

## LANCASHIRE COUNTY COUNCIL

### **LONG TERM SICKNESS ABSENCE PROCEDURE FOR STAFF IN DELEGATED SCHOOLS (AUGUST 2020)**

#### **1. PURPOSE**

- 1.1 This model procedure provides a framework for schools to manage cases of long-term sickness absence. The procedure is intended to give clear guidance to all parties in dealing with long-term absence.
- 1.2 The definition of a long-term absence is one lasting a minimum of 28 calendar days.

#### **2. APPLICATION**

- 2.1 This procedure has been adopted by the Governing Board and forms part of the contract of employment of all staff employed in St Bartholomew's C of E Primary School

This procedure has been written on the understanding that the day to day management of attendance is undertaken by the Headteacher (or nominated person), and dismissal decisions are taken by the Attendance and Dismissal Committee of the Governing Board. However, in accordance with the provisions of the Education Act 2002 and its associated School Staffing (England) Regulations 2003 and 2009, the Governing Board may elect to delegate the power to make dismissal decisions to the Headteacher. If this is the case, there will be no Attendance and Dismissal Committee. Instead the dismissal decision will be taken by the Headteacher, and the appeal referred to the full Governing Board. For further details, see Appendix B. If the responsibility for dismissal decisions rests with the Headteacher, to preserve the integrity of the managing attendance process, the Governing Board should delegate the responsibility for the day to day management under this procedure to another member of the School Leadership Team, thereby leaving the Headteacher available to consider what action should be taken at the end of the formal procedures, including dismissal.

In these cases, any reference to the role of the Headteacher within this procedure should be taken to mean the member of the School Leadership Team responsible for the day to day management of attendance (identified with an asterisk (\*) throughout this procedure).

- 2.2 **In this school, the responsibility for dismissal decisions rests with the Headteacher/the Attendance and Dismissals Committee of the Governing Board** (*delete as necessary*).
- 2.3 Nothing in this procedure shall prevent an employee from exercising their statutory rights under employment law to register a claim with an employment tribunal.

#### **3. GENERAL PRINCIPLES**

- 3.1 All employees must follow the notification procedure for reporting sickness absence as set out by the Headteacher\* or his/her nominated contact person. On the first day of absence, employees must give brief details of the reason for absence, the date the absence commenced, the likely duration of the absence, whether it is related to an accident or injury at work and whether any medical attention has been sought.
- 3.2 Employees must ensure that they submit medical certificates from the GP to cover their absence continuously on the 8<sup>th</sup> calendar day of absence onwards. The school must

make internal arrangements to ensure that absence is recorded correctly using the School's absence recording system and that the appropriate documentation relating to sickness absence, including medical certificates is obtained and maintained.

- 3.3 In all cases of long-term absence, it is important that the school maintains regular contact with the absent employee in relation to their absence, including, if necessary and by agreement, visit the employee, unless exceptional circumstances apply. The purpose of such contact is to enquire as to the employee's health and recovery, to ascertain whether a return to work is likely in the near future and to identify any adjustments that could be made to facilitate an earlier return to work. Any contact with the employee should be handled sensitively to avoid the perception that the employee is being pressurised or harassed. Appropriate informal social contact should also be encouraged, which will ensure that the employee does not feel isolated. It is a matter for the Headteacher\* to determine who would be the most appropriate person to maintain contact with the employee.
- 3.4 Employees have a responsibility to maintain regular contact with the Headteacher\* or nominated contact person during periods of long term sickness absence to update the School on progress and likely duration of absence so that support can be provided for the employee as appropriate and to enable the Headteacher to plan for cover arrangements.
- 3.5 Where any action under this procedure may have implications for an employee's salary or their continued employment, they should be advised to seek advice from their trade union/professional association. At any meeting convened under this procedure, the employee may be accompanied by a work colleague or trade union/professional association representative.
- 3.6 Where the absence(s) is due to a condition that could be classed as a disability under the Equality Act 2010, advice should be sought from AskHR or a member of the Schools HR Team in relation to the procedure.
- 3.7 School employees are not covered by the County Council's Redeployment Agreement. Therefore the only option for the consideration of alternative employment is within the employee's own School.
- 3.8 The School processes personal data, including special categories of data, collected and processed during the absence management process in accordance with the School's Data Protection Policy. In particular, data collected as part of the absence management process and any subsequent stages of action under the Long Term Sickness Absence Procedure is held securely and accessed by, and disclosed to, individuals only for the purposes of completing the Long Term Sickness Absence Procedure. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with the school's Data Protection Policy. It may also constitute a disciplinary offence, which will be dealt with under the school's Disciplinary Procedure.

#### **4. MEDICAL REFERRAL PROCEDURE & OUTCOMES**

- 4.1 The responsibility for the management of long-term absence cases rests with the School, supported by AskHR and the Schools HR Team. Each school will need to ensure that all employee absence is monitored and will need to ensure that they are able to supply the information required to make a referral to the Occupational Health Unit (OHU).

- 4.2 A referral for a medical opinion from the OHU should be made in the following circumstances:-
- Where an employee has been absent from duty for four weeks or more due to sickness; or
  - If the employee has been absent from duty with stress, depression, anxiety or any other mental health condition, the referral should be undertaken when the first medical certificate is received; or
  - If the employee is absent with an industrial injury or other work-related condition, a referral should be undertaken immediately; or
  - There have been a number of shorter periods of sickness, (see Repeated Short-Term Absence Procedure); or
  - The Headteacher\*/Governors of the school have justified concerns about the ability of the employee to carry out his/her duties because of a medical condition,
- 4.3 There is a need for discretion and tact in requiring an employee to attend an OHU assessment, taking into consideration the circumstances of the case. In certain circumstances, it may be appropriate just to monitor the case over a longer period of time rather than referring it to the OHU, e.g. post hysterectomy, broken bones, end dated or terminal illness (see [Absence Management Guidelines](#)).
- 4.4 It should be noted that, in cases where employees who have contact with children suffer from pulmonary tuberculosis, epilepsy, psychiatric disorders or other such conditions, action should be taken to refer the employee to the OHU without delay. Section 9 of this procedure provides further information on such conditions.
- 4.5 Where it is decided that the employee should be referred to the OHU, the Headteacher\* or nominated person should contact the employee to inform them of the referral and its contents, before the referral is made. In all cases, the employee should be informed that they may find it helpful to seek the advice and guidance of their trade union/professional association.
- 4.6 In the case of teachers, the Education (Teachers' Qualification and Health Standards) (England) Regulations 1999 apply. These regulations state that it is a contractual requirement to submit to medical examination if requested to do so. The same contractual requirement applies to support staff as stipulated by the NJC National Agreement on Pay and Conditions.
- 4.7 The school should complete an online referral via the OHU online system. The prime responsibility for initiating the referral process rests with the School. The referral should contain factual details and provide details of the illness, the duties and responsibilities of the postholder, any problems which have come to light in undertaking the duties and responsibilities as a consequence of the medical condition, the likely length of absence, possible adjustments to enable a return to work and any other relevant information. In completing the referral, the manager should bear in mind the fact that the referral may be seen by the employee at a later date.
- 4.8 OHU may consider it appropriate for a medical report to be sought from the employee's own medical practitioner. If this is the case, the employee will be asked to sign a consent form, sent by the OHU, which will set out their rights under the Access to Medical Reports Act 1988, including the right to see the report prior to it being sent to the Authority's Occupational Health Adviser.
- 4.9 An OHU appointment will normally be arranged within 2 weeks of the referral. The OHU will notify the employee of the date of any appointment once the appointment date has

been set. The appointment will normally take place over the telephone but face to face appointments may be available upon request by the referring person. The Headteacher will be able to track the progress of the appointment on the OHU online system.

- 4.10 As stated in paragraph 4.6, all school employees are required, under their conditions of service, to attend a medical consultation arranged by the OHU and failure to do so without a reasonable explanation being provided to the Headteacher or nominated person, or failure to notify School and OHU of intended non-attendance may lead to formal disciplinary action, or may lead to decisions being taken on the basis of the existing level of knowledge about the absence. It may also disqualify employees from the benefits of the occupational sick pay scheme, in accordance with their conditions of service.
- 4.11 Following the OHU appointment, the OHU will prepare a report, which will be available on the on-line system. A copy of the report should be provided to the employee by the Headteacher\* if requested.
- 4.12 Depending upon the circumstances of the case, a meeting may be convened by the Headteacher\* to discuss the implications of the OHU report and the sickness absence procedure with the employee. At this meeting, the Headteacher\* may be accompanied by a representative of the Schools HR Team. The employee has the right to be accompanied by their trade union/professional association representative or a work colleague at this meeting. In exceptional circumstances, the Headteacher\* may not be present at this meeting and the meeting may take place away from the school premises, or outside of school time.
- 4.13 Normally, the outcome of the medical referral and any subsequent discussion with the Headteacher\* will be one of the following:-
  - (i) the employee is fit to return to the full duties of the post, therefore a return to work date is agreed;
  - (ii) the employee is fit to return to the duties of the present post subject to there having been some 'reasonable adjustment' carried out and/or the benefit of a rehabilitation programme, possibly, through a phased return to work, therefore a return to work date is agreed. The suggestion of adjustments may arise from the OHU report or from a GP fit note;
  - (iii) the employee is permanently incapable of discharging efficiently the duties of the present post, but fit for other comparable employment within the school (where this is available) (see paragraphs 4.17-4.19 below);
  - (iv) the employee is permanently incapable of discharging efficiently the duties of the present post or any other comparable employment within the school (where this is available) (see Section 5 below);
  - (v) the case should be reviewed at a later date (see Section 6 below);
  - (vi) the matter should be referred to the Attendance and Dismissals Committee of the Governing Board or Headteacher (where the Governing Board has delegated the power to make dismissal decisions to the Headteacher) (See Sections 7 and 8). If this is the case, the employee should be informed of this intention, and of the possible outcomes of such a Committee meeting regarding the possible impact on their future employability within school prior to the meeting of the Attendance and Dismissals Committee being convened.

- 4.14 In consideration of the above when dealing with an employee with a disability, the Headteacher\* should consider their duty to make reasonable adjustments under the Equality Act and should consider any advice from the OHU in relation to risk assessments. The Headteacher\* should also seek and consider advice from the Schools HR Team. See Section 6 of the Guidelines for Managing Sickness Absence in Schools for further information.
- 4.15 In cases where the OHU and the employee's medical adviser agree that the employee is permanently incapable of efficiently carrying out the duties and responsibilities of his/her present post, or any other comparable employment within school (where this is available), the Headteacher\* should arrange a meeting with the employee and their representative to discuss the implications of that decision. In these circumstances, the Headteacher\* should seek and consider advice from the Schools HR Team.
- 4.16 Where OHU recommends ill health retirement and the employee decides that s/he wishes to pursue ill health retirement, the procedure in Section 5 will be followed. In these circumstances, employees should be encouraged to consult their trade union/professional association, so they are fully aware of the implications of their application.
- 4.17 Where the Occupational Health Adviser determines that the employee is permanently incapable of discharging the duties of the present post efficiently but is fit for comparable employment within school (where this is available), consideration should be given to the School making alternative arrangements, in consultation with OHU/Schools HR Team, by discussing:-
- job restructuring;
  - relinquishing some responsibilities;
  - changing to job share or part-time work;
  - being re-trained;
  - modifications to the work place or to working practices;
  - the use of technical aids.

Such alterations should also be considered under the provisions of the Equality Act 2010 to assist the employee in gradually returning to full-time employment. Where appropriate, any proposal in relation to alternative duties should be discussed with the Schools HR Team and with the OHU (if necessary) before the amendment to the role is made.

- 4.18 If suitable alternative employment within the school is identified and offered, but is rejected by the employee and he/she is in agreement with the medical opinion with regard to permanent incapacity, the matter should be referred to the Attendance and Dismissals Committee, who may decide to terminate the contract of employment on the grounds of permanent ill health. Any appeal against such a dismissal decision may be accepted where it is submitted that the alternative employment which has been offered is not comparable or suitable. The employee must also be made aware that refusal of the offer of comparable employment would result in no automatic entitlement to pension benefits being paid upon dismissal.
- 4.19 Where it is felt there are no suitable alternative employment or the employee refuses to accept the medical advice or there is continuing disagreement, the matter should be referred to the Attendance and Dismissals Committee, who may decide to terminate the contract of employment on the grounds of permanent ill health.

- 4.20 Any appeal against dismissal by the Attendance and Dismissals Committee will be heard by the Appeals Committee. The appeal outcome will be final. There will be no further right of appeal against dismissal.

**NOTE:**

- (1) In this context 'permanently incapable' means incapable of discharging the duties of the post until the employee's normal retirement age.
- (2) Alternative/comparable employment is defined as employment in which, when compared to an employee's present employment, the contractual provisions as to capacity are the same or differ only to an extent that is reasonable. The following factors will be taken into account: the nature of the employee's ill health or infirmity of mind or body, the contractual provisions as to location, remuneration, hours of work, holiday entitlement, sickness or injury entitlement and other material terms that do not differ substantially from those of the employee's present employment.

## **5 ILL HEALTH RETIREMENT**

### **5.1 Teachers' process**

- 5.1.1 Any teacher considering an application for IHR benefits should be advised to consult with their trade union/professional association, before submitting their application. In making such an application, the teacher will be reminded that in doing so, they are indicating to their employer that they believe themselves to be permanently unfit to teach.
- 5.1.2 The application process for ill health retirement is contained within the Ill Health Retirement Guidance for Teachers document.
- 5.1.3 If approval has been given by Teachers' Pensions for the teacher to retire on IHR grounds, the Headteacher/Manager should arrange a mutually convenient date of retirement with the teacher and the school. It should be noted, however, that in granting infirmity benefits, the teacher has been deemed permanently unfit to teach and the provisions of the Teachers' Regulations then apply. Therefore, the date of termination should be as soon as possible after the granting of infirmity benefits without payment in lieu of notice. If the date of retirement cannot be mutually agreed, the termination date will be 30 days after the date that the award of IHR benefits is notified to the Employer.
- 5.1.4 The teacher has a right to appeal against a decision of TPS in relation to their IHR retirement application. The written appeal should be directed to TPS. For further details of the IHR appeals process, visit the TPS website at [www.teacherspensions.co.uk](http://www.teacherspensions.co.uk).

### **5.2 Support Staff process**

- 5.2.1 The application process for ill health retirement for support staff is contained in the document Ill Health Retirement Guidance Support Staff in Schools.
- 5.2.2 If the application for ill health retirement is successful, the effective date of termination should be as soon as possible after the granting of IHR, without payment in lieu of notice. If the employee is not granted IHR the matter should be referred to the Attendance and Dismissals Committee, where termination of the employee's contract of employment should be considered on the grounds of capability owing to ill health.

- 5.2.3 Members of the LGPS have a right of appeal against any decision made by their employer regarding their pension rights. Further details regarding the appeals process can be found on the Your Pension Service website [www.yourpensionservice.org.uk](http://www.yourpensionservice.org.uk).

## 6 TEMPORARY INCAPACITY

- 6.1 If the OHU advises that the employee is not permanently incapable of carrying out the duties and responsibilities of the post and may be capable of returning to work, the Headteacher\* will continue to monitor the case. In these circumstances, it may be necessary for the Headteacher\* to arrange a meeting with the employee to discuss the return to work arrangements, or discuss the situation if no return to work is forthcoming. Where it appears that the employee will be fit to return to his/her duties in the near future, no further action may be required.
- 6.2 Where it is apparent from the OHU report that the employee will remain absent from duty for some time but may return, the Headteacher\* should discuss the matter with a member of the Schools HR Team in order to determine what action could be taken. A meeting may also be arranged with the employee to discuss the options available.

The alternatives available include:-

- continuation of monitoring;
  - the possible application for ill health retirement benefits;
  - phased re-introduction to work. The feasibility of this should be considered by the Headteacher\*. If a school is part of the County Council's Insurance Scheme for supply cover, the phased return must be arranged in agreement with Schools HR Team, and in consideration of the advice from the OHU and/or the employee's medical adviser;
  - restructuring of the employee's duties and responsibilities;
  - retraining;
  - any other reasonable adjustments recommended by the OHU or on the GP fit note.
- 6.3 In case of more prolonged absence, where the OHU continue to be unable to make any firm prognosis regarding return to work or ill health retirement, a meeting/interview should take place with the employee, accompanied if s/he so wishes by a work colleague or trade union/professional association representative, to discuss the findings of the medical report, the implications of the continued absence, to inform the employee of the process and outcomes of an Attendance and Dismissals Committee hearing and to consider any comments made by/on behalf of the employee.
- 6.4 In each case in 6.1 to 6.3 above, any meeting or interview with the employee should be arranged by the Headteacher\*, with the advice of the Schools HR Team. The meeting should address alternative mechanisms for the continuation of employment, several of which are outlined in 6.2 above. If a mutually acceptable return to the work situation is not identified, a decision as to whether the matter should be referred to the Governing Board's Attendance and Dismissal Committee or Headteacher (where the Governing Board has delegated the power to make dismissal decisions to the Headteacher) should be taken, in consultation with the Schools HR Team and the Headteacher\*/Chair of Governors as appropriate (see Section 6), having considered:

- the available medical advice;
- the nature of the illness;
- the pattern of absence;
- the overall absence record
- the likelihood of a return to work in the foreseeable future;
- the operational needs of the school;
- the impact on other employees.
- any implications arising from the Equality Act 2010

## **7 TERMINATION OF EMPLOYEE'S SERVICES**

7.1 Where it is decided that all alternatives have been exhausted and termination of the employee's contract of employment should be considered, advice must be sought from the Schools HR Team, as in the case of all dismissals.

7.2 Circumstances in which consideration may be given to terminating an employee's services include:-

- where the OHU determine that an employee is permanently unfit to carry out the duties of their present post or any other comparable employment within school (where this is available), and the employee does not wish to pursue ill health retirement;
- where the OHU determine that an employee is permanently unfit to carry out the duties of their present post but is fit for other comparable employment within school (where this is available) and all other employment alternatives have been considered, including modifications to the work place and/or working practices, but no such comparable employment has been identified;
- where the employee does not agree with the medical opinion with regard to permanent unfitness;
- where the employee has been advised to seek ill health retirement on the basis of medical advice but refuses to do so;
- where the OHU is unable to reach a decision on permanent unfitness;
- where neither OHU nor the employee are able to indicate a return to work date in the foreseeable future;

7.3 In these circumstances a report will be made to the Governors' Attendance and Dismissal Committee or Headteacher (where the Governing Board has delegated the power to make dismissal decisions to the Headteacher). The Committee will consider whether to monitor the case further or to take a decision to terminate services on the grounds of permanent or temporary incapacity, having regard to the circumstances of the case, and the factors set out at section 7. The procedure to be followed at the meeting is outlined at Appendix A.

## **8 MEDICAL DISORDERS (TEACHERS AND OTHER EMPLOYEES HAVING CONTACT WITH CHILDREN)**

8.1 In cases where a teacher is found to be suffering from a contagious disease or a condition such as pulmonary tuberculosis, epilepsy, a psychiatric disorder or other such condition, the matter should be referred to the OHU following the procedure



outlined in Section 4 above. The employee should not be allowed to work until the OHU has given clearance.

- 8.2 In some cases, the employee's General Practitioner may sign him/her off as being fit to work but he/she should not be allowed to return to duty until the OHU has made a decision, even if this means suspending the employee from duty on full pay. Where an employee is suspended on full pay, the Schools HR Team must be consulted.
- 8.3 Headteachers\* must take immediate action when they consider a teacher may have become medically incapable of performing teaching duties if this may put at risk the health, education, safety or welfare of pupils.

## **9 INDUSTRIAL INJURY**

- 9.1 Where an employee is absent from duty due to an accident which arose out of, and in the course of, his/her employment, this may be treated as an industrial injury. The Headteacher must consider each case on an individual basis and make a decision on whether the absence is due to an industrial injury. Where there is any doubt as to whether it should be treated as an industrial injury, the Headteacher should seek advice from the Schools HR Team.
- 9.2 The Headteacher should inform the employee that the case is held to be an industrial injury and should update the online absence system to indicate this, including inputting the injury on the online accident reporting system. The Headteacher should ensure that any relevant paperwork is completed e.g. HS1, Riddor form etc, in consultation with the employee.
- 9.3 The Headteacher will inform the employee, that the absence is being viewed as an industrial injury (without prejudice).

### **9.4 Teachers**

Paragraph 9 of the Burgundy Book outlines the provisions relating to absence arising from accident, injury or assault at work. These provisions apply equally to absence caused by both physical injury and clinically diagnosed psychological injury.

If the case is held to be an industrial injury, teaching employees are entitled to full pay for a maximum period of 6 months, which is not deducted from his/her normal sick pay entitlement, though such absences are reckonable for entitlement to Statutory Sick Pay.

### **9.5 Support staff**

If the case is held to be an industrial injury, support staff employees are entitled to full pay for a maximum period of 9 months, after which time the employee will receive his/her half pay entitlement under the Occupational Sick Pay Scheme.

## **10 EXTENSION OF SICK PAY ENTITLEMENT (TEACHING STAFF ONLY)**

- 10.1 Under the Conditions of Service for School Teachers in England and Wales (the Burgundy Book) Section 4, paragraph 2.2 provides the employer with discretion to exceed the minimum entitlement for sick leave in individual circumstances.

## 11 TERMINAL ILLNESS CASES

- 11.1 This procedure may be used for dealing with cases of terminal illness. The Occupational Health Unit can assist in dealing with such cases.
- 11.2 Advice on managing cases of long-term absence due to terminal illness can be obtained from the Schools HR Team including advice and guidance in relation to financial entitlements and pension issues. In addition, specific guidance for managing cases of critical or terminal illness can be found within the [Guidelines for Managing Sickness Absence](#) on the Schools Portal.

## 12 ABSENCE CAUSED BY NEGLIGENCE

### 12.1 Teachers

#### ***Based on paragraph 11.1-3 of the Burgundy Book:***

If the absence of the teacher is occasioned by the actionable negligence of a third party in respect of which damages are recoverable, he/she shall advise the employer forthwith and the employer may require the teacher to refund a sum equal to the aggregate of sick pay paid to him/her during the period of disability of such part thereof as is deemed appropriate, but not exceeding the amount of the damages recovered. In the event of the claim for damages being settled on a proportionate basis, the employer will require full details and will determine the actual proportion of sick pay to be refunded by the teacher.

If the employer, in consultation with the governing Board as appropriate, are of the opinion that the disability which has occasioned the teacher's absence from work is due to his/her misconduct, or if the teacher has failed to observe the conditions of this scheme, or has been guilty of conduct prejudicial to his/her recovery, the payment of any sick pay under the scheme may be suspended by the employer. In any such case the employer shall inform the teacher of the grounds upon which the payment of sick pay has been suspended. He/she will then be given the opportunity to submit his/her observations and to appear (accompanied by a representative if he/she so wishes) before the Grievance Committee of the Governing Board. The Committee will thereupon decide whether the disability was due to the conduct of the teacher or whether he/she has failed without reasonable cause to observe the conditions of the scheme, or has been guilty of conduct prejudicial to his/her recovery, in which case the teacher shall forfeit his/her right to any payment or further payment of sick pay in respect of that period of absence.

Sick pay shall not be paid in a case of accident due to active participation in sport as a profession unless the employer decides otherwise, though Statutory Sick Pay may be payable".

### 12.2 Support staff

#### ***Based on paragraph 10.10 of the Green Book (paragraph 10.10)***

If an employee abuses the sickness scheme, or is absent on account of:

- (i) sickness due or attributable to deliberate conduct prejudicial to recovery, or
- (ii) the employee's own misconduct or neglect, or
- (iii) active participation in professional sport, or

- (iv) injury while working in the employee's own time on their own account for private gain or for another employer,

sick pay may be suspended. The Governing Board will advise the employee of the grounds for suspension and the employee shall have a right of appeal to the Grievance Committee of the Governing Board. If the Committee decide that the grounds were justified then the employee shall forfeit the right to any further payment in respect of that period of absence. Repeated abuse of the sickness scheme will be dealt with under the disciplinary procedure.

If an absence is attributable to the negligence of a third party in respect of which damages are recoverable, the employee should inform the employer. In such cases, the employer may require the employee to refund a sum equal to the amount of sick pay paid to him/her during the period of absence, not exceeding the amount of the damages recovered.

## **APPENDIX A**

### **GOVERNING BOARD ATTENDANCE AND DISMISSAL COMMITTEE**

#### **PROCEDURE FOR CONSIDERATION OF REPEATED AND LONG-TERM SICKNESS ABSENCE AND TERMINATION OF EMPLOYMENT ARISING FROM SICKNESS ABSENCE**

##### **A. GENERAL PRINCIPLES**

1. Any consideration of termination of employment should be pursued in consultation with the Director Children's Services as in the case of all dismissals, other than where the Chair of Governors has delegated authority. In the case of Voluntary Aided and Foundation Schools, any consideration of termination should take place in accordance with the Governing Board's dismissal procedure. Confidentiality should be maintained as is the case in any dismissal process.
2. The employee has the right to attend and/or be represented by a work colleague or representative of a trade union/professional association, at any meeting convened under these procedures. In addition, the employee may be accompanied by a scribe whose only function is to take written notes to serve as a private record for the employee.
3. The Headteacher\*, when presenting a report at any meeting convened under these procedures, has the right to be accompanied by a representative of a professional association to act as adviser (not as the presenter of the case).
4. At any meetings convened under these procedures, the Director Children's Services or their nominee, normally an HR representative, is entitled to attend. In the case of Voluntary Aided and Foundation schools with full delegation, this will apply where advisory rights have been accorded to the Director Children's Services. Where advisory rights have been accorded to the Diocese, a Diocesan Officer is entitled to attend.
5. The power to adjourn meetings convened under these procedures rests with the Chair of the meeting. Both parties will be allowed the facility of an adjournment which will not unreasonably be refused.
6. In schools where the Governing Board have not delegated the responsibility for dismissal decisions to the Headteacher, any reports presented to the Governing Board under these procedures will not be dealt with by the full Governing Board, but by a Committee of the Governing Board set up for that purpose comprising no fewer than three governors. The Governing Board will empower the Disciplinary Committee to sit as an Attendance and Dismissal Committee with delegated powers to deal with matters under both the short term and the long term sickness absence procedures. The Committee will be empowered to consider and determine matters arising from ongoing temporary incapacity and repeated short-term absence and to consider and determine matters where an employee does not accept a recommendation to seek infirmity benefits.
7. Any appeal against termination of contract will be referred to the Appeals Committee of the Governing Board.

##### **B. PROCEDURE AT THE HEARING OF THE ATTENDANCE AND DISMISSAL COMMITTEE OF THE GOVERNING BOARD**

1. The Attendance and Dismissal Committee will meet as soon as is practicable, once a decision has been taken to submit a report to Governors.
2. The employee will be informed in writing that a report is being submitted to the Attendance and Dismissal Committee and that the employee can attend and may be represented by a work colleague or Professional Association/Trade Union representative, to respond to the case. Where the employee fails to attend and no reasonable explanation is forthcoming, the matter may be considered in his/her absence.
3. The Headteacher\* will prepare a report for the Attendance and Dismissal Committee setting out:
  - ❑ the absence record of the employee over the relevant period (depending upon the nature of the absences) with any patterns/frequencies highlighted which are considered to be relevant
  - ❑ all correspondence confirming action taken
  - ❑ a current medical report (where this is available) and any further medical advice relevant to the case.
4. The Clerk to the Governors will give written notification of the date, time and place of the hearing to the employee and his/her representative together with a copy of the report to be placed before the Committee at least 10 working days prior to the date of the meeting. If the employee is not able to attend due to the unavailability of their professional association/trade union representative, the representative should suggest an alternative date within 5 working days of the original date.
5. The employee may (if he/she wishes) submit to the Clerk of the Governors any documents concerning the report for circulation to the members of the Committee prior to the meeting.
6. The case on behalf of the School will be made by the presenter of the report (i.e. Headteacher\*, or other appropriate person e.g. an officer of the Authority) and witnesses may be called to support the case.

Where an employee does not attend the hearing or is not represented but submits written representations, 7 to 10 should be omitted.

7. The employee and/or his/her representative and members of the Attendance and Dismissal Committee will be entitled to question the presenter of the report and any witnesses.
8. The employee and/or his/her representative will present a statement of case and present any documents to the Committee and will be entitled to call witnesses to support the case.
9. The presenter of the report and the Committee will be entitled to question the employee and any witnesses who have been called.
10. The presenter of the report will have the opportunity to make a closing statement to the Committee and, thereafter, the employee and/or his/her representative will have the opportunity to do the same.

11. At the conclusion, the presenter of the report, the employee, his/her representative and any witnesses will withdraw and the Committee will reach a decision in private. Advice given by the Director Children's Services/Diocesan Officer or their representatives must be considered by the Committee. Should any parties need to be recalled to clarify any points of uncertainty, all parties should return notwithstanding that the point giving cause for concern relates to one party only.
12. Following their deliberations, the decision of the Committee will be conveyed orally to both parties and subsequently confirmed in writing within 5 working days informing the employee of their right of appeal which must be exercised within 10 working days of written confirmation of the decision.
13. In the event that a decision to dismiss is taken, the employee will receive due notice.
14. The notice period will commence from the date that the decision to dismiss is taken.
15. The same procedure will be followed where the Governing Board have delegated the responsibility for dismissal decisions to the Headteacher. In these cases, the Headteacher will assume the role of the Committee and an alternative member of the School Leadership Team will assume the role of the Headteacher. The Headteacher will identify the most appropriate individual to assume the role of the Clerk to Governors.

### **C. APPEAL PROCEDURES**

1. Any appeal against a decision of the Headteacher (where the Governing Board has delegated the power to make dismissal decisions to the Headteacher) or the Attendance and Dismissal Committee will be referred to the Appeals Committee of the Governing Board.
2. Appeals will be dealt with by way of rehearing and the order of proceedings will be in accordance with Section B6-11 above. In the case of Voluntary Aided, Trust and Foundation Schools, the Appeals Procedure will operate in accordance with their adopted procedures for dismissal.
3. The Clerk to the Governors will give written notification of the date, time and place of the hearing to the employee so as to arrive no later than 10 working days before the date of the meeting and the employee will receive, by that time, a copy of the report and statement(s) (if any), which are to be considered by the Appeals Committee.
4. The employee may submit any documents concerning the decision of the Attendance and Dismissal Committee or Headteacher (where the Governing Board has delegated the power to make dismissal decisions to the Headteacher). These should normally be made available to the Clerk to the Governors as soon as possible before the date of the meeting, so that they may be circulated with the report and statements.
5. A copy of the report and statements will be forwarded to members of the Appeals Committee prior to the hearing.
6. The Appeals Committee will have the power to confirm, or alter the decision of the Attendance and Dismissal Committee or Headteacher (where the Governing Board has delegated the power to make dismissal decisions to the Headteacher). In the event that any subsequent appeal reverses the decision, the termination of employment will be rescinded and any arrears of salary will be reinstated accordingly.

7. The decision of the Appeals Committee will be final and no further right of appeal or hearing will be allowed under these procedures. The decision will be conveyed orally to the employee at the conclusion of the appeal hearing by the Chair of the Committee or one of the advisors to the Committee.
8. The Governing Board will notify the Authority in writing within 5 working days of the meeting of any determination to dismiss and the reasons for it. The Authority will within a period of 14 days (excluding weekends and public holidays) of the receipt of notification inform the employee of the termination of their contract of employment having regard to any period of notice to which they are entitled. In Voluntary Aided or Trust schools the Governing Board will be responsible for informing the employee of the termination of contract.
9. The effective date of dismissal will be the date of the Attendance and Dismissal Committee hearing or Headteacher hearing (where the Governing Board has delegated the power to make dismissal decisions to the Headteacher) where the original decision to dismiss was taken. All dismissals under this procedure will be with notice pay or payment in lieu of notice.

**NOTE      Employment Tribunal**

Nothing in these procedures will restrict an employee from exercising statutory rights under employment law.

## **APPENDIX B**

### **ADDENDUM TO LONG-TERM ABSENCE PROCEDURE**

#### **School Staffing (England) Regulations 2003 & 2009 – Delegation to Headteacher of authority to make dismissal decisions.**

These Regulations allow for Governing Bodies to delegate authority to make dismissal decisions to Headteachers. Therefore, the Headteacher becomes responsible for all disciplinary action up to and including dismissal.

Governing Bodies will need to take a decision as to whether they wish to delegate this responsibility. They need to bear in mind that the statutory guidance accompanying the Regulations specifies a series of circumstances where such an arrangement may not be appropriate. These are as follows

- A Headteacher who is unwilling to accept this function and who has hitherto not been required to do so. The position could be reviewed on the appointment of a successor Head.
- Where the Headteacher has been directly involved in the disciplinary process leading up to the consideration of dismissal – for example, through investigating the alleged misconduct. Experience shows that this is invariably the case and therefore, referral for consideration by the Discipline and Dismissal Committee preserves the integrity of the disciplinary process. However, in large Schools, it may be possible to delegate the responsibility for investigation to another member of the School Leadership Team, thereby leaving the Headteacher available to consider, what disciplinary action, up and including dismissal, should be taken. Appeals against disciplinary action should still be considered by the Appeals Committee.
- Where the Governing Board of a school with a religious character (i.e. Voluntary Aided, Foundation and Voluntary Controlled Schools) has agreed that Governor involvement will serve to preserve this character. Therefore, advice should be sought from the relevant Diocesan Authority.
- Where the Headteacher is themselves subject to disciplinary or capability procedures.
- Where the CSA may have made representations to the Chair of Governors on grounds of serious concerns about the performance of the Headteacher.

Where a Governing Board does decide to delegate the authority to make dismissal decisions, they are strongly advised to consult with staff and their professional associations before finally confirming their decision.