

## Appeals Policy and Procedure

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<b>Document Data</b>		
<b>Subject:</b>	Procedural Documents	
<b>Document Type:</b>	Policy	
<b>Document Status:</b>	Final Version	
<b>Document Owner:</b>	██████████, HR Consultant	
<b>Executive Lead:</b>	██████████, Acting Director of Human Resources	
<b>Approval Authority:</b>	Trust Partnership Forum – 12 <sup>th</sup> July 2016	
<b>Estimated Reading Time:</b>	20 Minutes	
<b>Review Cycle:</b>	24 Months	
<b>Next Review Date:</b>	<b>Date of First Issue:</b>	<b>Date Version Effective From:</b>
July 2018	15 November 2011	19 July 2016

<b>Document Abstract</b>
<p>The Appeals Policy &amp; Procedure is to set out the process for employees of the Trust to appeal against a management decision/action in relation to:</p> <ul style="list-style-type: none"> <li>• Termination of employment</li> <li>• Any formal disciplinary sanction</li> <li>• Grievances and disputes (as per section 6.4 of the Grievance Policy &amp; Procedure) including the application of trust employment policies</li> <li>• Refusal of flexible working application under the Trust’s Flexible Working Policy</li> </ul> <p>The purpose of the Policy &amp; Procedure is to ensure that decisions were fair and reasonable in all circumstances and that the appropriate process was followed in reaching decisions.</p>

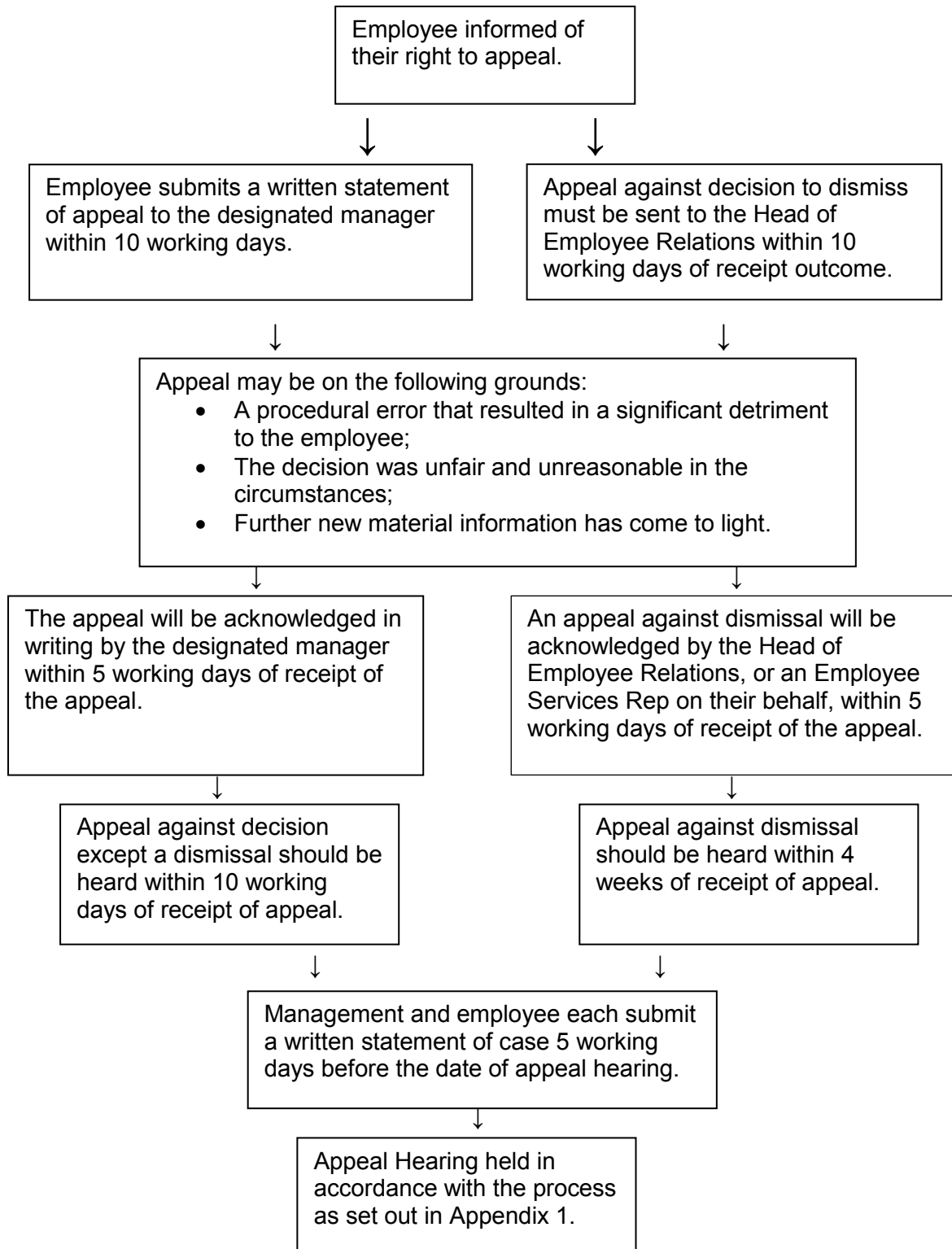
<b>Document Change Control</b>				
<b>Date of Version</b>	<b>Version Number</b>	<b>Lead for Revisions</b>	<b>Type of Revision</b>	<b>Description of Revision</b>
15th Nov 2011	V1	Director of W&OD	Policy Revision	
March 2014	V2	Director of W&OD	Policy Revision	
July 2016	V3	Head of Employee Relations	Policy Revision	<p>Appeals now sent to Head of Employee Relations.</p> <p>Clarification that employees have no further right of appeal (can only appeal once against a particular decision).</p> <p>Appeal panels should consider new material information in the written statement of appeal.</p> <p>New evidence arising at the appeal stage may be taken into account in justifying a dismissal.</p>

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## Quick Reference Guide

Flowchart giving overview of the Appeals process



## **1. Introduction**

All employees of the Trust have the right of appeal against a management decision/action in relation to:

- Termination of employment
- Any formal disciplinary sanction
- Grievances and disputes (as per section 6.4 of the Grievance Policy & Procedure) including application of trust employment policies
- Refusal of flexible working application under the Trust's Flexible Working Policy

Appeals specifically relating to bullying & harassment should be submitted as set out in the Bullying & Harassment Policy.

## **2. Purpose and Scope**

The purpose of the appeal procedure is to ensure that decisions were fair and reasonable in all circumstances and that the appropriate process was followed in reaching decisions.

This policy applies to all employees except for issues of professional misconduct for medical staff for which separate provisions apply, contained within the Policy for Managing Capability Concerns of Medical and Dental Staff

## **3. Key Provisions of the Policy**

All employees of the Trust have the right of appeal against a management decision/action as described in Section 1 above.

The individual must be informed of their right to appeal both verbally at a hearing or meeting and in the letter confirming any outcome.

No member of staff shall be discriminated against for lodging a formal appeal either at the time of lodging the appeal or subsequently.

Confidentiality will be maintained throughout the appeal process by all those involved. Any breach of confidentiality may result in disciplinary action.

An appeal can only be lodged if the individual can provide sufficient evidence that an unfair decision has been made, and in accordance with the How to Appeal Guidelines in Section 4.1.

Employees have the right to be accompanied at an appeal hearing by a trade union representative or friend/colleague not acting in a legal capacity. It is the employee's responsibility to organise this.

Employees may only appeal against a particular decision once and have no further right of appeal.

## **4. Appeals Procedure**

### **4.1 How to Appeal**

The employee must submit a written statement outlining the grounds of appeal. Employees can ask for help in preparing this statement from their Union Representative, a work colleague or friend or family member, or from the Employee Services Team.

An appeal may be made on the following grounds:

- A procedural error
- The decision was unfair and unreasonable
- That further new material information has come to light which, had it been known by the panel at the time of the hearing, may have affected the panel's decision. This must be information that was unavailable at the original hearing or meeting and is pertinent to the case.

The written statement of appeal must be received by the named manager within 10 working days of the date of the letter notifying the employee of the outcome giving rise to the appeal.

An employee choosing to be accompanied by a trade union representative, friend or colleague, not acting in a legal capacity, should state the name and address of their representative if known.

### **4.2 Who to Appeal to**

An appeal against any decision except a dismissal should be submitted to the senior manager named in the letter giving the outcome being appealed against.

An appeal against a dismissal decision should be addressed to the Head of Employee Relations, University Hospitals Bristol NHS Foundation Trust, Level 4c, Whitefriars, Lewins Mead, Bristol, BS1 2NT.

### **4.3. Correspondence before an Appeal Hearing**

#### **4.3.1 Appeal not against dismissal**

An appeal against any decision except a dismissal should be acknowledged in writing by the designated appeal manager within 5 working days of receipt.

An appeal hearing date should be arranged within 10 working days of receipt of the appeal letter wherever possible. Where this is not possible, both parties should mutually agree a date to hear the appeal. The employee should be advised in a letter who will hear the appeal and details of any witnesses. The Chair of the Appeal panel will normally call the manager involved at the previous stage to present the management case.

Any available original papers, together with the employee's statement or case, will be circulated to all parties at least 5 working days in advance of the hearing.

In cases other than appeal against dismissal, the hearing manager (Chair of the Panel) will make arrangements for the delivery of papers

Statements or case and other papers will be circulated to:

- Members of the Appeal panel;
- The Manager presenting the case;
- The employee;
- The employee's representative (at the employee's request).

#### **4.3.2 Appeal Against Dismissal**

An appeal against dismissal will be acknowledged in writing by the Head of Employee Relations, or an Employee Services Representative on their behalf, within 5 working days of receipt.

For a dismissal appeal all parties are required to submit a written statement of case 5 working days before the proposed Appeal hearing date, together with the names of any witnesses to be called, to the designated person stated in the letter. Any available original papers, together with the employee's statement of case, and other papers will be circulated to:

- Members of the Appeal panel;
- The Manager presenting the case;
- The employee;
- The employee's representative (at the employee's request)

No further paperwork may be presented after this, unless there are very exceptional circumstances, in which case the hearing may have to be adjourned.

In relation to an appeal against dismissal, a Human Resources representative will make arrangements for the delivery of papers.

An appeal against dismissal will be heard wherever possible within 4 weeks of receipt of the written statement of appeal. There will be a minimum notice period of 10 working days for the employee to be invited to the hearing. The manager involved at the previous stage will be called to present the management case supported by an appropriate Human Resource practitioner.

#### **4.4.3 Witnesses**

Either party can call witnesses to attend the hearing and they should advise the Chair of the panel in writing at the time of submitting their statement of case.

In all instances it should be discernible that such attendance may contribute to the decision making process.

Witnesses who attend to give evidence will normally be open to questions from all parties and will be asked to leave the hearing at the conclusion of their evidence. The appeal panel chair will indicate whether they should remain available for the duration of the hearing in case it is necessary to recall them.

If a witness is not available on the date of the hearing, if appropriate, they may submit a written statement instead.

On very rare occasions, the Chair of the panel may need to contact the witness after the hearing.

If a witness is no longer required to attend the hearing, both sides should be advised before the hearing date.

Witnesses will not be advised of the outcome of the hearing by the panel.

#### **4.4 The Panel Hearing**

The process of the Appeal Hearing is shown in Appendix 1 - Format of Appeal Hearing

An Appeal hearing takes precedence over routine meetings and management and staff may need to reschedule appointments in order to attend.

Employee Services will support the Division / Head of Employee Relations with arranging the appeal hearing.

Under normal circumstances an appeal hearing shall not be postponed. The hearing may be re-arranged only once if the employee or their representative is unable to attend. This should normally be within 2 weeks and not longer than one month from the original appeal hearing date. At the second attempt, the hearing will take place and a decision made in the absence of the employee unless there are extenuating circumstances or justification.

In order to ensure that appeals are heard swiftly, and with the approval of the manager hearing the appeal, if the Hearing Manager of the original panel is not available the 3rd member of the panel may present it with the original HR Adviser, or; the original Hearing Manager with a different HR Adviser, if the original one is not available.

#### **4.5 Constitution of the Appeal Panel following any decision except a dismissal**

- A manager at a higher level than the previous hearing manager who has had no prior involvement with the case. (For example, if a Deputy Divisional Director chaired the panel making the decision, the Divisional Director would normally hear the appeal.)
- The appeal panel may require specialist advice if the matter relates to professional code of conduct issues (see Disciplinary policy for more details), which may influence the choice of clinical or non-clinical manager to sit on the panel.
- The panel will be advised by a Human Resources practitioner.
- A note taker will be present.
- No member of the Appeals Panel should have had involvement in the decision giving rise to the appeal.



#### **4.6 Constitution of the Appeal Panel following Dismissal/Termination of Employment**

- Executive Director or another senior manager taking delegated authority representing the Chief Executive
- A further advisor to the panel may be required in order to access specialist advice if the matter relates to professional code of conduct issues (see Disciplinary policy for more details);
- The panel will be advised by a Human Resources practitioner.
- A note taker will be present.
- No member of the Appeals Panel should have had involvement in the decision giving rise to the appeal.

#### **4.7 Role of Human Resources on the panel**

A member of the Human Resources Department will be present at the Appeal hearing and will be responsible for:

- Advising the panel of the procedure to be followed;
- Advising on matters of relevant employment legislation and consistency

#### **4.8 Sickness Absence**

The Trust's aim is to proceed with all appeal hearings with the minimum of delay. The appeal process may therefore continue during an employee's sickness absence where that is ongoing. Professional medical advice will be sought, where appropriate, from Occupational Health to ascertain the likely length of the absence and whether the individual is fit enough to attend a hearing. If the absence is likely to be lengthy, the employee should be offered the opportunity to submit a written case and the appeal may be heard in the employee's absence based on the evidence available and a response made in writing.

#### **4.9 Conducting an Appeal Hearing**

The purpose of the appeal is to consider the case in respect of the grounds for appeal as stated in the employee's written statement of appeal. It is not a re-hearing of the original case.

The appeal panel will consider all the facts and the original decision will be reviewed.

The procedure to be followed at an Appeal hearing is set out in Appendix 1 (Format of Appeal Hearing).

The normal purpose of an Appeal hearing is to review a managerial decision taken on the basis of the merits of the case known at the time of the decision. The Panel should also consider any new material information introduced in the employee's written statement of appeal and allow both sides to comment on it.

New evidence arising at the appeal stage may be taken into account in justifying a dismissal even if the evidence available at the initial disciplinary hearing would not have

justified it. However, if new evidence does arise on appeal, the employee should be given the opportunity to comment on it before a decision is taken to ensure a fair process is followed.

All parties (excluding witnesses) will be present throughout the hearing. A note-taker may also be present - this should be organised by the Chair of the panel or the HR support in the case of a dismissal Appeal Hearing.

By prior agreement with the panel, either side involved in the appeal may call on relevant advisers from outside the Trust.

#### **4.10 Decisions of Appeal Panel**

The role of the panel is to determine whether or not the action which is the subject of the appeal was fair and reasonable, taking into consideration all the relevant facts and circumstances of the case. The options available to the panel are as follows:

- To uphold the management decision
- To overturn the management decision
- To recommend an alternative solution / sanction

In cases of appeals against the outcome of a disciplinary hearing, sanctions can, in exceptional circumstances, be increased.

The decision of the Appeal Panel, and the reasons for reaching that decision, will normally be announced at the end of the Appeal hearing. Decisions will be confirmed in writing, usually within 5 working days. If the panel is unable to reach a decision on the day of the hearing, the Chair will confirm with the employee that the decision will be advised in writing or arrange a further meeting to continue the Appeal hearing.

The following information should be supplied in the letter:

- The date, venue and names of the people in attendance;
- The reason for the appeal and brief details;
- The decision;
- The reasons for the decision;
- Where relevant, what action needs to be taken

The appeal decision will be final and there is no further right of appeal.

## **5. Record Keeping and Monitoring**

For the purposes of good information governance all documents relating to the appeal process will be filed along with the original information regarding the process. All information will then be retained according to the time limits for the sanction agreed by the appeal panel (for example, if the appeal panel uphold an original disciplinary sanction of a first written warning, the information relating to that written warning and the appeal process

will be retained on the individual's personal file for 12 months or up to 2 years for a final written warning from the date of the original sanction).

Outcomes of appeal hearings are monitored and reported quarterly to HR Governance Board.

## **6.    References**

Trust Disciplinary Policy and Procedure  
Trust Grievance Policy and Procedure  
Trust Supporting Attendance Policy and Procedure  
Trust Performance Management Policy and Procedure  
Trust Bullying and Harassment Policy and Procedure  
Trust Redeployment Policy and Procedure  
Trust Flexible Working Policy and Procedure  
Trust Policy for Managing Capability Concerns of Medical and Dental Staff

## 7. Appendices

### Appendix A – Monitoring for this Policy

The number of appeals received, upheld and overturned will be monitored by ethnicity, disability & gender, division and data will be reported to HR Governance Board on a quarterly basis.

### Appendix B – Dissemination, Implementation and Training Plan

- 1.1 The following table sets out the dissemination, implementation and training provisions associated with this Policy.

<b>Plan Elements</b>	<b>Plan Details</b>
<b>The Dissemination Lead is:</b>	██████████, Interim Head of Employee Relations
<b>This document replaces existing documentation:</b>	Appeals Policy
<b>Existing documentation will be replace by:</b>	No other documentation to be replaced.
<b>This document is to be disseminated to:</b>	All Managers and Employees and will be available on HR Web.
<b>Training is required:</b>	Training will be provided for managers by Employee Services on a 121 basis on a case by case basis.
<b>The Training Lead is:</b>	HR Consultants, Employee Services

<b>Additional Comments</b>
n/a

## 2. Appendix C – Document Checklist

2.1 The checklist set out in the following table confirms the status of ‘diligence actions’ required of the ‘Document Owner’ to meet the standards required of University Hospitals Bristol NHS Foundation Trust Procedural Documents. The ‘Approval Authority’ will refer to this checklist, and the Equality Impact Assessment, when considering the draft Procedural Document for approval. All criteria must be met.

<b>Checklist Subject</b>	<b>Checklist Requirement</b>	<b>Document Owner’s Confirmation</b>
<b>Title</b>	The title is clear and unambiguous:	Title is clear
	The document type is correct (i.e. Strategy, Policy, Protocol, Procedure, etc.):	Document type is correct
<b>Content</b>	The document uses the approved template:	Approved template used
	The document contains data protected by any legislation (e.g. ‘Personal Data’ as defined in the Data Protection Act 2000):	Protected Data.
	All terms used are explained in the ‘Definitions’ section:	Terms are explained.
	Acronyms are kept to the minimum possible:	Acronyms minimal.
	The ‘target group’ is clear and unambiguous:	Target group is clear.
	The ‘purpose and scope’ of the document is clear:	Purpose and Scope are clear.
<b>Document Owner</b>	The ‘Document Owner’ is identified:	Document Owner is identified.
<b>Consultation</b>	Consultation with stakeholders (including Staff-side) can be evidenced where appropriate:	Consultation is evidenced.
	The following were consulted: Staff Side, Employee Services Team, HR Business Partners.	Consulted
	Suitable ‘expert advice’ has been sought where necessary:	Suitable advice sought
<b>Evidence Base</b>	References are cited:	References are cited
<b>Trust Objectives</b>	The document relates to the following Strategic or Corporate Objectives:	Trust Objectives.
<b>Equality</b>	The appropriate ‘Equality Impact Assessment’ or ‘Equality Impact Screen’ has been conducted for this document:	Equality Impact Assessment completed
<b>Monitoring</b>	Monitoring provisions are defined:	Monitoring provisions are defined.
	There is an audit plan to assess compliance with the	There is an audit plan.

Date: Revised July 2016

Author: [REDACTED] (HR Consultant)

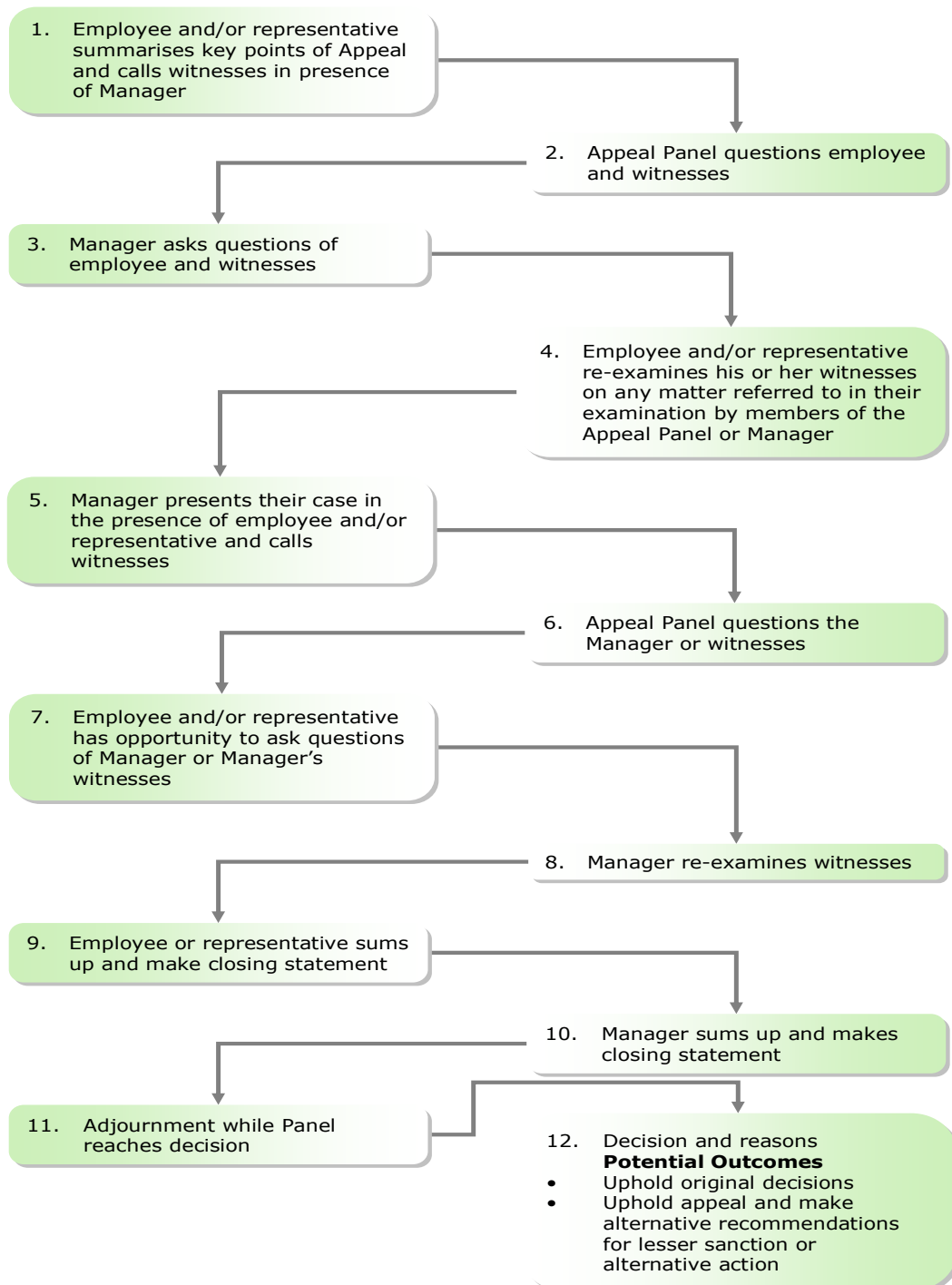
<b>Checklist Subject</b>	<b>Checklist Requirement</b>	<b>Document Owner's Confirmation</b>
	provisions set out in this procedural document:	
	The frequency of reviews, and the next review date are appropriate for this procedural document:	Review frequency and next date are shown
<b>Approval</b>	The correct 'Approval Authority' has been selected for this procedural document:	Approval Authority is appropriate.

<b>Additional Comments</b>
n/a

## Appendix 1 – Format of Appeal Hearing

### Opening by Chair

- Introductions / outline reasons for appeal hearing.
- Explain process (explain that either side may request a short adjournment at any time).
- No new evidence should be submitted at this stage.



EQUALITY IMPACT ASSESSMENT SCREENING FORM			
<b>Title: Appeals Policy and Procedure</b>			
<b>Author:</b> [REDACTED], HR Consultant		<b>Division:</b> Employee Services	<b>Date:</b> May 2016
<b>Document Class:</b> Policy	<b>Document Status:</b> Approved	<b>Issue Date:</b> July 2016	<b>Review Date:</b> May 2018
<b>What are the aims of the document?</b> To provide a clear, fair and consistent process for appeals being heard.			
<b>What are the objectives of the document?</b> To ensure that decisions are fair and reasonable in all circumstances and that due process has been observed in arriving at the decisions.			
<b>How will the effectiveness of the document be monitored?</b> Appeal Outcomes are reported on a quarterly basis to HR Governance Board			
<b>Who is the target audience of the document (which staff groups)?</b> All staff groups			
<b>Which stakeholders have been consulted with and how?</b> HR practitioners via email, staff side via Trust Policy Group			
<b>Who is it likely to impact on?</b>			
<input checked="" type="checkbox"/> Y	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Staff	Patient	Visitors	Carers
<input type="checkbox"/> Other (please specify):			



	Yes or No	Give reasons for decision	What evidence was examined?
Does the policy/strategy/function or proposed change affect one group more or less favourably than another on the basis of:	No	The Policy is designed to ensure that staff from all protected characteristics are treated in the same way.	
Race	No		
Ethnic Origin (including gypsies and travellers)	No		
Nationality	No		
Gender (including transgender)	No		
Culture	No		
Religion or belief	No		
Sexual Orientation (including lesbian, gay, bisexual and transgender)	No		
Age	No		
Disability (including learning disability, physical, sensory impairment and mental health)	No		
Socially excluded groups (e.g. offenders, travellers)	No		
Human Rights	No	The Policy states that staff should have a fair hearing within a reasonable timescales. This is in accordance with Article 6 of the Human Rights Act 1998.	

<p><b>Are there opportunities for promoting equality and/or better community relations?</b>  <b>If YES, please describe:</b> Data reported to HR Governance Board will be monitored by Ethnicity / Disability / Division</p>	
<p><b>Please state links with other relevant policies, strategies, functions or services:</b>  <b>Disciplinary, Grievance, Supporting Attendance, Performance Management, Bullying and Harassment, Redeployment, and Flexible working policies and procedures.</b></p>	
<p><b>Action Required:</b></p>	
<p><b>Action Lead:</b></p>	<p><b>To be delivered by when:</b></p>
<p><b>Progress to date:</b></p>	
<p><b>Next steps:</b></p>	
<p><b>How will the impact on the service/policy/function be monitored and evaluated?</b></p>	
<p><b>Person completing the assignment:</b></p>	<p><b>Date:</b></p>

# Supporting Attendance Policy



**Extended to 31/12/2017**

## DOCUMENT DETAIL

<b>Author:</b>	██████████
<b>Job Title:</b>	Assistant Director of HR
<b>Date:</b>	July 2015 Additional information for Nursing Revalidation March 2016
<b>Version No: (Author Allocated)</b>	2.2
<b>Next Review Date:</b>	November 2016

<b>Approving Body/Committee:</b>	Industrial Relation Group (IRG) / Trust Partnership Forum
<b>Chair:</b>	████████████████████
<b>Date Approved:</b>	18 <sup>th</sup> November 2014 / 14 <sup>th</sup> July 2015 / 16 <sup>th</sup> Feb 2016
<b>Target Audience:</b>	All Staff
<b>Date of Equality Impact Assessment:</b>	June 2014

Document History					
Date of Issue	Version No.	Next Review Date	Date Approved	Executive or Div Lead Responsible for Change	Nature of Change
24 September 2012	1	March 2014	September 2012	Director of Workforce and Organisational Development	Policy Review
November 2014	2	November 2016	18 November 2014	Director of Workforce and Organisational Development	Scheduled review
July 2015	2.1	November 2016	14 July 2015	Director of WF & OD	Process update/clarification
March 2016	2.2	April 2017	16th Feb 2016	As above	Update to cover introduction of Nursing Revalidation

**Consultation:** This document was reviewed with the following individuals and groups:

HR Business Partners, Employee Services, Trade Unions	Trust Employment Policy Group
	Industrial Relations Group
	Nursing Revalidation Group

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## 1. INTRODUCTION

University Hospitals Bristol NHS Foundation Trust (UHBristol or 'the Trust') aims to ensure all staff are able to make the best contribution, individually and collectively, to improve all Trust services.

The Trust is also committed to providing cost efficient services to the communities it serves. Managing sickness absence and improving sickness absence rates is an indicator of creating both a healthier and more efficient workplace.

## 2. PURPOSE

The purpose of this policy is to ensure a fair and consistent approach to the management of sickness absence throughout the Trust, for all staff groups, ensuring that the following aims are met:

- the promotion of employees' health, safety and welfare
- the efficient use of resources
- the identification of changes necessary in working practices or environment
- the compliance with relevant employment legislation e.g. sections of the Equality Act 2010 relating to disability, Employment Statutory Code of Practice
- to achieve the Trust's targets for absence reduction
- to support full attendance by staff who are fit to work

It sets out the process to follow when staff hit the agreed trigger points for sickness absence, and supports Managers/Supervisors to manage sickness absence effectively.

### 2.1 Key Principles and Aims

#### This policy:

- Applies to all Trust staff, including Medical and Dental staff
- Helps staff and managers understand their responsibilities in managing absence and understanding the processes around absence management.
- Applies to the management of both paid and unpaid sickness/absence.
- Expects confidentiality to be maintained throughout all its stages except where it is considered appropriate for particular legal or safety reasons. Under such circumstances staff will be informed.

#### 2.1.1 The Equality Act 2010 and Disability

The Equality Act 2010 protects employees from unfavourable treatment related to protected characteristics, including disability. A medical condition that is recurrent and long term (for example a condition that flares up from time to time) may, depending on its effect on the employee, be classed as a disability under



the Act. If this is the case, the employer will be under a duty to make reasonable adjustments to the employee's working arrangements in order to help reduce the disadvantage that the employee would otherwise experience.

## 2.2 Summary of the Key Requirements of Handling Any Sickness Case

Although each case will be different and should be treated on its own merits, there are a number of fundamental aspects of dealing with a sickness case which Employment Tribunals expect organisations to adhere to, as follows:

- To be fair and sympathetic in handling any sickness case.
- To have regular and meaningful consultation with the employee (allowing him/her full rights of representation).
- Where appropriate (and certainly in cases of long term illness) managers must seek a medical opinion to help with the final decision.
- To investigate the possibility of redeployment (although there is no requirement to create a special job).
- Consider alternative medical advice if this is produced by the employee.
- Where an employee becomes disabled, ensure that the relevant provisions of the Equality Act 2010 are considered. (See 2.1.1 above.)
- The primary purpose of any meeting is to support the member of staff to improve attendance and return to work safely

## 2.3 Entitlement to representation

All employees are entitled to be represented by a trade union representative, or accompanied by a friend or colleague not acting in a legal capacity, during any **formal** stage meeting.

This must be made clear to the employee in each letter inviting him/her to attend any formal interview called by the manager.

It is the employee's responsibility to organise this representation and meetings will not be re-arranged more than once due to non-representation. With the employee's permission the trade union representative will be copied into correspondence.

Employee Services should attend **formal** meetings if required.

## 2.4 Grievances and Appeals

If an employee believes that the policy has not been followed correctly, he/she will have recourse to the Trust's Grievance Procedure.

Staff dismissed under this policy may appeal in line with the Trust's Appeal policy.

### 3. DEFINITIONS

**Short-term sickness** – The duration of the short-term absence can be up to and including a period of four calendar weeks.

**Long-term sickness** - One single episode of absence which exceeds four calendar weeks, the reason for which is given as sickness/injury. A General Practitioner or in-patient doctor should have certificated this from the eighth day of absence.

**Percentage Attendance** – A calculation to establish the percentage of days or hours taken as sickness absence in relation to the total days/hours available to work, excluding annual leave and non-working days. The percentage calculation is completed when the level of absence does not trigger long or short term absence thresholds but the level of absence is identified to be high, and is having a detrimental effect on the service.

**Sickness absence without an underlying health cause** - This is defined as periods or a pattern of sickness for which Occupational Health have confirmed that there is no common underlying health cause. This will normally present itself as short-term sickness with a number of short periods of sickness absence, but can also include long-term sickness episodes.

**Sickness absence with an underlying health cause** - This is defined as a period or pattern of sickness for which Occupational Health have confirmed that there is a common underlying health cause. This will normally present itself as long term sickness but over few episodes – although it can in some cases present in a different pattern (for example a number of short periods of sickness absence). Examples of causes would be significant medical conditions such as clinical depression, back conditions or injuries, or multiple sclerosis.

### 4. ROLES AND RESPONSIBILITIES

#### Managers / Supervisors

- To be accountable and responsible for the management of sickness absence in their area, ensuring that all aspects of the Supporting Attendance policy are carried out in an effective and timely manner, and ensure that staff can engage in the process at all times.
- To undertake risk assessments so that a safe and conducive working environment is maintained in accordance with the requirements of the Trust's Health and Safety at Work policy. (Reference should be made to the Risk Assessment processes set out in the Trust's Health and Safety policy.)
- To encourage staff to maintain good attendance
- To make adjustments to the workplace that are reasonable in the view of service

delivery to enable employees to attend work

- To ensure that staff are made aware of and follow the notification procedure when reporting absence. This should form part of local induction.
- To deal with sickness absence in a clear, fair and consistent manner, balancing the needs of staff and the service and taking into account the individual circumstances of each case.
- To obtain support and advice through the use of Occupational Health where appropriate for long and short term sickness
- To hold a return to work interview as soon as their member of staff returns to work from each period of sickness absence. (See Section 5.4)
- To ensure that absence in their area is reported to Payroll weekly and ensure that appropriate action/documentation, i.e. return to work interview/form, is completed and that appropriate information is sent through to Payroll by submitting on the next weekly return or Rosterpro.
- To ensure their employees' attendance records are up-to-date.
- To monitor the sickness absence level of their staff both on an individual and group basis against their expected minimum levels of attendance.
- To regularly analyse reasons for absence which could be symptomatic of underlying causes.
- To engage with Employee Services and meet with all staff who remain absent after 4 weeks.
- To engage with Employee Services and meet with staff prior to the expiry of their occupational sick pay entitlement, in accordance with the Long Term Sickness process, and on other occasions as indicated throughout this policy.
- Managers should contact Payroll to confirm dates of half pay and no pay. (Payroll will automatically write to the individual before the change in pay in most cases.)
- To ensure they are aware of and implement the most up to date supporting attendance policy and attend the 'Supporting Attendance' training provided by the Trust. (Managers should refer to the [Teaching and Learning](#) pages of Connect for details
- To ensure they have current contact details for their team members.

## Employees

- To ensure that they make every effort to maintain their fitness and regular attendance at work.
- To identify any work related issues which may impact adversely on their health.
- To co-operate fully with Trust policies and procedures in managing sickness absence.
- To notify any absence in line with local notification procedure/local operating procedures.
- To ensure that their line manager has an up to date record of contact details
- If on sickness absence to cooperate fully and honestly with GPs, Occupational Health and their manager about the reasons for absence and return date. Failure to disclose all relevant information may affect the advice provided by Occupational Health and may impact on the support the Trust can provide

- To keep in regular contact with their manager and inform them if circumstances change including their expected return to work date.
- Ensure they attend all Occupational Health appointments and return referrals promptly.
- To ensure that the GP's 'fit note' is adequate and fully completed.
- To ensure that they are aware of, and understand, the most up to date Supporting Attendance policy (available on HR Web).

## Employee Services / HR

- To provide advice and support to staff and managers as necessary, including attending meetings from Stage 2 of the short term procedure and at long term sickness meetings/ home visits where necessary.
- To monitor sickness absence and report to Divisional Boards via HR Business Partners.
- To notify managers, staff side representatives and staff of any changes to the Supporting Attendance policy, through Newsbeat, and through dissemination of information by HR Business Partners and Divisional Boards, paying particular attention to staff who do not usually or regularly have access to Connect.

## 5. GENERAL INFORMATION

### 5.1 Notification of sickness absence

**Employees must notify their manager or supervisor of their absence as soon as they can, in line with local arrangements. Managers must ensure that all staff know the local arrangements for reporting absence.**

The manager must also ensure that staff understand their responsibilities to submit medical certificates. The length of absence applies to all staff and is not pro-rated for part-time staff.

- Absences up to and including 3 calendar days do not need certification.
- Absences up to and including 7 calendar days (i.e. days 4 -7) require a self-certificate to be completed when the employee returns to work and handed to the manager. (Please see the link to self-certificates at the end of this section.)
- Absences over 7 calendar days require a GP certificate to be forwarded to the manager. These certificates must be signed by a doctor registered with the General Medical Council.

Appropriate certification must be received within 7 calendar days from the required date or after the 8<sup>th</sup> day of absence or the expiry of the current certificate if required. Failure to provide the correct certificate cover for periods of sickness absence may result in pay being stopped and action being taken under the AWOL (Absence Without Leave) procedure up to and including dismissal.

Failure to keep in regular contact, give up to date contact details or to attend meetings or appointments in line with the Supporting Attendance policy could result in action under the Disciplinary or AWOL policies.

In cases when the illness occurs whilst in another country, a GP certificate or hospital certificate in English will be required. Staff may be required to provide an additional certificate or information from a GMC registered practitioner once they have returned to the UK to ensure the Trust has a full understanding of the illness that occurred abroad. This would be subject to advice provided by HR to the manager.

Self-certificates are available from [hmrc.gov.uk/forms/SC2](http://hmrc.gov.uk/forms/SC2) or on the Absence pages of HR Web via this link: [Absence](#)

### 5.1.1 Guidance concerning 'Fit Notes'

If a fit note states that an employee is NOT fit to work, managers must continue to complete the Trust's sickness returns indicating that the employee is off sick. If the fit note states that they are able to return to work under certain conditions, and those conditions can be met, please record them as attending work.

If the '*you may be fit for work taking account of the following advice:*' box is ticked, there should be additional comments or guidance from the Doctor. The additional comments or guidance may include the following recommendations:

Phased return to work – (please see Section 9.6 for further information about Phased Return to Work).

A reduction in hours would be regarded as part of the phased return and should not be submitted as a Change of Conditions unless this becomes part of the agreed permanent return of the employee. It should also be noted that Trust policy requires a minimum of 50% of the standard working hours to be worked from the outset, if a value quoted by the Doctor is less than this, the return to work will not be permitted.

Amended duties – this could mean, for example, doing a different job or working in a different department involving less physical effort or less stressful work.

Workplace adaptations require the involvement of a number of departments within the Trust including the Occupational Health Department.

If the Department/Division is unable to meet the recommendations for temporary/permanent adjustments in order to facilitate a return to work, then the employee remains sick until the date shown on the Fit Note.

If the employee returns to work after this date, then there is no issue but if the employee still feels unwell at the end of the authorised absence then they will need to return to the Doctor to obtain a further certificate to extend the absence period.

If the employee returns to work under any of the above options they are no longer sick and their sickness end date must be reported to Payroll. The Trust is not obliged to allow an employee to return to work if reasonable adjustments to the role to facilitate a return cannot be made. If this is the case the employee is still sick and must be reported on the sickness return as sick.

A further certificate for continued absence must be provided by the employee.

It is important to note that if the employee returns to work under any of the conditions cited, the sickness absence has ended and the last day sick must be entered on the weekly return.

## 5.2 Recording of Sickness Absence

Managers/Supervisors must keep records of sickness absence to enable them to identify individual sickness patterns at an early stage. The records should show:

- The dates of sickness
- The dates of medical certification
- The diagnosis
- The date of return to work.
- Injury allowance (if appropriate)

For employees claiming Injury Allowance Managers/Supervisors should write 'IA' on the SR2 form next to the employee's name. Further advice should be sought from Employee Services. The final decision will be made by the Trust in accordance with the Trust's Guidance on Injury Allowance. There is no recourse to the NHS Pensions Agency.

## 5.3 Reporting of absence to Payroll

The Trust's sickness absence monitoring system requires the submission of weekly returns to the Payroll Department. This involves recording the first date of absence and final date of absence of an employee, as well as the sickness code. This information is reported monthly to the Trust Board.

Failure by the manager to consistently provide accurate and timely information to Payroll may result in disciplinary action or performance monitoring.

## 5.4 Return to work interview

Managers/Supervisors must ensure that a Return to Work Interview takes place with the employee on a one to one basis promptly after **every** period of sickness absence, regardless of duration. These need to be conducted in a fair and reasonable manner with the aim of assisting the employee's return to work. Support from Employee Services is not needed during these discussions.

The Return to Work discussion should happen as soon as practicably possible once the employee has returned to work, and by no later than 5 working days. Return to work

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Date: November 2014 (v2.1 July 2015, v2.2 March 2016)

Author: [REDACTED], Assistant Director of HR

Additional information for Nursing Revalidation March 2016

discussions that take place after 5 working days should have the reason for the delay documented on the Return to Work checklist.

The return to work checklist should be used each time, and is available via this link on HR Web: [Staff Returning to Work](#)

If the absence has been for 4 days or longer, the self-certificate or GP certificate should be used as a basis for the discussion between the manager and the employee.

### **SUPPORT AVAILABLE**

Support to assist managers in helping employees' return to work is available from:

Occupational Health	Whitefriars Centre Level 4 Lewins Mead Bristol BS1 2NT 0117 342 3400 occupationalhealth@uhbristol.nhs.uk  <a href="http://www.uhbristol.nhs.uk/for-clinicians/avon-partnership-nhs-occupational-health-services/">http://www.uhbristol.nhs.uk/for-clinicians/avon-partnership-nhs-occupational-health-services/</a>
Physiotherapy Direct Service	0117 34 23400
Staff Counselling Service	0117 3420611 or 0117 3420612

### **5.5 Staff Network after Cancer (SNAC)**

The Trust is committed to ensuring individuals are provided with appropriate opportunities to attend the SNAC meetings as part of their rehabilitation after cancer. The appointments should be recorded as paid time off and should not count towards the supporting attendance policy. Details about SNAC are available from the Occupational Health Department.

<http://connect/Divisions/TrustServices/Human%20Resources/Pages/SNAC.aspx>

### **5.6 Referral to the Occupational Health Service**

The Occupational Health Department provide a confidential and independent clinical opinion concerning work-related health matters.

A referral form can be completed by the manager –

- If they are concerned about a staff member's absence or health. If a manager is unsure whether or not to refer a member of staff they can call an Occupational Health nurse on 0117 342 3400.
- If a staff member is on long term sick for four weeks, or it seems likely that they



will be, a referral must be made. A copy must be sent to the employee.

- In the event of stress related sickness, a referral to Occupational Health should be made on the first day the manager becomes aware
- The referring manager must explain clearly to the employee why he/she is being referred to the Occupational Health Department and what advice is being specifically sought. They should also seek consent to be copied into Occupational Health's response.
- The referral form should be used along with an individual referring information letter (see HR Web for documentation). This will allow Occupational Health to give a more tailored response in line with service needs.
- Once referred employees are expected to attend the Occupational Health appointment. Failure to do so without a good reason may result in disciplinary action being taken.
- Employees who are asked to attend an interview with the assessing Occupational Physician/clinician may be accompanied by a friend, relative, or Trade Union representative.
- The assessing Occupational Physician/clinician will incorporate sufficient detail in his/her clinical report to enable the manager to make an informed decision on whether the employee can return to the original job, or if not, what kind of alternative employment may be suitable. They will also advise the employee and manager on any reasonable modifications to the physical environment or working practices that would enable the employee to remain in employment.
- Occupational Health will not disclose the specific details of any health conditions or problems unless necessary, and only with the individual employee's permission. The assessing Physician will comply with the requirements of the Access to Health Records Act 1990 regarding access to health records (including reports to management) by employees.
- The assessing Physician/clinician will make it clear whether his/her advice is to be regarded as permanent or whether it is restricted to a clearly defined limited period. If he/she intends to re-assess the problem at a later date, this will be clearly stated.
- On receipt of the Occupational Health report, Managers/Supervisors should arrange a meeting with the employee to discuss the report. Employee Services/staff side representative may attend these meetings in relation to long term sickness.



Note: employees may also refer themselves to the Occupational Health Service. In these circumstances, the manager will not obtain a copy of the report unless the employee specifically grants permission.

## **5.7 Confidentiality**

Any sickness report prepared by the Occupational Health Service must be kept as confidential, with the details restricted only to the manager and the Employee Services support directly involved with the case. A hearing panel would also be given access in the case of hearings to consider dismissal on the grounds of ill health.

Any sickness absence meeting, whether formal or informal, should also be treated as strictly confidential.

## **5.8 Absence and annual leave/ bank holidays**

**5.8.1 Short-term sickness absence** (absence due to sickness which lasts for less than 4 weeks) - an employee will continue to accrue their contractual annual leave during short term sickness.

**5.8.2 Long term sickness absence** (absence due to sickness which lasts for more than 4 weeks)

If an employee is on long term sickness absence and they wish to take annual leave they may do so if their doctor or Occupational Health confirms that it will not be detrimental to the employee's health. The employee must notify their line manager and put in writing prior to travel the details and dates. Annual leave will be used for this period in the normal way. This does not break the episode of sickness. The line manager will need to inform Payroll of the annual leave dates to ensure that the employee is paid correctly during this time.

Staff will continue to accrue annual contractual leave during their current leave year if absent from work due to sickness.

Staff may be encouraged to use annual leave during any phased return to work. This is explained in more detail under the section 'Phased return to work'.

Staff who have been absent for an entire annual leave year will be allowed to carry forward a maximum of 20 days statutory annual leave (must be pro-rated for part-time staff).

### **5.8.3 Sickness prior to annual leave**

Where an employee is sick immediately prior to commencing annual leave, the employee must inform their line manager in order that this time can be recorded as sick leave.

#### **5.8.4 Sickness whilst on annual leave**

If a member of staff (who is not on long term sickness absence) is sick whilst on annual leave, they must contact their line manager and advise them of sickness on the 1st day of sickness and NOT on return from leave. The amount of annual leave not actually taken can be credited and taken within the employee's remaining annual leave year. If a fit note is not provided for the period of sickness, the period of time will be recorded as annual leave.

If an employee fails to return to work on an agreed date following annual leave and fails to communicate with his/her line manager, this will be regarded as unauthorised absence and the AWOL process outlined in the Absence Without Leave policy on HR Web should be followed.

#### **5.8.5 Sickness on a bank holiday**

In the event of any sickness absence falling on a bank holiday, time cannot be taken back and staff will not be allowed to take this bank holiday at a later date.

### **5.9 Part-day absence**

If the employee works 50% or more of their contracted hours on the day of absence, it is considered that the individual has made every effort to come to work and this is excluded from the absence process.

If an employee works less than 50% of their contracted hours on the day of absence, they will be considered absent from work, and this will be included as an episode and as part of the Bradford Factor scoring should it be a short term episode.

Part-day absence of more than 50% should be recorded on the individual absence log, and the weekly absence return and the normal return to work processes should be applied on the employee's return.

If an employee's absence record shows a pattern of part-day absence, Managers/Supervisors must raise this concern during the return to work discussions. Where a pattern of part-day sickness absence is identified this should be discussed with the individual and if necessary, they should be referred to Occupational Health for advice. The advice requested should include whether there is, or is not, an underlying health cause and prospects for improvement. Continued absence of this kind may result in the employee being warned and formally escalated through the policy.

### **5.10 Sickness as a result of an injury/illness at work**

All staff who have symptoms of diarrhoea and/or vomiting are expected to refrain from work for at least 48 hours in line with Infection Control advice. Unless it is clear

the symptoms relate to a specific ward/Trust area, absence due to diarrhoea and vomiting will be recorded in the normal way.

Where diarrhoea and/or vomiting is caused by infection on a ward, and this is confirmed by the Infection Control Team, the incidents should be treated as special leave with pay.

Where the sickness absence is caused by an accident at work or by an illness due to work, the manager should ensure that the appropriate entry is made on the sickness absence monitoring form so that arrangements can be made to pay Injury Allowance where appropriate. Injury allowance will only be paid as per the Trust's Injury Allowance Guidance.

Any accident at work must also be recorded in accordance with the requirements of the Trust's Incident Reporting Policy and RIDDOR (Reporting of Injuries, Diseases and Dangerous Occurrences Regulations) as appropriate.

Where absence is over 7 days excluding the date of incident causing the injury this will be reported by the Safety Department to the Health & Safety Executive within 15 days as required by law.

The manager must take personal responsibility for following this up and keep a copy on the employee's personal file. In the case of a RIDDOR reportable incident, the following documentation will be requested and must be submitted within three weeks of the request date:

- The total number of days sickness absence including weekends and days off.
- Copy of the off-duty rota or staffing establishment for the day the accident occurred.
- Relevant patient information e.g. mobility assessment if the incident involved a patient
- Witness statements/ injured person statement
- Risk assessments and/or safe systems of work.
- Occupational Health referral confirmation where appropriate
- Description of equipment involved and environment where relevant.

Where an absence is caused by an incident at work this would normally be excluded from short term sickness process. This should be clearly identified in the weekly sickness returns and entered as **industrial injury** (*not sickness*) as the 'absence type'.

Initially the absence will be treated and paid as sickness absence until the decision of the Trust has been made. Retrospective adjustments will then be made.

Guidance to the NHS Injury Benefit Scheme can be found on the HR web or via the internet on <http://www.nhsbsa.nhs.uk/InjuryBenefitScheme.aspx>. and the Trust's [Guidance on Injury Allowance](#) available on HR Web.

### **5.11 Suspension for medical reasons**

Where the manager is satisfied (on medical advice), that an employee's continued presence on duty cannot be permitted due to a medical condition which may cause harm to themselves, other staff and/or patients, the employee should be placed on special leave from work in that area until the matter is resolved or the employee submits sick notes and is then subject to the normal sick pay provisions. This includes, for example, clinical staff who have a cold sore that is wet and weeping, who should not attend work in any area with immuno-suppressed patients. Every effort should be made to find alternative suitable work in another area:

If absence from work is unavoidable it must be

- Confirmed in writing by the manager who suspends the employee
- Treated as special leave with pay (only whilst infectious).
- Of short duration
- Be recorded as sickness absence but not count as an episode or towards the Bradford Factor score

### **5.12 Absence following an accident involving a third party**

Where an employee is absent as a result of an accident involving a third party, and where damages may be recoverable from the third party, the Payroll Department should be notified immediately by the line manager.

In such circumstances, the sick pay paid to an employee is by way of a loan recoverable from any damages received by her/ him on settlement of their claim.

### **5.13 Alcohol and other drugs**

Employees absent due to alcohol or other drug related problems should be managed in accordance with the Trust's Substance Misuse Policy.

### **5.14 Cosmetic Surgery**

Planned cosmetic surgery and the planned period of convalescence is not considered to be a period of sickness, therefore the member of staff should apply for annual leave in the usual way. If following surgery there are complications that lead to a period of sickness absence then a medical certificate must be submitted.

Cosmetic surgery for clinical reasons, e.g. reconstructive surgery following trauma, will be treated as planned surgery and will attract Occupational Sick Pay and will require a medical certificate.

### 5.15 Fertility Treatment

Absence for appointments associated with the fertility treatment cycle, which will include pre/post cycle counselling, are considered as outpatient appointments and not considered to be a period of sickness. Up to three appointments may be granted in a rolling twelve months, beyond this annual leave must be used. Any sickness as a result of treatment will require a GP certificate and will count as sickness absence.

The Trust recognises the sensitivity of this particular treatment, and expects those involved with the approval and support of this leave to maintain confidentiality.

If the treatment proves successful, then the employee will move on to the Maternity, Paternity or Partner Leave policy as appropriate.

### 5.16 Gender Reassignment

Absence for appointments associated with gender reassignment, which will include counselling, are considered as outpatient appointments and not considered to be a period of sickness. Up to three appointments may be granted in a rolling twelve months, beyond this annual leave should be used. Any sickness absence as a result of treatment will require a GP certificate and must be recorded and will count as sickness absence.

The Trust recognises the sensitivity of this treatment, and expects those involved with the approval and support of this leave to maintain confidentiality.

### 5.17 Employees with or who develop a physical or sensory impairment

Disability is defined under the Equality Act as:

"A physical or mental impairment, which has a substantial and long term adverse effect on a person's ability to carry out normal day to day activities."

Managers/Supervisors or other staff must not discriminate against any disabled employee. In dealing with any long-term sickness case, Managers/Supervisors must have due regard to the requirements of the Equality Act 2010 and also refer to the Employment Statutory Code of Practice.

The Trust recognises that disabled members of staff may have cause to be absent from work for disability-related reasons for appointments. These may include (but are not limited to) absences for consultant's appointments, physiotherapy, hearing aid adjustments/replacements, etc. Paid time off will be allowed for these appointments.

The Trust also recognises that disabled members of staff may have cause to be absent from work on an irregular and unpredictable basis due to impairment caused by their disability. Advice from Occupational Health and Employee Services must be sought at an early stage.

All absence must be recorded. They may be discounted from calculating Bradford Factor scores as reasonable adjustments to support disabled employees. Further information on reasonable adjustments is given in 5.19.

Further guidance on Access to Work can be found on the [Gov.uk](http://Gov.uk) website.

### **5.18 Attendance expectations for staff with an underlying health condition**

All sickness absence should be recorded and reported regardless of whether it relates to an underlying health condition or is later discounted as a reasonable adjustment.

Employers are not automatically obliged to disregard all disability-related sickness absences, but they must disregard some or all of the absences by way of an adjustment if this is reasonable. (Statutory code of practice, section 17.20) Each case will be judged on its particular circumstances, especially if there are health problems of a serious or terminal nature.

Occupational Health should consider reasonable adjustment such as:

- Increasing the required level of Bradford Factor points allowed over a 6 month period.
- Grouping episodes together if they are a continuation of the same illness, with a very short time between them, for example 48 hours.
- Increasing the number of instances allowed for sickness relating to underlying medical condition.
- Temporarily or permanently making amendments to the individual duties, location or hours of work, which may include reducing the hours of work.
- Redeployment
- Providing modified equipment.

Managers/Supervisors should confirm the levels of attendance expected and adjustments that have been made in line with advice from Occupational Health in a letter to the employee.

During any temporary or permanent change, if an employee continues to have sickness absence, Managers/Supervisors should continue to proceed with the absence management under the policy.

### **5.19 Considerations for Managers/Supervisors**

All sickness meetings need to be handled with sensitivity and compassion. There may be non-health related reasons which are causing the absence such as domestic or financial difficulties. The employee must be given support so that they feel able to discuss confidentially the reasons which may be causing their poor attendance

record. If the employee is in a trade union or professional body it may be appropriate to signpost them to the local representative who may be able to provide additional support. All meetings should be recorded and followed up in writing.

At any stage of the policy Managers/Supervisors or employees may feel that advice from the Occupational Health service is required. Referrals should be made in accordance with this policy. This is particularly so if the absence is due to stress.

Managers/Supervisors should inform employees who are off sick or at risk of taking time off sick as a result of a musculoskeletal injury about the Physiotherapy Direct Service. This service provides telephone assessment and advice and/or onward referral for treatment within Physiotherapy at the Trust.

During any temporary or permanent change, if an employee continues to have sickness absence, Managers/Supervisors should continue to proceed with the absence management under the policy.

## **5.20 False reasons for absence or working elsewhere while on sickness absence**

If sick pay is claimed on false grounds, or staff are found to be working elsewhere whilst on sick leave from the Trust, including while working for the Temporary Staffing Bureau, action will be taken in line with the Trust's Disciplinary Procedure and the Countering Fraud & Corruption Policy and may constitute gross misconduct. Pay will also be stopped for the period of absence.

Sick leave must only be used for genuine sickness, not for other reasons such as childcare or domestic emergencies. These eventualities are dealt with in the Emergency and Special Leave Policy.

## **5.21 Revalidation Requirements for Nurses and Midwives**

The NMC expects registrants to be in a state of health that ensures they are capable of safe and effective practice without supervision, after any reasonable adjustments are made by an employer. This does not mean that there must be a total absence of any disability or health conditions.

The NMC has special arrangements in place for nurses and midwives who cannot meet the revalidation requirements as a result of exceptional circumstances. Exceptional circumstances include not being able to meet one or more of the requirements at any time because a protected characteristic under the Equality Act may apply. If it can be established that these exceptional circumstances apply, the existing Prep requirements will still need to be met. The NMC has guidance on exceptional circumstances at <http://www.nmc.org.uk/standards/revalidation/>.



Please note that if pay as a nurse or midwife is being received whilst on maternity, sick or annual leave, employees may need to maintain their registration with the NMC throughout this period.

## **6. OTHER ABSENCES**

### **6.1 Hospital Appointments**

Wherever possible, appointments should be made out of normal working hours. Alternatively appointments should be made at either the beginning or end of a normal working day. If appointments cannot be made at the beginning or end of a day, staff must agree with their Managers prior to the appointment, whether time off may be taken to attend. Managers should not unreasonably refuse such requests. Time off for such appointments must be made up, at a time to be agreed between the member of staff and their manager. If this is not possible, staff must use existing annual leave or unpaid leave. (See sections 5.17 and 5.18 for provisions for staff with or who develop a physical or sensory impairment, or who have an underlying health condition.).

### **6.2 Doctor / Dentist Appointments**

Wherever possible, appointments should be made out of normal working hours. Alternatively appointments should be made at either the beginning or end of a normal working day, and agreement reached between the employee and manager about making this time up, before the appointment takes place. There is no automatic entitlement to time off in such situations and the manager has the right to refuse time off for routine appointments.

### **6.3 Eye Tests**

Staff classified as visual display unit (VDU ) users are entitled under the DSE Regulations, to be reimbursed for the cost of any basic sight test. If the test shows that they need glasses specifically for their VDU work the Trust will pay for a basic pair of frames and lenses (currently set at £35.00). If the user wants a more expensive set then they can pay the difference. The Trust will only reimburse when the prescription (whether a new issue or change of an existing prescription) is issued solely and only for the use of a VDU. If you are an existing glasses wearer and your prescription was changed for general use i.e. reading, driving or watching TV, and for using a PC, the Trust will not reimburse.

A regular VDU user as classified as users under the Display Screen Equipment Regulations (DSE) 1992:

- Normally uses a VDU for continuous spells of an hour or more at a time and uses it in this way daily
- Have to transfer information quickly to or from the screen
- Need to apply high levels of attention or concentration; or

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Date: November 2014 (v2.1 July 2015, v2.2 March 2016)

Author: ██████████, Assistant Director of HR

Additional information for Nursing Revalidation March 2016



- Are highly dependent on VDUs or have little choice in using them

If an employee wishes to claim under these regulations, a receipt must be submitted with a completed claim form. Claim forms are available on the Intranet (Health and Safety – Display screen equipment) or from the Finance Department. Time off for eye test should be made up as per Doctor / Dentist Appointments in 6.2 above.

## 7. SICK PAY ALLOWANCES

Medical & Dental Staff should refer to Sections 225 to 244 of the Medical & Dental Terms & Conditions of employment for details of sick pay allowances.

Occupational Sick Pay allowance will be paid as indicated below (please also refer to section 14 of the AfC Handbook), and in accordance with the employee's NHS reckonable service in accordance with Section 12 of the AFC Handbook.

- During first year of service - one months' full pay and two months' half pay.
- During second year of service - two months' full pay and two months' half pay.
- During third year of service - four months' full pay and four months' half pay.
- During fourth and fifth year of service - five months' full pay and five months' half pay.
- After five years' service - six months' full pay and six months' half pay.

From 31st March 2013, for staff on pay spine points 9 to 54, pay during sickness absence is paid at basic salary level including allowances linked to basic pay. It does not include any other allowances or payments linked to working patterns or additional work commitments, for example, unsocial hours payments.

These entitlements are calculated by aggregating periods of sickness absence in the immediate preceding twelve month period.

Sick pay for those who have exhausted sick pay entitlements should be reinstated at half pay, after 12 months of continuous sickness absence if the failure to undertake the final review meeting is due to delay by the employer.

Employees, who are required to stay away from work following contact with a case of a notifiable disease (see list at Appendix D), shall be granted special leave with full pay (i.e. not regarded as sick leave). Where such employees normally qualify for Statutory Sick Pay or sickness benefit then the pay due to them will be subject to a deduction equivalent to the amount of Statutory Sick Pay or sickness benefit to which they are entitled.

### 7.1 Other Sick Pay information

In line with the Agenda for Change NHS Terms and Conditions of Service Handbook (section 15 and 16), an employee who is absent as a result of an accident outside of

the workplace is not entitled to occupational sick pay if damages are received from a third party. The Trust will advance an employee in these circumstances a sum not exceeding the amount of sick pay payable, providing that the employee agrees to repay the full amount of sick pay received on receipt of any damages.

It is the responsibility of the employee to inform the Trust in writing if they are likely to receive damages from a third party. Failure to do so may result in fraud against the Trust and the NHS and will be managed in line with the Trust's Disciplinary Policy.

If an employee does receive damages from a third party the period of sickness absence from work will not be taken into account for the purposes of calculating entitlement to occupational sick pay once the advancement of sick pay has been repaid by the employee in full.

Occupational sick pay will not normally be paid for an absence caused by an accident outside of work due to active participation in sport as a profession or where contributable negligence is proven (AfC NHS Terms and Conditions of Service section 14.11). The line manager may ask for a medical certificate for any period of sickness absence caused by a sporting injury.

Staff who work for the Temporary Staffing Bureau only are not entitled to occupational sick pay.

## 8. SHORT TERM SICKNESS ABSENCE PROCESS

The Short Term sickness absence process is designed to manage short and long term intermittent absence for employees **with or without** an underlying health cause. Please see Appendix A.1 for the Short Term Sickness flow chart.

Emerging patterns of sickness should be considered at return to work meetings and if it appears that an employee may have an underlying health condition a referral to Occupational Health should be made. Should Occupational Health identify an underlying health issue support including consideration of reasonable adjustments will be given.

### 8.1 Bradford Factor calculations and the trigger points

The trigger points can be met either through reaching a specific number of absence episodes, or a specific Bradford Factor Score, whichever comes first.

Staff who repeat any of the stages more than once may be escalated through the stages in agreement with the HR Business Partner/Employee Services Manager.

The Bradford Factor identifies persistent absence for individuals, by measuring the number of spells of absence and taking into account the length of each absence.

All episodes of sickness absence, **whether long or short term count** towards the number of spells (S). The number of hours (D) only includes the hours of short term absence.

It is calculated over a rolling 12 months using the following formula:

<b>S x S x D</b>
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**S** = number of spells of absence in a rolling 52 weeks taken by an individual  
**D** = Total number of hours of absence in rolling 52 weeks taken by that individual divided by 7.5

(‘D’ represents D for Days should the calculation be done in days rather than hours. It is recommended that for staff who do not work a standard 7.5 hour day, 5 days a week, that managers calculate the Bradford Factor score in hours.)

The Bradford Factor is calculated over a rolling 12 months taking into account the cumulative total of number of hours absent and the cumulative total number of episodes.

The table below describes the trigger points for an employee working full-time. **Part time workers’ points must be pro-rated.** (Please refer to the ‘Bradford Factor Score Form on HR Web in order to calculate these scores for part-time staff).

	Policy stage
Less than 150 or fewer Bradford Factor points or fewer than 4 absences in a rolling 12 months	Regular Attender
<b>150</b> Bradford Factor or more points or 4 absences in a rolling 12 months	Informal Improvement Plan
<b>350</b> or more points or 2 absences within 6 months	Stage 1 Improvement Plan
<b>500</b> or more points or 2 absences within 6 months	Stage 2 Improvement Plan
<b>700</b> or more points or 4 absences within 12 months	Stage 3 Dismissal Hearing

## 8.2 Paperwork

Managers/Supervisors need to keep clear records as they will need to look back at previous periods of sickness absence when considering whether an employee has hit the triggers or not. Please refer to HR Web for absence record templates.

Standard letters covering all formal stages in the procedure are available for Managers/Supervisors and Managers/Supervisors must ensure that a copy of the short term sickness process flowchart is enclosed with the letter. Please refer to HR Web for copies of all standard letters and the flowchart.

Both informal and formal meetings must be documented. Managers/Supervisors can use the check lists available for each meeting, which should be signed by the manager and the employee at the end of the meetings and sent to Employee Services.

### 8.3 The Stages in greater detail

#### 8.3.1 Regular attendance

An employee is considered to be attending regularly in terms of short-term absence if, in a 12-month rolling period from the start date of the final absence, he/she has had fewer than 4 episodes of sickness regardless of length, or has a Bradford Factor score of below 150.

#### 8.3.2 Informal Improvement Plan

The informal meeting represents the first step of supporting staff with short term absence issues. It takes place when the employee has had the 4<sup>th</sup> episode of absence, and/or **150** Bradford Factor points, in a rolling 12-month period.

The purpose of the informal meeting is to agree an Improvement Plan which encourages the individual to return to being a regular attender.

The meeting should be held as soon as possible after the employee's return and no later than **7 calendar days** after the member of staff has returned to work.

Staff do not need to be formally invited to an Informal Improvement Plan meeting and Employee Services support is not required. Managers/Supervisors should document the meeting using the 'Informal Improvement Plan check list' and give a copy of it to the employee. It is not necessary to hold a 'Return to work discussion' as well

#### 8.3.3 Guidance for formal stages

Meetings should be held at the beginning of each formal stage. Considerations for the formal meetings:

- Invite the employee to the meeting in writing
- Staff may be accompanied to the meetings by staff side or a work colleague
- Employee Services can be present if required from stage 2
- Offer support to the employee
- Consider any Occupational Health advice
- Managers/Supervisors should use the formal improvement plan check list for the stage that the staff member is on as guidance and a record can be found on HR web.
- Agree a formal plan to return the employee to being a regular attender

- All meetings should be followed up in writing confirming the plan, support and actions
- There is guidance on HR Web

#### 8.3.4 Stage 1 Formal Improvement Plan

Staff will reach formal Stage 1 if they fail the informal improvement plan by having two absences, regardless of duration, or a Bradford Factor score of **350** or more.

There is no need for Employee Services to be represented at the Stage 1 meeting unless the employee or manager believes it is necessary.

The purpose of the Stage 1 meeting is to agree a formal Improvement Plan which encourages the individual to return to being a regular attender and identifies methods of supporting the individual to have **below 500** points and **fewer than 2** further absences within the 6 months following the Stage 1 meeting. If this plan is met, the employee will return to being a regular attender at the end of the 6 month period.

#### 8.3.5 Stage 2 Formal Improvement Plan – Live for 12 months

If an employee fails the Stage 1 formal plan by having by having **a further 2** episodes of absence, regardless of length, in a 6 month period from the date the Stage 1 formal improvement plan commenced or **500** Bradford Factor points, they will move to Stage 2 of the formal process.

A representative from Employee Services should be present at the Stage 2 meeting

The improvement plan will involve identifying methods of supporting the individual to have **below 700** points and **fewer than 4** further absences within 12 months following the Stage 2 meeting. If this plan is met, the employee will return to being a regular attender at the end of the 12 month period.

#### 8.3.6 Stage 3 - Hearing

Staff will reach formal Stage 3 if they fail the Stage 2 formal improvement plan. This will mean that they have a Bradford factor score of **700** points or **a further 4** absences within 12 months following the Stage 2 meeting.

As soon as the employee returns from the absence that triggers Stage 3, the employee should be told that they are on the final stage of the policy and that a hearing will be arranged that may result in their dismissal.

The manager conducting the hearing must not have been actively involved in the case previously. He/She must have the authority to make decisions, including dismissal.

A senior member of the Human Resources Team must support the manager conducting the hearing.

If the case involves any issues requiring professional advice, knowledge or opinion (either clinical or non-clinical), a professional advisor may also be present on the hearing panel. Further information about the conduct of a hearing is found later in the policy under 'Sickness Absence Hearing'. The panel should have access to up to date occupational health advice.

Note: all hearings in which dismissal may be considered must be undertaken by a panel. The only exception to this is if an employee asks for an agreed termination. In this case there must be a written request from the employee asking for agreed termination or they agree that they cannot return to work and cannot attend a hearing so request to have the decision of the stage 3 panel delivered in writing. **In practice this is known as mutual termination.**

#### 8.4 Short Term Absence – Additional Information

If an individual's score is high enough to meet another stage of the policy that is not sequential to the stage already reached, Managers/Supervisors should not miss stages but move the employee to the next trigger point, if applicable.

If a member of staff changes their hours, for example to work less in an effort to improve their health, then the Bradford Factor triggers should be adapted to reflect the changes in hours. For example if the working hours have reduced by 20%, then the Bradford Factor triggers should reflect this. See also the Bradford Factor score calculations for part-time staff available on HR Web.

#### 8.5 Percentage attendance calculation and patterns of absence

The purpose of calculating percentage attendance is to establish whether the individual has a level of absence that warrants escalation to a higher stage of the Supporting Attendance policy, up to and including stage 3. The guideline for escalation is the Trust target absence/ attendance rate, which is generally no greater than 4% absence (96% attendance). Therefore any employee with an attendance rate of 96% or below may be reviewed in line with percentage attendance.

The impact of a review of percentage attendance is that the employee MAY be moved to the next stage of the policy or further in line with the following guidelines.

- *81% to 90% over the last 12 months or more, consider escalation to the next stage of the policy*
- *71% to 80% over the last 12 months or more, consider escalation two stages up the policy*
- *Less than 70% over the last 12 months or more, consider escalation to stage 3 of the policy*

Individual patterns of attendance will be reviewed as a percentage of attendance over a twelve month period. To provide a true reflection of attendance, it is recommended that absence data for the preceding 36 months is reviewed.

Managers/Supervisors may also identify employees who have a pattern of absence, for example at the beginning and end of shift patterns such as Monday/ Friday, regular half days, being absent due to sickness before or after annual leave or regular absence at Christmas.

Percentage attendance calculations may be completed by Employee Services or the Line Manager. Employee Services will provide appropriate information and support for the Line Manager.

### **8.5.1 The process of percentage attendance for an individual**

The same principles of fairness and consideration of underlying health issues and reasonable adjustments still apply.

Prior to completing the Percentage Attendance report the individual should be informed by their Line Manager that the report is being completed and the reason why it is being completed.

The process for the different stages described in 8.3 should then be followed.

If action is taken then the employee should receive a copy of the percentage attendance report. If individuals have no additional action taken, then the percentage attendance report will be kept on the individual's personnel file in Employee Services. Individuals can ask to have a copy if they wish to.

A percentage process flow chart can be found in Appendix C. Supporting documentation is available on HR Web.

### **8.6 Incidents of sickness absence which can warrant the use of discretion**

Discretion is where the manager may choose to discount certain periods of absence towards triggers in the short term sickness process. Incidents include:

- Where an employee (and his/her manager) know in advance that a number of incidences will occur due to, for example, a series of out-patient appointments/planned appointments/ planned surgery and recovery time. In this case the manager should record the absences but may decide not to consider them in relation to breaches of the policy.
- Where an employee is absent immediately following an injury or illness sustained whilst on duty.



- Pregnancy related absence (pregnancy related absence must be discounted for purposes of the short term absence process and Bradford Factor scores, but must be recorded as absence on all absence records).
- Where an underlying health condition has been identified and is currently being investigated in line with Occupational Health, Managers/Supervisors need to work closely with Occupational Health to ensure staff feel supported during this period of uncertainty and any reasonable adjustments are made.
- Sickness following a bereavement or absence due to bereavement.

Managers should aim to be consistent in their decisions to use discretion, as well as open, honest and fair with individuals. Managers should seek advice from Employee Services if required.

## 9. LONG TERM SICKNESS ABSENCE

Long term sickness is a single episode of absence which exceeds four calendar weeks, the reason for which is given as sickness/injury.

Long term absence will be included in measuring the overall number of episodes of absence when managing sickness under the Short Term Sickness Absence process and calculating the number of spells for the Bradford Factor Score. **The hours or days of long term sick absence do not count towards the 'days' when calculating the Bradford Factor Score.** Please see Appendix A.2 for the Long Term sickness flowchart.

### 9.1 Referral to Occupational Health while on Long Term Sick

The manager should, with employee consent, refer the employee to Occupational Health for advice as soon as the absence has exceeded four weeks or as soon as it is clear that they are likely to be off for more than 4 weeks.

Managers/Supervisors may consider a referral not to be necessary because of the nature of the illness, and guidance is available from the Occupational Health team.

Following the Occupational Health report, the manager should write to the employee inviting him or her to a meeting or home visit (as appropriate) to discuss the absence, the Occupational Health report and the options available to support their return to work or other options.

Where a meeting or home visits are arranged, the employee may be represented and the manager may also take a colleague or representative from Employee Services if this is deemed necessary.



## 9.2 Meetings during Long Term sickness

The following section details a sequence of formal meetings that should take place if the individual continues to remain on long term sick with no clear return date. At any stage, however, should the individual have support from Occupational Health and their GP to return to work, then the manager should liaise with the individual to ensure their return to work takes into account any advice and recommendations provided by Occupational Health.

Template invitation letters to review meetings are available on HR Web. At the end of any meeting, times for further review meetings should be agreed as necessary.

### 9.2.1 Considerations for review meetings

Occupational Health advice should be sought. The manager should write to the employee inviting him or her to a meeting or home visit (as appropriate) to discuss the absence, the Occupational Health report, the options available to support their return to work or other options. These are formal meetings at which the employee has the right to representation and a representative from Employee Services should be present. The matters to be discussed are:

- Returning to work – including a discussion on whether there are any factors affecting the absence and potential return including reasonable adjustments
- Advice from GPs or other health professionals
- Further Occupational Health advice
- Redeployment
- Ill health retirement
- A review of any actions agreed from previous meetings
- A date for the next review meeting

Please see the relevant sections for full details for each option. A record should be made of the meeting and followed up in writing.

At any stage if there is no expected return to work date a panel may be arranged to consider possible dismissal on the grounds of capability due to ill health.

### 9.2.2 The first review meeting

The first review meeting **must** take place as soon as it is known that the episode of sickness will be long term or after one month of absence.

### 9.2.3 The second review meeting

A second review meeting may not be deemed necessary in some circumstances. For example, if Occupational Health confirm the individual is returning to work and redeployment is not an option following the first review meeting, then the individual would be invited instead to a final review meeting.

A second review meeting will take place when the individual has had further appointments or treatments or has further information for the manager. The individual may also need to see Occupational Health again prior to the second review meeting in order that the most recent Occupational Health advice can be discussed. The options discussed at the previous meetings will also be reviewed.

The time scales for holding the second review meeting will vary depending on the individual case; however it should be held within two months of the first review meeting.

#### **9.2.4 The final review meeting**

A final review meeting should take place within two months of the second review meeting. At the meeting all information from Occupational Health and the individual, as well as the previous formal meetings held will be reviewed. The purpose of the meeting is to make a final decision with regard to the long term sickness episode. If there is no clear return date in the next 4 weeks, or Occupational Health have confirmed that redeployment (including consideration of the Equality Act 2010) is not a suitable option, then the possibility of dismissal on the grounds of ill health and the option of ill health retirement should be discussed.

Termination of an individual's contact on the grounds of capability due to ill health must be done by a formal panel hearing, appropriately constituted. See Section 8.3.6 for further detail.

Failure to hold the final review meeting within 12 months from the current sickness absence starting may result in the individual having their half pay sick pay reinstated. Reinstatement of pay will depend on the reasons for delays for holding the meeting prior to the sickness lasting 12 months (see AfC Handbook – 14.10 and 14.11).

#### **9.2.5 Further information**

Any additional meetings to the ones detailed above should be collectively agreed with the manager, the individual, and their representative and Employee Services.

### **9.3 Keeping in touch whilst on Long Term Sick**

It is very important for employees to stay in contact with the Trust while they are absent. Managers/Supervisors should agree with their member of staff the best way for keeping in touch in order to support the employee whilst they are absent. If this is not possible, guidance should be sought from Employee Services. The employee must engage with all aspects of the Policy. The Trust reserves the right to suspend payment if the individual fails to engage as required.

## 9.4 Performance Management

If an employee is absent while being managed under the Performance Management policy they return to the same stage of the performance management policy when they return to work.

## 9.5 Returning to Work (If there is a clear date for return to work).

Managers/Supervisors should prepare for the employee's return to work and this may include a phased return in line with Occupational Health advice. Preparations may include a risk assessment, local re-orientation, update on any managerial/staff changes; policy/protocol updates.

### 9.5.1 Revalidation for Nurses and Midwives

The NMC has special arrangements in place for nurses and midwives who cannot meet the revalidation requirements as a result of exceptional circumstances. Exceptional circumstances include having not been in practice for sufficient time between October 2015 (when the revalidation guidance was published) and an employee's revalidation application date because of sickness absence. If it can be established that these exceptional circumstances apply, the existing Prep requirements will still need to be met. The NMC has guidance on exceptional circumstances at <http://www.nmc.org.uk/standards/revalidation/>. If you believe that exceptional circumstances apply to you and you would like the NMC to consider a request for special arrangements, or you require a reasonable adjustment to be made, complete the 'Request for alternative support arrangements' form (available on the NMC website) to detail why. Make sure you complete and return this form well in advance of your revalidation application date to give the NMC time to consider your request and make any necessary adjustments.

Please note that if pay as a nurse or midwife is being received, whilst on maternity, sick or annual leave employees may need to maintain their registration with the NMC throughout this period.

## 9.6 Phased return to work

Where an employee would benefit from a gradual increase in hours/duties, a phased return to work can be arranged by the manager or in conjunction with the Occupational Health Service if required.

The following guidelines should be applied:

- The employee should be able to manage at least 50% of their contracted hours and activities with the expectation that they will gradually increase to 100% by the end of the phased return to work.
- Phased returns to the workplace will be paid at the individual's normal substantive pay.
- The phased return to work must be time bound for a period of four weeks. A maximum of six weeks may be applied in exceptional circumstances.
- If an employee is not fit to return to their contracted hours by the end of the phased return period, then a permanent resolution needs to be found.
- If the employee's health condition is likely to be covered by the Equality Act 2010, Occupational Health advice regarding temporary or permanent adjustments to both hours and duties should be sought.
- Phased returns can be used when an employee commences a trial period under the Redeployment Policy with Occupational Health guidance.
- Employees may be encouraged to use annual leave accrued during their absence during their phased return to cover the periods when they are not at work. Line managers and employees should agree how much annual leave may be used for phased return on a case by case basis. Employees who wish to use annual leave as part of their phased return should be encouraged to do so, particularly where a large amount of annual leave has been accrued.

## 9.7 Temporary change in working conditions

Where an employee's health would benefit from a temporary change in working conditions, for example, a change in location, change in duties or reduction in responsibilities or hours, and where this can be accommodated, the following guidelines should be applied:

- It is essential that this temporary change is communicated in writing and that a review date is set for four weeks. A temporary change should be no longer than 12 weeks.
- Where an employee returns temporarily on a lower grade this should be in line with the Pay Protection Policy.
- Any change should be by mutual agreement between the employee and his/her manager taking into account any recommendations made by the Occupational Health Department.
- Managers/Supervisors are responsible for making any reasonable adjustments and may seek Employee Services advice.

## 9.8 Medical evidence stating a return to the same post is not suitable

- If Occupational Health advise that the employee cannot continue in his/her job, then suitable alternative employment must be considered in line with the Redeployment Policy.
- Managers/Supervisors should seek advice from Employee Services. All correspondence must be kept on the Personal Employment Record file.

## 9.9 Medical evidence stating a return to work is not possible due to ill health

If Occupational Health advise that an employee cannot continue to work the employee must be informed at a meeting that a panel hearing will need to be arranged to consider whether or not their employment will be terminated on the grounds of ill health.

## 9.10 Alternative medical opinion

Where the employee does not accept the contents of the report from the Occupational Health Service, he/she has the option of obtaining independent medical evidence, at their own cost, and presenting this to the manager, who will take this into consideration in conjunction with Occupational Health, before reaching a decision. Occupational Health will also see staff for a second time as part of the referral process. A manager may be faced with conflicting medical reports and in these circumstances, further advice should be sought from both the Occupational Health Service and Employee Services before a decision is made.

## 9.11 Dismissal on the grounds of capability due to ill-health

After consideration of all the circumstances of the case and the available medical evidence at the final review meeting, the manager may then have to consider termination of employment on the grounds of capability due to ill health.

Authority for dismissal is set out in the matrix of responsibilities in the Disciplinary Policy. Where a decision is taken to terminate employment, the following procedural matters need to be taken into account:

- The panel should have up to date Occupational Health information. They should consider all the information from Occupational Health and the individual, as well as the previous formal meetings held. If there is no clear return date in the next 4 weeks or Occupational Health have confirmed that redeployment (including consideration of the Equality Act 2010) is not a suitable option, then the option of dismissal on the grounds of ill health and the option of ill health retirement should be discussed.
- The employee must be invited to the hearing. They may choose not to attend. They will have the option to present their case in writing. A management case will be presented and a final decision will be made by a panel. If dismissed, the employee will still have the right of appeal. Any appeal must be sent to the Head of Human Resources within ten working days of receipt of written confirmation of the decision.
- The proper contractual notice **must** be given in writing (even if the employee is not being paid due to the expiry of sick pay). Notice for bank-only staff should be given in accordance with the bank contract of employment.
- Managers/Supervisors should note that if notice is given before the expiry of sick pay then the remaining element of sick pay contributes to the full period of notice pay.

- The termination form should state clearly that it is a termination of employment on the grounds of capability due to ill health, and should also include a request to pay the appropriate period of contractual notice at full pay.
- Pay in lieu of notice should only be used when the Trust would otherwise be in breach of its contractual notice period

Where a member of staff requests that a lump sum of worked notice is paid, the manager must first agree this with Payroll then write to the member of staff asking them to confirm that the request for a lump sum of worked notice has come from them and is being applied at their own request. Two copies of this letter must be sent to the member of staff, who should sign both copies and return one to the manager and keep one for their own records.

Worked notice paid normally will be paid at the usual monthly intervals until the date of leaving is reached.

If a payment in lieu of notice is required, this will be paid as a statutory duty by the employer and will be paid as a lump sum. This payment is 'Compensation for Loss of Office' and is normally tax free up to a value of £30,000, with any value exceeding this paid at the employee's highest rate of tax.

Where an employee runs out of sick pay this is **not** an automatic reason for dismissal. Although payment to the employee has ceased, both parties are still bound by the contract of employment and any dismissal of an employee for this reason alone could be unfair.

### 9.12 Mutual termination

If an employee requests a mutual termination then this must be requested in writing or if made verbally then the manager should write to the employee confirming their understanding of the conversation and waiving their right to an appeal (because they agree to the termination). In this circumstance please seek advice from Employee Services.

### 9.13 Ill health retirement

Following confirmation that the employee can no longer work, if the employee accepts the findings, is eligible for ill-health retirement and wishes to retire, the Retirement Policy should be followed. Any decision should be made in the full knowledge of the potential effect on the employee's pension and lump sum. Further advice should be sought from the Pensions Office, and generally a date should be agreed which is mutually beneficial to both the employee and the manager.

Employees who have a minimum of two years' pensionable service will be eligible for the payment of a pension and a lump sum when retiring on the grounds of ill health. Final approval for the payment of a pension and lump sum rests with the NHS Pension

Scheme. Employees who have less than two years' pensionable service will be able to have a refund of their contributions.

There is no guarantee that an application to retire on the grounds of ill-health will be approved by the NHS Pensions Agency. Any decision made under this policy to dismiss a member of staff on the grounds of capability due to ill health will not be affected by a successful or unsuccessful application to retire on the grounds of ill health.

If the incapacity results from an injury that occurred as a result of employment, the employee may be entitled to benefits under the National Health Service Injury Benefit Scheme, (irrespective of whether they are members of the NHS Pension Scheme). Similar payments may be made if the incapacity is due to illness that is occupational in origin. In order to process potential eligibility Managers/Supervisors should seek advice from Payroll.

## 10. SICKNESS ABSENCE HEARING

### 10.1 Notice of Hearing

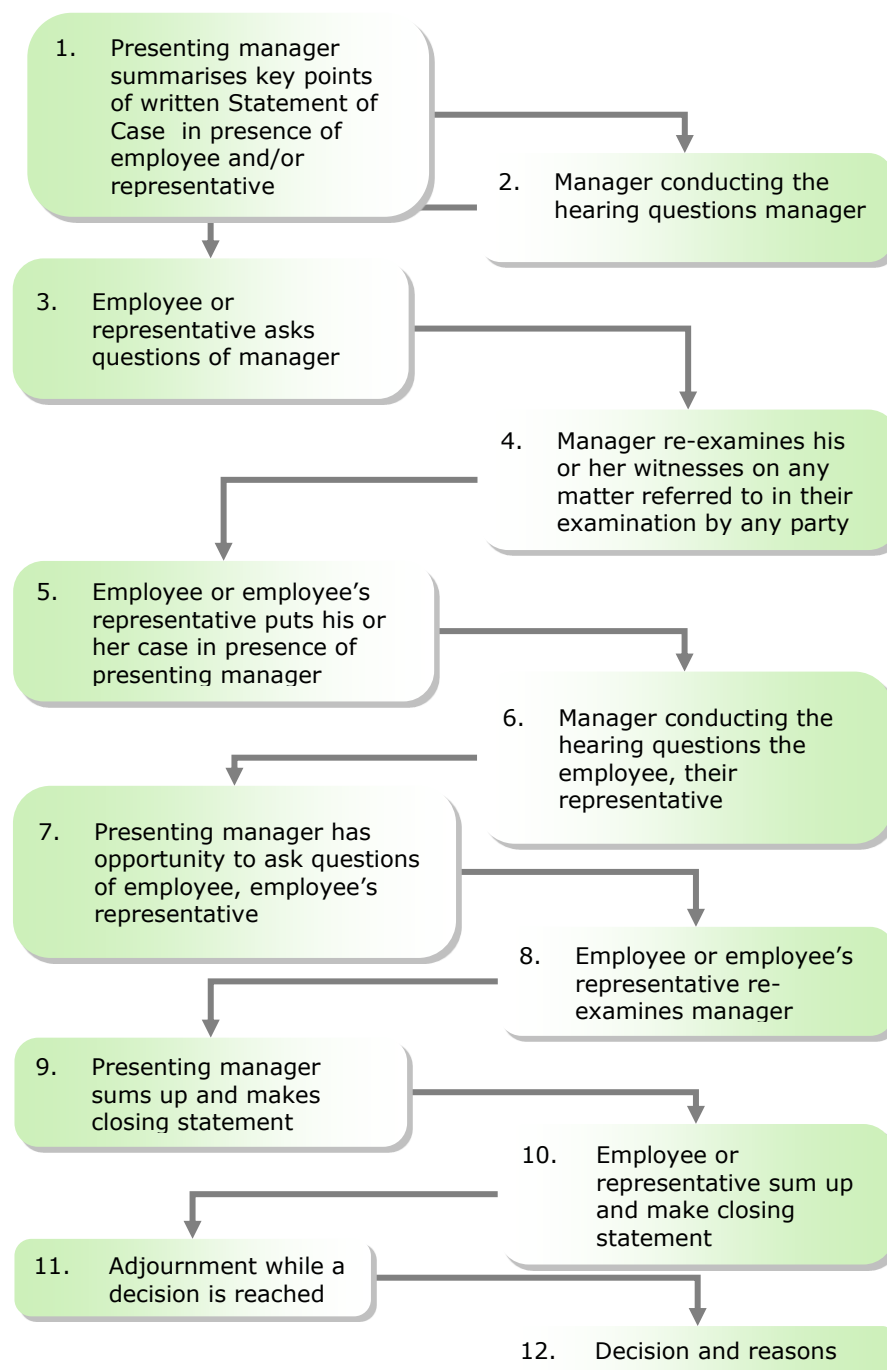
The arrangements for the hearing must be confirmed to the employee in writing allowing at least 5 working days notice. The information supplied to the employee in the letter notifying of the hearing must include:

- The requirement to attend the hearing and the reason;
- The date, time and place of the hearing;
- The details of the relevant evidence;
- The right of the employee to be accompanied by a Trade Union representative, or other person, not acting in a legal capacity;
- The name of the manager conducting the hearing;
- The names and job titles of the presenting manager and Employee Services support;
- Documents which will be produced in evidence during the hearing; including the management and employee statement of case;
- A request for details of the employee's representative (if any) at the hearing,
- Where the employee is an accredited Trade Union representative, the normal procedure should be followed. Depending on the circumstances, however, it is advisable to discuss the matter at an early stage with an official employed by the union, after obtaining the employee's agreement.
- A hearing may be re-arranged once if the employee or their representative is unable to attend. At the second attempt, the hearing will take place and a decision will be made in their absence unless there are extenuating circumstances. With the approval of the Chair of the panel, a different manager or HR adviser may present the case to avoid delay in hearing the case.



## 10.2 Conduct of Hearing

The hearing must be conducted impartially. The manager conducting the hearing must ensure that the employee is given every opportunity to state his or her case and that, only facts relevant to the case are considered. The conduct of the hearing will be as follows:





If the employee is dismissed on the grounds of capability he/she must be given the right of appeal against the decision. Any appeal must be sent in writing to the Head of Human Resources within 10 working days of receipt of written confirmation of the decision. The appeal will be dealt with in line with the Trust's Appeal Policy and Procedure.

## **11. RELATIONSHIP OF THIS POLICY TO OTHER POLICIES, PROCEDURES AND LEGISLATION**

### **11.1 Suspension on medical grounds**

Under Sections 64 and 106 of the Employment Rights Act 1996, an employee who is suspended from work as a result of the application of a statutory provision (see below), is entitled to a full week's pay for every week of suspension up to a maximum of 26 weeks (this is normal pay, not sick pay). The effect of this is to protect employees who, although not incapable of work because of a physical condition, cannot be employed in their jobs. The provisions leading to suspension on medical grounds are:

The Ionising Radiations Regulations 1999 SI 1999/3232

Regulation 24 - Medical surveillance.

Regulation 25 - Investigation and notification of overexposure.

Regulation 26 - Dose limitation for overexposed employees.

The Control of Lead at SI 1980 No. 1248

Regulation 16 - Work Regulations 1980

The Control of Substances Hazardous to Health Regulations 1988/2005 No. 1657

Regulation 11 - Hazardous to Health Regulations 1988

Together with any recommendation in any provision of a code of practice issued or approved under Section 16 of the Health and Safety at Work Act 1974, in respect of any of the above regulations.

In circumstances where, through no fault of the employee, the issues affecting their attendance at work have not been resolved, the appropriate Divisional Manager/ Corporate Manager has discretion to extend the 26-week period referred to above until the matter is resolved.

### **11.2 Access to Medical Records Act 1988 and Access to Health Records Act 1990 and Data Protection Act 1998**

The Trust will comply with the requirements of the above legislation on access to health records by Trust employees. The 1990 Act enables individuals to request in writing access to their health records or part of their health record from a doctor (including a company doctor). Where such a request is received it will be necessary for the Occupational Health Physician to respond in accordance with the Act's requirements.

### 11.3 Equality Act 2010

The Trust will comply with the requirements of the Act and any subsequent legislation.

### 11.4 Health and Safety policy

Accidents at work must be recorded in accordance with the requirements of the Trust's Adverse Incident Reporting Procedure.

### 11.5 Control of infection

Managers/Supervisors must consider the Trust's control of infection policies that affect their area of responsibility. For example, staff who have been abroad for four weeks or more should contact Occupational Health who will undertake an initial risk assessment by telephone and follow through any staff who may need further advice, investigation or referral.

## 12. TRAINING

All managers should attend the Healthcare Leadership Management Development (Supporting Attendance) course. This workshop aims to provide managers with the skills required to manage attendance in a supportive and fair manner.

HR Updates include information about new policies and revisions to existing policies.

## 13. MONITORING

The following staff are responsible for the monitoring and control of aspects of individual and overall attendance in the workplace.

### Line Manager

- Complete notification process for payroll services as soon as employee is absent and throughout the entire absence process.
- Stay in touch with staff through the duration of their absence regardless of length.
- Conducting return to work interviews with staff on return to the workplace.
- Monitoring the number of episodes, length of spells and where appropriate percentage levels of attendance of staff.
- Progressing staff through the absence stages as required by this policy
- Ensuring staff undertake any required temporary duties/staged returns for the appropriate timescale.

### Employee Services

- Hold sickness review meetings with Divisional managers
- Advise HR BPs of staff approaching half pay and no pay

### HR Business Partner

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Date: November 2014 (v2.1 July 2015, v2.2 March 2016)  
Author: [REDACTED] Director of HR  
Additional information for Nursing Revalidation March 2016

- Review the sickness levels and trends across the Division and in specific areas.
- Formally report monthly to the Divisional Board on absence levels, trends and challenges.
- May hold Sickness review meetings with Divisional managers

#### HR Information Services

- Provide HR Business Partners with sickness absence reports for use at Divisional Boards; Performance and Operations Meetings.
- Provide the corporate HR team with Trust and Divisional sickness absence reports and trends for inclusion for the HR Trust Board report.

## 14. REFERENCES

- The Trust's Performance Improvement Policy
- The Trust's Grievance Policy & Procedure
- The Trust's Disciplinary Policy & Procedure
- The Trust's Staff Conduct Policy
- The Trust's Appeals Policy & Procedure
- The Trust's Equality, Diversity & Human Rights Policy
- The Trust's Recruitment Policy
- The Trust's Substance Misuse Policy
- The Trust's Incident Reporting-Policy
- The Trust's Redeployment Policy
- The Trust's Emergency & Special Leave Policy
- The Trust's Injury Allowance Guidance
- NHS Terms & Conditions of Employment Handbook
- Equality Act 2010
- Employment Rights Act 1996
- Health & Safety at Work Act 1974
- Access to Medical Records Act 1988
- Access to Health Records Act 1990
- Data Protection Act 1998

**APPENDIX A.1** Short Term Sick Flow Chart

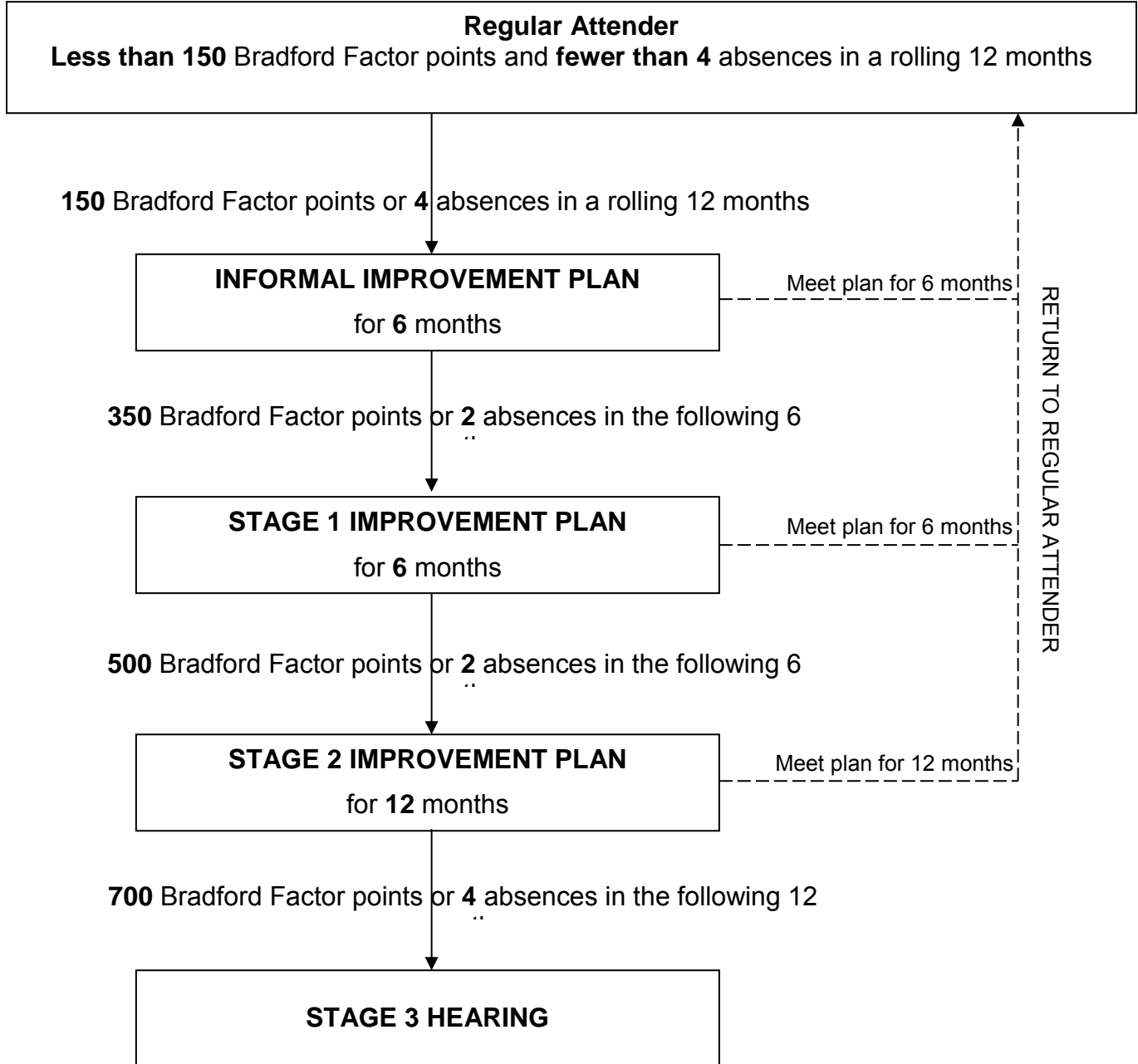
**APPENDIX A.2** Long Term Sick Flow Chart

**APPENDIX B** Percentage Attendance Flow Chart

**APPENDIX C** List of Notifiable Diseases

Equality Impact Assessment Form

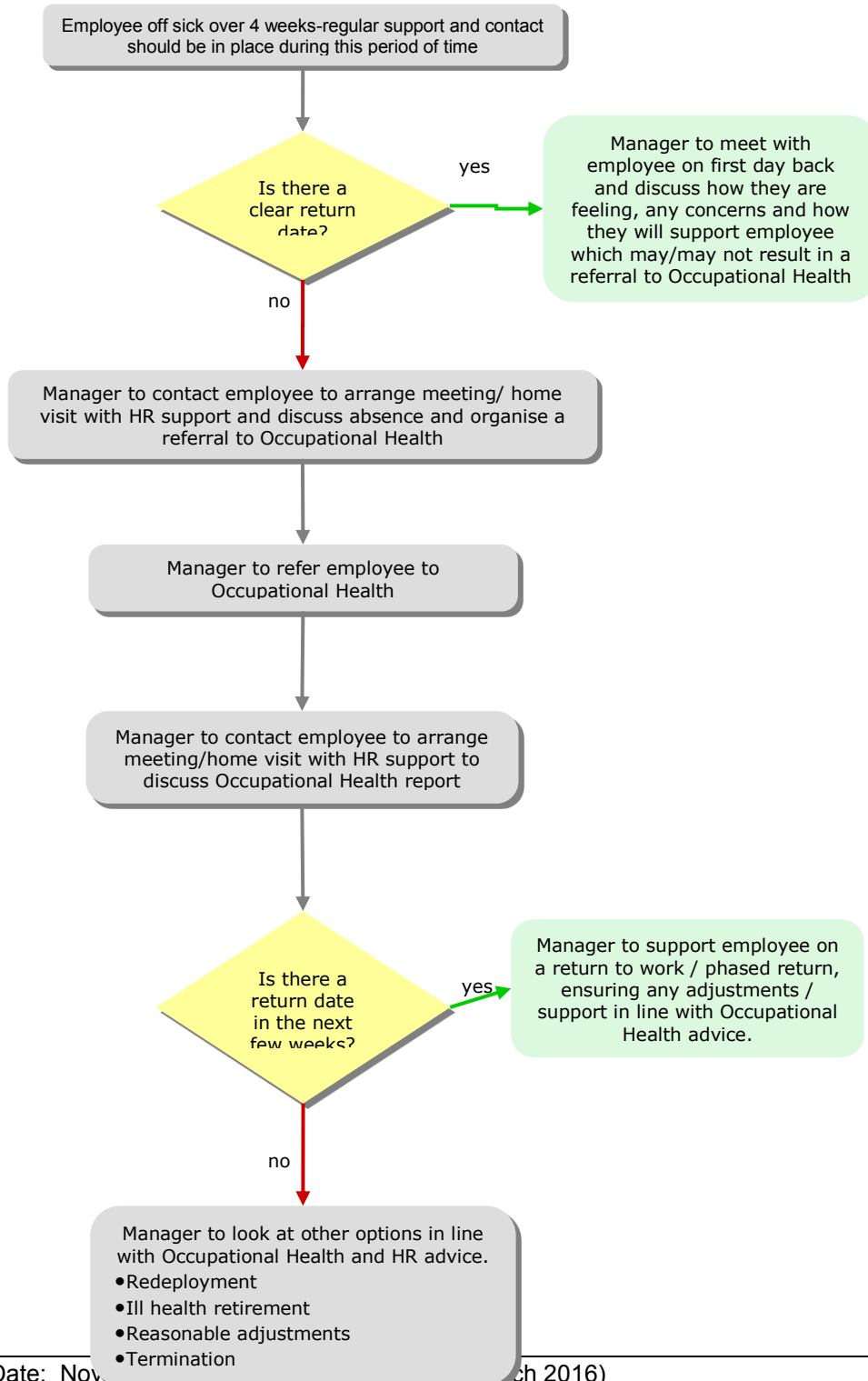
## APPENDIX A.1 SHORT TERM SICKNESS FLOW CHART



The Bradford Factors scores and trigger points in this flow chart are based on a full time employee with no underlying health causes. Bradford Factors scores and trigger points should be pro rated for part timers and adjustments may be made to trigger points, for those employees with an underlying health cause.

## APPENDIX A.2 LONG TERM SICKNESS

The following flowchart provides an overview of the process followed for managing long term sickness absence

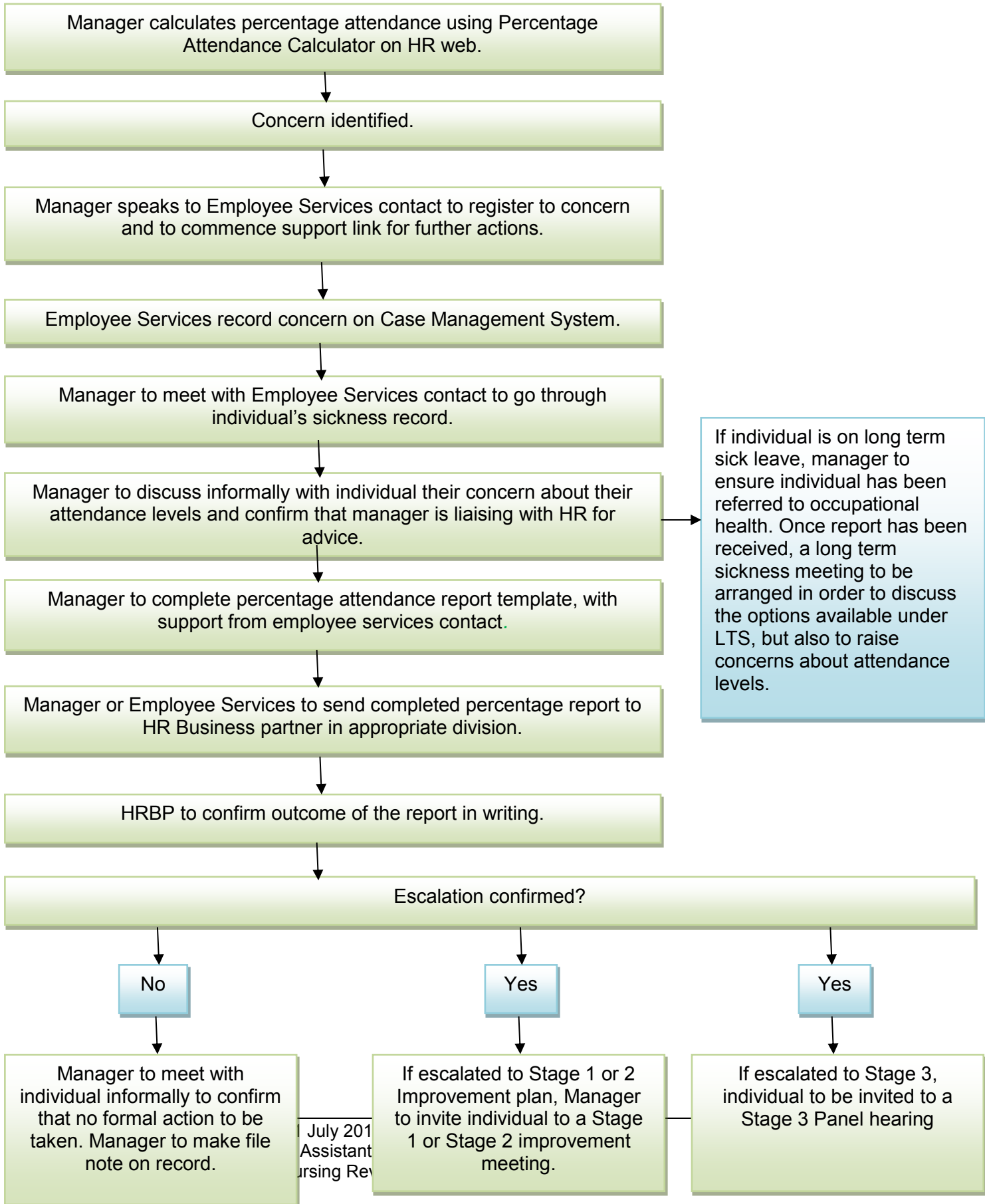


Date: Nov 2015 (last updated March 2016)

Author: [REDACTED], Assistant Director of HR

Additional information for Nursing Revalidation March 2016

## APPENDIX B- PERCENTAGE ATTENDANCE PROCESS FLOW CHART



## APPENDIX C

### LIST OF NOTIFIABLE DISEASES (from the Health Protection Agency)

Diseases notifiable (to Local Authority Proper Officers) under the Health Protection (Notification) Regulations 2010:

- Acute encephalitis
- Acute infectious hepatitis
- Acute meningitis
- Acute poliomyelitis
- Anthrax
- Botulism
- Brucellosis
- Cholera
- Diphtheria
- Enteric fever (typhoid or paratyphoid fever)
- Food poisoning
- Haemolytic uraemic syndrome (HUS)
- Infectious bloody diarrhoea
- Invasive group A streptococcal disease
- Legionnaires' Disease
- Leprosy
- Malaria
- Measles
- Meningococcal septicaemia
- Mumps
- Plague
- Rabies
- Rubella
- SARS
- Scarlet fever
- Smallpox
- Tetanus
- Tuberculosis
- Typhus
- Viral haemorrhagic fever (VHF)
- Whooping cough
- Yellow fever

These and other diseases that may be present significant risk to human health may be reported under the 'other' significant disease category.

As of April 2010, it is no longer a requirement to notify the following diseases: Dysentery, Leptospirosis, Ophthalmia neonatorum, Relapsing fever and Viral hepatitis. These and other diseases that may present significant risk to human health may be reported under 'other' significant disease category.

## EQUALITY IMPACT ASSESSMENT SCREENING FORM

**Title: Supporting Attendance Policy**

**Reviewer:** ██████████

**Division: Trust Services**

**Date: 25<sup>th</sup> June 2014**

**Document Class: Policy**

**Document Status: Live**

**Issue Date: 18th August 2009**

**Review Date: November 2016**

**What are the aims of the document?**

To ensure a fair and consistent approach to the management of sickness absence across the Trust

**What are the objectives of the document?**

To support managers/supervisor to deal with sickness absence in a clear fair and consistent manner

**How will the effectiveness of the document be monitored?**

Sickness reporting is completed monthly and presented to Divisional Boards and the Trust Board – and from July 2014 with the Workforce and OD Group

**Who is the target audience of the document (which staff groups)?**

All Staff Groups

**Which stakeholders have been consulted with and how?**

Staff side representatives at Trust Employment Policy Group and Industrial Relations Group; HR Practitioners;

**Who is it likely to impact on?**

Staff

Patient

Visitors

Careers

Other  
(please specify):



	Yes or No	Give reasons for decision	What evidence was examined?
<b>Does the policy/strategy/function or proposed change affect one group more or less favourably than another on the basis of:</b>		This policy makes provision for the needs of staff according to the Equality Act 2010	Equality Act 2010 Equality Act Statutory Code of Practice for Employers
Age	No		
Disability (including learning disability, physical, sensory impairment and mental health)	Yes	The policy makes provisions for the needs of staff whose illness falls under the Equality Act 2010 or who develop a disability during the course of employment.	Equality Act 2010 <ul style="list-style-type: none"> <li>• Health and Safety (Display Screen Regulation) Act 1992</li> <li>• Equality Act Statutory Code of Practice for Employers (section 17.20)</li> </ul>
Race	No		
Sex	No		
Gender Reassignment	Yes	Specific provision is made for gender reassignment-related absence	Equality Act Statutory Code of Practice for Employers (section 17.19 & 17.27)
Sexual Orientation	No		
Religion or belief	No		
Pregnancy & Maternity	Yes	Specific provision is made for pregnancy-related absence	Equality Act Statutory Code of Practice for Employers
Marriage & Civil Partnership	No		
Religion or belief	No		
Socially excluded groups (e.g. offenders, travellers)	No		
Human Rights	No		

Action Required: N/A	
Action Lead:	To be delivered by when:
Progress to date:	
Next steps:	
<p>How will the impact on the service/policy/function be monitored and evaluated?</p> <ul style="list-style-type: none"> <li>Sickness rates reported and monitored monthly</li> </ul>	
Person completing the assignment: Rebecca Ridsdale	<p><b>Date: June 2014</b></p> <p><b>Review Date: November 2016</b></p>