Torbay and South Devon NHS Foundation Trust

ATTENDANCE POLICY
(H33)

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Author:	HR Advisor		
Directorate:	People and Education		
Approval Route			
Approved By:		**Date Approved:**	
Partnership Forum		January 2020	
Partnership Forum and Exec		March 2022	
Links or overlaps with other policies:			
Disciplinary (H1)			
NHS Injury Allowance Policy (H3)			
Special Leave Policy (H9)			
Organisational Change Policy (H29)			
Retirement Policy (H34)			
Annual Leave Policy (H31)			
Equality and Diversity Policy (ED1)			
Reasonable Adjustment Policy (ED4)			
Health and Safety Policy			
Infection Control Surveillance Policy			

Amendment History

Issue	Status	Date	Reason for Change	Authorised
1	Approved	23/01/2018	New Policy	HR Manager
1.1	Active	16/01/2020	Amendment to policy to include advice re OH for Mental Health related illness	Workforce and OD Practitioner
1.2	-	03/03/2022	General two-year review	HR Advisor
1.3	Approved	01/04/2022	Amendment to use of annual leave for phased return to work	HR Advisor
1.4	-	04/04/2023	Review of section 8 to be consistent with points 17.1 – 17.3 in the Annual Leave Policy (H31)	HR Advisor
1.5	-	08/001/2025	Updated list of those designated to hear appeals to match current Trust management structure. Updated references of People Hub to Employee Relations.	ER Team Lead

Rapid (E)quality Impact Assessment (EqIA) *(for use when writing policies)*

Policy Title (and number)	Attendance Policy (H33)	**Version and Date**	v1.5 – January 2025
Policy Author	ER team		

An (e)quality impact assessment is a process designed to ensure that policies do not discriminate or disadvantage people whilst advancing equality. Consider the nature and extent of the impact, not the number of people affected.

Who may be affected by this document?

Patients/ Service Users ☐	Staff ☒	Other, please state… ☐

Could the policy treat people from protected groups less favorably than the general population?
PLEASE NOTE: Any 'Yes' answers may trigger a full EIA and must be referred to the equality leads below

Age	Yes ☐ No☒	Gender Reassignment	Yes ☐ No☒	Sexual Orientation	Yes ☐ No☒
Race	Yes ☐ No☒	Disability	Yes ☐ No☒	Religion/Belief (non)	Yes ☐ No☒
Gender	Yes ☐ No☒	Pregnancy/Maternity	Yes ☐ No☒	Marriage/ Civil Partnership	Yes ☐ No☒

Is it likely that the policy could affect particular 'Inclusion Health' groups less favorably than the general population? (substance misuse; teenage mums; carers[1]; travellers[2]; homeless[3]; convictions; social isolation[4]; refugees)	Yes ☐ No☒

Please provide details for each protected group where you have indicated 'Yes'.

VISION AND VALUES: Policies must aim to remove unintentional barriers and promote inclusion

Is inclusive language[5] used throughout?	Yes ☒ No☐ NA ☐
Are the services outlined in the policy fully accessible[6]?	Yes ☒ No☐ NA ☐
Does the policy encourage individualised and person-centered care?	Yes ☒ No☐ NA ☐
Could there be an adverse impact on an individual's independence or autonomy[7]?	Yes ☐ No☒ NA ☐

EXTERNAL FACTORS

Is the policy a result of national legislation which cannot be modified in any way?	Yes ☐ No☒

What is the reason for writing this policy? (Is it a result in a change of legislation/ national research?)

Framework for managing attendance in the workplace. Harmonization of separate policies into one

Who was consulted when drafting this policy?

Patients/ Service Users ☐	Trade Unions ☒	Protected Groups (including Trust Equality Groups) ☐
Staff ☒	General Public ☐	Other, please state… ☐

What were the recommendations/suggestions?

Does this document require a service redesign or substantial amendments to an existing process? ***PLEASE NOTE: 'Yes' may trigger a full EIA, please refer to the equality leads below***	Yes ☐ No☒

ACTION PLAN: Please list all actions identified to address any impacts

Action	Person responsible	Completion date

AUTHORISATION:
By signing below, I confirm that the named person responsible above is aware of the actions assigned to them

Name of person completing the form	ER Team Lead		
Validated by (line manager)	ER Service Manager		

Please contact the Equalities team for guidance: For Torbay and South Devon NHS Trusts, please call 01803 656676 or email pfd.sdhct@nhs.net **This form should be published with the policy and a signed copy sent to your relevant organisation.**

[1] Consider any additional needs of carers/ parents/ advocates etc, in addition to the service user
[2] Travelers may not be registered with a GP - consider how they may access/ be aware of services available to them
[3] Consider any provisions for those with no fixed abode, particularly relating to impact on discharge
[4] Consider how someone will be aware of (or access) a service if socially or geographically isolated
[5] Language must be relevant and appropriate, for example referring to partners, not husbands or wives
[6] Consider both physical access to services and how information/ communication in available in an accessible format
[7] Example: a telephone-based service may discriminate against people who are d/Deaf. Whilst someone may be able to act on their behalf, this does not promote independence or autonomy

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1 Policy Statement

1.1 The Trust recognises that good staff health and well-being is vital for ensuring that it can provide effective patient care and continually improve the quality of services to patients. The Trust's approach to staff health and well-being is centred on prevention, promotion of positive health and, where sickness occurs, enabling staff to return to work as early as appropriate.

2 Purpose and Scope

2.1 The purpose of this policy is to provide a clear and effective process to ensure equitable, appropriate and sensitive management to help staff maximise their attendance, support staff that are sick to enable as early a return to work as appropriate and to ensure that reasonable and timely action is taken in managing attendance.

2.2 This policy applies to all employees of Torbay and South Devon NHS Foundation Trust.

3 Equality and Diversity Statement

3.1 The Trust is committed to preventing discrimination, valuing diversity and achieving equality of opportunity. No person (staff, patient or public) will receive less favourable treatment on the grounds of the nine protected characteristics (as governed by the Equality Act 2010): sexual orientation; gender; age; gender re-assignment; pregnancy and maternity; disability; religion or belief; race; marriage and civil partnership. In addition to these nine, the Trust will not discriminate on the grounds of domestic circumstances, social-economic status, political affiliation or trade union membership.

3.2 The Trust is committed to ensuring all services, policies, projects and strategies undergo equality analysis.

4 Roles and Responsibilities

4.1 Employees

Every employee, who has a contract of employment with the Trust, has certain obligations with regard to sickness absence. Briefly these are:

- To ensure regular attendance at work;
- To be familiar with the arrangements for reporting sickness absence;
- To provide appropriate and timely certification of sickness absence;
- To maintain regular contact with their line manager or nominated person when absent from work;
- To attend medical appointments (e.g. with Occupational Health) to obtain advice regarding fitness for work, as required;

- To co-operate fully in the use of the Trust's Attendance Policy;
- If on a waiting list for any form of medical intervention, to ensure the individual in charge of their care is aware that they are a member of staff and can be contacted at short notice in the event of a cancellation and that this has been duly noted;
- Staff should be familiar and aware of their legal responsibilities under the Health and Safety at Work Act. The Trust has adopted a general and a more detailed Health and Safety at Work Policy, available on the intranet;
- To safeguard their health and not take part in activities or adopt lifestyles that might have an adverse impact on their health.

4.2 Line Manager

The role of the line manager is critical in ensuring the effective application of the Attendance Policy.

The line manager is responsible for:

- Ensuring that all staff within their department understand and follow the procedures for reporting sickness absence;
- Managing staff absence in accordance with the Trusts' Attendance Policy.
- Maintaining regular contact with staff on sick leave. Frequency will depend on the nature of the absence and operational requirements (e.g. covering shifts).
- Treating all staff who suffer ill-health, confidentially, sympathetically, fairly and consistently;
- Monitoring the attendance levels of staff and taking the appropriate action where necessary;
- Maintaining accurate documentation of absences;
- Informing the Payroll Department of all sickness absences, ensuring the self/medical certificates are received on dates due and that they are processed appropriately;
- Keeping staff who are absent informed of significant changes/events within the Department/Trust;
- Involving Human Resources and Occupational Health in a timely manner;
- Where formal referral to Occupational Health is required, supplying adequate and appropriate information together with specific questions to be answered rather than a general request for advice;
- Ensuring that in dealing with sickness absence the department is complying with the Equality Act (2010) and the Trust's wider policies on equal opportunities and dignity at work, seeking the appropriate advice and support from Human Resources and Occupational Health, as required;

- As far as reasonably practicable ensuring that on the first day of the employee's return to work a Return to Work Interview is conducted and the appropriate documentation completed.

4.3 Employee Relations team

Human Resources staff are available to provide advice and guidance on the application of this policy. HR advice should always be sought prior to issuing any formal warning to ensure a consistent approach. An Employee Relations representative will attend meetings at stages 3 & 4 where formal warnings may be issued.

4.4 Occupational Health Service

The Occupational Health Service offers confidential advice and support to the employee, manager and the Employee Relations rep during a member of staff's absence. Advice will include the employee's fitness for work and any adjustments at work which will assist the employee to work or return to work. Advice will be based on knowledge of the illness and the employee's job. In certain circumstances and with the individual's consent, Occupational Health will seek the opinion of the employee's General Practitioner and/or Specialist or arrange an appointment for an independent specialist opinion.

In the event of a referral from the manager, providing sufficient information is provided and the manager has confirmed they have discussed the referral with the employee, Occupational Health will arrange an appointment and send a copy of the report to the employee, manager and relevant Employee Relations representative when the consultation has been completed. The employee has the right to see the report prior to it being sent to the manager/Employee Relations representative.

Consideration of referral to Occupational Health is recommended at the earliest opportunity in all cases of mental ill-health related absence.

5 Absence Reporting Procedure

5.1 As soon as an employee is aware that they will be unable to attend work, they must notify their line manager or deputy as soon as possible and no later than one hour before their starting time. This should normally be by a telephone call but when the manager/deputy is unavailable email or text may be used. Under these circumstances the manager/deputy will aim to follow up with a telephone conversation with the individual member of staff at the first opportunity.

In exceptional circumstances, when an employee is unable to contact their line manager or deputy personally, a friend or family member should telephone on their behalf but the employee should follow this up with a personal call themselves as soon as possible.

5.2 Failure to report sickness absence correctly may jeopardise an employee's entitlement to sick pay.

5.3 Employees are required to notify their manager as soon as reasonably practicable once they are fit to return to work, and, wherever possible, in advance of the next rostered shift. Failure to do so will extend the recorded length of the absence.

5.4 Employees who repeatedly fail to report their sickness absence in accordance with this procedure may be subject to disciplinary action in line with the Trusts' Disciplinary Policy (H1).

5.5 A Return to Work interview must be completed upon the employee's return from all sickness absence episodes.

5.6 It is recognised that it is not always possible for some managers to complete the Return to Work Interview on the first day back, and therefore it must be completed no later than 72 hours after the return. In these cases the delay and reasons must be documented on the Return to Work record form.

6 Certification Requirements and Sick Pay

6.1 Employees who report their absence correctly in line with the policy and who provide the Trust with appropriate certificates will be entitled to two kinds of pay during any period of sickness:

a) Statutory sick pay

b) Occupational sick pay

6.2 Entitlements to occupational sick pay are as detailed in contract of employment and the Agenda for Change Terms and Conditions handbook.

6.3 <u>1 - 7 days' sickness absence</u>
On returning to work, an employee must complete a Trust "self-certificate". The appropriate manager must receive the Self Certificate within eight calendar days of the first day of sickness.

6.4 <u>8 or more days' sickness absence</u>
On an employee's eighth day of sickness, they must produce a Statement of Fitness for Work (Med 3) certificate from their doctor to certify sickness. The responsibility for submitting Med 3 certificates to their line manager lies with the employee.

6.5 Employees are able to return to work prior to the date specified on a fit note provided that both employer and employee are in agreement and any necessary support measures are implemented.

6.6 If an employee is subject to any review process for the management of attendance consideration may be given to the withdrawal of the right to self-certification. Any costs incurred for the provision of a medical certificate in this situation will be reimbursed by the Trust.

7 Infection Control & Hospital Acquired Infection

7.1 In cases where an infectious outbreak has been recognised and in accordance with Infection Control policies, a member of staff is precluded from returning to work for 48 hours after the cessation of symptoms, the 48 hour period will be recorded as medical suspension and will not be monitored as part of the short term absence procedure.

7.2 In order for the 48 hour medical suspension to be accurately recorded, employees must inform their manager when symptoms stop as per the normal reporting procedure.

7.3 The Trust encourages all employees to be vaccinated against flu by providing free annual flu vaccinations. Employees have a responsibility to consider the impact that contracting influenza would have on their work, family and personal life, and managers have a responsibility to increase awareness of the availability of the vaccine and to allow time for their staff to attend the immunisation clinics.

8 Annual Leave and Public Holidays

8.1 If an employee falls unwell whilst on annual leave, and wishes to treat this period as sick leave the employee must notify their line manager on their first day of sickness absence and request the period to be recorded as sickness. The employee may be requested to provide medical evidence such as a fit note, signed hospital admission/ discharge notes, referral etc as confirmation of the sickness period, and to enable the leave period to be treated as sickness absence.

8.2 Annual leave can only be claimed back from the point of becoming sick/ unwell. Retrospective notification and/or the submission of medical evidence will not be accepted and the time off will remain recorded as annual leave. If a request to treat annual leave as sick leave is granted, then the employee will be able to take the annual leave at another time, in agreement with their line manager and any local arrangements.

8.3 Employees continue to accrue annual leave whilst sick and where unable to take it in the current holiday year due to sickness absence are entitled to carry the statutory annual leave entitlement (20 days pro rata minus any leave taken in that leave year) forward to the next leave year.

8.4 An employee may wish to take a period of annual leave while absent from work due to sickness, for example, to aid their recovery. They should request annual leave in the usual way by following the annual leave process of the department. The request should then be considered by the manager and, if required, in consultation with Occupational Health. If an employee has a pre-booked period of annual leave which

falls during a period of long term sickness absence, then they may ask for this holiday to be deferred to a date when they are no longer on sickness absence. This request must be made prior to the start of the annual leave as it cannot be reinstated as annual leave retrospectively. Alternatively, if the employee wishes to take the leave as it has been previously booked, then, subject to the agreement of the manager and if appropriate, Occupational Health, then this may be taken as annual leave.

8.5 Employees will not be entitled to an additional day off if sick on a Bank/Public holiday and these hours are not accrued. ESR and annual leave records will need to be amended accordingly.

9 Accidents and Injuries

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

9.2 An employee who is absent as a result of an accident is not entitled to sick pay if damages are received from a third party. Employers will advance to an employee a sum not exceeding the amount of sick pay payable under this scheme providing the employee repays the full amount of sickness allowance to the employer when damages are received.

9.3 It is important to follow the appropriate Accident Reporting policies and procedures if an employee is injured or incapacitated whilst at work. In certain circumstances an employee who sustains an injury at work may be eligible under the Trust Injury Benefit Scheme to claim Trust Injury Allowance (*see Trust Injury Allowance Policy (H3)*).

10 Medical Opinion

10.1 Managers may, at any time, require an employee absent from work due to illness to attend an appointment with Occupational Health to obtain a medical opinion regarding their fitness for work. Furthermore, staff do not need to be off sick to be referred by their manager for a medical opinion. If an employee does not consent to a referral or attend an appointment, decisions about their employment may be made without the benefit of the professional medical advice and guidance that could be provided by a medical practitioner.

11 Other Employment

11.1 Subject to the caveats in 11.2 below, if an employee is absent on sick leave it is unacceptable that they work overtime or bank shifts for the Trust or undertake any work for another employer or on a self-employed basis including voluntary or unpaid work. Abuse of the sick pay arrangements may be deemed fraudulent behaviour and may result in disciplinary action depending on the circumstances.

11.2 In addition it may be considered an offence under the Theft Act (1988) or the Fraud Act (2006) and therefore the employee may face further civil and/or criminal proceedings against them. In certain circumstances (with the exception of the hours where the employee is specifically contracted to work for the Trust) there may be exceptions granted, for example, where there are differing job requirements, but this will need to be discussed between the employee, the manager, Occupational Health, and an HR representative and authorised in writing prior to commencement of the activity.

11.3 If an employee is under formal review in accordance with this policy, managers have the right to stop the employee undertaking overtime or bank work during the period of the review if it is thought it may adversely affect improvement in attendance levels. Bank shifts may also not be permitted during periods of a phased return.

12 Absence Related to Bereavements or Parental/Carer's Responsibilities

12.1 Please refer to the Special Leave Policy (H9) for instances of absence due to a bereavement or emergency and ensure that the reason for this absence is recorded correctly rather than being classified as sickness absence.

13 Sickness Absence Management Procedure

13.1 When an employee's absence record meets any one of three absence triggers the sickness absence management procedure must be followed. These triggers are:

- ✓ **A cumulative total of 15 calendar days over two or more occasions in a rolling period of 12 months;**
- ✓ **A total of four episodes over a rolling period of 12 months;**
- ✓ **Any pattern of absence including part day absences.**

13.2 An employee may enter the process at an escalated level if:

- Within 12 months of their start date with the Trust an employee meets any one of the above triggers they may enter the process at an escalated stage, up to and including a stage four Final Absence Review Meeting;
- There is a pattern of repeated reviews and spent warnings.

13.3 Stage 1 Informal Review Meeting

Once a trigger has been hit stage 1 will be commenced. The Return to Work (RTW) Interview form is completed and it is recorded that a stage 1 informal review meeting has taken place by completing the appropriate section on the RTW form.

This stage acts as an indicator to employees that their absence is causing concern and that monitoring has commenced. The employee's attendance will be monitored for a period of three months, with the objective set of an acceptable improvement in

their attendance. Employees must also be advised about the implications of a lack of improved attendance and the possibility of receiving a first written warning.

If there is further absence during the review period but satisfactory improvement has been demonstrated, then an informal absence review meeting will be undertaken as part of the Return to Work Interview. Where they carry on triggering the employee would continue to be monitored until their absence rate falls below the Trust trigger levels, or

If there is a further absence during the review period and the employee has failed to demonstrate satisfactory improvement then the employee will be required to attend a Stage 2 review meeting.

13.4 Stage 2 Review Meeting

The employee will be invited, in writing, to attend the meeting with their manager, giving at least five working days' notice, to discuss their absence.

The employee will have the right to be accompanied at the meeting by a Trade Union representative or by a workplace colleague.

If after discussion the manager considers that there has not been a satisfactory improvement in attendance the employee may be issued with a first written warning and the monitoring period extended. The written warning will remain live for a period of 12 months.

The employee's attendance will continue to be monitored closely for a period of three months. The consequences of not achieving a satisfactory improvement must be clearly indicated, this will involve consideration of the issuing of a final written warning. The outcome of the meeting will be confirmed in writing.

If there is further absence during the review period but satisfactory improvement has been demonstrated, then an informal absence review meeting will be undertaken as part of the Return to Work Interview. Where still triggering, the employee would continue to be monitored until their absence rate falls below the Trust trigger levels, or

If there is further absence during the review period and the employee has failed to demonstrate satisfactory improvement the employee will be required to attend a Stage 3 Review Meeting.

13.5 Stage 3 Review Meeting

The employee will be invited, in writing, to attend a meeting with their manager, giving at least five working days' notice, to discuss their attendance. Also present at this meeting will be an Employee Relations representative to support the process.

The employee will have the right to be accompanied by a Trade Union representative or by a workplace colleague.

If after discussion the manager considers that there has been no improvement in attendance the employee may be issued with a final written warning and the monitoring period extended. The warning will remain live for a period of two years.

The employee's attendance will continue to be monitored closely for a period of three months. The consequences of not achieving a satisfactory improvement must be clearly indicated. This may involve consideration of termination of employment. The outcome of the meeting will be confirmed in writing

If there is further absence during the review period but satisfactory improvement has been demonstrated, then an informal absence review meeting will be undertaken as part of the Return to Work Interview. Where still triggering, the employee would continue to be monitored until their absence rate falls below Trust trigger levels, or

If there is further absence during the review period and the employee has failed to demonstrate satisfactory improvement the employee will be required to attend a Stage 4 Final Absence Review Meeting.

13.6 Stage 4 Final Absence Review Meeting

This will be conducted by a senior manager with the authority to dismiss who has not had any previous involvement in the earlier stages of the process and an Employee Relations representative.

The employee will have the right to be accompanied at the final review meeting by a Trade Union representative or a workplace colleague.

The employee must be informed of the Stage 4 Final Review Meeting date in writing at least 10 working days before the meeting is due to take place. The letter will also indicate that termination of their contract due to capability owing to failure to meet the required levels of attendance in line with the Trusts' Attendance Policy may occur.

The procedure for conducting a Stage 4 Final Review Meeting is outlined in Appendix A

14 Management of Long Term Absence

14.1 The long term absence trigger is:

- ✓ One single episode of continuous absence that lasts for 21 calendar days or more

14.2 When an employee has been absent for three continuous weeks or indicates that this is likely to be the case, the manager must seek advice from HR and arrange a review meeting with the employee if appropriate. Depending on the circumstances, consideration should also be given to a referral to Occupational Health.

14.3 At the review meeting the employee may be accompanied by a trade union representative or work place colleague. The purpose of the meeting will be to review progress and discuss any support and identify any reasonable adjustments to facilitate a return to work.

14.4 The outcome should be an agreed 'action plan' detailing all reasonable steps to be taken to deal with the situation fairly and accomplish a return to work. This is important to ensure that all parties are clear on the options available, discussed and agreed and the necessary requirements for action and expectations of each party to achieve the return.

14.5 If the employee is too unwell or otherwise unable to attend a meeting at the workplace or would prefer not to do so, a home visit should instead be agreed to enable the meeting to go ahead. If the employee is too unwell to attend any meeting, even a home visit, the employee may need to provide a doctors' note stating this. Consideration should then be given as to whether it is possible and reasonable to conduct the meeting over the telephone or through a nominated person. These options would only apply in exceptional circumstances.

14.6 At every stage the manager will need to outline the options available, steps to be taken and potential timescale. If the date of return cannot be determined or is not expected for a prolonged period, it is for the manager, with advice from Occupational Health and the Employee Relations team, to decide what timescale would constitute a reasonable period for a return to work. This will take into account not only the individual circumstances, but also service needs and in particular the effects of continued absence on colleagues, patients and clients.

14.7 When an employee returns to work after a prolonged period of absence the manager should arrange an initial return to work interview and then ensure that follow up discussions occur as necessary. A support programme should also be considered where appropriate. Once the return is complete their absence will be subsequently be managed in accordance with Stage 1 of the Sickness Absence Management Procedure in section 13, or the stage reached at the point the long term absence commenced if applicable.

14.8 **Phased Return to Work**

In some cases, the employee may require a phased return to work. A phased return is suitable for employees where there is a realistic expectation that they will be able to return to their current post, hours and full duties. The phased return may be for one or a combination of the following:

- A period of reduced hours working in the substantive post;

- A period of less demanding duties in the substantive post.

14.9 A manager can agree a phased return with the employee for a period of no more than four weeks. Occupational Health can recommend a phased return for a longer period at their discretion but this should not exceed a total of eight weeks.

14.10 If returning to work from or after the 1st April 2022, during a phased return the following arrangements in relation to pay and reduced hours will be in place:

- During the first two weeks of a phased return you will not be required to use annual leave should you need to return on reduced hours. All contracted hours will be recorded as normal working hours;

- For the remainder of an agreed phased return if you require reduced hours you will need to use annual leave to offset hours not worked. Annual leave hours should be booked and recorded as normal during this time.

- In exceptional circumstances and where there is little or no annual leave, the manager, following discussions with the Employee Relations team, may be able to use discretion to authorise payment for some or all of the hours not worked.

Alternatively, both parties may agree to a reduction in paid hours during the phased return to work programme.

Please note – any return to work prior to the 1st April 2022 will fall under the arrangements of using annual leave for all of a phased return as per the previous version (v1.2) of the Attendance Policy and annual leave will need to be used for any reduced hours.

14.11 If after the agreed period of phased return, or a maximum of eight weeks, the employee is still not able to fulfil the obligations of their substantive post, they will be remunerated for the adjusted role/hours that they are currently performing only, even if this is a temporary arrangement. In addition a review will need to take place on whether the employee will be able to return to their substantive post and the manager will need to meet with the employee and monitor the situation on a weekly basis. If there is no improvement then they will need to refer the employee back to Occupational Health.

14.12 Interim Alternative Work

There will be situations where staff on long term sick leave, whilst unable to return to their substantive posts in the short term, are able, under advice from Occupational Health/GP, to return on a temporary basis to an alternative role (if available) in the Trust. Under such circumstances there will be a formal expectation for an employee to undertake such a temporary role.

If the temporary role matches the normal contractual hours of the employee then they will receive their full contractual pay for those hours. An employee who is unable to undertake alternative work for their full contracted hours will receive

contractual pay for the hours they work and rehabilitation pay (equivalent to sick pay) for the remainder of the hours. This should be for a maximum of up to eight weeks after which it will be reviewed.

14.13 Case Conference

In certain circumstances it may be appropriate for a case conference to take place, though it is not a requirement under this process. This would ordinarily involve a representative from Occupational Health, Employee Relations, Line Management, the individual member of staff and their trade union representative. The purpose of a case conference would be to try and identify an appropriate way forward where there is not clear agreement and understanding and to support the formal process.

14.14 Equality Act 2010

The Equality Act 2010 contains provisions that require employers to ensure that they make reasonable adjustments to the working environment or the duties of a post to prevent disabled employees from being disadvantaged. It may be beneficial to involve outside agencies such as the Job Centre Disability Advisor, Access to Work or Remploy, for advice if appropriate. Further information can be found in the Reasonable Adjustment Policy (ED4).

14.15 The Final Review Process

If it is evident that the employee will not be able to return to their substantive post and, at the latest, prior to the employee entering a nil pay situation, the manager must arrange a final review meeting where a decision can be made on the appropriate way forward. The employee must be informed of the final review meeting date in writing with at least 10 working days' notice, reminding them of their right to representation and that termination of their contract due to capability may be an outcome.

During this final review the manager may consider the following relevant courses of action:

14.15.1 Reasonable Adjustments

With advice from Occupational Health, if appropriate, the manager should consider what, if any, reasonable adjustments could be made to the employee's substantive post to allow a return to work.

14.15.2 Redeployment

On the advice of Occupational Health, redeployment may be considered on the grounds of ill-health. Efforts to obtain a suitable alternative post within the Trust should be made in accordance with the Organisational Change Policy (H29).

14.15.3 Retirement Options

In some cases it may be appropriate to consider the options available under the NHS Pension Scheme, which includes the following options:

- To “wind down” into part-time work in ways that do not significantly reduce pension benefits;
- To “step down” into a less demanding, lower paid role in a way that preserves pension entitlement from the higher level post;
- If an employee is a member of the NHS Pension scheme they may be eligible for ill-health retirement. To be eligible the employee has to be considered permanently incapable of efficiently carrying out the duties of their employment because of illness and injury.

Further details can be found in the Trust’s Retirement Policy (H34).

14.16 **Termination of Contract**

Where an employee is not able to return to their substantive post and all other options as indicated above have been exhausted, then their contract may be terminated on the grounds of capability due to ill health.

The manager who has been involved with the employee during their absence will act as the dismissing officer unless the employee chooses to go through the process outlined at the Stage 4 final review meeting under section 13.7 of the Sickness Absence Management Procedure.

If an employee fails to attend case conferences or a final review meeting without an explanation that is deemed satisfactory to the Trust, the process will continue to progress and a decision may be made in their absence based on the information that is available at that time.

15 Appeals Procedure

15.1 Right of Appeal

The employee will have the right of appeal against the decision to issue them with a first written warning or a final written warning under the Sickness Absence management procedure to a higher level of management not previously involved. The employee will also have the right of appeal against the decision to dismiss them under the Sickness Absence Management Procedure or Long Term Absence Management Procedure, to a Trust Panel (Appendix B)

An employee may choose to appeal because:

- **New evidence comes to light:** The grounds of the appeal must detail the nature of the new evidence;
- **They believe the Sickness Absence Management Procedure/ Long Term Sickness Absence Procedure was not followed correctly:** Summary of why the process was not followed correctly;

- **They believe the sanction applied was unjust:** Details concerning the reason why there is a belief the sanction was unjust.

Failure to provide details of the grounds for appeal as described above may lead to the Trust declining the appeal.

15.2 **Appeal against written warning and a final warning**

An employee who wishes to lodge an appeal against a first written or final written warning must do so to the designated manager not previously involved. It must be lodged in writing within 14 calendar days of the date of the outcome letter confirming the sanction and clearly state the grounds for the appeal.

The designated manager will respond to the appeal within five working days. Following the initial response the employee will be invited to attend an appeal meeting. This should be held within three weeks unless otherwise agreed. The employee has the right to be accompanied at this meeting by a Trade Union representative or workplace colleague.

The manager hearing the appeal will inform the employee of the appeal decision and the reasons for it, in writing, within five working days of the appeal meeting. The employee will also be advised at this point that the manager's decision is final and there is no further level of appeal.

15.3 Appeal against dismissal (Sickness Absence Management Procedure and Long-Term Absence Management Procedures)

An employee who wishes to appeal against dismissal must lodge the appeal in writing to the designated manager within 14 calendar days of the date of the outcome letter and clearly state the grounds for appeal

The designated manager will acknowledge receipt of the appeal within five working days. Following the initial response the employee will be invited to attend an appeal meeting. This will normally be heard within six weeks of the receipt of the appeal unless otherwise agreed. The employee has the right to be accompanied at this meeting by a Trade Union representative or workplace colleague. The procedure to be followed during an appeal meeting is outlined in Appendix C.

The chair of the panel will inform the employee of the appeal decision and the reasons for it, in writing, within five working days of the appeal meeting. The employee will also be advised that the panel's decision is final and there is no further level of appeal.

16 Critical Illness

16.1 The Trust believes it has a responsibility to support employees affected by a critical illness and will be as flexible as possible in its approach, bearing in mind each individual's personal circumstances and the needs of the Trust.

16.2 When an employee is aware that they have a critical illness and the likely impact it will have on their work, they should advise their line manager. This is important to ensure that the line manager can provide the employee the appropriate support.

16.3 As soon as it is possible and appropriate to do so the line manager should meet with the employee and the Employee Relations team to discuss:

- Arrangement for time off for treatment;
- The likely impact of the treatment on the employee's ability to work and whether the employee wants colleagues informed of their condition;
- Referral to Occupational Health for advice on the employee's illness and recommendations for returning to work and time off.

16.4 The employee is entitled to have a Trade Union representative with them at any meetings they attend.

16.5 The Trust will respect an employee's wish for privacy and confidentiality concerning their personal circumstances. At the same time the Line Manager will need to make arrangements to cover sickness absence effectively.

16.6 In the case of a long period of absence, the line manager and Employee Relations representative should ask the employee if they wish their colleagues to keep in contact with them to keep them up-to-date on work matters and, if so, the frequency of the contact. The employee should also be given the option of having regular discussions by phone or in person to review how their absence is being managed.

16.7 It is recognised that in some situations when an employee returns following treatment for a critical illness on a lengthy period of recovery, a phased return as under section 14.8 may need to be modified according to individual circumstances.

16.8 If a prognosis is given that means the employee's illness is likely to be terminal, the employee may decide that they are unable to continue to attend work. However, it may not be appropriate for the employee to formally retire, as death and pensions payments attached to their employment may be important to the welfare of their family or dependants. The Pensions Manager should be contacted at sdhc.pensions@nhs.net to advise the employee of the options available to them.

17 Mental Health

17.1 It is helpful for managers to educate themselves about the conditions in question. Most people have a lower level of general knowledge about mental health conditions than they do about physical illness which can result in misconceptions or poor handling of a situation, and there are lots of resources available to assist greater awareness.

17.2 Communicating with an employee during their absence may be considered fair and appropriate absence management and can be beneficial to the employee so that they do not feel isolated or ignored. However care needs to be taken if the

employee's illness is due to mental health or work-related stress and due regard needs to be made as to whether the employee is happy to have such updates.

17.3 Equally, discretion may need to be applied in respect of who to communicate and meet with when a member of staff is absent with a mental health condition. Ordinarily this would be the individual themselves supported by a trade union representative or workplace colleague but in some circumstances a nominated person could be a clinical professional or a family member or friend both for meeting support and general communication.

17.4 If the reason for absence is a severe and enduring mental health illness recognition of the challenges of returning to work need to be remembered. Although it is improving, there is still a stigma around mental health problems. Many people with mental health issues still feel discriminated against because of their illness, which can make them feel worse and make it harder to recover. This social stigma is a concern for people off work with a mental health problem. Fear of bullying or social exclusion can delay their return or even prevent them returning at all.

17.5 Managers should keep up-to-date with further support available and alternative services and courses that may be accessed (this is true for both physical and mental health issues). They should take opportunities to have 'healthy' conversations and signpost staff and support them in accessing appropriate courses and services, e.g. Wellness Recovery Action Plan (WRAP), HOPE, Resilience, EAP.

18 References

18.1 NHS Terms and Conditions Handbook

19 Contact Details

19.1 Any queries regarding this policy should be directed to the Employee Relations team of the People and Education Directorate:

- Email – tsdft.employeerelations@nhs.net or
- Employee Relations Advice Line – 01803 655754 (ext. 55754)

19.2 The management resource pack is available on ICON to support this policy.

20 Monitoring, Audit and Review Procedures

20.1 This policy will be monitored and audited on a regular basis. A full review will take place every two years by the People and Education Directorate unless legislative changes determine otherwise.

21. Appendix A - Framework for Stage 4 Final Review Meeting

The Chairperson should open the meeting by explaining why the meeting has been called and then conduct it as follows

- Invite the Line Manager to present the management case and to call any witnesses
- Invite the employee (or representative) to ask questions/seek clarification of the Line Manager and witnesses
- Provide the Line Manager with the opportunity to re-examine the witnesses
- Invite the employee (or representative) to present their case and to call any witnesses
- Invite the Line Manager to examine the employee's witnesses
- Provide the employee (or representative) with the opportunity to re-examine the witnesses
- The Panel under the direction of the Chairperson may ask questions at any time and may recall witnesses if necessary
- The Line Manager will be invited to sum up their case
- The employee (or representative) will be invited to sum up their case
- Either party has the ability to call for an adjournment at any stage in the proceedings

22. Appendix B - People authorised to hear attendance related appeals

Action	Appeal
Written warning	• Higher level of management; • Employee Relations representative providing advice and guidance to the panel.
Final written warning	• Higher level of management; • Employee Relations representative providing advice and guidance to the panel.
Dismissal	Higher level of management, not previously involved in the case to include a minimum of two individuals from the list opposite. In addition: • Professional Advisor (if applicable); • Employee Relations representative providing advice and guidance to the panel. • Chief Executive • Executive Directors • Other Directors • Clinical Directors • Care Group Directors • Heads of Service • Matrons • Associate Directors • Deputy Directors • Assistant Directors Chief Pharmacist

23. Appendix C - Framework for an Appeal Meeting

1. Prior to an appeal panel meeting

1.1 Where possible the employee will be given a minimum 14 calendar day's written notice of the date, time and venue of the appeal meeting.

1.2 The employee has the right to appear personally before the panel, either alone or accompanied by a trade union representative or workplace colleague.

1.3 Both parties will be required to submit written statements of the case, together with any supporting evidence a minimum of seven calendar days before the appeal meeting is due to take place, unless otherwise agreed.

1.4 The management statement should set out the reasons for the action taken/conclusion reached. It should be sufficiently detailed to enable the employee to understand on what basis the decision was reached, and to prepare their own case.

1.5 The employee's statement should set out clearly the grounds on which they are contesting the outcome. It should be sufficiently detailed to enable the manager and panel to understand on what basis the appeal was lodged.

The employee must provide details under the grounds for their appeal as follows:

- **New evidence comes to light**
  The grounds of the appeal must detail the nature of new evidence.

- **They believe the Sickness Absence Management Procedure/Long-Term Sickness Absence Procedure was not followed correctly**
  Summary of why the process was not followed correctly.

- **They believe the sanction applied was unjust**
  Details concerning the reason why there is a belief the sanction was unjust.

1.6 Both parties should provide details of any witnesses they intend to call. It will be the responsibility of management and staff side to call and brief their own witnesses.

1.7 Witnesses will not normally be required to be in attendance for the whole of the appeal meeting. Each witness will be called to give evidence and will then leave the room. Wherever possible the witness will be told at this point whether they are free to leave or are likely to be recalled.

1.8 As soon as both statements have been received they should be simultaneously circulated to:

- Panel members hearing the appeal

- Manager representing the case
- Employee
- Employee's representative

2. Conducting an Appeal Meeting

2.1 The Chair of the panel will:

- Introduce those present.
- Explain the purpose of the meeting.
- Advise all present of the order of the procedure, which will be followed at the meeting, and to ensure that it is understood by the employee and where appropriate their representative:

2.2 The following procedure should be adopted:

- The employee or their representative will present their case.
- The employee or their representative will call any witnesses during the presentation of their case.
- The manager may ask questions of the employee and any witnesses, as may the panel.
- The employee or their representative will have a final opportunity to question the witnesses.
- The manager will present their case and call any witnesses.
- The employee or their representative may ask questions of the manager and any witnesses, as may the panel.
- The manager will have a final opportunity to question the witnesses.
- The employee or their representative will sum up their case. The summing up shall not introduce any new matter.
- The manager will sum up their case. The summing up shall not introduce any new matter.
- Following summing up both parties, the employee and the investigating manager will leave the room.

2.3 It should be noted that the panel members may:

- Ask for clarification of any statements made during the course of the proceedings.

- Decide to adjourn at any stage, or at the request of either party. The duration of the adjournment will be made clear and a decision reached on the time the meeting is to be reconvened.

2.4 When all the evidence has been presented the meeting should be adjourned for the panel, with Employee Relations support in attendance, to reach a decision on the case. Both parties may be recalled if points of uncertainty need to be clarified.

2.5 Once a decision has been reached the employee, their representative and the manager should be recalled and informed of the manager's/Chairperson's decision.

2.6 One of three decisions will be made:

- To not uphold the appeal and endorse the action taken.
- To uphold the appeal and reinstate the employee if they were dismissed.
- To uphold the appeal but provide other recommendation(s)

2.7 The decision will be confirmed in writing within seven calendar days.

3.0 Salary arrangements following a successful appeal against dismissal

3.1 Where an employee is reinstated or re-engaged following a successful appeal against dismissal, reimbursement shall be based on the normal rate of pay the employee would have received if they had been working (i.e. inclusive of enhancements etc.). Employment will be viewed as unbroken from the date of the original effective date of dismissal for purposes of calculating continuous employment.