



Draft - Attendance Management Procedure

1. Introduction

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

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

1.3 The procedure applies to all employees of the Council with the exception of employees who are still within their probationary period.

2. Responsibilities

2.1 The Council's responsibility is to provide a safe and healthy work environment and a uniform process to manage sick absence in a fair, consistent and compassionate way. It is also the Council's responsibility to terminate the employment of employees when, despite supportive actions and however unavoidable the reasons for absence, employees cannot demonstrate their ability to attend work regularly.

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

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

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

3. How sick absence is defined

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

- any pregnancy related illness: for further guidance see paragraph 15 on maternity related sick leave and fertility treatment.

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

4. Health checks during the recruitment process

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

5. Attendance during Probation Periods

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

5.2 Probationers will have their attendance managed through the Probation Service Procedure. The manager should discuss all incidents of sick absence with the employee during the probationary reviews/interviews and explain that appointment cannot be confirmed unless attendance is satisfactory.

6. Confidentiality

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

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

7. Health appointments

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

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

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

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

8. Industrial Injuries and accidents

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

9. Notifying sick absence

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

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

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

9.4 If the manager has evidence that the absence is not due to sickness, then the manager should contact HR and investigate under the Council's Disciplinary Procedure.

9.5 In the event of an employee falling sick during annual leave, the absence will be regarded as sick leave from the date of a medical certificate and further annual leave will be suspended from that date. The employee should be credited with the annual leave which is covered as sick leave by the certificate.

10. Recording and monitoring

10.1 Managers are responsible for keeping accurate records on employees' sick absence in line with the current process for their Unit. The contents and outcomes of any formal or informal discussions with an employee about his/her sick absence should, wherever practically possible, always be confirmed in writing to the individual and a copy kept on file in a secure location. This will ensure that there is no confusion over what has taken place, and that an accurate record of events and advice/decisions is maintained for future reference. Managers are also responsible for keeping all self-certificates and medical certificates in a secure filing system. When an employee leaves his/her post these records should be sent to HR and will be placed on the employee's personal file.

11. Occupational sick pay

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

11.2 The Council reserves the right to dismiss an employee before s/he has exhausted any outstanding entitlement to occupational sick pay.

12. Attendance management process

12.1 This section of the attendance management procedure sets out the steps to follow in dealing with sick absence so that employees are dealt with fairly and consistently and that a positive attendance culture is developed.

12.2 Where there is evidence of false sickness certification this should be investigated under the Disciplinary Procedure.

13. Return to work discussion

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

14. Employees covered by the Equality Act

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

14.2 Advice is given in the Council's HIV/AIDS Awareness Guidance on how managers should support HIV positive employees and comply with Council policies and legislation.

15. Maternity related sick absence

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

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

16. Stress and mental health issues

16.1 Where managers are concerned that an employee may have a mental health problem (for example when they seem depressed and withdrawn) it is important to talk to the employee and offer support. See Guidance for Managers about Mental Health (appendix 5) for advice and expert sources of help.

17. Attendance Concern Levels

17.1 Managers should hold an absence review meeting whenever an employee's sick absence level reaches the following attendance concern levels:

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

17.2 For part time employees, the above levels should be applied pro-rata. A calculation table is provided here.

18. Absence Review Meeting – stage one of formal process

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

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

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

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

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

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

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

Absence Review Meeting – stage two of formal procedure

19.1. The stage two absence review meeting will take the same format as a stage one meeting. The purpose of the meeting will be to review the effectiveness of any actions which have taken place to improve the employee's attendance, and to plan further actions which need to take place. If appropriate, a referral or follow up appointment should be arranged with Occupational Health. HR may attend this meeting where requested to do so by the manager. Unless there are clear reasons to withhold or delay the action, the employee should be advised that they will receive a stage two written warning and that should their attendance level prompt a stage three review, their continued employment will be at risk. This meeting should be followed up where required by a written warning within 7 calendar days of the meeting, which will include the right of appeal (see appendix 13). A model letter for a stage two warning is given at appendix 14. A copy of this letter should be sent to HR to be placed on the employee's file.

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

20. Managing extended sick absences

- 20.1 During an employee's extended sick absence the manager must make every effort to maintain regular contact with the employee, for example at least once a month, arranging future contact as appropriate. This is to ensure that the employee does not feel isolated and unsupported, and to enable the manager to maintain an accurate picture of the employee's circumstances. The employee must keep management informed of progress, and submit medical certificates on time.
- 20.2 The manager should be proactive in seeking Occupational Health advice from the outset if it seems likely that the employee's absence may be extended.
- 20.3 If the absence appears to be a mental health related issue; i.e. stress (personal or work related), anxiety or depression, and the condition is likely to continue for more than 7 days, then referral to Occupational Health should be made immediately. This is because early specialist support has been shown to be very effective in managing these conditions.
- 20.4 For the same reason, if the absence appears to be due to a musculo-skeletal condition, referral to Occupational Health should be made after 14 days absence.
- 20.5 All extended absences must be referred to HR for advice by 28 days.
- 20.6 When employees return from an extended absence an absence review meeting and appropriate warning should be carried out as in paragraph 18.

21. Occupational Health referral

- 21.1 Where it is not clear that the employee will be able to return to work or to perform the same job within a reasonable and well-defined period, the manager should refer the employee to Occupational Health for a medical opinion. The manager should ask the employee to sign the Occupational Health Service Health Enquiry Referral Form plus the Occupational Health Service Informed Consent Form where Occupational Health needs permission to seek a report from the employee's own doctor/consultant. Where possible, the forms should be completed via a home visit, to keep in touch with the employee, understand his/her situation and enable any questions and concerns about the Occupational Health referral to be discussed. If the employee or manager prefers, an alternative venue for the meeting should be arranged
- 21.2 A model letter proposing a visit is at appendix 15. The employee may wish to ask their union representative or work colleague to attend the home visit/meeting place. Prior to any meeting the manager should contact the employee to explain its purpose. It is important that the manager keeps notes of the discussion and writes to the employee to confirm any actions arising from the meeting, such as appointments with Occupational Health.
- 21.3 If an absence is extended into a third month, a case review should take place between the manager and HR (and Occupational Health when practicable and appropriate). This review should consider progress and any actions which need to take place, for example Occupational Health writing to the employee's doctor or specialist for further information, or planning for reasonable adjustments to support a return to work.
- 21.3 If Occupational Health advice suggests that the employee is unlikely to be able to return to his/her existing job within a reasonable period, the manager should consider the need to hold a stage 3 capability hearing to consider redeployment or dismissal. Where redeployment is the

recommendation, the redeployment process can start prior to the hearing, with the active involvement of the employee, to maximise opportunities to find a job match.

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

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

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

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

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

22.1 Following a stage two warning, if sick absence again reaches the attendance concern levels, or as a result of an extended absence, it may be necessary to consider a stage 3 capability hearing, where both management and employee will be given the opportunity to state their case to a hearing manager. Before this hearing is convened, the manager should ensure that any relevant health enquiries and reports have been obtained from Occupational Health.

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

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

23. Stage Three Capability Hearing

23.1 The stage three hearing will take the form of a formal meeting between the employee, a senior manager of the department (the 'Hearing Manager'), the employee's management (the 'Presenting Manager'), and a representative from HR. The employee has the right to be accompanied at the meeting by their trade union representative or a companion who is a Brighton and Hove City Council employee. The manager must forward written notification of the time and date of the Hearing and a copy of the case papers to be presented by the Council to the employee and to their representative/companion by seven calendar days before the hearing.

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

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

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

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

23.5 The hearing manager will:

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

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

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

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

23.8 The hearing manager will send a letter giving written confirmation of the decision to the employee within seven calendar days of the conclusion of the hearing. A copy of this letter should be sent to the appropriate HR officer for the employee's personal file.

24. Appeals against dismissal

24.1 The employee may appeal against his/her dismissal to the Council's Dismissal Appeal Panel. The appeal must be made in writing, on the appeal form at appendix 12, and should clearly state the ground(s) for the appeal. The appeal form must be submitted to the Head of HR and OD within seven days of the employee receiving the written decision to dismiss him/her.

24.2 On receipt of the appeal form, the Head of HR and OD will arrange for the Council's Dismissal Appeal Panel to be convened as soon as reasonably practicable, to hear the appeal.

- 24.3 The appeal panel will consist of three Councillors drawn from a pool of Councillors allocated to sit on the Council's Dismissal Appeal Panel and an adviser from the Legal section and HR.
- 24.4 The parties will be given at least seven days' notice in writing of the date of the appeal hearing. The procedure which the panel will follow is at appendix 13.
- 24.5 A letter giving written confirmation of the decision of the Appeal Panel will be sent to the employee (copied to their representative) within seven days of the hearing being held.
- 24.6 A copy of the letter should be sent to HR for inclusion in the employee's personal file.
- 24.7 The Dismissal Appeal Panel is the final level of appeal within the Council.
- 24.8 A flowchart is included below to show the key steps of the Attendance Management Procedure.

