

MANAGERS' GUIDANCE

ATTENDANCE MANAGEMENT AND ILL HEALTH CAPABILITY PROCEDURE

Version History			
Version	Date	Detail	Author

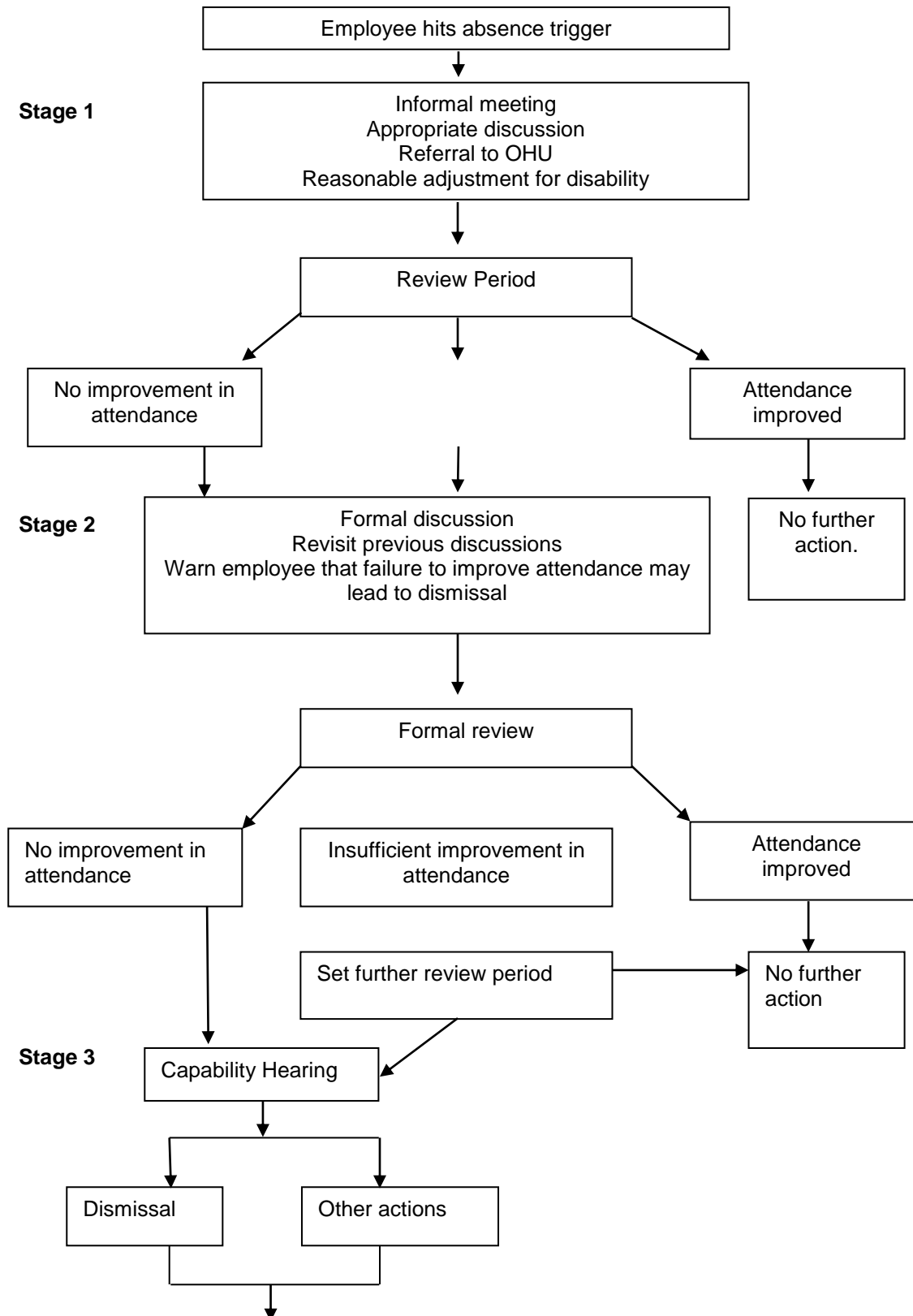
Links and Dependencies

NEDDC and BDC

Guidance on the Attendance Management and Ill Health Capability Procedure

	Page No
Flowchart	4
1 Introduction	5
2 Review	5
3 Sickness Reporting Procedure	5
3.1 First Day Contact	5
3.2 Fourth Day Contact	6
3.3 Return to Work – Self-Certification Form	6
3.4 Day 8 – Doctor’s Statement of Fitness to Work (Fit Note)	6
3.5 Maintaining Contact	7
3.6 Return to Work Discussion	7
3.7 Disciplinary Suspension	8
3.8 Sickness Absence and Annual/Flexi Leave	8
4 Abuse of Sickness Scheme	9
5 Ill Health Capability Procedure – Support Measures	9
5.1 Review Meetings	10
5.2 Referral to Occupational Health	11
5.3 Return to Work	13
5.4 Reasonable Adjustments	14
5.5 Temporary Alternative Work	14
5.6 Redeployment	14
5.7 Ill Health Retirement	15
5.8 Case Conference	15
6 Ill Health Capability Procedure – Stages	15
6.1 Timescales	15
6.2 Meeting and Record-Keeping Protocols	15
6.3 Stage 1 – Informal Meeting	16
6.4 Additional Support Available	17
6.5 Review Period	17
6.6 Stage 2 - Formal Meeting	18
6.7 Review Period	19
6.8 Stage 3 - Capability Hearing	20
7 Appeal	22
Appendix 1 – Capability Hearing Procedure	23

ATTENDANCE MANAGEMENT AND ILL HEALTH CAPABILITY PROCEDURE
FLOW CHART



1. Introduction

The aim of these guidelines is to provide practical support, advice and guidance to enable you to fulfil your role in the management of employees' attendance and the control of sickness absence. They should be read in conjunction with the Attendance Management and Ill Health Capability Procedure.

Their use will ensure the fair treatment of all employees consistent with good management practice.

2. Review

The Council's Attendance Management and Ill Health Capability Procedure and Guidance Documents have been reviewed in the light of and are consistent with ACAS guidance and current legal precedents. The documents will be updated in line with changing advice and codes of practice and D-net or the website should be referred to for the most up to date version.

3. Sickness Reporting Procedure

3.1 First Day Contact

Employees should notify their immediate manager, in person, of their absence and the nature of their illness. Texting managers is not normally acceptable practice, however, there may be occasions when this is the most practical option, e.g. if you are contacting your manager outside of normal working hours. However, you should follow this up as soon as possible with a telephone call.

As manager you should ask if the absence is due to industrial injury or disease. If so, this should be noted on the Self-Certification Form. The employee will be required to give the information necessary to complete Section 1 of the Self-Certification Form.

The employee should endeavour to report his/her absence, giving as much notice as possible, and by no later than their normal start time on the first day of absence.

Employees who are employed on a part-time basis or are shift workers or who have irregular working patterns should report their absences as determined by local departmental guidance.

Managers are responsible for reporting/recording the absence either into the appropriate pay system or by sending monthly absence returns to HR

3.2 Fourth Day Contact

If absence continues after the third day, then the employee should notify his/her manager in person on day 4 (including non-working days) and provide further information as to the nature and likely duration of illness. Where day 4 falls on a non-working day, the employee should contact the manager on the first available day after this.

3.3 Return to Work - Self-Certification Form

If an absence does not exceed 7 days, the employee will be required to complete the appropriate sections of the Self-Certification Form on their return.

Where an absence is long term, you should ensure the form is posted to the employee and that it is returned. Failure to return the form may be classed as an abuse of the scheme and may lead to sick pay being withheld.

The form should be completed in full and employees will be asked to provide details of the illness.

Completion of the Self-Certification Form applies to all periods of sickness absence including single days.

The manager should retain the self-certification form securely as part of the employee record.

3.4 Day 8 –Doctor’s Statement of Fitness For Work (Fit Note)

If the employee is still absent on or after Day 8 (including non-working days), he/she will require a Doctor’s Fit Note which he/she must send immediately to you as manager. The sickness absence will date from the first day of sickness as recorded on the Fit Note.

Under normal circumstances a doctor should not back-date a medical statement, however there are circumstances where this can be done, i.e. where an employee has an ongoing medical problem and has been unable to obtain an appointment to see their GP, then a retrospective Fit Note can be issued.

The manager should return the original Fit Note to the employee and retain a copy securely as part of the employee record.

3.5 Maintaining Contact

A successful return from an extended period of absence can only be achieved where you as manager have remained in contact with the employee throughout the absence.

Where an employee fails to contact you within the prescribed timescales, you should contact the employee. If unsure how to proceed, contact HR for further advice.

To maintain contact, an employee who is to be away from home for an extended period (two weeks or more) during sickness absence should inform their manager of their contact details before departure.

3.6 Return to Work Discussion

You should hold a return to work discussion with every employee on their return to work after a period of sickness absence, regardless of the length of that absence. This discussion should take place on the day the employee returns to work. If it is not possible to do this, then the conversation should take place within 2 working days, and if a face to face meeting is not possible, other methods of conducting the discussion, such as a telephone discussion, are acceptable. In any event, the discussion should be appropriate to the circumstances and duration of the employee's absence.

During your discussion you should:

- Ascertain whether the employee has made a full recovery. (Specific procedures are established in respect of employees who are food handlers. You should ensure these procedures are adhered to.)
- Discuss whether there are any adjustments either short or long term that are required to enable the employee to carry out the job role and, if so, record them on the return to **work discussion form**, with the appropriate timescales.
- Bring the employee up to date on work-related issues and developments that have occurred during their absence.
- If you feel that the reason for absence requires medical investigation or if the level of absence is a cause of concern, then refer immediately to the Occupational Health Physician, using the Occupational Health referral form available on the Intranet and the website. Tell the employee if you decide to do this.
- Advise the employee that they will be asked to attend a review meeting if they have hit the absence trigger of 8 days in any 12 rolling calendar month period.
- Where appropriate, remind the employee of the Council's in-house counselling service or refer for physiotherapy.

The return to **work discussion form** need only be completed where:

- The employee is having periods of short term intermittent absence.
- The absence is covered by medical certification.
- The employee is in the capability review process.
- Adjustments to the job are required.

Where the form is completed then one copy should be retained by you and one copy given to the employee. Please ensure that there is adequate information on the form to link it with the employee record.

It is good practice to hold return to work discussions after all absences, however the paperwork need only be completed in the circumstances shown above.

3.7 Disciplinary Suspension

If an employee has sickness absence during a period of disciplinary suspension, they must notify their department on the first day of sickness and submit Fit Notes in the normal way. Sickness payments will be made in accordance with normal procedures.

3.8 Sickness Absence and Annual/Flexi Leave

An employee who falls sick before or during annual leave, and sickness absence therefore coincides with booked leave, has the right to cancel that leave and retake it at a later date. This right depends on the sickness absence being reported on the first day it occurs, as set out in section 3.1 and, where the sickness period starts before booked leave, the continuing sickness should also be reported on the first day it coincides with the booked leave. A fit note should be supplied where appropriate. These conditions also apply to flexi leave.

Guidance on carry over of annual leave for employees on long-term sickness absence is available on the Intranet and the website.

Where an employee is on long-term sickness absence, they have a right to apply for annual leave during their sickness absence and to be paid for it. Guidance and an application form are available on the Intranet and the website.

4. Abuse of the Sickness Scheme

In cases where abuse of the scheme is suspected, sick pay may be suspended. Examples of abuse may include:

- Non-attendance at an In-Service Medical without reasonable cause.
- Failure to submit Doctor's Fit Notes at the appropriate time.
- Conduct prejudicial to the employee's recovery.

- Employee's own misconduct or neglect.

Abuse of the sickness scheme can lead to disciplinary action. You must seek advice from HR in these cases.

5. Ill Health Capability Procedure – Support Measures

This section of the guidance advises you on fair and consistent means of dealing with employees identified as having either short or long term sickness absence.

- Short term sickness absence including intermittent absence is defined as 8 working days or more sickness in any rolling 12 month period (pro rata for part time staff), or where absence is giving management cause for concern.
- Long term sickness absence is defined as being 28 consecutive calendar days or more.

The purpose in establishing these triggers is to identify those employees whose absence may be of concern to you. There will be cases where an employee does not meet a trigger but whose absence is still a cause for concern. In these cases you should also follow the ill health capability process.

At all stages of the process consider whether the employee is covered by the provisions of the Equality Act 2010. Further advice on this can be obtained from departmental HR or Occupational Health.

Where an employee has a terminal or life threatening illness or palliative care is being provided, you should contact HR immediately for urgent advice.

There may be cases where continuing and progressive ill health allows attendance at work but leads to a decline in performance. In such a case, advice should be sought from HR on use of the appropriate procedure.

5.1 Review Meetings

As the manager of an individual who has been identified as meeting a trigger or whose absence gives you cause for concern, your first step is to ascertain the details of the absence, including timings and reasons. To do this you should access individual records via the appropriate recording system. For managers who do not have access to this information, HR will be able to advise.

Reasons for absence can be found on the self-certification forms and Doctor's Fit Notes submitted by the individual or return to work discussion forms as appropriate.

In the majority of cases where employees meet a trigger within the procedure, there will be sufficient grounds for concern to make a review meeting necessary. However, there may be occasions when the trigger may be exceeded and a review meeting may not be appropriate, for example where the sickness is due to a significant family event or where all issues have been covered as part of the return to work discussion.

In the review meeting you are looking to establish whether there are any:

- Common reasons for absence.
- Common patterns – links to weekend/ bank holiday.
- Persistent or continuing illness.
- Underlying causes.

Other issues that may also need to be considered are:

- Previous attendance record.
- Any general problems with sickness in their place of work.
- Any domestic problems.
- The demands of the post and the need to cover workload.
- Re-deployment - where the Occupational Health Physician has advised that the employee is unfit to undertake certain aspects of their current role but may be able to undertake different job tasks.

In cases of intermittent absences, managers will usually be faced with absences where there appears to be no one underlying medical cause. The review process should still be followed but advice from Occupational Health may be sought, where appropriate, to ensure that there is no linked medical reason.

There may be exceptional circumstances when an individual is not prepared to discuss his/her absences with you. In such circumstances alternative arrangements should be made e.g. the employee discusses with another manager.

Managers should securely retain any documents relating to the review meeting including review form, notes and letters as part of the employee record, providing the employee with copies as appropriate.

5.2 Referral to Occupational Health

In cases of long term sickness absence you should refer the employee to Occupational Health when they have been absent continuously for 4 weeks,

except in respect of the following categories where it may be appropriate to defer a referral:

- Fractures which are healing normally with no complications.
- Operations with no complications.
- Employees receiving chemotherapy and/or radiotherapy that are expected to return to work.
- Sickness absence relating to anxiety arising from a significant family event.
- Imminent consultation referral.
- Imminent return to work.

In all cases of long term sickness absence, a referral to Occupational Health should be made after an employee has been absent from work continuously for three months.

In cases of intermittent sickness absence this should be done as and when appropriate.

You should advise the employee verbally that a referral is being made and/or issue a letter notifying employee of referral if appropriate, complete the Occupational Health referral form and forward to Occupational Health, via HR where appropriate.

A prompt referral is essential to ensure that:

- Any assistance required by an employee is offered quickly.
- Consideration is given to the employee returning to their substantive job by making temporary adjustments.
- Consideration is given to suitable alternative employment after medical consideration, should such a job be available.
- Management information is available to inform the review meeting which follows.

On the referral, you as manager/supervisor should provide:

- The individual employee's periods of absence during at least the last two years.
- The reasons in detail for the referral and as much factual, relevant background information as possible.
- Information provided by the employee to management about the reasons for the absence.

Also, where appropriate:

- A description of the physical and mental demands of the job on the employee.
- The frequency of such demands of the job on the employee.
- Whether the demands are likely to increase or decrease in the future.
- To which of the set questions on the referral form you require answers.

The notification of appointment will be issued directly to the employee's home address, with a copy sent to departmental HR for information.

If you require a workplace assessment for an employee, please indicate this on the referral form.

Following the in service medical, Occupational Health will provide a report to either you as the manager who made the referral or departmental HR, whichever is appropriate. The medical advice will provide answers to the questions that you have indicated are relevant.

These may include:

- That the employee is fit to return to their job.
- That the employee is unfit to work at present.
- That the employee requires a medical review at some future date.
- Whether there are underlying medical conditions necessitating absence.
- When the employee is likely to recover/return.
- Give advice and guidance on support to improve attendance.
- Whether the employee is permanently incapable of carrying out their job.
- What aspects of the current role the employee can / cannot do.
- Whether the employee is fit to undertake an alternate role (should examples of such roles be provided by management).
- Whether a medical report from his/her General Practitioner / specialist is required.
- State whether the employee may be a disabled person in accordance with the Equality Act.

If further clarification is required, Occupational Health will provide as much advice and assistance as possible, consistent with medical confidentiality.

The content of the medical report should be discussed with the employee and a copy of the report should be given to the employee as they do not automatically receive a copy.

It is your responsibility to decide on an appropriate course of action following receipt of Occupational Health advice.

In making any decision you will need to consider the following:

- The absence of a medical diagnosis or prognosis does not prevent you from taking action.
- You should not make medical judgements.
- You should not ignore medical opinion, or draw conclusions at odds with medical advice.
- The operational needs of the service.
- The right of the employee to seek an independent medical opinion. Where an employee does this, it should not delay your taking the appropriate action based on the information you have already received.
- Whether the employee is a disabled person under the Equality Act, and if so is more specific advice required from either HR or Occupational Health.

Managers should securely retain any documents relating to the occupational health referral, including forms, notes and letters, as part of the employee record, and provide the employee with a copy as appropriate.

5.3 Return to Work

The best outcome for employees and managers is a successful return to work. Where appropriate this may be on a phased basis to integrate the employee back into the working environment. This can be a combination of working days and continued sickness absence unless the employee specifically requests to use annual leave.

Return to work can be before the Fit Note expires if the employee recovers more quickly than expected. They may need some help or adjustments to return to work. If there is any uncertainty about an employee's fitness to return to work, you should contact Occupational Health for further advice.

A return to work discussion should take place to agree any rehabilitation programme that will best meet the needs both of the employee and of the service. Timescales should be put on these where appropriate.

5.4 Reasonable Adjustments

Where an employee is unable to undertake the full job role, consider whether adjustments can be made which are practical, reasonable and financially viable to enable the employee to continue in that job. These may be short term or permanent. In the case of short term adjustments ensure that end dates are clear and regular review take place to monitor progress. Advice regarding adjustments and/or equipment may be sought from Occupational Health.

5.5 Temporary Alternative Work

This may be considered in cases where medical evidence supports the view that an employee is unable to perform the full job role but is able to attend work and undertake a limited role within their job or alternative role for a

temporary period. The expectation will be that the employee will be able to resume the full role of their substantive job in the near future.

Where temporary alternative work is identified this will normally be as part of a planned and timetabled rehabilitation package. Ensure that end dates are clear and regular reviews take place to monitor progress. Any alternative work should support the operational requirement of the service and support the individual's recovery.

5.6 Redeployment

In cases where an employee is permanently unable to continue in their substantive job and it is not possible to make reasonable adjustments, redeployment may be considered.

Redeployment should be considered where the Occupational Health Physician has advised that the employee is unfit to undertake certain aspects of their current role but may be able to undertake different job tasks. The manager, in consultation with the employee, should then take a decision as to whether redeployment is a viable option.

For redeployment to be viable there needs to be a suitable redeployment opportunity i.e. a job available. This can be ascertained using the Council's job vacancy information. Employees have a shared responsibility to seek redeployment opportunities. Please take advice from HR.

An employee who accepts a formal offer of redeployment under these circumstances may be covered by the Council's Redundancy, Redeployment and Protection of Earnings Policy.

5.7 Ill Health Retirement

Where, in the opinion of an independent registered medical practitioner, an employee meets the criteria for ill health retirement, it will be the responsibility of the relevant Director to consider this opinion, before making a final decision.

5.8 Case Conference

In complex cases where an employee's absence is prolonged and no return to work is planned, you may ask departmental HR if a case conference would be appropriate. Representatives, as appropriate, from management, HR, Occupational Health, Health and Safety and Legal Services may be asked to attend to explore the issues of the case and decide the most appropriate course of action. You should ensure that, where appropriate, outcomes of any such meeting are shared with the employee at a subsequent review meeting.

6 III Health Capability Procedure - Stages

6.1 Timescales

Review periods should be at least four weeks but not longer than three months. However, in cases of short term intermittent absence, a longer review period may be required.

6.2 Meeting and Record-Keeping Protocols

Prior to the meetings at stages 1, 2 and 3, you should write to the employee inviting them to the meeting giving:

- A minimum of seven days' notice.
- The opportunity to be accompanied by a trade union representative or colleague.

It is important, and in both the employer and employee's interest, to keep written records during the capability process. Capability records should be maintained in the strictest confidence and kept no longer than necessary. **See the Human Resources Retention Schedule on the intranet or** the councils website for guidance on how long documents associated with the capability process should be kept.

Copies of meeting records should be given to the employee and their representative (if applicable).

A copy of letters relating to the capability process should be sent to the HR team who will maintain the register of all formal capability warnings, dismissals and actions taken detailing:

- The substance of the case.
- The outcomes of meetings and hearings.
- Actions taken, the date and reasons for that action.
- Whether an appeal was lodged.
- The outcome of the appeal.
- Any subsequent developments.

Please ensure that the correct documentation is issued at all stages of the process as this will evidence your actions should the outcome lead to a Capability Hearing and possible dismissal.

Template letters and statement of case are available on Intranet and on the website.

6.3 Stage 1 - Informal Meeting

The initial review meeting will either take place when an employee returns to work or, where the absence is long term, whilst the employee remains absent from work. In these circumstances meetings can take place at any mutually agreed place.

The employee should be given the opportunity to be accompanied by a trade union representative or a work colleague.

The purpose of the initial review meeting will be to:

- Discuss the individual's sickness absence record.
- Identify the reason for the period/s of absence and ascertain whether or not there are related reasons.

Consider where applicable:

- Prospects for a phased return to work.
- Work related issues.
- Is there an acceptable explanation of the reason for absence?
- Is further monitoring required?

In addition you should:

- Reinforce the need for good attendance.
- Where appropriate, set a date for a review meeting at the end of the monitoring period.

The following courses of action may be considered:

- Satisfactory outcome with no further action needed.
- Continue to monitor attendance at work for a stated period (between 1 – 3 months).
- Occupational Health referral.
- Where an employee is absent due to long term sickness, maintain contact during the review period and keep a log of all contact made.

For advice on completing an Occupational Health referral form, please see page 11 of these guidelines.

Following the meeting, complete either a review meeting record form or send the employee a letter outlining the content of the discussion. The manager should keep a copy of the paperwork and one copy should be given to the employee. Please ensure that there is enough information on the form to link it to the employee record (minimum requirement is a payroll number).

6.4 Additional Support Available

It is important to remember when conducting review meetings that there are a number of resources available which might assist an employee to return to work. These include:

- The role of Health and Safety Officers in advising on risk assessment and safe working practices.
- Support from the Council's Occupational Health Service and the Counselling Service.
- Reasonable adjustments which might be necessary or desirable, especially where disability is involved.
- Physiotherapy services to help people remain at work/ return to work sooner.
- Rehabilitation to assist a return to work / phased return to work.
- Advice is also available on adaptations to equipment and the provision of specialist equipment as well as available funding through the DWP - Access to Work Scheme.

6.5 Review Period

During the review period continue to monitor the employee's levels of sickness absence. Where the absences are intermittent, ensure that return to work discussions take place after each absence and that the return to work paperwork is completed.

At the end of the review period, a discussion should take place with the employee. Consideration should be given to:

Where attendance has improved -

- Advising the employee of this and that the matter is now closed.

Where the attendance has not improved -

- Reconsider the actions referred to at stage 1.
- Ascertain what steps the employee has taken to improve his/her attendance.
- Review current available medical information including an Occupational Health report where appropriate.
- Refer to Occupational Health if this has not already been done.
- Reinforce the expectation regarding attendance at work and the operational effects of the absence.
- Set a further review period or consider moving to stage 2 of the process. If the intention is to move to stage 2, provide the employee with details of the process and take advice from departmental HR.
- A further review period should normally be 1 – 3 months. However, where there are particular concerns about an employee's overall pattern of attendance a longer review period may be deemed appropriate, for example, in cases of short-term intermittent absence.

After the discussion, where appropriate confirm the outcomes to the employee in writing and retain a copy.

6.6 Stage 2 - Formal Meeting

From this stage of the process onwards, support will be available from HR. However you as manager will still manage the process.

Prior to any formal review meetings:

Unless the review meeting date has already been set, you should write to the employee inviting them to the review meeting giving:

- A minimum of seven days' notice.
- The right to be accompanied by a trade union representative or colleague.

At the meeting:

- Ensure the employee understands the stage of the process they are at – Stage 2.
- Reconsider the actions referred to previously.
- Consider any mitigating circumstances that may be affecting the employee's attendance.

In addition where appropriate:

- Ensure that reasonable adjustments are considered for an employee with a disability.
- Consider redeployment where the Occupational Health Physician has advised that the employee is unfit to undertake certain or all aspects of their current role but may be able to undertake different job tasks. If it is felt appropriate to seek redeployment, the following actions need consideration:
 - Working with the employee and the departmental redeployment officer to identify suitable alternative job roles, throughout the council.
 - Advising the employee to check the Intranet and the councils website for details of vacancies or arrange for the internal vacancy bulletin to be sent if access is not available.
 - Considering whether it is appropriate at this stage to ask Occupational Health to refer the case to an Independent Registered Medical Practitioner for an opinion on whether the criteria for ill health retirement are met.
 - In appropriate cases inform the employee of the Ill Health Retirement Procedure and provide a copy of the Employee Guide to it.

- Notify the employee that the level of absence cannot be contained and that failure to improve their attendance may lead to dismissal.

After the meeting confirm the outcomes of the meeting to the employee in writing and retain a copy.

6.7 Review Period

During the review period continue to monitor the employee's sickness levels. Where the employee is absent due to long term sickness, ensure contact is maintained in a mutually agreed way. Hold return to work discussions after all sickness absences and complete the return to work discussion form.

Following the review period an informal discussion should take place with the employee to consider:-

Where attendance has improved:

- Advising the employee of this and recording that the matter is now closed.
- Holding the employee at stage 2 of the process for a further monitoring period.

Where the attendance has not improved:

- Reconsider the actions referred to previously.
- Ensure up to date medical information is available from Occupational Health (within the last 3 months in most circumstances).
- In cases of long term sickness absence consider setting a further review period where you are:
 - Waiting for a response from the Independent Registered Medical Practitioner in relation to ill health retirement.
 - Waiting for completion of treatment or recovery from an operation that may allow the employee to return to work.
 - Allowing further recovery time where it is anticipated that this will allow the employee to return to work.
 - Allowing a further period during which suitable alternative employment can be identified.

In these situations it may be appropriate to hold a further informal review/ discussion to revisit outcomes.

- Advise the employee that a Capability Hearing will now be arranged.

After the discussion, where appropriate, confirm the outcomes of the meeting to the employee in writing and retain a copy.

6.8 Stage 3 - Capability Hearing

This should only be arranged if stages 1 and 2 of the process have been completed.

The capability hearing will be chaired by a manager from the Heads of Service teams, who has had no previous involvement in the case. He/she will be supported by HR.

The Hearing Officer must make arrangements for notes of the hearing to be taken.

The employee should be notified in writing of the following, giving a minimum of 7 calendar days' notice:

- A formal hearing is being held and of the requirement to attend.
- Purpose of the hearing and details of the ill health capability case.
- Location, date and time of hearing.
- Name of officer chairing the hearing.
- That a decision may be taken to dismiss on the grounds of capability.
- The right of accompaniment by his/ her nominated representative.
- The right of appeal against any decision taken.

Two copies of the statement of case should also be provided to the employee prior to the hearing date, allowing enough time for the employee to discuss matters with their nominated representative.

Options for delivering the letter are:

- Handed to the employee.
- Delivered by hand to the home address.
- Sent to home address by recorded delivery.

The case will be presented by you as the manager who has been involved in the case.

At the hearing the manager will detail the actions taken to improve the employee's attendance, including details of all the support given. Witnesses may be called where appropriate. The employee will also have opportunity to submit a statement or make a verbal presentation in support of his/her case. The procedure for the hearing is set out in Appendix 1.

The outcomes of the hearing may be:

- 1 Dismissal with contractual notice

- During the notice period, seek suitable alternative employment in cases where the employee wishes to be considered for this and medical grounds support it.
- 2 Final written warning with a further review period of up to 3 months in cases of long-term sickness.
- 3 Final written warning with a further review period which may be in excess of 3 months in cases of short-term intermittent sickness.

The employee has the right of appeal against these outcomes.

The decision may also be taken that none of the above actions are appropriate and that the employee should have a further review period.

Where there is a further review period under outcomes 2 and 3 and a return to work is not achieved or if alternative employment has not been identified, a further hearing will need to be convened to consider appropriate action including dismissal.

The outcome should be confirmed in writing to the employee and a copy provided to the HR for the employee's personal file.

7 Appeal

An employee may appeal within 7 calendar days of receiving written notification of the Capability Hearing decision.

- An appeal against dismissal is to Strategic Directors and must be registered in a letter to the Director of Legal Services within 7 calendar days of receipt of the written notification of the hearing decision.
- An appeal against any other outcome must be registered in a letter to the appellant's Strategic Director within the same timescales.

Appeals will be heard by a Strategic Director or a member of their Senior Management Team, normally from a different Department to that in which the original hearing was heard.

The employee will receive a reply to the appeal letter within 7 calendar days, acknowledging the registering of the appeal. The appeal will take place as soon as practicable. There will be a minimum of 7 calendar days' notice of the appeal date.

An appeal against an outcome other than dismissal will be heard by a member of the Heads of Service team.

Any statements of case or evidence on which either management or the employee wishes to rely, will be provided to the Appeals Panel and other party at least 7 calendar days prior to the hearing.

The Presenting Officer will call witnesses where appropriate. Legal and HR advisers may attend the appeal. The employee will be entitled to be accompanied at the appeal, by a colleague or trade union representative and will also be able to call witnesses.

The appeal may be upheld in the employee's favour or the original decision confirmed. The employee, nominated representative and the Presenting Officer should be informed in writing of the decision within 7 calendar days. The decision will be final.

Appendix 1

The Capability Hearing – Procedure

The Capability Hearing is chaired by the Hearing Officer and proceeds as follows:-

- i) The Presenting Officer puts the case in the presence of the employee and may call witnesses.
- ii) The employee (or representative) has the opportunity to ask questions of the Presenting Officer regarding the evidence given by him/her and any witnesses whom he/she may call.
- iii) The Hearing Officer has the opportunity to ask questions of the Presenting Officer and witnesses.
- iv) The employee (or representative) puts his/her case in the presence of the Presenting Officer and calls such witnesses as he/she wishes.
- v) The Presenting Officer has the opportunity to ask questions of the employee and his/her witnesses.
- vi) The Hearing Officer has the opportunity to ask questions of the employee and his/her witnesses.
- vii) The Presenting Officer and the employee have the opportunity to sum up their case if they so wish, with the Presenting Officer's submission being received first.

- viii) The Presenting Officer and the employee withdraw.
- ix) Any advisors to the Hearing Officer should remain in the room while a decision is made.
- x) The Hearing Officer deliberates, only recalling the Presenting Officer and the employee to clear points of uncertainty on evidence already given. If recall is necessary, both parties are to return even if only one may be concerned with the point giving rise to doubt.
- xi) After careful consideration of all the information the Hearing Officer recalls both parties and states the action deemed appropriate. Should there be occasion where this is not possible due to the need to review details of the case, the Hearing Officer may defer the decision.