

## 17.3 PROCEDURE FOR MANAGING EMPLOYEE ILL HEALTH

### London Borough of Bromley Procedure for Managing Employee Ill Health

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## **PART 1 Introduction and General Principles**

### **1. Purpose**

- 1.1 The purpose of this procedure is to set out the framework within which the ill health of employees will be managed in a proactive manner in order to minimise productive time lost to the Council as the employer and to protect the health and safety of each individual employee. It also aims to ensure a consistent and transparent process, balancing both the needs of the individual and those of the Council.

### **2. Application**

- 2.1 This procedure applies to all Council employees except employees in their probationary period and those employed in educational establishments which have fully delegated budgets.

### **3. Equal Opportunity Issues**

- 3.1 This procedure will be applied in accordance with the Council's Equal Opportunities policy, to ensure that no employee is treated unfairly under this procedure on the grounds of age, colour, national origins, nationality, race, disability, family commitments, gender, marital status, membership or otherwise of a trade union, religion or sexual orientation. The use of this procedure will aim to ensure that the Council complies with the requirements of the Equality Act 2010.

### **4. Interpretation**

- 4.1 Any issues of interpretation regarding the application of this procedure will be determined by the Council's Assistant Chief Executive (Human Resources).

### **5. Appropriate Use of Procedures**

- 5.1 This procedure for managing ill health will not be confused with the Council's procedure for disciplinary matters.

### **6. Setting the Scene**

- 6.1 Any reference in this procedure to the employee's manager will normally refer to the immediate manager. However, this will not preclude the substitution of another manager where appropriate.
- 6.2 Any reference in this procedure to the Chief Executive, the Council's Assistant Chief Executive (Human Resources), Chief Officer or HR Consultant will also relate to his/her representative.

- 6.3 A manager or chief officer may consult other officers of the Council, be accompanied by relevant specialists such as personnel or legal officers and/or call witnesses to any hearings under this procedure.
- 6.4 Personal information regarding employees will only be disclosed to relevant officers, medical practitioners or elected Members. All such information will be regarded as confidential and stored and treated in the same manner as other confidential personnel information.
- 6.5 Employees will receive written confirmation at each stage of the procedure.
- 6.6 Employees who are trade union officials shall be subject to the same standards as other employees. However, no formal action under this procedure shall be taken until the appropriate branch secretary or full-time official has been informed.
- 6.7 Any reference to “days” in this procedure means calendar days.
- 6.8 Reference to “satisfactory” or “unsatisfactory” attendance will be defined in the context of the individual circumstances in each case.
- 6.9 The employee has the right to be accompanied by a colleague, trade union representative or friend at any stage of this formal procedure. The employee is also entitled to call witnesses to any hearings under this procedure.
- 6.10 This procedure acknowledges that ill health and any related absence may adversely affect an employee’s overall performance of their duties.
- 6.11 If an employee being referred to the Occupational Health Physician (OHP) requests a doctor of the same sex, the HR Consultant will consider the reasons for the request and if reasonable, will seek to arrange this. A request for a same sex doctor will not be unreasonably refused. However, medical appointments will not be unduly delayed if such a request cannot be promptly met.
- 6.12 An employee’s report of ill health and any associated absence, including medical reports will normally be accepted unless the manager has evidence to the contrary.

## **7.       Sickness and Annual Leave**

7.1       Ill health starting prior to annual leave and continuing after annual leave will be considered continuous for the purpose of this procedure. A Fit Note will be required for periods of sickness of 8 calendars or more.

7.2       Employees who are unavailable to attend appointments arranged under this procedure due to a holiday or other personal commitment should apply for annual leave in the normal way up to the maximum of the statutory entitlement. Employee's unavailability for any other reason will need to be considered in the light of the particular circumstance. All annual leave booked will be deducted from the employee's annual leave entitlement.

## **8.       The Informal Stage**

### **8.1       Communication**

Managers are expected to communicate on a regular basis with their employees and be generally aware of their individual welfare at work, including health related issues. The employee also has a responsibility to keep the manager informed of their fitness for work, including raising with the manager any issues, including domestic or health problems which may affect their ability to perform appropriately or attend work. During periods of sickness absence both employee and manager should endeavour to maintain contact in order to keep the employee up-to-date on any changes and to allow the manager to plan workloads according to the employee's sickness prognosis.

### **8.2       Raising Issues Informally with Employee**

In appropriate circumstances managers will begin with an informal discussion of their concerns about an employee's health and/or their attendance and how it is affecting their performance prior to taking action under this procedure. This will give the employee an opportunity to improve their performance without use of this formal procedure. Employees will be advised by the manager that their sickness is beginning to cause concern and that where appropriate, their performance will be monitored. Such discussions will be noted and the employee given a copy. The formal procedure will however, be invoked as soon as the manager considers it appropriate to do so and the employee will be advised when the formal procedure is being used and given a copy.

8.3 When informal discussion(s) fail to effect an improvement or the onset of longer term sickness intervenes, then this formal procedure will be used.

## **9. Personal Circumstances**

9.1 If during the course of the discussion in 8.2 above the employee reveals personal or domestic problems which are alleged to be causing or contributing to the ill health, then the manager will consider whether there is any assistance that can be given. The manager may discuss the problem with the HR Consultant and it may be that a temporary or permanent adjustment to duties or terms and conditions of service can be accommodated which will assist the employee to resolve the problem. The details of any arrangements offered will be confirmed in writing, including any temporary or permanent variation of contract and revised terms and conditions of employment.

## **10. Counselling**

10.1 An employee identifying personal, domestic or other problems will also be advised by the manager of the Council's Counselling Service and how to access this independent and confidential service.

## **11. Responsibilities**

11.1 It is the joint responsibility of line managers and staff to remain in contact during any period of sickness.

11.2 Managers should make contact with each employee returning from sick leave to establish the reasons for absence and to ensure that the employee is fit for work and understands the work situation on their return.

11.3 Employees will attend all appointments made by this Council in connection with managing sickness. Failure to attend any appointment without good reason, including those made with medical advisors, or failure to report sickness absence in accordance with contractual requirements and Part 2 of this procedure may result in the suspension of sick pay for breach of conditions under the contractual sick pay scheme. Failure to attend an appointment will not preclude the commencement or continuation of action under this procedure, where any explanation offered for the failure to attend will be considered. If, without good reason, an employee fails to attend an appointment made in connection with this procedure, it may also be appropriate to initiate action under the Council's disciplinary procedure.



## **12. Referrals to the Occupational Health Physician (OHP)**

12.1 Employees should be referred to the Council's OHP as soon as an employee's health gives rise to concern; this may be at a time during their employment or at any stage of this procedure. Up-to-date medical advice will be sought in connection with any meeting or hearing under this procedure, or on any other occasion as the manager deems appropriate.

12.2 In any event, managers will actively consider whether it is appropriate to refer employees to the OHP for medical advice if any of the following apply:

- Following receipt of a Fit Note which states the employee may be fit for work and recommends one or more of the following:
  - a phased return to work;
  - altered hours;
  - amended duties; and/or
  - workplace adaptations.
- following an accident at work
- following a medical diagnosis of a stress-related illness
- following sickness which has lasted for four weeks or more
- following identification of a pattern of absences
- following identification that the number of occurrences of sickness gives concern

12.3 The manager will inform the employee of any decision to refer him/her to the Occupational Health Unit.

12.4 The referral, which will be actioned by the HR Consultant, will outline the problem and seek advice as to whether there is any underlying medical condition which may be affecting the employee's performance. Full details of the management concerns should be given and a record of sickness over the relevant period should be attached together with a copy of the job description and person specification.

12.5 In the event of a conflict of medical opinion arising in the operation of these procedures, then the Assistant Chief Executive (Human Resources) will be consulted as to the appropriateness of seeking an opinion from an independent medical referee.

## **PART 2 Procedures for Reporting Sickness Absence**

1. To comply with their contract of employment and to qualify for sick pay, employees need to follow the procedure set out below.
2. Employees must notify their immediate manager at the earliest opportunity and send in the right certificates at the right time. If they do not, they may not be paid. If they are too ill to make contact, they remain responsible for ensuring that their manager is notified. Employees have a responsibility to keep their manager informed and should stay in regular contact with the manager whilst they are absent from work; this will help the manager plan how to cover the work during the absence, assess where any support can be given and plan for the employee's return.

### **3. First Day of Sickness**

- 3.1 Employees must notify their manager as early as possible stating the nature of the illness and how long it is likely to last.

### **4. Fourth Day of Sickness**

- 4.1 Employees must contact their manager again if still unable to work (unless they made it clear on the first day how long they would be absent). Remember that weekends and non-working days are included when working out how long an employee has been sick, so being sick on Friday and still sick on Monday counts as four days.

### **5. Self Certification Form**

- 5.1 Employees should fill in a Self-Certification form (SC1 at Appendix A) when they have been absent for more than 3 calendar days (including Saturday, Sunday, rest and non-working days). If they return to work within a week, they must fill in this Self-Certification form when they return and hand it to their manager. If their sickness is likely to be for more than 7 days, the form should be sent to them for completion and returned to cover the first 7 days and they should get a Fit Note from their GP from the 8<sup>th</sup> day.
- 5.2 When an employee completes the Self-Certification form, s/he must give a description of their illness or symptoms. 'Not well' is not sufficient and may affect their entitlement to sick pay.

### **6. Fit Notes**

- 6.1 Employees must obtain a Fit Note when they have been sick for 8 calendar days or more, which must cover them from the 8<sup>th</sup> calendar of sickness. An employee, who is given a Fit Note which is dated

from the start of their sickness absence does not need to fill in a separate Self-Certification form as well. Any certificates/fit notes must be completed and sent in to their manager immediately. If the absence continues, certificates/fit notes must be submitted promptly to cover all of the absence. (See 1.9 below).

- 6.2 There may be individual circumstances when employees will be required to submit medical certificates to support absences of 7 days or less. The circumstances where this will apply will be determined in individual cases and will require the concurrence of the HR Consultant. Employees will be notified in writing when such certification is required and the cost will be reimbursed by the Council.
- 6.3 Failure to report sickness and supply sick certificates/fit notes promptly in accordance with this procedure will place employees in breach of the sick pay scheme and they will therefore be ineligible to receive pay.

**PART 3            Management Action****Section 1            Periods of Frequent but Short Term Sickness****1.            First Formal Review**

1.1            Where informal discussion (see Part 1, para. 8 above), has not achieved the required improvement, an up-to-date medical view will be sought, by referring the employee to the OHP (See Part 1, Section 12. above), unless this action has already been taken.

1.2            The manager will advise the employee in writing, with a minimum of 7 days notice, that a formal review meeting will be held. The letter should include:-

- the date, time and place of the meeting
- the purpose of the meeting which is to consider the problem, the medical view and explore any potential solutions
- the effect on the service of the illness
- the right to be accompanied by trade union representative or other friend and give details of the role of the Staff Side Secretary
- details of any relevant absence(s).

**2.            Other Factors Identified**

2.1            If the meeting reveals problems other than those relating to sickness, then it may be possible to address the problems identified. Any such assistance offered shall be well-defined and the timing stipulated.

2.2            The offer of such arrangements must however be balanced with the needs of the service. If action to be taken includes an amendment to the contract of employment which has been agreed with the employee, this will be confirmed in writing by the HR Consultant, clearly setting out any temporary or permanent variation(s) to the employee's terms and conditions of employment.

**3.            Medical Factors Confirmed**

3.1            If at the formal review meeting the employee maintains that the problem is caused by sickness but no underlying medical condition has been identified by the OHP, then the employee will be advised of the management concerns.

3.2 The outcome of the meeting will be confirmed to the employee in writing. Such letter will set out:

- the nature of the problem including any sickness absence(s), taking into account any advice from the Occupational Health Physician
- the effect on the service
- any agreements made to facilitate a resolution of the problem
- the improvement expected
- confirmation that the matter is causing concern
- a timetable for improvement and review

#### **4. Medical Cause**

4.1 If at any stage, the view of the OHP is that there is a consistent underlying medical factor contributing to the problem the employee is experiencing, then the matter should in future be handled in accordance with Part 3, Section 2 or 3 of this procedure.

#### **5. Subsequent Formal Review Meetings**

5.1 Before any review meeting takes place, an up-to-date medical assessment will be sought if there have been further incidents of sickness during the review period. The employee will be invited to the review meeting with the manager in accordance with section 1.2 above. The manager may also be accompanied by the HR Consultant or other management representative. At that meeting the health of the employee will be reviewed together with any implications for the needs of the service, contractual requirements and the improvements expected.

5.2 Second or subsequent review meetings will have one of the following outcomes:

- (a) the employee's health situation has improved. The meeting will discuss those improvements; whether they are sufficient or whether further improvement is required. A further review period may be set. The outcome of the review meeting will be confirmed in writing, including any further timetable for improvement and review. The letter will advise the employee that although the situation has improved, monitoring will continue to ensure that the improvement is sustained and that

any further decline will be dealt with under Council procedures and the earlier record may be referred to/taken into account.

- (b) in the manager's view, the employee's performance remains unsatisfactory due to ill health. Reasonable steps have been taken to assist the employee improve, but the manager considers that a further review period is reasonable, and likely to result in an improvement. In this case a further period will be allowed and confirmed in writing and another review meeting will be held; or,
- (c) in the manager's view, the employee's performance due to ill health remains unsatisfactory and all reasonable steps have been taken to assist the employee achieve the required improvement. The manager considers that a further review period is unlikely to result in an improvement and s/he will discuss the matter with the HR Consultant. The HR Consultant will consider whether all reasonable steps have been taken or whether there is any further action that can reasonably be taken to resolve the problem.

If, after consultation with the HR Consultant, the manager is content that all reasonable steps have been taken, then the matter will be referred to the departmental Chief Officer for consideration. The referral will include a written recommendation for action. Such recommendations may include a proposal that the employee be dismissed for failure to perform the contract of employment satisfactorily.

## **6. Chief Officer Hearing**

- 6.1 On receipt of a written recommendation, the Chief Officer will arrange a hearing as set out in Parts 4 and 5 of this procedure.

## **7. Outcome of Chief Officer's Hearing**

- 7.1 Having reviewed the case presented by management and the response of the employee, the Chief Officer may decide, having regard to the needs of the service, that there is a likelihood of improvement within a reasonable timescale. In this situation the Chief Officer will determine a further review period and may make proposals for action to be taken during that review period.
- 7.2 Alternatively, the Chief Officer, having reviewed the case presented by management and the response by the employee, may, in consultation with the HR Advisor present, accept the recommendation of management that the employee should be dismissed.

**8. Dismissal on Grounds of Capability**

8.1 The letter terminating the contract of employment will give the facts of the case and inform the employee of the right of appeal against the decision to dismiss. A copy of the letter will be enclosed for the employee to give to their representative.

8.2 The letter will be delivered by hand to the employee or sent by first class post. A copy will be placed on the employee's personal file.

**9. Appeals**

Where an employee is dismissed, s/he will have the right of appeal to a panel of elected Members. S/he must submit a written notice of appeal, stating the grounds for appeal, to the Chief Officer within 14 days of the date of the Chief Officer's letter. (See Part 6 on appeals against termination of employment).

**PART 3            Management Action****Section 2            Serious/Long-Term Illness Not Resulting in Early Retirement****1.            Formal Monitoring and Review**

- 1.1            As soon as it is recognised that the illness of an employee is serious, prolonged or likely to involve a period(s) of sickness absence which might cause the service problems, the employee should be referred to the OHU for medical assessment.
- 1.2            The OHP will advise the HR Consultant and Manager on the medical fitness of the employee, including, if possible, a prognosis as to the likely length of the illness/absence and of any effects on the employee's ability to carry out the full duties of their current job.
- 1.3            The employee and the manager should keep in touch during any period of absence.
- 1.4            The Manager should discuss with the employee the nature of the advice received from the OHP.
- 1.5            Where the OHP advises that the employee is temporarily unfit for work and there is no prognosis of an immediate return to work, or where the employee is fit for work but on a restricted basis only, then the manager will invite the employee to a meeting to discuss the matter.
- 1.6            If appropriate the HR Consultant should discuss with the OHP whether there are any temporary changes to the employee's duties that would facilitate either improved performance of their work or in the case of absence, a return to work. Such arrangements must however be balanced with the needs of the service and those which are likely to continue for more than 6 weeks, would normally result in a temporary variation to the contract of employment which must be confirmed in writing once it is agreed with the employee.
- 1.7            The letter will give:-
- a minimum of 7 days' notice of the meeting
  - advise the employee of the reason for the meeting, i.e., to review the situation
  - the right to be accompanied by a trade union representative, work colleague or other friend



- offer to hold the meeting at the employee's home if s/he is too ill to travel
- contain a record of the employee's sickness over the relevant period.

1.8 At the meeting, the manager will consider with the employee:

- the illness and the effect on the service
- the advice/prognosis of the OHP
- the employee's comments
- action available to facilitate the employee's return to work/improve performance
- the outcome of any earlier review meetings, and
- the likelihood of an early return to work

1.9 The main points of discussion and any agreed action will be confirmed in writing to the employee after the meeting. If it has been agreed that there is merit in allowing more time for the employee to recover before returning to work or proceeding to the next stage of this procedure, then the employee should also be advised of the timing of the next review meeting.

#### **1.10 No Early Return to Full Duties**

Where there is no immediate likelihood of a return to full duties, then the letter confirming the detail of the review meeting (See Part 3 Section 2, para 1.9 of this procedure) will also advise the employee that the situation will continue to be monitored and a review date given, s/he will also be reminded that one possible outcome of the sickness management procedure is dismissal on the grounds of capability.

### **2. Subsequent Monitoring Reviews**

2.1 The number of and time between such meetings will be as deemed as appropriate by the manager in consultation with the HR Consultant, in the light of the nature of the illness and individual circumstances but any subsequent review will normally be held within 3 months of the previous one.

2.2 At subsequent meetings to monitor/review the sickness because the employee has not achieved the required improvement, an up-to-date

medical view will be sought, by referring the employee to the OHP (See Part 1, Section 12 above), unless this action has already been taken.

2.3 The manager will advise the employee in writing, with a minimum of 7 days' notice, that a formal review meeting will be held. The letter should include:

- the date, time and place of the meeting;
- the purpose of the meeting which is to consider the problem, the medical view and explore any potential solutions;
- the effect on the service of the illness;
- the right to be accompanied by trade union representative or other friend and give details of the role of the Staff Side Secretary; and
- details of any relevant absence(s).

2.4 If at any stage the OHP declares the employee permanently unfit for their current duties then the procedure in Section 3 of this procedure covering permanent ill health will be followed.

### **3. Effect on the Service No Longer Viable**

3.1 When, following a review meeting, the manager is of the view that the sickness is no longer sustainable, having regard to the steps that have been taken to support the employee, the length of absence, the effect on the service, the prognosis, or no foreseeable return to work within a reasonable timescale, then the manager shall refer the matter to the Chief Officer of the Department who will review the case (See Parts 4 and 5 - Chief Officer Hearings). The employee will be advised of the referral to the Chief Officer in the letter confirming the outcome of the review meeting and again advised that one possible outcome of a Chief Officer hearing may be dismissal on the grounds of capability.

### **4. Rehabilitation**

#### **4.1 Returning Part -Time**

At any time during this procedure, the OHP may recommend that an employee is fit to return to work on a phased basis, perhaps on reduced hours. This recommendation will be considered by the manager, in consultation with the employee, in the light of the needs

of the service. If a phased return to work can be accommodated, any period of which reduced hours are to be worked shall then be agreed between the manager and the employee. A phased return to work should normally enable the employee to make a significant contribution to available work. Any phased return would not normally be for less than half of their normal working hours in the first instance and should be increased steadily with a view to achieving full contractual time working, normally within a maximum period of 6 weeks. During this period the contractual basic pay will not normally be adjusted.

4.2 Where a return to full contractual hours cannot be achieved within a period of up to 6 weeks, then a temporary variation to the employee's contract will be considered as an alternative to proceeding to the next stage of this procedure.

#### **4.3 Change of Duties**

The OHP may also, or alternatively, recommend that the employee should avoid certain duties or aspects of their current job during a convalescence period. In these circumstances, the manager will consider whether the recommended adjustments to duties can be accommodated in consultation with the employee and having regard to the needs of the service. Where appropriate, the HR Consultant will endeavour to find alternative work to accommodate the needs of the employee. Any temporary adjustment to duties in this way would normally be for a period of up to 6 weeks in the first instance. Should a longer period be necessary and sustainable having regard to the needs of the service, then where appropriate, a temporary variation to the employee's contract of employment will be considered as an alternative to proceeding to the next stage of this procedure.

#### **4.4 Adjusting Terms and Conditions**

Where the employee is unable to achieve the desired return to full hours/duties within the agreed period and a temporary variation of the contract of employment is agreed with the employee, this must be confirmed in writing. This does not preclude a permanent change of contract where this has the potential to resolve the performance or attendance difficulties.

4.5 The Council's agreement to a temporary or permanent variation of contract does not preclude a decision made by management to progress to the next stage of this procedure if the employee's work performance or attendance subsequently continues to give cause for concern on health grounds.

#### **4.6 No Agreement On Changes Made with Employee**

If the employee does not agree to any temporary or permanent change to his/her contract of employment to accommodate a return to work or a return to full duties, then the manager will decide whether to allow a further review period or whether the case should be referred to a Chief Officer hearing (see Part 4 of this procedure).

#### **5. Chief Officer Hearing**

5.1 On receipt of a written recommendation, the Chief Officer will arrange a hearing as set out in Parts 4 and 5 of this procedure.

#### **6. Outcome of Chief Officer's Hearing**

6.1 Having reviewed the case presented by management and the response of the employee, the Chief Officer may decide, having regard to the needs of the service, that there is a likelihood of improvement within a reasonable timescale. In this situation the Chief Officer will determine a further review period and may make proposals for action to be taken during that review period.

6.2 Alternatively, the Chief Officer, having reviewed the case presented by management and the response made by the employee, may, in consultation with the HR Consultant present, accept the recommendation of management that the employee should be dismissed.

#### **7. Dismissal on Grounds of Capability**

7.1 The letter terminating the contract of employment will give the facts of the case and inform the employee of the right of appeal against the decision to dismiss. A copy of the letter will be enclosed for the employee to give to their representative.

7.2 The letter will be delivered by hand to the employee or sent by first class post. A copy will be placed on the employee's personal file.

#### **8. Appeals**

Where an employee is dismissed, s/he will have the right of appeal to a panel of elected Members. S/he must submit a written notice of appeal, stating the grounds for appeal, to the Chief Officer within 14 days of the date of the Chief Officer's letter. (See Part 6 on appeals against termination of employment).

**PART 3            Management Action****Section 3            Serious Illness Leading to Consideration of Early Retirement on the Grounds of Permanent Ill Health**

1.            On reaching the view that an employee is permanently unfit to undertake normal duties on medical grounds, the OHP will advise the HR Consultant of this view. The OHP will set out for management the medical concerns relating to the current job/work and any restrictions on the nature of the work that the employee can undertake.

**2.            Permanently Incapable of Carrying Out Current Job/Duties**

2.1            The HR Consultant on receipt of advice from the OHP that the employee is permanently incapable of discharging the full duties of his/her current job will consider the implications for continued employment in the current job and will discuss these concerns with the line manager. Such considerations will include the Council's obligations under the Equality Act 2010.

2.2            The HR Consultant and manager will consider whether the employee can be retained at work by considering the following permanent changes, including where appropriate, the need for a variation of contract to be agreed:

- (a)    whether the work can be adapted in any way to accommodate the employee's medical needs;
- (b)    whether the hours of work can be changed permanently;
- (c)    whether there are any aids or adaptations that can reasonably be provided to enable to the employee to continue in their current job or suitable alternative employment - the HR Consultant may seek advice from specialist agencies as appropriate;
- (d)    whether any relevant retraining would enable the employee to stay in employment
- (e)    whether redeployment to a different job or location would enable the employee to remain at work.

2.3            If changes to the current job or alternative work can be identified then these changes will be referred by the HR Consultant to the OHP who will advise whether the proposed changes are acceptable given the employee's medical condition.

- 2.4 Whether or not options to retain the employee have been identified, the manager will then arrange to meet with the employee to discuss the situation.
- 2.5 The employee will be advised in writing of the meeting and its purpose and given a minimum of 7 days' notice. The employee will be advised of their right to be accompanied by a trade union representative, work colleague or other friend.
- 2.6 At the meeting all the options available for retaining the employee will be discussed and the employee's views and any alternative suggestions considered. The employee will be advised that wherever possible, the Council seeks to retain employees in employment, either in their current or a comparable post but that where this is not possible s/he may be dismissed on grounds of capability.

### **3. Possibility of Retaining Employee in Employment**

- 3.1 If the OHP finds the proposals medically acceptable, the HR Consultant and manager will discuss them at the meeting with the employee (see 2.5 above) and consider how retention at work can be facilitated; this will include consideration of any suggestions made by the employee. The employee will be invited to agree to the revisions to the work and if necessary to the contract of employment.
- 3.2 Depending on the progress of the discussions, the manager may decide to seek further specialist advice as necessary.
- 3.3 If the employee finds the proposals acceptable then the outcome of the meeting and the changes will be confirmed in writing including confirmation of any agreed variation to the contract of employment. The employee will also be advised that the situation will be kept under review, and if his/her work performance or attendance continues to give cause for concern further action under paragraphs 2.4 to 2.6 above may be taken.
- 3.4 If the employee finds the revised working arrangements unacceptable, there are two possible outcomes:
- (a) if the employee is not a member of the LGPS**, then the procedure at 4 below will be followed.
  - (b) if the employee is a member of the LGPS**, then the matter will be referred to a panel of officers consisting of the Council's Assistant Chief Executive (Human Resources), the Director of Legal and Democratic Services and the Departmental Chief Officer. The Panel will decide, whether the proposed

alternative work arrangements are suitable and comparable in the view of the Council and according to the definition provided in the LGPS Regulations, i.e., “comparable” is defined by the Regulations as employment in which, when compared to the employee’s current employment:

- (i) the contractual provisions as to the capacity are either the same or differ only to an extent that is reasonable given the nature of the member’s ill health or infirmity of mind or body; and
- (ii) the contractual provision as to the place, remuneration, hours of work, holiday entitlement, sickness or injury entitlement and other material terms do not differ substantially from those of the member’s employment.

The employee will be advised that if the Panel determines that the work is suitable and comparable, the Chief Officer may decide that s/he be dismissed on the grounds of capability without release of pension benefits if s/he continues to find work unacceptable and there is no alternative.

The employee may attend the panel to present his/her case and may be accompanied by a trade union representative or friend. Management will also be represented to present a view of the suitability of the proposals. Subject to any right of appeal against dismissal the findings of the panel will be final.

### **3.5 View of the Panel is that Work is Suitable and Comparable**

If, in the view of the panel, the alternative work is suitable and comparable but the employee refuses the work and there is no other option, then the matter will be referred for the consideration of the departmental Chief Officer who may decide that the employee should be dismissed with notice on grounds of capability. In these circumstances any benefits held in the Local Government Pension Fund will not be released. The Chief Officer will write to the employee confirming this decision in accordance with paragraph 8 below, and confirming the employee’s right of appeal.

### **3.6 View of the Panel is that Work is Not Suitable or Comparable**

If, in view of the Panel, the alternative work is neither suitable nor comparable then the matter will be dealt with as in 4 below.

#### **4. No Possibility of Retaining Employee in Employment**

4.1 If no suitable alternative work has been identified which is acceptable to the employee, or no changes, adaptations or alternative work can be identified which will enable the employee to remain in employment, or the OHP has advised that the employee is permanently incapable of discharging their current job or any other comparable employment with this Council, the HR Consultant will confirm to the OHP that all options to retain the employee in employment have been considered without success. The HR Consultant will confirm whether or not the employee is a member of the pension fund and will enclose the relevant certificate for the OHP to complete.

4.2 The employee will be advised in writing that the Council is of the view that s/he is considered permanently incapable of discharging his/her current job or any other comparable employment with this Council and that the matter is being referred to the Chief Officer with a recommendation that s/he be dismissed. The letter will include a summary of the circumstances which have led to this recommendation and the employee will be advised of his/her right to make representations against the medical prognosis of permanent unfitness for work. S/he will also be offered the opportunity of a meeting with the Chief Officer to discuss the matter before any decision is taken. The letter will advise the employee of the right to request to a meeting with the Chief Officer and/or notify his/her intention to make representations against the prognosis by writing to the HR Consultant within 10 days of the date of the letter.

4.3 If the employee wishes to make representations against the medical prognosis that they are not permanently unfit for work, they must then supply medical evidence supporting their view at their own cost, within one month of the date of the letter from the HR Consultant. Such medical evidence must be from a suitably qualified medical practitioner.

#### **5. Medical Representation Process**

##### **5.1 Representations Against Prognosis Received**

If the employee makes representations against the medical prognosis that s/he is permanently unfit for work, the HR Consultant will pass to the OHP the appropriate certificate of Permanent Ill Health for signature. The OHP will then pass the certificate and the relevant medical case file to the Approved Independent Occupational Health Physician, together with any additional medical evidence provided by the employee as part of this/her representations. (See paragraph 6 below).



## 5.2 No Medical Representations Received

### a. Employee is not a Member of the Pension Fund

The HR Consultant will pass to the OHP the appropriate Certificate of Permanent Ill Health for signature and the procedure at paragraph 7 below will be followed.

### b. Employee is a Member of the Pension Fund

The HR Consultant will pass to the OHP the appropriate certificate of Permanent Ill Health for signature. The OHP will then pass the certificate and the relevant medical case file to the Approved Independent Occupational Health Physician. (See paragraph 6 below).

## 6. The Approved Independent Occupational Health Physician (AIOHP)

6.1 The AIOHP will then assess the case, including any material submitted by the employee. The assessment may include a medical examination of the employee.

6.2 If the AIOHP confirms that the employee **is** permanently unfit for his/her current job or any comparable work, then the form will be appropriately endorsed and returned to the OHU who will in turn send a copy to the HR Consultant. Paragraph 7 below will then apply.

6.3 If the AIOHP certifies that the employee **is not** permanently unfit for his/her current job or any comparable work, then the form will be appropriately endorsed and returned to the OHU who will in turn send a copy to the HR Consultant. The HR Consultant will arrange a case conference between the HR Consultant, ER and OHP to discuss the implications of the AIOHP view. The case conference will consider other work opportunities or whether action under another section of this procedure would be appropriate.

## 7. Chief Officer's consideration of recommendation to dismiss

7.1 If the employee has requested a meeting with the Chief Officer prior to a decision on the recommendation to dismiss being taken, the Chief Officer will arrange a hearing as set out in Parts 4 and 5 of this procedure.

7.2 Having reviewed the case as presented by management and the response of the employee, the Chief Officer, in consultation with the HR Advisor, may decide:

- a) that other work opportunities or action under another section of this procedure would be appropriate; or
- b) to accept the recommendation of management that the employee should be dismissed on grounds of capability by reason of permanent ill health.

## **8. Dismissal on Grounds Capability by Reason of Permanent Ill Health**

8.1 The Chief Officer will write to the employee giving notice of the termination of his/her contract of employment on grounds of permanent ill-health. A copy of the letter will be enclosed for the employee to give to their representative. The letter will summarise the facts of the case and inform the employee of the right to appeal against dismissal to a panel of elected Members. S/he must submit a written notice of appeal, stating the grounds for appeal, to the Chief Officer within 14 days of the date of the Chief Officer's letter. (See Part 6 on appeals against termination of employment).

## **9. Appeal Against Dismissal Received**

9.1 If the employee appeals against his/her dismissal, then the papers will be passed to the Council's HR Consultancy Section who will arrange for a Panel of elected Members to hear the appeal against the employee's dismissal. The appeal will be arranged as quickly as possible during the employee's notice period and, in accordance with Part 6 of this procedure.

## **10. No Appeal Against Dismissal Received**

10.1 If no appeal against the dismissal is received, the HR Consultant will take appropriate action to notify Payroll and Pensions of the termination of the contract and last day of service.

**PART 4            Chief Officer Hearing**

- 1.1            This section applies where, following consultation with the HR Consultant, the manager decides it is appropriate to refer the case to the Departmental Chief Officer for consideration.
- 1.2            The Chief Officer will write to the employee advising that a hearing will take place, giving the employee the date, time and place of the hearing and at least 7 days' notice. The letter shall:
- state the purpose of the hearing and that a possible outcome is dismissal from the Council's service;
  - contain a written report of the facts of the case produced by the manager. This shall include a relevant sickness record, an assessment of the effect on the individual's performance and on the service, the OHP's up-to-date advice on the employee's fitness for work and the outcome of any previous reviews which have been conducted under this procedure and which are still on record;
  - inform the employee that s/he may be accompanied by a trade union or other representative, of the right to call witnesses and produce written evidence if desired;
  - include the date and time of the meeting, including any alternative dates and advise the employee that, if the employee fails to attend the meeting, it may be necessary to proceed in the employee's absence.
- 1.3            The employee shall supply the Chief Officer with the names of any witnesses s/he is to call and copies of any written evidence no later than two working days before the hearing in order that this information can be given to the manager and HR Advisor before the hearing.
- 1.4            Similarly, the employee and his/her representative shall be provided with the names of any witnesses to be called by management and copies of any additional written material, no later than two working days before the hearing. The manager is also entitled to be supported by the HR Consultant in the presentation of his/her case.
- 1.5            The hearing shall be conducted by the Chief Officer as set out in Part 5 of this procedure. A HR Advisor who has not previously been involved in the case shall attend the meeting to assist in the conduct of the proceedings and to provide the Chief Officer with impartial professional advice.

- 1.6 At the end of the hearing the Chief Officer, having considered all the evidence, shall decide what further action needs to be taken. This could include:-
- (i) take no further action;
  - (ii) allow a further review period and refer the matter back to the manager
  - (iii) recommend appropriate job modification or redeployment to alternative work
  - (iv) dismissal on grounds of capability

In all cases the outcome will be confirmed in writing to the employee.

## **2. Further Review Period**

- 2.1 Where the Chief Officer recommends an extended review period, s/he will advise the employee in writing. The manager will discuss with the HR Consultant any proposals the Chief Officer has suggested. Wherever possible, these arrangements should be in place and their effectiveness monitored, during the further review period. Their success or otherwise and any other adjustments made to support improvement will be considered at the subsequent review meeting.

## **3. Satisfactory Improvement in Performance Achieved**

- 3.1 Where at the end of any further review period satisfactory improvement has resulted or adjustment to duties/redeployment has proved effective, a review meeting shall be held with the manager. The employee shall be advised at the review meeting that improvement must be maintained otherwise the matter will be referred back to the Chief Officer for further consideration which could lead to dismissal from the Council's service.

## **4. No Satisfactory Improvement in Performance Achieved**

- 4.1 Where at any stage during, or the end of the review period it is found that there has been insufficient improvement, a review meeting will be held with the manager. Up-to-date medical information will be considered and unless new evidence is raised meriting a further review period, then the matter will be referred back to a Chief Officer hearing.
- 4.2 The content and outcome of the further review meeting shall be confirmed in writing to the employee.

**5. Chief Officer Decision to Dismiss**

5.1 Where having considered the evidence presented, the Chief Officer considers that a satisfactory outcome has not been achieved from the action that has been taken, nor would it result within a reasonable timescale from some further adjustment to duties or work arrangements, the Chief officer may decide in consultation with the HR Advisor, that the employee be dismissed from the Council's service on grounds of capability. The Chief Officer will write to the employee, giving notice of the termination of the employment.

5.2 The Chief Officer's letter shall:

- state the grounds for dismissal and the facts of the case, including the adverse effects on the service, the OHP's advice on the employee's state of health, the outcome of previous reviews and action taken under this procedure which has led to the dismissal;
- enclose a copy for the employee to pass to his/her representative;
- inform the employee of his/her right of appeal to a Panel of Members. Appeals must be received in writing by the Chief Officer within 14 days of the date of the Chief Officer's letter.

5.3 The letter shall be delivered preferably by hand to the residence of the employee or sent by first class post.

**PART 5 Procedure for Chief Officer's Hearings**

- 1.1 The Chief Officer shall be advised by a HR Advisor who has not been previously involved in the case. The Chief Officer will introduce the proceedings, explain the procedure to be followed and, if the employee is unaccompanied, ensure that he/she is aware of the right to be accompanied by a representative of his/her choice.
- 1.2 The manager shall present the facts of the case by reference to his/her written report and supporting evidence in the presence of the employee and the representative and shall call upon any witnesses to give supporting evidence.
- 1.3 The employee and his/her representative shall be given the opportunity to ask questions of the manager and any witnesses.
- 1.4 The Chief Officer and HR Advisor may ask questions of the manager and witnesses.
- 1.5 Each of the witnesses shall withdraw after giving evidence and answering any questions put to them.
- 1.6 The employee or representative shall submit his/her case in the presence of the manager and shall call upon any witnesses to give supporting evidence.
- 1.7 The manager shall be given the opportunity to ask questions of the employee and witnesses.
- 1.8 The Chief Officer and HR Advisor may ask questions of the employee and witnesses.
- 1.9 Each of the witnesses shall withdraw after giving evidence and answering questions put to them.
- 1.10 The manager and employee or representative may sum up their cases if they so wish. The employee shall have the right to sum up last.
- 1.11 The manager and any supporting HR Consultant, the employee and his/her representative shall withdraw whilst the Chief Officer considers the case with the HR Advisor. If any recall is necessary to clarify points of uncertainty, both parties shall return for the discussion.
- 1.12 The Chief Officer shall decide in consultation with the HR Advisor to take such action as may be appropriate in the circumstances. Both

parties shall be recalled and notified of the Chief Officer's decision wherever possible.

- 1.13 In the unlikely event that the Chief Officer and HR Advisor disagree about the reasonableness of a decision to dismiss, the Chief Executive will be consulted.
- 1.14 A letter detailing the Chief Officer's decision shall be sent to the employee and a copy placed on the personal file.

## **PART 6 Appeals Against Termination of Employment**

### **1. Appeal Process**

- 1.1 The final level of internal appeal against dismissal under this procedure is to a Panel of 3 elected Members.
- 1.2 Appeals must be lodged with the Chief Officer in writing within 14 days of the date of the letter terminating the contract of employment. The employee shall provide full written grounds for the appeal, the names of any relevant witnesses and/or additional information in support of his/her case at least 10 days before the hearing.
- 1.3 The employee and the Chief Officer will be permitted to produce new written evidence or call new witnesses at the appeal hearing if the Panel agrees.

Before any such agreement is reached, both parties will be given the opportunity to make representations regarding the production of new written evidence or calling of new witnesses. In the event that the Panel agrees to its/their introduction, the other side will be given an opportunity to consider the new written evidence before the appeal hearing continues.

- 1.4 The Chief Officer shall prepare a report setting out the facts of the case including an assessment of the effects of the employee's sickness record on service provision, the outcome of any previous reviews and actions taken to assist the employee to be able to return to work and/or address other performance difficulties.

Where appropriate, the full absence record and any other relevant information shall be appended to the Chief Officer's report. The report will include specific reference to any relevant witnesses and/or documents.

- 1.5 Wherever possible appeals shall be heard within 6 weeks of the date of the receipt of the written notice of appeal. The Assistant Chief Executive (Human Resources) shall prepare an agenda which will include the notice of appeal and the relevant papers.
- 1.6 The employee shall be notified in writing of the date, time and place of the hearing and the right to be represented and shall be sent a copy of the agenda at least 7 days before the hearing. The letter and agenda shall be delivered preferably by hand to the workplace or residence of the employee, or sent by first class post. A copy of the letter and agenda shall be enclosed for the employee to pass to his/her trade union or other representative.



1.7 A copy of the agenda shall be provided to the Panel of members and the employing Chief Officer at least 7 days before the hearing.

1.8 The Assistant Chief Executive (Human Resources), or their representative, shall attend the hearing to assist Members in the conduct of the proceedings and to provide independent professional advice.

## **2. Procedure**

2.1 The Chairman of the Panel shall introduce the proceedings, explain the procedure to be followed and, if the employee is unaccompanied, ensure that s/he is aware of the right to be accompanied by a representative of his/her choice.

2.2 The employing Chief Officer shall present his/her case in the presence of the employee and shall call upon any witnesses to give evidence and/or produce any necessary documentary evidence in support of the case.

2.3 The employee and representative shall be given the opportunity to ask questions of the Chief Officer and any witnesses.

2.4 The Panel and the Assistant Chief Executive (Human Resources), may ask questions of the Chief Officer and witnesses.

2.5 Each of the witnesses shall withdraw after giving evidence and answering any questions put to them.

2.6 The employee or representative shall present his/her case in the presence of the Chief Officer and shall call upon any witnesses to give evidence and/or refer to any documentary evidence in support of the case.

2.7 The Chief Officer shall be given the opportunity to ask questions of the employee and witnesses.

2.8 The Panel and the Assistant Chief Executive (Human Resources) may ask questions of the employee and witnesses.

2.9 Each of the witnesses shall withdraw after giving evidence and answering questions put to them.

2.10 The Chief Officer and the employee or representative may sum up their cases if they so wish. The employee shall have the right to sum up last.

- 2.11 The Chief Officer and any supporting officer, the employee and his/her representative shall withdraw whilst the Panel deliberates the case with the assistance of the Assistant Chief Executive (Human Resources), or their representative. If any recall is necessary to clarify points of uncertainty, both parties shall return for the discussion.
- 2.12 Wherever possible, both parties shall be recalled and notified of the Panel's decision.

### **3. Findings of a Member Panel**

- 3.1 In considering appeals against termination of employment the Panel may decide:-
- (i) that the appeal shall not be upheld and the decision to terminate employment be confirmed; or
  - (ii) that the appeal shall be upheld and the decision to terminate employment be set aside. The Members may then make recommendation to the Assistant Chief Executive (Human Resources) regarding the manner of retention in employment, including any further review period.
- 3.2 The panel's decision shall be confirmed in writing by letter delivered preferably by hand to the residence or workplace of the employee, or sent by first class post. The letter shall state the grounds on which the decision is based and a copy enclosed for the employee to pass to his/her trade union or other representative, or, if he/she wishes, sent direct to the representative. A copy shall be placed on the personal file.
- 3.3 The decision of the Panel shall be final.

**PART 7            Work-Related Ill Health or Injury****1.            Accident/Incident Reporting**

- 1.1            All work-related accidents and incidents involving staff, including those that result in absences from work or inability to carry out the full range of tasks, must be reported to the line manager at the earliest opportunity.
- 1.2            The manager must ensure that the employee receives immediate first aid or hospital treatment as necessary for any injury sustained at work.
- 1.3            The manager should consider calling the Police in any case of physical violence involving non-trivial injury.
- 1.4            If in the manager's view the injury sustained is likely to be more than trivial or if the employee so requests, the employee should be referred to the OHU as soon as possible for an assessment of the injury.
- 1.5            The manager will complete an initial investigation and the Bromley accident/incident form AR2 or AR3 (computer-based), immediately sending a copy to the Central Safety Unit (CSU), the departmental Safety Liaison Officer and the HR Consultant.
- 1.6            In the case of non-accidental injury or assault, including physical violence or verbal assault, the manager shall discuss with the employee whether any further support is required from the Council, this could include referral to the Council's confidential Counselling Service.
- 1.7            If the employee wishes and the departmental Chief Officer deems it appropriate, the matter may be referred to the Director of Legal, Democratic and Customer Services who will decide whether or not the Council will provide any support to the employee in relation to a private prosecution against a third party.
- 1.8            The CSU will report certain accidents/incidents to the Health and Safety Executive under the requirements of the Reporting of Injuries, Diseases and Dangerous Occurrence Regulations (RIDDOR) including where an absence of more than 3 days (including Sat/Sun) results.
- 1.9            The manager will consider whether any resulting absence should be considered as an industrial injury in consultation with the HR Consultant who will notify the Payroll Section if necessary. If appropriate, the HR Consultant will consult the Assistant Chief

Executive (Human Resources) regarding the relevance of the Greater London Whitley Council scheme of allowances to employees injured in the course of their employment. The Assistant Chief Executive (Human Resources) will determine the relevance of the scheme in individual cases.

1.10

Any work-related accident or incident including violence and verbal abuse, should be promptly investigated by the manager in order to assess whether current risk assessments and working procedures are adequate, and to make changes if necessary.