

ATTACHMENT A

**NATIONAL NEGOTIATING COUNCIL
MODEL SICKNESS ABSENCE MANAGEMENT
POLICY & GUIDANCE NOTES**

POLICY STATEMENT

MODEL SICKNESS ABSENCE MANAGEMENT – POLICY STATEMENT

1. The National Probation Service (NPS) has a clear responsibility for the efficient and effective delivery of its services. A high level of attendance at work is crucial to enable it meet its aims and objectives and reflects shared interests in contributing to the effective performance of the organisation. High sickness absence rates, on the other hand, involve costs for the National Probation Service in terms of sick pay, covering for absent colleagues, lower standards or disruption to its work and can adversely affect morale. The National Probation Service is consequently eager to ensure that sickness absence is effectively managed.

2. To meet its responsibilities NPS will:

- involve all levels of management in managing sickness absence with the objective of achieving maximum attendance levels and enhanced performance;
- deal with sickness absences fairly and with understanding and provide appropriate support through managers, HR and occupational health facilities;
- ensure that clear reporting and recording procedures are in place;
- maintain accurate records of absences attributable to illness or injury;
- regularly monitor trends, patterns and reasons for absence on a local and NPS-wide basis;
- provide staff with an appropriate working environment;
- treat all matters relating to ill-health and injury confidentially;
 - Will ensure that disability awareness is included in attendance management training;
 - Will record disability related absence and sickness absence separately;
- ensure that comprehensive guidelines on absence management are produced and reviewed periodically.

3. In return each employee is expected to:

- attend regularly for work when fit to do so;
- make themselves fully conversant with and comply with reporting procedures including maintaining contact, completing and submitting the relevant forms and certificates and obtaining medical advice and treatment if appropriate to facilitate an early return to work;

- contribute to Return to Work Interviews with their line manager;
- take reasonable care of the health, safety and welfare of themselves and others at work;
- not engage in an activity which may incur sickness absence, delay recovery and a return to work.

4. The National Probation Service's approach in cases of sickness absence will always be one of support and understanding. Wherever possible, assistance will be given to help ill employees regain full health with Occupational Health Service (OHS) support as appropriate. Assistance will be offered as appropriate to disabled employees including provision of reasonable adjustments as appropriate on a case-by-case basis.

5. Managers will keep up to date on progress during absence, arrange home visits where appropriate and support rehabilitation programmes which may be recommended by medical professionals. Where all possible practical alternative scenarios have been explored, termination of service on the grounds of ill health or incapacity will be considered.

6. Unacceptable levels of absence can be tackled by management action and the promotion of good staff morale. However, where problems occur, particularly when they are caused by casual or frequent short-term absences these absences need to be reviewed and managed.

7. Line managers can and should take action to improve the situation. A continuous and co-ordinated effort is necessary whereby line managers should:

- recognise and acknowledge good attendance and improvements when they occur;
- take appropriate action in dealing with those who abuse the system;
- show fairness and understanding when considering cases and considering whether disability, compassionate or unpaid leave might be appropriate.

8. Employees will want to see understanding shown to those who need to be absent and appropriate action taken against those who abuse the system at the expense of colleagues. The development and operation of sound, fair and consistent procedures is essential, within which the role of line managers not only in managing sickness absence but also in creating a positive working environment is key.

9. All employees involved in the process of sickness absence management have a responsibility to maintain the confidentiality of such information.

10. A copy of this policy statement will be made available to all employees.

SICKNESS ABSENCE MANAGEMENT – A GUIDE

1. Chief Officers and Heads of Human Resources should make clear to line managers that sickness absence needs to be managed sympathetically, but actively and firmly and fairly. This guide is intended to provide a framework for managers and employees to assist managers in managing sickness absence confidently and effectively and to ensure that appropriate levels of support are provided to every member of staff.
2. This set of procedures details the National Probation Service's expectations of employees when they are unable to attend work due to illness, and of managers involved in the process of managing the sickness absence of their employees.
3. The National Probation Service is committed to ensuring that this set of procedures is based on the principles of natural justice and is applied fairly and equally to everyone, regardless of:
 - race, ethnic or national origin;
 - sex, including gender identity;
 - actual or perceived sexual orientation;
 - age;
 - religion or belief; or
 - disability.
4. Sickness absence management is primarily the responsibility of line managers assisted by the provision of support services such as occupational health and human resources. Mild or even moderate ill health (such as minor colds etc) does not necessarily mean an employee will be absent from work and a number of factors are likely to influence this decision. These may include the quality of supervision, working relationships, team spirit and general working conditions. An awareness of these factors plays an important part in the management of sickness absence.
5. Accurate record keeping of all sickness absences helps to develop a fair and consistent approach to managing attendance. It is also a way of raising staff awareness of management's interest in this area whilst highlighting to each individual their own level of sickness absence.
6. Proactive use of occupational health services will assist in the reduction of ill health amongst employees. Occupational Health Services (OHS) will provide guidance and advice to managers, HR and staff members and contribute to ensuring the most appropriate approach to individual cases of sickness absence.
7. The Occupational Health Support for Sickness Management Policy Arrangement part of the National Health and Safety Policy (ref: NPS/HS/35) states:

“Current ‘best practice’ is for the OH Practitioner to be fully involved in providing clinically based advice to HR and line managers throughout the totality of the sickness management programme. In broad terms this embraces the following issues:

- The early identification of trends and possible future causes of ill-health within the Area;
- Advising on the management/prevention of short term absences;
- Advising on the management of long term absence – particularly return to work programmes and associated risk assessments together with any resulting new DDA issues;
- Advising on ‘Post Return to Work’ assessments;
- Providing support to individuals during periods of sickness absence; and
- Liaising with the employee’s personal medical advisors (e.g. GP’s etc).”

These aspects are covered in greater detail in the guidance provided in Annexes 2 – 4 of the Support to Sickness Absence Management Policy Arrangement (NPS/HS/35), part of the National Health and Safety Policy.

Overview of roles and responsibilities

Notification and reporting arrangements

Individual employees

8. In the normal course of events an employee must report sickness absence promptly to his/her line manager, as soon as practically possible following the beginning of his/her working day. In the rare event that he/she is unable to call personally, the employee should arrange for a representative to phone on his/her behalf.

9. The employee must provide his/her line manager or another appropriate manager, with the reasons for sickness absence and an indication of when he/she expects to return to work.

10. The employee must remain in contact with his/her line manager throughout the duration of his/her sickness absence, informing him/her of any changes in circumstances regarding his/her sickness absence.

Line Managers

11. Line managers are responsible for ensuring that sickness reporting procedures are adhered to (e.g. that certificates are produced on time) and should take action if they are not. All managers and employees have a responsibility to familiarise themselves with the reporting arrangements in place and to follow them. The arrangements for reporting absence should therefore be included in part of any induction programme for new employees and a reminder circulated to all employees from time to time. Line managers are responsible for ensuring adherence to the Occupational Health Arrangements in the National Health and Safety Policy.

Human Resources Staff, Health and Safety and Occupational Health Advisors

12. Staff working in HR, H&S and Occupational Health are responsible for supporting the line manager in managing sickness absence.

Board and Chief Officers

13. The Board has overall responsibility for the development, publishing, dissemination and application of policy and procedures on good attendance and sickness absence management to include clear principles and standards.

Chief Officers must ensure that sickness absence is managed consistently but actively and fairly. They must ensure that levels of sickness absence are monitored and managed.

First day of absence

14. An employee should notify his/her immediate line manager of any sickness or injury which prevents them from attending work at the earliest opportunity, normally by telephone, at the latest within two hours of his/her expected start time. Where possible, the line manager should obtain an indication of the nature of the absence, how long it is expected to last etc. It is not acceptable for a member of staff reporting absence from work to leave a message, for example, with Reception. If the immediate line manager is not available, arrangements should be in place for the call to be taken by another appropriate manager.

15. If the sickness absence continues beyond three consecutive days, the employee should contact his/her line manager again, as early as possible on the fourth day of sickness absence or on the next working day. If the manager is advised that it is likely that the absence will continue beyond seven consecutive days, the employee must be reminded of the need to obtain and submit a medical certificate.

Medical certification

Sickness absence of seven calendar days or less

16. A doctor's certificate (from a registered medical practitioner) is not normally required for absences lasting seven consecutive calendar days or less. Where the employer requires a medical certificate in these circumstances, the employer will meet the cost.

17. The line manager should ensure that the individual completes a self-certificate form on his/her return to work, check that this is properly completed, sign it and forward it to HR.

Sickness absence of eight calendar days or more

18. If the sickness absence is for eight calendar days or more, the employee is required to submit a doctor's medical certificate. If the sickness absence continues beyond the return to work or due date on the certificate, further medical certificates must be submitted within a week of the expiry date of the previous one.

19. It is the line manager's responsibility to ensure timely submission of outstanding certificates. The Occupational Health Support for Sickness Management Policy Arrangement (NPS/HS/35) states "..... it is important to recognise that, based

on HSE advice, a medical certificate provided by a doctor (the 'FMED3' form) is simply:

- an advisory note to the patient that can be overruled by the patient if he or she wishes.

It is neither:

- an instruction to the employee not to attend work during the period specified; nor
- an instruction to the employer not to accept the individual back to work during that period."

20. There are no restrictions relating to early return to work. Accordingly, by mutual agreement between an employee and the Area (taking account of the need for any specific requirements which would be identified in the return to work risk assessment), an employee can return to work when they feel sufficiently able. The employer should facilitate that return, consulting with the OH Practitioner and making adjustments as necessary (thereby ensuring that they have done all that is reasonably practicable in respect of general employer responsibilities). There is no requirement for the employee to seek formal authorisation from their GP prior to returning to work.

21. If the employee still does not feel well enough to return to work at the end of a period stated in a Medical Certificate, they should seek an extension of that Certificate from their GP. Conversely, if an employee wishes to return to work early, but the OH practitioner advises the relevant line manager that this would not be appropriate (e.g. for reasons of possible cross infection of other employees, or the employee is not considered to be sufficiently recovered from their ill-health, etc) the line manager should not permit the individual to return to the work.

22. It is also essential to ensure, through local procedures, that employees are not subject to pressure (from any party) to return to work early. Nothing in the above statements must be taken as requiring employees to return to work until they feel well enough so to do.

Failure to comply with reporting arrangements

23. If any member of staff fails to comply with the stipulated reporting arrangements without an acceptable explanation, pay may be suspended and disciplinary action initiated.

Failure to notify absence

24. If a member of staff does not report for work and has not made contact, the line manager should telephone the employee to find out the reason for the absence. If there is concern for the safety of the individual, the line manager (or other suitable person) should contact the named emergency contact. The local police may also be asked to visit the home address.

25. Where it has not been possible to contact the member of staff by telephone, a suitably worded letter should be sent following consultation with HR locally. The line

manager should express concern about the lack of contact and ask the member of staff to make telephone contact on receipt of the letter. It may also be appropriate, depending on the circumstances, to request a full explanation of the reason for the absence/lack of contact and the likely date of return.

26. Should the member of staff continue to be absent without contact, the line manager should again write requesting urgent contact. This letter, which should be sent by recorded delivery or delivered by hand, should also inform the member of staff that if s/he does not return to work or provide a valid reason for absence disciplinary procedures will be commenced.

Unauthorised absence

27. Instances of unauthorised absence, i.e. where a member of staff returns to work from an absence during which no contact has been made with the line manager, must be raised with the individual immediately on his/her return to work. The line manager should find out the reason for the absence and make a decision on the appropriate course of action.

28. If it is considered that there is an acceptable explanation for the lack of notification of absence, then the member of staff should be granted appropriate leave or sick pay in retrospect. If the explanation given is not considered acceptable, disciplinary action may be commenced.

Absence from home address when absent on sick leave

29. There are occasions when an individual who is absent on sick leave is away from his/her home address, e.g. to stay with parents; convalesce; go on holiday (acceptable as long as nothing is done which might worsen the condition or otherwise prolong the sickness absence). The employee must agree to provide the line manager with the revised necessary contact details.

Reporting of accidents, injuries, disease and dangerous occurrences

30. When an absence is due to a work related accident, incident, disease or dangerous occurrence an accident/incident form must be completed in addition to the absence being reported to HR in the normal way. Absences must still be supported by a doctor's certificate if they persist for longer than seven calendar days.

31. Absences due to a work related accident, incident, disease or dangerous occurrence must be treated on a case by case basis.

32. The line manager should seek advice as appropriate from HR and/or the Area health and safety advisor at any stage. It is the line manager's responsibility (see NPS/HS/1 in the National Health and Safety Policy) to ensure that accident/incident reports are completed so that where necessary reports and information relating to work related stress, muscular skeletal disorders (e.g. RSI), and reportable diseases can be forwarded to the NPD or to the HSE in line with the RIDDOR Regulations.

Absence of less than one day

33. If an employee has worked for more than half his/her expected hours and then has to leave work through ill-health, this will be counted as a full day's attendance.

34. If an employee has worked for less than half his/her expected hours and has to leave work through ill-health, this will be counted as a half day's sickness absence for monitoring purposes, and will be counted in the calculation of trigger points for unsatisfactory attendance action.

Illness during approved annual leave

35. When an employee is taken ill during a period of annual leave, provided that a doctor's medical certificate is submitted, the appropriate number of leave days will be restored to the employee's entitlement; medical certificates must be paid for by the employee, if necessary. Leave that was booked but not taken before the employee was taken ill will also be restored on production of an appropriate medical certificate; medical certificates must be paid for by the employee, if necessary.

Medical and other appointments

36. Employees should wherever possible arrange appointments outside of normal or rostered working hours (e.g. early morning or late afternoon). When this is not possible, employees should seek to arrange appointments that minimise the disruption to work. Where this cannot be arranged, permission to attend during work hours should be sought and should not be unreasonably refused. Except in cases of emergency, the employee should advise his/her line manager of the proposed time of the appointment as soon as possible and must produce an appointment card or letter if asked. Where there are a series of appointments for regular and ongoing treatment, acceptable arrangements need to be approved by the line manager for handling these.

37. Disability leave is different from sick leave or annual holiday entitlement. It is most commonly used to allow staff paid time off for rehabilitation, assessment or treatment. **Managers are reminded of the need for absolute confidentiality around an employee's disability and no reference to it must be made in any local records.**

38. Examples of situations where disability leave might be appropriate include:

- time off to attend annual check-ups
- medical appointments that occur unavoidably during working hours
- time off for treatment or surgery, such as chemotherapy, physiotherapy etc.
time off to attend physiotherapy
- time off for counselling and hospital appointments
- time off for specific rehabilitation activities such as assistance dog training or sign language training.

39. Time taken for disability leave should always be recorded separately to sickness absence. An appointment card or letter must be produced upon request.

40. Arrangements must be made to enable pregnant women paid time-off to keep an appointment to receive ante-natal care. Except for the first appointment, employees may be asked to produce proof that an appointment has been made.

41. Requests for time off for appointments relating to infertility treatment should usually be approved. The usual consideration and procedures for gaining approval for medical appointments should be used. Should sickness absence occur following treatment, the days absent should be recorded in the usual way. Line managers should not normally consider taking formal action for reasonable absence due to infertility treatment and if triggers are reached no action would usually be taken, after due consideration. **Managers are reminded of the need for absolute confidentiality around an employee's infertility treatment and no reference to it must be made in any local records.**

Transsexual employees

42. Transsexual employees undergoing medical and/or surgical procedures related to gender reassignment may require some time off from work. Line managers must allow employees paid time off work to undergo this treatment and it should not be counted towards attendance management warning triggers.

Managers are reminded of the need for absolute confidentiality around an employee's gender identity and no reference to it must be made in any local records.

Return to work following sickness absence

Return to work interviews

43. Line managers have a responsibility to conduct an interview with any employee returning from sickness absence on the first day they return to work, regardless of the duration of the absence. When it is impractical to conduct a return to work interview on the first or second day, the interview should be conducted by another appropriate manager.

44. The purpose of the return to work interview is to:

- Confirm the reason for the sickness absence;
- Ensure that the employee feels healthy enough to return to work (although this is recognised as being an unqualified opinion, rather than a medical statement);
- Demonstrate concern for the health of the individual;
- Establish if the absence may be disability related;
- Provide an opportunity to identify any health, domestic, welfare or work related problems;

- Consider a referral to OHS¹ if the absence is disability related, or if medical advice has been received that suggests work related ill health or injury may be developing;
- In exceptional circumstances where a health, domestic, welfare or work related problem may result in extended periods of absence a referral to OHS or other appropriate agency may be considered;
- Update the employee on events that may have happened at the workplace during his/her sickness absence;
- Provide the employee with information about support services that are available to them; and
- Establish any reasonable adjustments that may be required.

45. The Disability Discrimination Act (DDA) 1995 and the Disability Rights Commission's (DRC) associated Code of Practice give examples of the type of adjustments that would fit the definition of 'reasonable' and who is disabled under the definition outlined in the Act. Adjustments include:

- Making adjustments to the premises
- Allocating some of the disabled person's duties to another person
- Transferring the person to fill an existing vacancy
- Altering the person's hours of work or training
- Assigning the person to a different place of work or training including working from home
- Allowing the person to be absent during working or training hours for rehabilitation, assessment or treatment
- Arranging training or mentoring
- Acquiring or modifying equipment
- Providing all instructions, training or manuals in an accessible form
- Providing a reader, interpreter or support worker
- Identifying any stress related concerns.

46. The interview is not part of the formal unsatisfactory attendance procedure, but should take place in private to preserve confidentiality. The employee's sickness record should be discussed and any concerns brought to the attention of the employee; for example, emerging patterns of absence.

47. When concerns have been identified as to the level, type, or duration of an employee's sickness absence, the issues should be discussed informally. In appropriate circumstances, the implications of a poor attendance record on employee appraisals, controlling career development and the possibility of invoking the unsatisfactory attendance procedure should be explained.

Note. Any formal meeting to progress to the unsatisfactory attendance procedure should be conducted as a separate formal meeting, with the employee being given the appropriate notice and rights of representation (see **Annex D**).

¹ Referrals to OHS or other appropriate agencies must be done through local HR teams

48. The line manager should record the outcome of the interview on a return to work interview form. A copy of the form with agreed actions should be given to the employee. A copy of the form must be placed on file.

49. As return to work meetings are conducted on an informal basis, an employee would not normally be accompanied by a trade union representative during the meeting.

50. Line managers may request guidance from the OH practitioner prior to and after a return to work interview to clarify any issues or to seek guidance on any specific requirements.

Return to work on a reduced hours or alternative duties basis

51. When employees are recovering from a long-term illness or injury and are not fit for full duties, it may be beneficial for them to be eased back into the workplace as part of a planned short-term programme of work. Such a programme can have the effect of helping recovery and lessening the impact of a prolonged period of absence from the workplace. This may entail a reduction in working hours or could involve alternative duties. In all cases the line manager must consult with HR before discussing the feasibility of reduced hours/alternative duties with the employee, including potential duration. Assuming that the reduction in hours is not a permanent one the employee will return on full pay even if they are working reduced hours. It is very important when agreeing a return to work programme to obtain advice from the OH practitioner. S/he will be able to contribute to the risk assessment that should be completed prior to a return to work and advise on any adjustments that are required. OH advice may be particularly useful following a long period of sickness absence or following a particularly serious incident or injury. The OH practitioner will also be able to advise on post return to work assessments as part of the review of the individual's return.

Confidentiality

52. All employees involved in the process of sickness absence management have a responsibility to maintain the confidentiality of medical information in their possession. All letters and return to work interview record forms (once completed) should be treated as 'restricted – staff'.

53. The fact that a person is absent is not confidential, but there may be occasions when the employee wishes the reason for that sickness absence to remain confidential; this wish must be respected and HR should be informed of the reason in place of the manager. Line managers may have access to records of previous sickness absence to enable them to carry out the role effectively. However, this information is subject to the Data Protection Act and the Access to Medical Reports Act and line managers must ensure it remains confidential.

54. The Occupational Health Support for Sickness Management Policy Arrangement (NPS/HS/35) states:

“The requirements of medical confidentiality must be strictly observed at all times. OH Practitioners are not permitted to divulge personal medical information relating to specific individuals without the agreement of that individual.

In practice the medical confidentiality requirement means that matters of personal, confidential, medical information cannot be disclosed to managers (including HR). However, OH practitioners are at liberty to provide generalised information regarding an individual (e.g. typical progress of a particular condition; the impact of particular conditions on the ability to undertake work, generalised non attributable information regarding the general health of groups of employees etc). Key is a sensible informed dialogue between OH Practitioners and HR/line managers with a common understanding of the confidentiality requirement.”

Enforced Sick Leave

55. From time to time, management may feel that an individual may not be well enough to attend work, despite attending. The Health and Safety at Work Act places an obligation on managers to ensure that all staff are well enough to undertake work. Where a manager has concerns in relation to an employee fitness to remain in work the manager may send the employee home, request that they refrain from returning to work until the symptoms/ condition improves and/or produce evidence from their G.P. that they are indeed well enough to undertake work. In such circumstances management should ensure that the individual is well enough to travel home, unaccompanied and, if necessary, make arrangements for their safe journey home (for example by taxi).

56. Employees on enforced sick leave are still required to produce medical certificates and self certification of the absence. Enforced sick leave will be treated consistently with all other types of sick leave in the management of the absence(s); including the Unsatisfactory Attendance Procedure.

Keeping in touch with employees who are absent through sickness

57. Keeping in touch with absent colleagues is important but it should be done in a supportive way and not be felt by staff to be an additional burden or pressure. Contact should not only establish how the employee is and how their recovery may be progressing, but also aimed at keeping them in touch with what is going on in the workplace. The trade unions can make a valuable contribution to this contact and can provide support and assistance for the employee through the sickness management process. TU involvement in this process is dependent on the consent of the employee.

58. In certain circumstances relating to more serious conditions the OH Practitioner will be able to advise on timing and appropriateness of the contact/visit together with any matters that should be treated sensitively (whilst having regard to the need to maintain medical confidentiality.)

59. The line manager and the employee should agree how personal contact will be maintained with the circumstances of the sickness and the views of the employee

taken into account e.g. when an employee is in hospital, it may be difficult to maintain regular telephone contact and alternatives should be considered. Regular contact must be maintained with employees who are absent. It is difficult to give precise guidance as each case must be treated on an individual basis. However, it is advisable to contact sick employees as early as possible and certainly not let more than 14 consecutive sick days go by without contact. Thereafter, contact every two weeks would be a minimum standard. If an employee is absent due to sickness for more than seven calendar days, line managers should record any contact made.

60. At some point line managers should consider a meeting with the employee. The venue for this meeting should be mutually agreed, whether the office, home or an alternative location. The timing of this meeting would depend on the nature and length of the illness but in any event should take place before the employee has reached 28 calendar days continuous absence.

61. The meeting should be used to establish not only how an employee's recovery may be progressing and his/her anticipated return to work, but also to discuss any concerns the employee may have about his/her absence from work. It should also provide an opportunity to review what support can be provided to the employee and whether the use of reduced hours or alternative duties to ease a return to full duty is appropriate. Each time a meeting takes place, a record of the fact must be made and placed on the employee's sickness file, and a copy given to the individual.

62. There may be a benefit to all parties for the OH Practitioner to meet or communicate directly with the employee. The OH practitioner will be able to confirm his/her clinical judgement and thereby improve the quality of advice to managers/HR and to be able to provide an additional link for the employee to other support provisions where applicable.

Criteria for managing career development

63. The regular attendance of employees is fundamental to the ability of the National Probation Service to deliver an effective service, and as such employees seeking transfer, promotion or personal development opportunities will need to demonstrate that their attendance record is acceptable. Absences related to disability and/or pregnancy, and/or gender reassignment will be excluded from these considerations.

64. When making selections in any of these areas, line managers must take into consideration records of attendance, which will be fully considered along with other relevant matters such as ability, experience, potential and performance. It is crucial to ensure that these decisions do not discriminate either intentionally or unintentionally against a disabled employee.

65. Where an employee who has been subject to any previously agreed health related work adjustments is preparing to undertake a significant change in his/her duties it is advisable to conduct a pre-placement health assessment in conjunction with HR/OH. For more information on this or other health assessments (night workers & drivers) please refer to the OHS Arrangements in the National H&S Policy.

Disability related absence

66. Separate records must be kept of disability-related absence and general sickness absence. See **Annex A** for further information regarding disability.

Ill-health retirement

67. Ill-health retirement is a serious matter, which has major personal implications, and financial implications both for the employee and the National Probation Service. Line managers who are concerned about an employee's ability to cope with the job through ill health should discuss their concerns with him/her and advice should be sought from HR.

68. In circumstances when ill-health retirement is being actively considered, employees will normally have been referred to OHS who will be able to help managers with a medical opinion as to the employee's ability to carry on his/her post.

69. It is important to ensure that all other avenues to bring about an employee's return to work have been explored before ill-health retirement is considered. Not all cases referred for consideration will result in retirement on grounds of ill health. If dismissal results, then the Local Government Pension Regulations make it clear that under Regulation 97(9) the employer must obtain a certificate from an independent medical practitioner specifically stating whether the employee was permanently incapable of discharging efficiently the duties of the relevant employment due to ill health.

70. Additionally, employees have a right to apply for consideration of retirement on ill-health grounds, even if they have not incurred sickness absence and such requests must be forwarded to HR locally.

Unsatisfactory attendance procedure – short term absences (absences of less than 21 working days)

Principles

71. The purpose of the unsatisfactory attendance procedure is to help employees improve their attendance to an acceptable level and help them remain in work.

72. Managers should always consider whether taking formal action is appropriate, taking into account the individual circumstances in every case and consulting with local HR Colleagues, as appropriate.

73. These are the formal procedures for addressing frequent short term absences (that is, where each period of absence is less than 21 working days, and the employee has returned to work).

74. There is a separate procedure for dealing with continuing long term absence (that is continuing absence of 21 working days or more). See paragraphs 106-127.

Unsatisfactory attendance procedure

75. The unsatisfactory attendance procedure is a three-stage process consisting of:

Stage one action: improvement notice - followed by a period of six months to give the employee an opportunity to improve attendance to a satisfactory level (the improvement notice review period);

Stage two – action: final improvement notice - followed by a further period of review to give the employee another opportunity to improve to a satisfactory level (the final improvement notice review period);

Stage three – action: dismissal or other penalty - when attendance fails to improve following a final improvement notice.

Levels of sickness absence that could trigger stage one

76. The earliest point at which Stage One of the unsatisfactory attendance procedure can be considered is 12 working days absence or six separate absences in any rolling 12 month period.

77. There may also be cases where sickness absence levels have exceeded the triggers, but no previous improvement notices have been given. In these cases line managers in consultation with local HR should commence with Stage One - the improvement notice stage - of the unsatisfactory attendance procedures.

78. For part-time employees, these triggers are calculated pro-rata, and the table below is a guide to when formal action will be considered.

No of days worked per week	No of days absence in a 12 month period after which formal action can be considered	No of separate absences in a 12 month period after which formal action can be considered.
5	12	6
4	9	6
3	7	6
2	5	6
1	3	6

Guidance on using the unsatisfactory attendance procedure

79. It is the line manager's decision to decide if an improvement notice should be given and he/she can seek advice from HR if necessary. In considering whether an improvement notice is appropriate, the line manager should consider:

- the employee's sickness absence record;
- length of service;
- any relevant advice from Occupational Health Services (in appropriate cases);
- any history of previous improvement notices in respect to sickness absence;
- information obtained at return to work interviews;
- any underlying medical condition, disability or pregnancy.

80. It is important to remember that though the number of sickness absences is an important element in determining whether an improvement notice is appropriate, it is just as important to consider individual circumstances. These might include:

- the reasons for the sickness absences and how likely they are to reoccur (e.g. an employee who has consistently good attendance over a number of years is off for a few weeks after sustaining a broken leg, in such case it would probably not be appropriate to issue an improvement notice in such an isolated case);
- patterns of sickness absence such as frequent Monday and Friday absences;
- whether reasonable adjustments have been made in the workplace to support an employee who suffers with an underlying health condition or disability;
- considering if any of the sickness absences are regarded as pregnancy-related absences as these absences do not count towards trigger points;
- consideration should be given to not applying trigger points to disability related absence as this could be a reasonable adjustment;
- disability leave does not count towards a trigger point.

Stage One

81. The line manager should normally write to the employee and invite the employee to a meeting to discuss his/her sickness absence; local HR will be able to assist with the wording of the letter, if required. The line manager may invite a local HR colleague to also attend this meeting.

82. The letter from the line manager must:

- Require the employee to attend a meeting to discuss the matter – informing him/her of the level of action that may result;
- Give at least five days notice;
- Set out details of the unsatisfactory attendance, including a copy of all relevant documentation, e.g. copies of return to work interview notes and OHS advice;
- Inform the employee that they have the right to bring a trade union representative or work companion. If the employee or his/her trade union representative/companion cannot attend the first scheduled meeting date they have the right to re-arrange the meeting once, but only to a further five days. See **Annex D** for further guidance.
- Advise that if the employee refuses or fails to attend the meeting without good reason a decision may be made in his/her absence. Line managers must take advice from HR in these circumstances.

83. The purpose of the meeting is to explain clearly why attendance is unsatisfactory and to give the employee the opportunity to comment. See **Annex C** for full details of how to hold a sickness absence management meeting. There are three potential outcomes from the meeting. They are:

- That no further action should be taken;
- That a referral to the OHS would be appropriate; and/or
- That a stage one improvement notice should be administered.

84. The line manager should listen to the employee and then consider what action is appropriate. The line manager should inform the employee of the decision at the end of the hearing, or as soon as reasonably practicable following the meeting. The employee should be sent a note of the meeting and be asked to sign to confirm that a fair and accurate record has been taken. Any disagreements about the record should be attached to this note.

85. If a decision to issue a stage one improvement notice has been taken, the manager must explain to the employee:

- that they have carefully considered the evidence;
- the reason(s) for the stage one improvement notice;
- that his/her attendance will be kept under review for six months (as set out in the review period: see para 89);
- the improvement and level of attendance that will be required;
- that further absence within the review period may lead to a final improvement notice;
- the right of appeal, as long as they do so in writing, within ten working days of the decision. See **Annex F** for details of the appeals process.

86. A letter must be sent to the employee by the line manager informing him/her of the outcome, regardless of whether or not an improvement notice is issued. **A copy of the letter must be sent to HR for the personal file.**

Improvement notice review period

87. The review period is the period following an improvement notice that gives the employee an opportunity to show that they can achieve the required level of attendance. The start date of the review is the date on which the meeting took place and the decision made to issue an improvement notice.

Trigger for Stage Two Action

88. As a guide, if, during the review period of six months there are six working days absence, or three separate absences, the manager can consider moving to the next stage of the formal procedure, having due regard to the guidance on administering improvement notices.

89. For part-time employees, these triggers are calculated pro-rata, and the table below is a guide to when formal action will be considered.

No of days worked per week	No of days absence in a six month period after which formal action can be considered	No of separate absences in a six month period after which formal action can be considered.
5	6	3
4	5	3
3	4	3
2	3	2
1	2	2

90. The line manager should write to the employee and invite the employee to a meeting to discuss his/her sickness absence; local HR will be able to assist with the wording of the letter, if required. The line manager may invite a local HR colleague to also attend this meeting.

91. The letter from the line manager must:

- Require the employee to attend a meeting to discuss the matter – informing him/her of the level of action that may result;
- Give at least five days notice;
- Set out details of the unsatisfactory attendance, including a copy of all relevant documentation, e.g. copies of return to work interview notes and OHS advice;
- Refer to previous warning(s);
- Inform the employee that they have the right to bring a trade union representative or work-place companion. If the employee or his/her trade union representative/companion cannot attend the first scheduled meeting date they have the right to re-arrange the meeting once, but only to a further five days. See **Annex D** for further guidance;

- Advise that if the employee refuses or fails to attend the meeting without good reason a decision can be made in his/her absence. Line managers must take advice from HR in these circumstances.

92. The purpose of the meeting is to explain clearly why attendance is unsatisfactory and to give the employee the opportunity to comment. See **Annex C** for full details of how to hold an attendance management meeting. There are three potential outcomes from the meeting. They are:

- That no further action should be taken - although the employee should be reminded that their absence is still being monitored;
- That a referral to the OHS would be appropriate; and/or
- That a final improvement notice should be administered.

93. The line manager should listen to the employee and then consider what action is appropriate. The line manager should inform the employee of his/her decision at the end of the meeting, or as soon as reasonably practicable following the meeting. The employee should be sent a note of the meeting and be asked to sign to confirm that a fair and accurate record has been taken. Any disagreements about the record should be attached to this note.

94. If a decision to issue a final improvement notice has been taken, the manager must explain to the employee:

- that they have carefully considered the evidence;
- the reason(s) for the final improvement notice;
- that his/her attendance will be kept under review for six months;
- the improvement and level of attendance that will be required;
- that further unsatisfactory absence within the review period may lead to his/her dismissal;
- the right of appeal, as long as they do so in writing, within ten working days of the decision. See **Annex F** for details of the appeals process.

95. A letter must be sent to the employee informing him/her of the outcome, regardless of whether or not an improvement notice is issued. **A copy of the letter must be sent to HR for the personal file.**

Final improvement notice review period

96. The review period is the period following the issuing of a final improvement notice that gives the employee an opportunity to show that they can achieve the required level of attendance. The start date of the review is the date on which the interview took place and the decision made to issue a final improvement notice.

97. As a guide, the review period may last six months. If at any stage within that review period the employee has four working days or two further absences, the manager may consider moving to the next stage of the formal procedure straight away, having due regard to the guidance on administering improvement notices above.

Stage Three – consideration of dismissal

98. Where there are further absences within the review period the line manager should refer the matter to the relevant senior manager. The senior manager should invite the employee to a meeting to discuss his/her sickness absence; local HR will be able to assist with the wording of the letter, if required.

99. The letter from the senior manager must:

- Require the employee to attend a meeting to discuss the matter – warning that a possible outcome of this meeting is dismissal;
- Give at least five days notice;
- Set out details of the unsatisfactory attendance, including a copy of all relevant documentation, e.g. copies of return to work interview notes and OHS advice;
- Refer to previous improvement notice(s);
- Inform the employee that they have the right to bring a trade union representative or work-place companion. If the employee or his/her trade union representative/companion cannot attend the first scheduled meeting date they have the right to re-arrange the meeting once, but only to a further five days. See **Annex D** for further guidance;
- Advise that if the employee refuses or fails to attend the meeting without good reason a decision may be made in his/her absence. The senior manager must take advice from HR in these circumstances.

100. An HR representative must be present at the Stage Three meeting. His/her role is to advise the senior manager on correct procedures and attendance management measures, but the senior manager makes the final decision on any attendance management measure that may be applied.

101. The purpose of the meeting is to allow the employee or his/her representative to put his/her case and any mitigating circumstances to the senior manager handling the matter. See **Annex C** for full details of how to hold an attendance management meeting. The senior manager should listen to the employee and then consider if dismissal is appropriate. If the required improvement has not been achieved and/or sustained by this stage, then the likelihood is that dismissal will be appropriate.

102. The senior manager should inform the employee of his/her decision at the end of the meeting, or as soon as reasonably practicable following the meeting. The employee should be sent a note of the meeting and be asked to sign to confirm that a fair and accurate record has been taken. Any disagreements about the record should be attached to this note.

103. In conveying the decision, the senior manager must explain to the employee:

- the reason(s) for his/her dismissal;
- reasons for accepting or rejecting evidence;
- if dismissed, the period of notice the employee will be given;

- the right of appeal, as long as they do so in writing, within ten days of the decision. See **Annex F** for details of the appeals process.

104. A letter must be sent to the employee informing him/her of the outcome. **A copy of the letter must be sent to HR for the personal file.**

105. The employee may also have the right of appeal if they have more than 12 month's continuous service. See **Annex F** for details of the appeals procedure.

Unsatisfactory attendance procedures – long term absence (absences over 21 working days)

Introduction

106. The procedures for short-term absence are not appropriate for employees who have long term (i.e. 21 working days), continuing absence through sickness, or the inability to attend work regularly and consistently because of a long-term ill health problem. If the line manager is unsure which procedure to use to manage attendance (i.e. short-term absence or long-term absence) they should refer to HR.

107. The line manager should try to establish through regular contact with the employee, how long the absence is likely to last, so that decisions can be made on whether it is reasonable for the Service to support his/her absence. Occupational Health Services will be able to provide advice, and the manager must treat each situation sympathetically, sensitively, fairly and on its own merits.

108. Both manager and employee must keep in regular contact and the employee must let the manager know immediately if there is any change in his/her medical condition.

Formal review meeting for continuing long term absence

109. Once an employee has been absent for 21 working days, the line manager should commence what may become a series of formal case conferences to ensure that all necessary attendance management action has been taken.

110. Case conferences should be used to plan the next steps and consider what supportive help is available to help the employee return to work. Details of all actions taken and planned must be recorded on the sickness file to inform all future discussions and actions. Case conferences should not be the only contact that the employee and line manager have – both parties have a responsibility to maintain regular contact during absence and contact should remain as recommended.

111. Case conferences should take place after 40 working days, 6 months and at 11 months absence. At each stage the employee must be invited to the case conference and must be given at least five days' notice of the meeting. The employee should be told the reason for the case conference and informed of his/her right to have a trade union representative or work-place colleague present.

112. The line manager and the employee should attend the case conference. It may also be appropriate for an HR representative to attend case conferences as well. If the employee is not able to attend at the office the case conference can be arranged at an alternative location, such as the employee's home, or a mutually agreed venue. If the employee's illness prevents him/her from attending then they must be kept informed of progress in writing, and given the opportunity to make written representations.

Stage One - case conference at 40 working days

113. The line manager must write to invite the employee to a case conference. The letter must:

- Outline the reasons for case conference copying any relevant documentation e.g. OH report;
- Require the employee to attend a case conference to discuss the matter;
- Give at least five days notice;
- Inform the employee that they have the right to bring a trade union representative or work-place colleague. If the employee or his/her trade union representative/colleague cannot attend the first scheduled meeting date they have the right to re-arrange the meeting once, but only to within a further five days. See **Annex D** for further guidance.

114. At the case conference the line manager should discuss with the employee:

- Progress made and prognosis;
- Referral to OHS, involving signing of consent form if not already undertaken (see **Annex E** for further details);
- Support available that the Service could offer to help assist recovery and return to work;
- Information on when and how pay will be affected due to absence;
- The process of formal monitoring during long term absence and that the process can ultimately lead to dismissal.

115. The employee should be sent a note of the meeting and be asked to sign to confirm that a fair and accurate record has been taken. Any disagreements about the record should be attached to this note.

Stage Two - case conference at six months

116. The line manager must invite the employee to a second case conference. The letter must:

- Refer to previous case conference and outline the reasons for case conference, copying any relevant documentation e.g. OHS report;
- Require the employee to attend a case conference to discuss the matter – warning that a possible outcome of this meeting is a final case conference;
- Give at least five days notice;
- Inform the employee that they have the right to bring a trade union representative or work-place colleague. If the employee or his/her trade union representative/colleague cannot attend the first scheduled meeting date they have the right to re-arrange the meeting once, but only to within a further five days. See **Annex D** for further guidance.

117. At the case conference the line manager should discuss with the employee:

- the progress made in relation to the written record of actions taken and planned;

- explain how his/her continuing absence is giving cause for concern;
- support available to help the employee return to work e.g.
- Occupational Health Service advice, particularly in relation to possible adjustments which could be made to the working environment. If OHS advice has been received recently (i.e. within the last three months there is no need to automatically refer again at this stage);
- A temporary or permanent change in the employee's working hours or pattern of work;
- A temporary or permanent change in the individual's duties, if there is more suitable alternative work available;
- Whether special aids or equipment can be provided;
- Explain to the employee the process of formal monitoring during long term absence and that the process can ultimately lead to dismissal;
- Whether consideration of ill health retirement may be an appropriate avenue to investigate;
- The line manager should decide if, based on advice from Occupational Health Service, previous sickness absence history and the prognosis for the employee's return, his/her absence can continue to be supported. If they believe they can no longer support the absence, the line manager should refer the case to the senior manager;
- Explain to the employee that at 11 months absence, they will be referred to the senior manager, who will consider if they are to be dismissed;
- This does not imply a right to remain in employment until that time.

118. The employee should be sent a note of the meeting and be asked to sign to confirm that a fair and accurate record has been taken. Any disagreements about the record should be attached to this note.

119. Between six and 11 months sickness absence the line manager should continue to keep in regular contact with the employee and a series of regular informal meetings may be useful. Records should be kept

Stage Three - referral to the senior manager at 11 months

120. For all cases of long-term sickness absence, when the absence has reached 11 months, the line manager must refer the matter to the relevant senior manager.

121. Before referring to the senior manager, the line manager must ensure that there has been recent advice received from OHS.

122. The senior manager should invite the employee to a final case conference to discuss the issue.

123. The letter from the senior manager must:

- Refer to previous case conferences and outline the reasons for final case conference copying any relevant documentation e.g. OHS report
- Require the employee to attend a final case conference to discuss the matter – warning that a possible outcome of this meeting is dismissal;
- Give at least five days notice;

- Inform the employee that they have the right to bring a trade union representative or work-place colleague. If the employee or his/her trade union representative/colleague cannot attend the first scheduled meeting date they have the right to re-arrange the meeting once, but only to within a further five days. See **Annex D** for further guidance;
- Advise that if the employee refuses or fails to attend the meeting without good reason a decision may be made in his/her absence. Managers must take advice from HR in these circumstances.

124. A representative from HR must be present at the Stage Three case conference. His/her role is to advise the senior manager on correct procedures, but the senior manager makes the final decision on any dismissal decision.

125. The purpose of the case conference is to allow the employee to put his/her case and any mitigating circumstances to the senior manager handling the matter - see **Annex C** for details of how to hold a case conference. The senior manager should listen to the employee and then consider if dismissal is appropriate.

126. The senior manager should inform the employee of his/her decision at the end of the case conference, or as soon as reasonably practicable following the hearing. The employee should be sent a note of the meeting and be asked to sign to confirm that a fair and accurate record has been taken. Any disagreements relating to the final review meeting should be attached to this note. Dismissal at this stage should normally only take place if recovery is not foreseeable.

- the reason(s) for his/her dismissal or other action;
- reasons for accepting or rejecting evidence;
- if dismissed, the period of notice the employee will be given;
- the right of appeal, as long as he/she does so in writing, within ten days of the decision. See **Annex F** for details of the appeals process.

127. A letter must be sent to the employee informing him/her of the outcome, regardless of whether or not an improvement notice is issued. **A copy of the letter must be sent to HR for the personal file.**

Records

128. It is very important to keep written records during the process. Records should include:

- the attendance issues;
- the employee's response or defence;
- findings made and actions taken;
- the reasons for action taken;
- whether an appeal was lodged;
- the outcome of the appeal;
- any grievances raised during the procedure; and
- subsequent developments.

129. Records should be treated as `restricted-staff', be kept for 12 months and in accordance with the principles of the Data Protection Act. Copies of formal warnings must be placed on personal files.

Annex A – Employees with disabilities

Employees with an underlying health condition or disability in terms of Disability Discrimination Act (DDA) 2005

Definition of Disability

A1. The DDA defines disability as: “A person who has a physical, sensory or mental impairment which has a long term and substantial adverse effect on their ability to carry out normal day to day activities”.

A2. “Impairment” covers physical or mental impairments and includes sensory impairments, such as those affecting sight or hearing. Examples include:

- Diabetes
- Dyslexia
- Autism
- Asthma
- Arthritis
- Depression
- Incontinence
- Severe disfigurement
- and many other impairments, both visible and invisible.

A3. “Mental impairment” is intended to cover a wide range of impairments relating to mental functioning, including learning disabilities and mental illness.

A4. “Substantial adverse effect” is not defined other than that it is more than a minor or trivial effect. The requirement that an effect must be substantial reflects the general understanding of disability as a limitation going beyond the normal differences in ability which exist among people.

A5. “Long term” means lasted for 12 months, is likely to last for more than 12 months or for the rest of the employee’s life.

A6. It is very important to be aware that someone who has had a disability which falls within the definition given above is protected by the DDA from discrimination even if they have recovered, or where the condition is controlled by medication. This would cover, for example, someone who has had an episode of mental illness, or someone who has experienced a physical injury which lasted for a relevant period.

A7. If an impairment has had a substantial adverse effect on normal day-to-day activities but that effect ceases, legally it is treated as continuing if it is likely to recur. For example someone who has arthritis, continues to be protected by the DDA, even during periods of remission.

Background to the DDA 2005

A8. The basic requirement for a public authority when carrying out their functions is to have due regard to do the following:

- promote equality of opportunity between disabled people and other people
- eliminate discrimination that is unlawful under the Disability Discrimination Act
- eliminate harassment of disabled people that is related to their disability
- promote positive attitudes towards disabled people
- encourage participation by disabled people in public life
- take steps to meet disabled peoples needs, even if this requires more favourable treatment.

A9. From December 2005 progressive conditions like cancer, HIV and multiple sclerosis have been covered from first diagnosis (previously this had been from first onset of symptoms).

A10. The amendment to the Act has removed 'clinically well-recognised' from the definition of disability with regard to mental health.

A11. The DDA states that the duty to make reasonable adjustments arises 'where a provision, criterion or practice applied by, or on behalf of an employer, or public body, or any physical feature of the premises, places the disabled person at a substantial disadvantage compared with a person who is not disabled'. If a disabled person is at a 'substantial disadvantage' the employer or public body has to take the appropriate steps to make the relevant adjustment. Failure to do so is unlawful and cannot be justified.

A12. The DDA defines disability as a physical or mental impairment, which has a substantial and long-term adverse effect on a person's ability to carry out normal day to day activities. Employees living with cancer, HIV and MS are to be regarded, for attendance management purposes, as being disabled from the point of diagnosis.

A13. Line managers must have an open discussion with the employee about managing disability related absence as one would with sickness absence. If there are problems with an employee's attendance and an underlying medical condition or disability is identified, advice should be sought from Occupational Health Services (OHS), via HR. The provision of reasonable adjustments must **always** require the involvement and agreement of the person involved.

A14. When speaking with an employee about his/her disability, managers and others **must** be alert to the sensitivities of the person being questioned and the subject. Each person's disability is unique to them, as is their way of managing it. He/she will be the experts on their own situation and assumptions of other people knowing what is best for the individual must be avoided.

A.15. DDA legislation and Code of Practice give examples of the type of adjustments that would fit the definition of 'reasonable'. These include:

- Allocating some of the disabled person's duties to another person

- Transferring the person to fill an existing vacancy
- Altering the person's hours of work or training
- Assigning the person to a different place of work or training including working from home
- Allowing the person to be absent during working or training hours for rehabilitation, assessment or treatment
- Arranging training or mentoring
- Acquiring or modifying equipment
- Providing all instructions, training or manuals in an accessible form
- Providing a reader, interpreter or support worker
- All individuals on disability absence need to be treated on a case by case basis.

A16. Where reasonable adjustments are made, the employee should be given reasonable time to adjust to the changes. If the employee is still unable to meet levels of attendance expected and agreed to, formal unsatisfactory attendance procedures should be considered, following the process outlined in paragraphs 77 onwards of the sickness absence management guide.

A17. The DDA does not require all disability-related absence to be automatically discounted on every occasion; nor does it require an employer to retain an employee indefinitely if they are frequently absent due to a disability. However, before counting disability-related absences towards trigger points for unacceptable attendance procedures, line managers must be able to demonstrate that:

- All reasonable adjustments have been made to reorganise a job around functions that the employee can perform and that;
 - All reasonable adjustments have been made to working practices, the workplace and its location that place the disabled employee at a substantial disadvantage, including adequate training.
- They have taken account of legal requirements and 'take account of a disabled person's disabilities, even where that involves treating disabled people more favourably.'

A18. Where the combination of both disability-related and general sickness absence exceed the trigger points for formal unsatisfactory attendance procedure, the line manager should seek advice from HR. The line manager and HR representative should consult with OHS and the disabled employee for advice on any reasonable adjustments that should be considered.

A19. Although many disabled people who are covered under the provisions of the DDA require specific adjustments to work, there are others who only require a flexible approach to the way work is carried out. Disability Leave is an example of a flexible approach or reasonable adjustment, as it allows for reasonable absence during working hours for rehabilitation, assessment etc. Such absences count as special leave with pay and are to be recorded separately from sick absence (see also NNC circular 2/2004 for the special leave policy).

Employees with HIV, cancer or MS

A20. Employees living with HIV, may need time off work to attend regular medical appointments, and paid time off must be allowed for necessary treatment and consultations. **Managers are reminded of the need for absolute confidentiality around an employee's HIV status and no reference to it must be made in any local records.**

A21. Similarly, employees suffering from cancer, MS or other serious, long-term illness may need time off work to attend regular medical appointments, and paid time off work must be allowed.

Annex B - Conducting return to work interviews

B1. The importance of the return to work interview in managing sickness absence cannot be over emphasised. It is key in translating management concerns and information into effective action. The return to work interview allows line managers to welcome the individual back and to up-date them on any work they may have missed and allows staff an opportunity to talk through issues relating to their health or other concerns which might be impacting on their attendance.

B2. Line managers have a responsibility to conduct a return to work interview with any members of staff returning from sickness absence on their first day back, regardless of the duration of the absence. Where it is impractical to have a return to work interview on the first or second day (for example, because the line manager is on leave) alternative arrangements should be made for the interview to be held with another appropriate manager.

B3. Before the interview, the line manager should have all the relevant information about the individual's absence record including:

- date reported sick;
- date returned to work;
- reason for absence; and
- absence history.

B4. The purpose of the interview is to:

- Confirm the reason for the sickness absence;
- Ensure that the employee feels well enough to return to work (although this is recognised as being an unqualified opinion, rather than a medical statement);
- Demonstrate concern for the health of the individual;
- Establish if the absence may be disability related;
- Provide an opportunity to identify any health, domestic, welfare or work related problems;
- Consider a referral to OHS¹ if the absence is disability related, or if medical advice has been received that suggests work related ill health or injury may be developing;
- In exceptional circumstances where a health, domestic, welfare or work related problem may result in extended periods of absence a referral to OHS or other appropriate agency may be considered;
- Update the employee on events that may have happened at the workplace during his/her sickness absence;
- Provide the employee with information about support services that are available to them; and

¹ Referrals to OHS or other appropriate agencies must be done through local HR teams

- Establish any reasonable adjustments that may be required.

The Interview Itself

B5. Return to work interviews should be conducted in a consistent and uniform way which is appropriate to the type of absence. It need not be formal but should take place in private to preserve confidentiality. On occasion it need by no more than a brief informal word allowing the line manager to sympathise with the member of staff and show that his/her input has been missed. On other occasions, there will be a need to discuss the individual's absence record and to highlight any concerns e.g. emerging patterns of illness.

B6. Where appropriate, the facilities offered by HR and Occupational Health should also be discussed. It is important that the member of staff understands that by providing further information about their health problem, s/he may benefit from the policies and support services provided by NPS staff association groups.

Recording the interview

B7. The line manager should record brief details and the outcome of the interview on a return to work interview form (attached) to include:

- the date of the interview;
- cause of the most recent absence;
- note of the interview signed by both participants; and
- the outcome of interview including any specific action agreed, reviews etc.

B8. A copy of completed return to work interview form should be retained by the line manager for his/her files, the individual for their own records and a copy (marked 'restricted staff') should be sent to HR locally. In some cases the outcome of a return to work interview may be made available to the OH practitioner who will provide a further resource for identifying possible work related health issues.

B9. It is not normally necessary for HR or OH practitioners to be directly involved in return to work interviews; however their advice may be sought both prior to and after a relevant meeting to clarify issues, seek guidance on any specific requirements etc.

'RESTRICTED – STAFF' once completed

Return to Work Interview Summary

Interview conducted by:

On:

With:

Period of Sickness:

Reason for Sickness:

Brief notes of meeting (include any agreed actions)

Signed:
Date:

(Employee)

Signed:
Date:

(Line Manager)

Annex C – Managing a sickness absence management meeting

C1. Preparing for the sickness absence management meeting

The manager should:

- prepare carefully and ensure he/she has all the facts;
- consider how the hearing will be structured and make notes of the points he/she needs to cover;
- book a private room;
- check if the employee has a live improvement notice as this may be taken into account in subsequent action;
- ensure he/she has copies of all the evidence;
- ensure all relevant facts are available, such as personal details, any other relevant documents;
- arrange for a note-taker to be present, but ensure it is someone independent of the matter under consideration. Inform the employee who the note taker will be. The manager should carefully consider any objections to the note-taker on the grounds they work alongside the employee and replace them if possible with another note-taker;
- ensure any reasonable adjustment needs are addressed.

C2. Conduct of the sickness absence meeting

The manager should:

- Introduce those present to the employee and explain why they are there. The employee has a right be accompanied by a work colleague (companion) or trade union representative. These roles are explained in **Annex D**.
- Explain to the employee that the purpose of the meeting is to consider whether action should be taken in accordance with the National Probation Service's attendance management policy.
- Explain how the meeting will be conducted.

C3. Statement of the case

The manager should:

- State precisely what the case is, and outline it briefly by going through the evidence that has been gathered;
- Ensure the employee has been given copies of all of the evidence. The objective of the meeting is to discover the truth, not to catch people out.
- Establish if the employee accepts he/she has not attended satisfactorily.

C4. The employee's reply

The manager should:

- Establish if the employee accepts he/she has not attended satisfactorily;

- Listen attentively and be sensitive to silence, as this can be a constructive way of encouraging the employee to be more forthcoming.

C5. General questioning and discussion

The manager should:

- Use this stage to establish all the facts.
- Adjourn the meeting if further enquiries are necessary, or the manager has reason to believe the issue cannot be dealt with properly under the sickness absence management procedure. Explain the reason for the adjournment and, if appropriate, consult HR and/or OH.
- Ask the employee if he/she has any explanation for the attendance problems, or if there are any special circumstances and/or mitigation to be taken into account.
- Keep the approach formal and polite but encourage the employee to talk freely with a view to establishing all the facts. A meeting should be a two way process.
- Use questions to clarify all issues, and to check what has been said is understood. Ask open-ended questions (e.g. what happened then?) to get the broad picture. Ask precise, closed questions only when specific information is needed.

C6. Summing up and adjournment

The manager should:

- After general questioning and discussion, summarise the main points raised by the employee and any matters that need to be checked.
- Adjourn the meeting before a decision is taken. This allows proper consideration of the matters raised.
- If new facts emerge, decide whether further investigation might be necessary and/or the meeting needs to be reconvened.
- Where facts are in dispute, decide which version is most probable. This standard of proof is common to all employment and civil law matters and is the standard used by employment tribunals.

C7. What problems may arise and how should they be handled?

- If the employee becomes emotionally distressed during the meeting allow time for him/her to become composed before continuing. The issues however cannot be avoided. If the employee continues to be so distressed that the meeting cannot continue, it should be adjourned and reconvened at a later date.

- During the meeting a certain amount of “letting off steam” may be inevitable. However, if misconduct or gross misconduct - for example abusive language or threats of physical violence - takes place during the meeting, adjourn the meeting to allow the employee to calm down. Consideration should then be given as to whether to continue with the meeting or whether the behaviour itself needs to be investigated.

C8. Note-taking

- A note of the meeting should be written up and copied to the employee. The note only has to summarise the main points of the meeting and any agreed actions/timescales. The employee should sign a copy to say they agree that it is a fair record. Any disagreements on the content of the note should be attached on a separate note.

Annex D - Right to be accompanied at meetings

D1. Where a meeting may result in the giving of an improvement notice, the taking of some other action against an employee (such as dismissal) or the confirmation of an improvement notice or action taken, an employee has the right to be accompanied by another employee (“companion”) or a trade union representative (“representative”) of their choosing.

D2. Representatives from the staff support groups, as employees of the National Probation Service, may act as companions. In exceptional circumstance and by agreement a representative from the staff support groups may attend in addition to a companion or a trade union representative.

D3. When an employee is choosing a representative or companion, he/she should bear in mind that it would not be reasonable to insist on being accompanied by a colleague whose presence would prejudice the meeting or who might have a conflict of interest. It may also be unreasonable for an employee to ask to be accompanied by a colleague from a geographically remote location if someone appropriate is available on site.

D4. An employee may ask an official from any trade union to accompany them at a disciplinary or grievance meeting, regardless of whether the union is recognised or not. **However, the National Probation Service recognises the following unions and it is good practice for the employee to ask an official from one of these unions to accompany him/her:**

**NAPO
Unison
GMB/Scoop**

D5. Fellow employees or trade union officials do not have to accept a request to accompany a colleague, and they should not be pressurised to do so.

D6. An employee who has agreed to accompany a colleague is entitled to take a reasonable amount of paid time off to fulfill that responsibility. This should cover the hearing and time for the companion to familiarise themselves with the case and confer with the employee before and after the meeting. A trade union official employed by the National Probation Service is permitted to take a reasonable amount of paid time off to accompany another employee at a meeting, but only if that person is also employed by the National Probation Service.

D7. In the same way that line managers should cater for an employee's disability at a sickness absence management meeting, he/she should also cater for a companion or representative's disability.

D8. Before the meeting takes place, the employee should tell the manager conducting the hearing who they have chosen as a companion or representative. In certain circumstances (for instance when the representative is an official of a non-recognised trade union) it can be helpful for the representative and the manager conducting the meeting to make contact beforehand.

D9. The companion or representative may:

- put the employee's case;
- sum up that case;
- respond on the employee behalf to any view expressed at the meeting; and
- confer with the employee during the meeting (in private if necessary).

D10. Managers are not required to permit the companion or representative to:

- answer questions on the employee's behalf
- address the meeting if the employee indicates they do not wish the companion or representative to do so; or
- behave in a way that prevents the manager from explaining their case or any other person making their contribution.

D11. Where possible, the line manager should allow a companion or representative to have a say in the date and time of a meeting. Where the companion or representative cannot attend a first meeting, the employee must offer an alternative time and date so long as it is reasonable and falls before the end of a period of five days. The period of five days begins with the first working day after the day proposed by the manager. In proposing an alternative date employees should have regard to the availability of the relevant manager. For instance, it is not reasonable to ask for a new date for the meeting where it is known the manager is going to be absent on business or on leave. If the manager is on extended absence or leave, another manager may conduct the meeting. The location and timing of any alternative meeting should be convenient to all parties.

D12. If the companion or representative cannot attend on the second time of re-arranging the meeting the employee may lose the right to be accompanied unless there are convincing and exceptional reasons otherwise. Line managers must contact HR for further advice before proceeding with meetings in these circumstances.

D13. If the employee refuses to attend the meeting it can be held in their absence.

D14. Managers should be careful not to disadvantage employees for using his/her right to be accompanied or for being companions or representatives, as this is against the law.

Annex E - Guidance on referral to the Occupational Health Service (OHS)

E1. The OHS can provide a report, which will identify any reasonable adjustments that can be made to the workplace, or the work itself, to enable the employee to carry out his/her role effectively.

E2. There are three ways in which employees can be referred to the OHS.

- a. When the employee believes he/she has an illness or disability which comes under the terms of the Disability Discrimination Act and wish to be referred to the OHS.
- b. When they reach the first trigger point;
- c. Following medical advice that work related ill health or injury may be developing.

In exceptional circumstances where a health, domestic, welfare or work related problem may result in extended periods of absence a referral to OHS or other appropriate agency may be considered.

E3. At a return to work interview, line managers should ask the employee if there are any underlying health problems, which may fall under the Disability Discrimination Act (DDA). The DDA covers disabilities and illnesses, which are likely to last more than 12 months and which have a significant impact on an individual's ability to carry out day-to-day activities. This includes recognised mental health conditions and illnesses such as cancer and diabetes. Should the employee indicate that they have such a disability then they manager can put forward a request for an OHS referral to HR directly.

E4. At a meeting to discuss the employee's attendance after reaching the first trigger point, the line manager should again ask if the employee has any underlying condition which may be covered by the DDA.

E5. Even if the employee does not consider that he/she has a disability the line manager should review the reasons given for sickness. If any are for recognised mental health conditions, e.g. depression, or the line manager believes that there may be an underlying condition that the employee is not tackling, he/she may put forward a recommendation to HR for a referral to the OHS. Should HR agree that an OHS referral is necessary, the manager should gain the employee's permission to proceed.

E6. If the employee refuses to give permission for an OHS referral the possible implications should be outlined to him/her. i.e. if their attendance continues to be unsatisfactory they risk dismissal.

E7. Advice from OHS is especially appropriate following a relatively long absence where it has been necessary to invoke a formal 'Return to Work' programme or following a particularly serious incident or injury.

Annex F - Appeals process

- F1. An employee may appeal against an improvement notice or other penalty.
- F2. An appeal must be made in accordance with the local model on appeals against dismissals.