



## **Capability Policy and Procedure**

### **Reviewed and agreed: Full Council Committee meeting 22nd April 2021- Agenda item 7**

This policy is designed to ensure that all instances of repeated short-term absence are dealt with fairly and consistently and to encourage an improvement in individual attendance at work. It outlines the procedures that the Council will follow should there be a need to take action in respect of repeated short-term absence and your right to appeal. The Council reserves the right not to follow this Procedure if you have less than 24 months' continuous service.

### **Your entitlements and responsibilities**

The Council aims to deal with instances of repeated short-term absence fairly and consistently. You have the right to appeal against a decision the Council makes at a formal meeting related to your repeated short-term absences from work. In these cases, the Council will make every effort for the appeal to be dealt with by a different manager to the person who dealt with the matter initially. The Council's decision at the appeal stage is final and there is no further right of appeal. You have a responsibility to assist the Council, if required, to investigate the matters raised at meetings relating to your repeated short-term absences and to comply with the capability procedure.

### **Disabilities**

At each stage of the procedure consideration will be given to whether your unsatisfactory attendance is arising from a disability and if so whether there are any reasonable adjustments that could be made to support you. Where appropriate the Council may also consider making reasonable adjustments to this procedure.

### **Levels of Capability sanctions**

Where possible, the Council will seek to deal with instances of repeated short-term absence informally. Where informal steps are not enough to improve your level of attendance or where the absences become more persistent, formal action will be taken as described below. Other than in exceptional circumstances you will not normally be dismissed for a first instance of unacceptable short-term absence.

### **Written Improvement Notice**

A Written Improvement Notice will usually be applied as the first step of corrective action in case of repeated short-term absences.

The Written Improvement Notice will:

- Provide an explanation of the reasons for the improvement notice.
- Set out the improvement in attendance required.
- Set out any support the Council can offer you.
- Set out a Review Period during which your attendance will be monitored.
- Set out the consequences of your failure to meet the required improvement in attendance.
- Confirm your right of appeal against the decision to issue you with an improvement notice.

At the end of the Review Period the Council will inform whether you have achieved the improvement in attendance required in which case no further action will be taken. If you have not achieved the improvement in attendance required the Review Period may be extended or further action may be taken.

### **Final Written Warning**

If you have not achieved the improvement in attendance required as set out in the Written Improvement Notice a Final Written Warning may be issued to you.

The Final Written Warning will:

- Provide an explanation of the reasons for the Final Written Warning.
- Set out the improvement in attendance required.
- Set out any support the Council can offer you.
- Set out a Review Period during which your attendance will be monitored.
- Set out the consequences of your failure to meet the required improvement in attendance and that this could include your dismissal.
- Confirm your right of appeal against the decision to issue you with a Final Written Warning.

At the end of the Review Period the Council will inform you whether you have achieved the improvement in attendance required in which case no further action will be taken. If you have not achieved the improvement in attendance required the Review Period may be extended or further action may be taken.

### **Dismissal**

If you have not achieved the improvement in attendance required as set out in the Final Written Warning the outcome may be your dismissal.

You will be provided with confirmation of your dismissal in writing. This will

- Set out the reasons for your dismissal.
- Confirm the date your employment has terminated or will terminate.
- Confirm your right to appeal the decision to dismiss you.

The Council reserves the right, at its complete discretion, to impose a sanction short of dismissal if it is deemed appropriate. This may include demotion, transfer to a different post or another appropriate sanction. Any such decision will be confirmed to you in writing once you have been informed of the outcome.

### **Procedure**

In the first instance, absence issues should normally be dealt with informally between you and your line manager as part of day-to-day management. The formal procedure should be used in any case where an earlier informal discussion has not resulted in a satisfactory improvement.

### **Invitation to a Capability meeting**

If you are required to attend a formal Capability meeting, the Council will inform you of this in writing. In the letter, the Council will set out the issues that are to be considered, the potential consequences and, since this is a formal meeting, your right to be accompanied by a companion. Where appropriate, we will also enclose copies of relevant documents for example your absence records, any medical report obtained and any relevant policies. The letter will also inform you of the date and time of the meeting to allow you sufficient time to prepare your case.

### **Your right to be accompanied at a Capability meeting**

You are entitled to be accompanied at a Capability Meeting by a fellow worker or a trade union official. With the exception of those under the age of 18, when a parent or guardian will be

permitted, no other person will normally be permitted to attend. We may, at our sole discretion, allow you to bring a companion who is not a colleague or union representative where reasonable adjustments are necessary to help you overcome a particular difficulty caused by a disability. Should you wish to be accompanied, you must notify the Council of the name and position of your chosen companion as soon as possible.

Your companion is permitted to put forward and summarise your case, respond on your behalf to views expressed in the meeting, ask questions and confer with you, but will not be entitled to answer questions directly on your behalf.

### **Action if you cannot attend the meeting on the proposed date**

If you feel that you have a legitimate reason as to why you cannot attend the meeting on the proposed date, you must contact the person named on the invitation letter to advise them of this fact immediately. The meeting may then be delayed to facilitate your attendance, if this is considered reasonable.

### **Attending the Capability meeting**

You must attend the meeting at the proposed time. Failure to participate in the process or attend arranged meetings without good reason may result in a decision being made in your absence. Prior to the meeting, you should ensure that you are fully prepared to answer questions relating to the circumstances in question. At the meeting you will be given every opportunity to state your case and present any evidence before any decision is made.

### **After the Capability meeting**

At the end of the meeting there will normally be an adjournment to allow for consideration of the facts. You will be informed of the outcome and any sanction will be confirmed in writing to you as soon as possible. In some circumstances there may be a need to adjourn and reconvene a meeting at a later date if we need to gather any further information or give consideration to matters discussed at the meeting. In this case you will be advised accordingly.

### **Notification of the decision**

Following the Capability meeting, the Council will notify you of its decision and the Capability sanction it will apply. This letter will also explain your right to appeal against any decision taken and sanction applied.

### **Your right of appeal against a Capability sanction**

If you wish to appeal against a decision you must submit your request in writing, stating the reasons for the appeal, to the individual identified in the letter confirming the sanction. This should be submitted within five working days of receiving notification.

### **The Appeal meeting**

You will be informed of the date and time of the Appeal Meeting. If you feel that you have a legitimate reason as to why you cannot attend the meeting on the proposed date, you must contact the person named on the invitation letter to inform them of this fact immediately. The meeting may then be delayed to facilitate your attendance, if this is considered reasonable. You will be entitled to be accompanied by a fellow worker or a Trade Union official.

At the Appeal Meeting you will be given an opportunity to state your case. Your companion is permitted to put forward and summarise your case, respond on your behalf to views expressed in the meeting, ask questions and confer with you, but will not be entitled to answer questions directly on your behalf.

The meeting will then be adjourned to allow the Council to consider the facts and the decision will be confirmed in writing. The outcome will be communicated as soon as possible, taking into account the complexity of the issues raised in the appeal. The decision at this stage will be final.