

# Ealing Schools

## Medical Capability Procedure

Revised September 2012



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## Authority to Act

A formal Medical Capability Meeting will be conducted by a person who will chair the meeting and reach a decision at the end of the meeting. The Chair of the Meeting will be one of the following depending on the circumstances of delegation that apply in the school, as decided by the School Governors:

- Panel of three Governors
- One Governor
- Headteacher
- Deputy Headteacher
- Assistant Headteacher
- Any other manager, teacher or support staff, who has managerial responsibility for one or more subordinate staff.

A hearing which may involve the dismissal of the employee can only be considered by a panel of Governors, one Governor or the Headteacher. An appeal against dismissal would always be to the Governing Body.

The above will be referred to as the Manager in the rest of this document.

## **Procedure for Review of Medical Capability**

### **1. SCOPE AND PRINCIPLES**

1.1 The aim of this procedure is to provide fair and effective arrangements to support schools in managing sickness absence and maintaining high standards/levels of attendance.

1.2 To support this aim the procedure takes account of best practice, and guidance provided by ACAS

1.3 Governing bodies of schools with delegated budgets are responsible for determining arrangements for dealing with staffing matters including medical capability. Governing bodies should set procedures for staff they employ and make them known to these staff. It is a statutory requirement for governing bodies to establish a committee to consider appeals. Governing bodies are expected to delegate to Headteachers the power to suspend and dismiss staff and to the Chair of the Governing body the power to suspend the Headteacher.

These procedures have been the subject of consultation with the teaching and support staff trade unions and are commended to Ealing schools for adoption. Any further local changes to the procedures should be the subject of consultation with school based staff side representatives.

1.4. These procedures apply to all staff employed directly by the governing body. They do not apply to staff working in the school under contract arrangements with external providers or to supply/agency staff.

## **2. Introduction**

It is expected that where an employee has unsatisfactory attendance due to sickness absence, the school will have been following a framework of good practice guidelines for dealing with management of the absence (e.g. the guide on Management of Absence in the Personnel Handbook for Schools). The framework will allow flexibility to deal appropriately with the wide-ranging circumstances that arise with individual cases of sickness absence. It is recommended that the advice of the Council's Occupational Health Physician (or the schools chose OH provider) is obtained as necessary before any formal medical capability meetings and in particular before a decision to dismiss.

## **3. Procedure**

3.1. Staff absences should be reviewed regularly by the Senior Management Team for the School as a whole and also by all managers who have responsibility for managing staff. The Management of Absence guidance provides trigger points for the review of absence. Under these trigger points it is recommended that a member of staff who is on sick leave for more than 7 days in the course of a rolling year is subject to a review by the relevant manager. . This will not necessarily trigger a formal review .A formal review is likely if a continuing series of short term absences occur or if a prolonged period of continuous sickness absence occurs.

3.2. The letter instructing an employee to attend a formal Medical Capability Review meeting shall:

- i) give a minimum of 5 working days notice of the date, time and venue fixed for the review (unless an earlier date has been mutually agreed);
- ii) Name the member of the manager or governing body member/s who will conduct the review and any other person (s) attending as advisor (s);
- iii) clearly state the matters to be considered at the review meeting;
- iv) Inform the employee that a work colleague or a recognised trade union/professional association representative may accompany them to the meeting and will be permitted to speak on their behalf and that, if they intend to seek representation, they should check immediately that their representative is available on the day and time scheduled. It is the responsibility of the employee to arrange for representation.

- v) Inform the employee that either side may produce relevant documentation for consideration at the meeting. Any documentation to be relied upon by the school will be copied to the employee and enclosed with the letter instructing them to attend the review. The employee shall be required to provide copies of any documentary evidence, to the manager/headteacher/governors conducting the review, no later than 2 working days before the review to allow consideration to be given to it;
- vi) enclose a copy of this medical capability review procedure;
- vii) Inform the employee that if they are not fit or able to attend the meeting, a written statement (including medical evidence where appropriate) to this effect should be submitted to the person/s conducting the meeting (see 3.5 below). This should be done before the date of the meeting.
- viii) If at a second or subsequent meeting dismissal is a possible outcome, this must be stated in the letter calling the employee to the meeting.

3.3. If the employee is not able to attend the meeting, the written statement they submit would normally ask for consideration to be given to:

- a) A postponement of the meeting due to ill health. If this is requested, then the employee should indicate a date by when they would be able/fit to attend a reconvened meeting. The decision on whether or not to proceed will rest with the person/s conducting the meeting, who may consult with an adviser.
- b) A postponement of the meeting due to non-availability of a representative (see 3.4 (iv) above)
- c) A written submission or submissions that is considered in their absence
- d) A presentation on their behalf by a colleague or trade union representative
- e) The employee must also be informed that in any event the meeting may be held in their absence.

If a postponement is requested, and declined, the reason/s must be set out in writing for the employee.

3.4. The objective of the meeting shall be to obtain all the relevant facts so as to enable the person conducting the review meeting to arrive at a decision, which is fair to both the employee and the school. Consideration must be given as to whether, on the balance of probability, there are reasonable grounds to sustain a belief that for health reasons, the employee's attendance may continue to be below an acceptable level.

- 3.5. The review meeting itself shall be conducted in as informal a way as is possible and reasonable. During the course of the meeting and with all relevant parties present:
- i) the member of the leadership group or manager will present the management position (Presenting Officer) and any supporting information and evidence. In cases where there are not enough senior members of staff at the school to present evidence and conduct the review, the Headteacher may have to collate the evidence and then conduct the meeting.
  - ii) the employee and/or his/her representative will be given an opportunity to ask questions on: the management case, any information/evidence presented and/or and advice provided.
  - iii) the employee and/or his/her representative will then state his/her case and present any supporting information and evidence.
  - iv) the Presenting Officer will be given an opportunity to ask questions on the employee's case, any information/evidence presented and/or any advice provided.
  - v) the Governor/headteacher conducting the meeting may ask questions of the employee, his/her representative, the Presenting Officer and/or any advisor at any stage during the process.
  - vi) the Governor /headteacher conducting the review may determine that it is necessary for more information to be obtained. If this is the case and the information is not to hand or readily available then the manager/headteacher can agree an adjournment of the meeting to allow for the information to be provided. A new date and time will be set by the manager/governors for the review to be reconvened. Any new information provided should be made available to all parties at least two working days prior to the date of the reconvened review meeting.
  - vii) At the conclusion of the process the manager/ headteacher and the employee, or his/her representative, shall be invited to summarise their position without introducing new evidence.
- 3.6. All parties shall then withdraw leaving the manager or Governor(s) conducting the review, together with any person (s) attending as advisor(s), to consider what, if any, action is required. Notwithstanding any advice that may be relied upon, the decision will be the responsibility of the Governor/s, Headteacher or other manager conducting the review. If any party needs to be recalled to clarify any matter, then all parties shall be recalled together.
- 3.7. The Governor/s/Headteacher conducting the review should consider the facts and details of the specific case against the following criteria:
- i) The number of days of sickness absence and/or the period over which there has been repetitive short-term absence.
  - ii) The average rate of sickness absence for staff with similar working conditions, at the school over the same period.

- iii) Any relevant school policies in force at the time.
- iv) The likelihood of improved attendance/performance. This must include up to date information from the Authority's Medical Adviser (or the schools' nominated medical advisers) as well as information from any other relevant source.
- v) The employee's length of service, past attendance record and/or performance
- vi) The needs of the service and the adverse effect of the employee's level of absence on the service.
- vii) The special circumstances of employees who have a disability, including any adaptations or adjustments that have been made and the effect of these. Consideration should also be given to whether further adjustments/adaptations could be made. Advice on this should be available through the schools HR provider.
- viii) Any previous relevant medical capability review information and/or action taken to inform the employee of the situation and advise them of the consequences, including the possibility of dismissal.

3.8. The courses of action open to the Governors, Headteacher or other manager conducting the review can be any one, or a combination, of the following:

- i) inform the employee that failure to attain a satisfactory performance/attendance level by a specified date and sustain it would culminate in a further review hearing, which may lead to dismissal. This should include a clear indication of the level of improvement that is expected.
- ii) review the case at a future date, pending further medical information, to decide whether or not the employment can continue and what further measures may be necessary.
- iii) that no action is necessary at present except to monitor the level of performance/sickness absence and review the case at a later stage if necessary
- iv) clearly inform the employee that if there is no substantial improvement in the performance/attendance level to provide a regular and efficient service, this will result in dismissal.
- v) any additional recommendation deemed reasonable and appropriate including the offer to investigate any suitable alternative employment that is available
- vi) termination of the employee's services if s/he has previously been formally informed/warned (as a result of a related previous medical capability review) that failure to attain a satisfactory performance/attendance level to provide a regular and efficient service could/would result in dismissal.

3.9. The Governor/s/headteacher conducting the review will give a decision to the parties in person (except where it is agreed to communicate the decision by other means) at the earliest opportunity, specifying any subsequent action to be taken and, where appropriate, any rights of appeal. The details will be confirmed in writing to the

employee as soon as possible but in any case within five working days of the review meeting.

- 3.10. An employee whose employment is terminated on the grounds of capability arising from unsatisfactory attendance, due to illness or injury, and who is unable to work during their notice period as a result of illness, is entitled to be paid at the normal level of pay during the notice period, (subject to deduction of sick pay being received). Notice is the contractual entitlement for the position or one week's notice for each completed year of service up to a maximum of 12 weeks, whichever is the greater. Subject to complying with any contractual requirement during their notice period (including the regular submission of sickness certificates) the employee shall be paid on full pay for the duration of their notice period. If the employee wishes to leave the school and terminate their employment prior to the date given in the notice, whether to commence receipt of pension, or to take up alternative employment or otherwise, then they must give notice in the normal way. If the school agrees to such early termination, then entitlement to pay or sick pay will cease on the effective date of such early termination of employment.

## **Appeal**

- 4 An appeal against a decision to dismiss will be to the appeal committee of the governing body. In cases where the Headteacher has been dismissed, the Appeal Panel will be drawn from members of the governing body not involved in the dismissal decision.

Appeals against decisions made by the Headteacher, a governor or a panel of governors will be to a governing body Appeal Committee

- 4.1 The employee will be informed that their grounds for appeal should be clearly set out; e.g. explaining why they believe that the procedure was unfairly or incorrectly applied in their case or why they feel that the decision is not reasonable in the circumstances, that new evidence is now available or that evidence was not properly taken into account
- 4.2 The employee must confirm his/her intention to appeal, in writing to the Headteacher/ Chair of Governors within five working days of receipt of written confirmation of the decision. .
- 4.3.1 Any disagreement over medical advice between the schools medical adviser and the employee's medical adviser will be referred to the Head of the Schools HR Consultancy Team who will consult the employee and the school over the nomination of a medical referee to adjudicate on the matter.

If agreement cannot be reached on the appointment of the medical referee, the matter should be referred to the appropriate joint secretaries (or other officers of the recognised NJC) at local, regional or national level.

If the appeal is based solely on medical grounds then the report of the nominated medical referee will need to be presented to the headteacher/Governing Body appeal panel for their consideration.

- 4.4 The Governing Body appeal panel will set a date for the appeal, normally within 20 working days of receipt of the employee's detailed grounds for appeal, and confirm the date, time and venue to the appellant and the schools representative in writing.
- 4.5 Any documents that are to be relied upon at the appeal hearing shall be exchanged between the parties, through the appeal panel, no later than 5 working days before the appeal hearing. At this time the names of any witnesses to be called should also be confirmed.

The employee shall be entitled to be accompanied by a trade union/professional association representative or work colleague, who will be permitted to speak on their behalf. In cases of dismissal the management case will include evidence from the headteacher who took the decision to dismiss. The Assistant Director School Effectiveness, or their representative, may be asked to advise at the appeal.

- 4.6 The appeal process will involve:

The management case being presented by the management representative, with witnesses called if necessary, in the presence of the employee and his/her representative.

The appellant and/or his/her representative having the opportunity to ask questions of the management representative and any witnesses they call.

The person/panel conducting the appeal having the opportunity to ask questions of the management representative and any witnesses they call. The HR Adviser present may also ask questions.

The appellant and/or his/her representative then presenting his/her case for appeal, with witnesses called if necessary, in the presence of the management representative.

The management representative having the opportunity to ask questions of the employee, his/her representative and his/her witnesses.

The person/panel conducting the appeal having the opportunity to ask questions of the employee, his/her representative and his/her witnesses. The HR Adviser present may also ask questions.

The person/panel conducting the appeal will allow the management representative and the employee (or his/her representative) to sum up their case if they so wish.

- 4.7 At the conclusion of the appeal, the governing body panel will adjourn with any adviser to consider their decision. The decision will be communicated to the employee, preferably in person, but in any event in writing within three working days of the date of the appeal.

## **Appendix 1**

### **Alternative Arrangements**

- 5.1 In certain circumstance the governing body may feel that it is not appropriate for the head teacher to exercise delegated responsibility for medical capability matters, which may involve dismissal and may consider applying alternative arrangements. This would then require a governing body panel exercising this responsibility. The circumstances in which delegated responsibility for staff dismissal matters may not be exercised by the governing body are as follows:
- 5.2 Where the head teacher has had some prior involvement in an issue involving a member of staff, which could be seen to prejudice a Headteacher's impartiality in managing the medical capability process,
- 5.3 Where a head teacher is subject to suspension, disciplinary or capability procedures, or disciplinary sanction.
- 5.4 Where the LA has made representations to the chair of the governing body on grounds of serious concerns about the performance of the head teacher.
- 5.5 Where the Headteacher has failed to abide by financial limits agreed by the governing body for any school purpose.

5.6 A head teacher who is unwilling to perform these functions and whose previous history of service at the school did not include any such responsibilities (this would give the existing head teacher the option of preserving their working arrangements, but when the governing body considers a new appointment for the head teacher post the normal expectation for the head teacher to undertake these responsibilities should apply).

5.7 The Governing Body should review, at least annually or where necessary, the continuation of any circumstances where the headteacher does not lead on these staffing matters because of concerns about their conduct or performance. The headteacher should have the opportunity to make representations on any decisions to discontinue or continue delegated responsibility.

## **Appendix 2 Flowchart 1 – Medical Capability Procedure**

No improvement in performance /attendance/remains unsatisfactory following general managing of performance sickness absence



Head or Chair of Governors arranges for letter to be sent requiring employee to attend Medical Capability meeting



Conduct Medical Capability meeting and right to representation



Adjourn meeting to consider details of the

- Range of factors to consider**
1. Sickness absence record.
  2. Other policies e.g. medical redeployment, ill health retirement, prospect of phased return etc.
  3. Employee's representation/mitigating circumstances.
  4. Employee's length of service and previous attendance record.
  5. Impact on/needs of service.
  6. Provision of any further reasonable adjustments, if applicable.
  7. Any previous review information/action.

Give decision in person where

- Possible courses of action**
1. No action necessary, except to monitor attendance and review at a later date.
  2. Review case pending further medical information.
  3. Any other reasonable/appropriate recommendation, e.g. medical redeployment.
  4. Inform/warn employee no improvement in attendance may/will lead to a further meeting and possible dismissal.
  5. Dismissal where previously informed/warned.

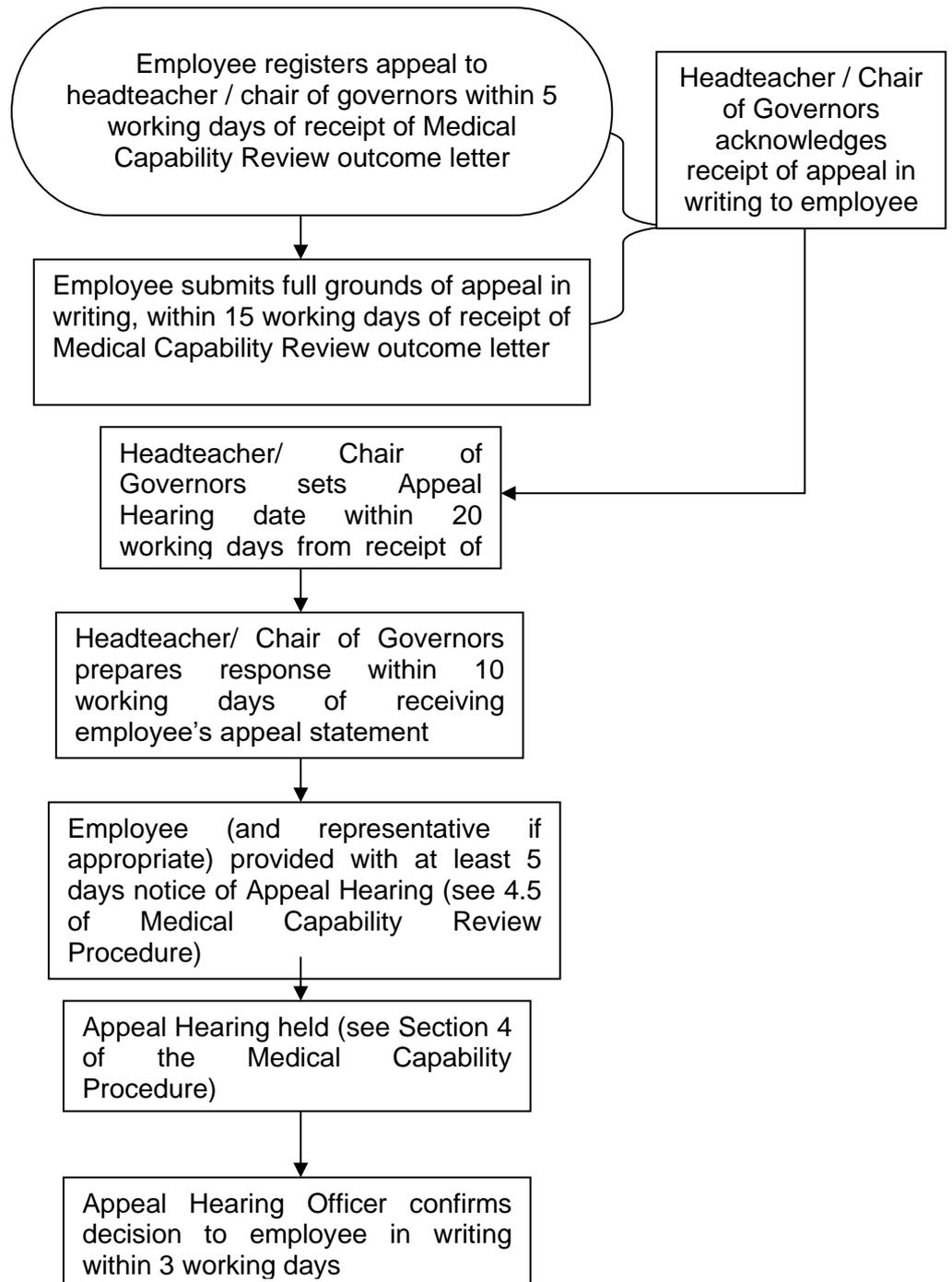


Confirm outcome of Medical Capability Review meeting in writing, within 5 working days



Consider appeal if registered within 5 working days

### Appendix 3 Flowchart 2 - Appeals



## Appendix 4      Template letters

### Inviting the employee to a medical capability review meeting:

Dear

Date:

Private & Confidential

#### First / second formal medical capability review meeting

I am writing to invite you to the above meeting on (date giving at least 5 working days notice) at (time), (venue).

You may wish to have a work colleague with you or your union representative. It is your responsibility to arrange their attendance at this meeting.

I will present the case as Presenting Officer to the Hearing Officer (Headteacher). (Name) from School HR Advisory team will attend to advise the Hearing Officer.

The matters to be discussed are as follows:

- continued poor attendance
- etc

The documents I shall refer to are attached as is the Medical Capability Procedure for your information / will be sent to you 3 working days before the meeting. If you wish to refer to evidence of your own at the meeting, this must be submitted to me 3 working days before the date of the hearing.

If you are too ill to attend the meeting, medical evidence may be requested from you. If you are unable to attend for some other reason, this must be put in writing to me before the date of the meeting if possible.

*As this is the second medical capability review meeting and dismissal is a possibility, this must be stated in the letter.*

If there is anything unclear in this letter to you, please do not hesitate to contact me.

Yours sincerely,

## **Appendix 4**

### **Letter to invite the employee to an Appeal**

Appeal against a warning, targets/objectives or the length of a monitoring period

#### **Private & Confidential**

#### **Appeal Hearing**

Dear \_\_\_\_\_

Further to your letter dated (insert) appealing against the outcome of your recent Medical capability review meeting a date has now been arranged to consider your appeal.

The appeal hearing is scheduled to take place on (*insert date*), in (*insert venue*), at (*insert time*).

A set of agenda papers (*insert: 'are enclosed' or 'will be sent out 5 working days before the appeal hearing'*). [NB: the presenting manager who was responsible for the original decision should prepare a written response to the employee's submission. This should be provided to the employee within 5 working days of receipt of the appeal notification].

The purpose of the appeal hearing is to consider the grounds of your appeal and determine whether the decision made at the Medical capability review meeting was reasonable in all the circumstances.

I will be chairing the hearing and have arranged for (insert name), HR representative to attend to provide HR advice. I have also arranged for (insert name/title of the manager who conducted the Medical capability review meeting to be present at the appeal hearing to provide a response in relation to the grounds of your appeal.

The procedure to be adopted in considering your appeal hearing is set out in the Medical capability Procedure, a copy of which is enclosed for you.

You have the right to bring a work colleague or trade union representative to the appeal hearing to represent or accompany you. If you decide to do so, please ensure they are aware of the time, date and venue of the appeal hearing as early as possible.

**Yours sincerely**

(Name)  
(Title)

**Appeal letter outcome** for appeals against a warning, targets/objectives or the length of a monitoring period

### **Private & Confidential**

Dear \_\_\_\_\_

I am writing to inform you of the decision taken in respect of your appeal against (*insert warning, targets/objectives and/or length of monitoring period*), which was held on (*insert date*).

Following my review of the grounds for your appeal and all the available evidence, I considered that the decision of (*insert the name of the employee's manager*) that (*insert details of original decision*) was...

(e.g. that the decision was unreasonable and does not stand OR that the decision was reasonable in the circumstances and the original decision was confirmed OR to submit the case back for a rehearing OR decided that a different outcome was appropriate...)

This decision constitutes the end of this appeal procedure.

Yours sincerely,

(*Name*)

(*Title*)

### **Letter of Dismissal**

Dear

You attended a second formal Medical Capability Hearing on (date). I chaired the hearing and the management case was presented by (name). You were accompanied by your trade union representative/workplace colleague. (Name) represented Human Resources. We took account of all the information which you provided as well as the submissions made by the Headteacher/Manager in addition to the latest report from the Occupational Health Physician. We noted the following periods of absence:

List absences

We/I have decided in light of this information that your employment with (school) will be terminated on the grounds of medical capability. You will receive three months notice of the termination of your contract and your last day of employment will be (date).

You have the right to appeal against this decision to the Governors Appeal Panel. Please write to me stating the grounds for your appeal within five working

days of receiving this letter if you wish to lodge an appeal. I attach a further copy of the Medical Capability Procedure and draw your attention in particular to the section on Appeals. You are advised to seek the advice of your trade union representative. I shall send you a copy of the minutes shortly.

