

PERSONNEL COMMITTEE – 4TH APRIL 2017

Report of the Head of Strategic Support

Part A

ITEM 8 'DYING TO WORK' CHARTER

Purpose of the Report

To provide the Personnel Committee with information about the TUC's 'Dying to Work' campaign and charter.

Recommendation

That the Committee notes the content of the TUC 'Dying to Work' Charter, and that a further report will be presented to the Committee on adopting the Charter once the required consultation processes have been completed.

Reason

To progress the resolution on this matter made at the Council meeting on 23rd January 2017.

Policy Justification and Previous Decisions

A motion on notice was submitted by Councillor Forrest at the Council meeting on 23rd January 2017 regarding support for employees diagnosed with a terminal illness and a related voluntary code of practice that many employers were adopting, and Council made the following resolution (minute reference 63.1):

'This Council expresses its wish for workers with terminal illnesses and their families to be supported, notes the existence of the voluntary code of practice and requests the Personnel Committee to give consideration to adopting that code of practice'.

Implementation Timetable including Future Decisions

The option to adopt the Charter will be considered in the usual manner in consultation with the trade unions and a further report will be brought to the Committee once this process is complete.

Report Implications

The following implications have been identified for this report

Financial Implications

There are potential financial costs associated with managing terminally ill employees differently relating to their sickness absence and by possibly extending their sick pay entitlement. These will be considered further in the future report.

Risk Management

There are no specific risks associated with this decision.

Background Papers: None

Appendix A: The TUC's 'Dying to Work' charter
Appendix B: Attendance Management Policy and Procedure

Officer to contact: Adrian Ward
Head of Strategic Support
Telephone: (01509) 634573
Email: adrian.ward@charnwood.gov.uk

Part B

Background

1. Full Council on 23rd January 2017, noted the TUC campaign for terminally ill employees and, asked for a report outlining the Council's practice in relation to the support provided for employees diagnosed with a terminal illness. It was resolved that the Council expresses its wish for workers with terminal illness and their families to be supported, notes the existence of the voluntary code of practice and requests that the Personnel Committee give consideration to adopting that code of practice.
2. This request follows on from a TUC campaign called 'Dying to Work'. Attached to the campaign is a voluntary charter which the TUC are asking companies and organisations to adopt. The charter is attached as Appendix A.
3. The campaign is also calling for terminal illness to be made a 'protected characteristic' as outlined in the Equality Act 2010. The proposed legal change is unlikely to make any practical difference to the way that seriously ill employees are managed within the Council. Disability is defined as a 'protected characteristic' and it is difficult to envisage that a terminally ill employee would not be provided with the same level of support and reasonable adjustments as a disabled employee.

Current HR Policies

4. The Council's current Attendance Management Policy and Procedure contains a specific section outlining how the Council expects employees with serious illnesses to be managed, and this is copied below:

'The Council recognise that employees can develop serious medical conditions which can affect their attendance at work. This may be evident through long-term or short term frequent absences. Managers should be particularly sensitive and supportive to employees in these circumstances, working with HR to provide appropriate supportive measures as outlined above. Managers should also give due consideration, taking into account advice received from Occupational Health, to when it is appropriate to adopt different stages within the policy. Where possible, solutions should be sought, which are beneficial to both the employee and the service.'

5. The recently adopted Carers' Leave and Career Break Policies will assist employees to support close family members who have a terminal illness.

Custom and Practice

6. The Council already seeks to treat any employees who are diagnosed with terminal illnesses sympathetically and to support them as far as is possible in their choices and preferences as to deal with their own particular situations.

Proposals

7. The Senior Management Team (SMT) are being requested to consider the following proposals:

Adoption of the TUC 'Dying to Work' Charter

8. The Charter, as attached at Appendix A, lists 4 'promises' outlining what terminally ill employees can expect. SMT are considering each of these 'promises' to decide if it is appropriate for Charnwood to adopt the full charter:
9. Promise 1: *'We recognise that terminal illness requires support and understanding and not additional and avoidable stress':*

It appears that, with sensitive management, this would be achievable.

10. Promise 2: *'Terminally ill workers will be secure in the knowledge that we will support them following their diagnosis and we recognise that safe and reasonable work can help maintain dignity, offer valuable distraction and can be therapeutic in itself.'*

If the employee is no longer able to do the current job, this may involve redeployment. There is currently provision in the redeployment policy to redeploy employees for health reasons.

11. Promise 3: *'We will provide our employees with the security of work, peace of mind and the right to choose the best course of action for themselves and their families which helps them through this challenging period with dignity and without financial loss.'*

Charnwood currently has very few compulsory redundancies, therefore it would be reasonable to offer secure employment, unless the financial situation of the Council changes substantially. Employees with more than 5 years' service, who are absent long-term, are currently entitled to 6 months full pay and 6 months half pay. After that time they go down to no pay. There is a provision within the LGA Green Book which states that; *'Authorities shall have discretion to extend the period of sick pay in exceptional cases'*. Officers are not aware of any cases where this discretion has not been exercised within Charnwood in recent years. If the Council is minded to adopt the Charter, consideration will need to be given to whether it may be appropriate to allow some discretion to extend periods of salary payment for terminally ill employees.

12. Promise 4: *We support the TUC's Dying to Work campaign so that all employees battling terminal illness have adequate employment protection and have their death in service benefits protected for the loved ones they leave behind.*

The Council are limited to what they can provide for death in service benefits by the rules of the LGA pension scheme.

Amendments to the Attendance Management Policy and Procedure

13. An amendment to the Attendance Management Policy and Procedure will be proposed to include the following paragraph:

'If an employee is diagnosed with a terminal illness, the manager should work with HR to provide the employee with the supportive measures outlined in the policy and management guidance document. Managers should keep in regular contact with the employee, whether they are in work or absent, and ensure that they have all the relevant information and options available to them relating to their employment'.

14. If Charter is adopted, then an additional sentence should also be included as follows:

'The Council has decided to adopt the TUC 'Dying to Work' Charter', and managers should therefore refer to this charter and aim to manage this difficult situation in a way that meets the 4 recommended outcomes as far as they are able'.



This charter sets out an agreed way in which ‘Sample Company’ employees will be supported, protected and guided throughout their employment, following a terminal diagnosis.

- We recognise that terminal illness requires support and understanding and not additional and avoidable stress and worry.
- Terminally ill workers will be secure in the knowledge that we will support them following their diagnosis and we recognise that, safe and reasonable work can help maintain dignity, offer a valuable distraction and can be therapeutic in itself.
- We will provide our employees with the security of work, peace of mind and the right to choose the best course of action for themselves and their families which helps them through this challenging period with dignity and without undue financial loss.
- We support the TUC’s Dying to Work campaign so that all employees battling terminal illness have adequate employment protection and have their death in service benefits protected for the loved ones they leave behind.

Chief Executive of Sample Company

TUC Regional Secretary

Attendance Management Policy and Procedure

1 Scope

This document applies to all employees of Charnwood Borough Council employed under the Joint Negotiating Committee for Local Government Services (JNC), National Joint Council for Local Government Services (NJC) and Joint Negotiating Committee for Local Authority Craft and Associated Employees (Craft).

Further information on the application of the policy is available in the supporting [Guidance](#) and this policy should be read in conjunction with that document.

It is not applicable to employees within their probationary period or casual workers.

2 Purpose

The purpose of the Council’s Attendance Management Policy and Procedure is to provide a supportive framework for employees where a shortfall in attendance has been identified in order to assist employees to improve, reach and maintain the standard of attendance expected within their area of work.

It is acknowledged that, at times, employees need to take time off work due to personal illness or injury. The Council provides appropriate paid (or in some instances unpaid) leave in such circumstances and expects its employees to respond by ensuring they take reasonable care of their health and attend work unless they are unable to do so.

3 Roles and Responsibilities

HR Services	HR Services will provide advice, coaching and support to managers on the application of the Policy and Procedure. HR will also act as panel members at hearings and will express a view on whether the case is founded and make recommendations about the appropriate outcome.
Line Manager or Management Representative	Will support and manage the employee through the process and will normally act as the management representative if a hearing is convened.
Chair of the Panel	The Chair of the panel will manage the hearing and notify the employee of the decision. They will also normally present the case if the employee exercises their right to appeal against that decision.
Panel Members	Will support the Chair of the panel and express a view on whether the case is founded and make recommendations about the appropriate outcome.

Trade Union Representative or Work Colleague	To support and advise, if appropriate, the employee. At a hearing this may include presenting the employee's case, summarising and conferring with the employee and responding to points on behalf of the employee. The Trade Union or work colleague cannot answer questions put directly to the employee.
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4 Short Term / Frequent Absences

This is described as an employee having regular periods of sickness absence from work on health grounds. This is normally 3 or more absences in a 6 month period, but will depend on the circumstances.

5 Long Term Absence

This is normally defined as being a continuous absence of 4 weeks or more, which is medically certified and attributable to an underlying medical condition or specific reason.

6 Monitoring of Employee Attendance

All absences should be reported, recorded, monitored and analysed on an ongoing basis in order to identify problems, review individual cases and decide upon any appropriate action.

Absences which may require further attention / investigation, may include, but will not be limited to the following:

- Three periods of absence in 6 months;
- A pattern of absence e.g. regular Friday / Monday absences or linked to annual leave;
- Two long periods of absence (which is over 1 week but less than 4 weeks) in a 6 month period;
- A long term absence of 4 weeks or more;
- A stress related absence or reoccurrence of a stress related absence;
- Regular repetition of the same / similar type of illness.

Authorised absence (e.g. unpaid leave) should not be counted towards the 'triggers' shown above.

7 Return to Work Meetings

Managers should complete a return to work interview with employees following every period of absence. In many cases the meeting may be as brief as a quick chat to ensure the employee is fit to return, welcome them back to work and provide any support that could help them.

8 Support Mechanisms

Managers may wish to explore the following options:

- a) [Referral to Occupational Health](#) to seek medical advice and opinion.
- b) [Rehabilitation / Phased Return to Work Plan](#) to assist the employee to return back to work on a planned and phased basis, usually following a medical recommendation.

- c) [Reduction in Hours](#) to assist the employee to return back to work on a temporary or permanent basis, which must be mutually accommodated and agreed. The employee's contract of employment will then be changed accordingly.
- d) [Flexible Working](#) this would enable employees to adjust their working arrangements on a temporary basis where this can be accommodated by the service. Adjustments may include an element of home working or a different pattern of work.
- e) [Temporary Redeployment](#) to a different role to enable the employee to return to work.
- f) [Preferential Treatment Status](#) where applicable, to obtain alternative work on the Council's redeployment register to enable the employee to return back to work. If the employee is appointed to another post, there will be no entitlement to pay protection or additional travel expenses.
- g) [Reasonable Adjustments](#) to support the employee in their role and to improve their attendance levels.
- h) [Amica Counselling Service](#) to access counselling and support on a range of issues (e.g. financial worries, family concerns, work-related problems, etc).

9 Employee's with a Disability

Consideration should be given as to whether an employee's level of attendance is due to a disability, and if so, what [reasonable adjustments](#) may be needed to assist the employee in being able to reach the acceptable level of attendance. If an underlying disability is suspected an Occupational Health referral is usually required for advice on reasonable adjustments. Further advice should be sought from HR Services.

10 Employees with a Serious Medical Condition

The Council recognise that employees can develop serious medical conditions which can affect their attendance at work. This may be evident through long-term or short term frequent absences. Managers should be particularly sensitive and supportive to employees in these circumstances, working with HR to provide appropriate supportive measures as outlined above. Managers should also give due consideration, taking into account advice received from Occupational Health, to when it is appropriate to adopt different stages within the policy. Where possible, solutions should be sought, which are beneficial to both the employee and the service.

If an employee is diagnosed with a terminal illness, the manager should work with HR to provide the employee with the supportive measures outlined in the policy and management guidance document. Managers should keep in regular contact with the employee, whether they are in work or absent, and ensure that they have all the relevant information and options available to them relating to their employment.

The Council has decided to adopt the TUC 'Dying to Work' Charter', managers should therefore refer to this charter and aim to manage this difficult situation in a way that meets the 4 recommended outcomes as far as they are able.

11 Sickness Absence during Pregnancy

If the employee is off work ill, or becomes ill, with a pregnancy related illness during the last four weeks before the expected week of child birth (EWC), maternity leave will normally

3

commence on the day after the first day of absence. Pregnancy related absences during this period may be disregarded at the manager's discretion.

Sickness absence prior to the last four weeks before the EWC, supported by either a fit note or a self-certificate, shall be treated as sickness absence in accordance with normal sickness absence provisions. However, pregnancy related absences may be disregarded for the purpose of invoking the formal stages of the policy and for any future employment related decisions.

12 Annual Leave and Bank Holidays

Annual leave will continue to accrue during sickness absence. Employees on long term sickness absence (i.e. over 4 weeks) will also accrue their public holiday entitlements.

13 Links to Disciplinary Policy and Procedure

Where sickness absence patterns emerge and where it is believed that absences are not attributed to genuine sickness, this will be investigated through the [Disciplinary Policy and Procedure](#).

14 Escalation to Stage 4

In most cases there will be four stages to the attendance management process. However, there may be occasions in cases of long term sickness absence where the medical reports indicate that a return to work is not possible within a reasonable time period. In these circumstances the manager must ensure that all avenues of [support](#) such as [ill health retirement](#) and [redeployment](#) have been exhausted as applicable, but may proceed to Stage 4 of the attendance management process without completing all and/or any of the other three stages. Where the manager wishes to progress to Stage 4 before the preliminary action stage has been completed, this must be agreed by the employee. The employee should ensure that they are in receipt of all appropriate information before making the decision. Advice must be sought from Strategic HR before escalating to Stage 4.

15 Stage 1 Preliminary Action

If there are concerns regarding an employee's level of attendance, the manager will arrange a meeting with the employee to review their absence record and if relevant, draw up a [support plan](#). A review period should be agreed (which will vary in individual cases, but generally this will be between 4 and 8 weeks) and [support mechanisms](#) considered.

It is not usual practice for an employee to be accompanied at this stage. However, if the manager or employee feels that it would be appropriate, the employee may be accompanied by a work colleague or Trade Union representative.

A meeting should be held with the employee at the end of the review period to determine whether the support plan has been achieved. If the employee has not achieved the level of attendance required by the end of the review period, the line manager may consider progressing to Stage 2 of this procedure.

However, if the employee has made sufficient improvement, the attendance management procedure will cease. If the improvement is not sustained for 4 months from the end of the review period then the manager may progress to Stage 2 of this procedure.

Brief notes of all meetings should be taken to record what has been discussed and a copy provided to the employee for their agreement.

16 Stage 2 – Formal Action

Where there are continuing concerns over an employee's attendance, the manager will invite the employee to attend a Formal Attendance Management Meeting. Ten working days' notice will be given for this meeting, the purpose of which is to establish the facts, to allow the employee to respond to concerns about their attendance and if applicable, put further support mechanisms in place. The employee has the right to be accompanied by a work colleague or Trade Union representative. Notes should be taken at this meeting and a copy will be sent to the employee for their agreement, together with any relevant documents e.g. the agreed [support plan](#).

The person conducting the meeting will:

- Identify the level of attendance not being met, and give clear [guidance](#) on the standard of attendance required (support plan);
- Explore any [support mechanisms](#) available to help the employee improve their attendance;
- Specify the monitoring and review period for improvement (which will vary in individual cases, but generally this will be between 4 and 8 weeks);
- Advise the employee of the potential outcomes of the meeting noting that failure to improve to the required attendance level within the timescale could lead to the manager arranging an attendance management hearing whereby the employee could be issued with a final written warning.

The employee will:

- Provide an explanation as to any reasons why their attendance is not meeting expectations and explore any factors that may be having an impact (e.g. domestic circumstances, underlying health problems, work concerns, etc.);
- Identify any support mechanisms that they feel may help them to improve their attendance.

17 Review Meeting

A review meeting will be held at the end of the support plan period. Employees have the right to be accompanied by a work colleague or Trade Union representative. Notes should be taken at this meeting and a copy will be sent to the employee along with a letter confirming the outcome of the meeting.

Both the person conducting the meeting and the employee will have an opportunity to present evidence to support their position.

The potential outcomes of the meeting are:

- If the employee has made sufficient improvement, the attendance management procedure will cease. However, if the improvement is not sustained for 9 months from the end of the review period then the manager may recommence at [Stage 3](#) of this procedure.
- If some improvement has been made and further progress is likely, it may be appropriate to extend the review period by 4-6 weeks. In the majority of cases it will be appropriate to extend the review period just once during the attendance management process.
- If no, or insufficient improvement has been made, the employee will be advised that a Stage 3 Attendance Management Hearing will be arranged at which they could be issued with a Final Written Warning.
- If applicable, [escalation](#) to a Stage 4 Attendance Management Hearing (see No. 13 above).

18 Stage 3 – Final Action

Attendance Management Hearing

The manager will be responsible for arranging a panel which will be chaired by a Senior Manager (PO Grade or above), supported by a further Senior Manager and a representative from HR Services, who will act as panel members. All of the panel should have had no prior involvement in the employee's case. The manager should also arrange a note-taker.

Ten working days written notice will be given to attend the formal hearing in which the employee will be informed of the reasons for the hearing and their right to be accompanied by a work colleague or Trade Union representative. The letter should state that a potential outcome of the hearing is a final written warning. Employees should also receive copies of relevant documentation e.g. support plan(s), notes of meetings, etc. within an evidence folder. Employees will also be given an opportunity to provide evidence and this must be submitted to the Chair of the panel at least 5 working days before the date of the hearing. Details of the format the hearing should take can be found in the supporting [Guidance](#).

The panel may find:

- The level of attendance is acceptable;
- It is appropriate to issue the employee with an extension (4-6 weeks) to the review period of the support plan agreed during [Stage 2](#). This should only be considered if an extension has not previously been given during the attendance management procedure or in exceptional circumstances. The panel will reconvene at the end of the extension period;
- The level of attendance is not acceptable. If the panel are satisfied that the employee has been unable to improve their attendance to the required standard,

they will issue the employee with a final written warning. Within 7 days of the hearing, the manager should meet with the employee to agree a further [support plan](#) and review period. A date and time should also be agreed for the final (and any mid-point) review meeting. The panel may wish to make recommendations at the hearing regarding the contents or duration of the support plan;

The employee should receive written confirmation of the outcome of the hearing including information on their right to appeal the decision.

19 Final Written Warning

Where an employee has received a Final Written Warning, this will remain on their file for 12 months.

20 Right of Appeal

An employee has the right to appeal against their final written warning and it must be submitted in writing by the employee within 7 working days of receiving notification of the hearing. For further information, please refer to the [Appeal Policy](#).

21 Review Meeting

A review meeting will be held at the end of the support plan review period. The employee has the right to be accompanied by a work colleague or Trade Union representative. Notes should be taken at this meeting and a copy will be sent to the employee together with a letter confirming the outcome of the meeting.

The potential outcomes of the meeting are:

- If the employee has made sufficient improvement, the attendance procedure will cease. However, if the improvement is not sustained within 12 months from the end of the review period then the manager may recommence at Stage 4 of this procedure;
- If some improvement has been made and further progress is likely, it may be appropriate to extend the review period by 4-6 weeks. This should only be considered if an extension has not previously been given during the attendance management procedure;
- If no, or insufficient, improvement has been made, the employee will be advised that a Stage 4 Attendance Management Hearing will be convened to consider the case and that a potential outcome is dismissal.

22 Stage 4 – Attendance Management Hearing

The manager will be responsible for arranging a panel, chaired by a Senior Manager (PO Grade or above), supported by a further Senior Manager and a representative from HR Services, who will act as panel members. All of the panel should have had no prior involvement in the employee's case.

If a hearing has already been held under Stage 3 of the procedure then, where possible, the same panel should be used for this hearing. The manager should also arrange a note-taker.

Ten working days written notice will be given to attend the hearing in which the employee will be informed of the reasons for the hearing and their right to be accompanied by a work colleague or Trade Union representative. The letter should state that a potential outcome of the hearing is dismissal. Employees should also receive copies of relevant documentation e.g. support plan(s), notes of meetings, etc. within an evidence folder. Employees will also be given an opportunity to provide evidence and this must be submitted to the Chair of the panel at least 5 working days before the date of the hearing. Details of the format the hearing should take can be found in the supporting [Guidance](#).

The panel may find:

- The level of attendance is acceptable;
- It is appropriate to issue the employee with an extension (4-6 weeks) to the review period of the support plan agreed during [Stage 3](#). This should only be considered if an extension has not previously been given during the attendance management procedure. The panel will reconvene at the end of the extension period;
- The level of attendance is not acceptable. If the panel are satisfied that the employee has been unable to improve their attendance to the required standard, having considered the grounds of the appeal including any reasons for the failure to reach the required standard, it is likely that they will dismiss the employee from the Council's employment with notice.

The employee will be notified in writing of the outcome of the hearing including their right of appeal. If the employee has been dismissed, the letter should include the reason for the dismissal and the employee's termination date. A copy of the notes from the hearing should also be provided.

23 Right of Appeal

An employee has the right to appeal against their dismissal from the Council and it must be submitted in writing by the employee within 7 working days of receiving notification of the hearing. For further information, please refer to the [Appeal Policy](#).