



TRAINER'S GUIDE

Challenging Absenteeism

Video and Trainer's Guide
written by Hugh Murray FCIPD

Advised by Sally Brock
of steeles Solicitors and
Employment Law Specialists

A video resource produced in the
United Kingdom by Fenman Limited



fenman
Professional Training Resources

Challenging Absenteeism

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What you must not do, ever, is copy the DVD or the videos. Firstly, because it is immoral, and secondly, because it is illegal. We do sue people we catch who have made copies of our products without consent and we do catch them, often years after the offence itself.

Theft of copyright material threatens the supply of training materials in future and it threatens the livelihood of people who develop training materials.

Thank you for buying this resource and for respecting our copyright.

DVD and VHS versions

Fenman has produced *Challenging Absenteeism* in both DVD and VHS versions (two tapes).

The content is the same in each case. DVD offers a number of advantages over VHS.

The advantages include:

- physically more robust
- easier to carry and store
- far superior picture and sound quality
- can be played on DVD player, PC or Mac
- enables the trainer to jump to the exact frame required
- enables the trainer to play scenes in the order of their choice
- includes subtitles
- can be run in a window on a computer, enabling the user to access word processing and other software at the same time.

We have taken advantage of some of the features of DVD to make your use of the programme easier. On starting the DVD, you will see a menu from which you can choose a number of options, including running the video in the normal way. There are other options included that will enable you to jump to the scenes you require.

If you have purchased the VHS version, but would like to switch to DVD, you can do so at a special rate. Please contact our sales department (telephone +44 (0)1353 665533) for details.

Online support

If we become aware of changes in legislation or other factors affecting the use of this programme, we will make this information available at the Fenman website on the page relating to this programme.

Summary overview

Who is this programme for?

It is for trainers, managers, team leaders and others who wish to help their people improve their skills in dealing with a wide range of problems that cause absence.

What does this programme do?

- It builds *confidence* in dealing with absenteeism.
- It develops *skills* in dealing with absenteeism.
- It improves *knowledge* of both employment law and of effective practices.

Why is this programme necessary?

- Because absence is expensive.
- Because absence is a growing problem.
- Because addressing absence uncovers and solves problems affecting people at work.

How to use the programme

The programme is designed to be used with a group of participants under a group leader who can be a trainer, manager or other facilitator.

The programme provokes discussion, debate, thought and learning. The facilitator shows a number of short scenarios, 'The challenges', and facilitates a discussion around each one, using the notes in this Trainer's Guide.

About the author

Hugh Murray is a Fellow of the Chartered Institute of Personnel and Development (CIPD) and has been an active contributor to the field of training for nearly 25 years. At the age of 27, he became one of the youngest general managers within the McGraw-Hill group of companies when he assumed the management of McGraw-Hill International Training Systems in the UK. He subsequently became the Managing Director of Gower Training for five years before starting his own company, Fenman, in 1988.

He presided over Fenman's growth from a single room in his house to its position today as one of the country's leading publishers in the field of training. He has developed some of the most successful management training videos in the UK and published the works of many of the country's leading trainers. He was responsible for the acquisition of *Training Officer* and its relaunch as *Training Journal* and for the creation of UKHRD, the country's leading on-line discussion forum for trainers.

Following the sale of his interest in Fenman Limited, Hugh has been self-employed as a consultant in the field of organisational learning and development and as a freelance writer on management issues. He can be reached via e-mail at hs.murray@talk21.com or by telephone on 01638 578622.

Legal disclaimer – very important

This is a training programme intended to help managers develop their skills in dealing with absence from work. Our expertise at Fenman Limited lies in the area of developing the interpersonal skills of users of our material. Fenman Limited has no legal expertise beyond that of lay people.

Although Fenman Limited and the author have taken every care to ensure that the law is correctly represented in this programme, neither is competent to give legal advice and users of the programme must not rely on it as a statement of the law.

Users of this programme must satisfy themselves, by taking competent advice or by other means apart from this programme, as to the legal consequences of any action that they propose to take.

Fenman Limited and the author cannot accept responsibility for any legal consequences that may arise from the application of the ideas in this training programme.

Terminology

The word 'worker' is used throughout as opposed to 'employee' or 'member of staff'. Current legislation uses the term worker to include not only employees but also certain categories of people who may be working under an employer's direction. Certain employment rights now extend to such people and so the appropriate term to use in a programme like this is 'worker'.

Introduction

Absence is a major problem – and it's getting worse.

A report by the Chartered Institute of Personnel Development (CIPD) in 2002 showed that absence across the organisations surveyed averaged ten working days per employee per annum. This is a whole day worse than in the previous year's survey. The government is particularly worried about levels of absence in the public sector which consistently run significantly above those of the private sector. However, all sectors suffer to a degree.

The damage done by absence is huge. The salary cost of workers who are away is only the tip of the iceberg. Absence damages the morale of people who *do* come to work, it deprives organisations of critical skills and knowledge, it makes planning virtually impossible and it can play havoc with productivity.

The government is almost certainly making the situation more complex by a never-ending stream of employment legislation that no manager can realistically be expected to keep up with. Many managers are left with a sense that it is simply too dangerous to take any action when workers behave in ways that damage their employers' business.

Nevertheless, many employers are taking effective measures against absence and are succeeding in reducing it. Not, it must be stressed, by forcing sick people to come to work, but rather by addressing the reasons why people who *could* come to work do *not* come to work.

In any organisation, there will always be instances of unavoidable illness preventing people from coming to work. But there will be a number of other instances where people do not come to work. These vary from the man who goes fishing, to the single mother who wakes up to find her child has been sick in the night; from the social worker who is so stressed by her caseload that she cannot take anymore, to the disabled man whose bus service has not run; from the teenaged girl who knows she really ought to go to work but whose mild hangover is just sufficient for her to decide to call in sick, to the middle-aged man whose sore throat is not sufficient to send him to bed, but who decides on balance not to go in.



Absences fall into one or more of four categories:

- Illness (mental and physical)
- Lack of motivation
- Overriding other commitments
- Transport failures.

Absence is very often a result of more than one of these.

Good employers can bear down on all four causes. Where motivation is lacking, the employer can either seek to instil motivation or dispense with the worker if they cannot be motivated. When workers are ill, good employers can offer support including working around the illness and providing occupational health facilities. The effect of overriding other commitments, such as looking after a dependent, can be greatly reduced by a flexible attitude on the part of the employer and there are even things employers can do about transport failures, such as allowing homeworking.

At the core of effective attendance management lies *communication*. Good employers communicate with their workers. They know why a person is away and they make sure the person knows they know. Good employers *shine a light* on absence. They make it clear that they care about absence and want to reduce it.

The most effective single technique for reducing absence is the return to work interview. This should be carried out with every worker every time they have unauthorised absence. The return to work interview is not part of the organisation's disciplinary system. It is part of the organisation's communication and support system.

The purpose of the return to work interview is to:

- make the employee feel welcome and valued upon return.
- ensure that the employee is really fit to return.
- identify the cause of the absence.
- discuss the worker's state of health and any underlying reasons for the absence.
- emphasise the impact of absence on the organisation and discuss working arrangements.
- address any problem that may be causing or contributing to the absence.



- flag up the fact that the absence has been noted and been given high priority.
- agree priorities for the post-absence period.
- consider whether the worker could be disabled within the meaning of the Disability Discrimination Act.

Fenman Limited has developed the WARM mnemonic to help managers remember the phases of an effective return to work interview:

Welcome
Absence
Responsibility
Move On

Fenman Limited has published another training programme that covers the return to work interview in depth. It is called *Improving Attendance – What Managers Can Do*, and consists of a DVD or a video and extensive written support. You can order it from Fenman Limited. Unfortunately it is not possible to cover the structure of the return to work interview in detail here.

The video *Challenging Absenteeism* has been designed to help managers gain confidence in dealing with absence. It consists of seven 'challenges', each representative of the different kinds of absence problem a manager can face. In each case the challenge is shown in two parts.

The first part is 'The challenge fumbled', which consists of a short vignette that sets the scene and shows the nature of the absence problem. In this short scene, we see the kind of mistakes an otherwise competent manager might easily make.

Next comes a longer scene 'The challenge met'. This demonstrates a more effective way of dealing with the situation that results in progress towards a solution or a resolution.

'The challenge met' is never perfect. This is because there are very few perfect solutions to managerial problems. The manager still makes mistakes, still struggles and stumbles, but always finds a way to move the situation forward.



One reviewer, looking at the scripts of this programme, asked why these scenes did not have neat and tidy outcomes. In practice, it is very unlikely that a single discussion will solve an absence problem. An unsuccessful discussion is likely to be one that results in no progress. A successful discussion is one that ends in the parties agreeing to steps that move the situation forward. These steps will move the situation towards either a *solution* – the problem causing the absence is solved and the absence ceases – or a *resolution* – the problem is insoluble and the worker is either dismissed or the organisation finds a way of accommodating the problem. ‘The challenge met’ is successful by this standard – progress is made.

How to use the challenges

The scenarios are meant to provoke discussion, argument, thought and learning. They are not meant to be wrong-way/right-way examples for people to stare at passively. If you do no more than show these challenges, they will have little effect. They are designed to be used in groups. They depend on the discussion, and possibly even argument, that they provoke for their efficacy.

As trainer or facilitator, your role is to enable the discussion to take place. To help you do this, we have provided a number of questions and discussion topics for each of the challenges. With luck, these questions will generate ample learning on their own accord. But you need to be prepared to deal with any issues that arise as a result.

To help you do this, we have provided notes on each challenge. However, some issues are common to several challenges and we have not repeated ourselves where it seems unnecessary. As trainer or facilitator, you are advised to read the notes on all seven challenges, even if you do not intend to use them all. This way, you will be as well equipped as possible to deal with anything that comes up.

The learning method is the same for each challenge. Start by showing ‘The challenge fumbled’, then pose the questions we suggest or questions of your own.

Next, show ‘The challenge met’ and pose the questions we suggest for that.



You will have to work within the time constraints you have. However, it is probably better to spend half an hour discussing one challenge than it is to spend five minutes on each of the seven scenarios.

The materials supplied

We have put the challenges on to two VHS video tapes and also on a DVD. The purpose of the two tapes is to make it easier for you to find the challenge you want to use easily. The DVD is the easier medium to use because you can jump to the exact scene you want at any time.

The law

This programme is not about the law. It is about the skills and techniques that a manager needs to handle absence effectively. However, the law does regulate the conduct of employers and workers to a degree and you need to be aware of it. This programme was written in early 2003. At that time, the Employment Act 2002 was being implemented, with its emphasis on flexibility. We believe the handling of the challenges is in accordance with the law at the time of writing. Each organisation must satisfy itself as to the current legal position before taking any action that may have legal consequences.



This challenge can be found on Tape 1 if you are using the VHS tape.

The first challenge – the doctor's certificate

Managers can be unnecessarily frightened of the doctor's certificate. They consider it to be definitive – to put the matter beyond challenge.

On the other side, workers can feel secure behind a certificate. Once they have the certificate in their hands, they may feel that there is nothing further to be said. They have, in effect, a licence to be absent.

The video sequence shows a manager confronted by a worker who believes that the certificate says all there is to say. In the first sequence, the manager is unsure how to proceed. In the second sequence, we see the manager treat the certificate for what it is – confirmation that the worker has told his doctor that he does not feel well!

The issues

It is a common misconception that managers cannot do anything about a person who has been 'signed off' by their doctor. In fact there are a number of things they can do:

- 1) They can investigate the illness. They can seek further details of the illness from either the worker's own doctor, or from a doctor or specialist of their own choosing.
- 2) They can work round the illness by taking a flexible approach. For example, a doctor may have certified that an individual may not lift heavy weights for three months. The employer is able to require the worker to do other work that does not involve lifting.
- 3) They can ask the worker to undergo treatment for the illness.

A manager can dismiss a worker on the grounds of 'capability' if they are unable to do the work required as a result of long-term illness. Equally a manager can dismiss a worker on the grounds of 'some other substantial reason' for persistent short-term illness. The manager must be fair and reasonable in doing this and this means thoroughly investigating all the



This challenge can be found on Tape 1 if you are using the VHS tape.

facts, consulting with the worker and exploring all the options. But ultimately the manager can dismiss a worker who is genuinely ill and that dismissal will be potentially fair.

In rare cases, investigation will show that the worker is faking an illness or even, if behaviour recently covered in the press is widespread, colluding with a GP to falsely obtain a medical certificate. If either of these circumstances pertain, the manager would commence proceedings under the organisation's disciplinary procedure and these could lead, after due process, to dismissal on the grounds of conduct.

It is unlikely that a manager would want to take action in the case where a worker is rarely absent and produces a medical certificate. The problem arises when a worker is persistently absent, yet produces a certificate in each case. It is important to avoid getting stuck in a situation like this. The manager must take action to address the problem. If the problem lies more in the worker's attitude, the fact that the manager is taking action at all is likely to result in a change in behaviour. If the worker has some underlying medical problem, including suffering from stress, the manager will have started the process of getting to grips with the problem.

The vignette raises the issue of what happens when a worker does not cooperate with a manager's investigation. The worker must give permission for an employer to speak to their doctor or to seek other medical opinion and the worker does not have to give this permission.

What does this mean in practice? It means that the manager can act on the basis of what he or she knows. This is unlikely to be in the interest of the worker. So, for example, the manager can say that in the absence of any information about the cause of the absences, the manager must warn the worker that if the absences continue the worker may be dismissed.

The law on this matter is so full of safeguards for the worker that most will wish to cooperate. The manager must explain these safeguards to the worker when seeking permission to get a medical opinion. These are that the worker:



This challenge can be found on Tape 1 if you are using the VHS tape.

- does not have to agree to let the employer seek a medical opinion
- may see the report before it is sent to the employer
- may see the report and then refuse to let the employer see it
- may see the report and then ask the doctor to modify it (if the worker believes it is incorrect or misleading)
- may insist on attaching a dissenting note if the doctor refuses to modify it.

However, the last four points are only applicable where the employer seeks a report from a doctor or specialist who has actually been treating the worker.

The organisation needs to ensure that managers are able to communicate all this accurately and the best way to do this is to have it all in writing ready for managers to hand to workers as required.

The vignette addresses another common problem. It is quite common to find that a worker believes that they are entitled to a certain number of sick days each year. You hear people say that they have a certain number of sick days left. In very few contracts of employment is there any entitlement to sick days. Rather there is an obligation on the employer to continue to pay the worker for a certain number of days if they are too ill to work. In other words, there is an entitlement to be paid if you are too ill to work. There is no entitlement to take time off at will.

There is always an entitlement to take time off with the agreement of the employer for holidays.

In the second vignette, the manager, Paul, tells Dick that his job may be on the line. There is a reason for this. In considering whether any dismissal was fair, a Tribunal will take into account the question of whether the worker understood the seriousness of the situation. In particular, they will ask whether the worker understood that their job was in jeopardy. Paul understands this and makes sure he covers it. He would be wise to repeat this in any written confirmation of the outcome of the discussion. But what about the way he did it? Might this have come across as a threat? How might Dick react to it? Are there other ways he could handle this?



This challenge can be found on Tape 1 if you are using the VHS tape.

A question that is arising more and more is the right of accompaniment. Under current law any worker has the right to be accompanied to any formal disciplinary hearing. A formal disciplinary hearing is one at which some sanction may be applied. A worker also has the statutory right to be accompanied at any other meetings, such as performance or sickness absence review meetings, if sanctions are likely to be applied or dismissal likely to occur.

Unless the worker's contract provides for such a right, there is no general right to be accompanied to meetings with managers. If there were, appraisals, coaching sessions and other meetings would become impossible. It is a decision for each manager in each organisation as to whether to allow accompaniment in a given case.

Some organisations always accede to a request to be accompanied because it helps ensure that the worker cannot make false claims later about what took place. However, managers should always ensure that they, too, have a witness in such circumstances. This has the advantage of providing corroboration of the discussion, but a simple matter may escalate to a major hearing with the character, but not the force, of a formal hearing.

As a general rule, it makes sense to allow accompaniment regardless of any statutory right in cases where decisions affecting a worker's employment may be taken. It is probably not advisable to allow it in informal discussions about a worker's performance or conduct where there is no question of any sanction being taken against them.

It is important to understand that 'sanction' includes formal warnings.

The challenge fumbled

After showing the first part of this challenge, you may wish to ask some, or all, of the questions below. The notes above should help you field any questions that arise in the subsequent discussion.



This challenge can be found on Tape 1 if you are using the VHS tape.

- Many managers believe that 'if a person is sick, they are sick' and that that is the end of the matter. Does a manager in the position shown have to accept the situation? If he wishes to challenge it, what options does he have?
- How might the manager, Paul, feel after this encounter? How would you feel?
- What has Paul achieved by this meeting? (Your participants may be tempted to say he has achieved nothing, but this is not necessarily so. Any discussion has to be better than no discussion. It might be interesting to ask what Paul did *right* at this meeting? He did, for example, hold it in private and he kept his cool. There are probably other things your participants could come up with.)

The challenge met

After showing the second part of this challenge, you may wish to ask some, or all, of the questions below. The notes above should help you field any questions that arise in the subsequent discussion.

- Do you think it was wise for the manager to warn Dick that he might lose his job? And if so, why? And if not, why not?
- Have you ever sought a medical opinion in a situation like this? If so, how did it go? What difficulties did you encounter and what did you learn?
- If one of your people objected to your obtaining a medical opinion, what arguments might you use to persuade them?
- How do you think a member of your staff would react if you asked for a medical opinion?
- How would you react if a member of your staff in this position demanded to have a colleague or representative present? What would you actually say?
- What other strategies, apart from seeking medical advice, might Paul have used for dealing with this situation? What are the advantages and disadvantages you see for these?



This challenge can be found on Tape 1 if you are using the VHS tape.

The second challenge – the menstrual cycle

A female worker has a history of one- or two-day absences at roughly four-weekly intervals. How do you handle it?

Male managers find this a particularly difficult area. They don't understand it and they are afraid of being thought intrusive if they tackle it.

Female managers are generally more comfortable dealing with it, but they run the risk of being too harsh or too sympathetic, according to their own experiences.

The video sequence shows a young manager facing an older female worker who misses odd days at roughly four weekly intervals. In the first sequence the female worker does not want to discuss the issue at all and the manager acquiesces, resulting in a failure of the meeting. In the second sequence the manager picks his way carefully through the issues to an outcome in which progress is made.

The issues

There is a key point that all managers need to understand in dealing with menstrual problems – either excessive pain or bleeding or excessive psychological responses – it is that a menstrual problem sufficient to interfere with a worker's ability to attend work is an illness in the same way that 'flu or back pain are illnesses. It is not a 'no-go' area. Most women continue to work through menstruation. It is abnormal for an individual's symptoms to be sufficiently severe to interfere with work, and absences caused by this abnormality must be faced.

The manager has the right to enquire as to the likely long-term effect on work and he or she has the right to ask the worker to undergo treatment. The worker may decline to provide information and may refuse to undergo treatment. But in these cases, the manager can act based on what he or she knows, and taking into account the worker's refusal to cooperate.



This challenge can be found on Tape 1 if you are using the VHS tape.

One point the manager must bear in mind is that severe menstrual problems may well constitute a disability as defined in law. A disability is any physical or mental impairment which has a substantial and long-term adverse effect upon a worker's ability to carry out normal day-to-day activities. This does not change the manager's ability to act, but he or she must be careful not to discriminate – not to treat the worker in a different way to any other worker with an illness. It also imposes a duty on the manager to see if reasonable adjustments could be made to accommodate the worker's problem. An example of this would be not requiring a worker with severe menstrual bleeding to drive long distances during menstruation.

As a general rule, return to work interviews should be carried out with every worker every time they are absent. Menstrual problems may mean that the worker is not in the right frame of mind to conduct such a discussion. This raises the question of whether a manager should defer the return to work interview in such cases.

The answer to this question is 'No', for two reasons:

The first is that the manager cannot know what the problem is. He or she may suspect menstrual problems, but cannot be certain. Return to work interviews must be undertaken with an open mind and deferring them suggests that the manager has already decided. This point will not be lost on the absentee worker.

The second reason is that if managers start to make decisions about when to hold return to work interviews, the discipline of *every worker, every time* will break down. Other workers will notice inconsistencies in the way different people are treated and managers may put interviews off indefinitely, saying to themselves that the time is not yet right.

Having said that, it may become apparent during the return to work interview that now is not the right time to discuss the problem. If that situation arises, the return to work interview should be ended but arrangements made for a further discussion at a better time.



This challenge can be found on Tape 1 if you are using the VHS tape.

The manager must never suggest that the worker has a menstrual problem. He or she should ask the worker the reason they were away. If the problem is menstrual, she may choose to discuss it, or she may not. The manager will have to respond accordingly.

In the vignette, the manager faces a worker who does not want to discuss the problem at all. He respects this and suggests that she might like to speak to another manager. In this case, it goes slightly wrong because the worker is offended by the suggestion. In effect, the manager is stating his suspicions before they have been confirmed.

You may wish to discuss this issue with your participants. It is a tricky one to handle because provision should be made for the worker, if they don't want to talk to their manager about it, to discuss it with either another manager or with the occupational health department, if there is one.

The manager has a major challenge in deciding how to raise the subject. It would be very unwise to ask outright if the worker was suffering from menstrual problems. Instead, he decides to refer to the objective records that show the pattern of absence. In this case, the worker does confirm his suspicions.

An interesting issue to discuss is what happens if she does not. If she does not disclose her problem the manager can still request a medical investigation to ascertain the cause of absence. But the manager must remain open-minded and objective about the cause of absence.

In the vignette, the worker does disclose the problem, and also that she is upset. The manager takes the decision to defer further discussion until a later date and this seems to work well in this instance.

The challenge fumbled

After showing the first part of this challenge, you may wish to ask some, or all, of the questions below. The notes above should help you field any questions that arise in the subsequent discussion.



This challenge can be found on Tape 1 if you are using the VHS tape.

- What are your views on what the manager should do in this situation?
- What has Justin achieved by this meeting?
- How is Monica likely to feel afterwards?
- Do you think managers have the right to intrude into a situation like this?

The challenge met

After showing the second part of this challenge, you may wish to ask some, or all, of the questions below. The notes above should help you field any questions that arise in the subsequent discussion.

- Monica was offended by the suggestion that she should talk to another manager. Why do you think this was?
- Was Justin right to offer this choice? How else might he have handled it?
- How would you proceed if a member of your team was regularly absent for a day or so at roughly monthly intervals and simply refused to discuss it with you in any way?
- Can you suggest possible alternative explanations for regular short absences at monthly intervals? (For example, a delivery driver who delivers every four weeks may be sexually harassing the worker; a child may have a regular hospital appointment; her husband or partner may be in prison with four weekly visiting intervals and she is ashamed to admit to this. The point is, you cannot assume you know the cause.)
- In this instance, Monica agreed to the provision of a medical report. What would you say to a member of staff who refused permission? (This issue is dealt with in the notes to *The first challenge – the doctor's certificate.*)
- How do you feel about this issue in general? Does an employer have a right to tackle it, or should it remain private? Discuss your reasons.



This challenge can be found on Tape 1 if you are using the VHS tape.

The third challenge – it's none of your business

This vignette deals with the situation in which a worker refuses to tell his manager why he was away. In the first vignette we see the manager totally flustered by this approach. In the second one she deals firmly and effectively with the challenge.

The issues

A worker does not have to tell their manager why they were away, so managers need to know how to deal with this situation.

Managers have to tread a fine line between maintaining discipline and ensuring attendance, and respecting the privacy of a worker. If a worker is persistently absent without giving a reason, an employer can dismiss them on disciplinary grounds, provided proper warnings are given in properly conducted formal hearings. Case law has established that a dismissal cannot be retrospectively made unfair by revealing information afterwards that a worker withheld at the time.

The worker may have a good reason not to tell their manager why they were away. It is important to understand that the manager must respect this decision if the worker feels that they have a right to privacy. But progress must still be made in dealing with the absence and the manager has the right to make reasonable enquiries of the worker in order to try to establish the real reason for the absence.

In the first vignette, the manager is simply flustered and does not know what to do. This is clearly ineffective.

In the second, she tries harder to get at the underlying reason. Once it becomes obvious that Sadiki is not going to tell her, she decides to accept this one absence, but trades that acceptance for an undertaking that it won't happen again.



This challenge can be found on Tape 1 if you are using the VHS tape.

Although the manager must ultimately respect a decision not to explain the reason for absence, he or she is allowed to persevere and try to convince the worker to explain, so long as he or she does not bully or threaten. In the vignette, the manager tries various approaches, including offering help and asking if Sadiki is ill. She could have tried something more robust. For example, she could have pointed out the disadvantages to the worker that might result in future from the lack of trust that a refusal to explain the absence might engender. But, at the end of the day, if a worker does not wish to discuss the reason for their absence, they do not have to.

So what were the manager's options? If this was a worker with a serious attitude problem, and if she believed that this was unmitigated misconduct, she could have convened a formal hearing to consider whether to issue a formal warning. Otherwise, if a worker refuses to discuss their absence, the manager's best tactic would be to explain that he or she could not allow any more absences without an adequate explanation. So that if the worker were to be absent again without giving a reason, the manager could convene a disciplinary hearing at that point. This hearing could issue a warning that any further absence without explanation would result in dismissal.

This way the worker is not compelled to disclose the reason for their absence on this occasion and the manager is not obliged to accept further such absences. If the worker has a genuine and unavoidable reason for absence he can disclose it at any point in the process and cause the manager to switch to a different approach.

The challenge fumbled

After showing the first part of this challenge, you may wish to ask some, or all, of the questions below. The notes above should help you field any questions that arise in the subsequent discussion.

- Do you have a legal right to know why someone was away?



This challenge can be found on Tape 1 if you are using the VHS tape.

- What arguments would you use to persuade a worker who refused to disclose the reason for an absence to provide one?
- How would you react if this happened to you?
- How *should* you react if this happened to you?

The challenge met

After showing the second part of this challenge, you may wish to ask some, or all, of the questions below. The notes above should help you field any questions that arise in the subsequent discussion.

- Would you say Marcia has been successful in dealing with this situation?
- What other options do you think she had?
- Imagine this situation: Sadiki repeatedly took time off without giving a reason and Marcia dismissed him after issuing appropriate warnings at properly conducted hearings. Sadiki then revealed that he had AIDS and issued proceedings alleging unfair dismissal and discrimination. Discuss Marcia's position in this situation?
- Suggest three reasons why a person might refuse to discuss the reason for an absence. (No marks for AIDS if they have heard the question above!)



This challenge can be found on Tape 2 if you are using the VHS tape.

The fourth challenge – it's your fault I'm stressed

Stress is frequently caused by work or the workplace.

The Health and Safety Executive defines seven categories of risk factors within an organisation, these are:

- culture within an organisation
- demands (for example, workload and physical hazards)
- control (how much say a person has in the way they work)
- relationships (for example, bullying and harassment)
- change (how change is managed and communicated)
- role within the organisation and possible conflicts
- support from peers and management.

Dealing with stress can be particularly difficult because of the possibility that it may be partly the employer's fault. Employers have a duty to protect their people from unnecessary stress and to take steps to ameliorate work-related stress.

In this challenge, Shumaila has been certified by her GP as suffering from stress. In the first sequence, the manager completely fails to grasp the seriousness of this. She points out that everyone is under stress and tells Shumaila, in effect, to 'pull herself together'.

In the second sequence, we see the manager deal sympathetically with the issue and set about uncovering the underlying cause.

The issues

The employer is usually entitled to assume an employee can withstand the normal pressures of the job unless a particular problem or vulnerability is known about. The organisation is only in breach of its duty if it fails to take steps that are reasonable in the circumstances.



This challenge can be found on Tape 2 if you are using the VHS tape.

If a worker is suffering from stress, their productivity is likely to suffer. It is clearly in the employer's interests to investigate and, if possible, resolve the issue. However, in the case of stress, a failure to deal with it may leave the employer open to a claim for damages.

As with most problems at work, the key to finding a solution and making progress is communication.

In the first sequence, the manager fails to do this. She seems to assume that everyone is under equal stress and that Shumaila is just making a fuss about it. She sees her role as being to give a pep talk rather than as being to help solve the problem.

People do respond, at least superficially, to pep talks. But the effect is rarely permanent. The usual effect is that they go away and get angry that their problem was not addressed properly.

If a worker has not previously suffered from stress, it is likely that some change in practices or structure has caused the problem. In this case it is because Shumaila has been thrown into contact with the public for the first time. This can be very stressful, particularly if, as here, the worker has not been adequately prepared. Modern organisational pressures frequently lead managers to solve problems by changing the way people work in order to create what appears a more logical and effective structure. Very often, they overlook the human effect of such changes.

Employers do have a positive duty to undertake risk assessments to identify work place hazards. This includes identifying hazards which could induce workplace stress.

The challenge fumbled

After showing the first part of this challenge, you may wish to ask some, or all, of the questions below. The notes above should help you field any questions that arise in the subsequent discussion.



This challenge can be found on Tape 2 if you are using the VHS tape.

- Based on the vignette, how do you think Anna sees Shumaila's problem?
- Why do you think she sees it in this way?
- What do you think Anna thinks she has achieved?
- What do you think she has achieved?

The challenge met

After showing the second part of this challenge, you may wish to ask some, or all, of the questions below. The notes above should help you field any questions that arise in the subsequent discussion.

- What do you think of Anna's line of questioning in order to uncover the cause of stress?
- Can you think of other questions she could have asked?
- Anna asks about home life. What do you think about the privacy issues here? Should she ask this? Would you? Why, or, if not, why not?
- Anna asks, 'how do you feel about your work?'. What alternative questions might you ask to open up the subject?
- Do you think the problem will be solved once Shumaila has been trained?
- What further action should Anna take?
- Suppose the problem is not solved this way. What then?



This challenge can be found on Tape 2 if you are using the VHS tape.

The fifth challenge – it's stress! – the external cause

Stress is the second most common cause of absence amongst non-manual workers, after minor coughs and colds. Stress can result from external causes – divorce, financial problems, child-related problems – internal causes which are work-related.

The video sequence explores the issue of stress from outside the organisation. In this case, the manager of a pizza restaurant faces a waitress who is missing days through stress caused by the fact that her partner is in jail.

The issues

Sometimes a worker will just announce that they are suffering from stress. More normally, they will complain of a range of relatively minor symptoms such as headache, stomach upset and fatigue.

The only way the manager is going to uncover stress as the underlying cause is by taking time to communicate with the worker.

In the first vignette, the manager takes the symptoms at face value and accepts that the worker was suffering from minor ailments. In the second vignette, he explores the issue in greater depth and uncovers a major problem.

The key principle is that the manager does not allow each absence to be treated in isolation. The worker is anxious to explain the latest absence as though it were a unique occurrence. The manager puts the absence in context and seeks to solve the problem of *recurrent* absences. He explains that he cannot continue to allow repeated absences because of the damage they are doing to the business.

This presents the worker with a choice. She can either choose not to disclose the underlying problem, in which case the manager can seek to investigate it further through obtaining a medical opinion, or she can open up, in which case the two of them can make progress towards solving the problem. What the manager cannot do is let the matter drift.



This challenge can be found on Tape 2 if you are using the VHS tape.

In this case, Lizzie decided to tell Obasi about her personal problem. This gives Obasi the opportunity to research what reasonable steps the employer can take to alleviate the situation.

This is a further illustration of the key principle underlying all absence management: each discussion must make progress. Absence is not reduced by a single, brilliant stroke – it is reduced by *bearing down* on it.

In the examples where sickness was involved and managers sought medical opinions, the manager could really take no further action until that opinion was provided. But stress from outside the organisation is not the organisation's problem. However, the effects of the stress are likely to impact on the worker's performance and attendance and such issues cannot be treated in isolation. The organisation can be supportive, but ultimately it is the worker's problem and they must take the final responsibility for solving it. In this challenge, Obasi gently, but firmly puts the onus on Lizzie to come to work when she is due to come to work, whilst he remains as supportive as possible. In terms of the WARM mnemonic, he puts the *responsibility* for attending on her shoulders, where it belongs.

People often overlook the fact that managers find dealing with absence stressful. Finding a member of staff is away at a crucial time can be one of the more stressful occurrences in a manager's working life. The current emphasis on employment rights tends to mean people forget this.

In this challenge, Obasi is frustrated and starts the discussion angrily. It is easy to criticise this. But he has *every right* to feel frustrated and angry. Were he always to proceed in a textbook fashion, he would probably so fill his body with toxins as to seriously shorten his life. He needs to let his anger and frustration out for the sake of his own health and well-being. The other advantage is that it communicates to the worker the effect their absence is having far more graphically than any reasoned argument. People understand anger.

In the challenge, Obasi uses the technique of starting the meeting again once he has vented his anger. There is nothing wrong with this. It can be a very powerful technique.



This challenge can be found on Tape 2 if you are using the VHS tape.

Obasi's questioning technique is crucial to the outcome of the meeting. It is very subtle, but effective. He uses both 'thinking out loud' and *pauses* very effectively. For example, he says, 'You know, this is happening a lot'. It is not a question in the literal sense, but it has the effect of producing a response as if it were. It tells Lizzie how he is thinking. He also reflects her own comments back to her: 'You said life was "awful" earlier'. Then he waited ... and waited. This gave Lizzie time to think and to make a decision to talk. His whole technique was rather like using a garden hose. The water was coming out anyway, he just had to point it in the right direction by gentle interventions from time to time.

The challenge fumbled

After showing the first part of this challenge, you may wish to ask some, or all, of the questions below. The notes above should help you field any questions that arise in the subsequent discussion.

- Obasi was very angry at the start of the interview. He was clearly under stress himself as a result of Lizzie's absences. Do you get angry and stressed when people are away at times of great pressure? Discuss the advantages and disadvantages of showing it.
- Is it ever justified to appear angry to a member of your staff? What effects might this have on the member of staff? On you?
- What do you think of Obasi deciding to 'restart' the meeting?
- How do you think Obasi will feel after this meeting?
- How do you think Lizzie will feel?
- What might this meeting have achieved?



This challenge can be found on Tape 2 if you are using the VHS tape.

The challenge met

After showing the second part of this challenge, you may wish to ask some, or all, of the questions below. The notes above should help you field any questions that arise in the subsequent discussion.

- What did you think of Obasi's questioning technique?
- In your own experience, what sort of questions or comments might you make that might help a person to talk to you?
- Do you have a problem with stress amongst your staff? What strategies do you implement for dealing with it?
- What do you think the attitude of the organisation should be towards stress? Do you feel the organisation has any responsibility to help a person deal with external causes of stress?
- Towards the end of the meeting, Obasi presents Lizzie with a choice – take part-time work or guarantee to come in when needed. How do you feel about this?
- A sensitive issue arose over the question of whether to tell Head Office about the problem. Obasi said he had to do this. What do you think? What would you have done?
- What do you think the balance should be between the manager's role and that of support services within the organisation? In other words, is stress a matter for the Personnel and Occupational Health specialist, or does line management have a role? And if so, what?



This challenge can be found on Tape 2 if you are using the VHS tape.

The sixth challenge – take it as holiday

Here we see a manager faced by a worker who has been warned repeatedly of the consequences of taking time off work. The worker has now been away again and knows he does not have an acceptable reason. He plans to wrong-foot the manager by volunteering to take the time from his holiday entitlement. The manager was not expecting this and feels that he has to agree.

In the second sequence, the manager deals effectively with this ploy.

The issues

It is important to look at this incident *in context*. One could easily imagine a reliable worker taking time off because his wife's aunt was suddenly ill. In this case, most managers would regard the excuse as acceptable. In Mike's case it is different. Mike has taken a string of days off, always with marginal excuses. Charlie has warned him that continuance of this would lead to serious consequences. In this context, Mike's excuse, even if true, is not acceptable.

The law does require employers to allow time off for emergencies involving dependants. Mike's wife's aunt is not a dependant, but most employers would understand if a worker felt he had to support his wife in this situation. Mike, however, has used up all the goodwill that he might have expected from Charlie, so if the aunt really is ill, Mike's wife will just have to deal with it herself.

The first issue to arise here is that holiday entitlement cannot be claimed at the discretion of the worker. Holiday has to be agreed with the employer a reasonable time in advance. A reasonable time in advance is often taken to mean at least as long as the duration of the holiday itself. And the manager does not have to agree, if to do so would harm the interests of the organisation. Managers cannot refuse holiday without a good reason, but they certainly can refuse if such a reason exists, for example, operational requirements and the need to provide cover when staff are absent.



This challenge can be found on Tape 2 if you are using the VHS tape.

So Mike is simply not able to retrospectively claim holiday.

Might a manager ever agree to treat absence as holiday for good reasons? It is difficult to see how he or she could. If a worker is absent, they either have an acceptable reason, or they do not. If the reason is not acceptable, and given that the time was not booked as holiday, a manager who agrees to treat it as holiday is effectively punishing the worker by removing a day's holiday from them, but without a formal hearing. This is unfair. So the manager's only real choices are to either accept the excuse, or to treat the matter as a breach of discipline.

There is also a practical reason for not allowing unauthorised absence to be treated as holiday. It is the same reason shoplifters cannot exonerate themselves by paying for the goods afterwards. People would be tempted to take time off in the hope that they'd get away with it. If they were caught, they would just take it as holiday.

It is very important to understand that you cannot spring a disciplinary hearing without due warning and without advising the worker of their rights under the various pieces of employment legislation. Even if a worker has been formally warned that repetition of certain conduct will result in dismissal, you cannot just say, 'that's it – you're out!' if they repeat the conduct. You must convene a proper hearing to take the decision and the worker's rights, including the right of appeal, must be respected before and during the hearing.

If an organisation does have a disciplinary procedure in place, which forms part of a worker's contract of employment, failure to follow the procedure will be a breach of contract, and could render a dismissal potentially unfair.

It is apparent from the vignette that Mike has not been previously issued with a formal warning. It is obvious that Charlie has spoken to him about his conduct in the past, but this does not constitute a formal warning.

Charlie now judges that the time has come to convene a formal hearing to consider the issuing of a formal warning.



This challenge can be found on Tape 2 if you are using the VHS tape.

Charlie's conduct in the vignette is an interesting subject. He hectors Mike remorselessly. If he were to behave like this in a formal hearing, the hearing would almost certainly be held to be unfair. However, there is nothing wrong with a manager becoming angry with a worker who he feels is giving him the run around and there is nothing wrong with letting that anger show. This is only true, however, so long as the manager remains calm and in control and does not cross the line to become abusive or rude.

It is certainly not acceptable to bang the table and call the worker names, or issue threats. But a display of cold anger can be very effective in bringing home to a worker how seriously their conduct is viewed.

The position in a formal hearing is quite different. The person conducting the hearing must be unfailingly courteous and objective and must give the worker every chance to present their case fully, including the making of absurd and implausible claims.

The challenge fumbled

After showing the first part of this challenge, you may wish to ask some, or all, of the questions below. The notes above should help you field any questions that arise in the subsequent discussion.

- Has this happened to you?
- How did you handle it?
- What is the legal position? Can Mike insist that he treat the time as holiday?
- Is it ever advisable to agree retrospectively to a holiday? What are the issues here?



This challenge can be found on Tape 2 if you are using the VHS tape.

The challenge met

After showing the second part of this challenge, you may wish to ask some, or all, of the questions below. The notes above should help you field any questions that arise in the subsequent discussion.

- What is the legal position regarding Jean's aunt?
- What would the position be if she lived with Mike and was dependent on him?
- What would the position be if she lived ten miles away in sheltered housing?
- Charlie adopts a tough stance with Mike, clearly indicating that he does not believe a word of it. How do you feel about this?
- What might the consequences be?
- Charlie lets his anger and incredulity show. Talk about this. What are the issues here?
- In a formal disciplinary hearing, workers have rights. How do you think these rights should best be communicated before a hearing?
- Do you think it is a good idea or not for the person who has investigated the absence to be the person who actually handles the disciplinary hearing? (There is no question that it would be better for another person to conduct the disciplinary hearing. Tribunals will take into account the resources and size of the organisation. A branch manager in a small local branch of an off-licence may find it impractical to ask another manager to hold a hearing. A shift leader on a car production line might find it relatively straightforward. The question of whether Charlie is the right person to chair the hearing will depend on the circumstances.)



This challenge can be found on Tape 2 if you are using the VHS tape.

The seventh challenge – the union rep

The law now grants the right to any worker to be accompanied to disciplinary and certain types of grievance hearings. This right must be respected and tribunals will penalise any employer who disregards it. The right is to be accompanied by a trade union official. Generally, most disciplinary procedures will allow for representation by some other individual such as a work colleague. Normally, the procedures would not allow for the worker to be represented by a solicitor or some other legal representative.

No such right exists (unless it is specifically provided for in the contractual policies of the particular employer, or is normal custom and practice within the organisation) in the case of informal discussions about conduct or performance. There is no right to be accompanied at appraisals, coaching or counselling sessions or at informal disciplinary discussions.

To justify accompaniment, the meeting must be a hearing at which some sanction, such as a warning or suspension, might be applied, or where the warning is being reviewed on appeal.

In this vignette, we see a worker demanding the right to be accompanied by his union representative at a discussion of his absence.

The issues

Although the law only grants the right to be accompanied to formal hearings, it is open to any organisation to grant the right itself. Some organisations always accede to a request to be accompanied because it helps ensure that the worker cannot make false claims later about what took place. However, managers should always ensure that they, too, have a witness in such circumstances. This has the advantage of providing corroboration of the discussion, but a simple matter may escalate to a major hearing with the character, but not the force, of a formal hearing.

It is almost certainly wiser to refuse to allow a worker to be accompanied if what is intended is an informal discussion.



This challenge can be found on Tape 2 if you are using the VHS tape.

In the first sequence the manager is wrong-footed by his own ignorance of the legal position. It is clearly important for a manager to be aware of the position regarding accompaniment and to be able to explain it succinctly and authoritatively to a worker if necessary.

In the second vignette, the manager explains the rule on accompaniment, but also explains the difference between a return to work interview and a disciplinary hearing.

The challenge fumbled

After showing the first part of this challenge, you may wish to ask the questions below. The notes above should help you field any questions that arise in the subsequent discussion.

- What is the legal position on accompaniment?
- What is our organisation's policy?

The challenge met

After showing the second part of this challenge, you may wish to ask some, or all, of the questions below. The notes above should help you field any questions that arise in the subsequent discussion.

- What would you do if a worker insisted on being accompanied, even though they were not legally entitled to be so?
- What is the difference between a formal and an informal hearing?
- In a formal hearing, what would be the consequences of not respecting the right to be accompanied?





