

## Sickness capability policy

New policy number: **873**  
Old instruction number:  
Issue date: **1 July 2015**  
Reviewed as current: **19 May 2025**  
Owner: **Assistant Director, People Services**  
Responsible work team: **Policy, Pay and Reward**

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# 1 Introduction

- 1.1 This policy sets out the arrangements for managing short term persistent absence and long-term absence where previous supportive action has not achieved an improvement in attendance, a return to work or a return to full substantive duties. This policy applies to all employees.
- 1.2 This policy should be applied in line with the Brigade's values:
  - Service – We put the public first.
  - Courage – We step up to the challenge.
  - Learning – We listen so that we can improve.
  - Teamwork – We work together and include everyone.
  - Equity – We treat everyone fairly according to their needs.
  - Integrity – We act with honesty.

# 2 Application

- 2.1 Moving from the First to the Second and the Second to the Third Stages will normally have a 12 months' time limit in total, dependent on the individual circumstances of the case. During each stage of the process, the case will remain "live". However, there may be occasions where an employee's absence is satisfactory, only to lapse very soon after a 12-month period expires.
- 2.2 Where a pattern emerges e.g. frequent absenteeism on a Friday or a Monday, before or after public holidays or during school holidays, the employee's record under the capability process should be considered when deciding whether to move to the next stage of the procedure or to repeat the stage for another period, e.g. 12 months. After one repeat stage, normally further absences will result in moving to the next stage up.
- 2.3 The process has a structured approach to dealing with capability issues in a reasonable and fair way that affords the employee every opportunity to address the issues being brought to their attention by management.
- 2.4 The employee is entitled to be accompanied at meetings held at all Stages of the procedure by a trade union representative or other work colleague.

# 3 Sickness absence triggers

- 3.1 The following sickness absence triggers have been set as guidance as to when consideration should be given to initiating the capability process:

## 6-month rolling period

- Three separate instances; or
- a total absence of 6 working days or over in any six-month period.

## 12-month rolling period

- Five separate instances; or
- a total absence of 8 working days or over in any 12-month period.

- 3.2 An employee's sickness absence triggers must exclude:
  - Any maternity related illness,
  - short term due to service sickness absences,

- the first 16 days of menopause related sickness absence,
  - the first 10 days of a period of Covid-19 sickness prior to 1 June 2024.
- 3.3 If the sickness absence(s) is/are considered to be as a direct result of a disability then, as a workplace adjustment, the sickness absence trigger threshold will be doubled.
- 3.4 If you are unsure whether the sickness absence is as a result of a disability, then advice can be sought from Occupational Health or People Services.

## **4 Assessing suitability for progression to the capability process**

- 4.1 There is no single formula for determining the point at which an individual's attendance should be progressed through the capability process. Each case must be based on its own merits, but will always be based on the following principles:
- The intention of the Supporting health and wellbeing policy number 1005 and the application of this process is to improve attendance.
  - Where individuals are injured or ill they should be treated fairly and compassionately at all times.
  - Managers should be able to demonstrate that they have acted reasonably in all actions taken in accordance with the supporting health and wellbeing policy, including any decision to apply the sickness capability process.
  - In certain circumstances, it may be appropriate to consider redeployment or ill health retirement in discussion with the employee. In these circumstances, advice must be sought from People Services.
- 4.2 Although each case must be reviewed on its own merits, as a guide consideration should be given to initiating the capability process at the following points:

### **Long term absence**

- 4.3 After 6 months of continued long-term absence or unavailability from the substantive role, a first stage capability meeting may be considered.
- 4.4 After 9 months of continued long-term absence or unavailability from the substantive role, a second stage meeting may be considered.
- 4.5 As a last resort, and after all other alternatives have been explored, if an employee remains absent from work after 12 months or is unavailable from the substantive role, a third stage hearing may be initiated.

### **Short term absence**

- 4.6 If an employee fails to achieve the targets for improvement given to them as part of their employee support meetings and short-term persistent absence remains a management concern due to the continuing nature within the employee's attendance record, the first stage of the capability process may be considered unless the short-term absence is recorded as Due to Service, which includes a request is pending a decision.
- 4.7 The sickness capability process should not normally be applied unless:
- Supportive management action having been taken, the individual continues to have unacceptable levels of persistent short-term absence and there is no sufficient improvement in their attendance; and/or

- The individual is absent due to long-term sickness and supportive management action has been taken; there is no realistic prospect of return to work or return to substantive duties in a reasonable timeframe.
- The employee is unable to return to their substantive role and it is not anticipated will be able to do so within a reasonable timeframe.
- The employee has been previously advised that their continued absence may result in progression through the capability process.
- Earlier supportive action was offered but the individual either declined it or failed to co-operate and as a result there has not been the necessary improvement in the employee's attendance.

## **5 Monitoring periods**

- 5.1 Schedule a review meeting at an appropriate agreed time to monitor the employee's progress towards meeting the agreed targets, remembering that the guidance states that, for long-term absence, this should generally be in no less than a month but not more than three months. For cases where persistent short-term absence remains a management concern, managers may wish to consider reviewing an employee's attendance over a longer period to ensure improvements are sustainable in the longer term.
- 5.2 At the end of the monitoring period, where targets have not been met, a further Employee Support Meeting must be arranged. If it is established that the employee's absences are not related to a health issue, this should be discussed with the employee and may be managed in accordance with other relevant Brigade policies and procedures.
- 5.3 Where an acceptable level of attendance has been achieved, i.e. it is within targets, there is no longer a requirement to arrange a further Employee Support Meeting.
- 5.4 In exceptional cases where there are high levels of sickness during the monitoring period, and where the targets have already not been achieved, the manager can hold an Employee Support Meeting, curtail the monitoring period, and move to the capability process.

## **6 Employee support meetings**

- 6.1 After the initial employee support meeting which should be held after 28 days sickness, and after a medical outcome report from Occupational Health is provided, further employee support meetings should be held dependant on the individual circumstances. As a guide it will generally be appropriate to hold a further employee support meeting after no less than one month, and no more than three months, of long-term absence (28 days or more). This is a guide, and the frequency of employee support meetings can vary depending on the circumstances of the case. For cases where persistent short-term absence remains a management concern, managers may wish to consider reviewing an employee's attendance over a longer period to ensure improvements are sustainable in the longer term. In cases of short-term absence, managers will normally set a monitoring period of 12 months for improvement. If the manager feels that a shorter monitoring period than this is required, then this can be set when justified. The manager will consider holding further employee support meetings during the monitoring period when the absence triggers are met. In exceptional cases where there are high levels of sickness during the monitoring period, and where the targets have already not been achieved, the manager can hold an employee support meeting, curtail the monitoring period, and move to the capability process.
- 6.2 For long-term absence schedule a further employee support meeting at an appropriate time during which the manager will review the employee's absence levels and the employee should provide an update on their health issues. Reviews should generally be carried out in no less than

a month but not more than three months from the date of the employee support meeting, managers should set a reasonable, but specific target for the employee during which they will review the employee's absence.

- 6.3 These meetings must be conducted to review absences of all employees who have attended an initial employee support meeting. This follow up meeting with the employee will focus on their absence record over the previously agreed monitoring period, where an improvement has not been achieved and whether any further action is necessary.

## **7 Stage 1**

- 7.1 A First Stage Meeting will be held to discuss the employee's attendance record and determine any support mechanisms that could be put in place to assist the employee to return to work or achieve the targets set for improvement. The employee will be advised of this meeting in writing. It is recommended that the manager consults People Services when this stage is reached.
- 7.2 The First Stage is the start of management progressing the lack of improvement of previously set targets or failure to return to work/substantive duties. The approach taken should continue to be supportive with the focus being on how to resolve the employee's absence issues. The employee should be made aware of the impact their absence is having on the service delivery and work of their colleagues. Further targets for improvement should be set if appropriate and the employee informed of the consequences if they do not meet these targets or achieve a return to work/substantive duties i.e. they will be required to attend a Second Stage Meeting.
- 7.3 In terms of setting absence targets, managers must consider the following:
- Any emerging patterns so that support/assistance can be offered to the employee if necessary e.g. alcohol/drug addiction/caring issues.
  - The period of time that the absence target will be set for and whether this is realistic and achievable for the employee.
  - Discuss any practical support/assistance that is required to allow the employee to improve over the timescales set.
- 7.4 The employee's line manager or other designated officer, no lower than sub/station officer/FRSC/control commander, should chair this meeting.
- 7.5 The outcome of the meeting will be put in writing using the standard letter. Where there is a requirement to request further medical information from Occupational Health at this stage, a referral should be made, and specific information requested.

## **8 Stage 2**

- 8.1 Where it is necessary to hold a Second Stage Meeting, a discussion should take place with the employee as to why they have failed to achieve the targets set at the first meeting or achieve a return to work/return to substantive duties. Again, support mechanisms should be considered, if appropriate and a referral made to Occupational Health (if no previous referral arranged) to obtain further medical information in relation to the employee's medical condition (if appropriate). Further targets for improvement should be set, if appropriate and the employee informed that failure to meet these targets or achieve a return to work/substantive duties could ultimately result in their employment being terminated on the grounds of capability.
- 8.2 This is the penultimate stage to potential dismissal and presents another chance for the employee to make the necessary improvements in attendance. The employee should be invited to the meeting in writing and the written outcome of the meeting should be detailed. Management, whilst still taking a reasoned and understanding approach to the employee's position, will be at

the point where the employee's lack of improvement is of considerable concern. Accordingly, it will be important to ensure absolute clarity in understanding of where the improvements are required and of the case put forward by the employee. It is therefore important that a discussion should take place with the employee as to why they have failed to achieve the targets set at the first meeting or achieve a return to work/substantive duties. It is important to ensure absolute clarity in understanding where the improvements are required, and the case put forward by the employee.

- 8.3 A manager, no lower than group commander/FRSE/senior control commander should chair this meeting. Where an employee's absence record continues to give cause for concern following a Second Stage meeting, then advice will be sought from People Services.

## **9 Stage 3**

- 9.1 To assist in determining whether or not an employee should move to the third and final stage of the procedure, it is recommended that a management of sickness absence case review checklist is completed by the manager who held the second stage interview.
- 9.2 Where it is necessary to proceed to the Third Stage of the procedure, the employee should be advised of the arrangements in writing. This is the final stage in the capability procedure at which dismissal can be the result. Only instances for which there is a strong case for dismissal should be brought to this stage, but it is for the senior manager conducting the meeting, no lower than DAC or FRSG, to decide on the outcome based on the information, case put forward, including new information presented by the employee and with advice from People Services.
- 9.3 To sustain dismissal there needs to be a consistent record of non-improvement in the employee's record of absence as required at the Stage 2 meeting, or no foreseeable date identified for a return to work or a return to substantive duties, depending on circumstances. Each stage must be clearly documented, setting out the requirements of management and the employee's obligations. Management must also be able to demonstrate consistency and reasonableness in their approach to the actions previously taken. All cases should have a consistent record of absences, supporting medical opinion of the reasons for the absences, knowledge of the employee's intentions and a record of unfulfilled employee obligations and the reason for unfulfilled obligations.
- 9.4 Any decision to dismiss an employee will be considered on its own merits with careful judgement exercised and is only be taken when:
- The employee has been formally advised that failure to attend work on a regular basis could lead to dismissal. This applies equally to cases of both short term persistent and long-term absence.
  - The employee and trade union representative have had an opportunity to explain the absence record and the reasons for it.
  - Management has explained the requirement for the employee to attend work on a regular basis and has given the employee the opportunity to prove that they can attend work on a regular basis.
  - Reasonable adjustments to the post have been considered, as required under the Equality Act, and it has been determined that no further adjustments can be made.
  - Where applicable, the option of a suitable alternative position has been fully considered.
  - Medical advice has been obtained to ascertain the nature of the illness/ailment, its likely duration, whether the employee is likely to make a full recovery and if not, what work they are able to perform.
  - Ill Health Retirement has been considered where appropriate.

**IMPORTANT:** Clearly each case will require to be considered on its own merits and careful judgement exercised before reaching a decision to dismiss, based on capability. Management should consult People Services for advice at any stage where it is considered this could be of assistance.

## **10 The appeals procedure for termination of employment due to capability**

- 10.1 Where an employee is dismissed on the grounds of capability, the employee has the right to appeal the decision. Appeals should be in writing and within seven days of receipt of the letter detailing the outcome. The appeal shall be heard by a Head of Service/Assistant Commissioner. The grounds of appeal will normally be one or more of the following:
- The principles of the Supporting health and wellbeing policy number 1005 have not been adhered to.
  - Decision to dismiss was too severe.
  - Medical information has not been considered or new information has come to light.

## **11 Records**

- 11.1 Please send records by email to [RecordsServices@london-fire.gov.uk](mailto:RecordsServices@london-fire.gov.uk). Records will be kept on the employee's electronic personal record file (e-prf) and retained in accordance with Policy number 788 - Electronic personal record file. Personal data shall be processed in accordance with Policy number 351 – Data protection and privacy policy.

## **12 Help and support**

- 12.1 Please contact the HR Helpdesk on extension 89100 option 3 and by email to [IT.HR@london-fire.gov.uk](mailto:IT.HR@london-fire.gov.uk).
- 12.2 This policy may also be available on request in other alternative accessible formats as set out in Policy number 290 – Guidance note on translation and interpretation. Please contact Communications on extension 30753 and by email to [communications.team@london-fire.gov.uk](mailto:communications.team@london-fire.gov.uk) to discuss your needs and options.
- 12.3 The Brigade invites your engagement so that it can learn so if you have a suggestion that can improve this policy then please submit your idea via the Staff Suggestion Scheme on Hotwire as set out in [Policy number 887](#) – Staff suggestion scheme. Any changes do need to go through the agreed engagement, consultation, negotiation or governance requirements.

## Document history

### Assessments

An equality, sustainability or health, safety and welfare impact assessment and/or a risk assessment was last completed on:

EIA	08/05/24	SDIA	H - 24/07/23		HSWIA	01/08/23	RA	N/A
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### Audit trail

Listed below is a brief audit trail, detailing amendments made to this policy/procedure.

Page/para nos.	Brief description of change	Date
Throughout	Role to rank changes made to content.	15/10/2019
Page 1	Owner title updated from 'Head of Human Resource Management' to 'Assistant Director, People Services'.	
Page 2, para 1.1 Page 2, para 3.1 Page 4, para 5.4	'Authority' changed to 'Brigade' due to the abolition of LFEPA. 'HRM Department' updated to 'People Services Department'. Language changed to gender-neutral terms.	26/08/2020
Throughout	This policy has been reviewed as current with content from the cancelled managing attendance policy and handbook added.	23/01/2023
Page 8	SDIA and HSWIA updated.	04/08/2023
Page 2, para 1 and 2 Page 4, para 6.1 Page 7, para 11 and 12	Scope and background consolidated into an 'Introduction'. References to StARS removed. Records paragraph added replacing references throughout of records. Help and support paragraph added replacing references throughout of HR contacts.	17/11/2023
Page 2, para 1.2	Values included.	25/03/2024
Page 7, para 11.1 Page 7, para 12.2	Data protection details added. Access to alternative policy format details added	19/04/2024
Page 7, para 11.1 Page 7, para 12.3	Records Services details added. Staff Suggestion scheme access details added.	23/05/2024
Throughout	Reviewed against updated 2025 Grys Book 7 <sup>th</sup> edition.	19/05/2025
Page 2 – 3 , para 3.2-3.3	Included exemptions from sickness absence triggers from PN1008. Updated exceptions to include the first 16 days of menopause related sickness.	11/08/2025

### Subject list

You can find this policy under the following subjects.

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## Freedom of Information Act exemptions

This policy/procedure has been securely marked due to:

<b>Considered by:</b> (responsible work team)	<b>FOIA exemption</b>	<b>Security marking classification</b>