



Sickness Absence Policy and Absence Capability Procedure

This school is committed to safeguarding and promoting the welfare of children and young people and expects all staff and volunteers to share this commitment

Governor's Committee Responsibility:

Personnel

Date Approved:

Spring 2023

Review Period:

Annually

Next Review Date:

Spring Term 2024

The Limpsfield Grange Values:

At Limpsfield Grange we believe in working together to make a difference.

We are a tolerant community; we accept value and understand others.

We care for all members of our community without judgement.

We are responsible for our own learning, behaviour and actions.

We accept that sometimes things go wrong. We work together to take responsibility for our mistakes and for putting things right.

We are a respectful community and we treat others as we would like to be treated, even if they have different views and opinions to our own.

We understand that good behaviour helps us to prepare for life beyond Limpsfield Grange.

We are positive and resilient. We celebrate difference in everything that we do.

We are all proud to be part of the Limpsfield Grange community.

July 2022

Limpsfield Grange School

Sickness Absence Policy and Absence Capability Procedure

Background and rationale

The Sickness Absence Policy and Absence Capability Procedure is designed to provide a clear process to maximise attendance at work, in order to ensure effective service delivery, and minimise any work-related causes of sickness absence. It further aims to ensure all employees are treated reasonably, fairly, consistently and sensitively, and supports the school's intention to ensure an effective, efficient, healthy and safe workforce.

Aims of the policy

The aim of this policy is to minimise absence levels whilst also providing reasonable support to those absent to assist their return to work at the earliest opportunity.

The policy and procedure are designed to enable:

- Appropriate support and medical assistance to be offered to employees through Occupational Health and Employee Assistance Programmes (where available) to enable employees to return to work as soon as practical.
- Reasons for absence to be fully explored to try and help prevent any recurrence wherever possible.
- Organisational and work-related causes of sickness absence to be identified and resolved wherever possible.
- Accurate recording and objective review of levels of sickness absence.

Sickness absence issues that are not resolved through the informal absence management procedure set out in this policy should be progressed using the formal stages of the Performance Capability procedure.

Scope

This policy applies to all staff at the school, except those who are within their probationary period of employment.

Special Considerations

While managing sickness absence, managers are required to pay particular attention when dealing with sickness falling under the following categories and ensure that staff whose sickness falls under these categories are not negatively impacted by the implementation of this policy.

Disability related absence

The Equality Act 2010 provides for legal protection against discrimination of disabled people. The Act places responsibilities on employers when either recruiting or employing disabled people.

In relation to sickness absence management, where the effects of an employee's disability results in a need to be absent from work due to illness or where an employee requires leave which is directly associated with their disability, this will need to be accommodated within the terms of the Act. Any such absence needs to be clearly recorded. This will prevent

management judging the individual's attendance record in exactly the same way as other employees and will avoid unnecessary 'triggering' of formal action under the Absence Capability Procedure. This does not preclude management intervention or action related to the absence but a failure to acknowledge these needs could amount to a failure to make a 'reasonable adjustment'

Managers should note that an employee's menopause or perimenopause could potentially be regarded as a disability by an employment tribunal. Therefore, they should record an employee's absence because of the menopause or perimenopause separately from other sickness absence as a reasonable adjustment.

Maternity related sickness absence

Managers need to ensure that employees are not discriminated against as a result of maternity related sickness. The Pregnant Workers Directive provides that maternity related sickness 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. The Maternity and Parental Leave Regulations also give protection from detriment or dismissal in connection with pregnancy. Dismissal for pregnancy related absence/illness is automatically unfair.

Confidentiality

The reasons for sickness absence may sometimes be very personal or private. This may make it difficult to explain the sickness absence to an immediate Line Manager/supervisor. If this is the case the employee may wish to talk to a member of the Leadership Team or with HR.

Managers must ensure that information relating to an employee's health is only disclosed to those who have a direct and essential involvement in dealing with the case, emphasising the need for confidentiality. In exceptional instances where confidentiality will need to be breached due to safety and procedural reasons, the employee will be informed.

Responsibilities

Employees are responsible for

- taking appropriate steps to look after their own health and wellbeing;
- letting their manager know when they fall sick and need to take time off work;
- keeping in touch with their manager whilst absent;
- taking appropriate steps to aid their own recovery;
- co-operating with their manager to support their return to work and recording their reason for absence on their return to work;
- attending an Occupational Health appointment or being available for an Occupational Health telephone consultation when requested to do so.

Employers are responsible for:

- keeping in touch with absent employees;
- ensuring cover whilst they are absent;
- obtaining information needed to inform the support to be provided on their return to work; (e.g. OH reports, advice from HR);

- supporting employees through their return to work acting on advice provided;
- reassessing an employee's work so that any changes needed are made; (risk assessment and reasonable adjustments);
- holding return to work interviews after each absence (RTW interviews);
- reviewing sickness absence of their teams regularly (sickness absence review) following, where needed, the formal absence capability procedure.

Procedure

Reporting a sickness related absence

If an employee is unable to attend work they are required to inform their Line Manager by telephone as soon as possible, to minimise disruption to service delivery and to ensure their work can be covered. For more information about reporting a sickness absence please see the Lingsfield Grange School staff handbook.

If an employee becomes sick during the working day and needs to stop or leave work before their normal finishing time they must notify their Line Manager. Absences of longer than an employee's normal working day must be recorded.

In the event of an accident at work it is important to ensure that the Accident Reporting Procedure is followed. Sickness entitlement for industrial injuries may be treated separately and advice should be taken from the school's HR consultant regarding these cases.

Keeping in touch

Employees will need to inform their Janine Chippington (Education Team) or their Line Manager (Residential Team and Support Team) of the nature of their sickness, the approximate number of days they expect to be absent and any work commitments, which will need to be covered during their absence.

Medical Certificates

If an employee is sick for eight consecutive calendar days, they must obtain a medical certificate (a Med 3 form), now known as a Statement of Fitness for Work or 'fit note', from their doctor or from the hospital if they are an inpatient (a Med 10 form), and forward it to the School Business Manager immediately. The fit note will advise that the employee is either "unfit for work" or "may be fit for work". A doctor will give a "may be fit for work" statement if they think that their patient's health condition may allow them to work if they get suitable support from their employer.

An employee will need to continue submitting doctor's medical certificates as frequently as necessary and on time. A failure to either obtain, or submit, medical certificates regularly and on time which cover all days of sickness may result in the employee's absence being treated as unauthorised, resulting in loss of pay and/or disciplinary action.

Where a manager has specific concerns, an employee who has taken frequent self-certificated absence may be required to submit medical certificates on the first day of the absence from then on. In any case, where short-term absence reaches more than 15 working days within any twelve month period, the employee will need to provide a medical certificate for the first

day of any subsequent absence. If a certificate is not provided the employee will not be paid occupational sick pay for the period of sickness over the respective period. The school will repay to the employee the cost of the medical certificate upon receiving a receipt.

Return to Work Discussion

The Line Manager or Headteacher will hold a Return to Work Discussion in private with the employee as soon as practical. The Return to Work Discussion should be recorded on a return to work form and signed by both the employee and manager.

The discussion should enable the Line Manager to:

- Welcome the individual back to work and let them know they are a valued and appreciated member of staff
- Update the employee on key developments during their absence
- Review risk assessments and make any changes that are needed
- Offer appropriate support, where needed, to facilitate the employee's smooth return to work
- Confirm details of the employee's sickness absence, any underlying causes for their absence, e.g. whether it is related to pregnancy or disability.
- Confirm that they are fit to work.

Dealing with short term absence

Frequently short term absence is usually unpredictable and normally attributable to minor ailments that may be unrelated.

Trigger Points:

A manager has a responsibility to monitor and also to take immediate action in the following circumstances:

- Where an employee reaches 10 working days absence within any twelve month period; or
- Where there are concerns about an employee's absences, absence levels or absence patterns.

Informal Stage - Sickness Absence Discussion

The Headteacher will hold a separate meeting with an employee as soon as they become concerned about their level and/or pattern of sickness absence. The purpose of the meeting is to examine the reasons, pattern and nature of the absence with a view to finding whether there is an underlying medical condition or other issues contributing to the level of absence and to support the employee to work.

Headteachers are encouraged to be considerate when dealing with absences related to sensitive personal issues. The meeting should be held in private and, depending on the particular circumstances of the case, it may include a discussion on:

- The levels and pattern of attendance.
- The underlying causes of the absence. If the underlying cause relates to stress or depression the manager should in all cases make a referral to Occupational Health. If it concerns a disability, advice should be sought from the school's HR consultant.

- The likelihood of a recurrence of the illness, if known.
- What absence monitoring, in the form of return to work discussions, has taken place previously.
- Whether any Occupational Health or other medical advice has been sought.
- Suggestions from the employee on managing and improving the situation.
- Whether management action or other support is needed e.g. referral to Occupational Health, Employee Assistance (if available), training or development opportunities, workplace equipment, flexible working arrangements, or other reasonable adjustments if the employee has a disability.
- Whether an individual wellbeing assessment is appropriate.
- Agreement on what needs to be put in place.
- The timescale for review - normally no more than 12 weeks.
- Monitoring arrangements.
- The likely action that may follow if the level or pattern of absence continues to give cause for concern.
- That the employee may need to consult their GP and obtain a medical certificate if their absence reaches 15 working days in a 12 month period.
- The Headteacher should keep written notes of the discussion for future reference and forward a copy to the employee.

If monitoring during the review period shows that the employee's attendance is no longer a cause for concern, the employee should be notified.

If monitoring during the review period shows that the employee's level and/or pattern of sickness absence continues, an Occupational Health report should be obtained if one has not already been received. The employee must be informed of the reasons, benefits and possible outcomes of an Occupational Health referral and be given a copy of the referral form.

If there are still concerns over the level or pattern of sickness absence following receipt of an Occupational Health report, the Headteacher should seek and act on guidance from the school's HR consultant. Where appropriate the Headteacher should advise the employee that the formal stages of the Absence Capability procedure will be followed. The first stage of this process is that a formal meeting will be arranged with the employee by the Headteacher.

Where an employee has been unable to improve their level of attendance, or where arrangements to manage the level and/or pattern of attendance have proved unsuccessful, the employee will be reviewed through the remaining formal stages of the Absence Capability procedure. If after all formal stages have been exhausted, the manager believes the required performance improvement to be unattainable by the employee in their current post, and there is no suitable alternative work to offer the employee or the employee has declined an offer of suitable alternative work, consideration will be given as to whether dismissal is the appropriate option. Where an employee is dismissed, they will have the right to appeal.

Dealing with long term absence

The key principle is to ensure that a balance is achieved between the needs of the employee and the requirements of the school. Long-term absence is generally defined as a continuous period of absence lasting 20 working days and more (pro rata for part time employees).

Where an employee is absent through long-term sickness, there is a shared responsibility for the employee and the Line Manager to keep in regular contact with one another. The manager should determine the most appropriate way to stay in contact with the employee given the anticipated length of sickness and the individual circumstances of the case e.g. by letter, by telephone or through home visits. Home visits should only be undertaken with the employee's prior consent. On each occasion the manager and employee should agree the date and form of their next contact. The Line Manager is advised to keep a record of all contacts made with the employee. Advice on how to maintain contact with the employee can be obtained from the school's HR consultant and/or Occupational Health; and in cases where an employee is off work with stress related illness, this guidance should always be sought.

The employee is required to keep their Line Manager informed of their ongoing medical condition. This will help inform discussions about reasonable adjustments that might enable the employee to return to work as soon as possible. The employee will also inform the manager of when they anticipate returning to work.

Advice from Occupational Health

Referrals to Occupational Health

The purpose of a referral to Occupational Health is to obtain professional advice about the employee's fitness to perform their current job. It also enables the organisation to seek guidance as to any reasonable adjustments that can be made to support an employee in the work place or other appropriate advice to reduce the possibility of further sickness.

The Line Manager will take into account the individual circumstances of an employee's sickness absence and after consultation with HR will normally refer employees to Occupational Health:

- As soon as they become aware that an employee is absent from work because of stress and/or depression
- Where an employee has been or is expected to be absent for a period of 20 days
- Where there is a period or nature of absence which the manager identifies as a cause for concern
- Following an accident at work that has either caused, or appears likely to cause, a significant absence from work or results in an individual being unable to undertake their normal duties
- Where there are concerns about an employee's health in relation to their ability to perform their duties safely and effectively.
- Where a manager receives a "may be fit for work" Statement from a GP and they need Occupational Health guidance to help them decide how to proceed, or the Statement recommends an Occupational Health assessment.

In addition Occupational Health should be informed where it is known that an employee has a notifiable infectious disease. A list of notifiable diseases under RIDDOR (Reporting of Injuries, Diseases and Dangerous Occurrence Regulations) is given in Section G3 of the Health and Safety Manual.

The Headteacher will ask the School Business Manager to make a referral to Occupational Health on the OH Referral Form. Occupational Health will contact the individual for their consent to obtain medical reports from a doctor/consultant, where necessary.

The Headteacher should inform an employee of the reasons, benefits and range of possible outcomes of a referral to Occupational Health. Where appropriate, the employee must also be informed that in the event of a medical report advising that they are permanently unfit to undertake their duties, or are unlikely to be able to improve their level of attendance at work within a reasonable period of time, the school may have to end their employment. The School Business Manager should ensure that a copy of the referral form is shared with the employee. The School Business Manager should also ensure that a copy of the referral form is sent to the relevant HR contact identified on the form and that they are copied in on all correspondence to Occupational Health and the employee.

The Headteacher is entitled to request that an employee attends a medical assessment with Occupational Health and employees are contractually obliged to do this. However, employees do have a right under the Access to Medical Records Act 1988 to refuse to co-operate with an employer's attempt to gain information from their GP. In such cases, employees must be made aware that decisions will be taken in the light of the information available to management.

Reports from Occupational Health

Occupational Health will send a report to the School Business Manager, copied to the relevant HR contact. On receipt of the Occupational Health report the School Business Manager will share the report with the Headteacher, who will consider the most appropriate course of action, acting on advice and guidance from school's HR consultant.

Occupational Health advice will not disclose medical details, unless already known, but will advise that the employee:

- Is fit to return to work, either on their previous contracted hours or on a progressive return to work plan; or
- Needs to have their case reviewed; or
- Is incapable of carrying out the full duties of their post, but they will outline the kind of work the employee should be capable of performing; any particular tasks or duties that should be avoided and for how long so that a judgement can be made about whether they should be temporarily or permanently redeployed; or
- Is permanently incapable of performing their normal job and the school may therefore consider ill health retirement options.

The Headteacher will discuss the Occupational Health advice with the employee and provide them with a copy of the medical report from Occupational Health.

Supported return to work following long term absence

If a Return to Work Discussion follows a longer period of absence from work, the Headteacher will ensure that the employee is given appropriate support to enable them to return to work as easily and as soon as possible. Options for support might include a mutually agreed and recorded phased return to work plan, temporary redeployment or permanent redeployment. In certain circumstances Occupational Health may advise there is a need for changes to an employee's working conditions and/or ergonomic environment. In this case an assessment will need to be undertaken prior to the employee returning to work in order for any adjustment to be in place on the employee's first working day.

Phased return

If Occupational Health has advised a phased return to work, the Headteacher in consultation with HR will agree with the employee how this is to be organised in a way which is supportive of the employee and ensures the needs of the school are met. This arrangement should be confirmed in writing with the employee and state the timeframe, normally not longer than six weeks. If an employee does not return to their normal duties within the specified period, these arrangements should be reviewed and further advice taken from Occupational Health and HR.

A well-structured phased return to work plan can support an employee to return to work more quickly and smoothly. If the Headteacher has concerns, however, about the health and safety aspects of an employee returning to work, they may require the employee to remain on sick leave whilst further advice is taken from Occupational Health and the school's HR consultant.

In circumstances where salary adjustments need to be made, payroll must be notified in writing. Where employees have an agreed, written, progressive return to work plan for a fixed period not exceeding six weeks, they will receive full pay.

Case Review

For cases where further advice from Occupational Health is needed, they will arrange for a review meeting with the employee and notify Line Managers of the outcome of that review meeting. There may be times where a case has been reviewed one or more times and the Headteacher will need to consider the effects on the school of an employee's continuing absence and therefore the continued employment of the employee. The Headteacher should act on further advice from Occupational Health and HR and may wish to consider an Occupational Health case conference for complex cases.

An Occupational Health case conference is a forum to allow a manager and employee to discuss complex cases of sickness capability and rehabilitation with the Occupational Health professional to increase understanding between the parties. It is not a decision making forum but can be helpful to progress a case. A Headteacher may decide, following the further advice and discussions with HR and Occupational Health, that a Stage 2 Absence Capability Hearing should be held.

Temporary redeployment

Where there is confirmation that the employee is currently unfit to carry out the full duties of their post, but could be temporarily redeployed to alternative work, Occupational Health will advise on the length of time the adjustment will be required. In addition they will make recommendations about the kind of work the employee should be capable of performing and any particular tasks or duties that should be avoided. In these circumstances the Headteacher should take guidance from the school's HR consultant before making a decision. Any temporary redeployment will need to be discussed and agreed with the employee and arrangements confirmed in writing.

Where possible temporary redeployment will be offered to an employee to support their return to work. During the temporary redeployment normal contractual pay arrangements will apply.

Where temporary redeployment is not possible, however, the Headteacher able to refuse this request and require the employee to remain on sick leave until they are fit to return to their normal duties. In these circumstances normal sick pay arrangements will apply.

If an employee does not return to their normal duties within the specified period further advice should be taken from Occupational Health and HR. The Headteacher may decide that a Stage 2 Absence Capability Hearing should be held.

Permanent redeployment

Where Occupational Health advises that the employee is permanently incapable of carrying out the duties of their current post and recommends that they are redeployed to a reasonable alternative, they will include recommendations about the kind of work the employee should be capable of performing, as well as any particular tasks or duties that should be avoided.

The Headteacher should take active steps to find suitable alternative posts for the employee. Advice can be sought from the school's HR consultant. During this period of seeking redeployment normal sick pay arrangements will apply.

Where redeployment is not immediately or obviously available, a Stage 2 Absence Capability Hearing should be held and where dismissal from their current job is the outcome, redeployment opportunities can continue to be sought during the notice period. A further referral to Occupational Health to establish whether ill health retirement pension benefits, if applicable, would be appropriate should also be considered.

Permanently incapable for work

Occupational Health

Occupational Health may issue advice to retire an employee on the grounds of ill-health where the medical practitioner has established that the employee:

- is permanently incapable of discharging efficiently the duties of his/her employment with the school because of ill-health or infirmity of mind or body AND,
- has a reduced likelihood of being capable of obtaining other gainful employment, whether in local government or elsewhere, before age 65.

In the case of teachers, the application process for ill-health retirement is initiated by the individual. For support staff, Occupational Health would arrange for a certificate confirming this to be provided by a registered medical practitioner who has not previously been involved in the case. The medical practitioner would also provide an opinion as to which of the 3 tiers of ill-health pension benefits the Council should award.

In these circumstances Headteachers are required to take advice from HR. The Headteacher must notify the employee that Occupational Health have advised that the employee may be retired on grounds of ill health and invite them to attend a meeting.

The notification of the meeting must:

- Be in writing, enclosing a separate copy for a representative.
- Give the employee at least five working days' notice of the meeting.
- Notify the individual of their right to be accompanied by a recognised Trade Union representative or work colleague.
- Ensure that the employee is clear about the purpose of the meeting and the issues to be addressed, including that termination of employment, for reasons of ill health, is to be considered.

Employee appeal

An employee has a right of appeal against any decision regarding pension rights. Employees who wish to appeal should write to the Pensions Manager within six months of the date of the decision.

Permanently incapable

Headteachers are advised to seek guidance from the school's HR consultant when a permanently incapable for work report is received for employees who are not part of the Local Government Pension Scheme.

Appeal against termination

An employee has the right of appeal¹, against the decision to terminate his/her employment. The school's HR consultant will be able to advise on this process.

Handling cases of terminal illness

In the case of a terminally ill employee, there is a particular need to consider the individual circumstances of the case in a compassionate and sensitive way which always:

- Takes account and acknowledges the wishes of the employee
- Makes advice and information about the options open to the employee and their relatives readily available to them. Advice about continuity of employment, death in service and superannuation benefits for partners and/or dependents should be sought from HR

¹ Details of the Staff Appeals process can be found in the Absence Capability Procedure document.

An employee and their relatives should have the Headteacher as their key contact point, in order to ensure that they are responded to promptly and efficiently, with dignity and compassion.

Advice for managers on dealing with a death in service will be provided by the school's HR consultant.

Arrangements for pay

Eligible for sick pay

Where it is agreed that an individual is eligible for sick pay the Surrey Sick Pay Policy should be followed.

Determining alternative employment

The fact that the employee has followed the normal notification and medical certificate requirements and is recognised as having a genuine illness or injury does not automatically entitle him/her to paid sick leave. Limpsfield Grange, in line with HM Revenue & Customs guidance, may seek to satisfy itself that the employee cannot undertake any work at all which therefore determines whether paid sick leave is appropriate in this particular case. Headteachers are advised to consult with the school's HR consultant in terms of how these arrangements work.

Advice on sick pay

The Payroll team will provide advance notice to the School Business Manager on any reductions due to be made to an employee's sick pay. The School Business Manager is responsible for notifying the employee of any changes.

Salary adjustments

In circumstances where salary adjustments need to be made, payroll must be notified in writing.

Equalities impact and review

HR is responsible for monitoring the impact of this policy on the workforce and ensuring it is not applied disproportionately to certain staff groups.

Abuse of the Absence Management procedure may become a disciplinary matter. This Policy & Procedure will be kept under review.

Absence Capability Procedure

Introduction

Sickness absence issues that are not resolved through the informal absence management procedure set out in the Sickness Absence Policy, should be progressed using the formal stages of the Absence Capability Procedure.

Defining Capability

Lack of capability is defined as a situation in which the employee consistently fails to perform their duty/duties to an acceptable standard. Capability is assessed by reference to the skills, aptitude, health or physical/mental abilities of the individual compared with the abilities required to perform satisfactorily and consistently the work the individual has been employed to do.

Where there are concerns about an employee's inability to perform work which is expected as part of their job role to a required standard due to insufficient skill level or aptitude the performance capability policy and procedure should be used.

Disability Related Cases

This procedure may need to be adjusted where the attendance of the employee may be affected by a disability. Managers should be aware of the duty to make reasonable adjustments under the Equality Act 2010 and be ready to make adjustments both to the procedure itself and, if necessary, the requirements of a particular job where these may cause a particular disadvantage to people with a specific disability.

Application

This procedure will not apply to employees in the following situations:

- Agency workers or project specific consultants.
- Workers employed by partnership organisations (other than those covered by TUPE terms and conditions).
- During the contractual probationary period.
- Cases of redundancy
- Cases of trial periods that employees undergo due to redeployment during a restructure.
- Termination of a fixed term contract of employment where the term of that contract expires without being renewed
- Performance that fails to reach the required standard and is believed to be attributable to a wilful refusal to work would be regarded as negligence. This normally involves a measure of personal blame, wilful conduct or misconduct on the part of the employee and their performance will have been judged inadequate due to lack of motivation, care, interest or attention. In these cases the school's Disciplinary Policy and Procedure will apply.
- Where there are concerns about an employee's inability to perform work which is expected as part of their job role to a required standard due to insufficient skill level or aptitude. In these case the school's Performance Capability Policy and Procedure will apply.

Responsibilities

This procedure assumes that the power to dismiss staff remains with the Governing Body and has not been delegated to the Headteacher.

- The Governing Body is responsible for the overall monitoring of the effectiveness of this procedure.

- The Chair of Governors will be responsible for monitoring the absence levels of the Headteacher and will act as the Line Manager in relation to the management of the Headteacher's absence in accordance with this procedure. It is the responsibility of the Headteacher to follow the school's procedures and inform the Chair of Governors of any absence due to sickness.
- The Headteacher is responsible for ensuring that those with line management responsibilities are suitably skilled to manage sickness absence and have received appropriate training. The Headteacher will also fulfil the responsibilities of the Line Manager in respect of certain individuals.
- All Line Managers (including the Headteacher) are responsible for ensuring that members of staff are familiar with the expectations placed upon them in relation to their attendance at work, for monitoring absence, ensuring that consistent reporting is in place and conducting informal and formal meetings with individuals in accordance with the various stages outlined within the procedure. References in this procedure to actions taken by the Line Manager are intended to refer either to the Headteacher or the Line Manager acting in consultation with the Headteacher.

Informal Procedure (To be undertaken by immediate Line Manager and employee)

Please refer to the informal procedure in the Absence Management Policy for initial concerns regarding an employee's sickness absence.

Formal procedure – Stage One Absence Capability Meeting

If, following specific targets and timescales for the necessary improvement, it is considered that the employee's level and /or pattern of attendance continues to cause concern, the employee will be required to attend a formal Absence Capability Meeting. This meeting will be with the Headteacher. Managers are encouraged to seek advice from their HR consultant prior to meeting with the employee.

The employee will be:

- Informed in writing about the arrangements made for the absence capability meeting
- Given a minimum of 5 working days' notice of the date and time of the meeting – where possible the date should be mutually agreed to allow for the employee to arrange for representation
- Informed of the purpose of the meeting
- Informed of the right to be accompanied by a work colleague or Trade Union representative
- Informed of the opportunity at the meeting to put forward an explanation, either personally or through a representative
- Informed about the support available to the employee.

The purpose of the meeting is for the Headteacher to state concerns regarding the employee's level and/or pattern of absence. The Headteacher will need to outline where the employee's attendance was deficient and what improvements were sought in a way that could be measured or assessed.

The employee will then have an opportunity to raise any points that they wish to be considered. They are able to offer an explanation for their absence levels, discuss any mitigating factors and explore any possible solutions.

The Headteacher will then reach a conclusion regarding the issues that have been raised and will make a decision on the basis of the information available, including Occupational Health as appropriate.

Decision – No Further Formal Action

If the Headteacher decides that no further formal action will be taken at this time, the employee must be notified of this in writing. The employee's attendance will continue to be supported and reviewed on a regular basis through normal supervision/one to one meetings.

Decision – Further Action Required

Where the Headteacher decides that the absence levels/patterns remain a concern, it will be necessary to outline an action plan and timescale where an opportunity will be given to the employee to improve their attendance.

This will include:

- Setting up a time period for improvement usually no more than 3 months.
- Providing the employee with additional assistance, as appropriate
- Where applicable, exploring flexible working options, or reasonable adjustments to the employee's work environment
- Outlining performance standards, targets, volume of work to be achieved
- Monitoring absence records

The Headteacher will make the employee aware that a failure to improve their absence levels by the end of the agreed timescale, could result in invoking Stage Two of the formal Absence Capability Procedure, which could result in the employee's dismissal.

The Headteacher will then confirm in writing the arrangements, timescales, targets and the consequences of not correcting the attendance shortfalls.

Absence Capability Review Meeting

At the end of the review period the Headteacher will prepare a report on the employee's progress against the agreed targets. In exceptional circumstances, a decision will have to be made about convening the review meeting before the agreed end of the review period.

An Absence Capability Review Meeting will be convened to consider, discuss and act upon this report. Formalities of convening this meeting will be similar to the ones undertaken whilst arranging the Stage One Formal Absence Capability Meeting.

At the Capability Review Meeting the Headteacher will ascertain:

- If sufficient improvement has been achieved.
- If yes, then the employee will be informed about the same immediately. A written confirmation will be given to the employee that no further formal action will be taken and the employee's records will be suitably updated.

- If targets have not been achieved and there has not been sufficient improvement.

In such a situation the employee will be informed immediately and a written confirmation will be sent to the employee informing them that they have entered Stage Two of the Capability Procedure.

Formal Procedure – Stage Two Absence Capability Meeting

Typically, the Stage Two Absence Capability Meeting will be heard by a panel of Governors, with the Headteacher, the school’s HR consultant and the employee.

Before the decision to dismiss a Teacher is made, the school will discuss the matter with the Local Authority.

A Stage Two Absence Capability Meeting will be called to discuss the continuing concerns around the employee’s attendance levels or patterns. The Stage Two Absence Capability meeting is also used in managing incidences of ill health retirement.

The employee will be:

- Informed in writing of the date and time of the meeting with a minimum of 5 working days’ notice. Where possible the date should be mutually agreed to allow for the employee to arrange for representation
- Informed of the purpose of the meeting
- Informed of his or her right to be accompanied by a work colleague or his or her Trade Union representative
- Informed that he or she will have the opportunity at the meeting to put forward an explanation, either personally or through a representative
- Informed that one of the potential outcomes of the meeting could be dismissal/termination of their contract of employment

Potential Outcomes

The Governors’ panel will decide whether the arrangements to manage the level and/or pattern of attendance have proved to be successful and the employee has improved their level of attendance sufficiently. If the Governors’ panel considers that the employee’s attendance remains less than satisfactory, it must decide:

- Whether it is necessary to refer the employee back to Occupational Health. If this is deemed necessary the Stage 2 Absence Capability Meeting will have to be reconvened after receipt of the Occupational Health report
- To allow more time for improvement, backed by a warning if considered necessary; or
- To dismiss the employee from the current role but seek to find suitable alternative work during the notice period; or
- To dismiss the employee without recourse to seeking alternative employment.

If the decision is to allow further time for improvement, the meeting may be reconvened on one further occasion. At this reconvened meeting the Governors’ panel of the will decide whether the employee has reached a sustained and satisfactory level of attendance.

If yes, then the employee will be informed about the same in writing and this will mark the end of the Absence Capability Procedure for the employee for the given instance.

If not, then the Chair will have to decide from the options above.

Following a decision to dismiss in community and voluntary controlled schools the school will confirm the decision to dismiss the employee and the Local Authority, as the employer of staff, will give effect to the dismissal within 14 days of notification.

Entering the procedure directly at Stage Two of the Absence Capability Procedure (For reasons of Ill health)

In the case of long-term sickness absence where, having taken Occupational Health advice, an eventual return to work is thought to be unlikely in the foreseeable future, it is possible to convene a Stage Two Absence Capability Meeting directly. Where redeployment is not available, a capability related dismissal will be considered. It is important for managers to consider the requirements of the Equality Act.

Consideration should also be given to ill health retirement, which is dependent on advice from the Occupational Health Doctor

Appeals

Employees have the right to appeal following an outcome at Stage 2.

If an employee wishes to exercise their right of appeal, they must do so by lodging a notice stating the grounds of appeal in writing to the Clerk to the Governors/Chair of the Governors' panel. The appeal should be filed within 10 working days of being notified of the decision made at the given stage of the procedure.

Receipt of the employee's notice of appeal in writing will be acknowledged by the Clerk to the Governors. Decisions made by the Chair of the appeal procedure will be final for that particular stage of the procedure.

Procedure for appeals

The Clerk to the Governors will identify a suitable panel, not previously involved in the detail of the case or the capability meeting, to hear the appeal on behalf of the school and give a final decision.

This is the final stage of appeal within the school. Where the appeal is against a decision to dismiss in a community or voluntary controlled school, an HR consultant from the Local Authority who has not previously been involved in the detail of the case will advise the chairperson of the appeals panel.

The employee shall be given notice in writing at least five working days in advance of the time and place of the hearing. Once again where possible the date should be mutually agreed to allow for the employee to arrange for representation.

The appeal will take the form of considering the employee’s grounds for appeal, with both sides being entitled to call witnesses and to produce such documentary evidence, as they require. Any such documentation should normally be exchanged at least 3 working days prior to the hearing date.

Any question as to the procedure to be followed at the appeal will be determined by the Chair and their decision will be final. The purpose of an appeal hearing is not to re-hear all the evidence presented at the initial capability meeting but to consider the employee’s grounds for appeal, whether the initial decision was reasonable and consistent with other decisions made by the school in similar circumstances.

The employee will present their case first and once both sides have presented their case, the panel and their adviser will adjourn to consider the decision.

The panel’s decision will normally be given orally to the two sides and confirmed in writing within five working days of the appeal hearing.

Data Protection

The school processes personal data collected during the stages of the capability procedure in accordance with its data protection policy. Data collected as part of the process is held securely and accessed by, and disclosed to, individuals only for the purpose of completing the capability procedure. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with the data breach policy immediately. It may also constitute a disciplinary offence, which will be dealt with under the school’s disciplinary procedure.

Related links <https://www.legislation.gov.uk/ukpga/2010/15/contents>

Related Policies

- | | |
|---|-----------------------------|
| Data Breach Policy | Equality & Diversity Policy |
| Data Protection Policy | Health & Safety Policy |
| Performance Capability Policies and Procedures (Teachers and Support Staff) | Staff Behaviour Policy |
| | Staff Privacy Notice |

Review

The Governing Body of Limpsfield Grange School adopted this policy on:

It will be reviewed on: _____

Signed _____

Dated _____