



ABSENCE MONITORING BY EMPLOYERS

GUIDANCE FROM THE NATIONAL UNION OF TEACHERS

This document sets out updated NUT guidance on "absence monitoring" or "attendance management" procedures in schools. It outlines recent developments which have encouraged the adoption and use of these procedures, including guidance issued by the DfEE (as it was at the time) and National Employers. It supersedes earlier NUT guidance published in January 1997.

RECENT DEVELOPMENTS

The Government has, since 1998, pursued various initiatives to reduce absence rates across the whole of the public sector. DfEE Circular 4/99, "Physical and Mental Fitness to Teach", issued in May 1999, included advice on the importance of absence monitoring procedures. David Blunkett subsequently wrote to all schools in May 2000 setting out targets for reduction of teachers' absence rates by 20 per cent by the end of 2001 and a further 10 per cent by the end of 2002 and enclosing a DfEE checklist on absence monitoring procedures. Further DfEE guidelines intended primarily for LEA occupational health advisers were published in June 2000. The National Employers' Organisation for School Teachers also published guidance on absence monitoring in December 1999 which includes examples taken from various LEAs' procedures.

In January 1997, when the NUT first published guidance on this area, only a minority of LEAs had adopted such procedures. Most LEAs, including Gloucestershire, have now introduced procedures.

NUT POSITION WITH REGARD TO ABSENCE MONITORING PROCEDURES

The NUT accepts that employees should not be permitted to abuse sick pay provisions and take unjustified absence from work. Such absence can have a detrimental impact upon those staff who are at work, by increasing the burden of cover but also by disrupting the co-operation and team-working essential for proper delivery of pupils' education. The NUT accepts, therefore, that in those rare cases where teachers are found to be abusing sickness arrangements then disciplinary action can be justified.

The NUT also agrees that there is a prima facie argument that such procedures have a potential value to employees by assisting employers in discharging their responsibilities for health, safety and welfare.

Such procedures might, for example, provide information on employee health and on such matters as the extent and effects of excessive workload and consequent levels of teacher stress. In addition, they might bolster the availability and effectiveness of employers' occupational health services.

The NUT's fundamental position, however, continues to be that there is no good case for the introduction of absence monitoring procedures in schools and that in practice such procedures are often found to have major drawbacks for employees. The NUT has taken this position for the following reasons in particular.

- There is no evidence that widespread abuse of sick leave arrangements is occurring in schools. Absence levels of teachers are lower than absence levels of local authority white collar and manual staff despite the fact that teachers are particularly prone to pick up infections from their pupils.
- Absence monitoring procedures can cause considerable anxiety and stress to absent staff, which may in some cases lead to further periods of absence, and may also lead to problems of "presenteeism" where sick teachers attend work when they should not do so, teaching less effectively and potentially spreading illness among colleagues and pupils.
- Operation of such procedures involves a considerable amount of form filling, record keeping and interviewing by head teachers and other managers which might be better spent on more meaningful work.

- Procedures are frequently operated in a mechanistic or unsympathetic fashion which leads to unnecessary action being instituted in situations where teachers' absence is known to be for genuine reasons and where it is known they will in due course return to their duties.

The NUT believes that LEAs which operate such procedures should monitor absence data in order to develop occupational strategies to tackle underlying causes of teacher absence. Where absence levels are significantly higher in some schools than others, LEAs should seek to ascertain the causes for such absence levels which may be traceable to factors such as management style, high pupil-contact ratios or excessive paperwork requiring other forms of action.

STAGES AND FEATURES OF ABSENCE MONITORING PROCEDURES

Procedures will set down details of sickness absence reporting requirements for all absences and will often include provision for informal return to work interviews after every absence.

The formal stages of procedures will commence when absence levels begin to cause concern. In many cases this will arise when a particular "trigger point" has been reached at which the procedure requires head teachers to institute formal review of the teacher's absence. "Trigger points" may typically be a certain number of days' absence, or a certain number of periods of absence over a set period, or a combination of both. Some procedures may not, however, include a specified trigger mechanism. Formal absence monitoring interviews will be held between the teacher and the head teacher or other designated senior member of staff at which the reasons for absence will be discussed.

Procedures usually distinguish, in terms of the action to be taken following such interviews, between cases where employees are suspected of unjustified absence and cases where absence is accepted to be genuine (whether frequent intermittent absence or long term absence).

Where an employee is suspected of unjustified absence, procedures will generally provide for action to be taken according to the terms of the disciplinary procedure. Where absence is accepted to be genuinely for reasons of sickness, procedures will usually provide for the employee's absences to be monitored over a specified further period and, where necessary, for further medical evidence to be obtained. Following this a further interview will usually be held to consider the case. Subsequent action involving the possibility of dismissal will be taken either according to the terms of any ill-health capability procedure or of the absence monitoring procedure itself.

Whatever procedure is followed, this must be subject to general principles of fairness such as are set out in the ACAS Code of Practice on Disciplinary and Grievance Procedures. The Disability Discrimination Act 1996 also has an over-arching effect on procedures and practice in relation to teacher with disabilities or conditions which may be defined as disabilities under the terms of that Act.

Policy Statements

- **DfEE and National Employers' Guidance:** The National Employers recommend that LEA procedures should include a policy statement which sets out the rationale for the establishment of the procedure and the way in which its provisions should be implemented.
- **NUT Policy:** Such statements should include:
 - a recognition of the employer's legal responsibility to ensure, so far as is reasonably practicable, the health, safety and welfare at work of its employees;
 - a commitment to collect data centrally on the levels and causes of sickness absence and to monitor this data in such a way as to enable the employer to take effective steps to promote employees health, safety and welfare;
 - a commitment to the establishment and provision of an effective occupational health service for employees which will be available to individual employees following their own request as well as following referral by the employer;
 - a commitment to share this information with trade unions and to involve them in discussion on the occupational health of employees;

- a commitment to provide full support by LEA staff during the various stages of procedures, including attending and advising at any formal interviews held under the procedure;
- a commitment to provide necessary training for LEA staff and head teachers and other managers involved in the various stages of procedures.
- The policy statement should also undertake that the procedure will not take the place of any negotiated disciplinary or capability procedure and that cases would, once categorised by monitoring under the terms of the procedure, be subsequently dealt with under the separate appropriate procedure.
- Finally, the policy statement should make specific reference to the Disability Discrimination Act 1995 which may apply in cases of intermittent, short or long term absence involving disabilities or conditions which may be defined as disabilities under the terms of the Act.

Reporting Sickness Absence

- **DfEE and National Employers' Guidance:** Employees should be aware of procedures for reporting, including who they should contact and how much information to provide, and also be aware of the importance of early contact with the school.
- **NUT Policy:** Provisions on reporting sickness absence should be clear and reasonable. They should recognise the possibility that circumstances may arise in which employees illness may of itself create difficulty for them in reporting absence.
- Provisions on further subsequent reporting and submission of medical certificates by the teacher during a period of absence should be consistent with the requirements for submission of medical certificates set out in the Burgundy Book sick pay scheme unless it has been decided at a review meeting that more frequent reporting or submission of certificates is required (see below).
- Where absences are reported to be due to work-related injury, this should be recorded at the time by the school.
- All information given by the teacher should be treated as strictly confidential.

Contact with Absent Teachers

- **DfEE and National Employers' Guidance:** Regular contact should be maintained between the head teacher and absent teachers by telephone or where appropriate by visiting teachers at home.
- **NUT Policy:** While it is courteous for the head teacher to enquire about a teacher's health, head teachers should seek to ensure that such teachers do not feel that they are being harassed or threatened. Contact with absent teachers should only be necessary in order to discuss the reason for absence and the anticipated date of return. Where a sickness certificate has been received indicating the reason for absence and the anticipated date of return then there should be no further need for contact on these issues. Teachers should not be required to maintain contact by the school other than via the appropriate reporting requirements. While absent teachers may wish to keep in regular contact with the school in order to remain informed about matters at the school or to avoid feelings of isolation, this should be a matter for the teachers concerned. In some instances, absent teachers may wish to keep in contact through a colleague or their NUT representative.
- On no account should head teachers seek to direct absent teachers to set work for classes, prepare reports or undertake other work when they are absent on sickness grounds.

Informal Return to Work Interviews

- **DfEE and National Employers' Guidance:** Head teachers should hold automatic "return to work interviews" with teachers on their return to work after sickness absence.
- **NUT Policy:** While it is again courteous for head teacher or line manager to enquire about teachers' health on their return to work after sickness absence, automatic return to work interviews are not necessary. Such interviews will take up valuable time and will be unnecessary in many cases where the

absence has been for a short period or for a known condition. In addition, such interviews are likely to cause unnecessary anxiety for some teachers and can therefore be counter-productive.

- Where such interviews do take place, they should be aimed as much at updating the teacher about events in the school during their absence as at seeking information about the absence. They should always be pre-arranged in order that teachers involved may prepare their thoughts. Teachers suffering from conditions of an intimate nature are likely to feel particularly intimidated or embarrassed by such discussions; in cases where a teacher would prefer to discuss the issue with another appropriate member of staff such as a member of the same sex, full consideration should be given to this.

Trigger Points

- **DfEE and National Employers' Guidance:** The DfEE states that schools should take steps to investigate cases of patterns of short term absence or frequent or long term absence but does not set out specific advice on use of "trigger points" to identify cases of concern.
- The National Employers' guidance, however, sets out the following advice on trigger points for absence levels at which the formal stages of procedures should be invoked. This may be helpful for reference where lower trigger points are encountered in LEA or school policies.
 - For short term absence, in any one term: three periods of uncertified absence; or three periods of self-certified absence; or a combination of the above on at least three occasions; or unacceptable patterns of absence for example regular Monday or Friday absence.
 - For long term absence, where a member of staff has been absent for 13 weeks continuously or it is known that he/she is likely to be absent for such a period due to illness. However, in Gloucestershire employees absent continuously for more than 9 weeks can expect to be contacted by the Occupational Health Unit and asked to attend for a medical examination.
- The National Employers' guidance also advises with regard to trigger points that "caution is needed in their application" and that "it is equally important that a staff member's personal circumstances and record are taken into account when considering appropriate action".
- **NUT Policy:** Trigger points should not specify levels of absence which are so low that they do not constitute genuine grounds for concern. The National Employers guidelines set out above may be of use in assessing trigger points.
- Trigger points should not be operated in a mechanistic fashion which leads to unnecessary action. Such matters as previous sickness record, known medical condition, circumstances of the post etc should always be taken into account before any action is instituted. Absences which are for reasons other than sickness (i.e. absences which are leave of absence rather than sick leave) and absences due to injury at work should be disregarded for absence monitoring purposes. Rigid enforcement of trigger points would also be inappropriate where teachers are absent for medical reasons which cannot recur e.g. hysterectomy or are unlikely to recur e.g. broken limbs.
- Action should not, therefore, be taken automatically whenever trigger points are reached. Instead, flexibility should exist to determine whether, in the circumstances of each case, action should be taken, recognising that the fact that absence has reached a trigger point does not of itself mean that the level of absence is unacceptable. Trigger points should be used to trigger consideration of the situation rather than action itself.
- More vaguely defined terms for trigger points such as "several" or "regular" absence are not necessarily more acceptable than those which use more definite trigger points since they may lead to inconsistency both within and between schools. The scope for inconsistency can be best achieved by means of a commitment by the LEA to full involvement at all stages of procedures in an active advisory role.
- Part time teachers should be aware of how trigger points apply to them and these should not place them at a disadvantage in comparison to full time teachers.

Formal Stages: Alleged Unjustified Absence and Sickness Absence

- **DfEE and National Employers' Guidance:** The DfEE and National Employers both advise formal investigation where matters give cause for concern.
- Both the DfEE and National Employers state that where absence is deemed to be unjustified, this is a conduct issue to be dealt with under disciplinary procedures. The National Employers advise that genuine sickness absence "should not be approached within a disciplinary context" but should be dealt with under a separate procedure which "places emphasis upon cautions rather than sanctions, review periods rather than live warnings and consultation rather than hearings".
- **NUT Policy:** The purpose of the initial formal interview should be investigation of the reasons for absence and exploration of means of assisting the teacher's return to work. It should include the opportunity for the teacher to make a statement about the situation. It should also incorporate offer of any advice or counselling which the teacher wishes to accept and exploration of any other appropriate means of assisting return to work. Teachers should always be given the opportunity to be accompanied by a trade union representative at such interviews if they so wish.
- Any period for monitoring which is established and any date for a further review meeting should be recorded in writing and a copy given to the teacher.
- Where a teacher's absence is, after the initial interview or after further monitoring or investigation, regarded as unjustified as not being on grounds of genuine sickness or due to breach of procedures and it is decided that further action is to be taken, the case should be referred to the disciplinary procedure and dealt with under its provisions.
- In such cases, where absence is traced to domestic reasons then consideration should be given to whether such absence would have been permitted under leave of absence arrangements, including the statutory right to unpaid time off for urgent family reasons which includes the right not to suffer detriment for taking such time off. Consideration should also be given to whether such leave of absence would be appropriate in any such future circumstances.
- Where a teacher's absence is accepted to be due to genuine sickness but is likely to continue due to chronic or long term medical problems, it should not be dealt with via the disciplinary procedure. Instead it should be dealt with under a separate procedure as advised by the National Employers and in a way which aims initially at supporting the teacher to return to work or making other adjustments necessary to accommodate the teacher's state of health. Where an acceptable ill health capability procedure exists, then it would be appropriate for this procedure to be used. In Gloucestershire the LEA reviews cases on a case-by-case basis and deals with each on the basis of its merits. At all stages the LEA advises teachers to contact their Unions and to be accompanied by their Union representative at all interviews and review meetings. Where an absence monitoring procedure is used to deal with cases, then its terms should be no less favourable than any ill health capability procedure in terms of support for the teacher concerned.
- Where teachers have terminal illnesses, their situation should be treated with the greatest sensitivity and sympathy and they should never be the subject of absence monitoring procedures.

Further Action regarding Sickness Absence: Monitoring/Review, Medical Evidence and Medical Referral, Return to Work and Ending Employment

- **DfEE and National Employers' Guidance:** The National Employers emphasise use of monitoring/review periods and of occupational health services. For frequent short term absence, there should be time limits for improvement. For long term absence, there should be consultation with the teacher and the LEA; and consideration of the medical prognosis and the impact on the school. The National Employers' guidance also give detailed advice on steps up to and including dismissal of teachers on ill-health grounds and states that this need not await the exhaustion of occupational sick pay. It also, however, includes examples of LEAs' assistance with phased return to work and other means of assisting return.
- **NUT Policy:** Monitoring/review periods should not be set at periods of less than one term. Continuing absence during the monitoring/review period should not automatically trigger further action. Review

meetings at the end of these periods should again consider all the relevant factors before any judgement is formed.

- In cases where frequent short term absence is being monitored, the employer should meet the cost of any medical certificates which are required during this period more frequently or earlier than provided for in the Burgundy Book sick pay scheme, as advised in the National Employers' guidance.
- For frequent short term absences which are due to genuine ill-health, specific "targets" for improvement in attendance are inappropriate. Consideration should be given to whether and how the employee's ill-health can be accommodated within the school.
- In cases where either frequent short term absence or long term absence is being monitored, any further medical evidence required should be sought via LEA occupational health services. Employees should be advised of the provisions of the Access to Medical Records Act 1988 which permits employees to decline to allow employers to see medical records held by their doctor and to request copies of any medical report from their doctor before it is sent to the employer. Employees should also be permitted to see any medical reports from the LEA occupational health service provided to the employer.
- Where long term absences are being monitored, procedures should recognise the provisions of the sick pay scheme including the discretion available to LEAs to extend periods of sick leave on full and half pay.
- For long term absences arising out of any form of psychiatric disorder, including stress, the monitoring mechanism to ensure fitness to return to work set out in DfEE Circular 4/99 should be applied.
- LEA occupational health services should be responsible for advice with regard to employees who have been suffering from chronic conditions or long term illness. As noted earlier, the primary emphasis should be upon means of assisting the teacher to return to work or making other adjustments necessary to accommodate the teacher's state of health.
- Where employees will at a future stage be able to return to work after long term absence, their jobs should be kept open for their return. Termination of employment should only be considered, at the exhaustion of occupational sick pay, where employees will not be able to return to work and early retirement on ill-health grounds will be available.
- LEAs should provide assistance in facilitating a phased return to work for teachers who have been absent on a long term basis. Such assistance would form part of those "reasonable adjustments" which must be considered for teachers who fall within the terms of the Disability Discrimination Act and would be good practice in other cases. Consideration should, in particular, be given to necessary financial support to schools in order to assist with salary costs for phased return to work.
- Where an application for medical ill-health retirement is made, any procedures towards dismissal should be suspended. Where ill-health retirement is granted, the employer will need to dismiss the employee. Notice in accordance with length of service is appropriate in such cases.

Miscellaneous

- Any absence monitoring procedure which seeks to replace a disciplinary or capability procedure should include an appeals process during the formal stages of the procedure.
- Teachers who are unhappy about the way in which they are being treated during the informal stage of the procedure should be entitled to invoke the grievance procedure.
- Provisions suggesting that procedures may be applied according to a shorter timetable in schools in special measures should be strongly opposed, particularly in view of the likely higher incidence of stress-related conditions among staff in such schools.
- Procedures should recognise that where teachers are unwilling to discuss their condition with a particular individual, such as the head teacher, it does not necessarily mean that the conditions are not genuine. Teachers should be entitled to discuss their condition with an appropriate third party if they do not want to do so with the head teacher or line manager.

- Teachers may, in many such cases, welcome the opportunity to discuss their health situation with the occupational health service before their case is automatically referred under the procedure.

FURTHER REFERENCES: DfEE AND NATIONAL EMPLOYERS' GUIDANCE

DfEE Circular 4/99 on "Physical and Mental Fitness to Teach of Teachers and of Entrants to Initial Teacher Training", and the DfEE's guidelines for occupational health advisers can both be obtained free of charge from DfEE Publications on 0845 6022260.

The National Employers' guidance document, "Monitoring and Management of Sickness Absence in Schools", can be obtained from the National Employers' Organisation on 0207 296 6726.

National Union of Teachers
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