



# Attendance Management Policy Staff

ADOPTED FROM BRADFORD METROPOLITAIN COUNCIL MODEL POLICY VERSION  
NO. 6 FEBRUARY 2016

Agreed by Governors on; 21/03/2016

Signed by Chair of Governors: Sally Birkbeck

*Sally Birkbeck*

Statutory policy NO

Frequency of review period; 3 Years

Document History

| Date     | Description             |
|----------|-------------------------|
| 04/11/13 | Agreed by Governors     |
| 21/03/16 | Agreed by Governors     |
| 01/03/19 | Review due by Governors |
|          |                         |
|          |                         |
|          |                         |
|          |                         |

## Contents

|   | Page      |
|---|-----------|
| <b>Attendance Management Policy Statement</b>           | <b>3</b>  |
| The Principles of this Managing Staff Attendance Policy | 3         |
| The School's Responsibilities                           | 3         |
| Employee Responsibilities                               | 3         |
| <b>Attendance Management procedure</b>                  | <b>4</b>  |
| Reporting Sickness Absence                              | 4         |
| Sick Pay  | 4         |
| Statutory Sick Pay (SSP)                                | 5         |
| Surgery Not for Medical Reasons                         | 5         |
| Returning to Work                                       | 5         |
| Employee Health and Well Being Unit                     | 6         |
| Fit for Work  | 7         |
| Return to Work Interview                                | 7         |
| Right to be Accompanied                                 | 8         |
| <b>Short Term Absence Management</b>                    | <b>8</b>  |
| How attendance will be reviewed                         | 8         |
| Procedure   | 9         |
| Stage 1 Absence Hearing                                 | 9         |
| Stage 2 Absence Hearing                                 | 10        |
| Stage 3 Absence Hearing                                 | 11        |
| Warnings  | 12        |
| Appeals   | 12        |
| Managing Headteacher Absence                            | 13        |
| <b>Long Term Absence Management</b>                     | <b>13</b> |
| Alternative Venues                                      | 13        |
| Medical Suspension                                      | 14        |
| When Medical capability is being considered             | 14        |
| Pre-Medical Capability Meeting                          | 14        |
| Medical Capability Hearing                              | 14        |
| Appeals   | 15        |
| Conflicting medical advice                              | 16        |
| Redeployment  | 16        |
| Ill health retirement                                   | 16        |
| Accrual of annual leave during sick leave               | 17        |

***Please Note: There are a number of supporting documents available on the PACT HR website which will help you administer this process.***

# **1. Attendance Management Policy Statement**

## **The Principles of this Policy**

As a responsible employer Delius Special School is committed to maintaining the health, safety and welfare of our staff, providing a positive and healthy working environment and recognising the value of their work/life balance. Regular attendance at work is part of every employee's contract of employment and it is the expectation of the management of the school that all our staff will maintain good attendance. However, it is recognised that, occasionally, employees will have genuine health reasons that result in them being absent from work. On those occasions the school will offer support to the employee during their absence with the aim of facilitating their return to work at the earliest opportunity.

The overall aim of the Attendance Management policy is to minimise staff absence in the school and to advise employees on how they may be supported when they are unable to attend work due to ill health and the possible implications of poor attendance. This policy also provides a fair and consistent framework for managing staff attendance and includes information for employees that details their responsibilities in relation to attendance at work.

Under the Equality Act (2010), management will make all reasonable efforts to allow employees with a recognised disability, or who become disabled, to continue their employment with the school

The school has no right, in law, to be made aware of either the reason for an employee's absence nor the content of any medical report from either the GP or the EH&WU without the express consent of the employee.

## **The School's Responsibilities**

- To ensure employees are aware of the attendance management procedures including the conditions of the sick pay scheme.
- To keep records of all sickness absence, including reasons.
- To maintain reasonable contact with employees, including meeting with them, during their absence and on their return to work, regardless of the duration of the period of absence.
- To regularly monitor and review sickness absence across the school.
- To determine the appropriate course of action with an employee when their sickness absence level has reached an unacceptable level.

## **Employee Responsibilities**

- To attend work when fit to do so.
- To comply with the school's procedure for notifying sickness absence.
- To maintain reasonable contact with the school and to attend meetings when required during any periods of absence.

- To make arrangements for another person, e.g. trade union representative or family member, to maintain contact on their behalf if they are not well enough to do so themselves.
- To attend any appointments with the Employee Health and Wellbeing Unit (EH&WU) should they be asked to do so.

## **2. Attendance Management Procedure**

### **Reporting sickness absence**

A clear reporting process is key to helping the school make the necessary arrangements to cover staff sickness absence. This could be short-term supply cover or longer term arrangements if an employee is absent for a longer period.

The management of the school has a reporting procedure which must be followed by all staff in the event that they are absent due to sickness. Failure to follow this procedure may result in sick pay being withheld and/or the absence being treated as unauthorised in accordance with the school's disciplinary procedure.

- On the first day of sickness absence the employee must telephone The School Office on 01274 666472 by no later than 08:00am and leave a message on the school answer phone then as soon as reasonably practicable telephone after 08:00am and speak to a member of the Business Support Team.
- If the sickness absence occurs during the school holidays and there are no staff in school, the employee should contact PACT HR directly on 01274 436644. PACT HR will record details of the absence on behalf of the school.
- The employee must notify the member of the Business Support Team/PACT HR of the reason for their absence and give a reasonable estimate of how long they may be absent.
- The employee has a duty to maintain contact with the school/PACT HR for the duration of their absence. If the absence persists for longer than 7 consecutive days, the employee must submit a doctor's fit note to the school.

### **Sick Pay**

The entitlement to sick pay is based on an employee's length of service. For teachers this is aggregated service as a teacher within any Local Education Authority and may also include service with Academies or other educational establishments. For all other staff it is continuous service with any public authority to which the Redundancy Payments Modification Order 1999 applies. Full details of sick pay entitlements may be found in Teachers' Local Conditions of Service (White Book) and the Officers' Terms and Conditions of Service (Blue Book).

If school management is concerned that the reason(s) given for an employee's absence/s may not be genuine, then action under the school's disciplinary procedure may be commenced as this would be considered a conduct issue.

The school may withhold basic pay where the employee fails to follow the schools sickness absence reporting procedures.

Where an employee who sustains an injury outside of work is off sick as a result of this and makes a claim against a third party for loss of earnings they must inform their employer. This is so that the school/council can recuperate the sick pay as otherwise potentially the employee is receiving payment for loss of earnings twice.

Staff who are absent from work due to sickness should not participate in any other form of work (paid or unpaid) during their normal working hours without the prior written authorisation of the school, and on medical advice. Failure to notify the school may result in sick pay being withheld. It is the responsibility of the employee to notify the school if they are undertaking therapeutic work whilst off sick. The member of staff should consult with Employee Health and Wellbeing as to the advisability of working whilst sick. However, it is possible for a member of staff to have two (or more) jobs (with differing working hours) and be unable to attend one due to illness but able to continue to work in another.

The employee must do all that is reasonably possible to recover from their illness/absence. Sick pay may also be withheld if it is deemed that the employee is acting in a way that could delay their recovery and return to work.

Periods of sickness absence which are fewer than 8 weeks apart are called linked absences. This is because they are linked as one period of incapacity for work (PIW) for payment of Statutory Sick Pay (SSP) purposes. This means that, if an employee is sick for a second time during an eight-week period, and the total absence is 4 days or more, SSP should be paid from the first day of the second absence. Odd days of sickness do not form a PIW and cannot link.

### **Statutory Sick Pay (SSP)**

In order to qualify for SSP an employee must:

- Be sick for at least 4 or more consecutive days(including weekends and bank holidays) as SSP is not payable for the first 3 days of any period of absence (unless it is a linked absence); and
- Earn an average of not less than the current lower earnings limit for National Insurance Contributions (NIC).

SSP is paid to the employee by the school for up to a maximum of 28 weeks.

### **Surgery Not for Medical Reasons**

If a member of staff elects to have surgery that is not medically necessary, time off may be paid or unpaid at the discretion of the governing body. However, as

there is no automatic entitlement to time off, either paid or unpaid for an employee to undergo surgery not for medical reasons the management of the school may choose not to grant time off.

Any time off that may be granted, whether paid or unpaid, will be subject to the needs of the school at the time. An employee is only entitled to statutory sick pay (SSP) if they are unfit for work.

### **Returning to Work**

An employee who has been given a “fit to work” note from their GP and/or a ‘Return to Work Plan’ from the Fit to Work Service (*please see Page 7 of this document for more information about the Fit to Work Service*) no longer needs a ‘signing off’ note.

A fit note from the GP should state the period (or dates) that the employee will be unfit and whether they will need to assess the employee again. If the GP has not advised that they need to see the employee again, then the employee should return to work on expiry of the fit note. However there may be occasions where school management may ask the employee to get further advice from their GP regarding returning to work or make a referral to EH&WU for advice.

If the fit note/return to work plan advises - *‘may be fit for work taking account of the following advice’*.

This might mean considering a number of options including:

- A phased return to work (which could be reduced hours or duties or a combination of both).
- Flexible working.
- Amended duties or workplace adaptations.

It is important that a meeting takes place prior to the employee’s return to work to discuss any adjustments suggested by their GP, the Fit for Work Service or EH&WU. Employees should inform the school of the date they intend to return to work as soon as they are able to do so.

If a member of staff becomes fit to return to work during a school holiday and there is no-one in school to advise, they should contact the PACT HR helpdesk on 01274 436644, or their payroll provider.

If school has doubts on the authenticity of a fit note or suspects the member of staff has changed any of the information contained within it this may be deemed as fraud and may result [in disciplinary](#) action being taken.

### **Employee Health and Wellbeing Unit (EH&WU)**

The school may refer the employee to the Employee Health and Wellbeing Unit who can advise on matters such as:

- When the employee may be fit to return to their role.
- The employee's ability to carry out their role.
- Whether the employee would be considered disabled under the Equality Act (2010) and whether any adjustments or modifications should be considered that may assist the employee in carrying out their role, for example a higher trigger point or target.
- If the employee is (or will soon be) unable to carry out their role, whether they may be able to carry out alternative duties either within the school, and if any adjustments or modifications should be considered to assist the employee in carrying out alternative duties.

The school has a duty of care to its employees to consider all appropriate support options including reasonable adjustments or phased returns to work.

It is recommended by the EH&WU that for employees experiencing stress, anxiety or depression or a neck, shoulder or back condition, an immediate referral is made and a stress risk assessment is undertaken.

***NB:*** *Where employees fall under the Equality Act 2010, employers have a duty to make reasonable adjustments where appropriate. Time off to attend medical appointments could be considered a reasonable adjustment. What is reasonable for the employer to do will depend on the circumstances of the particular case and the needs of the school. Advice should be sought from the school's HR Advisor.*

### **Fit for Work Service**

GP's may also consider referring employees to the government's Fit for Work Service should the employee's absence be expected to extend beyond 4 weeks in duration and where there is a good chance of them returning to work within 3 months.

The Government's Fit for Work scheme, is a free service which provides an occupational health assessment as well as general health and work advice to employees, employers and GPs to help individuals stay in or return to work.

The Government's Fit for Work scheme, will provide a new fit note based on the telephone assessment and a Return to Work Plan to help support the employee back to work. The Return to Work Plan will be shared with their GP and employer, subject to the employee's consent. A Return to Work Plan can be used in place of a fit note.

In assisting the employee with their Return to Work Plan the Fit for Work Service may contact school; should this be the case please contact your HR Advisor for further guidance.

This scheme does not replace the Council's Employee Health and Wellbeing provision.

## Medical Suspension

There are a number of circumstances where it may be necessary to suspend an employee on medical grounds. If a situation arises where this is being considered, advice should be sought from the school's HR Advisor immediately.

Reasons for a decision to medically suspend may include protection of the person's own health and wellbeing, as well as the health and welfare of other staff and pupils who may be put at risk by the medical condition of an employee. EH&WU may recommend medical suspension to management, via the school's HR Advisor. Medical suspension is on full pay and the school must give consideration to the appropriate next steps to be taken once medical suspension is actioned. The next steps will be informed by the medical evidence available and the suspension should be reviewed on a regular basis.

## Return to Work Interview

Following a period of 1 day's sickness absence or more a return to work interview should take place with the employee.

Ideally this should be done on the employee's first day back at work or no later than 3 days after their return to work. The meeting will be held by a member of the Senior Leadership Team or the Office Manager.

The purpose of the interview is:

- to welcome the employee back to work, advise them of any events or changes that have taken place during their absence and to ensure that they are completely fit for work or whether they need extra support for a period of time and whether a referral to EH&WU is necessary;
- to make employees aware if they are near to, or have exceeded the trigger points (outlined in section 3 below) or, if their absence is generally a cause for concern and the possible implications of this. The discussion that takes place will depend on their absence history. A record of the interview must be made and this should be signed by the manager and employee with a copy given to the member of staff and one placed on their personnel file; and
- if appropriate, set the employee a period of informal monitoring which may include targets.
- if appropriate, to advise the employee of the next stage in the process, for example a stage 1 Absence hearing.

A template return to work interview record form can be found on the PACT HR Website.

***NB:*** *It is recognised that on occasion HR support may be required at a return to work interview. In this instance, the employee should be given appropriate notice and will have the right to be accompanied by a trade union representative or a work colleague.*

## **Right to be accompanied**

An employee has the right to be accompanied at each absence hearing by a trade union representative or a work colleague only.

The companion should be allowed to address the meeting to put and sum up the member of staff's case, talk things through at the meeting and confer with the member of staff.

The companion does not, however, have the right to answer questions on the member of staff's behalf, address the meeting if the member of staff does not wish it or prevent the school from explaining the management case.

It is the responsibility of the member of staff concerned to arrange their own accompaniment, provide them with copies of any paperwork and inform the relevant person conducting the meeting who this will be.

## **3. Short Term Absence Management**

The trigger points in the policy should not be used as an automatic mechanism for taking action, any further action will depend on the actual reasons for the absence/s. All individual circumstances should be carefully considered in order to treat all employees fairly and consistently.

### **How Attendance will be reviewed**

To manage attendance effectively, sickness absence should be regularly and consistently reviewed. There are pre-determined trigger points which will identify when an employee's absence has reached a point where it may be a cause for concern. These are:

- 3 or more occurrences of sickness absence in any 6 month period
- 7 or more days sickness absence in any 12 month period
- 4 weeks continuous sickness absence.
- If a particular pattern of absences seems to be developing e.g. every Monday, before school closures etc.

**NB:** *for part time staff this should be pro rata*

### **Procedure**

This procedure is for managing persistent, short-term, sickness absence.

### **Stage 1 Absence Hearing**

If an employee's sickness absence levels have not improved, despite being discussed in their Return to Work Meetings, and the employee has reached the trigger points (see above), the Headteacher may invite the employee to a Stage 1 Absence Hearing

The Headteacher will set a date for the hearing, advising the employee of the date, time and venue and their right to representation. The employee must receive a minimum of 5 working days' notice in writing of the hearing including any evidence to be discussed (including any medical evidence) and advise the employee that it is their responsibility to seek the support of their representative (either Trade Union or work colleague). The school where possible, will liaise with trade union representatives, in order to try and find a mutually convenient date and time for the hearing, within the necessary timescales.

The employee may request an adjournment of up to 5 working days if their representative is not able to attend on that particular date. However, it is important to note that only one such adjournment may be accommodated. Alternatively the re-arranged hearing may go ahead whether or not the member of staff or their representative is in attendance. The employee will be notified of any decisions made in relation to the management of their absence.

The Headteacher should ensure that the information they have about the employee's sickness absence is reliable and that any support that has been provided to the employee via the return to work meetings and any referral to EH&WU has been documented. Any medical evidence or other relevant information that the employee wishes the Headteacher to consider should be submitted prior to the hearing.

- More time may be allowed for both parties if further information needs to be collected.
- In the Stage 1 Absence Hearing the Headteacher must:-
- Explain the concern about the level of absence and why it is of concern to the school.
- Explore the reasons for absence and whether there are factors inside or outside of work that may be causing the absence.
- Listen to the member of staff and respond appropriately.
- Consider whether to refer the case to the EH&WU, if this has not already been done.
- Advise that sustained improvement in attendance is expected and set an appropriate monitoring period together with targets for improvement.
- Identify any support required to assist the employee in addressing their level of absence.

#### **Potential Outcomes:**

- No further action is required at this stage.
- Set/extend a period of informal monitoring.
- Give the employee a Stage 1 warning, to remain on file for 6 months, set a monitoring period and explain that continued failure to improve attendance to the required level may result in moving to the next stage in the procedure.
- Record the details of the hearing and send a letter to the employee confirming the discussion and outcome.

## **Stage 2 Absence Hearing**

If no improvement has been made by the end of the monitoring period set previously or the targets set have been exceeded, the Headteacher will invite the employee to attend a Stage 2 Absence Hearing.

The Headteacher will set a date for the hearing, advising the employee of the date, time and venue and their right to representation. The employee must receive a minimum of 5 working days' notice in writing of the hearing including any evidence to be discussed and advise the employee that it is their responsibility to seek the support of their representative (either Trade Union or work colleague).

The employee may request an adjournment of up to 5 working days if their representative is not able to attend on that particular date. However, it is important to note that only one such adjournment may be accommodated. Alternatively the re-arranged hearing may go ahead whether or not the member of staff or their representative is in attendance. The employee will be notified of any decisions made in relation to the management of their absence.

The Headteacher should ensure that the information they have about the employee's sickness absence is reliable and that any support that has been provided to the employee via the return to work meetings and any referral to EH&WU has been documented. Any medical evidence or other relevant information that the employee wishes the Headteacher to consider should be submitted prior to the hearing.

More time may be allowed for both parties if further information needs to be collected.

In the Stage 2 Absence Hearing the Headteacher must:-

- Explain their concern about the continued level of absence and why it is of concern.
- Explore the reasons for absence and whether there are factors inside or outside of work that may be causing the absence.
- Listen to the employee's case and respond appropriately.
- Consider whether to refer/ re-refer the case to the EH&WU, if this has not already been done.
- Advise that sustained improvement in attendance is expected and set an appropriate monitoring period and targets for improvement.
- Identify any support required to assist the employee in addressing their level of absence.

### **Potential Outcomes:**

- No further action is required at this stage.
- An extension of monitoring and support within Stage 1 of the formal process.

- Give the employee a Stage 2 warning, to remain on file for 9 months, set a monitoring period and explain that continued failure to improve attendance to the required level will lead to a Stage 3 Absence Hearing which could result in dismissal.
- Record the details of the hearing and send a letter to the employee confirming the discussion and outcome.

If there has been no improvement by the end of the set monitoring period or the targets set have been exceeded at any point during the set monitoring period, the Headteacher must arrange a Stage 3 Absence Hearing which could result in the member of staff being dismissed. This Hearing will be heard by the Governors of the School.

### **Stage 3 Absence Hearing**

The employee must receive at least 10 working days' notice in writing of:

- the reason for the hearing and the date, time and venue;
- the stage reached in the procedure and who will be attending, including witnesses to be called;
- any evidence to be relied on by school management, as part of the hearing, including any medical evidence
- the right to be accompanied by a trade union/professional association representative or work colleague not involved in the case. (No other individual may accompany the employee.);
- the requirement for confidentiality and details of the possible outcomes of the hearing;
- the requirement for the employee to provide, at least 3 working days before the hearing, all documents that he/she intends to present at the hearing. The documents must be supplied to the clerk to governors.

The employee may request an adjournment of up to 5 working days if their representative is not able to attend on that particular date. However, it is important to note that only one such adjournment may be accommodated. Alternatively the re-arranged hearing may go ahead whether or not the member of staff or their representative is in attendance. The employee will be notified of any decisions made in relation to the management of their absence.

The Stage 3 Absence Hearing will be conducted by a Committee of the school's Governing Body.

The purpose of the Stage 3 Absence Hearing is to consider whether the employee is capable of continuing employment with the school taking into account their health and level of attendance and the impact this has had on their ability to perform their role effectively. Account will also be taken in relation to the school's ability to sustain the employee's level of attendance.

## Potential Outcomes:

- If the case for dismissal is not established, a formal warning appropriate to the circumstances of the case may be issued.
- If the Governors decide that the employee's attendance is not acceptable and is unlikely to improve, the employee may be dismissed with notice on the grounds of failure to sustain the required levels of attendance.

If the Governors decide to dismiss the employee on the above grounds, the employee will be informed of that decision, in writing, by the Chair of the panel and will be advised of their right of appeal.

**NB:** *In a Community or Voluntary Controlled school (whose staff are employed by Bradford Council), the employee will also receive a letter from the Director of Children's Services who will confirm dismissal from the Local Authority.*

*In a Voluntary Aided, Trust or Foundation school or in an Academy (whose staff are employed by the Governing Body), the letter to the employee from the Chair of the Committee formally confirms dismissal.*

## Warnings

A Stage 1 Warning will stay on the employee's record for 6 months.

A Stage 2 Warning will stay on the employee's record for 9 months.

If the employee fails to meet set targets in the specified review period, this may result in them moving to the next stage in the procedure before the previous warning period expires.

**NB:** *It should also be noted that, where there is a history of formal absence warnings that result in a successful monitoring period which is then immediately followed by further absences, the school may not re-commence the informal attendance monitoring process but move instead to the next stage in the formal procedure.*

*In extenuating circumstances it may be deemed necessary to commence the absence management process at a later stage. This may be where the level of absence continues to be a serious concern, has a serious impact on the school and is unsustainable.*

## Appeals

Employees have a right of appeal and any appeal arising as a result of a warning or dismissal must be made in writing to the Clerk of Governors within 10 working days of receiving notice from the Headteacher or Chair of the Committee of the outcome of the hearing.

If the employee submits an appeal, he/she will be invited to an Appeal Hearing where their case will be heard by a further Committee of the Governing Body.

School should consider at this stage whether it is necessary to re-refer the Employee to EH&WU. The outcome of the Appeal Hearing will be confirmed in writing to the employee. There is no further level of appeal.

The employee may request an adjournment of up to 5 working days if their representative is not able to attend on that particular date. However, it is important to note that only one such adjournment may be accommodated. Alternatively the re-arranged hearing may go ahead whether or not the member of staff or their representative is in attendance. The employee will be notified of any decisions made in relation to the management of their absence.

***NB:*** *It should also be noted that, if the member of staff fails to offer an alternative date for a hearing within the required timeframes, then a date will be set by school management (either the Headteacher or Chair of the panel). This is the case for hearings of any nature, whether Headteacher or Governors. Unnecessary delays to any hearing are not acceptable and not in the interest of either the school or the member of staff.*

### **Managing Headteacher Sickness Absence**

In the case of Headteacher sickness absence, The Absence Management Procedure will be managed by the Chair of Governors. The Chair of Governors is advised to contact their HR Advisor in these circumstances.

All Sickness Absence Hearings relating to Headteacher sickness absence will be conducted by the relevant Committee of the school's Governing Body.

## **4. Long Term Sickness Absence Management**

Where an employee is absent from work for 4 weeks or more they will fall within the scope of the long term sickness absence management procedure.

It is recommended by the EH&WU that for employees experiencing stress, anxiety or depression or a complaint such as a neck/shoulder/back condition, an immediate referral is made and a stress risk assessment is undertaken.

The school will maintain regular and supportive contact with the employee, which may include regular review meetings to discuss their continuing absence, a timeframe for their return to work and any reasonable adjustments that the school may be able to consider to assist them in a speedy return to work.

### **Alternative Venues**

In some circumstances it may be appropriate for management to arrange a venue other than the school for meetings.

## **When Medical Capability is being considered**

If, following advice from EH&WU, it appears that the employee is probably not going to be able to return to their role within a reasonable period of time the employee may be asked to attend a Medical Capability Hearing.

### **Pre-Medical Capability Meeting**

Prior to a Medical Capability Hearing a preliminary meeting should take place in order to discuss the following:

- The history of the employee's absence.
- Any reasonable adjustments that have been made or considered.
- If and when the employee may be able to return to work or start providing regular and efficient service.
- Any redeployment options that have been considered within the school.
- The up to date medical advice.

The employee has the right to be accompanied at the pre-medical capability meeting by a trade union representative or work colleague. It is important to note that this is a formal meeting to advise the employee that the situation has become serious and that consideration is being given to the viability of their ongoing employment with the school.

If, following this meeting, school management remain of the opinion that the employee is not able to return to work within a reasonable period of time and that their absence cannot be sustained or that they will not be able to fulfil the requirements of their contract of employment, the employee should be asked to attend a Medical Capability Hearing.

### **Medical Capability Hearing**

The Medical Capability Hearing will be conducted by a Committee of the school's Governing Body. The purpose of the Hearing is to consider the viability of the employee's continuing employment with the school. The employee must receive 10 working days' notice in writing of the hearing including any evidence to be discussed, including any medical evidence to be relied on by school management..

The committee will consider dismissal on the grounds of medical capability where:

- EH&WU have stated that the employee is permanently unfit to work, or
- EH&WU are unable to provide evidence of when the employee will be able to return to work, or
- EH&WU cannot confirm that the employee is likely to be able to provide a reliable and efficient service.

In the event that an employee has failed to either attend appointments with EH&WU or give permission to release medical reports to the school, meaning that there is no medical evidence to consider, the Committee will consider their decision based on the information presented at the Hearing.

The employee has the usual right to be accompanied or represented at the Medical Capability Hearing. Any documents/information that the employee wishes the Committee to consider should be submitted at least 3 working days prior to the Hearing to the Clerk to Governors of the school.

The employee may request an adjournment of up to 5 working days if their representative is not able to attend on that particular date. However, it is important to note that only one such adjournment may be accommodated. Alternatively the re-arranged hearing may go ahead whether or not the member of staff or their representative is in attendance. The employee will be notified of any decisions made in relation to the management of their absence.

Where an employee fails to confirm their attendance at the Medical Capability Hearing, the Committee may decide that the hearing can go ahead in their absence.

If the Committee decides to terminate the employee's employment on the grounds of Medical Capability, the employee will be informed, in writing, of the decision to dismiss them and their right of appeal and will be paid the appropriate amount of notice.

## **Appeals**

Any appeal arising as a result of a Medical Capability Dismissal must be made in writing to the Clerk of Governors within 10 working days of receiving a letter from the Chair of the panel of the outcome of the hearing.

If the employee submits an appeal, he/she will be invited to an Appeal Hearing where their case will be heard by a different Governing Body panel. Both the employee and the school may provide additional medical information for consideration at the Appeal Hearing.

The employee may request an adjournment of up to 5 working days if their representative is not able to attend on that particular date. However, it is important to note that only one such adjournment may be accommodated. Alternatively the re-arranged hearing may go ahead whether or not the member of staff or their representative is in attendance. The employee will be notified of any decisions made in relation to the management of their absence.

The outcome of the Appeal Hearing will be confirmed in writing to the employee. There is no further level of appeal.

## **Conflicting Medical Advice**

Where there is conflicting medical advice, the matter will be submitted to an independent medical referee that has been agreed by both parties.

## **Redeployment**

There may be some instances where an employee is fit to return to work but not necessarily to the role they were originally employed to undertake. Redeployment to a different role can then be considered. Headteachers are advised to look at any existing and possible future vacancies in the school in the first instance and discuss these with the employee in terms of their eligibility (including consideration of reasonable adjustments and training, as appropriate).

Following a dismissal on grounds of medical capability wider redeployment within the Council may be a possibility. If this is the case, a meeting between a representative from the Council's Corporate HR Department and the member of staff will be arranged. This meeting will be to consider alternative roles within the Council (including consideration of reasonable adjustments, as appropriate). At this meeting the employee will have the usual right to be accompanied by a trade union representative or work colleague. The member of staff will be placed on the redeployment register and access to the Councils redeployment vacancies will be granted for the duration of the employees notice period.

## **III-Health Retirement**

The EH&WU may advise that an employee who is contributing to the West Yorkshire Pension Fund (WYPF) or Teachers' Pensions (TP), could be considered for III-Health Retirement.

If an employee seeks advice with regard to ill-health retirement he or she should be referred to EH&WU. The school should seek support with this process from your HR Advisor.

### Support Staff

If appropriate, the EH&WU Advisor will advise the school that they will support III-Health Retirement and will complete the relevant medical documentation. This will be sent to the WYPF alongside other relevant documents. In order to terminate the individual's employment the school will need to hold a Governors hearing to dismiss the employee on the grounds of medical capability.

### Teachers

If appropriate, the EH&WU Adviser will advise the school that they will support III-Health Retirement but the process is significantly different to that of support staff. EH&WU can only recommend III-Health Retirement, the final decision is made by Teachers Pensions (TP). Under these circumstances the employee will be required to apply for ill-health benefits, completing an application form and a medical evidence form. A teacher may be granted ill-health retirement by TP either where they have resigned on grounds of ill health or been dismissed on grounds of medical capability. However there is no guarantee of being granted III-Health Retirement as the decision is made by TP.

## **Accrual of Annual Leave during Sick Leave**

Employees have the right to accrue annual leave during sickness and to take this upon their return or carry it forward into the next leave year. The time an employee takes leave will be agreed by management in line with the needs of the school. All full time employees are entitled to 28 days (5.6 weeks) of statutory annual leave under the Working Time Regulations 1998. However, in schools, this entitlement to statutory annual leave can be offset by any periods of school closure, whether they occur before or after any period of sickness. Where there is insufficient school closure time to allow the statutory annual leave to be taken, employers should allow the member of staff to carry forward the leave, to be taken in future school closure periods.

When a member of school staff commences sick leave, the amount of 'leave' they have taken in the current leave year will be established by the number of school closure days that have already occurred during the leave year. If this exceeds the entitlement to the statutory annual leave (28 days for a full time employee) there will be no further entitlement to leave. For more information advice will be sought from our HR Advisor.

## **Copyright**

City of Bradford Metropolitan District Council, City Hall, Bradford, West Yorkshire, BD1 1HY.

© City of Bradford Metropolitan District Council, 2014

All rights reserved. No part of this document can be reproduced in any material form (including photocopying or storing it in any medium by electronic means and whether or not transiently or incidentally to some other use of this document) without the written permission of the copyright owner except in accordance with the provisions of the Copyright, Design and Patents Act 1988. Applications for the copyright owner's written permission to reproduce any part of this document should be addressed to the HR-Pact Team, part of the City of Bradford Metropolitan District Council.

**Warning: The doing of an unauthorised act in relation to a copyright work may result in both a civil claim for damages and criminal prosecution.**