

### Proposed Additions to Sickness Management Procedure – August 2022

#### Termination on the Grounds of Capability (Ill Health)

- 6.22 When an individual has been absent from work and there is no agreed date for return or where the individual is unable to undertake their role due to medical issues then the Brigade will need to consider terminating the employment of the individual on the grounds of capability.

A meeting should be held as soon as possible. The employee should be invited to the meeting by way of letter advising that they are to be investigated under Stage Three of the Capability Policy, the potential outcomes of the procedure and confirming that they have the right to be accompanied by a Trade Union representative or a work colleague.

At the meeting the employee should be informed that a 2-month monitoring period will commence whilst the investigation manager considers all available information and options available to prevent a termination of employment.

At the end of the 2-month monitoring period, and once the investigating manager has considered whether:

- adequate recent medical evidence is available which indicates that a return to work in any capacity or to their role is unlikely within a reasonable timescale
- ill health retirement has been considered but they do not meet the criteria
- any feasible modification to the role/workplace have been explored and are either not possible or have not worked
- redeployment has been considered but: there are no vacancies, no suitable alternative employment or the redeployment opportunity has not worked
- there has been full and meaningful consultation with the individual in respect of their sickness and opportunities to return to work

the process that is used is the Formal Stage 3 Hearing from the Capability Procedure and should be heard by the relevant level of Hearing Manager.

- 6.24 Prior to the Formal Stage 3 Capability Hearing, the designated HR Representative must write to the employee explaining the purpose of the Capability (Ill Health) Hearing and the potential outcome. This must include the possibility that they may be dismissed on the grounds of Capability due to Ill Health.

- 6.25 At the Capability Hearing, the Hearing Managers must ensure that recent Occupational Health advice is available and that all alternatives to dismissal have been explored.

- 6.26 If Occupational Health advice suggests that the employee remains unfit to return to any work but is unlikely to meet the criteria for permanent ill health, the Hearing Manager must consider the employee's likelihood of returning to work in the future and service needs.

- 6.27 Any dismissal will be with immediate effect on the grounds of capability due to ill health paying the relevant notice period in line with service. Any such dismissal is sanctioned by the Chief Fire Officer under the Scheme of Delegation. This should be in the form of a letter sent to the employee no later than 7-calendar days after the date of the hearing.
- 6.28 The letter confirming the decision of the Hearing Manager should include: (a) The evidence and information taken into consideration (b) the support that has been provided (c) The reason why employment cannot be continued. (d) The options/alternatives considered (e) Where dismissal is the only option, then confirmation that after consideration of all alternatives the decision was made to dismiss the employee on grounds of capability due to ill health. Including any notice period and outstanding annual leave. (f) Their right of appeal. Appeals must be submitted within seven-calendar days of the date of the letter confirming the outcome of the Formal Stage 3 Capability Hearing. The letter should outline the grounds on which the appeal is being submitted.
- Appeal**
- 6.29 Employees may appeal against dismissal. Appeals must be submitted, in writing, to the Head of Human Resources within 7 calendar days of the date of the letter confirming the outcome of the formal hearings. The deadline date for receipt of appeals will be detailed in the initial correspondence from the Hearing Manager.
- 6.30 Where an employee appeals they must provide sufficient evidence of the grounds for appeal in writing.
- 6.31 In the case of appeals against dismissal, the appeal will be heard by the Fire Authority. Once a date and time has been established both parties will be informed via letter from the Head of Human Resources. Following the invite the original Hearing Manager (in liaison with a HR) and the employee must each submit the following documents to Head of Human Resources at least 10-calendar days prior to the Hearing: (a) A full written statement of the case including the grounds upon which the appeal is presented (or resisted, as appropriate). (b) Copies of any documents the party concerned intends to use in evidence and identities of any witnesses the party concerned intends to call.
- 6.32 Every effort will be made to conclude any appeal process within the contractual notice period following the notice of dismissal. If the employee has been dismissed and their appeal is upheld, the employee will be reinstated to the date in which their employment ceased to ensure continuity of service.
- 6.33 The employee is advised of the outcome of the appeal and the reasons for the decision in writing within 7 calendar days of the Appeal Hearing or review. This decision of the appeal Hearing is final.