

Subject:	Attendance Management Procedure		
Date of Meeting:	20 March 2012		
Report of:	Strategic Director Resources		
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Ward(s) affected:	All		

FOR GENERAL RELEASE**1. SUMMARY AND POLICY CONTEXT:**

- 1.1 When the Attendance Management Procedure was introduced in April 2011, a commitment was given to review how well the policy was working in practice after six months. That review took place in October and involved extensive discussions with the Trade Unions and members of the Workers' Forums.
- 1.2 The review's findings were presented to the Governance Committee at its meeting in November. Given the very real concerns expressed by colleagues about the mandatory nature of the formal absence review meetings, the Head of HR recommended that the Committee could consider the option of amending the Procedure so that the formal Absence Review meetings were no longer a mandatory requirement when an employee's sickness reached an attendance concern level. However, as there had not been an opportunity to seek the views of the Corporate Management Team and other managers on this possible change before the meeting, Members were asked to defer a decision until consultation had taken place.
- 1.3 This report sets out the findings from the consultation exercise as well as the views of the Strategic Leadership Board regarding the mandatory nature of the formal absence review meetings under the current Procedure.

2. RECOMMENDATIONS:

- 2.1 That the Committee note the views of all parties who have contributed to the review of this Procedure and thank them for their input.
- 2.2 That the Committee agree to the current Attendance Management Procedure being amended to remove the mandatory requirement to always hold a formal Absence Review meeting when an employee's sickness reaches an attendance concern level.
- 2.3 That the Committee agree to amending the current Procedure to ensure that managers always hold a Return to Work discussion when an employee returns to work after a period of sickness absence.

- 2.4 That the Committee notes that further training for managers will be provided to equip them to determine when it is appropriate to convene a formal Absence Review meeting where an employee's sickness absence reaches an attendance concern level.
- 2.5 That the Committee instructs Officers to make the necessary amendments to the Attendance Management Procedure to give effect to recommendations in 2.2 to 2.4 inclusive to take effect from 1 April 2012.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 When the Attendance Management Procedure was introduced in April 2011, a commitment was given to review how well the policy was working in practice after six months. That review took place in October and involved extensive discussions with the Trade Unions and members of the Workers' Forums.

Findings of the review

- 3.2 Although a number of issues were raised, the one that caused the greatest concern related to the mandatory requirement for managers to hold a formal Absence Review meeting with every employee whose absence reached an attendance concern level.
- 3.3 This aspect of the Procedure was introduced to address the perceived inconsistency in managing sickness absence and many managers supported this approach.
- 3.4 However, it was evident that the Trade Unions and the Workers' Forums, particularly the Disabled Workers' Forum, felt that requiring employees to attend a formal Absence Review meeting in all cases was "heavy handed" and was placing extra pressure on individuals who were already anxious about having had time off work through sickness.
- 3.5 It was felt that the level of anxiety was particularly acute for individuals who were asked to attend a formal review meeting after having just returned to work after an extended period of absence as a result of a disability or serious life-threatening illness or where there was a difficult working relationship between the employee and their manager.
- 3.6 The Forum argued that the fact the manager may, in the event, use their discretion not to issue a warning at the end of the review meeting did nothing to alleviate the anxiety felt by the individual.
- 3.7 The review's findings were presented to the Governance Committee at its last meeting in November.

3.8 Given the very real concerns expressed by colleagues over the mandatory nature of the formal Absence Review meetings, the Head of HR recommended to the Committee that, following consultation with the Corporate Management Team and other managers, Members could consider the option of making amendments to the Procedure. These were to:

- place greater emphasis on the need for managers to hold Return to Work discussions with employees after every absence
- remove the mandatory nature of the formal Absence Review meetings. However, there would be an expectation that they would need to be held where the manager was not satisfied, having taken into account any existing or new reasonable adjustments that had been made, that the employee's attendance would be maintained at a satisfactory level.

3.9 Over the last couple of months, the views of the Corporate Management Team (CMT) and their own management teams have been sought over the possible changes to the Procedure. Their feedback is summarised below.

Results of consultation with CMT and other managers

3.10 There was general consensus that:

- early intervention is essential if sickness absence is to be managed effectively
- the process should be supportive
- the process should encourage open and honest discussions between individuals and managers to enable appropriate support and/or reasonable adjustments, where applicable, to be implemented to help the individual improve their attendance
- the Procedure needs to ensure consistency, transparency and equity of treatment for individuals
- the Procedure must be flexible to allow managers discretion over the issuing of warnings following a formal review meeting.

3.11 However, there were different views on whether the holding of a formal Absence Review meeting should remain mandatory for every employee whose absence reached an attendance concern level.

3.12 A number of service areas including Adult Social Care, Children and Families and City Regulation and Infrastructure considered that the Procedure should remain unchanged. They felt that the mandatory nature of these formal meetings ensured a consistent approach and provided the opportunity to discuss in detail health issues and any reasonable adjustments or other support that may encourage improved attendance.

3.13 Whilst they acknowledged some staff might find these formal meetings stressful, managers sought to conduct them in a positive and supportive manner. They also pointed out that, whilst formal meetings were held in all cases where an employee's absence reached a concern level, managers still had the discretion not to issue a warning if this was appropriate given the circumstances.

- 3.14 Although some services supported the current policy, others including Communities, City Services, Housing & Inclusion and some Resource Units would not be opposed to these changes. Indeed, despite the current agreed corporate position, some service areas were not holding Absence Review meetings in all cases but exercising discretion depending upon the circumstances.

Views of the Strategic Leadership Board

- 3.15 The Strategic Leadership Board (SLB) was asked to consider the results of the consultation exercise and to give a view on whether they would support a change to the current Procedure.
- 3.16 Having consulted with representatives of the Disabled Workers' Forum, and taken account of the views expressed by CMT, SLB are of the view, on balance, that:
- managers must apply the corporate Attendance Management Procedure in all instances of sickness absence
 - the mandatory requirement to hold formal Absence Review meetings when an employee's sickness absence reaches an attendance concern level should be removed from the current Procedure
 - Return to Work discussions should be mandatory and should cover
 - the reasons for the absence
 - factors that may have contributed to the sickness such as an underlying medical condition or disability
 - the nature of any support the employee may need including reasonable adjustments or referral to occupational health.
- 3.17 Notwithstanding the above, SLB also felt it was important for managers to regularly discuss any health issues with their employees outside of the formal procedural framework e.g. in one-to-ones to ensure that they were able to provide effective support and identify any action that may be needed to help individuals improve their attendance.
- 3.18 In addition, SLB recognised that there was a need to provide skills training to equip managers to hold these sensitive discussions with employees and to help them come to fair and reasonable decisions taking into account the circumstances of each individual's case.

Views of the Staff Workers' Forums

- 3.19 Detailed feedback on the proposed changes was only provided by the Disabled Workers' Forum. The other two Forums responded saying that they endorsed the Disabled Workers' Forum views.
- 3.20 The Disabled Workers' Forum welcomed the changes being proposed to the current Attendance Management Procedure and supported the requirement for managers to meet informally with disabled employees on a regular basis e.g. in one-to-ones to discuss how their staff could best be supported in the workplace.

- 3.21 They considered that this was particularly important where the individual had had a large number of disability-related absences. These meetings would provide an opportunity for the manager to seek advice from other sources such as Occupational health, HR's coaching and advice team, the Disabled Workers' Forum or other disability specialists on the type of reasonable adjustments that might be appropriate.
- 3.22 The Disabled Workers' Forum also requested that a number of other changes be made to the Procedure. These are summarised below in italics followed by management's response to the points raised:

- *The Attendance Management Procedure should not be applied to disabled employees in the same way as for non-disabled individuals. They believe that to do so would disproportionately affect disabled employees and therefore would be indirectly discriminatory practice. They wished to see disability-related sickness being recorded separately from other sickness absence so that it would be disregarded when determining whether an attendance concern level had been reached or when managers were taking decisions about the individual's employment such as promotion or selection for redundancy.*

The Equality Act 2010 does not require employers to disregard disability-related absence when operating their sickness management procedures only that any action taken under the procedure, including dismissal, does not constitute unlawful discrimination. The council has a duty to ensure that reasonable adjustments are made, wherever practicable, to support employees with a disability to help them achieve a satisfactory attendance level.

The council already requires managers to indicate on the Return to Work Discussion Form and the managers' absence recording screen on PIER whether or not any sickness absence is disability-related.

- *The Forum have requested that disabled employees who need to attend consultations or for treatment to improve or manage a disability during work time should have their absence recorded as "disability leave" in accordance with the legal requirement for the council to make reasonable adjustments.*

There is no statutory requirement for an employer to provide "disability leave". However, the Procedure as it is currently written already provides for paid time off to be granted in such circumstances. This is good practice and would be classed as a reasonable adjustment.

- *The Disabled Workers' Forum wished to see the abolition of the formal Absence Review meeting following an individual's return from an extended period of sickness absence. Instead they felt that managers should meet informally with the member of staff to discuss the phased return to work and any reasonable adjustments that might be required during that initial period or on longer-term basis.*

The proposed changes to the Procedure would mean that a manager would have discretion over whether or not to require an employee to attend a formal review meeting when returning to work after an extended period of sickness absence.

- *The Forum has requested that any formal warnings issued for disability-related absences since the new Attendance Management Procedure was introduced in April 2011 be rescinded.*

As mentioned above, an employee whose attendance is giving cause for concern due to a disability-related condition can be issued with a warning. Where an individual considered that a warning was not justified they would have had the opportunity to appeal the decision. At the appeal hearing, another manager would have considered the case and come to a view as to whether the warning was a fair and reasonable decision given the circumstances of the particular case. It would therefore not be appropriate to rescind any warnings already issued under the Procedure.

- *The Forum have asked that the Procedure should include a statement stating that disabled employees should not be discriminated against in relation to their disability-related sickness absence.*

The council agrees that disabled employees should not be unlawfully discriminated against in relation to their disability-related sickness absence.

- *The Forum have stated that they wish to see mandatory training for managers to help them decide when it would be appropriate to hold informal, support meetings with individuals and when formal absence review meetings under the Procedure should be convened.*

The Procedure already requires managers to seek advice from HR where they are dealing with disability related issues. In addition to revising the Absence Management e-learning module to reflect the amended Procedure, the coaching and advice team will offer skills training for managers, either through workshops or one-to-one coaching sessions, to help their decision-making in this area and to ensure a fair and consistent approach to sickness absence management for both disabled and non-disabled employees. It is proposed, due to the current pressure on resources within HR, to prioritise this training for those managers who lack confidence and skill in dealing with these issues (especially those in services with high sickness rates). It is not feasible to accommodate a compulsory training programme for all managers without compromising existing work priorities.

- *The Forum wished to see the revised Procedure implemented from 1 April 2012 or, if this was not practicable, as soon as possible thereafter.*

The council would support this.

Views of the Trade Unions

- 3.23 The Trade Unions' feedback is summarised below. Although they supported the proposed amendments to the Procedure, they considered that:

- *Disability-related sickness absence should be disregarded for the purposes of determining whether an employee's sickness absence had reached an attendance concern level.*

The Procedure states that when a manager is dealing with disability related issues they should seek advice. Please see paragraph 3.22 above.

- *it was unfair to pro rata the attendance concern levels for part-time employees.*

It was only the 10 day attendance concern level that was pro rata'd for part-time employees. The council does not consider that the application of its policy has been unfair. However, the council has decided to remove this provision from the Procedure.

- *the Procedure should be amended to make it clear that a formal warning can only be issued following a formal Absence Review meeting.*

The council considers that this is already clear within the current procedure. However, as it is a concern for the trade union side a statement to this effect will be included in the Procedure.

- *the wording included in the standard letter sent to an employee who was being issued with a formal warning was inappropriate. The main concern centred on the fact that the letter states that the individual's sickness record was "unacceptable".*

We will re-word the standard letters.

4. COMMUNITY ENGAGEMENT AND CONSULTATION

- 4.1 The Strategic Leadership Board, Corporate Management Team and other managers have been consulted over the option of removing the mandatory nature of the formal Absence Review meeting when an employee's sickness absence reaches an attendance concern level. Their views are set out in this report.
- 4.2 The results of the consultation with senior management have been discussed with the Trade Unions and Workers' Forums and their views are also included in this report.

5. FINANCIAL & OTHER IMPLICATIONS:

5.1 Financial Implications:

The adherence to absence management procedures supports the effective management of staffing budgets and resource management. The proposed changes in the procedure are not expected to have any direct financial implications. The training support can be managed within existing budgets through prioritisation of the programme.

Finance Officer consulted: Anne Silley

Date 09/03/2012

5.2 Legal Implications:

The changes made to the Attendance Management Procedure do not have any legal implications. The duties imposed on the Council by the Equality Act 2010 in relation to the need to make reasonable adjustments where applicable, and the duty to not discriminate on the basis of a person's disability remain unchanged and unaffected by the changes proposed in this report.

Lawyer consulted: Sarita Arthur-Crow

Date: 08/03/2012

5.3 Equalities Implications:

The Procedure complies with the provisions set out in the Equality Act 2010. Equalities data for any employees dismissed under the Attendance Management Procedure will take place as part of our annual equalities monitoring of key HR policies.

5.4 Sustainability Implications:

None.

5.5 Crime & Disorder Implications:

None.

5.6 Risk and Opportunity Management Implications:

5.6.1 The continued implementation of the Procedure will help managers to reduce working days lost to sick absence by:

- increasing their confidence and capability to manage attendance
- providing more timely support for employees with potentially long-term conditions
- increasing engagement with, and understanding of, the council's attendance standards and formal procedures.

5.6.2 There are additional benefits in staff productivity, wellbeing and morale by reducing the need for people to cover for absent team members.

5.7 Public Health Implications:

None.

5.8 Corporate / Citywide Implications:

Reduced sickness absence will result in the more consistent delivery of services to Brighton and Hove residents and lower agency costs.

SUPPORTING DOCUMENTATION

Appendices:

1. None

Documents in Members' Rooms

1. None

Background Documents

1. None

