



MANAGING SICKNESS
ABSENCE PROCEDURE



INVESTORS IN PEOPLE



MANAGING SICKNESS ABSENCE

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OVERALL CONTEXT

This policy and procedure provides managers with a structured framework that will enable them to properly manage the difficult and sensitive area of employee sickness absence.

Why Manage Attendance?

A proactive approach to managing sickness has successfully reduced sickness levels in a range of organisations.

High levels of sickness absence are costly and disruptive. They often mean:

- Poor quality public services
- Higher levels of stress, low morale and extra work for colleagues
- Lost production, missed work targets and delays
- Lower productivity, higher costs and disruption to flow of work
- Extra wage/salary costs to cover sickness absence
- A loss of competitive edge over other service providers
- Failure to meet Best Value Indicator
- Poor reputation for the Council

Sickness Absence – A Best Value Performance Indicator

Through its corporate strategy the Council has shown its commitment to provide a best value public service to the community. Sickness absence management is a Best Value Performance indicator. The Council recognises that sickness absence can only be effectively managed if employees are treated fairly and consistently.

Legal Context

The framework for managing sickness absence takes into consideration the provisions of the Employment Rights Act 1996, The Employment Relations Act 1999 the Employment Act 2002, the Disability Discrimination Act the Race Relations (Amendment Act) 2000 and the ACAS Code of Practice on Disciplinary and Grievance Procedures.

Considering Any Adverse Impact

The Council wishes to ensure that its policies and procedures do not impact unfairly on employees with reference to race, sex, religion or belief, sexual orientation or disability. Managers are therefore required to ensure that their application of this policy does not have this adverse impact, for example in the unbalanced use of formal processes on particular groups of employees compared to the informal process.

Scope

This procedure does not deal with lack of capability due to poor work performance, which is covered by a separate policy and procedure.

EMPLOYEES COVERED BY THIS PROCEDURE

This policy and procedure applies to all employees covered by the NJC conditions of service for Local Government Services or the NJC conditions of service for Chief Officers in Local Authorities with the following exceptions: -

New employees during their probationary service where separate monitoring processes apply

Temporary employees with less than six months' continuous employment with the Council

School based staff under LMS and teachers employed in units other than in schools who are subject to a separate procedure

PROCEDURE

1.0 MANAGING SHORT TERM SICKNESS

1.1 There are three formal stages to the procedure and a right of appeal for the employee against dismissal.

2.0 Pre Stage 1 Assessment Process

2.1 If the employee's sickness absence reaches the trigger level for action (see attached HR Management Guidance), the manager will undertake a pre stage 1 assessment process to consider whether the employee's overall pattern and level of sickness absence, together with the reasons for sickness absence, warrant the case going forward to the First Formal Stage 1 meeting.

3.0 First Formal Stage

3.1 If having undertaken the pre stage 1 assessment process the manager is still concerned about the sickness absence the employee will be called to attend a Formal Stage 1 meeting so that the manager can:

- Investigate further the reasons for the sickness
 - Bring management concerns to the attention of the employee
 - Discuss the effect of the sickness on the department's work
 - Discuss with the employee a strategy for reducing the sickness to an acceptable level.
 - Consider the employee's explanation
 - Decide whether to set targets and a review period
 - Explain the Council's policies on sickness absence, including the management focus on whether the employee can give regular and efficient service
 - If not already done, tell the employee that the next stage would be to refer the employee to the Occupational Health Service for assessment

3.2 The employee is entitled to:

- Reasonable notice (normally 10 working days if practicable) in writing of:
 - The date, time and place of the meeting
 - The name of the manager conducting the meeting (normally the employee's manager)
 - The purpose of the meeting
 - The issues to be discussed
 - Rights to representation
 - The opportunity to be represented by another Brent Council worker, an official employed by a trade union or a certified trade union official (but not a paid legal representative). A certified trade union official is one whom the trade union has reasonably certified in writing as having experience of, or having received training in, acting as a worker's companion at disciplinary or grievance hearings.

- Postponement of the meeting to another reasonable time within 5 working days after the original date - **only if their representative will not be available at the time proposed**
- Give their explanation for the level of sickness absence and generally have the opportunity to put their side of the matter
- A letter normally within 5 working days confirming the issues considered the decisions and action plans made to reduce sickness. Where a target has been set the letter should tell the employee that the consequence of failure to meet the target, or of a continuation of sickness absence following the end of the review period at a level defined by the manager as unacceptable is that the employee will move to Stage 2 of the procedure.
- The right to medical confidentiality
- Access to any records or notes of matters discussed

4.0 **STAGE 2**

- 4.1 If sickness absence exceeds the target set in the outcome of the Stage 1 meeting or continues at an unacceptable level following the end of the review period, the manager will decide in consultation with their Human Resources Manager to progress to Stage 2 by calling the employee to attend a Formal Stage 2 meeting.
- 4.2 The purpose of the meeting, the manager's considerations, the employee's rights, including rights to representation, and to request postponement, on the grounds of non-availability of the employee's representative are as set out in Stage 1.
- 4.3 The manager will write to the employee normally within 5 working days of the date of the meeting confirming the issues considered, the decisions and action plans made. Where a target has been set the letter should tell the employee that the consequence of failure to meet the target or of a continuation of sickness absence following the end of the review period at a level defined by the manager as unacceptable is that the employee will move to Stage 3 of the procedure, where a decision to dismiss the employee could be made.

5.0 STAGE 3

- 5.1 If sickness absence exceeds the target set in the outcome of the Stage 2 meeting or continues at an unacceptable level following the end of the review period the manager should decide in consultation with the Human Resources Manager to progress to the Stage 3 review.
- 5.2 In these circumstances the employee should be referred to the Occupational Health Service for assessment following which a medical report will be provided to the manager.
- 5.3 Having considered the medical report the manager will make a decision as to how best to proceed. The options include:
- Implementation of any recommendations or advice that the Occupational Health Service makes.
 - ➤ Extending the timescale for monitoring to allow for anticipated improvement in attendance.
 - Refer the case to the relevant Assistant/Deputy Director or Service Unit Director/Manager or manager of similar seniority and recommend dismissal. The Assistant/Deputy Director or Service Unit Director/Manager will consider all the facts of the case and decide whether the employee should be dismissed.
 - ➤ No further action at this time.
- 5.4 If the manager decides based on the Occupational Health Service's advice to have a medical redeployment search conducted as an alternative to referring the case for consideration as to whether the employee should be dismissed, then the search should be undertaken within the employing service area and in other service areas for a period of one month. If the redeployment search is unsuccessful then at the end of the one month period the case will be referred for consideration as to whether the employee should be dismissed. The redeployment search can carry on if appropriate after the referral and up to date of termination of employment.
- 5.5 If the manager decides to refer the case for consideration as to whether the employee should be dismissed the procedure for the formal meeting, together with the factors that the Hearing Officer would take into account before taking a decision to dismiss, and other options available to the hearing officer, including reasonable alternatives to dismissal are set out in the attached HR Guidance.
- 5.6 Where it is decided to convene a Stage 3 meeting the presenting manager will write to the employee giving whenever practicable 10 working days notice of the date, time and place of the Formal Stage 3 meeting. The letter should also give the name of the manager who will be conducting the meeting and should set out:
- The issues to be discussed
 - The fact that the employee may be dismissed

- The opportunity to be represented as per Stage 1
- The employee will have rights to the postponement of this meeting as per Stage 1
- A letter within 5 working days of the meeting to confirm the issues considered, the decision and any right of appeal
- Notice or pay in lieu of notice if dismissed.
- Pay in lieu of notice is subject to deduction of Income Tax and National Insurance
-

7.0 **MANAGING LONG TERM SICKNESS**

7.1 Long Term sickness is defined as continuous sickness for four weeks and where there is no definitive date for the employee to return to work in the near future.

8.0 **Contact**

8.1 Where it seems likely that an employee will be on long term sickness absence the manager will make contact with the employee to establish the reason for and the likely duration of sickness absence, and generally to try to build up a picture of the sickness case. This can be done by way of letter or personal visit by appointment where appropriate. Any contact with the sick employee should always be sympathetic and sensitive in tone.

9.0 **Medical Information**

9.1 In order to come to a reasonable judgement the manager will need to have accurate and up to date medical information. Normally the manager will refer the employee to be seen by the Occupational Health Physician once the employee has been off continuously for a period of 4 weeks, and there is no definite indication of an early return to work.

10.0 **Case Review**

10.1 The manager should regularly review long term sickness cases and keep in contact with the sick employee either by letter, telephone, or home visit where appropriate.

10.2 At the right time, and certainly after 3 months continuous sickness absence, the manager shall in normal circumstances make an assessment of the case based on the following considerations:

- Any recommendation/advice provided by the Occupational Health Service
- The nature of the illness and any medical information available
- The length of absence to date and the likelihood and timing of a return to work
- The level of disruption caused by the employee's sickness absence
- The need to have the work done which the employee is engaged to do
- The feasibility of continuing with any temporary arrangement
- The employee's age and length of service
- The work problems caused by the employee's absence, including the adverse impact on service delivery and the poor effect on the morale of other staff
- Can the service unit cope with the level of disruption caused by the employee's sickness absence, and if so for how much longer?
- Any other relevant circumstances

11.0 Review Meeting

- 11.1 Having done that, the manager will, in normal circumstances call the employee to a review meeting, to discuss the sickness absence and any options that may be available.
- 11.2 Practicable 10 working days notice of the date, time and place of the meeting. The letter should also give the name of the manager conducting the meeting (normally the employee's manager) and should explain the purpose of the meeting.
- 11.3 The employee should also be advised in the letter of their rights to be represented as set out for the Stage One meeting regarding short-term sickness.
- 11.4 The employee will have the same rights to request a postponement as set out for the Stage One meeting regarding short-term sickness.
- 11.5 During the review meeting the manager will discuss with the employee the serious concern that exists about the length of the sickness absence
The employee in turn will be given every opportunity to tell the manager about any factor or personal circumstances that they would like the manager to take into account in the overall case assessment.
The manager must tell the employee if s/he feels that the employee's future employment is potentially at risk and follow this up in writing.
- 11.6 Following the review the manager will make a decision as to how to proceed based on the following three options:
- Implement any recommendations the Occupational Health Service may make
 - Set a deadline to review the circumstances again
 - Refer the case to the relevant Assistant/Deputy Director or Service Unit Director/Manager, or a manager of similar seniority to a Service Unit Director/ Manager and recommend dismissal. The Assistant Director /Service Unit Director/Manager will consider all the facts of the case and decide whether the employee should be dismissed.
- 11.7 If the manager decides based on the Occupational Health Service's advice to have a medical redeployment search conducted an alternative to referring the case for consideration as to whether the employee should be dismissed, then the search should be undertaken within the employing service area and in other service areas for a period of one month. If the redeployment search is unsuccessful then at the end of the one month period, the case will be referred for consideration as to whether the employee should be dismissed
The redeployment search can carry on if appropriate after the referral and up to the date of termination of employment.

12.0 Refer the case to senior management to consider taking a decision to dismiss

12.1 If the manager decides to refer the case for consideration as to whether the employee should be dismissed, the procedure for the formal review hearing, together with the factors that the Hearing Officer would take into account before taking a decision to dismiss, and other options available to the Hearing Officer, including reasonable alternatives to dismissal, are set out in the attached HR Guidance.

12.2 Where it is decided to convene a formal review hearing in connection with long-term sickness absence the presenting manager will write to the employee on the same basis as for the Stage 3 meeting regarding Short Term Sickness. The employee has a right of appeal against a decision to dismiss on the grounds of long-term sickness absence

12.3 The Hearing Officer will write to the employee, normally within 5 working days of the formal review hearing to confirm the issues considered, inform the employee of the decision reached by the Hearing Officer and any right of appeal that the employee may have.

14.0 **EMPLOYEE APPEAL RIGHTS.**

- 14.1 The employee will have a right of appeal against dismissal to a member of management immediately senior to the manager who took the decision to dismiss. The Appeal Hearing Manager will be at the level of seniority of at least Assistant. Director or equivalent and will conduct the appeal hearing ensuring good order and natural justice. Normally the manager who conducted the Stage 3 meeting will present the management case at the appeal hearing.
- 14.2 The appeal must be lodged within 10 working days of the employee receiving the letter confirming the dismissal decision. The appeal will examine the grounds for appeal. It will not normally constitute a full rehearing.
- 14.3 The appeal must be made in writing and must clearly and specifically state in detail the ground/s for appeal, which must be on one or more of the following grounds:
- 14.4 **Procedural flaw:** a failure to follow procedure had a material effect on the decision
- 14.5 **The decision on the facts:** The manager who took the decision to dismiss came to a conclusion on a material point of fact that no reasonable person could have come to.
- 14.6 **The sanction was too severe:** The decision to opt for dismissal rather than an alternative option was one that would not have been reached by any reasonable person.
- 14.7 **New Evidence:** There is evidence, which the employee wishes to introduce for the first time at the appeal which could not reasonably have been raised at the Stage 3 meeting and the absence of which had a material effect on the dismissal decision.

The appeal is not to be used to reargue the case with different evidence.

The Manager who took the decision to dismiss will arrange for the appeal to be heard as soon as practicably possible.

The employee will be asked in a letter from the manager to attend a meeting where s/he has the right to be represented and to request a postponement in line with previous stages of this procedure. The process that applies in the appeal hearing is set out in the attached HR Guidance.

GUIDANCE NOTES FOR MANAGERS

15.0 Short Term Sickness Absence

Target for average levels of sickness –sickness a Best Value Indicator

15.1 The Council's target is to:

- Reduce the average number of days taken as sick leave by its employees to 9 days in accordance with the Best Value Performance Indicator.
- Be ranked within the best 8 London Boroughs on this Best Value Indicator.

15.2 This target must not be mistaken as the target for any individual employee. It is an average, which takes into account all the Council's employees over a full year.

16.0 Setting targets for the reduction of sickness absence

16.1 Sick Pay Entitlement

Particularly in the case of short term sickness there is no need to exhaust the employee's sick pay entitlement before taking action, even in the case of industrial injury. However discretion, sensitivity and good practice are essential ingredients in handling individual cases. The system of having trigger levels for taking managerial action is meant to prevent matters drifting, and to ensure that each case gets due consideration – not to impose hasty decisions.

17.0 Short Term Sickness Absence

Triggers for action

Trigger	Action for manager to take
1. Return to work after any sickness absence	Return to work interview
2. Concern about patterns of sickness	Informal meeting with employee
3. If the employee's sickness reaches the trigger level for action	A pre assessment process
4. Having undertaken the pre assessment process, and the manager is still concerned about the level of sickness, and the employee has accumulated, either 4 occasions of sickness in a rolling three month period, or 3 or more occasions of sickness amounting to 9 days in a rolling 12 month period	Stage 1 Meeting
5. Failure to meet target level set at Stage 1 Meeting (target level normally no more than 3 working days of sickness in 3 months) or	Stage 2 Meeting
6. 3 or more occasions of sickness absence amounting to 9 days, during the 12 month period running from the start of the Stage 1 monitoring period	Stage 2 Meeting
7. Failure to meet target level set at Stage 2 (target level normally, not more than 3 working days in 3 months) or	Stage 3 Meeting
8. 3 or more occasions of sickness absence amounting to 9 working days during the twelve month period running from the start of the Stage 2 monitoring period	Stage 3 Meeting
9. If employee is dismissed	Right of Appeal

17.1 In deciding whether a trigger for action has arisen the manager will review the case at each stage, and s/he if is still concerned about the sickness absence the case will proceed to the appropriate stage of the

procedure. For example where during the relevant period the employee has only a single occasion of sickness, which is medically certificated, and which appears to be for a one off illness, then that sickness shall not be taken into account.

17.2 Any occasion of sickness which is caused wholly or partly by pregnancy shall not be taken into account

17.3 Sick absence caused by a disability as defined by the Disability Discrimination Act 1995 should not be taken into account in deciding whether a trigger for action has arisen save in cases where it has a more than minor impact on service delivery.

17.4 Taking all of the above into account, it is for the manager to consider whether or not the employee's sickness is such that a trigger for action has arisen, and in the interests of equity it is for the manager to be able to show that no one employee has been treated differently to another employee without good reason being shown.

17.5 At the end of the three month monitoring period the manager will review the level of sickness absence. If it is satisfactory the employee will be advised accordingly in writing and reminded of the need to sustain the level of improvement. If the employee has no sickness absence for a further three month period then the employee will come out of procedure. Any future sickness absence will be dealt with separately.

18.0 Long Term Sickness Absence

Triggers for action

Trigger	Action for manager to take
1. Four weeks' continuous sickness	Begin sympathetic and regular contact with the employee if this has not started earlier
2. Four weeks' continuous sickness	Refer to Occupational Health Service for assessment
3. Three months' continuous sickness	Case Assessment
4. No later than 4 months' continuous sickness	Sickness Review Meeting
5. No later than 5 months' continuous sickness	Refer case to senior manager to consider taking a decision to dismiss
6. If employee is dismissed	Employee right of appeal

19.0 **Distinction between short term and long-term sickness**

- 19.1 The basic issues for consideration are the same i.e. the capability of the employee and their ability to provide regular, and efficient, service for the Council. However with long term sickness there is generally an underlying medical condition, possibly a chronic condition. This is not always the case with shorter-term sickness absence. In long-term sickness cases the emphasis is on sympathetic contact with the employee. They are expected to co-operate with this. Home visits may be appropriate to express concern and sympathy and to explain the sickness procedure to be followed. Obtaining medical opinion from occupational health service is normally an essential part of the process. Depending on the medical opinion, making adaptations to the workplace or working arrangements, with an emphasis on rehabilitating the employee and encouraging an early return to work may be the way to proceed. There will be regular assessments of the case, and if the manager reaches the stage where they conclude the employee will not provide regular and efficient service s/he will convene a review meeting, following which the case may be referred to senior management for consideration of dismissal.
- 19.2 There is not always an underlying medical condition in short-term sickness cases, in which case the emphasis should be on:
- Setting clear and reasonable targets for improved attendance at work
 - Monitoring for achievement of the target set
 - Giving clear information about the adverse impact of absence on service and colleagues
 - Keeping the employee informed about where they stand and if their job is at risk.

20.0 INVESTIGATING SICKNESS ABSENCE

20.1 Return to work interview

This is a normal part of your managerial duties. Following each period of sickness absence you will meet with the employee as soon as possible after their return to work to discuss the sickness. The purpose of the interview is to:

- Try to establish the reason for the sickness absence
- Establish that the employee is fit to resume his/her normal duties
- Discuss whether the illness is likely to reoccur
- Ascertain whether or not any adjustments can be made to prevent a recurrence
- Deal with any outstanding issues concerning compliance by the employee with reporting requirements

20.2 Be sympathetic, sickness absence sometimes masks an underlying problem. Talk to the employee and encourage them to discuss any health, domestic or work problems that may contribute to their sickness.

20.3 Where the employee's level and or pattern of sickness absence gives cause for concern, an example of which is where the employee regularly reports sick on the same day of the week e.g. Monday or Friday. The manager should also be concerned if, including the most recent episode of sickness, the employee has been sick during the past three months for a total of three or more working days. In such circumstances the manager should also use the interview to: -

Review the employee's sickness record

Consider any previous relevant medical information, which is available

Explain the impact of the sickness absence on the service and on work colleagues

Reinforce what is regarded as an acceptable level and or pattern of sickness

Show that the manager regards the level/ pattern of sickness as a cause for concern

Discuss the reasons for the sickness absence and any explanation the employee has to offer

20.4 Consider whether there is anything that management can do to help the employee to reduce the level of sickness e.g. any reasonable adjustments that can be made if the employee's sickness is caused by a disability. If the manager considers that medical advice would be helpful, or if the employee would benefit from having access to the counselling service s/he may be referred to the Occupational Health Service. The employee should be

immediately referred to the Occupational Health Service if it appears that the employee's sickness is caused by work-related stress.

21.0 **Setting targets under the formal procedure for improvement in short-term sickness absence**

21.1 Intermittent short-term sickness absence may be due to a variety of minor, unlinked illnesses, or it may be due to one (or more) underlying medical cause.

21.2 It is important that an employee's personal circumstances and record are taken into account when considering appropriate action. The issues that should be considered include:

- Has the employee a previously good work/sickness record?
- Have there been problems of sickness in the workplace generally?
- Have work problems caused or exacerbated sickness?
- Is the employee suffering from domestic problems?
- Is the employee suffering from industrial injury?
- How long has the employee worked for you?
- The employee's age and length of service, the demands of the post and the importance of the position to the organisation.
- Any medical information available e.g. medical certificate(s).
- Is the employee disabled? (As defined by the Disability Discrimination Act 1995 –)

21.3 Assessment of this information will enable a manager to decide whether or not to set targets for reduction in the sickness level, and if targets are set what they should be. The manager should normally seek advice from Human Resources before a decision is made.

21.4 The manager may need to provide counselling and support e.g. in the cases of:

- * Domestic circumstances – the employee may be referred to the Occupational Health Counselling service. The likelihood and time scale over which attendance can be expected to improve will also require consideration.
- * Work –related problems – the manager may be able to institute measures at work that will alleviate factors contributing to the absence. Again the employee may be referred to the counselling service
- * Recent illness/accident – it may be appropriate to make temporary adjustments to working arrangements to allow the employee to recover. Employees who did not consult their doctor (e.g. who self-certificated) may be advised to do so.

- 21.5 Any measures such as amendments to hours of work will normally be aimed at providing temporary assistance during domestic difficulties or following illness/accident. They should therefore be subject to review at a given date in the light of circumstances and service needs. The manger should also consider if the Council's Special Leave provisions might apply in such cases.
- 21.6 The existence of an underlying medical condition, while accepted as the reason for absence, will not mean that it is "set aside". All absences will be counted and the total picture of an employee's level of sickness absence considered, alongside the factors set out above.

22.0 **First Formal Meeting Stage**

- 22.1 Use the meeting to review the sickness record and consider any relevant medical information that is already available.
Set standards of acceptable attendance at work and communicate that clearly to the employee. Make sure the employee understands that sickness absence disrupts the workflow, reduces the quality of service to the public, places an added burden on colleagues and reduces the Council's ability to compete successfully.
- 22.2 If the employee's attendance record causes concern decide whether to set targets for improvement and say what improvement you expect and in what timescale. Explain the consequences for the employee if this does not happen. The employee should know where they stand.
- 22.3 If you believe there is no need for further action at this stage because the level of sickness is not persistent, say so. If you can wait until the employee's health improves say so. Tell the employee if you intend to review at a later date.
- 22.4 Keep the employee informed and keep good records of your contact with staff- you may need to show later that you have been open, reasonable and consistent.
- 22.5 Confirm the outcome of the meeting in writing to the employee. The letter should include details of what measures are to be taken by either party to assist the process of improving the employee's sickness record to an acceptable level. The ranges of actions that may be appropriate include:
- Interim measures to lessen the impact on work performance of temporary domestic difficulties/health problems
 - Action under the Council's guidance on Dealing with Alcohol Related Problems
 - Setting of specific targets for improvement.
- 22.6 If you decide that it is necessary at this time to set targets for improvement you will advise the employee in the letter confirming the outcome of the meeting:

That there is a need to improve during a specified period

The maximum level of sickness absence set as a target for that period.

- 22.7 The consequences of failure to meet the target i.e. that the employee will move to Stage 2 of the procedure.
- 22.8 You should also advise the employee in the letter that the employee will also move to Stage 2 of the procedure if his/her level of sick absence reverts to an

unacceptable level for a further period following the end of the specified period. You should define the length of the further period and the level of sick absence during that period considered unacceptable.

22.9 Depending on the nature of the illness, an employee may wish to discuss the sickness absence with a manager of the same gender or with a HR Manager.

22.10 At the end of the three month monitoring period you will review the level of sickness absence. If it is satisfactory the employee will be advised accordingly in writing and reminded of the need to sustain the level of improvement. If the employee has no sickness absence for a further three month period then the employee will come out of procedure. Any future sickness absence will be dealt with separately.

23.0 **Additional Considerations at the Stage 2 Meeting**

- 23.1 On the basis that the employee has been referred to the Occupational Health Service for assessment, one outcome could be a recommendation from the Occupational Health Physician for a medical redeployment search because medical opinion advises that the employee is no longer able to perform the full duties of the current job. The option of a medical redeployment search should not be considered as alternative to setting further targets but rather as an option which could be pursued during the monitoring period.
- 23.2 There may be times where because of the particularly sensitive nature of the illness you may have taken HR advice, apply your discretion not to take action under Stage Two of the procedure. This decision should be kept under constant review.
- 23.3 If you consider the level of sickness absence to be unacceptable, the letter confirming the outcome of the Stage 2 meeting will include details of the following:
- A further monitoring period during which sickness absence levels must reduce
 - Targets for improved attendance,
 - Do make clear to the employee that failure to reduce the level of sickness absence puts their job at risk and will result in them moving to Stage 3 of this procedure where the decision to dismiss could be made.
 - You should also advise the employee that s/he will also move to Stage 3 of the procedure if his/her level of sick absence reverts to an unacceptable level for a further period following the end of the monitoring period. You should define the length of the further period and the level of sick absence during that period considered unacceptable.

24.0 Medical Advice: Referral to Occupational Health Physician

- 24.1 It is advisable to obtain up to date medical advice prior to considering dismissal. Depending on the circumstances it may be helpful to obtain an opinion from the Occupational Health Service at an earlier stage. In certain circumstances it may be appropriate for the manager to hold a case conference with the Occupational Health Physician, a Human Resources adviser, the employee and his/her representative (if any).

25.0 **Short Term Sickness**

- 25.1 Although it is not essential to refer the employee for occupational health assessment when dealing with short-term sickness prior to Stage 3, it can often aid decision making to know whether there is an underlying medical condition linking absences. When a referral is made information should be sought from the Occupational Health Physician as to whether there is an underlying medical condition and what the future prognosis is in relation to the employee's ability to do their job. Where there is an underlying medical cause for the intermittent short term sickness absence, many of the questions that can be asked in a referral for long term absence may also be relevant e.g. should the employee be considered for redeployment on medical grounds, and, if so, what type of alternative work would be suitable for them?

26.0 Long Term Sickness

26.1 Medical referral is of major importance and needed in most cases of long-term absence. This should occur at the earliest practical opportunity in order to gain a speedy and useful response. The following questions can be asked in a medical referral:

- What is the nature of the illness?
- What (if any) future treatment is envisaged and over what time scale?
- What is the expected date of return?
- What is the likelihood of a full return to work?
- Will the employee have a residual disability?
- If so, will this be permanent or temporary. If temporary, for how long?
- Will the employee be able to give regular and efficient service?
- What duties will the employee be able to undertake?
- Whether there is any need for temporary measures as part of a phased return to work e.g. time on light duties, part-time work
- Whether the employee is disabled for the purposes of the Disability Discrimination Act (DDA)
- Where the employee is or may be disabled for the purposes of the DDA, what reasonable adjustments to work practices, premises or equipment may be appropriate
- Should the employee be re-deployed permanently or temporarily on medical grounds and if so what type of alternative work would be suitable for him/her. This may be particularly important where the employee is suffering from a work-related condition and the cause of the condition cannot reasonably be removed.
- Whether the employee should be retired on medical grounds.

27.0 Stage 3 –Option –

Referring the case upwards for consideration as to whether the employee should be dismissed

Short Term Sickness

27.1 Factors for the hearing Officer to consider

The Employment Appeal Tribunal has set out the following factors that should be considered before a dismissal decision is taken in a case of persistent short-term sick absence:

- (a) The nature of the illness
- (b) The likelihood of recurrence, or some other illness arising
- (c) The length of the various absences and the spaces of good health between them
- (d) The need of the employer for the work to be done by the employee
- (e) The impact of the absences on other employees
- (f) Following the correct procedure
- (g) Will the employee be able to give regular and efficient service
- (h) The extent to which the employee has been made fully aware of the department's situation and when the point of "no return" would be reached.

27.2 Medical Advice in relation to dismissal

The decision to dismiss is not a medical one but a managerial one based, among other things, on medical opinion(s) –

BUT:

- While the absence of a medical diagnosis or prognosis does not preclude the manager taking action to dismiss an employee, nonetheless without a medical referral an Employment Tribunal could view the dismissal as unfair.
- Managers should not make medical judgements.

27.3 Long Term Sickness

An employer can fairly dismiss an employee due to long-term absence, based on incapacity to perform the job. It is necessary to look at the whole history and the entire picture: every case must depend on its own facts. When considering whether to dismiss an employee due to long-term absence the need to ensure the efficient operation of the service will in the final analysis override the employee's need to remain in employment. The basic question which has to be determined in every case is whether it is reasonable in all

the circumstances for the manager to wait any longer for the employee to return to work and, if so, for how much longer? In the case of long term sickness dismissal following the employee's sick pay entitlement becoming exhausted is likely to be justifiable except in special circumstances e.g. where the medical advice is that the employee is likely to be fit to return to work in the near future. In the case of long term sickness dismissal while the employee is still entitled to sick pay is likely to be premature except in special circumstances e.g. where there are pressing service needs, or where the advice is that the employee is unlikely to be fit to return to work by the end of the period of his/her sick pay entitlement.

27.4. Alternative options to dismissal

These may include:

- Reviewing the case after getting more information
- Establishing a further time scale for improvement
- Consideration of alternative employment (if available) within the Council if this has not already happened, and in that context to consider whether retraining will be required for the employee to perform effectively in the new role
- Referral to the Occupational Health Physician for consideration of ill health retirement or redeployment if this has not been considered previously.
- Variation of the employee's hours and/or duties with the employee's agreement
- Making reasonable adjustments to the employee's working conditions where the sick absence is caused by the employee's disability

28.0 FORMAL MEETING TO CONSIDER DISMISSAL ON ABSENCE GROUNDS

- 28.1 The purpose of this meeting is to consider the inability or failure of the employee to undertake the duties of the post by virtue of intermittent short-term or long-term absence, certified or self-certified as sickness absence.
- 28.2 The concept of an adversarial hearing at this stage should be avoided: this is not a disciplinary issue. However, the meeting does need to be structured in order that management can set out all the relevant information and the employee/employee's representative has a full opportunity to respond and set out the information they wish taken into account in the final decision.
- 28.3 Generally, the employee's manager will present the management case at the meeting.

29.0 Preparation for Meeting

- 29.1 The presenting manager will advise the employee in writing of the date, time and place of the meeting. Whenever practicable, 10 working days' notice of the hearing will be given. The notice should state the purpose of the meeting and that a possible outcome is dismissal from the Council's service. The notice should also advise the employee of his/her rights of representation at the meeting. The employee may request a postponement of the hearing of up to 5 working days to enable his/her representative to attend the hearing. Any alternative time and date proposed by the employee must be reasonable. The manager conducting the hearing ("the hearing officer") will decide whether the postponement should be allowed. The person chosen by the employee, as his/her representative may be another Brent Council worker, a close relative, a certified trade union official (as defined earlier) or an official employed by a trade union (but not a legal representative)

29.1.1 The presenting manager shall provide the employee and the hearing officer with a statement of the facts of the case and the medical report. This shall include a full absence record and an assessment of the effect on the individual's performance and on the service generally; together with the outcome of any previous reviews that have been conducted under this Code and which are still on record. It should also contain the presenting manager's recommendation concerning whether or not the employee should be dismissed and the reasons for this. This documentation must be made available to the employee at least 5 working days before the hearing.

29.1.2 The employee shall also be informed that she/he may be accompanied by a representative as defined above, has the right to call witnesses if desired and that s/he must provide the presenting manager with copies of any documentation s/he wishes to present and the names of any witnesses s/he intends to call not later than 3 working days before the date of the hearing. Alternatively, the employee can send in written representations that will be considered at the meeting.

30.0 **Conduct of the Meeting**

- 30.1 An Assistant/Deputy Director or Service Unit Director/Manager, or a manager of similar seniority to a Service Unit Director/Manager, who will be assisted by a Human Resources/ Legal Services representative as his/her adviser, will conduct the hearing. The hearing officer will be responsible for arranging a note taker to be present.
- 30.2 The hearing officer will open the hearing by explaining the reasons why the hearing has been arranged and the order of proceedings and answer any issues with regard to procedure.
- 30.3 The presenting manager will submit his/her case and call upon any witnesses to give evidence and/or produce any necessary documentary evidence in support of the case.
- 30.4 There will then be the opportunity for questions from the employee/ representative, the hearing officer and the adviser.
- 30.5 Any witnesses shall withdraw after giving evidence and answering any questions put to them.
- 30.6 The employee/representative will submit her/his case and call upon any witnesses to give evidence and/or produce any necessary documentary evidence in support of her/his case.
- 30.7 There will then be the opportunity for questions from the presenting manager, the hearing officer and the adviser.
- 30.8 Any witnesses shall withdraw after giving evidence and answering any questions put to them.
- 30.9 The presenting manager and the employee/ representative may sum up their cases if they so wish. The employee has the right to sum up last.
- 30.10 The presenting manager and the employee/ representative will withdraw whilst the hearing officer considers the case. If any recall is necessary to clarify points of uncertainty, both parties will be asked to return. In addition the hearing officer may require that other witnesses/evidence should be called/produced in order to ensure that all the necessary facts can be considered before making a decision on the case. S/he may decide to adjourn the hearing to allow or this if necessary.
- 30.11 The hearing officer will decide to take such action as may be appropriate in the circumstances. Dismissal from the Council's service (either with notice or pay in lieu of notice) is one option. Pay in lieu of notice is subject to deductions for income tax and national insurance. The letter confirming a decision to dismiss will explain the employee's appeal rights. The hearing officer may review the decision during the notice period if fresh medical evidence is provided e.g. that the employee is now fit to work.

31.0 Absence of employee

31.1 Where the employee is unable, or chooses not to attend the meeting, any written representations submitted by them or their representative (either in person or in writing) will be considered after the presenting manager has set out the case.

32.0 **APPEAL AGAINST DECISION TO DISMISS ON THE GROUNDS OF ABSENCE DUE TO ILL HEALTH**

- 32.1 Any employee who is dissatisfied with a decision to dismiss on the grounds of absence due to ill health may appeal to a member of management (“the appeal hearing officer”) immediately senior to the manager who has taken the decision. The appeal hearing officer will be at the level of seniority of at least Assistant Director or equivalent and will be the manager specified in the letter to the employee confirming the outcome of the capability hearing. The manager who took the decision to dismiss will present the management case at the appeal hearing. The appeal must be lodged within 10 working days of the employee receiving the letter confirming the dismissal decision.
- 32.2. The appeal must be made in writing and must clearly and specifically state in detail the ground or grounds for appeal which must fall within one or more of the following categories: -
- (a) Procedural flaw; there was a procedural irregularity which had a material effect on the dismissal decision.
 - (b) The decision on the facts; the hearing officer came to a conclusion on a material point of fact which no reasonable person could have come to,
 - (c) The decision to opt for dismissal rather than an alternative option was one that would not have been reached by any reasonable person
 - (d) New evidence; there is evidence which the employee wishes to introduce for the first time at the appeal which could not reasonably have been raised at the capability hearing and the absence of which had a material effect on the dismissal decision.
- 32.3 No right of appeal will be allowed where the letter of appeal does not meet these requirements.
- 32.4 The hearing officer will arrange for the appeal to the appeal hearing officer to be heard as soon as practicably possible.
- 32.5 For the appeal the employee will be asked to attend a hearing where s/he has the right to be accompanied by either another Brent Council worker, a close relative, a certified trade union official (as defined earlier) or an official employed by a trade union who may act as their representative. The letter inviting the employee to attend the hearing should advise the employee of his/her rights of representation at the hearing. Whenever practicable the employee will be given 10 working days’ notice of the appeal hearing. The meeting may be postponed by up to 5 working days to enable the employee’s

chosen representative to attend. Any alternative time and date proposed by the employee must be reasonable. The appeal hearing officer will decide whether the postponement should be allowed. The appeal hearing will not constitute a full re-hearing of the case. It will only address the specific grounds of appeal set out in the letter of appeal. The appeal hearing officer can refuse to consider any new evidence if s/he decides it is unreasonable for it to be raised for the first time at the appeal.

32.6 The hearing officer and the employee will provide each other with any documents to be used by them and the names of any witnesses to be called by the third working day before the appeal hearing.

32.7 The appeal hearing officer will chair the meeting with a Human Resources/Legal Services representative present as an adviser. This manager will not have been previously involved, directly or indirectly with the case. The appeal hearing officer's decision will be final and there shall be no further internal right of appeal.

32.8 The procedure to be adopted at the appeal meeting shall be as follows:-

- (a) The Chair of the meeting (the appeal hearing officer) will introduce all parties and state the purpose of the appeal meeting. S/he will then summarise the order of the proceedings and answer any issues with regard to procedure.
- (b) The employee and/or his/her representative may present their case based on the grounds specified when submitting the appeal. At this stage the employee will be entitled to refer to documentation in connection with the grounds for appeal and call any witnesses necessary in connection with the grounds for appeal.
- (c) The management representative, the Chair and the adviser may ask questions of the employee, the employee's representative and any witnesses. Any witnesses shall withdraw after giving evidence and answering any questions put to them.
- (d) The management representative will then answer the employee's presentation, call witnesses as necessary in connection with the grounds of appeal and use any relevant documents.
- (e) The employee and/or his/her representative, the Chair and the adviser may ask questions of the management representative and any witnesses. At the Chair's discretion a party may be allowed to ask questions of their own witnesses arising from questions of the other party. Any witnesses shall withdraw after giving evidence and answering any questions put to them.
- (f) The management representative will summarise their appeal case.

- (g) The employee and/or his/her representative will summarise their appeal case.
- (h) The parties to the case will be asked by the Chair to withdraw.
- (i) The Chair will deliberate and come to a decision,
- (j) The parties will be recalled and given the Chair's decision in the matter.
- (k) The appeal decision and the reasons for it will be confirmed in writing to the appellant and the management representative by the chair normally within five working days of the hearing.

32.9 The appeal hearing officer will have the authority to confirm the dismissal decision or to overturn it. In the latter event reinstatement or reengagement with continuous service will apply and s/he shall have the authority to decide on an alternative option to dismissal that may include those set out on page 22. Where the appeal hearing officer decides to uphold the appeal in a case of procedural flaw or new evidence s/he will have the discretion to refer the case back for a rehearing or to rehear the case him/herself. Where the case is referred back for a rehearing s/he will decide, depending on the circumstances, whether the case should be reheard by the same officer who originally heard the case or by a different hearing officer.

33.0 NON – ATTENDANCE OF THE EMPLOYEE AT FORMAL MEETINGS OR HEARINGS

- 33.1 Should the employee fail to attend a meeting or hearing the manager conducting the meeting/hearing will have the discretion to proceed with the hearing/meeting if no reason for the absence considered by the manager to be satisfactory has been given.
- 33.2 If the employee fails to attend the hearing/meeting on the grounds of sickness consideration should be given to proceeding with the meeting in the employee's absence, provided that the employee has received written warning that this may happen and an alternative date after the first occasion. The manager should ensure the employee is aware of the date and time of the revised date, remind him/her of the importance of attending and should if appropriate seek medical advice on whether the employee is fit to attend. Where the employee still cannot/ does not attend, the manager may judge it is essential for the meeting/hearing to continue, in which case account should be made of submissions made on the employee's behalf by a representative in person or made by or on behalf of the employee in writing or by telephone.