



# West Lancashire Borough Council

## Supporting Employees Diagnosed with Terminal Illness

### Policy and Line Manager Guidance

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## **1.0 Introduction**

- 1.1 West Lancashire Borough Council ('the council') is committed to equality, diversity, and inclusion for all its employees and citizens of the Borough. This is recognised in the council's equality objectives that sit within the Equality, Diversity, and Inclusion strategy. The council is also committed to treating its employees with dignity and respect, managing staffing and employment matters with sensitivity and compassion.
- 1.2 The council also has a duty to comply with the Equality Act 2010 which seeks to protect individuals from discrimination based on a number of protected characteristics including disability. Disability, as defined within the Equality Act 2010, is "a physical or mental impairment that has a 'substantial' and 'long-term' negative effect on your ability to do normal activities".
- 1.4 "Terminal Illness" is not identified as a protected characteristic under the Equality Act 2010; however, it is recognised that a medical condition which is given a terminal diagnosis may be considered under the Equality Act 2010 due to any 'substantial' and / or 'long-term' effect on the individual's ability to do normal activities. In any case, the council seeks to support all employees with a terminal diagnosis considering all possible support and reasonable adjustments. Some conditions are automatically considered to meet the disability definition under the Equality Act 2010 from the date of diagnosis, and this includes HIV infection, cancer, and multiple sclerosis.
- 1.5 Terminal illness, for the purposes of this document, is normally considered to be a prognosis of 12 months' life expectancy or less.
- 1.6 The council has recently affirmed its commitment to supporting terminally ill employees with dignity, respect, and compassion by signing up to the Trade Union Congress' "Dying to Work" voluntary charter, setting out the agreed way in which council employees will be supported, protected, and guided throughout their employment following a terminal diagnosis.
- 1.7 This guidance is designed as a Policy document confirming the council's commitment to supporting employees with a diagnosed terminal illness and has a supplementary guidance resource document for line managers to assist them in supporting an employee who has been given a terminal diagnosis and can also be used as a support framework for those employees themselves.

## **2.0 Guidance on Roles and Responsibilities**

It is important to be aware at an early stage of all the relevant roles and responsibilities of those involved and who may be able to offer support to the employee and / or to a line manager. The individual will always remain at the centre of all communications. The following stakeholders may all have a role in ensuring appropriate next steps are taken and support is offered:

### **Line Manager**

Key role in liaising with the individual and ensuring that you maintain timely and appropriate welfare communication with the employee either during any period of absence or if the individual is able and chooses to remain in work.

Ensure that appropriate action and advice is taken which can include seeking of medical advice from Occupational Health and HR advice. This can also include offering counselling support to the employee if they are not in receipt of such support through their GP / Consultant.

### **GP/Consultant**

Key role privately with the employee. It is likely that as a Line Manager you will not have any direct contact with a GP or Consultant, however it is possible that medical advice will be provided from either party in the form of a GP 'Fit Note' or specific Consultant advice, which is likely to come indirectly through the employee or Occupational Health.

It is important that all medical advice is taken into consideration, which may include that an employee is unfit to attend work, or that the employee is fit to attend work with support and / or adjustments.

Line Managers are advised to contact HR&OD services and consider making an appropriate referral to Occupational Health in either circumstance.

### **Human Resources and Organisational Development Service**

To support the Line Manager in undertaking their role, including consideration of making a referral to occupational health and of any support that can be offered to the employee.

The HR&OD Service are also able to discuss with the Line Manager the options available to an employee who has been given a terminal diagnosis, and to support them to share such information with the employee.

### **Occupational Health Service**

To provide medical advice to managers regarding the prognosis and any support or adjustments which can be provided to the employee.

A referral to occupational health is usually made where an employee has been absent for 4 weeks or more, or where specific medical advice is required.

A decision regarding a referral being made to occupational health is best made in conjunction with the employee considering the medical advice they have already received, their ability due to their health to attend an occupational health appointment and their thoughts and wishes with regard to their employment.

Line Managers are advised to contact the HR&OD Service for advice on the appropriateness of a referral to Occupational Health.

### **Counselling Services**

to offer confidential one-to-one support to an employee upon receipt of self-referral from the employee in respect of Able Futures or Zurich Counselling services.

Line Manager managers can also request bespoke face to face counselling support through the HR&OD Service.

Counselling should be offered to an employee at the earliest opportunity to provide the employee with a confidential source of support unless the employee is accessing specialist counselling support through their GP or Consultant.

### **Trade Union Representatives**

Employees may also benefit from seeking the advice and support of their Trade Union Representatives who will be able to support employees to consider the options available to them and to obtain further relevant information.

## **3.0 Guidance on Immediate action following a diagnosis**

- 3.1 In most cases, a line manager will be aware that an employee is suffering with ill-health, and that the employee may have incurred absence as a result, although this is not always the case. The employee may be currently absent from work or have continued to attend work. A line manager may be aware that an employee is receiving support from a medical practitioner, and/or undergoing medical tests or treatment, but some employees may not be aware of any medical condition until such a diagnosis is made. The important thing to remember is that each individual and each case is different, and individuals will manage such a diagnosis in a range of ways. Line managers will be keen to ensure that they support employees with sensitivity, compassion, and flexibility.
- 3.2 When an employee first informs a manager of serious ill-health or terminal illness, it may be a difficult and distressing conversation for both parties to have. All employees will deal with such a conversation differently, and it is important to handle the conversation as the employee wishes. The employee may not know at that stage what their wishes are, so it is important to give the employee the space and time they need to take in the news they have received, but also ensure that appropriate support and opportunity to discuss the matter with you as a line manager or another suitable party is offered. This could be a colleague or alternative manager, an HR Business Partner, or Occupational Health.
- 3.3 All discussions with the employee should be handled sensitively and empathetically, and any immediate or early discussions are likely to cover the following areas:
  - How the employee feels and their immediate reactions to their diagnosis. Be sensitive to the needs of your employee and understand that everyone's case is different.

- Any treatment they are due to undergo and the likely impact of this treatment, including any impact on their ability to attend work, whether in the immediate term the condition or treatment is likely to lead to sickness absence, any support or adjustment which can allow the employee to remain in work, and whether flexibility is required with regard to working time and / or time off to attend appointments / treatment.
- What colleagues within the team know and what the employee would like colleagues to be told – this includes who they would like to be told, who will tell colleagues and what information they wish to be shared. The employee's privacy must be respected; if they don't wish for colleagues to be informed this has to be honoured.
- Any financial impact upon the employee and sources of support we can provide as an employer. This can include reference to sick pay entitlement and the possibility to apply for an extension to normal sick pay entitlements. It can also include at an appropriate time discussion regarding options regarding their pension through Local Government Pension Scheme (LGPS).
- Reference to appropriate information within the council including services such as occupational health, counselling and the HR&OD Service, relevant policies and procedures including the Management of Sickness Absence Policy, sick pay entitlements and time off to attend medical appointments, and relevant information such as pensions and any further contacts for support.

#### 3.4 Managers should ensure that they:

- Are sensitive to the needs of the employee and allow the employee the time they need to discuss the matter with them in a private place.
- Listen and show the employee that they are listening, giving time for the employee to share whatever information they feel comfortable sharing, at their pace. Don't be afraid to ask questions to seek to identify the right information to help you to support the employee.
- Check guidelines, policies, and procedures in advance of any planned meeting to ensure the correct support can be offered.
- Are willing to explore whether any adjustments or support can be made, including flexibility to permit an employee to attend medical appointments and / or recuperate from any procedures if they are able to remain in work.
- Only inform colleagues with the express agreement of the employee, having agreed with the employee what information will be shared, who by, and what involvement the employee wishes to have in such discussions. In discussing matters with colleagues, managers are encouraged to avoid personal or excessive detail, speak factually, and outline to staff whether the employee wishes for colleagues to discuss the matter with them or not.

- 3.5 It is acknowledged that discussions of this nature may be difficult for managers. There is some support Material on the intranet to help managers prepare for these discussions and these can be access via the links below:

<http://intranet.westlancsdc.local/attendance-and-wellbeing/sickness/supporting-employees-with-mental-health-issues-cancer-terminal-illness-bereavement.aspx>

<http://intranet.westlancsdc.local/media/21422/dealing-with-cancer-managers-guide.pdf>

[https://issuu.com/unionlearn/docs/mentalhealth\\_individuals](https://issuu.com/unionlearn/docs/mentalhealth_individuals)

<http://intranet.westlancsdc.local/media/21425/managing-bereavement-in-the-workplace.pdf>

MacMillan offer specific advice and guidance for managers on discussing a cancer diagnosis with staff, and managers are encouraged to access this guidance to prepare for detailed supportive discussions with staff in this particular case. This can be accessed access via the following link:

<https://www.macmillan.org.uk/cancer-information-and-support/get-help/financial-and-work/employers>

- 3.6 Line managers are also encouraged to attend the free training available through the Our Learning eLearning facility entitled 'e.g. Having Difficult Conversations' (*list of available courses to be inserted*) which will support managers in preparing to have difficult conversations with employees as part of their normal managerial role. Advice is also always available from your usual HR Business Partner, and you are encouraged to seek their advice early on in your discussions with the employee.

#### **4.0 Supporting an employee with a terminal illness in work**

- 4.1 An employee may be well enough and may wish to remain in work despite their diagnosis. Additionally, it must be acknowledged that individuals have different views about work and also different priorities with regard to their personal and family life. Therefore, some individuals will wish to remain in work as long as possible – indeed, it can be therapeutic to an employee to remain in a safe and supportive working environment for as long as possible; for others their priority may be to spend time with loved ones. In such a situation it is important that line managers engage in regular supportive welfare discussions with the employee regarding their health and ability to remain in work.
- 4.2 It is understandable for line managers to be concerned for the health and safety of an employee remaining in work with such a diagnosis, however in some cases the diagnosis may not in the immediate future prevent an employee from attending work and may in the medium term only require small adjustments to the role or work environment. Again, any support or adjustments required should be explored with the employee and further with HR&OD Services and /

or Occupational Health as appropriate. It would be useful in such a situation to risk assess the role alongside the employee to consider which aspects may present any difficulty and how this difficulty can be removed to allow the employee to remain in work.

- 4.3 As a terminal diagnosis is likely to be covered by the Equality Act 2010 (refer to earlier definition), there is a duty on an employer to consider and implement reasonable adjustments. The likely scope of a reasonable adjustment would depend on the employee's health and their particular job role; however, these can be adjustments to the role itself, adjustment or removal of particular duties, adjustment to the work premises or work environment, working from home, flexibility in hours, or even redeployment to an alternative role if this is available. Specific advice on adjustments would need to be obtained from Occupational Health in most cases or may be a recommendation from a GP 'Fit Note' or Consultant Report.
- 4.4 It is important to note that the medical and psychological impact of their diagnosis can change over time, so line managers need to ensure that they decide to regularly review the situation alongside employees to consider their current ability to remain in work, current treatment and time-off needs, and any support and / or adjustments which are in place. The employee's wishes regarding communication both with the line manager and within the team may change over time, so line managers are encouraged to continue to seek the employees' views regarding communication.
- 4.5 An employee who can remain in work may require time off to attend appointments in relation to their condition. Time off to attend medical appointments can be considered in line with the policy (<http://intranet.westlancsdc.local/media/72637/medical-appointments.pdf>). Line managers are also reminded that, in such circumstances, consideration should be given to whether further flexibility can be afforded to the employee to allow them time off to attend appointments and / or treatment and / or rest following such appointments.
- 4.6 Employees who are able or want to remain in work may incur short to medium-term absences covered by a GP 'Fit Note'. Line Managers should be aware that advice contained within a GP Fit Note is considered medical advice and should review any recommendation be made for adjustments to the role or supportive measures for an employee.
- 4.7 Employees can seek further information via the Family Friendly Policies (<http://intranet.westlancsdc.local/attendance-and-wellbeing/family-friendly.aspx>) which provides advice on the options available to them to consider in supporting them to remain in work. This could allow an employee to have a reduction in hours, a change in working days or work pattern, or increased ability to work from home, subject to approval from the service.



- 4.8 A confidential counselling service is available to employees of the council through Able Futures and Zurich via self-referral. Further information and the referral form can be accessed via the following link:

<http://intranet.westlancsdc.local/attendance-and-wellbeing/wellbeing-support.aspx>

- 4.9 Line Managers are encouraged to seek HR&OD advice to determine when a referral to Occupational Health should be made in individual cases.

## **5.0 Supporting an employee with a terminal illness who is absent from work**

- 5.1 Further detailed advice for managers in supporting a member of staff who is absent from work on a long term basis due to sickness is contained within the following link: <http://intranet.westlancsdc.local/attendance-and-wellbeing/sickness/supporting-employees-with-mental-health-issues-cancer-terminal-illness-bereavement.aspx>

- 5.2 Managers are encouraged to establish directly with the employee the method and amount of contact is agreeable to both parties to have, bearing in mind that this may change over time and to therefore keep this under review.

- 5.3 Managers are also encouraged to discuss with employees whether they wish to receive contact from colleagues during their period of absence and if they wish to receive other updates regarding work, and how they wish to receive these.

- 5.4 Again, it is important to recognise that all individuals are different; some would wish to maintain regular contact and keep up to date with all the latest information regarding work, whereas some would wish to have minimal contact.

- 5.5 If you are needing to cover an employees' absence from work with another member of staff, consider whether it is appropriate to share this information with the staff member and how and when you will share this information.

- 5.6 Line Managers are encouraged to seek HR&OD Service advice to determine when a referral to Occupational Health should be made in individual cases.

- 5.7 Consideration will need to be given to making a referral to Occupational Health for medical advice, considering the information the employee has shared with you about their diagnosis and prognosis, and the employees' ability to attend occupational health given their medical condition.

- 5.8 A confidential counselling service is available to employees of the council through Able Futures and Zurich via self-referral. Further information and the referral form can be accessed via the following link:

<http://intranet.westlancsdc.local/attendance-and-wellbeing/wellbeing-support.aspx>

- 5.9 Line Managers should ensure that they are familiar with the relevant policies and procedures applicable in these circumstances, including the Management of Sickness Absence Policy, sick pay entitlements and pensions' information to ensure appropriate support is offered to the employee.
- 5.10 Employees are also encouraged to access further information on wellbeing support available through the council via the following link: <http://intranet.westlancsdc.local/attendance-and-wellbeing/wellbeing-support.aspx>

## **6.0 Management of Sickness Absence Policy**

- 6.1 A high level of attendance at work from employees is essential to the successful delivery of the Council's business. However, it is recognised that employees may be prevented from attending work through ill health. The Management of Sickness Absence Policy sets out the Council's approach to managing attendance in the workplace.
- <http://intranet.westlancsdc.local/media/72604/mangement-of-sickness-absence-policy.pdf>

As such, the broad principles of the policy will continue to apply in cases of terminal illness.

- 6.2 However absence triggers do not always lead to formal action where there are compassionate circumstances, and instead should be used to prompt positive interventions such as Occupational Health referrals and reasonable adjustments.
- 6.3 In the case of a terminally ill employee, there is a need to consider the individuals circumstances and their continued employment with sensitivity and compassion, and as such, managers are expected to exercise maximum discretion before taking any action under the formal steps of the procedure.

## **7.0 Finances**

### **Sick Pay**

- 7.1 It is recognised that not all employees diagnosed with a terminal illness will be absent due to sickness, however it is important for employees to be aware of their entitlements to sick pay and knowledge of the benefits they would be eligible for should they incur absence can be a reassurance financially.
- 7.2 Employees of the council are entitled to Occupational Sick Pay (OSP) in line with their terms and conditions of employment. For employed staff, the majority will be entitled to the terms and conditions as outlined in the Green Book or the JNC Chief Officer terms and Condition.
- 7.4 Under these schemes, entitlement to occupational sick pay is based on your length of service; the longer the service, the greater entitlement to sick pay, up to a maximum of 6 month's full pay, 6 month's half pay.

## **Benefits**

- 7.6 Employees should be encouraged to seek independent advice about the benefits they could be entitled to, including those which are payable whilst in work or those payable if someone has ceased to work.
- 7.7 Further information on the range of financial benefits available can be found on [www.gov.uk/browse/benefits](http://www.gov.uk/browse/benefits) Please also see the useful contacts section for other sources of such advice and information. Such benefits could include:
- Personal Independence Payments (PIP's) may be payable upon application to the Department for Work and Pensions if an individual has less than 12 months to live and under state pension age.
  - Employment and Support Allowance (ESA) may be payable to an individual who is unable to work, even if the individual is in employment at the time.

## **Ill Health Retirement**

- 7.8 Some employees may choose to give up work when they receive a diagnosis of a terminal illness, as this may allow them time to focus on treatment and on personal and family matters. The council affirms its commitment through the voluntary charter to allow employees the time to consider the options available to them and wherever possible, manage the situation as the employee wishes. Some employees may therefore wish to be considered for ill health retirement, which will allow release of their pension benefits early on health grounds.
- 7.9 Employees are encouraged to seek independent financial advice in considering the options available to them and are encouraged to seek pension's estimates with regard to the benefits they may expect to receive if they take this option. The employee can seek support from their line manager, HR&OD and / or their Trade Union Representative to liaise with the Local Government Pension Scheme (LGPS) to obtain such estimates.
- 7.10 Employees are also encouraged to take time to carefully consider the options available to them and to not make any irrevocable decisions regarding their finances.
- 7.11 To qualify for ill health benefits under LGPS, the employee must have met the 2 years vesting period in the scheme, and the council as the employer would need to have received independent medical authorisation through occupational health that the employee meets the criteria for early release of their pension. If an employee is diagnosed with a terminal illness and the independent medical advisor acting on behalf of Occupational Health indicates the life expectancy of the employee is less than 12 months, the employee will be provided with the option to commute their pension to a one-off lump-sum.
- 7.12 Ill Health benefits can be paid at any age and are not reduced due to early payment and could be increased dependent on the tier awarded.

7.13 For members of the LGPS, further information can be obtained at: <https://www.lgpsmember.org/tol/thinking-leaving-illhealth.php>

7.15 If an employee wishes to apply for ill health retirement, the employee needs to apply via the HR&OD Services who will provide them with the relevant forms. The Council's policy on ill health retirement is accessed via the link below:

[http://intranet.westlancsdc.local/media/73879/ill\\_health\\_retirement\\_policy\\_feb\\_22.pdf](http://intranet.westlancsdc.local/media/73879/ill_health_retirement_policy_feb_22.pdf)

### **Death in Service**

7.18 Some employees may identify that in a financial sense, benefits payable through Death in Service is the most appropriate option for them. Again, the council, through its commitment to the voluntary charter, seeks to allow employees to take the decision which is right for them and where possible will support an employee who wishes to choose this option.

7.19 Again, employees are encouraged to seek independent financial advice in considering the options available to them and if possible, to seek pension's estimates regarding the benefits they may expect to receive if they take this option. The employee can seek support from their line manager, HR&OD Service and / or their Trade Union Representative to liaise with the Local Government Pension Scheme (LGPS) to obtain such estimates.

7.20 For employees who are members of LGPS, a lump sum death grant of three times the employees final pay is payable, no matter how long the employee has been a member of the LGPS. Employees must ensure that they have completed a Death Grant Nomination Form to name one or more individuals or organisations they wish to receive payment from the Death Grant.

7.21 For members of the LGPS, if an employee dies in service, survivor benefits are payable for life to the spouse, civil partner, or eligible cohabiting partner, increased to the amount of service the employee would have had up to age 65.

7.22 Further information can be found at: <https://www.lgpsmember.org/arm/already-member-prot.php>

### **Termination of employment on the grounds of ill health**

7.23 The council has on **(insert Date)**, signed up to the TUC "Dying to Work" Voluntary Charter, signalling its' commitment to support employees who are diagnosed with a terminal illness in accordance with their wishes wherever possible. What this means in practice for employees who have been diagnosed with a terminal illness is different in each case, however financial matters can be a worry for individuals. Where some employees may be members of an occupational pension scheme and have options available to them in respect of their pensions in such circumstances, it is acknowledged that some employees may not be members of the pension scheme.

- 7.24 The council, in signing up to the Voluntary Charter, has indicated that it supports the TUC's Dying to Work campaign so that all employees battling terminal illness have adequate employment protection and have their death in service pension benefits protected for the loved ones they leave behind'. In practice, in some individual situations, a termination of employment on the grounds of ill health, managed in the most sensitive and dignified way, may be of financial benefit to an employee who is diagnosed with a terminal illness, particularly where an employee has exhausted sick pay entitlements.
- 7.25 In considering all options available to an employee who is diagnosed with a terminal illness and considering their options in respect of their employment, managers are encouraged to seek HR&OD Service advice in gathering relevant information to share with an employee.