

Revenue & customs briefing

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Members' Briefing **REVENUE & CUSTOMS GROUP**

To: **All Members**

cc: **Branch Secretaries, Group Executive Committee, Equality Chairs, VOAC** (for info)

Can this Briefing be circulated via HMRC IT systems: **NO**

Website: **YES**

Action to be taken: **For circulation to all members, particularly those who are managers**

DATE: 27 March 2017

R&C/MB/042/17

ATTENDANCE MANAGEMENT POLICY PCS GUIDANCE FOR MANAGERS

- *Branches advised to give a printed copy of this briefing to all managers including those who are non-members (non-members should also receive a PCS membership form)*
- *This briefing – which has been produced with the assistance of the PCS Legal Department – is aimed at assisting managers in dealing with attendance management issues*
- *This briefing has been shared in advance with HMRC. However they have withheld consent for it to be circulated via HMRC systems*

If you're reading this and you're not a member of PCS, the first piece of advice we would give you is to join. If you're a member and you're aware of other managers who are non-members, please encourage them to join by either logging onto the PCS website <https://join.pcs.org.uk/> or by contacting their local PCS rep.

As a manager, issues can arise with members of your team or with your own manager and PCS are here to provide you with advice, support and representation in either situation if you need it. So just because you've faced a PCS rep who has been supporting one of your staff, don't think that the Union isn't for you. It is. Of course, you will need to be a member of PCS as the union won't represent you on an issue that occurred before you became a member.

Raising concerns

As a manager, if you are in any way concerned about the way the Attendance Management Policy is being administered in your area then please let a rep PCS know. Any information you provide will be kept in the strictest confidence. If you would prefer to not to discuss your concerns with a local rep, you can contact one of the PCS National Negotiators who are leading on the Attendance Management Policy, [Hector Wesley](#), [Mark Leopard](#) or [Jake Wilde](#).

We've already received information from concerned managers which has enabled us to intervene to resolve these issues without revealing the source of the information. An example of this was an e-mail that was forwarded to us from a manager working in Benefits & Credits. This e-mail had been sent to managers from an Attendance Champion, it provided a list of instructions and 'clarification' on points within the guidance such as 'If a Jobholder goes off for a planned operation and they have already

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reached or exceeded their trigger point prior to the absence, then an exception can not be applied and they should be placed on a Written Improvement Warning' Of course, this advice was completely incorrect and we managed to take this up with senior management and remedy the situation.

Decision making

The second, and most important piece of advice we would give you is that, with very few exceptions, decisions about the management of your staff are yours to take.

As a manager, you are expected to seek advice before reaching a decision, but the decision is, and must be, yours and yours alone. That is because, and this is especially pertinent when it comes to managing poor attendance cases, any management action that results in dismissal could end up at an Employment Tribunal (ET). If it does then it will be you, as the manager of the person dismissed, who may have to justify the decisions made early on in the process during cross examination.

This is why it is particularly important to fully complete the Decision-Making Template to record any decisions you make during each stage of the process, ensuring that you provide as much detail as possible when covering the following points:

- What decision are you considering
- The information you have assessed e.g. guidance, fit for work plan, fit notes, OH Assist report, disability passport, carers passport, CSHR Casework advice, manager and business head advice.
- Who you have consulted for advice and what they have suggested
- What are the risks and how did you mitigate them?
- What discretion you have used in making the decision

PCS believes it is important to ensure our manager members are fully informed on the potential consequences of a sickness absence case going to Employment Tribunal which is why we would advise you to ensure that you are comfortable that any decision you make 'is the right thing to do'. Remember, if you need advice or support, your union, PCS is here to help you.

When you are making your decision it is important to imagine having to justify it in an Employment Tribunal. It would not be acceptable to say that your manager or attendance champion advised you to take a particular course of action as **the decision must be yours** and you should be able to give a clear rationale for making it.

If you are put under any pressure to make a decision that you are not comfortable with, please seek advice from your PCS rep.

Keeping records of advice received

It is absolutely essential that you ensure any advice given to you is provided in writing. If you are given advice verbally by your manager or an attendance champion, either ask them to put it in writing or record notes of the advice yourself and ask them to confirm they are a true representation of the discussion.

When contacting Civil Service HR or the Reasonable Adjustment Support Team (RAST) for advice, you should automatically receive notes of the discussion from the advisor but it is worth ensuring that this will be provided before you end the call.

If you are uncomfortable with the advice given to you or if you want to seek reassurance, please don't hesitate to contact your local rep or one of the GEC members leading on the new Attendance Management policy ([Hector Wesley](#), [Mark Leopard](#) or [Jake Wilde](#)) if you are going to send them a copy of the advice you've received, please ensure that the jobholders personal details have been removed.

Setting of the Disabled Employees Trigger Point (DETP)

It's important to remember that the DETP is a reasonable adjustment, designed to remove any substantial disadvantage that a disabled employee may experience from the Attendance Management policy. You are responsible for consulting with the Reasonable Adjustment Support Team, Civil Service HR Casework, Occupational Health, your manager and the jobholder over setting a suitable DETP for employees with disabilities

Not all jobholders with disabilities need a DETP but where additional absence is unavoidable as a result of a qualifying impairment, it may be discrimination not to accept that higher level of absence through the setting of a suitable DETP. Of course, any adjustment is only reasonable if it overcomes the substantial disadvantage that it is designed to address. So if a DETP is artificially restricted without due consideration of the jobholder's individual circumstances then it is not a 'reasonable adjustment.'

The amount of the DETP is generally based upon previous levels of sickness absence. First it uses accurate historical data rather than taking a guess about future absences, though it is important to remember (and factor in) that conditions can change. Secondly absence levels must be regarded as sustainable by the business, so using previous levels of absence ensures that as those levels have previously been regarded as sustainable.

When making any decision on a DETP, you will need to document how you've arrived at that decision taking into account a number of factors including:

- the jobholder's absence record
- the stability of the condition
- the level of absence the business can support – you will need to consider factors such as cost, disruption to the business and impact on the organisation but when considering this, you must remember that HMRC employs 56,000 members of staff
- what sort of periods of absence someone with this condition might reasonably be expected to have over the course of an average year because of their disability, or
- whether future absences related to the disability are likely to remain at a similar level.
- If you are considering agreeing a DETP that exceeds 16 days (i.e. 100% of the standard trigger point) you will need to seek advice from Civil Service HR Casework and you will also need the decision to be signed off by a senior manager, Grade 7 or above. Don't let this deter you from recommending a DETP that exceeds 16 days if you believe that is the right thing to do. Once you have documented your rationale and sent it to a senior manager, the final decision is out of your hands.

If your decision is overruled then it is important that this is done in writing as the senior manager who does so has made a decision that may have consequences for you having to take disciplinary action against the jobholder in the future. That is because the Trigger Point is always the prompt for action, so if it is set unfairly low then there is a risk that any resulting penalty (dismissal for example) would also be unfair as appropriate reasonable adjustment had not been made. If this happens and you find yourself in an Employment Tribunal, you will be able to provide evidence that you had recommended a reasonable DTP but your decision was overruled.

Taking action, or not, when the Trigger Point is reached

The decision on whether management action is appropriate once a trigger point has been reached is again yours. The guidance is clear that not every absence or spell should be counted towards the trigger points. This means that you will have to evaluate each absence individually, taking advice but not instruction, before deciding first whether a formal meeting is necessary and then what your decision is on that jobholder's current level of attendance.

This is true even if the trigger points have been reached. The new policy is not designed to be any more mechanistic than the previous policy and reaching the trigger point does not automatically mean that action must be taken, even if none of the absences are discounted or disregarded.

As long as you have set out clear reasoning for your decision and it is in line with the discretion allowed in the guidance then you should not be pressurised into taking a different decision. If you are then your union will support you.

If you haven't already done so, read through the entire Attendance Management Policy and the associated guidance. If you pay particular attention to HR27003, paragraph 59 onwards, which gives

guidance on when it is not appropriate for a written warning to be given. Paragraph 63 of this guidance also confirms that the manager may use their discretion to decide not to give a Written Improvement Warning.

When circumstances change

A jobholder's health can change at any time, bringing them under the provisions of the Equality Act or changing their underlying condition. Such circumstances can often coincide with a spell of long term absence, or a period where the final diagnosis of a condition has not been made. You have a key role here in supporting the jobholder through what can be a very stressful experience, and your union recognises that you may find yourself under pressure to manage the continuing absence in a certain way. The guidance is clear that the decision on how to progress the case is yours, from occupational health referrals through to phased return to work. Also remember to talk to the jobholder and their PCS rep to identify reasonable adjustments that will help a jobholder remain in work or return to work. Examples could include allocating some of the disabled person's duties to someone else, a reduction in targets or even transferring the disabled person to another vacancy or place of work. Occupational health, the RAST and particularly PCS and Access to Work can give advice on reasonable adjustments.

Stress / Increased workloads for managers

The new Attendance Management policy is proving to be extremely time consuming for everyone. Managers are already stretched to the limit and the additional burden of having to facilitate an increased number of formal meetings is causing additional stress & anxiety. The increase in formal meetings also generates an increased needs for note takers which again, creates an additional burden for managers.

If you and your colleagues feel that your workload is unmanageable, please seek the advice & support of your PCS rep. As a manager it is important that you have sufficient time to do your job well or you run the risk of making mistakes. PCS can take this up any concerns over your workload as an industrial relations issue and we can try to negotiate solutions that will help you have a better work / life balance.

Your union representative can provide you with support during what can be a difficult time for you as well. While advice on the official process should be given by HMRC bodies, or contractors such as OH Assist, support for you as an individual member does not cease during this period. Your union representative is able to give advice on stress reduction options for you, as well as provide support if you are having to have difficult conversations.

HMRC's stated objective is to help jobholders back into work but senior managers are also under pressure to reduce AWDL. This can drive contrary behaviours further up the management chain and your union is available to support you as a jobholder in this scenario. PCS is also able to support wellbeing activity and this will have a more effective long term effect upon reducing AWDL figures than hasty dismissals.

"Dismissing employees should be the last resort" say ACAS. With support from your union you will be able to be confident that the decisions that you make are the correct ones.

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