

# HR Policy & Procedure: Maximising Attendance

Version: 4.4a

Focus. Passion. Inspiration.



North Ayrshire Council  
Comhairle Siorrachd Àir a Tuath

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## Related policies and HR Guides

- All of the template letters and forms referenced in this document are available on the Councils Intranet site 'Connects'.  
<http://naconnects.north-ayrshire.gov.uk/documents/forms/hr-forms/maximising-attendance-forms/maximising-attendance-forms.aspx>
- [HR Guide: Dealing with GP's Fit Notes including Phased Return](#)
- [HR Guide: Conducting Effective Return to Work Interviews](#)
- [HR Guide: Occupational Health Referrals and Reports](#)
- [HR Guide: Conducting a Stage 3 Interview](#)

## Version Control

Version Number	Effective Date	Details of Last Revision
4.4a	24.12.20	Transferred onto Accessibility Template
4.4	28.09.20	Updated terminology and aligned with accessibility regulations
4.3	01.03.18	Clarify Senior Manager (G14 and above)
4.2	21.08.15	Updated to replace reference to 'Connects'

## Equality Impact Assessment: 30 June 2013

Prepared by: HR Team

# 1. Introduction

## 1.1 Why is Managing Sickness Absence Important?

1.1.1 North Ayrshire Council recognises that employees will, from time to time, be unable to come to work because of sickness. However, the Council regards high levels of attendance at work vital for the maintenance of an effective and efficient service to the community it serves and one of its principal aims is to maximise employees' attendance at work.

1.1.2 High levels of sickness absence are costly and disruptive and can lead to:

- Additional pressure being placed on work colleagues leading to higher levels of stress and low morale
- Loss of continuity for Service users
- Additional salary costs necessary to cover absences
- A poor reputation for North Ayrshire Council

1.1.3 Addressing sickness absence properly can also benefit employees by:

- Providing an opportunity for support and assistance from the Council through the absence
- Helping to identify work-related and non-work related issues
- Identifying clearly the attendance standards expected

## 1.2 Management Responsibility

1.2.1 Managers and Supervisors must manage and control their employees' attendance and absence and are accountable for the sickness absence levels of their staff.

1.2.2 In maintaining acceptable levels they must:

- Be supportive, treat every sickness absence as genuine (unless there is evidence that it is not, when the disciplinary policy and procedure should be invoked) and be clear this is not a disciplinary process
- Conduct a return to work interview after every sickness absence, try to establish the underlying reasons for frequent sickness absence and record the outcome of that interview
- Set targets for attendance improvement
- Seek medical advice from the Council's Occupational Health Service, where appropriate
- Warn the employee of the consequences of continuing unsatisfactory attendance including the possibility that it may lead to dismissal
- Conduct a timely monthly review of sickness absence to identify problem areas and develop constructive solutions to these problems

## 1.3 Monitoring Sickness Absence

- 1.3.1 Services should monitor sickness absence by the creation of a monthly report which can be presented to their Senior Management Team (SMT). The report should detail the names of employees who have reached absence triggers, which stage of the formal procedure the employee has reached. The report should also include reasons for any non-progression through the stages of the procedure. Services should use the HR Payroll System to produce these monthly reports wherever possible, however a spread sheet may be used. It is therefore, vital that the information on the HR Payroll System is kept up-to-date.
- 1.3.2 Services are expected to provide year-on-year improvements to their sickness absence statistics and agreed annual targets should be included in the Service plan.
- 1.3.3 Senior Managers will be accountable for managing sickness absence. The Corporate Management Team (CMT) will be updated through monthly reports for each Service; The Scrutiny committee will also be updated regularly.

## 1.4 Sickness Absence Reporting Procedures

- 1.4.1 Employees must fulfil the Notification and Certification Requirements set out in the Terms and Conditions of Employment. Where an employee does not fulfil their responsibilities under these procedures' managers should follow the procedures set out in the HR Guide: Breach of Notification and Certification Procedures.
- 1.4.2 When an employee calls in to report their absence, this call should be taken by their line manager or designated person within the service.
- 1.4.3 The line manager/designated person should complete a Sickness Absence Reporting Form for the employee. This form has been designed to ensure that the reason behind the employee's absence is examined as early as possible and assistance from North Ayrshire Council offered from the outset.
- 1.4.4 Template letters are available to send which offer condolences on illness or hospitalisation and to wish the employee well.

## 1.5 Moving between Short and Long Term Absence

- 1.5.1 Absence can normally be categorised into two distinct types; short term or long term sickness absence.
- 1.5.2 The management action for managing short and long term absence differs slightly due to the pattern of the sickness absence. Therefore, the Maximising

Attendance Procedure has been split into two sections; Dealing with Short Term Absence and Dealing with Long Term Absence.

1.5.3 In some circumstances an absence may not fall neatly into the long/short term categories and may sometimes meet the trigger for both short and long term.

➤ **Short Term to Long Term Absence;**

Where an employee is already on a stage one or two for short term absence, who then becomes absent for a period stretching into three weeks and long term (usually indicated by the medical certificate) managers should review the employee's absence record, the reason for absence and consider a referral to Occupational Health prior to a review meeting at the three week stage to help determine when to proceed with the next stage meeting.

➤ **Long Term to Short Term Absence;**

Sometimes employees may have been off long term and then return to work but reach the next stage with a short term absence. Managers should consider the reason for absence and whether it is connected to the previous long term absence, in which case it may be appropriate to refer to Occupational Health prior to a review meeting to help determine when to proceed with the next stage meeting. Any absence deemed to be linked to the previous absence should be annotated on the HR Payroll System.

1.5.4 Further assistance is available from Human Resources if required.

## 1.6 Representation

1.6.1 An employee may represent him/herself or chose to be represented at any of the stages of the Procedure where an employee is required or invited to attend a Stage 1/2/3 interview.

1.6.2 If a representative is chosen, the representative can only be one of the following in accordance with the Employment Relations Act, 1999: -

- a fellow employee; who is another North Ayrshire Council employee; or
- a full time trade union officer or a lay trade union representative (but not necessarily of a union recognised by the Council) with experience of or has received training in acting as a worker's companion.

1.6.3 The employee shall provide to the manager concerned, verbal or written confirmation beforehand of the intention to be represented. The employee shall, wherever possible, also provide the name of that representative. Where that representative is a fellow employee, the employee being interviewed should consider any possible conflicts of interest that may arise through their choice of representative. The manager, however, can object to the chosen representative if a conflict of interest arises.

- 1.6.4 Reasonable time off should be given to allow the employee, fellow employee or lay representative to prepare before the interview and for the actual interview.
- 1.6.5 An employee can offer an alternative interview date where the representative cannot attend on the date proposed by management. However, the interview shall normally be re-arranged within five working days beginning with the working day after the day proposed by the manager.
- 1.6.6 The employee or representative shall take as full a part in the interview as possible and the employee and/or the representative has the right to address the interviewers and to ask questions. The representative does not have the right to answer on behalf of the employee who should respond to questions asked directly of him/her.
- 1.6.7 **An employee will have a right to appeal at the First Stage, Second Stage and Third Stage of both the short and long term procedure.** The appeal can be against either the facts (which led to their being seen under this procedure) or the outcome of their interview under this procedure. An employee shall also have an appeal against their dismissal, such an outcome only being possible at the Third Stage of the procedure. There shall only be one level of appeal within North Ayrshire Council. Please see [Section 4](#) for further details on appeals.

## 1.7 Guidance on Repeating Stages of the Maximising Attendance Procedure

- 1.7.1 Moving within the procedure from the First to the Second and the Second to the Third Stages has a 12 months' time limit between each stage during which the stage remains 'live'. Therefore, within that period of 12 months, an interview can be linked to the next stage. Where an employee improves their attendance in the 12 month period, they will normally no longer be in the procedure.
- 1.7.2 However, there may be occasions where an employee's absence is satisfactory, only to lapse very soon after the 12 month period as noted above. Should this be the case and the manager continues to be concerned about the levels of absence, the manager may decide to reinstate the previous stage or to move to the next stage of the procedure

## 2. Short Term Sickness Absence

### 2.1 Short Term Absence Procedure

- 2.1.1 The purpose of the procedure is to address and resolve issues of sickness absence in a structured setting with the overall objective of improving attendance to an acceptable level. In pursuit of this objective, the employee

shall be supported wherever possible. The process begins with the Return to Work Interview which the line manager must arrange after every sickness absence. Thereafter, Management will be expected to review the employee's short-term sickness absence and take appropriate action based on the triggers set out below.

## 2.2 Discretion

Managers will have discretion in certain circumstances to vary from this procedure; however, any decision to vary from the procedure must be justifiable to the nominated Senior Manager or Head of Service. Discretion should be requested using the Discretion Request Form and submitted to the nominated Senior Manager or Head of Service. Where discretion is applied the manager must ensure that this is recorded on the Return to Work/Stage Interview Form and recorded on the HR Payroll System. Failure to record accurately on the HR Payroll will result in inaccurate reporting to the SLT on Service progress.

2.1.2 Please see [Section 5](#) for further details on discretion.

2.1.3 Overview of the Short-Term Absence Procedure is as follows:

9 cumulative working days of sickness absence, *taken over more than one occasion*, in a rolling 12 month period

Or

3 instances of sickness absence in a rolling 12 month period, *irrespective of length of absence*

↓

Stage 1 Interview

↓

Stage 1 Review (if required)

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3 instances, or 9 cumulative working days sickness absence in a 12 month fixed monitoring period

↓

Stage 2 Interview

↓

Stage 2 Review (if required)

↓

2 instances, or 5 cumulative working days sickness absence in a 12 month fixed monitoring period



Stage 3 Interview

## 2.2 Return to Work Interview

After every absence

- 2.2.1 The disruption caused by frequent short term absence can often be worse than that caused by long-term absence as the ability to plan work is much harder.
- 2.2.2 After each absence the manager will conduct a Return to Work Interview with the employee. The Return to Work interview allows the manager to discuss the reason for the employee's absence and make any referrals to the Counselling Service/Occupational Health or other relevant support as soon as possible.
- 2.2.3 It is essential that the Return to Work interview is completed correctly before any formal attendance management action is taken to ensure that the employee:
- Is aware of the support available
  - Is aware that there are concerns regarding their level of attendance
  - Has been given the opportunity for improvement
  - Is aware of the possible consequences of continued poor attendance
- 2.2.4 Managers should read and use the HR Guide: Conducting Effective Return to Work Interviews when meeting with employees on their return to work. This interview is critical as it gives the Manager the opportunity to explore the general health and well-being of the employee. The Return to Work meeting **must** be recorded on the HR Payroll System.

## 2.3 Occupational Health Referrals for Short Term Absence

- 2.3.1 An employee can be referred to Occupational Health at any point during the Sickness Absence process. However, employees should only be referred where the Occupational Health Report will assist with the attendance management decision, for example where the employee cites an underlying medical condition as the reason for absence. Unrelated absences would not necessarily require a referral. Possible outcomes for short term absence referrals are:
- Confirmation that the employee has an underlying medical condition, which may continue to result in absences from work
  - Confirmation that the employee has a medical condition, but which should not require further periods of absence

- Confirmation that there is no underlying medical condition that would necessitate absence from work
- Advice on reasonable adjustments to the workplace
- Confirmation that the employee has had a medical condition which has required frequent absence, but this has been resolved and should no longer require absence from work.

2.3.2 Please refer to the HR Guide: Occupational Health Referrals and Reports for advice on the Occupational Health referrals.

<p><b>2.4 Stage 1 Interview</b></p>	<p>Trigger: 9 cumulative working days of sickness absence, <i>taken over more than one occasion</i>, in a 12 rolling 12 month period  OR  3 instances of sickness absence in a rolling 12 month period, <i>irrespective of length of absence</i></p>
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2.4.1 Should an employee meet any of the absence triggers set out in the Managing Absence procedure above, they should be advised that they will be met under Stage 1 of the formal maximising attendance procedures. A template Letter is available.

2.4.2 A common sense approach should be taken to ascertain when it would be unreasonable to meet an employee under the procedure, despite hitting the absence triggers, for example, where an employee’s absence is directly attributable to a specific illness or recovery from a recent operation. In this instance the Stage 1 interview should be postponed for a reasonable time to allow the employee to make a full recovery and discretion may be appropriate (please see [Section 5](#)).

2.4.3 The first stage interview is designed to ensure the employee is aware of the seriousness of their poor attendance and to discuss in a formal setting, ways that this can be improved. This is not a disciplinary hearing. It is important to emphasise that all sickness absences from work are treated as genuine. (Any question that the absence is not genuine should be dealt with under the Council’s Disciplinary Policy and Procedure). It is the effect and impact of the absence on the workplace and contractual obligations that is being addressed. The reasons for sickness absence allow exploration of options available to support the employee to improve attendance.

2.4.4 It is essential that the employee fully understands in what respect their attendance is unsatisfactory and that they are given an opportunity to explain any contributing difficulties to this situation. The employee will also be advised that if performance does not improve or there is a recurring pattern of sickness absence, they will be referred to the Second Stage of the procedure.

### 2.4.5 Stage 1 Attendance Target:

The employee should be advised that they are in a fixed monitoring period for the next 12 months and will be called to a Stage 2 Interview if they have 3 occasions or 9 cumulative days of absence in 12 months from the date of the last day of absence. It is essential that the Stage 1 interview is arranged as near to the last day of absence as possible. The employee's attendance should be closely monitored over the 12 month period and a review meeting arranged if appropriate. The employee can appeal the Stage 1 interview outcome (please see [Section 4](#) for further information on appeals).

- 2.4.6 The manager should complete the Stage Interview Form and ideally obtain a signature from those in attendance at the interview. A template outcome letter is available on Connects and should be issued to the employee as soon as possible following the meeting.

<b>2.5 Stage 2 Interview</b>	Trigger: 3 occasions, or 9 cumulative working days in the 12 month monitoring period
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- 2.5.1 If the sickness absence exceeds the target set out in the outcome of the *first stage* meeting, the employee will be called to a Second Stage interview. If the employee cites an underlying health problem as the cause of absence then an Occupational health report should be sought prior to the Stage 2 interview.
- 2.5.2 The discussion and considerations at the Stage 2 interview should cover the offers of support and explanation of the effects of the absence as per the Stage 1 interview. It may be appropriate to consider redeployment as an option for underlying reasons.

### 2.5.3 Stage 2 Attendance Target

The employee should be advised that they are in a fixed monitoring period for the next 12 months and will be called to a Stage 3 interview if they have 2 occasions or 5 cumulative working days of absence in 12 months, from the date of the last day of absence. It is essential that the Stage 2 interview is arranged as near to the last day of absence as possible. Review interviews should be arranged if appropriate, for example following receipt of a further Occupational Health report. It may be appropriate to consider re-deployment as an option at this stage.

- 2.5.3 The employee can appeal the Stage 2 outcome (please see [section 4](#) for further information on appeals).
- 2.5.4 The manager should complete the Stage Interview Form and ideally obtain a signature from those in attendance at the interview. A template outcome letter is available on Connects and should be issued to the employee as soon as possible following the meeting.

## 2.6 Stage 3 Interview

Trigger: 2 occasions, or 5 cumulative working days in the 12 month monitoring period

- 2.6.1 The third stage interview is normally the final stage and may result in the employee being dismissed or transferred. To assist in determining whether or not an employee should move to the third and final stage of the procedure, it is highly recommended that a Maximising Attendance Stage 3 Case Review is conducted in consultation with an HR Adviser prior to the Stage 3 interview being held. Please refer to the HR Guide: Conducting a Stage 3 Interview (Maximising Attendance).
- 2.6.2 The Service should complete the Stage 3 Case Review Checklist as far as possible ahead of this review with Human Resources.
- 2.6.3 The nominated Senior Manager or Head of Service will consider all aspects of the case. Where the unsatisfactory attendance record has continued and the improvement plan has not been achieved or sustained, the nominated Senior Manager or Head of Service shall have the authority to terminate the employee's employment on the grounds of incapability due to their poor attendance record.
- 2.6.4 Where the employee is dismissed on the grounds of incapability, he/she shall be advised in writing, using a template letter, of their right to appeal against the decision of dismissal. The dismissal letter should be sent, Special Delivery, to the employee with a copy for the representative present at the interview and to the Head of People & ICT. The employee can appeal the Stage 3 outcome (please see [Section 4](#) for further information on appeals)

## 3. Long Term Sickness Absence

### 3.1 Long Term Absence Procedure

- 3.1.1 Research indicates the best support for employees with long term absence is through early and continuing absence discussions. This procedure has been designed to ensure that managers keep in contact with absent employees throughout the duration of their absence, continue to offer and discuss support mechanisms and advise the employee of the possible consequences of their continued absence.
- 3.1.2 Long term absence cases will be considered on their individual circumstances within the parameters set out in the procedure below.

### 3.1.3 Discretion

Managers will have discretion in certain circumstances to vary from this procedure; however, any decision to vary from the procedure must be justifiable to the nominated Senior Manager or Head of Service. Discretion should be requested using the Discretion Request Form and submitted to the nominated Senior Manager or Head of Service. Where discretion is applied the manager must ensure that this is recorded on the Return to Work/Stage Interview Form and recorded on the HR Payroll System. Failure to record accurately on the HR Payroll System will result in inaccurate reporting to the SLT on Service progress.

3.1.3 Please see [Section 5](#) for further information on discretion.

3.1.4 Overview of the Long-Term Absence Procedure is as follows:

Reasonable Contact with employee during first 3 weeks of Continuous Absence (and throughout period of sickness absence)

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Initial Long Term Absence Review Meeting (3 weeks)

↓

Stage 1 Interview (8 weeks)

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Stage 1 – Review (if appropriate)

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Stage 2 Interview (13 weeks)

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Stage 2 – Review (if appropriate)

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Stage 3 Interview (between 24 - 36 weeks)

## 3.2 Contact During Long Term Absence

From 1<sup>st</sup> day of absence

3.2.1 When an employee is absent from work due to sickness it is important that contact is maintained throughout to aid in supporting the employee. The responsibility to maintain contact rests equally with the line manager and employee.

- 3.2.2 To ensure that regular contact is maintained, employees must remain contactable during periods of absence and respond to letter and phone messages.
- 3.2.3 Managers should keep in contact to gain an understanding of when the employee expects to be back at work and any support the Council can provide to assist their recovery, as well as any work related matters and the possibility of working for example, from home to maintain contact with the workplace. The amount of contact will depend on the reason for absence and a balance of reasonable contact is expected from both the employee and the line manager. Template letters are available to send which offer condolences on illness or hospitalisation and to wish the employee well.
- 3.2.4 Employees should also be advised that should their absence be anticipated to reach 4 continuous weeks under medical certification, then a Long Term Absence Initial Review Meeting will be arranged at 3 weeks and if there is no return before 8 weeks a formal meeting will be arranged under the Maximising Attendance Procedure.

### **3.3 Initial Long Term Absence Review**

3 weeks continuous sickness absence

- 3.3.1 The initial review meeting should take place as soon as possible once the employee's absence reaches 3 continuous weeks. In the case of hospitalisation the initial review meeting should take place as soon as is reasonable. The initial review meeting can take place at a Council building, at the employee's own home, an alternative mutually acceptable venue or over the telephone, depending on the employee's illness.
- 3.3.2 The review is designed to allow managers an opportunity to gain a better understanding of the reason for the employee's absence, when the employee is expected to return to work and any support that the Council can offer to aid the employee's recovery. The meeting will consider;
- When the employee expects to return to work
  - Any reasonable adjustments that can be made e.g. working from home, redeployment
  - Referrals to Occupational Health (see below)
  - Discuss with the employee the consequences of their continuing absence
- 3.3.3 Managers should use the Initial Long Term Absence Review Meeting proforma to assist with this discussion.

### 3.4 Occupational Health Referral for Long Term Absence

Any point in the procedure and repeat if required

3.4.1 The manager must give serious and immediate consideration to the employee being referred to the Council's Occupational Health service as early as possible, or where appropriate to seek other medical opinion. **A referral must be made in all cases where an employee has been, or is likely to be, absent for six calendar weeks or more and there is no date identified for a return to work.** Muscular-skeletal and stress cases should be referred immediately.

3.4.2 The purpose of the medical referral will be to determine the following: -

- Whether or not there is an underlying health problem
- The employee's fitness for his/her full range of duties or any alternative duties that the employee could carry out
- The earliest date of return to work, where recovery is expected
- Whether the employee has a disability as defined by the Equality Act 2010
- Information to support the manager and employee through the stages of this maximising attendance procedure

3.4.3 Should the employee potentially meet the criteria to define a disability specified under the Equality Act 2010 and as indicated in their Occupational Health Report, North Ayrshire Council is required under the Act to make reasonable adjustments to the physical conditions of their premises, furniture and/or equipment to enable the employee to not be disadvantaged in their ability to attend work. Discretion (please see Section 5 for further information on discretion) may be considered as a reasonable adjustment. Please refer to the HR Guide: Occupational Health Referrals and Reports for advice on Occupational Health referrals.

3.4.4 It is highly recommended that Senior Managers engage in organised, regular, Service/Unit case management discussions in conjunction with HR and Occupational Health professionals. These case management discussions will assist overall support and a consistent approach to maximising attendance in the workplace.

### 3.5 Stage 1 Interview

At 8 weeks continuous absence

3.5.1 Long term absence is operationally difficult, and it is appropriate to review the case and ensure an up-to-date Occupational Health report is available **or** to establish with the employee that there is no change to the employee's health status since the last report. Once the Occupational Health report is received, the employee will be invited to attend a Stage 1 Interview. A template letter is available to arrange this meeting. This should normally be arranged at 8

weeks continuous sickness absence. All situations will vary depending upon the nature of the medical problems and the prognosis of the employee's condition. The meeting will consider:

- Previous discussions with the employee
- The employee's future employment prospects, other options such as reasonable adjustments, change in hours, redeployment and working from home.
- the latest OH report and the employee's current and future capability;
- The support available, amended duties, redeployment and ill health retirement,

3.5.2 If the Occupational Health report indicates that the employee will be fit to return in 12 weeks or less, then a Stage 1 Review should be organised to discuss the employee's progress prior to the expected return date and ascertain if the date will be fulfilled. If the expected date of return is unknown or much longer than 12 weeks the employee is advised that a Stage 2 Interview will be arranged once the absence reaches 13 weeks.

3.5.3 The manager should arrange to complete the Stage Interview Form and ideally obtain a signature from those in attendance at the interview. An outcome letter is available on Connects and should be issued to the employee as soon as possible following the meeting. The employee can appeal the Stage 1 outcome (please see [section 4](#) for further information on appeals).

## 3.6 Stage 2 Interview

At 13 weeks continuous absence

3.6.1 Managers should ensure that an up-to-date Occupational health report is available before holding a Stage 2 Interview, or establish with the employee that the latest report reflects the current health status of the employee. The 2<sup>nd</sup> stage interview should normally be arranged at 13 weeks continuous absence. The following options should be discussed:

- Ensure that reasonable adjustments are explored
- Consider any feasible redeployment options and encourage the employee to register on the Council's redeployment list and attendance at Right Fit course.
- Ill health retirement - check if employee is in the Local Government Pension Scheme for eligibility – a decision to award this would be made by the Occupational Health Physician and the Strathclyde Pension Fund.
- The employee should be informed that cases of significant long term absence cannot be sustained indefinitely and if there is no prospect of a return to work in the foreseeable future or ill health retirement, a Stage 3 Formal Interview will be arranged to consider dismissal due to incapability.
- Clarify when the employee will commence half pay and discuss use of annual leave if appropriate.

- 3.6.2 Where an employee has been advised by Occupational Health that a phased return would be beneficial and the employee is still in receipt of full sick pay allowance, North Ayrshire Council will normally support a structured phased return by continuing to remunerate the employee with their contractual salary for up to a maximum of four weeks (pro-rata as applicable) subject to the employee being eligible for full sick pay allowance for the period of the phased return. Once an employee commences half sick pay allowance, the employee should consider the use of accrued annual leave to assist with a phased return to work. Please refer to [HR Guide: Dealing with GP Fit Notes including Phased Return](#).
- 3.6.3 The manager should complete the Stage Interview Form and ideally obtain a signature from those in attendance at the interview. A template [outcome letter](#) is available on Connects and should be issued to the employee as soon as possible following the meeting.
- 3.6.4 If the return to work is not planned and the employee is absent for a further 12 weeks the employee will be referred to a Stage 3 Interview to consider whether the Council can sustain their employment. The employee can appeal the Stage 2 outcome (please see [Section 4](#) for further information on appeals).

### 3.7 Stage 3 Interview

Between 24 – 36 weeks continuous sickness absence

- 3.7.1 Following the completion of the Stage 1 and Stage 2 interviews, cases of continuing long term absence will be referred to a Stage 3 Formal Capability Hearing. The purpose of the Stage 3 interview will be to consider whether there are any further actions that the Council can take to assist the employee in continuing their employment or, whether employment should be terminated due to the employee's continuing incapability to undertake their duties effectively because of their ill health. Please refer to the HR Guide: [Conducting a Stage 3 Interview \(Maximising Attendance\)](#).
- 3.7.2 Prior to the Stage 3 interview being organised, a stage 3 case review must be conducted with an HR Adviser. The case review should consider;
- Up-to-date OH report
  - Details of previous interviews held
  - Details of other arrangements made by the Manager to support the employee
  - Details of discussions on adjustments, phased return or redeployment
  - Ill Health Retirement
  - Any issues raised or comments expressed by the employee or their representative

3.7.3 When reaching a decision about whether or not to dismiss, the nominated Senior Manager or Head of Service will consider any relevant information including the following;

- The impact of the employee's absence on other employees and service delivery
- The employee's absence record and the Occupational Health advice received
- Representation made by the employee and/or their representative
- What actions have been taken/considered to enable the employee to continue in employment

3.7.4 The manager should complete the Stage Interview Form and ideally obtain a signature from those in attendance at the interview. A template outcome letter is available on Connects and should be issued to the employee as soon as possible following the meeting. The employee can appeal the Stage 3 outcome (please see section 4 for further information on appeals).

### **3.7.5 Human Resources Support**

Advice and guidance are available from HR at any stage of this procedure. However, an HR Adviser is not normally required to be present at Stage 1 and 2 of this procedure. Advice must be sought prior to a Stage 3 interview at a Case Review with an HR Adviser and from this meeting it can be determined whether an HR Adviser is required to attend the Stage 3 interview.

## **4. Appeals and Levels of Authority**

### **4.1 Appeals Procedure**

4.1.1 An employee will have a right to appeal at the First Stage, Second Stage and Third Stage of both the short and long term procedure.

4.1.2 The appeal can be against either the facts (which led to their being seen under this procedure) or the outcome of their interview under this procedure.

4.1.3 An employee can of course appeal against their dismissal, such an outcome only being possible at the Third Stage of the procedure. There is one level of appeal within North Ayrshire Council.

4.1.4 If the employee chooses to exercise their right of appeal, an appeal stating fully the grounds on which it is based, should be made in writing, using Notification of Appeal Form, either by the employee or by their representative on his/her behalf. The Appeal must be made not more than 14 days from the day following the date on the letter notifying the employee of the result of the interview.

4.1.5 The appeal request should be sent to the management official named in the notification of the outcome of the interview at the First Stage and Second Stage and to the Head of People & ICT at the Third Stage.

4.1.6 The employee shall be given notice in writing of the time and venue of the Appeal Hearing and a template appeal invitation letter is available on Connects. At the Appeal Hearing, the Senior Management Official/Appeals Committee shall have the authority to revoke, confirm or vary the decision previously issued. The result of the Appeal Hearing will be notified in writing to the employee and his/her representative as soon as possible after the Appeal and a template appeal outcome letter is available on Connects.

## 4.2 Levels of Authority for Interviews and Appeals

4.2.1 The Third Stage appeal will be heard by the Appeals Committee of North Ayrshire Council following dismissal. Any appeals at the Third Stage where the outcome was not dismissal will be heard by a Head of Service/Service Director.

Interview	Interviewing Officer	Appeal heard by
First stage	Supervisor/Line Manager/Member of School SMT	Manager senior to Interviewing Officer
Second Stage	Appropriate Supervisor/Line Manager	Manager senior to Interviewing Officer
Third Stage	Nominated Senior Manager (Grade 14 or higher) or Head of Service	Head of Service/Service Director

## 5. Discretion

### 5.1 Applying Discretion

5.1.1 The Maximising Attendance Procedure outlines the levels of attendance expected of all employees. The procedure also provides guidance as to when employees should be invited to formal managing absence meetings. However, where a manager feels that a particular case requires discretion to vary from the prescribed procedures, they must formally request discretion from the Head of Service/Director. Where a manager requests discretion they must complete and submit a Discretion Request Form setting out the reason and type of discretion requested to the Head of Service/Director.

5.1.2 Discretion should be interpreted to mean an individual will not be progressed to the next stage of the procedure at the time the discretion is granted. The fact that the employee has been absent due to ill health still remains and will be recorded as sickness absence. Any further absences following discretion will be managed in accordance with the Maximising Attendance Procedure as agreed at the point of discretion.

Pregnancy related absences will automatically be exempt from the maximising attendance procedure and qualify for discretion.

## 5.2 Discretion Criteria

5.2.1 Discretion should only be applied where the employee;

- Is absent due to a chronic illness/disease and/or has to undergo a surgical procedure/requires hospitalisation which has a specified/expected date of recovery and/or
- Is likely to be covered by the disability provisions of the Equality Act 2010 advised in an Occupational Health Report and where an extension to the timeframes in the procedure would be deemed a reasonable adjustment in the circumstances of the absence.
- For short term absence this may also include varying the attendance targets where an employee has been identified by Occupational Health as having an underlying medical condition which may affect their attendance intermittently over a set period of time.

5.2.2 Consideration may also be given to the employee's attendance record over the last three years.

5.2.3 Where a line manager feels that the case requires discretion, they must submit a request to the nominated Head of Service/Director. The Head of Service/Director will then decide whether the case merits discretion. When considering cases for discretion Heads of Service/ Director should take into consideration the employee's circumstances as detailed in the Discretion Request Form.

5.2.4 Please note that it is the line manager who decides whether or not to request discretion. The line manager should listen to the employee regarding the reasons why he/she feels discretion should be applied; however, it is the line manager who makes the decision to submit a formal request to the nominated Head of Service/Director. If the request is not submitted by the line manager, the line manager will provide reasons to the employee as to why the request has not been submitted.

5.2.5 Employees can use the opportunity of appeal available at each stage of the procedure, should there be grounds to question a decision not to request discretion.

5.2.6 There is no limit to the number of times that discretion may be applied, however, one of the terms of discretion is that consideration may also be given to the employee's attendance record over the last three years and this record will include previously granted discretion.

## 5.3 Requesting Discretion

5.3.1 Discretion can be requested at any point in the procedure e.g. before Stage 1, 2 or 3 of the Maximising Attendance Procedure.

- 5.3.1 When deciding when to request discretion Managers should consider the employee's absence record, the reason for absence, the expected length of absence and request discretion when they feel that it is most appropriate. In specific cases it may be appropriate to request discretion before the Stage 1 interview, for example, an employee who requires a set period of time to undergo an operation/recovery time or to make a reasonable adjustment such as requesting extensions to the triggers to allow for relapses or particular treatments.
- 5.3.2 The discretion request may ask that the employee should not be invited to a Stage 1 meeting if they return by 13 weeks when more information is known about the absence and the employee's expected date of return. Alternatively, it may ask that due to an underlying medical condition which may affect the employee's attendance intermittently over a set period of time, that an agreed extension to the triggers be approved.
- 5.3.4 In other cases the Stage 1 or 2 meeting should be held, and discretion requested at a later date if required e.g. this may be the case where there is no specific date of return known/the reason for absence is unclear or varied. This allows the manager to meet formally with the employee to find out more about the absence and make an occupational health referral if required. If, following the formal meeting further information about the employee's reason for absence is known, discretion could then be requested.

## 5.4 Recording Discretion Requests

- 5.4.1 **Discretion requests must be recorded on the HR Payroll System (Maximising Attendance Screen B46) by the service HR Payroll System Administrator.**
- 5.4.2 Example: If an employee has discretion applied to ensure that they do not move to a Stage 1/2/3, then a formal discussion with the employee takes place and recorded on the HR Payroll System as a **'Review meeting'** with an outcome of **'Discretion applied'**. Their absence should be reviewed in line with the time limit of the discretion approved by the nominated Head of Service/Director.
- 5.4.3 A review meeting should be arranged immediately following the expiry of the discretion period. If the employee's circumstances have changed to the extent that discretion is removed by the nominated Head of Service/Director, the review meeting should be recorded on the HR Payroll System and **'Move to stage 1/2/3'** selected.
- 5.4.4 The manager would then schedule a formal Stage meeting providing the necessary notice to allow for any representation to be arranged. This should be recorded on the HR Payroll System as a **'Formal 1/2/3 Stage'**.
- 5.4.5 **'Type of Discretion Applied'** – Discretion can be approved in full or in part i.e. the nominated Head of Service/Director can approve discretion for the full

period of time applied for, or, if approved in part, they may approve for discretion to be applied to a certain date (this date being earlier than the original date requested by the manager) – if the employee has not returned by the stipulated date then discretion shall be removed and the Maximising Attendance procedure shall commence / continue.

5.4.6 A copy of the request should also be held by the service.

## **5.5 Managing Absence where Discretion has been Granted**

### **5.5.1 Employee Returns to Work Within Discretion Period**

Where the employee returns to work within the period allowed for discretion then no formal action should be taken at this time. This period of absence may not contribute towards future Maximising Attendance meetings, depending on the discretion requested.

### **5.5.2 Employee Does Not Return to Work Within the Discretion Period**

Where the employee does not return to work within the agreed period or is absent over the agreed trigger point, then the formal procedure should be reinstated (unless further discretion is granted). Where further discretion is not granted then the employee will follow the maximising attendance procedure.

5.5.3 If you are unsure as to when the relevant formal stages should take place following a period of discretion, please contact Human Resources for advice.

## Appendix 1: Local Government Employees Maximising Attendance Triggers

### Short Term Absence

#### Return to Work Discussion:

After each absence



Employee met at **Stage 1** if absence reaches:

9 cumulative working days of sickness absence, taken over more than one occasion, in a 12 month rolling period

OR

3 instances of sickness absence in a rolling 12 month period, irrespective of length of absence



Employee met at **Stage 2** if absence reaches (from last day of absence):

3 instances, or 9 cumulative working days in a 12 month fixed monitoring period



Employee met at **Stage 3** if absence reaches (from last day of absence):

2 instances, or 5 cumulative working days sickness absence, in a 12 month fixed monitoring period

### Long Term Absence

#### Initial Long Term Absence Review:

Conducted at 3 weeks continuous long term absence



Employee met at **Stage 1** if absence reaches:

8 weeks continuous sickness absence



Employee met at **Stage 2** if absence reaches:

13 weeks continuous sickness absence



Employee met at **Stage 3** if absence reaches:

24 – 36 weeks continuous sickness absence

### *Discretion*

Discretion to vary from these procedures must be approved by a Head of Service /Director. Discretion should only be applied where the employee;

- Is absent due to a chronic illness/disease and/or has to undergo a surgical procedure/requires hospitalisation which has a specified/expected date of recovery and/or
- Is likely to be covered by the disability provisions of the Equality Act 2010 advised in an Occupation Health Report and an extension to the timeframes in the procedure would be deemed a reasonable adjustment in the circumstances of the absence.
- For short term absence this may also include varying the attendance targets where an employee has been identified by Occupational Health as having an underlying medical condition which may affect their attendance intermittently over a set period of time'.

In deciding on discretion, consideration may also be given to the employee's attendance record over the last three years.

Should the employee's absence extend beyond the original expected date of return, discretion should be removed, and the employee will commence, or continue to be met under the formal procedures.