

Ealing Council

Medical Capability Review Policy and Procedure

Effective 1st January 2010

For HR advice on this policy, raise a request on the Service Ealing Portal accessed via the intranet <http://serviceealing.com> Alternatively, telephone the HR Shared Service Centre (HRSSC) on extn: 9000 option 1, option 1 (0208 825 9000).

Medical Capability Review Policy and Procedure

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Medical Capability Review Policy and Procedure

1. AIM

- 1.1 The purpose of the Medical Capability Review Policy and Procedure is to provide a framework to formally review cases, where despite following the general managing sickness absence process, an employee's lack of attendance through sickness absence remains unsatisfactory.
- 1.2 This procedure supports and should be read in conjunction with the Council's Managing Sickness Absence Policy and Guidance, to ensure a consistent and fair approach is taken in managing employees with ill health from the outset, and that they are supported reasonably, whilst ensuring the Council's services are delivered effectively.
- 1.3 The nature of medical capability is such that employees must be treated sensitively, confidentially and objectively, and full consideration given as appropriate to the individual circumstances of each case.

2. SCOPE

- 2.1 This procedure applies to all employees with a contract of employment with Ealing Council (who have passed their probationary period), with the exception of Chief Officers and Teaching and School based support staff that have separate arrangements in place. It does not apply to non-employees such as Agency Workers.

3. KEY PRINCIPLES

3.1 Link with Managing Sickness Absence Policy and Provisions

- 3.1.1 This procedure details the steps managers should take in the event that:
 - Attendance remains unsatisfactory following management action under the Managing Sickness Absence Policy and Guidance, either where:
 - An employee has a lengthy sickness absence and where there is no prospect of recovery and/or a return to work in a reasonable time period or
 - Where there are continuing frequent short term sickness absences.
- 3.1.2 Managers are expected to have managed an employee's sickness absence prior to referring a case up for consideration under this procedure. The Council's Managing Sickness Absence Guidance contains steps that should be taken in relation to short-term absences, and at the beginning of long term absences. (See the Council's

Managing Sickness Absence Guidance available on the Intranet, under Working in Ealing, Employment Policies pages)

- 3.1.3 Managers must ensure up to date medical advice is sought from the Occupational Health Unit, including advice on the employee's ability to regularly attend work.
- 3.1.4 An employee would not normally be dismissed as a result on an initial Medical Capability Review meeting (except in cases of dismissal on the grounds of permanent ill health following the recommendation of an Occupational Health Physician). Where dismissal is a possible consequence, the employee should be informed of this in the letter requiring the employee to attend a review meeting.

3.2 The Disability Discrimination Act 1995

- 3.2.1 The Council will comply with the requirements of the Disability Discrimination Acts 1995/2005 (DDA). Managers must consider and put in place any (further) adjustments recommended by the Occupational Health Unit, provided these are reasonable steps to have to take in the context of the actual job, the service and the capabilities of the individual employee. It is essential that the views of the disabled employee (and his/her representative where appropriate) about his/her own capabilities and possible (further) adjustments are sought. The nature of reasonable adjustments that should be considered will depend on an assessment of all the facts and individual circumstances, and should be considered as part of the general management of sickness absence and also at any stage of this procedure. Further advice and information on reasonable adjustments is contained in the Council's Good Management Guide on the Employment of Disabled People, available on the Intranet under Working in Ealing, Employment Policies pages. Specific advice may also be sought from the HRSSC.

3.3 Seeking medical advice

Employees are required as part of their contract of employment, to participate in any necessary medical examination at anytime by a medical practitioner nominated by the Council, subject to the provisions of the Access to Medical Reports Act 1988. Guidance on how to make a referral to the Occupational Health Unit is available in the Council's Managing Sickness Absence Guidance or Intranet pages. If an employee fails to attend such an examination or to cooperate in the process, then the manager should address any concerns that the employee may have. If the employee still maintains their position, the manager should inform the employee that the Council will still seek medical advice from the Occupational Health Unit based on the information that they have available, and that decisions about the employee's employment situation will be made on the basis of the advice obtained and available evidence. Failure to attend or cooperate with any medical appointment, meeting or unreasonable delay in receiving medical information will not preclude the commencement or continuation of action under this procedure. The failure or refusal by an employee to submit to a medical examination may also lead to consideration of

action under the Council's Disciplinary procedure for not complying with their contractual obligations.

3.4 Links with other Council policies and procedures

- 3.4.1 The Medical Capability Review Policy and Procedure is to be used where the employee's ability to fulfil their contract of employment is significantly affected by health issues. It should not be used for cases of unsatisfactory work performance, which are not related to health, in which case the Council's Managing Unsatisfactory Performance Policy and Procedure should be followed. It should also not be used for cases of alleged misconduct, either where there is a deliberate failure or negligence on the part of any employee (including poor time keeping, unauthorised absence, failure to comply with sickness absence reporting procedures), in which case the Council's Disciplinary Policy and Procedure should be followed.
- 3.4.2 When dealing with a terminally ill employee, the HRSSC Advisory Service should be contacted for specific advice.

4. TIMESCALES

- 4.1 All parties involved in the process have an obligation to ensure that timescales set out in the procedure are followed as far as possible. Where the handling of a case would be compromised by the need to comply with the timescales, they may be varied by mutual agreement.
- 4.2 Where a trade union representative, or work colleague has been chosen by the employee to accompany them at a meeting and they cannot attend on the proposed date, an alternative date may be arranged. This should normally be within five working days, beginning with the first working day after the original date proposed by the manager. The meeting would not normally be postponed a second time.
- 4.3 For the purposes of this procedure, 'working days' are defined as Monday to Friday, irrespective of the actual working days of the employee concerned, but excluding public holidays.

5. THE RIGHT TO BE ACCOMPANIED

- 5.1 Employees have the right to seek advice and guidance and to be accompanied or represented by a fellow work colleague or trade union representative at all stages of the procedure.
- 5.2 In exceptional circumstances, a representative who is not a trade union representative or fellow work colleague may be permitted, for example, if there are medical reasons or if considered as a reasonable adjustment in accordance with the DDA. This will be at

the sole discretion of the manager conducting the meeting. Legal representation, specialist employment law advisers and similar, will not be allowed.

- 5.3 Employees and their representatives (where applicable) should be consulted on the timing of meetings under the procedure. However, it is the responsibility of the employee to ensure that his/her chosen representative knows as soon as possible the need to attend on the relevant date (subject to the provisions of paragraph 4 above).
- 5.4 Representatives are allowed to address the Medical Capability Review meeting to present and sum up the employee's case, to confer with the employee and to present any questions on behalf of the employee. The representative has no right to answer questions on the employee's behalf, or to address the meeting if the employee does not wish it, or to prevent the employee from explaining their case.

6. CONFIDENTIALITY

- 6.1 In dealing with medical capability cases under this procedure, managers may become aware of medical or other personal information concerning individual employees. It is the responsibility of each manager to ensure that any information that comes into their possession shall remain confidential and shall only be disclosed to those persons who are authorised to receive such information. It is essential that documentary information is kept confidentially. Authorised persons will normally be restricted to those with specific responsibilities for taking action under this procedure, including Managers, Heads of Service, Chief Officers, Councillors and HR, and the information provided to them will be that which they need to know to deal with the matter. All employees should be aware that any breach of confidentiality could lead to disciplinary action.

7. KEEPING RECORDS

- 7.1 Managers should retain records of all Medical Capability Review cases in progress. On completion of a case, the manager should send the case documentation to the HR representative providing advice on the case, so that it can be retained in accordance with HR record keeping practices, as information concerning the employee's employment history.
- 7.2 In all cases, the manager conducting the Medical Capability Review meeting is responsible for ensuring that a summary of what was discussed at the meeting, decision(s) and reason(s) for coming to the decision(s) is provided to the employee in writing. This may take the form of formal notes or be incorporated in the Medical Capability Review meeting outcome letter. Any other notes that are no longer required should be disposed of appropriately.
- 7.3 All records must be held confidentially and kept in accordance with Data Protection legislation at all times.

8. ROLE OF HR

8.1 At all stages of the Medical Capability Review Procedure, in addition to those stages where there is a specific requirement, the HRSSC may be consulted for advice in the first instance.

8.2 The responsibilities of the HRSSC include the following:

- Providing procedural advice to managers and attending Medical Capability Review meetings, including medical advice through the Occupational Health Unit
- Providing advice to managers on writing management case documentation and letters (*a sample letter inviting an employee to a meeting is available in the Managing Sickness Absence sample letters 5. A template for preparing a management position is also available in the Managing Sickness Absence appendix, 6*)
- Logging cases to ensure monitoring requirements under key performance indicators can be met, including obligations under the Race Relations Amendment Act and Council's Equality and Diversity Policy/Scheme
- Retaining confidential records of medical capability cases in accordance with HR record keeping practices and the requirements of Data Protection legislation

9. ROLE OF MANAGERS

9.1 Managing sickness absence forms parts of every manager's day to day management responsibilities and is a key performance indicator for the Council. Managing sickness absence is also integral to the Council's Managing People competency. The role of managers within this procedure includes the following:

- Following management action under the Managing Sickness Absence Policy and Guidance and having sought up to date medical advice, referring a case where attendance remains unsatisfactory to the appropriate Head of Service or above manager to arrange Medical Capability Review meeting
- Preparing and assembling management case documentation and presenting it at the Medical Capability Review meeting
- The manager conducting the Medical Capability Review meeting is responsible for:
 - Making reasonable arrangements for meetings, including the timing, date and location
 - Making arrangements to administer the meeting
 - Considering all relevant information as appropriate and acting reasonably and consistently to ensure fairness and equality
 - Ensuring the outcome of a meeting is provided to the employee in writing within specified timescales
- All managers are responsible for maintaining and retaining confidential records at all stages of the process

10. THE MEDICAL CAPABILITY PROCEDURE

Prior to arranging a Medical Capability Review meeting, it is expected that the manager will have followed the Managing Sickness Absence Policy and Guidance, have made the employee aware of the potential consequences of this procedure and also sought up to date medical advice. (This may include advice from the Occupational Health Unit on whether the employee is fit to attend a meeting).

10.1 Arranging a Medical Capability Review meeting

10.1.1 A Medical Capability Review meeting will be conducted by a manager who is at the level of Service Head or above. A representative from HR will advise the manager conducting the review.

10.1.2 The manager will send a letter to the employee to attend a Medical Capability Review meeting and it shall:

- i) Give a minimum of **5** working days notice of the date, time and venue * arranged for the review;
- ii) Name the manager who will conduct the review and any other person(s) attending as advisor(s);
- iii) Clearly state the matters to be considered at the Medical Capability Review meeting;
- iv) Inform the employee that s/he has the right to be accompanied or represented at the meeting by a work colleague or trade union representative, who will be permitted to speak on his/her behalf, and that if they intend to seek representation, they should check immediately that their representative is available on the date and time scheduled;
- v) Inform the employee they must take reasonable steps to attend the meeting, and that if they are not fit or able to attend the review meeting, a written statement (including medical evidence where appropriate) to this effect should be submitted to the manager conducting the review meeting (see note ** below). This should be done before the date of the review.
- vi) Inform the employee that either side may produce relevant documentation that will be considered at the review meeting. Management will provide copies of any such documents at least **5** working days before the review and require that the employee provide copies of any documents to which s/he intends to refer not less than **3** clear working days before the review, to enable due consideration to be given to them;
- vii) Enclose a copy of the Medical Capability Review Procedure;

- viii) Clearly state the objective of the review meeting shall be to obtain all the relevant facts so as to enable the manager to arrive at a decision that is fair both to the employee and to the Council.
- ix) That following an initial Medical Capability Review meeting, consideration may be given to dismissal as a possible outcome of a review meeting.

Notes:

- * If it is not practical to hold a Medical Capability Review meeting at the main Council offices due to an employee's ill health, the meeting may be arranged in an alternative venue if such an arrangement is acceptable to both parties.
- ** If the employee is not able to attend the review meeting, the written statement they submit would normally ask for consideration to be given to:
 - a) a postponement of the review meeting due to ill health. If this is requested, then the employee should indicate a date by when they would be able/fit to attend a reconvened review meeting. The decision on whether or not to proceed will rest with the manager conducting the review meeting, who may consult with the HR representative and the Occupational Health Unit.
 - b) A postponement of the review meeting due to the non-availability of a representative (see paragraph 4.2).
 - c) A written submission or submissions that are considered in their absence after the presenting manager has set out their case.
 - d) A presentation on their behalf by a work colleague or trade union representative.

10.2 Conducting the Medical Capability Review meeting

10.2.1 During the course of the review meeting and with all relevant parties present, both parties should be given the opportunity to explain their cases prior to a decision being made.

The order of the meeting should normally follow the arrangements set out below:

- i) The employee's manager will present the management position and any supporting information and evidence, including the latest medical advice.
- ii) The employee and/or his/her representative will be given an opportunity to ask questions on: the management case; any information/evidence presented and/or; any advice provided.

- iii) The employee and/or his/her representative will be given an opportunity to state his/her case and present any supporting information and evidence.
- iv) The employee's manager will be given an opportunity to ask questions on: the employee's case; any information/evidence presented and/or; any advice provided.
- v) The manager conducting the review meeting may ask questions of the employee, his/her representative, the employee's line manager and/or the HR representative at any stage of the process.
- vi) The manager conducting the review meeting may decide that it necessary for more information to be obtained. This may necessitate a formal adjournment and possibly arranging for a new date to reconvene the review meeting. All new information that is to be considered shall be given to the employee and/or his/her representative at least **2** working days prior to the date of the reconvened review meeting. Subsequently the manager conducting the review meeting may request further information until they are satisfied.
- vii) At the conclusion of the process, both the employee's manager and the employee and/or his/her representative shall be invited to sum up their case.

10.2.2 All parties shall then withdraw leaving the manager conducting the review meeting, together with the HR representative who will remain present to advise on procedural matters. However, the decision will be the responsibility of the manager conducting the review meeting. The parties may be recalled to clarify any points on information already given. If this is necessary, then all parties will be recalled together.

10.3 Factors to consider

10.3.1 The manager conducting the review meeting should consider all the available and relevant details of the individual case in reaching a decision. This will include:

- i) A review of the employee's sickness absence record for the relevant period, including the total number and length of absences to date, and the nature and pattern of absence(s) to date.
- ii) Relevant Council policies and guidance, e.g. medical redeployment, ill health retirement, phased return to work.
- iii) The employee's representations.
- iv) The likelihood of being able to return to work in the near future and/or sustain satisfactory attendance. (This should be based on available up to date information from the Occupational Health Unit and take into consideration any advice on possible mitigating circumstances relating to any underlying causes).

- v) The employee's past attendance record throughout their employment with the Council.
- vi) The ability to cover work in the employee's absence, the impact on his/her work, his/her colleagues and the service.
- vii) In cases of disabled employees, it is paramount that consideration is given to reasonable adjustments that have been made to reduce the level of sickness absence (where any periods of sickness absence are believed to be directly associated to an employee's disability) and to consider whether further possible reasonable adjustments could be made. (Further information and examples of reasonable adjustments can be found in the Council's Good Management Guide on the Employment of Disabled People, Managing Sickness Absence Guidance or sought from the HRSSC).
- viii) Any previous review information and/or action taken to inform the employee of the possible outcomes including the possibility of dismissal.

10.4 Possible courses of action

10.4.1 The courses of action open to the manager conducting the review meeting can be any one or a combination of the following:

Review	Possible outcome
Attendance now acceptable	1. That no action is necessary at present except to monitor the level of attendance and review the case at a later date if necessary
Further information required	2. Review the case at a future date, pending further medical information, to decide whether or not employment can continue and/or what further measures may be necessary
Other action required	3. Any additional recommendation deemed reasonable and appropriate, for example, medical redeployment
There has been some but insufficient improvement	4. Warning the employee that failure to attain a satisfactory attendance level and sustain it over a specified period will lead to a further Medical Capability Review meeting, which may lead to dismissal from the Council (<i>e.g. where one or more of the Council's trigger points or other reasonable improvement set in view of the individual circumstances of the case is reached</i>)
There has been no improvement or no reasonable expectation of achieving an improvement	5. Dismissal from the Council (<i>where s/he has previously been informed as a result of a previous Medical Capability Review meeting, that if there is no substantial improvement in the attendance level, this may result in dismissal</i>)

10.5 Giving a decision / written notification

- 10.5.1 The manager conducting the Medical Capability Review meeting should give his/her decision at the earliest opportunity and personally if possible, specifying any subsequent action to be taken and the right of appeal. The manager conducting the review meeting must confirm the outcome in writing to the employee within **5** working days of the conclusion of the meeting.
- 10.5.2 The manager conducting the meeting should arrange for copies of the case documentation to be retained confidentially in accordance with Human Resources record keeping practices.

10.6 Entitlement to notice for dismissal on the grounds of ill health

- 10.6.1 An employee whose employment is terminated on the grounds of lack of capability due to unsatisfactory attendance through sickness absence, and who is unable to work during their notice period as a result of illness, is entitled to be paid at the normal level of pay during the notice period, (subject to deduction of sick pay being received). Notice is equivalent to one week's notice for each completed year of service up to a maximum of 12 weeks in accordance with the individual contract of employment. Subject to the employee complying with their contract of employment, including supplying sick certificates, the employee will be paid at the normal rate for the notice period, regardless of how much of their sick pay entitlement has been used prior to the start of the notice.
- 10.6.2 If the employee wishes to leave the Council and terminate their employment prior to the date given in the notice, whether to commence receipt of pension, or to take up alternative employment or otherwise, then they must give notice in the normal way. If the Council agrees to such early termination, then entitlement to pay or sick pay will cease on the effective date of such early termination of employment.
- 10.6.2 Employees are also entitled to payment in lieu for unused annual leave as set out in the Local Agreement on Terms and Conditions of Service, see 'Annual Leave' in Part 2, paragraph 11.1.7.

11 APPEALS

11.1 Appeal rights

11.1.1 An employee has the right of appeal against a decision taken under this procedure, on the following grounds if they believe that either:

- The process followed was flawed;
- The outcome was not appropriate and/or reasonable in all the circumstances and/or;
- New evidence has come to light, which if it had been available at the original Medical Capability Review meeting may have resulted in the manager reaching a different conclusion.

11.1.2 Appeals must be registered within **5** working days of the date of the letter informing the employee of the outcome of the Medical Capability Review meeting, and should be sent to the Executive Director of the employing department. The appeal notification must incorporate a statement setting out clearly the grounds for appeal, specifying the reasons or state that the full grounds of appeal will follow. If these are not received within a further **10** days (i.e. within 15 days of the date of the outcome letter), then the employee will have failed to appeal within the specified timescales and will have lost their right of appeal. If the employee wants a short extension for lodging the full grounds of appeal, then the employee must make a written request within the time limit. The duration of the extension will be at the discretion of the Executive Director of the employing department, but will not normally exceed 20 working days.

11.1.3 An Executive Director or nominated Director who has not previously been involved in the decision(s) under appeal, and who would normally be (except in exceptional circumstances) more senior than the manager who conducted the original Medical Capability Review meeting will consider an appeal against all decisions, except dismissal (see procedure at Appendix 1 for cases not involving dismissal).

11.1.4 The Council's Member Appeals Committee will hear all appeals against dismissal (see procedure at Appendix 2 for cases involving dismissal).

11.1.5 Disagreements over medical advice between the Council and the Employee's medical advisors will be dealt with in the same way as the medical redeployment appeals procedure (see Part 3, Paragraph 12.5 of the Local Terms and Conditions of Service).

11.1.6 If an employee lodges an appeal against dismissal, then the employee will not be reinstated, nor be entitled to have the termination date delayed, pending the outcome of the Appeal meeting.

11.2 Timing of appeal meeting

11.2.1 The Appeal meeting will normally be held no later than **20** working days from receipt of the notice of appeal or of the full grounds of appeal. The employee and (if appropriate) their representative, will be given at least **5** days notice of:

- The date, time and place of the Appeal meeting;
- Details of the person(s) hearing the appeal;
- The employee's right to attend and be represented at the appeal by a fellow work colleague or trade union representative;
- That the Appeal meeting will not be a full rehearing of the case and that s/he should restrict his/her presentation to arguments about the reasonableness of the decision and/or procedural faults or failure.

11.2.2 Provided the employee has been given the appropriate notice of the Appeal meeting, the appeal may be considered on the basis of the available evidence in the absence of the individual.

11.3 Appeal meeting procedure and process

11.3.1 Appeal meetings will be conducted in accordance with the arrangements set out in Appendices 1 or 2. The Appeal meeting will take the form of a review of the original Medical Capability Review meeting and not a full rehearing of the issues. The Appeal meeting should address the arguments set out in the grounds of appeal and determine whether the decision made at the original Medical Capability Review meeting was reasonable in all the circumstances.

11.3.2 The presenting manager (the manager who was responsible for the original decision), will prepare a statement in response to the employee's submission. This should be provided to the employee within **10** working days of receipt of the appeal or of the full grounds of the appeal, if sent later. If further clarification or elaboration is considered necessary, either or both parties will be asked to provide this information, at least **2** working days before the Appeal meeting.

11.3.3 Evidence which is not supplied within the above mentioned timescales will only be considered in exceptional circumstances. This will be at the discretion of the appeal panel and will only be admitted where it may significantly affect the previous decision as provided for in the grounds.

11.4 Possible outcomes

11.4.1 Possible outcomes of an Appeal meeting considering any decisions excluding dismissal:

- A decision to uphold the employee's appeal and either revoke the decision completely or impose a lesser outcome;
- Dismiss appeal and confirm outcome(s) of Medical Capability Review meeting;
- Refer case back to employing department for a new Medical Capability Review meeting.

11.4.2 Possible outcomes of a Member Appeal meeting considering a dismissal outcome:

- An adjournment to allow for additional evidence and/or information to be made available;
- A decision to uphold the employee's appeal and either revoke the decision completely or impose a lesser outcome;
- To make an appropriate recommendation;
- Any combination of the above or;
- To refer the case back to the employing department for a new meeting or;
- To dismiss the appeal and confirm the dismissal.

11.4.3 The decision of an Appeal meeting or Member Appeal meeting will be final.

11.5 Notification of decision

11.5.1 The decision will normally be given orally on the day of the Appeal meeting, unless it is not practical to do so. In all cases, the decision of the Appeal meeting will be confirmed in writing within **5** working days of the conclusion of the Appeal meeting.

11.5.2 A copy of the case notes will be retained in accordance with Human Resources record keeping practices.

12 MONITORING AND REVIEW

12.1 The Council will monitor the application and compliance of the Medical Capability Review Policy and Procedure against relevant key performance indicators and by collating confidential details of the nature of all medical capability cases and outcomes.

12.2 The Medical Capability Review Policy and Procedure will be reviewed on a regular basis and changes and improvements made where necessary. The recognised trade unions will be consulted on any proposed changes, in accordance with the relevant provisions of Part 1 of the Council's Local Terms and Conditions of Service (paragraphs 3.3 to 3.8 inclusive).

Appendix 1

Appeal Procedure to be followed for cases NOT involving dismissal

- 1.1 The appeal hearing manager should ensure that there is a management note-taker or notes taken as appropriate. The appeal hearing manager will invite the parties into the meeting, introduce all parties present and explain the purpose of the meeting. The appeals process will not normally take the form of a rehearing.

Presentation by the appellant

- 1.2 The appellant or representative presents the grounds for the appeal.
- 1.3 The appeal hearing manager will invite the presenting manager and HR representative to ask questions of the appellant/representative on the grounds for the appeal in that order.

Response to the appeal by management

- 1.4 The presenting manager will respond to the appeal in the presence of the appellant.
- 1.5 The appellant (or representative)/appeal hearing manager/HR representative may ask questions of the presenting manager.
- 1.6 If required, the appeal hearing manager may seek further evidence to ensure that s/he is aware of all the facts of the case. The appeal meeting may be adjourned to allow for this to happen. If recall is necessary to clarify any points of uncertainty, both parties will return, notwithstanding the fact that only one may be concerned with the point giving rise to doubt.

Summing up stage

- 1.7 The presenting manager, followed by the appellant (or representative) will have the opportunity to sum up their case. This summing up may take into account statements during the proceedings, but may not introduce new evidence.

Deliberation

- 1.8 Both parties will withdraw, leaving the appeal hearing manager to deliberate accompanied by the HR representative. The appeal hearing manager will indicate to the parties whether they should wait to be recalled for the decision. The HR representative will provide advice as necessary. The appeal hearing manager should make a note of the reasoning behind his/her decision and keep this carefully filed for future reference if needed.

The decision

- 1.9 The decision is made by the appeal hearing manager and may be given to the parties verbally at the end of the hearing, or later in writing. In all cases, the appeal hearing manager must confirm the decision in writing within **5** working days. The HR representative will provide advice on the content of the letter.

Appendix 2

Appeal Procedure to be followed for cases against dismissal

- 1.1 An appeal against a decision to dismiss is to the Council's Member Appeals Committee. The arrangements are set out below.
- 1.2 Where the appeal is dismissed, the effective date of dismissal will be the effective date of the original decision. Where an appeal is upheld, any salary/wages due will be reinstated as appropriate.
- 1.3 The intention to appeal must be notified to the employee's Executive Director within **5** working days of the date of the written confirmation of the outcome of the Medical Capability Review meeting. The Executive Director will immediately notify the Principal Committee Administrator who will arrange for a meeting of the Council's Member Appeal Committee to take place following receipt of the full grounds of appeal.
- 1.4 The appellant must then provide a written statement outlining in detail the grounds of the appeal against the decision, together with any supporting documentation within **15** working days of receipt of the written confirmation of the Medical Capability Review outcome. The appellant should clearly state with full reasoning, the basis on which s/he believes the decision to be at fault (i.e. why s/he believes that the procedure was incorrectly applied and/or that the outcome is too severe and/or that specific relevant evidence was not available or was not taken into account at the original meeting). No appeal meeting shall be arranged until such a detailed statement has been received.
- 1.5 A representative of the Director of Human Resources and Organisational Development will assess the case statements and review the notes of any meeting in light of the appellant's statement. If further information, clarification or elaboration in support of the case is considered necessary, then the appellant will be asked to provide this information at least **3** clear working days before the date set for the appeal meeting if it is to be used.

2 Member Appeals Committee Hearing Procedure

- 2.1 The local authority shall appoint a Member Appeal Committee, which shall be constituted from among elected members who have no direct formal responsibilities specifically for the relevant employing service/department. A representative of the Service Director, Human Resources and a Committee Administrator will support the Committee.
- 2.2 The employee shall be given notice in writing at least **5** working days in advance of the time and place of the appeal meeting that:

- S/he shall be allowed to be represented by a fellow work colleague or his/her trade union representative, and;
- May call witnesses and;
- Refer to previously submitted documents relevant to his/her appeal; at the appeal meeting;
- The employee will also be informed that the appeal meeting will not be a full rehearing of the case and that s/he should restrict his/her presentation to arguments about the reasonableness of the decision and/or procedural faults or failure.

2.3 The Chair of the Member Appeal Panel will outline the procedure to be followed and inform the appellant that s/he may stop and/or redirect any participant if at any time s/he believes that evidence being produced is irrelevant to the matter under consideration.

2.4 The Council's management representative(s) will present his/her justification of the decision, in the presence of the appellant and his/her representative.

2.5 The appellant (or his/her representative) will then have the opportunity to ask questions of the Council's management representative on the evidence given by him/her.

2.6 The members of the panel may ask questions of management's representatives.

2.7 The appellant (or his/her representative) will present his/her grounds of appeal in the presence of the Council's management representative.

2.8 The Council's management representative will then have the opportunity to ask questions of the appellant and his/her witnesses.

2.9 The members of the panel may ask questions of the appellant and his/her witnesses.

2.10 The Council's management representative and the appellant (or his/her representative) will then have the opportunity to sum up their case.

2.11 The Members Appeal panel supported by a representative for procedural HR advice (and the Committee Administrator for administrative support) will deliberate in private only recalling the Council's management representative and the appellant to clear points of uncertainty on evidence already given. If recall is necessary, both parties are to return notwithstanding only one is concerned with the point giving rise to doubt.

3 Courses of action open to the Member Appeals Panel are:

- i) An adjournment to allow for additional evidence and/or information to be made available;

- ii) A decision to uphold the employee's appeal and either revoke the decision completely or impose a lesser outcome;
- iii) To make any appropriate recommendation;
- v) Any combination of the above;
- v) To refer the case back to the employing department for a new meeting;
- vi) To dismiss the appeal and confirm the dismissal;

4 Outcome

- 4.1 The Member Appeals Panel will announce the decision to the Council's management representative and appellant personally on the day of the appeal meeting, if practical and this will in any case be confirmed in writing together with the reasoning behind the decision within **5** working days of the conclusion of the appeal meeting. The employee will also be reminded that there are no further rights of appeal.