

Lead Employer Trust

Management of Attendance

POLICY INFORMATION SHEET

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Content

1. POLICY STATEMENT.....	4
2. ROLES AND RESPONSIBILITIES.....	4
3. DEFINITIONS.....	5
4. RECORDING AND REPORTING ABSENCE.....	5
5. CONTACT WITH ABSENT EMPLOYEES.....	7
6. STATEMENT OF FITNESS TO WORK (FIT NOTE).....	7
7. SUPPORTED RETURN TO TRAINING	8
8. RETURN TO WORK.....	8
9. REFERRAL TO OCCUPATIONAL HEALTH.....	8
10. WHEN SHOULD SUPERVISORS TAKE ACTION.....	9
11. REPRESENTATION.....	10
12. PROCEDURE FOR THE MANAGEMENT OF SHORT TERM/PERSISTENT SICKNESS ABSENCE	10
13. PROCEDURE FOR THE MANAGEMENT OF LONG TERM OR CHRONIC SICKNESS.....	13
14. PROCEDURE FOR THE MANAGEMENT OF UNACCEPTABLE ABSENCE PATTERNS.....	15
15. APPEALS.....	16
16. SCALES OF ALLOWANCE.....	16
17. DISABILITY.....	17
18. TERMINAL ILLNESS.....	17
19. CONFIDENTIALITY.....	17
20. MEDICAL EXCLUSION.....	17
21. ABSENCE DUE TO AN ACCIDENT/INJURY AT WORK.....	18
22. NHS INJURY BENEFIT SCHEME.....	18
23. ACCIDENTS/INJURY OUTSIDE OF WORK.....	19
24. PUBLIC HOLIDAY DURING SICKNESS ABSENCE.....	19
25. ACCRUAL AND USE OF ANNUAL LEAVE DURING LONG TERM SICKNESS.....	19
26. COSMETIC SURGERY OR TREATMENT.....	21
27. GENDER REASSIGNMENT SURGERY	21
28. IVF TREATMENT.....	21
29. EQUALITY AND DIVERSITY STATEMENT.....	21
30. REFERENCES/LEGISLATION.....	21
31. REVIEW.....	21
APPENDIX A: STAGE 3 HEARING PROCEDURE.....	22
APPENDIX B: SICKNESS ABSENCE APPEAL HEARING PROCEDURE.....	23
APPENDIX C: EQUALITY IMPACT ASSESSMENT.....	25

1 POLICY STATEMENT

At some time during their working life almost all employees will suffer from ill health and be genuinely unable to attend work. When these incidents arise the Lead Employer Trust (LET) will deal with sickness absence in a sympathetic and understanding way. In most cases these absences only lasts for a few days. If the absence is prolonged it can have a significant effect on both the quality of life of the individual and in the workplace.

The disruption that absence from work causes is both costly and has an adverse effect on the quality of service provided by the Host training Organisations. It is therefore essential that managers take action to address sickness absence wherever possible and employees familiarise themselves with their obligations under the procedure. Research has shown that the longer people are off work, the less likely is it that they will return. It is also accepted that minor and moderate conditions can develop into chronic ones if action is not taken at an early stage to assess the impact of the illness on the individual's ability to work. The Trust is a large and complex organisation that relies upon all staff to regularly attend work in order to achieve its goal of delivering the best possible healthcare.

This procedure has been developed in order to highlight the importance of the management of sickness absence from the first day of absence and to give guidance on how best employees can be supported during periods of absence and the assistance which can be given to them in achieving an early return to work.

This procedure applies to all LET employees.

Sick Pay entitlements are in accordance with Medical and Dental Terms and Conditions (Agenda for Change for Non Medic Public Health Trainees).

2 ROLES AND RESPONSIBILITIES

LET Department

- Must keep accurate records of all sickness absence (episodes and reasons) and ensure that payroll are notified
- Must address unacceptable levels of attendance (see Sections 9 – 13)
- Must maintain regular contact with employees during absence from work
- Must identify and manage unacceptable absence levels in accordance with this Procedure
- Must use the provisions within the Special Leave/Employment Break/Parental Leave/Flexible Working Policies where appropriate
- Must document and facilitate return to work plans including any recommended adjustments as necessary

Host Training Organisation

- Must carry out return to work discussions after every episode of absence
- Must keep accurate records of all sickness absence (episodes and reasons) and ensure that the LET are notified.

If there are reasons to believe that an employee is abusing the sickness absence scheme, the host training organisation should contact the LET HR department to discuss whether action should be taken in accordance with the LET's Conduct and Capability Procedure. Examples might be an employee who was refused a request for annual leave and reports in sick, an employee who undertakes other paid employment whilst on sick leave, or an employee whose behaviour away from work is incompatible with the reason for the absence.

Employee's contractual obligations

- Has a duty to report for work when fit to do so
- Must maintain regular attendance at work
- Must comply with absence notification/certification procedures
- Must maintain regular contact with their supervisor and the LET during their absence
- Must attend occupational health appointments and meetings with supervisors or LET

- Must be contactable at their home address during their absence, unless an alternative contact address has been notified to their manager
- Must ensure that they do not partake in any activity that will have a detrimental effect on their recovery
- Must return to any suitable alternative duties identified following receipt of recommendations on a Fit Note, where immediate return to their substantive role is not possible
- Must notify their manager of any holidays occurring during their period of absence

Failure to do so, without good reason, will be regarded as a breach of contract, and may result in the employee being subject to the LET's Disciplinary Procedure.

Where employees have failed to comply with the requirements in this procedure, then decisions on their continued employment with the LET may be made in their absence and based on the information available to the manager at that time.

3 DEFINITIONS

Where the word 'absence' appears in the text, it refers to sickness absence.

3.1: Short Term Absence

Short term absence relates to situations where the employee is absent from the normal working environment due to illness for periods of between one day and 27 calendar days. There may be occasions where it is appropriate to link periods of short-term sickness absence when it relates to the same episode of illness and the employee has attempted an unsuccessful return to work. In these circumstances this is counted as one episode of absence for monitoring purposes (but not for recording purposes)

3.2: Long Term/Chronic Absence

Relates to situations where the employee is absent for a prolonged period of time due to illness, or a prolonged period broken by brief returns to work whilst well due to an underlying health problem. The LET considers long term absence as 28 calendar days or more continuous absence for monitoring purposes.

4 RECORDING AND REPORTING ABSENCE

Effective management of sickness absence depends on accurate and comprehensive record keeping. Supervisors will record individual levels, frequency and reasons for absence, and must report absence to the payroll department. The supervisor, LET and host training organisation will identify problems or patterns at an early stage and provide support and assistance to improve attendance. Leaders will be trained in the management of sickness absence and promotion of health and wellbeing to understand the link between staff health and wellbeing and attendance at work, quality of patient care and productivity.

Employees are responsible for making themselves familiar with any local/departmental absence notification procedures including the nominated person to contact.

It should be noted that in the case of time off owing to ill-health, such absence is counted in calendar days not working days. So, if at the end of a period of sickness an employee has days off, either rostered or as a weekend not normally worked, **unless they report their fitness to return to work by the last day of their illness, the days off/weekend will be counted.**

Employees and supervisors are reminded that where time off is required for reasons relating to dependents/domestic circumstances, there are separate provisions with the various Work Life Balance Policies, i.e. Special Leave, Out of Programme.

4.1: On the First day of absence

Employees are required to notify their supervisor/nominated person of their absence as far in advance as possible prior to commencement of the period of duty. The manager can be informed in person or by telephone by the employee in accordance with local departmental rules. Where an employee leaves a message on an answerphone or with colleagues, the manager will normally ring the employee back. The use of text messages and emails to notify the manager that an employee is unable to attend work due to illness should only be used where it is an agreed department rule. **Only in circumstances where the employee is physically unable to speak to their manager due to illness, can a relative or friend contact their manager on their behalf.**

A brief indication of the reason for absence must be offered, its likely duration, and whether the reason is work related. Where the employee is unable to give a confirmed date of return to work they will agree with the host training organisation and the LET how often the employee should be in contact during their absence.

A referral to the LET's occupational health provider can be made without delay to ask for advice on the likely timescale for a return to work and also whether adjustments to work or alternative work would enable the individual to return more quickly or even immediately. The LET should ensure questions they ask of occupational health are shared with the employee and sign a declaration to this effect on the referral form.

In exceptional circumstances, and with the knowledge of their supervisor, it is recognised that on occasion's issues of a private or personal nature can be discussed more effectively with the LET's Occupational Health provider or with another supervisor of the same sex. In such circumstances a referral to the LET's Occupational Health can be made without delay.

If an employee becomes ill at work i.e. after starting their shift, they must report to their supervisor, who will ensure their safe return home. In these circumstances, this will be recorded as the rostered shift worked on time sheets for the purposes of statutory sick pay and occupational sick pay. A separate record of hours lost owing to sickness should be recorded on the employee's return to work discussion form for the purpose of managing sickness absence. If an employee is sent home on arrival at work (other than for infection control exclusion) the period of absence will commence on the first day.

4.2: On the Eighth day of absence

The employee must notify their supervisor of continuing absence and submit a Statement of Fitness for Work (referred to as 'Fit Note') from a registered medical practitioner to the LET. The employee must ensure the Fit Note is received by their manager within 4 calendar days inclusive of the day of issue.

If it is not this will be regarded as unauthorised absence which may affect their pay and may be dealt with under the LET's Disciplinary Procedure where appropriate.

5 CONTACT WITH ABSENT EMPLOYEES

It is the norm for both the LET and employees to maintain regular, though not excessively frequent, contact during a sickness absence (either by telephone, letter or home visit, as mutually agreed) to offer support and help if required and to keep up-to-date with the employee's progress, and consider which work adjustments could facilitate the return to work. This may include pre-arranged visits to employees who are hospitalised, by arrangement with relatives and the agreement of the hospitalised employee. Supervisors should seek advice from the LET if they are unsure how to make contact. During the early days of absence it is essential that regular contact is maintained and the employee keeps the LET informed on their progress and a date for their likely return to work. After the first month of absence, contact should be maintained as agreed between the LET and the employee.

In cases of prolonged absence this helps to reduce the feeling of isolation that can otherwise develop and can identify needs for management action on any return to work at an early stage. As a minimum it is reasonable for the LET to have contact a few days before a doctors certificate or self-certification period is to expire, within a few days after a new certificate is received, after any report from occupational health and during a longer absence at least on a monthly basis, in the absence of advice to the contrary from occupational health.

6 STATEMENT OF FITNESS FOR WORK (FIT NOTE)

Where a Fit Note indicates absence in months, these should be regarded as calendar months.

- e.g. Fit Note signed on 20th January for 3 months: return to work date is 19th April

Where a Fit Note indicates absence in weeks, these should be regarded as 7-day weeks

- e.g. Fit Note signed on Friday 18th January for 6 weeks: return to work date is Friday 1st March.

Where a Fit Note indicates actual dates „from“ and „to“, the return to work date is the day after the „to“ date

- e.g. Fit Note indicates absence from 20th to 27th March – the return to work date is 28th March.

The Fit Note empowers GPs to confirm that an employee is either:

- Not fit for work
- May be fit for work with extra support from their employer

This second option may indicate that the employee may be able to carry out some work if adjustments can be made to the employee's existing role such as reduced hours, changes to duties and responsibilities or working from a different location. It is incumbent on the LET to explore such options with a view to facilitating the employee's return to work and if the host training organisation can accommodate this the employee can be expected to make a return to such adjusted work as soon as it can be arranged. Where adjustments cannot be made to the employee's existing role a suitable alternative role will be identified taking account of the restrictions on the Fit Note and the employee will be expected to undertake those duties.

If the line manager cannot accommodate the Fit Note then they must seek to place the employee elsewhere within the Division/Directorate or within the host training organisation.

If the suggested changes cannot be implemented, for sound business reasons, which should only be in exceptional circumstances, then for sick pay purposes, the employee will be regarded as if the GP had advised that the employee was 'not fit for work.'

Certificates indicating that a period of sickness absence has ended will no longer be issued and managers should not expect to receive such. Where there is doubt about the nature or extent of adjustments needed or where the GP has suggested an occupational health assessment a referral to the LET's occupational health should be made.

7 Supported Return to Training (SuppoRTT)

SuppoRTT is a centrally funded Health Education England (HEE) initiative which aims to support **ALL** trainees to safely and confidently return to training after a sustained period of absence. The programme applies to **ALL** trainees who are absent for a period of three months or more, regardless of the reason. Those who are absent for a shorter period may also access support. As returning trainees are a diverse group, SuppoRTT aims to provide a bespoke, individualised package for each returning trainee. If you are returning to the workplace after a period of absence it is strongly recommended that you follow our guidance, further information can be found here: <https://madeinheene.hee.nhs.uk/education2/Supported-Return-to-Training>

As part of the Supported Return to Training (SuppoRTT) programme we encourage you to undertake a pre-return meeting with your ES/CS to discuss the extra support you might need on

your return to work. This could include training, a supernumerary period or enhanced supervision.

You can access the pre-return form here:

<https://madeinheene.hee.nhs.uk/education2/supporttdocuments>

8 RETURN TO WORK

If a Fit Note indicates that a return may be possible the employee should contact the LET by telephone or in person no later than 5.00pm of the following working day to discuss the note, any adjustments that are needed and whether an occupational health appointment is needed.

Failure to comply with this may result in the employee being sent home without pay, if arrangements have already been made to cover their duties.

A phased return to work may be required for trainees usually on advice from occupational health. The phased return is not usually more than 4 weeks. An employee could opt to lengthen a phased return beyond 4 weeks by using annual leave for this purpose.

On their first day back on duty following sickness, an employee must report to the person in charge. The host training trust must conduct a return to work discussion on the employee's first day back at work, or at the earliest opportunity. This meeting should be in private on an informal one-to-one basis and is done to welcome the employee back to work, establish the nature and cause of absence and see if any help is needed (It is recognised that this may be difficult to do on the first day of return from absence. However, they can conduct this by phone, or regardless of any time lapse it is important that the interview takes place at the earliest opportunity).

Other issues unrelated to sickness absence should not be discussed (e.g. misconduct/performance issues), but addressed on another occasion.

Sometimes the issues to be discussed may be sensitive and, in these circumstances, staff should have the option of speaking to a supervisor of their own sex or discussing the nature of the absence with a member of the Occupational Health Department. Nevertheless, Occupational Health cannot replace the role of the LET in sickness absence management and any discussions of the sensitive issues would have to be undertaken in the context of an occupational health referral. The individual should be referred as soon as it is discovered that their health problem is such that they would not wish to discuss it with their manager in order to avoid any delay in ensuring action needed to adjust work or support the individual can be taken.

At the Return to Work Discussion the employee's previous attendance record should be reviewed:

- if the employee has had, in the last 12 months, either 3 or more occasions of absence or their absence rate (as at the last date of the most recent episode of absence) exceeds the current Trust target the employee should be informed that a Stage 1 meeting will be arranged.
- If the employee has previously had a Stage 1 or Stage 2 meeting, and their absence rate since that meeting (to the last date of the most recent episode of absence) has reached the target set, they will be informed that a Stage 2 or Stage 3 meeting will be arranged.

Where possible a date will be agreed, at the Return to Work Discussion, for the absence review meeting to take place.

9 REFERRAL TO OCCUPATIONAL HEALTH

The LET may refer employees, with their consent, to the LET Occupational Health provider, in order to obtain an assessment on their ability to perform the duties of a given job description and advice on reasonable adjustments with the workplace. If the LET wishes to provide additional information or seek additional advice this should be specifically requested within the referral. Any medical reports provided are confidential, and provide part of the information that is taken into account along with other factors, on which the LET decides what action to take. Occupational Health's role is advisory and not managerial.

An occupational health assessment may be requested at any time by the LET where it is felt this would assist in clarifying the position, in relation to an individual's ability to undertake the duties of

their job description, and must be undertaken before considering the continued employment of an individual. The purpose of the consultation is to determine if there are any underlying factors which prevent regular attendance at work. The LET can insist that the employee attend any such assessment arranged, and if the employee fails to attend they should be informed that in the absence of a medical report action will be taken using the information available.

If the employee disagrees with the occupational health report, they should bring this to the attention of the occupational health staff member involved. The occupational health advisor or doctor will consider whether they have made an error due to incorrect understanding of the facts reported or whether this is simply a matter of differing professional and lay opinions. They may decide to get further advice from another (usually more senior or a peer) member of the occupational health team or whether further information is needed from the employee's treating professionals.

If LET employee is still in disagreement they can request a second medical opinion from another Occupational Health Physician. The employee will be responsible for meeting any associated costs and both opinions should then be made available to the LET for consideration.

The LET should make decisions based on all the facts available. They will need to weigh the relative expertise of the professionals and others from whom information is received. For example, it would usually be expected that an Occupational Health Physician's (OHP) opinion is more important than that of a GP provided the OHP has seen the employee. This is because the OHP knows the workplace and is specifically trained to consider questions of fitness for work and the health impacts of work.

Subsequent to an occupational health assessment, advice will be given from the occupational health professional to the LET based both on the occupational health appointment and further information from a third party (if applicable). In keeping with good practice guidelines consent for the assessment will need to be given in writing. If an employee refuses to grant access to medical records, or prevents the occupational health report from being released to the LET, any decision on future employability will be taken on such information that is available and known to the LET. The LET cannot be held responsible for errors made due to lack of information denied to them.

10 WHEN SHOULD SUPERVISORS TAKE ACTION?

Supervisors are expected to take action when:

- Employee's absence is 3 or more separate occasions within a rolling 12 month period or the employee's total absence level has exceeded the Trust absence % target.
- Where the employee has been **or is likely to be** absent from work for a period of 28 or more calendar days. Employees with a Fit Note taking them up to this duration should be referred to Occupational Health when that certificate is received, without delay.
- The employees attendance records gives cause for concern and/or the absence pattern does not fall neatly into the above categories - in these circumstances the overall absence history should be reviewed.
- There is concern about the health of an employee, affecting their work performance, this should be discussed with the employee and a referral made to the occupational health department. It is essential that the employee is aware of the reasons for the referral.
- In all these circumstances the LET retains discretion to act directly on receipt of information received from reasonable sources which make the solution for a return to work clear. For example if an employee is given a Fit Note indicating they may be able to do alternative duties and the manager can accommodate this then there is no need to make an occupational health referral to verify these arrangements.

The LET will identify the appropriate course of action:

Procedure for the Management of Short Term/Persistent Sickness (section 11)

11 REPRESENTATION

Under the *ACAS Code of Practice 2009 - Disciplinary and Grievance Procedures*, the employee has a right to be accompanied by a 'companion' at formal meetings that may result in a warning or some other action. However, the LET will continue to extend the right to be accompanied at any formal meeting which is part of the process e.g. investigatory interviews. The employee may be accompanied by a trade union representative, an official employed by a trade union or a colleague from within the host training organisation but not someone acting in a legal capacity. Employees may only have one companion and the companion should not be someone who would prejudice the investigation/hearing process.

The LET also allows employees being investigated, or witnesses, to be accompanied at the investigation stages of the procedure, as long as that will not delay the investigation or the companion is not part of the investigation.

A LET employee who has agreed to accompany a colleague (also employed by the LET) is entitled to take reasonable paid time off to fulfill that responsibility, where possible.

The companion should be allowed to address the hearing and to put and sum up the employee's case, but does not have the right to answer questions on the employee's behalf.

It is the employee's responsibility to arrange their own representation.

12 PROCEDURE FOR THE MANAGEMENT OF SHORT TERM/PERSISTENT SICKNESS ABSENCE

Where the employee has reached the levels/targets outlined in section 9, they should be informed at the Return to Work Discussion that their attendance will be addressed formally in accordance with the Procedure for Managing Short Term/Persistent Sickness Absence.

The procedure has the following stages:

- Stage 1 – First Absence Review Meeting - where employee has reached levels/targets outlined in Section 6
- Stage 2 – Final Absence Review Meeting – failure to meet standard or continued poor attendance
- Stage 3 – Absence Review Hearing – failure to meet standard or continued poor attendance

Guidance on conducting Stage 1 and 2 Absence Review Meetings:

- The employee will be given written notice of the absence review meeting and made aware of the right to be accompanied at the meeting
- The meeting should take place in private with the Procedure and absence record available for discussion, and it should be an investigation into any underlying problems, medical, work based or domestic, which may be preventing the employee from attending work regularly
- It is important to remember that the reasons for absence may be sensitive, and that confidentiality is very important. The employee may be given the opportunity to talk in confidence to either Occupational Health or the LET if they prefer.
- Any pattern of sickness absence should be highlighted and explored. If it is a Stage 2 Absence Review Meeting the LET should review the reasons for the employee failing to meet the standards previously set
- The LET should explain the effect the absences are having on the work performance of the department and their colleagues

- Where appropriate managers should discuss and agree with the employee any reasonable adjustments to working practices, hours or environment that may alleviate the problem
- There is no requirement to refer an employee to Occupational Health unless there are concerns regarding an underlying medical condition, the employee's ability to carry out their role, or the employee requests a referral.
- If no underlying medical cause is found the manager needs to continue to monitor and manage the situation. The LET need not re refer to occupational health each time the employee has an additional sickness absence if the employee accepts there is no new underlying medical condition (e.g. after a further absence for a cold or flu).
- If an underlying medical condition links the absences and they amount to a substantial proportion of the time, but are expected to continue for a limited medium term timescale, these may be better dealt with under the long term sickness absence procedure. An example would be an employee absent for a few periods of several weeks undergoing surgery and other treatment expected to give a good chance of cure of an underlying condition.
- The LET should explain that attendance will be monitored over the following 12 month period and explain what is considered to be a reasonable standard of attendance, using 3 episodes as a standard (setting a nil sickness target is unrealistic). They should not however allow the situation to continue indefinitely and must consider the impact of continuing absence on service delivery.
- The LET should give the employee an indication of the consequences of any continued poor work attendance or failure to meet the required standard within the time period
- If in the 12 month monitoring period (starting from the day after the end date of the period of absence which triggered the Stage meeting) absence levels exceed the target set (3 episodes within a 12 month rolling period), the employee will be moved to the next stage of the procedure.
- **In addition at a Stage 2 Review Meeting**
 - Employees will be issued with a Final Caution on the consequences of continued poor attendance or failure to meet the required standard within the time period i.e. that it will place the employee's employment in jeopardy and may lead to their dismissal. The employee will have the right to appeal against the Final Caution
- All points of the meeting should be put in writing to the employee

Stage 3: Absence Review Hearing

If, following exhaustion of Stages 1 to 2 of the procedure, an employee's attendance fails to meet the required standards previously set out to them, a hearing will be arranged where consideration will be given to the employee's continued employment.

An up-to-date medical opinion from the occupational health department must be sought in advance of the hearing taking place.

The employee will be given written notice of the Absence Review Hearing and made aware of the right to be accompanied at the hearing

This Stage 3 hearing can take place before the employee exhausts their sick pay.

The hearing will be chaired by a more senior manager of the LET who has had no prior involvement in the case.

The format of the Stage 3 hearing is at appendix B.

The employee will be given every opportunity to state their case.

Minimum periods of notice in accordance with the Employment Rights Act and the employee's contract of employment must be given. The LET must confirm the decision to the employee in writing and advise of their right of appeal (within 10 working days).

13 PROCEDURE FOR THE MANAGEMENT OF LONG TERM OR CHRONIC SICKNESS ABSENCE

This can be defined as situations where the employee is continuously absent for twenty eight calendar days or more or recurrent periods of time or repeatedly absent over a similarly long timescale with a single underlying cause.

Referrals should be made to the LET's occupational health when an employee is absent or is likely to be absent for 28 calendar days or more unless the absence is for 8 calendar days or more and is as a result of stress/anxiety/depression in which case referral should be made as soon as the LET are aware of this reason for the absence.

The LET can refer any employee to occupational health, where there is uncertainty about the reasons for their absence, its likely timescale and any adjustments that may be needed on return to work. The LET can ask for informal advice by phone if they consider the diagnosis and timescale on the Fit Note are incompatible or either is unusual. They may be advised to refer the employee or be reassured, that their plans appear appropriate to Occupational Health.

The LET should deal with long-term/chronic sickness absence sensitively and in accordance with these procedures. Even when it is apparent that the sickness absence will be long-term the manager should become involved at an early stage. Where employee is terminally ill, please refer to section 17 for further guidance.

This type of absence demands quite a different supervisory approach as it requires a balance between acting compassionately to the employee and minimising disruption to the host training organisation. In the interests of the individual employee and the organisation, it must be remembered that the chances of an employee returning to work decreases rapidly with the duration of the absence. In the majority of cases, where absence has lasted less than 6 months, employees will be able to return to their normal duties following long-term absence. However, there will remain a few instances when a return to work will not be possible, and the LET must ensure that they work closely with host training organisation and Occupational Health to deal with such situations properly. Managers should refer to the LETS Rehabilitation/Redeployment Policy for further guidance on phased return to work or redeployment.

The employee will be invited to a formal meeting with the LET and Programme Director or Supervisor to review progress on their situation. Normally this will take place no later than three months after the absence started. It should not be the first contact the employee has had during the absence. The employee will have the right to be accompanied at this meeting. This meeting can take place at the employee's home if that is more convenient, or at a mutually agreed location.

Thereafter there should be regular meetings with the employee to review progress with their condition and to discuss any occupational health reports.

Absence management options

There are several options available when considering how to deal with employees who have been on long term/chronic sickness or had a series of long term episodes. These include:

- a) Secondment
- b) Redeployment
- c) Work Restrictions/ Reasonable Adjustments

- d) Ill Health Retirement Applications
- e) Dismissal

Where any of the above is likely, the LET must seek an opinion from the Occupational Health department, as appropriate.

Termination of Employment on Medical Grounds

Where it has not been possible to identify suitable workplace adjustments or alternative employment, or where the Occupational Health Report recommends that the employee is not fit to return to work in any capacity, the LET will need to meet the employee to discuss the contents of the Occupational Health Report and/or the fact that no suitable alternative employment has been identified and/or a timescale for return to work cannot be given. The employee has the right to be accompanied at this meeting.

This meeting can take place before the employee exhausts their sick pay. At the meeting the manager will:

- discuss the outcome of the report with the individual and canvass his/her opinion on the advice received
- advise that the individual can obtain a second opinion (Section 8) if they disagree with the Occupational Health Report
- where employees are members of the NHS Pension Scheme they may wish to be considered for ill health retirement if they have ill-health to the extent that they cannot work in any role. This is normally following advice from the Occupational Health Department that an application for ill-health retirement pension benefits is appropriate.
- if appropriate at this stage, confirm that the employee's employment will be terminated with due notice
- inform the employee of their right of appeal against the termination of their employment
- confirm the outcome of the meeting in writing

Ill Health Retirement Pension Arrangements

Where an employee has contributed to the NHS Pension Scheme, they may make an application for premature retirement on the grounds of ill health. The LET will make the necessary arrangements for such an application in conjunction with the employee, Occupational Health and the Payroll section. Employees must be made aware that the criteria for termination of contract on medical grounds are not the same as the criteria for qualifying for retirement on ill health grounds and employees can have their employment terminated without qualifying for ill-health retirement. The decision to grant ill-health retirement pension benefits rests with the Medical Advisors at the NHS Pensions Agency and not the host training organisations or Occupational Health Department.

Where the occupational health physician does not consider an application for ill-health retirement appropriate or likely to succeed, an employee can arrange for their GP or treating consultant to support their application for ill-health retirement benefits. The employee will be responsible for meeting any costs associated with the GP or Consultant completing the form.

14 PROCEDURE FOR THE MANAGEMENT OF UNACCEPTABLE ABSENCE PATTERNS

Unacceptable patterns of sickness may occur where an employee's overall level of sickness absence is unreasonable or causes operational difficulty. Examples of such may include:

- Repeated instances on specific days of the week, or during school holidays, specific shifts
- Days taken as sick leave when requests for annual leave have been turned down (Note: in some cases this may need to be addressed under the LET's Disciplinary Procedure)
- Repeated instances of Long term absence, which could be over a period of years
- A combination of both long and short term absences

It is likely to take longer to recognise these patterns but managers should acknowledge them when they arise.

In order to recognise unacceptable patterns of sickness absence recording and monitoring is crucial.

With regards to long term sickness absence, when a pattern is identified or the supervisor becomes concerned at the cumulative amount of absence over a period of time they should contact the LET to review previous occupational health reports and if necessary a referral can be made to Occupational Health to ascertain whether these absences are linked and/or caused by any underlying health problem. This referral should take place after a sickness review meeting with the individual to explain the reason for the referral. By its nature this pattern may take longer to identify but it may consist of repeated periods of certificated absence lasting for anything from four weeks to several months but separated by absence free periods at work.

In all cases regular reviews should be carried out with the employee by the LET. The employee has the right to be accompanied at such meetings The employee may be accompanied by a trade union representative, an official employed by a trade union or a colleague from within the host training organisation but not someone acting in a legal capacity.

Stage 1 - Absence Review Meeting(s)

Following a number of absence review meetings, which may have been held under the Stages of the Short Term Absence Procedure (section 11) or meetings under the Long Term Absence Procedure (Section 12). The employee should be advised of their overall level of unacceptable attendance and the need to see an improvement in attendance. They must be made aware that continued unacceptable absence levels could lead to their dismissal.

Stage 2 – Final Absence Review Meeting

If there is insufficient improvement or the unacceptable absence levels persist then a Final Absence Review meeting will be held at which a Final Caution will be issued and the employee will be given the right to appeal. In addition the employee must be informed that due to being issued with a Final Caution their salary increment will be deferred for a period of 12 months.

In the light of Occupational Health Advice every effort should be made to alleviate the situation by considering short or long term adjustments to the duties or hours of the current post or to redeployment as described above. It is reasonable to ask occupational health whether there is any medical reason to expect that things will improve or whether previous levels of absence are likely to continue in the current post or an alternative post.

If there is no improvement in the levels of sickness absence then serious consideration should be given by the LET to whether the department or the host training organisation can continue to support that level of sickness absence.

Stage 3 Absence Review Hearing

An Absence Review Hearing will be arranged in accordance with the arrangements detailed on page 12, where consideration will be given to the employee's continued employment with the Trust.

15 APPEALS

An employee who is aggrieved by any action taken which results in the issue of a formal warning or dismissal has the right of appeal against this action. The opportunity to appeal against such

decisions is essential to natural justice and appeals may be raised by employees on any number of grounds, for instance new evidence, undue severity or inconsistency of the penalty.

An appeal must never be used as an opportunity to punish the employee for appealing the original decision and it should not result in any increase in penalty as this may deter individuals from appealing.

The appeal should be dealt with by the next level of management above that of the officer who issued the warning/dismissal and to a manager who has not previously been involved in the case. An appeal must be lodged within fourteen (14) calendar days of the date of the letter confirming the decision. The appeal letter must outline the grounds for the appeal.

Procedure for the appeal hearing can be found in Appendix A.

A member of the HR team will also attend the hearing in an advisory capacity.

It is important that both parties exchange written statements of their case seven (7) calendar days prior to the appeal hearing and that the members of the appeal panel are presented with copy statements to afford the panel the opportunity to read and understand the case.

Appeals should be heard without unreasonable delay.

The Chairperson will confirm to the employee and their representative, in writing, the decision of the appeal panel within 14 calendar days of the hearing.

16 SCALE OF ALLOWANCES

A practitioner absent from duty owing to illness, injury or other disability shall, (subject to the provisions of paragraphs 226 to 244 of the Medical and Dental Terms and Conditions), be entitled to receive an allowance in accordance with the following scale:

During the first year of service: One month's full pay and (after completing four months' service) two months' half pay.

During the second year of service: Two months' full pay and two months' half pay.

During the third year of service: Four months' full pay and four months' half pay.

During the fourth and fifth years of service: Five months' full pay and five months' half pay

After completing five years of service: Six months' full pay and six months' half pay.

The authority shall have discretion to extend the application of the foregoing scale in an exceptional case. A case of a serious character, in which a period of sick leave on full pay in excess of the period of benefit stipulated above would, by relieving anxiety, materially assist a recovery of health, shall receive special consideration by the employing authority.

If, on a temporary basis, Occupational Health advise against on-call duties (e.g. recommendation of a phased return) employees are entitled to receive up to 4 weeks on call allowance. If this adjustment exceeds 4 weeks the on-call allowance will cease until the employee returns to full duties.

Non-medic Public Health Trainees will fall under the NHS Agenda for Change, scale of allowances.

17 DISABILITY

In seeking to manage sickness absence we all share a duty not to discriminate against people with disabilities and must not treat an employee less favorably on the grounds that they have a disability or unfavorably because of something arising in consequence of an employee's disability where this cannot be justified

In such instances the LET must consider whether all "reasonable adjustments" to the employee's working environment, conditions and place of work have been made. Please refer to the LET's Disability Policy.

18 TERMINAL ILLNESS

Where terminal illness is diagnosed it is essential that the supervisor contacts the LET for advice as early as possible in order to ensure that the employee has the opportunity to discuss Ill Health Retirement options (including pension or death in service benefits) and access any support which they may require. The LET will discuss the options with the employee, with the support of a LET Payroll Officer (where appropriate). The outcome of this discussion will determine any future action.

19 CONFIDENTIALITY

All aspects of an employee's sickness absence are strictly confidential. The LET may discuss these details with the host training organisation HR department, the Specialty Training Programme Director or the Occupational Health staff, but the absence should not be discussed with colleagues or other members of the employee's family without their express consent and knowledge, unless in exceptional circumstances.

20 MEDICAL EXCLUSION

The occupational health department will provide written notification to LET where absence relates to infection control issues rather than sickness. This in essence relates to symptoms or conditions that could pose an infection risk to patients and colleagues but otherwise the employee does not feel unwell enough to prevent them from working. The occupational health department will continue to monitor staff meeting this criteria and advise the LET on the likely duration of the exclusion and also the date when this period ends. In some circumstances Occupational Health will give an indication of areas where the employee can be redeployed on a temporary basis, as an alternative to exclusion.

This absence should not be recorded as Sickness Absence for payment or monitoring purposes, and the LET should use the Exclusion from Duty code.

Individuals who report absent as a result of an illness such as D&V, should have their absence from work recorded as sickness and it would count towards the number of episodes/percentage. However the 48 hours that they must remain symptom free before returning to work may be managed differently. The employee must report to their manager at the point that they feel fit enough to return to work but are not able to do so due to not being 48 hours symptom free. If there is an opportunity to change their shifts/work a different day then this should be explored. If these options are not available then these two days are classed as medical exclusion and recorded as such.

21 ABSENCE DUE TO AN ACCIDENT/INJURY AT WORK

The host training organisation should complete an incident reporting form for every occasion resulting in an injury or contractible disease at work.

Where an individual sustains a significant injury or work related health problem, in order to assess the need for support and any work place adjustments which may be needed to minimise absence from work, they should be referred to the LET occupational health department as soon as possible. The supervisor or host training organisation must notify

the LET that the absence is the result of an injury at work. Where timesheets/attendance reports are used the Injury at Work code must be used in place of the normal sick leave code.

Employees absent due to an accident/injury at work should still be referred to LET occupational health and have absence review meetings.

22 NHS INJURY BENEFIT SCHEME

NHS Injury Benefits are available to all staff whether or not they are members of the NHS Pension Scheme.

Temporary Injury Allowance (TIA)

The Temporary Injury Allowance is paid by the LET when sick pay reduces below the normal level of earnings because of industrial injury and is the amount by which all monies received falls short of 85% of the average remuneration of the employee over the previous 12 months preceding the accident or onset of disease.

Permanent Injury Allowance (PIB)

Where an employee who has been receiving Temporary Injury Allowance is terminated, then an application may be made for Permanent Injury Benefit.

A Permanent Injury Benefit may also be paid to an employee who returns to work but suffers a permanent reduction in pay due to a change of job as a result of this injury.

To qualify for these benefits, an employee must have suffered a loss of earnings because he/she:

- sustained an injury from an accident or incident which must have occurred whilst on duty
- contracted a disease in the course of employment
- developed a condition that is attributable to the employee's work in the host training organisation
- sustained an injury as a result of giving assistance at the scene of an accident, even if the employee is off duty

If the host training organisation feel that an employee may be entitled to receive NHS Injury Benefits (or if an employee has approached them and they feel that they may be entitled to benefits), the host training organisation and employee should inform the LET as soon as possible. In all cases, the LET will seek an opinion from their Occupational Health Department before authorizing payment.

The host training organisation (and/or the employee) will be required to provide evidence to support the claim, including sight of any accident reports or health and safety records.

Payment of Temporary Injury Allowance is normally decided by the LET, but where there are doubts about the payment of Injury Benefits, the LET will arrange for further advice and guidance to be sought from the occupational health department and/or the NHS Pensions Agency.

Eligibility for Permanent Injury Benefit is determined by the medical advisors at the NHS Pensions Agency.

23 ACCIDENTS/INJURY OUTSIDE OF WORK

It is NHS policy that any employee absent as a result of an accident outside of work is not entitled to any occupational sick pay if damages are receivable from a third party in respect of such an accident. Outside of work is defined as any occurrence at any time whilst not engaged on LET or host training organisation business.

In this event, the host training organisation may, having regard to the circumstances of the case, advance a sum not exceeding the amount of sick pay payable, subject to the employee undertaking to refund to the host training organisation the full amount of sickness allowance when damages are received. A separate agreement to this repayment must be made with the employee if this agreement does not appear in the terms and conditions of service.

Sick pay is not normally payable for an absence caused by an accident due to active participation in sport as a profession, or where contributable negligence is proved.

24 PUBLIC HOLIDAYS DURING SICKNESS ABSENCE

If an employee reports sick on a public / statutory holiday they will not be entitled to an additional Statutory / Public Holiday in accordance with Section 14.8 of Agenda for Change terms and conditions.

25 ACCRUAL AND USE OF ANNUAL LEAVE DURING LONG TERM SICKNESS

Accrual of Annual Leave during absence

Following the 2009 European Court of Justice and House of Lords decisions, staff who are absent on long term sick leave have the following rights;

- to accrue and take statutory annual leave entitlement during long term sick leave.
- to take any untaken statutory leave, i.e. up to the maximum of 28 days per annum (statutory entitlement is in accordance with the European Working Time Directive i.e. 28 days for full time staff, pro-rata for part time staff), when they return to work, if they are on sick leave for part or all of the annual leave year. This is broken down into 20 days annual leave plus 8 bank holidays for full time staff, pro-rata for part time staff. The limit for taking statutory annual leave holiday is for a maximum period of 18 months from the end of the relevant leave year, after which it will expire.

Note: If an employee is able to take their accrued annual leave on their return to work and before the current annual leave year ends, they should do so. If they choose not to do so, the accrued leave can be carried over but must be used 18 months after the end of the relevant annual leave year in which the leave was accrued, after which it will expire.

- to have a request to take annual leave whilst on sick leave granted, subject to complying with the usual/ written notification arrangements for annual leave request arrangements.

Note: Employees who apply for statutory annual leave during sick leave will receive their normal rate of full pay, i.e. if an employee qualifies for statutory sick pay (SSP), he/she will continue to be paid SSP and this sum will be made up to full pay with holiday pay. Such periods of paid annual leave will not extend an employee's entitlement to sick pay and payment for the days treated as annual leave during sick leave will not exceed the employee's normal total holiday pay.

It is essential that the host training organisation maintain accurate records relating to sickness absence and annual leave entitlement to inform the LET.

The host training organisation has no obligation to meet any statutory holiday request which was not made during the leave year when the worker was off on long term sick leave or immediately after returning from long term sick leave.

All remaining contractual annual leave will be lost and cannot be carried forward to the next leave year.

If an employee reports sick on a public / statutory holiday they will not be entitled to an additional Statutory / Public Holiday.

Sickness occurring during annual leave

If an employee becomes ill while on annual leave or on lieu days, they will need to adhere to the normal notification procedures, if they wish to reclaim some or all of the annual leave for that period. They will need to produce at that time a medical certificate or a letter from a treating physician; then they will be regarded as being on sick leave from the date of the certificate and their annual leave entitlement will be adjusted accordingly. The employee must inform the LET as soon as possible, and must not wait until their return to work to report it retrospectively. The absence will only be recorded as sick leave from the point at which it is reported to the LET.

Going on holiday whilst on sick leave

There may also be occasions where an employee has a holiday pre-booked before the start of their long term sickness absence or wishes to go on holiday during their absence.

Employees who are on long-term sick leave and have pre-booked leave which will take them away from their home for a period exceeding 3 working days **must** obtain the approval from the LET for the holiday/break.

It is also the employee's responsibility to inform the LET of any holidays they are wishing to undertake whilst on sick leave, providing details of destination and dates.

The LET will wish to ensure that the holiday/break will be of therapeutic value and support the employee's recovery from ill-health.

If the LET has concerns about the appropriateness of the holiday then can contact the occupational health department for advice.

Whilst on holiday, the employee is required to continue to comply with the notification/certification requirements.

Employees need to be aware that visiting certain holiday destinations may affect payment of Statutory Sick Pay

26 COSMETIC SURGERY OR TREATMENT

It would not be appropriate for employees to take sick leave where they have chosen to undergo surgery or treatment for cosmetic reasons. However, where the reason for surgery is medical or psychological, then the sick pay provisions would be appropriate. In these circumstances a letter would be required from the treating Consultant/Specialist stating that the surgery or treatment is essential. The employee will be responsible for meeting the cost of obtaining this letter.

27 GENDER REASSIGNMENT SURGERY

Planned surgery for medical gender reassignment will be managed under the same process as any other planned surgery the employee may undergo, which results in absence. A sensitive approach should be taken to discuss options and fully support the employee in returning to work

28 IVF TREATMENT

Whilst there is no statutory right to paid time off from work for IVF Treatment, the LET can consider the provision of reasonable paid special leave or unpaid leave together with a combination of annual/sick leave. This will need to be agreed on a case by case basis.

29 EQUALITY & DIVERSITY STATEMENT

The LET is committed to providing equality of opportunity, not only in its employment practices but also in all the services for which it is responsible. As such, an Equality Impact Assessment has been carried out on this procedure to identify any potential discriminatory impact. The LET also values and respects the diversity of its employees and the wider community it serves. In applying this procedure, representatives of the Trust will have due regard for the need to:

- Eliminate unlawful discrimination
- Promote equality of opportunity
- Provide for good relations between people of diverse groups

For further information, please refer to the LET's Equality Diversity and Human Rights Policy

30 REFERENCES/RELEVANT LEGISLATION

LET Disability Policy

LET Rehabilitation/Redeployment Policy

NICE Guidelines – managing long term sickness absence and incapacity for work

ACAS Guidelines for Managing Attendance at Work

NHLSA Risk Management Standards

Equality Act 2010

Agenda for Change Terms and Conditions of Service Handbook

31 REVIEW

The General Manager of the LET is responsible for monitoring the application of this policy and to ensure that the document is reviewed no later than three years from the date of issue. The policy may be amended at any time by joint agreement.

STAGE 3 HEARING PROCEDURE

In advance of the hearing, the following documentation should be made available to all parties involved in the hearing:

A summary of overall absence record

- The Sickness Absence calculation tool for each calendar year
- Return to Work Discussions
- Occupational Health Report
- Stress Risk Assessment (*if appropriate*)
- Letters confirming discussions at meetings
- Management of Attendance Procedure

Opening by Chair of Panel

- Introductions
- Explain purpose of hearing - refer to Management of Attendance Procedure
- Explain process of hearing
- Check if employee needs any assistance
- Confirm representation
- State either side can seek an adjournment at any time

Management Case

- Manager presents case
- Employee may ask questions of Manager
- Panel may ask questions of Manager

Employee Response

- Employee states their response including any mitigation
- Manager may ask questions of employee
- Panel may ask questions of employee

Summing up – no new information may be introduced at this stage

- Management side sums up
- Employee sums up

Adjourn whilst panel reach decision

All decisions made will be based on the facts and mitigating evidence as available at the time of the hearing.

After an appropriate adjournment it is hoped that, in normal circumstances, a decision will be reached on the day of the hearing. In such instances the chairperson will recall the employee and management to outline the decision, giving appropriate reasons. However, where a case is likely to require further consideration following the hearing, written advice should be provided to the employee within 14 calendar days, indicating the date by which a full response can be expected.

Sickness Absence Appeal Hearing Procedure (For appeals against Cautions or Dismissal)

The following procedure should be followed for conducting a Sickness Absence Appeal Hearing.

The Chair will:

- make the necessary introductions
- explain and make it clear to the employee and all present that this is a Sickness Absence Appeal Hearing
- The purpose of the meeting should be clearly stated:
 - To consider their appeal against the action imposed
 - The format of the Appeal Hearing

An adjournment may be called by either party at any time during the hearing.

Format of Hearing

- The employee or their representative shall state the case for their appeal
- The Presenting Manager and Panel will be entitled to question the employee following presentation of their case.
- The Presenting Manager shall state the management case
- The Employee or their representative and Panel will be entitled to question the Presenting Manager following presentation of their case.
- The Presenting Manager shall summarise their case.
- The employee or their representative shall summarise their appeal. The employee or the employee's representative has the right to speak last.
- Normally in summing up, neither party may introduce any new evidence. However if at this point, further evidence to support the appeal is required, the members of the Panel may, at their discretion, adjourn in order that either party may produce further evidence.
- The Presenting Manager, the employee and his/her representative shall withdraw.

Adjournment

- The Panel, the HR representative and/or specialist advisor will adjourn in private only recalling both parties to clear points of uncertainty on evidence already given. If recall is necessary both parties shall return, notwithstanding that only one is concerned with the point given rise to doubt.
- **After private deliberation it is hoped a decision will be reached on the day of the hearing. In such instances the Chairperson will recall the employee and Presenting Manager and outline the decision, giving appropriate reasons**
- The Chairperson will confirm to the employee and their representative in writing the decision of the appeal panel within 14 calendar days of the hearing.
- However, where a case is likely to require further consideration following the hearing, written advice should be provided to the employee within 14 calendar days, indicating the date by which a full response can be expected.

- Following this process the Chairperson must explain to the employee and their representative that the decision made by the appeal panel is final and there will be no further right to appeal.

Equality Impact Assessment

Preliminary Assessment Form

The preliminary impact assessment is a quick and easy screening process.

It should:

- Identify those policies, procedures, services, functions and strategies which require a full EIA by looking at:
 - negative, positive or no impact on any of the equality groups
 - opportunity to promote equality for the equality groups
 - data / feedback
- prioritise if and when a full EIA should be completed
- justify reasons for why a full EIA is not going to be completed

Division/Department

LET HR Department

Title of policy, procedure, function or service

Procedure for the Management of Attendance

Type of policy, procedure, function or service

- Existing X
- New/proposed
- Changed



Q1 - What is the aim of your policy, procedure, project or service?

To support employees during periods of absence owing to ill-health.
To reduce the absence levels within the Trust

Q2 - Who is the policy, procedure, project or service going to benefit?

LET Employees and Host Training Trusts

Group	Yes	No	Unclear
Age		N	
Disability	Y		
Race		N	
Gender		N	
Transgender		N	
Sexual Orientation		N	
Religion or belief		N	

Marriage & Civil Partnership		N	
Pregnancy & Maternity Leave		N	
Relationships between groups		N	
Other socially excluded groups		N	

If the answer is “Yes” or “Unclear” complete a full EIA

Q4 – Does, or could, the policy, procedure, project or service help to promote equality for members of the equality groups?

Group	Yes	No	Unclear
Age	Y		
Disability	Y		
Race	Y		
Gender	Y		
Transgender	Y		
Sexual Orientation	Y		
Religion or belief	Y		
Marriage & Civil Partnership	Y		
Pregnancy & Maternity Leave	Y		
Relationships between groups	Y		
Other socially excluded groups	Y		

Q5 – Do you have any feedback data from equality groups that indicate how this policy, procedure, project or service may impact upon these groups?

Group	Yes No Impact	Yes Impact	No	Unclear
Age			N	
Disability			N	
Race			N	
Gender			N	
Transgender			N	
Sexual Orientation			N	
Religion or belief			N	
Marriage & Civil Partnership			N	
Pregnancy & Maternity Leave			N	
Relationships between groups			N	
Other socially excluded groups			N	

If the answer is “Yes Impact”, “No”, “Unclear” or opinion is divided complete a full EIA

Q6 – Using the assessments in questions 3, 4 and 5 should a full assessment be carried out on this policy, procedure, project or service?

Yes		No	N
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If you have answered “Yes” now follow the EIA toolkit and complete a full EIA form

Q7 – How have you come to this decision?

The procedure may impact on those employees who have a disability, and the ability of the Trust to make reasonable adjustments.

Q8 – What is your priority for doing the full EIA

High	Medium	Low
		X

Q9 – Who was involved in the EIA?

LET HR Department

This EIA has been approved by:

General Manager, Lead Employer Trust

Date: 18.5.2023

Contact number:

0191 275 4769

Please ensure that a copy of this assessment is attached to the policy document to which it relates.

