

APPENDIX 1: New Attendance Policy and Procedure

Attendance Policy

1. Introduction

- 1.1 Employees are the most valuable resource in Brighton & Hove City Council. The aim of the Attendance Policy is to provide a framework to promote well-being and support employees to attend work. When an employee is absent for long periods, or frequently for short periods, this can cause disruption to services, increasing pressure for colleagues, and it is not good for the individual.
- 1.2 The policy outlines how we deal with absence situations fairly and consistently both for our colleagues and customers and ensure managers comply with our legal duty under the Equality Act to consider and provide reasonable adjustments to employees with disabilities. The responsibilities of both managers and employees to ensure good attendance and sustained returns to work after illness are set out in this policy and supplemented with guidance contained in the **Attendance Toolkit**.

2 Scope

- 2.1 The procedure applies to all employees of the council with the exception of employees who are still within their probationary period and those employed in schools unless the relevant Governing Body has adopted this policy.

3 Responsibilities

- 3.1 Employees have a personal responsibility to take all reasonable measures to ensure their fitness for work. Employees should be proactive in discussing any work issues that may be contributing to their absence and discuss any support and adjustments they may require.
- 3.2 Employees who are sick and unable to attend work are required to tell the council as soon as possible using the council's reporting process and to keep in touch regarding support required upon return to work. They are also expected to co-operate with referrals to **occupational health**.
- 3.3 Managers have a duty of care and responsibility for ensuring there are good working conditions, work practices and work behaviours in place. Managers are expected to;
- hold supportive return to work discussions with employees after every absence,
 - agree and implement attendance support plans for employees,
 - ensure medical advice is promptly sought and considered, and always do so
 - At any time where advice is required to support an employee with a disability.
 - From day 1 for stress/mental health absence,
 - From day 14 for musculo-skeletal absence,
 - At any time but no later than day 28 for any other absence (this is regarded as long term absence)

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- implementing agreed support promptly
- apply the process in a fair and consistent manner
- hold an informal absence review meeting where employees reach an attendance concern level
- arrange formal absence review meetings where employees reach a further attendance concern level

3.4 HR provides advice and support to improve the wellbeing and attendance of employees, on the application of the policy and procedure and advises the Hearing Manager at the Absence Hearing which is stage two of the Attendance Procedure.

3.5 The trade unions provide advice and support to fully represent their members interests, attend meetings convened under the Attendance Procedure, work with all parties to facilitate timely resolution to absence concerns and fair and consistent application of this policy and procedure.

4 Attendance Support Plan

4.1 Managers will agree an **attendance support plan** with employees where there is a requirement to maintain or improve attendance at work and, in the case of disabled employees, where reasonable adjustments are agreed and recorded. Any employee who doesn't have one already must have one as soon as they reach an attendance concern level.

4.2 The plan must be monitored, reviewed and updated on a regular basis and updated to reflect any additional requirements arising from a new or existing medical condition. The manager is responsible for implementing agreed actions promptly to secure the wellbeing of the employee at work.

5 Attendance Concern Levels

5.1 The council's attendance concern levels are:

- 3 separate spells of absence in any six month period
- 10 or more days of absence in any six month period

Different attendance concern levels should be considered as a reasonable adjustment for disabled employees.

5.2 Where employees reach an attendance concern level the manager is required to meet informally with the employee to discuss the situation and agree an attendance support plan. Following this meeting, if the employee should reach a further attendance concern level (see 5.1 above) within 6 months the manager will convene the first stage of the two stage Attendance Procedure.

5.3 The long-term absence concern level is 28 days and over. At which point, medical advice through occupational health should be obtained and the line manager should remain in regular contact with the employee.

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5.4 Where an employee is absent for a prolonged period and there is no prospect of a sustained return to work within a reasonable time frame the matter may be addressed by going straight to stage two of the Attendance Procedure i.e. the Absence Hearing.

6 Disability Related Sickness

6.1 We are committed to having a representative workforce and understand that disabilities can be both visible and non-visible, and will take all reasonable steps to support the attendance of disabled employees.

6.2 We will also work with disabled staff making reasonable adjustments as necessary to help disabled employees to reach their full potential at work.

Reasonable Adjustments

6.3 Under the Equality Act 2010, employers have a legal duty to make **reasonable adjustments** where working arrangements place a disabled person at a substantial disadvantage from those who are not disabled. Please see the **EHRC Employment Statutory Code of Practice** (<https://www.equalityhumanrights.com/en/publication-download/employment-statutory-code-practice>), which contains a non-exhaustive list of potential adjustments that employers might be required to make. Where an employee has a disability, managers will need to evidence that reasonable adjustments couldn't resolve the unsatisfactory attendance before taking action up to dismissal including compulsory ill-health retirement. Where absence is attributable to a disability, managers should make sure they hold regular discussions with the employee to assess how reasonable adjustments are working or where further changes need to be made to support the employee. These discussions and outcomes relating to adjustments should be recorded on the employee's attendance support plan.

6.3 The Equality Act also covers where an employee is acting as main carer for someone who is disabled. If someone were treated less favourably as a result of their association with the protected characteristic of someone else (e.g. a carer's link to the disabled person they are looking after) this is considered discrimination by association. It is important that we consider this when managing attendance at work and ensure that reasonable adjustments are made where necessary.

6.4 Managers will allow reasonable paid time off for a disabled employee (i.e. someone whose condition falls under the Equality Act) to attend appointments in the following circumstances and this will be recorded on the employee's Attendance Support Plan (these are not recorded as sick leave and do not count towards concern levels):

- To attend consultations or treatment to improve/manage a disability
- To attend medical appointments for life threatening/critical or chronic illnesses

7 Stress and mental health issues

- 7.1 Where managers are concerned that an employee may have a **stress/mental health** issue it is important to talk to the employee and offer them support. They should also be made aware of the council's **counselling** and **occupational health** services. An **individual stress risk assessment** should be completed. When an employee's absence is stress or mental health related then an occupational health referral should be made immediately.

8 Pregnancy and Maternity Related Sickness

- 8.1 Women have legal protection from detriment or dismissal in connection with pregnancy. Pregnancy and maternity-related sick absence (including absence as a result of a miscarriage) during protected periods should be reported in the normal way but does not count towards attendance concern levels. Pregnancy and maternityrelated sickness absence should be disregarded for the purpose of the Attendance Procedure.

9 Absence from work due to gender reassignment

- 9.1 An employer is guilty of direct gender reassignment discrimination if, in relation to a transgender employee's absence from work because of gender reassignment, it:
- Treats the employee less favourably than it would have done had the employee been absent because of sickness or injury, or
 - Treats the employee less favourably than it would have done had the employee been absent for some other reason **and** it was not reasonable for it to do so.
- 9.2 A person's absence is because of gender reassignment if it is because the person is proposing to undergo, is undergoing or has undergone the process (or part of the process) of gender reassignment by changing physiological or other attributes of sex.
- 9.3 There is no defined minimum or maximum time which must be allowed for absence for treatment. It will be good practice for employers to discuss with transgender staff how much time they will need in relation to the gender reassignment process and accommodate those needs in accordance with our policy on **Supporting Transgender Employees Policy**.

10 Terminal Illness

- 10.1 The council will strive not to create additional avoidable stress or worry for individuals who have been given a terminal diagnosis by providing employees in this situation with appropriate support and security. Where they wish to do so, employees will be supported to remain at work as long as they are able. This may reduce the uncertainty and insecurity that they are facing as well as providing some financial security and a distraction from their illness. Where possible and in accordance with their wishes, their death in service benefits will be secured for their

beneficiaries. Others may wish to sever their employment as soon as possible in order to spend the time they have left with their families. More information will be provided in the **Attendance Toolkit** under managing extended absences.

11 Sick Absence and Pay

Occupational Sick Pay

- 11.1 Entitlement to occupational sick pay is set out in employees' contracts of employment. Extensions to occupational sick pay may be granted in extenuating circumstances by the Head of HR&OD (in consultation with the Executive Director Finance and Resources).
- 11.2 The Council reserves the right to dismiss an individual before they have exhausted any outstanding entitlement to occupational sick pay.

12 Medical Appointments

- 12.1 Employees are required to make every effort to arrange medical appointments in their own time outside normal/core working hours. If employees are unable to make appointments in their own time it is expected that managers will allow reasonable paid time off. Where attendance at a medical appointment results in an absence of half a day or more this should be recorded as sickness absence and employees qualify for occupational sick pay. Managers may ask to see appointment letters/cards. Medical appointments will not count towards an attendance concern level.

13 Unauthorised Absence

- 13.1 Where an employee is absent without making contact, or when fit for work certificates are not produced on time, the manager should try to contact the employee to check their well-being. However, in the absence of a response or an acceptable explanation, managers should record the absence as "unauthorised absence" (and therefore unpaid) and contact HR.
- 13.2 Where there is evidence of false sickness certification or unauthorised absence then the manager should contact HR and the matter should be investigated under the council's **Disciplinary Procedure**.

14 Industrial Injury Related Sickness

- 14.1 Only those injuries or illnesses covered by the reporting requirements of the Reporting of Injuries Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) can be classified as work related injury/illness. Work-related stress is not reportable under RIDDOR. Please see the **Attendance Toolkit**.

15 Third Party Injury Related Sickness

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- 15.1 An employee who is absent as a result of an accident where damages may be received from a third party, may receive Occupational Sick Pay as an advance of salary. This is because part of any payment claimed from a third party will usually cover loss of earnings. Please see the **Attendance Toolkit**.

16 Sickness during Annual Leave

- 16.1 If an employee is sick when they are on annual leave they should meet with their GP as soon as possible to obtain a 'fit note'. Once the manager has received the 'fit note' the days that are covered by this will then be considered as sickness and the annual leave days will be reinstated. Please note the council will reimburse the employee for any costs incurred as a result of obtaining a fit note.

17 Sickness during Notice Period

- 17.1 Employees will be paid their normal contractual salary for the duration of their notice period where notice is given by the council.

The Attendance Process

Note: This section sets out more detailed information about what is expected from staff and managers to meet the requirements of the policy and procedure.

1 Reporting Absence

- 1.1 Employees must report their sickness absence using the council's **sickness reporting procedure** no later than one hour before their normal start time on their first day of sickness or in line with local reporting arrangements. Failure to report sickness absence in accordance with the council's procedure may result in a loss of pay and/or disciplinary action and the manager should contact HR for advice. A 'fit for work' certificate must be produced as soon as possible for absences that continue beyond the seventh consecutive day.
- 1.2 Managers are responsible for monitoring and reviewing the employee's absence and working with employees to facilitate a return to work.
- 1.3 Managers must contact employees who haven't reported their absence as soon as possible to check on their well-being.

2 Informal Return to Work Discussion

- 2.1 A **return to work discussion** must take place between the manager (or delegate) and employee after each sickness absence, ideally on the day the employee returns to work. Ideally this would be a face to face discussion but a telephone call is acceptable.
- 2.2 This discussion is:
 - informal and supportive
 - intended to welcome the employee back
 - to check they are fit to return to their full duties
 - to find out why they were away
 - to let them know any news
 - cover any support required including reasonable adjustments
 - where there is room for improvement the employee must be told what is expected and the likely consequence if this does not happen

A copy of the return to work form should be provided to the employee. Please see the **Attendance Toolkit**.

3 Occupational Health Referrals

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- 3.1 There are times when further medical advice is needed. This may be to seek advice on how to support an employee with a disability or a newly diagnosed condition maintain or improve their attendance at work, to support a return to work, to understand when an employee may be fit to return. Managers must discuss the reasons for making a referral with employees and provide the employee with a copy of the referral. Please see the **Attendance Toolkit** for details on how to make a referral.

4 The Attendance Support Plan

- 4.1 An **attendance support plan** is a record of the actions, reasonable adjustments, and other appropriate support agreed for the employee to maintain or improve their attendance at work. The manager is responsible for implementing actions promptly to secure the wellbeing of the employee at work. A stage 2 absence hearing cannot be arranged under the formal Attendance Procedure unless an attendance support plan for the employee's medical condition(s) has been implemented (where the individual is at work), and an attendance concern level reached within twelve months of being issued with a formal review period. A copy of the attendance support plan must be provided to the employee.

5 Attendance Concern Levels

- 5.1 If an employee has reached an attendance concern level the manager must meet with the employee to discuss their wellbeing and how their attendance at work can be improved to meet the required standard. It is expected that the manager and employee will agree an attendance support plan to mitigate against reaching the attendance concern level again. If there is already an attendance support plan in place this should be reviewed and any further support and reasonable adjustments agreed and implemented.
- 5.2 The employee must be told that if a further attendance concern level is reached within a six month period of the last absence then a formal absence review meeting will be convened under the Attendance Procedure and that if they continue to reach attendance concern levels their future employment may be at risk.
- 5.3 Managers cannot arrange a formal meeting under the Attendance Procedure if they have not previously met with the employee following their absence reaching the concern levels, implemented an agreed attendance support plan and the employee's absence has again reached an attendance concern level. The exception to this is long term absence where there is no reasonable prospect of the employee returning to work within a reasonable period of time.

6 Definition of a Disability

- 6.1 Under the Equality Act 2010, employees must not be unlawfully discriminated against in relation to their disability-related sickness absence. The definition of a disability is "a physical or mental impairment, which:

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“Has a substantial and long term adverse effect upon their ability to carry out normal day to day activities”. The illness or condition is considered long term if it has lasted, or could last 12 months or more”.

6.2 The definition of disability applies from the time of diagnosis for those employees with progressive conditions including HIV, multiple sclerosis and cancer. Employees with psychological ill-health may also be protected.

6.3 A **reasonable adjustment** may be, **but is not limited to any of the following**:

- An adjustment to their working environment, the building, or equipment they require
- A temporary/permanent adjustment to their duties
- A temporary/permanent adjustment to their patterns of work or flexible working options
- Reasonable paid time off to attend medical appointments related to the individual’s disability
- Adjusting attendance concern levels (increasing the threshold) for any disability related absences (see toolkit guidance and examples)

See also the council’s **HIV/AIDS Awareness Guidance** on how managers should support HIV positive employees.

6.4 All disability related absence should be reported in accordance with the council’s normal process but it should be clearly recorded as disability related absence on the attendance management system.

7 Occupational Health Advice – Management Action

7.1 The manager must discuss the content of the occupational health report and the options with the employee as soon as possible. If occupational health advice is that the employee is unlikely to be able to return to their existing job within a reasonable period, the manager should consider convening an Absence Hearing under the Attendance Procedure.

7.2 If occupational health advises that the employee is not fully fit but that they should, for an interim period, return to work on reduced hours or reduced duties, the manager should wherever possible agree an appropriate temporary working arrangement or other adjustments. This arrangement should be documented in the attendance support plan. If the employee fails to make a sustained return to work within a reasonable period of time despite reasonable adjustments being in place then the manager will need to arrange an Absence Hearing under the Attendance Procedure to consider whether to terminate their employment.

Medical Redeployment

7.3 If Occupational Health advises that the employee is not capable of returning to their post, but that they would be fit for other duties, the manager should ensure that a

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report of the employee's occupational suitability is provided to the Redeployment Co-ordinator who will arrange for the employee to be placed in the redeployment pool at the earliest opportunity. The manager should also arrange an Absence Hearing under the Attendance Procedure to consider the future employment of the individual in case there is no suitable alternative employment.

Ill-Health Retirement process

- 7.4 If the employee is a member of the local government pension scheme and occupational health advice is that the employee is or soon will be medically unfit to do their job or any other suitable post it is probably not appropriate to convene a Hearing under the Attendance Procedure and the employee will be written to regarding this decision. The employee will be advised, in writing, of their right to appeal the ending of their employment with the council.
- 7.5 In the absence of an ill-health retirement recommendation from Occupational Health termination will be on the grounds of medical capability and an Absence Hearing under the Attendance Procedure will be convened.

8 Return from Extended Sick Absence

- 8.1 The employee should call before their expected return date provided on their fit to work certificate to update their manager about their recovery. When the employee confirms their return date the manager should (prior to the employee returning) discuss what support they are likely to need (on the basis of medical advice) and should capture this, together with any OH advice and agreed adjustments (temporary or permanent) on the Attendance Support Plan. These could include a phased return, temporary/permanent alternative duties or work location. If adjustments are required in most cases they will need to be in place before the employee returns.

Attendance Procedure

1 Introduction

- 1.1 This document sets out the formal procedure to be used where an employee is unable to attend work regularly. Please note that there is an informal stage and this is the meeting between the line manager and the employee when they have reached the first attendance concern level. At this meeting an attendance support plan should be put in place.
- 1.2 There are two formal stages; stage one may result in the employee's attendance being subject to a formal review for a 12 month period and advised that if their attendance does not improve the matter will be considered at stage two of the procedure. This takes the form of an Absence Hearing which will consider their future employment with the council. There will be circumstances where it is appropriate to convene a hearing at stage two without having considered the matter at stage one, for example, long term absences where there is no prospect of a return within a reasonable time.

Please note – all references to days in this procedure refer to calendar days.

2 Discretion

- 2.1 **It is not necessary** to convene a formal **absence review meeting** under the procedure where it is clear from the return to work discussion and previous attendance record that:
- The employee's future attendance levels are likely to be satisfactory
 - The employee has a disability and there is a short-term attendance issue which is likely to be resolved
 - The employee has a disability and there is a long-term attendance issue where a reasonable adjustment could be to accept a slightly higher level of absence compared to an employee who does not have a disability
 - The employee has been absent due to a newly diagnosed condition/illness that is covered under the Equality Act.
 - The employee has recently been prescribed new medication to treat their medical condition, which is impacting on attendance levels.
- 2.2 Please note this list is not exhaustive and further examples are provided within the **Attendance Toolkit**.

3 Stage One - Absence Review Meeting

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- 3.1 The manager will convene an **Absence Review Meeting** in the following circumstances
- the employee has reached an attendance concern level
 - the manager has previously discussed concerns with the employee
 - the manager and employee have agreed an attendance support plan
 - the attendance support plan was implemented
 - within a year of reaching the attendance concern level the employee has again reached an attendance concern level
- 3.2 The manager will write to the employee to give 7 days' notice of the date of meeting and explain their right be represented at the meeting by a union representative or a work colleague. If the employee is unable to arrange representation for the scheduled meeting then an alternative date will be arranged within a reasonable timeframe. Prolonged delays due to the lack of an available representative will not be a reason for postponement.
- 3.3 At the meeting the manager will discuss their concerns about the employee's absence, the actions taken to support improved attendance, review the attendance support plan and explore with the employee why these have not addressed the concerns. The manager will consider what action may be taken to prevent future absence from reaching the attendance concern level.
- 4 Outcome – Formal Review Period**
- 4.1 At the conclusion of the meeting the manager can arrive at the following outcomes:
- The setting of a formal review period for the next 12 months.
 - To adjourn the meeting pending occupational health advice.
 - No formal review period (see section 5 below for examples of when this might apply).
- 4.2 Where the manager decides to place the employee in a formal review period, this starts from the end date of the last absence that caused the attendance concern level to be reached, for a period of 12 months. The employee needs to understand that if their sickness absence reaches a further attendance concern level during the 12 month review period, an Absence Hearing will be arranged and the Hearing Manager will, at that time, consider whether or not to dismiss the individual.
- 4.3 The attendance review period will expire after 12 months if the individual has not reached a further attendance concern level during this period.
- 4.4 The manager will write to the employee within 7 days of the meeting to confirm their decision and will explain that the last day of sickness absence marks the start of a formal rolling 12 month review period. Employees may appeal decisions to implement a formal review period by writing to their manager's manager within 7 days of receipt of the outcome letter. A copy of the outcome letter should be placed on the employee's personal file.

5 Outcome – No Formal Action

5.1 Placing the employee under a formal attendance review period may not be required in the following circumstances (please note that these examples are not exhaustive);

- Appropriate support and reasonable adjustments which would have prevented the absence reaching a concern level were not in place.
- Return to Work discussions have not taken place for all absences that gave rise to the employee reaching this Attendance Concern Level.
- The absence(s) represent a spell of illness which is unusual and unlikely to recur in an otherwise excellent attendance record by a long term employee.
- The absence(s) relate solely to a non-recurring illness/condition which has been successfully treated (e.g. fracture, routine operation).
- A disabled employee is experiencing short term absences as a result of changes in their medication aimed at improving their condition
- Occasional absences are an accepted part of the condition which a disabled person has and the service area is able to support these operationally
- An employee has been absent due to a newly diagnosed condition/illness that is covered under the Equality Act.
- The manager is satisfied that the individual's absence will not give rise to further concerns.

5.2 If no formal action is to be taken, this should be confirmed in writing to the individual within 7 days of the meeting and a copy of this letter should be placed on the employee's personal file.

5.3 However, if a further Attendance Concern Level is reached within 6 months of the last occasion, the manager will convene a further Absence Review Meeting under this procedure.

6 Stage 2 - Absence Hearing

6.1 The purpose of the **Absence Hearing** (which is stage 2 of the procedure) is to consider the employee's continued employment with the council, which should be arranged in the following circumstances:

- where the attendance concern level is reached during a formal review period
- when the reason for absence is a serious illness and it is unlikely that the employee will make a return to work within a reasonable period of time

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- 6.2 The manager, prior to arranging an Absence Hearing, must have tried to obtain an up to date Occupational Health report and arrange to meet to discuss this with the employee to see if their attendance at work is likely to improve to the required standard. If the manager does not consider that the employee's absence will improve then an Absence Hearing will be convened.
- 6.3 Those present at an Absence Hearing will be the Hearing Manager, advised by an officer from the Human Resources & Organisational Development team, the line manager presenting the concerns about the employee's continued level of absence, the employee and the union representative or colleague of the employee.
- 6.4 The manager must confirm the date and time of the hearing in writing and send a copy of the written documentation to be relied on to the employee and their representative at least **14 days** before the hearing. Any documentation the employee or their representative wishes to present at the hearing should be submitted to the hearing manager **no less than 4 days** before the hearing.
- 6.5 If the employee or the representative cannot attend on the proposed date efforts will be made to find an alternative date acceptable to all parties within a reasonable timeframe.
- 6.6 At the Absence Hearing the Line Manager will present their case to the Hearing Manager setting out why the level of attendance is not acceptable and what action has been taken to support the employee improve their attendance at work. The case should include the following;
 - the employee's absence record (no more than past 2 years), including the advice from Occupational Health
 - the support and advice given to the employee
 - how the attendance support plan has been implemented
 - any further action taken to support the employee's attendance at work
 - in cases where the employee's absence is related wholly or in part to a disability, set out how the council has considered or made reasonable adjustments.
- 6.7 The employee and/or the union representative will present their case setting out what they wish the Hearing Manager to take into consideration when making a decision.
- 6.8 The Hearing Manager will adjourn to consider the cases presented and decide whether to:
 - Dismiss the employee (with notice) on the grounds of a lack of capability to attend work on a regular basis.
 - Dismiss the employee (with notice) on the grounds of a lack of capability unless an alternative suitable redeployment can be identified within the period of notice.
 - Dismiss the employee (with notice) on the grounds of permanent ill-health, where supported by medical certification from the OH Adviser.

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- Implement a further final review period of 12 months to monitor the employee's attendance at work. If a further Attendance concern level is reached during this review period another Absence Hearing will be convened and it is likely that the employee will be dismissed.
- No dismissal or review period is required, and recommendations for further action for the manager/employee are detailed in the attendance support plan.

6.9 The manager will reconvene the hearing and inform the parties of the decision. Exceptionally the hearing manager may defer making a decision, for a short period, if issues arise that require further investigation.

6.10 The hearing manager will send a letter giving written confirmation of the decision to the employee within 7 days of the date of the hearing. A copy of the letter will be kept on the employee's file.

7 Appeals

7.1 **Appeals** against a decision to implement a further review period shall be submitted to the Hearing Manager's manager (their contact details will be provided) within 7 days of receipt of the decision letter. See **Attendance Toolkit** for the format for the appeal against a further review period.

7.2 **Appeals against dismissal** - The employee may appeal against their dismissal to the Council's Personnel Appeals Panel. The appeal must be made in writing, on the appeal form and clearly state the ground(s) for the appeal.

7.3 The **appeal form** must be submitted to the Head of Human Resources & Organisational Development within 7 days of the date of the letter confirming the Hearing Manager's decision. The Council's Personnel Appeals Panel will then be convened as soon as possible to hear the appeal.

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