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# **Policy and Procedure for Supporting Attendance at Work**

## **Guidance for Managers Applying Discretion**

Human Resources  
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## **POLICY AND PROCEDURE FOR SUPPORTING ATTENDANCE AT WORK**

### **GUIDANCE FOR MANAGERS – APPLYING DISCRETION**

(Covers all employees)

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## **POLICY AND PROCEDURE FOR SUPPORTING ATTENDANCE AT WORK**

### **GUIDANCE FOR MANAGERS – APPLYING DISCRETION**

#### **1. OVERVIEW**

- 1.1 In certain limited circumstances, it may be appropriate for managers to apply a degree of discretion where grounds exist to justify taking an alternative or modified course of action to that normally required by a formal policy or practice.
- 1.2 A departure from the normal default policy position should however be the '*exception rather than the rule*' and as such discretion should be exercised on a measured and informed basis. By definition therefore, it should be infrequent and not routinely applied if the integrity of the policy or practice is to be protected.

#### **2. GENERAL APPLICATION**

- 2.1 Applying the above approach to the [Policy and Procedure for Supporting Attendance at Work](#), means that all sickness absences that trigger the next stage of the process will be acted upon unless one or other of the following applies;
  - a) There is a legal obligation placed upon the council to apply a reasonable adjustment under the Equality Act in respect of an employee who has a disability see [Managers Guide to Reasonable Adjustments](#), or
  - b) Based on the individual circumstances of the case, there are grounds (other than related to the Equality Act ) for not acting on the trigger
- 2.2 The focus of this guidance is on those cases that might be considered to fall within category b above.

#### **3. PURPOSE OF DISCRETION**

- 3.1 Taken in the context of the aims and objectives of the council's [People Strategy](#), applying discretion is a means by which managers can respond to situations that call for a compassionate interpretation and implementation of the [Policy and Procedure for Supporting Attendance at Work](#). The aim is for employees to feel that they have been treated fairly and reasonably and that their treatment under the policy is reflective of their value and contribution to the organisation.
- 3.2 The application of discretion should not simply be to defer an individual's progress through the sickness absence management process but rather a measure taken to recognise extenuating circumstances which would not otherwise be achieved through a strict application of the policy.

#### **4. EXERCISING DISCRETION**

- 4.1 In the absence of a set formula or matrix, decisions to exercise discretion must inevitably entail a degree of subjective judgement on the part of the manager. As each case should be viewed on its own individual merits, no two cases will be identical nor will they necessarily merit the same treatment. However in the interests of consistency, the manager would be expected to apply the same test to each case in terms of the factors to be considered on each occasion (Paragraph 4.6 below refers).

- 4.2 As previously indicated, it is neither possible nor desirable to list all types of exceptional circumstances, (in other words those extreme life events or traumatic circumstances that are likely to impact adversely on an employee's health, well - being and attendance) and which may warrant a degree of leeway being afforded to an employee within the context of council policy.
- 4.3 Discretion needs to be exercised within broad parameters and should not be considered in isolation of an individual's previous absence record. A decision not to progress an individual through the stages of the process should also be supported by a favourable prognosis of sustained attendance going forward.
- 4.4 Any period of absence in respect of which discretion is applied should be **time limited and informed by medical prognosis**. Discretion will therefore not be applied on an open-ended basis and will be subject to a mandatory 6 week review where discretion is applied to absences that are expected to go beyond 6 weeks.

#### Relevant Considerations

- 4.5 A decision to defer an employee's progression to the next stage of the Supporting Attendance process and the length of any such deferment will be subject to a wider review of the circumstances that extends beyond solely the reason for the current absence.
- 4.6 A number of other factors will be considered including;
- a) the employees general absence history (this enables favourable consideration to be given to cases where an employee whose attendance has not given previous cause for concern, experiences an unprecedented period of ill-health);
  - b) the reasons for absence that have resulted in the employee triggering;
  - c) the likely duration of the absence and the medical prognosis for satisfactory attendance going forward (in these circumstances, a referral to the council's Occupational Health Adviser may or may not be required);
  - d) the impact on the employee of any unanticipated or extreme life event (employees can react differently and demonstrate varying levels of resilience depending on the circumstances)
- 4.7 Given that absence history is a relevant consideration, application of discretion will be restricted to employees with at least 12 months continuous service with the council. Service of less than 12 months is not considered to be a sufficiently lengthy period over which to make a balanced assessment.

## **5. LEVELS OF MANAGEMENT DISCRETION**

- 5.1 Discretion can be applied at any stage of the procedure. For the purpose of this guidance, the Service Manager/Group Manager/Education Officer will normally be responsible for making decisions on discretion unless responsibility is delegated to another named officer in line with the Scheme of Delegation in the service concerned to apply discretion up to stage 2.

- 5.2 Where, following a stage 2 absence meeting, an employee again reaches the corporate action trigger point, the Service Manager/Group Manager/Education Officer will determine whether discretion will be applied or whether it is appropriate to convene a Capability Assessment Review Panel.
- 5.3 Where it is agreed that a Capability Assessment Review Panel is required, this will be chaired by the relevant Service Manager/Group Manager/Education Officer will review the case and most recent occupational health report. The employee's line manager and a member of Human Resources will also attend. The Panel will determine if the trigger is to be acted upon and a Capability Assessment Meeting convened or whether there are grounds for exercising discretion to defer that course of action.
- 5.4 Service Managers/Group Managers/Education Officers will also have authority to exercise discretion at Stage 3 of the procedure (Capability Assessment Meeting) should additional information emerge at that meeting that was not available or considered at the earlier review panel.

## **6. CONSISTENCY MONITORING**

- 6.1 While the decision to apply discretion is that of the relevant Manager, any such decision should be taken in consultation with Human Resources in order to promote council-wide consistency. A record of the decision to apply discretion or extend discretion beyond 6 weeks should be recorded by the relevant Manager and forwarded to the Human Resources Sickness Absence Management Team.
- 6.2 In determining the reasonableness or otherwise of a decision to apply/not apply discretion, Human Resources will provide a reference point for testing proposals against decisions applied in previous (although not necessarily identical) cases.

## **7. APPLYING DISCRETION – OPTIONS/OUTCOMES**

- 7.1 When the relevant Manager, considers it appropriate to apply discretion they may do so in the following ways:
- a) Defer an employee's progression through the stages of the [Policy and Procedure for Supporting Attendance at Work](#) by allowing for a limited period of time during which no formal action will be taken. The duration of this *discretionary period* will be determined with reference to medical advice and/or discussion with the employee (see Para 4.6 c) and will be subject to a mandatory 6 week review.
    - Where the employee returns to work or maintains satisfactory attendance levels within the *discretionary period* no formal action should be taken at this time.
    - Where the employee does not return to work within the discretionary period or again triggers during that period, then the employee will progress to the next stage of the formal procedure (unless further discretion is applied),
  - b) Determine at the Case Management Review Panel not to progress to a Capability Assessment Meeting with the employee remaining on Stage 2 of the [Policy and Procedure for Supporting Attendance at Work](#).

## **8. REQUEST FOR REVIEW OF DECISION**

- 8.1 Employees have no automatic right of redress if the application of discretion is not exercised in their favour.
- 8.2 Notwithstanding 8.1 above, where an employee (and/or their representative) considers that there are extenuating circumstances that justify not progressing to the next stage of the [Policy and Procedure for Supporting Attendance at Work](#) (but this view is not supported by the relevant manager), he/she can request that the case is independently reviewed by a manager at a more senior level in the service management structure.
- 8.3 The person responsible for undertaking this review will depend on the management structure and the provisions of the Scheme of Delegation in the service concerned.

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