# Sickness Absence and Wellbeing Policy and Procedure

**Reference**
HR/1004

**Approving Body**
Joint Staff Partnership Forum

**Date Approved**
18 June 2019

**Issue Date**
June 2019

**Version**
V4

**Summary of Changes from Previous Version**
Introduction of Improvement Notice at Stage 1 of Short-Term/Frequent Absence procedure
Reviewed and amended to provide concise procedural steps and scope for managers to exercise discretion
Introduction of Disability Leave

**Supersedes**
V3

**Document Category**
Human Resources

**Consultation Undertaken**
Joint Staff Partnership Forum – Policy Sub Group
Joint Staff Partnership Forum

**Date of Completion of quality Impact Assessment**
September 2018

**Date of Environmental Impact Assessment (if applicable)**
N/A

**Legal and/or Accreditation Implications**
- ACAS Code of Practice on Grievance and Disciplinary Procedures
- Equality Act 2010
- Employment Rights Act 1996
- Employment Relations Act 1999
- Employment Act 2002
- Trade Union and Labour Relations (Consolidation) Act 1992
- Trade Union Act 2016

**Target Audience**
This policy applies equally to all employees

**Review Date**
18 June 2021

**Sponsor**
Executive Director of Human Resources and Organisational Development

**Author**
Deputy Director of HR

**Lead Division**
Corporate

**Lead Department**
Human Resources
| Position of Person able to provide Further Guidance/Information | HR Business Partner  
HRBP | Assistant HR Business Partner  
AHBP |
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1.0 INTRODUCTION

1.1 This policy is designed to make sure that the Trust manages sickness absence fairly, consistently and in a sensitive way, whilst diminishing the effect of absences on the delivery of services. This policy & procedure will ensure that mechanisms are in place to report and monitor all sickness absence and to support our staff to improve their health and return to work.

1.2 A toolkit and comprehensive guidance document is available on the Trust intranet. This policy should be read in conjunction with the guidance document.

1.3 The policy also makes provision for disability leave which is recognised as a separate absence type from sickness absence.

2.0 POLICY STATEMENT

2.1 This policy and procedure is applicable to all employees of Sherwood Forest Hospitals Trust. Some specific provisions for Medical staff are included at Appendix 1.

2.2 Throughout this policy & procedure the Trust assumes that ill health is genuine unless there is evidence to the contrary, the reason for taking action will therefore relate to the capability of an employee to undertake their duties and fulfil their contract of employment and will not be because of their illness. Capability is defined in Section 98 (3)(a) of the Employment Rights Act 1996 as follows: “capability, in relation to an employee, means their (cap)ability assessed by reference to skill, aptitude, health or any other physical or mental quality.”

2.3 This policy and procedure is based on the core principles of ensuring an environment where employee health and wellbeing are a priority, in line with the Trust's Happy, Healthy & Here agenda. It encourages managers and employees to clearly identify and understand the causes of sickness absence and initiate timely, appropriate and responsive interventions which facilitate a return to work at the earliest opportunity.

2.4 In its application all employees are to be treated in a fair, consistent and compassionate manner and will be given the opportunity to improve their attendance informally in the first instance through support and attendance targets before proceeding to the formal procedures. Ultimately, the needs of the service and the provision of patient care will prevail.

2.5 It is not the Policy of the Trust to require employees to attend for work when being unfit to do so.

2.6 This policy and procedure clearly sets out an employee's responsibilities in relation to sickness absence. Failure to adhere to the requirements of this policy and procedure may result in consideration of action in accordance with
the Trust’s Disciplinary Policy & Procedure and in certain circumstances a referral to the Counter Fraud Service.

2.7 The Trust acknowledges the significant role of representatives of trade unions and professional organisations who work in close partnership with managers to facilitate and support employees to take personal responsibility for their attendance at work.

2.8 Where an employee has a pattern of frequent short term sickness absence for which no underlying health cause can be established, then the Trust will strike a reasonable balance between the need for service provision and the genuine needs of the employee to take occasional short periods of time off because of sickness taking into account the Trust’s absence targets.

2.9 Where an employee has long-term absence where there is an underlying health cause the Trust will strike a reasonable balance between the need for service provision to continue in the employee’s absence and the genuine needs of the employee; taking into account available and relevant facts and including the likely date of return to work.

2.10 Where a return to work in the foreseeable future is not likely and/or where there is no realistic date for a return to work the Trust will consider available options and this will include termination on the grounds of ill health capability. Any employee who is dismissed on the grounds of capability (or ill health) will have the right of appeal against that decision as detailed within this procedure.

2.11 The scheme of delegation in terms of the authority of managers within this process is in accordance with the Trust Disciplinary Guide document.

2.12 The Trust is committed to ensuring reasonable measures are taken to remove any identified disadvantage for disabled employees and to support and retain disabled employees in employment. A person has a disability for the purposes of the Equality Act 2010 if they have a physical or mental impairment which has a substantial and long term adverse effect on their ability to carry out normal day to day activities.

3.0 DISCRETION

3.1 The policy provides for the employee’s manager, advised by HR, to exercise discretion in determining the application of the policy according to an employee’s individual circumstances. This does not mean that the employee’s manager can decide not to apply the policy, but it does mean that judgement can be exercised within the various stages of the policy.

3.2 Discretion is the application of judgement. It is not possible to set out prescriptively in a policy document how discretion should be applied across the Trust as each case will be considered on its own merits. Factors that will be taken into consideration include the employee’s overall attendance
pattern, the impact on the employee’s health or attendance of any current treatments, investigations or Occupational Health assessments, and the extent to which allowing further time within the process is judged likely to make a material difference to the employee’s ability to attend work.

4.0 DEFINITIONS/ ABBREVIATIONS

4.1 ▪ The Trust means Sherwood Forest Hospitals NHS Foundation Trust.
▪ RIDDOR means Reporting of Injuries, Diseases and Dangerous Occurrences.
▪ ESR means Electronic Staff Record.
▪ Short-term sickness is defined as absences of between 1 and 27 calendar days duration
▪ Long-term sickness is defined as absences of 28 days or more

5.0 ROLES AND RESPONSIBILITIES

5.1 Employees should demonstrate a positive approach to attendance and be responsible for managing their own health and wellbeing.

5.2 If it is found that during a sickness period of absence an employee is acting in a manner inconsistent with the reason for the absence or not aiding their return to work, occupational sick pay may be withheld and where appropriate action taken in accordance with the Trust’s Disciplinary Policy & Procedure and referred where appropriate to Local Counter Fraud Services.

5.3 If the employee holds more than one contract of employment with the Trust or undertakes work with an agency/other employer, any period of sickness should affect all work including voluntary work or self-employment.

5.4 The only exception to this would be where a medical practitioner determines that specific work could be carried out by the individual. In these circumstances confirmation from the medical practitioner would be required. This should be discussed with the line manager in the first instance with a view to determining whether adjustments can be made or alternative employment found within the Trust to accommodate the employee working at the Trust. This would not prevent the manager from requesting a second opinion from Occupational Health if appropriate.

5.5 On no account must employees work for another employer whilst on sick leave with the Trust unless the above evidence is provided and it is agreed with the manager. Failure to provide this evidence in advance of any work being undertaken may result in this being regarded as a fraudulent act and/or misconduct and could result in a referral to Counter Fraud Services and action in accordance with the Trust’s Disciplinary Policy & Procedure.

5.6 Staff are reminded that they remain employed by the Trust and should make themselves readily available to attend meetings with their manager. In exceptional circumstances, if the Line Manager is not the preferred contact of
the member of staff, then a nominated deputy line manager will work with them during their period of sickness absence.

5.7 All employees are required to comply with requests to attend the Occupational Health department for health assessment or support at any time following discussion with their manager.

5.8 Where an employee does not comply with the reporting and recording/ Fit Note procedure they will be regarded as being absent without leave and pay may be withheld. The circumstances of any non-compliance will be considered on an individual basis and if necessary may be referred for consideration in accordance with the Trust’s Disciplinary Policy & Procedure.

6.0 DOCUMENT (PROCEDURAL) REQUIREMENTS

6.1 REPORTING AND RECORDING OF SICKNESS

Sickness Reporting Arrangements

6.1.1 Employees who are ill and unable to come to work have a responsibility to inform their manager or designated deputy by telephone before they are due to commence work. Reporting of absence by text message, email or social media messaging will not be accepted. In exceptional circumstances only where the employee is physically and/or psychologically unable to do so themselves a member of their family/partner/spouse may telephone the manager on their behalf.

6.1.2 When reporting their absence an employee must give an indication of the nature of their illness so that an accurate absence reason can be recorded and give an estimate of the duration of the absence and the anticipated return to work.

6.1.3 If the manager or designated deputy is unavailable for this initial contact, the employee must leave their telephone contact details in a message to the manager who should contact the employee at the earliest opportunity.

6.1.4 The employee must keep their manager informed regarding their progress and their anticipated date of return. The manager and the employee should jointly agree contact arrangements during the period of absence.

6.1.5 For absences that exceed one week/ longer-term absence the employee will be expected to update their line manager at least once a week by telephone, not text, email or social media. The manager should maintain a record of all contact with the employee and a template form for this purpose is contained in the toolkit.

6.1.6 Employees must inform their manager on the day that they are fit to return to work, even if they are not rostered to work on that day. Staff will be recorded as on sick leave until they report that they are fit to return to work. This
cannot be done retrospectively.

**Fit Notes**

6.1.7 Employee must provide a medical certificate ‘Fit Note’ to cover any absence which continues beyond 7 calendar days. The Fit Note must therefore begin on the 8th calendar day of absence.

6.1.8 When determining the 8th day, all days including weekends, should be included for all groups of staff. Where an employee anticipates difficulty in timely submission of Fit Notes they must communicate this to their manager.

6.1.9 This should be submitted to the line manager within 3 calendar days of being issued. Any subsequent fit note issued must be submitted within 3 calendar days of the expiry of the previous note.

**Sickness Absence Records**

6.1.10 For the purposes of local sickness absence recording, all hours of sickness absence will be recorded, even where the absence relates to part of a day. However sickness absence recorded on ESR and e-rostering must be completed days.

6.1.11 Accurate and timely recording of sickness absence on ESR/ Health Roster will ensure individual's pay is correct; pay can be adversely affected especially where employees have returned and this is not recorded in ESR/ Health Roster. Records of sickness absence will be recorded by managers on ESR/ Health Roster which enable identification of individual attendance patterns at an early stage, and also facilitates effective monitoring of absence.

6.1.12 Where sickness absence is as a result of an injury whilst at work, or illness acquired through work, before recording as such on ESR, this must be reviewed with the Divisional General Manager / Head of Service after taking advice from the HR Department where appropriate. If the period of sickness absence is recorded as work related NHS Injury Allowance may be payable. Further guidance on this can be found in the guidance document.

6.1.13 All documentation relating to sickness absence will either be stored on ESR or on the employee’s personal file.

**Sickness and annual leave**

6.1.14 Employees whose sickness begins whilst they are on a period of planned annual leave should report their sickness to their line manager following the reporting procedure detailed in section 6.1 on the first day of sickness absence. The usual self-certification and Fit Note requirements still apply. The employee will be classed as absent due to sickness from the date they
report their absence to their manager.

6.1.15 If an employee has annual leave prebooked during a period of sickness absence and proceeds to go on holiday, the annual leave will continue to be deducted from their annual leave allowance. Employees must seek authorisation from their manager if they are to go on holiday when absent due to ill health. Leave will not be credited retrospectively if an employee has confirmed that they are proceeding with their holiday arrangements.

6.1.16 If the employee does not proceed to go on holiday they must be covered by a Fit Note which should be submitted to the line manager within 3 calendar days, in order to receive any annual leave entitlement back.

**Disability Related Sickness Absence**

6.1.17 The Trust recognises that some disabled employees’ conditions may result in some sickness absence. Employees should have discussed their situation with their manager including the issue of absence. Accommodating this absence may then be undertaken as a reasonable adjustment. Disability related sickness absence will still be recorded and monitored in discussion with the employee including whether there are any other reasonable adjustments that can be made to support the employee’s attendance.

6.1.17 Absence should be recorded and reported in accordance with the process described in this policy & procedure. If during a return to work the individual identifies that their particular absence is connected to their disability then this may be recorded as disability related sickness absence.

6.1.18 Disability related sickness absence will not be excluded for consideration under the Trust’s Stage 1 – Short-Term/ Frequent Absence process. Case by case decisions will be made, in relation to the circumstances of the situation and having regard to the sustainability of frequent absence and the impact on service delivery.

**6.2 RETURN TO WORK DISCUSSION**

6.2.1 The purpose of the Return to Work discussion is to ensure that a productive, informal meeting is held with the employee relating to their recent absence and their return to work. The areas that should be covered within the return to work interview are contained within the Sickness Absence Management guidance document available on the Trust intranet.

6.2.2 A face to face Return to Work discussion will be undertaken with employees by their line manager ideally within 48 hours of the day they return from any period of sickness absence (including part days), or if duty/work patterns do not coincide, this responsibility may be delegated appropriately.

6.2.3 It remains, however, the responsibility of the line manager to ensure that
the Return to Work discussion has been undertaken on their return to work and the discussion record filed on the employee’s personal file.

6.3 OCCUPATIONAL HEALTH AND OTHER STAFF SUPPORT SERVICES

6.3.1 The Occupational Health Department is a confidential advisory service that has a dual role to provide advice and support to both managers and employees about health in the workplace and the possible effect of health conditions in relation to employment. Managers should refer employees to the service to ensure that they are able to obtain medical opinions regarding the health conditions of employees and the effect that these conditions may have upon the employee’s ability to undertake roles and responsibilities. Employees are also able to refer themselves to Occupational Health if they wish.

6.3.2 Managers should also encourage employees to take advantage of other staff health and wellbeing services available across the Trust such as staff counselling services and the Employee Assistance Programme. Further information on such services can be obtained from HR Advisors, Trade Union representatives, Occupational Health and the Trust intranet.
6.4 SHORT-TERM/ FREQUENT ABSENCE

Stage 1 – Short-Term/ Frequent Sickness Review Meeting

6.4.1 The line manager should arrange to meet with the employee where the employee has had either:

a) 2 separate occasions of sickness absence in a rolling 6 month period excluding pregnancy related illness
b) 1 occasion of 15 calendar days or more sickness absence
c) A target previously set as a result of a) or b) above which is due for review
d) A pattern of sickness absence is forming relating to timing of absence in a rolling 36 month (maximum) period e.g Absence on Mondays, School Holidays, Bank Holidays absence before/after annual leave, and/or a pattern is forming relating to reason for absence.

These can include the consideration of long-term and short-term sickness absence as a whole.

6.4.2 The meeting should be held within 14 calendar days of the end of the period of absence which triggers the meeting and the employee should be notified in writing of the date, time and purpose of the meeting at least 7 calendar days in advance. The employee must be provided with the opportunity to be accompanied and supported by an accredited representative of a recognised Trade Union or Professional Organisation or by a work colleague not acting in a legal capacity.

6.4.3 The purpose of this meeting will be to:

a) Discuss and review the position since the Return to Work interview and to ensure that the employee is receiving appropriate support.

b) Ensure the employee is aware of the Sickness Absence Management policy and that they have a responsibility for attending work regularly. Advise the employee of the need for immediate and sustained improvement in their levels of attendance.

c) Set an attendance target if appropriate to the circumstances of the individual and the service.

d) Examine the working pattern and number of paid hours worked in excess of the employees contracted hours of duty. Where these are considered excessive it is appropriate that no additional hours will be offered or worked until there has been a demonstrable improvement in the level of sickness absence. This will include work on the Trust’s bank.
e) Where there is an identified underlying medical issue stated, this should be confirmed by Occupational Health. If the condition is likely to prevent sustained attendance at work, reasonable adjustments should be considered and implemented where possible.

6.4.4 Targets will be set from the date of the meeting and ensure that the employee is aware that a failure to achieve the target or an increase in sickness absence levels could result in formal action being taken.

**Attendance targets**

6.4.5 Once an attendance target has been issued this should be kept under review by the manager and employee during normal routine management supervision and 1:1 meetings, in between formal absence review meetings.

6.4.6 Where the employee has breached the attendance target consideration should be given to the following options:

a) Extend the Stage 1 attendance target for further period (repeat point 6.4.2 – 6.4.4)

b) Issue an Improvement Notice with a further target.

c) Implement the Stage 2 – Sickness Capability Hearing process

d) Take no further action in accordance with this policy but keep attendance under review. It is advised that this option is only used in specific circumstances and in consultation with a HR representative.

6.4.7 If there is a pattern of an individual repeatedly achieving Stage 1 targets and then triggering the Stage 1 process again consideration may be given to the options set out at Point 6.4.6. HR advice must be taken in these circumstances.

**Improvement notice**

6.4.8 On occasions it may be more appropriate and fitting for managers to issue an Improvement Notice, which is an informal sanction, instead of referring an employee’s absence directly to a Stage 2 – Sickness Capability Hearing.

6.4.9 Managers are expected to see the employee concerned and discuss with them why the expected levels of attendance are not being met and the impact of this. The aim of the meeting should be to clarify the improvement expected over an appropriate timescale. Any agreed support required in order to facilitate improved attendance should be identified and agreed. A further attendance target should also be issued at this stage.

6.4.10 This meeting should be followed up in writing with an Improvement Notice which will remain on file for 12 months. If there are concerns about
attendance during the period of the Improvement Notice consideration will be given to moving to the Stage 2 – Sickness Capability Hearing process.

6.4.11 Should the Improvement Notice fail to address the concerns about attendance levels, it will be appropriate to follow the formal Stage 2 – Sickness Capability Hearing process.

6.4.12 Further guidance about the Improvement Notice process can be found in the Management of Sickness Absence Guidance.

6.4.13 Where an attendance target has been breached or where there is continued concern about an employee’s attendance at work or performance due to health reasons whilst at work, a Stage 2 - Sickness Capability Hearing should be arranged.

Stage 2 – Short-Term/ Frequent Sickness Capability Hearing

6.4.14 The sickness capability hearing will be held no later than 4 working weeks following the Return to Work discussion where the employee is informed that their attendance is being referred for consideration at a formal hearing. This timescale can be extended in exceptional circumstances with approval from the appropriate senior Divisional manager.

6.4.15 The employee will be formally notified of the arrangements for the hearing and its purpose in writing at least 7 calendar days prior to the hearing. A copy of the report prepared by the manager will be forwarded to the employee with the letter notifying them of the arrangements for the hearing.

6.4.16 The hearing will be chaired by the authorised senior manager (or designated deputy) who will be supported by a Human Resources representative.

6.4.17 The employee is entitled to be represented by an accredited representative of a recognised trade union or accompanied by a work colleague not acting in a professional capacity.

6.4.18 The sickness capability hearing will allow for a full review of the facts of the case, including the employee’s present and past sickness absence record (up to a maximum of 3 years), consideration of medical advice and any mitigating circumstances.

6.4.19 The format to be followed at a Sickness Capability hearing is outlined in Appendix 2.

6.4.20 The potential outcomes that the chair may consider are as follows:

Formal Written Warnings

6.4.21 A First Written Warning can be issued for a specified period of up to 18 months and a Final Written Warning can be issued for a specified period of
up to 24 months.

6.4.22 If formal warning is issued this would usually be linked to a further attendance target and/or other adjustments to working arrangements which are felt would support improvement of the employee’s levels of sickness absence.

6.4.23 Staff who meet a target set in a formal hearing will continue to have their attendance monitored for the period that the formal warning remains live. Once the initial target has been met any further periods of sickness absence will be considered in with regard to the employee’s present and past attendance record, the outcome of which may result in a further attendance target being set in accordance with Stage 1 of the procedure.

6.4.24 Any further breach of sickness absence targets or concerns about attendance at work during the period that the warning is live should be referred for consideration at a further Sickness Capability hearing which may result in termination of the contract of employment or other action being taken.

Dismissal

6.4.25 Dismissal under the Sickness Absence Management Policy is the final sanction that can be imposed. It is usually applicable where there has been a previous formal warning in relation to attendance, however there may be situations where dismissal on the grounds of capability due to an inability to attend work on a regular basis may be the appropriate outcome.

Right of appeal

6.4.26 There will be a right of appeal against any formal warnings or dismissal. The sanction will be put in place until the appeal has been heard. Employees must be informed of their right of appeal and advised of the procedure for lodging an appeal in writing in the letter confirming the outcome of the formal hearing. The appeal will be managed in accordance with the Trust’s Appeal Procedure.
6.5 LONGER TERM SICKNESS ABSENCE OR SHORT-TERM ABSENCES WITH AN UNDERLYING HEALTH CONDITION

6.5.1 For the purpose of this policy long-term sickness absence is determined as a period of 28 days or more.

6.5.2 Staff who are absent on a long-term basis must be actively managed and engaged with, regardless of the nature of the absence, by their line manager. The main aims are to maintain positive relationships, to support the staff member and facilitate their return to work as soon as possible.

6.5.3 Managers should consult the HR for advice in cases of long-term absence, or repeated shorter periods of absence arising out of a single or underlying illness.

Stage 1 – Sickness Review Meetings

6.5.4 The manager should have already discussed and jointly agreed a plan to maintain regular contact at the beginning of the period of sickness absence with the employee. For long-term absence, where an employee is absent for 28 days or more the line manager should, if appropriate, arrange an informal Sickness Absence Review meeting with the employee. The purpose of the meeting is to give consideration to the appropriate course of action for the management of the employee’s absence and to ensure that the employee is receiving any necessary support to enable a return to work or to sustain their attendance at work.

6.5.5 The manager should arrange to meet with the employee at a convenient location. This can be on-site, an alternative Trust location, or a home visit where agreed. Issues for discussion at the meeting include:

a) The projected period of absence

b) Health update and progress of treatment

c) The advice of Occupational Health, or a referral to Occupational Health if this has not yet happened

d) Consideration of any reasonable adjustments that might be made to working conditions or premises to accommodate a return to work. There may be circumstances where an individual’s ill health/disability prevents them from undertaking their full duties within their job role but does not result in them having sickness absence. Where reasonable adjustments can be considered or made on a temporary or permanent basis these will be accommodated.

e) Redeployment to suitable alternative employment on a permanent basis, where such employment can be identified and Occupational Health advise that the individual is capable of undertaking the duties of the post.
Pay protection arrangements would apply in accordance with the Trust’s Policy for Protection of Pay and Conditions of Service.

f) Support that may be available to the employee both within and outside the organisation.

g) Arrange further review meetings

h) Phased return to work plan which is a short-term graduated/ phased return to normal duties/ hours

i) Confirm next steps if return to work cannot be agreed

Further information and guidance on phased return to work, reasonable adjustments and redeployment is provided in the guidance document.

6.5.6 Line Managers must document the review meetings and confirm the outcome of the meeting in writing to the employee.

6.5.7 Once a return to work is achieved the line manager should continue to monitor the return to work and support the individual to sustain their attendance at work.

6.5.8 Where long term sickness interlinks with short-term Stage 1 sickness monitoring/ target setting consideration should be given to the impact of the long-term absence on the target that has been set. Further guidance is available in the guidance document.

**Occupational Health referral**

6.5.9 The Line Manager should make an Occupational Health referral, when they believe it is appropriate, but no later than 28 days after the first day of sickness absence. The staff member must be informed of the reasons for the referral, which should be discussed fully with them by their manager and a copy of the referral provided to them.

6.5.10 The manager should review the Occupational Health report. The report will provide guidance on an employee’s fitness to return to the workplace and/or whether they are fit to return to their substantive post. Specifically the report should address the following issues:

- Is the individual medically fit to fulfil the requirements of the post and will a return to their substantive role be possible and by when?
- Is the individual medically fit to fulfil the requirements of the post and will a return to their substantive role be possible with adjustments?
- If the individual is medically unfit to fulfil the requirements of their substantive role, could they undertake a different role/redeployment?
- If the individual is medically unfit to fulfil their contractual obligations and adjustments and redeployment are not viable options.
Ill Health Retirement

6.5.11 An application by the individual for Ill Health Retirement Benefit, or an Injury Allowance may be considered where appropriate and alongside the management of long-term sickness absence, or in some cases where there is frequent short-term absence related to an underlying health condition. It should be noted that a decision regarding eligibility for an ill health retirement pension is a matter for the NHS Pensions Agency and not a matter for the Trust.

6.5.12 A requirement of an application for ill health retirement is that the employee is permanently incapable of undertaking the role in which they are employed. The Trust will therefore deem the submission of the application for ill health retirement to be an acknowledgement by the employee of this position and will take the necessary steps to terminate employment.

Management of continued long-term absences

6.5.13 Managers should seek HR advice for cases of long-term absence, which exceed four months, where a return to work has either not been achieved or has not been sustained. The manager should maintain supportive and sensitive contact.

6.5.14 The assessment of the employee’s illness, particularly the Occupational Health advice, will provide an indication of the amount of time that should be given for an employee’s health to improve, particularly in prolonged long-term absences for any treatment and/or recuperation time needed to be taken into account.

6.5.15 In deciding the appropriate course of action the manager will weigh up such factors in the context of the needs of the service and may decide that the issue of an employee’s capability in relation to their health should be referred for consideration at a sickness capability hearing.

Stage 2 – Long-Term Sickness Capability Hearing

6.5.16 The sickness capability hearing will allow for a full review of the facts of the case, including the employee’s present and past sickness absence record, consideration of medical advice and any mitigating circumstances. This should involve the exploration of alternative employment, reasonable adjustments which can be made to facilitate a return, ill health retirement or ultimately dismissal on the grounds of capability arising from ill health.

6.5.17 The employee will be formally notified of the arrangements for the hearing and its purpose in writing at least 7 calendar days prior to the hearing. A copy of the report prepared by the manager will be forwarded to the employee with the letter notifying them of the arrangements for the hearing.
6.5.18 The hearing will be chaired by the authorised senior manager (or designated deputy) who will be supported by a Human Resources representative.

6.5.19 The employee is entitled to be represented by an accredited representative of a recognised trade union or accompanied by a work colleague not acting in a professional capacity.

6.5.20 The order of the sickness capability hearing is outlined in Appendix 2.

6.5.21 On deciding the appropriate action, the chair will objectively and fairly consider:

a) The line management’s case and collated evidence (e.g. the individual’s absence record meeting records, return to work action plans, Occupational Health reports and written correspondence, current warnings)

b) Whether all return to work options were thoroughly considered including redeployment and reasonable adjustments

c) The effect that the absence is having on the operational efficiency, cost effectiveness of the department or service and patient care

d) Any relevant mitigating information from the staff member and their representative

e) That all reasonable efforts have been made to obtain appropriate and up-to-date medical evidence regarding the individual’s ill health including reports from Occupational Health

f) That the individual has been consulted at all times and has been warned that a potential outcome of their ongoing absence may lead to dismissal

6.5.22 The potential outcomes that the chair may consider are as follows:

**Formal written warning on grounds of capability due to health**

6.5.23 Warnings issued at this stage of the procedure are linked to an individual’s capability to undertake the requirements of their role and therefore fulfill their contractual obligations due to ill-health. They are not disciplinary sanctions.

6.5.24 If a formal warning is issued this would usually be linked to an updated return to work plan for the individual. As part of this there should be a clear agreement of how this will be managed, implemented, and monitored as well as how the individual will continue to be supported. The timescale for when this will be formally reviewed will be agreed, taking account of any Occupational Health advice and the actions/ treatment/ interventions required to happen i.e. redeployment search, ill health retirement applications may necessitate longer review periods than cases where
these options are not required.

6.5.25 If a return to work is not achieved within this timeframe, a further sickness capability hearing should be scheduled.

6.5.26 A first written warning can be issued for a specified period of up to 18 months and a final written warning can be issued for a specified period of up to 24 months.

**Dismissal on grounds of capability due to health**

6.5.23 There are situations when:

- a staff member’s absence appears to be of an indefinite duration and Occupational Health are unable to specify a return to work date; or
- no feasible return to work options exist within the service; or
- the individual is medically unfit and adjustments and redeployment are not viable options.

In these situations it is not necessary to have previously issued warnings before considering termination of an employee’s contract on the grounds of ill health capability.

6.5.24 In these situations and if the chair is satisfied that the process that has been followed has been fair and reasonable then they may decide to dismiss the individual on the grounds of capability due to ill health. The individual is entitled to a notice period, which may be paid in lieu of notice, in accordance with their length of service and any outstanding annual leave.

6.5.25 Formal notice of the termination of employment should be confirmed both verbally and in writing. If appropriate the employee may be placed on the Suitable Alternative Employment Register for ill health redeployment for the duration of their notice period.

**Right of appeal**

6.5.26 There will be a right of appeal against any formal warnings or dismissal. The sanction will be put in place until the appeal has been heard. Employees must be informed of their right of appeal and advised of the procedure for lodging an appeal in writing in the letter confirming the outcome of the formal hearing. The appeal will be managed in accordance with the Trust’s Appeal Procedure.
7.0 DISABILITY LEAVE

7.1 The Trust is committed to ensuring reasonable measures are taken to remove any identified disadvantage for disabled employees and to support and retain disabled employees in employment.

7.2 Disability is defined by the Equality Act 2010 as individuals with a physical or mental impairment that has a 'substantial' and 'long-term' adverse effect on their ability to carry out normal day to day activities. Where necessary, the advice of Occupational Health will be sought to determine whether an employee is disabled.

7.3 If the employee defines themselves as a disabled person under the terms of the Equality Act 2010 there is a duty to make 'reasonable adjustments', where appropriate. Disability leave is a form of 'reasonable adjustment'. The employee’s personal record on ESR should record the fact that they have a disability.

7.4 The Equality Act 2010 specifically identifies the provision of leave as a reasonable adjustment where a disabled person needs to be absent from work for "rehabilitation, assessment or treatment", for a fixed period(s) of time known in advance. This can be termed as disability leave.

7.5 The usually predictable and fixed nature of disability leave distinguishes it from disability related sickness absence, which is unpredictable and for unknown periods of time, although there may be occasions where disability leave has to be taken at short notice and/or is unpredictable, in which case flexibility should be applied.

7.6 Examples of disability leave may include (but are not limited to) leave for:

- Hospital, doctors, or complementary medicine practitioner’s appointments (by accredited practitioners)
- Hospital treatment as an outpatient
- Counselling/therapeutic treatment
- Assessment for conditions
- Training, for example with a guide or hearing dog or in the use of specialist equipment
- Medical appointments or specialist check-ups including monitoring of related equipment or treatment
- To allow time for adjustments or adaptations to be made

7.7 A maximum of 5 days/ 37.5 hours, pro rota for part time workers, paid disability leave can be requested by employees in a leave year and should be monitored and recorded appropriately. It should be noted that this time can be taken in hours or in days, where appropriate and should include travel time taken.
7.8 Where possible, disability leave appointments should be made outside of working hours. The Trust, however, recognises that scheduling of appointments is sometimes outside of the individual’s control and in these cases paid time off will normally be granted, if the needs of the service can be maintained. The manager/supervisor may reasonably request to see evidence of the appointment and it is expected employees will work with their line manager to consider how any impact on work can be mitigated with the expectation that regular attendance at work will continue.

7.9 Employees should use the disability leave application form to make all requests for disability leave. The completed form should be sent to the line manager for approval.

7.10 Disability leave is not classed as sickness absence and will not count against attendance targets that may have been issued.

7.11 If an employee does not believe they are disabled, or does not wish to be included under the definition then disability leave does not apply.

8.0 INDIVIDUALS WITH TERMINAL ILLNESS

8.1 A terminal illness is a disease that cannot be cured or adequately treated and there is a reasonable expectation that the patient will die within a relatively short period of time. Usually, but not always, they are progressive diseases such as cancer or advanced heart disease.

8.2 Staff who had been diagnosed with a terminal illness will be supported in a sensitive and individual way where options in relation to employment will be discussed including but not restricted to, ill health retirement and death in service.
## MONITORING COMPLIANCE AND EFFECTIVENESS

<table>
<thead>
<tr>
<th>Minimum requirement to be monitored</th>
<th>Responsible individual/group/committee</th>
<th>Process for monitoring e.g. audit</th>
<th>Frequency of monitoring</th>
<th>Responsible Individual or Committee/Group for Review of Results</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regular reporting of absence figures to Trust Board</td>
<td>Director of HR</td>
<td>Absence figures</td>
<td>Monthly</td>
<td>Trust Board for review of results and monitoring action plan</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Divisional Leadership Team/Corporate Director, including Divisional HR Lead for developing action plan</td>
</tr>
<tr>
<td>Regular reporting of absence figures to Divisional Management Team meetings and at Performance Meetings</td>
<td>HRBPs</td>
<td>Absence Figures</td>
<td>Monthly</td>
<td>Divisional Leadership Team. Divisional Performance Meetings for review of results, developing and monitoring action plans</td>
</tr>
</tbody>
</table>
10.0 TRAINING AND IMPLEMENTATION

10.1 Human Resources are responsible for ensuring that the effective management of sickness absence is covered in the Trust induction and the local induction checklist.

10.2 In addition, all managers with people responsibilities will be expected to attend Sickness Absence Management training to ensure they fully understand their responsibilities in the application of this policy.

10.3 The Deputy Director of Human Resources will be responsible for reviewing this policy and will ensure that anyone involved in implementing this policy will receive training to assist them with these duties.

10.4 The implementation of this policy and its effectiveness will be monitored on an ongoing basis by the Trust Board, JSPF and senior members of the HR Department.

11.0 IMPACT ASSESSMENTS

11.1 ▪ This document has been subject to an Equality Impact Assessment, see completed form at Appendix 3.
▪ This document has been subject to an Environmental Impact Assessment, see completed form at Appendix 4.

12.0 EVIDENCE BASE AND RELATED SFHFT DOCUMENTS

12.1 Evidence Base:
▪ CIPD and ACAS websites
▪ Employment Rights Act 1996
▪ Equality Act 2010

Related SFHFT Documents:
▪ Management of Sickness Absence Guidance Document
▪ Disciplinary Policy
▪ Equality & Diversity Policy
▪ Pay and Condition of Service Protection Policy
▪ Reasonable Adjustments Guidance Document
▪ Suitable Alternate Employment Register Guidance Document
APPENDIX 1

Sickness Absence Management for Medical Staff

1. Notification of Sickness

Where Medical staff are absent from work due to sickness, Junior doctors and Staff/Speciality and Associate Specialist (SASG) doctors must contact their rota coordinator and also speak either to the Service Director/Head of Service, immediate Consultant or the Consultant’s PPC to advise of their absence. Other Medical Staff would contact their Head of Service/Service Director as appropriate who would in turn contact the rota coordinator to ensure that the sickness absence is recorded on the ESR system. Out of normal working hours, the doctor would be expected to contact the consultant on call and the Site Coordinator. The Site Coordinator will then be responsible for organising cover during the night/weekend.

2. Managing Sickness Absence involving Doctors

The Maintaining High Professional Standards in the Modern NHS document and the Trust’s Disciplinary Procedure for Medical Staff which incorporates the process to be followed in cases of Conduct, Capability and Ill-Health for Medical Staff will take precedence in the event of a conflict with this policy. The Trust recognises that the principle for dealing with doctors with health problems is that, wherever possible and consistent with reasonable public protection, they should be treated, rehabilitated or retrained and kept in employment, rather than be lost from the NHS. Wherever possible, considering the circumstances involved, the Trust will attempt to continue to employ the individual provided this does not place patients or colleagues at risk.

3. Periods of Sickness involving Junior Doctors

Where a Junior Doctor has a period off sick which might affect their training programme then it may be appropriate that Health Education East Midlands are informed. However will be sought with the junior doctor will be informed prior to any discussions taking place with HEEM.
APPENDIX 2

STAGE 2 ILL HEALTH CAPABILITY HEARING

FORMAT TO BE FOLLOWED AT HEARING

1. Welcome and introductions

2. The Chair of the panel will explain the purpose of the hearing and will ask if there are any declarations of interest.

3. The Line Manager will present the management statement of case.

4. The Employee or their representative may ask questions of the management case.

5. The Panel may ask questions of the management case.

6. The Employee or their representative presents their case.

7. The Line Manager may question the employee case.

8. The Panel may ask questions of the employee case.

9. The Line Manager summarises the management case.

10. The Employee or their representative summarises their case.

11. The meeting is adjourned for the Chair to make a decision.

12. The meeting is re-convened and the Chair advises the employee of their decision.
## EQUALITY IMPACT ASSESSMENT FORM (EQIA)

<table>
<thead>
<tr>
<th>Name of service/policy/procedure being reviewed: Sickness Absence Management Policy and Procedure</th>
<th>New or existing service/policy/procedure: Existing Policy</th>
<th>Date of Assessment: 19 September 2018</th>
</tr>
</thead>
</table>

For the service/policy/procedure and its implementation answer the questions a – c below against each characteristic (if relevant consider breaking the policy or implementation down into areas)

<table>
<thead>
<tr>
<th>Protected Characteristic</th>
<th>a) Using data and supporting information, what issues, needs or barriers could the protected characteristic groups’ experience? For example, are there any known health inequality or access issues to consider?</th>
<th>b) What is already in place in the policy or its implementation to address any inequalities or barriers to access including under representation at clinics, screening?</th>
<th>c) Please state any barriers that still need to be addressed and any proposed actions to eliminate inequality</th>
</tr>
</thead>
<tbody>
<tr>
<td>Race and Ethnicity</td>
<td>The policy when applied correctly gives no potential for disadvantage as triggers are determined by episodes of absence, or length of absence, so remove the potential to discriminate.</td>
<td>Standardised approach to attendance management for all employees.</td>
<td>N/A</td>
</tr>
<tr>
<td>Gender</td>
<td>The policy when applied correctly and consistently does not disadvantage either gender</td>
<td>Standardised approach to attendance management for all employees.</td>
<td>N/A</td>
</tr>
<tr>
<td>Age</td>
<td>The policy when applied correctly gives no potential for disadvantage as triggers are determined by episodes of absence, or</td>
<td>Standardised approach to attendance management for all employees.</td>
<td>N/A</td>
</tr>
<tr>
<td>Category</td>
<td>Description</td>
<td>Standardised approach to attendance management for all employees</td>
<td>N/A</td>
</tr>
<tr>
<td>--------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>------------------------------------------------------------------</td>
<td>----------------</td>
</tr>
<tr>
<td>Religion</td>
<td>The policy when applied correctly gives no potential for disadvantage as triggers are determined by episodes of absence, or length of absence, so remove the potential to discriminate.</td>
<td>Standardised approach to attendance management for all employees</td>
<td>N/A</td>
</tr>
<tr>
<td>Disability</td>
<td>Managers’ judgement is required for individual cases. Disability related ill health requires management review before formal processes are initiated. Difficulty presents itself when illness may not be directly the same as the disability but may be as a result; potential to be disadvantaging individuals.</td>
<td>Patterns of absence within Procedure ensures disability -related sickness is dealt with in a non - discriminatory manner.</td>
<td>N/A</td>
</tr>
<tr>
<td>Sexuality</td>
<td>The policy when applied correctly gives no potential for disadvantage as triggers are determined by episodes of absence, or length of absence, so remove the potential to discriminate.</td>
<td>Standardised approach to attendance management for all employees</td>
<td>N/A</td>
</tr>
<tr>
<td>Pregnancy and Maternity</td>
<td>Pregnant employees are at a higher risk of having non - attendance due to ill health during pregnancy and are therefore more likely to trigger this Policy during their pregnancy than non -pregnant employees. Often, there are limited adjustments than can be made to reduce this issue.</td>
<td>Pregnancy related absences do not count towards absence targets.</td>
<td>N/A</td>
</tr>
<tr>
<td>Gender Reassignment</td>
<td>The policy when applied correctly gives no potential for disadvantage as triggers are determined by episodes of absence, or length of absence, so remove the potential to discriminate.</td>
<td>Standardised approach to attendance management for all employees</td>
<td>N/A</td>
</tr>
<tr>
<td>Protection Factor</td>
<td>Description</td>
<td>Standardised approach to Attendance Management</td>
<td>Notes</td>
</tr>
<tr>
<td>------------------</td>
<td>-------------</td>
<td>-----------------------------------------------</td>
<td>-------</td>
</tr>
<tr>
<td>Marriage and Civil Partnership</td>
<td>The policy when applied correctly gives no potential for disadvantage as triggers are determined by episodes of absence, or length of absence, so remove the potential to discriminate.</td>
<td>Standardised approach to attendance management for all employees.</td>
<td>N/A</td>
</tr>
<tr>
<td>Socio-Economic Factors (i.e. living in a poorer neighbourhood / social deprivation)</td>
<td>The policy when applied correctly gives no potential for disadvantage as triggers are determined by episodes of absence, or length of absence, so remove the potential to discriminate. Lower socio-economic status is linked to poorer health, but these employees will have access to the support mechanisms the Trust offers through its Health and Wellbeing programme.</td>
<td>Standardised approach to attendance management for all employees.</td>
<td>N/A</td>
</tr>
</tbody>
</table>

What consultation with protected characteristic groups including patient groups have you carried out?

None

What data or information did you use in support of this EqIA?

Trust statistics

As far as you are aware are there any Human Rights issues be taken into account such as arising from surveys, questionnaires, comments, concerns, complaints or compliments?

No
**Level of impact**

From the information provided above and following EQIA guidance document Guidance on how to complete an EIA [click here](#), please indicate the perceived level of impact:

Low Level of Impact

For high or medium levels of impact, please forward a copy of this form to the HR Secretaries for inclusion at the next Diversity and Inclusivity meeting.

**Name of Responsible Person undertaking this assessment:** HRBP Team

**Signature:**

**Date:**