

UNISON comments on Attendance Management Framework consultation

September 2015

Thank you for consulting UNISON on some proposed changes to the above Framework.

Detailed below are UNISON's comments along with issues, comments and questions raised by staff as part of the consultation.

It is appreciated that some comments may be similar or the same as those made by UNISON on the last consultation on the Framework.

UNISON also wrote to Steve Atkinson in July 2010 with points on the application of the Framework.

Fit Notes

The government Guidance on Fit Notes has just been re-issued (29 September 2015). This includes the guidance for employers and guidance for employees. It is suggested that the Framework be updated if necessary to reflect the current guidance (eg see point 2.10.) I have included salient points from the guidance but I will also put the 'fit for work guidance' on the intranet to assist managers/ employees

Introduction

It is suggested the Framework has an introduction, detailing all the support and help which HBBC will provide to employees who are ill, sustain an injury, become disabled or who have a disability whilst working at HBBC. HSE guidance lists certain matters which could be included. It could also state that employees who have suffered ill health, injury or disability will be treated fairly, equally and consistently (also from HSE guidance) Noted, will include 'This policy applies to all HBBC employees, unless otherwise stated, and will be applied fairly and consistently without discrimination on the grounds of marital status, gender, age, disability, sexual orientation, race, nationality, ethnic or national origins, trade union membership or activity, political or religious belief and unrelated criminal conviction.'

Linking in to other policies

It is suggested that links in to other relevant policies be included eg Health and safety Policy, Equal Opportunities procedures etc Agreed and noted

Statement on ill health and disciplinary procedures

An Absence Policy from North West Leicestershire (on HBBC's intranet) has a statement which includes that the Council recognises that absence from work due to ill

health is not normally a disciplinary matter..... Perhaps a similar statement could be included in the Framework? Will include 'The council recognises that absence from work due to ill health is not normally a disciplinary matter. In such circumstances the employee has not done anything wrong; their absence is due to ill health. However, it is important to that if an employee's absence has reached or is close to reaching a level where, without better attendance, their continued employment is at risk, this will be made clear to the employee and in these circumstances the relevant stage of the framework will be followed'.

Definitions

A suggestion was made to include clearer definitions eg the term 'senior manager' Sarah it is difficult to include a definition as this could differ depending on the team. For example within Refuse the supervisor may carry out the step 1 meeting and Darren Moore (the manager) may then hold the step 2 (short term meeting). HR will ensure for a step 5 meeting (LT) and a step 3 meeting (ST) will only be held with a Chief Officer as this is potentially where an employee could be dismissed. If I put a definition in it may get confusing. I would say a Senior Manager is the manager above the manager who has held the previous stage meeting.

1.1.3

Why does it state that the Framework is not part of an employee's contract? (It is currently written in to my job description that I need to comply with it.) The aim of the policy is to merely lay down standards of good practice which employees are expected to follow, rather than to confer contractual rights on employees. Therefore, the Council should have the ability to change the AMF and hence set relevant rules/standards without being hindered by the possibility of such changes being deemed to be a variation of contractual terms (requiring the Council to go through a cumbersome procedure.)

Policies and procedures often form part of the contract of employment.

UNISON requests that the Branch is always consulted on any proposed changes in advance of them happening to allow us to consult staff and feedback. Agree and noted

(Trade union safety representatives have a right to be consulted on health and safety issues in the workplace and this would include sickness absence.) Agree and noted

Is it being suggested that time limits within the Framework could be varied at any time in a particular case? If yes, there would be no certainty within the Framework and this could be unfair. This is required to enable the Council to adopt shorter procedures for employees, who, for example are on a probationary period where it would be entirely reasonable to shorten the procedures. In other circumstances, it may be necessary for longer time limits to apply where, for example the matter is particularly complex or unexpected events occur that protract the procedure to be adopted.

1.1.5

An amendment is that an employee can request an earlier meeting than one requiring five days notice. A concern is that there is a right to be accompanied and by having meetings at very short notice this may make it difficult for an employee to be accompanied if the representative is not available or the notice is too short. However, that being said, it would be expected that an employee would not request a shorter period should they wish to be accompanied and the shorter period could impact on their ability to be accompanied. The stage 1 meeting is only ever held sooner if the employee requests it. It is not something the manager would request. If the employee would like union/ work colleague representation then the meeting would be arranged giving the 5 day notice. We do try and work with Unison in arranging the meeting to suit everybody but avoiding a delay as this can be stressful for the employee if they have to wait too long.

1.1.9

The section states that any period of sickness absence not covered by a self notification or a fit note (medical certificate) will not be paid.

It is not always possible for an employee to get a doctor's appointment when one is needed to get a Fit Note. (or another one) This can be very stressful especially when an employee is already unwell. Whilst it is appreciated that a fit note can be back dated perhaps this difficulty to have continuous notes with no gaps can be reflected in the Framework? Sarah, we will change the wording to 'any period of sickness absence not covered by a self notification or a fit note (medical certificate) **MAY** not be paid. We are required to have continuous fit notes for audit and payroll purposes. It would only ever be on rare occasions when we would withhold occupational sickness pay. SSP would not be withheld. This decision would only ever be made after consulting the HR Manager.

1.1.11

The Framework indicates there may be a need for a Fit Note when requested by HBBC.

If this is in a period normally covered by self certification then a doctor may be reluctant or unwilling to provide a Fit Note. (Guidance for GPs says that they do not have to issue a Fit Note for the first seven days as the patient can self certify) It would only be on the rare occasion we require a fit note, we do accept that this may not always be possible as the GP maybe reluctant to do it. I can only remember on 1 occasion when we have asked the employee to gain a fit note during their first week of absence and the GP did provide them with one. The employee was not charged.

1.1.13

It is stated that the Attendance Management Framework will be reviewed annually with UNISON. UNISON welcomes being involved in such a review but would query whether this is this a realistic time frame with the other Policy and Procedure work which is normally undertaken each year? We would suggest reviewing the policy every 3 years?

1.3.2 vii)

The Framework says that sick pay may not be paid when an employee is injured working for another employer. Some employees may need to take further paid employment to supplement the wage they receive from HBBC. It would therefore seem unfair to penalise a low paid worker and remove their sick pay entitlement if they were injured/absent from work through no fault of their own. We have never known to suspend sick pay for this reason. The policy does state it MAY not be paid. This is a green book rule (page 2.8 section 10.10)

1.3.3

Appeals against suspension of sick pay are proposed to be to a senior manager. The Green Book refers to appeals on such cases being to 'the appropriate committee of the authority'. The only appeal which would go to the committee would be for gross misconduct. It would be unworkable to hold a committee each time an employee was appealing against suspension of sick pay. On saying that, I cannot recall ever suspending an employee's sick pay. This decision would be made in conjunction with the HR Manager.

1.3.5

If an employee did have a private insurance policy to protect against any loss of earnings then surely this would only 'kick in' when earnings are being lost (which depends on the number of years of service and length of absence) HBBC may not be aware of whether an employee has such a Policy. If the Council claimed back SSP then surely the employee suffers a further loss of pay? The Green Book sickness scheme is designed to supplement SSP (and any relevant benefits) to maintain 'normal pay' during

periods of absence. Usually, if this was to apply the employees insurers would write to HR to find out the employee's pay details. We would be asked to advise what we have/due to pay the employee in sick pay and what the council's sick pay scheme is. If the employee has been paid this money by their insurers then we would ask the employee to reimburse the Council. This would only apply if they had also received a pay award from their insurers. The employee would not be at a loss.

Compensation is mentioned. Would the HBBC insurers assist an employee injured at work or involved in an accident (which was not their fault) in pursuing a compensation claim in certain circumstances? When an employee is injured and we have paid their sick pay we would only ever recover what we have paid so that they are not paid twice. The council would have lost the employee's service for the time that they had been off.

1.5

What is the current corporate sickness absence target level? Is it 8 days? Yes

What were the average days sickness absence lost at HBBC for 2013/2014 and 2014/2015? It is noted that in 2012/2013 it was 8.94 days.

2014/2015 = 8.45 days

2013/2014 = 10.37 days

2012/2013 = 8.94 days

Did the 8.94 days figure for 2012/2013 include any sickness absences due to pregnancy, disability, assault at work, accident at work etc? The 8.94 figure would have included pregnancy, disability but not accident at work.

It is noted that individual Chief Officers/Deputy Chief Executive can set their own targets. (UNISON commented on this previously) It would be inconsistent within HBBC if different services had different targets. (Having said that, it is appreciated that manual workers often have higher levels of sickness absence due to their jobs than office workers) Previously the Chief Executive had set a target of no more than 1 day in 3 months. This was when sickness absence was creeping back up (2013/14). The current target is generally no more than 2 days over 3 months (this is in line with the 8 day target). Some areas have given a 1 day target this is because the employee has had persistent short term absence and it was felt this target was more appropriate. On the rare occasion managers have given a 3 day target in 3 months this only applied when an employee had a good sickness record but the manager felt a target needed to be

set. HR do not encourage different target setting and would advise the 2 day in 3 month target.

Line managers/supervisors (4th bullet point) include health and safety issues being assessed by line managers in conjunction with HR. Should the role of the Principal Safety, Health and Resilience Officer be included? It is our understanding that this is the post which HBBC has to meet corporate health and safety responsibilities under the Management Regulations. Agreed will include Principal Safety, Health and Resilience Officer

Human Resources (1st bullet point) include HR staff developing and reviewing health and safety policies. Again would it be appropriate to include the role of the Principal Safety, Health and Resilience Officer? In the post we have been consulted on safety policies by persons in this post (or its equivalent previously) Agreed will include Principal Safety, Health and Resilience Officer

The role of the Local Joint and Safety panel is rightly included. Unfortunately, this Panel has not met since January 2014. We are currently trying to arrange a meeting for November. The Panel plays an important role in monitoring the accident and stress statistics. UNISON supports the bullet point widening this to reporting all illness (not just accidents and stress statistics)

2.9

The Fit Note Guidance recognises that an employee may go back to work, with the employer's agreement, before expiry of the Fit Note and that an employee may not be fully fit when they return to work. The Fit Note allows a doctor to suggest changes to the job, working pattern etc to aid a return to work.

Employees should not be encouraged to return to work when they are unwell. Illnesses and infectious diseases/conditions may be spread in the work place if someone comes back to work too soon. They may also make mistakes at work and not provide the normal level of service of someone who is fit for work. 'Presenteeism' can have a negative effect on both the employee and the organisation.

Several concerns have been raised on the competence and ability of a line manager/manager who is not medically trained, to assess fitness of an employee, do the related risk assessment and assess the employee's ability to return to work before expiry of a Fit Note.

We would not encourage an employee to return to work sooner and this has only happened in the past when the employee has requested it. If an employee asks to come back to work before their note has expired then a risk assessment would need to be carried out by the manager. Fit note guidance advises that a risk assessment would need to be carried out. All Managers have been trained in carrying out risk assessments. If there were any issues the manager would speak to HR, if necessary we would make contact with the employees GP (with their consent), the Health and Safety Officer, and/ or occupational health.

Questions have also been asked whether an employee returning before the expiry of the Fit Note would be problematic if further ill health/injury resulted. Questions have been asked about possible insurance issues if an early return to work occurs before expiry of a Fit Note. Some jobs have greater risks eg when driving cars, lorries etc.

See comments above

2.7 and 2.10

The employee guidance on Fit Notes (updated 29 September 2015) says that the Fit Note is your property and you should keep it. It also says your employer can take a copy if they want one for their records. The Framework should reflect the current Government guidance. Agreed and noted a copy is sufficient for HR purposes.

3.2 Recording absence

UNISON has previously requested that certain absences be excluded from the Framework. This included absences due to disability (as well as where the employee is waiting for aids, adaptation or training in relation to adapted equipment) and flu epidemics. Is the Framework proposing to exclude all absences related to disability or just disability related 'treatment' appointments as stated? We are not proposing to exclude disability related absences. Disability related appointments are not be recorded.

It has been asked how is time to be recorded for medical appointments? It is believed this is not currently recorded. It is not recorded however the employee needs to ensure their manager is aware.

6.3.1

Staff have been concerned that triggers for persistent short term absence have been significantly reduced. This appears not to have taken into account human factors in reducing the trigger figures. They will lead to more staff being included , through no control or fault of their own and subject to sickness reviews. This will increase

management supervisory time and demoralise staff further, for expected small gain in performance. It has been asked have we not reached a point through diminishing return that it will cost more through monitoring and management than that benefit to the organisation lost through periods of sickness suffered by individuals? The cost to the Council for sickness absence is high. The cost incurred to the council in sickness absence is loss of productivity, paying agency staff to cover the absent employee. The sickness target needed to be refreshed to align to our corporate aspiration of 8 days target. I do not agree that by changing the target it will increase management supervisory time as by having employees absent from work this would increase management time as they may need to arrange cover for the work not being completed, train another employee to carry out the work. We would suggest that the triggers can be reviewed after 1 year to see if management time has increased

Concerns have been expressed of the change from a trigger of 10 to 8 days. It will also lead to increased absence reviews/meetings and the time/resources which will need to be spent on this rather than on other front line tasks. Please see comments in paragraph above in regard to increased management time. The trigger has been reduced as this was set when the AMF was first introduced back in 2007. This was at the time when the average sickness days per employee was 12.5 days.

What is the rationale for changing the number of trigger points from 5 to 4 occasions in a rolling 12 months and 10 days to 8 days absence in a rolling 12 months? The triggers have changed as the corporate target is now 8 days (rather than 10).

Is the corporate target now 8 days? (Triggers are to be in line with corporate targets)
Yes

The last point refers to any unacceptable pattern of absence.

In UNISON's letters of 9/12/2005 and 13/7/2010 it was stated that UNISON believes the phrase "any unacceptable period of absence" is very wide and will be interpreted differently within HBBC. UNISON also stated that the last trigger is unclear and has been used (in our opinion wrongly) to trigger the procedure when an employee has had a period of absence which has not itself met any of the (then) three other triggers.

Surely the first three triggers should adequately cover all eventualities? As far as we can recall we have never progressed to a stage 1 meeting because of any unacceptable periods of absence.' We agree to remove this trigger.

Is meeting a 'trigger point' related to whether an employee being full or part time? For example if an employee is off work for 2 weeks but only works for three days per week would this be 6 days or 10 days of absence? The triggers are the same for a part time employee. It is worth noting that a target is the same for a part time employee also.

How does the HBBC absence rate compare with other local authorities? I would need to explore this and let you know.

What would the extra cost be of additional referrals to Occupational Health under the proposed Framework? We have not changed the number of times we would refer an employee to occupational health. HR and the manager find it extremely helpful to seek advice from occupational health. This also supports an employee who is returning to work, usually when they have been off from work for sometime and also if an employee has a long standing condition.

6.4.1.2 - requires HR to be informed when a manager refers someone to OH. This is not consistent with 6.4.4.1 and it was thought at HBBC that HR arrange OH not the manager. Noted. The policy will be amended. HR do make the referrals to occupational health not the manager.

7.4.2/7.6.2 "adjustments that can reasonably be made to the employee's job to enable them to do so" is it just the job that needs adjusting or working arrangements too/instead? Home working, change of hours, change of desk location etc would not affect the "job" but would potential enable some employees to return to work. Occupational health and/ or the employees GP may make suggestions around the job and working arrangements. We have in the past arranged for an employee to work from home to assist their return. We would certainly consider any recommendations and where possible support the recommendation enabling the employee to return to work and maintain their attendance.

7.7.1 - Use of annual leave and flexitime to make up phased return. Is this current policy? I am not aware it is. It is therefore a negative step for staff in encouragement of staff to return to work. This was in the policy before and has not changed. Generally a phased return to work only last for 4 weeks and the employee's pay would not be effected. It is only if the phased return last longer than the 4 weeks would we require the employee to use their own leave/ flexi/unpaid. This has only ever happened on the odd occasion when an employee has been on long term sick and has a lot of annual leave left to take.

Setting of targets at review meetings

UNISON requests that if it is necessary for any targets to be set that they are fair, achievable and not set with the sole intention of discouraging legitimate absence. Agree and noted.

If an employee has a disability then the manager would consider what an appropriate target would be to set them. The target could be higher for an employee who has a disability rather than an employee who does not have a disability.

UNISON also requests that zero absence targets (or any targets which are unreasonable) are not set. Zero targets are not set

Appeals

UNISON requests that there be a right of appeal at each stage when an adverse decision is made (also in letters of 9/12/05 and 13/7/2010)

It is a fundamental principle of natural justice that an employee can appeal against an adverse decision particularly when the decision could have detrimental effect on their future employment. UNISON is aware that at point 11 of the Framework there may be an appeal against a decision to dismiss. There is also the provision to appeal against a formal caution at point 6.4.6.5

It is believed that there should be a right to appeal against a target being set within the Framework which could be unfair and unreasonable. An example being if an employee has been set a zero absence target at either step 1 or step 2 reviews and exceeds that target (ie has any time off sick) then the next stage of the Framework can be proceeded to with ultimately the possibility of dismissal.

It has been asked who makes up the 'Appeals Panel' as the Framework was not clear on this. Noted. The appeal would be heard by a COB/ SLB member depending on the level of management who issued the sanction.

Zero targets are no longer set. We do not intend to allow an employee to appeal if they have been set a target at a stage 1 meeting. However, if the employee feels they have been treated unfairly then they do have the right to raise a grievance. By putting an appeal in at the stage 1 target setting stage this would potentially increase time spent by a manager as they would need to hear the appeal. This goes against what you have recommended under 6.3.1

15.2.3

Terminal illness

Suggestions on softening the language in this section have been put forward:

There are occasions where an employee with a terminal illness wishes to be dismissed on ill health grounds and may be eligible for early release of pension benefits, if they are a member of the Local Government Pension Scheme. Factors taken into consideration include

the medical condition and ~~how long the employee is expected to live~~ **prognosis** , as this may be critical in establishing the most ~~beneficial~~ **appropriate** course of action.

15.2.3 In extreme cases, the employee will ~~be kept~~ **remain** on the payroll, ~~even though~~ **after** they have exhausted their entitlement to sick pay. This removes the need to add further distress by formally dismissing someone who is ~~dying~~ **suffering from a terminal illness** where it is to the employee's advantage to remain in service due to their entitlement to benefits, such as death in service.

Agreed and noted.