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| Wiltshire Council HR Policies And Procedures |
| Absence Management Policy and Procedure |

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1. Introduction

- 1.1 This policy and procedure covers the management of health and sickness issues for all Wiltshire Council employees. Specifically this covers the responsibilities of the Wiltshire Council, managers and staff in promoting good health and in managing sickness and sickness absence both where there is an underlying health cause and where there is no underlying health cause.
- 1.2. This Policy and Procedure is to be used in conjunction with other Council Policies and Procedures, including the Disciplinary Procedure and Capability Procedure if there are issues which overlap these policies.
- 1.3 This Policy and Procedure supersedes all previous policies, procedures and Codes of Practice in relation to managing sickness absence.

2. Policy Statement

- 2.1 Wiltshire Council recognises its responsibilities in promoting the good health of its staff and that doing so is likely to lead to a workforce who will be more productive and who are better able to lead full and satisfying working lives. The Council is committed to promoting healthy living for all staff and providing facilities to encourage this.

Examples of this include:

- Providing a professional, confidential Occupational Health Service;
 - The promotion of cycling and walking to work;
 - Discounted gym membership;
 - Providing smoking cessation support;
 - Risk assessment if known health risks;
 - Promotion of good management / working practices;
 - Working environment and equipment designed to protect health; and
 - Healthy eating options
- 2.2 The Council recognises that there will always be a certain level of sickness absence. However high levels of sickness and absence have a detrimental effect on the level and quality of service provision, place an additional burden on colleagues at work and often result in increased costs through the use of agency staff and overtime. Wiltshire Council recognises its responsibilities in monitoring and managing the sickness and sickness absence of its staff in a fair, consistent and supportive manner. In the same way Wiltshire Council recognises that staff have a responsibility to assist in this process by following the procedures within this Policy and Procedure at all times.
 - 2.3 Wiltshire Council recognises the importance of managing sickness in a supportive way and using all possible opportunities to retain staff going through underlying health problems so that staff with key skills and knowledge are retained and not lost to the service.
 - 2.4 Wiltshire Council is committed to ensuring that this policy and its application reflect the Council's Equal Opportunities Policy. This means treating people fairly regardless of their colour, race, ethnic or national origin, language, religion or belief, gender or gender reassignment, marital status, sexuality, disability, age, or any illness or infection. In particular, the Council recognises its responsibility to meet all its legal obligations for managing staff with underlying health issues in line with the Disability Discrimination Act (1995).

- 2.5 The Council is committed to evaluating the effectiveness of this policy by recording, monitoring and communicating sickness absence levels, with the aim of working towards a reduction in absence levels.
- 2.6 This policy applies to the handling of sickness and absence during both paid and unpaid sickness/absence. Entitlement to occupational sick pay is determined by the conditions of employment under which the member of staff is employed.
- 2.7 All information in relation to staff sickness will be held in accordance with the Data Protection Act, 1998.

3. Scope

This policy applies to all Wiltshire Council employees.

4. Procedure

4.1 Promoting good health, managing health and safety and risk

- 4.1.1 All managers have a responsibility to promote good health for their staff and to identify and remove significant risks to staff from their work and their working environment.
- 4.1.2 All staff have a responsibility to follow all the guidance given to them and not to place themselves or others at risk as a result of their actions.
- 4.1.3 All managers and staff must follow the Health, Safety and Welfare Policy, procedures and advice of the Council. It is the responsibility of all staff to report any risk or potential risk to their manager and / or via the incident reporting system.

4.2 Recording sickness and absence

Accurate records are not only mandatory for statutory sick pay but are essential for monitoring sickness/absence. Employees are required to report sickness at each stage of the absence management process. For more information, please refer to the Sickness Reporting Procedure at 4.3 below.

4.3. Sickness reporting procedure

- 4.3.1 Each department will determine the time on the first day of sickness by which notification of sickness is required for each of the shifts that staff work. Managers have a responsibility to communicate this information and to ensure that all their staff know and understand these rules. The employee's manager will log the first day of absence onto the SAP system. The absence will remain an 'open ended' absence until the employee returns.
- 4.3.2 It is a condition of employment that all staff, who are unable to attend work because of illness, should notify their manager or team leader within the agreed time for their particular service area by telephone (unless there is a substantial and acceptable reason preventing notification). Contact with their manager should then be at regular subsequent intervals after that. Staff must notify their manager of the nature of their sickness and of the likely duration of their sickness.
- 4.3.3 If the period of absence is of 7 calendar days or less, the manager will complete a self-certificate form and return to work interview with the employee and enter the date of return on SAP. All staff are required to submit medical certificates signed by a

registered medical practitioner and with a reason for absence from the 8th calendar day of sickness absence onwards. These certificates must be signed by the employee and medical practitioner at the time of the sickness and include the date when seen by the GP, as well as the period of time the employee needs to refrain from work. All certificates will be treated as confidential.

- 4.3.4 Employees and their managers are required to keep in regular contact throughout the period of absence. This is so that the employee can report progress and confirm when they will be returning from a period of sickness absence in advance of the expected return date. Managers will need to maintain a reasonable level of contact with the employee during absence to discuss return to work arrangements and to talk through any occupational health recommendations.
- 4.3.5 Staff should also be aware that they must be available and contactable during their normal contractual hours. This is in order that they can attend appointments with Occupational Health, receive follow up telephone calls from Occupational Health or to discuss arrangements relating to a return to work. It is usual for a manager to maintain a reasonable level of contact with their member of staff during sickness absence.

4.4 Unauthorised absence and failure to follow sickness reporting procedures

- 4.4.1 Unauthorised absence is when an employee is absent from work for no apparent reason and fails to explain this absence and the reason for it within a reasonable period of time, i.e. on the first day of absence. It includes situations where staff are absent from the normal workplace during working hours without the prior permission of their manager.
- 4.4.2 Failure to supply either a self certificate and/or a medical certificate covering the entire period of absence or complying with the reporting procedures may lead to the withholding of pay. The Council will not accept backdated certificates from GPs unless there are substantial and acceptable reasons why certificates could not have been obtained at the time of sickness.
- 4.4.3 Failure to notify the relevant manager of any period of absence will be regarded as potential misconduct and the manager will decide whether to suspend pay immediately. The matter will be investigated in line with the Disciplinary Procedure.
- 4.4.4 Failure to comply with sickness reporting procedures will be viewed as unauthorised absence and therefore treated as misconduct. All such matters will be investigated in line with the Disciplinary Procedure.
- 4.4.5 Managers have a responsibility to investigate self certified absence where they doubt the reason for the absence. Human Resources can provide advice and support about how to manage this situation.

4.5 Sustaining injury / ill health through work activities

Employees have a responsibility to report all accidents or incidents at work and any work-related ill health. Decisions about entitlement to sick pay will be determined by the conditions of employment under which the member of staff is employed.

4.6 Sickness absence and holiday entitlement

During periods of long term sickness absence employees will be entitled to continue to accrue the statutory level of holiday entitlement.

In the event that an employee has a pre booked holiday / or wishes to take annual leave during a period of sickness absence they must inform their Line Manager of this intention so that sick pay may be suspended for the period of annual leave and to enable this time to be accredited as 'annual leave'. On the employee's return from 'annual leave' sick pay will commence again. It is the Line Manager's responsibility to inform Shared Services of any pay adjustment.

If an employee has accrued statutory holiday entitlement and has been unable to use 'annual leave' during their sickness absence they will be permitted to carry the leave over to the next year. They will need to discuss with their line manager the timeframe when this leave can be taken so that unreasonable levels of leave entitlement do not build up.

*NB: This clause may be subject to review due to conflicting employment legislation that has been published.

4.7 Return to work interview

After each and every episode of sickness absence it is mandatory for the manager to arrange and carry out a "return to work" interview with the employee as early as possible on the day they return. The aim is to be supportive and helpful, and show that sickness absence is taken seriously. The meeting should cover the following points:

- A welcome back and check on how they are feeling/coping
- Confirm the reason for the sickness absence (*if the employee is prepared to disclose this to the manager*) and discuss the steps taken by the employee to recover
- If there is an underlying absence pattern, a sensitive discussion about what might be causing this.
- To bring them up to date on what has happened while they have been away

In discussing issues with the employee the manager should always be prepared to listen and take remedial action if poor working practices or environments are believed to be contributing to sickness absence. Managers should also keep in mind that medical information is a personal matter and staff may not wish to discuss it in detail.

Guidance for Managers on Return to Work Interviews is available in the Employee Handbook.

4.8 Monitoring sickness and sickness absence

- 4.8.1 Managers have a responsibility to consider all the possible factors which may influence the level of sickness absence and, acting on advice and support from HR and Occupational Health, take forward actions to improve sickness absence rates.
- 4.8.2 Managers have a responsibility to monitor the sickness absence level of their staff both on an individual and group basis. As part of this, they should review the sickness absence records of their staff on a regular basis and identify where there appear to be patterns of sickness absence that are higher than average rates (determined by local and national indicators) and other non-attendance.
- 4.8.3 Where managers have initial concerns about the health or sickness absence of their staff they should discuss these sensitively and compassionately with the employee

on an individual and confidential basis. These discussions may include whether help or advice from Occupational Health would be beneficial.

4.9 Key 'trigger points' for management action

4.9.1 In addition to carrying out Return to Work Interviews, the Council has agreed the following 'Trigger Points' which, when reached by an employee, require managers to take an appropriate management response:

- 4* episodes of absence over a 6-month period; or,
- Absences of 10 or more working days off work over a rolling 12-month period.

**All absence, including hours will be included in this calculation.*

4.9.2 Each time an employee reaches a 'trigger point' Managers should discuss the case and agree the management response with an HR Advisor to maintain consistency. In some cases a short discussion with the employee to explore the reasons for their absence may be sufficient, or a referral to Occupational Health might be appropriate. In other cases, the manager may inform the employee that they will monitor their absence over a specified period and, if the pattern continues, they will seek further advice from Occupational Health and Human Resources.

The following circumstances require the manager to make an automatic referral to Occupational Health:

- 28 days continuous absence (includes weekends), with no immediate or known prospects of return to work; or
- Where a serious and potentially long-term illness or injury is reported (e.g. back injury, clinical depression, stress etc.); or
- Where it has been reported that the absence is due to identifiable work-related issues.

4.10 Identifying absence that causes concern

4.10.1 Patterns of poor attendance vary and managers should always discuss absence with staff on their return after any period of non attendance. Where managers identify a clear pattern of sickness absence or where there is cause for concern they should refer the member of staff, via Human Resources, to Occupational Health for advice. The advice requested should include whether there is an underlying health cause and prospects for improvement.

4.11 The role of Occupational Health

4.11.1 The role of the Occupational Health Service is to provide a professional assessment of the physical and psychological health of employees in order to enable managers to make decisions about operational service delivery and the ability of any employee to undertake the tasks required of the job. It is the manager's role to consider the advice from Occupational Health and to decide on and implement the appropriate actions, with advice from HR. The Occupational Health Service will not disclose any medical information without the express permission of the member of staff concerned. However all employee's do have an obligation to disclose to their manager or any other relevant parties, any medical information that may pose a potential health and safety risk to themselves or others, e.g. if they have been issued with medication that restricts their capacity to carry out their normal working activities.

- 4.11.2 In situations where there are concerns with attendance and / or performance that may have a health cause the manager will refer the employee to the Occupational Health Service via Human Resources. This referral must be discussed with the employee beforehand to ensure that s/he is aware of it and understands the reasons for it. The manager should complete the appropriate referral form and send this to Human Resources.
- 4.11.3 The Occupational Health service will advise the manager on whether there is an underlying health problem(s) which relates to the sickness absence for which the employee was referred. They will advise the manager on fitness to return to work or whether they will be able to maintain a level of attendance in line with the published corporate standard or the likely timescale for these to be achieved. If appropriate they will also advise on any restrictions on the employee and suggest any reasonable adjustments or modifications (in line with the Disability Discrimination Act 1995), either temporary or permanent, that would enable the employee to return to work and sustain an acceptable level of attendance.
- 4.11.4 It is not the role of Occupational Health to agree and implement a resolution to the non-attendance whether health-related or not. The Occupational Health Service simply provides a professional medical opinion. It is the responsibility of managers (with advice and support from HR) to ensure that the appropriate steps are taken in the light of the Occupational Health advice and in consultation with the employee and their representative.
- 4.11.5 Managers have a responsibility to retain information supplied by Occupational Health in accordance with the data protection act.
- 4.11.6 An unreasonable refusal by the employee to co-operate with the referral process will result in the manager making decisions based on the facts available at the time.

4.12 Meeting to confirm referral to Occupational Health

The manager will meet with the member of staff, on a one-to-one basis to explain their referral to Occupational Health. They also need to make the employee aware that following the receipt of Occupational Health advice they will take into account all the information they have and consider setting up a Formal Sickness Advisory Meeting with the member of staff at which a member of HR may also be present and at which they can be represented by an accredited trade union representative or fellow employee. This meeting is intended as part of a supportive approach to health and sickness.

4.13. Managing different types of sickness absence:

This part of the procedure distinguishes between two different types of sickness absence:

4.13.1 Sickness absence with an underlying health cause [Follow steps at Part A]

This is defined as a period or pattern of sickness for which Occupational Health advise that there is a common underlying health cause. This type of sickness absence will normally present itself as long term sickness – a long period or periods of sickness absence normally with a high number of days of absence but over few episodes – although it can in some cases present in a different pattern (e.g. - lots of short periods of sickness absence). Examples of causes would be significant medical conditions such as clinical depression, back conditions or injuries, multiple sclerosis, breaks or fractures to bones etc. etc.

4.13.2 Sickness absence without an underlying health cause [Follow steps at Part B]

This is defined as a periods or pattern of sickness for which Occupational Health advise that there is no common underlying health cause. This will normally present itself as short-term sickness - lots of short periods of sickness absence.

5. PART A

Procedure for managing sickness absence with an underlying health cause

A1 General principles

- A1.1 A flowchart is attached at Appendix A (to be finalised), which summarises the general process for managing sickness absence with and without an underlying health cause.
- A1.2 As stated in the policy statement this procedure is to be used for all staff with sickness absence related to an underlying health cause which may meet the requirements of the Disability Discrimination Act (DDA) (1995). If the DDA could apply the Council will have a duty of care to make reasonable adjustments. In these circumstances, in addition to the steps outlined below the Manager should refer to Appendix C (to be finalised), where a number of processes are detailed that should be followed to support the management of cases where the DDA could apply.
- A1.3 Whilst this section sets down a general procedure for managing underlying sickness, it should be emphasised however, that each case should be judged on its particular circumstances, especially if there are health problems of a serious or terminal nature. For example it may be appropriate to agree with the employee to move straight into an application for ill health retirement if they meet the necessary qualifying criteria or, alternatively, to consider another post within the employee's capabilities.

A2 Formal sickness advisory meeting

- A2.1 On receipt of advice from Occupational Health that the absence has an underlying health cause the manager should arrange a Formal Sickness Advisory Meeting with the member of staff. The manager should be advised by HR prior to this meeting and the employee has the right to be represented by an accredited trade union, or a friend who is an employee of the Council.
- A2.2 The purpose of the meeting is to discuss Occupational Health advice and from this, the prospects and timescale for employee's return to work. This will include, if appropriate, the consideration of which of the options below are most appropriate for the employee in the light of the Occupational Health advice.

Normally these options would be considered in the order that they are listed below:

- a) return to existing post,
- b) return to existing post with reasonable adjustments or modifications,
- c) redeployment,
- d) application for ill-health retirement and
- e) dismissal on health grounds.

Should the employee's job be at risk at any time, this will be communicated to them.

- A2.3 Given the time that it may take for a clear diagnosis of the employee's condition, or for a review of the effectiveness of treatment, it is likely that a number of formal Sickness Advisory Meetings will need to occur before final advice is given by Occupational Health and before a final set of actions in line with the options below can be implemented. Whilst the employer will take all reasonable steps to assist employees to return to work, it is not possible to wait indefinitely for an employee's condition to improve. These meetings should therefore set a date for return, subject

to an employee's fitness to do so. Whilst each case will be judged on its particular circumstances, managers should endeavour to ensure that appropriate action in line with the options below is actioned as soon as possible.

A3. Options in underlying health cause sickness cases

In line with above, the following options should be considered where appropriate, led by Occupational Health advice and the employee's manager. A reasonable timescale should be set to explore the appropriate alternatives and sufficient time should be given for the employee to consider the options. The employee should be informed in writing of the actions to be pursued and the timescale over which they would be considered.

- a) **Return to existing post** – this may be with a graduated return to work – see below. In these circumstances, a manager may consider setting a monitoring period, and can have a formal meeting with the employee and their representative to consider this.
- b) **Return to existing post with reasonable adjustments or modifications** – all possible reasonable adjustments or modifications will be considered which would enable the employee to be fit to return. As part of the consideration of these, further advice may additionally be sought where appropriate from the Disability Advisor based at the Job Centre Plus or through specialist organisations like the RNIB or the Shaw Trust. This additional advice may be referred from Occupational Health or approached directly by the manager. Adjustments may include contractual changes to hours or duties of the role on a permanent basis. The Manager will need to assess whether these changes can reasonably be accommodated without having a detrimental effect on the service. Modifications may include the use of particular equipment or improving access or facilities. In these situations managers will need to take advice from HR on what modifications/ adjustments would be reasonable in a given situation. As above, in these circumstances, a manager can set a monitoring period, and arrange a formal meeting with the employee and their representative to consider this.
- c) **Redeployment** – If it is not possible for the employee to return to their post under options a. and b. above then the manager should consider redeploying them into another post where it is mutually agreed. In this situation the Occupational Health Service should give advice on what tasks the employee is capable of undertaking and on which posts the employee would be fit to be re-deployed into. The Manager would then set up a period (up to 12 weeks) during which re-deployment would be sought for the employee. During the re-deployment period the employee would have priority status and be considered before other applicants for a post (other than other candidates with priority status for either health or redundancy reasons).
- d) **Application for Ill-health Retirement** - Where it has not been possible for an employee to return under options a. to c. above and where the employee belongs to the Local Government Pension Scheme (LGPS) and has the required length of membership to the pension scheme then consideration should be given to an application for ill-health retirement. The Local Government Pension Scheme (Administration) Regulations 2007 introduced a new three tier provision for ill health, and applications will need to meet specific criteria at one of the levels. For further information regarding ill

health, employees and Managers should seek advice from the Pensions Service.

- e) **Voluntary Early Retirement and other retirement options** - If the application for ill-health retirement does not meet the requirements of any of the three tiers then the employee can consider options of voluntary early retirement or other retirement options as an alternative to dismissal.

A4 Termination of contract in underlying health cause cases

Only where the appropriate options listed above have been examined and found not to be possible including where an application for ill-health retirement is not applicable, will a manager consider terminating an employee's employment on the grounds of capability due to ill-health. In these circumstances an employee will be required to attend a formal attendance hearing. The employee will be given ten working days' written notice of the meeting, advised of the right to be accompanied by a workplace colleague or trade union representative, confirmation of the nature of the concerns and possible outcome, and provided with all relevant documentation that will be discussed at the hearing. The meeting will be chaired by a Service Director and an HR Adviser will attend to support and advise the manager. Having considered the situation the Service Director may decide there is not alternative but to terminate the employee's contract on the basis of medical incapacity.

A letter confirming this decision must be sent to the employee within five working days of the meeting. The letter will set out the employee's entitlement to notice pay and details of the right of appeal against dismissal.

It is possible for an employee to be dismissed (on the grounds of medical incapacity) prior to the exhaustion of any contractual sick pay entitlement.

A5 Graduated return to work

(The arrangements detailed below in respect of phased return to work arrangements are only applicable automatically to non teaching staff. Additionally these new phased return arrangements could generate an increased financial cost to the authority and therefore will be monitored closely, and reviewed in consultation with the Trade Unions if necessary).

Where an employee is returning to work under options a, b or c above, the Occupational Health Service may advise that they should return on a graduated return to work, where their hours are increased week by week until they reach the level of their usual contractual hours. In these situations where Occupational Health advise a graduated return to work the arrangements will be discussed with the Manager and Human Resources before being confirmed to the employee.

The phased return to work arrangements can be agreed to be in place for anytime between 2 – 6 weeks. It would be unusual for a phased return programme to exceed 6 weeks.

During formal 'phased return to work' arrangements (up to 6 weeks) the employee will suffer no financial detriment by returning to work on this basis, providing that they adhere to the agreed arrangements and remain at work for the duration of the programme. When an employee returns to work on a phased basis they will be paid their usual contractual salary and the pay will be accredited as 'phased return pay' for the hours that they are not in work.

If the employee has pre booked annual leave during a phased return programme, the

phased return arrangement will stop and annual leave will be taken.

If sickness absence occurs during a phased return programme sick pay entitlements will be triggered and the phased return arrangement will end.

In exceptional circumstances, where a phased return of more than 6 weeks is agreed, for the additional weeks (i.e. above 6) the level of payment that the employee receives will be adjusted depending on the number of hours that they work during those weeks and the sickness entitlement that they had reached prior to returning to work. For example, a full time employee in receipt of half sick pay prior to returning to work, on week 7 of a phased return in working 17 hours for that week would receive pay for 18.5 hours (equivalent to the half sick pay that they would have received if off sick). If however that same employee was in receipt of no sick pay prior to returning to work and worked 17 hours they would only be paid for 17 hours. (Please note that pay adjustments, including any deductions may need to be made in the next available pay period).

In the event of an unsuccessful phased return, or the necessity of a second phased return arrangement in a rolling 12 month period it will be up to the employee's manager in discussion with HR and Occupational Health to consider how any further phased return to work programmes are supported in terms of paid / unpaid time. In using their discretion they will take into account the following factors:

- an employee's service and previous attendance record
- the length, success / failure of a previous phased return programme during the last 12 months
- the level of occupational sick pay that they are receiving
- the particular circumstances and nature of the case
- whether longer term adjustments are required rather than a further phased return

If a manager agrees to pay an employee for their contractual salary for the duration of a second phased return, the pay will be accredited as 'phased return to work pay' for the hours that they are not in work during this agreed period.

6. PART B

Procedure for managing sickness absence without an underlying health cause

B1 General principles

A flowchart is attached at Appendix B (to be developed), which summarises the process for managing sickness absence with and without an underlying health cause.

B2 1st Formal sickness advisory meeting

- B2.1 After the meeting in 4.11 above, and on receipt of advice from Occupational Health that the absence/employee has no underlying health cause/condition the manager should arrange a formal sickness advisory meeting with the member of staff. At this meeting the manager would be supported by an HR Advisor and the employee has the right to be represented by an accredited trade union or a fellow employee. The purpose of the meeting is to inform the employee of the results of the Occupational Health assessment and to discuss how the employee can achieve an acceptable level of attendance.

- B2.2 This meeting needs to be handled sensitively. There may be non-health related reasons, which are causing the absence which the employee has not yet felt able to discuss. The employee must be encouraged to feel able to discuss confidentially the reasons, which may be causing their poor attendance record. Examples of non-health related issues that may cause poor attendance can include harassment, bullying, domestic abuse, stress and social, child-care and relationship problems. The manager needs to be constructive in looking at ways in which they can assist the employee to deal with their issues and may need to refer the employee to other policies and procedures if these are appropriate.
- B2.3 During the meeting a review period for improvement will be agreed; normally 3 months, but with an ability to meet earlier. During this period the employee will be required to achieve an acceptable level of attendance. The manager should advise the employee on the consequences of failing to make this improvement. The details discussed and agreed in the formal advisory meeting will be confirmed in writing and copies given to the employee's representative where they have been represented.

B3 2nd Formal sickness advisory meeting (end of the 3 month review period)

- B3.1 A second formal advisory meeting should be set up for the end of the review period. At this meeting the manager should be supported by an HR Advisor and the employee has the right to be represented by an accredited trade union or a work colleague. The content of the meeting will depend on whether the employee has achieved the expected minimum level of attendance during the review period.
- B3.2 **If the employee has made the required improvement during the review period -** The manager should congratulate the employee on their improvement and discuss the importance of sustaining this standard. S/he will confirm that the formal process will now be suspended, providing there is no repetition of poor attendance at work without an underlying medical reason within the next 12 months.
- B3.3 **If the employee has failed to make the required improvement -** The manager, advised by Human Resources, has the ability to review the case in light of the information that has been provided by the employee during the 2nd formal sickness advisory meeting. If attendance has not been satisfactory and the agreed target of attendance has not been achieved the manager can either:
- Extend the review period for 1 month
 - Adjourn the meeting pending further investigation (e.g. last report from Occupational Health / establishing of facts or evidence.
 - Advise that a formal hearing will be set up
- B3.4 **If the employee has made the required improvement during the review period but has subsequently had a repetition of sickness absence without an underlying health cause in the next 12 months**
If this applies a formal advisory meeting, following further Occupational Health advice if that is appropriate will be set up to consider the following:
- Whether a 3 month review should be put into place
 - Whether a formal hearing should be arranged

B4 FORMAL HEARING

- B5.1 If the employee has failed to achieve the required level of attendance at the end of the 2nd formal sickness advisory meeting and the manager has decided that there will not be any further period of review a formal hearing will be set up. The employee will be informed in writing of the hearing and the reasons of why it has been arranged. The formal hearing will consider the matter of attendance and will be heard by a

Service Manager who has not been previously involved with the case. The outcome of the formal hearing may result in any of the sanctions of the disciplinary policy which includes dismissal.

The employee will be able to be represented at this meeting by an accredited trade union representative or a friend who is an employee of the Council. The manager who has managed the employee through the process should also attend this meeting supported by an HR Advisor.

- B5.2 During the hearing the Head of Service / Senior Manager authorised to consider action that includes dismissal, will carefully consider how the employee's poor attendance has been managed and question the employee on their continued poor attendance. S/he will be supported with procedural advice and guidance provided by a HR Advisor not involved in the case management.
 - B5.3 If the Service Manager concludes that the employee and the process have been managed fairly, that the required level of attendance is fair and achievable and that the employee has been given all reasonable opportunity to improve to an acceptable standard but failed to do so, s/he will be able to consider action including the ability to terminate the employee's employment with the appropriate notice on the grounds of capability for failure to meet an acceptable level of attendance.
 - B5.4 If the Service Manager concludes that sufficient reasonable opportunity has not been given to the employee, s/he can agree one further and final review period during which the employee will be required to achieve the required minimum acceptable level of attendance.
 - B5.5 The main details discussed during the meeting and its outcome (including dismissal) will be confirmed in writing to the employee and their representative.
 - B5.6 An employee reserves the right of appeal against any decision that is made concerning their employment and the process of submitting an appeal is outlined below.
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7. Appeals

- 7.1 If following the taking of any form of disciplinary / capability action an employee wishes to exercise his right of appeal he/she must do so by lodging a notice of the grounds of appeal in writing with their Service Manager and copied to the HR Advisor who has been involved with the case within ten working days of being notified of the action.

The written notice of appeal must make clear whether the employee is appealing against the finding of misconduct / capability and/or the form of action decided upon.

- 7.2 All appeals will be heard by an Appeals Panel within 25 days of the receipt of the appeal being received.

The employee and his/her representative will be given notice in writing at least five working days in advance of the time and place of the hearing.

Any extension on the time frames must be agreed in advance by both parties.

- 7.3 The Appeals Panel consists of a nominated representative who has not had prior involvement with the case and who will be of a more senior position to the officer who

had originally heard the case, advised by a representative from Human Resources. At the appeal hearing both parties (i.e. the individual who is appealing against the action taken against them and the officer who is presenting the management's case) have the opportunity to state their case and to ask questions of each other. The employee may be accompanied to the appeal hearing by a work colleague, or a union representative. Once they have heard the case the panel may make the following range of decisions.

The nominated representative hearing an appeal against the action taken / decision to dismiss the employee may allow the appeal, or dismiss the appeal.

The Appeals Panel has power in the case of an appeal against action that includes dismissal to:

- dismiss the appeal; or
- to allow the appeal; or
- to allow the appeal and substitute a different warning (greater or lesser); or
- to dismiss the employee.

There is no further right of internal appeal against the decision of the Appeals Panel.

8. Representation

As confirmed throughout the Procedure, employees may be represented at formal hearings and appeals by a trade union representative or a friend who is an employee of the Council.

9. Interpretation, variation and termination

- 9.1 Any questions as to the interpretation of this policy shall be referred to Human Resources.
- 9.2 Management and unions will jointly review the collective performance and effectiveness of the policy and procedure at appropriate intervals. There shall be no variation to this policy except by agreement through the Joint Consultative Committee.

