

TRUST-WIDE NON-CLINICAL POLICY DOCUMENT

MANAGEMENT OF ATTENDANCE

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2015 – Version 10

Quality, recovery and wellbeing at the heart of everything we do

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Further information about this document:

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SUPPORTING STATEMENTS – this document should be read in conjunction with the following statements:

SAFEGUARDING IS EVERYBODY'S BUSINESS

All Mersey Care NHS Foundation Trust employees have a statutory duty to safeguard and promote the welfare of children and vulnerable adults, including:

- being alert to the possibility of child/vulnerable adult abuse and neglect through their observation of abuse, or by professional judgement made as a result of information gathered about the child/vulnerable adult;
- knowing how to deal with a disclosure or allegation of child/adult abuse;
- undertaking training as appropriate for their role and keeping themselves updated;
- being aware of and following the local policies and procedures they need to follow if they have a child/vulnerable adult concern;
- ensuring appropriate advice and support is accessed either from managers, *Safeguarding Ambassadors* or the trust's safeguarding team;
- participating in multi-agency working to safeguard the child or vulnerable adult (if appropriate to your role);
- ensuring contemporaneous records are kept at all times and record keeping is in strict adherence to Mersey Care NHS Foundation Trust policy and procedures and professional guidelines. Roles, responsibilities and accountabilities, will differ depending on the post you hold within the organisation;
- ensuring that all staff and their managers discuss and record any safeguarding issues that arise at each supervision session

EQUALITY AND HUMAN RIGHTS

Mersey Care NHS Foundation Trust recognises that some sections of society experience prejudice and discrimination. The Equality Act 2010 specifically recognises the *protected characteristics* of age, disability, gender, race, religion or belief, sexual orientation and transgender. The Equality Act also requires regard to socio-economic factors including pregnancy /maternity and marriage/civil partnership.

The trust is committed to equality of opportunity and anti-discriminatory practice both in the provision of services and in our role as a major employer. The trust believes that all people have the right to be treated with dignity and respect and is committed to the elimination of unfair and unlawful discriminatory practices.

Mersey Care NHS Foundation Trust also is aware of its legal duties under the Human Rights Act 1998. Section 6 of the Human Rights Act requires all public authorities to uphold and promote Human Rights in everything they do. It is unlawful for a public authority to perform any act which contravenes the Human Rights Act.

Mersey Care NHS Foundation Trust is committed to carrying out its functions and service delivery in line with a Human Rights based approach and the FREDA principles of **Fairness, Respect, Equality Dignity, and Autonomy**

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1 PURPOSE AND RATIONALE

- 1.1. **Purpose** - To detail the responsibilities of all staff and to outline the processes to be followed in the management of attendance of staff.
- 1.2. **Rationale** - The Trust's Health and Wellbeing approach with the principle of "Pursuing Perfect Care for Staff" is modelled on the ambition to deliver perfect Patient Care. The plan intends to ensure the high quality levels of care and support provided to patients are reflected in the way the Trust values and supports its staff. As poor attendance can have a negative impact upon service quality it is therefore the shared responsibility of the Trust and its staff to ensure that absence due to sickness is minimised. The Trust will support staff with long term absence and challenge those with unsatisfactory attendance.
- 1.3. The Trust expects 100% attendance by all staff and is committed to providing a healthy working environment to support this. The Trust also recognises that it is inevitable that some staff will experience periods of ill health from time to time and that those staff are entitled to expect that the Trust will be sympathetic and supportive towards them and to act in a fair, reasonable and consistent manner, and where feasible be supported to resolve issues causing the absence.
- 1.4. The Trust is committed to measuring attendance levels for all employees as it is recognised that low levels of absence are beneficial to the health and wellbeing of employees and the performance of the Trust overall.
- 1.5. It should be noted that unsatisfactory attendance due to sickness absence is not a disciplinary matter. It centres on whether the individual is fulfilling the requirements of the contract of employment in regard to their regular attendance for duty.
- 1.6. Disciplinary action is only relevant in situations where an employee consistently fails to notify absence properly; fails to provide evidence of sickness as required by the Trust, or where there are sufficient grounds to suggest that sickness is not genuine. These situations will be covered by the Disciplinary Procedure.

2 SCOPE

This policy and procedure applies to all Trust employees.

3 DUTIES

- 3.1 **Chief Executive** – The Chief Executive has delegated responsibility for ensuring compliance with this policy to the Executive Director of Workforce.
- 3.2 **Lead Executive Director** – the lead Executive Director for this policy (Executive
- 3.3 **Executive Director of Workforce** has strategic responsibility for:

Developing, implementing and communicating policy to manage attendance at work and to promote the health and well being of the workforce.

Ensuring that effective monitoring information is routinely provided for Executive Directors, Line Managers and Trust Board.

Ensuring provision of HR support and advice to line managers in the application of this Policy and associated procedures

Ensuring provision of appropriate training for managers

Review of the continued relevance/appropriateness of policy and procedure on a regular basis

3.4 **Senior Managers** - will be responsible for ensuring that this policy is implemented across their area and that operational managers are meeting their objectives and annual targets in managing the attendance of their staff.

3.5 **Line Manager - are responsible for:**

3.5.1 The promotion of the health and well being of the workforce and the provision of a safe, healthy working environment which will enable staff to attend work regularly. This will include investigating factors which may contribute to the levels and potential patterns of sickness absence within their area. This may include environmental and / or job related factors. Action must be taken wherever possible to minimise these factors.

3.5.2 Complying with this policy and for ensuring that all staff, (including all new staff at induction) understand the standards of attendance the Trust expects and their responsibilities and obligations under the policy regarding attendance.

3.5.3 Referring employees with either long term sickness absence or an unsatisfactory level of short term sickness absence to the Occupational Health Service in accordance with the timescales/triggers outlined in this Policy.

3.5.4 Maintaining regular contact with staff who are absent, keeping them up to date, offering support and signposting them to support services and monitoring their progress.

3.5.5 Maintaining effective records of absence and actions taken in this respect.

3.5.6 Ensure that a "return to work" discussion takes place with the member of staff normally within 2 working days. (The Manager may delegate this task to a nominated deputy).

3.5.7 Their own performance in ensuring that the policy and procedure is effectively implemented. Managers will be performance managed against the application of this policy and associated procedures and this will be included in their objectives.

- 3.6 **Human Resources** - will support Mersey Care staff at all levels in the application of this policy and procedure. This will include providing appropriate training to managers to support them in their responsibilities under this policy.
- 3.6.1 They will be responsible for monitoring the application of the policy and timescales to ensure that is applied equitably, fairly and in a timely manner.
 - 3.6.2 A member of the Human Resources Department will attend second formal Review meetings and final Review meetings together with the line manager. Human Resources may attend earlier formal Review meetings with the line manager, where appropriate. Their role will be to advise managers.
- 3.7 **Staff** - Responsible for attending work regularly and for taking responsibility for looking after their own health and wellbeing
- 3.7.1 Responsible for reporting sickness absence in line with the agreed reporting procedures, and for ensuring compliance with medical certification requirements. (See Appendix A). A failure to comply with these requirements may result in the employee being marked as absent without pay and the disciplinary procedure being invoked
 - 3.7.2 Responsible for maintaining regular contact with their manager during periods of sickness absence, including communicating with their manager about estimated duration of absence, reason for absence and when they expect to be fit to return to work.
 - 3.7.3 Contractually obliged to attend meetings relating to their attendance and to attend Occupational Health appointments.
 - 3.7.4 Responsible for adhering to the requirements of this policy and associated procedures.
- 3.8 **Occupational Health and Staff Support** – have a key role in supporting the health and well-being of staff, and in the provision of impartial medical advice to enable managers to deal fairly and equitably with the management of attendance. Staff Support provides a confidential counselling service which is accessible via the Occupational Health department or by self referral.
- 3.8.1 The Occupational Health Department will be responsible for: Health screening of new staff consisting of full assessment of past and present medical and any relevant employment history
 - 3.8.2 Health surveillance of staff as appropriate
 - 3.8.3 Provision of advice to staff and managers on matters relating to health at work, including the provision of occupational health opinion on the

prospects/ likely timescales of a return to work in respect of referred staff; reasonable adjustments that may be made to facilitate a return to work

3.8.4 Identifying if counselling or any other specialist services are required to facilitate the return to work of an individual employee.

3.9 **Trade Union Organisations** – will support staff at all formal review meetings

4 PROCESS / PROCEDURE

4.1 It is acknowledged that some staff will suffer periods of ill health. Ill health is broadly defined to include both physical and mental ill health and/or disability. When this occurs, staff will be treated in a supportive way in accordance with the trust values. The emotional, psychological and physical effects of ill health will be fully considered.

4.2 In applying the policy and procedure, care must be taken to ensure that no employee is discriminated against directly or indirectly. The Equality Act 2010 (referred to as the Act) makes it unlawful for an employer to discriminate against current or prospective employees who have, or who have had, a disability. The definition under The Act is very broad and many health problems may fall into this category.

4.3 Confidentiality must be maintained at all times by managers and staff. Any inappropriate breach of confidentiality may result in disciplinary action being taken.

4.4 The Staff Support Service is available to staff who wish to discuss issues in confidence. Managers should encourage staff to use this. In addition members of staff can approach the Occupational Health Department directly to seek advice on work related or other health problems.

4.5 The Trust is responsible for ensuring that appropriate policies and procedures exist and that managers are supported in implementing them. It is also responsible for ensuring that conditions at work serve to promote the good health and well being of the workforce and to enable employees to attend work regularly.

4.6 The Trust will be responsible for ensuring that they comply with health and safety requirements and that mechanisms are in place for the reporting of injuries and dangerous occurrences (RIDDOR).

4.7 **Occupational Sick Pay**

4.7.1 Staff who are absent from work owing to illness will be entitled, (subject to the conditions of the Agenda for Change Terms and Conditions), to occupational sick pay.

4.7.2 Sick pay for those who have exhausted sick pay entitlements should be reinstated at half pay, after 12 months of continuous sickness absence, in the following circumstances:

- 4.7.3 Staff with more than 5 years reckonable service – sick pay will be re-instated if sick pay entitlement is exhausted before a final Review meeting for long term absence has taken place.
- 4.7.4 Staff with less than 5 years reckonable service – sick pay will be re-instated if sick pay entitlement is exhausted and a final Review does not take place within 12 months of the start of their sickness absence.
- 4.7.5 Re-instatement of sick pay should continue until the final Review meeting has taken place.
- 4.7.6 Re-instatement of sick pay is not retrospective for any period of zero pay in the preceding 12 months continuous absence. Please refer to the Agenda for Change Terms and Conditions
- 4.7.7 Handbook for further information.
- 4.7.8 Managers may, in exceptional circumstances, use their discretion to extend the period of full or half pay for a time limited period. Advice must be sought from Human Resources prior to this being agreed.

4.8 Types of Sickness Absence

- 4.8.1 Sickness absence falls broadly into two categories:
- 4.8.2 Frequent and separate occurrences of short term absence which may or may not be related; and Long term absence caused by illness or injury which lasts 4 calendar weeks or more.
- 4.8.3 It is important to be able to distinguish between these two categories and to deal with them separately as described. However, this policy is also concerned with the management of attendance overall and therefore short and long term sickness absence are not mutually exclusive and there can be occasions where the pattern of absence is both short term and long term and in these instances both elements of the policy will interact with appropriate action based on the circumstances of the individual case. In this situation, the sickness will be counted in its entirety. For clarity, this means that where an employee is already subject to monitoring for one category of sickness absence, and they subsequently meet a trigger for the same or another category of sickness absence, consideration will be given to moving to the next stage of the policy.

4.9 Referrals to Occupational Health

- 4.9.1 Referrals for Short term sickness absence

- 4.9.2 Referral to the Occupational Health Service is a requirement from Second Formal Review onwards. In exceptional circumstances, the manager may refer the member of staff to the Occupational Health Service at Informal or First Formal Review to rule out any underlying causes for the absences.
- 4.9.3 Where absences are of a self-certificated nature and there is no medical evidence to support them, the manager, may recommend (either at Informal or First Formal Review) that the employee self refer to Occupational Health or their GP, in order to establish any underlying reasons or the need for medical treatment.
- 4.9.4 Prior to the Second Formal or Final Review meetings, advice should be obtained from the Occupational Health Service. The Manager should advise the employee that this referral will be made and that a formal meeting will be arranged for when the Occupational Health advice has been received.
- 4.9.5 Referrals for Long term sickness absence
- 4.9.6 If, during discussion at the informal or first Review, it is not possible to establish a date of return to work, the employee will be referred to the Occupational Health Service, unless a referral has already been undertaken.
- 4.9.7 Referral is required at Second Formal and Final Review, prior to the Review meeting.
- 4.9.8 Nevertheless, managers are expected to exercise judgment in respect of the appropriate timing of Occupational Health referral and meetings with the employee based on the individual circumstances (e.g. it may not be appropriate to make these arrangements if the employee is very seriously ill at that time and could not reasonably be expected to attend).

4.10 **Stress-Related Absence**

- 4.10.1 To ensure early intervention and support for employees absent due to stress, anxiety or depression Human Resources will signpost the employee to Staff Support Services. The Line Manager will refer to Occupational Health immediately.

4.11 **Musculo-Skeletal Absence**

- 4.11.1 If an employee is absent due to a musculo-skeletal injury, Human Resources will signpost the employee to the Trust Physiotherapy Service. An immediate referral to Occupational Health should be made to identify early intervention and support for their condition if appropriate.

4.12 Contractual Requirements to Attend Occupational Health

4.12.1 Staff must understand that attendance at Occupational Health is a contractual requirement of their employment when referred by their manager. Every effort must be made to attend the allocated appointment. If circumstances mean that an appointment cannot be kept, the employee is required to notify the Occupational Health Service directly at the earliest opportunity, so that an alternative appointment can be made. The employee must also inform their manager of their reasons for non attendance. If an employee refuses or fails to attend two Occupational Health appointments or comply with these requirements without acceptable explanation, consideration will be given to invoking the Trust Disciplinary Procedure and they may be invoiced £50 for the appointments. In the absence of an Occupational Health report the employee will be informed that any decisions relating to the management of their sickness absence, which may include dismissal, will be made on the basis of available information only.

4.13 Policy Stages

4.13.1 The Trust has set its sickness absence target rate for 2015/6 as 4.80%:

4.13.2 The key principles for managing attendance, both short and long term sickness absence, within the Trust, in line with this target will be;

- Informal Review
- First Formal Review
- Second Formal Review
- Final Review (dismissal could be an outcome)
- Appeal

4.13.3 Each case of absence that meets or exceeds the trigger levels set out below will be Reviewed and addressed by the manager on an individual basis.

4.14 Trigger Levels

4.14.1 'Trigger levels' are action thresholds that trigger a response from managers and remove uncertainty as to how attendance will be managed. This helps to ensure management consistency. The application of the policy stages based on trigger levels is defined in the table

Summary of Policy Stages and Trigger Levels

Policy Stages	Short Term	Long Term	Occupational Health Referral
Informal Review	<p>3 occasions of absence or 10 days (single or cumulative sickness absence in a retrospective rolling 12 month period) or unacceptable patterns.</p> <p>Attendance to be monitored and kept under Review of 12 months from the date of return from the last occasion of absence.</p>	4 weeks consecutive absence	<p>Immediate referral where absence is stress related or muscular-skeletal</p> <p>Short term Where absences are self certificated and there is no medical evidence the manager may recommend employee self referral to establish any underlying reasons or the need for medical treatment.</p> <p>Long term Where it is not possible to establish a return date</p>
1 st Formal Review	<p>Within the Review period a further 2 occasions of absence or 7 cumulative days is triggered since the issuing of the Informal Review</p> <p>Attendance to be monitored and kept under Review of 12 months from the date of return from the last occasion of absence.</p> <p>Provided the employee meets the required level of attendance during the First Formal Review period they will be stepped down to informal Review</p>	Within 2 months	<p>Short term Self referral as per Informal Review. Exceptionally the manager may refer to rule out any underlying reasons or need for treatment.</p> <p>Long Term Where medical advice is needed to establish prognosis for a return to work</p>

	for a further 12 month period		
2 nd Formal Review	<p>Within the Review period a further 2 occasions of absence or 7 cumulative days is triggered since the issuing of the First Formal Review</p> <p>Provided the employee meets the required level of attendance during the Second Formal Review period they will be stepped down to First Formal Review for a further 12 month period</p>	Within 5 months	Referral required prior to formal Review meeting for both short and long term absence.
Final Review	<p>Within the Review period if there is a further 2 occasions of absence or 7 cumulative days following the Second Formal Review being issued, then consideration will be given to termination of employment. If based on the circumstances of the individual case dismissal is not appropriate, the outcome will be an extension of the Second Formal Review of between 3 and 6 months.</p>	Within 6/7 months	Referral required prior to formal Review meeting for both short and long term absence.
Appeal	See paragraph 10.3 for information		

4.15 **Special Circumstances**

- 4.15.1 The Trust recognises that there are occasions when absences will not always result in members of staff being moved through the stages.
- 4.15.2 In very exceptional circumstances the manager with the advice of a HR Representative may make the decision not to proceed to the next stage of the procedure thereby allowing the employee the ability to remain on the same stage for an extended 12 month period. This will be considered, for example where the employee is already being monitored and they are known to be attending surgery for a condition which is directly related to their previous Review stage(s) being issued; or where there may be another limiting condition which on rare occasions may be considered; or in the case where an employee has been absent due to work related injury/work related stress.
- 4.15.3 However, because a particular reason for absence has been accepted as a special circumstance earlier in the application of the policy, it is at management discretion/judgement whether that same special circumstance will continue to be accepted. Factors to be taken into account are the continuing length of absence, frequency of absences, Occupational Health opinion, prognosis on a return to work, the impact of making reasonable adjustments, impact on service provision etc.
- 4.15.4 There may be circumstances where it is appropriate to terminate the employment of a member of staff before all the stages of the procedure have been exhausted (e.g. terminal illness or where occupational health advise that there is no likelihood of a full recovery and return to duty). Managers must seek advice from Occupational Health and Human Resources in these circumstances.
- 4.15.5 The Human Resources Team will monitor the application of all of the above to ensure it is being applied in a fair and consistent manner.

4.16 **Disability Leave**

- 4.16.1 Consideration should be given to additional leave an employee might need to adjust to changes in their life caused by a new or existing disability. Time off for treatment or rehabilitation, which may be categorised as disability leave may be given as a reasonable adjustment. These periods are usually planned for and will have specific timescales. Where an employee's disability will increase the levels of disability related sickness, a reasonable adjustment may be agreed to allow a greater level of sickness absence before progressing through the stages of the policy. However, all sickness episodes must be recorded and absence Review meetings should take place in line with the policy triggers. For further information refer to (HR27) Supporting Disabled Employees policy.

4.17 **The Right to be Accompanied**

4.17.1 Employees have the right to be accompanied at all formal Review meetings by an accredited Trade Union representative or workplace colleague of their choice. The manager must notify the employee of this right in all correspondence. The onus of securing Trade Union representation rests with the employee. Where an employee requests the postponement of a scheduled formal sickness meeting due to difficulties in organising representation, the employee or their representative must suggest an alternative time, or an alternative representative, normally within 5 working days of the original meeting. Where the request is judged to be unreasonable the Manager may, in conjunction with Human Resources, decide to proceed with the meeting as arranged and, if necessary, in the absence of the employee.

4.18 **Documentation of Review Meetings**

4.18.1 Confirmation of all meetings (and the invitations to attend) held in accordance with Review meetings, must be confirmed in writing to the employee.

4.19 **Considerations at Review Meetings**

- 4.19.1 The following information, as appropriate to the circumstances will form the basis of discussions at all Reviews of both short term and long term absence, and reasonable efforts will be made to provide assistance to enable the employee to overcome any problems identified.
- The absence record and return to work records during the previous 12 months, or 2 years (or longer) if there are repetitive/recurring problems potentially identified.
 - The nature, duration and occasions of sickness absence.
 - Any personal circumstances which may be adversely contributing to the attendance record.
 - Any on-going disability and reasonable adjustments in accordance with the Equality Act
 - Discussion and offer of any appropriate support or assistance.
 - Discussion of alternative work (applicable to long term sickness)
 - Consideration of ill health retirement (if applicable)

- Whether referral to Occupational Health or Staff Support is appropriate to determine any underlying reasons for absence, or for specific advice relating to the nature and/or duration of absence.
- The improvement level required and the next stage(s) that will follow if the improvement/return to work is not achieved and sustained.

4.20 Additional Considerations Relating to the Nature of Long Term Sickness Absence

4.20.1 The aim, when dealing with employees who are off long term is to provide for an early return to work (where practicable). This may include seeking suitable alternative employment or reasonable adjustment of duties where possible. However, there is no onus on the Trust to create a job. Termination of employment will be a last resort. The procedure for dealing with employees falling within this category may need to be varied due to the specific nature of the medical condition and/or Occupational Health advice. Each case of long term sickness absence will be different and the Trust must meet the test of 'reasonableness' before taking any decision to terminate employment on the grounds of long term ill health.

4.21 Return to Work following Long Term Sickness Absence

4.21.1 Where a manager is notified of a member of staff's intention to return to work following a period of long-term sickness absence, they may seek advice and guidance from the Occupational Health Department on how to support the member of staff to achieve a satisfactory sustained level of attendance in the future and to ascertain their fitness to return to work.

4.21.2 Occupational Health may recommend a phased return to work on reduced hours and/or adjusted duties. Phased returns will normally be completed within four weeks and in such cases will be on full pay. This may be extended in agreement with the Manager using annual leave to facilitate this. Where Occupational Health does not recommend a phased return to work, a member of staff may still request a phased return, using their annual leave to facilitate this. Such requests will be accommodated wherever possible.

4.21.3 Where a member of staff is returning from a period of long term sickness absence, they should not be allowed to work overtime or any additional hours over and above their contractual arrangements, for a period of four weeks.

4.21.4 If a manager receives an Occupational Health report or GP Fit note which recommends a return to duty with a phased return to work, amended duties, altered hours or workplace adaptations, the manager must consider

the viability of such adjustments. If for any reason the manager cannot make the changes necessary to support staff in returning to work then the statement can be treated as if the doctor has advised that the employee is not fit for work, and there will be no need for the member of staff to get another note from the doctor.

4.22 Final Reviews

- 4.22.1 Having followed the requirements of the policy it may be concluded that service needs are affected and there is no evidence that the employee will be able to give reliable, sustainable attendance in the future. In the case of long term sickness, the considerations outlined in paragraph 9.5.2 may result in the conclusion that dismissal is appropriate to the circumstances. In either situation the outcome is likely to be that employment will be terminated.
- 4.22.2 Where termination of employment is a possibility, the meeting notification letter will advise that it is a possible outcome of the meeting.
- 4.22.3 The line manager will produce a timeline of the absence(s) and full case report including all Occupational Health advice together with all of the supporting documentation which must be presented at the Final Review meeting.
- 4.22.4 The member of staff will be provided with a copy of the case report prior to the meeting. They will be able to provide any information that they wish to be taken into consideration. All information will be exchanged 5 working days before the meeting.
- 4.22.5 In the case of Unsatisfactory Attendance Final Review Meetings, these will be chaired by a manager, who has not had any involvement in the management of the process, and who has the authority to dismiss under the Trust's Scheme of Delegation. Following a Review of all the information provided the manager may dismiss the member of staff if he/she is satisfied that the decision is reasonable under the circumstance. It may be appropriate in certain cases to extend the Second Formal Review for a further period.
- 4.22.6 In cases of long term sickness, it may be more appropriate that the process to dismiss or extend the Second Formal Review, is continued by the manager dealing with the case. In these circumstances there must be written delegated authority provided to the line manager.
- 4.22.7 A member of the Human Resources Department must be present to support the manager at these meetings. The appropriate notice of termination must be given and confirmed in writing, including the following details:

- Date notice is effective from.
- Any outstanding paid annual leave entitlement.
- Final day of service (extended by annual leave)..
- Amount of paid notice (depending on length of service)
- Consideration of an application for ill health retirement.
- Appeal process - Staff have the right of appeal against the decision. Any appeal must be made in writing to the Executive Director of Workforce within 15 working days from the date of the dismissal letter.

4.22.8 There is no obligation to wait until contractual sick pay is exhausted before termination of employment.

4.22.9 There is an expectation that a final decision on the future employment of a member of staff will be made within a maximum of 12 months from the date the absence begins. In exceptional circumstances, the manager can extend any of the timeframes stated after consultation with the Occupational Health Department and in agreement with a member of the Human Resources Department.

- Sick pay for those who have exhausted sick pay entitlements should be reinstated at half pay, after 12 months of continuous sickness absence, in the following circumstances:
- Staff with more than 5 years reckonable service:- sick pay will be reinstated if sick pay entitlement is exhausted before a final review meeting for long term absence has taken place;
- Staff with less than 5 years reckonable service:- sick pay will be reinstated if sick pay entitlement is exhausted and a final review does not take place within 12 months of the start of their sickness absence.

4.22.10 Reinstatement of sick pay will continue until the final review meeting has taken place. Reinstatement of sick pay is not retrospective for any period of zero pay in the preceding 12 months of continuous absence.

4.22.11 These arrangements will only apply where the failure to undertake the final review meeting is due to delay by the Trust. This provision will not apply where a review is delayed due to reasons other than those caused by the Trust.

4.23 Appeals

- 4.23.1 Appeals should be made in writing to the Executive Director of Workforce within 15 working days from the date of the meeting outlining the grounds for the appeal and should be heard within 3 months of the date of dismissal.
- 4.23.2 The appeal should be heard by an Executive Director not previously involved in the case supported by a Human Resources representative
- 4.23.3 The manager who made the decision to dismiss will attend to present the case, and the reasons for the decision. The employee and his/her representative will have the opportunity to ask questions of the manager and present their own case after which the manager may ask questions.
- 4.23.4 The Executive Director hearing the appeal will have the opportunity to ask questions of the manager, and the employee. At the end of the meeting both parties will sum up.
- 4.23.5 The manager hearing the appeal may make the following decisions:-
- To confirm the action already taken, i.e. to dismiss the appeal.
 - To reinstate the employee which will usually include recommendations in relation to continue the formal attendance process, and may include recommendations for future support and/or adjustments if appropriate.
- 4.23.6 There is no further right of appeal within this procedure.

4.24 **ALTERNATIVE EMPLOYMENT**

- 4.24.1 Where, at any stage of the operation of this Policy, the employee is considered by Occupational Health as permanently unfit for their present duties but fit for modified duties or a different job, every reasonable effort will be made to find suitable alternative employment or make suitable reasonable adjustments where this has been recommended by Occupational Health, within a reasonable period of time. Where alternative employment is recommended, a period of 12 weeks will normally be allowed during which potential alternatives will be considered. In appropriate cases, the 12 weeks will run concurrently with the notice period.
- 4.24.2 There is no onus on the Trust to create a job. If an alternative post is identified and it is a lower pay band there is no requirement to protect pay, with the exception of where staff who have to change jobs permanently to a job on lower pay due to work related injury, disease or other health condition. In these circumstances staff are entitled to receive a period of pay protection that is equivalent to those arrangements described in the Trust's Organisational Change Policy. Therefore, this financial consideration must be borne in mind by both parties in making an offer, or accepting an offer, of what may be 'suitable' alternative employment.

Should the employee unreasonably refuse offers of alternative employment, or it is not possible to find any alternative, then employment will normally be terminated with notice as above.

- 4.24.3 Records must be maintained of actions taken with regard to this and any potential alternatives that are explored.
- 4.24.4 The Statement of Fitness for Work, (the 'fit note'), provided by GPs may also provide advice about an employee's fitness to work and/or give advice about possible changes that can be made by the Trust to facilitate a return for work which may be in relation to short term as well as long term absences.

4.25 **OBLIGATIONS UNDER THE EQUALITY ACT (2010)**

- 4.25.1 The Equality Act defines disability for the purposes of the Act as a mental or physical condition which has a substantial and long term adverse affect on the employee's ability to carry out normal day to day activities. Long term means that the condition must last, or be likely to last for more than 12 months. Managers must take advice from Occupational Health to determine if the employee's reason for absence is covered by the Equality Act and seek advice from Human Resources on the management of attendance where an employee is considered disabled.
- 4.25.2 If an employee is defined as having a disability under the Act, their sickness absence will be managed in accordance with the Act and reasonable adjustments will be considered. An adjustment is reasonable to the extent to which it is or might be effective, practicable, acceptable to the requirements of the organisation, affordable or within the means available to the organisation.
- 4.25.3 Examples of reasonable adjustments might include adaptations to the working environment or working arrangements. Workplace assessments and funding for equipment are available through the Access to Work Scheme. Advice should be sought from the Human Resources Department.
- 4.25.4 In all cases where the employee has a disability, reference must also be made to the Trust's Policy 'Policy for Supporting Staff with Disabilities'. The Trust's Equality Team can also be approached for advice

4.26 **WORK RELATED INJURY/WORK RELATED STRESS**

- 4.26.1 Where a member of staff is absent calculation of pay during a period of sickness absence does not include enhancements. (NB This only applies to those staff on pay point 9 and above of the Agenda for Change pay scales).

- 4.26.2 The exception to this is where the absences is due a work related injury or disease sustained or contracted in the actual discharge of their duties and the individual is not in receipt of Injury Allowance.
- 4.26.3 In order to determine if a member of staff's absence is due to work related injury or absence the line manager must complete the Work Related Absence (WRA) form (Appendix B) as soon as the member of staff reports that their absence is due a work related injury or work related stress. The line manager must submit the form with any supporting documentation to the designated Senior Manager within 7 days of the absence commencing. The member of staff will also be given the opportunity to provide supporting information and the line manager must ascertain with the member of staff if they have any additional information they wish to submit. (NB This process is to be followed for all staff, including those who are on pay point 8 and below of Agenda for Change pay scales)
- 4.26.4 A WRA Review will be convened chaired by the designated Senior Manager, and supported by a Human Resource representative. The Line Manager will also attend. A decision will be made based on the information provided and with regard to the eligibility criteria set out in the NHS Injury Benefit Scheme. (Appendix C). Additional information may be requested if deemed necessary. Until the decision is made, the employee's absence will not be marked as work related on Health Roster or ESR. The decision will be communicated to the member of staff and if it is accepted that the reason for absence is work related, Health Roster/ESR should be updated. The rationale for both approving and not approving a claim must be provided to the member of staff in writing. The decision will take into account the nature of the claim and evidence provided such as accident/incident reports, CCTV evidence, and witness statements.
- 4.26.5 If the employee disagrees with the decision not to approve the claim, they may appeal the decision in writing to the Sickness Co-ordination Team who will arrange for the appeal to be considered by an appropriate Senior Manager, not involved with the original decision, who will be supported by a Human Resources representative. The Manager who made the original decision will attend. The member of staff can also attend or be represented by their Trade Union representative if they are not able/do not wish to attend.
- 4.26.6 There may be some instances where the claim is straight forward (e.g. in the case of an assault by a patient) where there is no need to hold a review meeting and the decision can be made virtually by the Senior Manager and Human Resource representative. The WRA pro-forma must still be completed and submitted in these cases.
- 4.26.7 Absences due directly to an injury at work will not be added to other periods of sickness absence for the calculation of occupational sick pay.

4.27 INJURY ALLOWANCE

- 4.27.1 Injury Allowance is payable when an employee is on authorised sickness absence or a phased return with reduced pay or no pay, due to an injury, disease or other health condition that is wholly or mainly attributable to their NHS Employment. Common to both of these changes is that the determination of whether the employee's absence is due to an injury, disease or other health condition is wholly or mainly attributable to their NHS employment is for the Trust to decide.
- 4.27.2 If a member of staff has had the period of absence accepted as work related at a WRA Review or subsequent appeal, Injury Allowance will be paid at the appropriate time.

4.28 COSMETIC OR NON MEDICAL SURGERY

- 4.28.1 For staff having cosmetic or non medical surgery or cosmetic medical appointments for non medical reasons annual leave must be taken. NB: Gender reassignment is classed as a medical reason.

4.29 SICKNESS OCCURRING DURING ANNUAL LEAVE

- 4.29.1 Where sickness occurs during annual leave, so long as there has been compliance with the requirements for notifying and certificating sickness and where a medical certificate is provided, this will be treated as sick leave. Employees will not be entitled to an additional day off if sick on a Bank Holiday that they would otherwise have been required to work as part of their basic week. Further detail is included in the Annual Leave Procedure. In accordance with current legal requirements, an employee on sick leave who has taken less than 4 weeks Statutory Annual leave entitlement (i.e. 20 days or pro rata 4 weeks equivalent for part timers) and who had been unable or 'unwilling' to take this, is entitled to the balance when they return to work even if this means it needs to be taken in the next leave year.
- 4.29.2 The term 'unwilling' only applies where the employee is unwilling to take annual leave during the period of sickness; they cannot choose to carry over if, on return to work, there is time to take it within the existing leave year and the Trust requires that they take it. It is not necessary for the employee to make any request to carry the 20 days (or outstanding balance) of Statutory accrued holiday entitlement forward to the new leave year, it will be automatic if the reason it has accrued is because of long term sickness absence and the above criteria is met.

4.29.3 Staff who are off on long term sick leave, are still able to request annual leave. Managers must ensure that this is discussed with staff at sickness Review meetings. Payment in lieu of annual leave not taken due to sickness is only allowed upon termination of employment.

4.30 PROCESS FOR ANALYSING SICKNESS ABSENCE DATA

4.30.1 Monthly reports are produced by the Information Team.

4.30.2 The HR Department will then provide timely sickness information at least monthly, but as a minimum at least ten times a year, to the ward managers and department managers within the Trust informing them of all staff who have been absent in that months reporting period, with the relevant sickness history attached for that individual. The relevant Human Resource Adviser then meets with Line Managers (in the main on a monthly basis but as a minimum at least ten times a year) to discuss staff members who currently fall within the informal/formal process to ensure timely Review and progression or removal from the formal procedures where no further action is required is being applied consistently and fairly across the divisions.

4.30.3 The purpose of these meetings is also to identify hotspots for further exploration and intervention.

4.30.4 The Head of Workforce then meets with the Chief Operating Officers or delegated deputy and respective Human Resource leads, ideally monthly; but as a minimum 6 times per year to monitor compliance of the sickness data against the policy, ensuring staff are being treated fairly and consistently. Any division with sickness above 4.8% for the month are discussed and recorded between the Head of Workforce, relevant Service Manager and the relevant Human Resource Business Manager.

4.30.5 The Information Department produces a monthly HR KPI report showing sickness data for the:

- Rolling 12 months
- Financial year to date
- Single Month

4.30.6 The monthly report is discussed at divisional meetings and it is the Chief Operating Officers responsibility and Senior Managers to ensure sickness absence data is analysed and monitored with appropriate interventions and actions taken place in accordance with policy.

4.30.7 Sickness absence also forms part of the organization's KPI's and is presented by the Director of Workforce as part of the overall Trust Performance Report on a monthly basis to the Trust Board

5 CONSULTATION

The following staff and groups were consulted with in the development of this policy

- Senior Managers
- Recognised Trade Union Organisations
- Human Resources Staff

6 MONITORING

Monitoring of compliance with this policy will be undertaken by:	Executive Director of Workforce
The results of monitoring will be reported to:	Trust Board

7 GLOSSARY OF TERMS

Glossary of Terms

Term	Description	Reference

RIDDOR Reporting of Injuries, Diseases and Dangerous Occurrences 2013

SELF-CERTIFIED SICKNESS ABSENCE NOTIFICATION**1. PERSONAL DETAILS**

SURNAME: Mr/Mrs/Miss/Ms
FIRST NAME:
PRESENT ADDRESS:

2. EMPLOYMENT DETAILS

JOB TITLE
DEPARTMENT
PERSONAL NO. (from your payslip)

3. PERIOD OF SICKNESS

DATE YOU BECAME UNFIT FOR WORK	TIME	DAY	DATE	MONTH	YEAR
<u>NIGHT WORKERS ONLY</u> TIME YOUR LAST SHIFT BEGAN	TIME	DAY	DATE	MONTH	YEAR
DATE YOU EXPECT TO RETURN TO WORK (if known)	TIME	DAY	DATE	MONTH	YEAR

4. DETAILS OF SICKNESS/INJURY

GIVE REASON FOR ABSENCE CODE: (see overleaf)		
IS ABSENCE AS A RESULT OF AN ACCIDENT AT WORK	YES/NO	DATE OF ACCIDENT
IF YES, HAS AN INCIDENT FORM BEEN COMPLETED	YES/NO	
IS THE ABSENCE AS A RESULT OF A ROAD TRAFFIC ACCIDENT/THIRD PARTY ACCIDENT	YES/NO	

I certify that to the best of my knowledge the information given above is true, I understand that to give false information could result in the loss of sick pay benefits and/or disciplinary action.

Signed: _____

Date _____

Work Related Absence : Pro Forma

Name	
Job Title	
Ward/Department	

Accident or Injury

Details of accident/incident (what happened)	
Incident Date & Time	
Incident location	
Witnesses/people first on scene/CCTV	(i)
	(ii)
	(iii)
Witness statements available – Yes/No (If Yes, attach)	
Nature of Injury	
Treatment given	
Incident to be investigated – yes/no (if yes state whether it will be a 72-hour safety check, adverse incident review or police referral)	
RIDDOR reportable - yes/no	

Work related stress

Date absence commenced	
Referred to Occupational Health	
What factors does employee consider have contributed; <ul style="list-style-type: none"> • Workplace changes • Interpersonal relationships • Content of work • Extensive personal factors 	
Have any of the above concerns been raised with the employee's Line Manager? If so, please provide details of when, where, and the outcome of these discussions.	

NB If these concerns related to high observations, short staffing, etc please provide evidence / additional information.	
Has Wellbeing Assessment been completed? (If not, must be completed within 7 days)	

WRA Review Panel

Panel Date	
Panel members	
Discussion notes / actions	
Outcome communicated	
Health Roster / ESR updated	
Appeal Against Decision	
Appeal Upheld	Yes/No
Injury Allowance Approved	Yes/No

Determination of Work Related Injury in Relation to the Payment of Enhancements/Payment of Injury Benefit.

From 31st March 2013 changes have been made to the calculation of pay during sickness absence which affects staff on pay points 9 and above on the Agenda for Change pay bands. For these staff payment will no longer include regularly paid enhancements (i.e. what would have been paid had they been in work,) and instead will be calculated on the appropriate pay point only. The only exception to this is where absence is due to a work related injury or disease in the actual discharge of their duties and the individual is not in receipt of an Injury Allowance.

From the same date a new Injury Allowance has been introduced within the NHS Terms and Conditions of Service. This allowance is payable when an employee is on authorised sickness absence or a phased return on reduced pay or no pay, due to an injury, disease or other health condition that is **wholly or mainly attributable to their NHS employment**. (The definitions of which are 'wholly' means 'totally'; 'mainly' means 'for the most part' and 'attributable' is as defined in case law, which is contributory causal connection; it need not be the sole, dominant, direct or proximate cause and effect) It must have been sustained or contracted in the discharge of the employees duties of employment or not sustained on duty but connected with or arising from the employees.

Common to both of these changes is that the determination of whether the employee's absence is due to an injury, disease or other health condition and wholly or mainly attributable to their NHS employment is for the Trust to decide. This policy therefore sets out the provisions and processed that will apply with regards to determination of eligibility.

Situations where Sick Pay With Enhancements and/or Injury Allowance may be considered

Examples of situations will include:

- physical or psychiatric injury sustained or disease contracted due to a specific incident or series of incidents
- injury sustained or disease contracted that does not manifest itself for several years, for example, asbestosis or Hepatitis C following a needle stick injury
- injury sustained while travelling on official duty, for example, road traffic accident (RTA), while travelling in an official car from one NHS premises to another
- injury sustained off duty, for example, while providing professional treatment which required professional training or knowledge at the scene of a RTA
- injury inflicted off duty, the cause of which can be attributed to NHS employment (for example, being assaulted on the way home from work by ex-patient)
- injury, disease or other health condition contracted due to a series of incidents relating to NHS employment (for example, exposure to noxious substances causing injury, condition or disease over a period).

Situations where Sick Pay With Enhancements or Injury Allowance will not be considered.

Where the employee is injured while on a normal journey travelling to and from work, except where the journey is part of their contractual NHS duties of employment

- is on sickness absence as a result of disputes relating to employment matters such as investigations or disciplinary action, or as a result of a failed application for promotion, secondment or transfer
- sustains an injury or disease which is aggravated by the claimants own negligence or misconduct.
- where there is no reduction in pay below 85 per cent
- where the employment contract ends.

Circumstances Where Sick Pay With Enhancements and /or Injury Allowance is unlikely to be payable?

Where the injury or disease is attributable to some other cause, for example the natural progression of a pre-existing condition, normal wear and tear or a non work related injury, condition or disease

Where a person suffers from a pre-existing or non-work related condition (injury or disease) unless there is some new work related cause and effect over and above the original problem.