable under Regulation 20 (5) of the Local Government Pension Scheme Regulations (LGPS). The practitioner will need to complete an "Independent Registered Medical Practitioner's Certificate" in order to confirm that the employee can / cannot be regarded as incapable within the LGPS criteria.

14.3.2. The independent medical practitioner will receive information from the Occupational Health unit about the employee, and in due course, advise the employing Service as to whether the criteria for ill-health retirement have been met and within which tier the employees ill health would fall; those being:

**Tier One:** If there is no reasonable prospect of the member of the LGPS obtaining any gainful employment before the age of 65.

**Tier Two:** If the member of the LGPS is likely to be able to obtain "gainful" employment before the age of 65, but cannot do so within a period of three years of the estimated date of leaving.

**Tier Three:** If the member of the LGPS is likely to obtain "gainful" employment within a period of three years of the estimated date of leaving.

In this instance, "gainful" is defined as "paid employment for not less than 30 hours per week for a period of not less than 12 months"

14.3.3. Whereby the practitioner confirms that the employee **does not** meet the criteria for ill health retirement as defined by the LGPS, yet Occupational Health has deemed the employee incapable of discharging their duties, then the Headteacher should contact their HR team for advice prior to arrangements for the employee to be dismissed on the grounds of capability.

## 14.4. Teachers' Pension Scheme

14.4.1. Under the Teachers' Pension Scheme, a teacher must be considered to be **permanently unfit to teach** in order to qualify for ill health retirement benefits. The decision is made by the Secretary of State on recommendation by DCSF Medical Advisers.

14.4.2. In order to be considered for ill health retirement benefits a teacher has to submit an application to Teachers' Pensions with supporting medical evidence, it is advised that this includes a statement by the employer's Occupational Health Adviser. In practice the majority of employees who find themselves in the position of making an application are doing so on the advice of their medical specialists and there is therefore a mutual acceptance of the need for them to leave their employment.

14.4.3. The Authority considers an application for ill health retirement benefits as notice of an employee's intent to retire on those grounds should the application be approved. On ill health retirement benefits being granted the employee is required to submit a letter of resignation taking effect from the earliest possible date, which can be the last day of that month.

14.4.4. There are two different levels of ill health benefits that can be awarded:



- a) Accrued benefits are awarded if the member is assessed as being permanently unable to teach but can do other work. A members service won't be enhanced
- b) Enhanced benefits are awarded if a member is assessed as being unable to undertake any gainful employment. This service will be enhanced.

The ill-health retirement forms can be downloaded from [www.teacherspensions.co.uk](http://www.teacherspensions.co.uk)

14.4.5. Under the Education (Health Standards) (England) (Regulations) 2003, teachers cannot be appointed to posts covered by those regulations while they remain in receipt of an ill health retirement pension which has become payable after 31 March 1997. A teacher awarded ill health retirement benefits will not be able to return to teaching in any capacity without firstly being declared medically fit and then suspending payment of their pension.

## 15. Disabilities

15.1. If an employee's absence is because of a disability or their illness leaves them with a mental or physical condition which falls within the definition of a disability, the school will consider reasonable adjustments to support employees and enable them to carry on working.

15.2. Further detailed information relating to disabled employees can be found at **Appendix 3**.

## 16. Appointment procedures and fitness for work - Arrangements during recruitment and selection

16.1. Headteachers are required to take action during the recruitment procedures to support the aims of this policy.

16.2. The Equality Act 2010 contains provisions which aim to stop disabled job applicants being screened out early in the recruitment process and prevents discrimination.

These provisions apply to any person recruiting people for work.

(a) It is unlawful for an employer to ask **any** job applicant about their health or disability unless and until the applicant has been offered a job.

(b) Questions about previous sickness absence are classed as questions that relate to health or disability and must not be asked.

16.3. There are certain specific situations in which health or disability questions are allowed to be asked during the early stages of the recruitment process.

(a) To establish whether the applicant can take part in an assessment to determine their suitability for the job.

(b) To determine whether any reasonable adjustments need to be made to enable a disabled person to participate in an assessment during the recruitment process.

(c) To find out whether a job applicant would be able to undertake a function that is intrinsic to the job.

(d) To monitor diversity among job applicants.

(e) To support "positive action" in employment for disabled people.

(f) If there is an occupational requirement for the person to be disabled.

16.4. Once the employer has decided that a job applicant meets the requirements for work the employer is allowed to make the offer conditional upon the successful applicant meeting the employer's health or other requirements.



However, an employer must avoid making final job award decisions that discriminate against disabled people – see “Avoiding direct discrimination” section below.

Medical fitness should also be checked in some cases when internal appointments or promotions are made when the requirements of the new job are significantly different to the employee’s existing role.

16.5.To ensure that sickness policies and procedures are made known to newly appointed employees as part of induction processes.

## **17. Annual Leave (only applies to staff who work 52.14 weeks per year)**

17.1. Employees are expected to utilise annual leave periodically throughout the year to maintain a healthy work life balance and to ensure they take adequate rest breaks.

17.2. Employees who are absent due to ill health continue to accrue statutory holiday entitlement whilst off work. Where sick pay entitlement has been exhausted, and in exceptional circumstances, employees may request to take accrued annual leave during periods of ill health.

17.3. Any statutory holiday entitlement that isn’t used because of illness may be carried over into the next leave year. However, employees are expected to make every reasonable attempt to take accrued leave periodically throughout the current leave year.

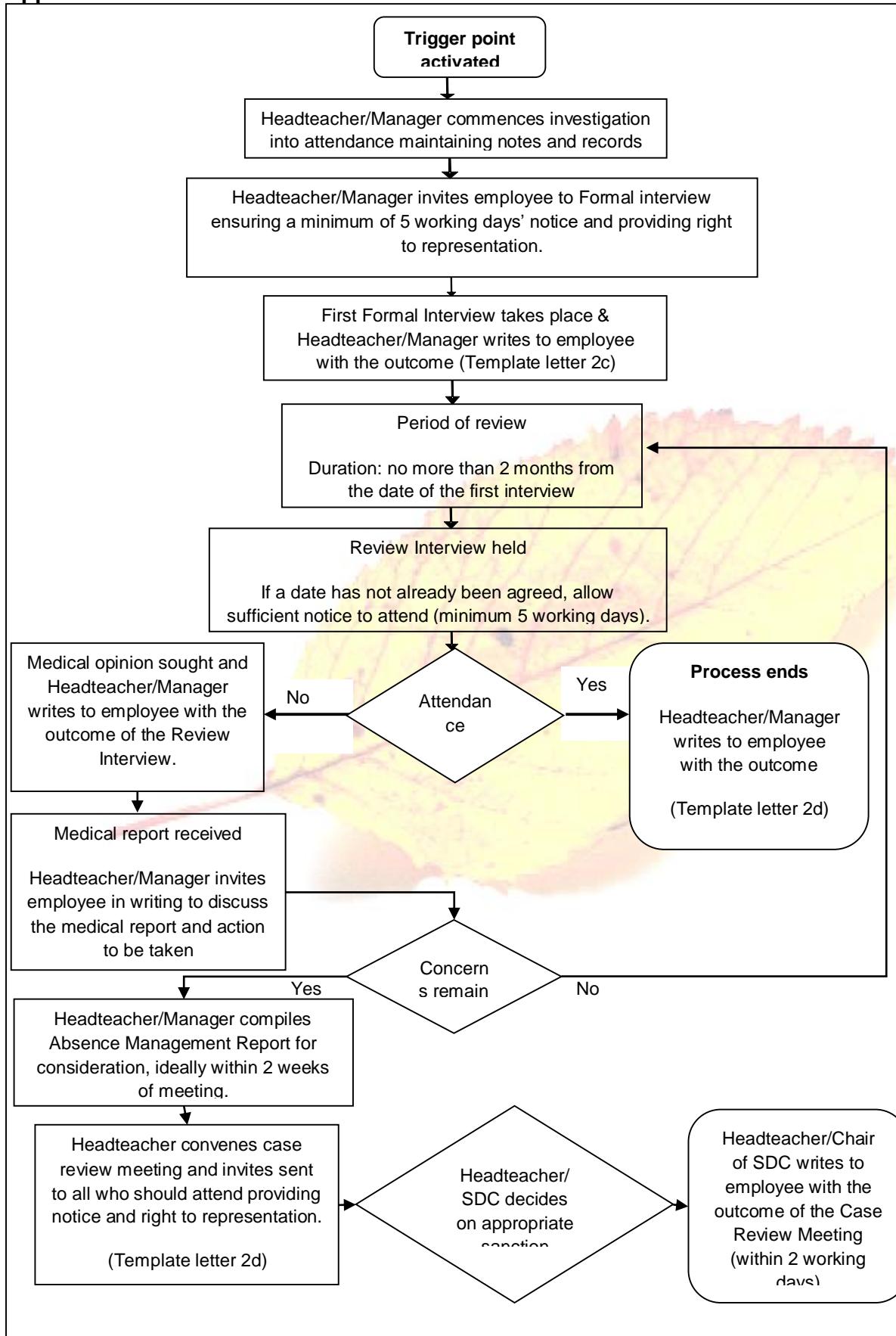
17.4. It may be agreed that employees returning from a period of long term absence may request annual leave during a phased return in order that full pay can be maintained during the phased return. Phased returns can be used for a variety of reasons when someone has been off sick and last for different lengths of time depending on the individual reasons for absence and balanced with the needs of the School.

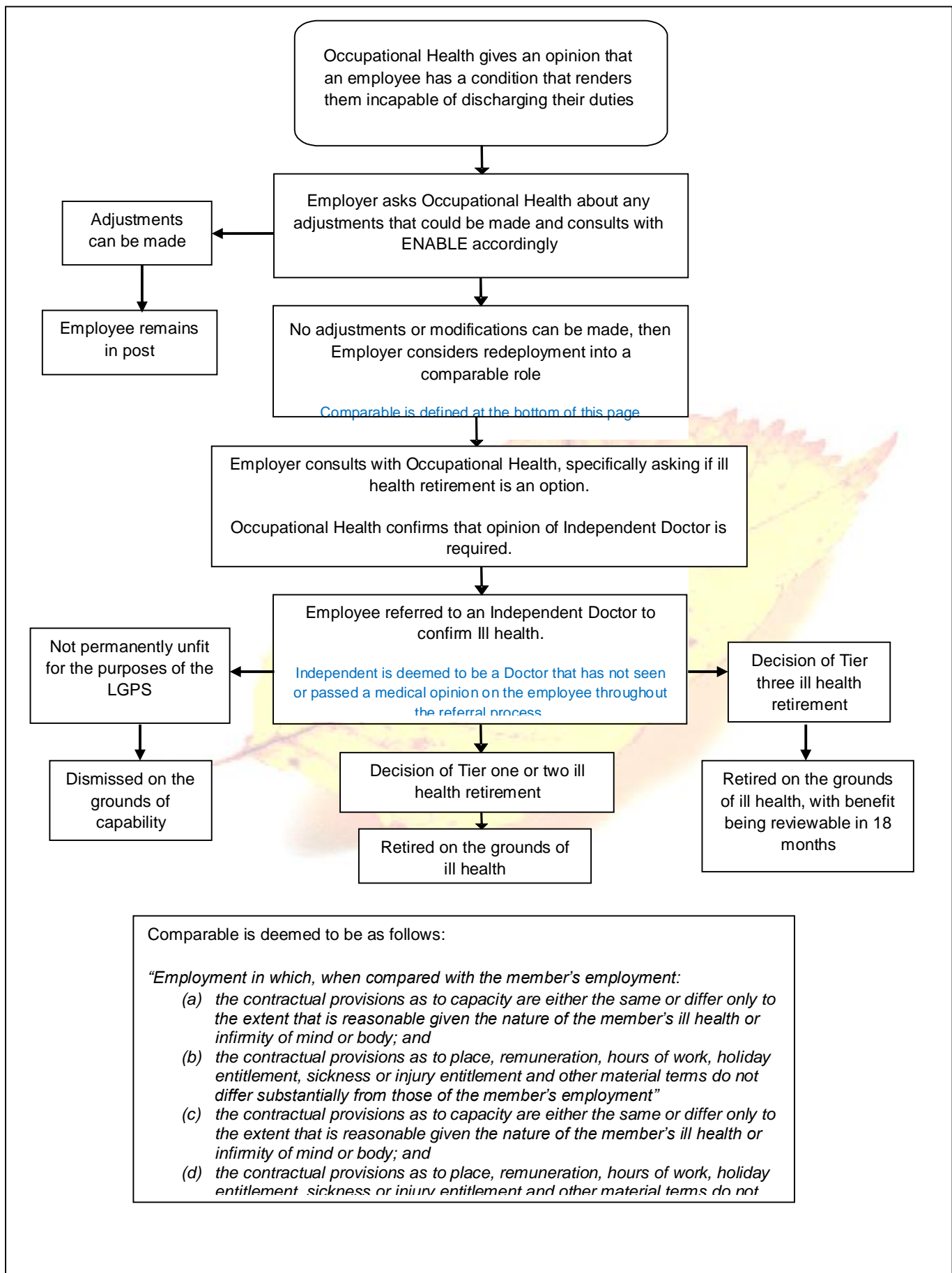
### **Footnote:**

The School reserves the right to periodically review the Managing Attendance Policy and make changes upon review.



## Appendix 1 - Formal Procedure Flow Chart







## Appendix 3 - Disabled Employees - The Equalities Act 2010

The Equalities Act defines disability:

***“If you have a physical or mental impairment that has a ‘substantial’ and ‘long-term’ negative effect on your ability to do normal daily activities.***

- The Equalities Act requires employers to treat disabled employees equally with all employees in relation to all aspects of employment.
- Disabled employees have the same entitlement to sick leave and sick pay as other employees.
- Subject to some exceptions, disabled employees should be treated equally with other employees in relation to managing sickness absence.

### **Sickness absence and disabled employees**

Many Headteachers/Managers are likely to have concerns about health issues relating to disabled people and, whether having a disability will affect an employee's attendance at work. In many instances such concerns are based on the misconception that disabled people have a health problem but in fact there is no reason why a disabled employee should need more time off due to sickness than other employees.

#### **We must be aware that:**

- A disability is a physical or mental impairment which affects a person's ability to carry out certain tasks and it does not necessarily have any effect on the disabled person's overall health.
- Some disabilities, however, are caused by impairments which are associated with health problems, and
- Some disabled people may be reluctant to take time off for sickness, even when it is really necessary. A disabled person who has had difficulty in finding a job may be anxious about taking sick leave and thereby fulfilling stereotypes about disabled people being ill.
- As a Headteacher/Manager you should therefore, discuss concerns about an employee's health at an early opportunity and apply a consistent and fair process.

### **Time off for medical appointments or treatment**

To fulfill duties under the Equalities Act it will generally be enough to ensure that disabled employees have the same entitlements for time off as other employees. There may, however, be some circumstances when it would be considered a reasonable adjustment to allow a disabled employee time off to receive treatment, and it may be reasonable to for an employee to receive this time off at full pay.

### **Disabled employees and persistent short term absences**

The same procedure should be used when handling issues relating to disabled employees as for other employees; however, you may decide that suitable adjustments are required, for example, accepting a slightly higher level of sickness absence if the disabled employee needs time off for treatment or hospital appointments relating to their impairment.

You may also decide to provide additional support and equipment or change some of the duties of the job, if practicable.

### **Can a disabled employee be dismissed for high levels of sickness absence or long term sickness?**



If a disabled employee reaches the point which would trigger procedures under long term sickness absence then the normal review should be undertaken to decide what action should be taken. This should include discussion with and obtaining a report from the Occupational Health Physician.

If a disabled employee can no longer do their current job, options to be considered are:

- Changing some of the duties of the job.
- Providing additional equipment or assistance.
- Redeployment to another job.
- Agreeing a temporary or permanent reduction in hours.
- Early retirement on health grounds.
- Dismissal on health grounds where the employee does not meet the criteria for ill health retirement.

### **Financial Assistance for employers of disabled employees**

The **Access to Work** program is a government funded scheme which provides financial assistance towards the extra costs of employing someone with a disability. It can apply to any job, full time or part time, permanent or temporary.

Examples of the type of support available include:

- Adaptations to a vehicle, or help towards taxi fares or other transport costs if someone cannot use public transport to get to work because of their disability.
- Equipment (or alterations to existing equipment) necessary because of an individual's disability.
- Alterations to premises or a working environment necessary because of a person's disability.

Applications for Access to Work must be made by the person with the disability on an application form. Forms are available from Access to Work, although it is the individual who completes the form, the Headteacher/Manager concerned should be involved in the process.

**It is important to note that Access to Work funding is not available retrospectively. It will not refund any payments that have already been made towards the cost of the reasonable adjustments**

**The key issues in respect of the Equalities Act are:**

- To ensure that disabled employees are not treated less favorably than other staff. This means it would not be permissible to dismiss a disabled person for absenteeism through illness if another employee would not be treated in the same way if they had the same amount of sickness.
- To make any reasonable adjustments which would enable an employee whose sickness is related to a disability to stay in employment.





## Appendix 4 - Return to work interview

- 1.1 All periods of sickness absence, of whatever length, must be acknowledged by the headteacher (or designated officer) on the employee's return to work and a "Return to Work Interview" must take place.
- 1.2 Wherever possible the employee must be seen personally. However, where this is not practicable because of the nature of their work, they can be spoken to by telephone. A note of the return to work discussion should be taken and placed on the employee's personal file.
- 1.3 The return to work interview is of particular importance where the absence is part of a pattern of short term absences giving rise to concern or for longer periods of absence.
- 1.4 The length and scope of a return to work meeting will be proportionate to the duration, frequency and nature of the employee's sickness absence. For example, if the individual was only absent for part of a day it may only last for a few minutes, however if the employee was returning from a lengthy period of absence it would necessarily be longer and more detailed in scope.
- 1.5 For all absences this process provides an opportunity:
  - (a) To remind employees that the school/Local Authority does care about sickness absence and to reassure them that their employer has a genuine interest in their health and wellbeing.
  - (b) To understand the reason for the absence, if possible, and any link which there may be between the employee's ill-health and work. This informal discussion is not about expecting an employee to disclose and discuss personal medical information if there is no reason to do so. The focus should be on the absence and employee's return to work, and should only include the reason for absence where this may be work-related or may have some impact on work performance either at the time or in future.
  - (c) To try to establish whether the absence is likely to re-occur.
  - (d) To try to establish whether the absence is likely to re-occur. To see if there are any domestic or work related issues contributing to the absence and to ascertain whether any employer action or support can be provided.
  - (e) To help the employee catch up with any work issues, particularly where the absence has been for a long period.
  - (f) Where the employee is returning after a long absence, to discuss aspects of their rehabilitation, although in all such cases prior contact must have been made to help with the employee's return to work.
  - (g) For employees with disabilities (as defined under the Disability Discrimination Act (DDA)) to explore any reasonable adjustments to working arrangements which may be helpful.



## Appendix 5 – Procedure for Staff Dismissal Committee

### **Governors' Staff Dismissal Committee/Staff Dismissal Appeals Committee (This procedure applies to meetings of either committee)**

1. The Chair will introduce those present, confirm the purpose of the meeting and process to be followed and confirm that either side may request an adjournment at any stage of the proceedings.
2. The headteacher will be invited to present the case. Witnesses can be called if deemed necessary.
3. The employee, or his/her representative, may ask questions of the headteacher and any witnesses (if called).
4. The headteacher may re-examine any witnesses (where called).
5. The employee, or his/her representative, will be invited to present the case and will have the same opportunity to call witnesses if appropriate.
6. The headteacher may ask questions of the employee, any witnesses called by the employee and, where the employee's representative gives evidence, of the representative.
7. The employee or his/her representative may re-examine any witnesses (where called).
8. Members of the Committee may ask questions of the parties (or witnesses) at any stage but will seek to confine questioning until after questioning of any witnesses is completed and prior to re-examination of the parties.
9. The headteacher will be invited to sum up the case.
10. The employee or his/her representative will be invited to sum up the case.
11. At the conclusion of the hearing the parties and any other persons present with the exception of the Director of Children Services, or representative, shall withdraw whilst the Committee deliberates. The decision will be notified in accordance with section 10 of the Disciplinary Procedure.

#### **Notes:**

- Arrangements will be made for a record of the meeting to be taken. This record will not be a verbatim report but should aim to accurately reflect the content of the meeting and will be provided for both parties' information.
- Although the procedure allows for witnesses to be called, it is unlikely that witnesses will be required or be appropriate in most cases of persistent short- term or long term sick absence.
- The Chair of the Committee may during the process above recall witnesses or call for further evidence on specific points but if it becomes necessary to act in this way following conclusion of the hearing (i.e. at 11. above) then both parties must be recalled.
- Either party may present documentary evidence, copies of which shall be served upon the other party at least five working days in advance of the hearing date.