

# Managing sickness absence policy and procedure

<b>Document name/title</b>	Managing sickness absence policy and procedure
<b>Version number</b>	V4.0
<b>Status</b> (draft, published or superseded)	Published with trade union approval
<b>Department/Team</b>	Human Resources
<b>Relevant or related policies</b>	
<b>Distribution</b> (internal or external)	Internal
<b>Author/Owner</b> (if different name both)	Human Resources
<b>Approved by</b>	SLT and Trade Unions
<b>Date of sign off</b>	May 2021
<b>Review by</b>	June 2023
<b>Security classification</b>	Official

<b>1.</b>	<b>Introduction</b>
1.1	At the ICO we expect all of our employees to achieve a satisfactory level of attendance. It is important, therefore, that we all understand our obligations and rights in this regard.
1.2	This policy and procedure applies to all ICO employees at all levels.
<b>2.</b>	<b>Policy aims</b>
2.1	<p>The aim of this policy is to:</p> <ul style="list-style-type: none"> <li>• identify the standards of attendance expected;</li> <li>• make sure that absence is managed in a fair, sensitive, appropriate and consistent way;</li> <li>• outline the approach that managers should take when dealing with long and short-term absence; and</li> <li>• provide practical support and encouragement to bring about any necessary improvements in attendance.</li> </ul>
2.2	This policy is not intended to force you to attend work when you are unfit to do so. It is important, however, that everyone recognises their personal responsibility to achieve an acceptable level of attendance.
<b>3.</b>	<b>General guidance</b>
3.1	<p>This policy and procedure applies to:</p> <ul style="list-style-type: none"> <li>• uncertified or certified short-term sickness absence; and</li> <li>• long-term absence due to ill health.</li> </ul>
3.2	<p>We will deal with any issues relating to conduct under the ICO's disciplinary procedure. The following are examples of issues that would normally be dealt with under the disciplinary procedure:</p> <ul style="list-style-type: none"> <li>• Failure to follow workplace procedures in reporting sickness absence (see section 7.2).</li> <li>• Where absence forms a repeated pattern, such as days off before and/or after weekends / bank holidays.</li> <li>• Where there is evidence that you are not actually ill.</li> </ul>
<b>4.</b>	<b>General responsibilities</b>
4.1	<p>Managers</p> <ul style="list-style-type: none"> <li>• Managers are responsible for monitoring absence within their team, conducting return to work meetings with members of their team following any period of absence and taking appropriate action to manage absence levels within their team.</li> </ul>

- Where the level of your attendance is considered to be unsatisfactory, your line manager must review the situation with you and provide support as appropriate. Line managers must also set review dates and monitor progress accordingly.
- Line managers may issue informal and formal warnings. Where there is a possibility that the outcome of the formal action will be dismissal, the formal hearing must be chaired by a manager of Level G or above.

#### 4.2 Employees

- Employees should make every effort to ensure that their level of attendance meets the required standard and, where appropriate, take advantage of any support identified (such as attending occupational health appointments) to ensure satisfactory attendance.

#### 4.3 Human Resources Team

- The Human Resources (HR) Team is responsible for ensuring that staff and managers are provided with advice and guidance on the use of this policy and procedure. It is not the role of the HR team to act as a representative or advocate for a member of staff in attendance management meetings.
- The HR Team can advise on all stages of the procedures set out in this document, and must participate in the formal meetings held under this policy and procedure.

### 5. The right to be accompanied

5.1 Return to Work Meetings and Stage 1 of this procedure are intended to reflect the informal element of sickness absence management.

Stages 2, 3 and 4 reflect the formal stages of this procedure.

You have the right to be accompanied at any **formal** stage of the procedure by either a TU representative or full-time official of a recognised trade union, or by an ICO colleague. You have no right under this procedure to be accompanied by anyone else such as a family member, friend or legal representative.

5.2 The only exceptions to this rule are:

- Where you have been absent due to long-term ill health and your ill-health retirement is being considered, in which case you may need the support of a family member, friend or medical practitioner; or

- where it would be a reasonable adjustment under the Equality Act 2010 to allow appropriate external support.

## **6. Trade union representatives**

- 6.1 Formal action against a Trade Union representative can lead to a serious dispute if it is seen as an attack on their functions. Whilst normal standards apply to their attendance as employees, the relevant trade union official must be notified of any action that is proposed (including suspension).
- 6.2 In any event, formal action must not be taken against a Trade Union representative until the relevant full-time official has had an opportunity to be present at the formal meeting.

## **7. Attendance and ill health**

### **7.1 General considerations**

- There may be various factors both within and outside the workplace that can affect your health and wellbeing. We offer a range of services within the ICO including occupational health support, counselling and access to discounted physiotherapy and other treatments.

The ICO may only be able to provide these facilities following a review by Occupational Health and if they are unavailable from the NHS within a reasonable timescale. This may require confirmation from your GP.

- Each particular case must be judged on its own merits, involving Occupational Health when appropriate. We will provide managers with training and guidance so that they can deal with these issues appropriately.
- We will only use the formal stages of this policy in situations where either the frequency or the duration of your sickness absence is an issue.
- Line managers may refer to Minfo to obtain information about the duration and reasons for periods of sickness absence, and they may wish to retain secure notes of actions they have taken with respect to absence management. These records will allow managers to monitor sickness absence levels and enable problems to be addressed at an early stage. These records will be supported by information sent to line managers by the HR Team.
- Sickness absences for reasons related to pregnancy – including sickness absence associated with a miscarriage – will be recorded

in the normal way, but no action should be taken in respect of them.

The norm will be that the sickness absence processes will be followed in all other cases. However managers may exercise discretion or consult with HR if they feel there is a legitimate reason for adjusting the usual processes in exceptional circumstances, for example where absence is related to bereavement following the death of a close relative, terminal or life threatening illness, or other circumstances where HR will advise upon the appropriateness of adjusting these procedures.

It may be necessary for the ICO to obtain information from a GP or Occupational Health to ascertain further information about your condition and the potential impact on your attendance.

- Disability-related absence must be managed in a way that does not breach the Equality Act 2010. Line managers must obtain advice from HR when dealing with disability-related absence.
- If you choose to have elective surgery where there is no pressing medical need, for example cosmetic surgery, you must take annual leave for the duration of the absence. In the event that further time off is required for recuperation, that cannot be covered by annual leave, only Statutory Sick Pay (SSP) will be paid to you during the absence.

## 7.2 Notification of sickness absence

- You must follow the ICO's procedures regarding the notification of sickness absence. This means that you must contact your line manager as early as possible and before 10.00am, unless that is not practicable, on the first day of absence.
- You will be required to inform your manager of:
  - a) The nature of your illness or injury;
  - b) the anticipated period of your absence; and
  - c) any urgent or outstanding work issues which will need to be addressed whilst you expect to be absent from work including any meetings or appointments you were due to attend
- You are required to stay in regular contact with your line manager while you are absent from work. If your manager needs to contact you he or she may be provided with your contact details by HR. You must ensure that you speak with your line manager in person and not communicate by email, text or by leaving a message on an answer phone. If you cannot reach your line manager you must contact another manager within your department or, if that is not possible, HR.

- For sickness absence spells of up to 7 calendar days (including weekends), you must provide a self-certification form (which is combined with the Return to Work interview form).
- For absence spells which last for more than 7 calendar days, you must provide a certified medical note from a doctor (a "Statement of Fitness for Work") stating that you are not fit for work and the reasons why. This must be forwarded to your manager or HR as soon as possible.
- If your absence continues, further medical notes must be provided to cover the whole period of your absence consecutively and without gaps. If you do not provide consecutive medical certificates, your absence may be recorded as unauthorised and you may not be paid for the period not covered. You may also face disciplinary action.
- If you have a doctor's note which states that you are unfit for work for a prescribed period, but you feel well enough to return before that date, you may return to work providing that your manager is in agreement following consultation with HR.
- If your doctor provides a certificate stating that you "may be fit for work" you should inform your line manager or HR immediately. We will discuss with you any additional measures that may be needed to facilitate your return to work, taking account of your doctor's advice. This may take place at a return-to-work interview. If appropriate measures cannot be taken, you will remain on sick leave and we will set a date to review the situation.

### 7.3 Implications for holiday pay when off work due to sickness

- If you are off sick and unable to take your full leave entitlement, you may be able to carry over untaken annual leave into the next leave year.
- You are expected to take annual leave whilst you are off work due to sickness absence on occasions where you would otherwise have booked holiday had you been in work, for example when taking holidays abroad. As with normal annual leave arrangements, such days must be requested and approved in advance via your line manager.
- This provision may be waived in limited circumstances by HR, for example if written evidence is provided by your doctor or occupational health that the holiday is necessary as part of a recuperation plan. Any time taken as annual leave whilst you are

absent due to sickness will not be counted against your use of occupational sickness allowance.

- If you fall sick during your annual leave, you will be treated as being on sick leave from the date of a doctor's statement and re-credited with annual leave. Self-certification will not be enough to be re-credited with annual leave.

## **8.0 Being sent home from work**

- 8.1 If you attend work and your line manager has a genuine concern about your state of health, they may decide it is necessary to send you home from work. You will then be absent on sick leave until you are fit enough to return to work.

If you dispute that you are unwell, and therefore should not be off sick, you may be required to obtain evidence of your fitness for work from your GP, or you may be referred to Occupational Health for an assessment of your health.

## **9. The process for dealing with short term absences**

- 9.1 Whenever possible, an informal approach will be the first step to help, guide or advise you about improving your attendance. This may take place in return to work meetings or in separate informal meetings arranged by your manager.
- 9.2 The purpose of an informal meeting between you and your line manager is to identify and examine any areas of concern, and to make sure that you clearly understand future expectations regarding your attendance.
- 9.3 Your line manager should keep a note of any meetings (such as a diary note), but other than the self-certification and return to work meeting form, no record or details of the meeting will be kept on your personnel file.
- 9.4 Return to work meetings
- Following **any** period of sickness absence, your line manager should meet with you to:
- Welcome you back to work;
  - ask how you are and discuss the reason for your sickness absence (N.B. your line manager may decide to make a referral to occupational health);
  - discuss, if appropriate, whether your absence was due to any underlying or long-term health problem;

- discuss, if appropriate, whether your absence was work-related and whether we could make any adjustments to help you;
- discuss, if appropriate, whether we can provide any assistance or support to allow you to continue to attend work; and
- update you about any relevant matters that may have occurred while you were absent.

If you have been absent for a reason which you are uncomfortable speaking with your manager about in a return to work meeting, you should contact HR for advice.

- 9.5 Return to work meetings should take place as soon as possible following your return from absence. If your manager is away from the office for a substantial period of time, the meeting may be held with an appropriate alternative manager. If you have not had the opportunity to discuss adjustments which you think may be necessary because a return to work interview has not taken place, you should contact HR for advice.
- 9.6 If you return to work before you have properly recovered and then require a further period of time off for the same illness within 7 calendar days of your return to work, your manager has the discretion to treat this as one period of sickness absence if they regard the absences as linked. This may still require the completion of more than one self-certification, for example if the initial return to work interview has already taken place, or the provision of a doctor's note depending on the timing of the secondary absence.
- 9.7 Details must be recorded on the Self-certification and Return to Work meeting form and you and your line manager may keep a copy for future reference. Your line manager will send a copy to HR to go on your personnel file.

## **10.0 The sickness management process**

- 10.1 It is essential that we deal with frequent and persistent absence promptly and consistently to demonstrate to all employees that we regard absence as a serious matter. However, managers should note the earlier sections of this policy document before instigating formal procedures.
- 10.2 The sickness absence process may include the engagement of Occupational Health services and advice at any stage. Staff are required to attend appointments to the Occupational Health provider when referrals are made.
- 10.3 If you are frequently and persistently absent, the process outlined in section 11 will be followed. In rare cases where attendance has fallen far below the expected standard it may be necessary to enact the



formal stages of this procedure when the informal process has not been followed.

10.4 We are aware that sickness absence may be as a result of a health condition which causes a person to be disabled, for these absences we will make adjustments to this policy where necessary. This will include appropriate adjustments to the triggers for sickness management action. In line with our Reasonable Adjustments policy we will seek to agree adjustments that could be made to the requirements of your job or your working arrangements which will help to support your attendance at work.

10.5 There may be exceptional circumstances where we make appropriate adjustments to the triggers for sickness management action, where absence is not related to a disability. It is anticipated that such instances will be rare and will be considered in response to the most acute or unusual circumstances.

## **11. 'Stage 1' Informal process**

11.1 Stage 1 of this process is informal and is intended to address potential issues at an early stage – the formal process does not commence until Stage 2.

11.2 **Triggers:** If you have had three periods of sickness absence in the last 6 months, or absence totalling 10 working days or more (pro-rated for part time staff) within the last 12 months, your manager will meet with you to discuss your attendance in more detail.

This is known as a Stage 1 meeting. It takes place whenever the trigger points have been reached.

There may be exceptional circumstances which mean that it is not necessary to hold a Stage 1 meeting. Managers must consult with HR if they feel that the circumstances are sufficiently exceptional to justify not holding the meeting even though the above triggers have been met.

The meeting will allow your manager to discuss matters with you, consider your attendance and its impact on your performance.

If your absence has hit the triggers your manager may issue you with a letter of concern.

A letter of concern under this policy is regarded as a forewarning intended to advise you that your attendance is below the expected standards and must improve to avoid escalation to the formal stages of this procedure. The letter of concern should include a summary of the informal discussion between you and your line manager.

A letter of concern is not held on a staff members HR record and should be retained by the line manager for 12 months. The line manager must ensure the letter of concern is deleted once 12 months have passed.

There may be circumstances where it will be appropriate for more than one letter of concern to be issued within a 12 month period.

## **12. 'Stage 2' Formal process**

12.1 The formal stages of this process may be enacted if your attendance does not meet the standards set out by your manager at Stage 1.

At the conclusion of Stage 2 of the procedure you may be issued with a first written warning. In some circumstances it may be appropriate to extend a letter of concern.

Your manager should write to you to confirm that a Stage 2 meeting will take place. A template letter can be provided by HR.

12.2 The following procedure will ensure that we take the appropriate action.

- If appropriate, a report will be obtained from Occupational Health. Consideration will be given to implementing advice contained within the report.
- The outcome of the Stage 2 meeting may be a **first written warning**. This will generally be where attendance has clearly fallen below the expected standard of attendance.
- The first written warning letter will set out the required standard of attendance that must be achieved. Expectations for attendance will be established which cover the next twelve months. HR will provide advice about what may be considered reasonable expectations in the circumstances.
- Your attendance will be subject to continual review during that period.
- A written warning will be retained on your personnel file and will be considered 'live' for twelve months.
- You have the right to appeal against a first written warning. If you appeal, you must do so in writing to HR within 10 working days of receiving the letter containing the first written warning.
- If your attendance continues to be unsatisfactory during the period of a live warning, we will move on to Stage 3 of this procedure.

### 13. 'Stage 3' Formal process

13.1 If your attendance has not met the requirements of the written warning, we may progress to the next stage of the procedure. At the conclusion of Stage 3 of the procedure you may be issued with a final written warning.

Your manager should write to you to confirm that a Stage 3 meeting will take place

The outcome of the Stage 3 meeting may be a **final written warning**.

The manager hearing the Stage 3 meeting may also decide to extend an existing first written warning.

13.2 The following procedure will ensure that we take the appropriate action.

- The final written warning letter will set out the required standard of attendance that must be achieved. Expectations for attendance will be established which cover the next twelve months. HR will provide advice about what may be considered reasonable expectations in the circumstances.
- Your attendance will be subject to continual review during that period.
- A final written warning will be retained on your file and considered 'live' for twelve months.
- You have the right to appeal against a final written warning. If you appeal, you must do so in writing to HR within 10 working days of receiving the letter containing the final written warning.
- If your attendance continues to be unsatisfactory during the period of a live final written warning, we will move on to Stage 4 of this procedure.

### 14. 'Stage 4' Formal process

14.1 If your attendance does not meet the requirements set out in the Stage 3 final written warning we may progress to the next stage of the procedure. At the conclusion of Stage 4 of the procedure it is possible that you will be dismissed from the ICO.

The manager hearing the Stage 4 meeting may also decide to extend an existing final written warning.

14.2	You have the right to appeal against a dismissal. If you appeal, you must do so in writing to HR within 10 working days of receiving the letter containing the dismissal letter.
<b>15.</b>	<b>Deciding on the outcome of formal action</b>
15.1	<p>Meetings taking place at Stages 2 and 3 will be chaired by a manager more senior to your line manager wherever practical. Meetings at Stage 4 of the procedure will be conducted by a manager at Level G or above.</p> <p>Meetings will be conducted in accordance with the following procedure and, as well as you, they will be attended by:</p> <ul style="list-style-type: none"> <li>• the Chair of the meeting;</li> <li>• your line manager;</li> <li>• a member of HR team (to advise the Chair); and</li> <li>• a trade union representative or an ICO colleague (if you wish).</li> </ul>
15.2	<p>General considerations</p> <p>The Chair will decide whether to take formal action after listening to all the information presented during the formal meeting. The Chair will, however, need to consider the following points.</p> <ul style="list-style-type: none"> <li>• Your absence record;</li> <li>• the fairness, consistency and merits of the information presented during the hearing;</li> <li>• the efforts you have made to improve your attendance;</li> <li>• the extent to which you may have contributed to the situation, such as by not attending occupational health appointments;</li> <li>• the requirements of employment legislation which state that we, as your employer, act reasonably and treat each case fairly and on its own merits, including any reasonable adjustments to practices which may be required for disabled staff in compliance with the Equality Act; and</li> <li>• the status of warning that you are under at the current time.</li> </ul> <p><b>Any warnings issued under the ICO's Disciplinary procedure are not relevant or applicable to this 'Managing absence' procedure.</b></p>
15.3	If the Chair of the meeting decides to issue you with any of the above formal warnings or penalties under this procedure they will write to you confirming:

- the reason for the warning or decision to dismiss you;
- details of the review period;
- the standard of attendance expected of you;
- the consequences of you failing to meet specified improvements; and
- your right of appeal.

15.4 Your manager can, at any point, refer the matter for a further formal meeting if your attendance is not sufficiently improving. If you have made sufficient improvement by the end of the review period, your manager will inform you that no further action will be taken.

## **16. Right of Appeal**

16.1 If you wish to appeal against a first or final written warning you must do so in writing to HR. You must submit your appeal within 10 working days of receiving the letter confirming your warning. Where possible we will hear your appeal within 15 working days of receiving your request. Where possible your appeal will be heard by a manager more senior than the original Chair.

16.2 If you wish to appeal against dismissal you must do so in writing to the Head of HR within 10 working days of receiving the letter confirming your dismissal.

An appeal panel will be set up to include a member of the Senior Leadership Team and an appropriate HR representative.

Your appeal will be heard without unreasonable delay and where possible within 3 weeks of receiving your request.

16.3 Appeals will be dealt with internally and, after such an appeal, you will have no further internal right of appeal.

## **17. Dealing with long term sickness absence**

17.1 If you are absent on long-term sickness absence (in other words, more than 15 working days or a pro-rated equivalent for part time staff), the following procedure will make sure that appropriate action is taken.

17.2 While you are on long-term sickness absence you must stay in regular contact with your manager, i.e. making contact at least every two weeks. This approach will help both of you. You will be able to raise any particular concerns with your manager and, in turn, your manager will know how long you expect to be absent.

17.3 HR will notify you if your salary is about to reduce from full to half pay or if your entitlement to sick pay is about to run out and will aim to provide you with at least 4 weeks' notice.

- 17.4 The long term sickness absence process will include the engagement of Occupational Health services and advice at any stage. You are required to attend appointments to the Occupational Health provider when referrals are made by Human Resources.
- 17.5 We may ask you to consent to us requesting a medical report from your GP, consultant or other appropriate medical professional.
- 17.6 If you refuse to co-operate, either to provide medical evidence or to submit to an independent medical examination, we will base our decision on the information we have available and this may result in your dismissal or affect your pay.
- 17.7 Having received medical evidence, or in the absence of such evidence if you have refused to co-operate, we will arrange a meeting with you, to discuss your health and absence from work. The meeting will either be held at work, your home or another suitable venue, whichever is most convenient for you.
- 17.8 If, according to medical opinion, you are likely to return to work in the foreseeable future, your line manager will discuss the following issues with you at the meeting.
- How best to arrange your return to work; for example, a gradual return (perhaps three days a week to start), bearing in mind the needs of the ICO to provide a service.
  - Whether it would be feasible to make temporary adjustments to your current job, such as altering your hours or days of work, redistributing your duties and, if appropriate, making adjustments to your physical work environment (such as an adjustable chair or raising your desk).
- 17.9 If, according to medical opinion, it is unlikely that you will be able to return to work or to your normal duties in the foreseeable future, we will discuss the following options with you.
- Making permanent adjustments to your current job, such as altering hours or days of work, redistributing your duties and, if appropriate, making adjustments to your physical work environment.
  - The possibility of redeploying you to another appropriate post within the ICO on the same salary/wage and terms and conditions as your current post, if this is possible. We will make every reasonable effort to find you alternative employment.

17.10	If we cannot keep your job open any longer and, after taking medical advice, we cannot make any reasonable adjustments or find any suitable alternative work for you, we will inform you of the likelihood that you will be dismissed on the grounds of capability.
17.11	<p>We only consider dismissing an employee on the grounds of capability due to ill health when we have considered all the available facts and medical reports and investigated the following factors.</p> <ul style="list-style-type: none"> <li>• Current medical opinion shows that you are not able to return to your current post in the foreseeable future.</li> <li>• It has not been possible for us to make any reasonable adjustments to your existing post.</li> <li>• Your medical condition prevents you from being redeployed to another job within the ICO.</li> <li>• You have refused to consider or accept suitable alternative employment within the ICO, where available.</li> </ul>
17.12	If we decide to dismiss you, the normal conditions for us giving you notice will apply even though, in practice, you may not be able to work your notice. In these circumstances, you should either receive full pay throughout the notice period, or be paid in lieu of notice. We may dismiss you at any time, as long as we have evidence of your capability as outlined above. The decision to dismiss you will be confirmed in writing.
17.13	You have the right to appeal against a decision to dismiss you on the grounds of capability. Any appeal must be made in writing to the Head of HR within 10 working days of receiving the dismissal letter.
17.14	Independent of and separate to the decision to dismiss you, we can explore options for you to retire on the grounds of ill health under the rules of the Principal Civil Service Pension Scheme (PCSPS), if you are eligible to do so.
<b>18.</b>	<b>Retirement on the grounds of ill health</b>
18.1	This section of the procedure is not intended to replace or override the rules and procedures of the Civil Service Pension Scheme, which may be changed from time to time.
18.2	Under their normal arrangements for these matters, the administrators of the PCSPS will consider information provided by our Occupational Health Service advisor along with available information from your GP or consultant. In all but the most exceptional circumstances, you will be required to attend one or more

appointments with the Scheme Medical Adviser's physician if ill health retirement is under consideration.

- 18.3 If the Scheme Medical Adviser's physician decides that you are incapable of performing the duties and/or responsibilities of your post due to permanent ill health, we will arrange a home visit or a meeting at some other mutually agreed location so that we can explain their decision to you.
- 18.4 The Scheme Medical Adviser may decide that you are permanently unfit to carry out your normal duties or perform any form of work. However, they may recommend that we look for suitable alternative employment opportunities for you. In this case, we will make every effort to redeploy you within the ICO, even if the work is not at the same level as your current salary. The Equality Act states that employers must make reasonable adjustments wherever possible. If we do not have any suitable alternative employment available, you may be eligible to retire on the grounds of ill health or dismissal may be the outcome if you do not fulfil the criteria for ill health retirement.
- 18.5 If ill health retirement is recommended, we will write to you to arrange a meeting to confirm the decision, and advise you of your right to be accompanied at the meeting.
- 18.6 At this meeting, we will explain that we are serving you with a notice to terminate your employment on the grounds of ill health retirement. You will have the opportunity to respond and you will also have the right to appeal against the decision. We will confirm our decision in writing.
- 18.7 Any appeal against a dismissal on the grounds of ill health retirement must be sent to the Head of HR within 10 working days of receiving written confirmation of the decision.

Version	Changes made	Date	Made By
2.0	<b>Published</b>	March 2008	Human Resources
3.0	<b>Published</b>	July 2018	Human Resources
4.0	<b>Full policy review. Update to the sickness management process and stage 1, 'Informal process'</b>	May 2021	HR, SLT, TU & EDI Networks