

## Woughton Community Council

# Capability and Sickness Management Procedures

These procedures are provided for information only and do not form part of your contract of employment, although these procedures may be referred to in your Contract of Employment (or Terms and Conditions).

## 1. Capability Procedure

The primary aim of this procedure is to provide a framework within which managers can work with employees to maintain satisfactory performance standards and to ensure improvement where necessary.

It is our policy to ensure that concerns over performance are dealt with fairly and that steps are taken to establish the facts and to give employees the opportunity to respond at a hearing before any formal action is taken.

This policy is used to deal with poor performance. It does not apply to cases involving genuine sickness absence or misconduct. In those cases reference should be made to the appropriate policy or procedure in this Handbook namely the Sickness Management procedure and the Disciplinary procedure.

### Identifying performance issues

In the first instance, performance issues should normally be dealt with informally between you and your line manager as part of day-to-day management. Where appropriate, a note of any such informal discussions may be placed on your personnel file but will be ignored for the purposes of any future capability hearings. The formal procedure should be used for more serious cases, or in any case where an earlier informal discussion has not resulted in a satisfactory improvement. Informal discussions may help:

- Clarify the required standards;
- Identify areas of concern;
- Establish the likely causes of poor performance and identify any training needs; and/or set targets for improvement and a time-scale for review.

Employees will not normally be dismissed for performance reasons without previous warnings. However, in serious cases of gross negligence, or in any case involving an employee who has not yet completed their probationary period, dismissal without previous warnings may be appropriate.

If we have concerns about your performance, we will undertake an assessment to decide if there are grounds for taking formal action under this procedure. The procedure involved will depend on the circumstances but may involve reviewing your personnel file including any appraisal records, gathering any relevant documents, monitoring your work and, if appropriate, interviewing you and/or other individuals confidentially regarding your work.

### Disabilities

Consideration will be given to whether poor performance may be related to a disability and, if so, whether there are reasonable adjustments that could be made to your working arrangements,

including changing your duties or providing additional equipment or training. We may also consider making adjustments to this procedure in appropriate cases.

If you wish to discuss this or inform us of any medical condition you consider relevant, you should contact your line manager or the Head of Business Support.

### **Confidentiality**

Our aim is to deal with performance matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with a matter which is subject to this capability procedure.

You, and anyone accompanying you (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure. You will normally be told the names of any witnesses whose evidence is relevant to your capability hearing, unless we believe that a witness's identity should remain confidential.

### **Notification of a capability hearing**

If we consider that there are grounds for taking formal action over alleged poor performance, you will be required to attend a capability hearing. We will notify you in writing of our concerns over your performance, the reasons for those concerns, and the likely outcome if we decide after the hearing that your performance has been unsatisfactory. We will also include the following where appropriate:

- A summary of relevant information gathered as part of any investigation;
- A copy of any relevant documents which will be used at the capability hearing;
- A copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case we will give you as much information as possible while maintaining confidentiality.

We will give you written notice of the date, time and place of the capability hearing. The hearing will be held as soon as reasonably practicable, but you will be given a reasonable amount of time, usually 2 to 5 working days, to prepare your case based on the information we have given you.

### **Right to be accompanied at hearings**

You may bring a companion to any capability hearing or appeal hearing under this procedure. The companion may be a work colleague or trade union representative. You must tell the manager conducting the hearing who your chosen companion is, in good time before the hearing. Your companion may make representations, ask questions, and sum up your case, but will not be allowed to answer questions on your behalf. You may confer privately with your companion at any time during the hearing.

A companion is allowed reasonable time off from duties without loss of pay but no-one is obliged to act as a companion if they do not wish to do so.

If your choice of companion is unreasonable we may require you to choose someone else, for example:

- If in our opinion your companion may have a conflict of interest or may prejudice the hearing; or
- If your companion works at another site and someone reasonably suitable is available at the site at which you work; or
- If your companion is unavailable at the time a hearing is scheduled and will not be available for more than 5 working days.

## **Procedure at capability hearings**

If you or your companion cannot attend the hearing you should inform us immediately and we will usually arrange an alternative time. You must make every effort to attend the hearing, and failure to attend without good reason may be treated as misconduct in itself. If you fail to attend without good reason, or are persistently unable to do so (for example, for health reasons), we may have to take a decision based on the available evidence.

The hearing will normally be held by your line manager or a more senior manager and may be attended by the Council Manager or a member of the Councillor Group (usually Chair of Operations, Chair of Council or Council Leader) if available.

You may ask relevant witnesses to appear at the hearing, provided you give us sufficient advance notice to arrange their attendance. You will be given the opportunity to respond to any information given by a witness. However, you will not normally be permitted to cross-examine witnesses unless, in exceptional circumstances, we decide that a fair hearing could not be held otherwise. The aims of a capability hearing will usually include:

- Setting out the required standards that we believe you may have failed to meet, and going through any relevant evidence that we have gathered;
- Allowing you to ask questions, present evidence, call witnesses, respond to evidence and make representations;
- establishing the likely causes of poor performance including any reasons why any measures taken so far have not led to the required improvement;
- Identifying whether there are further measures, such as additional training or supervision, which may improve performance;
- Where appropriate, discussing targets for improvement and a time-scale for review.

If dismissal is a possibility, establishing whether there is any likelihood of a significant improvement being made within a reasonable time and whether there is any practical alternative to dismissal, such as redeployment.

A hearing may be adjourned if we need to gather any further information or give consideration to matters discussed at the hearing. You will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

We will inform you in writing of our decision and our reasons for it, usually within 5 working days of the capability hearing. Where possible we will also explain this information to you in person.

### **Stage 1 hearing: first written warning**

Following a Stage 1 capability hearing, if we decide that your performance is unsatisfactory, we will give you a first written warning, setting out:

- The areas in which you have not met the required performance standards;
- Targets for improvement;
- Any measures, such as additional training or supervision, which will be taken with a view to improving performance;
- A period for review;
- The consequences of failing to improve within the review period, or of further unsatisfactory

performance.

A first written warning may be authorised by a manager.

The warning will normally remain active for 12 months from the end of the review period, after which time it will be disregarded for the purposes of the capability procedure.

Your performance will be monitored during the review period and we will write to inform you of the outcome:

- If your line manager is satisfied with your performance, no further action will be taken;
- If your line manager is not satisfied, the matter may be progressed to a Stage 2 capability hearing; or
- If the manager feels that there has been a substantial but insufficient improvement, the review period may be extended.

### **Stage 2 hearing: final written warning**

If your performance does not improve within the review period set out in a first written warning, or if there is further evidence of poor performance while your first written warning is still active, we may decide to hold a Stage 2 capability hearing. We will send you written notification as set out above.

Following a Stage 2 capability hearing, if we decide that your performance is unsatisfactory, we will give you a final written warning, setting out:

- The areas in which you have not met the required performance standards;
- Targets for improvement;
- Any measures, such as additional training or supervision, which will be taken with a view to improving performance;
- A period for review; and
- The consequences of failing to improve within the review period, or of further unsatisfactory performance.

A final written warning may be authorised by a senior manager.

A final written warning will normally remain active for 12 months from the end of the review period. After the active period, the warning will remain permanently on your personnel file but will be disregarded in deciding the outcome of future capability proceedings.

Your performance will be monitored during the review period and we will write to inform you of the outcome:

- If your line manager is satisfied with your performance, no further action will be taken;
- If your line manager is not satisfied, the matter may be progressed to a Stage 3 capability hearing; or
- If the manager feels that there has been a substantial but insufficient improvement, the review period may be extended.

### **Stage 3 hearing: dismissal or redeployment**

We may decide to hold a Stage 3 capability hearing if we have reason to believe:

- Your performance has not improved sufficiently within the review period set out in a final written warning;
- Your performance is unsatisfactory while a final written warning is still active; or
- Your performance has been grossly negligent such as to warrant dismissal without the need for

a final written warning.

We will send you written notification of the hearing as set out above.

Following the hearing, if we find that your performance is unsatisfactory, we may consider a range of options including:

- Dismissing you;
- Redeploying you into another suitable job at the same or (if your contract permits) a lower grade;
- Extending an active final written warning and setting a further review period (in exceptional cases where we believe a substantial improvement is likely within the review period);
- Giving a final written warning (where no final written warning is currently active).

The decision may be authorised by the Operations Manager, Council Manager or, in exceptional circumstances, a member of the Council.

Dismissal will normally be with full notice or payment in lieu of notice, unless your performance has been so negligent as to amount to gross misconduct, in which case we may dismiss you without notice or any pay in lieu.

### **Appeals against action for poor performance**

If you feel that a decision about poor performance under this procedure is wrong or unjust you should appeal in writing, stating your full grounds of appeal, to the Operations Manager or Council Manager within 5 working days of the date on which you were informed in writing of the decision.

If you are appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if your appeal is successful you will be reinstated with no loss of continuity or pay.

If you raise any new matters in your appeal, we may need to carry out further investigation. If any new information comes to light we will provide you with a summary including, where appropriate, copies of additional relevant documents and witness statements. You will have a reasonable opportunity to consider this information before the hearing.

We will give you written notice of the date, time and place of the appeal hearing. This will normally be 2 to 5 working days after you receive the written notice.

The appeal hearing may be a complete re-hearing of the matter or it may be a review of the fairness of the original decision in the light of the procedure that was followed and any new information that may have come to light. This will be at our discretion depending on the circumstances of your case. In any event the appeal will be dealt with as impartially as possible.

Where possible, the appeal hearing will be conducted by a more senior manager who has not been previously involved in the case. The Council Manager, Operations Manager or another Service

Manager, where available, and/or the manager who conducted the capability hearing will also usually be present. You may bring a companion with you to the appeal hearing (see above).

A hearing may be adjourned if we need to gather any further information or give consideration to matters discussed at the hearing. You will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

Following the appeal hearing we may:

- Confirm the original decision;
- Revoke the original decision; or
- Substitute a different penalty.

We will inform you in writing of our final decision as soon as possible, usually within 5 working days of the appeal hearing. Where possible we will also explain this to you in person. There will be no further right of appeal.

## **2. Sickness Management Procedure**

This Sickness Management Procedure sets out our procedures for the management of sickness absence in a fair and consistent way. This procedure covers all our employees.

Sickness absence can vary from short intermittent periods of ill-health to a continuous period of long-term absence and have a number of different causes (for example injuries, recurring conditions or a serious illness requiring lengthy treatment).

We wish to ensure that the reasons for sickness absence are understood in each case and investigated where necessary. In addition, where needed and reasonably practicable, measures will be taken to assist those who have been absent by reason of sickness to return to work.

### **Disabilities**

We are aware that sickness absence may result from a disability. At each stage of the sickness absence meetings procedure as set out in this policy, particular consideration will be given to whether there are reasonable adjustments that could be made to the requirements of a job or other aspects of working arrangements that will provide support at work and/or assist a return to work.

If you consider that you are affected by a disability or any medical condition which affects your ability to undertake your work, you should inform the Operations Manager or your line manager.

### **Unauthorised absence**

Cases of unauthorised absence will be dealt with under our Disciplinary Procedure.

Absence that has not been notified according to the sickness absence reporting procedure will be treated as unauthorised absence.

If you do not report for work and have not telephoned your line manager or other manager to explain the reason for your absence, your line manager or senior manager will try to contact you, by telephone and in writing if necessary. This should not be treated as a substitute for reporting sickness absence.

Please also refer to the Sickness Policy which details actions taken if absent without notice.

### **Keeping in contact during sickness absence**

If you are absent on sick leave you should expect to be contacted from time to time by your manager and / or any relevant person who may be working together with you on specific tasks or projects in order to discuss your wellbeing, expected length of continued absence from work and

any of your work that requires attention. Such contact is intended to provide reassurance and will be kept to a reasonable minimum.

If you have any concerns while absent on sick leave, whether about the reason for your absence or your ability to return to work, you should feel free to contact your manager at any time.

### **Returning to work from long-term sickness absence**

We are committed to helping employees return to work from long-term sickness absence. As part of our sickness absence meetings procedure we will, where appropriate and possible, support returns to work by:

- Obtaining medical advice;
- Making reasonable adjustments to the workplace, working practices and working hours;
- Considering redeployment; and/or
- Agreeing a return to work programme with everyone affected.

If you are unable to return to work in the longer term, we will consider whether you are entitled to any benefits under your contract and/or any insurance schemes we operate.

### **Sickness absence meetings procedure**

We may apply this procedure whenever we consider it necessary, including, for example, if you:

- Have been absent due to illness on a number of occasions;
- Have discussed matters at a return to work interview that require investigation; and/or
- Have been absent for more than 10 working days.

Unless it is impractical to do so, we will give you 2 to 5 working days written notice of the date, time and place of a sickness absence meeting. We will put any concerns about your sickness absence and the basis for those concerns in writing or otherwise advise why the meeting is being called. A reasonable opportunity for you to consider this information before a meeting will be provided.

The meeting will be conducted by your manager and will normally be attended by the Operations Manager or another Service Manager, as available and practical. You may bring a companion with you to the meeting.

You must take all reasonable steps to attend a meeting. Failure to do so without good reason may be treated as misconduct. If you or your companion are unable to attend at the time specified you should immediately inform your manager who will seek to agree an alternative time.

A meeting may be adjourned if your manager is awaiting receipt of information, needs to gather any further information or give consideration to matters discussed at a previous meeting. You will

be given a reasonable opportunity to consider any new information obtained before the meeting is reconvened.

Confirmation of any decision made at a meeting, the reasons for it and of the right of appeal will usually be given to you in writing within 5 working days of a sickness absence meeting (unless this time scale is not practicable, in which case it will be provided as soon as is practicable).

If, at any time, your manager considers that you have taken or are taking sickness absence when you are not unwell, they may refer matters to be dealt with under our Disciplinary Procedure.

### **Right to be accompanied at meetings**

You may bring a companion to any meeting or appeal meeting under this procedure.

Your companion may be either a trade union representative or a fellow work colleague. Their identity must be confirmed to the manager conducting the meeting, in good time before it takes place.

Employees are allowed reasonable time off from duties without loss of pay to act as a companion. However, they are not obliged to act as a companion and may decline a request if they so wish.

Some companions may not be allowed: for example, anyone who may have a conflict of interest, or whose presence may prejudice a meeting. Companions should not normally work at another site, unless no-one reasonably suitable is available at the site at which you work.

A companion may make representations, ask questions, and sum up your position, but will not be allowed to answer questions on your behalf. You may confer privately with your companion at any time during a meeting.

### **Stage 1: first sickness absence meeting**

This will follow the procedure set out in paragraphs on the arrangements for and right to be accompanied at sickness absence meetings. The purposes of a first sickness absence meeting may include:

- Discussing the reasons for absence;
- Where you are on long-term sickness absence, determining how long the absence is likely to last;
- Where you have been absent on a number of occasions, determining the likelihood of further absences;
- Considering whether medical advice is required;
- Considering what, if any, measures might improve your health and/or attendance;
- Agreeing a way forward, action that will be taken and a time-scale for review and/or a further meeting under the sickness absence procedure.

### **Stage 2: further sickness absence meeting(s)**

Depending on the matters discussed at the first stage of the sickness absence procedure, a further meeting or meetings may be necessary. Arrangements for meetings under the second stage of the sickness absence procedure will follow the procedure set out in the paragraphs on the

arrangements for and right to be accompanied at sickness absence meetings. The purposes of further meeting(s) may include:

- Discussing the reasons for and impact of your ongoing absence(s);
- Where you are on long-term sickness absence, discussing how long your absence is likely to last;
- Where you have been absent on a number of occasions, discussing the likelihood of further absences;
- if it has not been obtained, considering whether medical advice is required. If it has been obtained, considering the advice that has been given and whether further advice is required;
- Considering your ability to return to/remain in your job in view both of your capabilities and our business needs and any adjustments that can reasonably be made to your job to enable you to do so;
- Considering possible redeployment opportunities and whether any adjustments can reasonably be made to assist in redeploying you;
- Where you are able to return from long-term sick leave, whether to your job or a redeployed job, agreeing a return to work programme;
- If it is considered that you are unlikely to be able to return to work from long-term absence, whether there are any benefits for which you should be considered;
- Agreeing a way forward, action that will be taken and a time-scale for review and/or a further meeting(s). This may, depending on steps we have already taken, include warning you that you are at risk of dismissal.

### **Stage 3: final sickness absence meeting**

Where you have been warned that you are at risk of dismissal, we may invite you to a meeting under the third stage of the sickness absence procedure. Arrangements for this meeting will follow the procedure set out in paragraphs on the arrangements for and right to be accompanied at sickness absence meetings. The purposes of the meeting will be:

- To review the meetings that have taken place and matters discussed with you;
- where you remain on long-term sickness absence to consider whether there have been any changes since the last meeting under stage two of the procedure; either as regards your possible return to work or opportunities for return or redeployment;
- To consider any further matters that you wish to raise;
- To consider whether there is a reasonable likelihood of you returning to work or achieving the

- desired level of attendance in a reasonable time;
- To consider the possible termination of your employment.

Termination will normally be with full notice or payment in lieu of notice.

## Appeals

You may appeal against the outcome of any stage of this procedure and you may bring a companion (as referred to above in this procedure) to an appeal meeting.

An appeal should be made in writing, stating the full grounds of appeal, to the Council Manager, or a person more senior to the person who facilitated the sickness absence meetings, within 5 working days of the date on which the decision was sent to you.

Unless it is not practicable, you will be given written notice of an appeal meeting within 1 week of the meeting. In cases of dismissal the appeal will be held as soon as possible. Any new matters raised in an appeal may delay an appeal meeting if further investigation is required.

You will be provided with written details of any new information which comes to light before an appeal meeting. You will also be given a reasonable opportunity to consider this information before the meeting.

Where practicable, an appeal meeting will be conducted by a person senior to the individual who conducted the sickness absence meeting.

Depending on the grounds of appeal, an appeal meeting may be a complete rehearing of the matter or a review of the original decision.

Following an appeal the original decision may be confirmed, revoked or replaced with a different decision. The final decision will be confirmed in writing, if possible within 5 working days of the appeal meeting. There will be no further right of appeal.

The date that any dismissal takes effect will not be delayed pending the outcome of an appeal. However, if the appeal is successful, the decision to dismiss will be revoked with no loss of continuity or pay.

<b>Last review date:</b>	<b>August 2020</b>
<b>Next review date:</b>	<b>August 2022</b>
<b>Lead:</b>	<b>Operations Manager</b>
<b>Overseeing Committee:</b>	<b>Operations</b>
<b>Approved:</b>	
<b>Review cycle:</b>	<b>2 yearly and/or as per legislation</b>