



# **Long Term Sickness and Ill Health Capability Policy and Procedure**

## **LONG TERM SICKNESS AND ILL HEALTH CAPABILITY POLICY**

### **1. INTRODUCTION**

This document sets out our procedures for the management of long term sickness absence in a fair and consistent way.

Long term sickness absence can vary from short intermittent periods of ill-health to a continuous period of long-term absence of four weeks or more, and have a number of different causes (for example, injuries, recurring conditions, or a serious illness requiring lengthy treatment).

We wish to ensure that the reasons for sickness absence are understood in each case and investigated where necessary. In addition, where needed and reasonably practicable, measures will be taken to assist those who have been absent by reason of sickness to return to work.

Any information you provide to us about your health will be processed lawfully. We recognise that such data is sensitive and will handle it in a confidential manner.

### **2. APPLICATION OF THIS POLICY AND PROCEDURE**

This policy and procedure should be used where the following triggers are reached:

- The employee has been off sick for more than 20 working days (pro rata) and where there is no imminent prospect of a return to work, or
- Where frequent short-term sickness absence (20 days within a 12 month period (pro rata)) may be attributable to an underlying, long-term medical condition.

Due regard will be given to the Equality Act 2010 and ACAS guidance concerning disability discrimination in the workplace, where the reasons for absence may be related to a disability.

Whilst all situations are different, it is expected that most cases of long term absence will normally be resolved within 12 months. Most situations will, of course, take less time than that.

Managers will need to demonstrate that they are managing long term sickness absence by making positive decisions in line with this guidance. Managers should make a decision on the most appropriate action following discussion with the employee and taking advice from HR as necessary. Action will normally be decided on and communicated at an Absence Review Meeting. However, it may not always be necessary to hold a meeting first. For example, it may be more appropriate to inform the employee of the need to make a referral to Occupational Health via HR in order that the professional medical opinion can be

discussed to reach an informed decision at an Absence Review Meeting. This action may be communicated in a variety of ways, i.e. letter, telephone conversation or email.

Long term absence is handled most effectively through early interventions and actions. This enables the manager to identify what practical support can be provided to facilitate a return to work.

Managers have the right to initiate and maintain reasonable contact with the employee in order to inform their decisions. Employees are expected to co-operate with such contact and failure to do so may result in decisions being made based on the limited information available at that time.

### **3. ROLES AND RESPONSIBILITIES**

#### **EMPLOYEES**

Employees are responsible for their health and wellbeing and for minimising their own absence from work where possible. Employees are responsible for adhering to the requirements stated within this policy and the Attendance Management Policy, particularly in terms of sickness notification, providing doctors notes/Fit Notes and keeping in regular contact with their manager.

#### **MANAGERS**

Managers have a duty of care for the health, safety and welfare of their staff and should:

- Work supportively in conjunction with HR and the Council's nominated occupational health provider to support staff with sickness absence.
- Be responsible for managing sickness effectively and ensuring absence is monitored and recorded for their team.
- Carry out return to work discussions and other review meetings, promoting a positive working environment, motivating and managing their team to maximise attendance.
- Monitor triggers and absence patterns and to identify where irregularities have occurred.

Senior managers are responsible for ensuring that managers who are managing sickness absence issues attend the appropriate training. Senior managers should also ensure that absence issues are treated equitably and consistently within their area of responsibility.

#### **HUMAN RESOURCES**

HR will provide specialist advice and support to managers and staff in dealing with absence issues. HR may attend any meetings held under the informal or formal stages of this procedure and will also:

- Provide statistical information to support the management of absence.

- Actively support managers when trigger points are reached. Any information held will be in line with the requirements of the Data Protection Act and GDPR and confidentiality maintained.
- Work with managers and staff to facilitate a return to work, including provision of advice, support and referrals to Occupational Health.
- Provide appropriate training to support managers who are managing sickness absence issues
- Provide information updates to managers and staff on sickness issues, for example, to advise of changes in legislation and best practice.

#### **4. PROCEDURE**

Managing sickness under this policy involves holding regular sickness review meetings with the member of staff. The following methods may also be followed:

- Holding keeping in touch meetings;
- Discussing and reviewing the length and reasons for absence;
- Establishing the need for occupational health appointment
- Meeting to review occupational health report
- Reviewing any reasonable adjustments
- Establishing a return to work date
- Facilitating a return to work/improve attendance levels.
- Implementing a phased return to work
- Redeployment

More details regarding the above methods are given below.

#### **KEEPING IN TOUCH**

During long term sickness absence, it is important that managers keep in touch with their member of staff and provide appropriate support and interventions to facilitate a return to work.

It is also important that employees keep in touch with their manager at agreed regular intervals and ensure any changes in health or expected date of return are discussed.

Regular review meetings (e.g. monthly) will normally be held with the manager (HR may also attend these meetings) and may be arranged at work, at the employee's home or another agreed location. An employee has the right to be accompanied to these meetings by a recognised trade union official or a work colleague – if this is not possible, there may be an

option to be accompanied by an HR approved individual for support (for example a family member).

In some situations, (e.g. where there is a known date of return to work), meetings may be held at longer intervals by agreement. Further contact can also be maintained by telephone and/or email.

The purpose of the meeting may include:

- Enquire after the health of the absent employee; discuss the nature and likely prognosis and duration of the absence.
- Consider referral of the individual to Occupational Health. The purpose and process of this and the potential outcomes should be explained.
- Discuss the outcome of a referral to Occupational Health that has already been made.
- Agree future contact arrangements; contact should be maintained regularly via phone calls, or meetings, or visits.
- Discuss whether any assistance can be provided and give details of any useful contacts such as the trade unions and the confidential counselling service.

The details discussed and any actions agreed should be recorded and acted upon. Managers should send any documentation to the employee.

If the employee is expected to return to work within a short, specified time, then a meeting may not be necessary. Such situations may include an employee who has undergone an operation where the condition and recovery is straightforward. Managers should, however, monitor the situation in case the sickness absence becomes more prolonged or complicated than expected and a meeting arranged whenever appropriate.

### **FACILITATING A RETURN TO WORK**

In order to provide appropriate support and facilitate a return to work, the manager in conjunction with HR may need to:

- Seek medical advice through the nominated Occupational Health provider (which could be a nurse or physician) and / or from the individual's G.P. or medical consultant about the employee's health to establish when / whether a return to work is likely and how the manager can reasonably help to facilitate this.
- Discuss and make reasonable adjustments that may facilitate a return to work or to retain an individual at work.
- Consider whether alternative duties / or a phased return to work is beneficial.
- Consider redeployment as a potential alternative to ending employment where appropriate.

If an employee is not considered fit to undertake their normal duties for a short period of time, but it is recommended via a Fit Note or Occupational Health that they could do other

work; they may be requested to undertake other appropriate work. Such requests will only be made in consultation with independent medical advice and where appropriate following a risk assessment.

### **PHASED RETURNS**

If an employee is recovering from illness and it is recommended by Occupational Health or their GP that a phased return to work would be beneficial, the manager will discuss this with the employee and HR. A phased return allows an employee to resume work, starting on reduced hours for a short period, building up hours gradually to normal full time hours. The employee will receive their usual basic pay during this phased return which would normally be for up to a maximum of four weeks. There may be exceptions when a longer phased return is recommended and this will be with agreement from the manager and HR. (NB – usual basic pay will only be paid in accordance to the four week phased return period. Should a phased return go beyond four weeks, employees may be asked to use alternative methods to accommodate this, e.g. annual leave to be taken for normal hours not worked).

If the employee is not able to return to full time work at the end of a phased return period, flexible working arrangements may be considered upon request. For example, if the employee wanted to reduce their normal working hours either permanently or for a temporary period, an application could be made through the flexible working procedure or through the Council's VRT policy and, if approved, this request could result in a permanent or temporary contractual change.

A return to work following an extended period of sick leave can be facilitated by a graduated build up to normal contracted hours. Where either a doctor's Fit Note or an OH report includes the option of a phased return to work; managers should meet with the employee to establish a pattern of return to work and anticipated timescales, subject to agreed reviews.

Each case must be considered in the light of the individual circumstances but it would be unusual for a phased return to extend beyond 4 weeks. HR will support managers in establishing a reasonable approach to phased hours to be worked, taking into account any advice or guidance given by the GP or Occupational Health and operational needs.

### **REFERRAL TO OCCUPATIONAL HEALTH**

Occupational Health can assist Managers and employees by:

- Providing a specialist occupational health assessment and advice to both parties about the effect of any health condition or other relevant problem on current and future fitness for their work or attendance.
- Providing advice about how job modification, alternative work or workplace rehabilitation may help the employee return safely to work and so cut short avoidable continuing sickness.

- Obtaining reports or advice from the employee's GP (with appropriate consent) and/or specialist to help facilitate safe rehabilitation at work
- Providing specialist medical assessment to facilitate health & safety risk assessments where this becomes necessary in the management of individual cases.

Following a discussion of the purpose, process and the potential outcomes of a referral with the employee, managers should consider referring the employee to Occupational Health via HR to ascertain the employee's medical condition, including fitness for work, timescale for return, and any limits on the ability of the employee to perform their job.

Occupational Health may liaise with the employee's GP and/or Consultant, and if so will arrange this direct with the employee. Employees must, where possible attend the Occupational Health appointment arranged for them. Failure to attend may result in a recharge of the appointment to the employee. It is in the best interest of all concerned to try and resolve sickness absence matters early and co-operatively, as early intervention is usually more effective in achieving a successful return to work.

Managers do not have to wait until the end of a Fit Note or a formal attendance warning in order to make a referral to occupational health, as often an early referral may be more beneficial to the employee in assisting their return to work.

Managers must liaise with HR to arrange the referral to be made to Occupational Health.

Following receipt of the report from Occupational Health, managers should discuss the report and the implications arising from the report with the employee. HR may also be involved in this discussion. Please note that any advice given and suggested adjustments contained within a report are recommendations and the opinion of the Occupational Health Advisor / Physician. It is a management decision as to whether or not these can be accommodated.

The potential outcomes arising from an Occupational Health appointment(s) will normally fall into the following categories:

<b>Outcome</b>	<b>Action required</b>
Fit for work: no adjustments likely to be required	Managers should confirm with the employee the arrangements for a return to work.
Fit for work: temporary / Permanent adjustments recommended	Managers should discuss with the employee the adjustments outlined and whether or not they can be accommodated. If the adjustments cannot be accommodated managers should endeavour to facilitate the continuation of the employee's employment through the alternative actions outlined below such as redeployment.

<p>Temporarily unfit for work:-</p> <ul style="list-style-type: none"> <li>• Report from GP/Specialist</li> <li>• OHA/OHP review to be arranged</li> </ul>	<p>Managers should maintain regular contact with the employee and monitor the situation. Once a GP/Specialist report is received a further outcome report should be received from Occupational Health and managers will need to consider the advice given at that stage. If the employee fails to give their consent to a GP/Specialist report, OH will need to give their advice and managers will need to consider their actions stemming from that advice without the benefit of a GP/Specialist report.</p> <p>If the situation does not become clear within a foreseeable period of time the situation will be reviewed in conjunction with HR and the line manager to ascertain whether the absence can be sustained.</p>
<p>Not fit for work in the foreseeable future (OH Physician decision only).</p>	<p>Where the medical advice is that the employee cannot continue to carry out their current duties due to their physical or mental health, managers should endeavour to facilitate the continuation of their employment through the alternative actions outlined below such as redeployment before taking action to end the employment on the grounds of incapability due to ill health.</p> <p>If the employee is a member of the Local Government Pension Scheme and has at least two years pensionable service, they may be eligible for retirement on the grounds of ill health. If this is the case their employment may be terminated with a pension.</p>

### **REASONABLE ADJUSTMENTS / ADAPTATIONS**

Consideration should be given to any reasonable adjustments to the duties, hours of work, shift pattern, work environment etc. that might enable the employee to return to work or attend regularly. Advice should be sought from HR regarding any adjustments affecting the employee's contract of employment. Any changes made to the contract of employment must suit the business needs of the service. If there are any health and safety issues / risks for which advice is needed, managers should contact HR in the first instance for further advice and guidance.

### **REDEPLOYMENT**

Where the employee is unable to return to their substantive post, either permanently or for the foreseeable future, attempts should be made over a reasonable period of time to



find suitable alternative employment. Details of this process are available in the redeployment agreement. HR will provide guidance regarding the redeployment process.

If after a reasonable period, of up to 12 weeks, no suitable employment can be identified, it may be appropriate to consider the appropriateness of continuing employment. Redeployment will still be actively explored during the notice period.

#### **LONG TERM SICKNESS AND ANNUAL LEAVE**

Employees on long term sick leave will still accrue their annual leave. If they return to work before the end of the leave year they can request to take their remaining accrued contractual leave within the leave year.

If there is not enough time remaining within the leave year for the leave entitlement to be taken, or the absence spans more than one leave year, then the employee will be able to carry over up to 20 days (148 hours) from the remaining accrued leave. 20 days is the minimum leave entitlement stipulated under the European Working Time Directive. This should be pro rata for part time employees. Any annual leave days that have already been taken in that leave year should be deducted from the 20 days.

If an employee has had a period of long term sickness absence that spans more than one holiday leave year, a maximum of 20 days may be carried over from each leave year in which the employee is absent (pro rata for part time employees) although this holiday may not be carried over indefinitely and will usually be lost after 18 months from the end of the holiday year in which the days were accrued.

During a period of long term sickness, should an employee wish to take annual leave, this should be agreed and signed off with the line manager and HR should be informed.

#### **ILL HEALTH EARLY RETIREMENT UNDER THE LGPS**

If medical advice indicates that the employee is medically unfit to undertake the duties of their current post and there are no suitable redeployment opportunities and the employee is a member of the LGPS, early retirement on the grounds of ill health may be considered. Under the Local Government Pension Scheme (LGPS), an employee eligible for early pension benefits due to ill health must:

- Have at least two years pensionable service, or have equivalent transferred rights from another pension scheme; *and*
- Be certified as medically 'unfit' for work by an independent occupational health physician.

Further advice and guidance on this process can be obtained from the HR.

#### **5. ENDING THE CONTRACT OF EMPLOYMENT**

Having due regard to all the circumstances of the case consideration may be given to terminating the contract of employment of an employee on long term sickness absence on the following grounds:

- The employee does not meet the criteria for early retirement on grounds of ill-health
- Redeployment is not appropriate or it has not been possible to redeploy the employee
- The employee has exhausted the alternatives offered for rehabilitation.
- Medical opinion has established that it is unlikely that the employee will return to work and maintain an appropriate attendance record within a reasonable period of time.
- Keeping a role vacant for a further period would be detrimental to the service.

## **6. FORMAL STAGES / ILL HEALTH CAPABILITY STAGES**

This process should be undertaken in conjunction with HR.

Managers will need to commence formal reviews of absence under this procedure when the employee's absence:

- Has met or exceeded a sickness absence indicator, or
- Is otherwise of concern e.g. the impact of the absence is causing ongoing service delivery difficulties or there is a trend of absences occurring on particular days of the week, etc.

Even though sickness triggers may have been met, it may not always be appropriate to immediately proceed to a First Stage Meeting. There may also be cases where medical advice is indicating there is no prospect of the employee being able to return to work within the foreseeable future or a reasonable timeframe. In such instances it may be appropriate to progress straight to the Final Stage Meeting. All cases can differ greatly and therefore advice should be sought from HR.

### **THE FIRST STAGE MEETING**

A First Stage Meeting is the first formal step in addressing sickness absence under this procedure. The manager should normally contact the employee to explain the need for this meeting before liaising with HR to write to them formally under this Procedure. HR will support the progression of this process as follows:

#### **WRITE TO THE EMPLOYEE AND INVITE THEM TO THE FIRST STAGE**

- Provide seven calendar days' notice of the meeting and a copy of the Procedure;
- Advise of the entitlement to be accompanied by a \*\*trade union representative or work colleague;
- Provide the relevant background information prior to the meeting including (where appropriate) a copy of Occupational Health advice, and sickness absence record.

*\*\*If the employee's chosen trade union representative or work colleague is unable to attend the scheduled meeting, the employee may propose an alternative date provided it is reasonable and no more than 7 calendar days after the original date and another meeting will be arranged. If the employee fails to attend the re-arranged meeting, a decision may be taken in their absence.*

#### **THE FIRST STAGE MEETING AND DISCUSSION:**

This will include:

- The absence record and the impact that this is having on the team/service delivery

- The implications of further/continued absence
- Likely date of a return to work, and, where the absence relates to an underlying medical condition or serious/recurring illness, the latest medical advice and prognosis
- Any support and agreed objectives that may be required to improve attendance e.g. reasonable adjustments where the absence is disability related
- Any representations made by the employee.

### **DECISION / OUTCOME OF MEETING**

Following the **First Stage Meeting** the manager may:

- Issue a notice to improve, with a monitoring period/programme agreed which requires **a sustained, acceptable attendance pattern that meets the needs of the business**, with a specific target which must be maintained for a period of 12 months for either long term or intermittent absence. Within the period the employee should be advised that if their attendance does not meet the required standard, then the matter may be referred to a **Final Stage Meeting** and their employment may be at risk.
- Not issue a notice to improve, as it is believed there are extenuating circumstances as to why the warning should not be issued. This should be discussed with HR in the first instance.

In considering the above, managers should accommodate any reasonable adjustments required for disability related conditions, please seek advice from HR.

### **THE OUTCOME - RECORDING THE DECISION**

- Confirm the outcome and any actions to be taken in writing to the employee. Agree actions and ensure that the implications of further absence/unsatisfactory improvement are made very clear, including the possibility of escalation to a **Final Stage Meeting**;
- The outcome letter must advise the employee of the right of appeal where a formal notice to improve has been issued. An appeal, usually to the manager's manager, must be lodged within 14 calendar days of being informed of the decision. There is no right of appeal against the implementation of a monitoring programme/period.

### **MONITOR, IMPROVEMENT SATISFACTORY OR ESCALATE**

During a monitoring period after the First Stage Meeting, managers should discuss this as part of routine 1:1 meetings or arrange to meet regularly with the employee to review progress and how any subsequent absence should be considered.

Depending upon the circumstances, either during or at the end of the notice to improve period, a decision should be taken as to what further action is necessary. Where there has been satisfactory improvement, this should be confirmed and the employee informed that the current notice to improve has finished/been completed. Where improvement has **not** been satisfactory –

### **EITHER**

1. Consider what is expected/acceptable and whether to extend the timescales for reviewing the notice to improve (e.g. there has been encouraging improvement and continuing signs of further improvement);

**2. OR**

The case should be escalated to a **Final Stage Meeting**. This will be appropriate where one or more of the following might apply:

- A notice to improve has already been issued but targets have not been met and/or absence continues to be of concern;
- The absence relates to an underlying medical condition or serious illness and the likely return to work date has been delayed and the absence can no longer be sustained;
- Occupational Health has provided evidence that supports a recommendation that the employee can no longer carry out a substantial part of their current duties and/or should not return to their existing post, or that they will not be able to return to work in the foreseeable future or sustain regular attendance within a period of time that the manager considers to be reasonable. Redeployment will be considered, if appropriate and available, taking into account advice from Occupational Health (**Note: Occupational Health advice may be sought at any time and therefore redeployment may occur at any part of the formal stage**). This may be either on a permanent or temporary basis. Where permanent redeployment is appropriate but is not available, or the employee unreasonably refuses an offer of redeployment, a **Final Stage Meeting** will be held.

### **THE FINAL STAGE MEETING**

A **notice to improve** does not need to expire before matters can be escalated to a Final Stage Meeting under this procedure however, advice should be sought from HR in cases where it is proposed to shorten the review period under the notice. Managers will need to **obtain up-to-date occupational health advice** as previously scripted above in the First Stage process. Thereafter:

#### **WRITE TO THE EMPLOYEE AND INVITE THEM TO THE MEETING:**

The meeting will normally be chaired by a manager more senior than the manager who issued the notice to improve and who holds the authority to terminate employment.

- Provide 14 calendar days' notice of the meeting
- Advise of the entitlement to be accompanied by a trade union representative or work colleague
- Provide the relevant background information prior to the meeting including a copy of Occupational Health advice and sickness absence record
- Note **\*\*above re: reorganising meetings where trade union representatives cannot attend.**

#### **THE FINAL STAGE MEETING AND DISCUSSION:**

This will include:

- The absence record and the measures, targets and criteria that were used to assess improvement
- Review of the up to date Occupational Health report

- Review of the actions that have been taken to date (including any reasonable adjustments required) and any further adjustments that may have been recommended
- The impact that the absence has had on the team/service delivery; and
- any representations made by the employee.

### **THE DECISION / OUTCOME OF MEETING**

Following the **Final Stage Meeting** the manager may EITHER:

#### **1. Re-affirm the notice to improve – where:**

- A notice to improve has previously been issued and, in exceptional circumstances, a further period of recovery or further consideration of redeployment and/or reasonable adjustment can be agreed. If this is agreed, the notice to improve must be reaffirmed (and extended with a specific target which must be maintained for a period of up to 12 months) and the employee advised that the Final Stage Meeting will be reconvened if an improvement is not achieved or sustained. Regular monitoring should be put in place and, once issued, an employee will remain under review for the duration of the further notice to improve, regardless of whether or not they have returned to work or had any further periods of absence.

**OR**

#### **2. Terminate employment – where:**

- Evidence suggests that an improvement is unlikely to be achieved or sustained within a reasonable period
- Redeployment and/or adjustments are either not appropriate or available
- Consideration has been given to all the advice available, including up to date medical advice and management decide that the employee is likely to be permanently incapable of carrying out their current duties or a significant/material part of their duties (or incapable of carrying out duties within a reasonable period)
- Medical evidence indicates that the employee is unlikely to be able to return to work in the foreseeable future.

The relevance of each of the factors above will depend on the reason and pattern of absence.

### **THE OUTCOME - RECORDING THE DECISION**

- Confirm the outcome in writing;
- Where the outcome is termination of employment, appropriate notice and appeal rights must be given.
- The employee may be entitled to pension benefits, subject to the relevant pension scheme rules (early consideration of an application for 'Ill Health Early Retirement' - IHER should be considered wherever possible)

### **RIGHT OF APPEAL AND NOTICE ON TERMINATION OF EMPLOYMENT**

The employee will be advised of their period of notice on the termination of their employment (which may be paid in lieu but subject to tax and national insurance

deductions) together with their right of appeal against the decision to dismiss. The employee will receive full pay during their notice period.

An employee may appeal the decision to terminate their employment which must be submitted **(along with the grounds for the appeal)** to HR in writing within 14 calendar days of the receiving the decision. The Appeal will usually be heard by a manager more senior than the manager who made the decision to dismiss or Head of Service or, in exceptional circumstances, by another Head of Service. The decision reached will be final.