



## **Manager's Guide MoA and Ill Health in the Workplace Policy**

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Empathy, Respect, Forgiveness and Responsibility

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## **Mission Statement**

At The King's CE School

we believe that everyone is unique and created in God's image.

We enable all to achieve their God-given potential;

to grow, learn and aspire;

to transform their lives and the lives of others

and to journey in faith without limits

within a unified, respectful and harmonious community.

## **'Aspire, Believe and Achieve Together'**

Aspire to be the best that we can be... Believe that anything is possible... Achieve beyond what we ever imagined...

- ◆ Learn and worship in the name of God – Father, Son and Holy Spirit – revealed in the life, death, and resurrection of Jesus Christ and value, respect and celebrate all faiths and cultures.
- ◆ Believe in themselves and become successful adult – developing their vision, faith, ambition and aspirations.
- ◆ Develop a resilience and inner strength to overcome life challenges.
- ◆ Embrace life-enriching experiences and make well-informed lifestyle choices that promote health and wellbeing.
- ◆ Develop thinking skills and transferrable skills, working in partnership to become life-long learners.

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## **1. Introduction**

1.1 Keeping staff at work and helping them get back to work as soon as possible following an absence can help to maintain their health and wellbeing and improve the overall effectiveness of a School. Schools aim to achieve a high level of attendance and performance in order to deliver the best possible outcomes for all pupils within a safe, effective and efficient environment.

1.2 The aim of the Management of Attendance Procedure (MOA) is to assist and support employees in returning to work and maintaining good attendance. The Procedure covers School and employee responsibilities, sickness absence reporting and certification, and recording and monitoring arrangements.

It sets out the steps to be taken to manage sickness absence including conducting Return to Work Interviews, the trigger points for further action in respect of short term and long term sickness absence, conducting Absence Monitoring Review Meetings, referral to Occupational Health, and referral to a Formal Hearing; where consideration may be given to terminating employment on grounds of ill health.

1.3 The aim of the Ill Health Capability Procedure (IHC) is to assist and support employees, in circumstances where a disability or health concerns may be impacting on their ability to satisfactorily perform their role, but not their ability to sustain their attendance at work. The Procedure covers School and employee responsibilities, and identifying whether the Procedure applies.

It sets out the steps to be taken to explain the standards or performance required, taking informal action, referral to Occupational Health, taking formal action including the issuing of a written warning, monitoring and review arrangements and referral to an Ill Health Capability Hearing; where consideration may be given to terminating employment on grounds of ill health.

1.4 Both Procedures aim to provide a consistent, fair and timely system for the management of sickness absence and performance concerns that have arisen due to disability or ill health, and explain the duty to make reasonable adjustments for employees who have a disability as defined by the Equality Act 2010.

1.5 This guide is intended to assist Head teachers / Heads of Service, Managers and Governing Bodies in applying the Procedures, by setting out expectations and supplementary advice, with regard to each area listed on the above index page.

1.6 This guide cannot cover every eventuality. It is intended to highlight the key steps involved in successfully managing sickness absence and ill health, and to cover some of the concerns and questions which frequently arise.

1.7 The School and Local Authority are not responsible for the content of the external resources that are highlighted and the guide does not replace professional HR advice, which should be sought where indicated or required.

## **2. Documentation and timescales**

2.1 In addition to the accurate recording of sickness absence for payroll and absence monitoring purposes, it's important that written records are kept in respect of the steps being taken to manage sickness absence and ill health. Written records provide for clear communication with employees, and should enable the School and Local Authority to evidence that the Procedures are being followed and that they are being applied fairly and consistently.

2.2 The MOA Procedure should be communicated to all staff and be readily accessible to them. This will assist them in following the absence reporting and certification requirements in accordance with the relevant timescales. (section 24 covers failure to comply). When arranging a first Absence Monitoring Interview, the MOA Procedure should be sent to the employee with the invite letter, and when entering into informal discussions under the IHC Procedure, the Procedure should be provided to the employee at that stage, and a record of this made.

2.3 Template letters, and guidance regarding support plans and collating other documentary evidence, is available from the School's HR Consultancy Team. A non-exhaustive list of letters and other documents that you may require in order to manage staff under the Procedures is set out in Appendix B of this guide. You may wish to review the list to assist you in keeping appropriate records.

2.4 Employees should know what to expect at meetings, and where applicable should be informed in writing of their right to be accompanied / represented (see section 4 below) or to call witnesses. Following meetings, and where appropriate following discussions, employees should receive written confirmation of outcomes and expectations.

2.5 The timescales set out in the Procedures must be adhered to. In the MOA Procedure these include conducting Return to Work Interviews as soon as practicable and no later than the fourth day of the employee's return, providing five working days' notice in writing of Absence Monitoring Review Meetings, welfare visits and Formal Hearings, and complying with the requirements in Appendices D and E of the Procedure when notifying employees in writing of the outcome of Hearings and Appeal Hearings. In the IHC Procedure the timescales also include providing five working days' notice in writing of Formal meetings and Hearings.

2.6 With regard to arranging Formal Hearings, the timescales that you will be working to may also be affected by the amount of statutory or contractual notice that would need to be given to the employee in the event that their employment was terminated. (see section 19 below)

### **3. Data protection**

3.1 Information relating to the health of employees is classed as special category data in accordance with the General Data Protection Regulation (GDPR). Data protection means that the collection and use of information must comply with the Regulation's six data protection principles and it is against the law if the principles are not kept to. Article 8 of the European Convention on Human Rights which creates a right to respect for private and family life must also be observed by employers in the public sector. For more information on GDPR see The Information Commissioner's Office (ICO) [Guide to the General Data Protection Regulations](#).

3.1 The key points to remember if you obtain health information from employees for the purposes of managing their attendance, performance, health and safety or safeguarding requirements, are that:

- employees should be made aware of why the information is being collected and how it will be used
- confidentiality must be maintained
- it must be stored securely
- it should not be kept for longer than necessary
- you should not collect more information than you need for the purpose intended; and
- employees can expect the School and Local Authority to respect their privacy

3.2 Further important guidance which is directly relevant to the use of Occupational Health services is set out in section 9 below.

### **4 The role of employee representatives and the right to representation**

4.1 Trade union representatives have a vital role to play in supporting their members, and working with Schools and the Local Authority to enable employees to maintain the expected standards of attendance and performance, which in turn have a direct impact on pupil outcomes.

4.2 It is recommended that managers advise employees to contact their trade union at the earliest stage of the Procedures, so that appropriate advice, guidance and support can be offered to the employee.

4.3 Employees attending Absence Monitoring Interviews, Formal meetings under the IHC Procedure and Formal Hearings and Appeal Hearings under both Procedures, have the right to be represented by a work colleague, trade union official or representative certified by the union as being competent.

4.4 Where an employee has mental health impairment, it may be considered a reasonable adjustment (in accordance with the Equality Act 2010) to allow them to be accompanied

by a person of their choice to support them; in addition to or in place of a work colleague or trade union representative.

## **5 Reporting, recording and monitoring absence**

5.1 Sickness absence reporting and recording form the basis for managing sickness absence, and requiring staff to report their absence also allows the School to exercise its duty of care.

5.2 If staff don't report their absence and don't arrive for work when expected, steps should be taken to seek to contact them, or where required their next of kin / emergency contact, to ensure that they are safe. All attempts to make contact including the date/s, times, telephone numbers used and the outcomes should be logged. Where you are unable to make contact with absent staff you may wish to seek professional HR advice. (see section 24 which covers absence without leave)

5.3 The requirement to report must be implemented consistently with all staff. All staff are required to call in person to report their absence, and unless agreed by the School as a reasonable adjustment, text messages, emails or voice messages should not be accepted in place of this requirement; they may of course be helpful in addition to it to enable the School to receive as much notice of staff absence as possible.

5.4 The steps that staff should take to report their absence due to ill health, including when they should report their absence, how and who to is covered in section 8 of the MOA Procedure. Self-certification and the provision of G.P. statements is covered in section 11 of the MOA Procedure.

5.5 Sickness absence should be recorded and managed separately to leave for other reasons, for example dependants care leave or other types of leave which may be authorised under the School's policy for discretionary leave of absence.

5.6 Absence attributable to ill health for a pregnancy related reason or IVF treatment should be recorded separately and not count towards the trigger points for action under the Procedure, and absence arising from ill health as a result of disability should be recorded as such.

5.7 The absence data recorded needs to be monitored to get the most out of it. Monitoring absence data for all staff will enable the School to look at patterns and identify if any aspects of the workplace may potentially be affecting their health. Absence monitoring for individuals will enable the School to manage absence consistently, by responding to trigger points for action in the Procedure.

## **6 Maintaining contact with absent employees**



- 6.1 Keeping in touch with employees who are absent from work due to ill health is essential, both to ensure the well-being of employees and that they do not feel isolated, and to enable the School to understand the period of time over which an employee's absence may need to be covered. A lack of communication can therefore impact on the employee, their colleagues and the services the School provides.
- 6.2 The MOA Procedure sets out initial absence reporting arrangements for employees to follow. Where it is anticipated that employees will be absent longer than a week, it's advisable to agree contact arrangements taking account of the nature of the employee's health concerns. Where it has been indicated that an employee's absence is due to work related stress, or there is medical evidence that they are not well enough to maintain communication, the employee may nominate a person to do so on their behalf by providing written and signed consent to enter into this arrangement.
- 6.3 There is a balance to be sought when communicating with employees who are absent due to ill health. Employees are not entitled to refuse to maintain contact with the School or the Local Authority in the capacity of their employer during their absence, even when they have provided a G.P statement of fitness for work. If an employee fails to report their absence or to maintain appropriate communication during their absence they may be considered absent without leave. (see section 24 below)

## **7 Return to Work Interviews**

- 7.1 Return to Work Interviews along with the use of trigger points for action, are two of the most effective tools in managing and reducing levels of sickness absence. Interviews should take place following every period of absence, on the employee's first day back in work, or within four days of their return where this has not been practicable.
- 7.2 The Interviews should be conducted with tact and sensitivity. They are an opportunity to welcome the employee back to work, to check that they are well enough to return, and to consider all of the relevant circumstances in respect of their health and absence.
- 7.3 It's important to remember that we are not medical professionals, and employees have a right to privacy and to not be expected to discuss full details regarding a medical condition or treatment. The School's concern is attendance and any matters specifically relevant to the employees' health and performance in the work context.
- 7.4 Before holding a Return to Work Interview, you should ensure that you have an accurate record of the employee's sickness absence, and identify whether they appear to have met one of the trigger points for action as detailed in section 9 of the MOA Procedure.
- 7.5 During the Interview you should cover the points detailed in section 12 of the MOA Procedure, including the impact of the employee's absence on service delivery and colleagues, expectations regarding future attendance, and any supportive actions that may be required such as a phased return to work, a risk assessment or Occupational Health Referral.

7.6 Where the employee has provided a G.P. statement of fitness for work in relation to their absence or their return, any advice should be considered and discussed in accordance with the guidance directly below.

7.7 Notes of the meeting should be recorded on the Confidential Record of Return to Work Form in Appendix B of the MOA Procedure, which sets out each area to be covered during the meeting. A copy must be placed on the employee's file and a copy provided to the employee when complete.

## **8 The use of G.P. statements of Fitness for Work 'Fit Notes'**

8.1 The requirements in respect of self-certification and the provision of G.P. statements are covered in section 11 of the MOA Procedure.

8.2 Fit Notes are not only to be used to certify periods of absence, but are designed to provide advice which is intended to allow employees to return to or remain in work, and to reduce the burden on G.P.'s, who are no longer required to provide certificates to state that an employee is fit to return.

8.3 The DWP document '[Getting the most out of the fit note: Guidance for employers and line managers](#)' is recommended reading for those responsible for acting on G.P. statements. Key points to be aware of are:

- The Fit Note belongs to the employee and they should keep the original. The School may decide to take a copy for their records.
- The employee can come back to work at any time with your agreement, even if this is before their Fit Note expires and their doctor has indicated that they need to assess them again

8.4 Fit Notes contain two tick boxes to certify either that the employee is not fit for work, or that they 'may be fit for work taking account of the following advice'. Beneath the latter are four possible options for the G.P. to advise, which include a phased return to work, amended duties, altered hours or workplace adaptations. There is also a box beneath this for G.P. comments.

8.5 G.P.'s don't always complete the comments box after they've ticked one of the four options, but they will sometimes provide additional advice. For example with regard to the hours to be worked or the period over which a phased return is recommended to take place.

8.6 The School is required to consider, but is not bound by any advice provided. Also, as G.P.'s are not Occupational Health specialists, the advice that they provide may be general and not focussed on the role that the employee works in or the school context.

- 8.7 It's for the School to consider how they may implement the advice, and where changes and support can't be agreed, the Fit Note should be used as though the G.P. had advised that the employee is not fit for work. There is no need for the employee to return to their G.P. to obtain a revised statement.
- 8.8 When considering any advice contained in a Fit Note, this must be done with due regard to the Equality Act 2010 and the duty to make reasonable adjustments for employees who have a disability. See section 10 of this guide 'Considering and implementing support and reasonable adjustments.
- 8.9 Section 13 of this guide covers risk assessments, which may be relevant depending upon the reason for the employee's absence.
- 8.10 Where an employee has attributed their health concerns to work professional HR advice should be sought.

## **9 The use of Occupational Health**

- 9.1 The purpose of the Occupational Health referral is to obtain a report on the employee's medical condition, any potential reasonable adjustments that can be made, their ability to undertake a full range of duties and an indication of the possible duration of their absence. An employee does not need to be absent from work to be referred to Occupational Health.
- 9.2 Consent must be obtained from the employee prior to any referral being made. Consent must be informed and freely given. Where an employee declines to attend Occupational Health, they must be informed in writing that decisions which may affect their employment will therefore be taken in the absence of Occupational Health advice.
- 9.3 Section 15 of the MOA Procedure covers the circumstances in which you may wish to make a referral to Occupational Health. To get the best out of Occupational Health you need to:
  - 1. Provide relevant information about the employee's health, their absence record and job description.
  - 2. Ask focussed questions to obtain the advice that you require.
- 9.4 It's also important to consider the timing of the referral and whether and at what point it will add value and relevant advice.

For example if arranging an Absence Monitoring Review Meeting, you should consider whether it's best for the employee to attend Occupational Health before the meeting, so that you can discuss the Occupational Health advice when you meet. Alternatively, where you don't have sufficient information regarding the employee's health concerns and the possible work implications, you may decide to meet with the employee first and complete

the referral following the meeting, so that you have relevant information to include in the referral.

- 9.5 On receipt of the Occupational Health report the School should meet with the employee to discuss any recommendations in the report and to ascertain the employees' views and any concerns. This discussion may take place at a Return to Work Interview, an Absence Monitoring Review or an informal discussion mutually agreed between the School and the employee.
- 9.6 The recommendations must be considered by the School, (in accordance with section 10 below) who will assess whether they can be accommodated with due regard to the Equality Act 2010, and on the basis of factors such as the needs of the School, the resources that may be required to implement the recommendations and any advice from other sources. As with any recommendations in G.P. Fit Notes, Occupational Health advice is not binding on the School.

## **10 Considering and implementing support and reasonable adjustments**

- 10.1 Disability is one of the nine protected characteristics under the Equality Act 2010. Where it is considered that an employee may have a disability as defined by the Act, the duty to make reasonable adjustments in order to assist them in returning to work, or being able to remain in work will arise.
- 10.2 In accordance with the Act, a person is considered to have a disability if they have a physical or mental impairment, and the impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. Long term means the impairment has or is likely to last at least 12 months or the rest of a person's life.
- 10.3 Whether a disability affects the work function is irrelevant in determining whether a person has a disability and 'normal day to day activities' may include one or more of the following:
- mobility
  - manual dexterity
  - physical co-ordination
  - continence
  - ability to lift or carry
  - speech hearing or eyesight
  - memory or ability to concentrate
  - perception of risk of physical danger
- 10.4 Progressive conditions, such as HIV, cancer and multiple sclerosis, are considered a disability immediately from the point of diagnosis and are not subject to the conditions of lasting or expected to last for a year. However, addictions to nonprescribed substances are specifically excluded. Managers are not required to become experts on disability but

they must ensure that they do not unlawfully discriminate, but understand the nature of the employee's health concerns which are impacting on their ability to attend work and/or to perform in their role.

- 10.5 Where it is unclear as to whether an employee may have a disability then advice can be sought from Occupational Health, however Employment Tribunals also expect employers to use their own judgement, and so the employer cannot delegate the assessment of whether an employee is disabled and whether there are reasonable adjustments that can be made to Occupational Health, and seek to rely on the answers that Occupational Health provide.
- 10.6 Even where an employee's condition does not appear to amount to a disability the School may still need to make adjustments to accommodate the employee, for example to avoid an unfair dismissal claim.
- 10.7 As a general approach it's better to focus on supporting employees and minimizing the impact of attendance and health concerns on the School, rather than whether the employee has a disability as defined by the Act.
- 10.8 Chapter 6 of The Equality and Human Rights Commission '[Equality Act 2010 Code of Practice: Employment Statutory Code of Practice](#)' provides guidance to assist employers in considering whether adjustments are reasonable. The general duty to make reasonable adjustments comprises three requirements. These are that employers take reasonable steps to:
- Avoid the substantial disadvantage where a provision, criterion or practice applied for or on behalf of the employer puts a disabled person at a substantial disadvantage compared to those who are not disabled.
  - Remove or alter a physical feature or provide reasonable means of avoiding such a feature where it puts a disabled person at a substantial disadvantage compared to those who are not disabled.
  - Provide an auxiliary aid or service, where a disabled person would, but for the provision of that auxiliary aid, be put at a substantial disadvantage compared to those who are not disabled.
- 10.9 When managing sickness absence and considering whether adjustments can be made to assist an employee to return to work, the Code states:

'Ultimately the test of the 'reasonableness' of any step an employer may have to take is an objective one and will depend on the circumstances of the case

Some of the factors which might be taken into account are:

- The effectiveness of the steps in preventing the substantial disadvantage

(the more effective the more reasonable)

- The practicability of the step i.e how easy to implement
- Costs – Financial, other and the extent of any disruption ☐ The extent of the employer's financial and other resources
- The availability to the employer of financial or other assistance to help make an adjustment (such as advice through Access to Work); and
- The type and size of the employer.

10.10 Examples of adjustments include:

- Adjustments to premises
- Re-allocating some of the duties
- Redeployment
- Altering hours of work, with appropriate amendments to pay
- Relocating to a different workplace
- Time off for rehabilitation or treatment
- Providing extra training or supervision
- Modifying or providing specialist equipment (e.g. chairs IT hard / software)
- Phased return to work

10.11 If the School is unclear as to whether it may be able to accommodate G.P. or Occupational Health recommendations in respect of support or reasonable adjustments, it is advised that they seek professional HR advice.

10.12 The duty to make reasonable adjustments does not mean that employees who have a disability cannot be managed under the Management of Attendance Procedure, and where necessary their employment terminated on grounds of medical incapability. If the MOA Procedure has been followed, and every reasonable attempt has been made to support the individual throughout the process, then termination of employment is a potential outcome.

## **11 Redeployment**

11.1 In the event that an employee cannot carry out the duties of their existing post, the employee should be asked if they wish to be considered for alternative employment and, if so, all posts which are available should be brought to their attention, even if they may involve a loss of pay or status. It is for the employee to decide whether they wish to be considered for any available jobs. There is no obligation for an employer to create a job where none are available. Where there is an alternative post in respect of which an employee lacks specific knowledge or skills, but would otherwise be able to undertake, it should be considered whether the level of training required is such that it would be reasonable for the School to offer this to enable the employee to undertake the role.

## **12 Access to Work**

- 12.1 Access to work is a specialist disability service delivered by Jobcentre Plus, which can give practical advice and support to employees who have a disability. Access to work support may be provided where an employee needs support or adaptations which are beyond the reasonable adjustments which an employer must provide.
- 12.2 Where an employee is eligible to receive support Access to Work can provide a grant to reimburse the cost of the support that is needed. For example, where a support worker, or adaptations to equipment are required. The level of grant will depend on a number of factors and the employer may have to share the cost with Access to Work.
- 12.3 Where it is considered that the support that an employee requires is beyond the reasonable adjustments that an employer must provide, in the first instance professional HR advice should be sought, following which it may be appropriate to signpost the employee to Access to Work and ask them to make contact.

## **13 Risk Assessments**

- 13.1 Schools will have health and safety risk assessments in place as required by statute, but there will also be occasions when it may be beneficial to carry out a specific risk assessment for an employee due to the nature of their health concerns; the aim being to identify specific risks and implement support and controls in response.
- 13.2 For example, where an employee has expressed that they feel they are experiencing stress at work, a stress risk assessment can be carried out using the Health and Safety Executive's management standards. (demands, control, relationships, support, role, change)
- 13.3 Other types of risk assessment which may be appropriate include ergonomic assessments, which focus on any particular health concerns that the employee may have in relation to their work environment and context, or risk assessments for expectant or new mothers. The general risk assessments that the school has in place should already cover new and expectant mothers, but you may determine that a specific assessment is required, particularly in relation to high risk pregnancies.
- 13.4 Further advice and guidance in respect of risk assessments can be obtained from the School's HR Service or your provider in relation to Health and Safety.

## **14 Guidance on trigger points for action in the MOA Procedure**

- 14.1 The trigger points for action are set out in section 9 of the MOA Procedure. Absences of four consecutive weeks or more, including school holidays (if the employee fails to notify the school of their fitness to return during this time) are considered long term, and the

differing approaches to be taken to manage short term or long term absence are described in sections 15 and 16 below.

14.2 For the purpose of how the application of the Absence Policy will be applied, please see Appendix C

14.3 Absence attributable to ill health for a pregnancy related reason or In Vitro Fertilisation (IVF) treatment should be recorded separately and not count towards the trigger points for action.

14.4 Absence arising from ill health as a result of disability should be recorded as such, and relevant reasonable adjustments considered when managing the absence.

Professional HR advice should be sought in circumstances where an employee reaches a trigger point due to sickness absence arising as a result of a disability.

14.5 Appendix A provides further guidance in respect of specific factors and health concerns which may impact on attendance and / or performance, including accidents away from work, bereavement, industrial injury, mental illness, pregnancy, substance abuse, work related stress and terminal illness.

14.6 The trigger points specified in the MOA Procedure apply to employees working on 5 days of the week out of 7 Monday to Sunday, whether they are contracted to work full year or during term time. To provide for consistency and fairness, employees who work on less than 5 days of the week, the triggers will be applied on a pro-rata basis.

14.6 Leave of absence for any other non-sickness related absence will be covered under separate procedures.

## **15 Absence Monitoring Review Meetings (short term absence)**

### **Preparing for the meeting**

15.1 Section 13 of the MOA Procedure covers Absence Monitoring Review Meetings. When it is believed that an employee's absence has reached or exceeded the trigger points specified in relation to short term absence in section 9 of the MOA Procedure, advice should be sought from a HR Professional prior to initiating a meeting.

15.2 To prepare for the meeting you will need to consider:

- **Who is going to chair the meeting and when are they available?**

Involvement of the Headteacher or members of the Governing Body at early stage of the Procedure will preclude their involvement later.

- **Does a HR Professional need to be present and when are they available?**



- **Will a note taker be required and when are they available?**
- **Where and when will the meeting be held?**

With due regard to the nature of the employee's ill health, any access requirements, the employee's hours of work, any appointments that the employee may need to attend in relation to their health and the requirement to give the employee five working days' notice of the meeting.

- **Are you clear what the impact of the employee's absence has been on the School, service delivery and colleagues?**

You will need to explain this at the meeting.

- **Do you have an up to date absence record, notes from Return to Work Interviews, any relevant Fit Notes and Occupational Health reports where a referral has already been made?**
- **If you haven't already, do you want to seek Occupational Health advice before the meeting takes place?**

See section 10.3 above with regard to the timing of Occupational Health referrals.

- **Do you have an appropriate letter to use to invite the employee to the meeting?**

A letter can be obtained from the School's HR Service or your HR provider. The letter should notify the employee of their right to be accompanied at the meeting by a trade union representative or work colleague, and should explain the reason for, purpose of and potential outcomes of the meeting. A copy of the MOA Procedure should be enclosed, or the employee should be asked to refer to the copy you have already given to them, the employee's absence record should be included and the employee should be asked to confirm their attendance at the meeting.

### **During and following an Absence Monitoring Review Meeting**

15.3 Appendix C of the MOA Procedure provides an example document to record the discussions that take place during the meeting, but also provides a clear structure for it. You may use an alternative format, but you will need to cover and document the discussions in respect of each of the areas listed in section 13.2 of the MOA Procedure which are broken down further in Appendix C.

15.4 As with Return to Work Interviews the meeting should be conducted with tact and sensitivity, and the employee's right to privacy respected. They should not be expected to discuss full details regarding a medical condition or treatment; the School's concern is attendance and any matters specifically relevant to the employees' health and performance in the work context.

15.5 The meeting should be a positive one and is an important opportunity for you to listen to the employee. As well as asking questions you should also remember to invite questions from the employee and their representative. If you are not in a position to respond to questions at the meeting you should ensure that you subsequently provide a response when you are able.

15.6 The guidance in section 10 above will be relevant in considering the use of Occupational Health, and any support, reasonable adjustments or risk assessments which should be implemented. You may wish to consider the following when running the meeting:

#### **Opening**

- Set the tone (remember that this is a positive and supportive discussion, the purpose of which is to improve attendance)
- If the employee is not accompanied by a representative or work colleague, check that they were aware of their right to representation and are happy to continue.
- Explain why the meeting is being held and an outline of what you're going to cover

#### **Exploration**

- Ask open questions; in particular, ask the employee if there are any circumstances which you (as manager) may not be aware of which may be affecting their attendance.
- Engage the employee and work towards achieving consensus by getting the employee to suggest realistic solutions and outcomes.

#### **Ending**

- summarise what you have agreed to avoid misunderstanding.

15.7 Following the meeting the employee must be provided with a copy of the notes of the discussions, which may take the form of a completed Appendix C, and also a letter to confirm the outcomes of the meeting.

15.8 A letter can be obtained from the School's HR Service or your HR provider. The letter should summarise the outcomes of the meeting, and ensure that expectations and the next steps to be taken are clear.

15.9 Ensure that the monitoring and review arrangements and any actions agreed are implemented.

## **16 Welfare visits (long term absence four consecutive weeks plus)**

16.1 Section 14 of the MOA Procedure covers the management of long term absence and arranging welfare visits. Advice should be sought from a HR Professional prior to initiating.

When arranging a welfare visit with an employee you can offer them the option for a visit to take place at their home or an alternative neutral venue if they would prefer. The meeting can also take place at the School if the employee is in agreement.

## **17 Informal action under the Ill Health Capability Procedure**

Section 10 of the Ill Health Capability Procedure covers the management of informal action. Advice should be sought from a HR Professional prior to initiating.

## **18 Formal action under the Ill Health Capability**

Section 11 to 15 of the Ill Health Capability Procedure covers the management of formal action. Advice should be sought from a HR Professional prior to initiating.

## **19 Preparing for a Formal Hearing Ill Health Capability Hearing**

Section 18 of the Ill Health Capability Procedure covers the preparation for a formal ill health capability hearing. Advice should be sought from a HR Professional prior to initiating.

## **20 Ill Health Retirement**

20.1 There are a number of specific pension scheme rules which apply in respect of ill health retirement and the rules differ between the Local Government Pension Scheme (LGPS) and the Teachers' Pension Scheme (TPS). An employee may, subject to the applicable rules, be eligible for ill health retirement in circumstances where they are a current scheme member, and medical evidence indicates that their health may not recover sufficiently to enable them to return to work in any capacity. A different level of ill health benefits may also be available in circumstances where an employee may not be permanently incapacitated, and for employees who are not current scheme members.

Further information in respect of the applicable scheme rules can be obtained from [www.lgps.org.uk](http://www.lgps.org.uk) or [www.teacherspensions.co.uk](http://www.teacherspensions.co.uk)

Schools and the employer cannot, and must not be perceived to be, giving employees advice in respect of their pension.

20.2 Where it is considered that an employee may be eligible to apply for ill health retirement a discussion should be held with them regarding the process through which their eligibility for ill health retirement can be assessed.

In order for an assessment to be carried out an Occupational Health referral will need to be completed to allow the employee to be assessed by an independent registered medical practitioner, and the practitioner may request consent from the employee to access their full medical records.

20.3 When discussing ill health retirement it's important to manage the expectations of the employee. There is no automatic entitlement to be dismissed on the grounds of permanent ill health. Also if the employee consents to an assessment to determine their eligibility, this does not commit them to taking ill health retirement should they be eligible. Even if an employee is deemed to be eligible, they may elect not to take ill health retirement.

20.4 Before referring an employee to a Formal Hearing under the MOA Procedure the School must explore whether the employee may be eligible for / wishes to be assessed for ill health retirement, and document the outcome. In the event that an employee does not wish to be assessed and their employment is terminated on grounds of ill health, it will be possible for them to apply to have their eligibility assessed when they are no longer employed.

## **21 Employee entitlement to Notice of Dismissal**

21.1 Where an employee's employment is terminated on grounds of ill health, their entitlement to notice will be determined by the contract of employment or through the statutory provision, whichever is the greater. Dismissal may be with notice served or with pay in lieu of notice.

21.2 When managing the MOA process or IHC process for teaching staff, the notice requirements stated in the Burgundy Book must be considered. The requirements mean that a teachers' employment may only terminate on 31<sup>st</sup> August, 31<sup>st</sup> December or 30<sup>th</sup> April each year.

## **22 Employee entitlements to pay in their absence due to ill health**

22.1 All employees' have their entitlements to paid sick leave detailed under their Conditions of Service. The amounts of full and half pay will depend on an employee's length of service. There may be exceptional circumstances, however, when Governors or equivalent may wish to exercise their discretion in considering an extension of employee's sick pay. Advice on this matter is available from the appointed HR provider.

	<b>Green Book Support Staff</b>	<b>Burgundy Book Teaching Staff</b>
<b>During the first year of service</b>	1 months full pay (and after 4 months service) 2 months half pay	25 days full pay and after 4 calendar months' service, 50 working days half pay
<b>During the second year of service</b>	2 months full pay; 2 months half pay	50 working days full pay 50 working days half pay
<b>During the third year of service</b>	4 months full pay; 4 months half pay	75 working days full pay 75 working days half pay
<b>During the fourth and fifth year of service</b>	5 months full pay 5 months half pay	100 working days full pay 100 working days half pay <b>( and in subsequent years)</b>
<b>After fifth year of service</b>	6 months full pay 6 months half pay	

The following should be noted:

## 22.2 Green Book

The Green Book Scheme operates on the basis of a six day week Monday to Saturday all year round, and it is these days which count against the above sliding scale entitlements. For part time support staff, 'full pay' refers to the normal pay that they would receive. The sick pay year for support staff is based on a 12 rolling month period, which looks back 12 months from the start date of the most recent absence.

## 22.3 Burgundy Book

The Burgundy Book scheme operates on the basis of working days Monday to Friday. It is only those working days for which the teacher is absent which count against the above sliding scale entitlements. For part time Teachers, 'full pay' refers to the normal pay that they would receive. During School closure periods Teachers will be paid at the rate applicable the day before the closure period commenced. The sick pay year for Teachers runs from 1 April to 31 March and a new entitlement starts each year on 1 April. However, teachers absent due to illness on 31 March will not be entitled to the subsequent year's allowance until they are recovered and are back at work. Instead, sick leave will continue to be counted against the previous year's entitlement.

## 23 Extension to Sick Pay Entitlement

23.3 The facility to extend Occupational Sick Pay beyond the above entitlements is only available in exceptional circumstances, such as terminal illness. Professional HR advice should be sought prior to approval.

## **24 Managing employee failure to co-operate / inability to attend meetings**

24.1 Employees are required to fulfil their responsibilities as detailed in section 5 of the MOA Procedure. Failure to report or certify sickness absence in line with specified requirements may result in an employee being absent without leave (AWOL).

24.2 Where an employee fails to arrive for work and has not reported their absence, in the first instance steps should be taken to seek to contact them, or where required their next of kin / emergency contact, to ensure that they are safe. All attempts to make contact, including the date/s, times, telephone numbers used and the outcomes should be logged. Where you are unable to make contact with absent staff you may wish to seek professional HR advice. HR will be able to provide letters to assist you in managing the employee's absence without leave, including taking steps to withhold pay and to manage any unauthorised absence / failure to report in accordance with the School's Disciplinary Procedures where required.

24.3 Employees are also expected to take all reasonable steps to attend any meeting or visit to which they are invited. Where an employee indicates that they cannot attend a meeting or participate in a visit for medical reasons (and this is supported by medical evidence which clearly states that they cannot attend) they should be provided with options to facilitate their participation. These can include the option to:

- Request that the meeting or visit takes place at another venue of their choosing
- Participate by telephone
- Nominate and provide written consent for a Trade Union representative or work colleague to act and attend on their behalf
- Provide a written submission
- Request that a meeting takes place in their absence

Employees will be notified that if they do not indicate which of the options they wish to choose by a specified date, that the meeting will take place in their absence with the outcome communicated to them in writing.

24.4 Where the employee's representative is not available to attend a meeting or visit at the date and time proposed, (or where reasonable adjustments are being made in accordance with section 4.4 of this guidance, any other person accompanying the employee is not available to attend) the employee or their representative may propose alternative arrangements for the meeting or visit; provided that they are reasonable and allow for the

meeting or visit to take place in the five working days of the date originally proposed. This may also be the approach taken where an employee cannot attend due to medical appointments or other legitimate reasons.

- 24.5 Reasonable steps will be taken to mutually agree arrangements for meetings, but where arrangements cannot be agreed or the process is being subject to unreasonable delay, the employee will be offered the options in 24.3 above and a meeting may take place in their absence.
- 24.6 Failure to co-operate with the MOA process will not prevent the process from continuing to its conclusion; decisions will be made on the basis of the information available.
- 24.7 The same approach will be taken under the IHC Procedure when managing any failure to co-operate / inability to attend meetings.

## Appendix A

### Guidance in respect of absence / health concerns related to:

#### **Accidents away from work**

The appropriate indemnity forms should be completed by employees incurring absence following an accident away from the workplace. If an employee's ill health or injury is the result of an accident caused by a third party in respect of which damages are recoverable the employee must provide the School with all relevant information and be prepared to refund any sick pay they have received up to but not exceeding the amount of the award from the third party.

#### **Bereavement**

The School will have a policy which covers leave of absence for reasons other than ill health, which will provide for a level of leave in relation to bereavement. As grief can impact on the emotional, physical, spiritual and psychological wellbeing of an employee who is bereaved, it can be the case that they go on to experience ill health and absence from work as a result. Ill health and absence in relation to bereavement should be managed with tact and sensitivity. Guidance in relation to managing bereavement in the workplace is available from ACAS. <http://www.acas.org.uk/bereavement>

#### **Pregnancy**

Section 18 of the Equality Act 2010 provides that an employer discriminates against an employee if, during "the protected period", it treats her unfavourably because of her pregnancy or because of illness suffered by her as a result of her pregnancy. The protected period begins when the pregnancy begins and ends when the additional maternity leave period ends or when the employee returns to work after her pregnancy, if that is earlier. Pregnancy related sickness will be disregarded for the purposes of managing absence under the Absence Monitoring Policy.

It is particularly important for the School to establish the reason for a pregnant employee's sickness absence because, if the sickness absence is pregnancy related, the employer will need to ensure that it complies with its duties towards pregnant employees. If the reason for the sickness is unrelated to the employee's pregnancy, there should be no special pregnancy-related protection for the employer to consider and the employer should deal with the employee in line with its normal procedures. However, the distinction between absence that is unrelated to the employee's pregnancy and absence that is related to her pregnancy is not always clear cut. For example, stomach upsets may or may not be pregnancy related. Where there is some doubt, the School would be prudent to treat the sickness as pregnancy related.

While the School should suspend some aspects of its management of attendance policy, to avoid discrimination, it should continue to apply other aspects of its management of attendance procedures, covering matters such as timely reporting of absence, the method of contact to be used and the evidence required, equally to pregnant employees as to other staff. Applying the management of absence procedures could also aid the School in identifying steps that it could take to avoid further absences and improve the employee's wellbeing during her pregnancy. The employer should ensure that it applies the procedures in a fair and non-discriminatory manner.

An employee's statutory maternity leave period will usually commence on her chosen start date, as notified to her employer. However, where the employee is absent from work wholly or partly because of pregnancy in the four-week period before her EWC, her maternity leave is automatically triggered and will start on the day following the first day of the employee's absence in this four-week period (reg.6(1) of the Maternity and Parental Leave etc Regulations 1999). If the employee is eligible for statutory maternity pay (SMP), this will also start automatically on the day after the first day of absence (reg.2(4) of the Statutory Maternity Pay (General) Regulations 1986 (SI 1986/1960)). If the employee is already off sick going into the fourth week before her EWC, SSP and/or contractual sick pay will stop at this point, even if the employee is not entitled to SMP.

### **Substance abuse**

Managers are encouraged to consult HR at the earliest opportunity if they suspect that an employee has an alcohol or drug problem, since early recognition of a problem is a crucial factor in achieving successful treatment. However if an employee without an underlying alcohol or drugs problems behaves in a manner contrary to the required standards of safety and conduct, because of excessive indulgence on a random basis, they should be dealt with in accordance with the Disciplinary Procedure.

### **Mental Health**

A substantial amount of sickness absence is as a result of mental health problems, variously described by employees and GPs as stress, depression, anxiety state or general debility. There are also occasions where mental health problems result in a physical disorder, such as high blood pressure, which is stated for the reason for the absence. Whilst the management of sickness absence generally requires sensitive handling this is particularly the case where mental health problems are indicated or suspected. In such cases the assistance of an Occupational Health



Clinician may prove particularly helpful and should be considered, although the process for managing such cases is the same as for other absences.

Whilst the majority of absences are genuine, if a manager suspects abuse of the sick pay scheme (i.e. stress or depression being used as a reason to resist change or avoid/delay the disciplinary or capability process) they should seek advice from HR and consider making an immediate referral to Occupational Health.

### **Terminal illness**

A situation where an employee is terminally ill requires very careful and sensitive handling. Managers should seek early advice and support from HR and Occupational Health. Discussions between the manager and HR/Occupational Health should include consideration of the following;

- The most appropriate employment and pensions options for the employee
- The impact of their medical condition on their job
- If the employee is able to and wishes to continue to work, discussion of any reasonable adjustments that can be made to enable them to continue to work for as long as possible
- Making counselling service available to the employee and their colleagues
- The most appropriate way of dealing with their work colleagues
- The appropriateness of postponing / going ahead with any staged meetings, both now and in the future.

A representative from HR and/or Occupational Health will be available to attend any meetings between the manager and the employee should the manager or employee consider it would be beneficial.

### **Medical/Hospital appointments**

There will be times when employees' require time off for a medical appointment either with a doctor, dentist or for at a hospital or for treatment such as counselling, physiotherapy etc. Employees' should make every effort to arrange these appointments outside work time, however if appointments cannot be arranged outside work time then they should be arranged outside core working hours if at all possible. Managers are expected to exercise discretion where urgent medical appointments cannot be taken outside core time. Medical appointments will not count towards sickness absence; however employees' are required to present their appointment card to their manager. If an employee is required to stay in hospital or is unable to return to work following an appointment this should be classed a sick leave and manager's should ensure the details are recorded.

### **Cosmetic/Private Surgery**

**Not medically required – lifestyle choice** - Where an employee arranges cosmetic or private surgery that is not medically required which may include cosmetic surgery, laser eye surgery, vasectomy reversal etc. that will require time off work, paid sick leave will not apply. Time taken should be booked in advance as annual or unpaid leave. If there is insufficient annual leave

entitlement unpaid leave may be agreed. The leave booked must cover the period required for both the surgery itself and the recovery time required.

Manager's may request evidence of the total anticipated time required for this before agreeing to the annual leave request.

**Medically required** - The school may pay Occupational Sick Pay for cosmetic surgery, where it is deemed necessary for medical reasons, subject to receipt of written confirmation from a GP or consultant that this is the case. In this situation the absence will count towards the employee's absence record.

### **Gender Reassignment**

Both assessment and surgery will require the employee to have time off from work. The recovery time from surgery will depend upon the procedure, the individual and any complications that may arise. Major gender reassignment surgeries can take several weeks. Recovery time may depend upon the type of work that the individual is employed in. The School may pay Occupational Sick Pay in respect of gender reassignment surgery, where it is deemed necessary for medical reasons, subject to receipt of written confirmation from a GP or consultant that this is the case and will consider any requests for time off for assessments sympathetically.

### **In Vitro Fertilisation (IVF) Treatment**

Whilst there is no statutory entitlement for time off for IVF treatment manager's should deal with requests from employee's, both male and female, sympathetically. Further advice on granting time off is available from your HR provider.

### **Probationers**

Absence for non-teaching staff who have a probationary period will be monitored in line with the Management of Attendance Procedure and return to work interviews and the formal thresholds will apply. Managers should speak to HR as early as possible if they have concerns about a probationer's attendance record. Employees who have recently completed their probationary period will have the whole of their attendance record taken into account, i.e. from the date their employment commenced, not just from the date their employment was confirmed at the end of their probationary period.

### **Medical suspension**

Medical suspension is where an employee is instructed to refrain from work on medical grounds by their manager and HR following advice from Occupation Health that they consider that the employee is currently unfit to attend work. Medical suspension should only be used as a last resort and managers should seek advice from HR and Occupational Health before deciding upon this course of action. Medical suspension is on full pay. Before considering medical suspension managers must consider whether there are any temporary changes to the role or any suitable alternative temporary role that the employees could undertake instead of a medical suspension.

## **Appendix B**

### **Letters and other documents which may be required in order to manage staff under the Procedures**

Relevant documentation includes:

- The employee's absence record
- Copies of G.P. statements of fitness for work
- Completed Confidential Record of Return to Work Interview (MOA Appendix B)
- Letters inviting the employee to Absence Monitoring Review Meetings
- Completed Confidential Records of Absence Monitoring Review Meetings / Visits (Example MOA Appendix C)
- Covering letters for the above records to confirm the outcomes of the meetings / visits, including where relevant notification that employment may be at risk
- Occupational Health referrals
- Occupational Health reports
- Letter inviting the employee to a Formal Hearing (MOA)
- Letter confirming the outcome of a Formal Hearing (MOA)
- Notes from Formal Hearing (MOA)
- Records of informal meetings / discussions e.g regarding support, adjustments or performance concerns
- Other records which evidence performance concerns e.g reports, emails
- Informal support plan with clear targets and timescales (IHC)

- Confirmation that the appraisal process has been formally suspended (IHC)
- Confirmation that underperformance due to disability / ill health is to be managed under the IHC Procedure, and invitation to attend a Formal IHC Meeting
- Confirmation of outcome of Formal IHC Meeting
- First letter re Absence Without Leave
- Second letter re Absence Without Leave

## Appendix C

### Examples of how to apply the Managing Attendance Procedure

These examples are not exhaustive:

**Example 1:**

11 January - 1day - Cold

29 January - 2 days - Stomach ache

6 February - 7 days - Influenza

Triggers met: 10 days & 3 periods

Absence Review Meeting 1 is arranged for 17 February

Further absences:

9 March – 6 April - 4 weeks

Long term trigger met

Arrange Absence Review Meeting 2

Further Absences:

2 May - 1 day - Cough  
17 May - 1 day - Ear Ache  
2 June - 1 day – Diarrhoea

Trigger met 3 periods

Principal’s decision – Arrange Absence Hearing or hold a further Absence Review Meeting (Absence Review Meeting 3)

**Example 2:**

11 January - 1day - Cold  
29 January - 2 days - Stomach ache  
6 February - 7 days - Influenza

Triggers met: 10 days & 3 periods

Absence Review meeting 1 is arranged for 17 February

Further absences

10 March - 5 days - Conjunctivitis  
17 April - 5 days – Back pain

Trigger met 10 days

Absence Review Meeting 2 is arranged – 25 April

Further Absences:

2 May - 1 day - Cough  
17 May - 1 day - Ear Ache  
2 June - 1 day – Diarrhoea

Trigger met 3 periods

Principal’s decision – Arrange Absence Hearing or hold a further Absence Review Meeting (Absence Review Meeting 3)

These examples capture an employee’s absence history over a rolling 12 month period.

Following an Absence Review Meeting should an employee have further absences these will be counted towards the next monitoring period. Please note these should not include absences already considered under previous absence review meetings.

However, in cases where Absence Monitoring Review Meetings have been set and the employee has been notified, should further absences occur after the notification and prior to the meeting, these absences will count towards and be considered at the next monitoring period.