

WHAT IS RAINBOW, HOW IS IT BEING IMPLEMENTED AND WHAT DOES IT MEAN FOR OUR MEMBERS?

Management are taking action against our members where the following arbitrary 'triggers' are reached.

- 10 items or more of sickness in the last three years
- 100 days absence in 3 years

All non-attendance counts, including:

- ALL sick leave whether a planned operation or a cold
- Time off following an assault on duty
- Time off following an accident on duty
- Time off following a one-under
- ALL unpaid leave including time off to care for dependents

However, any days when a member of staff is working to a temporary adjustment of duties WILL NOT count.

Rainbow reports are run in January and July. The reports include items of non-attendance that have already been dealt with under Disciplinary Procedures (Local Disciplinary Interviews (**LDI**) and conceivably Company Disciplinary Interviews (**CDI**) warnings. One recent case conference was abandoned after two hours when the Employing Manager and People Manager Advisor (**PMA**) finally conceded (after an hour on the phone) that they could not deal with the items under 'fitness for work' when a *live* LDI warning was in place for breaching the Attendance at Work Policy(AAW).

However, the issue of whether the warning is live or not is a red herring; the items have been dealt with under the disciplinary process and that is the end of the matter as far as we're concerned. Some reps will be aware that what was known as 'double jeopardy' (LU using 5.1 *and* 5.2 of the AAW against our members) went to Functional some years ago and the RMT position was won – however, that was in a context of managers trying to include items of sickness that had been managed by case conference in the LDI process: Rainbow is the reverse. It remains to be seen how management will deal with this matter.

Rainbow identifies those who meet its trigger points, but it is up to the Employing Manager to decide on what course of action to take. It is not mandatory to hold a case conference. It also appears that on at least one group a version of this has been devolved to the Duty Manager (more on this at the end...)

At two separate case conferences recently, with a PMA in attendance, it was confirmed to our reps that the case conferences were being conducted under the AAW policy, version dated 25.4.2004 and the Attendance standard dated 27.01.2003.

MANAGEMENT ARE USING AS THEIR BENCHMARK AN ATTENDANCE REQUIREMENT OF 96%, BUT ARE UNABLE TO SHOW ANY REQUIREMENT FOR STAFF TO ACHIEVE 96% ATTENDANCE IN ANY LU POLICY OR PROCEDURE. 96% IS IN FACT A CORPORATE TARGET; I.E., IT'S THEIR TARGET, NOT OURS AND ONE THAT CAN'T BE FORCED ONTO INDIVIDUALS.

Management have stated that failure to meet the Rainbow 'standard' constitutes a pattern of non-attendance in accordance with Attendance at Work (AAW) section 4.2; '*A pattern of non-attendance may have developed over a period of time that is a cause for concern, but has not resulted in a breach of the... attendance standards*'

Where a case conference is held management will generally try to:

- Discuss whether there are any underlying reasons for a member failing to meet what the Employing Manager claims to be the 'standard' of 96% attendance.
- Discuss whether a member needs any adjustments or other help to enable them to improve their attendance.
- Set a target of 96% attendance which will be reviewed every six months according to the Rainbow data.

THREAT OF MEDICAL TERMINATION OR DISCIPLINARY ACTION RELATING TO CAPABILITY

Last year we represented a member at several case conferences. The member was set a 96% target and was eventually terminated on medical grounds; that is, an inability to meet 96%. At appeal LU withdrew the 96% criteria and stated simply that the member had a very poor record of attendance, was on long-term sick leave again and there was no prospect of a return in the foreseeable future. However, the way the case conferences were conducted gives us an indication of LU's plans.

RMT believes the likely pattern will be something like this:

A member is set a 96% target as a result of reaching a Rainbow trigger point (It is possible that managers may choose not to state this explicit target but ask for a 'significant' improvement in attendance. This would still be measured against 96% in Rainbow reports but would not be stated in case conference minutes).

A review (follow up) case conference will be set up after six months, when the next Rainbow report is run.

If the member breaches 96% during these six months they will be asked again whether LU can help them to achieve the target (or a significant improvement). The target will be set again and a further review in six months will be arranged.

If the member fails to stay within 96% again things could start to get serious. The target will be re-set and at some point (it remains to be seen how quickly LU feels able to move to termination) the member will be either:

- 1) Terminated by the employing manager on grounds of medical incapacity, or
- 2) Sent to CDI on grounds of incapability to attend work to the required standard

RMT members should be quite clear that breaching the 96% will be easy. The following scenarios would constitute a failure to improve:

Scenario 1) Member has a planned operation in hospital and takes four months to recover and return to work. At a case conference before their return to work their employing manager sets them a target of 96% attendance. For two years the member achieves 100% attendance. Rainbow continues to flag the member up for three years as they had >100 days off. The member then slips on a wet floor at work and takes a week off. The next Rainbow report picks up on the new non-attendance and the member is called to a case conference where they are set a 96% target. After four months the member has flu and takes a week off. They have now breached the target. Having been asked to improve on three occasions and having failed the member could now face CDI or medical redeployment or termination.

Scenario 2) Member with two young children has four short sickness items over the past three years but has also taken two single days of unpaid leave to care for their children in

each of the last three years. Rainbow flags up a breach as the member has 10 items of non-attendance in three years. The member is called to a case conference and set a 96% target. Just before their next case conference the member injures them self at home and has to take five days off on sick leave. This constitutes <96% attendance during the six month review period. They have now failed to meet the target and it is set again. During the next six months the member takes two odd days (unpaid) to care for their children and takes three days sick after an assault on duty. The member has now failed to improve after the last two case conferences could potentially face CDI or medical termination.

It is not possible to tell, at this stage, how far LU will go in implementing these procedures. It is clear that the terms stated in the case conferences in recent cases raise the threat of mass dismissals on the grounds of incapacity/incapability but it may be that they intend a creeping tightening of this process rather than a sudden attack on us.

WHAT SHOULD RMT REPS & ACTIVISTS DO NEXT?

We are in the process of asking RMT's solicitor, Thompsons, to consider legal opinion in the light of the information obtained in recent case conferences. In particular we want an opinion regarding LU's inclusion of dependent leave and sickness following assaults/accidents at work in the process and time off for trade union duties.

- All reps have an important role in ensuring the Regional Council has a full report from the RO and CofE member about any action taken under Rainbow
- All Level 1 reps representing all operational grades must inform the Regional Organiser, via Mac McKenna, of all case conferences called in response to Rainbow triggers.
- Each function should nominate a liaison point, as the matter will have to go to Company Council and advise Mac McKenna.
- Training will be organised for Level 1 Reps in how to deal with Rainbow case conferences. Branch meetings will be briefed.
- We should publicise this issue and discuss the possibility of taking industrial action if LU does not withdraw this Rainbow process. Whether this is realistic before someone is actually dismissed is a matter for discussion but we need to ready, in any eventuality, to respond on this issue.

IT IS IMPERATIVE THAT ALL REPS:

- Ask management to state what procedure/policies the case conference is convened under.
- Ensure management's answer is included in the case conference minutes.
- Demand a full SAP printout of all items being considered at the case conference
- Demand a record of all items, in the period under discussion, that have been included in any LDI/CDI disciplinary process and insist any such items are not included in the case conference because the AAW policy is explicit (Sect 5) that items will be considered under "ONE of the following approaches" 5.1 Conduct or 5.2 Fitness for Work. If an item has already been dealt with under conduct it cannot now be considered at a case conference, which is part of the fitness for work process.
- Check all data being considered is correct. You may need to ask for Return To Work paperwork as well.
- Identify any absence due to accidents or assaults on duty or recovery after witnessing/assisting with one-unders.
- Identify any unpaid absence taken under LU's work-life balance, family or special leave policies. ***Management must disregard these items. If they do not agree to***

this, ensure that the nature of all the items they are including, and the rep's/member's objection to this, is included in the minutes.

If management set the member a specific target, such as 96%, ask them how they have come to this target.

- Ask them where the target is shown in any LU attendance standard or policy.
- Point out that the member is being asked to explain why they have failed to meet a target that has been set retrospectively and of which they knew nothing until now.
- Ensure the minutes show management's answers to these questions.
- The member must state that they do not accept the target.
- Do not sign anything: we don't accept that the Rainbow process is a legitimate part of the AAW, but it's irrelevant anyway because we've never accepted the AAW and therefore our advice to members remains the same: if a manager requires a memo, write out the usual form of words.

Lastly, a word on Duty Manager; on one group a version of this, via Attendance Review, was carried out by a Duty Manager: reps/members are advised against demanding the matter be dealt with by Employing Manager/case conference – this will only accelerate the process. Instead, the same rules of (dis)engagement apply – demand representation, (this will be probably be contested), ask the same questions, collate the info in the same way.

Send a report of the case conference (with a copy of the minutes where possible) to Mac McKenna for collation for the Regional Organiser and Union's solicitors.