



# LONGHILL

HIGH SCHOOL

## Staff Absence Management Policy

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Absence Management Policy

SLT (I:), Policy Library, Longhill High School Policies, ratified by Headteacher September 2018

**1. GENERAL POLICY STATEMENT**

The Governing Body accepts its responsibility for the health, safety and welfare of its school based staff. This acceptance not only encompasses the legal obligations put upon the School as an employer through the Health and Safety at Work Act and other relevant legislation, but also its policies and codes of practice that support best practice and standards across a wide range of subjects such as risk assessment, manual handling, maternity provision, accident reporting and sickness absence. The School aims to build on current best practice across the Local Authority, as well as set new standards to ensure consistency, fairness, and an overall reduction in sickness absence.

This policy for absence management details individual responsibilities and has a comprehensive code of practice with procedures and guidance notes for Schools. Employees who are unwell must be treated with consideration and respect, with every effort being made to assist their recovery and safeguard their employment. The needs of the employee must be balanced against school requirements.

These documents have taken account of, and should be read in conjunction with, the appropriate policies and terms and conditions of employment within the Local Authority

It is recognised that sufficient time will need to be allowed for the implementation of these documents in schools. A review of the Policy and Code of Practice will therefore be undertaken annually from the date of implementation.

**2 PURPOSE**

2.1 The purpose of this document is:

- To ensure good standards of practice;
- To encourage good attendance
- To inform schools and schools based staff of their responsibilities;
- To bring about consistency in sickness absence management across the Local Authority.

### **3 GOVERNING BODY RESPONSIBILITIES**

It is the responsibility of the Governing Body to:-

- 3.1 Ensure the dissemination of the Policy and Code of Practice throughout the school
- 3.2 To promote high standards of health and safety and support occupational health measures.
- 3.3 Support the Headteacher and the Leadership team in their efforts to encourage good attendance, manage, and ultimately reduce sickness absence levels whilst maintaining their commitment to staff welfare;

### **4 HEADTEACHER / LEADERSHIP TEAM RESPONSIBILITIES**

It is the responsibility of the Headteacher and / or Leadership team to:-

- 4.1 Identify and allocate resources as far as possible within the school to ensure compliance with the policy; particularly those relating to training for Leadership team, support from Human Resources Managers and recording/monitoring arrangements;
- 4.2 Discuss absence monitoring reports at Leadership team meetings and investigate areas where absence levels seem to be higher than elsewhere as this may indicate possible work-related causes;
- 4.3 Communicate the costs of sickness absence to Governing Body through the Headteachers report on a regular basis.

It is the responsibility of Headteacher and / or Leadership team to:-

- 4.4 Act upon the advice given by Human Resources and Occupational Health staff during pre-employment health screening processes;
- 4.5 Ensure that the reporting procedures are explained to new employees on induction;
- 4.6 Ensure that the reporting, recording and monitoring procedures are adhered to;
- 4.7 Act upon the advice given by Human Resources and Occupational Health staff following ill health referrals.

Headteachers and /or Leadership team should also ensure the welfare of the employee by:-

- 4.8 Maintaining regular contact with the employee during any prolonged period of absence, by telephone and visiting as appropriate;
- 4.9 Obtaining advice from Human Resources and Occupational Health staff when appropriate;
- 4.10 Ensuring that there is a complete investigation in accordance with the Schools "Health and Safety Incident/Abuse/Violence Reporting Procedure" where the sickness is due to an accident at work;
- 4.11 Investigating the reasons for absence and conducting a return to work interview following a period of absence;
- 4.12 Giving support to an employee upon their return to work following a long period of absence, in order to facilitate their return and rehabilitation;

- 4.13 Investigating redeployment options available for any employee found to be incapable of carrying out their normal duties due to ill health or disability or breakdown in working relations;
- 4.14 Discuss with the employee the option of early retirement due to ill health, following advice from an independent registered medical practitioner qualified in occupational health medicine that they are permanently unfit.

## **5 EMPLOYEES' RESPONSIBILITIES**

- 5.1 It is the responsibility of employees to:-
  - 5.1.1 Ensure that, in the undertaking of their work, they take care of their own safety and the safety of other workers and anyone else who might be affected by what they do or fail to do;
  - 5.1.2 Ensure that they adhere to the reporting procedures in relation to sickness absence as explained at induction;
  - 5.1.3 Participate with the school in return to work interviews;
  - 5.1.4 Co-operate with the school and Human Resources when it is felt appropriate to refer them to Occupational Health for a health interview, medical report and/or examination;
  - 5.1.5 Participate with the school and Human resources in the redeployment process following capability procedures.

## **6 HUMAN RESOURCES' RESPONSIBILITIES**

It is the responsibility of the Human Resources to:-

- 6.1 Effectively implement the corporate strategy for the management of good attendance and sickness absence, ensuring communication of the code of practice and consistency of practice;
- 6.2 In cases of appointments made, obtain the necessary information, including sickness absence patterns from the previous employer where possible;
- 6.3 Liaise with the Occupational Health Service during the pre-employment health screening process, and inform line managers of the advice given by the Occupational Health Service as to the selected candidate's fitness for the job;
- 6.4 Ensure that notified sickness absence is recorded in line with the corporate guidelines;
- 6.5 Ensure frequent, adequate and accurate monitoring and reporting of sickness levels;
- 6.6 Monitor levels of absence in line with Local Authority Health Performance Indicators, and report data as appropriate;
- 6.7 Assist and advise the school throughout the sickness /capability process(s);
- 6.8 Assist and advise the school when requested, in dealing with referrals to the Occupational Health Service;
- 6.9 Liaise with the school in the design of briefings / training sessions on the management of sickness absence for the Leadership team and those teachers with direct staffing responsibilities;

## **7 OCCUPATIONAL HEALTH SERVICE RESPONSIBILITIES**

It will be the responsibility of the Occupational Health Service to:-

- 7.1 Assist in the preparation of health profiles for various job categories as part of the pre-employment health screening process;
- 7.2 Examine detailed health questionnaires completed by employees and advise on fitness to do the job including advice on implications of the DDA;
- 7.3 Where appropriate, arrange for candidates to see an appointed Occupational Health Physician for medical opinion/examination;
- 7.4 Preserve the duty of confidentiality to any school based employee who may seek help or guidance on ill health matters;
- 7.5 Give Human Resources and the School advice in relation to frequent short term and long term sickness cases, as well as any ongoing health referrals;
- 7.6 Interpret monitoring reports and advise on sickness trends, changes / improvements and risks to health.

## **8 THE ROLE OF TRADE UNIONS**

- 8.1 It is recognised that throughout the process of managing sickness absence, trade unions have a valuable function in supporting their members, and working with the School in relation to this policy.
- 8.2 The areas in which trade union should be involved include interviews under this policy and redeployment, early retirement and capability, as well as consultation over any updating of this policy.

## **9 EVALUATION AND REVIEW**

The Local Authority is committed to the evaluation, review and updating of its policy on Absence management after a period of 12 months. It will endeavour to ensure that the policy and its implementation keeps pace with developments, through the provision of information, instruction, training and professional support.

## Schools Sick Absence Management Procedure

### 1. Introduction

1.1 Employees are the most valuable resource in Brighton & Hove Schools and the aim of the Sick Absence Management Procedure is to promote the highest possible attendance levels to enable excellent service delivery to the schools community. It is also important to manage attendance because of the impact absence can have on colleagues at work.

1.2 The procedure is designed to encourage employees to seek support and advice to improve their health and well-being and therefore to meet standards of attendance.

1.3 The procedure applies to all employees in schools with the exception of employees who are still within their induction or probationary period where other arrangements apply.

1.4 The role of the Headteacher as set out in this document will be undertaken either by the Headteacher or by a member of the Senior Management/Leadership team who has line management responsibility for the employee concerned, depending on local management responsibilities.

1.5 If the sick absence relates to the Headteacher, the management role will be undertaken by the Chair of the Governors (see the separate Headteacher Sickness Absence Protocol for further details on managing headteacher sickness absence).

### 2. Responsibilities

2.1 Headteachers are responsible for promoting high levels of attendance in their teams. They have a duty of care and a responsibility for good working conditions, work practices and work behaviours. Headteachers are responsible for ensuring regular supportive contact with employees who have an extended absence, and for working constructively with employees who need to improve their attendance. Headteachers are responsible for fair and consistent management and support to those who are unwell. Headteachers should be flexible wherever operationally possible to facilitate a sustained return to work. Headteachers are responsible for advising employees when their absence is causing concern and for managing any employee attendance problems.

2.3 The HR Coaching and Advice team supports the effective management of attendance by providing advice and support to Headteachers on the operation of the procedures. HR also provides expert sources of advice on Health and Safety, Occupational Health, and Employee Counselling via [HR contacts](#).

2.4 Individual employees have a personal responsibility to take all reasonable measures to ensure their fitness for work. If absences are work related, employees have a responsibility to be proactive in raising concerns as part of the normal staff/Headteacher relationship. If employees have a medical condition which may affect their work, (which may not be apparent to others), they should discuss this and any adjustments needed with their Headteacher.

### **3. How sick absence is defined**

3.1 A sick absence is any absence from work where the employee is unfit through a medical condition, or an accident, or receiving medical treatment. The following circumstances are not included as sick absence:

- authorised unpaid or paid leave for hospital or doctors' appointments at which no actual treatment is to be provided.
- elective treatment which is not medically required such as laser eyesight correction, cosmetic procedures and other non-essential treatments.
- authorised leave for dentists' appointments which cannot be arranged out of school working hours.

### **4. Health checks during the recruitment process**

4.1 Guidance on how to ensure that new recruits will be fit to carry out job related requirements is provided in the [Recruitment Policy](#).

### **5. Attendance during Probation Periods**

5.1 It is the responsibility of the Headteacher to advise new employees, on the first day of employment or as soon as possible during the first week, about the sickness notification procedure, stressing the need for good attendance. This should be reinforced through the induction programme.

5.2 Probationers will have their attendance managed through the probationary arrangements applying to their post. The Headteacher should discuss all incidents of sick absence with the employee during the probationary reviews/interviews and explain that appointment cannot be confirmed unless attendance is satisfactory.

### **6. Confidentiality**

6.1 All personal records and any discussions held relating to employees' absence will be treated in strict confidence. Access to medical records, including sick notes, absence and interview records, is restricted to the Headteacher on a "need to know" basis. Headteachers and their administrators should take care not to disclose reasons for absence to anyone else.

6.2 Employees may request confidentiality if the reasons for sick absence are personal or private. This may make it difficult to explain the sick absence to a Headteacher. If this is the case the employee may tell an HR officer in confidence, and HR or Occupational Health will advise the Headteacher where necessary of the nature of the condition, so that adjustments may be planned.

### **7. Health appointments**

7.1 Employees are required to make every effort to arrange medical appointments in their own time outside normal/core working hours.

7.2. When employees are unable to make appointments in their own time, and at the discretion of the Headteacher, paid time off to attend such appointments may be allowed. Where an employee requests time off he/she must notify his/her Headteacher in reasonable time.

7.3. Paid time off will be allowed to attend medical appointments for life threatening illnesses.

7.4 If a disabled employee needs consultations or treatment to improve or manage a disability while they are at work, paid time off should be considered as part of planned and agreed reasonable adjustments. See [appendix 1](#).

## **8. Industrial Injuries and accidents**

8.1 An employee who is absent as a result of an accident where damages may be received from a third party, may receive Occupational Sick Pay as an advance. This is because part of any payment claimed from a third party will usually cover loss of earnings. Information on how to deal with [sick absence related to industrial injuries and accidents caused by third parties](#) is given in appendix 2.

## **9. Notifying sick absence**

- 9.1 Arrangements on [notifying sick absence](#) form part of an employee's contract of employment and should be followed by all employees. They are at appendix 3.

- 9.2 Employees must fill in a self-certification form for all sick absence up to and including the seventh calendar day of absence. They must produce a doctor's statement of fitness from the eighth consecutive day of absence.

9.3 If employees are absent without making contact, or when certificates are not produced on time, the Headteacher should try to contact the employee to check their well-being. However, in the absence of contact or an acceptable explanation, Headteachers should record the absence as "uncertified" and therefore unpaid, and contact HR without delay. HR will alert Payroll to stop pay if the individual is absent without leave. The Headteacher must write to the employee that any uncertified absence will be unpaid and that unless the employee gets in contact, they may be subject to action under the [Disciplinary Procedure](#) and their employment may be terminated.

9.4 If the Headteacher has evidence that the absence is not due to sickness, then s/he should contact HR and investigate under the Council's [Disciplinary Procedure](#).

## **10. Recording and monitoring**

10.1 Headteachers are responsible for keeping accurate records on employees' sick absence in line with the current process for their Unit. Headteachers should keep notes in confidence of the key points and outcomes of any formal or informal discussions with an employee about his/her sick absence. Notes of formal discussions about attendance issues should also be copied to the employee. This will ensure that there is no confusion over what has taken place, and that an accurate record of events and advice or decisions is maintained for future reference. Headteachers are also responsible for keeping all self-certificates and medical certificates in a secure filing system. When an employee leaves his/her post these records should be sent to HR and will be placed on the employee's personal file.

## **11. Occupational sick pay**

11.1 Entitlement to occupational sick pay is set out in the individual contract of employment.

11.2 An employee may be dismissed before s/he has exhausted any outstanding entitlement to occupational sick pay.

## **12. Sick absence management process**

12.1 This section of the sick absence management procedure sets out Headteachers' roles and responsibilities in dealing with sick absence. It enables Headteachers to ensure that employees are dealt with fairly and consistently and that a positive attendance culture is developed.

12.2 Where there is evidence of false sickness certification this should be investigated under the [Disciplinary Procedure](#).

### **13. Return to work discussion**

13.1 On the employee's first day back from any period of sick absence, or as soon as possible thereafter, the Headteacher should meet or at least telephone the employee to discuss his/her sickness. Guidance on the return to work discussion and the self certification form to be completed by the employee (for absences shorter than 8 days) are provided in the [Return to Work Interview Form](#) (appendix 4)

### **14. Employees covered by the Equality Act**

14.1 Headteachers should consider [reasonable adjustments](#) where appropriate and at the same time manage disability related absence like any other absence – fairly, transparently and with reference to council policy. Where absence is attributable to disability, Headteachers should conduct absence review meetings to discuss how reasonable adjustments are working, or where further changes need to be made to support the employee. Where absence or work performance due to disability is causing operational concerns, advice should be sought from Occupational Health. Further advice is given in the fact sheet on [disability and the management of absence](#).

14.2 Advice is given in the [HIV/AIDS Awareness Guidance](#) on how Headteachers should support HIV positive employees and comply with schools policies and legislation.

### **15. Maternity related sick absence**

15.1 Headteachers need to ensure that employees are not discriminated against as a result of maternity related sickness. Maternity related sick absence during protected periods must not be taken into account as grounds for subsequent dismissal. The protected period is from notification of inception of pregnancy to the end of the woman's maternity leave. There is also legal protection from detriment or dismissal in connection with pregnancy. It is advisable to consult Occupational Health if it is not clear whether the absence is related to maternity.

5.2 Although there is no right to paid time off for fertility treatment, it is advised to treat such requests to take time off sympathetically. Employees should discuss their need for time off with their manager in advance to allow for cover arrangements.

### **16. Stress and mental health issues**

16.1 Where Headteachers are concerned that an employee may be suffering from a mental health problem (for example when they seem depressed and withdrawn) it is important to talk to the employee and offer support. See [School Staff Wellbeing Framework](#) (appendix 5) for advice and expert sources of help.

### **17. Attendance Concern Levels**

Headteachers should hold an absence review meeting when an employee's sick level reaches attendance concern levels'

## **18. Absence Review Meeting – stage one of formal process**

18.1 Headteachers should set up a meeting in a suitable place for a confidential discussion and give five working days notice in writing of this meeting. A [model letter](#) is given at appendix 6, which should be sent to the employee with the [Absence Review Meeting Guidance](#) (appendix 7). The employee has the right to be represented at this meeting by a union representative or a work colleague. It is the employee's responsibility to arrange representation. However, prolonged delay due to the lack of availability of a representative should not be accepted as a reason for postponement. [Headteacher guidance](#) on the absence review meeting is provided at appendix 8.

18.2. In addition to the discussion of actions planned to support an improvement in attendance, the employee will usually be advised that

- they are being given a first stage warning about their attendance;
- that this warning will be confirmed in writing;
- this marks the beginning of a formal rolling twelve month sick absence management process;
- there is a right of appeal against the warning.

The employee should be informed that should their sick absence again reach the attendance concern levels during the twelve month period from the date of the [written warning](#), a stage two absence review meeting will be held.

18.3. Headteachers have the discretion to decide that a warning is inappropriate or not required. For examples, see the [Headteacher guidance](#). If no formal action is to be taken, this should be confirmed in writing to the individual within five working days. However, if further absence causes the attendance concern levels to be reached, the manager will need to hold another meeting and will include within this discussion the absences previously reviewed. A stage one warning would be applicable at this subsequent meeting.

18.4 The stage one warning will expire after 12 months if attendance is satisfactory.

18.5 If there is further absence which means that attendance concern levels are again reached, the Headteacher will need to call another meeting with the employee. The general principle is that for the purposes of calculating whether attendance concern levels have again been reached, absences for which a previous formal warning have been given should not be included.

## **Absence Review Meeting – stage two of formal procedure**

19.1. The stage two absence review meeting will take the same format as a stage one meeting. The purpose of the meeting will be to review the effectiveness of any actions which have taken place to improve the employee's attendance, and to plan further actions which need to take place. If appropriate, a referral or follow up appointment should be arranged with Occupational Health. Unless there are clear reasons to withhold or delay the action, the employee should be advised that they will be sent a stage two written warning and that should their attendance level prompt a stage three review, their continued

employment will be at risk. This meeting should be followed up where required by a written warning within 5 working days of the meeting, which will include the right of [appeal](#) (see appendix 14). A [model letter](#) for a stage two warning is given at appendix 13. A copy of this letter should be sent to HR to be placed on the employee's file.

19.2. If the employee's attendance is satisfactory during the following twelve months, all warnings will elapse. However, if sick absence again reaches the Council attendance concern levels during that period, the procedures set out in paragraph 22 onwards should be followed.

## **20. Managing extended sick absences**

20.1 During an employee's extended sick absence the Headteacher must make every effort to maintain regular contact with the employee, for example at least once a month, arranging future contact as appropriate. This is to ensure that the employee does not feel isolated and unsupported, and to enable the Headteacher to maintain an accurate picture of the employee's circumstances. The employee must keep the Headteacher informed of progress, and submit medical certificates on time.

20.2 The Headteacher should be proactive in seeking HR and Occupational Health advice from the outset if it seems likely that the employee's absence may be extended.

20.3 If the absence appears to be a mental health related issue; i.e. stress (personal or work related), anxiety or depression, and the condition is likely to continue for more than 7 days, then referral to Occupational Health should be made immediately. This is because early specialist support has been shown to be very effective in managing these conditions.

20.4 For the same reason, refer to Occupational Health if the absence appears to be due to a musculo-skeletal condition, and is likely to last more than 14 days.

20.5 All extended absences must be referred to HR for advice by 28 days.

20.6 When employees return from an extended absence an absence review meeting and appropriate warning should be carried out as in paragraph 18.

## **21. Occupational Health referral**

21.1 Where it is not clear that the employee will be able to return to work or to perform the same job within a reasonable and well-defined period, the Headteacher should refer the employee to Occupational Health for a medical opinion. The Headteacher should complete the [Occupational Health Service Health Enquiry Referral Form](#), ensuring that all sections are completed in full.

21.2 A [model letter](#) proposing a visit is at appendix 15. The employee may wish to ask their union representative or work colleague to attend the home visit/meeting place. Prior to any meeting the Headteacher should contact the employee to explain its purpose. It is important that the Headteacher keeps notes of the discussion and writes to the employee to confirm any actions arising from the meeting, such as appointments with Occupational Health.

21.3 If an absence is extended into a third month, a case review should take place between the Headteacher and HR (and Occupational Health when practicable and appropriate). This review should consider progress and any actions which need to take place, for example Occupational Health writing to the employee's doctor or specialist for further information, or planning for [reasonable adjustments](#) to support a return to work.

21.3 If Occupational Health advice suggests that the employee is unlikely to be able to return to his/her existing job within a reasonable period, the Headteacher should consider, with HR advice, the

need to hold a stage 3 capability hearing to consider redeployment or dismissal. Where redeployment is the recommendation, the redeployment process can start prior to the hearing, with the active involvement of the employee, in order to maximise the opportunities of finding a suitable job match.

21.4 If Occupational Health advises that the employee is unlikely to be able to return to their job or a similar role, and where the employee is a pension fund member, options for ill health retirement may be considered. HR will advise on applying for ill health retirement.

21.5 If the Occupational Health report indicates that the employee will be fit to return to work within a reasonable period the Headteacher should meet with the employee to discuss the recommendations made in the report including arrangements for his/her return to work.

21.6 If Occupational Health advises that the employee is not fully fit but that s/he should, for an interim period, return to work on reduced hours or reduced duties, the Headteacher should wherever possible agree an appropriate temporary working arrangement or other adjustments. It is advisable to confirm the arrangements and any end dates in writing.

21.7 If Occupational Health advises that the employee is not capable of returning to their post, but that s/he would be fit for other duties, the Headteacher should ensure that a full report of the employee's occupational suitability is made and with the support of HR, should seek redeployment opportunities for the employee without delay. The employee should co-operate with this process. However, if no redeployment can be made within a reasonable period of search (not less than one month) then consideration should be given to a stage three capability hearing. Redeployment searches will continue while a hearing date is being arranged.

## **22. Action to be taken before a Stage Three Capability Hearing is held**

22.1 Following a stage two warning, if sick absence again reaches the attendance concern levels, it may be necessary to consider a stage 3 capability hearing, where both management and employee will be given the opportunity to state their case to a properly constituted committee of Governors authorised to take decisions on dismissal. Before this hearing is convened, the Headteacher should ensure that any relevant health enquiries and reports have been obtained from Occupational Health.

22.2 On receipt of the Occupational Health report, a meeting with the employee should take place to discuss the contents of that report. The key issue is the capability of the employee to attend work and to give regular service, and whether there is any evidence that sufficient improvement is likely. In the light of the contents of that report, and information which is put forward during the meeting, the Headteacher should inform the employee if a stage three hearing is being convened in which their continued employment may be at risk.

22.3 Regardless of whether previous warnings have been given, if an employee's overall attendance record causes sufficient concern, consideration should be given to holding a stage three capability hearing. Advice should be sought from HR and Occupational Health. The employee should be advised that this option is being considered.

## **23. Stage Three Capability Hearing**

23.1 The stage three hearing will take the form of a formal meeting between the employee, the 'Presenting Headteacher', a properly constituted committee of Governors authorised to take decisions on dismissal and a representative from HR. The employee has the right to be accompanied at the meeting by their trade union representative or a companion who is a schools colleague. The written notification of the time and date of the Hearing and a copy of the case papers to be presented by the Headteacher will be sent to the employee and to their representative/companion by 5 working days before the hearing.

23.2 Any papers the employee or his/her representative/companion wishes to present at the stage 3 hearing should be submitted to the Headteacher and the hearing Governors at least four days in advance of the hearing together with a list of any witnesses s/he intends to call.

23.3 Where the employee's chosen representative/companion cannot attend on the hearing date proposed, the employee can ask for an alternative time and date provided the key parties can attend on a date within a short time of the original hearing date.

23.4 At the stage three capability hearing, the presenting Headteacher should:

- Outline the employee's absence record, including the assessment or advice from Occupational Health
- Specify the standards of attendance that were expected of the employee in relation to attendance concern levels
- Demonstrate the support and advice given towards improvement (where applicable)
- Outline any assistance or remedial action taken by the Headteacher
- In cases where the employee's absence is related wholly or in part to a disability, set out how the school has considered or made reasonable adjustments wherever practicable.
- Confirm that levels of attendance have not improved to an acceptable level.

23.5 The hearing Panel will

- Give the employee and/or their representative the opportunity to state their case and any information to be taken into consideration.
- Adjourn to consider the evidence presented by both sides.

23.6 At the end of the stage 3 hearing, the hearing Panel has the opportunity to consider the following decisions:

- Dismissal of the employee on the grounds of a lack of capability to attend (whether this is related to frequent short absences, extended absence(s), reduced physical/mental capability or a combination of these factors)
- Dismissal of the employee on the grounds of a lack of capability unless an alternative redeployment suitable to his/her abilities can be identified within the period of notice.
- Dismissal on the grounds of permanent ill-health (where supported by medical certification)
- A final formal warning followed by a specified review period.
- No dismissal or warning required, and/or recommendations for action

23.7 The employee will be informed in person by the hearing Panel of the outcome at the conclusion of the hearing. Exceptionally, the Panel may defer giving a decision for a short period if issues arise at the meeting requiring fuller investigation or consideration.

23.8 A letter giving written confirmation of the decision must be sent to the employee within five working days of the conclusion of the hearing. A copy of this letter should be sent to the appropriate Human Resources officer for the employee's personal file.

## **24. Appeals against dismissal**

24.1 The employee may appeal against his/her dismissal to the committee of governors authorised to hear appeals against dismissal. The appeal must be made in writing, on the [appeal form](#) at appendix 14, and should clearly state the ground(s) for the appeal. The appeal form must be submitted to the Chair of the Governors within five working days of the employee receiving the written decision to dismiss him/her.

24.2 On receipt of the appeal form, the Chair of the Governors will arrange for the Governors' appeal panel to be convened as soon as reasonably practicable, to hear the appeal.

24.3 The appeal panel will be advised by an adviser from the Legal section and Human Resources.

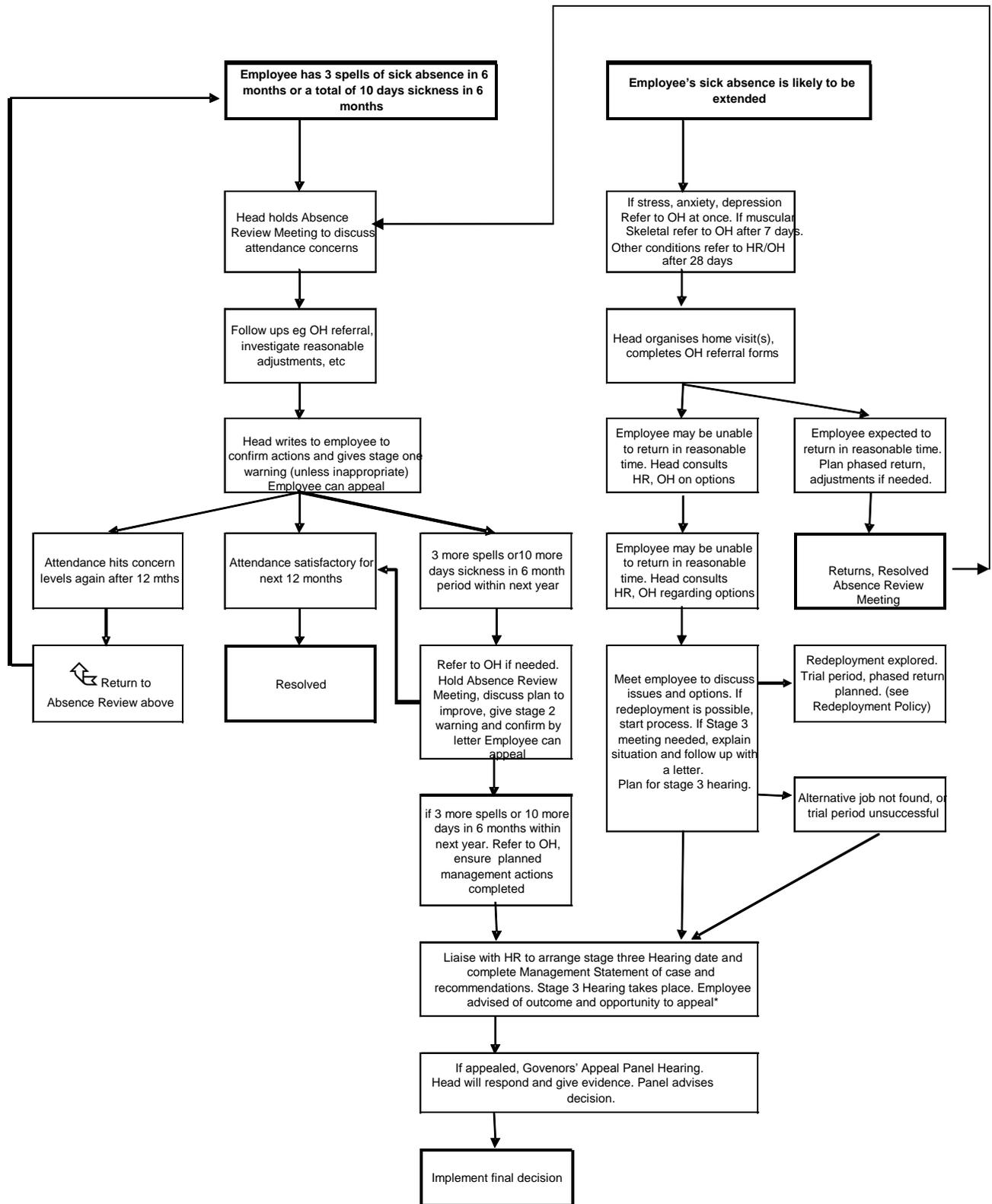
24.4 The parties will be given at least five working days' notice in writing of the date of the appeal hearing. The procedure which the panel will follow is at [appendix 16](#).

24.5 A letter giving written confirmation of the decision of the Appeal Panel will be sent to the employee within five working days of the hearing being held.

24.6 A copy of the letter should be sent to Human Resources for inclusion in the employee's personal file.

24.7 The Dismissal Appeal Panel is the final level of appeal.

24.8 A flowchart is shown below to show the key steps of the Sick Absence Management Procedure.



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## **The Equality Act and disability related absence**

1. The Equality Act provides disabled people with legal protection against discrimination. The Act defined disability as a "physical or mental impairment which has a substantial and long term adverse effect on a person's ability to carry out normal day-to-day activities". A substantial adverse effect is one which is "more than trivial" rather than "very large". Day-to-day activities may include mobility, sensory impairment and so on but there is no defined list.

2. The definition covers physical, mental or sensory impairments. Mental impairment includes mental illnesses as well as conditions that affect mental functioning, including learning disabilities.

3. For a disability to be classed as long term it should have an effect which has lasted at least 12 months; or is likely to last for a total period of at least 12 months; or is likely to last for the rest of the person's life.

4. Addiction to alcohol, drugs or nicotine or any other substances are not classed as impairments, although consequential impairments may be, for example depression, cirrhosis of the liver or lung cancer.

5. Employees diagnosed with progressive conditions such as HIV/AIDS, multiple sclerosis and cancer will be protected by the Act once the condition is diagnosed even if the illness has not had an adverse effect on their ability to carry out normal day-to-day activities. This includes those who are in remission from cancer or who have been successfully treated.

6. When an employee says that they have a disability, this must be carefully logged on his/her personal file so there can be no confusion over the point in time at which the manager had actual knowledge. If a third party, such as a colleague or representative brings this to the attention of the manager, the manager must take steps to seek clarification from the employee.

7. When a manager becomes aware that an employee has a disability, s/he should also consider whether a risk assessment needs to be carried out, and to progress any requirement.

8. The Equality Act (1 October 2010), makes a number of additions to discrimination laws. Employers are now prevented from asking candidates questions about their health that are unrelated to the job role. It will mean in particular that those with a medical condition or a disability will not be forced to disclose their condition prior to the offer of employment, unless it hinders their ability to do the job. For example, it will not be considered relevant to ask an applicant for a job such as a home care support worker for their medical history, but it will still be appropriate to ascertain whether any disability would affect the intrinsic skills required of the job. If so it would then be necessary to consider whether any adjustments are possible to enable them to carry out the job.

The Act also extends the law on direct discrimination to include discrimination by association (i.e. where a dependant relative is disabled). Reasonable adjustments must be considered in relation to flexible working requests to care for disabled or elderly relatives.

The concept of indirect discrimination relating to disability must also be considered. For example, if an office reorganisation is planned and the changes are harder for a disabled person to meet than a non disabled person then that is indirect discrimination.

The term disability-related discrimination is replaced by "discrimination arising from disability", widening the scope of actions which can be considered as related to the disability.

As part of the harmonisation of existing discrimination legislation, employers will be prohibited from discriminating against a disabled person by treating them unfavourably where that treatment is "not a proportionate means of achieving a legitimate aim". Under the previous Disability Discrimination Act, employers only had to show that the treatment was "justified". There is therefore more responsibility for the employer to make every effort to make adjustments.

Employment Tribunals have recently adopted the practice of relying far more on the employee's perception and account of the effect of their disability and are less insistent on an expert medical report.

### **1. Industrial Injury related sick absence**

1.1 Headteachers need to ensure that the Health & Safety procedure for reporting accidents is followed where an absence is a result of an alleged industrial injury. An employee can apply to have an accident at work declared as an industrial injury and if necessary apply for disability benefits by completing claim form BI 100A, available from the Department for Work and Pensions (DWP) or the disability benefits section of Directgov. It is the DWP responsibility to decide whether or not to accept claims. Sickness entitlement for industrial injuries is treated as a separate entitlement to normal occupational sick pay so only previous periods of industrial injury allowance within the preceding 12 month period count against the sickness entitlement.

### **2. Third Party accident related sick absence**

2.1 An employee who is absent as a result of an accident where damages may be receivable from a third party, will be paid Occupational Sick Pay as an advance. It is a requirement of receiving this advance, that an employee signs a form of undertaking to include as special damages a claim for the full extent of such advance payments in any claim for damages made against a third party and to refund to the council the amount of damages received in respect of such advance payments. A completed self certificate is still required.

### **3. Model letter to be used where an employee is incapacitated by an accident and where damages may be claimed from a third party. This letter will need to be amended according to individual circumstances.**

Dear

#### **Staff incapacitated by an Accident for which a Third Party may be responsible or partly responsible**

When you are absent as a result of an accident you are not entitled to sick pay if damages are receivable from a third party.

As regards the accident in which you were involved in on .....and which resulted in your absence from work, it would appear that damages may be receivable from a third party.

You are advised to seek legal advice, particularly as injuries may cause continuing incapacity or conditions which are not immediately apparent. (Union members may have legal cover).

The Council, taking the circumstances into account, may advance to you a sum not exceeding the sick pay which would normally be payable, subject to your undertaking to refund to the Council the total amount of such an advance should you receive damages from a third party. Where the full advance is not recoverable in the damages received, the proportion for repayment will be determined by the Council in accordance with your Conditions of Service and any other relevant information.

If you wish to apply for an advance to be made to you pending the settlement of your claim against the other party, you should sign in the presence of a witness (who should insert their name and address), the attached form of request and undertaking and return one copy to this office.

Yours sincerely  
HR Manager

### **4. Form of Undertaking for loan of monies equivalent to sick pay entitlement following an accident where damages may be claimed from a Third Party**

Department:

Name :

Section:

Post title:

Following my accident on \_\_\_\_\_ I request that a loan equivalent to sick pay be made to me, in accordance with the Conditions of Service applicable to my employment, for the period of any resulting absence from work.

If this loan is made to me then I undertake:

- That if I receive damages (whether awarded by a court or from an agreed settlement) in respect of the accident, I will immediately refund to the Council the total amount of the loan.
- That if I receive only a proportion of my claim on settlement, then the proportion of the loan that I am to repay shall be determined by the Council in accordance with the Conditions of Service applicable to my appointment, and taking account of any relevant information supplied by my solicitor or other agent.

Date: ..... Signed: .....

Witness:

Name: ..... Signature of witness: .....

Address: .....

.....

#### First Day:

Local instructions on contact arrangements, times and and local rules should be followed.

Otherwise you must call your supervisor/ line manager as soon as possible, and within the time specified in your contract. Unless there are exceptional circumstances (e.g. emergency hospitalisation), you must report your absence personally and to your line manager (or designated alternative contact). You must also give details of when you became unfit to work and if you know it, the likely date of your return to work.

#### Fourth Calendar Day:

If you are still unfit to work on the fourth day you must inform your supervisor/manager of your continuing absence so that information can be sent to Payroll for Statutory Sick Pay purposes. You must also give an indication of the likely date of your return to work.

#### Eighth Calendar Day:

If you are sick for more than seven consecutive days (including Saturdays and Sundays and days you would not normally work) you must notify your supervisor/manager, obtain from your doctor a Statement of Fitness for Work form Med 3 (referred to as a 'medical certificate' for ease of understanding), and send it to your supervisor/manager without delay.

#### Continuing Sickness:

If your sickness continues beyond the date given on the doctor's statement of fitness for work (medical certificate) you must obtain further doctor's statements as often as required. These must be sent to your supervisor/manager as soon as possible. Your manager will wish to keep in contact with you and you should provide preferred contact details by this stage.

If your doctor's statement covers longer than 14 days or you have had to obtain more than one statement during your absence, you must ask your doctor for a final statement of fitness confirming that you are fit to resume your duties and give it to your manager.

#### Accidents and Injuries caused by Third Parties

An employee who is absent as a result of an accident where damages may be received from a third party will be paid Occupational Sick Pay as an advance (see appendix 14 of the Sick Absence Management Procedure).

#### Return to Work:

When you are back at work, you must contact your supervisor/manager and sign the appropriate sick absence notification form. Late notification of sick absence and late submission of doctor's statements may result in pay being withheld or delayed.

Be aware that making a false declaration of sick absence is a serious matter and may result in disciplinary action, including dismissal, being taken against you.

Failure to provide doctor's statements in accordance with these arrangements may result in disciplinary action, including dismissal, being taken against you.

The Council reserves the right to require you to take a medical examination at any time regarding your fitness or otherwise for work.

If you have to go to a hospital or clinic as an in-patient, you should send in a doctor's statement on entry and on being allowed home, instead of the regular doctor's certificates.



**Self-certification / Return to Work Form**

**Self-Certification (to be completed by the employee)**

**Name:** ..... **Department:** .....

**First day of sickness:**.....am/pm **Last day of sickness:**..... am/pm

(First and last days of sickness should be actual dates of sickness even if these include non working days)

**Reason for absence:** ..... **Number of working days/hours off:** .....

Is the absence considered to be work-related or due to an industrial injury/disease? YES/NO  
 Was the absence caused by a third party (i.e. traffic accident)? YES/NO  
 Is the absence considered to be related to a disability YES/NO  
 For women only, is the sick absence considered to be pregnancy related? YES/NO

A doctor’s statement must be obtained for a sickness period exceeding 7 days.

**Please note that the provision of any deliberately false information may result in disciplinary action.**

**Signed by employee:**..... **Date:**.....

**Return to Work discussion (to be completed by the line manager)**

**Potential Discussion points include:-**

Was the absence reported in accordance with our policy?  
 Has medical advice been taken?  
 Is the employee fully fit now?  
 Is a recurrence likely?  
 Is there an underlying medical condition?  
 Are there any patterns/trends with sick absence?  
 Are any adjustments required?  
 Is any other support required?  
 Is a referral to Occupational Health required  
 Has the employee reached an absence concern level – if so, need to inform employee of need to arrange meeting  
 Confirm how the work was covered during their absence  
 Update the employee on what has happened in their absence

**Notes of interview with employee:**

Manager name .....Signed.....Date.....

Employee name .....Signed.....Date.....

**Appendix 5**

**BRIGHTON & HOVE CITY COUNCIL**

**School Staff Wellbeing**

**Framework**

<b>Change Control Details</b>				
<b>Date dd/mm/yy</b>	<b>Version</b>	<b>Description of changes</b>	<b>Sheets modified</b>	<b>Amended by</b>
January 08	1.0	Document created	n/a	JP
2.12.10	2.0	Review of document – in line with corporate branding	All	KB

<b>Author</b>	Janice Percy	<b>Author Title</b>	Lead Health & Safety Business Partner
<b>Owner</b>	Hilary Ellis	<b>Owner Title</b>	Head of Health, Safety & Wellbeing

<b>Review Frequency</b>	Every 12 months		
<b>Last Review</b>	Dec 2010	<b>Next Review</b>	Dec 2011

Staff Wellbeing Framework

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**This document has been prepared for Brighton & Hove City Council using a suite of policy documents, which require local interpretation and adaptation to individual schools circumstances.**

## 1. INTRODUCTION

- 1.1 Brighton & Hove City Council recognises its responsibility as an employer under the Health & Safety at Work Act 1974 to ensure, so far as is reasonably practicable the health, safety and welfare at work of all employees. This duty extends to the provision of a healthy workplace and working environment. .
- 1.2 This document sets out a framework including linked policies and procedures which schools can use and adapt in matters relating to developing arrangements for staff wellbeing. It provides guidance to assist schools in developing policies to manage and monitor staff wellbeing. Staff are more likely to flourish in an environment free of unnecessary anxiety, stress and fear and where the contribution of all employees is valued. This framework incorporates a range of issues including:
- Worklife balance
  - Stress
  - Dignity at work (bullying and harassment)
- 1.3 If staff are to provide an atmosphere conducive to pupil achievement, they need to be emotionally healthy themselves. This framework should be adopted to take a whole school approach to creating a healthy, positive working environment that puts the wellbeing and effectiveness of staff right at the heart of the school.

## 2. LEGAL IMPLICATIONS

- 2.1 **The Health & Safety at Work Act 1974** states that an employer has a duty to ensure the health and safety (this includes mental health) of their employees whilst at work:
- 2.2 The **Management of Health and Safety at Work regulations 1999** place a duty on an employer to conduct a risk assessment to ensure that all risks to health and safety of their employees are assessed and interventions put in place to minimise or control exposure to those risks.
- 2.3 **Other legislation:** Although not an exhaustive list below is a summary of other relevant legislation which may have an impact on schools wellbeing arrangements
- Working time regulations 1999
  - Employment Act 2002
  - Education Act 1996
  - Employment relations Act 1999
  - Equality Act 2010
  - Employment Rights Act 1996
  - Safer Recruitment Pack

## 3. RESPONSIBILITIES

- 3.1 **Overall City Council responsibility**  
Brighton & Hove City Council has responsibility for ensuring the health safety and welfare of its employees and others who could be affected by its undertakings. As part of this responsibility the City Council is providing a framework document which schools should adapt to meet their own needs. In Voluntary Aided schools the Governing Body has this responsibility.

### 3.2 **School responsibility**

The Governing Body through the head teacher must ensure that a policy is developed and a nominated member of staff is assigned the role of 'wellbeing coordinator' to act as a focal point for staff issues and concerns. The **headteacher** should ensure all staff are aware of the school wellbeing policy and arrangements. Safety representatives must be meaningfully consulted on any changes to work practices that could impact on staff wellbeing. Governors are responsible for monitoring this process

### 3.3 **Responsibility of Staff (including supply staff)**

All staff have a responsibility to co-operate with the school management team to assist in the implementation of this framework. Staff must take responsibility for their own actions and behaviours, including taking account of the affect these may have on others.

### 3.4 **Function of Safety Reps**

Safety reps are responsible for representing staff members and for assisting in developing wellbeing arrangements for schools. Safety reps must be consulted in the development, application and monitoring of school wellbeing arrangements.

## **4. POLICIES & ARRANGEMENTS**

### **4.1 Worklife Balance**

Worklife balance is about helping staff combine work with their personal interests outside work. Each of these interests makes demands and this can lead to role conflict, itself a cause of stress. A satisfactory worklife balance gives greater control of working lives and a stronger sense of ownership.

***The Worklife Balance Policy*** should be used as part of developing overall wellbeing arrangements. It is available on The Wave and offers guidance together with suggested interventions which schools can adopt for their own local arrangements.

Other useful contacts include: **Worklife Support**, [www.worklifesupport.com](http://www.worklifesupport.com)  
**Tel: 0845 873 5680 Email: info@worklifesupport.com**, this is a social enterprise established in 1999 by the national charity Teacher Support Network. The organisation can assist schools in developing their own wellbeing programmes.

### **4.2 Stress**

The Health and Safety Executive (HSE) defines stress as "the adverse reaction people have to excessive pressure or other types of demand placed on them." This makes an important distinction between pressure, which can be a positive state if managed correctly and stress which can be detrimental to health.

***The Stress Standard and related Guidance*** is available on The Wave and offers help to managers, headteachers, governors and all staff to identify and deal with workplace stress issues.

Other useful information can be found by accessing the Health and Safety Executive website at [www.hse.gov.uk/stress](http://www.hse.gov.uk/stress). A particularly useful source of information is contained in the ***HSE Tackling Stress - The Management Standards approach*** document. The leaflet contains

notes on good practice which are not compulsory but which you may find helpful in considering what measures need to be implemented locally.

### 4.3 Dignity at Work

All employees have the right to work in an environment in which the dignity of all individuals is respected and is free from discrimination, harassment and bullying. It is the responsibility of all staff to treat each other fairly and with mutual respect. The contribution of all employees in contributing to the efficient delivery of quality services will be valued.

***The Dignity at Work Policy*** contained within this framework document should be used in developing wellbeing arrangements. It is also available on The Wave and provides help to managers and all other staff to identify, challenge and deal with any incidents of harassment and bullying.

***Work –related Violence and Aggression Guidance*** provides advice and information to Headteachers, Governors and Managers on dealing with violent or aggressive behaviours within the workplace. There is also a ***Violence & Abuse Management Plan*** available on the Wave to help identify hazards and to assess and implement controls needed.

***Codes of Conduct; Grievance Policy; Discipline Policy; Whistle blowing Policy*** – These policies and procedures provide a framework to help you to manage issues and concerns in a fair, consistent and timely manner. These documents are available on The Wave within the Human Resources Section of the Schools tab.

## 5. Accident / Incident Reporting

All accidents, incidents and near misses must be reported to the Health, Safety & Wellbeing team, (available on The Wave), within five days of the incident occurring.

### Health, Safety & Wellbeing Contact:

**Address:** Kings House, Grand Ave, Hove, BN2 3SR

**Telephone:** 01273 291530

**Fax:** 01273 293598

This is extremely important - the Health, Safety & Wellbeing team will evaluate the form and decide whether, in the case of an accident, it would need a **RIDDOR** form submitted to the HSE (within 10 days of the accident). The Health, Safety & Wellbeing Team do this on behalf of schools – do not report directly to the HSE.

**RIDDOR** means the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 and it requires the reporting of certain work-related accidents, diseases and dangerous occurrences to the HSE. It applies to all work activities but not to all incidents.

We need to report:

- Deaths
- Major injuries
- Accidents resulting in over 3 day injury
- Some diseases
- Dangerous occurrences

- Gas incidents

More information on **RIDDOR** and a more detailed explanation on what needs to be reported can be found at [www.hse.gov.uk](http://www.hse.gov.uk)

Any incidence of verbal / written abuse should be reported within the school. Significant verbal/ written abuse and violence must be reported using the HS3 reporting form which is available within the health and safety section of The Wave. **All Violent and or Significant Abusive incidents must be reported on the HS3 form.**

It is essential that the member of staff concerned feels that the complaint has been properly handled.

If the incident was so serious that it posed a threat to an employee's personal safety, the perpetrator will need to be placed on the Clients of Concern Register (CCR). This is a database of service users/ members of the public which are a potential risk to council staff. All HS3 forms must be sent to the Health, Safety & Wellebing Team regardless of whether the incident fits the criteria for inclusion on the Clients of Concern Register.

Reporting, investigating and analysing workplace accidents and incidents is essential to ensure legal compliance and to assist in identifying trends and remedial measures required to prevent further occurrences.

## 6. Useful Contacts

Team	Contact Number	Further Advice
Human Resources	293492	Flexible working, dignity at work, employment contracts & occupational health (including counselling services)
Health, Safety & Wellbeing	291530	Accident / incident reporting and investigation, risk assessment, health & safety training
Remodelling Advisor	294549	Worklife balance, remodelling, change management
Schools Training	293466	Training courses
<b>Staff Associations:</b> <ul style="list-style-type: none"> <li>• ATL (Bobbie Churchley)</li> <li>• NASUWT (Jacqueline Sell)</li> <li>• NUT (Sue Suleyman)</li> <li>• NAHT (Dennis O’Sullivan)</li> <li>• PAT (Janet Martin)</li> <li>• UNISON (Denise Knutson)</li> <li>• GMB (Mark Turner)</li> <li>• ASCL (Paula Sargent)</li> </ul>		<a href="mailto:b.churchley@e-sussex.atl.org.uk">b.churchley@e-sussex.atl.org.uk</a> <a href="mailto:jacqueline.sell@nasuwt.net">jacqueline.sell@nasuwt.net</a> <a href="mailto:sue.suleyman@brighton-hove.gov.uk">sue.suleyman@brighton-hove.gov.uk</a> <a href="mailto:head@coomberoad.brighton-hove.sch.uk">head@coomberoad.brighton-hove.sch.uk</a> <a href="mailto:janetmartin@pat.org.uk">janetmartin@pat.org.uk</a> <a href="mailto:Denise.Knutson@brighton-hove.gov.uk">Denise.Knutson@brighton-hove.gov.uk</a> <a href="mailto:mark.turner@brighton-hove.gov.uk">mark.turner@brighton-hove.gov.uk</a> <a href="mailto:psargent@patchamhigh.org.uk">psargent@patchamhigh.org.uk</a>

## 7. Schools Wellbeing Action Plan

Task	Objective	Persons Responsible	Time scale	Success Criteria
Develop a school wellbeing policy	To identify arrangements for worklife balance, stress and dignity at work	Headteacher, governors		
Nominate a co-ordinator with responsibility for developing wellbeing arrangements for the school	To coordinate, manage and monitor wellbeing arrangements	Governors & headteacher		
Identify training needs of staff	To ensure staff have knowledge, understanding & skills to implement policy	Headteacher / CPD coordinator		
Establish a school wellbeing group	To monitor compliance and develop wellbeing procedures and interventions	Headteacher		
Identify and implement communication procedures for wellbeing issues	To ensure all staff are familiar with reporting procedures to enable analysis of data	Headteacher		
Incorporate the wellbeing policy and relevant procedures into the school development plan, performance management arrangements	To ensure all school policies consider wellbeing issues	Headteacher		

## Appendix 6

### Invitation to absence review meeting

Dear

**Absence review meeting - stage one/stage two - *insert date, time and place***

I am writing to ask you to come to an absence review meeting on the above date as part of the School's sick absence management procedure.

I am enclosing a copy of your sickness record which shows the record of your absence(s) in the period (*insert period*). The purpose of the formal interview is to discuss your sickness record at work, which is giving cause for concern. Please read the accompanying Guidance Notes which will explain the purpose of the meeting and give suggestions to help you to prepare for the meeting. This will help us to have a useful meeting and discuss any actions you may be able to take, or any support or sources of advice which we can provide to help you improve your attendance.

Please note that it is a requirement for us to meet and that this meeting is part of a formal process. You have the right to be accompanied or represented at the interview by either your trade union representative or a colleague who works for the Council. It is your personal responsibility to arrange your own representation.

Please confirm that you will be able to attend at the time stated.

Yours sincerely

Headteacher  
cc HR Advisor

**Staff Guidance on preparing for an Absence  
Review Meeting with your Headteacher/(line manager as appropriate)**

**Why have I been called to an absence review meeting and what will be discussed?**

Your Headteacher has called you to a meeting because staff records show that the time you have had off work on sick leave in the last 6 months has reached the monitoring standards set out in Council sick absence management procedures. These are:

- *3 separate spells of absence in any six month period*
- *10 or more days' absence in any six month period*

In holding the meeting, your Headteacher is following the procedure set out by the Council, and is simply doing his or her job. The purpose of the meeting is to check that you are taking all the steps necessary to help you manage any health or attendance problems you may have, and to facilitate any support that the Council can give you as a good employer.

At the meeting, your Headteacher will not criticise you for your absence or question the genuineness of the time off. It is a problem solving meeting designed to ensure that you are getting all the help you need to improve your attendance in the future. For example, if you have been feeling rundown or are experiencing pain, your Headteacher will want to make sure you are getting medical advice and treatment. If you do not wish to disclose personal or medical information, simply say that you do not want to go into detail.

If some or all of your absence is related to a disability that you have and you are not sure that your Headteacher is fully aware of this, take the opportunity to explain this and raise any adjustments you need that would help you at work. This is particularly important if your disability is not obvious.

The absence review meeting is a stage of the formal sick absence management procedure. You may bring your union representative or a colleague to the meeting if you wish for support in discussing issues with your Headteacher. The sick absence management procedure is available to read on the People First pages of The Wave. Your Headteacher can let you have a copy if you do not have access to the Council intranet.

**Preparing for the meeting**

So that **you** can get the most out of the meeting, it is worth considering this checklist, and making your own notes if you wish to in preparation.

**Is your sick absence record correct?** (*Sometimes information about the nature, reasons or duration of absences is missing or needs updating*).

**What do you think have been the causes for your absence(s)? Have you had any medical diagnosis?**

.....  
 .....

**Is there anything else that you think has contributed to your sickness?**

.....  
 .....

**Is there anything that could prevent a recurrence of this?**

- That **you** could do?  
.....  
.....
- That your **Headteacher** could do?  
.....  
.....
- Are there any issues in the **workplace** (physical environment, relationships with colleagues, workload etc) that could be improved to help to prevent a recurrence?  
.....  
.....
- Is there any other support that may be helpful (eg the Council provides a free confidential counselling service covering personal as well as work related issues).  
.....  
.....

**What will you do differently now to help prevent further sick absence?**

.....  
.....

**What support (if any) will you need to do this successfully?**

.....  
.....

**Are there any adjustments you need, such as physical aids or a modification to your situation at work?**

.....  
.....

**Are there any questions or concerns you want to raise with your Headteacher?**

.....  
.....  
.....  
.....  
.....  
.....

**Headteacher/senior manager Guidance on Absence Review Meetings**

1.1 The purpose of the absence review meeting is to check that the employee and the employer are taking all the steps necessary to improve any health or attendance problems s/he may have, and to provide and facilitate any support to ensure that satisfactory attendance levels are met in the future. At the end of the meeting, there should be a plan of actions by the employee and in some cases also by the manager with the purpose of reducing further absence. The meeting should also ensure that the employee is aware that his/her attendance has fallen below required standards.

1.2 Where the employee has returned from a longer spell of certificated illness or medical treatment, the discussion should focus on ensuring that the staff member receives any support or adjustments needed in the workplace to return to full fitness and effective working. If more specialist guidance is required but has not yet been obtained on rehabilitation or adjustments, the employee should be referred to Occupational Health. Information for Headteachers on the Occupational Health service is at appendix 9. A fact sheet on using Occupational Health effectively is available [here](#).

1.3 The employee should be referred to Occupational Health in the following circumstances:

- Their health problem appears to be related to the type of job they do or the work environment
- Advice is needed on the workstation placement or on [reasonable adjustments](#)
- They have a musculo-skeletal condition
- Their illness(es) are for stress, anxiety or depression
- There is a recurring or persistent medical condition
- There are repeated short absences for similar reasons

1.4 Where a referral to Occupational Health is made, employees and their Headteacher should complete the Occupational Health Service Health Enquiry Referral Form (appendix 10) and employees should be given the accompanying Health Enquiry Process - Information for Employees. (appendix 11).

1.5 If it becomes clear during the absence review meeting that referral to Occupational Health may be beneficial, the Headteacher should cover any other issues during the meeting, and then it should be reconvened when the Occupational Health referral has taken place and the employee and the manager have had an opportunity to read the Occupational Health report.

1.6 If an employee has returned to work following a significant illness or operation, the manager should agree return to work adjustments such as a phased return to avoid the need for the employee to take further sick leave related to their recovery needs. A fact sheet on the role of flexible working in the management of absence is available [here](#).

1.7 Advice should be sought from Occupational Health where deterioration in attendance due to a disability is causing concern. A fact sheet is available here on [disability and the management of absence](#).

Headteachers are advised to give a written warning following the meeting to ensure that employees understand that their attendance has fallen below Council standards and will be monitored under a formal process. This should be confirmed in writing within 7 calendar days of the meeting, and will include the right of appeal. A stage one [model letter](#) is provided at appendix 12.

1.8. There is discretion to omit the stage one written warning where there is clear evidence that unsatisfactory attendance is unlikely to recur, for example:

- The absence(s) represent a spell of illness which is unusual and unlikely to recur in an otherwise excellent attendance record by a long term employee:

- The absence(s) relate solely to a non-recurring illness/condition which has been successfully treated (eg fracture, routine operation)

### **The Health Enquiry Process - Information for Headteachers**

The Health Enquiry Process is designed to support you by providing specific information regarding the impact an employee's health may have upon their ability to perform their duties, and to advise on any adjustments that may be required to facilitate their performance of these duties.

The Occupational Health Service management report produced following a Health Enquiry will also advise if or when an employee can be expected to return to work, if they are currently absent due to sickness. This will enable you to make the appropriate management decisions. The Occupational Health Service management report will not contain any clinical information regarding the nature of the employee's illness, unless the employee consents to this.

In order to get the most from this management report, it is essential that you provide Human Resources and the Occupational Health Service with as much information as possible relating to the employee who is the subject of the Health Enquiry. Without all the information requested on the Health Enquiry form (such as job descriptions, sick absence record, background information), it is not possible for the Occupational Health Service to provide you with a specific informed response. If you have any queries regarding the completion of the form, please contact Human Resources or the Occupational Health Service.

#### **When an employee is absent due to sickness**

The Sick Absence Management Procedure is designed to help you effectively manage an employee's absence and to facilitate their speedy and safe return to work. It is vitally important that you use this procedure, and that you follow the timescales outlined in the procedure.

The Clinical Standards Advisory Group (CASG) advises that employees who have been off sick for over six months with back pain have only a 50% chance of returning to work; after a year that reduces to 25%<sup>1</sup>. By following the correct procedure, you will maximise the chances of that individual returning to work.

The Occupational Health Service cannot give Headteachers any clinical details regarding the nature of an employee's medical condition<sup>2</sup> and so we would encourage you to have open and honest discussions with the employee regarding their absence and their ability to perform their duties.

#### **When an employee remains at work, but there is a change in the condition of their health**

A Health Enquiry will inform you of the impact a change in the employee's health may have upon their ability to perform their duties, and will advise on any adjustments that may be required to facilitate their performance of these duties.

#### **Health Referral Process**

1. When concern is raised regarding an employee's health in relation to their work activities, the health referral process begins. It is not just when an employee's absence(s) have reached the concern levels set out in the sick absence management procedure.
2. Please ensure that the referral form is completed as fully as possible. The health referral process is designed to support you by providing specific information regarding the impact an employee's health

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<sup>1</sup> Clinical Standards Advisory Group (CASG), report on back pain 1994

<sup>2</sup> This information is protected by the Access to Medical Reports Act 1988, and cannot be disclosed without the employee's explicit written consent.

may have upon their ability to perform their duties, and to advise on any adjustments that may be required to facilitate their performance of these duties.

3. The Occupational Health Service management report produced following a health referral will also advise if or when an employee can be expected to return to work, if they are currently absent due to sickness. This will enable you to make the appropriate management decisions. The report will not contain any clinical information.
4. In order to get the most from this management report, it is essential that you provide HR and the Occupational Health Service with as much information as possible relating to the employee who is the subject of the Health Enquiry. It is important that all sections of the health enquiry form are completed in full and associated documents supplied such as job descriptions, sick absence record, background information and any additional memos. Please ensure that the employee and Headteacher declarations are signed and a copy of the completed health enquiry form and associated documents are supplied to the employee being referred **prior** to their appointment with Occupational Health. Without all the information requested on the Health Enquiry form, it is not possible for the Occupational Health Service to provide you with a specific informed response.
5. Please bear in mind that whilst all information provided is treated in strict confidence, any employee can make a request in writing under the Access to Medical Records Act 1988 for copies of the medical records held about them to be released.
6. If you have any queries regarding the completion of the form, or the supplementary information provided which accompanies it, please contact your HR contact or the Occupational Health Service.
7. Following the Occupational Health Service assessment, there may be a requirement to contact the employee's GP or specialist for further information. The employee's consent should be obtained through the OH Service Informed Consent Form available on the "People First" site of the Wave or through Human Resources.

## Occupational Health Referral Form

**Please ensure that all sections of this form are filled out.**

### **Employee Details (Person referred to Occupational Health)**

<b>Full Name</b>		<b>Title:</b>	
<b>Date of Birth</b>			
<b>E-mail</b> (accessible)			
<b>Contact Tel.</b>			
<b>Address</b>			

<b>Occupation</b>	
<b>Department</b>	
<b>Place of work</b>	
<b>Date commenced in current post</b>	
<b>Date began employment</b>	
<b>Contracted weekly hours</b>	
<b>Work pattern (when best to contact employee)</b>	

**Please advise why an occupational health assessment is required** (please add as much information as possible, for further guidance [click here](#))

Details:

**Please outline any measures/adjustments that have already been introduced** (i.e. temporary adjustment of hours etc)

Details:

<b>Is the employee currently absent from work?</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>			
<b>Relevant sickness absence record</b>					
<b>From:</b>		<b>To:</b>		<b>Reason:</b>	
<b>From:</b>		<b>To:</b>		<b>Reason:</b>	
<b>From:</b>		<b>To:</b>		<b>Reason:</b>	

**If a consultation is deemed appropriate, does the employee have any special requirements in relation to this, e.g. accessibility, provision of a hearing loop, etc? If so, please specify below.**

Details:

<b>If there is any background information relevant to the referral, please indicate in the tick box and give as much detailed information as possible in the space provided:</b>	
Reported/witnessed having difficulty performing physical tasks at work	<input type="checkbox"/>
Reported/witnessed having difficulty performing mental tasks at work	<input type="checkbox"/>
There have been changes to work tasks	<input type="checkbox"/>
Departmental reorganisation is to/has taken place	<input type="checkbox"/>
There are concerns about job security	<input type="checkbox"/>
Is undergoing disciplinary procedures	<input type="checkbox"/>
Harassment/grievance procedures are in process/pending	<input type="checkbox"/>
There have been complaints from service users	<input type="checkbox"/>
Was recently exposed to verbal/physical assault	<input type="checkbox"/>
Has personal/domestic problems	<input type="checkbox"/>
Other	<input type="checkbox"/>
<b>Additional information:</b> (please give us as much background detail as possible, i.e. resourcing issues, workplace relationships, alleged bullying & harassment)	
<p><b>On receipt of this referral a consultation with the Occupational Health Practitioner will be arranged. You will then receive a report advising you, where applicable, on</b></p> <ul style="list-style-type: none"> <li>• Any underlying medical issues to be taken into consideration</li> <li>• Reasonable adjustments required to support the employee</li> <li>• Any return to work plans relative to the employee's capabilities</li> <li>• If identified ill health redeployment / retirement suitability</li> </ul> <p><b>If you have any other questions you wish to ask as part of this referral, please complete the section below</b> (The box will expand as you type)</p>	
<b>Managers Questions:</b>	

### Managers Details

<b>Managers Name</b>		<b>Date:</b>
<b>Work Address</b>		
<b>E-mail Address</b>		
<b>Contact Tel. No</b>		
<b>MANAGER DECLARATION – PLEASE READ BEFORE SUBMITTING</b>		
<ul style="list-style-type: none"> <li>✓ <b>By sending this form you confirm that you have discussed the referral with your member of staff and that you have given them a copy of the referral form <i>PRIOR</i> to their appointment with Occupational Health.</b></li> <li>✓ <b>You have discussed with your employee that a copy of all OH reports will be sent to the Coaching and Advice Team in Human Resources.</b></li> <li>✓ <b>You agree that a charge of £210.00 will be made in respect of any missed appointments or cancellations with less than 48 hours notice (excluding SLA holders)</b></li> </ul>		
<b>Cost Centre</b>		

**Thank you, please now ensure you have completed all sections and return this form by e-mail to:-**  
**[Occupational Health Mailbox](#)**

**If you have any queries regarding the completion of this form please contact the Occupational Health and Wellbeing team: Tel: 01273 290533**

## **Appendix 11**

### **Outcome of Stage One Interview.**

*(This model letter will need to be amended according to individual circumstances).*

Dear

Following our discussion on .....(date) regarding your sick absence from work, under stage one of the schools' sick absence management procedure I am writing to confirm the points we discussed.

Your sick absence records show that you have taken ..... spell(s), covering a total of ..... working days lost, over the last ..... months. As this is an unacceptable level, we discussed the reasons for your absences *and the actions planned to help you make an improvement in your attendance to reach the required standard (if appropriate).*

#### ***Either – (where there are reasons to seek a medical view)***

As your absences indicate that you may have an underlying medical condition, it is our policy to refer you to the Occupational Health Service in order to obtain occupational health advice. *Thank you for completing/ we will need to complete* the consent forms explaining the process, confidentiality and so on. In most cases, an appointment will be made for you with our qualified occupational health nurse or doctor. When you have received the medical report, I will set up a continuation meeting with you so that we can discuss the advice and recommendations given.

#### ***Or – (Where a warning is unnecessary)***

I am writing to confirm that following our discussions it is not necessary to take any formal action regarding your attendance.

#### ***Or – (In the majority of cases this warning is advised)***

Following our discussion at the stage one meeting, I am confirming that this is a stage one warning under the Schools sick absence management procedure. This means that if your level of sick absence again reaches attendance concern levels during the next twelve months, a stage two meeting will be convened, at which time consideration may be given to a more serious warning about your attendance.

You have the right to appeal against the decision to give you a stage one warning, and if so, the appeal should be made in writing on the attached form within 5 working days of the date of this letter.

A copy of this letter and any accompanying notes will be placed on your personal file. Please be assured that, as your line manager, your welfare is my concern and it is my job to help you with any work-related issues which may affect your health. Should you wish to discuss any matter in confidence please contact me or HR for further assistance.

Signed.....

Headteacher/manager name .....

Date.....

**Outcome of Stage 2 Absence Review Meeting**

Model letter

Dear

Following our discussion on .....(date) regarding your sick absence from work, under stage two of the Council’s sick absence management procedure I am writing to confirm the points we discussed.

Your sick absence records show that you have taken ..... spell(s), covering a total of ..... working days lost, over the last ..... months. As this is an unacceptable level, we discussed the reasons for your absences *and the actions planned to help you make an improvement in your attendance to reach the required standard (if appropriate).*

***Either – (where there are reasons to seek a medical view or a further referral to Occupational Health)***

As your absences indicate that you may have an underlying medical condition, it is our policy to refer you to the Occupational Health Service in order to obtain occupational health advice. *Thank you for completing/ we will need to complete* the consent forms explaining the process, confidentiality and so on. In most cases, an appointment will be made for you with our qualified occupational health nurse or doctor. When you have received the medical report, I will set up a continuation meeting with you so that we can discuss the advice and recommendations given.

*Alternatively,*

We agreed that a further referral to Occupational Health would be helpful and I have asked HR to book a follow-up appointment for you as soon as possible. When you have received the medical report, I will set up a continuation meeting with you so that we can discuss the advice and recommendations given.

***Or – (very unusually if a stage 2 interview)***

I am writing to confirm that following our discussions it is not necessary for me to take any formal action regarding your attendance.

***Or – (In the majority of cases this warning is advised)***

Following our discussion at the stage one meeting, I am confirming that this is a stage two warning under the Council Sick Absence Management procedure. This means that if your level of sick absence again reaches the Council attendance concern levels during the next twelve months, a stage three meeting may be convened, at which point your continued employment may be at risk.

You have the right to appeal against the decision to give you a stage two warning, and if so, the appeal should be made in writing on the attached form within 5 working days of the date of this letter.

A copy of this letter and any accompanying notes will be placed on your personal file. Please be assured that, as your line manager, your welfare is my concern and it is my job to help you with any work-related issues which may affect your health. Should you wish to discuss any matter in confidence please contact me or HR for further assistance.

Signed.....  
Headteacher/Manager name .....  
Date.....



**Model letter arranging Home Visit/meeting.**

This model letter is an example and will need to be amended according to individual circumstances

PRIVATE & CONFIDENTIAL

Date:  
Our Ref:  
Your Ref:  
Phone: (01273) + phone number  
Fax: (01273) + fax number

e-mail: Type e-mail address here

Dear

I am sorry that your illness continues to prevent you from returning to work, and sincerely hope that it will not be too long before your health improves. All of your friends and colleagues here at .....send their regards and warmest wishes for a speedy recovery.

I would very much like to come and see you, either at home or at a meeting place which suits you and would ask you to contact me on .....in order to arrange a mutually convenient date and time to meet. If you wish, you may have a colleague or union representative with you.

It is Schools policy to keep in touch with employees who are on extended sick leave, but if you have any questions or concerns, do let me know when you ring.

I look forward to both hearing from you and seeing you soon.

Yours sincerely

HEADTEACHER/MANAGER

c.c. Personal File  
c.c. Trade Union Representative (if employee is a member)

**Format for an Appeal Panel Hearing**

1. The Appeal Panel Chairman will introduce those present to the employee.
2. He/she should explain the purpose of the appeal hearing, how it will be conducted and what powers the appeal panel has;
3. The appellant (or his/her representative/companion) to state their case and may call witnesses;
4. Management may ask questions of the appellant (or his/her representative/companion) to seek clarification of the appellant's case;
5. The Appeal Panel may ask questions of the appellant (or his/her representative/companion) to seek clarification of the appellant's case;
6. Management will state their case in the presence of the appellant and his/her representative/companion and may call witnesses;
7. The appellant (or his/her representative/companion) may ask questions of management or their witnesses to seek clarification of management's case;
8. The Appeal Panel may ask questions of management or their witnesses to seek clarification of the management case;
9. Management will summarise their case;
10. The appellant (or his/her representative/companion) will summarise his/her case;
11. Management and appellant (and his/her representative/companion) and any witnesses will withdraw;
12. The Appeal Panel and its adviser will deliberate in private, recalling management or the appellant (and his/her representative/companion) to clarify any points of uncertainty on evidence already given. If recall is necessary both parties are to return, even if only one is concerned with the point giving rise to the doubt;
13. Having given careful consideration of all the evidence presented, the Appeal Panel will make a decision on whether the appeal should be upheld or rejected and then reconvene the appeal hearing to advise the employee in person of the decision;
14. The employee should be informed that he/she will receive confirmation of the decision in writing within five working days;
15. A copy of the letter should be sent to the relevant HR manager to include in the employee's personal file.

**FACT SHEET – MANAGING ATTENDANCE WHEN ABSENCE IS RELATED TO DISABILITY**

**Who is covered as having a disability?**

The Equality Act 2010 defined disability as a "physical or mental impairment which has a substantial and long term adverse effect on a person's ability to carry out normal day-to-day activities". A substantial adverse effect is one which is "more than trivial" rather than "very large". Day-to-day activities may include mobility, sensory impairment and so on but there is no defined list.

The definition covers physical, mental or sensory impairments. Mental impairment includes mental illnesses as well as learning disabilities. For a disability to be classed as long term it should have an effect which has lasted at least 12 months; or is likely to last for at least 12 months; or is likely to last for the rest of the person's life.

### **What about long term illnesses?**

Employees diagnosed with progressive conditions such as HIV/AIDS, multiple sclerosis and cancer will be protected by the Equality Act once the condition is diagnosed even if the illness has not had an adverse effect on their ability to carry out normal day-to-day activities. This includes those who are in remission from cancer or have been successfully treated.

### **How will I know if someone has a disability?**

- It may already be logged on their personal file.
- They may tell you, in which case you must log it on their personal file and the date you were advised.
- A colleague or team member may tell you, in which case you should ask the employee.
- You may suspect this because of the nature of absences or other evidence, in which case the onus is on you to ask the employee.
- A consultation with Occupational Health may be helpful to provide information on whether the employee's condition is likely to be covered by the Act and what reasonable adjustments may be advised.

### **Should I use the Attendance Management procedure, or the Schools Sick Absence Management procedure, if someone is disabled?**

Follow the same procedure for disabled employees as for others. The key difference is that you have a **legal duty to consider, and wherever possible provide, reasonable adjustments** for disabled employees.

- The Reasonable Adjustments Guidance for Managers on the Wave provides advice, ideas and resources to help you support a disabled team member.
- OH can provide advice on specific reasonable adjustments based on someone's condition and the job they do.
- It is important to be flexible and prepared to consider fairly significant changes to the job or working hours in order to allow a disabled person to remain in employment.
- Where someone cannot continue in their current role due to an impairment, redeployment is a reasonable adjustment which should be explored.
- HR can provide further advice on managing absence related to disability.

## **HIV/AIDS Awareness Guidance**

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### **1. The Inclusive Council – As a Model Employer**

- 1.1 The Council is committed to developing and retaining a skilled, flexible and sustainable workforce that is representative of the diverse communities it serves.

To achieve this there must be equal opportunities in recruitment, training, development and promotion with discrimination, bullying, harassment and victimisation eradicated in all its forms.

- 1.2 The Council recognises the increasing numbers of people with HIV living within the community and the likelihood of increasing employees with HIV within its own workforce in the future. It also recognises that employees may have partners, dependants or friends who may become ill as a result of HIV or AIDS and who may need advice and support.

- 1.3 In accordance with the Equalities & Inclusion Policy, discrimination against individuals on the basis of their HIV status in matters of recruitment, promotion, developmental needs and terms and conditions of employment will not be tolerated.

- 1.4 The Council recognises its duty of care in the workplace to ensure that HIV positive employees are supported in an environment that includes tolerance and avoids prejudice and discrimination. It is the responsibility of every member of staff to work towards creating such an environment. Therefore, discrimination, harassment, victimisation or bullying of employees with HIV by other employees, actual or perceived, will be considered a disciplinary matter and could result in dismissal.

### **2. Confidentiality & Disclosure (see section 7 of the guidance)**

- 2.1 Employees with HIV do not have to reveal their HIV status and should not be pressurised to disclose HIV-related information.
- 2.2 The HIV status of an employee is personal information that should not be recorded in any way that may be easily accessible and should not be shared without the employee's consent.
- 2.3 Pre-employment health screening will be undertaken to ensure that prospective employees are capable of meeting the requirements of the job they have applied for. Information provided will remain confidential to the Occupational Health service only.
- 2.4 Access to employees' medical records, including sick notes, absence and "well for work" interview records, will be restricted on a "need to know" basis, e.g. issues surrounding service delivery. Managers/Section Heads, as well as the Human Resources section, will ensure that medical information remains confidential.
- 2.5 If an employee learns of an individual's perceived HIV status through any other means, e.g. word of mouth, it is the responsibility of the employee not to discuss this with a third party without the individual's explicit consent.
- 2.6 Should an employee seek advice, support or information about HIV and AIDS this should remain confidential between the employee and the source of information.

- 2.7 Breaches of confidentiality will be considered a disciplinary matter and could result in dismissal.

### **3. Management of Employees living with HIV/AIDS**

- 3.1 Management of employees living with HIV and AIDS will be consistent with the management of employees affected by other serious and potentially progressive medical conditions (e.g. Multiple Sclerosis, Cancer etc) (see section 8 of the guidance).

- 3.2 The Council has a legislative duty under the Equality Act 1 October 2010 (previously the Disability Discrimination Act) to make reasonable adjustments to the work place for HIV positive employees with risk assessments being undertaken accordingly (see section 9 of the guidance).
- 3.3 The Council also recognises its duty of care in affording appropriate consideration to requests from HIV positive employees who wish to work flexibly to accommodate changes in personal circumstances (see section 10 of the guidance).

#### **4. Education and Information**

- 4.1 Information, training, support and counselling will be made available to employees affected directly and/or indirectly by HIV and AIDS (see section 13 of the guidance for training and Section 15 for support mechanisms).

## HIV/AIDS Awareness Guidance

### 1. Introduction

This guidance is intended to provide information on HIV infection to all staff and managers, regardless of their HIV status, addressing key employment related issues and confirming support mechanisms in place across the council and externally within the community.

#### 2. *Related policies*

***The guidance should be read in conjunction with the following policies.***

- The Equality & Inclusion Policy
- Sickness Absence Management Policy/Code of Practice "Well for Work"
- Discretionary Special Leave
- Health & Safety Policy
- Health & Safety Operational Instructions: Infection Control
- Flexible Working Policy
- Organisation Change Framework (Redeployment)
- Employee Rights & Responsibilities

### 3. HIV & AIDS the facts:

AIDS stands for Acquired Immune Deficiency Syndrome. It is caused by the human immunodeficiency virus (HIV) which attacks the body's natural defence system and leaves it open to various infections and cancers. Several weeks after infection with the virus, antibodies are produced but they are ineffective and do not destroy the virus. An antigen test for the virus itself is then sometimes used to confirm the diagnosis.

The incubation period between infection and the onset of AIDS can be very long. During this time the individual is not likely to be ill or even aware of the infection. It is not known what proportion of those who have been infected with HIV will progress to the full syndrome (source ACAS).

While there is still no cure for HIV there are now very successful treatments which can control the virus and allow people to lead very active and fulfilling lives. Also, there are several treatments now available for the range of illnesses which constitute an AIDS diagnosis, and many people have made a full recovery from what were once almost inevitably fatal infections (source the Terrence Higgins Trust (THT)).

Appendix 1 has answers to frequently asked questions taken from the Terrence Higgins Trust website.

### 4. Support for employees living with HIV/AIDS

Although an employee with HIV does not have to disclose their HIV status, it could be beneficial. Anti-HIV drugs can cause side-effects and several drugs may be necessary in order to prevent resistance to the drugs developing. This combination therapy can lead to blood problems, depression and mood swings, diarrhoea, fatigue, headache, nausea and kidney problems.

There may be individual reluctance to disclose status, but the council policy statement confirms that discrimination of any kind will not be tolerated and line managers have a duty of care to respect confidentiality and consider requests for flexible working/reasonable adjustments.

Reasonable adjustment examples could include a re-allocation of duties, altering work hours, home working or reassignment to a different place of work (see also section 9 of this guidance, the

council's policies on Health & Safety and reasonable adjustments information, which is available from the "People First" site of the Wave or Human Resources).

Flexible working examples could be allowing sufficient breaks for taking medication, or consideration of reduced hours (see also section 10 of this guidance and the council's Flexible Working Policy).

## **5. Carer Responsibilities**

Discretionary Special Leave of up to ten days may be granted in any one leave year to enable an employee to fulfil his/her caring role in the face of emergency situations or to cope with an urgent complex domestic situation. Requests will be assessed against overall service delivery imperatives (see also section 11 of this guidance and the Discretionary Special Leave Policy for full information).

## **6. Manager Responsibilities**

Managers have a responsibility to ensure that every member of their staff is working towards creating an environment that includes tolerance and avoids discrimination.

Since HIV cannot be transmitted by everyday contact at work, employees who are HIV positive present no risk to their colleagues. Employees who continue to refuse to work with colleagues with HIV or AIDS, after receiving advice and training, should be interviewed by their line manager to establish the circumstances of their refusal and if appropriate dealt with under the council's disciplinary procedure.

HIV infection alone does not affect people's ability to do their job unless they develop illnesses that make them unfit. There is no reason why someone who is HIV positive cannot continue to work normally as long as they are fit to do so. There are no grounds for dismissing or otherwise discriminating against an employee purely on the basis of infection or suspected infection. Furthermore, opportunities for training and promotion should not be affected by an individual's HIV status.

## **7. Confidentiality and Privacy**

An employee may be reluctant to disclose their HIV status because of the fear of discrimination. Managers can help by adopting a supportive and non-discriminatory approach that includes respect for confidentiality.

Pressure to disclose information must not be applied, but it is reasonable to request the availability of information surrounding the frequency and duration of future medical/counselling appointments in order to enable the planning of service requirements.

### ***7.1 New employees***

Managers will not have access to the confidential health statement completed by a prospective candidate, but will be kept informed of the recruitment process via their Human Resources contact. Human Resources will also provide advice as to reasonable adjustments recommended as a result of any health enquiry that may arise.

### ***7.2 Existing employees***

Responsibility will directly lie with the line manager to ensure appropriate confidentiality of medical information where access is shared, with disciplinary action being taken should it be established that this has not been maintained.

Where a change of duties takes place to help the employee maintain good health, the HIV status must not be disclosed without the employee's consent. Should a redeployment situation occur, every effort will be made to find suitable alternative work under the council's Organisation Change Framework.

#### 8. Sickness Absence Management – "Well for Work"

The council accepts its responsibility for the health, safety and welfare of its employees under its Absence Management Code of Practice and Absence Policy. These are presented under an overall theme of "Well for Work" and as such reflect the commitment to employee welfare. Employees who are unwell must be treated with consideration and respect, with every effort being made to assist their recovery and safeguard their employment, balancing individual needs against service requirements. Managers are expected to play a key role in influencing employee behaviour and performance, but should not speculate on an employee's medical condition.

Employees with HIV who develop AIDS symptoms that affect their work performance should be treated like anyone else with a potentially life-threatening illness. The Procedure for "Absence Management: Long -Term Absence" under the "Absence Management: Code of Practice, should be applied by managers.

The Absence Management Code of Practice Section 8 confirms the formal procedure for Doctors, Dentists or Hospital appointments. However, time off with pay for cancer screening as confirmed within the Employee Rights & Responsibilities Document Section A Part II now locally includes any potential "life-threatening conditions". Employees should, wherever possible, arrange such appointments outside of any core times, or hours as specified by the Service Manager, and ensure that as much notice as possible is given to enable suitable cover arrangements to be made.

#### 9. Disability Related Absence & Reasonable Adjustments

The "Absence Management: Code of Practice" confirms legal protection against discrimination of disabled people. The Equality Act 1 October 2010 (previously the Disability Discrimination Act 1995) defines disability as a "physical or mental impairment which has a substantial and long term (i.e. lasts at least 12 months) adverse effect on a person's ability to carry out normal day to day activities". HIV/AIDS is covered by the clause on progressive medical conditions. The DDA act amendment December 2005 covered HIV from the point of diagnosis, but this is now within the Equality Act legislation.

The Equality Act places responsibilities on employers to make reasonable adjustments when either recruiting or employing disabled people. Such adjustments might include changes to physical features of premises, including fixtures and fittings, furniture and stairways and arrangements which cover recruitment procedures, together with altering working hours or assigning the person to a different place of work. Reasonable adjustments guidance is available on "the Wave" or from Human Resources (refer also to "flexible working" at section 10 and "risk assessment" requirements at section 12 of this guidance).

Any high costs involved in accommodating disabled employees may be covered by schemes such as "Access to Work" or the "Job Introduction Scheme". Contact the Equality and Human Rights Commission ([www.equalityhumanrights.com](http://www.equalityhumanrights.com)) or consult Human Resources section for further information.

#### 10. Flexible Working

Managers should give serious consideration to all requests from employees who wish to work flexibly, particularly those with caring commitments and those with disabilities, who may need to change their pattern of working more easily to accommodate changes in personal circumstances, such as the need to take medication. (Under the Equality Act 2010 (previously the Disability Discrimination Act) it is a lawful requirement to consider reasonable adjustments (see section 9 of this guidance).

Managers may only refuse an employee's request to work flexibly where there are objective and justifiable business reasons for doing so. Employees must also recognise that any request to work flexibly must fit in with business requirements (refer to the council's Flexible Working Policy and guidance notes).

Anti-HIV drugs can cause side-effects during the first weeks of treatment and some have serious implications which can be long-term. There can also be psychological and emotional implications associated with HIV treatment such as stress, trauma and depression. An HIV-positive employee may become ill, for example because of the side-effects of anti-HIV drugs, but it should be considered that any employee can become ill or suffer from a medical condition requiring them to take time off.

Examples of showing flexibility that meet service requirements could be:

- flexibility with shift patterns;
- flexibility around organising work duties to avoid opportunistic infections;
- sufficient or flexible breaks for taking medication;
- consideration of reduced hours if requested;
- access to a canteen, kitchen or facilities for appropriate food, at times required by combination therapy (see Appendix 1 for a definition of combination therapy).

#### **11. Discretionary Special Leave – Carer Responsibilities/Consideration of Requests**

Discretionary Special Leave of up to ten days may be granted in any one leave year to enable an employee to fulfil his/her caring role in the face of emergency situations or to cope with an urgent complex domestic situation.

Line managers, in consultation with Human Resources, will initially have the discretion to grant Discretionary Special Leave of up to five days in any one leave year. Thereafter, leave beyond the first five days (i.e. up to 10 in total) will be subject to the approval of the Assistant Director/Head of Service (refer to the Discretionary Special Leave policy for full information).

In considering an application line managers should ascertain the reasons for the request, the steps taken by the employee to deal with the situation and the likely length of the absence. The manager will then be required to assess the request against overall service delivery imperatives.

#### 12. Health & Safety

##### 12.1 Operational Instructions – Infection Control

It is council policy to ensure as far as reasonably practicable the health, safety & welfare of all its employees, service users and members of the public who may be affected by its working practices. This includes providing a hygienic workplace with appropriate waste disposal facilities and effective measures to control infection to staff and service users as far as reasonably practicable. The council's Health & Safety Operational Instructions provide clear guidance to staff regarding "Infection Control" which includes elements such as "Procedures for dealing with body fluids".

## 12.2 Risk Assessments

HIV-positive people are able to work normally. However, adjustments for an employee with HIV may be required either on a short-term basis or similar to those for other long-term conditions such as Multiple Sclerosis. These adjustments may relate to work flexibility and hours, and for the physical working environment. Risk assessments under the Health & Safety Policy will be required to assess likely impact on both the employee and service levels complying with confidentiality and privacy elements.

### 13. Training for Staff

**The Learning & Development Guide 2006/7 confirms a one day HIV Awareness training course available to staff delivered by the Terrence Higgins Trust which covers:**

- Awareness of key issues
- Focus on sexual health strategies
- Range of treatments available
- Update on advice issued

There is also an HIV Awareness training course for staff in Assessment Teams. This covers:

- Overview of HIV
- Update & latest changes
- HIV drugs
- Social Care needs
- Mental Health needs
- Nursing needs

To register interest for either course, complete the Request Form at the back of the Guide which is available to download from The Wave "Learning" site, or contact HR (Occupational Development).

### 14. Employee Responsibilities

*Employees working with colleagues who are HIV positive or have AIDS.*

- 14.1 There is generally no danger in working with someone who is HIV-positive or who has AIDS. You cannot become infected through everyday work activities with an infected co-worker.
- 14.2 HIV cannot be contracted through sharing a keyboard, shaking hands, or sharing tools or stationery. Neither can it be contracted through kissing, drinking from the same glass, sharing food or using the same toilet. (Refer to Appendix 1 of this guidance for further information)
- 14.3 As confirmed within the policy statement (part 1), it is the responsibility of every member of staff to work towards creating an environment that includes tolerance and avoids prejudice and discrimination. Any discriminatory claims will be considered a disciplinary matter and could result in dismissal.
- 14.4 Confidentiality and privacy is paramount and employees must respect this at all times. As confirmed within part 2 of the policy statement and section 7 of this guidance, breaches of confidentiality will be considered a disciplinary matter and could result in dismissal.
- 14.5 Staff should also endeavour not to speculate on an employee's medical condition in any situation.
- 14.6 Training on HIV/AIDS awareness is available through HR (Occupational Development (see section 13 of this guidance).

## **15. Support Mechanisms**

### **15.1 Internal**

#### **Welfare Service**

**A confidential welfare service is available to all council staff and can be accessed directly by calling the Staff Welfare Officer on (01273) 481738.**

The Service can assist with a wide range of issues including: financial and relationship problems, stress and long term ill-health. In addition to information, advice and support, arrangements for counselling can also be made if you are experiencing problems affecting your work.

#### ***Community HIV Specialist Team***

The Community HIV Specialist Team is made up of specialist HIV nurses, a specialist mental health nurse, social workers, and a part time consultant psychiatrist. They offer nursing support with home visits, health checks and information to help clients, their carers and partners make choices about their health and social care needs. They are based at:

The Old Market  
Upper Market Street  
Hove, BN3 1AS  
(01273 267575)

Mon – Fri 9.00am – 5.00pm  
Emergency out of hours 07699 391462  
[www.brighton-hove.gov.uk](http://www.brighton-hove.gov.uk)

### ***15.2 External***

There are various organisations within the Brighton & Hove area who offer support and information for both HIV positive and non-HIV positive people. Confirmation of these can be seen at [Appendix 2](#) with clarification on testing procedures.

## **16. Considered Issues – Questions and Answers**

[Appendix 3](#) contains answers to considered issues that may be raised within the workplace by HIV positive employees, work colleagues and/or line managers.

**This HIV/Awareness guidance will be reviewed on a yearly basis**

## APPENDIX 1

### HIV/AIDS the facts & frequently asked questions

(Taken from Terrence Higgins Trust Training Package for HIV/AIDS Awareness)

Since the Acquired Immune Deficiency Syndrome (AIDS) was first identified in the late 1970s, it has attracted the attention of both media and public alike. Never before has scientific research moved so quickly in identifying a cause and establishing guidelines for prevention.

Even so many questions remain unanswered. What we do know, however, is that AIDS is caused by a virus and that virus has to be transmitted from one person to another through the exchange of certain bodily fluids: e.g. blood, semen, vaginal and cervical secretions and breast milk.

This may lead to people asking questions such as:

#### **What is a Virus?**

Most of us are familiar with the idea of bacteria (germs) which can infect our body and often cause disease. A virus is much smaller than bacteria and is perhaps the smallest living thing. It cannot grow or reproduce outside living cells; instead it invades "host" cells in our body and takes over their function to produce more viruses. These new viruses then destroy the host cells and leave to attack other cells. A virus could be called a parasite of our cells.

The effects of a viral infection depend on the virus and the type of cells it attacks, as a certain virus will only invade certain cells. For example, the common cold virus attacks cells in the nose and throat causing the symptoms of sneezing, congestion and sore throat.

Following initial infection, many viruses can remain inactive inside the host cell for long periods of time without causing any signs of disease. Certain triggers can then re-activate them: this is seen with the Herpes virus which occasionally presents itself as a cold sore having been re-activated by a fever. The rest of the time the virus is inactive within a nerve cell. Like Herpes, many viruses are not life threatening.

#### **What is HIV?**

HIV is the name given to the virus that causes AIDS. It stands for the Human Immune Deficiency Virus. It has been given the name because it only affects humans and can cause a reduction in the efficiency of the immune system: that system which protects us from attack by germs and other viruses.

Viruses attack certain cells. HIV attacks cells from the immune system. These cells are called helper T cells or T4 cells and are like the 'conductors of the immune orchestra', giving the instructions needed for the immune system to work properly. Therefore, when these cells are damaged, the body is unable to deal efficiently with certain infections.

#### **What is AIDS?**

AIDS stands for the Acquired Immune Deficiency Syndrome, and is the final result of HIV infection. It is acquired, meaning it is not inherited. It is a deficiency of the immune system because the body's natural defences are weakened to allow infection and cancer to take hold and it is a syndrome; meaning a collection or variety of different diseases that can affect any part of the body.

AIDS is not a disease in itself, it is the end point of HIV infection. It is not known how many people will progress to this end.

### **How might I become infected by the HIV?**

To become HIV+ (i.e. positive), infected blood, semen or vaginal fluids containing the virus must get into your bloodstream. This can happen in the following ways:

- During sex, both vaginal or anal, with someone who has the virus.
- By injecting drugs using shared needles and syringes from someone who is infected.
- When blood products containing HIV are transferred from one person to another.
- Less common is the transmission of the virus from an infected mother to her baby either in the womb, during the birth or through breast milk.

Knowing how the virus is transmitted it is now possible to give some indication of whether certain activities can be considered "safe" or "high risk".

**Anal or vaginal intercourse (penetrative sex)** seems to be the main route of infection if a condom is not used properly. In any of these circumstances, penetrative sex is high risk if one of the participants is HIV positive. If used properly, however, condoms can prevent the spread of HIV infection.

**The sharing of contaminated needles and syringes** while injecting drugs is also a high risk activity. This allows the virus to get straight into your bloodstream from any blood left within the syringe or on the needle. The only way to reduce the risk associated with intravenous drug use is to avoid using shared equipment (works).

**Oral sex** has been shown to be a less risky activity than the above practices, but is not risk free. You are more at risk of passing on HIV through oral sex if you have an untreated sexually transmitted infection. You are more at risk of being infected with HIV from oral sex if you have cuts, sores or abrasions in the mouth or gums, or if you have an infection, including sexually transmitted ones, in the throat or mouth which is causing inflammation.

### **Can I get HIV by any other method?**

Social or casual contact with an infected person carries no risk. Neither do hugging, kissing, sharing cups and cutlery and so forth.

Sharing a toothbrush or razor has a small theoretical risk, but has not been responsible for any transmission. For other health reasons, however, it is best to avoid sharing these items.

It is also theoretically possible to transmit HIV during ear-piercing, acupuncture, electrolysis and tattooing if the needle used is contaminated. The risk may be small, but if you use reputable practitioners who follow a suitable code of practice, then the risk is minimal.

*Are there any documented cases of female to male sexual transmission with no other risk factors like drugs involved?*

Yes. This growth is of concern to health authorities as it is becoming common in relatively young people who do not think that they are at risk of acquiring HIV. If you have unprotected sex you are at risk.

**Is there a danger from having a blood transfusion in the UK?**

HIV has been transmitted by blood transfusions in the past. Now all donated blood is screened for antibodies to HIV before it is accepted by the blood bank. The only real risk of infected blood getting through arises from the fact that screened blood may be antibody negative, but still contain virus because it was screened before the antibodies were produced. But this is an extremely low likelihood. It is thought that the chance of receiving HIV via contaminated blood is probably over a million to one. The risk of not accepting a needed transfusion far outweighs this minute risk of contracting HIV from the transfused blood.

**Why can't I get HIV from dried blood and other spilt fluids?**

HIV, unlike some other viruses, is very fragile and is easily destroyed by mild detergents and warm water. HIV can survive outside its normal environment of blood, semen and vaginal fluid for a short time, but it would still have to come into contact with your bloodstream via an open cut or wound.

**Can HIV be transmitted by Mosquitoes and other insects?**

No. This answer is based on evidence from Africa where other diseases can be transmitted by insects and Mosquitoes e.g. Malaria, but there is no evidence of HIV being transmitted.

**What is combination therapy?**

Anti-HIV treatments work by stopping HIV from replicating (making more copies of itself) and infecting other cells. HIV uses certain chemicals, called enzymes, at different stages in its replication process – it is these enzymes which different classes of HIV treatments inhibit or interfere with.

The most effective way of using anti-HIV treatments involves taking three or more anti-HIV treatments together – this is called "combination therapy". The different treatments interrupt HIV replication at different stages in the process so together they make it much harder for HIV to replicate itself. Combination therapy may continuously need to be taken to allow it to carry on stopping the HIV in the body reproducing itself.

(Taken from Terrence Higgins Trust "Understanding HIV when you're positive – Where do I start?") Visit the website on [www.THT.org.uk](http://www.THT.org.uk) or call THT direct on 0845 12 21 200.

## APPENDIX 2

### External Information & Testing Procedure Information

Information that makes up this document has been obtained from the following:

UNISON

HIV/AIDS "its not over" revised 2002 UNISON Guide

**workSMART** ([www.worksmart.org.uk](http://www.worksmart.org.uk))

workSMART, brought to you by the TUC, is here to help today's working people get the best out of the world of work.

- Your health at work: keeping well in the workplace.

**Terrence Higgins Trust** ([www.tht.org.uk](http://www.tht.org.uk))

The THT delivers health promotion campaigns, national services and local services directly to people with, or affected by, HIV and people at risk from our centres across England and Wales. The range of direct services varies across the different centres according to local need. They also confirm current HIV statistics for the UK.

Direct Helpline 0845 12 21 200

THT South (B & H)  
61 Ship Street  
Brighton  
BN1 1AE  
(01273 764200)  
Email [info@thtsouth.org.uk](mailto:info@thtsouth.org.uk)

**National Aids Trust** ([www.nat.org.uk](http://www.nat.org.uk))

The National AIDS Trust (NAT) is the UK's leading HIV and AIDS policy development and campaigning organisation.

020 7814 6767  
Email: [info@nat.org.uk](mailto:info@nat.org.uk)

**The Sussex Beacon**

"A national care centre for men and women with HIV/AIDS related illnesses".

Residential Unit – by referral only.

10 beds offering convalescence, rehabilitation and Terminal care; assistance to start and continue with combination therapy; ward rounds attended by the local consultants in HIV, Palliative Care and Mental Health.

Day Care – by referral only

Structured service working with clients to maximise their independence and health and enable them to make choices. Complementary therapies for clients. Focussed group work is run from time to time addressing needs such as sleep problems etc.

The Sussex Beacon  
Bevendean Road  
Brighton  
BN2 4DE  
(01273 694222)  
Website: <http://www.sussexbeacon.org.uk/index.html>  
email: [info@sussexbeacon.org.uk](mailto:info@sussexbeacon.org.uk)

Other web sites  
[www.avert.org](http://www.avert.org)  
[www.aidsmap.com](http://www.aidsmap.com)

## **Testing**

### **How do I decide if I need a Test?**

The decision to be tested depends on many factors, including how you would cope with knowing you are positive. Time must be allowed to enable you to think carefully about the consequences: a positive test can fundamentally affect your life – from possible rejection by other people to the refusal of Life Assurance.

Before anything else you must ask yourself "Have I run a risk?" If you feel you have, you should first discuss your situation in confidence with someone who is experienced in counselling people about the test.

### **What is the HIV Antibody Test?**

A test that detects the presence of HIV itself is not used in screening. The test used is a simple way of showing if a person has been in contact with the virus. It does this by looking for 'antibodies to HIV'.

Whenever the body is attacked by an infected organism (germ, virus), it reacts by producing a chemical called an antibody. They attack the organism and either neutralise it or 'flag' it for other cells and chemicals to attack it. The test looks for these antibodies to HIV in the blood.

### **How is the test done?**

If you have spoken to someone about the test, you may have decided that the test is appropriate for you. If so, the test is done on a sample of blood, usually taken from a vein in the arm. The blood is taken by a nurse or doctor and then sent away to be tested. As the blood is sent away for testing, the result may take some time to come back; usually about one or two weeks. This time can be one of great anxiety and stress. Some clinics now offer same day results.

A further appointment needs to be made to receive the test result. The result is not given over the phone and it is useful to have another counselling session whether the result is positive or negative. Saliva testing is being evaluated in some districts.

### **What does the test result mean?**

The test will tell you whether you have antibodies to HIV: HIV positive, or no antibodies: antibody negative.

A negative result should not be taken to mean that HIV itself is not present. Antibodies can take up to three months to appear. If you come into contact with the virus during the three months prior to the test, antibodies may not yet have been produced and a false negative result would be given. You may be infectious and a later test would prove positive.

A positive test means that you are almost certainly carrying HIV and you are probably infectious. It does not mean that you have AIDS, or that you will necessarily go on to develop AIDS.

### **Where can I get a test?**

Visit an STD (Sexually Transmitted Disease) clinic or department of Genito-Urinary medicine (GUM). They will not charge for the test and will keep the result confidential. They can also provide pre and post test counselling.

A general practitioner can also provide testing.

STD/GUM Clinic(s)

Claude Nicol Centre  
Royal Sussex County Hospital  
Eastern Road  
Brighton  
BN2 5BE

(01273 664721)

The Wilde Clinic: offers a FREE confidential sexual health service to gay and bisexual men regardless of HIV status.

Opening Times are Wednesday 6.00pm – 9.00pm

The Wilde Clinic  
The Lawson Unit  
Eastern Road  
Brighton  
BN2 5BE

Appointments and Enquiries (01273 664722)

[www.brightonsexualhealth.com/cnc](http://www.brightonsexualhealth.com/cnc)

### **Terrence Higgins Trust: *Fastest Sexual Health Check-up***

Testing for HIV and other sexually transmitted infections.

Getting to your local GUM clinic for a sexual health check-up can sometimes be difficult, or the opening times may be inconvenient for you. So THT run HIV testing and sexual health screening services which are open outside office hours, making it easier for you to come along.

A walk-in, non-appointment HIV testing service (with counselling) for gay and bisexual men in Brighton and Hove, East and West Sussex. Visit the Brighton office on Mondays between 18.30 and 20.30 - arrive early to guarantee being seen.

61 Ship Street  
Brighton BN1 1AE  
0845 1221 200  
[info.south@tth.org.uk](mailto:info.south@tth.org.uk)

Please phone for details on how to access the service.

## **APPENDIX 3**

### **Considered Issues – Questions and Answers (taken from Worksmart (TUC))**

#### **If an employee with HIV costs more to employ, won't that affect us all?**

If a potential applicant is refused employment because of their HIV status this would be discriminatory practice under the Council's equality policy. All applicants are required to undergo pre-employment health screening to ensure that candidates are capable of meeting the requirements of the job (*see Sickness Absence Management Code of Practice Section 4*).

The majority of HIV-positive people who are not showing symptoms of the disease are able to work normally. Any adjustments for an HIV-positive employee may be minor and short term and similar to those for other long-term conditions such as Multiple Sclerosis. Such changes will relate to work flexibility and hours, and the physical-working environment.

An employee with HIV may become ill, for example because of the side-effects of anti-HIV drugs, but any employee can fall ill or suffer from a medical condition requiring them to take time off.

#### **Being HIV-positive does not necessarily mean early retirement.**

Any high costs involved in accommodating disabled employees may be covered by schemes such as "Access to Work" or the "Job Introduction Scheme" Contact the Equality and Human Rights Commission ([www.equalityhumanrights.com](http://www.equalityhumanrights.com)) or consult your Human Resources section for further information.

#### **Do employees with HIV have to reveal their condition?**

Employees with HIV do not have to reveal their HIV status. However, disclosure can be beneficial to establish the potential for reasonable adjustments, or the appropriateness of flexible working arrangements, although this must entirely be an individual choice.

Employees should not be pressurised to disclose HIV-related information, unless their infection is affecting their ability to perform their job or there is a risk of transmission, e.g. service users in a residential setting.

Confidentiality is covered in full within the *Sickness Absence Management Code of Practice Section 3*).

#### **Is HIV treatment likely to have any effects at work?**

The combination therapy for HIV requires a number of activities. These include Doctor's appointments for checks ups, which may be during working hours if at an NHS clinic, and taking pills to a rigorous schedule.

Anti-HIV drugs can cause side-effects during the first weeks of treatment and some have serious implications which can be long-term.

There can be psychological and emotional implications of taking HIV treatment such as stress, trauma and depression.

Anti-HIV drugs have to be taken indefinitely and continuously. HIV can become resistant to one or more drugs, lessening the effects of the treatment. The risk of resistance increases when the treatment is not taken regularly at strict schedules.

*The Sickness Absence Management Code of Practice Section 8* confirms the formal procedure for Doctors, Dentists or Hospital appointments, but flexibility should be applied wherever possible that meet service requirements, e.g. flexibility with shift patterns, consideration of reduced hours if requested either short or long term.

### **As a line manager, what should I do if an employee has frequent short-term absences?**

Where an employee's absence is attributable to a known underlying medical condition or disability and the employee is covered by the provisions of the Equality Act 1 October 2010 (previously the Disability Discrimination Act 1995) and Code of Practice, the "Procedure for Managing Long Term Absence due to Ill Health" under the Sickness Absence Management Code of Practice "Well for Work" policy should be followed. This would apply to an employee who has revealed their HIV positive status.

### **How do I support and care for people with HIV infection and AIDS in the workplace and how can I be flexible with job responsibilities recognising the balance between both individual needs and service needs.**

Understand the condition and appreciate the issues that may arise within the workplace by accessing the HIV Awareness training as appropriate. Familiarise yourself with Council policy on Equality in Employment, Absence Management and Health & Safety as appropriate for your service.

Support the individual in the workplace by being flexible with working arrangements as far as possible within service constraints undertaking a risk assessment as per Health & Safety Policy.

### **How to deal with prejudice in the work place and gain an insight into how people with HIV/AIDS view others, recognising the potential stigma associated with HIV/AIDS and its impact on staff.**

Access the HIV Awareness Training day through the current Learning & Development Guide. Remind staff about the Equality in Employment Policy and disciplinary procedures for discrimination, harassment and bullying. Seek guidance through Human Resources.

### **How best to respond to a colleague who has AIDS or HIV infection and recognise, understand and cope with an individual's potential anxiety and despair.**

Remember employees are expected to work with people with HIV without prejudice or discrimination.

An employee with HIV will not be obliged to tell anyone in the organisation of their condition, unless the well-being of a third party is considered to be placed in jeopardy, e.g. close association with service users in a residential setting.

If you discover that someone you know is HIV positive it may come as a shock. It's normal to worry about how you will react to them and perhaps be fearful for yourself. Remember that they may need your support more than ever, be it as a friend, work colleague or line manager.

If they want to talk about their condition encourage them and let them express their feelings. Make them aware of the HIV/AIDS Awareness guidelines and of the support mechanisms in place. Seek advice from the Human Resources section if you are unsure about sickness monitoring, the potential for flexible working arrangements to accommodate the individual's future medication requirements, risk assessment criteria, or training on HIV/AIDS awareness for the team.

## **How to find out about health and safety guidelines (cleaning up vomit, blood etc) and to understand anxieties surrounding infection control.**

The Health & Safety Policy with Operational Instructions are available on The Wave. Should you not have access to The Wave, please contact the Health & Safety Team at Kings House on 291305.

## **How to understand and recognise the potential side effects of medication.**

Anti-HIV medication can cause side effects during the first weeks of treatment and some have serious implications which can be long-term, e.g. dizziness, nausea. Managers should discuss with the employee the most appropriate way of minimising these effects within the workplace, while ensuring service needs are met. Consideration could perhaps be given to rota/shift pattern changes for when the drugs are taken, or reduced hours. A risk assessment should be undertaken by the manager to assess the impact on service provision (as per the Health & Safety Policy & Operational Instructions). Further guidance should be support via Human Resources.

## **How to deal with issues to do with confidentiality.**

Employees with HIV do not have to reveal their HIV status and employees should not be pressurised to disclose HIV-related information, unless their ability to perform the job is in doubt, or there is a risk of transmission to service users.

For existing employees, Council policy states that access to medical records, including sick notes, absence and interview records, is restricted to managers/section heads on a "need to know" basis. Managers/Section Heads, as well as Human Resources, will ensure that medical information remains confidential.



## **Reasonable Adjustments – Guidance for Headteachers**

### **1. Introduction**

1.1 The purpose of this guide is to make it easier to support disabled school staff, ensuring that they remain effective and productive at work, and have the same opportunities as their non-disabled colleagues.

1.2 The law requires employers to make "reasonable adjustments" for disabled employees, ensuring that barriers are removed that prevent a disabled person doing their job, and to make sure that the same opportunities in the workplace are available to all.

1.3 The role of the Headteacher as set out in this document will be undertaken either by the Headteacher or by a member of the Senior Management/Leadership team who has line management responsibility for the employee concerned, depending on local management responsibilities.

This guide will help you to -

- Identify who needs an adjustment
- Identify how work can be done differently (in other words, provide the reasonable adjustment)

- Decide whether an adjustment is reasonable
- Make sure the law is followed
- Understand procedures which are designed to provide a seamless service to disabled colleagues
- Know where to go for further help and advice
- Access useful resources

## **2. People who may need an adjustment**

2.1 The term 'disabled people' includes a wide range of different people with different impairments which may or may not affect how they do their job.

Under the law (the Disability Discrimination Act 1995 amended 2005) the term 'disability' is now quite wide and people who might not previously have been regarded as disabled are now protected, including people with conditions like diabetes, some back problems, dyslexia, and depression. (See Appendix 1 for a legal definition).

Many disabled people will not identify themselves as such. They may be embarrassed, or may think their condition just comes with age, or they may fear discrimination or even reactions at work. In the UK one in twelve people become disabled during their working lives, and so many teams already include disabled people.

2.2 Ordinarily, the question of whether an employee *definitely* falls within the scope of the DDA should not be the starting point in the process of deciding whether to make reasonable adjustments. Headteachers should make reasonable adjustments if the employee advises that they have a disability, illness or injury; if it seems they might be disabled; if their condition has an effect on everyday function or if making a reasonable adjustment would help them to overcome a disadvantage.

2.3 The law says that Headteachers must make reasonable adjustments for disabled people who are having, or will have, problems doing their job. This includes people whose disability is not visible, but may be showing up in the problems they are having at work. So if someone says that they have a condition or illness that is affecting the way they do their job, Headteachers have a duty to make reasonable adjustments. The DDA requires the employer to make adjustments to the physical features of premises (and equipment) or to any policies, practices or procedures.

2.4 Many disabilities will not be apparent, so Headteachers should also consider whether someone *might* have a disability when –

- performance at work deteriorates
- attendance becomes poor
- behaviour at work changes for no apparent reason (perhaps tearfulness, aggression, withdrawal etc)
- time-keeping becomes a problem
- pain or discomfort is being experienced
- there are deteriorating relationships with colleagues or in the classroom
- written or oral communications are poor
- there are signs of forgetfulness and irritability.

## **3. How to make reasonable adjustments and who can advise**

3.1 The place to start is with the person needing the adjustment. Headteachers need to know exactly what the disabled person is having problems doing. There is no need to ask about medical details: the focus of the discussion should be on what part of the job gives rise to problems.

3.2 Different people need different types of reasonable adjustments, sometimes for similar impairments. Some examples of reasonable adjustments are:

- Timetabling and teaching locations which avoid unnecessary movement
- Help with parking arrangements where mobility is limited
- Providing additional training or mentoring
- Moving furniture to make life easier for a wheelchair user or hearing/visually impaired person
- Changing desk position for someone who needs a quieter area or needs good sightlines
- Giving minor duties that prove difficult, to somebody else
- Assigning a 'buddy' where this is helpful
- Moving somebody to the ground floor, or closer to their home
- Arranging an option to work from home on a regular or occasional basis
- Making changes to tests or interviews so that a disabled person can show their ability to do the job
- Job-balancing so that individuals in a team do more of what they do best
- Making the swipe-card entry lower for a wheelchair user
- Acquiring or modifying equipment like voice-activated software or digital recorders
- Providing BSL interpreters, readers, support workers

3.3 Most adjustments cost very little or nothing and only require a change in working practices or a flexible approach. The Council's [Flexible Working Policy](#) contains options which provide a useful guide. Sometimes the individual will be able to suggest a solution themselves and the Headteacher may have the authority to make the necessary changes. However, the disabled person may not know the range of software, equipment or gadgets that are available, may just be learning to cope with the effects of their condition or be unaware of what other support is available.

3.4 Occupational Health can help to identify reasonable adjustments and assess them in operation. They can provide explanations about the impact of a condition or medication on the ability to do the job. They also have a small number of commonly-used aids that can be borrowed, pending assessment or delivery of assistive technology. See appendix 3 for information on the [accessible workstation equipment loans procedure](#).

3.5 The disabled employee may contact Access to Work (part of Jobcentre Plus) who can offer a range of practical and financial assistance in identifying and recommending reasonable adjustments. This is particularly advised where more costly solutions are required (£300 plus) as Access to Work has Government funding specifically for this purpose. Information about how to get [support from Access to Work](#) is given at appendix 2.

3.6 Access to Work will communicate directly with the disabled person and may only consult the Headteacher about the problems at work or workplace assessments. Their recommendations are sent only to the employee (to comply with data protection rules) so continued communication between the Headteacher and the disabled employee is vital. Access to Work do not buy/arrange the reasonable adjustments so it is important that Headteachers find out from their employees what Access to Work have recommended and what proportion Access to Work are prepared to pay. This communication is particularly important to minimise problems or delays.

3.7 In complex cases where a package of reasonable adjustments may be required, the Headteacher may wish to consult the Coaching and Advice Team for advice.

3.8 If the adjustment being made relates to computer software, the ICT coordinator or ICT support should be informed at least seven days in advance so that the workstation can be unlocked for installation and any other queries resolved prior to the installation of new software. ICT advice is available at [SchoolICTSupportHelpdesk@brighton-hove.gov.uk](mailto:SchoolICTSupportHelpdesk@brighton-hove.gov.uk)

3.8 If expert reports and assessments are needed from Occupational Health, this can sometimes take time. It is important to brief the person concerned about what is happening and how long things are

likely to take – especially if they are not able to come into work during this time. It is vital that unreasonable delays in making decisions are avoided, both for the sake of the employee and the council.

3.9 It is vital not to discuss the employee's disability or condition without explicit consent. Very few people need to know details of an employee's condition – OH can advise on how it may affect doing the job.

#### **4. What is reasonable?**

4.1 Whether an adjustment is reasonable will depend on the individual disabled person, the team they work with, and their particular circumstances. An adjustment that is reasonable for one person in a particular team might not be reasonable for somebody else working in another team.

4.2 The law says there are a number of factors Headteachers should consider when trying to decide if an adjustment is reasonable:

- Financial and other costs (Access to Work funding may be available).
- If it is a practicable solution.
- Whether the adjustment is effective in preventing the disadvantage.
- The extent of any disruption caused.
- The effect on others in the workplace.
- Health and safety considerations.
- The extent of financial and other resources.
- The extent to which the individual is able/willing to cooperate with the change.
- The person's length of service, valuable skills, contacts or training – the employer is expected to make a greater effort where there has been significant investment over a period of years for an established employee.

4.3 The decision as to what is reasonable lies with 'the employer' – not with Occupational Health or the individual concerned. Where the necessary adjustments to enable the employee to continue in their current role are substantial, and it is not clear whether it is practicable to support those adjustments, the Headteacher should involve the Coaching and Advice Team.

#### **5. Health & Safety**

5.1 Under health and safety law we have a duty to provide a safe system of work for employees – including disabled people. It may be that our health and safety provision needs to be adjusted for individuals. For instance, we may need to provide safety guidance in Easy Read, or a different type of personal protective equipment for somebody with skin cancer.

5.2 The scope of health, safety and welfare legislation extends to –

- Provision and maintenance of plant and systems of work
- Use, handling, storage and transport of articles and substances
- Provision of information, instruction, training and supervision
- Places of work and means of access and egress
- The working environment, facilities and welfare arrangements

5.3 Health and Safety should not be used as an excuse to impose restrictions on disabled employees if reasonable adjustments could overcome the problem. Conversely, part of the assessment of "reasonableness" of any adjustment should include basic risk assessment. In addition we are required to conduct risk assessments and identify groups of workers who might be particularly at risk. The relevant legislation refers to disabled staff as one of these groups. Advice on any aspect of health and safety in relation to disabled staff may be obtained by emailing [Health&Safety@Brighton-Hove.gov.uk](mailto:Health&Safety@Brighton-Hove.gov.uk).

## **6. Access to Buildings and Adaptations to Premises**

6.1 Sometimes reasonable adjustments are required to 'physical features' to enable a disabled person to access premises, facilities and services. Examples are:

- providing a suitable ramp,
- widening and/or automating doors,
- upgrading or providing a lift,
- installing an accessible WC
- providing a hearing enhancement system,

Headteachers can seek specialist advice from the Property & Design Education Team (01273 293473) or the Council's Technical Access Manager (01273 291444) on possible solutions and ways to achieve them.

6.2 Where adaptations are identified with the Authority, funding and programming of the work will need to be agreed. If it is practical to include these adaptations in another building contract it is likely this will improve value in terms of cost. It will be important to take this into account when any adaptations are required.

6.3 It is also good practice (or a requirement of Buildings regulations) to consider accessibility when carrying out routine maintenance or upgrade work, even if not specifically required by a disabled member of staff. Examples of this are when selecting fixtures, fittings, furniture and finishes, positioning controls, choosing colour schemes, providing signage etc.

## **7. Financial Approval**

7.1 If the disabled person's needs have a financial cost which falls outside the scope of Access to Work (or are only part-funded) or if they require building works which cannot be funded within available budgets, the Headteacher should seek authority from his Governing Body through their Finance or Personnel Sub Committees.

7.2 Although the Council will make every effort to support disabled employees, not every request for funding may be agreed, bearing in mind the Council's allocated financial resources and the extent of the benefits to be gained from the expenditure.

## **8. Formalising and Reviewing Reasonable Adjustments**

8.1 Where you have made reasonable adjustments for someone in your team, it is important to record it within your performance management documents, and to continue to discuss the effectiveness of the adjustment(s) and to review further improvements that may be helpful.

8.2 In reviewing reasonable adjustments, imaginative solutions produced by an open-minded and flexible approach are often more effective than looking for equipment.

8.3 When either you or the person with adjustments moves to a new team, it is important that their new Headteacher is briefed on their reasonable adjustments, (particularly as they may not be visible). Any assistive software or equipment acquired will move with the person, and arrangements may need to be planned for this.

8.4 Headteachers who are planning reorganisations or transfers of responsibilities should consider the needs of employees with reasonable adjustments in place. When changing IT systems, or introducing

new forms, paper systems etc, it is important to involve those working with assistive software in consultation, advice and trialling any new products.

## **9 Sources of Advice**

9.1 The Disabled Workers Forum is a valuable source of experience and practical advice on reasonable adjustments. Disabled employees should be allowed time off to attend meetings if they wish to do so.

9.2 'The Knowledge' is a specialist publication which contains detailed advice on reasonable adjustments which are effective for specific conditions. Copies are held in the LRC at Kings House. It is published by the Employers Forum on Disability, who also provide an advice line for Headteachers and staff on 020 7403 3020 or email advice at [disabilitydirections@efd.org.uk](mailto:disabilitydirections@efd.org.uk)

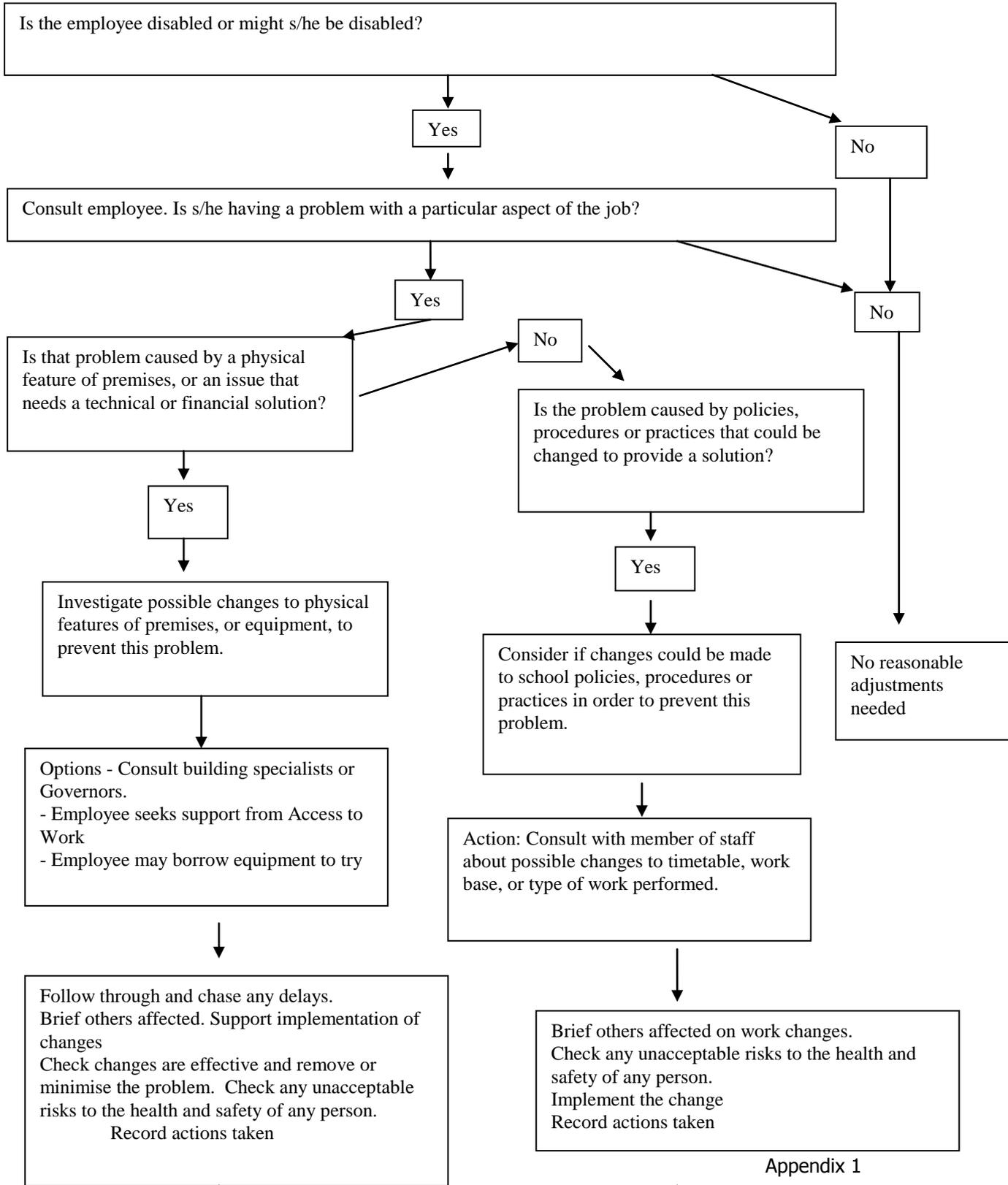
9.3 The School Staff Wellbeing Framework (appendix 4) provides signposts to many sources of support.

9.4 Links to organisations which provide useful information on specific conditions are provided by the government at <http://www.direct.gov.uk/en/D11/Directories/UsefulContactsByCategory/DisabledPeopleContacts/SpecificNeedsContacts/index.htm>

9.5 The Supported Employment Team in Brighton and Hove Council at [set@brighton-hove.gov.uk](mailto:set@brighton-hove.gov.uk) offers experience and advice on employing disabled people, particularly those facing complex barriers such as learning difficulties or autism.

9.6 The Communities and Equalities Team promotes diversity in the Council and can advise Headteachers with disabled staff on wider sources of expertise and advice.

**Reasonable Adjustments Flowchart**



**Legal definition of disability**

The Disability

Monitor and review changes made. Ask if further adjustments are needed.

Act defines disability as a "physical or mental impairment which has a substantial and long term adverse effect on a person's ability to carry out normal day-to-day activities". A substantial adverse effect is one which is "more than trivial" rather than "very large".

For an impairment to affect the ability to carry out normal day-to-day activities, it must affect one of the following:

- mobility
- manual dexterity
- physical co-ordination
- continence
- ability to lift, carry or otherwise move everyday objects
- speech, hearing or eyesight
- memory or ability to concentrate, learn or understand or perception of the risk of physical danger.

The definition covers physical, mental or sensory impairments. Mental impairment includes mental illnesses as well as conditions that affect mental functioning, including learning disabilities.

For a disability to be classed as long term it should have an effect which:

- has lasted at least 12 months; or
- is likely to last for a total period of at least 12 months; or
- is likely to last for the rest of the person's life

Employees with HIV/AIDS, multiple sclerosis and cancer will be protected by the Act from the point of diagnosis even if the illness has not had an adverse effect on their ability to carry out normal day-to-day activities. This includes those who are in remission or who have been successfully treated.

Progressive conditions, which have a slight effect on day-to-day activities but are expected to become substantial are covered (eg late-onset muscular dystrophy). Also, conditions that have a substantial effect for short periods but which are likely to recur (eg bi-polar disorder).

Medical or other treatment and aids, which alleviate or remove the effect of the impairment are to be disregarded when assessing whether the impairment has a substantial adverse effect on normal day-to-day activities. Thus people with conditions such as insulin dependent diabetes, epilepsy, hearing impairment or depression may be protected by the DDA. (Exception is ordinary glass/contact lenses.)

Addiction to alcohol, drugs or nicotine or any other substances are not classed as impairments under the Act, although consequential impairments may be, for example depression, cirrhosis of the liver or lung cancer.

### **Access to Work**

Access to Work funds are only available to disabled people. This is one occasion when your employee's legal status under the DDA is relevant and important.

Where possible, the disabled person should contact Access to Work in person to arrange for advice and/or an on-site assessment.

#### **Contact details**

Jobcentre Plus,  
Access to Work Operational Support Unit,  
1st Floor, Kings House,  
Clarendon Road,  
Harrow, Middlesex,  
HA1 1YJ.  
Tel: 020 8426 3110  
Text: 020 8426 3133  
Fax: 020 8426 3134  
Email <mailto:atwosu.london@jobcentreplus.gsi.gov.uk>

#### **Postal address:**

Access to Work, Jobcentre Plus,  
Harrow Jobcentre, Nine Elms Lane,  
London, SW95 9BH.

Information about Access to Work and contact details for the Operational Support Units (OSUs) is available on:  
[www.jobcentreplus.gov.uk](http://www.jobcentreplus.gov.uk) and [www.direct.gov.uk](http://www.direct.gov.uk)

### **Accessible workstation equipment policy**

A variety of work place accessories are now available for loan from the LRC, following recommendations from a Display Screen Equipment Assessment (DSE) or Occupational Health appointment. The equipment has been provided by Directorate funding and will be kept in the Learning Resource Centre (LRC) to provide access. It is important to note that the LRC staff are not Occupational Health experts.

### **Viewing and trying equipment**

You can view and try the equipment in the LRC by making an appointment. Please contact them to agree a date and time on 01273 291403 or email [learning.resources@brighton-hove.gov.uk](mailto:learning.resources@brighton-hove.gov.uk).

### **Borrowing equipment**

Before you can borrow any of the equipment, you will need to have had a DSE, or written recommendation following a meeting with the Occupational Health team.

**NB:** The chairs are for trial at the LRC only.

If you have not had an assessment you need to ensure that your Headteacher arranges an assessment with a DSE assessor, who will review and assess your equipment and workstation.

When your assessment has been undertaken and your requirements have been identified you will then be able to borrow the equipment from the LRC 4<sup>th</sup> Floor Kings House (please check opening times). This will enable you to try before you buy. If you find the equipment is suitable, you should then discuss this with your Headteacher regarding purchase of the item.

For heavier and or bulkier items, the department borrowing the item will need to provide a cost code to cover courier costs and will need to sign to confirm receipt of the item. When returning it, the department borrowing the item should arrange the same signed for service directly with the BHCC post room.

### **Returning borrowed equipment**

The equipment should be returned to the LRC within a maximum of 3 weeks in the same condition that you borrowed it. The LRC is not responsible for items lost in transit. The intended recipient will be responsible for the cost of the item once the LRC has sent written or e-mailed confirmation that the item has been sent.

### **For further information contact:**

Rachel Mallalieu  
Occupational Health and Wellbeing Support Officer  
Health, Safety and Wellbeing Team  
Human Resources  
King's House  
Tel: 01273 291412  
Fax: 01273 293598  
Email: [rachel.mallalieu@brighton-hove.gov.uk](mailto:rachel.mallalieu@brighton-hove.gov.uk)

### **Or**

Gillian Lewis  
Health Safety and Wellbeing Support Officer  
Health, Safety and Wellbeing Team  
Human Resources  
King's House  
Tel: 01273 290533  
Fax: 01273 293598  
Email: [gillian.lewis@brighton-hove.gov.uk](mailto:gillian.lewis@brighton-hove.gov.uk)

### **The following data will be kept in the LRC:**

Name of person borrowing the kit  
Work Address  
Work telephone number  
Department  
Team  
Headteacher's Name  
Name of item  
Date borrowed  
Date returned



children and  
young people's trust



Brighton & Hove

Appendix 4

**BRIGHTON & HOVE CITY COUNCIL**

**School Staff Wellbeing**

**Framework**



Staff Wellbeing Framework

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**This document has been prepared for Brighton & Hove City Council using a suite of policy documents, which require local interpretation and adaptation to individual schools circumstances.**

## 1. INTRODUCTION

- 1.4 Brighton & Hove City Council recognises its responsibility as an employer under the Health & Safety at Work Act 1974 to ensure, so far as is reasonably practicable the health, safety and welfare at work of all employees. This duty extends to the provision of a healthy workplace and working environment. .
- 1.5 This document sets out a framework including linked policies and procedures which schools can use and adapt in matters relating to developing arrangements for staff wellbeing. It provides guidance to assist schools in developing policies to manage and monitor staff wellbeing. Staff are more likely to flourish in an environment free of unnecessary anxiety, stress and fear and where the contribution of all employees is valued. This framework incorporates a range of issues including:
- Worklife balance
  - Stress
  - Dignity at work (bullying and harassment)
- 1.6 If staff are to provide an atmosphere conducive to pupil achievement, they need to be emotionally healthy themselves. This framework should be adopted to take a whole school approach to creating a healthy, positive working environment that puts the wellbeing and effectiveness of staff right at the heart of the school.

## 2. LEGAL IMPLICATIONS

- 2.4 **The Health & Safety at Work Act 1974** states that an employer has a duty to ensure the health and safety (this includes mental health) of their employees whilst at work:
- 2.5 The **Management of Health and Safety at Work regulations 1999** place a duty on an employer to conduct a risk assessment to ensure that all risks to health and safety of their employees are assessed and interventions put in place to minimise or control exposure to those risks.
- 2.6 **Other legislation:** Although not an exhaustive list below is a summary of other relevant legislation which may have an impact on schools wellbeing arrangements
- Working time regulations 1999
  - Employment Act 2002
  - Education Act 1996
  - Employment relations Act 1999
  - Disability Discrimination Act – In April 2005 a new Disability Discrimination Act was passed by Parliament, which amends or extends existing provisions in the DDA 1995, including: ensuring that discrimination law covers all the activities of the public sector and requiring public bodies to promote equality of opportunity for disabled people
  - Sex Discrimination Act 1975 (2003)
  - Sexual (Orientation) Act 2007
  - Race Relations Act 1976 (2003)
  - Employment Rights Act 1996
  - Protection from Harrassment Act 1997
  - Safer Recruitment Pack

## 3. RESPONSIBILITIES

- 3.1 **Overall City Council responsibility**  
Brighton & Hove City Council has responsibility for ensuring the health safety and welfare of its employees and others who could be affected by its undertakings. As part of this responsibility the

City Council is providing a framework document which schools should adapt to meet their own needs. In Voluntary Aided schools the Governing Body has this responsibility.

### 3.2 **School responsibility**

The Governing Body through the head teacher must ensure that a policy is developed and a nominated member of staff is assigned the role of 'wellbeing coordinator' to act as a focal point for staff issues and concerns. The **headteacher** should ensure all staff are aware of the school wellbeing policy and arrangements. Safety representatives must be meaningfully consulted on any changes to work practices that could impact on staff wellbeing. Governors are responsible for monitoring this process

### 3.3 **Responsibility of Staff (including supply staff)**

All staff have a responsibility to co-operate with the school management team to assist in the implementation of this framework. Staff must take responsibility for their own actions and behaviours, including taking account of the affect these may have on others.

### 3.4 **Function of Safety Reps**

Safety reps are responsible for representing staff members and for assisting in developing wellbeing arrangements for schools. Safety reps must be consulted in the development, application and monitoring of school wellbeing arrangements.

## **4. POLICIES & ARRANGEMENTS**

### **4.4 Worklife Balance**

Worklife balance is about helping staff combine work with their personal interests outside work. Each of these interests makes demands and this can lead to role conflict, itself a cause of stress. A satisfactory worklife balance gives greater control of working lives and a stronger sense of ownership.

**The Worklife Balance Policy** should be used as part of develop overall wellbeing arrangements. It is available on education on line and offers guidance together with suggested interventions which schools can adopt for their own local arrangements.

Other useful contacts include: **Worklife Support, tel: 020 7554 5280 e'mail: [info@worklifesupport.com](mailto:info@worklifesupport.com)**, this is a social enterprise established in 1999 by the national charity Teacher Support Network. The organisation can assist schools in developing their own wellbeing programmes.

### **4.5 Stress**

The Health and Safety Executive defines stress as "the adverse reaction people have to excessive pressure or other types of demand placed on them." This makes an important distinction between pressure, which can be a positive state if managed correctly and stress which can be detrimental to health.

**The Stress Policy** is available on education on line and offers help to managers to understand, identify and deal with stress affecting employees.

**The Guidance for Managing Stress** is available in the HR Handbook appendix 29A this guidance is intended to help headteachers governors and managers and all staff to identify and deal with workplace stress issues.

Other useful information can be found by accessing the Health and Safety Executive website at [www.hse.gov](http://www.hse.gov). A particularly useful source of information is contained in the **HSE Tackling Stress - The Management Standards approach** document. The leaflet contains notes on good practice which are not compulsory but which you may find helpful in considering what measures need to be implemented locally.

#### 4.6 Dignity at Work

All employees have the right to work in an environment in which the dignity of all individuals is respected and is free from discrimination, harassment and bullying. It is the responsibility of all staff to treat each other fairly and with mutual respect. The contribution of all employees in contributing to the efficient delivery of quality services will be valued.

***The Dignity at Work Policy*** contained within this framework document should be used in developing wellbeing arrangements. It is also available on education on line and provides help to managers and all other staff to identify, challenge and deal with any incidents of harassment and bullying.

***Violence at Work Guidance – for Headteachers, Managers and Staff*** is available in the HR Handbook appendix 30A. The purpose of this document is to offer general guidance on how to anticipate and prevent aggressive behaviour, thereby raising awareness and producing a safer working environment.

***Dealing with Sexual Harassment at Work*** guidance is available in the HR Handbook appendix 30B. This document provides definitions and procedures.

#### 5. Accident / Incident Reporting

All accidents, incidents and near misses must be reported to Health & Safety, Room 411, Kings House on the attached form, within five days of the incident occurring.

This is extremely important, the Health & Safety team will evaluate the form and decide whether, in the case of an accident, it would need a **RIDDOR** form submitted to the HSE. (within 10 days of the accident)

**RIDDOR** means the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995.

**RIDDOR** requires the reporting of work-related accidents, diseases and dangerous occurrences. It applies to all work activities but not to all incidents.

We need to report:

- Deaths
- Major injuries
- Accidents resulting in over 3 day injury
- Some diseases
- Dangerous occurrences
- Gas incidents

More information on **RIDDOR** and a more detailed explanation on what needs to be reported can be found at [www.hse.gov.uk](http://www.hse.gov.uk)

Managers must investigate and fill in Part B. One copy to be retained on site, one copy to be sent to Health & Safety

**All Violent and or Abusive incidents must be reported on the HS3 form.**

Any incidence of verbal / written abuse should be reported and violence must be reported using the HS3 form which is available within the health and safety section of education on line.

It is essential that the member of staff concerned feels that the complaint has been properly handled.

All HS3 forms must be sent to the Health and Safety Team regardless of whether the incident fits the criteria for inclusion on the Clients of Concern Register.

If the incident was so serious that it posed a threat to an employee's personal safety then the perpetrator will need to be placed on the Clients of Concern Register (CCR)

Reporting, investigating and analysing workplace accidents and incidents is essential to ensure legal compliance and to assist in identifying trends and remedial measures required to prevent further occurrences.

## 6. Useful Contacts

Team	Contact Number	Further Advice
Human Resources	293492	Flexible working, dignity at work, employment contracts & occupational health (including counselling services)
Corporate Health & Safety	291636	Accident / incident reporting and investigation, risk assessment, health & safety training
Remodelling Advisor	294549	Worklife balance, remodelling, change management
Schools Training	293466	Training courses
Behaviour Consultants		
<b>Staff Associations:</b> <ul style="list-style-type: none"> <li>• ATL (Louise Davies)</li> <li>• NASUWT (Sandra Messenger)</li> <li>• NUT (Sue Suleyman)</li> <li>• NAHT (Dennis O'Sullivan)</li> <li>• PAT (Janet Martin)</li> <li>• UNISON (Denise Knutson)</li> <li>• GMB (Mark Turner)</li> <li>• ASCL (Paula Sargent)</li> </ul>	<a href="mailto:ldavies@e-sussex.atl.org.uk">ldavies@e-sussex.atl.org.uk</a> <a href="mailto:sandramessenger@varndean.co.uk">sandramessenger@varndean.co.uk</a> <a href="mailto:sue.suleyman@brighton-hove.gov.uk">sue.suleyman@brighton-hove.gov.uk</a> <a href="mailto:head@coomeroad.brighton-hove.sch.uk">head@coomeroad.brighton-hove.sch.uk</a> <a href="mailto:janetmartin@pat.org.uk">janetmartin@pat.org.uk</a> <a href="mailto:Denise.Knutson@brighton-hove.gov.uk">Denise.Knutson@brighton-hove.gov.uk</a> <a href="mailto:mark.turner@brighton-hove.gov.uk">mark.turner@brighton-hove.gov.uk</a> <a href="mailto:psargent@patchamhigh.org.uk">psargent@patchamhigh.org.uk</a>	

## 7. Schools Wellbeing Action Plan

Task	Objective	Persons Responsible	Time scale	Success Criteria
Develop a school wellbeing policy	To identify arrangements for worklife balance, stress and dignity at	Headteacher, governors		

	work			
Nominate a co-ordinator with responsibility for developing wellbeing arrangements for the school	To coordinate, manage and monitor wellbeing arrangements	Governors & headteacher		
Identify training needs of staff	To ensure staff have knowledge, understanding & skills to implement policy	Headteacher / CPD coordinator		
Establish a school wellbeing group	To monitor compliance and develop wellbeing procedures and interventions	Headteacher		
Identify and implement communication procedures for wellbeing issues	To ensure all staff are familiar with reporting procedures to enable analysis of data	Headteacher		
Incorporate the wellbeing policy and relevant procedures into the school development plan, performance management arrangements	To ensure all school policies consider wellbeing issues	Headteacher		

## Recruitment & Selection Policy

### Scope

1. This policy applies to all staff employed by Brighton & Hove City Council. It is recommended that schools also adopt this policy. It should be used for any appointment requiring a selection procedure.

### Aims

2. Brighton & Hove City Council is committed to equalities, diversity and inclusion. This policy provides greater flexibility than has existed previously, and it is important that this flexibility is used to improve inclusivity. There will be less emphasis on sticking to complex and rigid procedures, and much more on measuring real outcomes. In considering advertising and procedures managers will be expected to take account of their current monitoring data.
3. Conventional approaches to recruitment and selection have not worked well enough, and this is particularly apparent in respect of the number of minority ethnic and disabled staff at all levels. More targeted advertising, combined with positive action initiatives, should be used to widen our appeal to all those people in the city whom we exist to serve.
4. In simplistic terms, if this policy is successful the workforce will look like a reflection of the city's population, and employees of all backgrounds will feel relaxed, comfortable and confident.
5. The aims of this policy are:
  - to provide an effective and efficient means of appointing the most suitable people to deliver services to the City now and in the future;
  - to do so fairly but with the minimum cost and bureaucracy consistent with legislation and good practice;

- to provide career pathways in appropriate areas and to encourage younger people into the workforce;
- to increase the numbers of people from under-represented groups.
- to promote e-recruitment as a means of achieving these aims.

## **Principles**

6. Appointment decisions should be made in the interest of providing services to the city, the effective running of the council and the individual – in that order of priority.
7. The system as a whole, and its operation, should be fair, open, transparent and afford equality of opportunity. It should make the council more inclusive as an employer, and attractive and accessible to all.
8. Selection processes and decisions should focus on skills and abilities, but also recognise that merit is a complex concept, not always evidenced by the 'best'

performance in one interview. In particular circumstances – particularly for more junior posts – it will be appropriate to consider ability as well as experience, development and potential as well as immediate contribution.

## **Vacancy Control Procedures**

9. Managers should follow the vacancy control procedures in place at the time of recruitment.

## **Moves Not Requiring Selection Procedures**

10. Vacancies will require a formal selection process except in the following circumstances:
  - redeployments (see the Organisation Change Framework Policy);
  - voluntary or directed moves at the same grade which could prevent a redundancy or redeployment;
  - temporary to permanent or acting to substantive, but only where an initial formal advertised selection process has been undertaken;
  - where career paths/grades have been established progression may take place dependent on achievement of qualifications or successful completion of training;
  - where the role can be filled by an employee who has successfully completed a modern apprenticeship.

## **Defining Criteria**

11. In some cases formal qualifications are a statutory requirement, for example teachers and social workers. In other areas qualifications are highly desirable, such as finance or HR specialists. Where these conditions apply this should be made clear in advertisements, but care should be taken not to over-specify qualifications. Qualifications should be properly balanced with relevant experience and skills as detailed in the person specification.
12. All posts should have a job description and also a person specification, which should be clearly related to the post's genuine requirements and communicated clearly to applicants. The heart of the person specification should be a list of no more than 10 key competencies against which applicants will be assessed and should be ranked in order of importance. To increase the flexibility of the council's

workforce generic role descriptions should be used wherever possible. If job descriptions and gradings should be authorised via the council's job evaluation scheme.

13. All selection procedures will be competitive, and designed to produce the best candidate or group of candidates on merit, assessed against the key competencies. Competencies should be a balance between behavioural and technical competencies within a post.

14. Managers must ensure that the key criteria have been properly defined, actually used, and communicated in advance to all applicants. They should also ensure

they record and evidence their decisions in sufficient detail to be able to explain them. In particular, all decisions should be in accordance with the council's equal opportunities policies. Decisions may be subject to audit by HR.

### **Advertising and Access**

15. Where a selection procedure is necessary the line manager should decide, having regard to the policy's aims, whether to advertise within the Division, across the council, or externally. Advice is available from HR. All externally advertised posts must also be advertised internally. Eligibility will match advertising. The use of restricted advertising will be subject to monitoring by HR.

16. All advertised posts will be open to all applicants in accordance with the council's policies on equality of opportunity. In certain specialist positions there may be a genuine requirement for a person of a particular gender, ethnic background, religion or sexual orientation. Such restrictions – which will be rare – must always be agreed formally by Human Resources to ensure legality and compliance with policy.

17. The council needs to make as many people as possible aware of employment opportunities, particularly under-represented groups, and those we have not previously been effective in reaching. At the same time it needs to minimise excess expenditure on advertising.

18. Emphasis will therefore be placed on less frequent, more generic group advertising as opposed to individual advertisements wherever possible. For posts advertised on a regular basis (e.g. clerical, care workers) applications will be accepted that are not directly related to a particular advertisement, and general selection procedures will identify pools of people suitable for appointment.

19. In addition, the council will engage in positive action advertising and events, specifically to increase recruitment of under represented groups. HR will provide guidance and assistance in these areas, to ensure compliance with legal guidelines.

20. Improving our performance on inclusivity will remain an important issue for the council. The implications of these changes are that we will focus much more on the measured results in terms of improving the diversity of employees at all levels. This will enable us to be less bureaucratic, more imaginative and flexible, and more successful.

### **Procedures**

21. Many potential applicants are put off by complex and difficult forms and procedures, and wherever possible these should be simplified. In particular, for posts where advanced written skills are unnecessary the application form and subsequent process will match this. We will therefore no longer have a single application form for all posts. No alternative forms however will be designed without explicit HR approval.

22. All applicants will be given information in a style appropriate to the post that will cover what the job is about; key terms and conditions; how to apply; what the selection procedure will consist of; and what criteria will be used to make decisions. This should both encourage some applicants who may otherwise feel lacking in confidence, or unfamiliar with local authority procedures, while at the same time reducing unsuitable applications. The aim will be to guide people through the process, rather than erect a series of obstacles.
23. As an absolute minimum all selection procedures will involve some form of signed application; the collection of key personal information required to ensure a proper contract of employment can be entered into; appropriate checks and employment references; and an interview. In all cases sufficient records must be kept to support the decisions made.
24. Interviews should be structured to allow the panel to obtain evidence as to whether the applicant matches – or can match – the key criteria set out in the person specification for the post. All applicants for a particular post should therefore face similar questions with appropriate further probing questions to ensure both sufficiency and consistency of relevant evidence. Interviewers should wherever possible have had formal training, both in interview techniques and in diversity/equalities issues.
25. The more complex or senior the position, the more a challenging procedure will be justified. In designing complex assessment centre procedures the advice of HR must be sought. Particular care should be taken in respect of the use and interpretation of ability, aptitude, psychometric and work based tests (seek advice from Human Resources).
26. In all selections it will be necessary to conduct a formal shortlisting. This can serve two purposes: to rule out candidates who do not meet minimum or essential criteria; and to reduce the numbers called for interview to a manageable number expected to produce an appointment. As a general guide no more than 6 candidates should be invited per post, but this decision is for the manager to take depending on his or her interpretation of the circumstances. The shortlisting should be based on the information provided by the candidates and related directly to the key criteria defined and publicised for the post, each of which should be assessed as Met, Partially Met, or Unmet using the standard shortlisting form. Care should be taken not to over-rate applications which are well presented – the applicant may have had help or coaching. Clear records should be kept so that all decisions can be justified.
27. All applicants should be offered appropriate feedback, if requested. In most cases this should be brief and simple, but where an applicant has reached a final interview feedback should be more detailed. Feedback should not include comments about the specific performance or behaviour of other applicants.

### **Post Selection Checks**

28. Before an appointment is confirmed appropriate checks must be applied for and confirmed:
  - Two written references
  - Health clearance
  - Verification of qualifications, if appropriate
  - Criminal Record Bureau, Right to Work in the UK check and Child Protection checks, if appropriate
  - Photocopy of driving licence, if appropriate.

### **Feedback and Complaints**

29. Individual recruiting managers will give verbal feedback to internal candidates if requested (see separate guidance).

30. Any complaints about the recruitment process should be directed to the AD Head of Human Resources.

### **Monitoring**

31. HR will produce quarterly reports on all recruitment and promotion decisions. The HR Equalities Group, which includes representatives of the trade unions and staff fora, will play a key role in monitoring, including recommendations on systems and content.

## Section 20

### **DISCIPLINE AND DISCIPLINARY DISMISSAL**

The Education Reform Act requires governing bodies with delegated powers to establish the disciplinary rules and procedures which are to apply in their schools/colleges, and make them known to staff. In order to assist, detailed consultations have been undertaken with the thirteen recognised trade unions in the Education Service to prepare rules, procedures and management advice. These documents, listed below, incorporate the Authority's direct experience of such matters and are commended to governing bodies for adoption in accordance with the guidance set out in Circular 157/90. Appendices 20B and 20C are the formal rules and procedures, 20D is advice to staff and the remainder are advice to schools in handling these employee relations matters.

#### APPENDICES:

Discipline and Disciplinary Dismissal: Management Advice	(Appendix20A)
Disciplinary and Disciplinary Dismissal Procedures	(Appendix20B)
Disciplinary Rules	(Appendix 20C)
Code of conduct for employees whose work brings them into contact with young people	(Appendix20D)
Suspension of Staff: Code of Practice	(Appendix 20E)
Undertaking a Disciplinary Investigation: Code of Practice	(Appendix 20F)
Conduct Counselling: Code of Practice	(Appendix 20G)

Appendix 20A

**MANAGEMENT ADVICE**

**1 Introduction**

This advice has been prepared to assist those involved in dealing with disciplinary matters and should be read before taking any action in accordance with the following:

- a) The disciplinary and disciplinary dismissal procedures.
- b) The disciplinary rules.
- c) Code of conduct for employees whose work brings them into contact with young people.
- d) Suspension of staff: Code of practice.
- e) Undertaking a disciplinary investigation: Code of Practice

**2 General**

- 2.1 Only cases of misconduct are to be dealt with in accordance with the disciplinary and dismissal procedures. Separate procedures apply in cases of capability, ill health and redundancy.
- 2.2 Formal records about disciplinary problems should be retained in accordance with the advice given. Such records and any other internal notes and memoranda could be subpoenaed by an Employment Tribunal considering a claim of unfair dismissal.

**3 Formal and Informal Disciplinary Action**

**3.1 Informal Action**

Clear records of any disciplinary counselling should be kept. These should provide an outline of the difficulty and the comments made by the manager and the employee. A note of such sessions should be in the form of a letter to the employee. The employee should be given the opportunity of replying to such a letter and his/her reply should be kept on the personal file as part of the overall record.

**3.2 Formal Action**

The model disciplinary and dismissal procedure refers to the normal management supervision of staff. In many cases action on an informal basis will be appropriate in response to relatively minor disciplinary problems. However, it is in the interests of the employee and of the school to judge carefully the stage at which use of the formal procedure is necessary. From the employee's point of view, appropriate use of the formal procedures will emphasise the possible serious consequences of further misconduct and avoid the problems that arise when such matters are left unchecked. The formal approach also ensures that there is a clear understanding of the standards expected of staff. It also avoids misunderstandings.

#### **4 What to do first**

Appropriate action should be taken promptly. First establish the nature of the problem and, in consultation with colleagues as appropriate, assess the seriousness of the situation. In cases where gross misconduct is alleged it may be necessary to consider the employee's suspension. Please refer to the code of practice on the suspension of staff.

#### **5 Preparation**

Procedures and Codes of Practice should be read carefully. Although the Codes of Practice are not part of the disciplinary procedure, they provide helpful guidance and should be followed closely. The provisions of the Disciplinary and Dismissal Procedure must, however, be followed in all respects. Pay particular attention to any time scales involved and whenever practicable, try to avoid a disciplinary matter being commenced before a school holiday period but not concluded until a new term/half term has begun. This may result in any action being postponed until the commencement of a new term/half term or agreement between the parties which allows the completion of a matter outside the published timescale. Note the need to consult a senior union officer, or full-time official, in cases where disciplinary action is proposed in the case of a union representative or safety representative. Do not hesitate to seek advice from the Personnel Team.

#### **6 Investigation**

Follow closely the Code of Practice on undertaking a disciplinary investigation. This provides clear guidance on any appropriate action to be taken. Establish whether any evidence can be corroborated particularly where evidence is only available from a pupil or young person. The investigation should be thorough and complete and should include an interview with the employee.

#### **7 Decision on action to be taken**

7.1 Determine what further action, if necessary, should be taken once the investigation has been completed. The possible range of action is as follows:-

- a) No action at all in cases where the investigation shows that the allegation is without foundation. Where such allegations were made by a pupil(s)/student(s), a record of such a finding should be kept on the pupil's/student's file.
- b) Deal with the problem through counselling.
- c) Hold a formal disciplinary interview at which either a first, intermediate or final warning might be given.
- d) Refer the problem to a Panel of Governors to consider the employee's dismissal.
- e) Under the 2003 Staffing Regulations (following the Education Act 2002) Governing Bodies were given the authority to delegate the power of dismissal to the headteacher. In situations where dismissal powers have been delegated to the headteacher, please read headteacher instead of 'dismissal panel' ( see particularly section 5 of appendix 20B). In all cases the appeal panel will be made up of Governors. Within the same 2003 staffing regulations the Governing Body may decide to compose appeals panel of two Governors

rather than the three referred to throughout this policy and procedures. Where this is the case, then the guidance given regarding three Governors on appeal panels should be substituted as above.

## **8 The Formal Disciplinary and Dismissal Procedure**

- 8.1 The procedure must be followed carefully.
- 8.2 Consider carefully domestic arrangements to ensure that there is sufficient time to consider the case properly in an appropriate setting. This should include, where possible, facilities for the employee to consult privately with his/her trade union representative or colleague (who is employed at the school/college).
- 8.3 Make clear to the employee at the outset that the hearing is in accordance with the formal disciplinary and dismissal procedure.
- 8.4 If difficulties are identified during the course of the meeting it is advisable to adjourn briefly to secure any advice that may be necessary.
- 8.5 Keep notes outlining the main points made throughout the hearing. The notes will help in reviewing the case, reaching a decision, giving the decision, writing the letter to the employee confirming the decision, and in any appeal that may be made. Notes may be subpoenaed by an Employment Tribunal.
- 8.6 Statements from witnesses will often be used at disciplinary hearings. Witnesses need not be called to give direct evidence in all cases but it is essential to hear directly from witnesses where their evidence, is crucial to the allegation, particularly where it is disputed.
- 8.7 Once the case has been heard in full, the employee and his/her representative/colleague and the person who presented the case should withdraw. The person(s) hearing the case should then consider all that has been said.

## **9 Reaching a Decision**

- 9.1 Consider carefully all that has been said. Note that the degree of proof required is not the same as it is in a court of law. It is not necessary for a case to be proved beyond all reasonable doubt. The question is one of reasonable belief / balance of probability.
- 9.2 The employee's general record with the school/college and the Council generally should be taken into consideration, including any disciplinary record. The employee's position in terms of status and length of service might be considered in mitigation and could influence the level of sanction. Sanctions should be consistent and equitable.
- 9.3 When an employee has previously been given a formal disciplinary warning the disciplinary and dismissal procedure paragraph 2.4 should be read carefully before a decision is reached.
- 9.4 Any decision must be reasonable in all the circumstances.

## **10 Appeals**

- 10.1 An employee may appeal against a formal disciplinary warning or against dismissal. The appeal hearing will, unless agreed at the outset, be a re-hearing of all the evidence. Witnesses who have

given evidence at the first hearing can be called again. Advice should be sought from personnel team if it is proposed not to call witnesses again at an appeal hearing or if witnesses are not available.

- 10.2 Those hearing the appeal must not have had any previous involvement in the case.
- 10.3 The Appeal Body will consider whether it was reasonable in all the circumstances for the disciplinary hearing to have reached the decision it did. All factors will be considered in that context. The Appeal Panel will not substitute its own view but will determine whether or not a reasonable person could reasonably have reached the decision made given all the circumstances.
- 10.4 The options available to an Appeal Body are set out in paragraph 4.4 and 6.4 of the disciplinary and dismissal procedure.

## **11 Involvement of the Police**

- 11.1 Where it appears that an employee has committed a criminal offence, the police must be notified immediately. Police should be involved in cases where an employee's response to a disciplinary problem is a physical one. In general, the police should not be involved in such cases unless it is clear that a physical assault occasioning actual bodily harm has taken place and in such cases, Headteachers should consult first with the Head of Personnel.
- 11.2 Do not investigate further where problems are referred to the police, and the police confirm that they will undertake an investigation.
- 11.3 Where the police are involved it will often be difficult for misconduct to be dealt with in employment terms. Problems will arise because of the lack of information on which to reach a reasonable decision. However, there may be occasions where the evidence available is sufficient for a case to be pursued in employment terms. Clarify with the police whether or not they would have any objections.
- 11.4 The Education Service generally has close links with the police. Where the police are involved in an investigation, whether or not it results in a criminal charge, it is often possible to obtain police witness statements for use in disciplinary/dismissal proceedings. The Head of Personnel will assist in obtaining such information.
- 11.5 In cases of alleged misconduct of a sexual nature, the police will be involved in accordance with the child protection procedures.

## **12 Involvement of the Council Finance Officer**

Refer any financial irregularity to the Council Finance Officer in accordance with the financial regulations of the Council. The audit team will consider, together with the Head/Principal, the way in which any investigation should be conducted. Normally, an audit interview with the employee would be held in accordance with the Council's procedures for such interviews.

## **13 Confidentiality**

- 13.1 Ensure that any alleged misconduct is treated confidentially. The emphasis should be on protecting the interests of the school/college and the employee.
- 13.2 Investigations into an allegation of misconduct must be as thorough as possible, but it must be made clear to all those involved that the issue must be treated confidentially.
- 13.3 Where an allegation is made by a pupil/student, it should be made clear to him/her that the matter will be investigated in confidence and that it is in everyone's interests to maintain confidentiality.
- 13.4 Where an employee is suspended, follow the provisions of the Articles of Government where applicable, and the Code of Practice on Suspension.

Appendix 20B

**DISCIPLINARY AND DISCIPLINARY DISMISSAL PROCEDURES**

OUTLINE OF CONTENTS

- 1 Introduction
- 2 Principles to be observed
- 3 Hearings which may lead to disciplinary warnings
- 4 Appeals against disciplinary warnings
- 5 Hearings which may lead to dismissal
- 6 Appeals against a determination that the employee should cease to work at the school

7 Determination or amendment of contract

8 Conduct of meetings

## **1 Introduction**

### **1.1 General**

This procedure has been drawn up in consultation with all the unions recognised by Brighton & Hove Council. Its purpose is to assist governing bodies in meeting their obligations, under the Education Reform Act 1988, to establish disciplinary and dismissal procedures and to make them known to their staff. It is hoped that these procedures will commend themselves to governing bodies.

### **1.2 Advisory Conciliation and Arbitration Service - Code of Practice**

In drawing up this model procedure the principles set out in the Code of Practice prepared by the Advisory, Conciliation and Arbitration Service (ACAS) have been observed. The code came into effect by order of the Secretary of State for Employment and its provisions are admissible in evidence at Employment Tribunals. Should any governing body propose to make material changes they are asked to seek the further advice of the Head of Personnel who, among other things, would ensure they are not in conflict with the ACAS code.

### **1.3 Management Supervision**

It is recognised that there will be cases of misconduct which are more appropriately dealt with as part of the normal arrangements for supervising employees because the headteacher does not consider them to be of sufficient concern to warrant the application of this procedure. In these cases unsatisfactory conduct may be remedied by discussion and counselling sessions. A note of such sessions should be in the form of a letter to the employee. This letter should provide for the employee to respond if he/she wishes. All correspondence of this nature should be disregarded for disciplinary purposes after one year subject to the principles that apply to the disregarding of warnings set out at paragraph 2.4 below.

### **1.4 Where Formal Action is Considered Necessary**

1.4.1 Where disciplinary action is considered necessary this procedure makes explicit the steps that must be taken, and also the rights and responsibilities of headteachers, governors, employee representatives and employees. The procedure aims to protect employees against unfair treatment whilst enabling headteachers, other senior staff and governors to carry out their responsibility to manage the school.

1.4.2 Disciplinary action should be initiated within the timescales set out in this procedure. Problems of a similar nature dealt with previously in accordance with paragraph 1.3 above may be relevant and if so should only be introduced where a note of a counselling session had been made by letter.

### **1.5 Scope**

This procedure will apply to staff employed by the school where it is considered that his/her conduct is such as to justify formal disciplinary proceedings, except that:

### **1.6 Capability**

A separate procedure is available for dealing with cases where questions of competence arise. The emphasis in that procedure is to identify areas of concern at an early stage, to emphasise the standards required to provide full support and to monitor progress to assist the employee to overcome his/her shortcomings.

### **1.7 Suspension**

In cases where gross misconduct is alleged, the employee may be suspended from duty in accordance with his/her conditions of service. Any suspension must be handled sensitively. The code of practice which gives advice on the suspension of staff should be followed.

## **2 Principles to be observed**

## **2.1 Safeguards for Employees**

- 2.1.1 Where, having established that there is substance in an allegation, it is proposed to undertake an investigation the employee must be informed about the allegation within ten days of the alleged misconduct having occurred or come to the attention of the Headteacher.
- 2.1.2 When, after investigation, formal disciplinary action is considered necessary the employee shall be given the appropriate notice of the hearing. At the same time he/she shall be supplied in writing with the details of the alleged misconduct and copies of any witness statements and any other papers, available at the time, which are to be considered at the hearing. He/she shall also be informed of the names of any witnesses who will give evidence at the hearing.
- 2.1.3 Where a witness statement is to be considered at a hearing the witness will normally be available to give evidence. Where video evidence is to be considered at a hearing, the employee shall be given the opportunity to see the video on or before the date on which notice of the hearing is required to be given.
- 2.1.4 Hearings shall be arranged as soon as reasonably possible and within the time limits set out in this procedure unless a variation is agreed between the parties.

## **2.2 Representation**

An employee subject to this disciplinary procedure may, if he/she so wishes be advised and/or represented by a trade union representative or accompanied by a colleague who is an employee of the school at every stage of the formal procedure.

- 2.2.3 Notwithstanding the above, the employee has a statutory right to be accompanied at any disciplinary hearing which concerns the performance of a duty by school or council in relation to the employee ie a legal duty arising from statute or common law.
- 2.2.4 The term 'trade union representative' throughout this document means either a lay trade union official (ie a steward/representative) or a paid official employed by a trade union.
- 2.2.5 Trade union representation will be afforded to any employee, irrespective of whether or not he/she belongs to a trade union recognised by the school.
- 2.2.6 In cases where the employee has a statutory right of accompaniment, and his/her chosen companion cannot attend on the date proposed for a meeting the employee can offer an alternative time and date. Any alternative time and date must be reasonable and fall within five working days beginning with the first working day after the date originally proposed by management.

## **2.3 Accredited Union Representatives**

Disciplinary action against an accredited union representative can lead to a serious dispute if it is seen as in attack on the functions of a trade union. Therefore, although normal standards shall apply to trade union representatives as employees, disciplinary action will not be taken against accredited representatives or safety representatives without the circumstances of the case first being discussed with a senior trade union representative or full time official.

## **2.4 Flexibility in the Level of Warnings**

Normally the various levels of disciplinary warning will be applied sequentially but the giving of a first or intermediate warning is not a condition precedent to the giving of either an intermediate or final warning where an employee's conduct justifies such action. Hearings convened to consider an allegation of gross misconduct may lead to summary dismissal without the employee having previously received any warnings under this procedure.

## **2.4 Disregarding Warnings**

- 2.4.1 Subject to Paragraphs 2.4.2, 2.4.3 and 2.4.4, a disciplinary warning will be disregarded for disciplinary purposes after the following periods from the date the warning was given:

- a) A first warning - after six months;
- b) An intermediate warning - after one year,
- c) A final warning - after 18 months.

- 2.4.2
- a) Warnings will only be disregarded if no further formal disciplinary warning has been given to the employee during the relevant period.
  - b) Warnings will not be disregarded on occasions where, despite the fact that an employee's conduct is satisfactory throughout the period that the warning is in force, it lapses very soon thereafter. In that event the employee's disciplinary record will be taken into account at any subsequent hearing and, where at such a hearing a warning is given, the normal period for which disciplinary warnings remain in force may be increased.
  - c) In cases where a pattern of behaviour is alleged, previous behaviour considered to form part of that pattern may be taken into account notwithstanding that it may otherwise have been disregarded under 2.4.1 above.

### **2.4.3 Warnings not disregarded automatically**

A warning will not be disregarded automatically where it has been given following improper behaviour of a sexual or physical nature towards pupils, students or young people. At the time such a warning is given, the employee shall be informed that it falls within this category.

## **2.5 Time Limits**

- 2.5.1 On occasions and by mutual consent the parties to a disciplinary matter may modify the time limits referred to in this procedure. With the exception of paragraph 7.2 **the time limits referred to in the procedure are 'working days', i.e. Monday to Friday and do not include Saturdays, Sundays or Bank Holidays.**
- 2.5.2 It is for the headteacher to decide whether or not other days when the School is not in session are to be regarded as working days for this purpose in an individual case, except that in this respect only, no day shall be regarded as a working day for any individual employee if he/she is not normally required to attend for work on that day.

## **2.6 Illness of Staff**

- 2.6.1 Where an employee is unfit to attend a hearing he/she (or a representative acting for the employee) must seek a postponement. Any request for a postponement must be accompanied by a medical certificate clearly indicating that the employee is currently unfit to attend the hearing and outlining the date when it is considered likely that the employee will be fit for this purpose. Any costs incurred in obtaining such a certificate will be reimbursed, on the production of a receipt. It will then be necessary for the School to rearrange the date of the hearing subject to the provisions of paragraphs 2.6.2 to 2.6.4 below. If the employee's doctor is unwilling to provide such a certificate, the School should consider seeking advice from the Occupational Health Physician.
- 2.6.2 In cases where the hearing may lead to a disciplinary warning every effort should be made to agree a date for the hearing at the earliest opportunity by discussion with the employee or his/her representative. The headteacher should not seek to convene such a hearing on a date when it is known from the existing medical certificate that the employee will be unfit to attend. Where a hearing is convened and postponed at the employee's request in accordance with paragraph 2.6.1 above the School will notify the employee of the revised date for the hearing. In such cases the requirement to give 5 working days notice need not apply, although consideration should be given to the availability of the employee's representative. In cases where a hearing is postponed on two occasions (an employee can only exercise his/her right to request the rearrangement of the hearing once) a further postponement will not normally be agreed. In cases where a hearing proceeds in the absence of the employee, the employee shall be given the opportunity to submit written representations and/or be represented at the hearing by a trade union representative or colleague employed at the school/college.

2.6.3 In cases where the hearing may lead to dismissal, the School will consider whether or not it is reasonable to convene a hearing in the absence of the employee. In reaching a decision the School may take into account factors such as the number of postponements already requested and agreed, the length of time it is likely to be before the employee is expected to be fit to attend the hearing, and whether the employee had a medical condition prior to the instigation of disciplinary procedures. The School need not seek advice from the Occupational Health Physician if it is considered that sufficient information is already available. If there continues to be disagreement between the School and the employee as to whether the hearing should be convened, the Panel of Governors considering the dismissal should be given the opportunity to consider representations from either side about the hearing proceeding, prior to considering the case itself.

2.6.4 If in the light of 2.6.3 above a decision is made to convene a hearing in the absence of the employee, the employee shall be given the appropriate number of days notice. Notice of the hearing will be sent to the employee's home address either by post or by hand delivery together with all the relevant papers. The notification shall include an indication that the hearing will be convened whether or not the employee is able to attend, and that he/she may be represented at the hearing in the normal way. The employee will also be given the opportunity to submit written representations.

## **2.7 Records**

2.7.1 Where a hearing concludes that there has been misconduct the record shall include any statement or report submitted to the formal disciplinary or dismissal hearing or appeal and the correspondence on the matter with the employee. The purpose in retaining such papers shall be to ensure that there is a clear record of the misconduct. In addition the following information shall be retained: a note of the decision taken with the main reasons; whether an appeal was lodged; the outcome of any appeal; and any subsequent developments.

2.7.2 Where a hearing concludes that an allegation against an employee is without foundation the record shall be a written record setting out the allegation and a clear indication that, upon investigation, the allegation was found to be without foundation. The reasons for such a conclusion shall also be recorded in the note. No other papers shall be retained unless the employee expressly requests that they should. No reference shall be made to any such records covered by this paragraph unless the employee expressly requests that they should.

2.7.3 All records shall remain confidential and be retained by the headteacher on the employee's personal file held at the school. A copy of any record shall be made available to the employee.

## **2.8 Advisers to those Conducting Hearings**

2.8.1 The person(s) conducting a hearing under paragraph 3 of this procedure may be advised, where appropriate, by a member of staff employed at the school. The Head of Personnel or his representative may also be available to give advice.

2.8.2 The Strategic Director (or his representative) is entitled and shall attend, for the purpose of giving advice, proceedings of panels of governors conducting hearings which could lead to dismissal or hearing appeals against a determination that employees should cease to work at the school. The headteacher (except where he/she is the person concerned) is similarly entitled to attend to give advice, but must withdraw, where he/she played a part in the presentation of the case against the employee, or the case itself, while the Panel of Governors considers its decision. The Panel must consider any advice given before reaching a decision.

2.8.3 Advisers at hearings shall be limited to no more than two.

## **2.9 Where an Employee is employed by the Council at the School and elsewhere:**

- 2.9.1 Subject to paragraph 2.4 above, where an employee is employed by the Council at the school and elsewhere, the employee's disciplinary record with the Council may be taken into account in dealing with any misconduct at the school and vice versa.
- 2.9.2 Where a decision is made that the employee should cease to work at the school, the procedure set out in paragraph 7 shall apply.

## **2.10 Confidentiality**

The press and members of the public shall be excluded from any hearing arranged in accordance with this procedure. All parties involved in a disciplinary issue shall ensure that the details remain confidential except that any party shall have the right of reply if the other makes details public. Where such a matter is in the public domain but not as a result of the actions of either party, it may be appropriate for an agreed joint response/statement to be released. Where such a response/statement is not agreed, the parties shall ensure that the details remain confidential.

## **3 Hearings which may lead to Disciplinary Warning**

### **3.1 General**

Where, following investigation, it is decided to pursue an allegation of misconduct formally which is not deemed, on the information available, to warrant dismissal a hearing shall be arranged in accordance with this paragraph and paragraphs 3.2 to 3.4 below. The hearing will be with the headteacher (or other senior member of staff authorised by the headteacher for this purpose), who may be accompanied and advised. The managerial level at which warnings may be given shall be determined by the headteacher and shall be made known to employees together with this procedure. Where the allegation concerns the headteacher the hearing will be conducted by a Panel of Governors appointed and authorised by the governing body for the purpose of giving such warnings.

### **3.2 Notice of Hearing and Other Employee Rights**

The employee shall be given **not less than five working days notice** of the date of the hearing or such shorter notice as may be mutually agreed. Details of the alleged misconduct, together with copies of any witness statements and any other papers to be considered at the hearing, shall be given to the employee with the notice of the hearing. Where video evidence is to be considered at a hearing, the employee shall be given the opportunity to see the video before the date of the hearing. The employee is entitled to attend the hearing and to be represented at the hearing by a trade union representative or colleague employed at the school/college.

### **3.3 Possible Outcome**

The person(s) conducting the hearing may:

- 3.3.1 Find that the allegation is without foundation.
- 3.3.2 Find that there is substance in the allegation either in whole or in part sufficient for it to be believed and:
- a) decide that no further action is needed;  
Or
  - b) decide that no formal disciplinary action is required, but that conduct counselling would be appropriate. In such cases, the Code of Practice on conduct counselling should be followed;  
Or
  - c) issue a first, intermediate or final warning (see para. 2.4.3).  
Or
  - d) refer the matter to a Panel of Governors authorised by the governing body to determine that persons employed at the school shall cease to work there, where, exceptionally, they consider dismissal would be appropriate.

### **3.4 Giving the Decision**

The person(s) conducting the hearing shall give his/her decision orally and shall confirm it in writing within five working days of the hearing. Where it is decided that the allegation is without foundation the confirmation shall state that the employee's record, in this respect, is unblemished. Where the decision is to issue a formal warning such confirmations shall state:

- a) the details of the offence;

- b) the decision made, including where such a determination is made, that the warning is one resulting from improper behaviour of a sexual or physical nature towards pupils, students or young people;
- c) the disciplinary consequences of any further offence;
- d) that the employee has a right of appeal (including the statutory right to be accompanied at the appeal hearing) or, alternatively an opportunity to make a written statement of dissent and/or an explanation for inclusion on his/her personal file, and the way in which such an appeal or statement may be made.

## **4 Appeals against Disciplinary Warning**

### **4.1 Making an Appeal**

Where an employee wishes to appeal against a disciplinary warning he/she must do so **within ten working days of receiving the written decision**. All appeals must be in writing and must state clearly the reason or basis of the appeal.

### **4.2 Composition of the Appeal Panel**

A Panel of at least three governors appointed and authorised by the governing body for the purpose shall hear the appeal. No governor hearing an appeal shall have been involved in the case to which the appeal relates. Staff governors may be members of the Panel, provided they are not involved in any way in the case, either as a witness or as the person making the allegation under consideration.

### **4.3 Notice of the Appeal Hearing and Other Employee Rights**

Within twenty working days of the receipt of an appeal, arrangements will be made for the case to be heard. The employee and the headteacher/principal (where the headteacher/principal is not the employee concerned) shall be given **at least ten working days' notice of the date of an appeal hearing** or such shorter notice as may be mutually agreed. The employee is entitled to attend the appeal hearing and to be represented at the hearing by a trade union representative or colleague employed at the school/college.

### **4.4 Possible Outcomes of an Appeal Hearing**

The Panel of Governors hearing the appeal may confirm or quash the decision against which the appeal is made. In addition, in those cases where the case is considered in full at the appeal stage, the Panel of Governors may substitute a different level of warning if they consider the decision against which the appeal has been made to be unreasonable.

### **4.5 Giving the Decision**

The decision of the Panel of Governors hearing the appeal shall be given to the employee orally and shall be confirmed in writing by the clerk to the governors to the employee and the headteacher (where the headteacher is not the employee concerned) within five working days of the hearing

### **4.6 Final Appeal Stage**

The hearing of an appeal under the arrangements set out above represents the final level of appeal against disciplinary warnings issued in accordance with this procedure.

## **5 Hearings which may lead to Dismissal**

### **5.1 General**

Where, following investigation, there is a further alleged offence after a final warning or an allegation of gross misconduct which is deemed, on the information available, to warrant consideration of the employee's dismissal, a hearing shall be arranged in accordance with this paragraph and paragraphs 5.2 to 5.5 below. The hearing will be with a panel of at least three governors appointed and authorised by the governing body to exercise their powers to determine that a person should cease to work at the school. Staff governors may be members of the Panel, unless they could be a candidate for the post held by the employee concerned, or if they have been involved in any way in the case, either as a witness or as the person making the allegation under consideration. When the employee concerned is a member of a direct services organisation the appropriate manager or a member of his staff shall be involved

### **5.2 Notice of Hearing and Other Employee Rights**

The employee shall be given **at least ten working days' notice of the hearing**. Details of the alleged misconduct, together with witness statements and any other papers available at the time which are to be considered at the hearing shall be given to the employee with the notice of the hearing. Where video evidence is to be considered at a hearing, the employee shall be given the opportunity to see the video before the date of the hearing. The employee is entitled to attend the hearing and to be represented at the hearing by a trade union representative or colleague employed at the school.

### 5.3 Possible Outcome

The Panel of Governors hearing the case may:

- a) determine that the employee should cease to work at the school;
- b) issue a first, intermediate or final warning;
- c) take no formal disciplinary action.

### 5.4 Giving the Decision

The Panel of Governors hearing the case shall give its decision orally and the clerk to the governors shall confirm it in writing within five days of the hearing. Where the decision is to determine that the employee shall cease to work at the school or to issue a disciplinary warning such confirmation shall state:

- a) the decision made;
- b) the reason for the warning or determination;
- c) where appropriate, the disciplinary consequences of any further offence and where such a determination is made, that the warning is one resulting from improper behaviour of a sexual or physical nature towards pupils, students or young people;
- d) that the employee has the right of appeal including the statutory right to be accompanied at the appeal hearing or, alternatively an opportunity to make a written statement of dissent and/or an explanation for inclusion on his/her personal file, and the way in which such appeal may be made.

## 6 Appeals Against a Determination that the Employee should Cease to Work at the School

### 6.1 Making an Appeal

Where an employee wishes to appeal against a determination that he/she should cease to work at the school taken in accordance with paragraph 5.4 he/she must do so **within ten working days of his/her having received the written decision**. All appeals must be in writing addressed to the Clerk to the governors and must state clearly the reason and/or basis of the appeal.

### 6.2 Composition of the Appeal Panel

A panel of at least three governors appointed and authorised by the governing body to determine appeals shall hear the appeal. No governor hearing an appeal shall have been involved in the decision to which the appeal relates. Staff governors may be members of the Panel, unless they could be a candidate for the post held by the employee concerned, or if they have been involved in any way in the case, either as a witness or as the person making the allegation under consideration.

### 6.3 Notice of the Appeal Hearing and Other Employee Rights

Within twenty working days of the receipt of a notice of appeal under paragraph 6.1 arrangements will be made for the case to be heard. The employee and the headteacher/principal (where the headteacher/principal is not the employee concerned) shall be given **at least ten working days notice of the date of an appeal hearing** or such shorter notice as may be mutually agreed. The employee shall be entitled to attend the appeal hearing and to be represented at the hearing by a trade union representative or colleague employed at the school/college.

### 6.4 Possible Outcomes of an Appeal Hearing

The Panel of Governors hearing the appeal may:

- a) confirm or quash the determination that the employee should cease to work at the school,

- b) where a decision is made to quash the determination that the employee should cease to work at the school, and where it is considered appropriate, issue a first, intermediate or final disciplinary warning.

#### **6.5 Giving the Decision**

The decision of the Panel of Governors shall be given to the employee orally and shall be confirmed in writing by the clerk to the governors to the employee and the headteacher/principal (where the headteacher/principal is not the employee concerned) within five working days of the hearing.

#### **6.6 Where Dismissal Determination is not upheld**

If the determination that the employee should cease to work at the school is quashed the employee will be reinstated and any suspension ended forthwith. If the employee feels that there would be difficulties in reinstatement in his/her previous post at the school it is open to the employee to:

- a) ask the governors to consider his/her re-employment in another post within the school;
- b) Request the Strategic Director to actively seek redeployment for him/her elsewhere in the service of the Council acknowledging that such redeployment could be difficult to achieve.

The employee may ask that one, or other, or both of these possibilities be explored at any time within forty working days of the date on which the dismissal determination was quashed.

#### **6.7 Final Appeal Stage**

The hearing of the appeal by the Panel of Governors represents the employee's final level of appeal within the authority. Where, at an appeal stage a determination that the employee should cease to work at the school is quashed but a formal disciplinary warning is issued, there is no right of appeal against that disciplinary warning.

### **7 Determination or Amendment of Contract**

#### **7.1 Notification to the Strategic Director of a Decision to Dismiss an Employee**

Where a Panel of Governors has determined in accordance with paragraph 5 that an employee shall cease to work at the school, and either the employee has not given any notice of his/her wish to appeal against that decision in accordance with paragraph 6.1, or an appeal has been heard in accordance with paragraph 6 and the Panel of Governors has confirmed the determination, the Clerk to the governing body should notify the Strategic Director in writing as soon as possible of the determination with the reasons.

#### **7.2 Action on the Part of the Council**

Unless the employee has resigned and ceases to work at the school, the Strategic Director, shall, within a period of fourteen consecutive calendar days from the receipt of the notification of the determination, write to the employee to terminate his/her employment at the school.

#### **7.3 Period of Notice**

Unless the cause of the determination is gross misconduct or other urgent cause the period of notice to be given shall be that required in accordance with the employee's conditions of service. Where the cause of the determination is gross misconduct or other urgent cause, the dismissal shall take effect from the date of the letter sent to the employee to terminate his/her contract of employment in accordance with paragraph 7.2 above.

#### **7.4 Position when Employee also Employed by the Council Elsewhere**

If the employee is employed by the Council to work at the school and elsewhere, the Strategic Director shall, in addition to terminating the employee's employment at the school, consider what action is necessary in respect of the employment elsewhere.

## **8 Conduct of Meetings**

- 8.1 Subject to paragraph 8.2 all cases coming before a Panel of Governors shall be conducted in accordance with the stages set out below.
- 8.2 In an appeal hearing, the Panel of Governors hearing the case shall firstly consider the submission made by the employee setting out the reason or basis of appeal. A decision will then be made about the way in which the case will be heard.
- 8.2.1 Where the Panel of Governors hearing the appeal decide that the case will need to be reheard in full the hearing shall be conducted in accordance with the stages set out below.
- 8.2.2 Where the Panel of Governors decide, so far as it is concerned that the case need not be reheard in full, the Panel will seek to agree with the employee a variation to these stages. Where a variation cannot be agreed the case shall be reheard in full in accordance with the stages set out below.

Stage 1 The headteacher to present the case in the presence of the employee and his/her representative including, as the headteacher considers appropriate by:

- a) referring to the written statements and other written evidence;
- b) the calling of witnesses;
- c) the presentation in evidence of any relevant video recorded interviews.

Stage 2 The employee (or his/her representative) to have the opportunity to ask questions on the evidence given by the headteacher/principal and any witnesses called, as they are called.

Stage 3 The Panel of Governors hearing the case to have the opportunity to ask questions on the evidence given by the headteacher/principal and witnesses, as they are called.

Stage 4 The employee (or his/her representative) to put his/her case in the presence of the headteacher/principal including at the discretion of the employee by:

- a) referring to the written statements and other written evidence;
- b) the calling of witnesses;
- c) the presentation in evidence of any relevant video recorded interviews.

Stage 5 The headteacher to have the opportunity to ask questions on the evidence given by the employee and any witnesses called, as they are called.

Stage 6 The Panel of Governors to have the opportunity to ask questions on the evidence given by the employee and any witnesses called, as they are called.

Stage 7 The headteacher and then the employee (or his/her representative) to have the opportunity to sum up their cases if they so wish.

Stage 8 The person presenting the case and the employee (and his/her representative) and any witnesses to withdraw.

Stage 9 The person(s) hearing the case (with any adviser(s)) to deliberate in private, only recalling the headteacher and the employee to clear points of uncertainty on evidence already given. If recall is necessary, both parties are to return notwithstanding only one is concerned with the point giving rise to doubt.

- Stage 10      The decision of the Panel of Governors will be notified to the employee and his /her representative at the meeting and confirmed in writing within five working days of the meeting.
- 8.3      The headteacher may arrange for a representative to present the case on his/her behalf and the headteacher (or representative) may be assisted in the presentation.
- 8.4      The references to headteacher in this paragraph assume he/she is not the employee concerned. If the headteacher is the employee concerned, arrangements must be made beforehand for the appointment of a person to present the case against the headteacher.

## **DISCIPLINARY RULES - SCHOOLS /COLLEGES**

### **1 Introduction**

- 1.1 The Governing Body is required, in accordance with the provisions of the Education Reform Act 1988, to establish disciplinary rules covering all employees working at the school, and to ensure that they are made known to the staff.
- 1.2 The disciplinary rules for the school are set out below. Whilst every effort has been made to identify all conduct that would be unacceptable, the list is not exhaustive. These rules will provide helpful guidance both to individual employees, and to senior staff in their management roles.
- 1.3 A code of conduct for employees whose work brings them into contact with young people has also been prepared and made available to staff and should be read in conjunction with these disciplinary rules.

### **2 Disciplinary and Dismissal Procedure**

The Governors have also, in accordance with the provisions of the Education Reform Act 1988, prepared a disciplinary and dismissal procedure and made it known to staff. That procedure sets out the arrangements which apply where a breach of discipline is alleged. Sanctions available in accordance with that procedure range from formal disciplinary warnings to dismissal. The procedure also ensures that there is a right of appeal against such sanctions.

### **3 Types of Misconduct**

- 3.1 Certain types of misconduct are so unacceptable that the employee's continued presence at work, even whilst the matter is being investigated, cannot be countenanced. Such misconduct falls within the term "gross misconduct" and examples are set out in Section 5.1 below. It is particularly important that staff at the school are aware of the examples of gross misconduct given. It is essential that all concerned are aware of the standards of behaviour expected both insofar as their own employment is concerned and for the overall good of the school.
- 3.2 Examples of other types of misconduct, not sufficiently serious to warrant consideration of summary dismissal, are set out under the heading 'Other Misconduct' in Section 5.2 below. Some examples of misconduct referred to in this section are more serious than others. A single incident of misconduct in some cases may not warrant immediate formal disciplinary action but may, more appropriately, be remedied by discussion and counselling sessions (see paragraph 1.4 of the Disciplinary and Dismissal Procedure). In others it will warrant a first warning. Other instances of misconduct may be regarded as sufficiently serious to warrant a disciplinary warning at intermediate or final level even where the employee does not have any other disciplinary warnings on the record. It is not possible to identify within the examples of misconduct, what level of sanction, if any, would be appropriate in each case. Much will depend on the particular circumstances of the case.

### **4 The Employee's Response**

- 4.1 All allegations of misconduct will be investigated. The investigation will include a discussion(s) with the employee. If it is decided to hold a formal hearing the disciplinary/dismissal procedure will apply. The employee will have the opportunity to present his/her case at the formal hearing and to be accompanied by a trade union representative or colleague employed at the school/college.
- 4.2 An employee's response to an allegation of misconduct is important. It will:-
  - a) assist in reaching a fair conclusion about an alleged incident where the facts are disputed.

- b) establish the employee's view about the seriousness of the alleged misconduct. The view of the employee can be of particular importance because it will demonstrate whether or not he/she understands and accepts the standards of behaviour expected by the Governing Body.

## **5 Disciplinary Rules**

### **5.1 Gross Misconduct**

The following are examples of behaviour which could lead to summary dismissal. The list is not exhaustive, and it is acknowledged that it will be necessary to exercise judgement in specific cases to determine whether particular misconduct is to be regarded as gross misconduct. Any decision to dismiss an employee must be fair and reasonable in all the circumstances.

- a) Any form of physical violence towards students. Please refer to the Code of Conduct for employees whose work brings them into contact with young people.
- b) Physical violence, actual or threatened towards other staff or visitors to the school.
- c) Any sexual approach or response to a pupil or the development of an intimate relationship with a pupil, whatever the provocation. Please refer to the Code of Conduct referred to at (a) above.
- d) Sexual offences, sexual insults or sexual discrimination against pupils, other staff or visitors to the school.
- e) Racial offences, racial insults or racial discrimination against pupils, other staff or visitors to the school.
- f) Theft of Council monies or property and of monies or property of colleagues, pupils or visitors to the school. Removal from school premises of property which is not normally taken away without the express authority of the Head or of the owner of the property may be regarded as gross misconduct.
- g) Deliberate falsification of documents such as time sheets, bonus sheets, subsistence and expense claims for the purpose of gain.
- h) Acceptance of bribes or other corrupt financial practices.
- i) Wilful damage of Council property or of property belonging to other staff, pupils or visitors to the school.
- j) Wilful disregard of safety rules or policies affecting the safety of pupils, other staff or visitors to the school.
- k) Any wilful act which could result in an action for negligence against the Council or the school.
- l) Refusal to comply with reasonable instructions given by staff with a supervisory responsibility.
- m) Gross neglect of duties and responsibilities.
- n) Unauthorised absence from work.
  
- o) Being untruthful and/or engaging in deception in matters of importance within the school community.
- p) Deliberate breaches of confidentiality particularly on sensitive matters.
- q) Being incapable by reason of alcohol or drugs (not prescribed for a health problem) from fulfilling duties and responsibilities of employment. The Council has produced advice that would need to be taken into account in the case of staff who may be dependent on alcohol.)
- r) Conduct which substantially brings the name of the school into disrepute or which seriously undermines confidence in the employee.
- s) Serious misuse of the School/Council computer facilities (see the Schools Use of ICT Policy).
- t) Corrupt or improper practice (i.e. when an employee improperly uses, or attempts so to use, his/her official position for his/her own private advantage or some other person (see the Anti-fraud and Corruption Policy Statement).

### **5.2 Other Misconduct**

The following are examples of behaviour which could lead to formal disciplinary warnings.

- a) Unsatisfactory timekeeping without permission.
- b) Neglect of safety rules and procedures. Some offences of wilful neglect may be regarded as gross misconduct.

- c) Breaches of confidentiality. Deliberate breaches on sensitive matters may be regarded as gross misconduct.
- d) Failure to comply with reasonable work related requirements or lack of care in fulfilling the duties of the post.
- e) Behaviour towards other employees, pupils and visitors which gives justifiable offence. Certain behaviour giving rise to offence may be regarded as gross misconduct.
- f) Acting in a manner which could reasonably be regarded as rude, impolite or contemptuous. In certain circumstances such behaviour may be regarded as gross misconduct.
- g) Conduct which it is considered adversely affects either the reputation of the school or affects confidence in the employee.

## Appendix 20D

### **A CODE OF CONDUCT FOR EMPLOYEES WHOSE WORK BRINGS THEM INTO CONTACT WITH YOUNG PEOPLE**

#### **Introduction**

This code of conduct is intended to help staff minimise the risk of being accused of improper conduct towards the young people with whom they come into contact during their work. The code also outlines what steps will be taken if an allegation is made against a member of staff by a pupil although this is dealt with in more detail in the Codes of Practice on suspension and investigation.

The code also outlines the action to be taken by employees when they suspect child abuse by a person outside or inside the school. Guidance under this code of conduct links to the provisions under the Protection of Children Act (POCA) but also to the Protection of Vulnerable Adults Act (POVA) when working with older pupils (including those with special needs). The handling of such matters is dealt with fully in the 'Child Abuse Procedures' handbook. It is important to recognise that child abuse may be physical, sexual or

psychological and that it has been increasingly detected and brought to the attention of the general public in recent years. Whilst many child abusers are known to the victim either as relatives or friends of the family, some meet children in other contexts and a small minority of these may gain access to children in schools as teachers or support staff or through their voluntary involvement in school activities.

Pupils should not feel inhibited from reporting any abuse against them by staff. This will include not only serious abuse but also any incident where a pupil has grounds to believe that a member of staff has crossed the boundary of acceptable behaviour. Headteachers/principals working with employees generally will continue to do all they can to ensure that the environment within schools encourages truthful reports of any inappropriate behaviour.

## **1 Guidelines for Employees**

### **1.1 Private meetings with pupils**

- a) Employees should be aware of the dangers which may arise from private interviews with individual pupils. It is recognised that there will be occasions when confidential interviews must take place, but, where possible, such interviews should be conducted in a room with visual access, or with the door open, or in a room or area which is likely to be frequented by other people. Meetings with pupils away from the school premises are not permitted unless the specific approval of the headteacher/principal has been obtained.
- b) Where such conditions cannot apply employees are advised to ensure that another adult knows that the interview is taking place. The use of 'engaged' signs or lights is not advisable.
- c) Where possible another pupil or another adult should be present or nearby during the interview.

### **1.2 Caring for pupils with particular problems**

- a) Employees who have to administer first aid should ensure wherever possible that other children or another adult are present if they are in any doubt as to whether necessary physical contact could be misconstrued.
- b) Wherever possible employees who have to help children with toileting difficulties should be accompanied by another adult, and pupils should wherever possible be encouraged to change themselves. It is accepted that there will be some situations where pupils will present particular problems for employees and the emphasis will be on what is reasonable in all the circumstances.

### **1.3 Reporting Incidents**

Following any incident where an employee feels that his/her actions have been, or may be, misconstrued he/she should discuss the matter with the headteacher/principal. Where it is agreed with the headteacher/principal the employee should provide a written report of the incident. It is especially important to speak with the headteacher/principal in cases where an employee had been obliged to restrain a pupil physically and where a complaint has been made by a pupil, parent or other adult.

### **1.4 Where Physical Contact may be Acceptable**

- a) There may be occasions where a distressed pupil needs comfort and reassurance which may include physical comforting such as a caring parent would give. Employees should use their discretion in such cases to ensure that what is, and what is seen to be by others present, normal and natural does not become unnecessary and unjustified contact, particularly with the same pupil over a period of time. Where an employee has a particular concern about

the need to provide this type of care and reassurance he/she should seek the advice of the headteacher/principal.

- b) Some employees are likely to come into physical contact with pupils from time to time in the course of their duties. Examples include:- showing a pupil how to use a piece of apparatus or equipment; demonstrating a move or exercise during games or PE, and contact activities at a youth club. Employees should be aware of the limits within which such contact should properly take place and of the possibility of such contact being misinterpreted.
- c) There may be occasions where it is necessary for employees to restrain a pupil physically to prevent him/her from inflicting injury to others or self-injury. In such cases only the minimum force necessary may be used and any action taken must be to restrain the pupil. Where an employee has taken action to restrain a pupil he/she should discuss the matter as advised in paragraph 1.3 above.

#### 1.5 Gratuitous physical contact with pupils

- a) Physical contact may be misconstrued by a pupil, parent or observer. Such contact can include well intentioned informal and formal gestures such as putting a hand on the shoulder or arm, which if repeated with an individual pupil could lead to serious questions being raised. Therefore as a general principle employees must not make gratuitous physical contact with their pupils and it is unwise to attribute touching to their teaching style or as a way of relating to pupils.
- b) Any form of physical punishment of pupils is unlawful as is any form of physical response to misbehaviour unless it is by way of restraint. It is particularly important that employees understand this both to protect their own position and the overall reputation of the school.

#### 1.6 Where conversations of a sensitive nature may be appropriate

- a) Many employees have a pastoral responsibility for pupils and in order to fulfil that role effectively there will be occasions where conversations will cover particularly sensitive matters. Employees must in these circumstances use their discretion to ensure that, for example, any probing for details cannot be construed as unjustified intrusion.
- b) Other employees in schools may from time to time be approached by pupils for advice. Pupils may also appear distressed and employees may feel the need to ask if all is well. In such cases employees must judge whether it is appropriate for them to offer counselling and advice or whether to refer the pupil to another employee with acknowledged pastoral responsibility for the particular pupil.

#### 1.7 Inappropriate comments and discussion with pupils

- a) As with physical contact, comments by employees to pupils either individually or in groups can be misconstrued. As a general principle therefore employees must not make unnecessary comments to and/or about pupils which could be construed to have a sexual connotation. It is also unacceptable for employees to introduce or to encourage debate amongst pupils in class, or elsewhere, which could be construed as having a sexual connotation that is unnecessary given the context of the lesson, or the circumstances. At the same time it is recognised that a topic raised by a pupil is best addressed rather than ignored.
- b) Systematic use of insensitive, disparaging or sarcastic comments is also unacceptable.

#### 1.8 Choice and use of teaching materials

When using teaching materials of a particularly sensitive nature an employee should be aware of the danger that their selection could be misinterpreted and may be criticised after the event.

### 1.9 General relationships and attitudes

Employees should ensure that their relationships with pupils are appropriate to the age and gender of the pupils, taking care that their conduct does not give rise to comment or speculation. Attitudes, demeanour and language all require care and thought, particularly when employees of either sex are dealing with adolescent boys and girls.

### 1.10 Educational visits and extra curricular activities

Employees should be particularly careful when supervising pupils in a residential setting such as a ski trip, outdoor education camp or extended visit away from home. Similarly the less formal approach adopted in extra curricular activities generally can be open to misinterpretation. Although more informal relationships in such circumstances tend to be usual, the standard of behaviour expected of employees will be no different from the behaviour expected within school.

## 2 Steps to be taken when allegations are made against an employee

- a) Employees working in schools are particularly vulnerable both to the possible consequences of their close relationships with pupils and to malicious or misplaced allegations made by pupils deliberately or innocently, arising from normal and proper association with them in school.
- b) For this reason, where a serious allegation is made, the arrangements for making a preliminary assessment of whether there is substance in the allegation, the procedure set out in the Code of Practice - Suspension of Staff, will be followed. The entire provisions of this Code and the Code of Practice - Investigations, will also be followed.
- c) Where an allegation is made which, if substantiated, would appear to indicate an offence of gross misconduct (see paragraphs 3.1 and 5.1 of the Disciplinary Rules) the employee will be suspended from duty. Suspension is intended as a neutral act taken as a precautionary measure.
- d) Where suspension takes place a contact will be nominated who is not conducting the investigation to provide information and support to the employee. The person nominated as the contact will discuss with the employee any welfare needs he/she may have and will act as a liaison point between the employee and those conducting the investigation.
- e) The Authority has procedures for managing allegations against people who work with children and vulnerable adults which will be followed.

## 3 Action to be taken by employees where child abuse is suspected

- a) Instructions on the procedures where child abuse outside the school is suspected are given in the Authority's Safeguarding policy. Information on this should be held in all Schools.
- b) In the event that an employee suspects that a pupil is being abused by a member of staff in school or elsewhere, a report should be made in strict confidence to the School's Designated Safeguarding Officer (often the headteacher). Prior to any internal investigations, the headteacher should immediately inform the Local Authority Designated Officer (LADO) who shall inform the area Social Services team and police child protection unit. Arrangements for investigating the allegation will be discussed with the headteacher. No investigation shall commence within the school prior to these arrangements being made.
- c) If the headteacher is suspected of improper conduct the employee concerned should make his/her report directly to the Local Authority Designated Officer / Strategic Director.

## 4 Conclusion

It would be impossible and inappropriate to lay down hard and fast rules to cover all the circumstances in which employees relate to pupils and where opportunities for their conduct to be misconstrued might occur. In all circumstances professional judgement will be exercised. For the vast majority of employees this code of conduct will serve only to confirm what has always been their practice. If employees have any doubts about the advice contained in this document they should consult their headteacher.

From time to time, however, it is advisable for all employees to reappraise their teaching styles, relationships with pupils and their manner and approach to individual pupils, to ensure that they give no grounds for any doubts in the minds of colleagues, pupils or parents.

Appendix 20E

## **SUSPENSION OF STAFF - CODE OF PRACTICE**

### **1. Introduction**

- 1.1 When a member of staff is suspended it is a traumatic experience for both the individual and the headteacher/principal. For this reason, despite the need to act quickly, it is essential that the facts of a case are carefully considered before a decision to suspend is made. It is also important that all communication with the employee, including the meeting to consider suspension, is conducted with care and with sensitivity.
- 1.2 This code of practice sets out advice on considering, handling and reviewing the suspension of staff.

### **2 Why suspend?**

- 2.1 Suspension is intended as a neutral act. It is taken as a precautionary measure when serious allegations, which warrant further investigation, are made against a member of staff.
- 2.2 A decision to suspend an employee:
- a) will protect the position of the Governors and the Authority if, at a subsequent hearing, the employee is summarily dismissed on grounds of gross misconduct. If an employer dismisses an employee without notice on the basis that he cannot countenance the presence of the employee at work the Employment Tribunal will normally expect the employer to have suspended the employee during the period of investigation as a precaution;
  - b) will, depending on the nature of the alleged misconduct, be a safeguard for the welfare and safety of pupils, students and staff;
  - c) will make it easier and less traumatic for the school/college and community during the investigation period;
  - d) may assist the employee by removing him/her from a potentially stressful situation.

### **3 Conduct leading to suspension**

The disciplinary rules for the school/college give examples of behaviour which cannot be countenanced. This behaviour is generally known as gross misconduct. When such an allegation is made the suspension of the employee has to be given urgent consideration.

### **4 Urgent initial assessment of whether there is substance in an allegation**

- 4.1 The headteacher/principal must inform the Strategic Director immediately there is a suspicion that an employee may have committed serious misconduct. The circumstances will be discussed and the steps set out at paragraphs 4.2 and 5 below will be given urgent consideration. In the case of an allegation of a sexual nature involving a pupil aged 17 or under the Child Protection Procedures will apply.
- 4.2 Before holding an interview with the employee, which may lead to suspension, it should be established, as a matter of urgency, whether or not there is sufficient substance in an allegation to warrant an investigation. Although it is important to act quickly, the following action should be considered first:
- a) Complaints and allegations should be obtained in writing, signed and dated. In the cases of allegations by young children and those with special educational needs, it is acknowledged

that a written account will not be possible. In such cases the headteacher should make an account in writing of his/her discussion with the pupil/student/parent. This account should cover all relevant points raised by the pupil/student/parent/ and should be signed and dated by the headteacher.

- b) Once, or at the time, a complaint or allegation is made in writing, a meeting should be held with the person making the complaint or allegation. The basis and substance of the complaint or allegation should be explored at the meeting.
  - c) In appropriate cases, information should be obtained from senior staff at the school/college. There may also be occasions when wider enquiries of staff would be appropriate. All discussions with staff must be on an entirely confidential basis.
  - d) A view should then be reached on whether or not it seems likely that a full investigation should take place. The headteacher will explain the possible consequences of the allegation for the employee involved, and for the person making the complaint, if the allegations are exaggerated or frivolous. The headteacher will judge, in the case of pupils/students, whether or not to describe possible consequences.
- 4.3 It is important to recognise that establishing whether an allegation warrants further investigation is not the same as forming a view on whether or not an allegation is to be believed. Only subsequent investigation of all the facts and a properly convened hearing can enable conclusions to be reached fairly.

## **5 Urgent discussions prior to any interview to consider whether suspension is appropriate**

- 5.1 The HR team will give urgent assistance to the headteacher in deciding whether the employee should be seen to consider whether suspension is appropriate. At this stage it will be decided whether the Police, the Council Treasurer and/or the Social Services area team should be informed, and who will undertake appropriate action under paragraphs 5.2, 5.3 and 5.4 below.
- 5.2 In some cases the Police and/or the Council's Finance Officer might wish to interview the employee before any approach is made by the headteacher. The Police and the Council's Finance Officer must be given every assistance in order that they can complete their own enquiries.
- 5.3 In some cases the Police may act independently of the school. This would most likely be the case where the alleged offence was not directly connected with the employee's work. Where it is known that the Police are undertaking an investigation, the appropriate police officer should be asked for information about the nature of the alleged offence and the possible charge that would result.
- 5.4 The Secretary or Regional Official of the employee's trade union will be advised about the general circumstances causing concern if it is decided to hold an interview with the individual which may lead to suspension. It will be important to follow the advice set out at paragraph 7.2 below.

## **6 Action when it is decided not to conduct an interview to consider suspension**

- 6.1 Where it is decided that no action to consider suspension should be taken (because the concern/allegation is clearly without foundation), the headteacher should see the employee. He/she may be accompanied by his/her trade union representative or a colleague employed at the school. The circumstances which led to the suspension being considered should be explained. The headteacher should explain to the employee any follow-up action he proposes to take and offer appropriate assistance or advice to the employee. The headteacher should seek to establish what, if any, support the employee might require. Where it is considered appropriate and acceptable to the employee, the Strategic Director should be approached for assistance. Circumstances and cases will vary. Welfare and/or health counselling may be helpful. Some basic legal advice may be of assistance if the employee has been the victim of a frivolous, exaggerated or malicious allegation.

- 6.2 In some cases the headteacher may be concerned about some aspects of the employee's behaviour in respect of the allegation, but does not believe that this amounts to gross misconduct. In such cases a full investigation should be undertaken (see the separate Code of Practice on undertaking a disciplinary investigation) before any decision is made about the appropriate response.

## **7 Action when it is decided to conduct an interview which might lead to suspension**

### **7.1 Timing of suspension interview**

If there is concern about the possible welfare or safety of pupils, students or staff the suspension interview should be held immediately the arrangements outlined in paragraph 7.2 below have been made. Normally, the interview to consider whether suspension is necessary should be timed to coincide with a natural break in the employee's working day.

### **7.2 Who is involved?**

In most cases the headteacher will conduct any interview which may lead to suspension, and he/she will normally be **accompanied by a representative of the senior leadership team and / or personnel**. The Articles of Government do, however, provide not only the headteacher with powers of suspension, but also the Governing Body. The Authority as employer also has power to suspend.

### **7.3 Arranging the interview**

Although it is important to act quickly when arranging an interview with an employee which may lead to suspension the following steps should be taken:-

- a) Where the employee is an accredited trade union representative or safety representative the interview should not be arranged without the circumstances of the case first being discussed with the secretary or full time official of the employee's trade union. Although normal standards of conduct are required of such representatives this discussion is necessary so that at the outset the action being taken is not misinterpreted as an attack on the functions of a trade union.
- b) Where the employee is a member of a recognised trade union every effort should be made to contact the secretary or full-time official of that union to establish what arrangements, if any, can be made, as a matter of urgency, for the employee to be represented at the suspension interview. Where it is not possible to contact the secretary or regional official, efforts should be made to contact a local trade union representative.
- c) Where the employee is not a member of a recognised trade union every effort should be made to identify a person on the staff of the school/college who would be readily available and prepared to accompany the employee to the suspension interview and/or offer support after the meeting.
- d) Where an employee is to be accompanied at the interview he/she should be informed, when the representative arrives, that a serious allegation is to be put to him/her and that a representative or friend is available to accompany him/her. The employee should then be offered the opportunity of a brief meeting with their representative or friend before the interview.
- e) If it is not possible to make arrangements, as a matter of urgency, for the employee to be represented the suspension interview should still be held. The interview is not a hearing and in conducting it in accordance with this paragraph, the individual will be aware of his/her basic rights.

### **7.4 The interview**

- a) At the interview to consider suspension headteacher/principal should explain to the employee that the meeting is not a formal disciplinary hearing but that it is necessary to put to him/her a serious disciplinary matter which may lead to suspension. The essential facts should then be put to the employee and the employee asked for any response which he/she wishes to make. It would be appropriate to agree a brief adjournment before the employee responds if it is requested.

- b) If it is clear from the responses from the individual that the allegation against the employee is without foundation, no further action should be taken although the arrangements set out in paragraph 6.1 above may be appropriate.
- c) If as a result of the interview, the headteacher/principal considers that the allegation should be pursued, the employee should be told that he/she is suspended from duty. It should be emphasised that the suspension is intended as a neutral act pending further investigation and that a conclusion as to the need for further formal action, including a hearing, will be reached as soon as possible. A letter should be sent to the employee within 24 hours confirming the suspension.

## **8 Terms of suspension**

- 8.1 The employee should be required to return any keys to the school immediately and asked to remove any personal possessions he/she is likely to require before leaving the premises. The employee should be accompanied by the headteacher (or a person nominated by him/her) when personal belongings are being collected. An arrangement may be made with the headteacher at a later date to return to school with a view to collecting any further personal belongings he/she requires. The employee should again be accompanied whilst on school premises by the headteacher (or a person nominated by him/her).
- 8.2 The employee should be told not to re-enter school premises at any time without prior permission of the headteacher.
- 8.3 Where the employee is a Governor of the school the question of his/her attendance at Governors meetings during the period of suspension should be discussed with the Strategic Director. In normal circumstances a Governor cannot be precluded from attending Governors meetings.

## **9 Who should be told about a decision to suspend**

- 9.1 The Strategic Director and the Chair of Governors must be informed formally in writing when an employee has been suspended pending investigation. A brief confidential report stating that the suspension has taken place pending an investigation, with no further details, should also be made to the next meeting of the Governing Body.
- 9.2 The person who has made the complaint or allegation should be informed. Where an allegation has been made by a pupil/student under the age of 18 years his/her parents should also be informed. If the pupil/student asks that his/her parents should not be informed, the headteacher/principal will have to judge what is most appropriate. Much will depend on the age of the pupil/student, the seriousness of the allegation and whether the investigation to be undertaken is entirely internal to the school/college.
- 9.3 Senior staff within the school/college should be informed on a need to know basis.
- 9.4 A decision on informing working colleagues and parents generally should be made taking into account the wishes of the employee. It would not normally be appropriate to inform parents but there might be circumstances where this is felt to be necessary.
- 9.5 All those informed should be asked to treat the matter as confidential. The headteacher/principal shall have the right of reply if the employee makes details public. Where such a matter is in the public domain but not as a result of the actions of either party, it may be appropriate for an agreed joint response/statement to be released. Where such an agreed response/statement is not agreed, the parties shall ensure that the details remain confidential.

## **10 Support for the employee during the period of suspension**

- 10.1 In the letter of suspension the employee should be given the name of a member of staff at the school or member of the personnel team as a contact point. This contact should not be conducting the investigation. The primary role of the contact point is to provide information about progress in

the investigation. If the investigation is likely to be lengthy arrangements should also be made for the employee to be contacted on a regular basis, at least fortnightly and preferably each week. These arrangements do not preclude the employee from contacting those conducting the investigation at any time.

- 10.2 In some cases it may be appropriate to ask the employee whether welfare counselling sessions or the support of the Medical Adviser to the Council would be helpful.

## **11 Conducting the investigation**

Please refer to the Code of Practice - Undertaking a Disciplinary Investigation.

## **12 Outcome of the investigation**

- 12.1 Once the investigation has been completed action must be taken about the next step. A further interview with the employee must be arranged to inform him/her of the conclusion reached.
- 12.2 The decision could be to present a case to the Governors to consider whether or not the employee should be dismissed. In that case the employee must remain on suspension until a hearing by the Governors has taken place. Any hearing must be arranged in accordance with the disciplinary procedure.
- 12.3 In some cases it may be decided that, although the alleged offence does not warrant a dismissal hearing, a formal hearing which might result in a disciplinary warning is to be arranged. In such cases the hearing should normally take place before the employee returns to work. This avoids a period of uncertainty and speculation in the days after a return to work leading up to the disciplinary hearing. The appropriate procedure should be followed but it is envisaged that both parties would seek an early date for the hearing, if necessary by mutually agreeing a modification to the stated time limits.
- 12.4 The decision could be not to proceed with any form of formal disciplinary or dismissal hearing. In that case the suspension should be lifted immediately. **Only the Governing body has the power to lift the suspension and the Chair of Governors will need to write to the employee to confirm this.** The headteacher/principal should see the employee and explain the outcome of the investigation and discuss the employee's return to work. The employee should also be given the same opportunities as set out in paragraph 6.1 above. In addition, if it is the employee's wish, consideration should be given to the possibility of securing a redeployment to another school/college.
- 12.5 Except where an employee is dismissed, the headteacher/principal should provide the opportunity for an informal counselling session. This could provide guidance as to future conduct. It could also be used to give appropriate support and reassurance and to rebuild where necessary the employee's confidence.

## **13 Records**

- 13.1 All documents collected during the course of an investigation should be retained together with a written note of the outcome of the investigation. These documents will be retained on the employee's personal file held at the school
- 13.2 When a pupil/student has made an allegation a copy of the statement by the pupil/student, or where appropriate, the written account of the allegation prepared by the headteacher/principal should be kept on the confidential section of the pupil's/student's personal file held at the school. A note should accompany this document explaining the outcome of the investigation.

## **UNDERTAKING A DISCIPLINARY INVESTIGATION – CODE OF PRACTICE**

### **1 Introduction**

- 1.1 Where, there is alleged misconduct on the part of an employee at a school it is important that the issues are investigated thoroughly. This will assist the headteacher, Governors and the Authority in ensuring that any misconduct is dealt with appropriately. It also provides a safeguard for staff by ensuring that no disciplinary action is contemplated before allegations have been carefully explored.
- 1.2 The principles set out in this code apply to all investigations whether they involve allegations which could lead to dismissal or those where disciplinary warnings or counselling are likely to be the outcome.
- 1.3 There is a separate Code of Practice concerned with the Suspension of Staff and in all cases where serious allegations are made the guidance given in that code should be followed before any investigation commences.

### **2 General**

- 2.1 Headteachers are recommended to seek advice from **HR team** before beginning an investigation, particularly when the allegation or suspicion is of a sexual nature. This first approach will clarify basic issues and enable the headteacher to share any concerns he/she may have.
- 2.2 Once an allegation is received it is important to undertake an investigation speedily so that facts are fresh in the minds of any witnesses.
- 2.3 It is important to acknowledge the special position of union representatives and safety representatives. The disciplinary procedure makes it clear that any problem involving such staff should first be discussed with a senior trade union representative or full-time official. Such an approach should be made at an early date, normally before an investigation commences.

### **3 Who should undertake an investigation**

A number of factors will determine who should undertake an investigation. The first point to establish is the nature and seriousness of the alleged offence. This will determine which of the following arrangements are appropriate:

- a) In cases of allegations of a sexual nature involving pupils/students the investigation will be undertaken in accordance with the Safeguarding Procedures. This will involve a joint approach by the Police, Social Services and a representative of the Strategic Director. In a particularly sensitive case involving a young person, a witness statement will be obtained at a video recorded interview conducted in accordance with the Council's Code of Conduct governing such interview.
- b) In the case of alleged financial misconduct the audit team as well as the Strategic Director must be informed. The audit team will liaise with the school/college in deciding how to proceed. This could involve notification to the Police who might then undertake a criminal investigation. Alternatively an investigation conducted by the Chief Finance Officer's audit team might be appropriate.
- c) In all other cases an investigation could be conducted by the headteacher or other Senior Officer within the school. This may be supported by a representative of the Strategic

Director. Alternatively it might be agreed that a representative of the Strategic Director should lead an investigation.

#### **4 Initial assessment of whether there is substance in an allegation**

Before proceeding it should be established whether or not there is sufficient substance in an allegation to warrant an investigation. In order to reach a decision the following action should normally be taken.

- a) Complaints and allegations should be obtained in writing, signed and dated. In the case of allegations by young children and those with special educational needs, it is acknowledged that a written account will not be possible. In such cases the headteacher should make an account in writing of his/her discussion with the pupil/student/parent. This account should cover all relevant points raised by the pupil/student/parent and should be signed and dated by the Head.
- b) Once, or at the time, a complaint or allegation is made in writing, a meeting should be held with the person making the complaint or allegation. The basis and substance of the complaint or allegation should be explored at the meeting.
- c) In appropriate cases information should be obtained from senior staff at the school. There may also be occasions when wider enquiries of staff would be appropriate. In all cases discussions with staff must be on an entirely confidential basis.
- d) A view then be reached on whether or not a full investigation should take place. The headteacher/principal will explain the possible consequences of the allegation for the employee involved, and for the person making the complaint if the allegations are exaggerated or frivolous. The headteacher will need to judge, in the case of pupils/students, whether or not to describe possible consequences.

#### **5 Suspension**

The Code of Practice on the suspension of staff makes it clear that, in the case of alleged gross misconduct, the employee should be suspended from duty before the investigation begins. Please refer to this separate Code of Practice before taking any further action in such cases.

#### **6 Notifying the employee at the outset**

- 6.1 The Disciplinary Procedure specifies that where it is believed that there is sufficient substance in an allegation to warrant an investigation, and it is not one warranting urgent consideration of suspension, the employee must be informed within ten days. A meeting should be arranged for this purpose. The opportunity to be accompanied by a trade union representative or colleague employed at the school should be stated. This meeting will normally take place immediately after it has been decided to pursue an allegation or complaint following the procedure outlined in paragraph 4 above.
- 6.2 It should be made clear to the employee at the meeting that it is not a formal disciplinary hearing but an opportunity for him/her to respond to the allegation and to assist in establishing the facts.
- 6.3 The substance of the allegation should be put to the employee, and the employee should be given the opportunity of giving his/her version of the incident or problem. The allegation and written evidence will not be supplied in writing at this stage, but will be released in accordance with the disciplinary procedure in advance of any formal hearing.
- 6.4 Every avenue should be explored with the employee but the employee has the right either not to respond or only to respond in a limited way.

- 6.5 In some cases a complaint will not be a complicated matter. It may, for example, be a concern about the employee's timekeeping and further investigation may not be necessary. In such cases the meeting with the employee at this stage could represent the only form of investigation prior to a decision on whether or not to convene a formal hearing.

## **7 Some general principles on investigation**

- 7.1 The purpose of an investigation is to collect facts whilst they are fresh in people's minds. It is important that the emphasis is on establishing the facts. An investigation should not begin with any preconceived view about the validity or otherwise of the allegation.
- 7.2 Any witnesses who are likely to be in a position to give direct evidence about the alleged offence should be interviewed. The witnesses should be informed that they could be required to give evidence at a disciplinary hearing. They should be asked to discuss what it is they have witnessed, and those conducting the investigation should ensure that all matters are explored fully.
- 7.3 Immediately after the witnesses have been seen they should be asked to write their statements ensuring that these cover all the relevant points. It is acceptable for witness statements to be typed for clarity, but they should be signed and dated by the witness.
- 7.4 In some cases the headteacher will consider it necessary to obtain the permission of parents before obtaining a statement from a pupil/student. Much will depend on the age of the pupil/student, the seriousness of the allegation and whether the investigation is entirely internal to the school.
- 7.5 In order to ensure that full information is obtained care should be taken in deciding who to approach to provide statements. In reaching a decision the following factors should be considered:-
- a) Who is most likely to be in a position to give direct evidence?
  - b) If a number of pupils/students in a class are likely to have witnessed an incident the headteacher/principal should decide which pupils/students to approach. It is important to get a balanced view. It is particularly important to obtain information from those who are more likely to have been in a position to see and hear what is alleged.
  - c) The employee against whom the allegation has been made should be given the opportunity to identify any individual(s) who he/she believes is most likely to be able to give a first hand account. The same opportunity should be given to the person who has made the allegation.

## **8 Interview with employee at the conclusion of the investigation**

- 8.1 In cases where evidence is collected which was not available to be put to the employee at the outset a further meeting should be arranged. At this meeting it should be made clear to the employee that the meeting is not a formal disciplinary hearing but an opportunity for the employee to respond to the allegation and assist in establishing the facts. The employee should be given reasonable notice of the meeting and should be informed that he/she may be accompanied by a trade union representative or colleague employed at the school.
- 8.2 The full allegation and the evidence should be described to the employee. The allegation and written evidence will not be supplied in writing at this stage, but will be released, in accordance with the disciplinary procedure, in advance of any formal hearing.
- 8.3 The employee has the right either not to respond or to respond only in a limited way.
- 8.4 Where the discussion with the employee results in further information being obtained which needs to be explored, arrangements should be made for the investigation to continue. It may be necessary to reconvene the meeting with the employee after further information has been obtained.

## **9 Health related problems including possible alcohol dependency**

- 9.1 Where the investigation suggests that there might be a health problem which is material to the alleged misconduct (this would include alcohol dependency) it is important to obtain a report from the Council's Occupational Health Advisor. In such cases the employee should be informed and asked to give written consent for the Medical Adviser to consult his/her medical practitioner(s). (NB the Council has produced advice for managers on dealing with staff who may be dependent on alcohol. This should be followed when such problems are identified.)
- 9.2 Arrangements should be made for the employee to see Occupational Health Advisor who should be informed about the reason for the appointment, provided with full background information and asked for advice especially on any particularly important features of the circumstances
- 9.3 Once the Occupational Health Adviser's report is available a decision on whether it is appropriate to proceed with disciplinary action or take other steps can be made. The Personnel Team will provide advice.

## **10 Outcome of investigation**

- 10.1 Once the investigation has been completed a decision must be taken about the next step.
- 10.2 In some cases it may be decided not to take any formal action. A counselling session might be appropriate. This could provide guidance as to future conduct. It may be used to give appropriate support and reassurance and to rebuild where necessary the employee's confidence.
- 10.3 In some cases it may be decided that the alleged offence should be dealt with at a hearing which could lead to the issuing of a disciplinary warning.
- 10.4 It may be decided to present a case to the Governors to ask them to consider whether or not the employee should be dismissed. This would be appropriate where gross misconduct is alleged or where further misconduct is alleged where an employee has previously received a final warning which has not been disregarded for disciplinary purposes.

## **11 Records**

- 11.1 All documents collected during the course of an investigation should be retained together with a written note of the outcome of the investigation. The documents will be retained on the employee's personal file held at the school. No reference shall be made to any such records covered by this paragraph unless the employee expressly requests that they should.
- 11.2 In those cases where a formal hearing is convened, details of the allegation(s) and supporting material will be sent to the employee in advance of the hearing in accordance with the disciplinary procedure.  
The record of the disciplinary hearing will be retained in accordance with the disciplinary procedure.
- 11.3 Where a formal hearing is not convened but a counselling session is undertaken a summary of the session should be made in the form of a letter to the employee. This letter should provide for the employee to respond if he/she wishes. The letter and any response will be held on the employee's personal file held at the school.
- 11.4 When a pupil/student has made an allegation a copy of the statement by the pupil/student, or where appropriate, the written account of the allegation prepared by the Head/Principal should be kept on the confidential section of the pupil's/student's personal file held at the school. A note should accompany this document explaining the outcome of the investigation and any hearing that is convened.

## Appendix 20 G

### **CONDUCT COUNSELLING – CODE OF PRACTICE**

#### **1 Introduction**

- 1.1 This code of practice is designed to assist headteachers to provide help and support where there is concern about an employee's conduct or the way in which an employee undertakes his/her duties which is more a matter of conduct than competence and is one of the options to be considered following an investigation. The principles set out in this code of practice will also apply where appropriate to headteachers.
- 1.2 Day to day management supervision will normally be the most appropriate way of supporting employees facing these difficulties. Where, however, such supervision fails to achieve an acceptable improvement it may be decided to counsel the employee more formally. Counselling is recognised by the Advisory, Conciliation and Arbitration Service (ACAS) as being appropriate in certain disciplinary cases and it is accepted that it may often be more satisfactory than a formal disciplinary hearing.
- 1.3 It will be for the headteacher to judge, given all the circumstances, whether or not to seek to resolve difficulties through counselling. Where counselling is judged to be the most appropriate way of addressing any problem, the first step will be for the headteacher/principal to discuss the matter with the employee concerned and to establish who would be the most appropriate person to undertake the counselling session(s). The wishes of the employee will be taken carefully into account in reaching such a decision but it will be for the headteacher/principal to make the final

decision. In cases where it is judged that a headteacher/principal should be the subject of counselling, it will be for the chair of governors to decide who should undertake such counselling.

## **2 Purpose of counselling**

2.1 The purpose of counselling should be to ensure that the member of staff concerned understands that their conduct, whether intentional or otherwise, has or is likely to cause a problem, or is in breach of reasonable standards of behaviour. Counselling should not be seen as punitive; the employee should be counselled with the objective of effecting an improvement or resolution at an early stage, thus avoiding the need to take action through the formal disciplinary procedure.

It is important that conduct counselling sessions should be:-

- informal
- frank
- two-way
- confidential
- positive
- constructive
- supportive

## **3 Principles to be observed**

3.1 At least three working days should be given to the employee in writing (unless mutually agreed otherwise) of the date, time, venue for the counselling session. The written notification should indicate the reason for the counselling session(s). A copy of this code of practice, and a copy of any statements to be considered at the counselling session, should also be made available to the employee three working days in advance of the session.

3.2 Sessions should be conducted in private with no interruptions. Confidentiality should be observed by both parties. Normally, no single counselling session should last longer than one hour and it should take place in working or directed time.

3.3 Normally, counselling sessions will be undertaken on a one to one basis. The counsellor may, however, seek the support of a colleague chosen from within or outside the school. The employee may involve his/her union representative or colleague employed at the school/college.

3.4 Witness statements and other appropriate documentation may be used if the counsellor judges that this would be helpful.

3.5 Although it is important to be as clear as possible about what went wrong and why, the emphasis should be on reaching an agreement about future conduct and not the events that led to the decision to undertake counselling.

3.6 The counsellor should listen carefully to the employee and make every effort to discover underlying factors which may have contributed to the initial problem. Counselling itself should be a two-way discussion aimed at pointing out any shortcomings and encouraging improvement. Criticism should be constructive and the emphasis on ways in which the employee can remedy shortcomings.

3.7 In listening to any explanation put forward by the employee, the counsellor may decide that there is no basis for the concern. This should be made clear to the employee in writing.

3.8 Where an improvement is required, this should be stated clearly in writing, and the counsellor should ensure that the employee understands what needs to be done, how the conduct will be reviewed, and over what period. The written statement by the counsellor should make it clear that if there is no improvement or if there are further disciplinary concerns, the next stage could be the formal disciplinary procedure.

3.9 A note should be made of any counselling session and kept on the personal file of the employee concerned. The employee should be provided with a copy at the time and given the opportunity to respond in writing - any such written response will be retained on the personal file with the other

documentation. The status of such notes and the time limits which apply to them are set out in the school's formal disciplinary procedure.

**4 After the counselling session(s)**

- 4.1 Arrange a time for a review of progress if required.
- 4.2 Inform the employee of the possible involvement of other members of staff in further discussions/action plans.

Appendices 20A-20G (inclusive) agreed by Management and Trade Unions – 23 November 2001

Slight revisions made – 14 March 2008