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# Branch Briefing

## REVENUE & CUSTOMS GROUP

To: **Branch Secretaries**

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

Can this Briefing be circulated via HMRC IT systems : **YES**

Website : **YES**

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

**DATE:** 9 February 2017

**R&C/BB/020/17**

### Attendance Management within HMRC

An update briefing giving details of exchanges between PCS and HMRC since the introduction of the new attendance management policy

Since the introduction of the new attendance management policy PCS national negotiators have continued to deal with queries raised by branches and we have continued to make representations to HMRC. The purpose of the briefing is to provide an update on this activity. This is a lengthy briefing. However given the importance of this issue and the volume of queries and casework it is generating it is appropriate to covering a number of matters in some detail.

Firstly the GEC wishes to express its gratitude to local PCS reps many of whom have indicated that the new attendance management policy is generating a noticeable increase in casework. We have previously asked branches to begin keeping details of the time spent dealing with attendance management cases. At the end of February we will be asking branches to supply this data to Group Office.

This briefing is aimed at local PCS reps, particularly those who have been dealing with attendance management cases. However we would have no difficulty if this was brought to the attention of interested members.

#### Oracle Article on Attendance Management

HMRC have advised PCS that they do not agree the content of the recent Oracle article on attendance management. They haven't provided specifics regarding the areas of disagreement. PCS stand by the Oracle article. However PCS have made an offer to HMRC that they will publish any response they wished to make in a future edition.

#### Civil Service World article on Sickness Absence

Civil Service World have recently published an article relating to sickness absence in the civil service. HMRC were featured in the article where one of the issues raised was increasing presenteeism within the civil service and the problems this can cause.



HMRC has now withdrawn the Check Off facility so you are no longer able to pay your union subs via payroll. Sign up to direct debit now to remain protected by your union's membership – it only takes a few minutes to switch.

[www.pcs.org.uk/ddday](http://www.pcs.org.uk/ddday)

For those who are interested the article can be found via this link:

<https://www.civilserviceworld.com/articles/feature/special-report-whats-state-sickness-absence-civil-service>

### Pregnancy Related Sickness Absence

HMRC have now clarified that their stance on pregnancy related sickness absence is consistent with that of other departments such as the DWP. This means that only pregnancy related absences during the protected period specified in Section 18 of the Equality Act 2010 are exempt from action under the attendance management policy. This is clearly disappointing and contrary to previous indications given by HMRC and which PCS reported in Members Briefing 034/16 which was approved for issue over HMRC systems. PCS have cited to HMRC a recent case where adopting such an approach could have left the department open to severe criticism.

PCS national negotiators have received a number of queries regarding post-natal depression. The CSEP attendance management guidance to government departments advises that discretion and empathy should be applied but it does not allow managers to discount such absences. HMRC state that they do not consider absences due to post-natal depression to be pregnancy related and this is consistent with the stance taken by other government departments.

### Case Conferencing

HMRC previously assured PCS that the provision within the previous attendance management policy to allow case conferences involving union reps would be retained in the new policy. PCS reps have found it useful to be able discuss complex cases with management, HR and sometimes Occupational Health prior to management action being taken. PCS will continue to press HMRC to have case conferencing included in the attendance management policy.

### Recent Flu Season

The indications are that the recent flu season has been severe. PCS will be monitoring the impact this has on the overall sickness absence statistics.

### Line Manager's Discretion

PCS have regularly been told by HMRC senior management that hitting either of the trigger points does not mean that a written improvement warning will automatically be issued. Line Managers are able to exercise discretion in this regard.

A regular concern being expressed to the PCS national negotiators is that at the formal unsatisfactory attendance meeting the job holder and/or the PCS rep make representations to the line manager in support of the view that a warning should not be issued despite the trigger point(s) being reached or exceeded. Where those representations are rejected by the line manager and hence a written improvement warning is issued there is no requirement under the current policy for the line manager to explain why not they not exercised their discretion to refrain from issuing a warning. The policy only requires line managers to give an explanation when they decide not to issue a warning. PCS believe that this is a deficiency in the current policy guidance. HMRC in response have said referred to the following provision contained within HR27005:

*“write to the jobholder within 5 working days of the [formal unsatisfactory attendance] meeting. Advise the jobholder of the decision taken and the reasons for it. Include the record of the discussion; this should be signed by the jobholder”*

This is simply not happening in many cases and this is due to way the decision letter templates have been constructed. The AM5 decision letter template does not ask managers to state the reason(s) why a warning is being issued. In contrast the AM4 decision letter template does ask managers to state the reason(s) why a warning is not being issued.

## Attendance Champions

Some but not all parts of HMRC have Attendance Champions also known as Attendance Leads or Attendance and Wellbeing Managers. PCS national negotiators have received representations from branches about the influence Attendance Champions are having over the handling of sickness absence cases.

HMRC have assured PCS that attendance champions do not have the authority to direct line managers on the handling of sickness absence cases. Line managers should therefore resist any such directions. If they feel unable to do this as a minimum they should ensure that any direction from an Attendance Champion is recorded in writing.

## Operation of Attendance Management within HMRC Customer Groups

PCS are aware that in some business streams guidance has been issued regarding the operation of the attendance management policy within their areas. HMRC contend that business streams are entitled to issue guidance detailing how the HMRC policy will be applied within their area. However some of the guidance PCS has seen that indicates that certain business areas are applying variants of the policy.

For example in one business stream within Customer Compliance Group it is mandatory that after 2 months' continuous sickness absence as well as holding a formal review meeting involving the member of staff and the line manager a supplementary meeting involving the attendance champion, manager, countersigning manager and Assistant Director must also be held. It is only after the supplementary meeting has taken place that the AM2 decision letter will be issued to the member of staff explaining whether or not HMRC will continue to support the absence – ref: HR27999. If the sickness absence continues then these two meetings will continue to be held on a monthly basis. PCS have obvious concerns about this given that it casts doubt as to whether the decision letter issued following the supplementary meeting involving the Assistant Director is conveying the decision of the line manager alone.

Within the Customer Services Group the Director General stated at a meeting with the DTUS held last December that there was one attendance management policy and she expected this to be operated consistently across HMRC. That said PCS have been advised that Customer Services Group have allocated 4 full-time HR caseworkers to work exclusively on providing support on the handling of attendance management cases. In addition they have established a hotline which managers can use to obtain immediate advice.

## PMR Objectives on reducing Average Working Days Lost (AWDL)

HMRC have advised PCS that business streams have discretion to introduce hard targets into PMRs on reducing sickness absences levels. PCS have stated clearly that we oppose such PMR objectives. If any business streams intend to introduce this then we would expect to be consulted in advance.

## Previously discounted sickness absences now being taken into account

The PCS national negotiators have received numerous complaints about absences which had been discounted under the terms of the old policy are now being taken into account and resulting in warnings under the terms of the new policy. HMRC assured PCS throughout our engagement that this would not happen. Following a recent spate of complaints brought to the attention of PCS, the policy holder for attendance management with HMRC provided the following response:

*“Unfortunately the ERP system does not recognise the discounting as we do not record it online. However we are exceptionally clear that any absences that were previously discounted under DRSA [Disability Related Sickness Absence] must stay disregarded and cannot be brought back into consideration. So although the system may issue a prompt due to absences exceeding the trigger point, local records will demonstrate that as absences were disregarded the trigger point has not been reached and a formal meeting is not required. I will see if I can include anything on this as part of the requested changes to guidance I'm trying to make.”*

## Comparison with the DWP Attendance Management Policy

PCS national negotiators have recently been discussing the attendance management policy within colleagues in the DWP. The PCS DWP Group Secretary made the following comments regarding the HMRC policy:

*“One thing that stands out ... is that HMRC seem to have applied this [the attendance management policy] in a much more draconian way than DWP. When the four spells policy was first included in DWP procedures it only triggered potential action if all the four spells had taken place after the DWP adopted the policy, there was no retrospective linking back to spells that occurred prior to April 2014.”*

PCS have brought this to the attention of HMRC and they provided the following response:

*“Just for context you are not comparing like with like here. DWP introduced their spells trigger when they previously did not have one. HMRC have INCREASED the spells trigger from 3 to 4 with an additional paragraph in our guidance that counsellors managers to think seriously before taking formal action if the spells trigger is hit but the days trigger is not. This is not a feature of the DWP policy.”*

## Disability Trigger Point

In the Oracle article on Attendance Management suggested that staff who feel that a disability trigger point should apply to them should have an early conversation with their line manager to establish whether a disability trigger point will be set and if so the level at which it is set. HMRC and indeed Civil Service Employee Policy (CSEP) guidance states that staff should be given a clear indication of the attendance standard expected of them.

However the trigger point guidance states that a disability trigger point should only be applied if the manager has evidence that the jobholder is disabled and that they will have absence over and above the standard trigger point. PCS are aware of instances where managers have told staff that they will only consider applying a disability trigger point once their sick leave approaches the standard trigger point.

PCS remain of the view that the removal of Disability Related Sick Leave (DRSL) and its replacement with the Disability Trigger Point is a detrimental change. PCS believe that sickness absence relating to disability should at least to some extent be disregarded for the purposes of attendance management. HMRC have acknowledged that under the attendance management policy no instances of sickness absence can be disregarded.

The attendance management policy does state that absences relating to a jobholder's disability do not count towards the spells trigger but do count towards the working day absent trigger. PCS do not consider this to be a reasonable adjustment. PCS are aware of the instances of managers telling staff that decisions they make regarding which absences are and are not related to their disability are final and cannot be appealed. PCS do not agree with that.

HMRC have also advised PCS that the level at which the disability trigger point is set is a decision which cannot be appealed on a stand-alone basis. It is only at the point at which a warning is issued based on that trigger point that the right of appeal exists. PCS believe that HMRC would be vulnerable to challenge if they refused to consider complaints under the grievance procedure about the level at which a disability trigger point or the refusal to apply a disability trigger point.

## Absences following planned operations

PCS have been clear with HMRC for a considerable time that it would not be acceptable for staff recovering from medical treatment to be subject to warnings under the terms of the attendance management policy. Until recently PCS didn't think this was a matter of contention.

It is therefore troubling that instances are now coming to light of staff being given warnings because of time spent convalescing from hospital operations.

In one case an appeal manager gave the following reasoning – apparently on the advice on Civil Service HR Casework - for upholding a warning as a result of time spent convalescing:

*“As you had not taken any time off for this condition prior to the absence ... and have not taken time off following this operation, it is not possible to say whether the operation has improved your attendance or would have prevented any absence from occurring in the future.”*

When PCS raised this case with the policy holder for attendance management within HR they replied that the guidance in this area is being reviewed. PCS have pointed out to HMRC that within the DWP attendance management policy absences relating to convalescence do not count towards the spells trigger.

HMRC have indicated to PCS that they will make amendments to the policy in response to feedback from the unions as well as staff. One issue PCS will need to discuss with HMRC is what happens in situations where staff receive a warning in accordance with a provision(s) of the policy which is subsequently amended to the effect that the warning would not have been issued had the amended provision(s) been in place previously.

#### Distribution of this briefing

PCS gave HMRC an advance copy of this briefing. They have agreed that it can be issued over their systems.

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