

Policy Number	SSCSD006
Policy Name	SUPPORTING POSITIVE ATTENDANCE - Long Term Sickness Absence Procedure
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This document is a valid document, however due to organisation change some references to organisations, organisational structures and roles have now been superseded. The table below provides a list of the terminology used in this document and what it has been replaced with. When reading this document please take account of the terminology changes on this front cover

Terminology used in this Document	New terminology when reading this Document
Liverpool Community Health (LCH)	Mersey Care NHS Foundation Trust

This policy is deemed non-contractual and will transfer with their incorporated procedures but was agreed as being a necessary addition during staff side negotiation

FOR OFFICE USE ONLY (Work Stream submission check)

This document is compliant with current best practice guidance

This document is compliant with legislation required in relation to its content

What change has this document undergone in the policy alignment process relating to the South Sefton Transaction?

None Minor Major This is a new document

This document has been reviewed and is no longer required

Does this document impact on any other policy documents?

Yes , if yes, which policies are effected? 33T

No

Signed:

Date: 25/05/2017

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**

SUPPORTING POSITIVE ATTENDANCE

Long Term Sickness Absence Procedure

To be used in conjunction with:

**Supporting Positive Attendance Policy
Short Term Sickness Procedure
Supporting Positive Attendance Toolkit for Managers
Reasonable Adjustments Policy**

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1. Aims and Objectives

The aims and objectives of this procedure are:

- To create a framework in which all interested parties liaise, discuss and identify options for the appropriate way forward
- To ensure prompt action and solutions so that both the employee and the department they work in are not left in a disadvantaged position.
- To maintain regular contact with the employee and keep them informed of progress.
- To ensure that long-term sickness absence is monitored.
- To provide a toolkit to assist managers in the management of long term sickness absence (see separate document – Supporting Positive Attendance Toolkit for Managers).

2. Definition of Long Term Sickness

Long-term sickness is characterised as one episode of absence lasting more than four weeks.

3. Recognition of Individual's Condition

It is recognised that in the case of long-term sickness, employees could be concerned about their future employment. It is therefore essential that such individuals are dealt with fairly and with due consideration for their condition.

4. Procedure for Staff and Managers

4.1 Maintaining Contact During Absence

Employees and managers should maintain regular contact at an appropriate mutually agreed time frame during sickness absence at agreed intervals eg weekly. Regular contact will ensure that timely and adequate support can be offered, discussions regarding alternative duties can be held and cover arrangements can be made. Appendix 22 – Record of Employee Contact Form in the Supporting Positive Attendance Toolkit is a pro-forma on which employee contact can be recorded.

Employees are required to attend meetings as appropriate with their line manager, Human Resources and/or Occupational Health.

In addition to contacting their line manager, employees can also contact Human Resources, Occupational Health and the Employee Assistance Programme for advice and support.

4.2 Referral to the Occupational Health Department

Referral to the Occupational Health Department should be considered as soon as it appears that the absence may be of a long term nature. A manager can refer an employee to Occupational Health

4.3 Review Meetings

When an employee has been absent from work for four weeks their manager must contact the HR Advisor to arrange a meeting with the employee, (this may not be appropriate in cases of planned surgery were the expected sickness is a defined period). The purpose of the meetings will be to review progress and discuss any support and

identify any reasonable adjustments to facilitate an early return to work. The employee has the right to be accompanied by a trade union representative or a work colleague.

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

If the employee is too unwell or otherwise unable to attend a meeting at the workplace or would prefer not to do so, a home visit should instead be agreed to enable the meeting to go ahead. If the employee is too unwell to attend any meeting, even though a home visit, the employee will need to provide a doctor's note stating this. Consideration should then be given as to whether it is possible and reasonable to conduct the meeting over the telephone or through the nominated next of kin. These options would only apply in exceptional cases of very serious illness.

At every stage the manager will need to outline the options available, steps to be taken and overall timescale. If the date of return cannot be determined or is not expected for a prolonged period, it is for the manager, with advice from Occupational Health, to decide what timescale would constitute a reasonable period within which a return must be achieved.

A final review meeting should be held prior to the employee entering a no pay situation. The purpose of the final review meeting will be to decide whether the employee can return to their substantive role, be redeployed or their contract terminated on the grounds of capability due to ill health.

Where, in exceptional reasons, the final review meeting is delayed, as a direct result of the organisation, into the individual's nil sick pay period, the Trust will re-instate half sick pay for employees who have had 12 continuous months sickness absence, as follows:

Staff with less than five year's reckonable service – sick pay will be re-instated if contractual sick pay entitlement is exhausted and a final review meeting does not take place within 12 months of the start of the sickness absence. Re-instatement of half sick pay will not be retrospective and will start at the 12 month point

Staff with more than five year's reckonable service – half sick pay will be re-instated if contractual sick pay entitlement is exhausted before a final review meeting has taken place

4.4 Interim Placements

If an individual is on long term sick leave and is unable to return in the medium term to their substantive post, but is fit to carry out some duties which will allow them to return to work and aid their recovery, then an interim placement may be considered.

An interim placement may be an identified vacancy not yet filled, a post which needs cover due to sickness or maternity leave or a created post which fulfils service need in a certain area but which will not be filled substantively. An example of the latter would be providing clerical support in a busy office for an agreed number of hours per week. An interim placement may be of a lower band and fewer hours than the substantive role but the employee's contractual pay will not be affected.

An interim placement does not need to be in the same department or directorate.

In identifying an interim placement, the line manager will undertake a risk assessment and may also seek advice from Occupational Health regarding whether the employee could carry out the duties identified without further risk to their health.

Any placement would need to be made with the agreement of the employee concerned and the receiving manager, if different. An employee's fitness to carry out restricted or alternative duties should also be supported by a Fit Note from their GP. See Section 3 of the Supporting Positive Attendance Toolkit for more information about Fit Notes. If the employee unreasonably refuses the offer of an interim placement, consideration will be given to removing the Occupational Sick Pay from the employee if they remain off sick. Payment for any interim placement will remain the responsibility of the employee's manager for the substantive post.

Interim placements are not a long-term solution and will be for an agreed period of time and subject to regular review in order to facilitate a return to the substantive post as soon as possible. If a return to the substantive post is not feasible then other options should be explored as outlined below.

An interim placement may also be considered as a reasonable adjustment under the Equality Act (2010) until longer term adjustments can be implemented in relation to the employee's substantive post.

4.5 Phased Return to Work

The option of a phased return to work can be discussed with any employee who has been absent from work for four weeks or more or who, due to the nature of their absence, is unable to return to full contractual duties and hours. A phased return to work may also be recommended by the Occupational Health Department.

A phased increase in hours/duties may help the individual retain good health and will also benefit the Trust as the alternative to an individual remaining on sick leave until fully fit to return.

It is important to note that many employees return to their contracted hours without a phased return and managers should, therefore, consider each case on its merits.

If Occupational Health recommends a phased return that is operationally reasonable and sustainable, then its use is advised. Failure to do so could result in further sickness and risks associated with the Equality Act. It is the responsibility of all employees to ensure they are fit and able to work. As the design of the phased return allows for flexibility in duration and content, the negotiation of a suitable plan should be possible.

The phased return to work programme should be developed by the Line Manager with advice from Human Resources, if required, and agreed in consultation with the employee and their representative.

A phased return is for a limited period of time, jointly agreed with the employee, and is usually around four weeks, up to a maximum of eight weeks, which increases hours of work and duties over the agreed time scale. In the final week of the phased return an employee should be undertaking their full contractual hours and duties.

A balance must be achieved between the hours the individual will be able to work and the duties undertaken. This will depend on the nature of the health condition and the work involved. The phased return to work programme must be documented and a copy given to the employee. During the phased return the manager should regularly monitor the employee's progress.

In some circumstances it may be appropriate to refer the employee together with a copy of their phased return to work programme to Occupational Health. This should be decided on an individual case basis.

A phased return to work can also include a temporary alternative work placement or duties that are not usually part of the employee's post. This should be discussed with Occupational Health and Human Resources.

4.6 Payment During a Phased Return to Work

To ensure that an employee continues to receive their full contractual pay during their phased return, annual leave that has been accrued during the period of sickness absence is used to cover those hours when an individual is not required to work, e.g. if a full time employee is returning three days per week then accrued annual leave should be used to cover the two days the individual is not working.

However, it is important that not all of an employee's annual leave is used to cover the phased return to work. The manager also has discretion where it is not deemed appropriate to use annual leave, (for example, if the employee has little or no annual leave), to authorise that the employee receives full pay during the phased return to work programme. Alternatively, both parties may agree to a reduction in paid hours during the phased return to work programme.

4.7 Holiday Entitlement

When an employee has been on long term sick leave and has been unable to use their outstanding annual leave by the end of the annual leave year they will accrue holiday calculated on the basis of 5.6 weeks per year. This will be pro rata for part time staff. This arrangement relates to Working Time Regulations annual leave, not annual leave under Agenda for Change.

It is recommended that an appropriate proportion of the individual's accrued leave is used to facilitate a phased return to work. The principles of the 'FAIR' model should be considered when agreeing this. Further support can be obtained from the HR Team.

It is not normal practice for an employee to take holiday whilst on long-term sick leave. Requests to do so should be by agreement with the manager. This includes pre-booked holidays. If a holiday is taken without the agreement of the line manager and Occupational Health have advised that it will impede recovery, the absence will be treated as unauthorised and therefore unpaid.

If an employee chooses to take annual leave whilst they are on a period of sick leave then they may choose to utilise annual leave for this purpose. This annual leave will be taken off their overall annual leave entitlement.

4.8 Equality Act 2010

Under the Equality Act a person is disabled 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”.

An impairment is considered as “long term” if it:

- Has lasted at least 12 months;
- Is likely to last 12 months; or
- Is likely to last for the rest of the person’s life.

Further information about how the Trust will support disabled staff, including Disability Leave and Tailored Adjustment Agreements, can be found in the Reasonable Adjustments Policy.

4.9 Options if Unable to Return to Substantive Post

In all cases the intention of all parties should be to try and ensure where possible the employee’s recovery and return to work.

If it is unlikely that an employee will be fit to return to their normal contractual hours and duties within an agreed timeframe, relevant decisions including redeployment or termination of employment should be made.

The relevant courses of action that should be considered are described below.

4.9.1 Reasonable Adjustments

The Code of Practice for the elimination of discrimination in the field of employment against disabled person or persons gives a number of examples of steps which employers may have to take, if it is reasonable for them to have to do so. Steps other than those listed here, or a combination of steps, will sometimes have to be taken:

- Altering a job description within a job role;
- Modifications to the way a job is structured;
- Altering a person’s working hours;
- Giving the person, or arranging for him/her to be given, training;
- Providing supervision;
- Acquiring or modifying equipment ;
- Making adjustments to premises;
- Allocating some of the disabled person’s duties to another person;
- Transferring the person to fill an existing vacancy (such a case might also involve reasonable retraining);
- Assigning the person to a different place of work;
- Allowing the person to be absent during working hours for rehabilitation, assessment or treatment;
- Modifying instructions or reference manuals;
- Modifying procedures for testing or assessment;
- Providing a reader or interpreter.

The Code states that it would be reasonable for an employer to have to spend at least as much on the adjustment to enable the retention of a disabled person – including any retraining – as might be spent on recruiting and training a replacement. For further information, please refer to the Trust’s Reasonable Adjustments Policy.

See the Supporting Positive Attendance Toolkit for a return to work assessment for long-term sickness absence.

4.9.2 Alternative Employment

Where the employee is diagnosed as being incapable of returning to the duties of their current post, efforts to obtain suitable alternative posts within the Trust should be made in accordance with the Redeployment Policy.

4.9.3 Retirement Options

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

- To wind down into part time work in ways that do not significantly reduce pension benefits.
- To step down into a less demanding, lower paid role in a way that preserves pension entitlement from the higher level post.

Further information is contained with the Trust's Leavers and Retirement Policy.

4.9.4 Ill-Health Retirement (Pension Benefits)

If an employee is a member of the NHS Pensions scheme they may be eligible for ill-health retirement.

There are tiered arrangements for the determination of ill-health retirement benefits, recognising that the different level of benefits for members should be dependent on the severity of their condition and the likelihood of them being able to work again.

Tier 1 benefits

Will apply where the NHS Pension Scheme administrators are satisfied that the individual is suffering from a mental or physical impairment that makes them permanently incapable of carrying out the duties of their normal role. As this tier assumes that they will still be able to carry out another job, a lower level of benefits will apply.

Tier 2 benefits

Will apply where the NHS Pension Scheme administrators are satisfied that the individual is assessed as being presently incapable of carrying out any regular employment that is similar to their job as a scheme member, either on a full or part time basis. This would apply where the individual cannot reasonably be expected to do work across a general field of employment, bearing in mind their physical and mental capacity and their training and experience to date. The aim is to provide a greater level of benefit to those who are permanently incapable of working again.

There is the potential for movement between Tiers 1 and 2.

Movement from Tier 1 to Tier 2 benefits

In a limited number of circumstances, where an individual meets the criteria for Tier 1 benefits, the medical advisers will be able to defer a decision for up to three years on whether to award Tier 2 benefits. This would apply where the nature of the condition makes it difficult to assess the longer term outcome in terms of ability to permanently undertake any regular employment. It is expected that this will apply in only a minority of cases.

Movement from Tier 2 to Tier 1 benefits

Those in receipt of Tier 2 benefits are permitted to undertake some employment provided they do not earn above the lower earnings limit. If they earn over this amount

they would move to Tier 1 and benefits would be abated. Different arrangements apply dependent on whether the return to work is within or outside of the NHS, and further advice should be sought from the Pensions Manager.

The Pensions Manager will need to be contacted to establish if the employee has the required service to apply for ill-health retirement under the NHS Pension Scheme Regulations. If they do, then a meeting should be arranged with the individual, the Human Resources representative and the employee's manager. The employee should also be permitted to have a representative present if they wish. At the meeting the individual should be appraised of the situation and the benefits available to them. If the employee agrees to make an application this should be done according to the normal procedure.

At the stage that an employee submits an application for ill-health retirement, the manager will issue the employee with notice and terminate the contract of employment.

4.9.5 Termination of Employment

If the employee is diagnosed as being unfit to return to work, or if they are unfit to return to their original job within a reasonable time frame and efforts to secure alternative employment have been unsuccessful, termination of the employee's contract must be considered. The manager who has been involved with the employee during their absence will act as the dismissing officer unless the employee chooses to go through the process outlined at Final Review Meeting of the short term sickness absence procedure.

Pay in lieu of notice may be paid on the basis of one week's pay for each complete year of service in the Trust, up to a maximum of twelve weeks.

4.10 Industrial Injury

If termination is being considered as the result of an Industrial Injury, the Trust's Litigation Officer must be consulted prior to dismissal, as there may be a claim for damages in the future.

4.11 Appeal Against Dismissal

An employee who wishes to appeal against dismissal must do so to Director of Human Resources and Organisational Development. Such an appeal must be lodged in within 14 calendar days of the date of dismissal and clearly state the grounds for appeal. The process is outlined in the Managing Short Term Absence Procedure.

4.12 Critical Illness

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

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

As soon as it is possible and appropriate to do so the line manager should meet with the employee and Human Resources to discuss:

- Arrangements for time off for treatment;
- The likely impact of the treatment on the employee's ability to work and whether the

- employee wants colleagues informed of their condition;
- Referral to Occupational Health for advice on the employee's illness and recommendations for returning to work and time off.

The employee may wish to have a Trade Union representative, work colleague or friend (not acting in a legal capacity) with them at any meetings they attend. It is the employee's responsibility to arrange this representation.

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

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

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