



'Doing our best to achieve our best'

Clarendon Primary School, Nursery and Family Centre

Absence Capability Procedure

Introduction

Sickness absence issues that are not resolved through the informal absence management procedure set out in the Absence Management Policy, will be progressed using the formal stages of the Absence Capability Procedure.

Defining Capability

Lack of capability is defined as a situation in which a member of staff consistently fails to perform their duty/duties to an acceptable standard. Capability is assessed by reference to the skills, aptitude, health or physical/mental abilities of the individual compared with the abilities required to perform satisfactorily and consistently the work the individual has been employed to do.

Where there are concerns about a member of staff's inability to perform work which is expected as part of their job role to a required standard due to insufficient skill level or aptitude, the performance capability policy and procedure should be used.

Disability Related Cases

This procedure may need to be adjusted where the attendance of the member of staff may be affected by a disability. Managers are aware of the duty to make reasonable adjustments under the Equality Act 2010 and are ready to make adjustments both to the procedure itself and, if necessary, the requirements of a particular job where these may cause a particular disadvantage to people with a specific disability.

Application

This procedure will not apply to members of staff in the following situations:

- Agency workers or project specific consultants.
- Workers employed by partnership organisations (other than those covered by TUPE terms and conditions).
- During the contractual probationary period.
- Cases of redundancy.
- Cases of trial periods that a member of staff undergoes due to redeployment during a restructure.
- Termination of a fixed term contract of employment where the term of that contract expires without being renewed.
- Performance that fails to reach the required standard and is believed to be attributable to a wilful refusal to work would be regarded as negligence. This normally involves a measure of personal blame, wilful conduct or misconduct on the part of the staff member and their performance will have been judged inadequate due to lack of motivation, care, interest or attention. In these cases the school's Disciplinary Policy and Procedure will apply.
- Where there are concerns about a member of staff's inability to perform work which is expected as part of their job role to a required standard due to insufficient skill level or aptitude. In these cases the school's Performance Capability Policy and Procedure will apply.

Responsibilities

This procedure assumes that the power to dismiss staff remains with the governing body and has not been delegated to the headteacher.

- The governing body is responsible for the overall monitoring of the effectiveness of this procedure.
- The chair of governors will be responsible for monitoring the absence levels of the headteacher and will act as the line manager in relation to the management of the headteacher's absence in accordance with this procedure.
- The headteacher is responsible for ensuring that those with line management responsibilities are suitably skilled to manage sickness absence and have received appropriate training. The headteacher will also fulfil the responsibilities of the line manager in respect of certain individuals.
- All line managers (including the headteacher) are responsible for ensuring that members of staff are familiar with the expectations placed upon them in relation to their attendance at work, for monitoring absence, ensuring that consistent reporting is in place and conducting informal and formal meetings with individuals in accordance with the various stages outlined within the procedure. References in this procedure to actions taken by the line manager are intended to refer either to the headteacher or the line manager acting in consultation with the headteacher.

Informal Procedure

(To be undertaken by immediate line manager and staff member)

Please refer to the informal procedure in the Absence Management Policy for initial concerns regarding a member of staff's sickness absence.

Formal procedure – Stage One Absence Capability Meeting

If, following specific targets and timescales for the necessary improvement, it is considered that a member of staff's level and /or pattern of attendance continues to cause concern, the member of staff will be required to attend a formal Absence Capability Meeting. This meeting will be with their immediate line manager or a more senior manager from the team. Managers are encouraged to seek advice from their HR consultant prior to meeting with a member of staff.

The member of staff will be:

- Informed in writing about the arrangements made for the absence capability meeting.
- 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 member of staff to arrange for representation.
- Informed of the purpose of the meeting.
- Informed of the right to be accompanied by a work colleague or trade union representative.
- 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 member of staff, for example via the school's Employee Assistance Programme if available.

The purpose of the meeting is for the line manager to state concerns regarding the member of staff's level and/or pattern of absence. The line manager will need to outline where the member of staff's attendance was deficient and what improvements were sought in a way that could be measured or assessed.

The member of staff will then have an 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.

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, including Occupational Health as appropriate.

Decision – No Further Formal Action

If the manager decides that no further formal action will be taken at this time, the member of staff must be notified of this in writing. The member of staff's attendance will continue to be supported and reviewed on a regular basis through normal supervision/one to one meetings.

Decision – Further Action Required

Where the line manager decides that the absence levels/patterns remain a concern, it will be necessary to outline an action plan and timescale where an opportunity will be given to the member of staff to improve their attendance.

This will include:

- Setting up a time period for improvement usually no more than 3 months.
- Providing the member of staff with additional assistance, as appropriate.
- Where applicable, exploring flexible working options, or reasonable adjustments to the member of staff's work environment.
- Outlining performance standards, targets, volume of work to be achieved.
- Monitoring absence records.

The line manager will make the member of staff aware that a failure to improve their absence levels by the end of the agreed timescale, could result in invoking Stage Two of the formal Absence Capability Procedure, which could result in the member of staff's dismissal.

The line manager will then confirm in writing the arrangements, timescales, targets and the consequences of not correcting the attendance shortfalls.

Absence Capability Review Meeting

At the end of the review period the line manager will prepare a report on the member of staff's progress against the agreed targets. In exceptional circumstances, a decision will have to be made about convening the review meeting before the agreed end of the review period.

An Absence Capability Review Meeting will be convened to consider, discuss and act upon this report. Formalities of convening this meeting will be similar to the ones undertaken whilst arranging the Stage One Formal Absence Capability Meeting.

At the Capability Review Meeting the line manager will ascertain:

- If sufficient improvement has been achieved.
- If yes, then the member of staff will be informed about the same immediately. A written confirmation will be given to the member of staff that no further formal action will be taken and the member of staff's records will be suitably updated.
- If targets have not been achieved and there has not been sufficient improvement.
- In such a situation the member of staff will be informed immediately and a written confirmation will be sent to the member of staff informing them that they have entered Stage two of the Capability Procedure.

Formal Procedure – Stage Two Absence Capability Meeting

Typically, the Stage Two Absence Capability Meeting will be heard by a panel of governors, with the line manager, the school's HR consultant and the member of staff.

Before the decision to dismiss is made, the school will discuss the matter with the local authority. (As a community school, the local authority is entitled to attend any meetings where dismissal of a teacher is involved.) The school's HR consultant will provide advice about this.

A Stage Two Absence Capability Meeting will be called to discuss the continuing concerns around the member of staff's attendance levels or patterns. The Stage Two Absence Capability Meeting is also used in managing incidences of ill health retirement.

The member of staff 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 member of staff to arrange for representation.
- Informed of the purpose of the meeting.
- Informed of his or her right to be accompanied by a work colleague or his or her trade union representative.
- Informed that he or she will have the opportunity at the meeting to put forward an explanation, either personally or through a representative.
- Informed that one of the potential outcomes of the meeting could be dismissal/termination of their contract of employment.
- The member of staff will be advised of the school's Employee Assistance Programme if available.

Potential Outcomes

The governors' panel needs to decide whether the arrangements to manage the level and/or pattern of attendance have proved to be successful and the member of staff has improved their level of attendance sufficiently. If the governors' panel considers that the member of staff's attendance remains less than satisfactory, it must decide:

1. Whether it is necessary to refer the member of staff back to Occupational Health. If this is deemed necessary the Stage 2 Absence Capability Meeting will have to be reconvened after receipt of the Occupational Health report.
2. To allow more time for improvement, with a warning if considered necessary.
3. To dismiss the member of staff from the current role but seek to find suitable alternative work during the notice period. OR
4. To dismiss the member of staff without recourse to seeking alternative employment.

If the decision is to allow further time for improvement, the meeting may be reconvened on one further occasion. At this reconvened meeting the governors' panel will decide whether the member of staff has reached a sustained and satisfactory level of attendance.

If yes, then the member of staff will be informed about the same in writing and this will mark the end of the Absence Capability Procedure for the employee for the given instance.

If not, then the chair will have to decide from the options above.

Following a decision to dismiss the school will issue notice of dismissal in accordance with the member of staff's contractual or statutory notice period (whichever is greater). The school will confirm the decision to dismiss the member of staff and the local authority, as the employer of staff, will give effect to the dismissal within 14 days of notification.

Entering the procedure directly at Stage Two of the Absence Capability Procedure

(For reasons of Ill health)

In the case of long-term sickness absence where, having taken Occupational Health advice, an eventual return to work is thought to be unlikely in the foreseeable future, it is possible to convene a Stage Two Absence Capability Meeting directly. Where redeployment is not available, a capability related dismissal will be considered. It is important for managers to consider the requirements of the Equality Act.

Consideration should also be given to ill health retirement, which is dependent on advice from the Occupational Health Doctor

Appeals

Members of staff have the right to appeal following an outcome at Stage 2.

If a member of staff wishes to exercise their right of appeal, they must do so by lodging a notice stating the grounds of appeal in writing to the Clerk to the Governors/Chairperson of the Governors' Panel. The appeal should be filed within 10 working days of being notified of the decision made at the given stage of the procedure.

Receipt of the member of staff's notice of appeal in writing will be acknowledged by the Clerk to the Governors,

Decisions made by the chair of the appeal procedure will be final for that particular stage of the procedure.

Procedure for appeals

The Clerk to the Governors will identify a suitable panel, not previously involved in the detail of the case or the capability meeting, to hear the appeal on behalf of the school and give a final decision.

This is the final stage of appeal within the school. As a community school, where the appeal is against a decision to dismiss, an HR consultant from the local authority who has not previously been involved in the detail of the case will advise the chairperson of the appeals panel.

The member of staff shall be given notice in writing at least five working days in advance of the time and place of the hearing. Once again where possible the date should be mutually agreed to allow for the member of staff to arrange for representation.

The appeal will take the form of considering the member of staff's grounds for appeal, with both sides being entitled to call witnesses and to produce such documentary evidence, as they require. Any such documentation should normally be exchanged at least 3 working days prior to the hearing date.

Any question as to the procedure to be followed at the appeal will be determined by the chairperson and their decision will be final. The purpose of an appeal hearing is not to re-hear all the evidence presented at the initial capability meeting but to consider the member of staff's grounds for appeal, whether the initial decision was reasonable and consistent with other decisions made by the school in similar circumstances.

The member of staff will present their case first and once both sides have presented their case, the panel and their adviser will adjourn to consider the decision.

The panel's decision will normally be given orally to the two sides and confirmed in writing within five working days of the appeal hearing.

Policy review:

Reviewed by the headteacher: Autumn Term 2023

Reviewed by the governing body: Autumn Term 2022

