

**SICKNESS CAPABILITY POLICY AND PROCEDURE**

Sickness Capability Policy

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# 1 Introduction

There may be occasions where sickness absence impacts on an employee’s ability to perform their role to the necessary standard. It may be that there is a cause for concern with short intermittent periods of absence or long-term periods of sickness. In either case, it may be necessary to take action beyond normal supervision arrangements.

Sickness absence issues should in the first instance be discussed informally as set out below. Where this does not lead to sufficient improvement, the concerns should be progressed using the formal stages of this Sickness Capability Policy.

The Sickness Capability Policy provides a fair and effective procedure to enable managers to respond to employee sickness problems at work. Any concerns regarding the sickness absence of an employee will be handled supportively with consistency, objectivity and confidentiality. The primary objective is to support and encourage the employee in a sensitive way so that they may achieve improved levels of attendance, with dismissal being the last resort.

# 2 Principles

The full principles that underpin the Sickness Capability Policy are outlined in the ACAS Code of practice.

Dealing with sickness absence issues can be a difficult experience for both employee and manager. In order to reduce the impact on those involved, we will strive to ensure:

* The process is as constructive as possible and takes into account both business needs and employee welfare
* All decisions made are fair, consistent and appropriate to the particular circumstances
* Steps are taken to maintain the dignity of all employees involved
* Managers clearly establish the required standards of attendance
* Where words such as ‘attendance’ or ‘absence’ are used, this term incorporates working from home or any attendance for work purposes regardless of location
* Employee confidentiality is maintained at all times unless there are safeguarding or health and safety concerns.

This policy will comply with, and exceed, statutory requirements where appropriate, and will be applied in a non-discriminatory way. Therefore, employees can expect:

* To have regular discussions with their manager so that sickness absence issues can be discussed and reviewed.
* Any shortcomings in their attendance to be raised as promptly as possible with them and the underlying reasons discussed, giving an opportunity to state their case before any decision is made or further action taken.
* To receive appropriate and reasonable support and resources to help achieve and maintain a satisfactory level of attendance within an agreed timeframe. Reasonableness will be determined with reference to the resources available to the Council.
* To be notified of their right to be accompanied by a trade union representative or work colleague at formal Sickness Capability meetings.
* To be given a right of appeal against dismissal or formal sanction.
* Not to be dismissed without prior notification.

#

# 3 Application

Although in principle this policy applies to all employees of Mole Valley District Council, it will not apply to employees completing their probation period.

The provisions in this policy are non-contractual and may be updated from time to time. Whilst it will normally be followed, other than under the exceptions noted below, there may be situations where the format can be altered, in accordance with HR advice on a fair capability process.

## **3.1**  **Dealing with short term absence**

A manager has a responsibility to monitor the absence of employees in their service and to carry out a sickness absence discussion where there are any causes for concern.  This may be:

* Where an employee has 3 separate incidents of absence within any 6-month period: or
* Where there are any concerns about an employee’s absences, absence levels or absence patterns (e.g., regular Monday or Friday absence or absence during critical periods such as Christmas).
* Where there are concerns about levels of an employee’s office attendance due to sickness (e.g., unable to attend the office on a number of occasions due to sickness which impacts their ability to carry out their full duties or comply with procedures or policies).

## **3.2 Dealing with Long term absence**

The key principle is to ensure that a balance is achieved between the needs of the employee and the requirements of the service. Long-term absence is generally defined as a continuous period of absence for more than 4 weeks, regardless of the contracted hours worked each week.

The employee is required to keep their line manager informed of their ongoing medical condition through regular contact. This will help inform discussions about reasonable adjustments that might enable the employee to return to work as soon as possible.

# 4 Managing Sickness Absence – Informal Procedure

# The line manager should hold a sickness absence discussion with the employee as soon as there is cause for concern about the employee’s level and/or pattern of sickness absence.

The purpose of these discussions is to examine the reasons, pattern and nature of the absence with a view to finding whether there is an underlying medical condition or other issues contributing to the level of absence and to support the employee to work.

Managers are encouraged to be considerate when dealing with absences related to sensitive personal issues. Discussions should be held in private and, depending on the particular circumstances of the case, it may include a discussion on:

* The levels and pattern of attendance.
* The underlying causes of the absence. If the underlying cause relates to stress or depression, the manager should consider a referral to Occupational Health. Consideration should be given to whether or not it may constitute a disability and relevant advice sought (medical and/or HR).
* The likelihood of a recurrence of the illness, if known.
* What absence monitoring, in the form of ‘Return to Work Discussions’, has taken place previously.
* Whether any Occupational Health or other medical advice has been sought.
* Suggestions from the employee on managing and improving the situation.
* Whether management action or other reasonable support is appropriate e.g., referral to Occupational Health, workplace equipment, flexible working arrangements, or other reasonable adjustments.

The outcome of these discussions should include:

* Any actions that have developed from the discussion
* The likely action that may follow if the level and/or pattern of absence continues to give cause for concern
* The timescale for review - normally no more than 12 weeks.
* Monitoring arrangements.
* The manager should keep written notes of actions agreed during the discussion for future reference and forward a copy to the employee as soon as practicable.

If monitoring during the review period shows that the employee’s attendance is no longer a cause for concern, it is good management practice to notify the employee.

Where an employee has been unable to improve their level of attendance, or where arrangements to manage the level and/or pattern of attendance have proved unsuccessful, the manager needs to consider progressing to the formal stages of the Sickness Capability policy.

Where further new absence meets an absence trigger within 12 months of the informal discussion, this will be managed under the formal stage of the process.

### 4.1 Informal procedure for long term absence

If an employee is absent on sick leave, the manager should agree a pattern of contact with the employee to discuss progress and any other relevant issues concerning the team or the individual. The pattern of contact will vary depending on the nature of the sickness.

Where a period of sickness extends beyond 4 weeks, the manager should ensure that contact is made with the employee to establish the following:

* The likely length of the employee’s absence from work and an approximate date of return if known.
* If a return date is anticipated in the near future, whether any special requirements are necessary to assist return, e.g., a phased return or temporary reduction in hours. If a referral to Occupational Health is likely to be necessary to establish the above, it should not be made at the time of an imminent return to work but allowing sufficient time for the consultation to take place and advice received.
* If advice is required regarding fitness for work or other matters or if the length of absence is unknown, to arrange for the employee to be referred to Occupational Health.

###  4.1.1 Initial Sickness Review Meeting

After the manager has received a report from Occupational Health, or where the manager wishes to discuss an employee’s sickness absence, they should contact the employee inviting them to a sickness review meeting.

The focus of the meeting will be to:

* Maintain communication with the employee.
* Discuss the report from Occupational Health (if available).
* Explore with the employee, where possible, a likely date of return to work.
* Discuss and agree any workplace modifications that may assist the employee’s return.
* Offer support.
* Explain entitlements to statutory and occupational sick pay.
* Provide any general news and information about the workplace since the employee
* has been absent.
* Plan future communication and meetings.

Following the meeting, the points discussed, and outcome of the meeting should be confirmed in writing to the employee*.* This can be via email.

The content and outcome of each meeting will vary depending on the circumstances of the individual case.

###  4.1.2 Further Sickness Review Meetings

The frequency of sickness review meetings will depend on the nature of the injury or sickness, prognosis of recovery and individual circumstances of the case.

Managers must ensure any long-term sickness absence issue is regularly reviewed as appropriate for the individual and service.

### 4.2 Employee unable to return to work or original job

The aim of the long-term sickness procedure will always be to facilitate the employee’s return to work and where possible consider how best to rehabilitate if appropriate.

On occasion, there may be medical advice from Occupational Health, or another medical professional, indicating that the employee is unable or unlikely to be able to return to their original post either indefinitely or in the foreseeable future. In these cases, the manager will have to consider the long-term impact of the employee’s absence for the individual and the service. Where medical and organisational evidence shows that the employee is unlikely to return to their role within a reasonable timeframe, and the absence is therefore no longer sustainable, a Stage Two Sickness Capability Hearing will be convened to consider continued employment and/or ill health retirement (as set out in section 5.4 below).

# 5 Multipurpose Capability Hearings

In some circumstances, concerns may arise that are impacted by both an employee’s sickness absence and work performance. In these cases, matters may be considered using the principles set out in both the Performance and Sickness Capability Policies at a multipurpose hearing.

Progress and targets will be reviewed through Multipurpose Capability Hearings using the stages set out below.

# 6 Sickness Absence at Formal Meetings

If an employee is unable to attend a formal Stage One Meeting or Stage Two Sickness Capability Hearing due to sickness, the meeting may be rearranged on one further occasion. Should the employee remain unable to attend the meeting and an alternative method to conduct the meeting cannot be found, the meeting will be held in the employee’s absence.

Depending on all the circumstances, the employee may be referred for Occupational Health advice in order to establish fitness to participate in meetings. Alternative ways of conducting the meeting may be reviewed, for example a virtual meeting (using software such as Teams or Zoom), conducting the hearing by phone, inviting the employee to send written submissions or a colleague to attend on their behalf.

# 7 Formal Procedure Stage One Sickness Capability

### 7.1 Stage One Sickness Capability Meeting

If, following set targets and timescales for the necessary and identified improvement, it is considered that there is insufficient improvement in the employee’s level and/or pattern of attendance continues to cause concern, the employee will be required to attend a Stage One Sickness Capability Meeting. This meeting will usually be chaired by the Line Manager.

The employee will be:

* Informed in writing about the arrangements made for the sickness capability meeting and provided with relevant documentation
* Informed of the purpose of the meeting
* Informed of the right to be accompanied by a work colleague or Union representative
* Given a minimum of 5 working days’ notice of the date and time of the meeting – where possible the date should be mutually agreed to allow for the employee to arrange for representation
* Informed of the opportunity at the meeting to put forward an explanation, either personally or through a representative
* Informed about the support available to the employee via the Council’s Employee Assistance Programme.

The purpose of the meeting is for the line manager to review concerns regarding the employee’s level and/or pattern of absence taking into consideration any measures and/or support put in place and any mitigating factors.

The employee will have the opportunity to raise any points that they wish to be considered. They are able to offer an explanation for their absence levels, discuss any mitigating factors and explore any possible solutions.

Non verbatim notes may be taken at the meeting by panel members to support their decision making. Each party may take notes for their own purposes, therefore there is no provision for a copy of these notes to be provided to the employee who may of course take their own notes.

An electronic recording may be made of the meeting. If so, this will be discussed in advance and will not be done without the employee’s knowledge.

Covert recording is not permitted. It is unlikely to be of good quality and suggests lack of trust in the process or the managers who are conducting it and will be considered as a disciplinary matter. In serious cases, it may be considered gross misconduct.

The Line Manager will then reach a conclusion regarding the issues that have been raised and will make a decision on the basis of the information available. This may include the medical advice already received. The Line Manager will make a decision in accordance with the below.

###  7.1.1 Decision – No Further Formal Action Required

If the manager decides that no further formal action will be taken at this time, the employee must be notified of this in writing within 10 days of the date of the meeting. It may be deemed appropriate to maintain a ‘stage one warning’ on file for a specified period (up to 12 months), in which case the employee will be notified. In any case, the employee’s attendance will continue to be supported and reviewed on a regular basis through normal 1:1 meetings and appraisal discussions.

###  7.1.2 Decision – Further Action Required

Where the appropriate manager decides that the absence levels/patterns remain a concern, it will be necessary for the Line Manager to outline an action plan and timescale in order to allow an opportunity for the employee to improve their attendance. This will include:

* Setting up a time period for improvement, usually no more than 3 months.
* Any additional support that is agreed to assist the employee to return to work or maintain attendance.
* Where applicable (and bearing in mind the dual considerations of the needs of the business and the employee’s wellbeing), exploring flexible working options (or their removal where they are considered to contribute to wellbeing or performance issues), or reasonable adjustments to the employee’s work and/or work environment.
* Monitoring absence records if this is a concern.

The employee will be made aware that a failure to improve their performance by the end of the agreed timescale could result in invoking Stage Two of the formal Sickness Capability Procedure.

Agreed arrangements, timescales, targets, consequences of not correcting the attendance shortfalls and a provisional date for a Sickness Capability Review meeting will be set out to the employee in writing.

### 7.2 Sickness Capability Review Meeting

At the end of the review period, the Line Manager will write to the employee and arrange a meeting to review the targets set out to them at the Stage One Sickness Capability Meeting.

The decision may be made to convene the review meeting before the agreed end of the review period where specific targets or improvements have not been met and require discussion or action at an earlier point.

At the Sickness Capability Review Meeting, the Line Manager will consider:

* If sufficient improvement has been achieved, in which case, the employee will be informed immediately. A written confirmation will be given to the employee that no further formal action will be taken at this stage. Where appropriate a ‘stage one warning’ may be maintained on file for a specified period (up to 12 months), in which case the employee will be notified. Where further absence triggers are met within the specified period, a Sickness Capability Review Meeting may be reconvened, and capability proceedings may move to Stage Two of the Formal Sickness Capability procedure.
* If there has not been sufficient improvement, the employee will be informed immediately, and a written confirmation will be sent to the employee informing them that a Stage Two Sickness Capability Hearing will be considered.
* The Line Manager will prepare a report on the employee’s progress against the agreed targets and objectives, including any relevant documentation to support their decision to request a Stage Two Sickness Capability Hearing. The report will be provided to the relevant Exec Head who will decide if a Stage Two Capability Hearing is an appropriate course of action. If so, the Exec Head will convene a Stage Two Capability Hearing or appoint an appropriate Business Manager or Exec Head to act on their behalf.
* Where additional information or review is required, the Exec Head will set out the requirements in writing to the Line Manager and employee.

### 7.3 Formal Stage Two Sickness Capability Hearing

A Stage Two Capability Hearing will be called to discuss the continuing concerns around the employee’s attendance levels or patterns.

NB: The Stage Two Capability Hearing is also used in managing incidences of ill health retirement or dismissal in cases of long-term absence.

The relevant Exec Head (or BMT where appointed) will be appointed as Hearing Chair and supported by an HR Adviser. The Line Manager (decision maker from Stage One) will present the case with the employee and their representative (if desired) in attendance.

The employee will be:

* Informed in writing of the date and time of the meeting with a minimum of 5 working days’ notice. Where possible, the date should be mutually agreed to allow for the employee to arrange for representation
* Informed of the purpose of the hearing
* Provided with the Line Manager’s report and any relevant supporting documentation
* Informed of their right to be accompanied by a work colleague or his or her trade union representative
* Informed that they will have the opportunity at the hearing to put forward an explanation, either personally or through a representative
* Informed that one of the potential outcomes of the hearing could be dismissal/termination of contract of employment with Mole Valley District Council
* Advised of the Council’s Employee Assistance Programme.
* Note taking applies as at section 6.1. (Stage One Sickness Capability Meeting)
* The Line Manager will outline where the employee’s pattern or level of attendance was deficient and what improvements were sought in a way that could be measured or assessed.
* The Hearing Chair will review all information and provide their decision to the employee, typically within 5 working days of the meeting, either face to face or in writing.

###  7.3.1 Potential Outcomes

The Hearing Chair must decide whether the arrangements to manage the level and/or pattern of attendance have proved to be successful, that the employee has improved their level of attendance sufficiently, and that suitable support has been provided. If the manager considers that the employee’s attendance remains less than satisfactory, they must decide:

1. Whether it is necessary to refer the employee back to Occupational Health and if so, the specific questions that need determining. If this is deemed necessary, the Stage Two Capability Hearing may be reconvened after receipt of the Occupational Health report.
2. If this is the decision, the hearing may be reconvened on one further occasion. At this reconvened hearing, the Hearing Chair will decide whether the employee has reached a sustained and satisfactory level of attendance. If the Hearing Chair decides the employee has reached a sustained and satisfactory level of attendance, the employee will be informed in writing within 10 days of the hearing, and this will mark the end of the capability procedure for the employee for the given instance. However, where there are live warnings on their file, these will continue in force for the duration of the warning. If the manager decides the employee has not reached a sustained and satisfactory level of attendance, the Chair will have to decide from options 3 or 4 below.
3. Whether to allow more time for improvement, backed by a Stage Two Warning if considered necessary. Such a warning may specify the circumstances in which the employee will be treated as at ‘stage two’ capability and the duration for this (up to 18 months).
4. If this is the decision, the hearing may be reconvened on one further occasion. At this reconvened hearing, the Hearing Chair will decide whether the employee has reached a sustained and satisfactory level of attendance. If the Hearing Chair decides the employee has reached a sustained and satisfactory level of attendance, the employee will be informed in writing within 10 days of the hearing, and this will mark the end of the capability procedure for the employee for the given instance. However, where there are live warnings on their file, these will continue in force for the duration of the warning. If the manager decides the employee has not reached a sustained and satisfactory level of attendance, the Chair will have to decide from options 3 or 4 below; or
5. To dismiss the employee from the current role but seek to find suitable alternative work during the notice period; or
6. To dismiss the employee without recourse to seeking alternative employment.

### 7.4 Entering the procedure directly at Stage Two of the Capability Procedure

## (For reasons of long-term ill health)

In the case of long-term sickness absence where, having taken Occupational Health advice, a return to work is thought to be unlikely in the foreseeable future, it is possible to convene a Stage Two Capability Hearing directly. Where appropriate, and reasonable redeployment is not available, a capability related dismissal will be considered. Full consideration will be given to the Equalities Act in conjunction with HR and medical advice.

Consideration should also be given to ill health retirement, which is dependent on advice from the Occupational Health doctor. (Advice should be sought from HR for further guidance in these circumstances.)

# 8 Appeals

Employees have the right to appeal within the formal sickness capability stages:

* Following formal action at stage one and two of the procedure
* Following the decision to dismiss by reason of capability and the issue of a dismissal notice.

Employees who wish to exercise their right of appeal must do so by writing, using the Appeal Form set out at Appendix 3. The appeal should be made to the decision maker at the stage of the capability process to which the appeal refers (unless a different name is confirmed in the decision letter to the employee) within 10 working days of receipt of their capability meeting outcome. The manager will make arrangements for appointment of an Appeal Hearing Manager for consideration of the appeal. HR should be copied into the appeal and the hearing arrangements.

The purpose of the appeal is to review the decision taken by the Capability Meeting Manager and not to re-hear the case. The employee should set out clearly the grounds for their appeal, including provision of relevant documentary evidence and how they would like the matter resolved. Grounds for appeal should relate to one or more of the following:

* **The procedure** - an appeal can be lodged where an employee can demonstrate that the sickness capability procedure was applied unfairly or incorrectly.
* **The facts** - an appeal can be lodged where the employee can demonstrate that the facts considered were not relevant; that the facts were not accurate; or where there are new facts/evidence which need to be considered that have come to light subsequent to the meeting/hearing.
* **The decision** - an appeal can be lodged where the employee can demonstrate that the sanction received is disproportionate to the charges found taking into account the evidence/mitigating circumstances presented or where it is disproportionate to the outcome in other similar cases.

The appointed Appeal Hearing Chair will review the points of appeal and determine if there is a case to answer. Where it is determined that there is no case to answer the Appeal Hearing Chair will set out the reasons to the employee in writing. Where it is determined that there is a case to answer an Appeal Hearing will be convened.

## The Appeal Hearing Chair should arrange a hearing within 10 working days of receipt of the appeal, giving the employee 5 working days’ notice of the hearing (where it is not possible to give this notice, the employee will be advised of the reasons in writing and a reasonable alternative timeframe set).

The hearing may be held in person or virtually. Where a hearing cannot be convened within a reasonable timeframe (e.g. due to absence) or a hearing is not deemed to be conducive to the timely and successful conclusion of the appeal the Appeal Hearing Chair may opt to conducted any necessary investigation and deliver their findings in writing. The most suitable approach will be determined by the Appeal Hearing Chair depending on the needs of the case, and will be outlined to the employee in writing.

The employee is entitled to be accompanied/supported by a trade union representative or a workplace colleague. The Appeal Hearing Chair will be supported by a member of the HR team.

The Appeal Hearing Chair will consider the grounds put forward for appeal and assess whether or not the conclusion reached in the formal Capability Meeting was appropriate. It should not be a rehearing of the original process, but rather a consideration of the rationale for being dissatisfied with the outcome. The Appeal Hearing Chair may wish to speak to the decision makers from previous stages of the Capability process, where clarity over decisions made during the original meeting/hearing is required. They may invite them to attend the Appeal Hearing where this supports their considerations.

Where the reason for the appeal may impact actions from the Capability Meeting outcome, these actions need to be put on hold until the appeal has reached an outcome. The Appeal Hearing Chair is responsible for ensuring this i.e, that any actions from capability meeting/hearing outcome are put on hold where necessary.

The decision of the Appeal Hearing Chair as to whether the points of appeal are upheld or not will begiven verbally to the two sides at the end of the hearing and/or provided in writing, normally within five working days. If it is not possible to respond within 5 working days because, for example, some investigatory work needs to be completed, the manager will give the employee a written explanation of the reason for the delay and a reasonable time frame for a response.

Where there are several elements to the capability appeal a decision on whether or not to uphold each element should be made and communicated in the written response. In addition to stating whether the appeal is upheld, the written response should also set out what, if any, actions are required.

The decision of the Appeal Hearing Chair is final and there is no further right of appeal.

# Appendix 1

# Capability Appeal Form

Employee Name:

Job Title:

Team:

Manager to whom the capability appeal is addressed:

Name of representative (if any):

1. Outline the nature of, and reasons for, your appeal providing any supporting documentation.

2. Please state the name and job title of the manager who held your capability meeting

and explain why you do not think your capability has not been conducted and/or

resolved satisfactorily.

3. What specific action(s) would you like management to take to resolve this issue?

Signed: Date:

To be completed by manager receiving the appeal form:

Date received ………………..... Date copied to HR ......…………..

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| --- | --- | --- | --- | --- |
| **Version** | **Version Status**  | **Date** | **Version Comment**  | **Version Author** |
| V1.1 | Final SLT draft | SLT meeting 7/10/21 | For SLT approval for document to be shared with Business Managers and Staff Hub.  SLT given 2 weeks to review and consider | KI |
| V1.2 | SLT amends discussed and agreed | SLT meeting 21/10/21 | Final SLT approved draft for BMT, Staff Hub consultation (2 weeks – 25/10/21 until Monday 8/11/21 10.00 am) | KI |
| V1.3 | Amends discussed and agreed post Hub/BMT consultation  | SLT meeting 11/11/21 | Agreed amendments following consultation  | KI  |
| V2 | Proposed Policy for all staff consultation | Week comm 15/11/21 | Policies out for all staff consultation (2 weeks)  | KI |
| V2.1  | Amends made post consultation above | SLT meeting  2/12/21 | Proposed amendments following consultation for SLT discussion and approval | KI  |
| V3.1 | FINAL (pre-formatting) | Week comm 6/12/21 | Policy finalised for publication and implementation  | KI  |
| V3.2 | Final (formatted) | Anticipated December 2021 | Final version post formatting | Comms |
| V4 | Review | 2024  | Policies to be reviewed at least every 3 years or in the event interim changes are needed (e.g. changes in legislation, work practices). | KI |