



## **WHOLE SCHOOL ATTENDANCE POLICY**

### **1 Introduction**

This model policy has been determined by the Local Authority in consultation with the recognised trade unions, teachers' associations and the Governors' Council. This policy is recommended to schools for adoption immediately; should schools decide to develop their own procedure, they will need to re-open trade union consultation on an individual basis.

This policy reflects the legal provisions concerning fitness to teach contained in The Education (Teachers' Qualifications and Health Standards) Regulations 1999 (S1 No 2166), The Education Act 1996, the provisions of the Equality Act 2010, Health and Safety at Work Act (1974 and 1992) and the Access to Medical Reports Act 1988.

The Health and Safety at Work Act requires Governors and Headteachers to ensure, so far as it is reasonably practicable, the health, safety and welfare at work of all their employees. In addition, all employees have a responsibility to take reasonable care for the health and safety of themselves and of other persons who may be affected by what they do, or fail to do, at work.

This policy may not cover all circumstances and the Governing Body/Headteacher are therefore advised to seek advice from the Schools' Employee Relations Team at the earliest opportunity.

"School days" refer to days on which the school is open.

For the purposes of this policy the term "Headteacher" can refer to the Headteacher, Deputy Headteacher or other nominated person in the school's Leadership Group.

### **2 Purpose**

To manage sickness absence effectively and provide for the fair and consistent treatment of staff.

### **3 Scope**

This procedure applies to all members of staff employed at St Germans Primary School.

'Sickness Absence', for the purposes of this procedure, refers to all occasions where a member of staff is absent from work because of sickness.

Where Headteachers/Governors have reasonable grounds to believe that a member of staff is abusing the system with due regard to Occupational Health advice (eg sickness is not genuine, failure to comply with sickness notification procedure without good reason) the matter will be dealt with in accordance with the School's Disciplinary Procedure.

### **4 Policy Statement**

St Germans Primary School wishes to establish a positive attendance culture by providing a fair and consistent framework for handling staff absence and by

promoting occupational health and staff welfare. When illness or injury occurs, the school will respond in a supportive manner. Equally staff are responsible for caring for their own health, seeking medical help when appropriate, attending work unless unfit to do so and co-operating with the requirements of the attendance policy.

This policy is designed to encourage full attendance and the proper management of sickness absence.

This procedure will be applied in a non-discriminatory way, irrespective of sex, age, race, marital status or disability.

The existence of the policy will be made known to every member of staff and is contained within the Personnel Handbook – A Guide for Headteachers and Governors.

During the informal and formal stages of this procedure, the member of staff has the right to representation from a trade union representative or work colleague.

## **5 Contact with Absent Staff**

It is important that regular communication is established between the member of staff and the school. Many members of staff who are absent through sickness for a period of time wish to be kept up-to-date with school news; similarly, the school will wish to be regularly updated on the individual's progress. It is essential that the school receives timely medical certificates.

It will not always be appropriate for the Headteacher to be in direct contact with the absent member of staff. If this is the case a senior member of staff may act as a link, with the agreement of the Headteacher, the absent person or his/her trade union representative. The Headteacher or other senior person should maintain contact with the absent member of staff and monitor the situation effectively. It is important that the Headteacher or nominated person adopts the correct balance as primarily the concern should be for her/his welfare and the Headteacher or nominated person must be careful not to give the member of staff the impression that s/he is being pressurised into returning to work when not fit to do so.

If it is necessary for the Headteacher or other senior member of staff to meet with the member of staff, a mutually convenient meeting should be arranged. Headteachers are advised not to make unaccompanied home visits or to require staff to work from home. If the member of staff wishes, a trade union representative or work colleague may be present at any such meeting or may represent them in their absence.

## **6 Sickness Reporting**

This procedure identifies the actions to be taken by staff and headteachers.

If a member of staff wilfully fails to follow the notification procedure, this may lead to sick pay entitlement being withheld and in exceptional circumstances, disciplinary action may be taken. Whilst on sick leave staff must take care not to do anything that may prejudice recovery.

In essence, the following action (shown overleaf) should be taken in the event of sickness absence.

When	Headteachers' Responsibilities	Staff Responsibilities
Prior to appointment	All offers of appointment must be made on a provisional basis subject to pre-employment medical checks being undertaken. Successful applicants are required to complete the pre-employment medical screening process prior to taking up appointment. Further advice on this process is available from Occupational Health.	All successful applicants must undergo pre-employment medical checks prior to confirmation of offer of employment.
Prior to appointment	Schools are required to comply with the provisions of The Equality Act 2010 (Disability), which makes it unlawful to discriminate against people with disabilities in employment. The Act must be taken into account and the school may have to make reasonable adjustments to employment arrangements or premises. If you require further clarification of the Act please contact the Schools' Employee Relations Team.	
Induction	All new staff must be given a copy of the Whole School Attendance Policy.	Staff should read the Whole School Attendance Policy and know what to do in the event of absence.
1st day of absence on normal working day	<p>Staff should arrange for someone to telephone you to let you know why s/he is absent, the date s/he expects to return to work and whether s/he has taken medical advice.</p> <p>If absence is attributable to an injury sustained at work you should ensure that an appropriate entry is made in the First Aid Log.</p>	Staff, or their representative, should telephone the Headteacher (or School Secretary) before the start of the teaching day, giving reasons for the absence, stating whether s/he has been to the doctors, giving a likely return date, if possible, and preferably noting any tasks that need to be undertaken.
4th day of absence (counting normal work days and non work days)	<p>Staff should telephone you to indicate the reason for her/his continuing absence, when a return to work is likely, and whether medical advice has been taken. Staff who are absent with stress or stress-related illnesses should not be pressed into stating a return date.</p> <p>You should advise the member of staff whether further contact is required.</p>	Staff should telephone the Headteacher (or School Secretary), giving reasons for the continued absence and stating whether medical advice has been sought, giving a likely return date, if possible.
4th day of absence (counting normal work days and non work days)	You should ensure that the member of staff completes a self certification form when s/he returns to work.	All staff must complete a self certification form on return to work.

When	Headteacher's Responsibilities	Staff Responsibilities
8th day of absence (counting normal work days and non work days)	<p>Staff should provide you with a doctor's Statement of Fitness for Work ('Fit Note').</p> <p>If the absence continues after the date given by the doctor, you should request further statements.</p>	<p>Staff must provide a doctor's Statement of Fitness for Work ('Fit Note').</p> <p>Should absence continue beyond the date given by the doctor, staff must produce further statements. If you wish to return to work before your Fit Note expires then you must seek the agreement of the Headteacher and attend OH appointments arranged for you in order to assess your fitness for work.</p>
Return to work	<p>Where a staff member wishes to return to work before the expiry of their 'not fit for work' fit note, then a meeting should take place with the employee to agree this, undertaking an appropriate risk assessment and/or seeking advice from Occupational Health as necessary.</p> <p>You, or a nominated manager, should talk to the member of staff on their return to work within the first 5 working days. The overriding principle of the return to work meeting is to support the member of staff with their return to work and if necessary discuss any area which may facilitate a smooth return to work.</p> <p>The discussion might need to cover (depending on the number of absences):</p> <ul style="list-style-type: none"> <li>• a discussion regarding the member of staff's level of sickness absence;</li> <li>• underlying reasons causing the absence; the reason for absence should be reported on the notification.</li> <li>• available support such as counselling and Occupational Health.</li> </ul> <p>At any time in the procedure it may be appropriate to ask a member of staff to produce a doctor's note for each period of absence. In such cases the School will meet any costs.</p>	<p>Wherever possible staff should give notice of at least one day of their intention to return to work. In cases of long-term absence, further notice may be required in order to ensure appropriate OH advice is available and any necessary adjustments to work arrangements have been agreed and put in place.</p> <p>If the return to work is prior to the expiry of a 'not fit for work' fit note then a meeting should take place with the Headteacher or designated manager to agree this. An appropriate risk assessment and/or advice may be sought from Occupational health as necessary.</p> <p>Staff will be asked to attend a "return to work" meeting.</p>
Stress	<p>In cases where it has been identified that an employee is suffering from work related stress, you are advised to refer to the Stress Management Toolkit available via the Schools Messenger website under Health, Safety and Wellbeing, with a view to undertaking a workplace stress risk assessment.</p>	<p>If it is identified that you are suffering from work related stress then your headteacher / manager should refer to the Stress Management Toolkit with a view to undertaking a workplace stress risk assessment with you. Employees are also able to access the toolkit via the Schools Messenger website under Health, Safety and Wellbeing.</p>

## **7. Return to Work Meetings**

On the employee's return to work the headteacher/manager should hold a return to work meeting within five working days of the return (an exception to this may be in the case of employees who have been on long term sick leave; in which case a return to work meeting can often be helpful prior to the employee returning to work as this allows time for structured return to work plan to be devised. (See Appendix 24 – Return to Work Meeting form).

Return to work meetings are considered to be a significant tool in managing sickness as they give the opportunity for the Headteacher/Manager and the employee to discuss the reason for the absence and agree any supportive measures to improve things.

All employees, regardless of how long they have been absent for, should be asked to attend a return to work meeting by the Headteacher/ manager. They are important both for the employee and the Headteacher/manager; for the manager to welcome the employee back and to enquire as to how they are feeling. Also to update them on things that have happened in the workplace in their absence, particularly if they have been absent for an extended period of time. Additionally, for the employee to have the opportunity to discuss where the cause of the absence may be work related (where absence is due to work related stress refer to the Stress Management Toolkit which is available via the Schools Messenger website under Health, Safety and Wellbeing)

The meeting should be conducted in a sensitive and confidential manner, using the Return to Work meeting form as a guide and a record. As such meetings are seen to be part of normal day to day management there is no right to be accompanied at the meeting.

It is expected that the reason for the absence will be explored in order to ensure that the employee is fit enough to return to work and for the manager to consider whether any help and support is required to ensure a sustained attendance at work is achieved.

The employee will be required to sign the self-certification section of the return to work meeting form for any period of absence not covered by a Statement of Fitness for Work ('fit note'). If a fit note is required but has not been received the employee will be reminded of his/her obligation to provide one.

If the employee has failed to comply with any aspect of the attendance management procedure the manager will remind them what is required.

If the level of absence is unacceptable, the headteacher/Governor may inform the employee that an evaluation or review meeting is necessary in view of the unsatisfactory level of attendance and in accordance with this Procedure.

## **8. Managing Short Term Absence**

Frequent short term absences are normally attributable to minor ailments which in many cases are unconnected. However, If it is thought that the absence(s) may be related to a disability or a particular health condition, it is recommended that the Headteacher contacts the Schools' Employee Relations Team as under these circumstances the member of staff may have higher than average levels of absence. If a member of staff has an unsatisfactory level of absence or a regular pattern of absence the Headteacher or Senior Manager should deal with it appropriately. Schools may decide to apply the Policy on a case by case basis with

due regard to the individual circumstances of each case or may apply the Policy where a member of staff(s) absence differs from the normal pattern of absence. As a matter of guidance schools **may** wish to consider the following levels of absences as indicating a potential problem that could lead to informal and formal action.

- during any three term period a member of staff has five or more occasions of uncertificated, self-certificated or medically certificated absence; or
- during a three term period a member of staff has had ten or more school days of uncertificated, self-certificated or medically certificated absences.

It should be emphasised that it will be up to each school to decide on a case by case basis what level of absence should activate possible action under the procedure.

## **9 Informal Approach**

The Headteacher should meet with the member of staff who has been identified as having a level or frequency of absence which gives cause for concern. At the meeting the Headteacher (or designated manager) will:

- discuss concerns about the current level of absence;
- explore the reasons for the absence including inviting comments from the member of staff;
- find ways to resolve any problems that might improve attendance and identify areas of support and assistance;
- seek a commitment from the member of staff to improve her/his attendance.

At this stage the meeting should be informal, with an emphasis on counselling and support. Should a member of staff ask to be accompanied by a trade union representative at this stage, such a request should be agreed.

At the end of the meeting the Headteacher (or designated manager) should summarise the main points discussed including:

- concern about the unsatisfactory level of absence and the need for improvement in attendance over a specified period;
- the action points that have been agreed including areas of assistance and support;
- the need to monitor the member of staff's attendance and schedule a date for the next review meeting. When a date for the next review meeting has been set the member of staff can request a Trade Union representative or a workplace colleague to accompany him or her to the informal stage review meeting. The member of staff should make this arrangement immediately as the informal stage review meeting will not be cancelled due to the non-availability of a Trade Union representative or a work place colleague.

A record of the meeting and agreed actions should be kept, noting the member of staff's responses. A copy of the record of the meeting should be given to the member of staff.

## **10 Informal Stage Review Meeting**

At this meeting the Headteacher (designated manager) should determine whether any improvement has been made and may consider the following options.

- taking no further action if attendance is now satisfactory;
- requiring continued or further improvement in attendance over a reasonable specified period;

- ensuring that medical advice has been taken to establish whether treatment is needed and/or to establish whether absences are work-related;
- requesting a doctor's statement for further periods of absence;
- referring the employee to the Occupational Health Consultant;
- reviewing/monitoring work programme;
- taking formal action.

A record of the meeting and agreed actions should be kept, noting the member of staff's responses. A copy of the record of the meeting should be given to the member of staff. In doing so the headteacher or senior member of staff should take account and be sensitive to the health and welfare of the member of staff

## **11 Short Term Absence - Formal Procedure**

### **11.1 Application**

The member of staff should be informed of her/his right to be accompanied to a meeting, at any stage of this procedure, by a trade union representative or work colleague.

The parties may, by mutual agreement, modify the time limits referred to in this procedure.

Notification of all meetings at any stage in this procedure should be in writing, giving at least ten days' notice of the date, time and place of the meeting and the reason for the meeting.

At all stages of the procedure consideration should be given to the need for medical advice from Occupational Health and the member of staff's medical condition should be monitored throughout the process. This may help in determining whether attendance is likely to improve if the member of staff remains in post.

A representative of the Director of Children, Schools and Families may advise the Headteacher or Governors at all meetings and has the right to attend any meeting where dismissal of a member of staff is to be discussed.

A detailed record of the interview at each stage of the procedure should be kept, including the member of staff's responses, and any agreed areas of support and assistance.

The Headteacher may delegate responsibility for the application of this procedure at Stage One and Stage Two to a designated manager. Any concerns that the member of staff has about a particular manager's role in the process should be carefully considered when applying this procedure.

### **11.2 Stage One**

A member of staff who has not shown sufficient improvement in attendance following the informal interview, or whose attendance has deteriorated again following some initial improvement, will be required to attend a formal interview. The letter requesting attendance at this meeting should be set out as in Appendix 8.

The Headteacher or designated manager will conduct the meeting. The Headteacher/designated manager will cover the following points during the course of the meeting:

- explore why the absence level continues to be unsatisfactory and the reasons for the absence, including inviting comment from the member of staff
- explain concern at the absence level and the impact on the school;

- offer any further help or guidance, eg changes that might be made to the teacher's working environment;
- seek an agreement that the member of staff will improve her/his attendance;
- the Headteacher should emphasise the level of absence remains unsatisfactory, the level of improvement required and the continued need for monitoring and specify the review period.

In most circumstances a referral for specialist advice should be sought from Occupational Health in consultation with the Schools' Employee Relations Team.

The Headteacher/designated manager should consider comments, circumstances & perspectives presented by the employee at the meeting and may consult a representative from the Schools' Employee Relations Team in this respect. Following these considerations, the Headteacher/designated manager should consider the following options:-

- no further action (where the employee's explanation and circumstances are such that the Headteacher/manager is satisfied that no further action is required under this Procedure);
- extension to the informal review period; or
- issue a formal written warning

The outcome of the meeting should be confirmed in writing to the member of staff within five school days. Where continued further review is required, reference should also be made to:

- any improvement required;
- the timescale for any improvement to be made (which must be of sufficient length to allow adequate time for improvement and assessment);
- the likely consequences of a failure to improve;
- further monitoring and review meetings.

Where a written warning is issued, this should be confirmed in the outcome letter (see Appendix 9). Reference to the employee's right of appeal should be made in the letter (see section 11.7).

### **11.3 Stage One Review Meeting**

On completion of the review period, an assessment of attendance will be undertaken. The Headteacher (or designated manager) will meet with the member of staff (or his/her representative) to assess whether the required improvement in attendance has been achieved. The outcomes at the end of Stage One could be that:

- the required improvement in attendance has been achieved. The individual will be encouraged to maintain attendance and the procedure will cease;
- where some but insufficient improvement in attendance has occurred a further review period within Stage One shall occur;
- where the required improvement in attendance has not occurred the individual will be advised that Stage Two of the procedure will be invoked.

### **11.4 Stage Two**

A member of staff who has not shown sufficient improvement in attendance following the Stage One Review Meeting, or whose attendance has deteriorated again during the period of the written warning, will be required to attend a formal Stage Two interview. The letter requesting attendance at this meeting should be set out as in Appendix 8.

The Headteacher (or designated manager) will conduct the meeting. The Headteacher/designated manager will cover the following points during the course of the meeting:

- explore why the absence level continues to be unsatisfactory and the reasons for the absence, including inviting comments from the member of staff;
- explain concern at the absence level and the impact on the school;
- offer any further help or guidance;
- seek an agreement that the member of staff will improve her/his attendance;
- the Headteacher should emphasise the level of absence remains unsatisfactory, the level of improvement required and the continued need for monitoring and specify the review period.

A referral for specialist advice from Occupational Health should be sought in advance of the Stage 2 Formal Interview. It is also strongly recommended that advice is sought from the Schools' Employee Relations Team.

The Headteacher/designated manager should consider comments, circumstances & perspectives presented by the employee at the meeting and may consult a representative from the Schools' Employee Relations Team in this respect. Following these considerations, the Headteacher/designated manager should consider the following options:-

- no further action (where the employee's explanation and circumstances are such that the Headteacher/manager is satisfied that no further action is required under this Procedure);
- extension to the informal review period; or
- issue a final written warning.

Where a final written warning is issued, the Headteacher should inform the member of staff that unless there is a significant improvement her/his job might be at risk. The final written warning should be confirmed in writing and sent to the member of staff within five school days (see Appendix 10 for standard letter). If appropriate, reference should also be made to:

- any improvement required;
- the timescale for any improvement to be made (which must be of sufficient length to allow adequate time for improvement and assessment);
- the likely consequences of a failure to improve;
- further monitoring and review meetings.

Reference to the employee's right of appeal should also be made in the letter (see section 11.7).

### **11.5 Stage Two Review Meeting**

On completion of the review period, an assessment of attendance will be undertaken. The Headteacher (or designated manager) will meet with the member of staff (or her/his representative) to assess whether the required improvement in attendance has been achieved. The outcomes at the end of Stage Two could be that:

- the required improvement in attendance has been achieved. The individual will be encouraged to maintain attendance and the procedure will cease;
- where some but insufficient improvement in attendance has occurred a further review period within Stage Two shall occur;
- where the required improvement in attendance has not occurred the individual will be advised that Stage Three of the procedure will be invoked.

## 11.6 Stage Three

A member of staff who has not shown sufficient improvement in attendance at the Stage Two Review Meeting, or whose attendance has deteriorated again following improvement, will be required to attend a formal Stage Three Hearing. The case will be heard by a Panel of Governors from the Personnel Committee of the Governing Body. The Full Governing Body is required to delegate the responsibility for managing sickness absence matters to the Committee. The Panel should consist of at least three Governors. The Director of Children, School and Families, or a representative, may also be requested to attend. The letter requesting attendance at this meeting should be set out as in Appendix 8.

The purpose of the interview will be to:

- to inform the member of staff of her/his attendance record and that it shows insufficient improvement;
- explore the reasons for lack of improvement including a report from Occupational Health and invite the individual or her/his representative to present her/his case as to why s/he should not be dismissed;
- consider the comments, circumstances & perspectives presented by the employee;
- consider the feasibility of alternative working arrangements that would facilitate a satisfactory level of attendance from the employee that could be accommodated by the school;
- if no acceptable reason is given for the inadequate attendance and if there is no prospect of the employee achieving the required levels of attendance in the future, consideration should be given to dismissal subject to the right of appeal.

The hearing should be conducted in accordance with the Procedure as set out in Appendix 25.

If no satisfactory reason for the continuing poor level of attendance can be determined and if there is no prospect of the employee being able to provide a satisfactory level of attendance taking into account any possible alternative working arrangements that may be arranged, the Panel of Governors may resolve to dismiss the member of staff. In such circumstances, advice should be sought from the Schools' Employee Relations Team. A letter confirming the decision should be sent to the member of staff within five school days (see Appendix 11). If the decision is to dismiss the member of staff, appropriate contractual/statutory notice should be provided and the employee should be advised of her/his right of appeal. If the member of staff decides not to appeal, the Governors will need to instruct the LA to dismiss the employee.

## 11.7 Appeals

### General:

A member of staff has the right of appeal against dismissal or any formal warning issued to them in respect of unsatisfactory attendance.

Where a member of staff wishes to exercise the right of appeal, he/she should make his/her appeal in writing to the Headteacher outlining the reasons for appeal within 2 calendar weeks of receiving written confirmation of the warning. Appeals will be heard by way of a formal appeal hearing, which will be convened (where practicable) within 4 calendar weeks of receipt of the appeal.

The member of staff has the right to attend the appeals' hearing represented by a trade union representative or a work colleague. The member of staff and/or his/her representative has the right to make written and verbal submissions at the appeal hearing. The Procedure for appeal is set out in Appendix 26.

Appeals will be heard by the Appeals' Panel of the Governing Body. All parties will be provided with copies of relevant background documents regarding the process undertaken with regard to the case. Additionally, the Headteacher/line manager who issued the warning may be required to attend the appeal hearing for the purpose of explaining to the Panel the reasons for the issuing the formal warning to the employee.

The Appeals' Panel's decision is final.

#### Appeals' Against Dismissal:

Where a member of staff has lodged an appeal against dismissal as determined by a Panel of Governors from the Personnel Committee under Section 3 of this Procedure, the appeal will be heard by a Panel of Governors from the Appeals' Committee who have had no prior involvement in the case (ie: the Appeals' Panel cannot include any members who sat on the previous Panel that made the recommendation to dismiss). In addition, the number of Governors constituting the Appeals' Panel of Governors cannot be less than the number of Governors who sat on Panel that made the decision to dismiss. The Director of Children, Schools and Families, or a representative, may also be requested to attend the appeal hearing.

The Appeals' Panel of Governors will receive all documentation considered by the Panel that made the decision to dismiss. The member of staff and/or her/his representative may make verbal and/or written submissions to the Appeals' Panel.

The Staff Dismissal Appeals Committee having considered the matter may either confirm or overturn the dismissal decision. If the Appeals' Committee decides to uphold the decision to dismiss the member of staff, the member of staff is entitled to written notice in accordance with their contract of employment or alternatively an arrangement of pay in lieu of notice may be agreed.

The Appeals Committee may announce their decision verbally or in writing. In all cases, a letter confirming the decision of the Appeals' Panel should be sent to the member of staff within one calendar week (see Appendix 12). Where the decision to dismiss is upheld by the Appeals' Panel, the Governors will need to instruct the LA to dismiss the employee.

## **12 Managing Long Term Absence**

A number of supportive actions should be put in place where a member of staff has been absent, or is likely to be absent, for a prolonged period as a result of sickness. The following arrangements should be made:-

- An agreed arrangement for continued contact with the employee, either through the trade union representative, the Headteacher, a governor or work colleague;
- A referral appointment to Occupational Health to seek a medical prognosis on the employee's state of health and advice on any supportive actions that may be undertaken by the school';
- Regular updates on school/work activities for the employee as part of maintaining contact;
- Where appropriate, regular review meetings with the employee to discuss progress in recovery (subject to employee's fitness to engage in such meetings).

### **12.1 Informal Approach**

If it proves impossible to estimate when a member of staff will be able to return to work, or if this is unlikely to be within a reasonable period, the Headteacher (or designated manager) should seek the advice of the Schools' Employee Relations

Team and Occupational Health. Occupational Health will consider the likelihood of a return to work in the foreseeable future, the scope of the member of staff's medical condition and its effect on her/his present or continuing capability, alternative working arrangements that may facilitate the employee's return to work or whether the employee would be able to return to a suitable alternative role.

Due regard should also be taken of the Equality Act 2010 relating to disability when considering the suitability of alternative employment or whether employees should be dismissed on grounds relating to their capability (see below).

If medical advice suggests that an employee is incapable of undertaking her/his duties, consideration should be given to the following:

- the availability of 'reduced' duties (such as teaching smaller classes or less contact time) or alternative work pending recovery and a return to normal duties; or
- where recovery is insufficient to enable the member of staff to return to her/his normal duties, in some circumstances it may be possible to find alternative employment through the redeployment procedure.

It should be noted that the Local Authority cannot insist that a Governing Body of a different school appoints a redeployee to a vacant post that may represent suitable alternative employment for the redeployee. This is because Governing Bodies have the autonomy to make their own decisions in terms of staff appointments to their schools. The Schools' Employee Relations Team should be consulted to help facilitate redeployment. The Schools' ER Team will explore the availability of suitable alternative employment options that may be available in other schools and will facilitate contact with those governing bodies as a means of attempting to secure alternative employment for the employee where an appropriate opportunity may exist.

Where Occupational Health suggests that an employee is incapable of fulfilling her/his full range of duties (either permanently or within a reasonable timescale having regard to operational or other considerations), and no suitable alternative employment can be found, the Headteacher is strongly advised to contact the Schools' Employee Relations Team before considering a proposal to terminate the employment of the member of staff (see Appendices 13 and 14).

### **13 Procedure for Dismissal on the grounds of Lack of Capability due to Ill Health**

Where the informal approach to managing long term absence has not resulted in a return to work of the member of staff, the Governing Body may decide to make arrangements for formal consideration to the prospect of the employee's continued employment in view of the ongoing lack of capability due to ill health. Before considering the option of terminating the member of staff's employment, the Governing Body should be satisfied that there is no medical evidence to suggest that the member of staff will be returning to work in the foreseeable future and that the absence is having detrimental effect on the school

#### **13.1 Full Governing Body Meeting**

The Full Governing Body should delegate the management of the case of an employee's long-term sickness absence to an appropriate Committee of the Governing Body (usually the Personnel Committee). It is essential that in making the resolution to delegate the case to the appropriate Committee, only the briefest of information is shared with the Governing Body. This will ensure that any Governors involved in considering the case at a later stage (ie: either at a formal hearing or an appeal) will do so without prejudice and with absolute impartiality.

If an appropriate Committee has not already been established the Governing Body will need to do so before progressing the matter further.

Once a Committee is established, a formal meeting can be arranged to consider the question of the employee's continued employment, having taken into account the considerations referred to in paragraph 13 above.

### **13.2 Medical Referral Meeting**

Prior to holding a formal meeting, the Headteacher or his/her adviser should write to the member of staff to confirm the proposed action of convening a formal hearing to consider the question of the employee's ongoing employment (see Appendix 14).

The member of staff will be offered an appointment with an Occupational Health adviser prior to the formal meeting. The purpose of the Occupational Health appointment is to give the member of staff an opportunity to submit medical evidence from her/his General Practitioner/ Consultant or Specialist and make medical representations to the Occupational Health Consultant. The employee may ask any suitably qualified medical practitioner to attend this meeting with them to make representations on her/his behalf.

Following the appointment, the Occupational Health Consultant will provide a report to the Staff Committee on the member of staff's capability to continue in her/his post, or ability to undertake work on the basis of certain adjustments being made or undertake alternative work.

A date for the medical representations meeting should be set giving the employee at least two calendar weeks' notice.

### **13.3 Formal Governors' Committee Meeting**

A Panel of Governors from the appropriate Committee will be convened to hold a formal meeting to consider the question of the employee's continued employment. The Panel should be represented by not less than 3 Governors. At the meeting, it is recommended that the Panel invite a representative from the Local Authority (usually an Employee Relations Officer from the Schools' Employee Relations Team) to attend the meeting as adviser to the Panel. The Procedure for the meeting is set out in Appendix 25.

In advance of the meeting, the Panel of Governors will be provided with copies of any relevant documents in respect of the case (e.g.: copies of medical reports, headteacher's report regarding impact on the school etc). The employee and his/her representative will also be provided with copies of the relevant documentation no later than 10 days before the meeting. The employee and/or his/her representative may also make verbal and/or written submissions to the hearing. Where the employee intends to make written submissions to the meeting, he/she should endeavour to provide these no later than one calendar week before the hearing where possible.

At the meeting, the Governors should hear representations from the member of staff as to why s/he should not be dismissed on grounds of lack of capability due to ill health. Additionally, the headteacher may be required to attend the hearing to present to the Panel information on the process undertaken to date in respect of attempts to facilitate the employee's return to work, any considerations of redeployment that may have been made, any relevant medical information (including medical reports) and the impact of the ongoing sickness absence on the operations of the school.

The letter requesting the employee's attendance at this meeting should be set out as in Appendix 15 giving at least ten school days' notice.

The Panel of Governors will decide, on the basis of evidence available, including the Occupational Health Consultant's report, whether or not to recommend to the Local Authority that the member of staff is dismissed (subject to the individual's right to appeal).

A letter confirming the decision should be sent to the member of staff within one calendar week of the meeting (see Appendices 16A and 16B). If the decision is to dismiss the member of staff s/he should be advised of her/his right of appeal.

Should the individual choose not to appeal within the specified period or the appeal is not upheld, the Governing Body will advise the Local Authority (see Appendix 17) who will issue a dismissal letter to the individual with due notice (see Appendix 18). The dismissal letter will state the reasons for dismissal.

### **13.4 Appeals**

Appeals against dismissal must be made by the member of staff in writing to the Headteacher or, where the appellant is the Headteacher, to the Chair of the Governing Body, outlining the reason for the appeal within two calendar weeks of receiving written confirmation of the dismissal. Appeals will be heard, where practicable, within twenty school days of receipt of the appeal application.

Appeals against dismissal will be heard by a Panel of Governors from the Appeals Committee. This Panel will exclude those Governors who have previously sat on the Panel of Governors that made the recommendation to dismiss. Additionally, the number of Governors constituting the Appeals' Panel of Governors cannot be less than the number of Governors that constituted that Panel that made the recommendation to dismiss. It is recommended that the Panel invite a representative from the Local Authority (usually an Employee Relations Officer from the Schools' Employee Relations Team) to attend the meeting as adviser to the Appeals' Panel. The Procedure for the Appeal meeting is set out in Appendix 26.

All documents that were considered by the Panel of Governors that made the recommendation to dismiss at the first meeting will be provided to the Appeals' Panel of Governors. The employee and/or her/his representative will also be provided with a copy of the relevant documents in advance of the hearing. The employee and/or his/her representative may also make verbal and/or written submissions to the Appeals' Panel of Governors at the appeal meeting. Where documents are submitted to the Appeals' Panel, the employee and/or his/her representative should endeavour to ensure these are provided no less than one calendar week before the date of the appeal meeting.

The Appeals' Panel of governors, having considered the matter may either uphold or overturn the decision of the previous Panel of Governors. If the Appeals' Panel decides to uphold the decision to dismiss the member of staff on grounds relating to capability due to ill health, the employee is entitled to written notice in accordance with his/her contract of employment or as an alternative, pay in lieu of notice may be made where this is agreed with all parties.

The Appeals Panel of Governors may announce their decision verbally or in writing. In all cases, the Panel must confirm the decision to the employee in writing within one calendar week of the appeal meeting (see Appendices 12, 17 and 18).

## **14 Termination of Employment**

In all cases where an employee's contract of employment is terminated on the grounds of ill health, the termination date must take into account the contractual notice period. Regardless of the status of the employee's sick pay entitlement, full

pay must be reinstated for the notice period so as to ensure no breach of contract occurs.

In accordance with the relevant case law employees may be entitled to receive payment for accrued statutory holiday entitlement where this has not been taken as a consequence of sickness absence.

## **15 Ill Health Retirement**

In cases of chronic ill health, ill health retirement should be considered after all other options relating to facilitated return to work, reasonable adjustments to work or redeployment have been exhausted.

### **15.1 Teaching Staff**

Under the Teachers' Pensions Regulations it is the teacher who instigates the approach to Teachers' Pensions for the payment of an ill health pension (see Appendix 19). Teachers' Pensions will then assess the medical evidence and make a decision on whether or not to award the pension. Their application would normally need to be supported by a consultant specialising in the medical condition which prevents their return to work.

If the teacher does not have a compelling case for an application for ill health retirement, or the Teachers' Pensions medical advisors do not support the application, the school may still wish to terminate the teacher's employment on the grounds of lack of capability due to ill health.

If the Occupational Health Consultant has confirmed that the teacher is permanently incapable of performing her/his duties and has recommended ill health retirement, the letter at Appendix 20 would be sent to the member of staff.

### **15.2 Non-Teaching Staff**

If an employee is a member of the Local Government Pension Scheme (LGPS) and the Occupational Health Consultant ***and*** an independent registered medical practitioner (who is qualified in occupational health medicine) has confirmed that the member of staff is permanently incapable of performing her/his duties and has recommended ill health retirement, then the member of staff may be able to receive an immediate retirement pension. There are graded levels of benefit based on how likely an individual will be capable of obtaining gainful employment after they leave. Further details are available from the Schools' Employee Relations Team.

Managers are advised to seek guidance on behalf of the employee on whether an employee is a member of the LGPS and whether they would be entitled to an ill health pension from the Pensions Section. Estimates of benefits are not normally prepared until the Occupational Health Consultant has recommended ill health retirement.