

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 (without attachments)**

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

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Attendance Management within HMRC

- **A further update for branches on exchanges between PCS negotiators and HMRC on Attendance Management.**
- **HMRC agree to review cases referred by PCS national negotiators.**

The purpose of this briefing is to update branches on recent exchanges with HMRC. By necessity it is a lengthy briefing. However the PCS national negotiators feel that it is important to convey to branches - particularly those dealing with attendance management personal cases - the full detail of these exchanges.

Workplace Wellness

PCS are aware that in a number of instances managers are asking staff who have been on sickness absence whether they have contacted Workplace Wellness and if they have answered no this has been viewed negatively. PCS believe that given Workplace Wellness is a confidential service managers should not be inquiring into whether staff have contacted them. PCS have raised this with HMRC and they provided the following response:

"I think it is quite appropriate for the manager to ask if an individual has made contact with Workplace Wellness and have a general conversation about whether it has been helpful or whether they need additional support. I do agree, however, that it's not appropriate to go into the detail of the conversation, unless the individual wants to discuss it and nor is it appropriate to make any judgement if an individual hasn't made contact."

Medical Treatment

In recent weeks PCS national negotiators have been advised by local PCS reps in a number of places that some staff have deferred or cancelled hospital operations because of concerns about receiving warnings under the attendance management policy. This is a deeply troubling situation and as soon as we became aware of it we raised this with HMRC and demanded that they take action. One point we made very firmly is that it is completely unacceptable for any manager to pressurize a member of staff to return to work following an operation sooner than their medical practitioner advises.



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.

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In one example drawn to the union's attention a member of staff was told that they could have 3 weeks' convalescence time following an operation when their medical specialist recommended 6 weeks' convalescence.

When PCS raised this with HMRC they gave the following response:

"I would be very concerned if people feel they have to cancel operations and as you know, the Guidance makes provision that formal action should not be taken if the trigger point would have not have been reached were it not for "reasonable time off to recover from an operation or treatment which could help to improve attendance or prevent sickness absence."

I will raise this as a concern with the business."

When pressed regarding concerns about staff feeling pressured to return to work sooner than their medical practitioner advised HMRC went on to state:

"I don't think we want to have an open ended provision for time off after an operation and that is why we favour our current position that managers take account of it when reviewing absence when the trigger point has been reached. I would expect medical advice to be part of their consideration though."

We would strongly urge members not to defer or cancel medical treatment because of the attendance management policy. PCS national negotiators will if necessary provide support to any member who has concerns regarding this.

PCS are aware that unlike the HMRC policy the DWP attendance management policy provides that "planned absences for dialysis, chemotherapy or scheduled minor operations are not counted as a spell". We have brought this to HMRC's attention and they have responded as follows:

"Disability related treatment such as chemotherapy and dialysis are likely to be covered by the DAL policy, provided the individual is otherwise fit for work, so they don't count as a spell."

Discounted absences under previous attendance management policy

This is an issue that the PCS national negotiators continue to receive representations about and which has been referred to in previous briefings. PCS wrote the following to HMRC recently highlighting two issues raised by local reps:

"I have been advised of a case where a member had some sickness absence episodes prior to 26 September 2016 [when the current attendance management policy was introduced] and management agreed not to take any formal action and wrote to them informing of them of that. However after the new policy was introduced the member's case was reassessed and because the trigger point under the new policy had been met they were given a warning. The member had no sickness absence episodes after 26 September. This seem completely wrong to me. I have also been made aware of cases where staff have a series of sickness absence episodes prior to 26 September 2016 and management agreed no further action (NFA) in respect of those absences but because they had 1 short spell of absence after 26 September this spell has been linked with the absences prior to 26 September - which management previously agreed NFA - and as a result a warning was issued. Again that does seem to be very sharp practice. Again I welcome your views."

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 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 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."

Concerns regarding the appeal process

The PCS national negotiators have been advised of a number of instances where appeals against warnings have been summarily dismissed under paragraph 109 of the attendance management policy without an appeal hearing being held.

Extract from AM Policy

108. There are three grounds of appeal:

- *a procedural error has occurred, and/or*
- *the decision is not supported by the information/evidence available to the manager or Decision Manager, and/or*
- *new information/evidence has become available which should be taken into account when reaching a decision about dismissal/demotion.*

109. If the appeal does not satisfy the above grounds of appeal, the Appeal Manager should reject it and notify the jobholder, in writing.

PCS have pointed out to HMRC that as an example the DWP Attendance Management Policy has a fairer appeals process in that it does not permit appeal managers to summarily dismiss appeals without holding an appeal hearing.

HMRC's response is that they are currently unwilling to change the appeal process. They state:

"The appeal process is aligned to the HMRC appeals policy and it would be inappropriate (and confusing for managers) to have a separate or different policy just for Attendance Management decisions."

PCS will continue to pursue this with HMRC as we are concerned that the current process does not meet the requirements of the ACAS Code of Practice on Disciplinary and Grievance Procedures or the Civil Service Management Code.

Referral of cases to a decision maker after 28 days sickness absence

PCS are aware of concerns that in some areas cases are being referred automatically to a decision maker for consideration of dismissal or demotion after 28 days continuous sickness absence. For example PCS have seen guidance in one business stream where managers are instructed that any cases not referred to a decision maker after 28 days' sickness absence must undergo an assurance process by a senior manager.

PCS have raised this with HMRC and we have pointed out that the attendance management flowchart contained in HR27004 suggests that the earliest a continuous sickness absence cases can be referred to a decision maker is the second Formal Attendance Review Meeting. HMRC's response was the following:

"The procedures do allow managers to consider whether the absence can continue to be supported at the first Formal Attendance Review Meeting held after 28 days. The circumstances in which we would not consider supporting at that stage are few. However, automatic referral to a Decision Maker for consideration of dismissal after 28 days should not be happening. Again, if you have evidence of this, happy to look into it."

Monitoring of the Attendance Management Policy

The PCS national negotiators have received a number of inquiries about when monitoring processes are in place to assess the impact of the attendance management policy. For example are statistics being collected centrally regarding the number of warnings being issued? HMRC have advised PCS that the only monitoring data they hold is in respect of dismissals. PCS are not content with this response. PCS note that in the draft equality analysis of the attendance management policy HMRC stated:

“Moving forward, information will be gathered from key stakeholders in HMRC, including internal Attendance Management groups and staff on the effectiveness of the policy. This will be used to provide feedback to support the evaluation of the policy, the idea being to identify any issues at an early stage so that discussions can be undertaken to ensure solutions are identified and actions taken quickly.

In line with the Equality Duty, we propose that the equality impact of the suggested changes is monitored as required.”

PCS are clear that only holding monitoring data in respect of dismissal under the policy is insufficient to meet the above commitment.

For information attached to this briefing are the Equality Analysis and People Impact Assessment compiled in respect of the attendance management policy.

Review of the Attendance Management Policy

PCS have made representations to HMRC that a post implementation review should be undertaken of the attendance management policy. HMRC reply that this will happen at some point during 2017/18 and the PCS and ARC Unions will be invited to take part.

HMRC have previously advised that they will be reviewing the Attendance Champion role. In previous branch briefings we have referred to concerns that have been expressed about how this role operates in certain business streams. PCS have advised HMRC that we welcome this review and would want to participate.

Review of Cases by HMRC referred from PCS National Negotiators

The DWP Attendance Management Policy contains the following provision:

“In individual cases where the Departmental Trade Union Side has serious concerns that either the process followed or the decision is fundamentally flawed, they may put the issue to HR Services for advice on how the case could be remedied.”

PCS have approached HMRC about this and they have agreed to review any cases we put to them under the above criteria. Branch Secretaries are asked to contact the PCS national negotiators if they have cases they feel fall under the above criteria and hence should be reviewed.

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