



## Managing Sickness Absence Policy & Procedure

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*(This policy supersedes all previous Managing Sickness Absence Policy and Procedures)*

## CONTRACTUAL POLICY

### Amendments

Policy Date	New Version Number	Summary of change	Comments

### Union Consultation

Date	Action (meeting, email etc)	Comments	Attendance
10/07/17	Meeting with Union Reps		UNISON, GMB, NASUWT, ATL, NUT

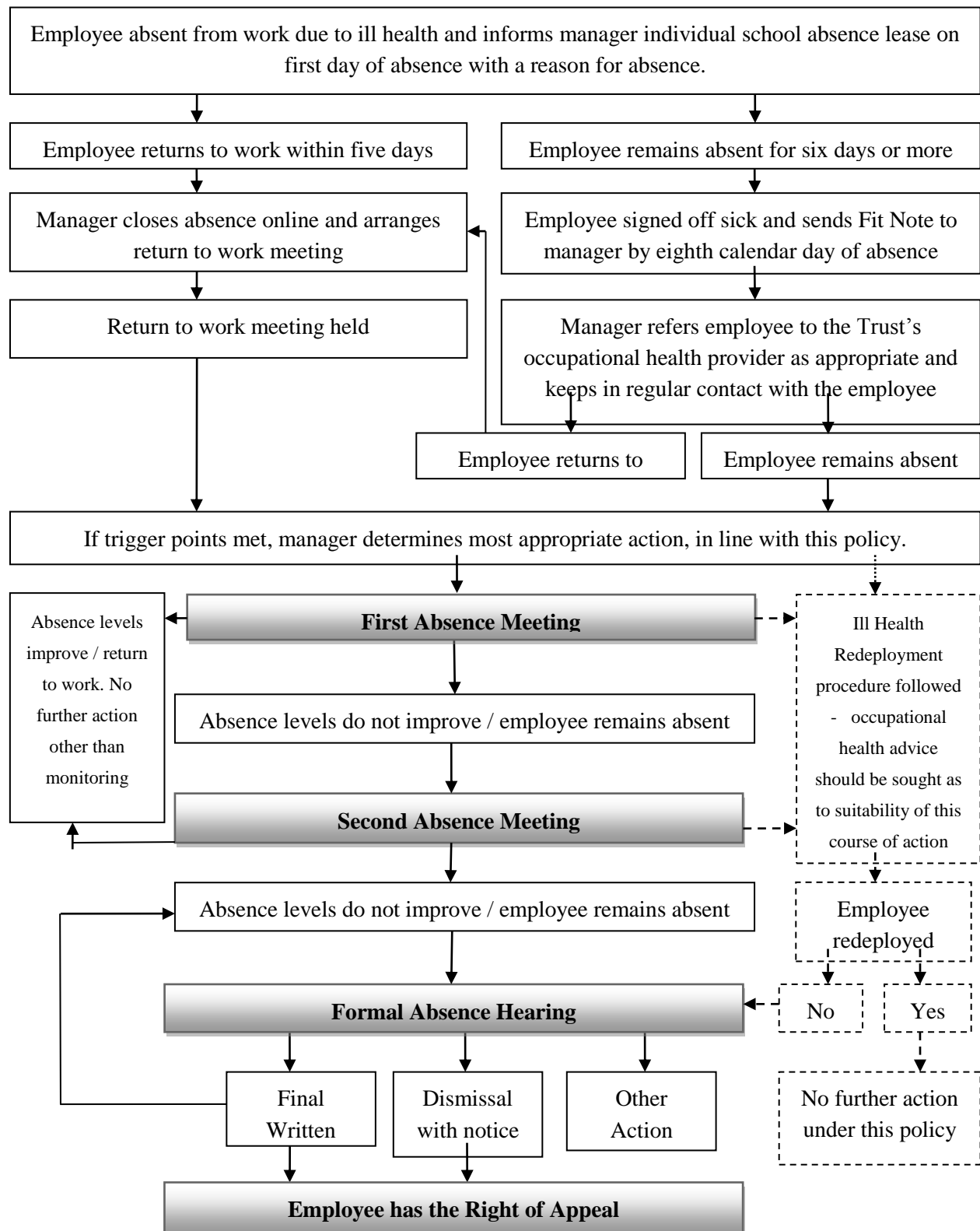
# CONTRACTUAL POLICY

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# CONTRACTUAL POLICY

## Procedure Flow Chart



# **CONTRACTUAL POLICY**

## **POLICY AND PRINCIPLES**

### **1. Purpose**

- 1.1 This policy is for managing employees' absence from work due to ill health and/or where an employee does not attend work regularly and reliably due to ill health.
- 1.2 The policy has been implemented following consultation with staff and recognised trade unions. It has been formally adopted by the Trust.
- 1.3 This policy is contractual and forms part of any employee's contract of employment but does not affect terms and conditions of employment of those staff who TUPE transferred on January 2017.

### **2. Application and Exclusions**

- 2.1 This policy is based on good practice to ensure a consistent and effective approach. The application of this policy will be fair, equitable, objective and will not discriminate either directly or indirectly on the grounds of an employee's gender, age, disability, gender re-assignment, marital or civil partnership status, pregnancy, maternity status, race (including colour, nationality and ethnic or national origins), religion or belief, sex and sexual orientation.
- 2.2 This policy does not apply to those employed by other organisations, employed on other organisations' terms and conditions of employment which include a contractual absence policy, casual workers or volunteers

### **3. Determining who will Hear the Matter**

#### **3.1 Absence Meetings**

Where there are concerns about an employee's absence(s) due to ill health and action is to be taken in accordance with this policy, the employee's line manager should usually deal with the matter. Where the concerns relate to the Headteacher, Business Manager, Executive Principals or the Chair of Governors/Directors will manage the matter.

The Manager/Headteacher/Business Manager/Chief Executive Officer (Chair of Governors/Directors) will be responsible for arranging the meetings, writing to the employee and arranging for a suitable person to attend to take notes.

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### **3.2 Formal Absence Hearing**

3.3 Formal Absence Hearings will be conducted and chaired by those that have delegated authority to dismiss. This is likely to be the First Committee or Headteacher/Business Manager/Chief Executive Officer, in accordance with their delegated responsibilities.

3.4 The Clerk to Governors/Directors will be responsible for arranging the hearing, writing to the employee and attending to take notes.

### **4. Time Limits**

4.1 The time limits included in this policy may be varied by mutual agreement. The policy makes reference to a number of 'days' within which certain actions/events are to occur. A 'day' is defined as any Monday to Friday excluding public holidays as defined by ACAS unless otherwise specified in the policy.

### **5. Being Accompanied**

5.1 The Employment Relations Act 1999 determines that an employee has a statutory right to request to be accompanied at any disciplinary or grievance hearing. To invoke that right an employee must make a reasonable request to the employer to be accompanied by either:

- a paid official from a recognised trade union/professional association
- an official of a trade union/professional association whom the union/professional association has reasonably certified in writing as having experience of, or as having received training in acting as an employee's companion at disciplinary or grievance hearings
- an appropriate work colleague.

5.2 Friends/family members are not permitted unless they fall under the above criteria and it is agreed as appropriate. It would not normally be reasonable for an employee to be accompanied by a work colleague or trade union/professional association representative whose presence would prejudice the hearing and/or was from a remote geographical location if someone suitable and willing was available more locally.

5.3 If an employee's chosen representative is not available on the day proposed for the hearing, the employee can propose an alternative date within the following five days of the original proposed date.

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### **6. Non Attendance**

- 6.1 If an employee fails to attend a meeting or hearing through circumstances beyond their control, an alternative time and date may be offered. Alternatively they may submit a written statement or nominate a representative to attend on their behalf.
- 6.2 Where an employee is unwilling or unable to attend the meeting/hearing without good cause, it will proceed in their absence and a decision based on the evidence available will be made.

### **7. Sick Pay Scheme – Support Staff**

- 7.1 Conditions for Education South West employees are contained in employee's statement of particulars (Contract of Employment). This sets out the eligibility for sick leave and conditions where sick pay is payable. To receive sick pay an employee must:
- notify their manager on the first day of absence
  - provide a doctor's Statement of Fitness for Work (Fit Note) by the eighth calendar day for absences over seven consecutive days
  - provide consecutive Fit Notes to cover the whole period of absence prior to the previous Fit Note lapsing, where there is a continuing sickness absence
  - undertake any examination that the Trust may require by an approved medical practitioner nominated by the Trust, where prolonged or frequent absences occur.
- 7.2 Sick pay may not be paid if the manager has reason to believe that the absence of the employee is due to:
- an abuse of the sickness scheme
  - the employee's own misconduct or neglect
  - active participation in professional sport
  - working for another employer
  - non-compliance with the conditions and eligibility details referred to above
  - conduct that is prejudicial to an employee's recovery.

In these circumstances, sick pay will be suspended and the Disciplinary Policy and Procedure will be followed.

### **8. Sick Pay Scheme – Teachers**

- 8.1 To receive sick pay, a teacher must meet the conditions and eligibility detailed in the Conditions of Service for School Teachers in England and Wales' (commonly known as the 'Burgundy Book') and in addition, must:

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- notify the designated manager on the first day of absence
- provide a doctor's Fit Note by the eighth calendar day for absences over seven consecutive days
- provide consecutive Fit Notes to cover the whole period of absence prior to the previous Fit Note lapsing, where there is a continuing sickness absence, even if this covers school closure
- undertake any examination that the manager may require by an approved medical practitioner nominated by the manager, where prolonged or frequent absences occur
- declare to the Trust any entitlement or alteration to any benefits received.

8.2 Sick pay may not be paid if the manager has reason to believe that the absence of the teacher is due to:

- misconduct
- non-compliance with the conditions and eligibility details referred to above
- conduct that is prejudicial to recovery
- active participation in sport as a professional, unless the Trust decides otherwise.

In these circumstances, sick pay will be suspended and the Disciplinary Policy will be followed.

8.3 Absences arising from accidents, injury or assault at work –

### **Teachers**

8.4 In the case of absence due to an accident, injury or assault which is attested by an approved medical practitioner to have arisen out of and in the course of the teacher's employment, further provisions may apply which are detailed in clause 9 of the Burgundy Book.

## **9. Trigger Points – Sickness Absence**

9.1 Managers should ensure an accurate record is kept of absence from work due to ill health and the trigger points below should be used to determine when absence from work is beginning to have an impact either on the Trust and/or colleagues. All absences due to ill health (including pre-arranged absences for planned procedures) are counted towards trigger points.



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<b>Trigger Point 1</b>	3 or more single days of absence and/or 3 periods of absence in any rolling 3 month period
<b>Trigger Point 2</b>	6 or more single days of absence and/or 6 periods of absence in any rolling 12 month period
<b>Trigger Point 3</b>	8 or more days of absence in any rolling 12 month period
<b>Trigger Point 4</b>	A discernible pattern e.g. regular absence on a particular day or certain weeks during the year (School holidays/term time, Easter break, Christmas)

### 10. Employees with a Disability

- 10.1 The Equality Act 2010 ('The Act') gives employees with a disability certain legal rights. The onus of proof is on the employee to show that they meet the requirements of section 6 of the Act which looks at whether an employee has a physical or mental impairment that affects the employee's ability to carry out normal day-to-day activities and whether the adverse effect is substantial and long term. It should be noted however, that some employees are covered by the provisions of the Act from the point of diagnosis when they have a progressive condition such as HIV, cancer or multiple sclerosis.
- 10.2 Employees are not covered by the Act if any impairment is as a result of an addiction e.g. alcohol, nicotine or any other substance (unless originally prescribed). However, there may be underlying health issues resulting from addiction that may lead to the employee being covered by the Act e.g. liver disease, lung cancer.
- 10.3 Where an employee is covered by the Act, managers will exercise their legal responsibility to consider making 'reasonable adjustments' to assist the employee to reduce and minimise absence and remain at work carrying out the job they were appointed to. It is important to emphasise that adjustments need to be *reasonable* given the circumstances. This does not mean that the manager needs to find completely different work for the employee unless it is reasonable to do so in the circumstances.
- 10.4 Managers need to manage the absences of employees covered by the Act appropriately and can seek guidance from the Trust's occupational health provider as to what adjustments to the work/workplace could be considered. Managers will determine whether suggested adjustments are reasonable given the circumstances.

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- 10.5 Any absence from work by an employee with a disability which is not connected to the disability should be dealt with in accordance with this policy in the usual way. There will be some cases where the employee's disability prevents them from regularly attending work even though all reasonable adjustments have been put in place. Certain conditions apply if the employee is not attending work due to the disability, covered by the Act, of someone the employee cares for.

### **11. Absences that should be Recorded Separately**

- 11.1 In the following circumstances, the manager will determine whether it can be justified that these absences should be included in assessing the meeting of trigger points e.g. where reasonable adjustments have been made but absence levels are still unsatisfactory:

- any pregnancy related absence (note: if pregnancy related absence occurs during the four weeks prior to the expected week of childbirth [EWC] maternity leave is automatically triggered)
- absence that arises as a consequence of the employee's disability covered by the Act
- absences resulting from an accepted accident at work unless resulting from the employee's negligence or carelessness at work.

### **12. Specific Long Term, Serious or Life Threatening Illness**

- 12.1 At the Headteacher's (Chair of Governors/Directors) discretion, the stages and outcomes of this policy may be modified for employees who have a specific long-term illness. Discretion may also be used to allow the employee to be accompanied by their partner or support worker in a supportive role if it aids the managing absence process.

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### PROCEDURE

#### 13. Reporting Sickness Absence

- 13.1 On the first day of absence, employees must contact their manager or individual school absence lead no later than thirty minutes after the normal start time (unless it is extremely extraordinary circumstances) to:
- confirm the reason for not attending work
  - advise what date they were unable to attend work (even if it was not a normal working day)
  - advise the likely return date, where possible.
- 13.2 In situations where the employee's manager is unavailable, the employee must contact another suitable person in the workplace to confirm the points listed above.
- 13.3 The employee should attempt to personally telephone their manager or individual school absence lead. In exceptional circumstances and only if the employee is unable to telephone personally, they should arrange for someone else to telephone their manager on their behalf to explain why they cannot attend work as well as why they could not speak directly to their manager. Text messages, emails or messages left with colleagues will/will not be accepted.
- 13.4 Where an employee fails to report for work and/or maintain appropriate contact during a period of sick leave this may be considered as the employee being absent without leave. In these circumstances, action under the Disciplinary Policy and Procedure may be considered once efforts to contact the employee have been exhausted.
- 13.5 Where the manager has concerns about the regularity of an employee's absence or the reasons for the absence given, the employee may be instructed to submit a Fit Note from the first day of any absence. The cost of the Fit Note will be met by the Trust.
- 13.6 The manager is required to:
- record the first day of absence even if that was not a working day for the employee, ensuring that disability and maternity related absences are recorded appropriately (see Section 11)
  - review the employee's absence against the trigger points and determine whether any action should be taken
  - consider any health, safety or wellbeing issues associated with the absence
  - where the absence is due to an accident or injury that occurred at work, record and investigate the incident as required in line with the Injury Allowance Scheme

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- ensure that an appropriate risk assessment is completed for any absence where the work environment may impact on the employee's well-being and consider what action may be taken.

Timely and accurate recording of absence is essential to ensure correct payment of contractual and/or statutory sick pay where applicable.

### **14. Absences for More than Seven Calendar Days**

#### **14.1 The employee is required to:**

- provide their manager with a Fit Note from their doctor covering all of the days from the eighth calendar day of the absence through to the last working day before they return to work, regardless of whether these are their working days or not.
- discuss with the manager any recommendations in the Fit Note that would enable them to return to work.
- attend any appointments made as a result of a referral to the Trust's occupational health provider.
- maintain contact with and keep their manager informed about their progress and the likely return to work date; and attend any meetings if required to do so.

#### **14.2 The manager is required to:**

- consider any recommendations in the Fit Note and establish whether these are reasonable, taking advice where necessary
- maintain an appropriate level of contact with the employee, meeting as necessary to ensure that the employee's absence is managed and that appropriate support to help them return to work is available.
- refer the employee to the Trust's occupational health provider as appropriate
- refer to the trigger points and determine appropriate course of action in accordance with this policy
- keep a written record of all actions taken

### **15. Fit Notes/Occupational Health Advice**

Some Fit notes and/or reports from the Trust's occupational health provider may suggest adjustments that could be introduced to assist the employee to return to work. The manager will need to determine if the suggested adjustments are 'reasonable' and can be accommodated in the workplace given the nature of the work carried out by the employee. If the suggested adjustments cannot be accommodated, the employee remains unfit for work and should continue to provide Fit notes during the absence.

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### 16. First Absence Meeting

16.1 When a trigger point has been reached, the Manager/Headteacher /Chief Executive Officer (Chair of Governors/Directors) will convene a First Absence Meeting with the employee. The employee may be back at work or still absent at this time. The purpose of the meeting is for the manager to:

- clarify the reason(s) the employee was absent from work or is still absent from work
- ensure the criteria under the relevant sick pay scheme have been met, where the employee is eligible
- ensure that the employee and manager have been keeping in contact
- if the employee is still absent, determine the likely date for a return to work
- discuss what steps the employee has taken to reduce their level of absence
- discuss the impact the employee's absence has on the service / colleagues and what arrangements might be put in place to cover work etc.
- consider a referral to the Trust's occupational health provider. This may include a referral to seek advice on the suitability of ill health redeployment
- set targets for reducing absence levels
- if it is determined that the employee has a disability covered by the Act (see Section 10 and 11), agree whether any reasonable adjustments could be considered or reviewed to reduce absence
- discuss whether the employee could access any support through specialist groups e.g. counselling
- at the discretion of the manager (after review of the employee's normal attendance pattern) arrange a date within the following 6-12 weeks for a Second Absence Meeting.

### 17. Second Absence Meeting

17.1 The Second Absence Meeting will be convened by the Manager/Headteacher /Chief Executive Officer (Chair of Governors/Directors) on the date agreed at the First Absence Meeting. If the employee's absence(s) has reduced, there may be no need for the Second Absence Meeting to go ahead if it was pre-arranged. The agenda followed at the Second Absence Meeting will be similar to that followed at the First Absence Meeting but in addition may also include the following points:

- seek further advice from the Trust's occupational health provider. This may include a referral to seek advice on the suitability of ill health redeployment

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- seek advice on whether Ill Health Retirement should be considered
- determine what has prevented the employee from reducing absence levels and if possible, determine likely future absence
- if the level of absence has not improved between First and Second Absence meeting, advise that the circumstances concerning absence will be referred to a Formal Absence Hearing at which time the appropriateness of continuing with the employee's contract of employment will be considered
- where it is determined the employee has a disability covered by the Act, consider whether any suggested adjustments are reasonable or review any already in place
- discuss any support through specialist groups e.g. counselling, that may be of benefit
- if the level of absence has reduced, advise the employee that if they exceed any of the trigger points again within the following 12 months from the last day of absence, the process will recommence at the Second Absence Meeting stage.

### **18. Formal Absence Hearing**

- 18.1 The purpose of the Formal Absence Hearing is to consider whether an employee is able to fulfil their contractual obligation to carry out the job for which they are employed and whether continued employment is appropriate.
- 18.2 The Manager/Headteacher /Chief Executive Officer (Chair of Governors/Directors) will prepare a summary report which should include the reasons for the absence(s), an up to date medical opinion from the Trust's occupational health provider, what adjustments have been looked at and/or introduced, the impact of the absence on the school/service and/or colleagues and what support measures have been considered.
- 18.3 A Formal Absence Hearing will be convened in any of the following circumstances:
- where there is evidence that an employee, due to illness, cannot carry out the duties for which they are employed
  - following unsatisfactory conclusion of a monitoring period
  - where the employee's pattern of absence illustrates an inability to attend work regularly and reliably
  - where the employee is assessed by a Physician/an Adviser from the Trust's occupational health provider as not fit for work in the foreseeable future and/or no indication of when the employee is likely to return to work and where no reasonable adjustments can be put in place to facilitate a return to work
  - where there is sufficient concern for the employee's welfare and/or for the welfare of others with whom the employee may

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come into contact with, that the continuation of the contract of employment should be considered.

- 18.4 Where it is determined that a Formal Absence Hearing is to be convened the Clerk to Governors/Directors will notify the employee in writing giving at least five days' notice, stating the details of the Formal Absence Hearing, the possible outcomes of the hearing, the employee's right to request to be accompanied and that the hearing may take place in the employee's absence if they fail to attend without providing a satisfactory explanation. A copy of the summary report and a copy of this policy must be included with the letter.
- 18.5 The Manager/Headteacher /Chief Executive Officer (Chair of Governors/Directors) is responsible for presenting the summary report at the hearing.
- 18.6 At least five days prior to the hearing, the employee will provide any relevant information that they wish to be considered at the hearing to the Clerk to Governors/Directors. This information will be passed to the Manager/Headteacher /Chief Executive Officer (Chair of Governors/Directors) and First Committee/Headteacher. The employee will be given an opportunity to address the hearing whether or not they wish to submit any relevant information.
- 18.7 The Chair of the hearing will ensure that all relevant information presented at the hearing by the manager and the employee will be considered. There will be an adjournment to enable consideration of the information by the First Committee. The outcomes may include:
- to issue a final written warning with a review period of up to 12 months
  - adjournment while further medical information/reasonable adjustments are looked into with a date set to reconvene.
  - dismissal with notice on full contractual pay, pro rata to the hours worked, with adjustments as necessary for any national benefits received such as Statutory Sick Pay. During the notice period, employees will be expected to engage in any redeployment process.
- 18.8 The Manager/Headteacher /Chief Executive Officer (Chair of Governors/Directors) /First Committee will reconvene the hearing and confirm their decision verbally, unless valid reasons exist not to do so, and will write to the employee within five days to confirm their decision.
- 18.9 If the decision is to dismiss the employee, the appropriate period of notice should be issued in accordance with the employee's contract of employment. Where a final written warning or dismissal with notice is the outcome, the employee must be informed of their right of appeal and where to send the appeal.

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- 18.10 Where dismissal with notice is the outcome, consideration should be given to assisting the employee in seeking suitable alternative employment within the boundaries of their capabilities during their notice period.

### 19. Appeal

- 19.1 If an employee wishes to appeal against the decision from the Formal Absence Hearing, they must do so in writing, stating the grounds for their appeal, within five days of receiving the written outcome.
- 19.2 An employee may appeal on the following grounds:
- the sanction given was too harsh given the circumstances
  - the procedure was not fairly or correctly applied
  - new information has come to light that would directly affect the decision made at the hearing.
- 19.3 The appeal should be sent to the Clerk to Governors/Directors who will then arrange for a Governors' Appeal Committee to be convened and make arrangements for the appeal hearing to be held.
- 19.4 The appeal should be heard without unreasonable delay. A minimum of five days' notice will be given to the employee to allow for preparation.
- 19.5 The outcome of the appeal hearing may be to:
- adjourn and refer the matter back to the Headteacher / First Committee if significant new information/evidence is provided, which was not available previously, and may change the original decision
  - conclude a procedural irregularity occurred. Determine whether this had an impact on the decision-making process and outcome. If so, determine an appropriate sanction and make a recommendation to rectify the situation
  - uphold the appeal and determine an alternative sanction/appropriate course of action
  - reject the appeal and confirm that the original decision stands.
- 19.6 The decision will be given verbally to all parties at the end of the appeal hearing unless valid reasons exist not to do so. The decision will be confirmed in writing to the employee within five days. An appeal is not a re-hearing of all of the facts but to determine if the original decision was reasonable given the circumstances. The process ends with the decision of the Appeal Committee.



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### **20. Additional Information**

#### **20.1 HR Advice**

HR advice and support can be sought by any manager or Governor/Director involved in the application of this policy at any stage. This includes attendance at meetings/hearings where required.

### **21. Employee Responsibilities**

- 21.1 Employees have a contractual responsibility to attend work to carry out the requirements of their job. Employees have a responsibility, where necessary, to take any steps required to minimise their absence. Employees must take all reasonable steps to attend meetings as required and adhere to this policy. It will be the responsibility of the employee or their line manager to contact the Trust's HR Team if they require a hard copy of their Payslip to be sent to their home address while absent from work.

### **22. Management Responsibilities**

- 22.1 Managers are required to ensure that each employee is aware of this policy, understands the attendance standards required of them and the consequences of not attaining and meeting these standards. Action should be taken consistently to identify concerns and reinforce attendance standards before it becomes necessary to take formal action. Managers are required to manage the process effectively, fairly and reasonably. In addition, managers should create a healthy and supportive work environment where employees feel valued, want to come to work and have a good work/life balance; and follow up all absences with a return to work meeting when the employee resumes work, regardless of the length of absence.

### **23. Medical Suspension/Fitness to Work**

- 23.1 In some circumstances, it may be necessary to suspend an employee on medical grounds in order to ensure they do not stay at work or resume their duties if there is a risk to the employee or any other person the employee may come into contact with. There may also be occasions where an employee's doctor has certified the employee as fit to return to work but given the nature of the work undertaken by the employee, the manager has concerns about the employee's fitness to return to/remain at work. In these circumstances, further advice should be sought on fitness to work from the Trust's occupational health

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provider and from the Trust's HR Team for any HR process being considered.

### **24. Accident, Incident or Injury at Work**

- 24.1 Any accident, incident or injury arising out of a work activity will be reported to the line manager and the manager should ensure the appropriate Accident Reporting System is completed. Absences occurring as a result of an accident, incident or injury at work should be monitored separately from trigger points but should be managed in accordance with this policy. The Injury Allowance scheme may be applicable in these circumstances. In some cases a RIDDOR referral may be necessary.

### **25. Recording of Information**

- 25.1 A written record must be made of all meetings held during the application of this policy. Those involved in each meeting will be provided with a copy of any records made.
- 25.2 The manager will ensure there is a record of the process which should include all statements, records and evidence. All records will be retained confidentially, securely and in accordance with the Data Protection Act (1998).

### **26. Raising a Grievance during the Application of this Policy**

- 26.1 If an employee is currently being managed under this policy and has a complaint related to either the person applying it and/or its application, the employee will raise a complaint under this policy which will be investigated. It may be necessary to suspend the application of the policy while the complaint is being looked into. Any delay to the application of this policy to deal with an employee's complaint should not exceed 10 days.
- 26.2 If an employee has an unrelated complaint, then the employee should use the Grievance Policy and Procedure. As the matter is unrelated, there will be no need to put any absence process currently being applied on hold as the complaint can be dealt with in parallel.

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### **27. Professional Standards/Statutory/Registration Requirements**

- 27.1 Some professions have minimum standards of fitness to be able to carry out the role and all employees covered by these standards and managers of these staff should ensure they are familiar with the obligations.

### **28. Employees Attending Work but Unable to Carry out all Aspects of their Job**

- 28.1 There may be situations where an employee attends work but is unable to carry out the full duties/requirements of their job, not as a consequence of a disability or ill-health but due to physical factors which are not related to their health. The physical factor may prevent the employee from undertaking duties such as responding quickly and effectively to children's needs in an emergency; caring for vulnerable adults appropriately; or inhibiting the employee from carrying out personal care to clients. In these circumstances, the Capability Policy should be used to manage the situation after determining that no underlying health issues exist.

### **29. Confidentiality**

- 29.1 Any parties affected by, or involved in the application of this policy will be expected to maintain an appropriate level of confidentiality. Breaches of confidentiality will be taken seriously, especially if they hinder the application of the policy. Failure to maintain confidentiality may result in action being taken under the Disciplinary Policy.
- 29.2 Disclosure of information may also be a breach of the Data Protection Act (1998) and may lead to action being taken under the provisions of this legislation, in addition to actions being taken under the Disciplinary Policy and Procedure.

### **30. Pensions**

- 30.1 Termination of employment under this policy does not mean that the employee's pension will be released automatically. The employee should seek further advice from their pension provider.

### **31. Redeployment**

- 31.1 If the employee is dismissed with notice under this policy, the manager should take all reasonable steps to assist employees to find a suitable alternative job within the Trust.

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### **32. Support for Employees**

- 32.1 Employees are encouraged to seek support from their trade union/professional association in the first instance. Procedural guidance relating to this policy is available from the Trust's HR service provider.
- 32.2 Where a referral to the Trust's occupational health provider is required, this should be made by the employee's line manager initially.

### **33. Issuing/Retracting Notice of Dismissal**

- 33.1 Where an appeal against dismissal is upheld, the notice issued to the employee will be retracted and the employee will be reinstated.

### **34. Review of policy**

- 34.1 This policy is reviewed every three years or upon change of relevant legislation. We will monitor the application and outcomes of this policy to ensure it is working effectively.

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