

Branch Briefing **REVENUE & CUSTOMS GROUP**

To: **Branch Secretaries**

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

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Action to be taken: For the attention of reps handling attendance management personal cases

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ATTENDANCE MANAGEMENT POLICY

GUIDANCE TO ASSIST BRANCHES WITH PERSONAL CASES

- Supporting members in dealing with HMRC's Attendance Management policy

This briefing sets out our guidance for reps on dealing with personal cases related to the new attendance management policy. As in all personal cases, detailed advice should be sought from more experienced reps at Branch or Group level where it is needed.

PCU1 form for personal cases

The PCU1 form is designed to assist reps in case managing all personal and legal cases where PCS represents a member. It is important to ensure that all sections of the PC1 form are completed in as much detail as possible and in all cases, the member should sign and date the form to state that the information included and any agreed actions are correct.

For ease of reference as the case progresses, you should get into the habit of creating timelines which cover all of the members' absences and the points at which formal or informal management action was taken.

You can find the PCU1 form on the PCS website.

Relevant guidance:

[PCS website – PCU1 form for personal cases](#)

Escalation Routes

Where it is necessary to escalate cases, for example because the correct process has not been followed or there is a particularly sensitive issue at play, branches should ensure that they follow the correct escalation route.

Generally, this means going through the Business Trade Union Side if the matter relates to a specific business stream, and from there to the appropriate Assistant Group Secretary and their GEC team.

For matters wider than an individual business stream, or that cannot be resolved through this route, you should contact one of the PCS Assistant Group Secretaries (AGS's) who are leading on the Attendance Management Policy, [Hector Wesley](#), [Mark Leopard](#) or [Jake Wilde](#).



This briefing, along with all national and group briefings issued by PCS, can be accessed from the [Document Library](#) within the membership section of the PCS website.

If you haven't already done so, please register at <http://www.pcs.org.uk/en/member/member-login.cfm>

Signing documents

We would advise that no member should sign any document relating to attendance management. This is because, in legal proceedings, the employer will try to argue that a member signing a document indicates that they agree with it.

While this may not be too much of an issue with minutes from a meeting where those minutes are accurate, it is more problematic with a document that we disagree with. For example, if we later contend that the employer failed to make reasonable adjustments, the members' signature on a document stating that they had made every adjustment they could undermines our position.

Always advise the member not to sign!

Trigger points

The trigger points for formal action are 8 days or 4 occasions of sickness absence. For part time staff, the days trigger points is pro-rata – so, for example, a member working 20 hours a week would have a trigger of 4 days. The trigger point is always 4 occasions even where the number of days has been apportioned.

An absence of more than one hour but less than half your daily contracted hours will count as a half-day sickness towards your trigger point. Any absence of more than half your daily contracted hours will count as a full day's absence towards your trigger point.

When a member reaches their trigger point, managers have to hold a formal poor attendance meeting to decide whether disciplinary action is necessary. If a written improvement warning is given, then the member will enter a 6 month Improvement Period. During this period, the trigger point is half their normal trigger point.

Following the successful completion of the Improvement Period, the member will be in a Sustained Improvement Period for 12 months. During this period, their normal trigger point applies once more but absences during the prior Improvement Period will count towards the trigger.

Occupational Health (OH) reports

When we are dealing with members whose sick absence is due to underlying conditions, particularly ones likely to be covered by the Equality Act 2010, OH reports are extremely useful as part of our efforts to stave off formal action and/or get reasonable adjustments put in place.

Members should ensure that they consult their GP in the first instance. The OH report does not override GP advice and should not be considered in isolation from other available information.

The OH report should cover:

- The member's current health status.
- Their prognosis.
- The likely return to work date or return to full duties if applicable.
- Advice on the current functional ability of the jobholder. If work duties are affected, this should include advice on whether this is likely to be short term, long term or permanent.
- A specific rehabilitation/return to work plan with clear timescales.
- Advice on any appropriate adjustments.
- Advice whether the member is likely to be covered by the Equalities Act 2010.

Where requested it can also cover:

- Whether the criteria for ill-health retirement might be met.
- The potential effect of administrative action on member's health.
- Recommendations for lifestyle changes.
- Advice on medical criteria for Sick Pay at Pension Rate.
- Responses to other specific questions.

It is important to ensure as far as possible that requests for up to date OH advice are made where a member's circumstances have changed. For example, if a member is now managing a condition better than they were previously and you're arguing that this will mean an improvement in attendance as mitigation against formal action, request a new report to reflect that.

Equally, where a member is facing dismissal, we need to be proactive in ensuring that the most up to date advice is being used and that where appropriate a fresh referral is sought before the manager contemplates any action.

If members are not happy with the content of the OH report, they can request either a rework or a clarification. If this does not resolve the matter, or if the member had an unsatisfactory experience with OH assist, they can make a complaint. This must be done via the manager.

Relevant guidance:

[HR6 - Occupational Health Services](#)

[HR63005 - Complaints procedure](#)

[HR63013 - The OH report, content, clarification and rework requests](#)

[HR63040 - Companion Support during the OH referral process](#)

Reasonable adjustments

The Equality Act 2010 states that wherever a disabled person is placed at a substantial disadvantage compared to a non-disabled person, there is a duty to make reasonable adjustments. The aim of the adjustments is to remove or reduce the disadvantage.

The duty to make adjustments comprises of three elements:

- Changing the way things are done where a provision, criterion or practice PCP puts a disabled person at a substantial disadvantage compared to a non-disabled person.
- Making changes to overcome barriers created by the physical features of the workplace (e.g. access to a building).
- Taking reasonable steps to provide an auxiliary aid or auxiliary service (e.g. a reader or interpreter).

In relation to sick absence, the Disabled Employees' Trigger Point is one of the most important reasonable adjustments and is dealt with separately below.

However, if employers are able to make reasonable adjustments in the workplace this can help the member by reducing the amount of time they need to take off in relation to their condition. These can be as simple as a change of equipment or more complex involving changes to duties, increased breaks and so on. What is important is that they are right for the member and that time is given for the adjustments to take effect before any review of attendance levels.

The first step to getting reasonable adjustments implemented should be discussion with the manager. Even though this would be an informal discussion, the manager ought to look favourably on a request to be accompanied as the purpose of the meeting is to provide support and the member is likely to feel more comfortable with their rep involved.

Any agreed adjustments need to be included on the member's Workplace Adjustment Passport. Where appropriate they should be given the training to use any required specialist equipment.

The adjustments need to be subject to regular review to ensure they are still appropriate – this should be about providing support rather than simply a mechanism to remove the adjustments again. (This is most likely to crop up in relation to a change of duties, e.g. management trying to force a member back onto work which they previously had moved off, such as phones.)

Relevant guidance:

[HR83005 - Reasonable adjustments](#)

Disability Trigger Point (DTP)

A Disability Trigger Point (DTP) is a reasonable adjustment. Under the Equality Act 2010 employers have a duty to make adjustments, which can arise when the employer's "provision, criterion or practice" (PCP) put disabled people at a substantial disadvantage.

In this case, the PCP is the sick absence policy, which disadvantages disabled people where they are more likely to have higher levels of sick absence than those without the condition and so are more likely to meet the trigger points. Applying a DTP means that a member can have more absence related to their condition(s) before they are considered for formal action.

Unfortunately, the design of the policy on DTP is still problematic, and rep involvement will be vital to ensure that it is applied as fairly as is possible. Whether or not it actually reduces or removes the detriment (i.e. the greater risk of formal action) is a key part of that argument.

- As it is a reasonable adjustment, application of a DTP should be subject to a discussion with the member and to relevant OH advice.
- In deciding a DTP, the manager should take into account – the past level of absence due to the disability, the stability of the condition and the level of absence the business can support. Given the size of HMRC as an employer, we ought to be arguing that the latter is towards the higher end of the scale and should challenge attempts to use 'what the business can support' as a broad brush to refuse higher DTP where they would benefit the member.
- The procedure states that "managers should not take a mechanistic approach to setting a Disabled Employees Trigger Point" and we should seek to challenge management where this is the case, including through the use of grievances.
- A DTP above 100% of the standard trigger point needs to be subject to advice from the Reasonable Adjustment Support Team and approved by a senior manager of at least a Grade 7. **However**, this doesn't mean that 100% is an upper limit and we need to be clear that a DTP above that level may well be reasonable.
- Where a DTP is reached, the procedure is clear that the reasons for this need to be taken into account as deciding what is a reasonable level of absence is not an exact science. As such, we should be prepared to challenge any decision to give a formal warning both through the appeals process and through grievances where this is done mechanistically and/or in a way that is discriminatory.
- The procedure is clear that as levels of disability related absences will vary it is not appropriate for an isolated peak of absence to justify formal action.

Relevant guidance:

[HR27008 - Trigger point guidance](#)

Disability Adjustment Leave (DAL)

DAL is, like DETP, a reasonable adjustment. Where DRSA is used for sick absence related to a disability, DAL is for paid time off where the member needs a disability-related assessment, treatment or rehabilitation but would otherwise be fit for work.

One important point here is that where the member suffers sickness as an immediate consequence of treatment to manage the effects of their disability or if it can be directly attributed to changes or a new use of medication to manage their condition, DAL would apply. This doesn't apply to routine prescription changes or where the member was already off sick when the treatment began.

In order to avoid this going down as sickness absence, in the scenario described above, it would be best if the member was able to apply for DAL as soon as the sickness occurred or immediately following their return to work. This would then have to be considered and dealt with before a manager could move to any potential formal action they might otherwise feel was triggered by the absence.

Relevant guidance:

[HR83006 - Disability adjustment leave](#)

The Workplace Adjustment Passport (WAP)

The WAP is a document which records what reasonable adjustments a jobholder and their manager have discussed, agreed and put in place. It exists to ensure that reasonable adjustments remain consistent even with a change in job, location or manager.

Any member with a disability likely to be covered by the Equality Act 2010 is eligible to apply for a passport. Once the member tells their manager, the manager must arrange a meeting as soon as possible to discuss adjustments needed or already in place.

Passports should be reviewed at least every six months as part of the review of reasonable adjustments. They should not contain medical information of the nature of the impairment.

Relevant guidance:

[HR83021 - Workplace Adjustment Passport](#)

[HR83022 Workplace adjustment passport: How to get a passport](#)

Formal action

If you are invited to accompany a member to a formal meeting as part of the MPA process, as with any formal meetings, you should obtain a copy of the member's file and meet with them beforehand in order to discuss their case.

The member is entitled to have a copy of their file and you are allowed to see it, if the member agrees. To request the file either ask the member to email their manager and ask that a copy be made available to you, or you can email the manager telling them you are the chosen Representative for the member and require a copy of their management file. If the member is off sick, you could do this via a letter and get the member to sign it.

Use this opportunity ahead of meeting the manager to ensure you're familiar with:

- The member's absence history.
- Any underlying conditions the member may have.
- Whether there is an OH report and workplace adjustment passport, and if not whether one is necessary.
- What stage of the process the member is at (members should see a rep as soon as they face action, but unfortunately some will wait until facing dismissal to seek representation).
- How management have handled the case, including any breaches of the policy.

Don't rely on members to give you all the information regarding their sickness absence that you require, make sure you check their file (note: you are not their manager so do not judge them, remember you are there to help the member). If you feel like you need help, don't be afraid to contact a more experienced rep for guidance.

At the formal meeting ensure that:

- You and the member are agreed on any mitigation and representations to be made at the meeting, as far as possible. This will ensure that you do not unwittingly contradict one another.
- Where appropriate you raise the request for an OH referral, including fresh referrals where a previous report exists. This is particularly important where the member is facing dismissal, and for disabled members we should argue for no decision to be made without an up to date OH report.
- You summarise the key arguments before the closing meeting, including what you want the decision to be (e.g. that there is no further action or that time is given for reasonable adjustments to take effect) so that this is clear in the notes of the meeting.
- If the meeting may result in the member's employment ending, where possible you take in another rep as a note taker so that you have a comprehensive record of the meeting. This is particularly useful if there are disagreements over the official notes.

After the meeting, ensure that you review the notes of the meeting and submit any changes where something is unclear or doesn't accurately reflect what was discussed.

Despite reassurances by the employer to the contrary, a lot of managers are being pressured into applying a mechanistic approach and not fully considering the nature of absence and whether it is appropriate for the jobholder to be given a Written Improvement Warning.

HR27003 Attendance Management: Procedure states:

62 .The outcome of the Formal Unsatisfactory Attendance Meeting is not predetermined and interviews can result in a number of outcomes. If managers believe for reasons not detailed above that a Written Improvement Warning would not be appropriate they have discretion to decide not to issue a formal improvement warning.

It also states in the next paragraph:

63. In some circumstances, the manager may use their discretion to decide not to give a Written Improvement Warning. The manager should consider the circumstances of the absence and the jobholder's absence history. In particular where a jobholder reaches a number of spells in their triggers points but not the number of days, managers should consider carefully whether the pattern of absence is sufficient to justify a Written Improvement Warning. The purpose of a spells Trigger point is to address patterns of repeated short term absence which are giving cause for concern.

At the formal meetings reps need to emphasise these parts of the guidance to the manager to corroborate the fact that they do have discretion on whether to issue a Written Improvement Warning or not and that issuing a formal written warning might not always be appropriate. For example a member has had a road traffic accident and has needed to sickness absence to recover from its effects. Unless the member is particularly unfortunate or a very poor driver sickness absence for this reason is never likely to reoccur.

Of course there will be managers who might feel that they are being pressured by their line management into making a decision to place somebody on formal action despite the fact that it is against their better judgement. Reps need to remind managers who are PCS members that the branch will unconditionally help and support them if they feel they are being unduly compelled in this way.

The other thing to consider is the fact that sections 59-61 of the guidance gives managers a number of instances when a Written Improvement Warning would not be appropriate.

Members should not be given an improvement warning for:

- Pregnancy-related sickness absence.
- Absence as a result of being assaulted in the course of duty or for a reason clearly connected with duty.
- Absence as a result of injury caused by the negligence of the employer.
- Absence directly caused by an operation or treatment which could help improve attendance.
- Absence due to the effect of infertility treatment.
- Time off to recover from bone marrow donation or similar procedures.

Relevant guidance:

[HR27003 - Attendance management procedure](#)

[HR27004 - Attendance management process overview flowchart](#)

[HR27005 - Annex 1 Holding a formal meeting](#)

[HR27006 - Annex 2 Checklist for referring a case to a Decision Manager](#)

Continuous absence and capability

If a member is absent for eight consecutive days or more, they should be managed through the managing continuous absence procedures.

This involves the manager ensuring that they keep in touch with the member and discuss what support they may need to return to work. It is important that the method and frequency of the communication be agreed with the member so that they neither feel harassed nor isolated, and if you are made aware of

concerns over this you should try to resolve them with the manager where possible, and escalate the matter to the manager's manager if it is not.

The guidance says managers should consider inviting members to formal meetings where their absence reaches 28 days, and every month thereafter. The aim of this should be to support the member in returning to work, but not to harass them into doing so prematurely.

You should accompany and support the members at these meetings. Ensure that managers appropriately consider any reasonable adjustment or other action that the member feels necessary for their return, and clear reasons are given if they are refused.

If the member is unlikely to be able to return to work, the manager may refer the case to a Decision Manager. This could lead to either ill-health retirement or dismissal, so it is important that as with MPA Stage 3 you get help from more experienced reps where it is needed and ensure that there is an accurate record of the meeting with the decision maker.

Relevant guidance:

[HR27003 - Attendance management procedure](#)

[HR27016 - Ill health retirement](#)

[HR27018 - Jobholder cannot reach or maintain a satisfactory standard \(capability\)](#)

Appeals

The member has to file the appeal against a decision within 10 working days of receiving the decision letter.

The appeal officer should be at least a grade above the decision maker and have not been involved in the process previously. If this isn't the case, or if you otherwise have reasons to question the impartiality of the appeal officer, then ensure that you challenge their appointment as soon as possible. We would advise members and reps to insist the Appeal Manager is somebody outside their line management chain.

If the member who has been dismissed wishes to appeal against the amount of compensation granted for their dismissal under the Civil Service Compensation Scheme (CSCS), they need to notify the Civil Service Appeal Board (CSAB) within 21 days of their date of dismissal.

If the member wishes to appeal the compensation amount, it is advisable to include this on the internal appeal against dismissal (the compensation aspect will be decided by the HR director) as well as making the direct appeal to the CSAB.

Relevant guidance:

[HR27002 - Attendance management policy](#)

[HR27005 - Annex 1 Holding a formal meeting](#)

[HR27018 - Jobholder cannot reach or maintain a satisfactory standard \(capability\)](#)

[HR20408 - Efficiency Departures \(including Civil Service Compensation Scheme\): Appeals against formal decisions relating to poor attendance or compensation](#)

[How to appeal to the Civil Service Appeal Board](#)

Filing a grievance

HMRC's policy allows members to file complaints relating to their treatment including bullying, harassment and discrimination.

PCS policy is that grievances should be used to challenge mechanistic application of the sick absence guidance and discrimination where equality issues haven't been properly considered. This is particularly important where managers are pressured to issue a formal improvement warning where they do not believe this is appropriate or to implement a lower Disabled Employees' Trigger Point than is needed to properly support the member.

The same right to be accompanied applies in grievance cases as in formal MPA meetings, and the same basic principles should be followed in terms of ensuring that the notes are accurate and proper representations are made. However, grievances can be among the most complex formal procedures in

HMRC so please speak to other experienced reps in your branch as well as to Group office where you need help and advice.

Your branch should keep a record of the grievances filed as part of this campaign and the outcome, so please ensure that you keep your personal case co-ordinator or branch officers up to date as appropriate.

If appropriate, you can consider filing collective grievances. These will be useful where a number of members share the same complaint. The procedure for a collective grievance is much the same as an individual one, except that no one individual can opt out of the grievance being heard collectively – and a meeting can be arranged between the trade union representative and the responsible manager in order to discuss how to proceed.

Relevant guidance:

[HR20504 - Grievance Procedure](#) (includes collective grievances)

[HR20505 - Frequently Asked Questions](#)

[HR20515 - How to: Appoint a Decision Manager and an Appeal Manager](#)

Employment Tribunals

In any case where there is a potential claim to an Employment Tribunal, strict legal time limits apply and it is important, therefore, that you raise the issue without delay.

For most employment law issues, a claim has to be lodged with the employment tribunal within **three months** of the date of the act being complained of. In the case of Attendance Management, this will generally be the effective date of dismissal if the member is sacked.

The internal grievance or appeal process must also be used, although it must be noted that the time limit is NOT delayed while you go through this. It is your responsibility to ensure that any legal time limits are complied with.

PCS will advance the necessary fees to members, where their cases are judged to have merit – but the case papers need to be referred to the Legal & Personal Case Unit at PCS HQ and arrive for assessment **at least 4 weeks** before the deadline date for the ET case to be lodged.

Relevant guidance:

[PCS website - employment law scheme](#)

[HR20513 Grievance: Employment Tribunal, early conciliation and ACAS](#)

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