

Sickness Absence Management

Policy and Procedures

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Sickness Absence Management (SAM) Policy and Procedures -

Including Long and Short term sickness absence procedures and Formal Capability (Sickness) Hearing

INTRODUCTION

1. The Council recognises that ill health is worrying for employees. Sickness also places an extra burden on employees covering for absent colleagues and this can have an adverse affect on both the service and those employees.
2. It is the responsibility of each employee to be in attendance at work in order to fulfil his/her contract of employment. The Council recognises that a certain level of absence due to sickness is unavoidable and is committed to ensuring that employees suffering from ill health, including mental and physical illness and disability are treated with understanding and sensitivity and support to achieve a reduced level of absence.
3. The Council has a commitment to provide a value for money public service to the community. Absence management is a key performance indicator. The Council recognises that sickness absence can only be effectively managed if employees are treated fairly and consistently.
4. The Council has a number of other related policies designed to support employees. These include policies relating to HIV/AIDS, Alcohol, Drug and Substance Abuse, Stress, Cancer; in addition there are a range of Flexible working schemes. These policies/schemes can be found on DENNIS / Employment Handbook and should be read in conjunction with this policy.
5. This policy is part of a wider absence management strategy that includes risk assessment, health surveillance and the promotion of healthy lifestyles and employee well-being. The strategy recognises the important role to be played by the Trade Unions, Occupational Health (OH) and the Health and Safety Committee. This policy will be reviewed 24 months after it is formally adopted.
6. This policy takes account of the provisions of the Equality Act 2010, as well as the latest good practice. Managers are required to ensure that they do not discriminate against any protected characteristics. Managers are required to ensure that their application of this policy does not have an adverse impact on any groups of employees.

SCOPE OF POLICY

7. This policy applies to all employees except casual employees because of the nature of their employment. There are specific arrangements in this policy for probationary employees (See DENNIS / Employment Handbook / Section 12 - Probationary Policy and Procedures). Temporary employees are covered by this policy, but their employment may come to an end in accordance with their contracts before a procedure has run its course.

GENERAL MATTERS

The Right to time off work

8. An employee who feels too unwell to attend work due to ill health should refrain from coming to work. An employee may self-certify sickness absence of between half a day and seven calendar days. However, he/she is required to telephone GoodShape (0333 321 8100) on the first day of absence. They do not need to telephone everyday that they are absent, however if there are any changes to their absence they will need to contact GoodShape to log them. They must contact GoodShape to close their absence by telephone or text. From the eighth day, absence must be covered by an official Fit note. These periods include Saturdays and Sundays (including bank holidays). Additional Fit notes are required when the sickness continues and must be supplied within two days of expiration of previous certificates. Failure to submit timely and regular Fit notes may result in action being taken under the Council's Conduct Procedure. Each Fit note must also be recorded with GoodShape and once received by the manager they should record it on the employee's current absence, under the '**documents**' section on GoodShapeCentral.

(i) **Hospital, Doctor and Dental appointments**

Employees may use sick leave for emergency consultation and treatment. For routine or non-urgent appointments, employees must use their own time. If an employee has flexible working arrangements in their contract, he/she will normally be expected to arrange the appointments outside of any "core hours". As it is not always possible to exercise control over the time of hospital appointments, these will be allowed in core time if necessary. The appointment card/letter must be shown to the manager in order to authorise any time off. If an appointment requires an absence of more than half of your working day then the employee must telephone GoodShape. Half-day or all-day attendance at hospital will be recorded as sick leave, but will not count towards sickness absence triggers as per paragraph 21.

(ii) **Cosmetic Surgery (elective/reconstructive)**

In most cases where an employee elects to undergo cosmetic surgery, no Occupational Sick Pay (OSP) will be paid. However, OSP will be payable in cases where surgery is essential for the physical and/or mental wellbeing of the individual.

Where an employee is undergoing cosmetic surgery for the purposes of reconstruction (i.e. following a previous illness, accident) OSP will be paid.

Elective surgery is not generally considered to be medically necessary. This includes cosmetic surgery which is concerned with the enhancement of appearance through surgical and medical techniques i.e. liposuction, facelifts, breast implants. Employees may discuss with their manager to agree taking annual leave for elective surgery, but there is no automatic right to take time off. Whilst no OSP is normally paid for elective cosmetic surgery, it may be paid if an employee develops serious complications following surgery necessitating hospital treatment.

(iii) **Organ/Bone Marrow Donation**

OSP will be paid in cases where an employee donates an organ or bone marrow.

(iv) Fertility treatment

The Council seeks to support anyone going through fertility treatment; however there is no entitlement to any sick pay for employees for absences due to fertility treatment. Employees may discuss with their manager to agree taking annual leave for fertility treatment, but there is no automatic right to take time off. OSP may be paid for associated medical and recovery procedures. However, the Council reserves the right to review such cases after ten days absence and cease payment of OSP.

(v) Dangerous sports

The Council reserves the right to suspend OSP if the employee regularly participates in any paid or professional or dangerous sport, which results in a high level of sickness absence from work (therefore incurring a cost to the Council). Under such circumstances, employees are advised to take out insurance to cover loss of earnings arising from such an event.

Absence and Annual Leave

9. Annual leave will be accrued whilst an employee is on sick leave. This applies in situations where employees are either receiving OSP or Statutory Sick Pay. When an employee returns to work from sickness absence, they should use any outstanding annual leave before their new leave year. The employee and manager must agree the booking of this leave in accordance with business need.

If an employee has had a period of long term sickness absence that spans more than one holiday year, the amount that is carried over should be calculated on the statutory minimum within the Working Time Regulations. (See DENNIS / Employment Handbook / Section 10 – Hours and leave – Working time policy).

10. If an employee's contract is terminated on grounds of ill health or they resign while on long term sick, they will be paid for any outstanding annual leave up to the statutory minimum (*the Working Time Regulations statutory holiday entitlement*).
11. Holiday entitlement will only be credited to an employee where a Fit note is produced for a period of sickness absence during authorised annual leave.
12. The employee needs to contact GoodShape and the manager/supervisor to report their sickness absence, as it is an amendment to the original annual leave booking. If the leave is agreed; their entitlement will need to be amended on the iTrent by the manager.
13. If an employee wishes to go on leave during a period of sickness absence, he/she must discuss this with his/her manager prior to the leave being booked. All such requests will not be unreasonably denied.

Right to be accompanied at Hearings

14. All employees have the right to be accompanied by a trade union representative or a work colleague at Formal Hearings to discuss his/her absence. The employee's choice of person must not lead to an unreasonable delay in agreeing a date. Should the manager consider that this is the case, he/she will request that the employee select another representative or colleague.

Minutes of Formal Hearings

15. Any formal Hearing will have written minutes taken; and a copy will be provided to the employee.

Absence Related Meetings

16. Employees are required to attend absence-related meetings. If the employee's health does not permit this, he/she may be required to obtain a Fit note from his/her Doctor. The Council will reimburse the cost. The employee must make all reasonable efforts to attend meetings and to inform the other parties in good time if he/she is unable to do so. Meetings with managers and other Council employees will be held during the employee's normal working hours, wherever possible.
17. A manager will normally meet with an employee on the Council's premises. If an employee's health does not permit this (a Fit note may be required and the cost will be reimbursed), the manager will arrange to meet with the employee at his/her home or at another mutually agreed location.
18. An employee shall, if required by the Council at any time during any period of absence, attend a medical examination by a registered practitioner, nominated by the Council or as advised by OH. In the event of a difference in medical opinion as to the employee's fitness for work, the matter shall, at the request of either party, be submitted to an independent medical referee agreed by the Council and the employee. The independent medical opinion will be final.
19. It is not always possible to arrange meetings with the Council's external OH provider during normal working hours and employees are expected to be flexible. Employees who are required to meet with an OH Adviser / Physician outside their normal working hours will receive time off in lieu. The Council will reimburse reasonable additional costs incurred attending meetings with such professionals.

Reference period for reviewing sickness absence

20. A 12-month rolling period will usually be used when reviewing sickness absence. However, in the event that an individual's sickness absence is a cause for concern, a longer period may be considered. The sickness scrutiny group meet up on a monthly basis to review all absence in the previous month. They review the employee's sickness absence in previous years in order to obtain a complete picture of the person's attendance history. Please see appendix 1 for information on the sickness scrutiny group.
21. The following types of absence **will not** count towards sickness absence triggers (see paragraph 41) and will be excluded from the employee's overall absence record:
 - Maternity leave or pregnancy related illness
 - Absence due to bereavement
 - Parental/dependant leave (*where employee has specific caring responsibilities*)
 - Hospital medical day appointments
 - Paternity leave
 - Discretionary leave authorised by the manager.

- COVID-19 Sickness: Where staff are required to self-isolate in line with latest Government guidance, or where staff are feeling unwell after receiving a COVID Vaccination (*typically 1 – 2 days*).

Absence due to a proven industrial injury, an operation and recovery from an operation at hospital or at home will not be counted as one of the 2 occasions in 3 months when looking at sickness absence triggers, but will be included in calculating the employee's sickness absence within the past 12 months.

Suspension of sick pay

22. If an employee fails to comply with any of his/her procedural obligations under this policy, the Council may invoke the Conduct Procedure. Where compliance cannot be restored, the Council is under no obligation to repay all/any of the withheld sick pay. Employees who fail to attend a pre-arranged OH appointment without a reasonable explanation, or advanced communication to OH and their manager may face disciplinary action.
23. Disciplinary action may be taken in the following circumstances:
 - where there is deliberate conduct by the employee prejudicial to his/her recovery;
 - where the absence has been caused by the employee's own misconduct or neglect;
 - injury incurred whilst under the influence of alcohol and/or drugs;
 - injury while working in the employee's own time on their own account for private gain, or for another employer without prior permission;
 - repeated short term absences;
 - the employee's manager has reasonable grounds to believe that the absence is for reasons other than sickness.
 - absence due to the employee's active participation in sporting activities including a paid or professional sport and/or extreme sports.
24. Where the Council doubts the integrity of sickness absence, the manager must discuss the case with their Assistant Director and Human Resources (HR). Disciplinary action may be taken, which could result in dismissal. Managers must be able to demonstrate reasonable grounds for doubting any period of sickness (e.g. continuing to work in a second job) and will discuss with the employee the reason why he/she is considering using the conduct procedure. Employees may appeal disciplinary action, using the conduct procedure appeal process.
25. The Council may recover OSP from an employee who is absent without leave or receives payment from a third party for loss of earnings. This will be deducted from the employee's salary after consultation with the employee.
26. Prior to a manager taking a decision to suspend OSP, it is imperative that advice is taken from HR to ensure that any change to OSP or use of the conduct procedure is appropriate in all the circumstances.

Extension of Sick Pay

27. Only in exceptional circumstances may the Assistant Director consider extending sick pay. The HR and OD Team Leader must be consulted on the extension before it takes place.

SICKNESS NOTIFICATION PROCEDURE – ALL EMPLOYEES

28. Sick leave can only be taken where the employee is unable to attend work because of his/her illness. Sickness absence cannot be taken where a member of the employee's family is ill. In such cases, the employee should contact their manager to discuss whether other arrangements can apply, for example, flexi-leave, annual leave, or emergency dependent (unpaid) leave.

In such cases, the employee should ring GoodShape if the absence is likely to be more than half their working day and advise GoodShape that it is a non medical absence. This will inform their manager. They can then liaise with their manager as to the best way of recording this leave (see above).

29. Any employee unable to attend work because of sickness must inform GoodShape as soon as practical. This must be on the first working day of absence and before the employee's shift has commenced. They do not need to telephone everyday that they are absent, however if there are any changes to their absence they will need to contact GoodShape to log them. They must contact GoodShape to close their absence by telephone or text. Employees who fail to follow the procedure for notification will be considered as being absent without permission. Managers are expected to maintain contact with employees who are off sick, to offer support and keep them up to date with work as appropriate.
30. Employees must telephone GoodShape in person unless they are so ill that it is impossible for them to make such a call. Such situations are likely to be uncommon.

NON NOTIFICATION OF SICKNESS ABSENCE

31. Unless there are exceptional circumstances, failure to notify GoodShape of sickness absence in accordance with this policy is a disciplinary matter and will be dealt with using the Council's Conduct Procedure.
32. If the employee does not contact GoodShape as specified in this policy, the manager will take all reasonable steps to make contact with him/her. If such steps have been exhausted and contact has not been possible (within 14 days of the first day of continuing absence) the manager will write stating his/her employment may be terminated in line with the employee's contract of employment and appropriate procedures. In all cases of unauthorised absence any applicable sick pay will be withheld.

STRESS RELATED ABSENCE

33. If an employee is absent due to stress-related illness, anxiety or depression, as determined on the Fit note, it is essential that immediate action is taken and for the manager to involve HR. If any work-related issue is felt to be contributing to ill health, it is essential that this is discussed with HR so that appropriate and reasonable action can be taken swiftly.
34. Managers have a duty of care to employees to take reasonable steps to avoid putting them in situations that might impair their health. Managers also have a responsibility to the Council to protect it from litigation (see DENNIS / Employment Handbook – Section 11 – Sickness - Stress Policy and Guidelines).

RETURN TO WORK INTERVIEWS – ALL EMPLOYEES

35. Before returning to work the employee needs to close the sickness absence by telephoning GoodShape. Regardless of the length or type of absence, the managers must undertake Return to Work (RTW) interviews to clarify the reason for absence, and ensure that the employee is fit to work and to offer any necessary support. The interview should not be intrusive but managers are entitled to know the nature of the illness that has prevented the employee from coming to work.
36. Managers must carry out RTW interviews as soon as possible and in any event within one week of the absence ending. The RTW interview form must be completed on the GoodShapeCentral. The undertaking of RTW interviews will form part of a manager's performance appraisal and compliance statistics will be publicised. It is the employee's responsibility to attend the RTW interview when requested by their manager.

RECRUITMENT

37. Sickness absence management begins at the recruitment stage. The Recruitment and Selection Code of Practice (see DENNIS / Employment Handbook / Section 1) sets out a number of requirements that must be observed by managers during the recruitment process.
38. Should it come to light that an applicant has failed to provide truthful answers to the questions in the application form, the medical questionnaire or at interview and is subsequently appointed, he/she may be subject to the Council's Conduct Procedure and this could result in dismissal.

PROBATIONARY EMPLOYEES

39. The probationary period is designed to establish an employee's suitability for his/her post: Suitability includes sickness absence. Details of the procedure for dealing with sickness absence during the probationary period is set out in the Probation Policy and Procedure (see DENNIS / Employment Handbook – Section 12 – Employee Relations.)

THE ROLE OF OCCUPATIONAL HEALTH (OH)

40. Appendix 2 explains the role of OH and how it benefits employees and management.

SHORT-TERM SICKNESS PROCEDURE

Short-term Sickness Review Meeting

41. An employee will be required to attend a Short-term Sickness Review Meeting when his/her absence meets one of the conditions below; this is known as a sickness absence trigger (see also paragraph 21):

- 2 occasions of sickness absence within a 3 month period and has had over 8 days sickness absence within the past 12 months
- If the employee is protected by the Equality Act 2010, has had 2 occasions of absence within a 3 month period and has had over 16 days of sickness absence within the past 12 months

An employee will be required to attend a Short-term sickness review meeting or Formal Capability (Sickness) Hearing if the sickness scrutiny group (SSG) has concerns on their overall levels of sickness absence

This meeting request will be confirmed in writing, explaining:

- Date, time and location
- Names of people who will be attending
- Reason for meeting

42. As a result of the meeting the manager will either:

(i) Set out the improved level of attendance, which will be not more than 4 working days sickness in 6 months from the date of the meeting. For employees who are recognised under the Equality Act 2010 the attendance target will be adjusted to no more than 8 days within a 6 month period.

Or

(ii) Refer to Formal Capability (Sickness) Hearing (see paragraph 57). Authorisation to proceed to a Hearing will need to be sought from a Corporate Director, via the monthly sickness scrutiny group.

At the Short-term Sickness Review Meeting, the Manager may also:-

- (iii) Refer the employee to the Occupational Health Adviser (OHA) for advice. Once consent is given by the employee, the OHA will send a report to the employees and HR and they will send it on to the manager. Employees who fail to attend a pre-arranged OH appointment without a valid explanation, or advanced communication to OH will face disciplinary action.
- (iv) Develop a plan of support for the employee.
- (v) Specify a date for a further review meeting to discuss the employee's absence.
- (vi) Set out other appropriate actions/decisions in writing.

43. It may be necessary to hold further Short-term Sickness Review meetings to give feedback, discuss new medical information and review the improvement in attendance. Should the employee fail to achieve the required standards of improvement, a Formal Capability (Sickness) Hearing (see paragraph 57) will be carried out.
44. The procedure should be used for all cases of sickness, including proven industrial injury. See appendix 4 for further information on industrial injury. However, if the absence is claimed to be an industrial injury, the manager must discuss with HR, Corporate Health and Safety Lead Officer and the Insurance and Risk Lead Officer before taking any action.
45. Absences of 4 weeks continuous sickness and over should be dealt with under the long-term sickness procedure (*see page 13, paragraph 47*).
46. Further guidance on sickness review meetings is provided in Appendix 5. Short and long term sickness flow charts can be seen in Appendix 5 and 6.

LONG-TERM SICKNESS PROCEDURE (Continuous sickness absence over four weeks)

Regular Contact

47. It is the manager's responsibility to establish and maintain regular contact with an absent employee. This is essential as there is a much greater likelihood that the employee will return sooner if contact is made early and support maintained. As a minimum the manager will make weekly telephone contact with the employee after he/she has been on sick leave for **two weeks**. A record of the conversations with the employee should be made by the manager and added to the employee's current absence on the GoodShapeCentral. This can be done using the **'Notes'** or add **'Document'** section.
48. Whenever possible face-to-face contact should be made. The manager will determine the frequency of face-to-face meetings after consultation with the individual employee. The manager may wish to consult OH for guidance.
49. The purpose of the telephone conversations/face to face meetings is to:
 - (i) Give the employee the opportunity to bring the manager up to date on the status of their condition, treatment and likely period of absence.
 - (ii) Inform the employee of OSP entitlement. The details will be confirmed in writing.
 - (iii) Offer support.
 - (iv) Keep the employee up to date with events at work.

Long Term Sickness Review Meeting

50. Regardless of the frequency or nature of contact, the manager will arrange and confirm in writing to meet with an absent employee after four weeks, unless their medical condition makes this impossible (a Fit note will be required).
51. This could be a sensitive meeting particularly if the employee is suffering from stress, anxiety or depression and the manager may wish to be accompanied by a representative from HR. In such cases the manager may wish to consult HR about the level of involvement that they should have with the OHA before approaching the employee.
52. Employees should attend OH if they have been off work for longer than 4 weeks or more than two or more periods of long term sickness (2 weeks).
53. Where necessary, the manager and HR will discuss the case with OH as soon as possible after the meeting. This discussion may prompt further action or investigation including:
 - (i) Referral of the employee to OH. Complete online referral form with HR. Once consent is given by the employee, the OHA will send a report to the employees and HR and they will send it on to the manager.
 - (ii) A review of the suitability of the current job.
 - (iii) A review of and recommendations for adjustments to the employee's current job and/or working environment (both on a permanent basis or as a temporary arrangement) to allow the employee to return to undertake some work useful to the Council.

- (iv) Recommendations for alternative employment, with or without adjustments (either on a permanent basis or as a temporary arrangement) to allow the employee to return to undertake some work useful to the Council.
 - (v) Setting of review dates.
54. The manager and HR will regularly review progress in assisting the employee back to work. Further Long-term Sickness Review meetings may need to be held to discuss the absence.
55. Whilst it is not possible to set precise timescales for the above actions, after a **maximum** of three months of continuous absence, the manager should review the following:
- Any recommendation/advice provided by OH.
 - The nature of the illness and any medical information available.
 - The length of absence to date and the likelihood and time of a return to work.
 - The need to have the work completed whilst the employee is absent.
 - The feasibility of continuing with any temporary arrangement.
 - The work problems caused by the employee's absence including the adverse impact on service delivery and the effect on the morale of other employees.
 - Whether the service unit can cope with the level of disruption caused by the employee's absence, and if so, for how much longer?
 - Any other relevant circumstances.

This review may result in a Capability (Sickness) Hearing being held.

Long term Sickness Outcomes / Considerations

56. The following are eventual outcomes/considerations for long term sickness:
- (i) **The employee returns to his/her existing job.**
 - (ii) **The employee returns to his/her job with suitable adjustments.**
In considering whether an adjustment is reasonable, a manager will take into account whether the employee's condition falls within the definition of disability as set out in the Equality Act 2010 and subsequent amendments. Appendices 8 and 9 provide guidance on considering possible reasonable adjustments to the job.
 - (iii) **The employee returns to an alternative job.**
 - (a) From the time a decision is made to try to find the employee alternative employment, the employee will be either sent a copy of the Vacancy List each week or referred to the Council's website and may apply for any vacancy he/she wishes. The employee's application form will receive prior consideration along with those from others seeking re-deployment, as long as it meets the essential criteria of the person specification. To help the employee find alternative employment the manager will consider what training might be reasonably offered. In addition, the manager of a vacant post for which the employee has applied will consider whether training to overcome any shortfalls can reasonably be offered.
 - (b) HR will request Group Managers to inform them of any suitable vacancies that may be likely to arise in the near future and will provide them with details of the employee's transferable skills.

- (c) The employee will receive the established rate of pay for the job into which they are re-deployed. No protection will apply.
- (iv) **The employee returns to an alternative job with suitable adjustments.**
 - a) It may be that a vacant post for which the employee would otherwise receive prior consideration is unsuitable only because of the employee's medical condition. The employee's manager and the manager of the vacant post will consider what adjustments might reasonably be made to accommodate the employee in accordance with the guidance and checklist in Appendix 8 and 9.
 - b) If the manager decides, based on OH advice, to look for redeployment as an alternative to considering dismissal, then this search should be undertaken across the Council for a period of one month. If the redeployment search is unsuccessful and no reasonable adjustments can be made, then at the end of the one-month period, the case will be referred for consideration as to whether the employee should be dismissed.
 - c) Any redeployment opportunity must be approved by OH as being appropriate in all the circumstances.

(v) **Phased return to work.**

Any of the above could be carried out on a phased return basis with the approval of OH. A maximum of 4 weeks phased return may be offered at full pay for those on restricted duties, which includes reduced hours or reduced duties. This is likely to be dependent upon the length and type of absence and therefore a shorter phased return may be offered in some instances. If subsequent weeks (beyond 4 weeks) are required then pay will be based on actual hours worked and a further review of the employee's ability to return to full duties will be assessed no later than 8 weeks after their initial return to work. The manager must consult the employee on the phased return and monitor his/her performance and wellbeing during it.

For employees who are not absent from work, but are on restricted duties, the period of restriction may not last for more than four weeks.

- (vi) **The employee is dismissed on the grounds of capability** because there is no likelihood of a return to work in accordance with any of the above within a reasonable period.

If, after consulting OH and other relevant medical professionals, there is **no likely return date within three months**, the manager will refer the employee to a Capability (Sickness) Hearing. If there is no prospect of a return to work within a reasonable period it may be appropriate to consider dismissal. The Hearing will be chaired by a more senior manager not previously involved in the case.

- (vii) **The employee is dismissed on the grounds of capability as being permanently unfit to fulfil the duties of his/her post** (*Ill Health Retirement*) or a similar post or that there is a reduced likelihood of obtaining any gainful employment.

If a suitably qualified OHP has issued a certificate of permanent ill health to the Council, the manager will refer the employee to a Capability (Sickness) Hearing to consider the

employee's continued employment with the Council. If the Adjudicator decides to dismiss the employee and he/she is a member of the Local Government Pension Scheme (LGPS) and meets the requirements of the LGPS Regulations; he/she will be entitled to pension payments in accordance with the regulations. Such dismissals are known as "ill health retirements".

- (viii) The employee is dismissed due to long-term absence based on incapability to perform the job. It is necessary to look at the whole history and the entire picture. When considering whether to dismiss an employee due to long-term absence the need to ensure the efficient operation of the service will, in the final analysis, override the employees need to remain in employment. The basic question, which has to be determined in every case, is whether it is reasonable in all the circumstances for the manager to wait any longer for the employee to return to work, and if so, for how much longer.

FORMAL CAPABILITY (SICKNESS) HEARING

57. The purpose of the Capability (Sickness) Hearing is to arrive at a conclusion on an employee's continued employment with the Council:
- (i) In cases of long-term sickness, where there is a recommendation by an OHP that the employee is permanently incapable of performing his/her normal or similar duties, or where a return to work within the time scales set out in this policy is unlikely (3 months maximum).
 - (ii) In cases of frequent short-term sickness where there has been insufficient improvement in sickness absence within a period previously notified to the employee. E.g. Exceeded Short Term sickness targets.
 - (iii) In cases where there are concerns over sickness absence. E.g. sickness trends or amount of absence. Authorisation to proceed to a Hearing will need to be sought from a the monthly sickness scrutiny group (SSG).
58. For an employee suffering ill health, a Hearing to decide on his/her continuing employment can be upsetting. The Hearing is designed to be as simple as possible, to allow the employee adequate opportunity to present his/her case and to deal quickly with cases where both the employee and the Council are in agreement on the outcome.
59. The Adjudicator of the Capability (Sickness) Hearing will notify the parties in writing, giving at least five working days notice, of the date, time and location of the Hearing. The letter will be accompanied by any relevant documents to be presented at the Hearing by the manager. If he/she wishes, the employee may present his/her views in writing to the adjudicator instead of attending the Hearing.
60. The Hearing will comprise:
- An Adjudicator, normally the next level of management not previously involved, where practical, supported by HR. Please note, that on occasions where interim Hearings are held due to length of absence, or where an outcome was not reached at a previous Hearing, it may be more appropriate for the same Adjudicator to attend more than one Hearing.
 - A manager to present the case. He/she may be supported by HR.
 - The employee who may be represented or supported by a Trade Union representative or work colleague (unless the employee has indicated he/she will not be attending).
 - In exceptional circumstances others may be asked to attend to provide further information or clarify existing information.
61. The manager will set out the reasons why the Council needs to take action against the individual. Third parties may be asked to give information in person to support this view. The employee, their representative, the Adjudicator and HR may ask questions of the third parties and the manager.
62. The employee or his/her representative will give the employee's view. Third parties may be asked to give information in person to support this view. The Adjudicator, manager and HR may ask questions of the third parties and the employee.

63. The manager will summarise the Council's view and the employee or his/her representative will summarise the employee's view. The Adjudicator will ask the parties to withdraw and will consider the information presented, supported by HR.

64. Action could include:

- Dismissal. The Council reserves the right to pay in lieu of notice
- Final Written Warning - attendance target will be set of 4 days within a rolling 12 month period over the next 2 years (8 days for those employees recognised under the Equality Act 2010).
- Written Warning - attendance target will be set of 4 days in 12 months (8 days for those employees recognised under the Equality Act 2010).
- Issuing an attendance target of 4 days in 6 months (8 days for those employees recognised under the Equality Act 2010)
- An instruction to the manager to seek further information or take further action before returning to another Capability (Sickness) Hearing. Please also refer to paragraph 56)
- No formal action

All formal warnings will include the following conditions:

- OSP to be withheld, from the date the warning is given and in conjunction with the duration of the warning (i.e. 12 months written warning, 24 months final written warning),
- Re-set attendance targets in line with the duration of the warning. Only an Assistant Director has the authority to overturn a decision to suspend OSP.

The decision will be confirmed in writing to the manager and the employee.

THE RIGHT OF APPEAL

65. An employee may appeal against a Written, Final Written Warning or Dismissal by writing to HR within 10 working days of the date of the outcome letter. The letter **must state the specific reasons in detail** for the appeal and relate these to one or more of the following areas:

- That they think a finding or penalty is unfair;
- That new evidence has come to light; or
- That they think there have been breaches in the Capability (Sickness) Hearing

66. At the Appeal Hearing only the reasons given under one or more of the 3 specific areas in the employee's letter of appeal will be considered.

67. HR will acknowledge the employee's letter of appeal within 5 working days.

68. All cases of appeal for permanent employees, other than dismissal, will be dealt with by a new Adjudicator, normally at a more senior managerial level, not previously involved with the case. In cases of dismissal the appeal will be dealt with by the Employment Appeals Committee.

69. All cases of appeal for temporary employees and those on probation, including dismissal, will be dealt with by a new Adjudicator normally at a more senior managerial level, not previously involved with the case.

70. This will be the final stage of the process.

The SSG consists of a group of senior officers that meet on monthly basis to review sickness absence across the Council over the previous month.

Why was the SSG set up?

In 2016, the Council sickness absence rates were the highest they had been for many years. The SSG was established to review levels of sickness absence and to ensure the Council was doing all it could to support staff back to work, as well as to identify those cases where the Council had exhausted all efforts to keep staff in employment.

A fundamental reason for the establishment of the SSG was to ensure a consistent approach to managing sickness absence across all areas of the Council. The SSG achieves this by virtue of the fact that management discretion is moved more away from individual Line Managers, and instead is concentrated within the remit of the SSG. The SSG is also in a unique position of being able to assess sickness data without the emotional staff attachment.

Who sits on it?

The group is made up of:

- Group Manager (People and Performance)
- HR and OD Team Leader
- Senior HR Officers.

What information does the SSG look at?

For each employee that has had sickness absence in the month being reviewed, the following information is analysed:

- Total sickness days lost for the last month
- Total sickness days lost over the past 12 months
- Previous sickness record since records began (with emphasis on sickness absence over recent years)
- Previous triggers, warnings and support provided
- Has the individual hit a sickness trigger?
- Consideration of how many of the sickness days related to an: industrial injury, surgery, maternity issues, long-term certified sickness and disability related absence.

What do the SSG recommend?

Upon reviewing the information above the following recommendations will be made:

- No action, manager to monitor sickness absence
- Manager to hold a sickness review meeting (paragraph 41)
- Manager to hold a Formal Capability (Sickness) Hearing (paragraph 57)

Who carries out the Formal Capability (Sickness) Hearings?

Typically an Assistant Director will chair the Hearing, however if they are not able to, they can delegate this responsibility to a Group Manager. The Human Resources team work with the relevant managers to progress the case and ensure the sickness absence policy and procedures are consistently applied

THE ROLE OF OCCUPATIONAL HEALTH (OH)

OH is a specialist branch of medicine focusing on health in the workplace. It is concerned with the physical and mental well-being of employees. OH specialists can support organisations through advising on work-related illnesses and accidents, carrying out medicals for new starters and existing employees and monitoring the health of employees.

OH services are also used to assist organisations in managing absence situations – both short and long term. The opinion of an OH specialist might be crucial in determining how management manage attendance, which in return provides employees with the reassurance that managers will be educated on their condition and any reasonable adjustments before making any decisions.

Services provided by OH

As well as addressing issues that occur, a lot of the work of an OH service should be proactive, aiming to reduce potential problems in the workplace. Hence the activities of OH are likely to include helping:

- implement policy
- ensure compliance with health and safety regulations
- minimise and eliminate hazards
- manage cases of drug and alcohol abuse, and advising on HIV/AIDS issues
- offer pre-placement health assessment which includes change of role and prior to starting work
- monitor the health of employees working in a high risk environment, after an accident, illness and during and after pregnancy
- advise on ill-health retirement and Equality Act 2010 although the ultimate decision can only be made in a court of law
- advise on ergonomic issues and workplace design
- promote good health education programmes
- provide advice and support
- provide support to management on sickness cases to ensure that management are aware of the work related functional capability impact of any medical conditions
- give employees the option to speak to a third party regarding their condition
- advise managers on what support and reasonable adjustment employees need to help them back to work or remain at work

The benefits for OH

The OH Service advise on all matters concerning the effects of work on health and health on work. They work impartially to the benefit of both employer and employee, to help minimise work related ill-health by providing:

- advice and guidance to minimise the risk of work impacting and work caused ill-health
- support for managers to manage employees with health related issues
- practical, impartial and confidential health support for all employees within the workplace
- advise on the control of potential health risks at work
- health surveillance in order to detect OH disease at an early stage
- to fast track medical treatment and supporting interventions such as physiotherapy and counselling through the EAP suitable
- management with medical information regarding functional impact of an employee's condition so that management can act accordingly

Confidentiality and OH

Under the Access to Medical Reports Act 1988 employees are entitled to see a medical report relating to him or her before it is passed to an employer and employees are entitled to challenge any factual inaccuracies in that report. Employees can also refuse consent for the release of the report in which case managers need to act on the information they have

The Data Protection Act 1998 allows employees access to any information held about them, on paper or on computer. It has to be presumed, therefore, that an employee might have access to any report written about him or her at some time.

The Importance of OH

Without support from OH, the Council could make decisions that could adversely affect employee's employment and could break legislation. OH specialists protect employees by ensuring management are aware of the impact on work of an individual's medical conditions and by recommending support plans to encourage management to implement reasonable adjustments in the workplace to avoid/reduce future sickness.

The Role of Management

OH work in partnership with managers to deliver their service and as a result, managers have a responsibility to;

- Make early referral, particularly in the case of mental health or musculoskeletal conditions, to OH by liaising with HR. Referral for all conditions should be made in line with the Council's sickness absence management policies and procedures and for cases of mental health or musculoskeletal conditions, as soon as possible to optimise the benefit of the service and the impact on the employee's health. As OH can only work with the information given, it is important that the online referral form is used and that referrals are as detailed as possible containing all information of relevance which could include;
 - at work, modified duties, previous absences, performance issues
 - Adjustments or modifications attempted? With what results and what may be reasonable
 - What has been discussed with employee with regard to situation
- It is the manager's responsibility to complete the referral form, but HR can support with the completion of the online form on the OH portal. A comprehensive booklet and guidance is available to assist you. Please contact HR for a copy if required. OH can be contacted prior to submission to provide impartial advice without naming the individual. Legally, managers must make employees aware of the referral prior to submitting.
- Managers are encouraged to include the HR Mailbox or their respective HR Support as a secondary manager when making a referral. This is to ensure that HR have an insight into all OH referrals and are able to provide support throughout the process.
- OH can be contacted prior to submission to provide impartial advice without naming the individual. Legally, managers must make employees aware of the referral prior to submitting.

There may be times when an OH report is slow to be returned for example where a GP or consultant's report is required. In these instances, the most effective pursuer of the report is often the employee so managers should seek the employee's support in chasing it. On receipt of the OH report, the advice made by OH is only advice and it is up to the Council to decide if they can be adopted. OH welcome pre and post referral telephone contact to ensure full understanding.

- Identify hazards in the workplace and through liaison with Health and Safety, identify and facilitate appropriate health surveillance.

When employees are starting in a new role, whether relocated or new to the Council, a baseline assessment should be conducted in the 1st 12 weeks after starting for roles working in high risk environments as determined by Health and Safety.

Reasons for a OH referral

- Frequent Short term sickness absence - please attach sickness absence record from the date of initial concern to present.
- Long term sickness absence - please attach sickness absence record
- Advice about return to work, including rehabilitation, adjustments after a period of long term illness, injury or surgery.
- The employee has developed/disclosed a potential disability and advice is required about the symptoms/effects of the disability and potential adjustments.
- Fitness for work concerns.
- Performance deterioration and whether this is health related.
- Fitness to attend a formal meeting/hearing or respond in writing to written questions
- Other reason, including health surveillance follow up (please specify)

Questions you may wish to ask on the online referral form

- Is there an underlying medical condition affecting the employee's performance or attendance at work? If so please provide details.
- Is the health problem likely to recur or affect future attendance? If so what are the likely triggers?
- Is the condition work related? If so how?
- Is the employee fit to carry out the duties in the enclosed job description (or if job description not available please supply a narrative role description) If not, are they fit for any alternative duties/role? If so, please provide details
- Are there any short/long term adjustments to the employee's work tasks or environment that would facilitate rehabilitation or an early return to work, e.g., phased return to work? If adjustments are required, approximately how long for?
- In your opinion is it likely the health condition may meet the criteria for disability as defined by the Equality Act?
- If the employee is not fit to return to role/adjusted role is ill health retirement appropriate?

Industrial Injury

An industrial injury will not count as a trigger in the current sickness absence process. Each industrial injury will however be investigated thoroughly and the following details taken into account:

- Number of previous accidents within the last 12 months
- Previous sickness absence levels
- Training undertaken by the individuals

Should there be any cause for concern, when reviewing the above; the sickness absence will count towards the trigger.

SICKNESS REVIEW MEETINGS

Short-term sickness review meeting

As a guide the manager will, as he/she thinks appropriate:

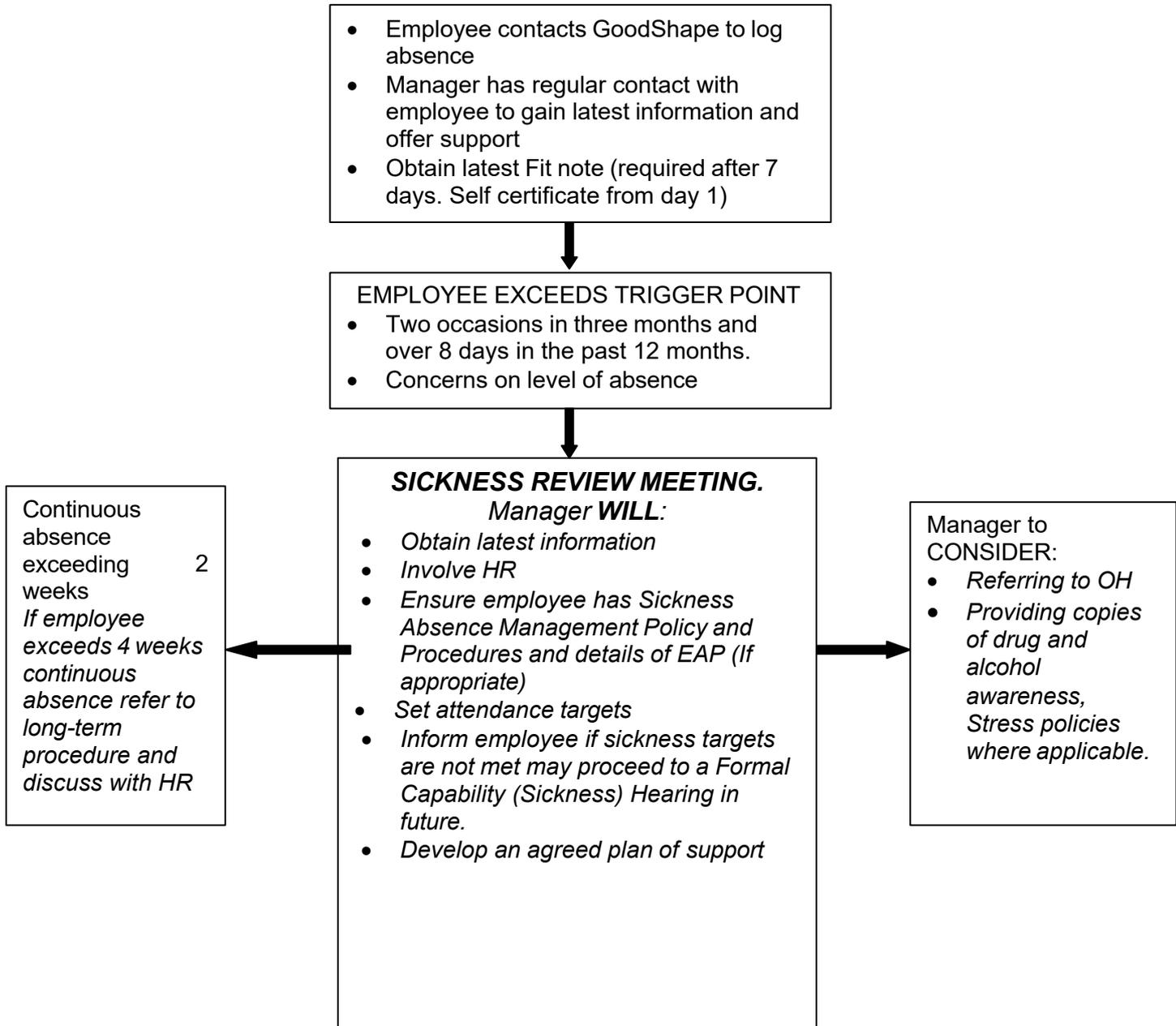
- (i) Obtain information from the employee to help identify if there is an underlying reason for absence. The stated reasons for absence may mask a more fundamental cause.
- (ii) Ask the employee what support the Council might be able to give him/her to help reduce the level of sickness. This could include giving consideration to changes in working hours, location and the working environment.
- (iii) Provide the employee with details of the Employee Assistance Programme.
- (iv) Advise the employee he/she may be referred to OH.
- (v) Refer the employee to the Employment Handbook for a copy of this policy if he/she does not already have one.
- (vi) Set attendance targets

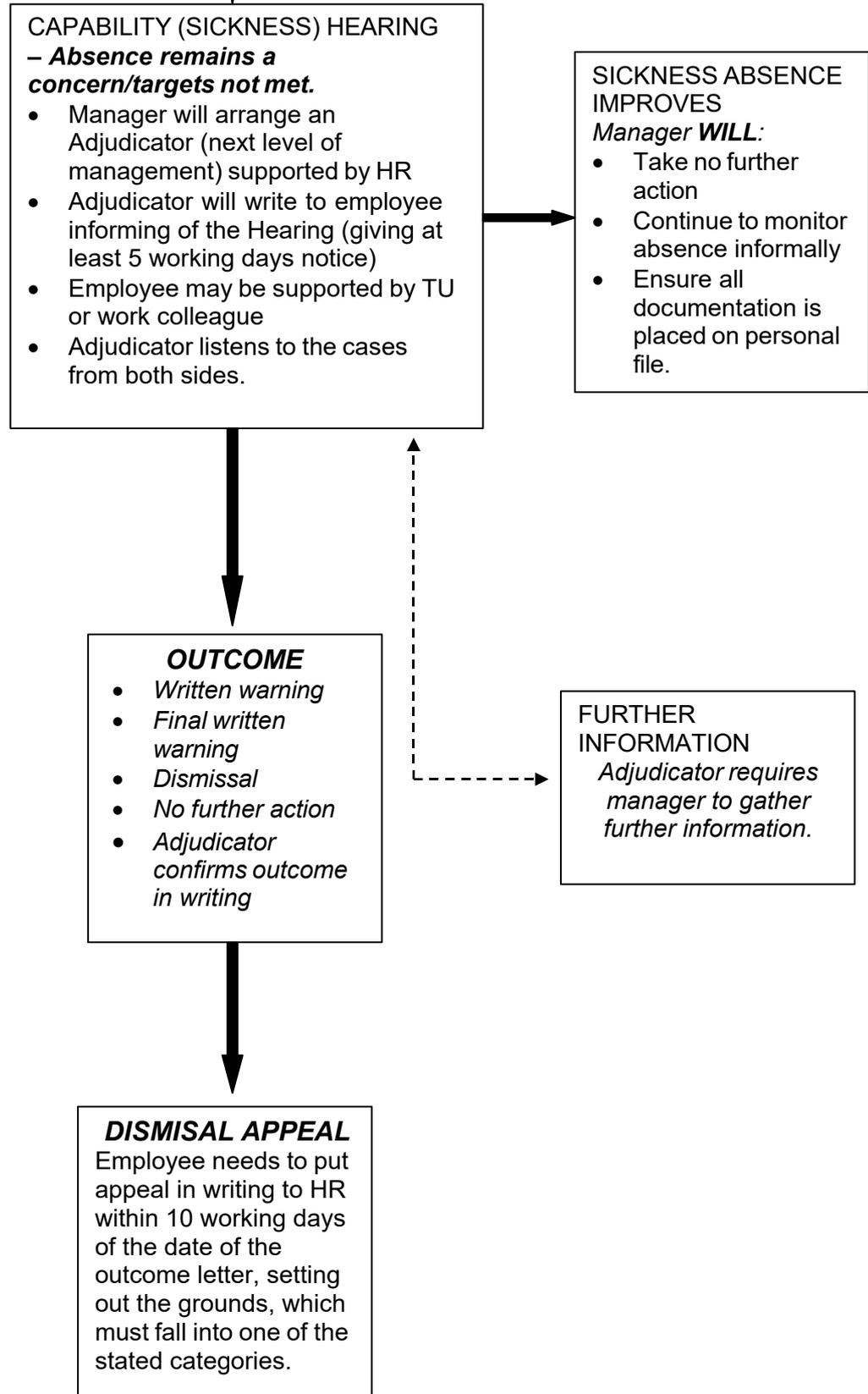
Long-term sickness review meeting

As a guide the manager will, as he/she thinks appropriate:

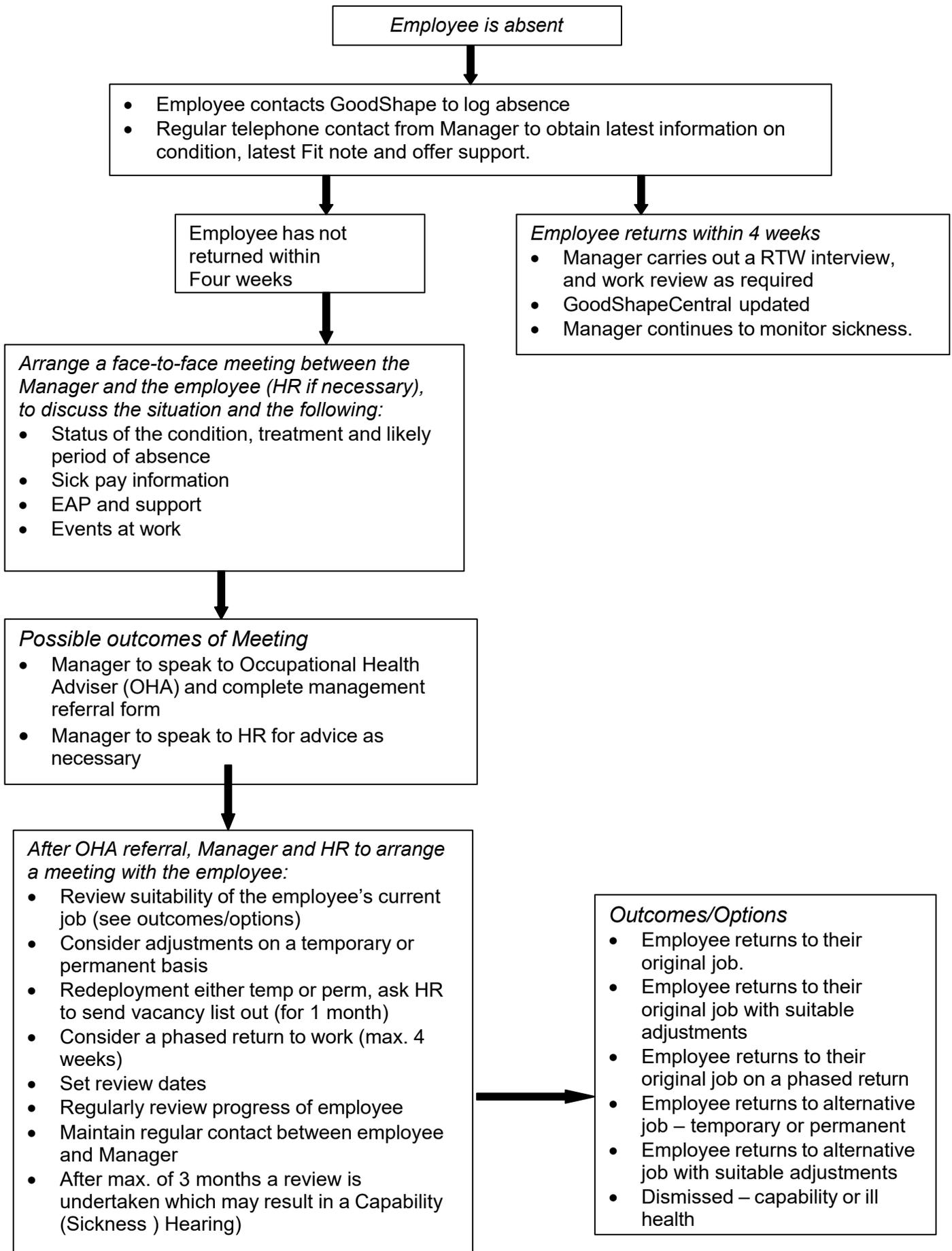
- (i) Obtain the latest information on the employee's condition and treatment.
- (ii) Advise the employee he/she may be referred to OH.
- (iii) Provide the employee with details of the Employee Assistance Programme.
- (iv) Refer the employee to Employment Handbook for a copy of this policy if he/she does not already have one.
- (vi) Ask the employee what support the Council might be able to provide. This could include giving consideration to suggestions for:
 - changes in working hours
 - adjustments to the current job
 - alternative work,
 - adjustments to alternative work,
 - training to make re-deployment easier.
- (vii) Undertake an audit of transferable skills.

SICKNESS ABSENCE MANAGEMENT FLOW CHART – SHORT TERM





SICKNESS ABSENCE MANAGEMENT FLOWCHART – LONG TERM
(Over two weeks)



GUIDANCE FOR ASSESSING REASONABLE ADJUSTMENTS IN EMPLOYMENT

1. The Equality Act 2010 and subsequent amendments places an onus on employers to consider making reasonable adjustments to a job to accommodate the disability of a job applicant or an existing employee who develops a disability. The legal requirement applies only to a person who has a disability as defined by the Equality Act i.e. a physical or mental impairment that has a substantial and long-term adverse effect on the person's ability to carry out normal day-to-day activities. By "long term" it is meant a condition that has lasted 12 months, is likely to last 12 months or is likely to recur. The definition specifically mentions the ability to carry out day-to-day activities not the ability required to carry out specific work activities. Progressive conditions (e.g. cancer, muscular dystrophy, multiple sclerosis and HIV infection) are covered by the definition even though there may be no current impairment.
2. It is good practice that managers consider making reasonable adjustments even though an employee's medical condition does not fall within the definition in the Equality Act 2010 . The difference between this and the legal requirement is one of degree in assessing what is "reasonable".
3. In the event of an employee developing a medical condition that prevents him/her from doing his/her job, consideration needs to be given to:
 - Adjusting premises (e.g. anything arising from building design and construction, exit and access, fixtures, fittings, furnishings, equipment, materials);
 - Allocating duties to others;
 - Altering working hours;
 - Assigning to a different workplace;
 - Allowing the person to be absent for treatment, rehabilitation, assessment;
 - Training; Supervision (e.g. help from colleague, support worker)
4. **What is reasonable?**

In deciding whether it is reasonable to make an adjustment, a manager must consider:

 - The adjustment's **effectiveness** in overcoming the problems of the disability.
 - The extent to which it is **practicable** for the Council to make the adjustment.
 - The extent to which the adjustment would **disrupt** activities.
 - The **resource and cost implication**.
 - The **extent** of the Council's **financial and other resources**.
 - The availability of **external funding** in respect of the adjustments.

NAME:

MANAGER:

DATE:

ADJUSTMENT EVALUATION SHEET

To assist managers in considering adjustments to a job or the working environment to accommodate a medical condition

Type of Adjustment	
Effectiveness	
Practicability	
Extent of disruption to employers activities	
Resource and cost implications	