



Agenda Item

**FOR PUBLICATION****DERBYSHIRE COUNTY COUNCIL****APPOINTMENTS AND CONDITIONS OF SERVICE COMMITTEE****24 May 2022****Report of the Director of Organisation Development and Policy****Revised Employment Procedure:  
Attendance Management and Ill Health Capability****1. Purpose**

- 1.1 To consider and approve the revised Attendance Management and Ill Health Capability procedure.

**2. Information and Analysis**

- 2.1 The Council's employment procedures are updated and reviewed on an ongoing basis to ensure they remain relevant and up to date to ensure the Council meets its commitments outlined in the Council Plan. Work has recently been carried out to review and revise the Attendance Management and Ill Health Capability Procedure.
- 2.2 The last major review of the procedure was in November 2016, with further updates in December 2017 and July 2019 to reflect changes to the appeals process. Minor changes to terminology were made in July 2020 to reflect the HR Review.
- 2.3 The updated procedure is aligned to the Council's Wellbeing Strategy as a supportive measure for both managers and employees. Similarly, the Council's approach to Modern Ways of Working has also been considered when making amendments to the procedure.

- 2.4 The procedure has now been revised and developed in line with ACAS guidance and the Equality Act 2010 and takes account of operational experience and requirements. In addition, benchmarking has been carried out against other organisations with the aim of achieving best practice.
- 2.5 The revised Attendance Management and Ill Health Capability Procedure which is attached at Appendix 2 includes detailed manager guidance to assist implementation, which has also been revised and agreed with key stakeholders. Key stakeholders are the recognised trade unions, CMT, and the Council's Network Groups.
- 2.6 Following feedback from the recognised trade unions, further work will be undertaken to develop employee guidance including employee responsibilities, signposting to relevant resources and support they can expect from their manager.
- 2.7 The main changes to the procedures are detailed below:
- Disability related absence is not currently reportable, and the revised procedure allows for this to be recorded separately, in accordance with current guidance. However, it is not disregarded for the purposes of the attendance management process, but it may be considered a reasonable adjustment to adjust how disability related absences are managed, for example, to agree longer review periods. Implementation of a process to record disability related absence separately is dependent upon changes to SAP and will be considered following the current change freeze.
  - Additional references are made to available Mental health support and assistance.
  - The policy and supporting guidance has been reformatted into one document, providing a clearly referenced procedure and guidance to ensure all information is readily available with links and dependencies updated.
  - More detail has been included regarding the ill health capability procedure to encompass employees who may be covered by the procedure but that are not on long term absence i.e., intermittent absence or ongoing health conditions affecting an employee's ability to carry out the full duties of the role.
  - Detail has been included on the accrual of annual leave whilst absent and the right to take that leave.
  - Additional support measures have been included for example consideration of reasonable adjustments, with examples, to provide more support for employees covered by the Equalities Act.

- Detail has been included regarding the management of reasonable adjustments associated with short term / temporary adjustments, ensuring that review periods are agreed to support & enable employees to return to their full role.
- Additional advice regarding suggested timescales associated with phased returns to work has been incorporated.
- More detail added regarding the ill health retirement process, as this is an area that affected parties are generally unfamiliar with and a lack of knowledge has led to unrealistic expectations in the past.
- The notice period for Capability hearings has been extended to 14 days which corresponds with the disciplinary process.

2.8 Working with the Organisation Development and Policy Division Communications Service, the Council will publicise the revised procedure and guidance to ensure managers and employees are aware of the changes.

It is anticipated that this will include:

- An HR Manager bulletin identifying the main changes and advising managers how to access the revised procedure and guidance.
- An article in the 'Our Derbyshire' communication.
- Updating the website and Our Derbyshire

All development work referenced in this report will be dealt with by BAU teams and there are no additional financial implications.

2.9 The communications plan will be supported by manager training. This includes mandatory eLearning for managers which has now been live for just over 12 months, which focuses on manager responsibilities in relation to the procedure, and further learning to upskill managers and support them in implementing the procedure.

2.10 It is anticipated the revised procedure will be implemented with effect from 1 June 2022.

### **3. Consultation**

3.1 The procedure has been developed with extensive consultation on the revised procedure, both internally within the Council, including employee network groups, and with external stakeholders, namely the joint trade unions

#### **4. Alternative Options Considered**

- 4.1 It is accepted good practice to regularly review current employment procedures and update them where necessary. The procedure has been updated in line with feedback from our stakeholders and also current best practice advice from ACAS.

Alternative options would be not to review the procedure and continue with the existing procedure, however this would not reflect current ACAS best practice advice

#### **5. Implications**

- 5.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

#### **6. Background Papers**

- 6.1 None

#### **7. Appendices**

- 7.1 Appendix 1 – Implications.
- 7.2 Appendix 2 - The Revised Attendance management and Ill health Capability Procedure and Guidance

#### **8. Recommendation(s)**

That Committee:

- a) Approves the revised Attendance Management and Ill Health Capability Procedure which will be implemented with effect from 1 June 2022.

#### **9. Reasons for Recommendation(s)**

- 9.1 The revised procedure provides a fair procedure for employees that is supportive both to employees subject to attendance management and ill health capability procedures and for those implementing it.
- 9.2 The revised procedure includes reference to disability related absences which, in accordance with ACAS guidance, should be recorded separately to other sickness absence in order for it to be identified, as well as signposting employees to mental health and wellbeing support,

and provides advice on the implementation of reasonable adjustments. These issues are not referred to in the current procedure.

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## Appendix 1

### Implications

#### Financial

- 1.1 As referenced in section 2.8, no additional costs or savings are associated with the update and revision of the Attendance Management & Ill Health Capability Procedure.

#### Legal

- 2.1 The Employment Rights Act 1996 specifies the five potentially fair reasons for dismissal. Capability will be a potentially fair reason for dismissal where it relates to the capability of the employee for performing the work they are employed to carry out. Capability is assessed “*by reference to skill, aptitude, health or any other physical or mental quality...*”. The procedure provides a framework for managers when considering capability issues and supports the employer to act reasonably and fairly should the process result in an employee’s dismissal.
- 2.2 The ACAS Code of Practice does not apply to ill-health dismissals, but the procedure incorporates key ACAS guidance to support a fair process.
- 2.3 The procedure is a non-contractual document and does not therefore, require the agreement of the entire workforce prior to any amendments or revisions. However, this is a procedure which will apply to all employees in accordance with their existing terms and conditions of employment. Therefore, the recognised trade unions have been consulted on the suggested changes in accordance with the trade union recognition agreement.
- 2.5 The terms of reference for the Appointments and Conditions of Service Committee provide for the Committee to approve corporate employment policies and to determine terms and conditions on which all staff hold office, including procedures for their dismissal.

#### Human Resources

- 3.1 The Council will develop additional employee guidance to supplement the procedure and manager guidance to ensure employees are made fully aware of their responsibilities under Attendance Management and

Ill health Capability and of the support offered from their manager and the Council overall.

- 3.2 Additional manager training is required and Learning and Development are currently working on producing a relevant training package.

### **Information Technology**

- 4.1 HR Services will develop a SAP update to enable the separate recording of disability related absence as referred to in the revised procedure.

### **Equalities Impact**

- 5.1 Monitoring of equalities will take place throughout the implementation of the policy.

### **Corporate objectives and priorities for change**

- 6.1 The revised procedure aligns with the Council Plan and its stated headline initiative of promoting our employees' wellbeing and developing their potential.

### **Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)**

- 7.1 N/A