

Attendance Management

This document outlines the Scottish Prison Service Policy in relation to Attendance Management

Published by Human Resources, Corporate Services

Published 5 April 2021

Unlocking Potential - Transforming Lives.

Policy Number:

HR0035/002

Directorate Owners:

Corporate Services, Human Resources

Policy Scope:

All Scottish Prison Service Employees

Links to Other Policies:

[Annual Leave](#)

[Career Break](#)

[Code of Conduct](#)

[Dignity at Work](#)

[Employee Wellbeing](#)

[SPS Equality, Diversity and Human Rights Statement](#)

[Equal Opportunities in Employment](#)

[Flexible Working](#)

[Maternity and Parenting](#)

[Probationary](#)

[Special Leave](#)

[Shared Parental Leave](#)

Approved by:

Chief Executive

Effective date:

5 April 2021

Review Date:

5 April 2022

Policy Content

1.0 Introduction	1
2.0 Aim	1
3.0 Policy Statement	2
4.0 Scope	2
5.0 Principles	2
6.0 Responsibilities	3
Head of Human Resources	3
Senior Manager / Governors	3
Line Manager	3
Employee	4
HR Department	4
Trade Union Representative (TU) or Workplace Colleagues	4
7.0 Attendance Management Procedure	4
7.1 Notification	4
7.2 Maintaining Contact	5
7.3 Certification	6
7.4 Return to Work Meeting	6
8.0 General Policy Provisions	7
8.1 Unauthorised Absence	7
8.2 Occupational Sick Pay	7
8.3 Part Day Absence	7
8.4 Phased Return to Work	7
8.5 Sickness Absence during Annual Leave	8
8.6 Attendance Reporting	8
8.7 Right to be Accompanied	9
8.8 Ill Health Retirement	9
9.0 Attendance Review Process	9
9.1 SPS Absence Review Points	9
9.2 Informal Wellbeing Discussion	11
9.3 Formal Wellbeing Meeting (Stage 1)	12
9.4 Formal Wellbeing Meeting (Stage 2)	13
9.5 Capability Assessment Meeting	15
10.0 Redeployment	16
10.1 Redeployment on Health Grounds	16

11.0 Appeal Process	17
11.1 Appeal - Formal Wellbeing Meeting	17
11.2 Appeals against Dismissal	18
11.3 Civil Service Appeal Board	19
11.4 Other Appeal Considerations	19
12.0 Occupational Health and Employee Assistance Programme	19
12.1 Occupational Health (OH) Referral	19
12.2 Employee Assistance Programme (EAP)	20
13.0 Employees with Disabilities	21
13.1 Reasonable Adjustments	21
13.2 Disability Leave	21
14.0 Further Information	21
14.1 Pregnancy Related Absences	21
14.2 Terminal Illness	22
14.3 Work-related Ill Health or Injury	22
14.4 Hospital / Medical / Dental Appointments	23
15.0 Associated Procedures	23

1.0 Introduction

The Scottish Prison Service (SPS) considers the contribution of its employees to be paramount in delivering services to those in our care, and is committed to promoting health and wellbeing to all employees.

The SPS will take a person centred approach to managing absence, taking account of all circumstances and ensuring compliance with any relevant legislation. Likewise, the SPS encourages employees to take responsibility for their own attendance at work by taking reasonable steps to engage with managers to remove barriers to work and wherever possible enable a return to the workplace.

The SPS understands that an employee may have a health condition or injury that means that they are not fit to attend for work and / or to undertake their full contractual role and recognises its obligations in respect of employees experiencing ill health, while at work and when absent from work. However, the SPS must also pay due regard to its operating needs, as the absence of an employee from the workplace environment can impact on our intended organisational outcomes.

Therefore, this Attendance Management policy and accompanying guidance has been developed to maximise attendance, and to provide guidelines for the fair, reasonable and consistent management of sickness absence.

This policy should be read in conjunction with the Employee Wellbeing policy and associated documentation.

2.0 Aim

The aim of this policy is to:

- Ensure the SPS acts in a fair, reasonable, proactive and consistent manner when dealing with sickness absence issues.
- Provide a clear framework that will enable all SPS employees to manage periods of sickness absence.
- Promote a culture of attendance where employees feel valued, supported and committed to the organisation and to their colleagues.
- Minimise disruption to service provision due to sickness absence and fulfil duty of care requirements towards employees.

3.0 Policy Statement

This policy is designed to promote good practice and provide a framework for the effective management of sickness absence.

It has been developed in consultation with the Trade Union partners (TUS and PGA) and has been created in accordance with published guidance from the Chartered Institute of Personnel and Development (CIPD), the Health and Safety Executive (HSE), the Equality and Human Rights Commission (EHRC) and the Advisory, Conciliation and Arbitration Service (ACAS). This policy complies with the Civil Service Management Code.

All personal and sensitive data relating to sickness absence will be treated in accordance with the General Data Protection Regulation (GDPR).

The policy is effective from 5 April 2021 and replaces the Managing Attendance & Absence Policy & Procedure (April 2005) and all earlier related guidance and policy documents, including staff notices.

4.0 Scope

This policy applies to all employees with the exception of those in their probationary period, including those on temporary contracts and fixed term appointments. Separate procedures exist for employees on probation, please see the Probationary policy for further information. It does not apply to agency workers, contractors, consultants or self-employed individuals working for SPS.

5.0 Principles

All employees involved in this process are expected to behave in a manner that is consistent with organisational values, affording colleagues dignity and respect at all times.

The SPS will promote and support employee wellbeing, taking reasonable steps to support employees to maintain regular attendance or to return to work from a period of sickness absence.

The SPS will monitor levels of sickness absence, and seek to maximise employee attendance through early intervention and support, whilst recognising our statutory obligations and complying with all relevant legislation.

SPS assumes that all sickness absence is genuine and trusts employees to act in accordance with this policy.

The SPS will make reasonable adjustments to support employees with disabilities to improve and sustain attendance at work.

All employees are encouraged to share with management any relevant information which may affect their ability to undertake their role or attend work, to enable the SPS to provide person centred case management support to overcome these issues.

All employee contact related to sickness absence will be managed sensitively taking into account medical prognosis, individual circumstances and the needs of the SPS, with due respect for the privacy of the individuals concerned.

All actions relating to managing attendance will be dealt with promptly in accordance with this policy.

6.0 Responsibilities

The SPS will seek to achieve a positive attendance culture and effective attendance management through the combined efforts of the following:

Head of Human Resources

- Monitor the application and implementation of this policy.

Senior Manager / Governors

- Promote a positive attendance culture and reach decisions consistent with the policy and SPS Values.
- Implement and participate in informal and formal procedures in accordance with section 9 of the policy and undertake any development required to familiarise themselves with the policy.

Line Manager

- Manage attendance in accordance with this policy including taking person centred action to assist and support the employee during sickness absence and on their return to work.
- Monitor and intervene to secure an improvement in employee attendance where it does not reach the standards expected, taking into account medical prognosis, individual circumstances and the needs of the employee, together with the needs of the SPS.
- Organise risk assessments where necessary and keep them under review to reduce the level of risk and help to maintain health and wellbeing at work.
- Undertake any development required to familiarise themselves with the policy.

Employee

- Attend work unless unfit or unable to do so, and to return to work as soon as they are able.
- Highlight any concerns with their line manager or HR if they believe that their job is contributing to their absence.
- Comply with the terms of this policy, including notification of absence arrangements and absence certification requirements. This includes undertaking any development required to familiarise themselves with the policy.

HR Department

- Work collaboratively with managers on the application of this policy, providing ongoing guidance, support and advice to help ensure that the policy is applied fairly and consistently across the SPS.
- Produce periodic reports and publish updates for relevant stakeholders on the SPS's performance in relation to employee attendance.

Trade Union Representative (TU) or Workplace Colleagues

- Attend, address and ask questions at formal meetings, respond to any views expressed by those in attendance at formal meetings and confer with the employee during formal meetings.
- The representative cannot answer questions on behalf of the employee, address formal meetings if the employee does not wish it and prevent any party from explaining their case.

7.0 Attendance Management Procedure

7.1 Notification

If an employee is unable to attend work due to sickness absence, they must follow the locally agreed arrangements for reporting their absence. The normal expectation will be that the employee will contact their line manager, in the first instance, to report their absence, including the reason for the absence. This should be as early as possible, and before the time they would normally be expected to attend work. If an employee's line manager is not available, the employee should contact another available manager.

The reason for absence is an essential piece of information for the line manager to support the employees return to work. In circumstances, where an employee does not wish to disclose their reason for absence to their line manager, the line manager should liaise with HR regarding alternative arrangements.

Where an employee fails to follow the locally agreed arrangements, either by not making contact on the first and / or subsequent days of absence, or by not submitting appropriate documentation, the absence will be treated as unauthorised, and may impact on entitlement to occupational sick pay and pension entitlement benefit.

7.2 Maintaining Contact

It is essential that line managers maintain contact with absent employees, particularly where the absence is for a lengthy period. This helps to prevent employees from becoming isolated and distanced from the workplace and their colleagues. It also enables appropriate management action to be taken on an informed basis to support a planned return to work.

A suitable frequency and method of contact will be mutually agreed at the point the employee contacts their line manager to report their absence. This should always be handled sensitively with due consideration given to the nature of the employee's reason for sickness absence.

A person centred approach should be taken to all forms of contact with the employee and details of any discussions are required to be recorded on the absence contact form, which should be forwarded to HR to be retained on the employee's career file.

Contact could involve the exploration of one or more of the following (not an exhaustive list):

- The employee's health status;
- The feasibility of a return to work;
- OH / GP / Specialist information / recommendations;
- Reasonable adjustments;
- Key actions required to support the employee to return to work e.g. the development of a phased return programme, individual management plans;
- Any work related issues / or disability, which may require collective discussion / actions.

In some circumstances, it may be appropriate for a supportive meeting to be requested and arranged either by the line manager or employee. The meeting would normally take place at the employee's place of work or at another mutually agreed suitable location. The employee can choose whether or not to attend this meeting and others may be involved through mutual agreement, although typically it would include the employee, line manager, HR representative, TU representative or workplace colleague.

Any information provided at the meeting will be used to inform management decision making in relation to how best to support the employee while absent from work. If the employee does not attend the meeting, if it is reasonable to do so, then the line

manager may hold the meeting in the employee's absence taking into account any other available information, before making a decision.

7.3 Certification

All employees must complete a self-certification form in respect of all sickness absence. The self-certification form is contained within the standard return to work form which must be completed after every absence.

If the absence continues beyond seven calendar days, a Statement of Fitness for Work (fit note) from a GP is required. All statements must be sent without delay to the appropriate line manager who, in turn, will inform HR.

It is important that the employee submits fit notes to ensure that absence is properly authorised. If sickness absence continues, consecutive fit notes are required to cover all days of sickness, including weekends and non-working days.

The line manager should forward all fit notes to HR to be retained on the employee's career file. Any failure to supply a fit note within 15 working days may impact on entitlement to occupational sick pay.

In certain circumstances the SPS can withdraw the right of employees to self-certify the first seven days of absence. The line manager should discuss any action of this nature with HR.

If an employee feels fit to return to work prior to the expiry of their current fit note, then they should normally contact their General Practitioner (GP) to discuss and request an updated fit note. In these circumstances, any potential health and safety issues should be risk assessed by the line manager, taking any advice as necessary.

7.4 Return to Work Meeting

The line manager is required to hold a return to work meeting with the employee following each occasion of sickness absence. This normally should be held on the day of return or usually within 3 working days from an employee returning to work.

If the line manager is unavailable, then to avoid any unnecessary delay the meeting should be convened with a suitable alternative manager or designated other, subject to the employee being content to proceed on this basis. HR advice should be sought in these circumstances.

To ensure a consistent approach to the discussion, the return to work form must be completed by the line manager and forwarded to HR to be retained on the career file.

8.0 General Policy Provisions

8.1 Unauthorised Absence

If the employee does not attend work and does not make contact with the line manager, the line manager must try to get in touch using the most appropriate means.

8.2 Occupational Sick Pay

Employees are entitled to receive payment for sickness absence in accordance with their terms and conditions of employment.

Where the pay of an employee is stopped due to the non-provision of a fit note, following receipt of appropriate fit note, withheld pay will be reimbursed.

In circumstances, where an employee is asked to undertake an assessment by Occupational Health (OH) before they can carry out some or all of their duties, the employee will be returned to full pay status (where it would otherwise be less), to cover the period between the date fitness for work as indicated on the GP's certificate and the date of the definitive health status report produced by OH.

8.3 Part Day Absence

A part-day sickness absence is where an employee attends work for part of the day before going home due to sickness absence or injury.

Where an employee works for less than half of their daily contracted hours, this will count as one day's sickness absence. Alternatively, where an employee works more than half of their daily contracted hours then this will be treated as a full day's attendance and not recorded as sickness absence.

8.4 Phased Return to Work

A phased return to work is when an employee returns to work and builds up their full hours and / or normal duties gradually over an agreed period of time, usually limited to a maximum of 6 weeks. Although, in exceptional circumstances, where there is compelling medical evidence to support it, a plan may be longer than 6 weeks.

The aim is to help the employee return to work as soon as possible as part of their agreed return to work programme with their line manager, which will usually be informed by medical advice from OH and / or the GP.

Any non-working days or part days as part of an agreed phased return to work arrangement which has been informed by OH advice, will be paid at the appropriate rate of occupational sick pay.

The employee may choose to voluntarily use accrued annual leave as part of the phased return, this would be subject to the approval of their line manager.

TOIL hours may also be used as part of an agreed phased return to work arrangement, where the employee has a TOIL balance.

Any non-working days or part days not worked as part of an agreed phased return to work arrangement will not count towards any absence review point. Any period of sickness absence taken during the agreed hours when the employee is required to be at work, will count towards the identified absence review points.

The line manager should send a copy of the agreed phased return to work form to HR who will notify Pay, Pensions and Relocation Services (PPRS) and retain on the career file.

8.5 Sickness Absence during Annual Leave

If an employee becomes ill during a period of annual leave, they must follow the rules on notifying their line manager and submit a self-certificate or fit note by the earliest practicable date. Once submitted, the period will be treated as sickness absence and not as annual leave.

Employees returning to work after a period of sickness absence will be able to take accrued annual leave entitlement at a time mutually agreed by them and their line manager as part of an agreed return to work programme and in accordance with the Annual Leave Policy.

There should be no deduction made from the employee's annual leave entitlement for any period covered by medical evidence. This means the annual leave can be taken at another time. The Annual Leave policy provides further explanation on how sickness absence affects entitlement to annual leave and pay.

An employee can take annual leave during a period of sickness absence. In these circumstances, they should submit their request for annual leave to their line manager, in advance, in the normal way. This means an employee will receive full pay for any annual leave taken regardless of their entitlement to sick pay.

8.6 Attendance Reporting

This policy requires managers to actively monitor the attendance levels of employees on an ongoing basis.

HR maintain an individual attendance record on each employee for reporting purposes. The information retained includes the reason, duration and frequency of absence.

Any employee may request access to their attendance record which is contained in the career file from HR.

8.7 Right to be Accompanied

All employees are entitled to be accompanied to any formal meetings held under this policy by a TU representative or workplace colleague.

It is recognised that the TU representative can often play a part in resolving issues before formal stages are reached, therefore an employee may request support from a TU representative or workplace colleague at any informal review meeting.

Employees attending appointments with OH can choose to be supported by a TU representative or workplace colleague in an informal capacity.

8.8 Ill Health Retirement

SPS employees who are Civil Service pension scheme members can apply for ill health retirement (IHR). The decision on IHR is made by the pension scheme medical advisor, not the SPS or OH. HR can provide information to pension scheme members on how to apply for IHR.

If an employee's medical condition is likely to prevent a return to work within a reasonable timescale, the line manager via HR should refer the employee to OH, who will advise on whether the criteria for IHR is likely to be met.

Subsequently, if OH advice indicates that the criteria is likely to be met, then the employee will have the opportunity to submit an IHR application. If applicable, the capability assessment meeting - section 9.5 would continue as appropriate, although in these circumstances an employee should not be dismissed until the outcome of an IHR application has been confirmed, with the employee remaining on the appropriate rate of occupational sick pay.

If the IHR application is successful, then the employee can choose to retire on IHR grounds. If the IHR is unsuccessful then the employee can be dismissed in accordance with the outcome of capability assessment meeting - section 9.5.

An employee / ex-employee can appeal the outcome of an IHR application. If the appeal is successful, then the reason for leaving will become IHR and all records will be updated accordingly.

9.0 Attendance Review Process

9.1 SPS Absence Review Points

Line managers are required to take appropriate action when absence levels reach the SPS absence review points, showing due consideration to the nature and reason for sickness absence. The SPS absence review points are detailed in the table below and can be interlinked.

Absence review points for Informal Wellbeing Discussion – (“Review Point 1”)

- 8 working days (or hours equivalent pro-rated for part time) of sickness absence; or
- 3 separate occasions of sickness absence; or
- Discernible pattern of absence which is causing concern; or
- 3 weeks of continuous sickness absence
- **Within the 12 months prior to, and including, the last day of the employees most recent period of absence.**

Absence review points for Formal Wellbeing Meeting (Stage 1) – (“Review Point 2”)

- Further 7 working days (or hours equivalent pro-rated for part time) of sickness absence; or
- 3 separate occasions of sickness absence; or
- Discernible pattern of absence which is causing concern; or
- 10 weeks of continuous sickness absence
- **Within the informal monitoring period.**

Absence review points for Formal Wellbeing Meeting (Stage 2) – (“Review Point 3”)

- Further 6 working days (or hours equivalent pro-rated for part time) of sickness absence; or
- 3 separate occasions of sickness absence; or
- Discernible pattern of absence which is causing concern; or
- 20 weeks of continuous sickness absence
- **Within the stage 1 monitoring period.**

Absence review points for Formal Capability Assessment – (“Review Point 4”)

- Further 5 working days (or hours equivalent (pro-rated for part time) of sickness absence; or
- 3 separate occasions of sickness absence; or
- Discernible pattern of absence which is causing concern; or
- 30 weeks of continuous sickness absence
- **Within the stage 2 monitoring period.**

The purpose of setting absence review points is to allow the employee and line manager to discuss the employee's attendance history, causes for absence, mitigating circumstances, and to explore whether there are any steps or support mechanisms that could be taken to improve attendance. It also functions to remind the employee of the SPS's expectations in terms of attendance and the steps that will be taken if they are not met.

Each monitoring period will normally be for a period of 12 months. However, if employees reach the next absence review point during a monitoring period they will proceed to the next stage of the procedure outlined in this Policy at that stage. In other words, the employee can move to the next stage of the procedure before a 12-month review period has ended if they reach the next relevant absence review point.

At any stage in the process, where it is indicated by OH that an employee is unable to provide regular and effective service and / or fulfil their full contractual role within a reasonable period then a formal capability assessment meeting should be convened, Review Point 4.

If there is an underlying medical condition, the line manager will work with HR to support the employee by putting in place support mechanisms or reasonable adjustments to help the employee maintain regular attendance. Any reasonable adjustment will be informed by input from OH.

In exceptional circumstances, or due to the nature of the absence, the SPS reserves the right to proceed with an informal or formal meeting in the employee's absence. This is provided that OH confirm that the employee is unable to attend and no reasonable adjustments can be made to allow attendance or participation by other means, for example, making written representations or attendance on their behalf by a Trade Union representative or workplace colleague.

Advice from HR is available to managers throughout all stages of this process.

9.2 Informal Wellbeing Discussion

An informal wellbeing discussion involves a positive and constructive, informal one to one discussion between the first line manager and employee.

The purpose of the meeting is to discuss the reason(s) why an employee has reached the SPS absence Review Point 1 and to consider any support / measures that may be necessary to help avoid future episodes of sickness absence.

This meeting should normally be held within 2 weeks of an employee's return to work or within 2 weeks of receipt of the OH report where the employee has been referred to OH. For continuous absences, the meeting should normally be held within 2 weeks of reaching Review Point 1.

The employee will normally be given at least 5 working days' written notice of the meeting and will be provided with details of their sickness absence record in advance.

The outcome of an informal attendance discussion will be confirmed in writing to the employee normally within 10 working days and a copy retained on the employee's career file. The form will detail:

- the issues raised at the meeting;
- the support plan including any reasonable adjustments;
- the informal monitoring period and highlight attendance expectations to the employee within that period.

9.3 Formal Wellbeing Meeting (Stage 1)

Where there has been insufficient improvement following an informal wellbeing discussion and Review Point 2 is reached, a formal wellbeing meeting (stage 1) will be convened.

This meeting will normally be chaired by the employee's first line manager (or in their absence another nominated manager of equivalent grade) supported by and with advice from HR. The employee will have the right to be accompanied by a TU representative or workplace colleague.

The purpose of the formal stage 1 meeting is to discuss an employee's attendance record, any mitigating circumstances and ways of improving their attendance. It also formally highlights the SPS's expectations regarding attendance, including possible future action should those expectations not be met during the stage 1 monitoring period.

This meeting should normally be held within 2 weeks of an employee's return to work or within 2 weeks of receipt of the OH report where the employee has been referred to OH. For continuous absences, the meeting should normally be held within 2 weeks of reaching Review Point 2.

The employee will normally be given at least 5 working days' written notice of the meeting and will be provided with details of their sickness absence record in advance.

The outcome of this meeting will be confirmed in writing to the employee normally within 10 working days and a copy retained on the employee's career file. The letter will detail:

- the issues raised at the meeting;
- the support plan including any reasonable adjustments;
- the formal stage 1 monitoring period and highlight attendance expectations to the employee within that period; and
- include the employee's right of appeal.

In exceptional circumstances, where the employee has returned to work, the first line manager may decide that it is not necessary to implement a formal stage 1 monitoring period in accordance with an agreed employee support plan. This will be reflected in the outcome letter, which will indicate that the employee will continue to be monitored in accordance with the outcomes of the informal wellbeing discussion. Any management action will be informed by HR advice and where necessary input from OH. In these circumstances, if a further Review Point 2 is then reached during the remainder of the informal monitoring period, the first line manager should reconvene the formal wellbeing meeting in line with stage 1 procedure detailed above.

Alternatively, a first line manager supporting an employee with continuous absence, may choose in exceptional circumstances to defer the implementation of a formal stage 1 monitoring period for a time limited period, which will be notified to the employee. This should be in accordance with an agreed employee support plan, with the employee continuing to be monitored in accordance with the outcomes of the informal wellbeing discussion for the identified period. Any management action will be informed by HR advice and where necessary input from OH. In these circumstances, if the employee has not returned to work within the agreed timescale, the first line manager should reconvene a further formal wellbeing meeting in line with stage 1 procedure detailed above.

In absence cases where the employee has been off for a brief time period, any further absence(s) that occur after the employee's return to work but before the relevant wellbeing meeting takes place, will not result in the employee progressing to the next stage of the absence review process at that point.

9.4 Formal Wellbeing Meeting (Stage 2)

Where there has been insufficient improvement following a formal wellbeing meeting (stage 1) and Review Point 3 is reached, a formal wellbeing meeting (stage 2) will be convened.

This formal meeting, will normally be chaired by the second line manager (or in their absence another nominated manager of equivalent grade) supported by and with advice from HR. The employee will have the right to be accompanied by a TU representative or workplace colleague.

The purpose of the formal meeting is to discuss an employee's attendance record, any mitigating circumstances and ways of improving their attendance. It is also to formally highlight the stage they are currently on, the SPS's expectations regarding attendance, including possible future action should those expectations not be met during the stage 2 monitoring period.

This meeting should normally be held within 2 weeks of an employee's return to work or within 2 weeks of receipt of the OH report where the employee has been referred

to OH. For continuous absences, the meeting should normally be held within 2 weeks of reaching absence Review Point 3.

The employee will normally be given at least 5 working days written notice of the meeting and will be provided with details of their sickness absence record in advance.

The outcome of this meeting will be confirmed in writing to the employee normally within 10 working days and a copy retained on the employee's career file. The letter will detail:

- the issues raised at the meeting;
- the support plan including any reasonable adjustments and details of any actions already taken;
- the formal stage 2 monitoring period and highlight attendance expectations to the employee detailing the capability assessment process; and
- include the employee's right of appeal.

In exceptional circumstances, where the employee has returned to work, the second line manager may decide that it is not necessary to implement a formal stage 2 monitoring period in accordance with an agreed employee support plan. This will be reflected in the outcome letter, which will indicate that the employee will continue to be monitored in accordance with the outcomes of the formal stage 1 monitoring period. Any management action will be informed by HR advice and where necessary input from OH. In these circumstances, if Review Point 3 is then reached during the remainder of the stage 1 monitoring period, the second line manager should reconvene the formal wellbeing meeting in line with the stage 2 procedure detailed above.

Alternatively, a second line manager supporting an employee with continuous absence, may choose in exceptional circumstances to defer the implementation of a formal stage 2 monitoring period for a time limited period, which will be notified to the employee. This should be in accordance with an agreed employee support plan, with the employee continuing to be monitored in accordance with the outcomes of the formal stage 1 for the identified period. Any management action will be informed by HR advice and where necessary input from OH. In these circumstances, if the employee has not returned to work within the agreed timescale, the second line manager should reconvene a further formal wellbeing meeting in line with stage 2 procedure detailed above.

In absence cases where the employee has been off for a brief time period, any further absence(s) that occur after the employee's return to work but before the relevant wellbeing meeting takes place, will not result in the employee progressing to the next stage of the absence review process at that point.

9.5 Capability Assessment Meeting

If (1) the employee's attendance has not improved to a satisfactory level and reaches absence Review Point 4; or (2) it is indicated by OH that an employee is unable to provide regular and effective service and/or fulfil their contractual role within a reasonable period, then the case will be considered by a Governor in Charge or Head of Function (or equivalent).

The Governor in Charge or Head of Function (or equivalent), will be supported by HR, who will meet with the employee. At least 5 working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the employee of their right to be accompanied by a TU representative or workplace colleague.

The employee will be informed in writing of the reason for the meeting and provided with details of the absences to be considered. An employee guidance pack will be produced that will contain relevant documentation relating to the current absence reason, attendance history and recent medical advice from OH obtained within the last two months, which outlines the capability of the employee to fulfil their full contractual role or to provide regular and effective service within a reasonable timescale.

The letter of notification will state that capability dismissal is a potential outcome of this meeting and will indicate that the employee can present a written statement prior to the meeting should they wish to do so.

In some instances, due to the nature of the absence, the matter of capability may be considered without a formal interview provided that OH confirm that the employee is unable to attend.

During the meeting the employee will be given every opportunity to discuss and explain their absences, provide any other information they feel is relevant, identify any support or interventions they feel would assist them in improving their attendance and ask questions before any decision is reached. In exceptional circumstances, the Governor in Charge or Head of Function (or equivalent) may adjourn the meeting to obtain further information to inform their decision making.

The Governor in Charge or Head of Function (or equivalent) may apply discretion to determine that a decision to dismiss is inappropriate in the circumstances. The basis for that decision will be explained to the employee along with the arrangements to be put in place to monitor their attendance going forward. Where discretion is applied at a capability assessment meeting, the employee will remain on stage 2 of the process and a further 12-month monitoring period applied from the date of such a decision.

Where the Governor in Charge or Head of Function (or equivalent) concludes that after considering all the available information, that there are no grounds for applying discretion and that reasonable adjustments / alternative employment is not feasible, the employee will be advised that they are to be dismissed on the grounds of capability

as a result of unsustainable sickness absence or on the grounds of capability due to permanent ill-health.

The employee will be advised of his / her right of appeal against a decision to dismiss, which will be convened during any notice period.

The outcome of the capability assessment meeting will be confirmed in writing to the employee normally within 10 working days and a copy of the confirmation letter will be forwarded to HR to be retained on the career file.

10.0 Redeployment

10.1 Redeployment on Health Grounds

The SPS will ensure every opportunity is made to redeploy an employee where necessary.

Where there is an indication that an employee is not able to return to their contractual role due to health reasons, then a referral to OH should be made via HR. OH will be asked to provide advice on whether the employee is fit to undertake their contractual role and if not what adjustments are required. This may be on a permanent or temporary basis depending on the circumstances of the case.

Suitable alternative employment within the SPS will be sought where OH advice indicates that an employee is not able to return to their contractual role. This will take place during a time limited period of no longer than 13 weeks from the point when it was agreed that the search should begin. There will be ongoing discussion with the employee both prior to and during the redeployment period regarding any potential redeployment opportunities.

The redeployment process will normally run concurrently with the SPS attendance review process. Where suitable alternative employment to a substantive role within the SPS cannot be identified within the specified time period, the employee will be referred to the capability assessment process.

The consideration of redeployment is limited to vacant posts which OH deem suitable on health grounds. The employee must meet the minimum requirements of the job specification for the available role or have equivalent experience to be considered for redeployment for any existing vacancy within the SPS. It is expected the employee will show flexibility in the posts being considered.

It is the responsibility of all managers to support the redeployment process by giving due consideration to redeployment cases presented to them, this may also include outplacement and in placement support.

If a vacancy is identified and the employee meets the criteria for the post and is deemed fit for the post by OH or the post meets OH recommendations, the employee

will be allocated to the vacant post. If the employee refuses to consider the post on offer or fails to report for duty in the allocated / redeployed post, the line manager of the previous post should initiate a discussion with HR about next steps.

Alternative employment at the same grade and hours cannot be guaranteed and protection of pay will not apply. Payment will be made at the appropriate grade / hours for any new role. If the employee states after starting the post that it is not suitable for them, then the line manager should initiate a discussion with HR about next steps.

The suitability of the redeployment must be formally reviewed after 4 weeks by the new line manager. The purpose of the 4-week review period is to enable both the employee and the new line manager to assess the suitability of the redeployment and the employee's capability to complete the duties of the post.

Whilst most redeployments work well for both the SPS and employee, there may be occasions where the redeployment of an employee is unsuccessful. In these cases, advice should be sought from HR, OH and a decision on the way to progress the case will be taken.

11.0 Appeal Process

11.1 Appeal - Formal Wellbeing Meeting

Employees intending to appeal against the decision of the meeting, must do so promptly, usually within 5 working days of receipt of the written outcome letter. Should the individual require additional time to submit an appeal, then they may make a request to HR, for a reasonable extension.

An appeal can be lodged by submitting the appeal form for the attention of the manager identified on the outcome letter or HR and it should detail the grounds upon which the appeal is based.

There is one right of appeal at each formal point in the policy. The appeal outcome at each stage is final.

The employee will be informed of the date of the appeal hearing which will normally take place within 10 working days of the submission of the appeal. At least 5 working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the employee of their right to be accompanied by a TU representative or workplace colleague.

The appeal will normally be heard and determined by a manager equivalent or senior to the individual who conducted the previous meeting supported by and with advice from HR. The manager should not previously have been involved in the specific process, so that an independent review of the decision can be made.

Following the meeting, the appeal manager should write to the employee notifying them of their decision usually within 5 working days of the meeting. The appeal manager may reject and confirm the relevant absence review point stage or uphold the appeal and overturn the decision returning the employee to their relevant stage of the absence review process for the remainder of the monitoring period. The decision of the appeal manager is final.

11.2 Appeals against Dismissal

Appeals against dismissal should be sent to the Head of HR within 5 working days of receiving written confirmation of the decision to dismiss. Should the individual require additional time to submit an appeal, then they may make a request to HR, for a reasonable extension.

An appeal can be lodged by submitting the appeal form and must include the grounds upon which the appeal is based.

In exceptional circumstances, or due to the nature of the absence, the matter of appeal against dismissal may be considered without a formal interview provided the OH confirm that the employee is unable to attend.

Appeals against dismissal are sent to the Absence Dismissal Appeal Board (ADAB), comprised of the Head of HR (or nominee) who will act as chairperson, together with two senior managers from out-with the direct line management chain of the employee.

The employee will be informed of the date of the appeal meeting which will normally take place within 10 working days of the submission of the appeal. At least 5 working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the employee of their right to be accompanied by a TU representative or workplace colleague.

The ADAB may:

- Reject the appeal and confirm the dismissal decision,
- Uphold the appeal and overturn the dismissal decision. Note that in these circumstances the employee will remain on stage 2 of the process and a further 12-month monitoring period applied,
- Defer the decision, from the date of the ADAB, by a period not exceeding 13 weeks, to obtain further medical advice.

The appeal will be considered and a written decision given which will include reasons for that decision. Normally the employee will receive the decision of the ADAB usually within 5 working days.

If the appeal is rejected and the dismissal is confirmed, the case will be passed to the Head of HR or their nominee to issue the final letter confirming dismissal to the employee.

The decision of the ADAB is final.

11.3 Civil Service Appeal Board

Following exhaustion of the SPS internal appeals procedure, eligible employees may exercise their right to appeal to the Civil Service Appeal Board (CSAB) on the level of compensation awarded. Appeals to the CSAB must be lodged within 3 months of the effective date of dismissal from employment.

11.4 Other Appeal Considerations

Employees may not raise a grievance where a right of appeal exists under this or any other SPS policy or procedure.

The appeal process should continue alongside any ongoing action under the policy. The appeal decision is final.

12.0 Occupational Health and Employee Assistance Programme

12.1 Occupational Health (OH) Referral

An employee may be referred to OH at any time subject to the provisions of the Access to Medical Reports Act 1988. Particularly where:

- An employee who notifies their line manager that they have been diagnosed with a health condition or disability. This decision may be taken following discussions with HR and OH.
- It is indicated that an employee is likely to be absent from work for a continuous period.
- The reason for the absence is mental health related or musculoskeletal in nature. The line manager should discuss the referral with HR who will liaise with OH, if necessary, to determine whether early referral is appropriate.

The purpose of an OH referral is to obtain a medical opinion to assist managers to determine the most appropriate action taking into account the interests of the SPS and the employee.

Although a referral to OH is a key element of the policy, a decision not to refer or to defer a referral may be appropriate in certain circumstances.

A referral to OH should be made throughout the informal and formal SPS absence review process as deemed necessary by the SPS to ensure the most up to date medical information is received and will always be made prior to convening a capability assessment meeting (obtained within the last two months).

Line managers via HR should provide OH with relevant employee details including the individual's sickness absence record, a job description together with any information provided by the employee and / or their GP. OH should be asked to provide an opinion on a number of specific issues including but not necessarily limited to the following:

- The likely duration of the absence.
- Whether or not an underlying health condition exists.
- The possibility of a recurrence of the absence reason / medical condition.
- Whether the Equality Act is likely to apply, whether there are reasonable adjustments (see section 13) that should be considered and the nature of those adjustments.
- The nature of any possible alternative employment that could be offered, if relevant.

In certain circumstances, it may be appropriate for OH to contact the employees GP or specialist for further information relating to their period of absence.

12.2 Employee Assistance Programme (EAP)

The SPS contracts on an annual basis the services of a fully independent and confidential counselling service which can be accessed by any employee on a self-referral basis or through HR if preferred.

Face-to-face counselling is available for a range of issues including stress, family or relationship problems, harassment at work, bereavement, anxiety and depression, post-traumatic stress, and alcohol and drug problems. A free confidential 24-hour helpline is available.

For absences due to psychological conditions, line managers should normally remind employees of the EAP support services available and the routes to make contact.

Periods of absence, can lead to anxiety about health, returning to work and finances. Therefore, it will often be appropriate to bring the EAP service to employee's attention even when the absence is not related to mental health.

In cases of absence related to allegations of workplace bullying and harassment, the employee should be reminded of the EAP contact details and referred to other relevant SPS policies.

In circumstances in which employees consent to EAP progress reports being submitted to management, the line manager will meet with the employee to discuss the content of the report.

13.0 Employees with Disabilities

13.1 Reasonable Adjustments

The SPS is fully committed to supporting any employee with a disability and the Equality Act places a legal obligation on the SPS to consider reasonable adjustments to ensure that disabled people are not disadvantaged by our policies and processes.

Under the Equality Act, a person is considered to have a disability if they have a physical or mental impairment that has a 'substantial' and 'long-term' negative effect on their ability to do normal daily activities.

Any medical advice provided by OH indicating that an employee has a disability will be taken into account when supporting employees to improve and maintain their attendance at work. If possible and required, reasonable adjustments will be made which may include temporary or permanent adjustment to duties, relaxation of SPS absence review points, a search for alternative employment and phased return etc.

The level of reasonable adjustments required to support an employee with a disability will be determined on a case-by-case basis, and the line manager should obtain advice from the employee, HR, TU representative and where appropriate OH.

In circumstances where all possible reasonable adjustments have been discussed, and made, but regular and persistent absence is having a detrimental effect on service delivery, the case will be reviewed under this policy and if appropriate, the case may be managed under the attendance review process.

13.2 Disability Leave

A Disability Leave policy is currently under review which will enable paid time away from work for pre-planned appointments or treatments, related to an employee's disability.

14.0 Further Information

14.1 Pregnancy Related Absences

For the purposes of determining whether or not an employee should progress to the informal or formal stage of the absence review process, absences directly related to pregnancy will not count towards absence review points.

In these circumstances line managers are encouraged to discuss any supportive measures that can be put in place to support attendance at work.

Pregnant employees have the statutory right not to be unreasonably refused paid time off work to attend antenatal appointments where the employee's attendance has been recommended by a registered medical practitioner, midwife or nurse. Paid time off in such circumstances will automatically be granted. Please see Maternity and Parenting policy for further guidance.

14.2 Terminal Illness

Line managers should be aware of the need to handle cases of terminal and potential terminal illness with great sensitivity. Where an employee is diagnosed with a terminal illness, the options available will be discussed at the appropriate time taking into account their individual circumstances.

Ill health retirement, where appropriate will be considered as an option by mutual agreement based on medical opinion and potential superannuation benefits. Advice in all cases should be obtained from HR and OH where necessary.

14.3 Work-related Ill Health or Injury

Where an employee's absence or injury has been caused by work it must be reported as soon as possible following the SPS's accident reporting procedures which are contained within the Health and Safety policy. Further advice and support should be obtained from HR or the Health and Safety team, as required.

Any sick absence, or subsequent treatment, relating to an injury, disease or condition occurring or contracted in the workplace which satisfy the qualifying conditions for injury at work contained in the Civil Service Pensions Scheme, although counting toward sick absence records, will not count towards the calculation of SPS absence review points.

Any sick absence, or subsequent treatment, which satisfy the qualifying conditions relating to an assault in the workplace, although counting toward sick absence records, will not count towards the calculation of SPS absence review points as per the Civil Service Management Code.

Where it is identified by OH that an employee is unable to provide regular and effective service and / or fulfil their full contractual role from a health perspective, then a capability assessment meeting should be convened.

14.4 Hospital / Medical / Dental Appointments

Subject to the needs of the SPS, line managers will be sympathetic to requests for paid time off to attend hospital, doctors and dental appointments during work time where these cannot be arranged outside of working hours.

In these circumstances, the absence will be debited against TOIL or flexi time. Employees on all-hours worked contracts will make up the time taken for the appointment, as will staff employed with contractual overtime.

Where possible, employees should attend such appointments in their own time. If they are unable to do so, they should try to minimise any disruption to SPS, for example by attending appointments at the beginning or end of the day. The employee should give their line manager as much notice as possible and provide evidence of their appointment time, if requested.

15.0 Associated Procedures

The SPS recognises that the management of attendance needs to be part of a wider approach; therefore, it has a number of associated policies, procedures and guidance documents, which are available.

Any employee who feels aggrieved at the way their sickness absence has been dealt with may invoke the SPS's Grievance Procedure or Dignity at Work policy, although the employee may not raise a grievance related to the absence review process where a right of appeal exists under this policy.

Where an employee or manager deliberately or consistently abuses policy guidelines then, depending on the circumstances, this may be dealt with under the Performance Improvement policy or Code of Conduct policy.

The SPS may determine that issues will be considered concurrently or under an alternative procedure where it considers it appropriate to do so.

This policy should be read in conjunction with the Employee Wellbeing policy as collectively they identify the mechanisms through which the SPS will seek to maximise attendance by helping employees maintain health and wellbeing in the workplace.

Additionally, the SPS has other policies in place to deal with time off work for personal reasons, such as the annual leave, special leave, maternity and parenting, transgender and shared parental leave

Further Information:

The SPS recognises that from time to time employees may have questions or concerns relating to Attendance Management. In certain situations, employees' rights and obligations regarding Attendance Management may change. In these circumstances the SPS will abide by any statutory obligations.

The SPS wishes to encourage open discussion with employees to ensure that questions and problems can be resolved as quickly as possible. Employees are encouraged to seek clarification on any issues with an appropriate manager in the first instance.

Sustainability

Improving our environmental performance and doing things in a more sustainable way should be seen as integral to our core business practices.

In line with the SPS Sustainable Policy and to demonstrate compliance with the Scottish Government's commitment to improving environmental and sustainable development performance, please be mindful if printing this document – keeping paper usage to a minimum (print only version), printing on both sides, and recycling.

Equality Statement

The SPS is an equal opportunities employer where all employees are treated with dignity and respect. We are fully committed to equality, diversity and human rights and to ensuring our culture, working environment, policies, processes and practices are free from bias. This policy applies to all employees regardless of protected characteristics, and, subject to any eligibility criteria, length of service, grade, working pattern or operational status.

GDPR

This Policy has been subject to a Data Protection Impact Assessment to ensure compliance with GDPR.

Inclusive Communications

It is our ambition to ensure that SPS documents are readable, accessible and engaging for staff. In formatting this document, good practice principles around engagement and inclusive communications have been adhered to.

If you require this document in an alternative format, please contact Human Resources.

Review and Monitoring

This policy will be reviewed every three years or sooner where applicable to reflect changing business and legislative requirements.

Human Resources Policy and Guidance in SPS

SPS policies take into account current legislation, rules, regulations and best practice guidance from a range of professional and public bodies, including the following:



UK Civil
Service
Management
Code



UK Legislation



EU
Legislation



ACAS



CIPD Best
Practice