
Title of Policy/Procedure Blue Kite Trust Managing Sickness Absence Procedure

Reviewer(s): Head of HR

To be read in conjunction with the following policies: BKAT Wellbeing and Mental Health Policy

Consultation Process Policy to be agreed with TUs at The Blue Kite Academy Trust JCC

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- 1.0 **Introduction**
- 1.1 This procedure should be read in conjunction with the Trust's Wellbeing and Mental Health policy. By following these policy and procedures the Trust and schools demonstrate the need to provide a robust and consistent framework for supporting and managing employee health and wellbeing and maximising attendance through positive attendance management.
- 1.2 This will be achieved through:
- Promoting the health, safety and wellbeing of all employees, including use of risk assessment to identify and manage hazards impacting on health in the workplace;
 - Monitoring levels of sickness absence and implementing fair and consistent procedures to support and manage staff absence.
- 1.3 To manage pressure and stress at work Blue Kite Academy Trust (BKAT) has chosen to adopt the HSE Management standards process to identify, manage and mitigate work related pressure and stress. The following principles will apply:
- Good attendance is valued.
 - Open and honest communication between the Trust, Members, Trustees, Governors, Heads, managers and employees is encouraged and promoted.
 - External support is made available to all staff, signposting to external support and the Trust's Employee Assistance Programme (EAP).
 - Matters raised relating to an employee's attendance do not imply any distrust of staff or concerns regarding their conduct.
 - Absence due to ill health or injury regardless of the case should be dealt with in a way that is consistent, non-discriminatory and in accordance with the Equalities Act 2010.
 - Sickness cases will be conducted with respect for confidentiality.
- 2.0 **Notifying Sickness Absence**
- 2.1 It is essential for Headteachers/managers to know as soon as possible when a member of staff is unable to attend work due to illness.
- 2.2 Each school across the Trust will have procedures in place for notifying sickness absence and all staff will be made aware of these. On the first day of absence, employees must notify the school as set out in their procedures. This will give the school the opportunity to arrange for supply cover.
- 2.3 In exceptional cases, if due to unforeseen circumstances the employee is unable to notify their own absence (e.g. hospitalisation), then a family member or friend may do so on their behalf.
- 2.4 Absence of less than a full day will still count as the first day of absence. For all absences of up to 7 calendar days a self-certification form must be completed and retained in the school office.

2.5 **Absences over 7 Consecutive Days**

2.6 For absences which extend beyond 7 calendar days (including the weekend), a medical certificate (Fit note) (MED3) must be received by the manager. This must be no later than twelve days from the start of the absence during term time, or the 1st day of the new term if absence occurs during the school holidays. Failure to submit medical certificates within this timeframe may be considered as unauthorised absence, which may result in loss of pay

2.7 The medical certificate must be certified by a qualified doctor. If a MED3 form is received that states an employee may be fit for work this must be discussed with the employee, as part of the sickness management process and the line manager must consider whether the employee is able to return to work in any capacity considering any advice on the MED3. If there is any doubt about the employee's capability to return to work the manager should refer the employee to Occupational Health before they return to work. If the manager is unable to accommodate the recommendations on the fit note due to the type of work available or business requirements then the MED3 should be treated as a 'not fit for work' notification until expiry or any change in circumstance that would support an earlier return to work.

2.8 The MED3 will never state when an employee is fit to work, on the expiry of the MED3 the onus of responsibility will be on the employee to obtain a further MED3 if they continue to feel unable to return to work.

3.0 **Medical Appointments**

3.1 Whenever possible, employees should arrange routine medical and dental appointments outside normal working hours. When this is not possible, (with consent from the Headteacher) employees should endeavour to arrange routine medical and dental appointments at the beginning or end of the working day, to limit disruption to the service.

3.2 In the case of urgent medical and dental appointments, and with some routine medical and dental appointments, it is recognised that flexibility will need to be applied in order to fit with the availability of the doctor or dentist, and as such, little discretion over the timing of such appointments is possible. In such cases, employees will be able to access time-off with pay to attend the appointment. Whenever possible, the employee's line manager should be notified in advance of appointments within working hours, so that the absence can be authorised. In urgent cases when this is not possible, the employee's line manager should be notified as soon as possible after the event.

3.3 **Hospital and other specialist medical appointments**

3.4 It is recognised that employees are less able to influence the timing of hospital and specialist appointments. In such cases, employees will be able to access time-off with pay to attend the appointment. Whenever possible, the employee's line manager should be notified in advance of appointments within working hours, so that the absence can be authorised.

- 3.5 **Excessive use of medical appointments**
- 3.6 If an employee appears to be making excessive use of the provisions for urgent appointments, the line manager can decide on the appropriate action, which may include withdrawal of the right to paid time-off for appointments. Any concerns should be discussed with the employee at an early stage.
- 4.0 **Payment to staff who are absent during school holidays**
- 4.1 **All Teachers and Support staff contracted to work term time only** - An employee who is ill immediately preceding a school closure and who has exhausted their sick leave entitlement, or are on less than full pay, and recover during the period of closure will be deemed, for the purposes of calculating the amount of salary due, to have returned to duty on the day they are authorised medically fit to do so by means of a doctor's statement, provided the employee actually returns to duty on the first day after the period of closure.
- 4.2 **Support staff contracted to work all year round** and are absent during a period of authorised annual leave may request that this time be credited back to them. In order to do so, normally a self-certificate will be accepted by the line manager, however, the manager may request a medical certificate from the employee at the manager's discretion. If the manager requests a medical certificate, and a fee levied by the GP, then this cost will be borne by the school.
- 4.3 **Absence following an Accident/Incident**
- 4.4 All absences due to an accident or incident during working time must be reported in line with the Trust's Guidance. The Trust operations team can provide advice and guidance. Affected employees should be made aware of the wellbeing support set out in the Wellbeing and Mental Health Policy.
- 4.5 **Pay During Absence**
- 4.6 An employee's entitlement to pay during periods of sickness absence is made up of Statutory Sick Pay and Occupational Sick Pay.
- 4.7 **Statutory Sick Pay:**
- 4.8 The Trust, on behalf of the Department for Work and Pensions, pays Statutory Sick Pay (SSP) into wages. SSP is paid for a maximum of 28 weeks in any 12 month period, for each occasion or linked episodes of sickness absence.
- 4.9 Staff who do not qualify for SSP, or whose entitlement has ended, should make a claim for Incapacity Benefit from the Department for Work and Pensions. The Payroll Office will send the employee a form detailing why they are not entitled to SSP to allow them to make a claim for Incapacity Benefit.
- 4.10 For the purpose of calculating a teacher's entitlement to sick pay, a year is deemed to begin on 1st April and end on 31st March of the following year. Where a teacher starts service after 1st April in any year, the full entitlement for that year will be applicable. Where a teacher is on sick leave on 31 March in any year, no new

entitlements shall begin until the teacher has resumed duty and the period from 1 April until the return to duty is regarded as the preceding year's entitlement

4.11 **Occupational Sick Pay**

4.12 The National Conditions of Service for Local Government staff and Teaching staff sets out details of the Occupational Sick Pay Scheme. All staff receive payment of full or half pay, dependent on length of service.

4.13 For NJC staff, where employees have continuous local government service any absence with their previous employer in the preceding 12 month rolling period will be considered when calculating sick pay entitlement. For all Support Staff (NJC) the entitlement for Occupational Sick Pay shall be determined on the first day of absence. Staff will not move to a new entitlement level until they return to work.

4.14 When a teacher moves to another employer, any sick pay paid during the current year by the previous employer shall be considered in calculating the amount and duration of sick pay payable by the new employer.

4.15 Subject to meeting the sickness absence notification requirements and other conditions, the Occupational Sick Pay provisions are outlined below:

4.16 **For School Support Staff**

Occupational Sick Pay	
During 1 st year of service	1 months full pay and (after completing 4 months service) 2 months half pay
During 2 nd year of service	2 months full pay and 2 months half pay
During 3 rd year of service	4 months full pay and 4 months half pay
During 4 th and 5 th year of service	5 months full pay and 5 months half pay
After 5 years service	6 months full pay and 6 months half pay

4.17 **For teaching staff:**

During the first year of service	Full pay for 25 working days and after completing four calendar months' service, half pay for 50 working days
During the second year of service	Full pay for 50 working days and then half pay for 50 working days
During the third year of service	Full pay for 75 working days and half pay for 75 working days
During the fourth and subsequent years	Full pay for 100 working days and half pay for 100 working days

4.18 The Trust reserves the right to terminate employment before the expiry of Occupational Sick Pay, in accordance with this procedure.

- 4.19 Any sickness absence occurring during the 12 months immediately before the first day of absence is counted towards the calculation of sick pay entitlement.
- 4.20 **Industrial Sick Pay**
- 4.21 The National Conditions of Service for Local Government employees sets out details of Industrial Sick Pay.
- 4.22 The conditions of service for teachers (Burgundy Book – section 4 paragraph 9) outline the salary arrangements for absences arising from accidents, injury or assault at work.
- 4.23 Where an employee has an accident at work, they will be paid normal salary up until the end of their ordinary working shift.
- 4.24 In cases of a recognised industrial injury, employees, where entitled, would be paid the equivalent level of sickness entitlement, as for Occupational Sick Pay outlined above. For teaching staff Section 4, paragraph 9 of the Burgundy Book applies.
- 5.0 **Informal return to work discussions – short term absence**
- 5.1 As long as the school agrees, an employee may return to work and resume normal duties prior to the expiry of his/her fit note. This may be appropriate under the following circumstances:
- the employee has recovered sufficiently from illness or injury sooner than expected
 - the school can offer support to enable the employee to return – see [Return to work guidance and form](#)
- 5.2 The school is entitled to seek the opinion of Occupational Health where they feel an employee may not be fit to return. It may be that the employee is requested to go back to their GP or, alternatively, they may wish to be assessed by Occupational Health who will determine if they are fit to return.
- 5.3 If the employee whose fit note has expired or they have been certified fit by their GP to return to work but their manager believes they are not fit to return, then Statutory Sick Pay cannot be paid and the employee will be put back onto normal salary hours, equivalent to their normal working hours or agreed phased return. Each case will be treated independently and permission will be sought from the employee to contact their Doctor in order to discuss the best possible solution for the employee. Until such time as a decision is made regarding their fitness to work following a GP or Occupational Health assessment normal salary will remain in payment. This period will not count as recorded sickness absence.
- 5.4 The return to work meeting is **not** a disciplinary matter and must not be treated as such.
- 5.5 The return to work meeting should be a confidential discussion with the aim of supporting the employee back to work. Where the period of absence is linked to the employee's mental health and wellbeing the line manager should signpost to appropriate support.

- 5.6 Where a manager feels concerned about the absence, or if a trigger point has been reached, a formal Sickness Monitoring meeting may take place in addition to the Return to Work Discussion. Should this be the case, the manager will inform the employee in writing and explain the process.
- 6.0 **Managing Long term/Short term absence**
- 6.1 It is essential that schools monitor staff sickness levels. Part of this process is ensuring that appropriate action is taken once an employee meets the sickness absence triggers but also allows the Trust to manage absence consistently and fairly.
- 6.2 Although each case is different and will require the discretion of the manager, the following triggers can be used for prompting action in relation to sickness absence management and Occupational Health referrals:
- 4 calendar weeks absence
 - 4 separate periods of absence in the previous 12-month period
 - Any pattern of absence emerging
 - continuous working days of sickness absence relating to a psychological issue (e.g. stress/depression), alleged work-related issue or a muscular-skeletal condition
- 6.3 There are three formal stages to the procedure for managing sickness absence. The purpose of this process is to support the employee in limiting sickness absence, managing long term illness and to determine when sickness absence means that an employee is incapable of effectively undertaking their current role.
- 6.3.1 **Stage 1 and 2 - Sickness Absence Management Meetings**
- 6.3.2 Each Sickness Monitoring Meeting is a formal meeting between the employee and their line manager/Headteacher to review the employee's attendance record, identify areas of support and establish targets and timescales for improvement. Managers should refer to **Appendix B** for a checklist of points to cover at the meeting.
- 6.3.4 A home visit could be arranged with the employee's permission if they are not well enough to attend the workplace.
- 6.3.5 Stage 1 – when an employee meets a trigger as set out in para 12.3 and is asked to attend a meeting. If an employee makes a successful and sustained return to work then any review meeting will remain under stage 1.
- 6.3.6 Stage 2 – is the review stage, which may be more than one meeting, in which the employee's health, wellbeing and capability to work are reviewed and steps to support/improve attendance and capability are discussed, agreed and monitored. Review meetings should be between 6 weeks and 2 months dependent on the medical advice received. Employees should be advised that their employment could be at risk if their attendance does not improve.
- 6.3.7 Before each meeting, the manager should:
- Provide the employee with at least five working days' notice of the meeting. This should be confirmed in writing to the employee.

- Advise the employee that they have the right to be accompanied at any formal part of the process by a work colleague or trade union representative.

6.3.8 Following each meeting, the manager should:

- Compile a summary letter of outcomes from the meeting; reflecting the main points discussed, actions agreed, targets and timescales. A copy of this should be sent to the employee within 5 working days of the date of the meeting giving them the opportunity to make comments and submit any additional information.
- Place a copy on the employee's personal file.

6.3.9 Where sickness levels have decreased, the manager should write to the employee, acknowledging the improvement and reiterating the need to sustain the improvement. The line manager will continue to monitor the employee's sickness until their level of sickness falls below the trigger points. At this stage, the employee will revert back to the informal return to work process.

6.3.10 If there is some improvement but the employee is still exceeding triggers, then monitoring by the line manager should continue. A further review period should be set, with another meeting scheduled to take place at the end of this review period. If sickness levels continue to exceed triggers outlined in section 5.2 following the review period, the manager will decide, in discussion with HR, to progress to the next stage by setting up a further Sickness Monitoring Meeting.

6.4 **Managing Long COVID**

6.4.1 For some people, coronavirus can cause symptoms that last weeks or months after the infection has gone. This is sometimes called post Covid-19 syndrome or 'long Covid'. How long it takes to recover from coronavirus is different for everybody. Many people feel better in a few days or weeks and most will make a full recovery within 12 weeks. But for some people, symptoms can last longer.

6.4.2 The chances of having long-term symptoms does not seem to be linked to how ill the individual is when they first get coronavirus. People who had mild symptoms at first can still have long-term problems.

6.4.3 When someone is off sick with long Covid rather than infectious with Covid, then their absence will be treated in the same way as any other absence. This is in line with the guidance from ACAS who say "the usual rules for sickness absence and sick pay apply when someone is off work because of long Covid".

6.4.4 Absence due to long Covid will count towards sickness absence triggers as outlined in para 12.2. If the absence is long term then it needs to be managed consistently with other absences. This will include formal sickness management meetings, occupational health referrals and making reasonable adjustments where appropriate.

6.4.5 When an employee is infectious with Covid they will receive full pay. However, once they are no longer suffering from infectious Covid but have the symptoms of long-Covid then their sick pay should be in accordance with their entitlement under the relevant sick pay scheme (for example Green Book and Burgundy Book).

6.5 **Making an Occupational Health Referral**

6.5.1 When an employee's health is giving cause for concern, whether absent from work or not, the employee may be referred to Occupational Health (OH). This referral process allows a medical opinion to be sought on health issues.

6.5.2 As part of the sickness monitoring meeting the employee should be asked if they have an underlying medical condition which is contributing/causing their absence. It is recommended that this is followed up by a referral to OH.

6.5.3 Occupational Health Advice can be sought with regard to:

- the underlying reason for absence,
- gaining an indication of a likely return to work date,
- whether the employee is disabled under the definition of the Equalities Act,
- a phased return to work, or a return on "restricted" duties for a period of time
- re-deployment,
- whether the employee is likely to return to work in the foreseeable future,
- whether the employee meets the criteria for ill-health retirement as appropriate.

6.5.4 Medical opinion must also be sought before reaching a decision to dismiss. It must be noted that the decision to dismiss is not a medical decision but a managerial decision, which should be based on medical advice and discussion with HR.

6.5.5 Headteachers should obtain the employees agreement to submit a referral and discuss the reason for it, including any specific points or questions, with the employee.

6.5.6 An Occupational Health Management Referral can be carried out by the Trust provider Safewell. Contact HR for the relevant referral forms. As much information as possible should be provided to OH this ensures that OH are aware of the issues surrounding the case and will enable them to provide more meaningful information.

6.5.7 Appointments and examinations with OH are subject to the provisions of the Access to Medical Reports Act 1988.

6.5.8 Following the Occupational Health assessment, a report will be agreed with the employee, and sent to their line manager.

6.5.9 Managers should respond proactively to medical reports. If the report is not clear and does not answer the questions highlighted, then the manager should contact OH for further clarification. Possible OH recommendations at this stage could include:

6.6 **Fit to return to work**

6.6.1 If the employee is deemed fit to return to work on full contractual duties and hours, the manager should arrange a meeting with the employee prior to their return to plan how this can be best supported.

6.7 **Fit to return to work on a phased return**

6.7.1 If the employee is deemed fit to return on reduced hours and/or over a phased period, it is advised that the manager arranges a meeting with the employee to consider whether and how the Occupational Health advice can be accommodated. Every effort

will be made to support employees returning to work on reduced hours for a reasonable and defined period of time.

6.7.2 Phased returns should take place over a short period, such as a few weeks and enable the employee to gradually increase their working hours.

6.7.3 A phased return can help an employee to acclimatise back to the work routine and tasks, whilst also ensuring they are fit enough. Pursuing this option may mean that the employee is able to return to work earlier.

6.7.4 Phased returns should take place over a short period, such as a few weeks and enable the employee to gradually increase their working hours.

6.7.5 To support an employee's return to work, their full pay will be protected during this period, up to a maximum of 4 weeks in any 12-month rolling period. Where a phased return continues after the 4-week period, the employee will receive payment for the hours worked only. Hours not worked will be covered by Occupational Sick Pay and Statutory Sick Pay where applicable, or the employee may decide to take annual or unpaid leave.

6.7.6 Days absent, although paid for, will be recorded as sick days and deducted from the employee's entitlement.

6.8 **Fit to return on restricted duties / reasonable adjustments needed**

6.8.1 If the employee is considered fit to return to work on restricted duties or where adjustments are to be made to the current role, then the manager should arrange a meeting with the employee, and a union representative if applicable, to consider whether and how the Occupational Health advice can be accommodated.

6.8.2 The manager/Headteacher must be clear about the exact nature of the restrictions recommended, the reason for these, the expected timescales involved and whether the employee comes under the remit of the Equality Act 2010. Serious consideration will need to be given to whether the restrictions/adjustments can be accommodated and the Headteacher must be satisfied that the school have met their statutory requirements under the Act. A workplace assessment may need to be carried out by Occupational Health or with the support of the Trust Operations Team, to identify any control measures that will need to be implemented.

6.8.3 If the restrictions can be accommodated, then a review date should be set, at the meeting, to discuss how the return to work has gone. This should, if possible, coincide with an Occupational Health review appointment. Further review periods, as determined by Occupational Health, should take place regularly.

6.8.4 Other options may be explored with the employee, where the recommended restrictions/adjustments cannot be accommodated or where they might be longer term (e.g. temporary redeployment/ changes to contractual hours etc). If reasonable adjustments cannot be accommodated, a further referral to Occupational Health must be made. **See Section 8 – reasonable adjustments.**

6.8.5 National Conditions of Service for Local Government employees enable the Trust to require an employee to undergo a medical examination by a Trust nominated medical practitioner. Where an employee is reluctant to attend a medical appointment, or give

permission for their GP/Specialist to be contacted, the employee cannot be compelled to comply. Should they refuse, then the school is entitled to base their decisions on the facts available, even if the facts do not give the full medical picture.

6.8.6 Teaching staff are governed by statutory regulations which, enables a school to require that an employee attends an appointment with a recognised medical practitioner for purposes of establishing their fitness to teach.

6.9 **Stage 3 – Final Sickness Monitoring Meeting**

6.9.1 Ultimately, if there is no improvement in an employee's health and attendance at work, the headteacher will need to consider the employee's employment position.

6.9.2 Before considering dismissal, the school will need to ensure that all alternative options including redeployment have been fully explored and that the employee has been given sufficient support, adequate warnings and the opportunity to improve their sickness levels. Managers/Headteachers should also ensure they have made any necessary reasonable adjustments within the remit of the Equality Act requirements. (See Para 8).

6.9.3 Where at least 2 sickness management meetings have taken place and there has been no significant improvement in the employee's sickness levels, Stage 3 of the procedure should commence to consider the employee's continued employment with the Trust. If the Headteacher has been dealing with the sickness management then it would be appropriate to either refer the matter to the CEO or to convene a Governors Staffing Panel to consider the case. The Trust Head of HR will attend to give advice.

6.9.4 In these circumstances, an up-to-date medical report should be obtained from Occupational Health. At this stage OH may make recommendations detailed in para 6.6 together with the following recommendations:

6.10 **Not fit to return - Ill-health retirement**

6.10.1 If an employee meets the criteria for ill-health retirement, they may be able to have an early release of pension benefits if they are a member of the Local Government Pension Scheme or the Teachers Pensions Agency (TPA). Employees who are not members of either scheme are not entitled to any pension or lump sum benefits.

6.10.2 **Support Staff.** If Occupational Health confirm that an employee is unlikely to be fit to return to any position within the foreseeable future and satisfy the ill-health retirement criteria, the Headteacher should arrange a meeting with the employee to discuss the advice.

6.10.3 Should retirement on Ill-health grounds not be granted, the employee may appeal the decision in which case a second independent Occupational Health Doctor will review the case.

6.10.4 In addition to the above, if the employee is a member of the Local Government Pension Scheme, they also have the right to appeal to the Wiltshire Pension Fund against the decision not to grant Ill-Health Retirement).

- 6.10.5 **Teachers** - Ill health benefits can be granted by the Secretary of State to the DCSF if he is satisfied that the applicant has become permanently incapable of any teaching until normal retirement age. There are 2 different levels of benefits that can be awarded:
- Total Incapacity Benefits (TIB) and
 - Partial Incapacity Benefits (PIB).
- 6.10.6 TIB is awarded if the member is assessed as being unable to undertake any type of gainful employment. PIB is awarded if the member is assessed as being permanently unable to teach but can do other work. If the member is awarded TIB their service will be enhanced but if they receive PIB it will not be enhanced. The teacher must submit 2 ill health application forms; one completed by the employer and the second submitting medical evidence to support the application. This can be completed by the employee's GP, consultant or the OH provider. Any appeal against a decision to turn down an ill health application should be made direct to the TPA. HR can advise individuals on this process and can also seek advice from Unions.
- 6.11 **Redeployment – Not Fit to Return to Substantive Post**
- 6.11.1 Where an employee is unable to continue working in their current role due to a health issue, discussions will need to take place to seek reasonable alternative employment, either within the school or within the Trust.
- 6.11.2 The length of time over which redeployment period will be sought will depend on the individual circumstances. It is however recommended that this be between 4 and 12 weeks. The policy on salary protection does not apply to redeployment on the grounds of ill-health.
- 6.11.3 Should no redeployment opportunities become available, Headteachers must be aware that under the Employment Rights Act 1996 all reasonable adjustments must be considered before deciding to dismiss.
- 6.11.4 When considering all adjustment options, including rehabilitation and redeployment, the manager should undertake risk assessments, as required by the Management of Health & Safety at Work Regulations 1999.
- 6.11.5 If the Occupational Health provider advises that an employee is unlikely to be fit to return to any position within the foreseeable future and do not satisfy the ill-health retirement criteria, the headteacher should arrange a meeting with the employee, and union representative if applicable, to discuss the advice and decide about their continued employment, in conjunction with HR. Alternatively the Headteacher should either refer to the CEO or arrange a Staffing Panel of Governors to consider the case.
- 6.11.6 The employee should be fully aware that the employer has reached the stage of considering termination of contract. This should have been clearly discussed with the employee at the previous meeting(s) held and recorded in a letter(s) to the employee.
- 6.11.7 The CEO/Staffing Panel will determine one or more of the following options:

- To warn the employee that their employment is at risk if their attendance does not improve
- To set a review date to review the employee's attendance
- To agree a timescale in which the employee would be expected to return to work (if currently absent)
- To agree any adjustments to be made support the employee back to work
- To consider the medical advice that the employee has been granted permanent ill health retirement
- To consider whether the employee should cease to work at the school by reason of capability due to ill health, or some other substantial reason
- Consider redeployment

6.11.8 The definitions for each dismissal type are as follows:

Capability– ‘Capability’ can include any assessment by reference to health or other physical or mental impairment, as well as reference to skills and aptitudes. An individual's capability with regard to health is determined by an Occupational Health doctor. Consequently, should an employee's ill health mean that they are unable to continue to undertake their duties, the employer can terminate employment.

Some Other Substantial Reason – The Some Other Substantial Reason may be relevant in ill health cases where there has been frequent intermittent absence. In these cases, the primary reason for dismissal is not related to the employee's incapability on health grounds, but more related to the employee's inability to undertake their duties because they are not at work often enough. This decision is made by the manager following advice from Human Resources

6.11.9 The Employment Rights Act 1996 provides the legal framework for determining if a dismissal is fair and case law sets out the following points that need to be considered:

- The nature of the illness
- The likelihood of it recurring or some other illness arising
- The length of the absences and the periods of good health between them
- The employer's need for someone to undertake the work
- The impact of the absence on other workers
- The adoption and exercise of the policy and procedure
- An assessment of the individual case, on its own merits
- The extent to which the employee is aware of how serious the Trust sees the absence and what the potential implications are for the employee should their absence continue.

6.11.10 Following a final Sickness Monitoring Meeting, the CEO/Chair of Staffing should write again to the employee (within 5 working days of the date of the meeting) to confirm the issues considered, the decision taken and the right of appeal, where the outcome is termination of contract. HR can provide template letters.

The Trust Appeals Procedure will apply.

7.0 The Equality Act 2010 Guidance

- 71 The Equality Act 2010 replaced the existing anti-discrimination laws, including the Disability Discrimination Act 1995, with a single Act, to ensure workplaces manage equality issues consistently, aiming to achieve a fair environment that complies with the law.
- 7.2 The Act protects anyone who has, or has had, a disability, from being discriminated against and harassed because of a disability they do not personally have as well as protection from being treated less favourably because they are linked or associated with a disabled person. For example, if the mother of a disabled child was refused a reasonable adjustment because this association was not recognised, that would be unlawful discrimination.
- 7.3 The types of disability discrimination covered under the Equalities Act 2010 are:
- Direct discrimination
 - Discrimination arising from disability
 - Indirect discrimination
 - Disability harassment
 - Victimisation
 - Failure to make reasonable adjustments
- 7.4 Any actions can be justified and will be lawful if an employer can show that they intended to meet a legitimate objective in a fair, balanced and reasonable way. They would have to show that it/they had a genuine lawful reason for its/their treatment of the disabled person and that the treatment was an appropriate response. It is important to consider flexible approaches when it is clear that a rule or practice disadvantages a disabled person. So you should consider whether there is any other way to meet your objectives that would not have a discriminatory effect. A lack of financial resources alone should not be considered as sufficient justification.
- 7.5 Also, discrimination arising from disability will not be unlawful if the employer can show that they did not know, or could not be reasonably expected to know, that the person was disabled. It is particularly vital to establish when managing sickness absence whether the cause of an employee's sickness is regarded as a disability within the meaning of the Act. If there is any uncertainty the employee should be referred to Occupational Health to confirm if the reasons for sickness meet the Equalities Act definitions. The school should record any periods of sickness as related to disability once this has been established.
- 7.6 Should an employee be identified as disabled, there are a number of requirements of the Act that must be complied with before termination of employment due to sickness absences or ill-health capability is considered. While the manager's approach must not be fundamentally different in relation to consulting the employee about their absence, **the Act puts a duty on an employer to make reasonable adjustments for their staff to help them overcome disadvantage resulting from an impairment.** For guidance on relevant work place adjustments see section 8.

Disability as defined by the Equality Act 2010

In the Equality Act 2010, **disability is defined as** a physical or mental impairment that has a substantial and long-term adverse effect on the ability to carry out normal day-to-day activities.

- **Impairment** – covers, for example, long-term medical conditions such as asthma and diabetes, and fluctuating or progressive conditions such as rheumatoid arthritis or motor neurone disease
- **Substantial**– Substantial means that the impairment should be considered more than “minor” or “trivial” and takes into account the time needed to carry out an activity, the difficulty experienced compared to someone without the impairment and the cumulative effect on activities (such as where someone has a number of minor health difficulties which added together become a problem).
- **Normal day-to-day activities** – examples of the sort of day-to-day activities the Act would include:
 - Mobility (e.g. inability to use stairs)
 - Manual dexterity (e.g. inability to open tins or packets)
 - Continence
 - Ability to lift, carry, or move everyday objects (e.g. saucepans)
 - Speech, hearing or eyesight impairments
 - Ability to concentrate (such as completing a task without assistance or confused behaviour).
- **Mental impairment** includes mental health conditions (such as bipolar disorder or depression), learning difficulties (such as dyslexia) and learning disabilities (such as autism and Down’s syndrome).
- **Progressive conditions** such as cancer, muscular dystrophy, multiple sclerosis and HIV infection, are covered by the definition of a disabled person from the point of diagnosis.
- People with **severe disfigurement** will be protected as disabled without needing to show that it has a substantial adverse effect on day-to-day activities. Although deliberate disfigurements such as tattoos and body piercings are not included in the definition.
- Addiction or dependencies on alcohol or any other substance (other than as a result of being medically prescribed) are specifically excluded from the definition.
- To qualify for protection from discrimination, a disabled person does not have to show that their impairment affects a particular ‘capacity’, such as mobility or speech, hearing or eyesight.

When an employee has a recognised disability, the manager, in consultation with Occupational Health, should consider establishing a working agreement that outlines relevant adjustments, and this may include an agreement for an extension of sickness

absence trigger points to allow for attendance of medical appointments and treatments. This will be dependent on the organisations objectives for the team and role in which the employee works and decisions should be supported with evidence supporting the reasons to allow or not allow adjustments.

7.9 **Pre-employment checks**

7.10 The Act includes a provision which limits the circumstances when you can ask health-related questions before you have offered an individual a job. Up to this point, you can only ask health-related questions to help you to:

- decide whether you need to make any reasonable adjustments for the person to the selection process
- decide whether an applicant can carry out a function that is essential ('intrinsic') to the job (e.g. if a job role includes a requirement for lifting, walking or standing you can ask the applicant if they would have any issues in undertake this element of a role. However please remember that when adjustments could be made to the role employers are still required to consider disabled applicants with a provision for adjustments)
- monitor diversity among people making applications for jobs (e.g. ask if applicants are disabled to identify how many disabled applicants are successful)
- take positive action to assist disabled people (e.g. ask if applicants are disabled to offer a guaranteed interview structure)
- assure yourself that a candidate has the disability where the job genuinely requires the jobholder to have a disability

7.11 The Schools pre-employment Occupational Health assessment process meets the above requirements.

7.12 Once a person has passed the interview and you have offered them a job (whether this is an unconditional or conditional job offer) you are permitted to ask appropriate health-related questions.

8.0 **Reasonable Adjustments**

8.1 The Equality Act 2010 puts a **duty** on the Trust and School to make reasonable adjustments for our employees or prospective employees to help them overcome disadvantage resulting from impairment. Adjustments could be made to the workplace, work load, school policies, the way work is done, the type of work included in a role, the equipment an employee uses and the hours/work patterns an employee is required to work which would help overcome the effects of disability, supporting the Trust in implementing its duty of care and reducing sickness absence. Examples of reasonable adjustments could be:

- **A change to recruitment and selections process.**
- **An adjustment to management processes** e.g. there is a legal requirement to consider an adjustment to extend trigger points for sickness management from 4 episodes or weeks to a higher number, when regular/more frequent sickness, is a symptom of the condition causing impairment, which is recognised under the Equality Act.
- **Reasonable alteration to the individual's role** and responsibilities (e.g. reducing work load/targets, assigning some duties to another person.

- **Redeployment.**
- **Time off during working hours** for rehabilitation, assessment or treatment.
- **Flexible working or a change of working hours.**
- **Training and/or re-skilling** and adjustment to training/development programmes.
- **Giving a mentor** e.g. assigning a workplace mentor to help build the confidence of a person with a mental health condition and training members of the team in mental health awareness with the consent of the person.
- **Providing supervision or other support .**
- **Amendment to design features of buildings** e.g. steps, stairways, corridors (widening, fitting ramps or handrails).
- **Adjustments to features relating to access to buildings** e.g. kerbs, paving, emergency escape routes, internal and external doors (to open in the opposite direction).
- **Adjustments to fixtures, fittings, equipment** e.g. IT software and hardware (large print, vocal recognition, specialist screens), work equipment (e.g. wrist rests, raised desk, ear phones, left hand tools) toilet facilities, lifts, flooring, signs, furniture.
- **Travelling support** to enable the employee to get to work or travel as part of role e.g. access to work can fund taxis to get to work and for travel required to undertake work.

8.2 Any adjustments recommended by one of the above parties, the employee and manager must be seriously considered and be documented. All records should be copied to the employee and be kept by the manager during implementation and review. It is important that once adjustments are set up these are reviewed at least annually to check if they are effective and whether amendment to or further adjustments need to be made, as the employee's condition and symptoms may change. You should review promptly if the job, the location or the person's condition changes at any time.

9.0 **Emergency Evacuation Procedures**

9.1 The School has a duty of care to all employees that may require assistance in evacuating a building in the event of an emergency. A Personal Emergency Evacuation Plan (PEEP) must be in place for all those staff requiring assistance e.g. visual or hearing impairment, mobility problems, anxiety.

9.2 **Managing work-related pressure and reducing stress**

9.3 **Definition of excessive pressure and stress**

9.4 The Trust defines stress as:

“The adverse reaction people have to excessive pressure or other types of demands placed on them.”

This makes an important distinction between pressure, which can be a positive state if managed correctly, and stress, which can be detrimental to health.

In order to prevent cases of work-related stress it is therefore important that the Trust and schools manage work demands and pressures, and identify areas and individuals where work-related pressure has become excessive.

9.5 HSE Management Standards

9.6 To manage pressure and stress at work the Trust has chosen to adopt the Health and Safety Executive (HSE) Management Standards process to identify, manage and reduce work-related pressure and stress. To find out more details on the HSE's Management Standards go to <http://www.hse.gov.uk/stress> .

9.7 Six areas of potential work-related pressure

9.8 The Management Standards identify six areas of potential work-related pressure. The six areas recognised as factors that may create excessive pressure and cause work-related stress are:

- **Demands** – this includes issues such as workload, work patterns and the work environment.
- **Control** – how much say the person has in the way they do their work.
- **Support** – this includes the encouragement, sponsorship and resources provided by the organisation, line management and colleagues.
- **Relationships** – this includes promoting positive working to avoid conflict and dealing with unacceptable behavior.
- **Role** – whether people understand their role within the organisation and whether the organisation ensures that they do not have conflicting roles.
- **Change** – how organisational change (large or small) is managed and communicated in the organisation.

9.9 The school, as part of the HSE Management Standards, are required to manage these six areas and monitor their impact on its employees.

9.10 Headteachers/ Line Managers are responsible for identifying and managing the impact of these pressures on employees within their teams, through observation, 1 to 1 meetings, management of sickness absence and performance management/ appraisals.

9.11 Managing excessive pressure and stress which is not work-related

9.12 When an employee is identified as suffering a psychological illness e.g. depression, stress or bipolar disorder, even if this has not generated from a work-related pressure they should be treated in the same way as an employee with work-related issues, as work-related pressure may increase the overall pressure placed on that employee. For actions follow guidance in section 9.5.

9.13 An employee may not identify or state that they are experiencing psychological illness and therefore there is some responsibility on managers to identify if an employee potentially has an issue. If the manager sees or hears something that suggests an employee has a psychological illness they should meet privately with the employee to explain the things that have given them this concern and give the employ the opportunity to discuss issues. If the manager is still concerned but the employee states there is no problem the manager may decide to refer the employee to Occupational Health or meet the employee at a later date to review the situation.

9.14

Potential areas of pressure that should be discussed with the employee as part of the risk assessment are:-

- **Demands** – are employees overloaded or under loaded, do they have the capabilities and capacities for their tasks? What about the physical (noise, vibration, ventilation, lighting etc) and social (violence, bullying etc) environments? You should ask the employee if he/she has problems managing his/her workload and if this is adding to the pressure he/she feels, if yes discuss possible appropriate solutions. i.e. does he/she regularly work longer than contracted hours? How can you support them in reducing their contracted hours?
- **Control** – does the employee have a reasonable/appropriate say in the way his/her work is carried out? You should ask the employee if he/she feels as though they are in control. If the answer is no, explore why and whether anything can be changed so that he/she would feel in control.
- **Support** – does the employee feel that he/she has the support from the management chain, in policies, in environment, through colleagues, that he/she needs to be able to perform his/her job? If the answer is no discuss how this support can be developed.
- **Relationships** – are there any relationships that the employee is aware of that are increasing the pressure he/she feels at work? If yes, discuss how these relationships can be managed or improved to reduce the pressure at work.
- **Role** – does the employee understand the objectives of his/her job, what is expected of him/her and what they can expect from others? Is he/she comfortable and confident with being able to do this? If no, then discuss what appropriate steps you can take to help him/her achieve this.
- **Change** – is change affecting the amount of pressure the employee is under? If yes, discuss what you can do to support the employee through the change.

9.15

Examples of possible actions

9.16

Examples of possible actions that may be used to support the employee in coping with work-related pressure, reduce work-related pressure and/or support the employee's rehabilitation are:

- Provide additional training for the employee or team
- Establish a person within the team to mentor or support the employee.
- Arrange a break from telephone or face to face communication with customers for a number of working days or for periods within the working day.
- Consider what the employee is able to do to help him/her manage, or cope with, pressure at work or home, refer the employee to Occupational Health
- Change the type of work the employee is doing for a fixed period or permanently if that is appropriate and within the capabilities of the organisation.
- Arrange mediation for the employee and any colleagues who the employee has relationship issues with.
- Consider a change to deadlines, the working process or the employees share for work.
- Consider giving development opportunities to the employee in order that he/she has opportunity to learn new skills.
- Consider a temporary or permanent change to working patterns or hours.

- Refer the employee to Occupational Health for further advice or support.

9.17 It is important to recognise that in some situations when all options have been considered and applied it is not possible to change the work-related pressures that are affecting the employee's well-being as these are essential to the role, which the employee has been employed to undertake. In this situation the employee may be identified as unable to continue to undertake the role for which he/she has been employed. In this case please see the Sickness Absence Management process in section one and the Trust [Capability policy](#).

9.18 In all cases of recognised, declared or certificated psychological illness and work-related stress a management referral to Occupational Health must have been completed; a full risk assessment process must have taken place before a decision to dismiss is reached.

10.0 **Useful contacts**

10.1 There are a number of support options available to help employees through a period of ill health or absence from work:

- Occupational Health support provided by [Safewell Ltd](#)
- Bespoke counselling and mindfulness through SAS Wellbeing [app](#)
- Additional support services/wellbeing clinics/menopause support through SAS wellbeing
- [Education Support Partnership](#) which provided 24/7 advice and support to education staff
- [NHS mental health services](#)
- [MIND](#)
- [Samaritans](#)
- Other online / telephone helplines and charities eg. Cruise
- Wiltshire Pensions Fund for school support staff www.wiltshirepensionfund.org.uk
- Teachers Pensions Agency for teaching staff www.teacherspensions.co.uk
- Trust HR englisha@bluekitetrust.org.uk Access to work Tel: 01793 489674

Appendix A

Managers Checklist of Points to Cover at Sickness Monitoring Meetings (SMM)	1st SMM	2nd SMM	3rd/Final SMM
Be clear about the purpose of the meeting (i.e. that it is a formal meeting that will be recorded and placed on the employee's personal file) – to enable you to identify the causes of sickness absence and to agree an appropriate approach for addressing the issue.	✓	✓	
Be clear about the purpose of the meeting (i.e. that it is a formal meeting to make a decision about the employee's continued employment with the Trust).			✓
Re-cap on the main points covered at the previous Sickness Monitoring Meeting.		✓	✓
Express concern over the level of sickness absence/make reference to policy and trigger points.	✓		
Express ongoing concern over no/little improvement in sickness levels since last meeting.		✓	✓
Discuss dates and reasons for absence.	✓	✓	✓
Explore whether there are any underlying medical issues/contact with GP.	✓	✓	
Explore with employee why there has been no/little improvement in sickness levels. Ask employee what steps they have taken to address the problem. Have they visited their GP?		✓	✓
Explore whether there are any issues in or outside of work that are having a bearing on the employee's sickness record.	✓	✓	
Explain the impact of sickness on the Team/Service.	✓	✓	✓
Explore whether the employee or Department could do anything to facilitate an improved attendance in the future.	✓	✓	
Determine whether a risk assessment is necessary.	✓	✓	
Discuss a referral to the Occupational Health Department/advice received back from the Occupational Health Department i.e. is there an underlying medical issue preventing this employee from attending work on a regular basis? Can Occupational Health identify anything that the employee or Department could do to facilitate an improved attendance?	✓	✓	
If there is an underlying medical condition, does the employee come under the Disability Discrimination Act. Consider whether there are any reasonable adjustments/changes in working practice/re-deployment options that would facilitate an improved attendance. Explore how you can aid/support their attendance.	✓	✓	
Make reference to any adjustments/changes in working practice that have been made since the last meeting to facilitate an improved attendance.			✓

Managers Checklist of Points to Cover at Sickness Monitoring Meetings (SMM)	1st SMM	2nd SMM	3rd/Final SMM
Strongly encourage the employee to contact the Employee Assistance Programme provider Care first and discuss the support this service can provide.	✓	✓	✓
Provide details on guidance available including, Managing Pressure leaflet, Managing Pressure and Reducing Stress in the Workplace Policy and the Substance Misuse leaflet, discuss the advice and support that Care First can offer from 01.07.08, encourage employee to call them at any time about any concerns or issues they may have in home or work, and remind them that family contacts who have an affect on their health and well-being can also use the phone services to obtain advice and support.	✓	✓	
Be clear about the level of improvement expected.	✓	✓	
Outline of Occupational Health advice to identify whether there are any final options that could facilitate an improved attendance.			✓
Inform the employee that their employment could be at risk if sickness record does not improve. If at Stage 2, inform employee that if there is no improvement then this will result in you progressing to Stage 3 of this procedure where a decision to dismiss could be made.	✓	✓	
Agree action plan, support measures and review date.	✓	✓	
If all options have been fully explored and the employee's sickness record remains unsatisfactory, then in consultation with the HR Consultant, managers should proceed with advising the employee that they are terminating the employee's contract of employment.			✓
Communicate the grounds for the dismissal, entitlement to notice, annual leave and right of appeal.			✓

Appendix B

RISK ASSESSMENT/ ACTION PLAN: WORK RELATED PRESSURE/STRESS

Risk Severity Scores

16-25	Of concern, action needed	
10-15	Coping, need for improvement	
0-9	Under control, monitor and review	

	Risk identified	Score 1-25	Options considered to reduce risk	Actions agreed to take forward	Start Date	Responsible Person	Notes on progress and outcomes
1.	Demand						
1a.							
1b.							
2.	Control						
2a.							
2b.							
3.	Support						
3a.							
3b.							
4.	Relationships						
4a.							
4b.							
5.	Role						
5a.							
5b.							