

NHS Education for Scotland

Management of Sickness Absence Policy

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Section 1

Management of sickness absence policy

1.1. Purpose and scope

The purpose of this policy is to provide a clear framework and procedures for the reporting and management of sickness absence. The content of this policy has been incorporated into a comprehensive Managers Guide which is available on the policies/HR policies section of the intranet.

The Management of Sickness Absence Policy applies to all employees, at all levels of the organisation. This includes employees on full-time, part-time and fixed-term contracts. It also includes homeworkers.

Staff who are on secondment to other organisations normally remain employees of NES and are covered by this policy, although some elements, such as reporting arrangements may be varied. Staff who are on secondment to NES and who remain employees of their parent organisation, are also covered by this policy although, again, some elements may be varied. Staff can expect their absence to be reported to their employer.

Agency staff, consultants, sessional staff, and any non-employees who are managed through a service level agreement or service contract can also expect their attendance to be monitored and managed. The specific arrangements will, however, be as agreed by local responsible managers. Service level agreements should include a clause for ensuring that the management of absence will be managed by NES management.

1.2. Policy

The Management of Sickness Absence Policy aims to ensure that sick leave is managed fairly and responsibly, being responsive to the differing needs of individuals and recognising the rights of staff under the Equality Act 2010 (See Section 1.5 'Positive about disability').

NES greatly values the contribution that every employee makes to the organisation. NES is dependent on every employee to deliver the work programme and meet the quality standards agreed nationally with NHS Scotland and the Scottish Government.

The cost of sickness absence to the NHS is immense and has a direct impact on the provision of services for patient care. As a responsible employer, costs need to be controlled in order to ensure that NES makes best use of its budgetary allocation for the good of the wider NHS.

NES regards regular attendance at work as the norm. However, NES acknowledges that, from time to time, employees will be unfit for work and need time off work to recover.

Support will be provided during sick leave to enable employees to return to work once they are fit to do so. Absence will be managed and monitored by NES managers in order to keep absence to minimum acceptable levels, using fair and reasonable management practices.

All employees are expected to use their annual leave entitlements effectively, as a way of scheduling in regular breaks from work and managing their own health and well-being.

Any absence, for whatever reason, should be authorised through existing policies. Although this policy focuses on sickness absence, NES has a wide range of policies in place for employees to deal with other issues in their daily life, including flexible working, special leave and family friendly practices which support the work life balance and assist with occasional personal crises including bereavement. Employees must only use sick leave for genuine ill health.

Sickness absence can lead to employees feeling isolated from the workplace. NES managers are committed to keeping in touch regularly, identifying any reasonable support which the organisation can provide and re-integrating employees to the working environment as soon as they are fit. (See Sections 3.3 and 4.3: 'Communicating during absence').

Facilities such as the occupational health service and the ICAS independent counselling service are in place to support employees while at work and on sick leave as required. (See Section 1.14 'Employee support').

High levels of sickness absence can also have a negative impact on colleagues, who often take on additional workloads to cover for absence. The fair and active management of absence does therefore have a positive effect on the health of colleagues in the workplace as well and on morale across the organisation.

NES managers are committed to the health, safety and well-being of employees and will ensure that the workplace itself does not adversely affect the health of employees. (See Section 1.10: 'Management responsibilities' and section 1.11 'Employee responsibilities').

NES recognises that, in some cases, employees may be unable to return to work within a reasonable timescale. Managers are committed to dealing sensitively with employees whose employment with NES may need to be brought to an end for reasons of capability. (See Appendix 2).

Employees have a right to be treated with respect in an organisation that recognises and celebrates the diversity of its staff. NES aims to ensure that employment practices promote equal opportunities and eliminate unlawful discrimination and harassment. This policy should be read in conjunction with the Equality and Diversity in Employment Policy

Where employees do not comply with the policy or claim sick pay inappropriately, it will be regarded as misconduct and they may be subject to disciplinary action. (See Section 1.6: 'Sick pay allowances' and section 1.7.3 'Unauthorised absence').

This policy takes into account UK and EU legislation, NHS terms and conditions of service, PIN guidelines, Scottish Government directives, guidance from Acas, the Chartered Institute of Personnel and Development, and good employment practice.

1.3. Principles

NES manages sickness absence in line with the following principles:

- NES is committed to ensuring that all employees have a healthy and safe working environment
- NES recognises that employees will be unwell from time to time and will support staff to take reasonable sick leave
- NES will actively manage attendance at work and will work with employees to keep sickness absence to a minimum
- Managers will act reasonably and fairly in all circumstances
- NES provides a range of positive policies to enable employees to achieve a work life balance
- Employees are responsible for achieving regular attendance at work
- Employees are entitled to sick pay (dependent on length of service) when they comply with NHS terms and conditions and this policy. Further details on the calculation of sick pay can be found in Appendix 1.

1.4. Confidentiality

NES respects the confidentiality of employees' health and sickness data. All such information will be safe-guarded in line with the Data Protection Act and the Access to Medical Records Act.

1.5. Positive about disability

NES is committed to supporting employees who are appointed with a disability or who develop a disability during their employment. Disability is defined in the Equality Act 2010 as being 'a physical or mental impairment' which has a substantial and long term adverse effect on an individual's ability to carry out normal day to day activities. In the Act, 'substantial' means more than minor or trivial. In addition, some long term conditions eg. cancer, HIV and multiple sclerosis are deemed disabilities under the Act from the point of diagnosis. Further details are contained within the NES Disability Policy

NES has a duty to make reasonable adjustments for disabled people, in employment and in its service delivery. NES must ensure that it takes all reasonable steps to remove any provision, criterion or practice or any physical feature of premises that may put a disabled person at a disadvantage at any stage of employment or in

delivering its services. Further information on making reasonable adjustments is covered in the Disability Policy and the Equality and Diversity in Employment Policy.

It is important to distinguish between general sickness absence and disability-related sickness absence. This helps to remove disadvantage experienced by disabled people and recognises that impairments and medical conditions may, at particular times, generate a greater level of sickness absence.

When undertaking return to work interviews with disabled employees, the line manager will discuss the absence with the individual in order to ascertain if the absence was related to the disability, in such cases it may be appropriate to seek advice from occupational health. Particular attention should be given to determining if the disability is contributing to the absence.

The aim is to ensure that the absence is recorded appropriately on the RTW1 Return to Work Discussion & Self Certification Form and personnel record as either sickness absence (e.g. where the absence was not as a result of the disability), or where it was an absence related to the disability (see Disability Policy).

Where 'disability leave' can be planned this should be discussed and agreed in advance to ensure the leave is recorded appropriately. Occupational Health should be used to provide guidance where necessary.

It will be the responsibility of the disabled employee's line manager to identify issues of disability and retention with regard to an individual employee, for example where dismissal is being considered on the grounds of sickness or incapacity.

If, as a result of a disability, an employee is frequently/ long term absent from work NES may request a medical, vocational or functional assessment of the employee. The aims and objectives of this assessment will be agreed by both parties. Following such an assessment a phased return to work will be arranged where possible and in consultation with the disabled employee.

If redeployment is necessary the disabled employee will be viewed as a priority within the redeployment procedure. Where the post to which the disabled employee is redeployed is of a lesser grade or salary, subject to Executive Team approval the employee's salary will normally be protected at the original salary during the trial period, after which he/she will be paid the salary for the new post.

1.6. Sick pay allowances

Sick pay allowances are payable to employees who are absent due to ill health, including disability. These form part of the NHS Terms and Conditions Handbook and are dependent on the conditions in the Handbook and this policy being met.

Further details on how sick pay is calculated can be found in Appendix 1. The extract in Appendix 1 has been lifted directly from the NHS Terms and Conditions of Service Handbook.

1.7. Categories of sickness absence

Employees are paid for each of the 7 days of the week so, for sick leave purposes, every day is counted.

Although this policy addresses short term and long term absence separately, in practice the distinction is not always so clear. Managers will manage each employee individually, taking into account the particular circumstances and taking advice from HR & OD. Although the policy may be varied in response to an employee's own circumstances, in all cases employees will be treated fairly and in a way that is consistent with the principles of this policy.

1.7.1 Short term absence

Short term absence lasts up to 20 working days or 28 days including weekends and is covered in more detail in Section 3.

There are two types of short term absence. The first involves

- one-off occasional absence

The second type is short term intermittent absence, and involves

- periods of short absence which occur intermittently over a period of months
- recurrent periods of short absence that form a pattern.

1.7.2 Long term absence

Long term absence lasts for more than 20 working days or 28 days including weekends and is covered in more detail in Section 4.

1.7.3 Unauthorised absence

If sick leave is not reported in line with this policy or is taken for reasons other than genuine ill health, it is regarded as unauthorised absence and can be classed as misconduct under the Disciplinary Policy. Where sick pay is claimed inappropriately, it can be regarded as gross misconduct and employees may be subject to disciplinary action.

1.8. Accidents at work

Where employees have an accident at work, they must report it in line with the Health and Safety Policy. Any sick leave arising as a direct result of the injury may be treated differently from normal sick leave and employees should ensure that their manager is advised accordingly. Managers must notify HR & OD.

1.9. Addiction

Employees whose absence is related to alcohol, drug or substance abuse will be managed under the Occupational Health and Wellbeing Policy

1.10. Line management responsibilities

Line managers are responsible for the following:

- managing the attendance of all their employees and managing sickness absence actively
- ensuring that all their employees have been given a copy of this policy and understand both the support available to them and their responsibilities
- understanding and following this policy and participating in training and education
- managing health and safety in the workplace and carrying out risk assessments to prevent or reduce work-related health problems
- being available to employees who wish to discuss their health or any workplace issues and advising them on NES facilities for support (eg OHS, ICAS)
- complying with equal opportunities legislation and, in particular, the Equality Act 2010
- keeping in reasonable contact with employees during their sick leave
- monitoring, learning from and acting on sickness absence rates and absence patterns
- informing employees of NES targets for attendance and limits on absence
- take action under the Disciplinary Policy. (See also Section 1.7.3 'Unauthorised absence'), if managers believe that an employee's sick leave is not due to a genuine health problem, is not reported as required or does not comply with this policy and procedures in any other way
- enabling employees to return to work after sick leave by providing reasonable support
- seeking advice from HR & OD where sick leave is attributable to:
 - a disability
 - mental illness e.g. depression
 - stress
 - HIV or AIDS
 - alcohol, drugs or gambling addiction
 - pregnancy
 - a notifiable infectious disease

- an accident at work
- violence at work
- bullying or harassment.

It should be noted that some illnesses may be covered by the Equality Act 2010

1.11. Employee responsibilities

Employees are responsible for the following:

- reporting regularly to their manager at the start and throughout any periods of sick leave, in line with the policy and as agreed by their manager
- taking care of their health and attending work regularly
- managing their work life balance effectively using the range of NES policies as required
- submitting self-certificates and medical certificates on time and in line with this policy
- using sick leave for genuine sickness only
- seeking and following medical advice
- complying with their managers' request to obtain medical advice on their health (eg occupational health referrals)
- taking reasonable steps to resume work as soon as fit to do so
- co-operating with any support or reasonable adjustments made by their manager to enable them to return to work
- reporting any factors which may contribute to ill health such as health and safety, bullying and harassment etc.

1.12. HR responsibilities

- providing professional guidance, advice and assistance to line managers on sickness absence management as requested
- advising employees and staff representatives on the interpretation of the policy
- keeping the policy under review and ensuring that it is applied consistently across NES
- maintaining accurate records of employee absence and associated documents, and ensuring they comply with the Data Protection Act

- reporting absence statistics as required by NES
- reporting corporate sickness absence statistics and providing advice to the Staff Governance Committee and Partnership Forum.

1.13. Medical referrals

From time to time, NES may have reason to require a medical report on employees. This may happen when employees are at work, as well as when they are on sick leave. Referrals will usually be made to the Occupational Health Service (OHS).

The purpose of the referral is normally for managers to obtain advice on one or more of the following:

- the reasons for sick leave and its likely duration
- the impact of the workplace on the employee
- an employee's progress to recovery
- the support that can be offered to enable an employee to return to work safely
- recommendations for ill health retirement.

Employees will normally meet with the OHS to discuss their health, their work and any other factors which may be having an adverse impact on their health. The OHS physician may wish to contact the employee's GP and hospital consultant for further information. Employees can request to see these reports and request amendments under the Medical Records Act.

Under the NHS terms and conditions, employees are required to attend for a medical, if requested. The OHS medical report is important to NES as it under-pins the provision of support and informs decisions which may need to be made concerning an employee's work options or continued employment. Without this information, managers (in conjunction with HR & OD) have to make decisions based on whatever information is otherwise available. This may negate their ability to explore reasonable options for work and may lead to termination of contract on the grounds of capability. (See Appendix 2).

1.14. Employee support

1.14.1 ICAS

All employees have free access to ICAS, the independent counselling service by phoning 0800 072 7 072. Details of this 24 hour helpline are available on the intranet.

1.14.2 Occupational Health Service

Employees can contact the Occupational Health Service direct with health problems on a confidential basis, whether or not they are on sick leave. This particularly

relates to health problems affecting, or caused by, work (Appendix 4 provides contact details).

1.15. Grievances

If any employee believes s/he has been treated unfairly under this policy, s/he should raise it informally with his/her line manager in the first instance. Thereafter, s/he should refer to the Grievance Policy.

1.16. Monitoring and Evaluation

The effectiveness of this policy can be assessed through the monitoring of sickness absence levels and the steps taken by NES managers on a day to day basis to manage absence proactively. Public sector managers have a financial duty to report absences accurately and the monitoring process will ensure that the policy is being applied fairly and consistently across the organisation.

Sickness absence will be recorded by NES managers and the data will be reported to the Staff Governance Committee and Partnership Forum. Reports will normally include information on how the absence is being managed. The data will not be attributable to individual employees.

The Staff Governance Committee will review the data, and agree a set of sickness absence objectives and targets for the organisation.

Reporting of the outcomes of the agreed objectives will be by the Director of Workforce through the Staff Governance Committee and the Partnership Forum.

1.17. Key contacts

For queries or advice on this Management of Sickness Absence Policy, employees should contact their line manager, staff representative or their HR Business Partner.

Section 2

Arrangements for Reporting Absence

2.1. First day of absence

Employees must notify their line manager of sickness absence as soon as possible on their first day of absence.

The purpose of this contact is to notify NES formally that sick leave is starting. The employee needs to explain the reason for the sick leave and the likely date of return. This enables work to be re-distributed and for sick pay to start.

Full-time employees should telephone their line manager within normal office hours by 10am. Part-time employees and anyone working non-standard hours (including homeworkers) should telephone their manager within one hour of their normal start time.

Where their line manager is unavailable during normal office hours, employees should notify another manager or leave a message. They should give their contact details so that their manager can call them back about their absence.

In exceptional circumstances, employees may explain their reason for absence to a HR representative instead of their line manager. However, as the manager is responsible for managing absence, HR will be required to advise the manager of the reason. In such cases, employees still need to notify the manager of the fact that they will be absent and their likely date of return, as outlined above.

Once the Line Manager has been notified of any absence they should e mail the absence mailbox at absence@nes.scot.nhs.uk giving the name of the employee and the date of the first day of absence

2.2. Reporting absence after day one

Employees must let their manager know when they can expect a return to work. Depending on the reason for absence, it can be difficult to anticipate when a full recovery will be made and so it will be assumed that this is an approximate date of return.

If they are not fit to return on the indicated date, employees must contact their manager again.

As a guide for absences lasting up to 7 calendar days, employees should contact their manager during working hours on the 4th day and every 7th day thereafter.

This regular contact between employee and manager is essential as it enables the employee to remain connected to the workplace and helps the manager to plan the work programme and staffing requirements. Once line managers have put in place transitional arrangements to cover the employee's work commitments, managers will normally restrict their contact to reasonable enquiries about their employee's absence and not on-going work issues.

Where the absence has the potential to become long term, there is evidence that this approach can also help employees achieve a successful return to their job earlier than would otherwise be possible.

2.3. Submitting certificates

2.3.1 Absence lasting 7 days or less

For sick leave that lasts for 7 days or less, a self certification form will be sent by Central HR to the employee to, complete and submit to their line manager immediately on their return to work. On this, they should outline the reason for their absence. Managers should forward the self certificate to Central HR at absence@nes.scot.nhs.uk

For sick pay purposes, every calendar day counts and must be recorded. Example: An employee is ill on Friday, stays ill over the weekend, and is unwell on Monday. When s/he returns to work on Tuesday, 4 days should be recorded on the self certificate.

2.3.2 Absence lasting more than 7 days

For sick leave that lasts more than 7 days, employees must provide a medical certificate from their GP (or hospital, if they are an in-patient). This must be obtained promptly and sent to their line manager as close to the 7th day as possible.

Employees need to ensure that they have certificates to cover the whole period of their sick leave. They should arrange GP appointments before their certificate expires to either obtain a new one or be certified as fit for work.

Managers should keep their HR Business Partner informed of the employees continuing absence and forward any medical certificates to Central HR.

2.3.3 Not submitting certificates

Employees who do not provide certificates promptly cannot be paid sick pay. In some instances, the period of absence may be regarded as unauthorised and may lead to disciplinary action.

Section 3

Short Term Absence

3.1. Principles

NES is sympathetic towards employees who fall ill from time to time. Employees may take reasonable time off when necessary. This can lead to an early recovery as well as ensuring that colleagues do not catch the colds and flu that can circulate in an office environment.

However, all absence is monitored. Managers are responsible for managing absence, having a duty of care for their employees and a responsibility to NES for proactively managing attendance.

Where employees' short term absence is considered unacceptable, managers will work with them and support them to secure an improvement.

In some instances, the reason for the sick leave may give the manager cause for concern perhaps because it has the potential to become long term or recurrent, or because of the implications for the workplace (eg work-related stress or health and safety related). See also Section 1.10 – 'Line Management responsibilities', for health issues that require immediate advice from HR & OD. In such instances, the policy can be adapted to meet the individual circumstances whilst remaining in line with its principles.

3.2. Monitoring short term absence

Managers will monitor the frequency, length and reason for all absence in order to determine whether there is:

- regular attendance and acceptable levels of sickness.
- the possibility of an underlying health problem or workplace issue (eg recurrent migraines, back strain)
- an emerging pattern of absence (eg Fridays, Mondays, just before/after annual leave etc)

From time to time, NES will set objectives and targets against which absence rates will be monitored.

3.3. Communicating during absence

The requirement for employees to contact their line managers is covered in Section 2. In addition, managers will also keep in touch with employees. This will normally be at pre-arranged times and will not be excessive as employees also need quiet time to recover.

3.4. Return to work meetings

Managers will meet with each employee on their return to work, regardless of the length of the absence. The purpose of this meeting is to:

- take an interest in their employee's health
- welcome them back to work
- check whether there are any on-going health problems
- check that the appropriate certificates have been completed
- up-date employees on their area of work.

3.5. Managing one-off occasional absence

This absence is the most common in organisations and relates to occasional short bouts of unrelated ill health, where overall attendance remains at an acceptable level.

Managers will ensure employees understand the sickness absence procedures, keep in touch while they are on sick leave and hold a 'return to work' meeting when they are fit to resume work.

3.6. Managing short term intermittent absence

3.6.1 Triggers for closer management

Short term intermittent absence is generally evidenced as more frequent absence which may or may not have an underlying health problem. As a guide, it should be classed as intermittent when the following trigger has been reached:

- 5 absences (self certificated and/or medically certificated) or 10 working days within 12 months.

At this stage, managers need to arrange a meeting with their employee.

3.6.2 Meetings

The manager will meet with the employee to counsel them that they have now reached a level of absence which is normally considered unacceptable. The Management of Sickness Absence Policy should be explained to them and a copy provided, with the opportunity to ask questions.

At this meeting, consideration needs to be given to whether there are any underlying reasons for absence. The manager should identify whether any workplace issues are contributing to the employee's absence (eg workplace stress, ergonomics, lighting, bullying and harassment).

The manager should also request a referral to the Occupational Health Service (OHS) at this stage in order to determine whether there is an underlying health problem that needs to be taken into account. Employees are required to attend for a medical if requested (See Section 1.13 'Medical referrals') and the OHS is most useful, as the physician's role is to advise on the impact of the employee's health problem on their work and vice versa. The purpose of the referral is to establish:

- the underlying reason for the absence
- when normal attendance is likely to resume
- what reasonable measures NES can consider to support the employee.

The meeting should be documented with a summary of the discussion and the expected improvements provided to the employee in writing.

If attendance does not improve, the manager should schedule regular meetings with their employee and keep a record of what was discussed and agreed. Employees are welcome to bring a work colleague or a staff representative with them to these meetings.

Employees will be given the opportunity to improve their attendance within a reasonable time period and managers will meet with them regularly to review their attendance record, and discuss progress.

3.6.3 Insufficient improvement

Where an underlying health problem is identified, absence will be managed in a similar way to long term absence (see Section 4). Managers will meet regularly and provide reasonable support to employees to enable them to attend more frequently, whilst also monitoring the level of attendance. If sufficient improvement is not made, consideration will be given to following the capability procedures at Appendix 2, which may ultimately lead to dismissal on the grounds of capability.

Where there is no underlying health problem and absence continues to be unacceptable, consideration will be given to starting the disciplinary process. In due course, this could lead to dismissal on the grounds of misconduct.

3.7. Unauthorised absence

If managers believe that an employee's sick leave is not due to a genuine health problem, is not reported as required or does not comply with this policy and procedures in any other way, they can take action under the Disciplinary Policy. (See also Section 1.7.3 'Unauthorised absence').

Section 4

Long term Absence

4.1. Principles

Taking time off work on long term sick leave can be an anxious time for employees. NES is committed to providing reasonable support to enable employees to have the time they need to recover.

It is generally understood that the longer an employee is off work, the harder they find it to return. NES will treat each employee as an individual and is committed to keeping in touch with absent employees. Managers will look at creative ways to make a return to work possible within an acceptable time period and in ways that continue to support the recovery of employees.

Where employees develop a disability under the definitions of the Equality Act 2010 (see Section 1.5 'Positive about disability' and the Equality and Diversity in Employment Policy), managers will work to identify reasonable adjustments in the workplace to support the employee's ongoing employment.

The formal capability procedures at Appendix 2 will be used in circumstances where a medical opinion indicates that a return to work is considered unlikely within a reasonable time frame.

4.2. Monitoring long term absence

Long term absence refers to absence which is longer than 20 working days or 28 calendar days including weekends. This also includes absence which is shorter than 20 working days or 28 days but can reasonably be expected to last longer or absence which has particular workplace significance, such as work-related stress or a workplace accident. See also Section 1.10 'Line Management responsibilities' for health issues that require immediate advice from HR & OD. In such instances, the policy can be adapted to meet the individual circumstances whilst remaining in line with its principles.

4.3. Communicating during absence

4.3.1 Frequency and purpose of contact

Employees are required to contact their line manager regularly during their absence (see Section 2 'Reporting absence'). For longer term absence, which is likely to continue for an extended period, employees can reduce the frequency of contact to two-weekly intervals.

However, managers also have the right to keep in contact with their employees and will be sensitive in this regard. Contact will normally be on an agreed basis and will not be excessive. This regular contact between employee and manager is essential as it enables the employee to remain connected to the workplace and helps the manager to plan the work programme and staffing requirements. Once line

managers have put in place transitional arrangements to cover the employee's work commitments, managers will normally restrict their contact to reasonable enquiries about their employee's absence and not on-going work issues.

The main purpose of this contact is to cover the following:

- up-date the manager on the employee's health status (especially after GP, OHS or hospital appointments)
- up-date the manager on the timing of a potential return to work
- discuss any support that can be provided by NES to enable a return to work
- up-date the employee on any relevant developments in the workplace.

4.3.2 Buddy system

It is important that employees continue to feel engaged with NES as this can support and ease their return to work when the time comes.

Although the manager can update employees on general workplace activities, it can be preferable for a nominated colleague (or colleagues) to keep in touch on an agreed basis.

Their role would be to update the employee on informal matters, such as general news, shared interests, events, births, marriages etc.

4.3.3 Receiving corporate communications

When employees are on sick leave, they should still receive corporate communications to help them keep in touch with the workplace.

Managers are responsible for ensuring that absent employees (subject to employee consent) are sent all suitable communications including, for example, newsletters, vacancy bulletins etc.

4.4. Meetings

Although telephone contact is useful on an on-going basis, from time to time employees will be required to attend meetings with their manager. Managers will be sensitive to the frequency and location of such meetings. They can be held at the workplace, at the employee's home or at another suitable venue as agreed.

These meetings will normally involve a representative from HR & OD and the employee is welcome to bring a staff representative or work colleague.

The purpose of these meetings is to cover the following:

- how NES can best support the employee during the period of absence

- whether the employee requires any support and / or reasonable adjustments (if classed as disabled under the Equality Act 2010 to assist a return to work
- a potential date for a return to work
- arrangements for an appointment with the Occupational Health Service
- the reasons for absence and whether these have any implications for the workplace.

The meeting will be documented and a summary of the discussion provided to the employee in writing.

Once the medical report has been received, a further meeting will normally be convened to discuss it and consider the implications for a return to work.

4.5. Returning to work

4.5.1 Medical Certificate

Once an employee is fit to return to work, the date of return to work must be completed on the medical certificate and passed to Central HR.

4.5.2 *Employees with disabilities*

NES is committed to recruiting employees with disabilities and to retaining employees who develop disabilities during their employment.

Managers will work with employees and medical advisers to identify any reasonable adjustments which can be made to their jobs or to the workplace to assist their return to work and enable their regular attendance. (See Section 1.5 'Positive about disability'.)

Examples of reasonable adjustments can include:

- part time employment
- job sharing
- phased return to work
- allocation of duties to one or more other colleagues
- additional training or re-training
- time off for rehabilitation or treatment
- flexible working options (eg homeworking)
- redeployment
- acquiring or modifying equipment
- increasing supervision.

A government grant may be available to assist with any additional costs of making reasonable adjustments, as long as it is applied for before costs are incurred. The 'Access to work' scheme is managed by Jobcentre Plus and can provide whole or

part-funding for up to three years to cover the additional costs of employing a person with disabilities.

Employees with disabilities have a responsibility under the Equality Act to co-operate with the reasonable adjustments proposed by NES.

4.5.3 Phased return to work

Employees who are returning to work after a long break may need a phased reintegration to working life. This can result in employees being able to return to work earlier than would otherwise be possible, without adversely affecting their health.

Managers should discuss with the employees a tailored induction package and/or training programme to re-orientate them to their job and to the organisation. Advice regarding the structure of any phased return arrangements would normally be sought from the Occupational Health Service/GP.

NES is committed to assisting employees by reviewing a range of short term options. Managers should consider the following options (and any others) as appropriate:

- working fewer days
- working reduced hours
- restricting job responsibilities
- working in a different location (perhaps working from home, or closer to home)

Although only employees with disabilities are entitled to consideration of 'reasonable adjustments' under the Equality Act, managers will be creative and flexible in considering ways in which the organisation can reasonably assist all employees' return to work.

A time frame will be set for employees to resume their normal job responsibilities and contractual working pattern. Managers will meet regularly with employees to monitor progress and continue to monitor medical reports.

Where employees are unable to contribute fully to the workplace within a reasonable time frame, consideration will be given to whether the temporary arrangement can be made permanent. If it can, this will result in a new employment contract. If it cannot be accommodated, consideration will be given to redeployment or to ending the employment contract on grounds of capability. See below (and see Appendix 2) for more information.

4.5.4 Redeployment

In some instances, employees may not be fit enough to return their original job.

Further information on redeployment can be found in the NES Organisational Change Policy and Procedures which includes the Redeployment Policy and Guidance.

Further details are also contained in the NES Disability Policy.

4.6. Non-return to work

4.6.1 Determining fitness for work

In a small number of cases, employees are unable to return to work within an acceptable time period. The formal capability procedures (see Appendix 2) will be followed and all reasonable options will be considered before deciding that an employee's job cannot be held open for him/her any longer.

It is not necessary for an employee's sick pay to have expired before consideration is given to ending the contract on the grounds of capability. It is, however, a last resort and, when considering dismissal, managers must have:

- taken into account written medical advice and other factors
- consulted with the employee
- balanced the employee's likely future health against the organisation's needs
- considered offering redeployment
- explored other employment options and found these to be unavailable or impractical.

4.6.2 Dismissal on the grounds of capability

The formal capability procedures at Appendix 2 will be followed and the decision to dismiss should never come as a surprise to affected employees. Their line manager and a representative from HR & OD will normally have met with them several times to review medical reports, discuss progress, assistance with a return to work and, eventually, the possibility of dismissal if a return to work is not possible within an acceptable period.

At all formal ill health meetings, employees will be advised that they can bring a staff representative or work colleague with them. Before the final meeting, the employee will be sent a letter formally advising them that the outcome of the meeting might be dismissal on the grounds of capability.

After the meeting, the employee will be advised in writing of the outcome and their right to appeal against the decision (See Appendix 3).

It is important to note that dismissal on these grounds does not mean that the sickness was not genuine. It does mean that NES was unable to continue to hold the job open beyond an acceptable period and there were no alternatives which would have made an earlier return to work possible.

4.6.3 Ill health retirement

In some cases, the OHS physician may recommend ill health retirement for eligible members of the NHS pension scheme. There are two tiers of ill health retirement benefits and the benefits will depend on whether or not the employee is capable of undertaking employment elsewhere. An ill health retirement application will require to be completed and submitted to SPPA together with full medical evidence.

Payment of a pension on the grounds of ill health can only be made following an assessment by the independent Medical Advisor appointed by SPPA. Members leaving NHS employment on ill health grounds will not automatically qualify for pension payments.

Further details can be found in the SPPA website (www.sppa.gov.uk)

Ratified by the Staff Governance
Committee on 11 February 2009

Reviewed by the Partnership Forum as an interim measure until PIN Guideline received October 2013

Appendix 1

Sick pay allowances

The following information is an extract from The NHS Terms and Conditions of Service Handbook, Section 14 'Sickness Absence'. Further guidance may be sought from the HR Business Partner

Sick pay allowances are payable subject to the conditions within the Handbook and this policy being met. Further details on the conditions can be found at <http://www.nhsemployers.org/pay-conditions/agenda-for-change.cfm>

Scale of Allowances

*'Employees absent from work owing to illness will be entitled, subject to the conditions of this agreement, to receive sick pay in accordance with the scale below.**

- *During the first year of service – one month's full pay and two months' half pay*
- *During the second year of service – two months' full pay and two months' half pay.*
- *During the third year of service – four months' full pay and four months' half pay.*
- *During the fourth and fifth years of service – five months' full pay and five months' half pay.*
- *After completing five years service – six months' full pay and six months' half pay.*

In the event of employment coming to an end, entitlement to sick pay ceases from last day of employment.

The definition of full pay will include regularly paid supplements, including any recruitment and retention premia, payments for work outside normal hours and high cost area supplements. Sick pay is calculated on the basis of what the individual would have received had he/she been at work. This would be based on the previous three months at work or any other reference period that may be locally agreed.

Full pay needs to be inclusive of any statutory benefits (so as not to make sick pay greater than normal working pay). The combined addition of statutory sick pay to half pay must not exceed full pay.

* Note – The scale of allowances will include weekends'

Calculation of Allowances

The period during which sick pay should be paid and the rate of sick pay for any period of absence is calculated by deducting from the employee's entitlement on the first day of sickness the aggregate periods of paid sickness absence during the 12 months immediately preceding that day. In aggregating periods of absence due to illness no account will be taken of:

- *Unpaid sick absence;*
- *Injuries or diseases sustained to members of staff in the actual discharge of their duties through no fault of their own;*
- *Injury resulting from crime of violence not sustained on duty but connected with or arising from the employee's employment where the injury has been the subject of payment by the Criminal Injuries Compensation Board (England and Wales), the Criminal Injuries Compensation Authority (Scotland) and the Compensation Agency (Northern Ireland);*
- *As above, but an injury which has not been the subject of payment by the Board on grounds that it has not given rise to more than three weeks' loss of earnings or was not one for which compensation above the minimum would arise.*

Sick pay paid to an employee under this scheme when added to any statutory sickness, injuries or compensation benefits, including any allowances for adult or child dependents, must not exceed full pay (see paragraph above).

Appendix 2

Formal Capability Procedures

Sections 3 and 4 of the Policy cover the process for managing absence. Employees are monitored and supported by their managers throughout both short term and long term absence. During regular meetings, medical assessments are reviewed and the working environment and job requirements discussed with a view to assisting an early return to work and sustained attendance.

If, however, the manager and the HR representative conclude that the employee is unlikely to work on a sustainable basis within a reasonable timescale, consideration will be given to dismissing the employee on the grounds of capability. Employees will normally be advised twice, in writing, that their continued absence could lead to dismissal.

Whilst it is acknowledged that discussions concerning the potential dismissal of an employee may cause anxiety during ill health, it is essential that the employee understands their employment position and the consequences of their absence.

In some circumstances, the OHS may advise that the nature of the ill health absence is such that a sustained return to work is not expected. In these cases, it may not be appropriate to hold all the formal meetings covered by this procedure and management have the discretion to start at Stage 2 or 3. In all cases, employees have the right to appeal (see Appendix 3).

Initial approach:

Before using the formal capability procedures detailed below, the line manager will arrange meetings to discuss the absence, identify causes, discuss support, consider an OHS referral, and discuss when attendance is likely to reach an acceptable level.

Formal capability approach:

Employees have the right to be accompanied by a Trade Union/professional organisation representative or by a work colleague at the following formal meetings.

A different manager, from the same Directorate wherever possible, will be involved at each stage to ensure greater fairness within the procedure and to enable the identification of additional support measures not previously considered at an earlier stage of the process (unless it is specifically requested that a different Directorate be approached). This will help to ensure that all potential support measures have been identified and exhausted before any decision is taken to progress to the final stage of the procedure;

Stage 1 –

The line manager will write to the employee, giving at least five working days' notice of a formal meeting, which will also be attended by a HR representative. The letter will include:

- the purpose of the meeting
- the fact that the meeting covers Stage 1 of the formal capability procedure

- a summary of the absence and that this cannot be sustained by NES
- any relevant supporting documentation
- a summary of the informal discussions to date
- the right to representation.

The purpose of the meeting is to:

- advise employees that the level of absence is unacceptable
- review the reason for absence
- review the support provided so far
- review the steps taken to achieve sustainable attendance and consider new steps, as appropriate
- set timescales for monitoring and review
- advise employees that they are likely to progress to Stage 2 if sustainable improvements are not demonstrated.

A letter summarising the meeting, expectations and a timescale for further review will be sent to the employee within five working days of the meeting. The employee will be given the right to appeal against the Stage 1 warning.

Note:

Absence should continue to be monitored after Stage 1 and progress meetings held as required. If sustainable improvement is demonstrated, a Stage 2 meeting is not required unless attendance reduces again.

Stage 2 –

If the employee has not returned or attendance has not improved sufficiently within the given timescales, a second formal meeting will be held under Stage 2 of the formal capability procedure. This will also be attended by a HR representative. As before, the letter will cover the following:

- the purpose of the meeting
- the fact that the meeting covers Stage 2 of the formal capability procedure
- a summary of what was decided at Stage 1 and any subsequent discussions
- a summary of the absence and that this cannot be sustained by NES
- any relevant supporting documentation
- the right to representation.

The purpose of the meeting is to:

- advise employees that the level of absence is still unacceptable
- review the support provided
- review the steps taken to achieve a return to work and consider new steps, as appropriate
- set timescales for monitoring and review
- advise employees that they are likely to progress to Stage 3 (ie dismissal) if sustainable improvements are not demonstrated.

If not already covered, consideration can be given to temporary or permanent redeployment options where appropriate (see Section 4.5.4).

A letter summarising the meeting, expectations and a timescale for further review will be sent to the employee within five working days of the meeting. The employee will be given the right to appeal against the Stage 2 warning.

Note:

Absence should continue to be monitored after Stage 2 and progress meetings held as required. If sustainable improvement is demonstrated, a Stage 3 meeting is not required unless attendance reduces again.

Stage 3 –

If the employee has not returned or attendance has not improved sufficiently within the given timescales, a third formal meeting will be held under Stage 3 of the formal capability procedure.

This meeting will be called by the manager who has authority to dismiss. It will be attended by the line manager and a HR representative. In the letter, the employee will be advised that this meeting could lead to dismissal on the grounds of capability.

This is the last opportunity to review any OHS reports, and any reasonable support that may be available to the employee. The employee will be advised of their attendance rate and that it cannot be sustained by NES. Consideration will also be given to ill health retirement (see Section 4.6.3 'Ill health retirement'), if this is recommended by the OHS.

Should the dismissing manager believe that sufficient improvement is likely within a reasonable timescale, dismissal will not normally take place. A letter summarising the meeting, expectations and a timescale for further review would be sent to the employee within five working days of the meeting. The meeting would be regarded as a Stage 2 meeting, and a further Stage 3 meeting can be held in due course as required.

Should the dismissing manager believe that sufficient improvement has not been made and ill health retirement is not a feasible option, s/he will consider permanent redeployment (at the same or a lower pay level). If redeployment is not available, or is not accepted by the employee, s/he will be dismissed.

The dismissal letter will be prepared by the dismissing manager and include:

- the date of the dismissal meeting and who attended.
- a summary of the meeting.
- the reasons for the dismissal.
- the effective date of dismissal.
- any administrative or financial arrangements
- the right to appeal.

Appendix 3

Appeal procedure

Employees have the right to appeal at each Stage of the formal capability procedures if they believe the decision was unjust. Management will write to employees to advise them of the outcome of each Stage and, should employees wish to appeal against the decision, they should write a letter which must be received by management within 10 working days.

Wherever possible, the appeal hearing will be heard within one month of the appeal letter.

At all levels of appeal, the employee has the right to be accompanied by a Trade Union/Professional Organisation representative or work colleague

Stages 1 and 2

When appealing against Stage 1 or Stage 2 decisions, employees should write to their manager's manager and explain why they believe the decision taken was unjust.

Stage 3/Dismissal

When appealing against dismissal at Stage 3, employees should write to the Chief Executive and explain why they believe the decision taken was unjust.

Employees will be asked to provide a written case at least 10 working days before the hearing and indicate whether they intend to call witnesses. If this is the same as the appeal letter, the employee should confirm this in writing.

The manager responsible for the decision will also be asked to provide a case in support of their decision, at least 10 working days before the hearing. S/he needs to advise management whether s/he intends to call witnesses.

The written cases will be sent to the employee, the manager and the panel at least 7 days before the hearing, wherever possible, along with the names of any witnesses.

In each case, the senior manager will contact their HR representative to advise him/her of the appeal. A small panel will be convened (usually consisting of the senior manager and a HR representative) to hear the case. Wherever practical, the panel will not have been previously involved in the case. The employee will present their case and the manager who took the decision will be asked to justify their decision.

The senior manager will then decide whether to: uphold the employee's appeal; or to uphold the manager's decision; or, in some instances, to recommend alternative action.

Appendix 4 Occupational Health Provider

If an employee considers that they have significant health problems, it is suggested that advice is sought direct from their own General Practitioner. Alternatively advice may be sought from the Occupational Health provider currently used by NES

National Services Scotland
Occupational Health
Healthy Working Lives
Gyle Square
Area 107B
1 South Gyle Crescent
EDINBURGH
EH12 9EB

Email: nss.occupationalhealth@nhs.net

Tel: 0131 275 6360

Fax: 0131 275 7607