



**Derbyshire
Police and Crime
Commissioner**

*Protecting Communities,
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Derbyshire Constabulary

**GUIDANCE ON UNSATISFACTORY ATTENDANCE PROCEDURES
(UAP) FOR POLICE STAFF**

POLICY REFERENCE 09/271

This guidance is suitable for Public Disclosure

Owner of Doc: Head of Department, Human Resources

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INDEX

<i>Section</i>	<i>Heading</i>	<i>Page No.</i>
1	GUIDANCE IDENTIFICATION PAGE	3
2	LEGISLATIVE COMPLIANCE	4
3	GUIDANCE	4
4	PRINCIPLES	4
5	MANAGEMENT ACTION STAGE (Informal Warning)	5
6	FORMAL PROCESS	6-12
	6.1 First Stage Warning	
	6.2 Second Stage Warning	
	6.2.1 Assessment of attendance following written warnings/ Final Written Warning	
	6.3 Third Stage Hearing	
	6.3.1 Objection to Panel Members	
	6.3.2 Meeting dates and timeframes	
	6.3.3 Procedure for employee on receipt of notice of third stage hearing	
	6.3.4 Procedure at third stage hearing	
	6.3.5 Witnesses and evidence	
	6.3.6 Postponement and adjournment in cases of absence or ill health	
	6.3.7 Assessment of attendance following Final Written Warning issued at Third Stage Hearing	
7	MONITORING AND REVIEW	13
8	APPEALS PROCESS	13-15
	8.1 Appeal Following First and Second Stage	
	8.2 Appeal following Stage 3 Dismissal	
9	DOCUMENTS	15
	Stage letters – invite to meetings	
	Document 1-2 - action plans, warnings, assessments and Related information	

1. Guidance Identification Page

Guidance title:	Unsatisfactory Attendance Procedures (UAP)
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Department / Division responsible:	HR		
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Last reviewed by:	Ace Williams	Date last reviewed:	February 2015
Impacts on other policies / guidance / documents (<i>list</i>):			
Attendance Management Policy			

Security Classification: NOT PROTECTIVELY MARKED
Disclosable under FOI Act: YES
Guidance to be published on Intranet: YES
Guidance to be published on Force Website: YES

2. Legislative Compliance

This document has been drafted to comply with the principles of the Human Rights Act. Proportionality has been identified as the key to Human Rights compliance, this means striking a fair balance between the rights of the individual and those of the rest of the community. There must be reasonable relationship between the aim to be achieved and the means used.

Equality and Diversity issues have also been considered to ensure compliance with the Equality Act 2010 and meet our legal obligation in relation to the equality duty. In addition, Data Protection, Freedom of Information and Health and Safety issues have been considered. Adherence to this policy or procedure will therefore ensure compliance with all relevant legislation and internal policies.

3. Guidance

General Information

These procedures are for all police staff. The term “police staff” refers to staff who work under the direction and control of the Chief Constable.

The PDR process should be used to set attendance objectives.

The purpose of the procedures is to enable line managers to discuss with staff in an objective and systematic way any perceived failures to meet acceptable attendance and identify actions for both parties in order to improve.

Further advice about the procedure may be obtained from:-

- HR Department
- UNISON

4. Principles

Unsatisfactory attendance means an inability or failure of an employee to perform the duties of the role they are currently undertaking to a satisfactory standard or level. The issue is not that the individual is unable to work but rather that their levels of attendance prevent them from fulfilling their contract satisfactorily.

Staff have the right to be accompanied and assisted by their recognised Trade Union, or work colleague (not acting in a legal capacity), throughout this process.

There is no single formula for determining the point at which concern about attendance should lead to the formal procedures. Procedures are usually triggered where the ability of the employee to perform their duties effectively is compromised by their sickness absence or where they fall below the attendance triggers, but each case will need to be considered on its own merits.

Where the absence is due to genuine illness the issue is one of capability which falls under UAP rather than Misconduct which would be dealt with through the Police Staff Disciplinary Procedure.

5. Management Action Stage (Informal Warning)

Line Managers are responsible for the effective attendance of the people within their management area. Attendance monitoring of individuals is delivered formally through the Performance Development Review (PDR) system. It is vital that PDR documents are up to date and jointly reviewed by line managers and individuals on a regular basis, with a formal half-year review in each reporting year. This is absolutely vital if the attendance of an individual might fall or has fallen below the required standard.

Reference should always be made to the provisions of the Equality Act which places an obligation on managers to consider making reasonable adjustments to the work or workplace to allow someone with a disability to continue to work. In some cases this will involve a review of the attendance triggers with a view to a greater tolerance of absence, **though most disabled people do not have high levels of absence**. Pregnancy related absences should also be discounted in relation to this procedure.

Where the member of staff: -

- (a) has 3 occurrences or 9 calendar days of absence in a rolling 12 months

This means that on an individual's 3rd period of sickness or if the total sum of sickness days is 9 the manager is expected to assess the case to determine if support or action is needed.

- (b) is unable to sustain a satisfactory pattern of attendance

or

- (c) where an individual's sickness record is a cause for concern

The matter should be addressed through an Attendance Support Meeting (ASM) (*for more information refer to the Attendance Management Policy*) with the aim of finding a joint way forward to improve matters without recourse to formal UAP procedures.

An Attendance Improvement Plan (action plan) and targets should be set to improve future attendance. However if attendance does not subsequently improve it is the responsibility of the Line Manager to begin the formal UAP process with the individual. Health, disability or welfare issues should also be reviewed jointly at this stage and advice sought through the local HR Officer if required. Referral to the Occupational Health Unit or Employee Assistance Provider (EAP) should also be considered. Occupational Health can provide information in terms of managing attendance and should be involved as soon as concerns are identified. Where the employee does not attend an appointment or fails to co-operate with the referral process, a decision on how to proceed will be made on the information available.

As the progress of the action plan and targets are monitored, together with any information from Occupational Health or the EAP, Line Managers **can decide** at any point to either close the plan if attendance has improved, or, to manage the issue through the UAP process.

If the targets are not achieved following the action plan the line manager will determine the appropriateness of moving to a First Stage meeting. Advice and

guidance can be obtained from the HR Officer in these cases. The employee must be made aware that if they remain unfit for work, or if reasonable adjustments cannot be made, or they continually fail to achieve the attendance target, dismissal from the Force is a possible eventual outcome at Stage 3.

Each case should be considered as follows –

- a) the nature of the medical problem(s)
- b) the likelihood of it recurring
- c) the pattern and length of absence
- d) the impact the absence is having on the performance of the formation
- e) the extent to which the employee has co-operated with management action
- f) the impact of the Equality Act
- g) whether consideration is being given to medical retirement

Where a member of staff has been absent for 10 weeks and there is no evidence to suggest that the individual will return to work in the foreseeable future, it will be necessary to consider action under the formal stages of UAP. However, the Force will not usually move to Stage 3 to consider dismissal until the entitlement to sick pay (at full pay rate) expires but reserves the right to do so in certain cases.

6. The Formal Process

6.1 First Stage Meeting

The first stage interview is held if there has been no improvement, insufficient improvement or the improvement planned within the action plan is not sustained over a reasonable period of time. If an employee reaches this stage it is expected that all previous attempts to seek improved attendance have failed.

The line manager should notify the employee in writing that they are required to attend a first stage meeting to discuss attendance issues (**Letter One**). The letter must also be accompanied by copies of relevant documents and evidence relating to the attendance. Where possible the meeting date should be agreed but where this cannot be reached, the manager should specify a date and time. If the employee or their supporter is not available at that time, an alternative time should be agreed within 5 working days from the date of original meeting.

An HR representative may also attend the meeting, if circumstances require.

The purpose of the meeting is to hear the evidence of unsatisfactory attendance and provide the opportunity for the employee to put forward their views and any factors impacting upon attendance and what the employee considers could be done to overcome these.

Any documents submitted by the employee which were not submitted in advance may be considered at the discretion of the line manager and a short adjournment should be made. However, unless the documents were not previously available, they would not usually be considered. The meeting may also be adjourned should the line manager need to check information which has emerged during the course of the meeting.

The line manager should explain the three stages to UAP and that the maximum outcome from the Stage 1 meeting is a written warning. It should also be explained that if there is no improvement, dismissal may be the possible final outcome.

At the meeting the manager will:-

- Explain the reasons why attendance is considered unsatisfactory.
- Provide the opportunity for the employee to respond.
- Provide the supporter with the opportunity to make representations.

Having considered the above and if, having found the attendance unsatisfactory the line manager will:-

- a) Inform the employee of the areas in which attendance is not satisfactory.
- b) Inform of the improvement required and that if sufficient improvement is not made within a period of 3 months, this may result in a second stage meeting.
- c) Inform the employee they will receive a First Stage Warning which will be valid for 12 months (refer to Document 4).
- d) Inform the employee that if sufficient improvement is not maintained during the period of the written warning, they may be required to attend a second stage meeting.
- e) Agree an action plan to assist the employee. It is expected that the employee will co-operate with this and take responsibility for their own health and improvement.

There may be situations where a previously unidentified problem is highlighted. Appropriate action should be undertaken. However, the ultimate aim of the procedure is to improve individual attendance. If an employee is referred to the Occupational Health Unit attendance should continue to be monitored, time scales set and reviewed and any reasonable adjustments implemented as appropriate.

After the meeting a letter confirming the written warning should be completed which identifies clearly the areas of attendance and improvements required/actions set.

The employee may appeal as per the procedure in Section 8, 8.1 First Stage Appeal.

6.2 Second Stage Meeting

If the attendance targets are not achieved at the three month review or not maintained during the period of the written warning the line manager will determine the appropriateness of moving to a second stage meeting. Advice and guidance can be obtained from HR in these cases.

Where this has not already been completed the employee should be referred to the Occupational Health Unit to identify if the employee meets the criteria for a medical retirement. The meeting will be held in abeyance until the information is received.

Where a medical retirement cannot be given, the Force Medical Advisor will be asked to provide an assessment on a likely return to work in the foreseeable future and a return to good attendance.

The line manager will need to request up to date medical information prior to the meeting. The Occupational Health Unit should be asked to provide information on

any adjustments that can be made to either support a return to work and whether there is in their opinion a realistic probability of a return to an acceptable standard.

Where unsatisfactory attendance relates to different occurrences of attendance, these can be combined, at each stage, and dealt with as one matter of attendance.

The line manager will then notify the employee in writing that they are required to attend a second stage meeting with a relevant manager to discuss attendance issues **(Letter Two)**. The letter must also be accompanied by copies of relevant documents and evidence relating to the underperformance. Where possible the meeting date should be agreed but where this cannot be reached, the manager should specify a date and time. If the employee or their supporter is not available at that time, an alternative time should be agreed within 5 working days from the date of original meeting.

The purpose of the meeting is to hear the evidence and continuing concerns of unsatisfactory attendance and provide the opportunity for the employee to put forward their views and any factors impacting upon attendance and what the employee considers could be done to overcome these.

The Line Manager and HR representative may also attend the meeting, if circumstances require.

Any documents submitted by the employee which were not submitted in advance may be considered at the discretion of the line manager and a short adjournment should be made. However, unless the documents were not previously available, they would not usually be considered. The meeting may also be adjourned should the line manager need to check information which has emerged during the course of the meeting.

At the meeting the second line manager will:-

- Explain the reasons why attendance is considered unsatisfactory.
- Provide the opportunity for the employee to respond.
- Provide the supporter with the opportunity to make representations.

Having considered the above and if, having found the attendance unsatisfactory the second line manager will:-

- a) Inform the employee of the areas in which attendance is not satisfactory.
- b) Inform of the improvement required and that if sufficient improvement is not made within a period of 3 months, this is likely to result in a third stage hearing.
- c) Inform the employee they will receive a written warning (refer to Document 4).
- d) Inform the employee that if insufficient improvement is not maintained during the period of the warning (12 months), they may be required to attend a third stage meeting.
- e) Agree an action plan to assist the employee. It is expected that the employee will co-operate with this and take responsibility for their own attendance and improvement.

There may be situations where a previously unidentified problem is highlighted. Appropriate action should be undertaken. However, the ultimate aim of the procedure is to improve individual attendance. If an employee is referred to Occupational Health

Unit attendance should continue to be monitored, time scales set and performance reviewed and any reasonable adjustments implemented as appropriate.

After the meeting a letter confirming the written warning should be completed which identifies clearly the areas of attendance and improvements required/actions set.

The employee may appeal as per the procedure set out in Section 8, 8.1 Stage 2 Appeal.

6.2.1 Assessment of Attendance following Written Warning/Final Warning

The line manager must actively monitor attendance throughout the review period. Any concerns should be discussed and supportive actions put in place.

When the review period has ended the line manager or second line manager (level two) must formally assess attendance. This formal assessment should be communicated to the employee and they can provide evidence of satisfactory or improved attendance. The line manager should inform the officer in writing of the assessment.

This notification should identify if the attendance is satisfactory and that the warning/final warning is still valid for the remainder of the 12 month period. If attendance is not sustained during this period then second or third stage procedures will commence, as appropriate.

6.3 Third Stage Hearing

Prior to the hearing the employee should be referred to the Occupational Health Unit to provide advice as to whether in their opinion there are any adjustments that have not previously been identified to support either a return to work and/or acceptable attendance. If not already undertaken at Stage 2 consideration should also be given to whether the member of staff should be retired on the grounds of permanent ill health. If consideration is being given to ill health retirement, the Stage 3 hearing will be held in abeyance until the information is received.

If attendance remains unsatisfactory the line manager should liaise with the relevant HR Officer to recommend progression to Stage 3. The HR Officer will notify the employee that they will be required to attend a Stage 3 hearing and **(Letter three)** should be completed. Copies of related documentation in respect of performance must also be included with the letter.

The HR Officer will arrange the third stage hearing and write to the employee as soon as dates, times and the panel members are known.

The panel will comprise chair plus two members as follows:-

Chair	Head of Department/Divisional Commander
First panel member	Senior HR Business Partner
Second Panel member	Independent Senior Manager

Panel members will receive copies of all relevant documentation presented during the first and second stage meetings, together with copies of improvement notices, action plans and meeting notes and any documents relating to any appeals.

The line manager who undertook the second stage meeting will be required to attend in order to present the issues relating to unsatisfactory attendance to the panel.

6.3.1 Objection to Panel Members

The employee has the right to object to any panel members within 3 working days of receiving notification. The employee must include the grounds of the objection in the submission.

The HR Officer must inform the employee in writing whether the objection is upheld. If so, the panel member must be replaced but still comply with the composition requirements. The employee will be informed in writing of the new member. The employee may object to this and the above procedure followed again.

6.3.2 Meeting Dates and Time Frames

Any third stage meeting should take place no longer than 30 working days after the notification is sent to the employee. Where possible panel dates and times should be agreed with the employee but where agreement cannot be reached the panel chair may specify such date and time. If the employee or their supporter is not available, they can propose an alternative that falls within 5 working days of the original proposal.

If the chair considers it is in the interests of fairness to do so, they may extend the 30 day period and the reasons notified to the HR Officer and the employee concerned.

As soon as the date is fixed, HR will notify the panel and the employee of the date, place and time.

6.3.3 Procedure for Employee on Receipt of Notice of Third Stage Hearing

Within 14 working days of the date of the notice letter, the employee must provide to the HR Officer:-

- a) Written notice of whether they accept that attendance has been unsatisfactory.
- b) If accepted, any written notice they wish to make in mitigation.
- c) If not accepted, the matters disputed and an account of relevant events and any arguments on points of law they wish the panel to consider.
- d) Evidence on which they intend to rely on at the hearing.

This documentation will be provided to the panel by the HR Officer.

6.3.4 Procedure at Third Stage Hearing

The chair will:-

- (a) Explain the reasons why the employee has been required to attend.
- (b) Provide the employee with the opportunity to make representations.
- (c) Provide the supporter with the opportunity to make representations.

Having considered any representations the panel will come to a finding of whether attendance has been unsatisfactory. If there is a difference in view between the panel, the decision will be based on a majority vote.

In taking any decision consideration must always be given to the Occupational Health assessment.

The decision of the panel together with the finding must be prepared in writing. The decision must also state the reasons for the decision and any outcomes. The decision should be sent to the employee and line manager. The employee must also be informed, by notice, of the right to appeal. The employee must be given written notice of the finding within 3 working days of the conclusion of the panel, even if the remainder of the decision is not available.

Possible outcomes are:-

- a) Final written warning.
- b) Dismissal with notice.
- c) Placing on the Redeployment Register.

A record should be completed of the decision made. The employee must, on request, be supplied with a record of the hearing. The employee may appeal (refer to Section 8 Appeal Procedure).

6.3.5 Witnesses and Evidence

The employee may propose witnesses. These should be submitted and agreed with the HR Officer. Where agreement cannot be reached the list of proposed witnesses should be sent to the Panel Chair for consideration of who should attend.

The Chair can also decide if other witnesses should attend if necessary to provide appropriate evidence.

Questions to any witness must be made through the panel chair.

Where possible all documents should be submitted in advance. Where a document or evidence is submitted at the panel, a short adjournment may be made for consideration of these.

6.3.6 Postponement and Adjournment in cases of absence or ill health

The employee does not have to be present for the panel to consider the issues and make a decision. Where the employee informs the panel of non-attendance, or does not attend but the chair is satisfied there is good reason for this, the hearing may be adjourned.

The re-arranged hearing should take place as soon as practicable but may fall after the 30 day period as outlined above.

If the hearing is re-arranged the chair should notify all parties in writing of the reasons for adjournment and the revised date and time.

6.3.6 Assessment of Attendance following Final Written Warning Issued at Third Stage Hearing

In cases where the panel has extended the written warning, the line manager will monitor attendance in the new specified period. When this is completed, the panel will assess attendance and decide whether there has been sufficient improvement.

If there has been improvement, the chair will write and notify the employee. If there has not been improvement a further Stage 3 hearing will be arranged.

If at the end of the period of the warning (12 months from date issued), sufficient improvement in attendance has not been sustained, a further third stage hearing will be arranged.

Any further third stage hearing should be with the same panel members, where possible. Any changes to the panel should be notified to the employee as soon as possible. The reconvened hearing can have three possible outcomes:-

- a) Placing on the Redeployment Register
- b) Dismissal with notice.
- c) Extension of final written warning

7. MONITORING AND REVIEW

The guidance will be reviewed and monitored on a bi-annual basis.

Statistics on sickness trends will be provided to Divisional Commanders and Heads of Department via their HR Officer on a monthly basis on action taken informally and formally with a view to the improvement of sickness absence.

8. APPEAL PROCESS

8.1 First and Second Stage Appeals

An employee may appeal against the findings and outcome imposed at Stages 1 & 2 of the procedure and against the decision to require them to attend a Stage 2 meeting. However, any findings and outcomes from the meetings will continue to apply up to the date the appeal is determined. This means that even if the employee appeals, they should follow the terms of the review period and warning pending the result of the appeal.

The appeal should be made in writing to the second line manager for the first stage appeal or for a second stage appeal to a senior manager within 7 days of receipt of the warning. This period may be extended by the manager following an application by the employee. The grounds for appeal should clearly set out the grounds and evidence for the appeal.

The grounds for appeal are:-

- a) that the finding is unreasonable.
- b) that the terms of the warning are unreasonable.
- c) that there is critical new evidence which was not considered at the first/second stage meeting.
- d) That there was a serious breach of the procedures.
- e) For second stage appeal only – that the employee should not have been required to attend the meeting as it did not concern unsatisfactory attendance which was referred to at the first stage.

On the basis of the above may appeal against:-

- a) The respect in which the employees attendance is considered unsatisfactory.
- b) The improvement which is required.
- c) The length of the review period.

The employee has the right to be accompanied and represented by a UNISON representative or work colleague not acting in a legal capacity.

The meeting should be arranged between the second/senior manager and employee. If agreement cannot be reached the second/senior manager may specify a time and date. If the employee or their representative cannot make this date, they may propose an alternative which must be 5 working days after the first proposed date.

As soon as the date is arranged between the parties, the manager will write to the employee outlining notice of the date, time and place of the appeal meeting. At the meeting the manager will provide the opportunity for the employee and their representative to make representations. The manager may then either:-

- a) Confirm or reverse the finding.
- b) Endorse or vary the terms of the warning.

Within 3 working days of the appeal meeting, the employee will be given written notice of the decision. The manager should prepare a summary of the reasons for the decision to accompany this.

Any decision made that changes the finding or outcome from the first or second stage meeting will take effect from the date of those meetings.

8.2 Appeal following Stage 3 Dismissal

An employee may appeal against the finding and/or outcome imposed. Any findings/outcomes will continue to apply up until the date the appeal is determined so the employee should follow the terms set by the panel until the appeal is concluded.

It must be stressed that the appeal meeting is not a re-hearing but a re-examination of the original decision and the procedure applied in reaching it.

The appeal must be submitted in writing to the Head of HR within 10 working days of the employee being notified in writing of the decision.

The grounds of appeal are: -

- (a) The finding or outcome imposed was unreasonable.
- (b) There is evidence that could not reasonably have been considered at the original hearing which materially affects the outcome or decision.
- (c) That there was a breach of the procedures or other unfairness.
- (d) The reasons for the appeal (which should be in report format and should set out why the grounds of appeal are applicable to the particular facts and circumstances of the employee's case).
- (e) Any supporting documentation.

It may be permissible to submit an appeal after the 10 day deadline, at the discretion of the Appeal Panel Chair. The Panel will normally comprise of an ACPO Officer and Head of HR.

The Chair may agree an extension of time for the submission of the appeal. Unless there are exceptional circumstances, any extension should be sought in advance of the relevant deadline and should set out clearly why an extension is required.

The member of staff has the right to be represented by a workplace colleague or trade union representative.

The panel shall determine whether the grounds of appeal have been made out. The determination shall be based on a majority ruling. The decision will be notified to the member of staff and the Force within 5 working days of the hearing.

9. DOCUMENTS

The below documents to be used in conjunction with this Procedure:-

- Letter One - Notification of First Stage Meeting**
- Letter Two - Notification of Second Stage Meeting**
- Letter Three - Notification of Third Stage Hearing**

- Document 1 - Related Information**
- Document 2 - Warnings, Action Plans and Assessments**

NOT PROTECTIVELY MARKED