



Ministry
of Defence

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Ref: FOI2021/13162

29 November 2021

Dear

Thank you for your further email of 1 November 2021 to the Ministry of Defence (MOD) requesting the following information:

“I request a copy of the Supporting Attendance Policy and the Supporting Attendance Procedure.”

I am treating your correspondence as a request for information under the Freedom of Information Act 2000 (FOIA).

A search for the information has now been completed within the Ministry of Defence and I can confirm that all the information in scope of your request is held.

A copy of the Supporting Attendance Policy and Procedure was provided in the response to your previous FOI request of 23 October 2021, under the reference number of FOI2021/12809, at Annex B. Regrettably, this was done in error as your initial request asked for copies of the “*Managing Unsatisfactory Attendance Procedure and the Managing Unsatisfactory Attendance Policy*” which pre-dated the Supporting Attendance Policy and Procedure. In view of this I have provided copies of the Managing Unsatisfactory Attendance Policy and Procedure below.

Section 40(2) has been applied to some of the information in order to protect personal information as governed by the Data Protection Act 2018. Section 40 is an absolute exemption and there is therefore no requirement to consider the public interest in making a decision to withhold the information.

Annex A	Managing Unsatisfactory Attendance Policy
Annex B	Managing Unsatisfactory Attendance Procedure

If you have any queries regarding the content of this letter, please contact this office in the first instance.

If you wish to complain about the handling of your request, or the content of this response, you can request an independent internal review by contacting the Information Rights Compliance team, Ground Floor, MOD Main Building, Whitehall, SW1A 2HB (e-mail CIO-FOI-IR@mod.gov.uk). Please note that any request for an internal review should be made within 40 working days of the date of this response.

If you remain dissatisfied following an internal review, you may raise your complaint directly to the Information Commissioner under the provisions of Section 50 of the Freedom of Information Act. Please note that the Information Commissioner will not normally investigate your case until the MOD internal review process has been completed. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. Further details of the role and powers of the Information Commissioner can be found on the Commissioner's website at <https://ico.org.uk/>.

Yours sincerely,

Defence Business Services (Secretariat)

Managing Unsatisfactory Attendance Policy

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Managing Unsatisfactory Attendance Policy

Policy Overview

1. Attendance is unsatisfactory when an employee's sickness absence level exceeds 8 working days, pro-rata, or exceeds an agreed extension to the trigger point. (see **How To: calculate pro-rata trigger points**), in a rolling 12-month period up to the last day of the most recent sickness absence. This is called the Formal Trigger Point.
2. Key areas covered by this policy include:
 - Stage 1 / first written improvement warning
 - Stage 2 / final written improvement warning
 - Stage 3 / dismissal decision
3. After each written improvement warning there is a review period in which employees are supported to improve their attendance so that they can return to work as soon as they are well enough. Employees can appeal the decision to issue a written warning and a dismissal decision where appropriate. Managers and employees are required to keep a written record of discussions.
4. In deciding whether or not to use this policy it is critical for managers to check that employees are aware of the level of attendance expected of them. Managers are required to provide all reasonable help, support and encouragement to assist employees to reach and maintain the attendance standards required. If an employee's attendance drops below an acceptable standard managers are required to address this promptly. In most cases such prompt support will result in the employee meeting the required attendance standard.
5. When the level of attendance does not improve and remains below the required standards, managers are required to use the Managing Unsatisfactory Attendance policy and procedure. Managers are required to seek advice from DBS before they take any formal Managing Unsatisfactory Attendance action. At all stages employees have a statutory right to be accompanied by a companion.

Policy Principles

6. Managing unsatisfactory attendance fairly, effectively and promptly is critical to maintaining a professional Civil Service. Failure to address unsatisfactory attendance results in inefficiency, and lowers engagement throughout the rest of the workforce. Managers (normally an employee's line manager) will address unsatisfactory attendance with the aim of improving the level of attendance. Where, under relevant **Attendance Management** policies, routine managerial support has failed to result in an employee achieving the required level of attendance, this policy should be applied.

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7. Attendance discussions will focus on what the employee can do rather than what they cannot, enabling employees wherever possible to remain at work. Dismissal will only be considered where the level of sickness absence cannot be supported by the Department.
8. Employees and managers can access the **Employee Wellbeing Service (EWS)** at any time during their employment where they can obtain advice and support as appropriate.
9. Attendance will be managed fairly and effectively in a clear and transparent way in compliance with the Equality Act 2010.
10. The documentation relating to an employee's health must be managed in compliance with the Data Protection Act 1998. Sickness absence records will only be shared in accordance with departmental data protection policies. Misconduct action may be taken for any inappropriate handling or processing of personal data. Records are required to be protectively marked, kept securely and handled in line with Departmental Records Management Policy. (See **JSP 441: Managing Information in Defence.**)

Scope of Policy

11. This policy applies to all MoD civilian employees and service line managers of civilian employees, including those on temporary contracts, fixed term appointments and probationers. This includes probationary Police Constables in their first year of service. Employees who are on loan to the Department and on secondment out of the Department are also included in the scope of the policy.
12. This policy does not apply to:
 - SBAA Cyprus District Judge (Department of Constitutional Affairs is responsible)
 - SBAA Cyprus Customs and Excise (HMRC is responsible)
 - RFA (refer to RFA Policy and Process)
 - locally engaged civilian staff (local delegated procedures apply in each overseas Business Unit)
 - fee earners (unsatisfactory attendance results in termination of contract – refer to **Engage Fee Earners**)
 - contractors (unsatisfactory attendance reported to contractor for action in accordance with contractor's own procedures)
 - employment agency workers (unsatisfactory attendance must be reported to the DBS Civilian Personnel who will take the matter up with the agency)
 - short notice appointments
 - MDP (see The Ministry of Defence Police (Performance) Regulations 2012 when dealing with officers' sickness absence)



Managing Unsatisfactory Attendance Procedure

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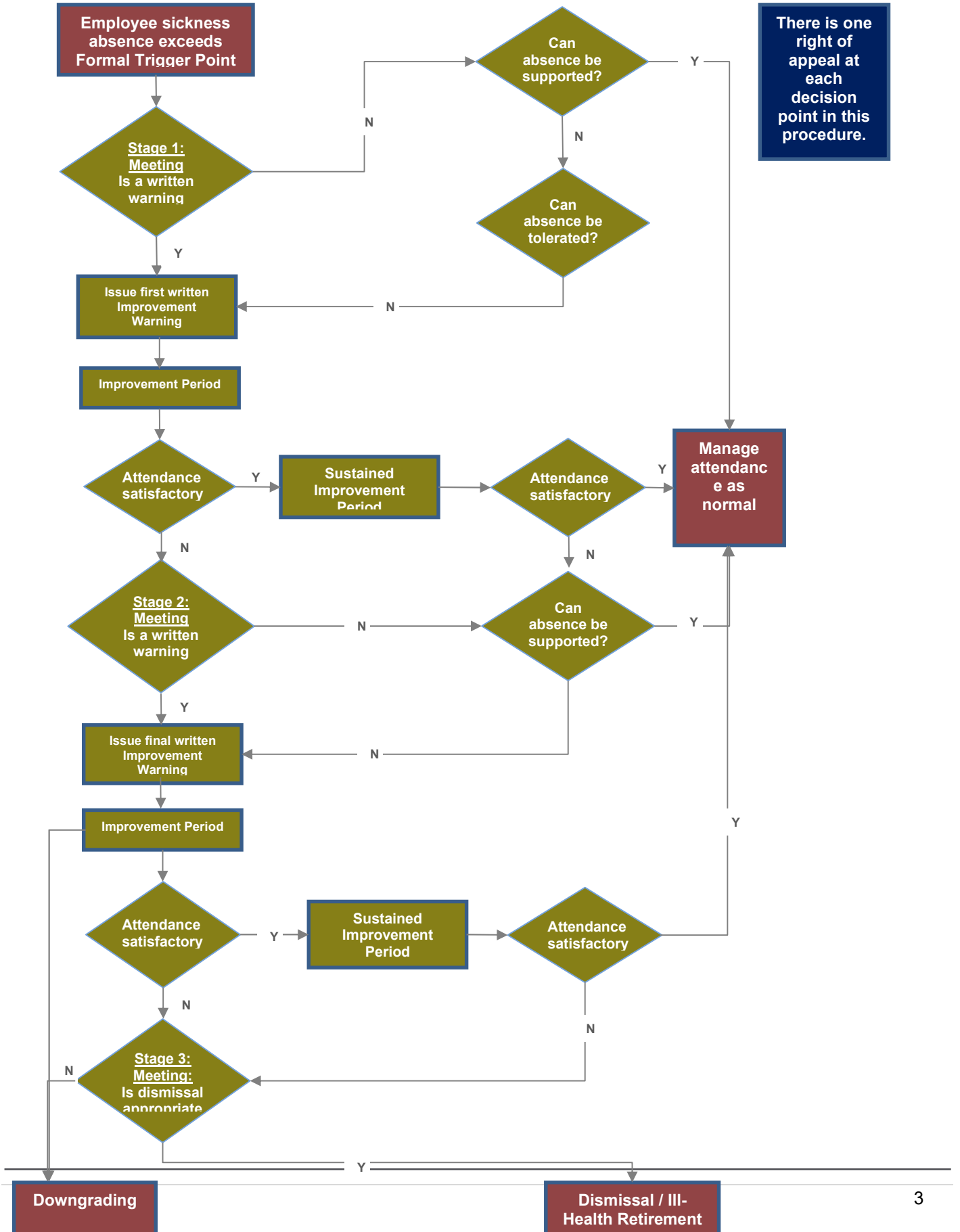
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Process map





Introduction

1. This is the required procedure for managing unsatisfactory attendance; it is to be read in conjunction with the **Managing Unsatisfactory Attendance** policy document.

Definitions

2. **Formal Trigger Point** - the Formal Trigger Point is reached when an employee exceeds 8 working days' (see How To: calculate pro-rata trigger points) of sickness absence in a rolling 12-month period. When the Formal Trigger Point is reached, managers are required to initiate the Managing Unsatisfactory Attendance procedure.

If an employee is absent for more than 8 consecutive calendar days (pro-rata) the employee is required to submit a Fit Note to their manager and the manager is required to agree arrangements for keeping in touch with the employee. The manager is required to discuss the employee's absence with the employee on the 14th consecutive calendar day if this has not already been arranged.

If an employee returns to work before the 28th consecutive calendar day managers are required to inform the employee in their Return to Work Discussion that Stage 1 of the Managing Unsatisfactory Attendance procedure will be initiated as they have exceeded the Formal Trigger Point (8 working days, pro-rata). If the employee does not return to work before the 28th consecutive calendar day, the manager is required to invite the employee to an Unsatisfactory Attendance Meeting while the employee is still absent (Stage 1 of this procedure).

3. **Fit Note** – a Fit Note is issued by a doctor and provides information on how a condition affects an individual's ability to work. A Fit Note can help the manager to understand how they can help the employee stay in work or return to work sooner.
4. **Supported Absence** – an employee may be absent for a reason which the Department will support, for example, if the sickness absence is a 'one-off' medical procedure. This is called a Supported Absence. Managers are required to record the absence on HRMS however, if the employee exceeds the Formal Trigger Point (8 working days, pro-rata) then the manager is required to review the employee's absence history and consider whether any of the absences can be supported during the Stage 1 Unsatisfactory Attendance Meeting. For more information on what absences can be supported see [Paragraph 29](#).
5. **Written Improvement Warning** – a Written Improvement Warning may be issued at Stage 1 and 2 as a result of an Unsatisfactory Attendance Meeting. The purpose of each warning is to



remind the employee of the expected attendance standard and to inform them that their attendance will be monitored during a 3 month Improvement Period.

6. **Improvement Period** – following a Written Improvement Warning an employee begins an Improvement Period. This is a 3 month period during which the employee is required to achieve the expected attendance standard.
7. **Sustained Improvement Period** – if an employee successfully achieves the expected attendance standard within the 3 month Improvement Period then a 12 month Sustained Improvement Period begins.
8. **DBS Casework Team** – the Casework Team sits within DBS. Before managers begin the Managing Unsatisfactory Attendance procedure they are required to inform DBS who will allocate a caseworker who will be responsible for recording all Managing Unsatisfactory Attendance action. The caseworker will provide managers with support and advice throughout the procedure.
9. **Fit For Work Plan** – a Fit for Work Plan is a formal arrangement to help an employee return to work gradually, usually after a long or severe illness. The employee returns to work on reduced hours. The number of hours worked will increase over a period of time but should not exceed 8 weeks although in exceptional circumstances may be extended to a maximum of a 13 week period until the employee resumes their normal contracted hours.

Summary of key information for managers and employees

10. Before initiating the formal Managing Unsatisfactory Attendance procedure, managers are required to have followed the Attendance Management policy and procedure.
11. The Managing Unsatisfactory Attendance procedure is split into 3 stages:
 - Stage 1 / first written improvement warning
 - Stage 2 / final written improvement warning
 - Stage 3 / dismissal decision
12. Decisions made during Stages 1 and 2 are to be taken by someone at least one grade higher than the employee in question. This will normally be the employee's manager.
13. The decision to dismiss an employee (Stage 3) is to be taken by a **Decision Manager** from within the employee's line management chain. It is a requirement that the Decision Manager is:



- at least one grade higher than the employee in question
 - not the manager that issued the stage 1 and 2 Written Improvement Warnings
 - not lower than C1 level / military equivalent
14. Employees have a statutory right to be accompanied by a companion at each formal stage of this procedure. An employee's chosen companion may be a work colleague, a trade union representative or an official employed by a trade union. A trade union representative who is not an employed official must have been accredited by their trade union as being competent to accompany an employee. The companion cannot be a friend or relative unless they are also a colleague and they cannot be a legal representative
15. Employees can appeal at each stage of this procedure.
16. Throughout the Managing Unsatisfactory Attendance procedure managers are required to consider the need for **Reasonable Adjustments** and **Occupational Health** advice.
17. Employees and managers can access the **Employee Wellbeing Service (EWS)** at any time during their employment where they can obtain advice and support as appropriate.

Procedure and roles and responsibilities

Stage 1 / first written improvement warning and Stage 2 / final written improvement warning

18. The Formal Trigger Point is reached when an employee exceeds 8 working days', pro-rata, or exceeds an agreed extension to the trigger point (see **How To: calculate pro-rata trigger points**) of sickness absence in a rolling 12-month period. When the Formal Trigger Point has been reached the manager is required to inform DBS who will allocate a caseworker who will be responsible for recording all Managing Unsatisfactory Attendance action; managers are then required to initiate Stage 1 of this procedure when the employee returns to work.
19. If the employee has not returned to work by the 28th consecutive calendar day, the manager is required to invite the employee to an Unsatisfactory Attendance Meeting while the employee is still absent. The manager should contact the **Employee Wellbeing Service** who will issue a letter offering further support to the employee.
20. Decisions made during Stage 1 and 2 meetings are to be taken by someone at least one grade higher than the employee who has unsatisfactory attendance. This will normally be the employee's line manager.
21. The purpose of Stage 1 is to determine whether an employee's attendance has fallen below the required standard to a level which requires a first written improvement warning.



22. The purpose of Stage 2 is to determine whether an employee's attendance has remained below the required standard and whether a final written improvement warning is therefore required.
23. The procedure for Stage 1 and 2 is the same.
25. Where an employee returns to work on a Fit for Work Plan, the Stage 1 meeting should be held at the end of the period of the Fit for Work Plan rather than on the employee's initial return from sickness absence.
26. The periods of absence agreed as part of the Fit for Work arrangement will not count towards the Trigger Point or any formal action for Managing Unsatisfactory Attendance. Any period of sickness absence taken during the agreed hours when the employee should be at work, will count towards the Trigger Point and will count towards calculations for sick pay.
27. The manager should ensure the sickness absence is closed on HRMS and the period of the Fit for Work Plan is recorded.

28. Before a Stage 1 or 2 meeting managers are required to:

- send a letter to the employee (**MUA Letter 01: Managing Unsatisfactory Attendance - Invitation to a Formal Managing Unsatisfactory Attendance Meeting**) including:
 - the employee's statutory right to be accompanied by a companion. An employee's chosen companion may be a work colleague, the employee's carer, a trade union representative or an official employed by a trade union. A trade union representative who is not an employed official must have been accredited by their trade union as being competent to accompany an employee. The companion cannot be a friend or relative unless they are also a colleague and they cannot be a legal representative
 - the date, time and location of meeting
 - give the employee at least five working days' notice of the meeting, if the employee or companion cannot attend the meeting can be postponed once up to a further five days
 - information about the unsatisfactory attendance and the possible outcomes of the MUA procedure
 - any previous attendance discussion notes:



- if issuing a Stage 2 letter managers are required to provide the employee with a report of the review period including a summary of the discussions that have taken place; no information that has not already been discussed should be included
- a copy of the Attendance Management policy and procedure if an employee has been absent for 28 calendar days or more
- notification that a note taker from within the wider Business Unit who is not from the employee's line management area will be in attendance at the meeting
- make any necessary **Reasonable Adjustments** to enable the employee to attend the meeting in line with the Equality Act 2010

29. During a Stage 1 or 2 meeting managers are required to:

- make a note of the discussion
- give the employee the opportunity to reply or raise any new issues or factors that may have impacted their attendance, for instance personal issues. If the employee states they have a medical condition that may be affecting their attendance, managers are required to discuss this with their caseworker and where appropriate promptly seek **Occupational Health (OH) Advice**
- explain that the employee's attendance has fallen below the expected standard and the consequences of not improving attendance
- ask the employee what steps they are taking to help themselves return to a satisfactory level of attendance
- discuss possible solutions, including what support is available to the employee
- when discussing possible solutions managers are required to explore whether there any temporary workplace adaptations or **Reasonable Adjustments** which might enable the employee to achieve a satisfactory level of attendance or a return to work
- review any reasonable adjustments which are already in place for employees with a disability and check whether they continue to be effective or necessary or whether further adjustments are needed to support the employee



- consider whether the employee is likely to return to work within a reasonable timeframe (if they have been absent for 28 consecutive calendar days or more) and whether the business can tolerate their absence
- explain that during the 3 month Improvement Period the employee is required to improve their attendance and outline what level of improvement is expected:
 - an employee's attendance will be deemed unsatisfactory during the Improvement Period if the employee has the following number of cumulative total days of sickness absence:

During:	Total days of sickness absence
Month 1	2
Month 2	3
Month 3	3

- if an employee's attendance is unsatisfactory during the Sustained Improvement Period the manager is required to initiate the next stage of this procedure (either a Stage 2 or 3 meeting)
- Where an employee has a Fit for Work arrangement the periods of absence agreed as part of this plan will not count towards the Trigger Point or any formal action for Managing Unsatisfactory Attendance. Any period of sickness absence taken during the agreed hours when the employee should be at work, will count towards the Trigger Point and will count towards calculations for sick pay
- Where an employee has an additional Trigger Point, for disability or health reasons, this will also be **pro-rated** during any Improvement Period, for example, if an employee has an additional Trigger Point of 4 days then they would receive a 25% increase on the Improvement Period Trigger Point, ie. 1 day
- consider whether any of the employee's absences can be supported by the Department. An employee may be absent for a reason which the Department will support, for example, if the sickness absence is a 'one-off' medical procedure. See below for more information on what absences can be supported:
 - The Department has a legal obligation to support any sickness absence that relates to an employee's pregnancy
 - The Department will support the following absences:
 - a 'one-off' operation or medical procedure e.g. appendectomy



- treatment for alcohol or substance misuse
 - where the employee was absent because they were assaulted either in the course of duty or for a reason clearly connected with duty
 - if the absence is due to injury caused by the negligence of the Crown. An appropriate share of the absence can count towards the Formal Trigger Point and lead to a warning if the employee's negligence contributed to the injury
 - during the first six months of an absence brought about in circumstances that satisfy the qualifying conditions for injury benefit under the **Civil Service Injury Benefit Scheme**. Stage 1 of the Managing Unsatisfactory Attendance procedure should be initiated if the absence continues beyond this
 - for any period of absence where the employee repays an advance of salary made by the Department under section 9.6.3.c of the **Civil Service Management Code**
 - where the sickness absence is due to the employee sustaining an injury or contracting a disease in the course of duty. Special arrangements apply in these circumstances and these are set out in Section 9.6 of the **Civil Service Management Code**. The full qualifying conditions for injury benefit are set out in the **Civil Service Injury Benefit Scheme**, but the most common situation is where the employee's earning capacity is impaired due to an injury sustained or disease contracted in the course of duty
- offer either party a short adjournment to consider any points raised

30. Where the OH advice identifies an underlying health problem which might make ill health retirement appropriate, managers are required to consider whether the employee is eligible for **Ill Health Retirement**. If the employee does not consent to the ill health retirement referral then a referral need not be made and the case will proceed on the information the Department has available.

31. After a Stage 1 or 2 meeting managers are required to:

- decide whether to issue a written improvement warning (at Stage 1 this will be a first written improvement warning and at Stage 2 this will be a final improvement warning)



- Note: pregnancy related sickness absence does not contribute to the Formal Trigger Point and therefore unless non pregnancy related sickness absence amounts to 8 working days (**pro-rata**) a written improvement warning should not be issued
- a warning should not be issued if the Department is able to support absences which result in the number of sickness absence days being fewer than the 8 working day (**pro-rata**) Formal Trigger Point. If the number of sickness absence days is lower than the 8 working day (pro-rata) Formal Trigger Point then the manager should continue to manage the employee's attendance as normal using the **Attendance Management** policy and procedure
- if an employee is on long term sickness absence managers are required to consider moving to Stage 3 if they do not expect the employee to return to work within a reasonable timeframe
- if an employee is absent for a reason related to disability and the department has explored all options to make **Reasonable Adjustments** which would enable an employee to return to work then the manager is required to consider moving to Stage 3
- if issuing a First or Final Written Warning managers are required to write to the employee within five working days (**MUA Letter 02: Outcome of a Formal Managing Poor Attendance Meeting – First or Final Written Improvement Warning Given**) including the following information:
 - a note of the discussion and attendance issues
 - the decision taken as to whether to issue a written improvement warning and the reasons for the decision taken
 - a manager may postpone issuing a Written Improvement Warning if they are awaiting **Occupational Health** advice
 - if a warning is issued managers are required to outline the improvement required from the employee during the 3 month Improvement Period and include the date of the review meeting. See [Paragraph 29](#) for more information on what level of improvement is required
 - if the employee's attendance does improve to the required level, they will enter a 12 month Sustained Improvement Period during which the employee is required to sustain their improved attendance (for more information on the Sustained Improvement Period see below)



- this process could lead to sanctions including dismissal or downgrading
- the name of the Appeal Manager (who is required to be at least one grade higher than the person who made the decision)
- the help and support available to the employee including the availability of the **Employee Wellbeing Service (EWS)**
- if a First or Final Written Warning is not appropriate (due to Supported Absences etc.) managers are required to write to the employee within five working days (**MUA Letter 03: Outcome of a Formal Managing Poor Attendance Meeting – No Further Action Taken**) including the following information:
 - a note of the discussion and attendance issues
 - the decision taken and the reasons for the decision taken
 - the help and support available to the employee including the availability of the **Employee Wellbeing Service (EWS)**
 - if the decision is taken not to issue a first or final written warning to an employee who has been absent for 28 consecutive calendar days or more and remains absent, then the manager is required to:
 - conduct an informal meeting with the employee to review their absence on a monthly basis to discuss: how the employee is progressing in their recovery, when they expect to be able to return to work and what support they need to achieve this, any medical advice that has been received, and any key developments in their work area
 - conduct a Stage 1 or 2 meeting (dependant on where in the process the manager/employee is) every 3 months to determine whether a written warning is appropriate. There is no requirement to hold an informal meeting in a month where a Stage 1 or 2 meeting is scheduled
 - determine whether the business can tolerate the employee's absence, if it can no longer tolerate the absence the manager is required to progress to the next stage of the procedure



- Note: absences may be linked for attendance monitoring purposes and treated as a single absence. This would mean the manager can continue the attendance monitoring action from the point they had previously reached. This would only happen if:
 - if an employee returns to work but is then absent shortly after the manager is required to consider how long the employee was back at work relative to the length of absence
 - the sickness absences are for different, unrelated reasons but the gap between the sickness absences is 2 weeks or less (unless the absence was due to a particularly long or serious illness in which case the gap could be up to 2 months)
 - the employee returns to work on a Fit For Work plan and is unable to sustain the increase in their hours and is absent due to sickness again
- record the decision on HRMS and update the employee's sickness absence record to reflect any supported sickness absence

3 Month Improvement Period

32. During the Improvement Period managers are required to:

- support the employee, ensuring that any **Reasonable Adjustments** are in place and that **Occupational Health** advice is sought where appropriate
- keep a note of the Improvement Period, including a summary of the discussions that have taken place
- promptly address the employee's attendance if the following Improvement Period trigger points are reached:
 - if an employee has 2 total days of sickness absence in the first month of the Improvement Period then the manager is required to send the employee a letter (**MUA Letter 05: Invitation to a Formal Managing Poor Attendance Meeting Following First/Final Written Improvement Warning - Attendance is Unsatisfactory**) explaining that the next stage of the procedure is being initiated as a result of breaching the Improvement Period Trigger Point (a Stage 2 Unsatisfactory Attendance Warning meeting or a Stage 3 Dismissal Decision meeting)
 - if an employee has a total of 3 days of sickness absence within the 3 month Improvement Period then the manager is required to send the employee a letter



(MUA Letter 05: Invitation to a Formal Managing Poor Attendance Meeting Following First/Final Written Improvement Warning - Attendance is Unsatisfactory) explaining that the next stage of the procedure is being initiated as a result of breaching the Improvement Period Trigger Point (a Stage 2 Unsatisfactory Attendance Warning meeting or a Stage 3 Dismissal Decision meeting)

- where an employee has an additional Trigger Point, for disability or health reasons, this will also be **pro-rated** during any Improvement Period, for example, if an employee has an additional Trigger Point of 4 days then they would receive a 25% increase on the Improvement Period Trigger Point, i.e. 1 day.

33. Before an Improvement Period review meeting managers are required to:

- send the employee a letter inviting them to an Improvement Period review meeting if the employee has not breached the Improvement Period Trigger Points (please see above) including the following information:
 - date, time and location of the review meeting. Managers are required to give the employee at least five working days' notice of the meeting, if the employee or companion cannot attend the meeting can be postponed once up to a further five days
 - the employee's statutory right to be accompanied by a companion. An employee's chosen companion may be a work colleague, a trade union representative or an official employed by a trade union. A trade union representative who is not an employed official must have been accredited by their trade union as being competent to accompany an employee. The companion cannot be a friend or relative unless they are also a colleague and they cannot be a legal representative
 - a report (if appropriate) of the Improvement Period including a summary of any discussions that have taken place, no reference to information that has not already been discussed should be included
- make any Reasonable Adjustments which are necessary to enable an employee with a disability to attend the meeting

34. During an Improvement Period review meeting managers are required to:

- make a note of the discussion
- review the employee's absence history and acknowledge that the employee's attendance has improved and therefore following the meeting a 12 month Sustained Improvement Period will be initiated

- explain to the employee that absences are monitored during the Sustained Improvement Period over a 12 month period; any absences during the 3 month Improvement Period will not be included
 - if an employee’s attendance is unsatisfactory during the Sustained Improvement Period the manager is required to initiate the next stage of this procedure (either a Stage 2 or 3 meeting)
 - an employee’s attendance will be deemed unsatisfactory during the Sustained Improvement Period if the employee has the following number of cumulative total days of sickness absence:

Figure 1: Sustained Improvement Period

During:	Total days of sickness absence
Month 1	2
Month 2	3
Month 3	3
Month 4	3
Month 5	3
Month 6	4
Month 7	5
Month 8	5
Month 9	6
Month 10	7
Month 11	7
Month 12	8

- if an employee has an additional Trigger Point for disability or health reasons this should be transferred to the Sustained Improvement Period. Any absences related to the disability or health reason associated with the additional Trigger Point will only be counted against the additional Trigger Point until this is breached. Any further absences will be counted against the table above. Absences not related to the disability or health reason associated with the additional Trigger Point will also be counted against the table above
- give the employee the opportunity to reply or raise any new issues or factors that may have impacted their attendance, for instance personal issues. If the employee states they have a



medical condition that may be affecting their work performance, managers are required to discuss this with their caseworker. Where appropriate seek **Occupational Health Advice**

- explore whether there any temporary workplace adaptations or reasonable adjustments which might support the employee in sustaining their improved attendance
- review any **Reasonable Adjustments** which are already in place for employees with a disability and check whether they continue to be effective or necessary. The manager should also consider whether any further adjustments are needed to support the employee
- remind the employee of the potential outcomes if their attendance becomes unsatisfactory, including dismissal
- remind the employee of the help and support available to the employee including the availability of the **Employee Wellbeing Service (EWS)**
- offer either party a short adjournment to consider any points raised

35. After the Improvement Period review meeting managers are required to:

- send the employee a letter (**MUA Letter 04: Outcome of a Formal Managing Poor Attendance Meeting – Attendance is Satisfactory after an Improvement Period**) including the following information:
 - outline the expected level of attendance during the 12 month Sustained Improvement Period and explain that any absences during the 3 month Improvement Period will not be included
 - outline the contact arrangements for the 12 month Sustained Improvement Period. Initially check-ins are required at least monthly becoming as frequent as is necessary if attendance is sustained
 - if an employee's attendance is unsatisfactory during the Sustained Improvement Period the manager is required to initiate the next stage of this procedure (either a Stage 2 or 3 meeting)
 - an employee's attendance will be deemed unsatisfactory during the Sustained Improvement Period if the employee has the following number of cumulative total days of sickness absence – see [Figure 1: Sustained Improvement Period](#)
 - this process could lead to sanctions including dismissal or downgrading



- the help and support available to the employee including the availability of the **Employee Wellbeing Service (EWS)**

Sustained Improvement Period

36. During the 12 month Sustained Improvement Period managers are required to:

- hold regular attendance discussions with the employee to ensure that all appropriate support is being provided. Initially these are required at least monthly becoming as frequent as is necessary if attendance is sustained
- promptly address any attendance concerns during the Sustained Improvement Period. If the employee's attendance breaches the Sustained Improvement Trigger Points (see below) then the manager is required to move the employee directly to the next stage of this procedure (note that any absences during the 3 month Improvement Period will not be included)
 - if an employee's attendance is unsatisfactory during the Sustained Improvement Period the manager is required to initiate the next stage of this procedure (either a Stage 2 or 3 meeting)
 - an employee's attendance will be deemed unsatisfactory during the Sustained Improvement Period if the employee has the following number of cumulative total days of sickness absence - see [Figure 1: Sustained Improvement Period](#)

37. If the employee maintains a satisfactory level of attendance throughout the Sustained Improvement Period, the manager is required to:

- send the employee a letter inviting them to a formal meeting to confirm that the employee has met the expected attendance standard. The letter is required to include the following information:
 - date, time and location of the review meeting. Managers are required to give the employee at least five working days' notice of the meeting, if the employee or companion cannot attend the meeting can be postponed once up to a further five days
 - the employee's statutory right to be accompanied by a companion. An employee's chosen companion may be a work colleague, a trade union representative or an official employed by a trade union. A trade union representative who is not an employed official must have been accredited by their trade union as being competent to accompany an employee. The companion cannot be a friend or relative unless they are also a colleague and they cannot be a legal representative



- a report (if appropriate) of the Sustained Improvement Period including a summary of any discussions that have taken place, no reference to information that has not already been discussed should be included
- make any reasonable adjustments which are necessary to enable an employee with a disability to attend the meeting

38. During the Sustained Improvement Period review meeting the manager is required to:

- make a note of the discussion
- review the employee's absence history and acknowledge that the employee's attendance has improved and therefore formal Managing Unsatisfactory Attendance has now ceased

39. After the Sustained Improvement Period review meeting the manager is required to:

- send the employee a letter (**MUA Letter 04: Outcome of a Formal Managing Poor Attendance Meeting – Attendance is Satisfactory after an Improvement Period**) confirming that their attendance has improved and therefore formal Managing Unsatisfactory Attendance has now ceased

Stage 3 / dismissal decision

40. The purpose of Stage 3 is to determine whether an employee is to be dismissed. The Stage 3 meeting is between the Decision Manager, the employee's manager / the individual who has made the decisions during Stage 1 and 2 and the employee.

41. The Decision Manager is required to determine whether dismissal, or in exceptional circumstances, a move of post, downgrading or a further period of review, is appropriate if an employee:

- fails to successfully complete the Stage 2 Improvement Period or the Stage 2 Sustained Improvement Period
- is not expected to return to work from a period of continuous absence within a reasonable timeframe
- is absent for a reason related to disability and the department has explored all options to make **Reasonable Adjustments** which would enable an employee to return to work



42. A Decision Manager from within the line management chain who is at least one grade above the employee is required to chair the Stage 3 meeting; this could be the employee's countersigning officer. It is a requirement that the Decision Manager is not the manager who issued the Stage 1 and Stage 2 warnings and is not lower than C1 level/military equivalent as a minimum. After this meeting has been held the Decision Manager is required to inform the employee of their decision in writing. Please see the process below for more detail.

43. **Note:** Managers are required to refer an employee to the relevant Pension Scheme Medical Advisor for consideration of **Ill-Health Retirement (IHR)** where **Occupational Advice** has identified an underlying health problem which might make IHR appropriate. This is required to take place before dismissal is considered. If the employee does not consent to the IHR referral then the manager should not make a referral for IHR and a decision will be made on the information available.

44. **Before a Stage 3 meeting managers are required to:**

- seek advice and assistance from their caseworker
- ensure that **Occupational Health** advice has been received within the last 3 months , unless the employee withheld their consent to an **Occupational Health** referral
- request an estimate of superannuation and compensation payments in the event of dismissal from their caseworker
- consider the percentage level payment of discretionary compensation in the event of dismissal and obtain the necessary financial approval from the appropriate finance/budget manager (see **PIN 40 - Information Notes For Personnel Managers - Dismissal For Inefficiency: Compensation (www)**)
- provide the following information to the Decision Manager:
 - the reasons why the business can no longer tolerate the sickness absence
 - a written summary of the case so far including all action taken to date, copies of any letters issued and notes of all discussions with the employee relating to their sickness absence
 - a copy of all **Occupational Health** advice, including advice issued within the last 3 months, or details of when consent for an **Occupational Health** referral was asked for and refused



- information on any temporary workplace adaptations or **Reasonable Adjustments** which have been considered and made. If these have not been implemented, the manager is required to include an explanation of the reasons
- a copy of a Local Risk Assessment for Work Related Stress, if available (see **JSP 375, Part 2, Volume 1, Chapter 8; Chapter 17**)
- a copy of the Fit for Work plan, where appropriate
- evidence that **Ill-Health Retirement** has been considered, if appropriate (see paragraph 43 for more information)
- the employee's sickness absence records for at least the last 2 years (provided by the caseworker)
- the estimate of superannuation and compensation payments in the event of dismissal (provided by the caseworker)
- the percentage level payment of discretionary compensation in the event of dismissal (see **PIN 40 - Information Notes For Personnel Managers - Dismissal For Inefficiency: Compensation (www)**)
- a copy of the employee's job description

45. Before a Stage 3 meeting the Decision Manager is required to:

- arrange a note taker from within the wider Business Unit who is not from the employee's line management area
- ensure the caseworker will be present to provide advice on MUA policy and procedure
- consider the estimate of superannuation and compensation payments in the event of dismissal provided by the manager
- consider the percentage level payment of discretionary compensation in the event of dismissal and obtain the necessary financial approval from the appropriate finance/budget manager (see **PIN 40 - Information Notes For Personnel Managers - Dismissal For Inefficiency: Compensation (www)**)
- consider whether downgrading may be appropriate and work with the caseworker to determine whether there is a suitable post to move the employee into if appropriate



- write to the employee inviting them to a Final Decision Meeting to discuss their attendance (see **MUA Letter 06: Managing Poor Attendance - Invitation to Final Decision Meeting**). Where possible the meeting should be face-to-face at the employee's usual workplace. The letter is required to include:
 - the employee's statutory right to be accompanied by a companion. An employee's chosen companion may be a work colleague, the employee's carer, a trade union representative or an official employed by a trade union. A trade union representative who is not an employed official must have been accredited by their trade union as being competent to accompany an employee. The companion cannot be a friend or relative unless they are also a colleague and they cannot be a legal representative
 - the date, time and location of meeting
 - give the employee at least five working days' notice of the meeting, if the employee or companion cannot attend the meeting can be postponed once up to a further five days
 - information about the unsatisfactory attendance and the possible outcomes of the MUA procedure – dismissal, downgrading or in exceptional circumstances the Stage 2 Improvement Period or Sustained Improvement Period may continue to the original end date
 - notification that a note taker from within the wider Business Unit who is not from the employee's line management area will be in attendance at the meeting
 - copies of any correspondence relating to the employee's sickness absence which will be referred to during the meeting
- make any necessary **Reasonable Adjustments** to enable the employee to attend the meeting in line with the Equality Act 2010

46. During a Stage 3 meeting, the Decision Manager is required to:

- ensure that accurate notes are taken during the discussion
- give the employee the opportunity to reply or raise any new issues or factors that may have impacted their attendance, for instance personal issues. If the employee states they have a medical condition that may be affecting their attendance, managers are required to discuss this with their caseworker and where appropriate promptly seek **Occupational Health (OH) Advice**



- consider whether any of the employee's absences can be supported by the Department. See [Paragraph 29](#) for more information on what absences can be supported
- explain that the employee's attendance has fallen below the expected standard and that dismissal and downgrading are being considered. In exceptional circumstances a Decision Manager may also consider continuing the Stage 2 Improvement Period or Sustained Improvement Period to the original end date
- ask the employee what steps they have taken to help themselves return to a satisfactory level of attendance
- discuss possible solutions, including what support is available to the employee
- when discussing possible solutions managers are required to explore whether there any temporary workplace adaptations or **Reasonable Adjustments** which might enable the employee to achieve a satisfactory level of attendance or a return to work
- review any reasonable adjustments which are already in place for employees with a disability and check whether they continue to be effective or necessary or whether further adjustments are needed to support the employee
- offer either party a short adjournment to consider any points raised

47. Where **Occupational Health** advice identifies an underlying health problem which might make ill health retirement appropriate, managers are required to consider whether the employee is eligible for **Ill Health Retirement**. If the employee does not consent to the ill health retirement referral then a referral need not be made and the case will proceed on the information the Department has available.

48. After a Stage 3 meeting, the Decision Manager is required to:

- make a decision as to whether or not to dismiss the employee
- the Decision Manager is required to dismiss the employee if **all** of the following apply:
 - the business can no longer tolerate the employee's level of sickness absence
 - where appropriate, there are no further **Reasonable Adjustments** that can be made which will help the employee return to satisfactory attendance

- **Occupational Health** advice has been received within the last 3 months, unless the employee withheld their consent to an **Occupational Health** referral
- an application for **III-Health Retirement** is not appropriate or has been refused

49. If the decision is to dismiss the employee, the Decision Manager is required to:

- confirm what level of superannuation and compensation payments and percentage level payment of discretionary compensation are to be paid
- meet with the employee and a companion (if the employee wishes), within 5 working days of the meeting to provide written confirmation of their decision (**MUA Letter 08: Managing Poor Attendance – Decision to Dismiss**). If unable to meet the letter must be sent by recorded delivery and by standard mail. The letter is required to include the following information:
 - the reasons for the decision
 - the date on which the decision becomes effective
 - the appropriate period of notice, if relevant
 - where any discretionary compensation is to be paid, and the level of payment
 - the employee's right of appeal (if the employee appeals against a dismissal decision the appeal is limited to the dismissal)
 - the employee's right of appeal to the Civil Service Appeal Board regarding the amount of discretionary compensation awarded
 - the name of the Appeal Manager (who is required to be at least one grade higher than the person who made the decision)
 - a copy of the notes taken during the Stage 3 meeting (the employee can raise comments on the meeting notes which will be appended to the record)
- send a copy of the letter and the percentage level of discretionary compensation awarded to People-CivHR-Policy@mod.uk
- update the employee's absence record on HRMS

50. If the decision is to downgrade the employee, the Decision Manager is required to:

- source an available and appropriate post at the lower grade
 - note: if a suitable post cannot be sourced then the employee cannot be downgraded and the Decision Manager is required to dismiss the employee
- meet with the employee and a companion (if the employee wishes), within 5 working days of the meeting to provide written confirmation of their decision (**MUA Letter 07: Managing Poor Attendance – Downgrading Letter**). If unable to meet the letter must be sent by recorded delivery and by standard mail. The letter is required to include the following information:
 - the reasons for the decision
 - the details of the downgraded post highlighting that the post is offered as an alternative to dismissal and the employee must expressly consent to the alternative sanction being offered
 - the effect of downgrading on the employee's pay, pension and other terms and conditions if appropriate
 - the date on which the decision becomes effective
 - the employee's right of appeal (if the employee appeals against a dismissal decision the appeal is limited to the dismissal)
 - the name of the Appeal Manager (who is required to be at least one grade higher than the person who made the decision)
 - a copy of the notes taken during the Stage 3 meeting (the employee can raise comments on the meeting notes which will be appended to the record)
- update the employee's absence record on HRMS

51. If the decision is not to dismiss or downgrade the employee, the Decision Manager is required to:

- meet with the employee and a companion (if the employee wishes), within 5 working days of the meeting to provide written confirmation of their decision. If unable to meet the letter must be sent by recorded delivery and by standard mail. The letter is required to include the following information:



- the reasons for the decision
 - if the Decision Manager decides not to dismiss then the Managing Unsatisfactory Attendance procedure will continue and the Stage 2 Improvement Period or Sustained Improvement Period will continue to the original end date. Any additional absences may lead to reconsidering dismissal
 - regular attendance meetings will continue during a period of continuous sickness absence. The manager may reconsider the decision to dismiss if, in future, they decide the business can no longer tolerate the absence
- the employee's right of appeal (if the employee appeals against a dismissal decision the appeal is limited to the dismissal)
- the name of the Appeal Manager (who is required to be at least one grade higher than the person who made the decision)
- a copy of the notes taken during the Stage 3 meeting (the employee can raise comments on the meeting notes which will be appended to the record)
- send a copy of the letter and the percentage level of discretionary compensation awarded to People-CivHR-Policy@mod.uk
- update the employee's absence record on HRMS

Appeals

52. There is one right of appeal at each decision point in the Managing Unsatisfactory Attendance procedure.
53. Appeals should be heard by an Appeal Manager who is both impartial and independent of the decision being appealed and at least one grade higher than the person who made the decision for which the appeal is against. There is a requirement that the appeal process continues in parallel with, and does not delay, any on-going action under this procedure. This includes, in the case of dismissal, the start of any notice period.
54. The appeal process should continue alongside any on-going action under the Managing Unsatisfactory Attendance procedure, including the start of any notice period. The Appeal Manager's decision is final.

55. For all appeals employees are required to:

- submit their appeal in writing to the appeal manager, within 10 working days of receiving their written warning (Stages 1 and 2) or dismissal/downgrading decision letter (Stage 3). The letter of appeal should clearly state:
 - the grounds for the appeal in writing and whether the appeal is against procedural errors and/or the decision
 - any new information/evidence that may change the outcome of the original decision

56. Employees cannot additionally raise separate grievances about the same issue under any other departmental procedures.

57. Appeal Managers are required to reject an appeal and notify the employee in writing if the appeal does not satisfy the following grounds of appeal:

- a procedural error has occurred, and/or
- the decision is not supported by the information/evidence available to the manager or Decision Manager, and/or
- new information/evidence has become available which the Appeal Manager should take into account when reaching a decision about dismissal

58. Before all appeal meetings Appeal Managers are required to:

- seek advice from the DBS casework team before taking any action and arrange for them to attend the appeal meeting
- invite the employee to a meeting within five working days of receiving the appeal giving the employee at least five working days' notice of the meeting (see **MUA Letter 09: Managing Poor Attendance – Invitation to Meet with the Appeal Manager**):
 - if the employee wishes they can be accompanied to the meeting by a companion. If the employee, or their companion cannot attend, the meeting may be postponed once up to a further five working days
 - any correspondence that will be referred to during the meeting should be enclosed. If the employee is on a continuous period of sickness absence, the Appeal Manager is



required to send them a copy of the Attendance Management and Managing Unsatisfactory Attendance policy and procedures

- arrange a note taker from within the wider business unit who is not from the employee's line management area
- ensure they understand the grounds of the appeal and are prepared to give full consideration to the points the employee raises
- ensure that they have all the relevant documentation relating to the original decision
- consider the basis of the original decision and any new evidence that has been raised
- ensure they have copies of all relevant papers including any documents covering new medical or wellbeing aspects of the case that the employee wishes to be considered
- make any necessary **Reasonable Adjustments** to enable the employee to attend the meeting in line with the Equality Act 2010

59. Before a Stage 3 appeal meeting Appeal Managers are also required to:

- arrange for a caseworker to attend the appeal meeting
- ensure they have a copy of the record of the Stage 3 meeting

60. During an appeal meeting, Appeal Managers are required to:

- ensure that accurate notes of the appeal meeting are being taken
- consider the grounds of the appeal and any procedural errors that the employee highlights as well as any new evidence that may change the outcome of the original decision

61. After an appeal meeting, Appeal Managers are required to:

- notify the employee whether their appeal has or has not been upheld and provide an explanation as to the decision taken within five working days of the meeting (see **MUA Letter 10: Managing Unsatisfactory Attendance – Appeal Manager's Decision**). The Appeal Manager is required to highlight any recommended actions that should be taken by the employee and include a copy of the appeal meeting notes



- if the appeal is successful the Appeal Manager is required to send a copy of the decision letter to the caseworker who will arrange for the warning to be withdrawn (and re-instate the employee if appropriate), and the employee's HRMS record to be amended accordingly
- if a Stage 1 or 2 appeal is unsuccessful the Appeal Manager is required to remind the employee that the warning remains in place and that their performance will be monitored for the remainder of the Improvement Period / Sustained Improvement Period. The Appeal Manager is required to send a copy of the decision letter to the caseworker
- if a Stage 3 appeal is unsuccessful the Appeal Manager is required to remind the employee of their external rights of appeal (see **Understand Appeals to the Civil Service Appeal Board**). The Appeal Manager is required to send a copy of the decision letter to the caseworker

62. The employee can raise comments on the meeting notes which will be appended to the record. The Appeal Manager's decision is binding on all parties within the Department.

Additional Information

Third Party Claims

63. In line with Chapter 9 of the **Civil Service Management Code**, employees should include an amount for loss of earnings where they make a claim for damages against a third party. Departments are required to provide an advance of salary where appropriate and require staff to repay proportionately the advance where the claim for damages is wholly or partly successful. Departments are also required to ensure that where all or part of the advance is repaid, a period representing the repaid advance does not reckon towards the trigger point of the department's or agency's sick absence scheme.