

## **Operational Guidelines**

### **C3 Attendance Management Policy**

**April 2013**

The following guidelines relate to the management of attendance within Barnet Council and should be read in conjunction with the C3 Attendance Management Policy.

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# 1. Absence Recording

## 1.1 Industrial Injury

Where an employee has reported an accident or injury at work in accordance with the school's / Council's reporting procedure and is absent due to an industrial accident or disease, the employee should be reminded to submit a medical certificate immediately so that the period of absence may be treated as an industrial injury. Further information is given at appendix A.

## 1.2 Medical Suspension

Where an employee reports for work but the manager has good reason to question their fitness for work, the manager or Head Teacher, as appropriate, should consider whether medical suspension is appropriate pending a report from the Council's Occupational Health Advisor. Medical suspension should only take place with the agreement of the relevant Chief Officer or governing body as appropriate. The employee should receive full contractual pay pending receipt of the medical report and a decision on their fitness for work.

## 1.3 Bank Holidays, Weekends and School Holidays

Managers should record all absence (through SAP if available) - guidance for entering absence on SAP is given on the council's intranet.

Bank holidays, weekends and school holidays falling in the middle of absence should be recorded as sick absence.

Where an individual indicates that would be fit to resume work were it not for a weekend, school holiday or bank holiday, absence may exceptionally be recorded as ending accordingly. However should the employee not report to work following the weekend or holiday the intervening period should be recorded as absence and the employee will be required to provide appropriate certification to cover the absence. A failure to do so may result in loss of council or statutory sick pay.

See also paragraph 10.5, 11 and 13.

# 2. Stress and Mental Health Problems

2.1 Stress and mental health problems are common causes of sickness absence and particularly long-term sickness.

2.2 The Council believes in dealing with stress positively through a proactive policy and accompanying training and support. In managing staff attendance at work managers should be aware of how stress can trigger or exacerbate sickness absence. Under the Health and Safety at Work Act 1974, managers have a duty of care to protect the physical and mental health of their staff at work. Recent Employment Tribunal cases have established that stress at work can be a disability, as defined by the Disability Discrimination Act 1995.

2.3 Mental health problems can be difficult to diagnose. They may be caused by stress, by bullying or by depression brought on by a combination of factors affecting an employee at work and at home.

- 2.4 A counselor can help to explore the deeper emotional problems associated with mental health. Access to a counselling service can be obtained through the Occupational Health Service.

### **3. Absence due to cancer**

- 3.1 The Equality Act 2010 protects anyone who has, or has had, a disability. When a person is diagnosed with cancer, he or she is automatically classified as disabled for the purposes of the Equality Act. This protection from discrimination continues even when there is no longer any evidence of the cancer. Thus, if the cancer has been successfully treated, employees will continue to be protected against discrimination. This means that managers should seek advice from HR where they are managing an employee's attendance, particularly in regard to making reasonable adjustments.

### **4. Medical / Dental Appointments**

- 4.1 When making appointments employees are expected to try to book them so as to avoid taking time off work, booking appointments at the beginning or end of the working day. Reasonable time off with pay will be granted for visits to the doctor, hospital, or dentist, when surgeries are not available outside of working hours. Managers should ask to see an appointment card or letter as proof of the appointment.
- 4.2 Whilst reasonable time off to attend medical appointments does not form part of an employee's sickness record, managers may request that frequent and regular appointments be partially accommodated through alternative arrangements such as annual leave, flexi-leave or working back hours. Managers should monitor unreasonable time off as it could form a pattern of absence that causes concern. If a whole day is required, the day will be classified as sickness and recorded as such.

### **5. Extended Periods of Treatment**

Employees who need to undergo extended periods of treatment should inform their manager of the situation in advance and produce appointment cards. Employees are expected to try to arrange appointments outside of their normal working hours, taking annual leave or flexi leave. Managers may use their discretion in exceptional circumstances in allowing the employee to record the appointment as sick leave. Employees who are required to attend regular appointments as part of their treatment for a progressive illness should record all appointments as sick leave. Employees with disabilities who need to attend medical appointments should record the absence as sick leave.

### **6. Cosmetic Surgery**

Paid leave will not be available to employees who undergo cosmetic surgery, or cosmetic dental treatment. Appointments falling into this category will be taken as annual, flexi leave or unpaid leave. In situations where an employee is recommended to undergo cosmetic surgery for physiological reasons, for example following an assault or a major operation, managers should use their discretion in allowing the employee to record the treatment as sick leave.

## **7. Fertility Treatment**

- 7.1 The Council recognises that fertility treatment, although not a sickness issue, is a health issue. Undergoing treatment is stressful and emotionally demanding and therefore managers are strongly advised to deal with such cases in a sensitive and supportive manner. To support members of staff who are undergoing treatment the Council will allow up to 5 days paid leave per year for investigations or treatment. These days may be taken as a block of 5 days or separately as half or full days as necessary. Any additional time off work should be taken as annual leave or flexi leave. Partners will also be entitled to this leave.
- 7.2 To be eligible for leave for fertility treatment, staff must have been continuously employed by the Council for at least one year. Employees who require leave for fertility treatment should advise their manager or approach HR to do so on their behalf. A letter from the hospital/clinic where they are being treated should be provided stating the expected week and the duration of the investigations or treatment. Request for leave for fertility treatment must be treated in the strictest confidence.

## **8. Obtaining Medical Advice**

- 8.1 Medical referral is very important and required in most cases of long- term absence. This should take place at the earliest reasonable opportunity, particularly on notification of absences relating to stress and muscular-skeletal absences. Examples of the sort of questions that may be asked in a medical referral include:
- What is the nature of the illness?
  - What is the expected date of return?
  - What duties will the employee be able to undertake on their return to work?
  - What (if any) future treatment is envisaged and over what time scale?
  - What is the likelihood of a full return to work?
  - Whether there is a need for temporary measures as part of a phased return to work? For example time on light duties or reduced hours.
  - 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 carry out their duties effectively and on a regular basis?
  - Whether the employee is disabled for the purpose of the Disability Discrimination Act (DDA)?
  - Where the employee is or may be disabled for the purpose of the DDA, what reasonable adjustments to work practices, premises or equipment may be appropriate?

- Should the employee be redeployed either permanently or temporarily on medical grounds, and if so what type of alternative work is appropriate?
- Should the employee be recommended for retirement on medical grounds?

## 9. The Role of the Occupational Health Advisor

9.1 Decision making about an employee's capability to carry out their duties is a management responsibility, however, managers need access to effective medical advice from the Council's Occupational Health Service.

9.2 Information provided by the Occupational Health Advisor will be used by the Council to make an informed decision about an employee's employment with the Council. The role of the Occupational Health Advisor is to advise the Council on any clinical issues affecting an employee's performance and attendance. Where a manager is concerned about the effect of an employee's health on their work and attendance at work, the employee will be referred to the Occupational Health Advisor. Circumstances where advice may be sought are:

- • If an employee's physical or mental health gives cause for concern
- • Where an employee's health may put others at risk
- • If an employee is absent excessively (either self certificated or medically certificated)
- • Where there is suspected abuse of self certification
- • In cases of long-term absence
- • Where there is a need for advice on permanent or temporary adjustments including the suitability for redeployment, which would enable the employee to return to work
- • Where there is a need to identify if there is a underlying medical condition or disability
- • Where an employee raises concerns about their health and the working environment
- • Where there is a need for further advice and information about an employee's known medical condition
- • In cases where ill health retirement is being considered.
- The Council may refer an employee to the Occupational Health Advisor for additional information and advice at any stage within these procedures.

## 10. Entitlement to Council Sick Pay

### 10.1 Head Teachers and Teachers

Teachers' sick pay is based on a teacher's length of service and is determined by the provisions within the 'Burgundy Book' as amended by the Council, a summary of which is detailed below. For full details, refer to the 'Burgundy Book'.

During the first year of service	Full pay for 25 working days and after completing four calendar months' service; full pay for 50 working days.
During the second year of service	Full pay for 75 working days.
During the third year of service	Full pay for 115 working days.
During fourth and subsequent years	Full pay for 150 days.

- 10.2 The council's revised sick pay provisions for teachers were introduced in 1982 and restated in 1996 as part of the "Working for Schools – a guide for staff". As a result of their introduction, schools using Barnet's revised sick pay conditions (rather than Burgundy book) are not entitled to take advantage of having their sick pay based on aggregated service with previous local or public employers if such service was more than 12 months prior to the date of employment at their current school.

This means that if a teacher has worked for an employer other than a local or public sector employee for 12 or more months prior to their current period of employment their previous service is not aggregated and only service in their current school will be counted in calculating sick pay entitlements.

### 10.3 Extension of Sick Pay

In very exceptional circumstances, when a Teacher has been on long-term sick leave and their sick pay expires; the governing body together with the Head Teacher may agree an extension of sick pay for a specific period. This would normally only be appropriate in cases of severe financial hardship and, for schools, this would be funded from the school budget.

### 10.4 All other Council Employees

Sick pay for support staff is based on length of service and is determined by the provisions within the 'Green Book', a summary of which is below. For full details refer to the 'Green Book'. It should be noted that service can only be aggregated where there is less than 12 months between periods of service.

During first year of service	1 month full pay, and after completing 4 months service, 2 months half pay.
During second year of service	2 months full pay and 2 months half pay

During third year of service	4 months full pay and 4 months half pay
During fourth and fifth year of service	5 months full pay and 5 months half pay
After five years service	6 months full pay and 6 months half pay

**10.5** Employees may also be considered for Industrial Absence sick pay (see paragraph 1.1 and Appendix A - Industrial Absence)

**10.6 Statutory Sick Pay**

Statutory Sick Pay (SSP) is the sickness payment made by statute for employees over the age of 16 and whose earnings are at the level at which National Insurance contributions must be paid.

**10.7 Eligibility**

Employees whose earnings are at a level on which National Insurance (NI) contributions must be paid will receive SSP when off sick for four or more consecutive working days.

SSP is payable from the 4th working day when the employee first becomes incapable of work unless this is within a linked period, and ends either when he or she returns to work or have used their entitlement that is at the end of 28 weeks. The period may end if one of the following occurs:

- The contract of employment ends
- The employee is detained in legal custody
- The employee is no longer considered to be sick by management
- The beginning of a disqualifying period because of pregnancy (eleven weeks before the expected week of confinement and running for a maximum eighteen weeks).

When an employee has more than one job, SSP is payable on each separate contract as is occupational sick pay.

**10.8 Period of Incapacity for Work (PIW)**

Incapacity for work for at least 4 consecutive days, (including Saturdays and Sundays) forms period of incapacity for work (PIW). This is the minimum amount of sickness absence, which counts for SSP.

Every day of the week is counted in calculating the PIW including Saturdays, Sundays and Bank Holidays.

**10.9 Qualifying Days**

Entitlement to SSP can only arise on a qualifying day. These are the days the employee concerned will normally be required to work. The first three qualifying days in a period of incapacity for work are known as waiting days for which SSP is not payable. Any work undertaken on the day the employee goes off sick does not

count as a qualifying day. If an employee has unusual work patterns, it is possible to agree different qualifying days. In these circumstances, HR will be able to provide advice.

#### **10.10 Linked Periods**

Any two periods of absence from work, which are separated by a period of not more than eight weeks (56 days), will be treated as a linked period of incapacity for work. For SSP purposes these two absences will be regarded as one. For the second period of sickness the employee need not serve the waiting days before they are entitled to SSP.

#### **10.11 SSP whilst abroad**

Employees who fall sick outside the European Economic Area (EEA), or who go outside the EEA during a period of sickness, are entitled to statutory sick pay, provided that they satisfy all the relevant qualifying conditions. This extension of statutory sick pay entitlement applies to employees who are on holiday, those seeking treatment abroad and those sent temporarily to work overseas by their UK employer.

#### **10.12 Payment**

Payments of SSP are based on the employee's average gross earnings over the eight-week period immediately before the first day of absence. All payments made in the 8 calendar weeks must be included. If, on any of the payday, the employee was not due any pay (e.g. due to an advance), the 'blank weeks' are still included in the calculation. This will only affect an employee's occupational sick pay when the average earnings fall below the level at which N.I. contributions must be paid because he/she will then not be entitled to SSP.

SSP is treated like salary in that it will be subject to PAYE Income Tax and to National Insurance contributions.

The Council's Sick Pay is a supplement to SSP. The scheme is intended to ensure that during sickness absence an employee shall receive the Council Sick Pay and SSP which together totals not more than the sum of their normal earnings.

Where an employee is on half pay, SSP will be paid in addition to this, however this must not together total more than the sum of normal earnings.

#### **10.13 Claiming Benefits**

When an employee is near to exhausting their SSP entitlement the employee will be sent form SSP1 with the last Medical Certificate to be submitted to the Department of Work and Pensions to claim sickness benefit.

The form SSP1 will also be given to employees who are not entitled to SSP.

#### **10.14 Leavers**

An employee who has been receiving SSP within 8 weeks of terminating their employment with the Council to work for another employer will receive a completed form SSP1 (L) from the Payroll Section.

## 10.15 Exclusions from SSP

The employee cannot receive Statutory Sick Pay if, on the first day of the Period of Incapacity for Work (PIW);

- (a) Their period of incapacity for work is within 8 weeks of receiving either Incapacity or Severe Disablement Benefit from the Department of Work and Pensions
- (b) They have already been due 28 weeks SSP from their previous employer within the last 8 weeks
- (c) Their average weekly earnings are below the level at which National Insurance contributions are payable
- (d) Their contract of service is for a specific period of three months or less
- (e) They are within the 'disqualifying period' related to pregnancy
- (f) They are away from work because of a trade union dispute
- (g) They are in legal custody
- (h) They have not yet done any work.

Employees who do not qualify for SSP may be able to claim State Sickness Benefit from the Department of Work and Pensions. They will receive form SSP1 from HR and the last medical certificate. For these staff an amount equivalent to the current rate of sickness benefit will be deducted from their occupational sick pay irrespective of whether they are entitled to receive benefits.

## 11. Withholding of Council Sick Pay

11.1 Council sick pay may be stopped or withheld if the absence is not promptly reported to the line manager in line with prevailing arrangements for that employee. Council sick pay will not be payable when absence is due to illness or injury attributable to:

- Misconduct
- Participation in any activity or course of action which delays recovery or return to work

These issues may be dealt with under the Conduct Procedure.

Council sick pay may also be withheld when absence is due to illness or injury caused by any of the following:

- Sport as a paid activity
- Undertaking paid work other than for the London Borough of Barnet. This provision does not apply to Teachers.

11.2 There may be circumstances where employees may remain absent but management may consider that they are fit to return or may not have taken appropriate action to recover or return to work. If this is the case, a referral will be made to Occupational Health. The Occupational Health Advisor, may, with the individual's consent, contact the employee's GP and if appropriate, a specialist to

gather medical information and provide advice accordingly. If the advice is that an employee is fit to return to work, even if contrary to their own medical advice, they will need to meet with a manager to review the situation. Once these steps have been taken, if the manager concludes that he or she is fit to return to work, he or she should formally be asked to return. Failure to return at this point will result in the Council withholding sick pay.

- 11.3 Council sick pay may also be stopped if an individual fails to attend an Occupational Health appointment without reasonable explanation, or if an individual fails to supply medical certification.
- 11.4 Weekends, bank, and school holidays falling during or at the end of absence will normally be recorded as sick absence and will attract council sick pay accordingly, see paragraph 1.3.

## **12. Accidents Involving a Third Party**

Should an employee have an accident at any time, whether at work or elsewhere, which results in an absence from duty, the employee must report this. Whilst the Council will continue to pay the salary due to an accident it is recoverable from the employee in the event of any compensation or payments received by the employee from other sources as a result of the accident.

## **13. Sickness During Leave**

- 13.1 During any periods of unpaid sickness absence, the entitlement to accrue contractual holiday ceases. The entitlement to statutory holiday will continue to accrue, irrespective of the length of absence.
- 13.2 Employees have the right to their full statutory holiday entitlement. Hence, if an employee is ill during a period of time that has been booked as holiday, the employee can ask for that period of holiday to be rescheduled. If it is not possible to reschedule that period of holiday during the existing holiday year the holiday entitlement can exceptionally be carried forward to the next holiday year. However employees must follow the usual sickness absence procedure for the reporting of the sickness absence and, as in any sickness absence situation, further proof of the illness may be requested by the Council if there are any suspicions that the reason for the absence is not acceptable. The employee will be regarded as having been on sick leave from the date of the Statement of Fitness to Work and not from the date of notification.
- 13.3 If a contract is terminated due to ill health the employee will be paid in lieu for accrued holiday.
- 13.4 Employees on long-term sick leave at the end of the leave year may have effectively been denied the opportunity to take their leave. For that reason, any employee who has been on sick leave for the whole of the leave year is not prevented from carrying forward the whole of their unspent leave into the next leave year or beyond, if necessary. However any employee returning from a spell of sick leave who has the opportunity of taking their annual holidays before the end of the leave year, but who fails to do so, is not permitted to roll over their entitlement into the following leave year. The effect is that he or she would lose their entitlement and not be paid in-lieu for any outstanding leave.

- 13.5 Holiday cannot be taken as an alternative to reporting absent as a result of ill health. This is a statutory requirement within the terms of the European Working Time Regulations.

## **14. Allowances**

### **14.1 Car Allowances**

Green Book lump sum payment – for the remainder of the month in which the car first became out of use, and for a further three months thereafter – full payment. For the following three months payment should be made at the rate of 50% of the lump sum payment. No payment is due until the individual returns to full duties which require business use of the car i.e. not for travelling to and for work

### **14.2 Car loan Repayment of the car loan during the time in receipt of sickness payments.**

Should the entitlement to sickness payments be exhausted, payments can be suspended until the employee starts to receive payment of salary.

## **15. Trigger Points**

- 15.1 The minimum trigger points for entering into the formal Absence Procedure, at Stage 1, are as follows:

- 4 or more absences of any duration in any 6-month period

And/or

- 10 or more working days absence in any 6-month period. Working days in this context relates to employee working days and includes weekends included in basic hours.

- 15.2 Subject to individual circumstances, individual trigger points will normally be set within the Improvement Notice at the formal Stage 1 and 2 meetings, based on the following:

- 3 or more absences of any duration in any 6-month period

And/or

- 10 or more working days absence in any 6-month period. Working days in this context relates to employee working days and includes weekends included in basic hours.

The trigger points listed above are for full time employees.

15.3 Employees working less than full time hours have the trigger points adjusted accordingly, the table below refers.

Percentage of hours worked as compared to a full time employee	Periods of absence in any 6-month period Stage 1	Absence duration in any 6-month period Stage 1	Periods of absence in any 6-month period Stage 2	Absence duration in any 6-month period Stage 2
90-99	4	9 or more	3	9 or more
80-89	4	8 or more	3	8 or more
70-79	3	7 or more	3	7 or more
60-69	3	6 or more	2	6 or more
50-59	3	5 or more	2	5 or more
40-49	2	4 or more	2	4 or more
30-39	2	3 or more	1	3 or more
20-29	2	2 or more	1	2 or more
Below 20%	2	2 or more	1	2 or more

15.4 Services may vary these trigger points subject to the needs of the service, but they should be no less stringent.

## 16. Representation at Meetings

Employees are entitled to be accompanied at formal meetings (as below) by their Trade Union Representative or a work colleague who is also a council employee. Where the council is not the employer (for example academies) the companion will be an employee of the same employer.

Companions may help and support employees to present the case against the issue of a warning or dismissal (see also paragraph 17.3).

## 17. Stage 1 Absence Meeting – Guidance

### 17.1 Background

Managers are required to monitor and analyse all sickness records to ensure all employees are treated consistently. Managers who regularly monitor and act upon sickness information ensure that problems are identified and addressed at an early stage. Most problems can usually be dealt with informally with assistance being given to the employee where necessary. If an employee reaches one of the set trigger points and there is cause for concern, the employee should be called to attend a first formal meeting. Prior to arranging this, managers should ensure that informal attendance meetings have already taken place, such as return to work discussions, and that the pattern/level of absence warrants further action.

Obtaining advice from the Council's Occupational Health Advisor should be considered, if it has not been done so already.

This stage of the process will enable the manager to:

- Detail all of the absences and if required to investigate further the underlying reasons.
- Reiterate management concerns.
- Discuss the effect of the absence on performance.
- Discuss with the employee a strategy for increasing attendance.
- Objectively consider the employee's explanation(s).
- Decide whether to set targets and the timescale for review period.
- Explain the Council's policy on attendance management.
- Focus on whether the employee can regularly and efficiently provide a service.
- Consider a further referral to the Occupational Health Advisor.

Employees must be made to understand the effects of sickness absence on performance, the quality of service to the public and the added burden placed on colleagues. Any standards of acceptable attendance that are set must be clearly communicated. The individual must know where he or she stands. The consequences of what will happen if he or she fails to meet the targets set must be clearly explained to him or her.

## **17.2 Notification**

Managers should ensure that the following points are all covered as part of the notification process:

- Notify the employee in writing of the absence meeting, clearly giving the reasons for it and a minimum of seven working days notice
- State that the level and / or pattern of absence is such that it is believed that the employee is no longer capable of performing their duties
- Notify the employee that he or she has the right to be accompanied by a recognised trade union representative or Barnet work colleague. (See paragraph 16).

## **17.3 Non-Attendance at a Hearing.**

If either the employee or their representative is unable to attend a meeting on the date of the Hearing due to sickness or another substantial and valid reason, the meeting may be postponed and rearranged for within 10 working days of the original meeting date. If the employee is unable to attend this second re-arranged meeting, the meeting will be held in the employee's absence. However employees will have the option of submitting a written report or requesting that their representative be allowed to present the case in their absence.

#### 17.4 The Meeting

The purpose of an attendance meeting is to enable managers and employees to discuss the following:

The Manager	The Employee
<ul style="list-style-type: none"><li>• detail absences</li><li>• explain why absences are giving cause for concern</li><li>• ascertain whether absence is being caused or aggravated by working conditions</li><li>• discuss referral to Occupational Health</li><li>• discuss the effect the absences are having on colleagues and on service delivery</li><li>• - discuss practical steps to reduce absence</li></ul>	<ul style="list-style-type: none"><li>• have an opportunity to comment</li><li>• discuss any issues affecting their attendance record</li><li>• discuss any relevant medical information</li></ul>

Attendance meetings must be conducted sensitively and in confidence, a brief note of the meeting should be produced, with a copy given to the employee.

#### 17.5 Absence caused or aggravated by working conditions

Where working conditions are or appear to be a contributory factor, managers should address the issues and offer the employee assistance in finding ways to improve their attendance / work performance. A referral to the Occupational Health Advisor should be made to assist with this process. See also paragraph 1.1 and appendix A.

#### 17.6 Concluding the Meeting

At the end of the meeting managers should conclude that either:

- No further action is needed at this stage,
- or
- To issue a first written warning in the form of an 'Improvement Notice', see 17.7.

### 17.7 Improvement Notice Example

Example notice of first written warning or final written warning

Dear ..... Date.....

You attended an ill health meeting on ..... I am writing to inform you of your written warning/final written warning\*. This warning will be placed in your personal file but will be disregarded for disciplinary purposes after a period of 12 months, provided your attendance reaches a satisfactory level.

a) The nature of the unsatisfactory attendance was:  
*e.g. 3 absences totaling 11 days from 17 May 2010 to 8 October 2010*

<i>17 May – 20 May</i>	<i>4 days</i>	<i>Headache</i>	<i>Self Certified</i>
<i>21 July – 23 July</i>	<i>3 days</i>	<i>Headache</i>	<i>Self Certified</i>
<i>4 October – 7 October</i>	<i>4 days</i>	<i>Flu</i>	<i>Self Certified</i>

b) The attendance improvement expected and agreed actions are:  
*e.g. to have less than 3 periods of absence in any period of 6 months over the next 12 months, or any absence (s) exceeding 10 days.*  
*It is also agreed that you will see your Optician, within the next 2 weeks, to have your eyes tested as you feel that your eyesight may be causing you to have headaches.*  
*I have agreed to refer you again to the Occupational Health Service to discuss whether the annual Flu Jab will help you keep free of Flu over the winter period.*

c) The timescale within which the improvement is required is:  
*e.g. From the date of this letter to the 28 April 2011*

d) The likely consequence of further misconduct or insufficient improvement is:  
Final written warning/dismissal

Yours sincerely

Signed Manager .....

*\* The wording should be amended as appropriate*

### 17.8 Suitable Review Periods

A four-week review period for cases of long-term sickness and a review period of 12 months for cases of regular short-term absence are recommended as reasonable review periods.

## 17.9 Possible Outcomes following a Review Period

Possible Outcome	Action to be taken	Points to consider
1. Where the employee's attendance improves to the standard set out in the action plan and they have demonstrated their ability to maintain level of attendance.	No further action should be taken.	If the level of attendance is subsequently not sustained, the manager should meet with the employee to determine the reason (s) and decide if further action is required.
2. If there is a partial improvement in attendance or there are good reasons as to why attendance has not improved.	Manager should consider continuing with the agreed monitoring arrangements for a further 3-6 month period.	Consider the long-term sickness record and whether there has been improvement followed by further poor attendance levels. The length of the review period should be sufficient to determine whether any further action should be taken.
3. If there is no improvement in attendance where it could have reasonably been expected.	Either at the end of the review period or before if the target has been breached, consideration should be given to issuing a Final Written Warning in the form of an Improvement Notice, see Annex A.as appropriate. The manager should consider moving to Stage 2, the formal hearing. It should be made clear to the employee that their attendance falls short of the standard required and that there is a requirement to improve attendance.	Confirmation that Stage 1 has been satisfactorily completed before moving to Stage 2. The employee should be informed that their continued employment with the Council might be at risk.

## 18. Guidance – Stage 2 Absence Hearing

- 18.1 The aim of this Hearing is to enable all parties to present their case for consideration and decision as to next steps. The employee should already have been informed at Stage 1 that this course of action would be taken if attendance did not improve within the agreed review period.
- 18.2 When a Hearing may not be appropriate - On some occasions when the Occupational Health Advisor has declared the employee permanently unfit for their

job, and alternative employment cannot be found, ill health retirement should be considered before a formal hearing is convened.

- 18.3 Preparation for the Hearing - A manager who has the authority to dismiss will Chair the hearing. He or she will have been provided with all the relevant case papers from the line manager. The Chair will review the case carefully prior to the hearing to ensure that Stage 1 has been completed correctly. The Chair must also ensure that full consideration has been given to any medical recommendations made by Occupational Health.
- 18.4 This meeting, given its potential implications and significance, will be held by an appropriate authority, see below.

Job Role	Authority
Headteacher – directly employed by the Council	Governing Body, who could recommend dismissal to the Local Authority. The LA have a statutory duty to issue the notice of dismissal within 14 days
Headteacher – employed by the Governors	Governing Body.
Teacher, including Deputy Headteacher - directly employed by the Council	Governing Body, who could recommend dismissal to the Local Authority. The LA have a statutory duty to issue the notice of dismissal within 14 days
Teacher, including Deputy Headteacher - employed by the Governors	Governing Body.
Chief Officer	Chief Executive or individual nominated by him/her
All other employees, not listed above including Centrally Employed Teachers	Chief Officer and their named nominees

- 18.5 Employees will be given at least seven working days' written notification of the Absence Hearing.
- 18.6 An employee is entitled to be accompanied at the meeting (see paragraph 16).
- 18.7 The manager involved at the previous stage of the procedure, will be asked to compile a summary report including any documents of the case to be presented to the Chair. The employee and their representative may also choose to prepare a similar document or report to support the case against formal action/dismissal or provide copies of documents they would want the Chair to consider.
- 18.8 Each party is responsible for providing a copy of their summary report/documents, no later than 2 working days' in advance of the Hearing, to the other involved

parties (i.e. the Chair; employee [2 copies, one of which he or she may choose to pass to their representative] and the line manager).

### **18.9 Non-Attendance at a Hearing.**

If either the employee or their representative is unable to attend a meeting on the date of the Hearing due to sickness or another substantial and valid reason, the meeting may be postponed and rearranged for within 10 working days of the original meeting date. If the employee is unable to attend this second re-arranged meeting, the meeting will be held in the employee's absence. However employees will have the option of submitting a written report or requesting that their representative be allowed to present the case in their absence.

### **18.10 Procedure at the Hearing.**

The Chair should open the hearing by explaining the reasons why the hearing has been arranged and explain the order of proceedings, answering any questions with regard to the procedure. The Chair should then either present the management case or request that the line manager does this, listing all of the following:

- All sickness absence under consideration which may include a summary of the employees previous attendance record over their entire employment.
- An assessment of the effect on the individual's performance and on the service generally
- Dates of return to work discussions
- Dates of attendance meetings and an overview of action taken including targets set and any adjustments recommended and/or implemented.
- Dates of informal interviews and previous formal interviews
- That the pattern or level of absence can no longer be sustained
- Copies of the most recent Occupational Health Advice and other relevant reports. In the case of long term absence, this would normally include all reports obtained during the absence along with any relevant previous reports (for example detailing recommended adjustments).

The employee will then be given the opportunity to submit their case and call upon any witnesses or to produce any necessary documentary evidence in support of their case. This will usually be in the form of updated medical advice that may have a bearing on the case. There will then be the opportunity for questions from the Chair. After answering any questions, any witnesses called by the employee will be asked to leave the hearing.

The Chair (or line manager) makes a closing statement, followed by the employee or representative. No new evidence can be introduced in the closing statements. The employee and their representative, and line manager if appropriate, then leave the hearing room.

The Chair considers the case.

If recall is necessary to clarify points of uncertainty, the meeting will be reconvened. In addition the Chair 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. The Chair may decide to adjourn the hearing to allow for this if necessary.

The employee and their representative are recalled to the hearing room and informed of the decision.

In some circumstances, the Chair may require more time to consider the evidence rather than making a decision on the day of the hearing. The decision may be conveyed through correspondence within three working days, or the hearing reconvened to announce the decision.

#### **18.11 Factors for the Chair to consider – short term absence**

Case Law has set out the following factors that should be considered before a dismissal decision is taken in cases of persistent short-term absence:

- the nature of the illness
- the likelihood of recurrence or some other illness arising
- the length of the various absences and the periods of good health in between the absences
- the need of the employer for the work to be done by the employee
- the impact of the absences on other employees
- the correct procedure has been followed at all times
- will the employee be able to give regular and efficient service
- the extent to which the employee has been made fully aware of the situation and when the point of no return would be reached.

### **19. Employees found permanently unfit**

If the employee has been found permanently unfit by the Occupational Health Advisor for their job and no alternative is available, then the employee should be considered for retirement on grounds of ill health, or dismissed on grounds of incapability if he or she is not a member of the pension scheme.

### **20. Employees not declared permanently unfit**

For persistent short-term absence, which can no longer be tolerated, where no underlying medical reason is the problem, or where Occupational Health does not declare the employee unfit, the employee may be dismissed on grounds of incapability. Such employees should be deemed not capable of performing their duties by reason of their persistent absenteeism. Where an individual's employment is terminated either by reason of permanent ill health or because they are incapable due to persistent absenteeism, their termination should be with full contractual pay, which may be in lieu of notice, even in cases where sick pay entitlement has been exhausted.

## 21. Right of appeal

Employees dismissed for either of the above reasons have the right of appeal against dismissal and should be informed of this right in their letter of termination. The letter of termination should also state that notification of intent to appeal must be submitted to the dismissing manager within five working days of the date of receipt of the letter notifying the outcome of the hearing.

21.1 The appeal is not normally a re-hearing of evidence submitted at the hearing.

21.2 Disputes about medical evidence cannot form the basis of an appeal. Such disputes should only be decided by an independent medical examiner, to be arranged by HR. The appeal must be made in writing and clearly state in detail the grounds for appeal, which must be one or more of the following reasons:

- Procedural flaw: failure to follow procedure had a material effect on the decision.
- The decision: the manager who took the decision to dismiss came to a conclusion on the facts that no reasonable person would have come to.
- The penalty: the decision to dismiss rather than an alternative option was one that would not have been reached by a reasonable person.
- New evidence: evidence which the employee wishes to introduce for the first time at the appeal could not reasonably have been raised at the stage 2 hearing and the absence of this had a material effect on the dismissal decision.

## 22. Appeal Hearing

22.1 The Appeal Hearing will be conducted by a manager authorised to take such action, as detailed below:

Job Role	Authority – against Dismissal
Headteacher – directly employed by the Council	Panel of Governors
Headteacher – employed by the Governors	Panel of Governors
Teacher, including Deputy Headteacher - directly employed by the Council	Panel of Governors
Teacher, including Deputy Headteacher - employed by the Governors	Panel of Governors
Chief Officer	Chief Executive
All other employees, not listed above including Centrally Employed Teachers	Appeal will only be considered by a Chief Officer, or more senior to this if the Chief Officer made the decision to dismiss

- 22.2 Appeal hearings will take place as soon as reasonably possible upon receipt of the employee's written notice of appeal.
- 22.3 An employee is entitled to be accompanied at the appeal hearing (see paragraph 16).
- 22.4 At the Appeal hearing, the authorised manager will initially review the proceedings to date to decide whether the appeal hearing will take the form of a review of the previous capability decision or a full rehearing of the case.
- 22.5 The appeal will normally be conducted as a review only where the facts/procedure are not in dispute but where the employee believes the judgement is unfair.
- 22.6 The appeal will normally be conducted as a rehearing in the following instances (not exhaustive):
- 22.7 There was a procedural defect of substance at the original hearing,
- 22.8 New evidence has come to light which needs to be heard in full, or there is a dispute about evidence given by witnesses
- 22.9 Where possible, the outcome of the appeal hearing will be confirmed orally at the conclusion of the appeal hearing. In some circumstances it may be necessary to adjourn, to complete further investigations. In these situations, the appeal hearing can be reconvened and the decision confirmed orally at the conclusion of this hearing or it may be agreed to communicate the outcome in writing. All decisions will be confirmed in writing.
- 22.10 The appeal manager's decision is final. No further right of appeal exists within the London Borough of Barnet .
- 22.11 Where an appeal against dismissal fails, the effective date of termination of employment will be the date on which the employee was originally dismissed.

## **23. Return to Work Guidance**

### **23.1 Purpose**

Return to work interviews should be conducted after every period of absence, in order to:

- welcome employees back
- check they are well enough to be at work
- discuss the details of an agreed return to work based on advice given by the GP in the Statement of Fitness for Work. The return to work should already have been agreed in principle by talking through the issues on the phone or face to face
- update employees on any news while they were absent
- identify the cause of the absence

- find out whether they have a disability and whether the provisions of Disability Discrimination Act 1995 apply, such as making a reasonable adjustment
- establish if their sickness is work related and whether there are any health and safety issues that need to be addressed.

A return to work interview is also a good way of teasing out any other problems an employee may have, at work or at home. These problems may remain hidden unless tact and sensitivity is used during the interview.

Many of the causes of absence arouse very strong feelings and managers may need training to help them manage the relationships with their employees.

## **23.2 How to prepare for a return to work discussion**

The majority of such discussions will be informal and brief. However they should still be done and it is recommended that managers take a short note of the areas and issues discussed. Where the discussion is more formal due to the sickness record, it must be remembered that it is confidential so a quiet meeting place without any distractions must be found. It must be noted that an employee may be building up the courage to reveal some information about their personal lives. If the employee is a home worker then a lengthy talk on the phone may be needed.

Managers need to think about:

- the employee's records and have everything to hand at the meeting
- any previous discussions that have been had with the employee
- following advice from the employee's GP on the 'Statement of Fitness for Work'. If a return to work has been agreed the manager might want to think about how this will work in practice, for example, what will the employee's work colleagues be told?
- what kind of questions you will ask. Open questions that give the employee the chance to talk freely are best – for example, 'how do you feel about being back at work'? may be better than a closed question like 'are you happy being back at work'?
- how the employee feels. Pick up clues by actively listening to what they say, making connections between the various points they make and seeking clarification. Also, being positive about the employee's value to the organisation
- the manager's body language – showing interest with appropriate nods, smiles and reassurance.

The manager should remind himself or herself about the individual employee. Are there any issues that might crop up during the interview? For example, it might be worth:

- familiarising themselves with the Council's stress standards

- thinking of a response to a request for flexible working or a phased return to work – this might be one of the suggestions made by the employee's GP on the 'Statement of Fitness for Work'.

The manager must be prepared to discuss the employee's absence in detail. Have there been any patterns? Has a trigger point been reached?

If the employee is returning from a period of long-term sickness plan a 'return to work' programme should be agreed.

- 23.3 The employee should be updated about any changes since they've been away – like progress on any jobs they were working on, changes to the team, etc.

#### **23.4 Return to work programmes**

Return to work programmes are not normally for lengthy periods and are normally supported by a fit note and/or occupational health advice. A typical return to work programme will entail a phased return and/or adjusted work and be for between 1-4 weeks aiming at resuming the individual to full hours and duties. As part of the programme the stages to resume to full time hours/duties should be clearly defined. Only in exceptional circumstances would a return to work programme be longer than 4 weeks. It should be noted that where a phased return is agreed, the following will apply:-

- for those hours that the employee attends for, the normal rate of pay should be applied. Where this is more than 60% of his or her normal working week, full pay should be given.
- for those hours where the employee does not attend for work, the employee should be recorded as absent. The rate of pay applicable will be according to his or her sick pay entitlement.
- Individuals awaiting surgery or other treatment may also be offered reduced hours for an extended but defined period of time but the 60% full pay would not normally apply in these circumstances.

- 23.5 Finally, what are the options for the future? All the options should be discussed with a focus on positive outcomes such as return to work programmes (above). Where appropriate the employee may agree to be referred to the Council's occupational health service. In some instances action may need to be taken in line with the Council's Conduct Policy if the manager is unhappy with the explanations for the absence. The manager should have an open mind, agree a shared action plan where possible, but not make any hasty decisions at the meeting.

**April 2013**

## Appendix A - Industrial Absence

- 1.1 Barnet Council is committed to supporting employees to attend work regularly and to provide them with a safe working environment where risk of injury or accident is reduced or removed as far as is practical and possible.
- 1.2 In accordance with the **Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011** the council is required to set out its policy statement in respect of a Discretionary Injury Allowance Scheme, this appendix sets out the Council's position.
- 1.3 The Council will retain the right to review this document at any time. Changes may result from employee, management and trade union feedback and/or from changes in employment legislation. The Council, following consultation with recognised Trade Unions, will implement revisions and updates.

### Scope

- 2.1 The provisions of this appendix applies to all Council employees, including Head Teachers, Teachers and Chief Officers.
- 2.2 A Chief Officer is defined as The Chief Executive, Deputy Chief Executive, Assistant Chief Executive, Director or a designated Deputy to one of the Directors.
- 2.3 The provisions of this appendix exclude the Chief Executive.
- 2.4 The provisions of this appendix are recommended for implementation in respect of staff directly employed by schools, for example those based in Academies.

### Principles

- 3.1 As a responsible employer, the Council undertakes to provide payments to employees who are unable to attend work due to sickness. In accordance with policy, this payment may be made through a combination of Statutory Sick Pay (SSP) and Occupational Sick Pay (OSP).
- 3.2 Where a member of staff is absent due to an injury or illness arising as a direct result of their employment, consideration will be given to paying an additional allowance in the form of **Industrial Absence Pay (IAP)**
- 3.3 In accordance with good practice, and the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011, Barnet Council will always seek the advice of their Occupational Health Advisor(s) in determining whether an employee is suffering from an illness or injury which has been caused by work, prior to determining whether it is appropriate to pay Industrial Absence Pay.
- 3.6. The Council respects the confidentiality of all information relating to an employee's sickness. This policy will be implemented in line with all data protection legislation and the Access to Medical Records Act 1988.

- 3.7. Where reference is made to “working days” in this statement, the meaning of a “working day” for all establishments except Schools is Monday to Friday (excluding Bank and Public Holidays), irrespective of whether this is a normal working day for the employee. For term time only employees in Schools, “working day” means one of the 195 days in a School year; of which 190 days must be days on which the individual may be required to teach pupils and perform other duties and 5 days must be days on which the individual may only be required to perform other duties

### **Managing Employee Absence Due to Industrial Injury**

- 4 Where a member of staff is absent from work due to Industrial Absence it is expected that their absence will be managed in accordance with the Council’s Managing Attendance Policy, using the triggers as set out under this policy. Managers are expected to exercise due discretion under this policy where a staff member hits a trigger for attendance, and to make appropriate choices in relation to appropriate next steps. Where managers need further guidance, this can be provided by their Human Resources advisor(s).

### **Industrial Absence Pay (IAP)**

- 5.1 Where it is determined by the Council’s Occupational Health Advisor, that an employees sickness absence is caused by or related to work, consideration should be given to paying Industrial Absence Pay in addition to **Statutory Sick Pay (SSP)** and **Occupational Sick Pay (OSP)**.
- 5.2 This payment is paid concurrently with SSP and OSP. The entitlement to Industrial Absence Pay is the same as that granted for Occupational Sick Pay. Details of how entitlement to Occupational and Statutory Sick Pay is calculated are contained in the Attendance Management Operational Guidelines
- 5.3 The total payments for OSP, SSP and IAP when combined can not exceed normal pay (including assigned allowances but excluding additional hours payments etc).
- 5.4 The effect of Industrial Absence Pay, when added to Occupational Sick Pay and Statutory Sick Pay, is that the period where an employee receives half Occupational Sick Pay plus SSP is “topped up” to normal pay.
- 5.5 Details of entitlement are as follows:-

### **Industrial Absence Pay Entitlement (Compromising SSP, IAP and OSP)**

During first year of service	1 month normal pay, and after completing 4 months service, 2 months additional normal pay.
During second year of service	4 months normal pay
During third year of service	8 months normal pay
During fourth and fifth year of service	10 months normal pay
After five years service	12 months normal pay

- 5.7 The granting of Industrial Absence Pay is without prejudice to the Council's position in respect of any personal injury claim which an employee may wish to raise, and is not an admission of culpability or responsibility in respect of such a claim.
- 5.8 Where an employee receives compensation for loss of earnings pursuant to a personal injury claim, this shall be repaid to the local authority in consideration of the industrial absence or sick pay paid to them. This requirement includes personal injury claims against Barnet Council.
- 5.8 The above payments constitute the limit of Discretionary Injury Allowance adopted by the Council and no further allowance or award will be made.
- 5.9 If, having taken in consideration the advice of the Occupational Health Advisor, the manager decides that they cannot support the payment of Industrial Absence Pay, the employee does have the option to appeal this decision to their Director, or their nominated director. Such an appeal would be dependent upon the employee providing further medical evidence to demonstrate that they were suffering from an injury which was directly related to their employment