

## PLYMOUTH CITY COUNCIL

**Subject:** Occupational health & sickness absence update  
**Committee:** Support Services Overview & Scrutiny Panel  
**Date:** Monday 6 August 2012  
**Cabinet Member:** Councillor Peter Smith  
**CMT Member:** Adam Broome (Director for Corporate Services)  
**Author:** Emma Rose, Head of Health, Safety and Wellbeing  
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**Ref:**  
**Key Decision:** No  
**Part:** I

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### **Purpose of the report:**

A review of Plymouth City Council's occupational health (OH) services and link to sickness absence levels was provided to Support Services OSP on 2 July 2012. As a result, SSOP requested an update report covering the following:

1. sickness absence policy;
2. action plan to address the top 100 sickness absence employees;
3. breakdown of sickness absence between administrative staff and manual workers;
4. information on what the private sector is doing to tackle sickness absence;
5. supporting evidence from the flu vaccination scheme business case.

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### **Corporate Plan 2012-2015:**

Occupational health services support our employees to be fit, healthy and productive and as such, contribute to the delivery of the Council's priorities.

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### **Implications for Medium Term Financial Plan and Resource Implications: Including finance, human, IT and land**

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**Other Implications: e.g. Child Poverty, Community Safety, Health and Safety, Risk Management and Equality, Diversity and Community Cohesion:**

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**I Recommendations & Reasons for recommended action:**

That the panel note the contents of this report

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**Alternative options considered and reasons for recommended action:**

Not applicable

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**Background papers:**

Absence Management Annual Survey Report 2011 – Oct 2011, CIPD in partnership with Simplyhealth  
<http://www.cipd.co.uk/hr-resources/survey-reports/absence-management-2011.aspx>

Immunisation against Infectious Disease (Chapter 19 influenza) – Department of Health, 3 Nov 2011  
[http://www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/documents/digitalasset/dh\\_131001.pdf](http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_131001.pdf)

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**Sign off:**

Fin		Leg		HR	MG	Corp Prop		IT		Strat Proc	
Originating SMT Member: Mark Grimley											
Have you consulted the Cabinet Member(s) named on the report? Yes											

## **1. Background**

A report to SSOP on 2 July 2012 reviewed the Council's occupational health provision and the link to sickness absence. It was agreed at the meeting that a quarterly update would be made to SSOP on progress in improving attendance. In addition to this regular update, SSOP asked five specific questions with the request that they were answered in a report to the August meeting. This is the purpose of this report and the headings below reflect each of the five questions.

## **2. Policy**

2.1 SSOP asked to see the council policy for sickness absence; the managing attendance guide and is included at appendix 1 and the capability policy as appendix 2.

## **3. Top 100 cases**

3.1 SSOP asked to see the action plan to address the top 100 sickness absence employees. The current actions are:

- a) HR Advisers meet with departmental management teams on a regular basis to discuss the approach in their service areas for colleagues appearing on the overall top 100 list, both for total number of days off in the last 12 months and Bradford score
- b) HR Advisers meet with line managers for those cases in the top 100 to support individual wellbeing plans to resolve cases. The content of those plans cannot be discussed in this paper as they involve confidential personal information.
- c) Cases in the top 100 that are not showing a clear improvement or path to resolution are nominated for an independent panel meeting led by the HR Management team.

## **4. Sickness absence by job type**

4.1 SSOP asked for a breakdown of sickness absence by administrative staff and manual workers. This is not a standard report provided by our current software systems. We are in the process of switching to a new, comprehensive HR software system and as a result we do not have the resources to be able to give high priority to bespoke report writing within the existing system. We are confident that the new system will provide us with more accurate information and an ability to more easily produce reports, in order to further focus our resources on priority areas to improve attendance.

## **5. Private Sector**

5.1 SSOP asked officers to conduct more research into what the private sector is doing to reduce sickness absence and to consider if any good practice could be used to inform the council's approach.

5.2 The Chartered Institute of Personnel and Development (CIPD) conducts an annual absence management survey across all sectors in the UK<sup>1</sup>. The most recent report was published in October 2011 and is based on 592 responses. The private services sector is reported as having 2 days per year fewer absences per employee, per year than public services sector (7.1 days compared with 9.1 days).

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<sup>1</sup> Absence Management Annual Survey Report 2011 – Oct 2011, CIPD in partnership with Simplyhealth

<http://www.cipd.co.uk/hr-resources/survey-reports/absence-management-2011.aspx>

- 5.3 The key differences identified between private and public sector organisations are:
- a) Pay restrictions – the private sector is far more likely to restrict pay as a means of managing attendance, with 54% reporting that they use this as a means to manage short term absence and 52% for long term absence. 26% of public services sector organisations use pay restrictions for short term absences and 33% for long term. It is not stated in the survey how pay is restricted in any of these cases, although it is stated that 87% of private services sector organisations have occupational sick pay schemes that pay OSP at full salary rate for the first 3 days of absence.
  - b) Private medical insurance – 41% of the private services sector respondents provide medical insurance to their employees, compared with 5% of public sector organisations.
  - c) Attendance bonuses or incentives – 18% of private services sector organisations provide incentives and bonuses for attendance, compared with 5% of public sector organisations.

## 6. Flu vaccination pilot scheme

- 6.1 SSOP asked to see the evidence of the effectiveness of flu vaccinations. This formed part of the evidence supporting the business case for the pilot scheme to provide flu vaccinations for council employees this year. The Department of Health publishes 'Immunisation against Infectious Disease' (widely known as the 'Green Book') which is the standard for medical practitioners in the UK. Chapter 19<sup>2</sup> of the book deals with flu vaccinations and states:
- 6.2 *"...influenza vaccines have been found to give around 60-70% protection against infection ... Protection afforded by the vaccine is known to last for at least one influenza season..."*
- 6.3 To err on the side of caution, the lower figure (60% protection) was used in the business case.

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<sup>2</sup> Immunisation against Infectious Disease (Chapter 19 influenza) – Department of Health, 3 Nov 2011  
[http://www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/documents/digitalasset/dh\\_131001.pdf](http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_131001.pdf)

# MANAGING ATTENDANCE (sickness) GUIDE

Human Resources and Organisational Development



Overview	Approved by
<p>The purpose of this guide is to promote the wellbeing of employees, to ensure a safe working environment and to recognise the need for clear, fair and consistent procedures when managing attendance.</p> <p>All managers are to follow this guide to provide fair and consistent attendance management across the Council. Managing attendance is complex and it is therefore not possible to document how to handle every situation. This guide sets out the usual steps to follow, however there may be additional actions which need to be taken according to the circumstances of each specific situation.</p>	<p>HRMT</p> <hr/> <p><b>Date</b></p> <p>December 2011</p>
In Scope	
All employees	
Key Principles	
<p><b>Sickness reporting</b></p> <ul style="list-style-type: none"> <li>▪ On the first day of sickness, the employee should telephone their line manager at the earliest opportunity, normally within <b>20</b> minutes of the time they were due to start work, or in accordance with departmental guidelines, where different. Only in an exceptional case should the employee ask a third party to telephone on their behalf and where this does happen, the employee should make direct contact with the line manager as soon as reasonably practicable. It is not acceptable to report sickness absence by written communication, such as email or text message.</li> <li>▪ The employee will be asked to provide basic information as to the nature of their sickness or injury and to indicate how long they think their absence may last.</li> <li>▪ Wherever possible, the employee must inform their line manager whether there are any critical tasks/meetings that need to be cancelled or undertaken in their absence.</li> <li>▪ Where the employee is in a period of self-certification, they should call in sick each day, unless instructed otherwise.</li> <li>▪ Where the non-attendance is a result of an accident or injury at work, the employee must state that this is the case and follow the accident reporting procedures in line with the <a href="#">health and safety accident reporting flowchart</a>.</li> </ul> <p><b>Fit notes</b></p> <ul style="list-style-type: none"> <li>▪ Where the employee has been sick for more than seven consecutive days (including non-working days), a fit note from the employee's doctor must be provided. Fit notes should be sent to the line manager promptly and in any event, at latest, within one week of being issued.</li> <li>▪ If the fit note states that the employee 'may be fit for work', the employee may be able to return to work if adjustments are made in accordance with the medical advice. Adjustments may allow the employee to return to restricted duties (in the short term) and should therefore be given full consideration. If it is not reasonably practicable for the employee to return to work in line with any such medical restrictions, they will remain off sick until they have recovered sufficiently to return to work.</li> <li>▪ The Fit Note should state whether the doctor needs to see the employee again before they return to work.</li> </ul>	

- Employees should return to work as soon as they feel well enough. If they propose to return before a fit note runs out, the agreement of the line manager is required.
- Employees who are sick during a period of annual leave should notify their line manager of the situation as soon as possible. Annual leave may be reinstated only where a doctor's fit note is produced promptly, and in any event within a maximum of seven working days of the first day of absence. The employee will then be regarded as being on sick leave from the date of the doctor's fit note. The cost of this sick note will be met by the Council. It is not permissible for employees to use the self-certification process in respect of any period of holiday leave they wish to have reinstated due to sickness.
- If any period of absence is not covered by the self-certification process and there is no doctor's fit note in force, this period will be unpaid and may also lead to disciplinary action being considered.

#### **Maintaining contact during long term sickness (4 weeks or more)**

- The line manager will arrange to keep in touch with the employee by telephone, email or face to face. Face to face meetings can take place in private at the workplace or at another appropriate location. Keeping in touch prevents the employee from feeling isolated and enables the Council to understand more about the nature and likely duration of the illness and any steps that may be taken to assist and support the employee to return to work.
- Managers should consider whether the employee should be referred to occupational health, in particular if there is a concern that there may be an underlying health issue.
- The purpose of the Occupational Health referral is to seek advice on matters such as the employee's health, the likelihood of a return to work, the timescale for any return, the impact the medical condition has upon their continuing ability to work, any reasonable adjustments that may be appropriate, or whether advice should be taken to determine if ill health retirement is an option.
- The referral may be made at any point, when it becomes apparent that the absence will be long-term. Managers do not have to wait until the absence reaches 4 weeks before making a referral.

#### **Return to work discussion (see [Sickness Absence Form](#))**

- Employees are required to attend a return to work meeting after all periods of absence. This should take place on the day the employee returns or as soon as possible thereafter.
- Line managers will decide whether to undertake a risk assessment to ensure the employee will not endanger their health, or the health of others, by carrying out their work.
- If there is a concern about the employee's fitness to work, a line manager may send an employee home, requesting that the employee obtains a statement from their doctor or making a referral to Occupational Health to advise as to fitness to work. Managers should take advice from a HR advisor before taking such steps.

#### **Monitoring sickness absence**

- The attendance of all employees is monitored, so that areas of concern are identified and dealt with appropriately and in a timely manner. Line managers will meet with employees who have met a threshold (see below) to discuss and identify ways to help the employee improve their attendance levels.

The following thresholds will result in an employee being required to attend a Wellbeing Meeting:

- A total of 5 working days/shifts or the equivalent of one working week, on one or more occasions in a rolling 3 month period
- 3 Separate periods of absence in a 3 month period
- 5 days or more in a rolling 12 month period

Please note that thresholds are pro-rated for part time employees.

#### **The Wellbeing Meeting (see [Wellbeing Meeting Form](#))**

Wellbeing meetings are held once a sickness threshold has been met, and focus on discussing the reasons for absence and what support may be needed to help the employee improve their attendance at work.

A wellbeing meeting can take place at the same time as a return to work meeting.

An individual attendance plan will be put into place to encourage improved attendance, which will be

reviewed regularly by the line manager and the employee. The plan may include adjustments (such as changes to hours or duties) to help improve the attendance levels of the employee, and/or a referral to Occupational Health (if appropriate).

The plan will be put in writing by the line manager and a copy will be placed onto the employee's personal file.

The line manager will review the plan as appropriate, such as at one to one sessions or during supervision. If the employee has further sickness absence that meets or exceeds a threshold for a second time within a rolling 12 months, a further wellbeing meeting will take place.

### **Continued absences following a wellbeing meeting**

If the employee is absent again following the wellbeing meeting, the manager should review the employee's rolling 12 months' absence history from the date of the most recent absence. If the employee still meets one or more sickness thresholds, a further wellbeing meeting should be held.

This further meeting is to decide whether any additional steps or support may be implemented to help the employee to improve their attendance levels.

If there is an underlying health condition or a potential disability, the employee should be referred to occupational health (if they haven't been referred already). At this point the manager must ensure they have explored all reasonable options with the employee to help their attendance to improve. The outcomes of this meeting will depend on the level of the attendance and surrounding circumstances, and may include the following:

- Allow the employee a further opportunity to improve their attendance levels, offering support and assistance as appropriate.
- Implement such adjustments as are reasonable for employees who have or may have a disability.
- If the level of absence is unsustainable and improvement does not appear likely in the foreseeable future (particularly where the absence is negatively impacting on the employee's colleagues or department), the line manager may invoke the capability policy. In cases where an employee is still on their probation, and has more than five days sickness absence they will be managed under the Probationary Policy.

The following information will often be used for the purposes of the capability process: return to work discussion forms, wellbeing meeting notes and attendance plan, and Occupational Health reports and/or other relevant medical reports.

### **Phased return to work**

If a phased return to work is appropriate, a programme should be drawn up by the line manager and employee, supported as appropriate by Occupational Health or the employee's doctor (normally through the issue of a fit note). These programmes are designed to gradually increase the employee's working hours and range of tasks until they are working their full normal duties.

A phased return programme should be specific in outlining the hours that are to be worked each week. The phased return will normally last between 2 and 8 weeks. In an exceptional case, a longer period may be considered, however if the programme lasts longer than 8 weeks the employees' pay may need to be temporarily reduced if the employee is unable to work their full contractual hours.

A [phased return to work form](#) detailing the agreed hours / duties must be completed, and a copy forwarded to the payroll team to enable accurate sickness recording and monitoring. For payroll purposes, a monthly submission should be made.

All phased return to work programmes should be put in writing and a copy kept on the employee's personal file.

The minimum number of hours an employee can work on a phased return is normally a half-day e.g. if an employee works 5 hours a day, they must do a minimum of 2.5 hours a day.

Under no circumstances should an employee accrue flexitime or time off in lieu when they are on a phased return to work programme.

Should unrelated periods of sickness occur (i.e. causing the employee to be absent during their agreed hours), the sickness should be reported. Payroll will input these additional absences.

If at the end of the phased return to work the employee has been unable to return to normal working

hours and duties, a wellbeing meeting will take place to determine if the case needs to transfer to the capability policy or whether further medical advice is required before further decisions should be made.

### **Reasonable adjustments**

Reasonable adjustments may be required to assist and support an employee to return to and stay in work. Adjustments may be part of a phased return to work or may be a permanent change in the role. Any adjustments must be discussed and agreed by both the line manager and the employee, with HR and medical input as appropriate. There should be regular reviews to ensure that the adjustments remain necessary and continue to be effective, and to consider whether any additional adjustments may be appropriate.

### **Redeployment**

Redeployment of the employee may be considered in appropriate circumstances, which include the following;

- The medical advice indicates that the employee will be unable to return to work within a reasonable timescale;
- The medical advice indicates that the employee is unlikely to be able to maintain employment in their current post;
- The medical advice recommends that adjustments are made but the line manager is unable to reasonably accommodate such adjustments.

Where this takes place, the employee will join the redeployment register for a reasonable timeframe, usually one month, and will be sent details of vacancies. It is the employee's responsibility to identify and apply for suitable vacancies. The employee has to demonstrate that they meet the essential requirements of any job for which they wish to be considered, or that they could do so with reasonable training.

As part of the redeployment process, an Occupational Health referral may be arranged to determine whether any potential role is suitable in the light of the employee's medical condition and whether any adjustments may be required.

Where a role appears suitable, the employee will be offered a trial period in the new role. During the trial the employee will remain on their existing salary unless the hours are substantially lower. If appointed to the new post following the trial period, the normal salary arrangements for that post will apply.

If an employee is not successful in finding a suitable alternative employment, the manager may convene a final capability hearing to review the case. Advice should be sought from the HR Adviser prior arranging such a meeting.

### **Ill health retirement**

If an independent occupational health physician recommends retirement on the grounds of ill health, the line manager will arrange a meeting to discuss this with the employee. It is not possible to obtain an estimate of benefits until ill health retirement has been approved.

### **Elective surgery**

Employees should apply for annual leave when they wish to have elective surgery (elective means that the employee chooses to have the treatment when it has not specifically been recommended on medical grounds). Annual leave should cover the time in hospital and the planned recuperation period following surgery.

Where an individual has surgery for reconstruction or to improve their appearance due to a disfigurement, or as a result of injury or illness, then sick pay will be paid in accordance with the usual arrangements. Line managers are entitled to ask for evidence of appointments, such as appointment cards, and letters that outline the expected recovery period.

### **Occupational health**

Should the employee decline an appointment for Occupational Health assessment and advice, or following an appointment, decline the provision of an Occupational Health report, it may be necessary to make decisions about the employee's future employment without the benefit of such medical evidence.



If an employee agrees to the appointment and then fails to attend without notice or without good reason, and a cancellation charge is made, this cost may be passed on to the employee or disciplinary action may be considered.

**Failure to comply with managing attendance procedure**

Employees who fail to follow the notification procedures and / or provide misleading or false statements in relation to their health or any matter relating to sickness absence may face deductions in pay, withdrawal of self-certification and/or disciplinary action.

Other relevant guide/policies	Relevant legislation
<a href="#">Capability Policy</a> Disciplinary Policy <a href="#">Sickness Absence Form</a> <a href="#">Wellbeing Meeting Form</a> <a href="#">Guide to pro-rating</a>	Employment Rights Act 1996 Equality Act 2010

# CAPABILITY POLICY

Human Resources and Organisational Development



**PLYMOUTH**  
CITY COUNCIL

1. Policy	Approved by
<p>Plymouth City Council is committed to continuous improvement to ensure excellent service delivery. Improvement is dependent on the ability of employees to achieve and maintain expected standards of performance. Employees are expected to be competent and able to undertake the duties of the post for which they are employed.</p> <p>This document provides a formal framework to encourage improvement amongst employees whose performance or attendance is regarded as unsatisfactory or unsustainable. It also sets out the steps to follow where consideration may need to be given to terminating employment on the ground of capability.</p>	<p>HR and OD Management Team</p> <hr/> <p><b>Date</b></p> <p>December 2011</p>
2. In Scope	
<p>Situations covered by this policy are:</p> <ul style="list-style-type: none"> <li>▪ unsatisfactory performance related to skills / abilities;</li> <li>▪ unsatisfactory performance related to health, whether due to inability to meet the required standards of performance for the role or due to attendance (sickness absence)</li> </ul>	
3. Out of Scope	
<ul style="list-style-type: none"> <li>▪ Employees in their probationary period: please refer to the probation policy and procedure.</li> <li>▪ Action or Dismissal on the ground of Some Other Substantial Reason.</li> <li>▪ Action or Dismissal on the ground of the employee's conduct: please refer to the Disciplinary Policy.</li> </ul>	
4. Key Principles	
<p>In the first instance and where appropriate, capability issues should normally be dealt with informally under the Managing Individual Performance Guide or <a href="#">Managing Attendance (Sickness) Guide</a>.</p> <p>There are three stages to the formal capability procedure:</p> <p>STEP 1: Investigation, recommendation and if appropriate, preparation for hearing.</p> <p>STEP 2: The hearing, which can relate to:</p> <p style="padding-left: 40px;"><i>Unsatisfactory performance related to skills: (section 2.1) and / or</i> <i>Unsatisfactory performance related to health: (section 2.2).</i></p>	

## STEP 3: The right to appeal

### **Consideration of suspension**

In exceptional circumstances it may be necessary to consider suspending an employee, for example, where their attendance or performance at work is placing them or others at risk, is affecting the delivery of service, or where there is a risk that these things may happen. In such circumstances, suspension may be deemed necessary or desirable whilst an investigation and / or hearing is conducted. Any decision to suspend will normally be made by the Assistant Director or delegated officer in consultation with an HR Adviser.

Suspension is always on normal contractual pay and is not itself any form of sanction, nor does the fact of suspension give rise to any implication that formal action will or should be taken against the employee on the ground of capability. The reasons for suspension must be stated in writing to the employee using the [standard suspension letter](#). This letter should set out the reasons for the suspension and any restrictions which apply to the employee during the period of suspension.

### **The right to be accompanied**

Suspension and Investigatory Meetings: the manager will normally permit the employee to be accompanied at such a meeting, provided it is practical and reasonable to do so in the circumstances and it does not cause undue delay to the process.

Formal Hearings: the employee has the right to be accompanied by a companion who is either a trade union representative or a workplace colleague.

The companion can:

- Put forward the employee's case, by making representations, questioning management witnesses and calling evidence on behalf of the employee, sum up the employee's case at the conclusion of the evidence, and respond on the employee's behalf to any view expressed at the hearing.

The companion is not permitted to answer questions posed directly to the employee in relation to the capability issues under consideration.

### **Conflict of interest**

If any person involved in the formal process (whether at the investigatory, hearing or appeal stages) believes that they may have a conflict of interest or that there is any good reason why they should not be involved in the process, they should seek immediate guidance from a HR advisor.

## **5. Step 1 – Investigation, Recommendation and Preparation**

### **Investigation and Recommendation**

An investigation will be conducted by an appropriate manager (often the line manager), to gather evidence relating to the capability issues, to compile a report and to make a recommendation as to next steps. Managers should refer to the [Managing Investigations Guide](#).

Following the preparation of the investigation report, the case will be reviewed by a more senior manager and a decision will be reached as to whether a formal hearing is necessary.

The employee must co-operate with the investigation process. Willful refusal to do so may be regarded as a disciplinary offence and may result in disciplinary action being taken. If the employee wishes to submit any evidence during the process, they should do so during the course of the

investigation so that this information can be taken into account. If the employee fails to submit such evidence at the investigation stage, it is possible that the Chair of the formal hearing will refuse to accept it, unless there are extenuating circumstances which adequately explain why evidence was not submitted earlier or the Chair takes the view that due its relevance, the evidence must be heard in any event.

If, at any stage during the investigation process, it appears that the matter is one of conduct rather than capability, the investigation should transfer to the [Disciplinary Policy](#).

### **Preparation for hearings**

Formal hearings are normally chaired by a senior manager, supported by a HR Adviser. A note taker will be in attendance.

The employee will be notified of the specific capability issues, the potential gravity of the situation (and specifically whether dismissal may be a consideration), the arrangements for the hearing, and provided with a copy of the investigation report and any supporting evidence no less than 5 working days in advance of the hearing. The employee should be told which witnesses management have asked to attend. Similarly, the employee should notify management in advance of the hearing of any witnesses he intends to call to give evidence.

Management will endeavour to set the meeting for a mutually convenient date within a reasonable timescale. Once the date has been set, an application by the employee to change the date of the meeting may be accepted if there is good reason. A second and final date will be offered, usually not more than five working days after the original date. Save where there are particular extenuating circumstances, no further changes to the timing of the meeting will be offered and the employee will be informed that if they do not attend, the meeting may go ahead in their absence.

If the employee fails to attend the hearing, advice from a HR Adviser should be sought. A decision may be made to proceed without the attendance of the employee, on the basis of the evidence available. In cases where the employee has trade union representation, they may present the employee's case in the employee's absence (provided the employee has given them authority to do so) and in any case, the employee will be permitted to make written representations.

## **6. Step 2 – The Hearing**

### **Hearing outcomes**

The potential outcome of a capability hearing is one of the following:

- No formal action, first advisory notice, final advisory notice, dismissal (with notice)

#### **2.1 Unsatisfactory performance related to skills**

Formal hearings are held where an employee has failed to reach the required standards of performance following a performance improvement plan and/or where an employee's level of performance amounts to a serious shortfall, often involving a risk to themselves, their colleagues, service users or other third parties or to members of the public.

The purpose of the hearing is to:

- Consider the evidence as to the employee's standards of performance against targets and objectives.
- Consider the impact of the individual's performance on the service, colleagues, customers, service users and other relevant third parties.
- Consider the extent of any support provided to date and whether and to what extent it

would be reasonable to provide further support.

- Consider any mitigating circumstances.
- Determine what, if any action should be taken.

A further outcome of a capability hearing (save where the outcome is dismissal) will normally be to issue an appropriate advisory notice, detailing matters such as the following:

- How and why the employee has underperformed.
- Any targets, standards and/or competencies to be achieved by the employee and details of the applicable timescales for such improvement.
- Information as to any adjustments, training, supervision or support to be offered to the employee.
- Details of any performance monitoring arrangements and information as to the dates on which any further performance reviews will take place
- The likely consequences of failing to meet the required standards of performance.

A performance capability hearing will not normally result in a dismissal unless one or more previous advisory notices have been given. While the standard process will be to issue a first and a final advisory notice before dismissal is a consideration, it may not be appropriate to do so in every case. If dismissal is a potential consideration without having first issued a first and a final advisory notice, advice should be sought from a HR adviser.

In cases of very serious performance issues which appear to be the result of misconduct as opposed to capability, or gross negligence (misconduct) the case should be dealt with under the Disciplinary Policy.

## **2.2 Unsatisfactory performance or attendance relating to health**

Formal hearings are likely to be held in the following circumstances:

- Where an employee has been absent from work due to long term sickness and is unable to return to work, either in the foreseeable future or at all.
- Where an employee's high levels of sickness absence (in terms of frequency or duration, or both) and has therefore not met the required levels of attendance and / or performance.
- Where an employee is able to attend work regularly but is unable to perform to the required standards due to issues relating to his health.

The purpose of the hearing is to:

- Consider the evidence as to the employee's standards of attendance and / or performance.
- Consider the impact the employee's health may have had on their levels of attendance and / or performance.
- Consider the extent of any adjustments or support provided to date, the effectiveness of such measures and whether and to what extent it would be reasonable to provide further adjustments or support to encourage or enable the employee to meet the required standards.
- Where appropriate, consider any medical advice (eg from Occupational Health or the employee's medical advisors).
- Consider the wider impact of the employee's attendance or performance issues, such as the effects on the employee's colleagues, department or service, clients, service users or other relevant third parties.
- Determine whether the employee has a medical condition which amounts, or is likely to amount to a disability. If so, consider whether and to what extent reasonable adjustments have been put in place to accommodate the needs of the employee, the effectiveness of such adjustments and whether and to what extent further adjustments may reasonably be made.

- Where appropriate, discuss with the employee the possibility of redeployment.
- Determine what, if any, action should be taken.

A further outcome of a capability hearing (save where the outcome is dismissal) will normally be to issue an appropriate advisory notice, detailing matters such as the following:

- How and why the employee has failed to meet the required standards of attendance and / or performance.
- Any targets, standards and / or competencies to be achieved by the employee and details of the applicable timescales for such improvement.
- Information as to any adjustments, training, supervision or support to be offered to the employee.
- Details of any attendance or performance monitoring arrangements and information as to the dates on which any further reviews will take place
- The likely consequences of failing to meet the required standards of attendance and / or performance.

A health-related capability hearing will not normally result in a dismissal unless one or more previous advisory notices have been given. While the standard process will be to issue a first and a final advisory notice before dismissal is a consideration, it may not be appropriate to do so in every case. If dismissal is a potential consideration without having first issued a first and a final advisory notice, advice should be sought from a HR adviser.

An example of a case where consideration may be given to dismissal without prior advisory notices having been issued is where there is clear medical evidence that the employee will not be able to return to work in either the short or longer term and that no adjustment or support is likely to change this.

In cases of very serious performance issues which appear to be the result of misconduct as opposed to capability, or gross negligence (misconduct) the case should be dealt with under the Disciplinary Policy.

### **Further Guidance as to Hearing Outcomes**

In addition to the four main outcomes set out above, the following guidance should be noted:

- Where there is no underlying health condition which could be considered to be a disability, a first or final advisory notice may be issued in the first instance, depending on the circumstances. The employee will be advised as to how their absences and / or performance will be monitored in the future and under what circumstances consideration may be given to further action being taken under the this policy.
- Where the employee has or is likely to have a disability and reasonable adjustments have not improved attendance or performance, an advisory notice can be issued which details any alternative measures agreed at the hearing (e.g. a reduction in hours, amendments to duties or transfer into an alternative position within the department). The effectiveness of such further measures will be monitored and the employee advised under what circumstances consideration may be given to further action being taken under this policy.
- A further potential outcome of a capability hearing for a disabled employee may be that they wish to seek alternative employment or early/flexible retirement. If the employee wishes to be considered for alternative roles they will be placed in the redeployment register for at least one month to seek alternative employment. Failure to find alternative employment will normally lead to a further capability hearing.
- An employee may be dismissed on the ground of capability where appropriate. Examples of such cases will include the following:

- The employee is unfit / unsuitable due to medical reasons to fulfil the duties of his post and is likely to remain so for the foreseeable future, even, in the case of disabled employee, with reasonable adjustments being made.
- The employee is unfit / unsuitable due to medical reasons to fulfil the duties of any suitable alternative role which is available to him and is likely to remain so for the foreseeable future, even, in the case of a disabled employee, with reasonable adjustments being made.
- All reasonable attempts to support the employee in their role have been unsuccessful in enabling the employee to meet the required standards of attendance and / or performance.

Employees in the pension scheme can be considered for capability ill-health retirement if they meet the relevant criteria.

## 7.

### **RIGHT OF APPEAL**

All employees have the right to appeal against the outcome of a formal capability hearing. Please refer to the Appeals Policy (General) and Appeals Policy (Dismissal).

### **8. Other relevant guide/policies**

### **Relevant legislation**

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| <ul style="list-style-type: none"> <li>▪ <a href="#">Probation Policy</a></li> <li>▪ Individual Performance Management Guide</li> <li>▪ <a href="#">Managing Attendance (Sickness) Guide</a></li> <li>▪ <a href="#">Disciplinary Policy</a></li> <li>▪ <a href="#">Redeployment Support Pack</a></li> <li>▪ <a href="#">Appeals Policy (General)</a></li> <li>▪ <a href="#">Appeals Policy (Dismissal)</a></li> </ul> | <ul style="list-style-type: none"> <li>▪ Employment Rights Act 1996</li> <li>▪ Equality Act 2010</li> </ul> |
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