

Attendance Management Policy and Procedures

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1. Introduction

This document relates to the management of attendance within BEAT.

2. Absence Recording

2.1. Industrial Injury

Where an employee has reported an accident or injury at work in accordance with BEAT's reporting procedure and is absent due to an industrial accident or disease, the employee should be reminded to submit a medical certificate immediately so that the period of absence may be treated as an industrial injury.

2.2. Medical Suspension

Where an employee reports for work but the manager has good reason to question their fitness for work, the Chief Executive Officer should consider whether medical suspension is appropriate pending a report from BEAT's Occupational Health Physician (See Section 10). Medical suspension should only take place with the agreement of the Chief Executive or Trustees as appropriate. The employee should receive full contractual pay pending receipt of the medical report and a decision on their fitness for work.

3. Stress and Mental Health Problems

Stress and mental health problems are common causes of sickness absence and particularly long-term sickness.

BEAT believes in dealing with stress positively through a proactive policy and accompanying training and support. In managing staff attendance at work managers should be aware of how stress can trigger or exacerbate sickness absence. Under the Health and Safety at Work Act 1974, managers have a duty of care to protect the physical and mental health of their staff at work. Recent Employment Tribunal cases have established that stress at work can be a disability, as defined by the Disability Discrimination Act 1995.

Mental health problems can be difficult to diagnose. They may be caused by stress, by bullying or by depression brought on by a combination of factors affecting an employee at work and at home.

A counsellor can help to explore the deeper emotional problems associated with mental health. Access to a counselling service can be obtained through the Occupational Health Service.

4. Absence Due to Cancer

The Equality Act 2010 protects anyone who has, or has had, a disability. When a person is diagnosed with cancer, he or she is automatically classified as disabled for the purposes of the Equality Act. This protection from discrimination continues even when there is no longer any evidence of the cancer. Thus, if the cancer has been successfully treated, employees will continue to be protected against discrimination. This means that managers should seek advice from the Chief Executive Officer where they are managing an employee's attendance, particularly in regard to making

reasonable adjustments.

5. Medical/Dental Appointments

When making appointments employees are expected to try to book them so as to avoid taking time off work, booking appointments at the beginning or end of the working day. Reasonable time off with pay will be granted for visits to the doctor, hospital, or dentist, when surgeries are not available outside of working hours. Managers should ask to see an appointment card or letter as proof of the appointment.

Whilst reasonable time off to attend medical appointments does not form part of an employee's sickness record, managers may request that frequent and regular appointments be partially accommodated through alternative arrangements such as annual leave, flexi-leave or working back hours. Managers should monitor unreasonable time off as it could form a pattern of absence that causes concern. If a whole day is required, the day will be classified as sickness for recording purposes.

6. Extended Periods of Treatment

Employees who need to undergo extended periods of treatment should inform their manager of the situation in advance and produce appointment cards. Employees are expected to try to arrange appointments outside of their normal working hours, taking annual leave or flexi leave. Managers may use their discretion in exceptional circumstances in allowing the employee to record the appointment as sick leave. Employees who are required to attend regular appointments as part of their treatment for a progressive illness should record all appointments as sick leave. Employees with disabilities who need to attend medical appointments should record the absence as sick leave.

7. Cosmetic Surgery

Paid leave will not be available to employees who undergo cosmetic surgery, or cosmetic dental treatment. Appointments falling into this category will be taken as annual, flexi leave or unpaid leave. In situations where an employee is recommended to undergo cosmetic surgery for physiological reasons, for example following an assault or a major operation, managers should use their discretion in allowing the employee to record the treatment as sick leave.

8. Fertility Treatment

BEAT recognises that fertility treatment, although not a sickness issue, is a health issue. Undergoing treatment is stressful and emotionally demanding and therefore managers are strongly advised to deal with such cases in a sensitive and supportive manner. To support members of staff who are undergoing treatment BEAT will allow up to 5 days paid leave per year for investigations or treatment. These days may be taken as a block of 5 days or separately as half or full days as necessary. Any additional time off work should be taken as annual leave or flexi leave. Partners will also be entitled to this leave.

To be eligible for leave for fertility treatment, staff must have been continuously

employed by BEAT for at least one year. Employees who require leave for fertility treatment should advise their line manager or the Chief Executive Officer to do so on their behalf. A letter from the hospital/clinic where they are being treated should be provided stating the expected week and the duration of the investigations or treatment. Request for leave for fertility treatment must be treated in the strictest confidence.

9. Obtaining Medical Advice

Medical referral is very important and required in most cases of long- term absence. This should take place at the earliest reasonable opportunity, particularly on notification of absences relating to stress and musculoskeletal absences. The following questions may be asked in a medical referral:

- What is the nature of the illness?
- What is the expected date of return?
- What duties will the employee be able to undertake on their return to work?
- What (if any) future treatment is envisaged and over what time scale?
- What is the likelihood of a full return to work?
- Whether there is a need for temporary measures as part of a phased return to work? For example, time on light duties or reduced hours.
- Will the employee have a residual disability? If so, will this be permanent or temporary. If temporary, for how long?
- Will the employee be able to carry out their duties effectively and on a regular basis?
- Whether the employee is disabled for the purpose of the Disability Discrimination Act (DDA)?
- Where the employee is or may be disabled for the purpose of the DDA, what reasonable adjustments to work practices, premises or equipment may be appropriate?
- Should the employee be redeployed either permanently or temporarily on medical grounds, and if so what type of alternative work is appropriate?
- Should the employee be recommended for retirement on medical grounds?

10. The Role of the Occupational Health Physician

Decision making about an employee's capability to carry out their duties is a management responsibility; however, managers may need access to effective medical advice from an occupational health consultant. BEAT will employ the services of an independent occupational health consultant on an as and when required basis.

Information provided by the occupational health consultant will be used by BEAT to make an informed decision about an employee's employment with BEAT. The role of the occupational health consultant is to advise BEAT on any clinical issues affecting

an employee's performance and attendance. Where a manager is concerned about the effect of an employee's health on their work and attendance at work, the employee will be referred to the occupational health consultant. Circumstances where advice may be sought are:

- If an employee's physical or mental health gives cause for concern
- Where an employee's health may put others at risk
- If an employee is absent excessively (either self-certificated or medically certificated)
- Where there is suspected abuse of self-certification
- In cases of long-term absence
- Where there is a need for advice on permanent or temporary adjustments including the suitability for redeployment, which would enable the employee to return to work
- Where there is a need to identify if there is a underlying medical condition or disability
- Where an employee raises concerns about their health and the working environment
- Where there is a need for further advice and information about an employee's known medical condition
- In cases where ill health retirement is being considered.

BEAT may refer an employee to the occupational health consultant for additional information and advice at any stage within these procedures.

11. Entitlement to Sick Pay

11.1. Teachers

(Extract from BEAT Teachers' Contract of Employment March 2020)

You must notify your line manager as soon as possible on the day in question if you are unable through illness or injury to attend work. If you are absent for up to seven calendar days, you must complete a self-certification form. If you are absent into an eighth continuous day of absence, you must provide a statement of fitness for work from a registered medical practitioner, stating the reason for your absence and how long you are advised to refrain from work. Continued absence must similarly be covered.

Your entitlement to sickness payment in respect of any sick leave year (deemed to begin on 1st April and end on 31st March) will be in accordance with the information below, and full details of the sick pay provisions and notification requirements are available from the Trust. Sick pay is inclusive of statutory sick pay (SSP).

During 1 st year of service	25 working days full pay and, after completing 4 calendar months actual service, 50 working days half pay.
During 2 nd year of service	50 working days full pay and 50 working days half pay
During 3 rd year of service	75 working days full pay and 75 working days half pay
During 4 th and successive years of service	150 working days full pay, no period of half pay.

11.2. All other BEAT Employees

(Extract from BEAT Admin Staff' Contract of Employment March 2020)

You must notify your line manager as soon as possible on the day in question if you are unable through illness or injury to attend work. If you are absent for up to seven calendar days, you must complete a self-certification form. If you are absent into an eighth continuous day of absence, you must provide a statement of fitness for work from a registered medical practitioner, stating the reason for your absence and how long you are advised to refrain from work. Continued absence must similarly be covered.

Your entitlement to sickness payment will be in accordance with the information below, and full details of the sick pay provisions and notification requirements are available from the Trust. Sick pay is inclusive of statutory sick pay (SSP).

Occupational sick pay is dependent upon continuous service as follows:	
During first year	1 month's full pay and, after completing 4 months' service, 2 months' half pay
During second year	2 months' full pay, 2 months' half pay
During third year	4 months' full pay, 4 months' half pay
During fourth and fifth years	5 months' full pay, 5 months' half pay
After five years	6 months' full pay, 6 months' half pay

11.3. Extension of Sick Pay

In very exceptional circumstances, when an employee has been on long-term sick leave and their sick pay expires; the Trustees together with the Chief Executive Officer may agree an extension of sick pay for a specific period. This would normally

only be appropriate in very exceptional circumstances e.g., severe financial hardship.

12. Statutory Sick Pay

Statutory Sick Pay (SSP) is the sickness payment made by statute for employees over the age of 16 and whose earnings are at the level at which National Insurance (NI) contributions must be paid.

12.1. Eligibility

Employees whose earnings are at a level on which NI contributions must be paid will receive SSP when off sick for four or more consecutive working days.

SSP is payable from the 4th working day when the employee first becomes incapable of work unless this is within a linked period, and ends either when he or she returns to work or have used their entitlement that is at the end of 28 weeks. The period may end if one of the following occurs:

- The contract of employment ends
- The employee is detained in legal custody
- The employee is no longer considered to be sick by management
- The beginning of a disqualifying period because of pregnancy (eleven weeks before the expected week of confinement and running for a maximum eighteen weeks).

When an employee has more than one job, SSP is payable on each separate contract as is occupational sick pay.

12.2. Period of Incapacity for Work (PIW)

Incapacity for work for at least 4 consecutive days, (including Saturdays and Sundays) forms period of incapacity for work (PIW). This is the minimum amount of sickness absence, which counts for SSP.

Every day of the week is counted in calculating the PIW including Saturdays, Sundays and Bank Holidays.

12.3. Qualifying Days

Entitlement to SSP can only arise on a qualifying day. These are the days the employee concerned will normally be required to work. The first three qualifying days in a period of incapacity for work are known as waiting days for which SSP is not payable. Any work undertaken on the day the employee goes off sick does not count as a qualifying day. If an employee has unusual work patterns, it is possible to agree different qualifying days. In these circumstances, the Chief Executive Officer will be able to provide advice.

12.4. Linked Periods

Any two periods of absence from work, which are separated by a period of not more than eight weeks (56 days), will be treated as a linked period of incapacity for work. For SSP purposes these two absences will be regarded as one. For the second period of sickness the employee need not serve the waiting days before they are entitled to SSP.

12.5. SSP whilst abroad

Employees who fall sick outside the United Kingdom (UK) or who go outside the UK during a period of sickness, are entitled to statutory sick pay, provided that they satisfy all the relevant qualifying conditions. This extension of statutory sick pay entitlement applies to employees who are on holiday, those seeking treatment abroad and those sent temporarily to work overseas by their UK employer.

12.6. Payment

Payments of SSP are based on the employee's average gross earnings over the eight-week period immediately before the first day of absence. All payments made in the 8 calendar weeks must be included. If, on any of the paydays, the employee was not due any pay (e.g. due to an advance), the 'blank weeks' are still included in the calculation. This will only affect an employee's occupational sick pay when the average earnings fall below the level at which N.I. contributions must be paid because he/she will then not be entitled to SSP. SSP is treated like salary in that it will be subject to PAYE Income Tax and to National Insurance contributions. The Council's Sick Pay is a supplement to SSP. The scheme is intended to secure that during sickness absence an employee shall receive BEAT Sick Pay and SSP which together totals not more than the sum of their normal earnings. Where an employee is on half pay, SSP will be paid in addition to this, however this must not together total more than the sum of normal earnings.

12.7. Claiming Benefits

When an employee is near to exhausting their SSP entitlement the employee will be sent form SSP1 with the last Medical Certificate to be submitted to the Department of Work and Pensions to claim sickness benefit. The form SSP1 will also be given to employees who are not entitled to SSP.

12.8. Leavers

An employee who has been receiving SSP within 8 weeks of terminating their employment with BEAT to work for another employer will receive a completed form SSP1 (L) from the Payroll Section.

12.9. Exclusions from SSP

The employee cannot receive Statutory Sick Pay if, on the first day of the Period of Incapacity for Work (PIW);

- a) Their period of incapacity for work is within 8 weeks of receiving either Incapacity or Severe Disablement Benefit from the Department of Work and Pensions
- b) They have already been due 28 weeks SSP from their previous employer within the last 8 weeks
- c) Their average weekly earnings are below the level at which National Insurance contributions are payable
- d) Their contract of service is for a specific period of three months or less
- e) They are within the 'disqualifying period' related to pregnancy
- f) They are away from work because of a trade union dispute

- g) They are in legal custody
- h) They have not yet done any work.

Employees who do not qualify for SSP may be able to claim State Sickness Benefit from the Department of Work and Pensions. They will receive form SSP1 from HR and the last medical certificate. For these staff an amount equivalent to the current rate of sickness benefit will be deducted from their occupational sick pay irrespective of whether they are entitled to receive benefits.

13. Withholding of BEAT Sick Pay

BEAT sick pay may be stopped or withheld if the absence is not promptly reported to the line manager in line with prevailing arrangements for that employee. BEAT sick pay will not be payable when absence is due to illness or injury attributable to:

- Misconduct
- Participation in any activity or course of action which delays recovery or return to work

These issues may be dealt with under the Conduct Procedure. BEAT sick pay may also be withheld when absence is due to illness or injury caused by any of the following:

- Sport as a paid activity
- Undertaking paid work other than for BEAT.

BEAT sick pay may also be stopped if an individual fails:-

- to attend an Occupational Health appointment without reasonable explanation,
- to supply medical certification.

13.1. Failure to Return to Work

There may be circumstances where employees may remain absent, but management may consider that they are fit to return or may not have taken appropriate action to recover or return to work. If this is the case, a referral will be made to Occupational Health. The Occupational Health Physician, may, with the individual's consent, contact the employee's GP and if appropriate, a specialist to gather medical information and provide advice accordingly. If the advice is that an employee is fit to return to work, even if contrary to their own medical advice, they will need to meet with a manager to review the situation. Once these steps have been taken, if the manager concludes that he or she is fit to return to work, he or she should formally be asked to return. Failure to return at this point will result in the Chief Executive Officer withholding sick pay.

14. Accidents Involving a Third Party

Should an employee have an accident at any time, whether at work or elsewhere, which results in an absence from duty, the employee must report this. Whilst BEAT will continue to pay the salary due to an accident it is recoverable from the employee in the event of any compensation or payments received by the employee from other sources as a result of the accident.

15. Sickness and Annual Leave

15.1. Entitlement to Contractual Holiday

During any periods of unpaid sickness absence, the entitlement to accrue contractual holiday ceases. The entitlement to statutory holiday will continue to accrue, irrespective of the length of absence.

15.2. Sickness During Booked Holiday

Employees have the right to their full statutory holiday entitlement. Hence, if an employee is ill during a period of time that has been booked as holiday, the employee can ask for that period of holiday to be rescheduled. If it is not possible to reschedule that period of holiday during the existing holiday year the holiday entitlement can exceptionally be carried forward to the next holiday year. However, employees must follow the usual sickness absence procedure for the reporting of the sickness absence and, as in any sickness absence situation, further proof of the illness may be requested by BEAT if there are any suspicions that the reason for the absence is not acceptable. The employee will be regarded as having been on sick leave from the date of the Statement of Fitness to Work and not from the date of notification.

15.3. Payment in Lieu of Holiday on Contract Termination

If a contract is terminated due to ill health the employee will be paid in lieu of accrued holiday.

15.4. Annual Leave and Long-Term Sick

Employees on long-term sick leave at the end of the leave year may have effectively been denied the opportunity to take their leave. For that reason, any employee who has been on sick leave for the whole of the leave year is not prevented from carrying forward the whole of their unspent leave into the next leave year or beyond, if necessary. However, any employee returning from a spell of sick leave who has the opportunity of taking their annual holidays before the end of the leave year, but who fails to do so, is not permitted to roll over their entitlement into the following leave year. The effect is that he or she would lose their entitlement and not be paid in-lieu for any outstanding leave.

15.5. Taking Annual Leave instead of Reporting Sick

Annual Leave cannot be taken as an alternative to reporting absent as a result of ill health. This is a statutory requirement within the terms of the European Working Time Regulations.

16. Formal Absence Procedure - Trigger Points

16.1. Full Time Employees Trigger Points

The trigger points for entering the formal Absence Procedure, at Stage 1, are as follows:

- 4 or more absences of any duration in any 6-month period

And/or

- 10 or more working days absence in any 6-month period.

Individual trigger points should be set within the Improvement Notice at the formal Stage 1 and 2 meetings, based on the following:

- 3 or more absences of any duration in any 6-month period

And/or

- 10 or more working days absence in any 6-month period

NB The trigger points listed above are for full time employees only.

16.2. Part Time Employees Trigger Points.

Employees working less than full time hours have the trigger points adjusted accordingly, the table below refers.

Percentage of hours worked as compared to a full-time employee %	Stage 1 Periods of absence in any 6-month period	Stage 1 Absence duration in any 6-month period. In days DAYS	Stage 2 Periods of absence in any 6-month period	Stage 2 Absence duration in any 6-month period. In days DAYS
90-99	4	9 or more	3	9 or more
80-89	4	8 or more	3	8 or more
70-79	3	7 or more	3	7 or more
60-69	3	6 or more	2	6 or more
50-59	3	5 or more	2	5 or more
40-49	2	4 or more	2	4 or more
30-39	2	3 or more	1	3 or more
20-29	2	2 or more	1	2 or more
Below 20	2	2 or more	1	2 or more

17. Stage 1 Absence Meeting - Guidance

17.1. Background

Managers are required to monitor and analyse all sickness records to ensure all employees are treated consistently. Line managers who regularly monitor and act upon sickness information ensure that problems are identified and addressed at an early stage. Most problems can usually be dealt with informally with assistance being given to the employee where necessary. If an employee reaches one of the set trigger points and there is cause for concern, the employee should be called to attend a first formal meeting. Prior to arranging this, managers should ensure that informal attendance meetings have already taken place, such as return to work discussions, and that the pattern/level of absence warrants further action. Obtaining advice from BEAT's Occupational Health Physician should be considered if it has not been done so already. This stage of the process will enable the manager to:

- Detail all the absences and if required to investigate further the underlying reasons.
- Reiterate management concerns.
- Discuss the effect of the absence on performance.
- Discuss with the employee a strategy for increasing attendance.
- Objectively consider the employee's explanation(s).
- Decide whether to set targets and the timescale for review period.
- Explain BEAT's policy on attendance management.
- Focus on whether the employee can regularly and efficiently provide a service.
- Consider a further referral to the Occupational Health Physician.

Employees must be made to understand the effects of sickness absence on performance, the quality of service to the public and the added burden placed on colleagues. Any standards of acceptable attendance that are set must be clearly communicated. The individual must know where he or she stands. The consequences of what will happen if he or she fails to meet the targets set must be clearly explained to him or her.

17.2. Notification

Line Managers should ensure that the following points are all covered as part of the notification process:

- Notify the employee in writing of the absence meeting, clearly giving the reasons for it and a minimum of seven working days notice
- State that the level and / or pattern of absence is such that it is believed that the employee is no longer capable of performing their duties
- Notify the employee that he or she has the right to be accompanied by a recognised trade union representative or BEAT work colleague.

17.3. Non-Attendance at a Meeting.

If either the employee or their representative is unable to attend a properly notified meeting due to sickness or another substantial and valid reason, the meeting may be postponed and rearranged for within 10 working days of the original meeting date. If the employee is unable to attend this second re-arranged meeting, the meeting will be held in the employee's absence. However, employees have the option of submitting a written statement or requesting that their representative be allowed to present the case in their absence.

17.4. The Meeting

The purpose of an attendance meeting is to enable managers and employees to discuss the following:

The Manager	The Employee
<p>Detail absences</p> <p>Explain why absences are giving cause for concern</p> <p>Ascertain whether absence is being caused or aggravated by working conditions</p> <p>Discuss referral to Occupational Health</p> <p>Discuss the effect the absences are having on colleagues and on service delivery</p> <p>Discuss practical steps to reduce absence</p>	<p>Have an opportunity to comment</p> <p>Discuss any issues affecting their attendance record</p> <p>Discuss any relevant medical information</p>

Attendance meetings must be conducted sensitively and in confidence, a brief note of the meeting should be produced, with a copy given to the employee.

17.5. Absence caused or aggravated by working conditions

Where working conditions are or appear to be a contributory factor, managers should address the issues and offer the employee assistance in finding ways to improve their attendance / work performance. A referral to the Occupational Health Physician should be made to assist with this process.

17.6. Concluding the Meeting

At the end of the meeting managers should conclude that either:

- a) No further action is needed at this stage, or
- b) To issue a first written warning in the form of an 'Improvement Notice', see Appendix 1,
- c) If possible, the employee should be informed verbally of the outcome of the meeting. Confirmation correspondence should be sent to the employee within three working days.

17.7. Suitable Review Periods

A four-week review period for cases of long-term sickness and a review period of 3 to 6 months for cases of regular short-term absence are recommended as reasonable review periods.

17.8. Possible Outcomes following a Review Period

Possible Outcome	Action to be Taken	Points to Consider
Where the employee's attendance improves to the standard set out in the action plan and they have demonstrated their ability to maintain level of attendance.	No further action to be taken	If the level of attendance is subsequently not sustained, the manager should meet with the employee to determine the reason(s) and decide if further action is required.
If there is a partial improvement in attendance or there are good reasons as to why attendance has not improved.	Manager should consider continuing with the agreed monitoring arrangements for a further 3-6 month period.	Consider the long-term sickness record and whether there has been improvement followed by further poor attendance levels. The length of the review period should be sufficient to determine whether any further action should be taken.
If there is no improvement in attendance where it could have reasonably been expected.	Consideration should be given to issuing a Final Written Warning in the form of an Improvement Notice, see Appendix A. The manager should move to Stage 2, the formal hearing. It should be made clear to the employee that their attendance falls short of the standard required and that there is a requirement to improve attendance	Confirmation that Stage 1 has been satisfactorily completed before moving to Stage 2. The employee should be informed that their continued employment with BEAT might be at risk.

18. Stage 2 Absence Hearing - Guidance

18.1. Objective

The aim of this Hearing is to enable all parties to present their case for consideration and decision as to next steps. The employee should already have been informed at Stage 1 that this course of action would be taken if attendance did not improve within the agreed review period.

18.2. When a Hearing is not appropriate

On some occasions when the Occupational Health Physician has declared the employee permanently unfit for their job, and alternative employment cannot be found, ill health retirement should be considered before a formal hearing is convened.

18.3. Preparation for the Hearing

A manager who has the authority to dismiss will chair the hearing and act as the Adjudicator. They will have been provided with all the relevant case papers from the first line manager. The Adjudicator will review the case carefully prior to the hearing to ensure that Stage 1 has been completed correctly. The Adjudicator must also ensure that full consideration has been given to any medical recommendations made by Occupational Health.

18.4. Adjudicators

This meeting, given its potential implications and significance, will be adjudicated by an appropriate authority:-

All teaching and administrative staff; - CEO or Deputy

CEO or Senior manager; - 2 members of the board of trustees (one trustee to act as chair).

18.5. Notice of Hearing

Employees will be given at least seven working days' written notification of the Absence Hearing.

18.6. Hearing Preparation

The manager involved at the previous stage of the procedure and the employee and their representative, will each be asked to compile a summary report of the case to be presented to the Adjudicator.

Each party is responsible for providing a copy of this summary report, no later than 2 working days' in advance of the Hearing, to the other involved parties (i.e. the Adjudicator; employee [2 copies, one of which he or she may choose to pass to their representative] and the line manager).

18.7. Non-Attendance

If either the employee or their representative is unable to attend a meeting on the date of the Hearing due to sickness or another substantial and valid reason, the hearing may be postponed and rearranged for within 10 working days of the original meeting date. If the employee is unable to attend this second re-arranged meeting, the meeting will be held in the employee's absence. However, employees will have

the option of submitting a written statement or requesting that their representative be allowed to present the case in their absence.

18.8. Procedure at the Hearing.

The Adjudicator should open the hearing by explaining the reasons why the hearing has been arranged and explain the order of proceedings, answering any questions with regard to the procedure. The Adjudicator should then request that the line manager presents the management case, listing all of the following:

- All sickness absences
- An assessment of the effect on the individual's performance and on the service generally
- Dates of return to work discussions
- Dates of attendance meetings and an overview of action taken
- Dates of informal interviews and previous formal interviews
- That the pattern or level of absence can no longer be sustained

The employee will then be given the opportunity to submit their case and call upon any witnesses or to produce any necessary documentary evidence in support of their case. This will usually be in the form of updated medical advice that may have a bearing on the case. There will then be the opportunity for questions from the Adjudicator. After answering any questions, any witnesses called by the employee will be asked to leave the hearing.

Line Manager makes a closing statement, followed by the employee or representative. No new evidence can be introduced in the closing statements. The employee and their representative then leave the hearing room.

Adjudicator considers the case.

If recall is necessary to clarify points of uncertainty, the meeting will be reconvened. In addition, the Adjudicator may require that other witnesses/evidence should be called/ produced in order to ensure that all the necessary facts can be considered before making a decision on the case. The Adjudicator may decide to adjourn the hearing to allow for this if necessary.

The employee and their representative are recalled to the hearing room and informed of the decision.

In some circumstances, the Adjudicator may require more time to consider the evidence rather than making a decision on the day of the hearing. The decision may be conveyed through correspondence within three working days, or the hearing reconvened to announce the decision.

18.9. Factors for the Adjudicator to Consider – Short Term Absence

Case Law has set out the following factors that should be considered before a dismissal decision is taken in cases of persistent short-term absence:

- the nature of the illness
- the likelihood of recurrence or some other illness arising

- the length of the various absences and the periods of good health in between the absences
- the need of the employer for the work to be done by the employee
- the impact of the absences on other employees
- the correct procedure has been followed at all times
- will the employee be able to give regular and efficient service
- the extent to which the employee has been made fully aware of the situation and when the point of no return would be reached.

18.10. Employees Found Permanently Unfit

If the employee has been found permanently unfit by the Occupational Health Physician for their job and no alternative is available, then the employee should be considered for retirement on grounds of ill health, or dismissed on grounds of incapability if he or she is not a member of the pension scheme.

18.11. Employees Not Declared Permanently Unfit

For persistent short-term absence, which can no longer be tolerated, where no underlying medical reason is the problem, or where Occupational Health does not declare the employee unfit, the employee may be dismissed on grounds of incapability. Such employees should be deemed not capable of performing their duties by reason of their persistent absenteeism. Where an individual's employment is terminated either by reason of permanent ill health or because they are incapable due to persistent absenteeism, their termination should be with full contractual pay in lieu of notice, even in cases where sick pay entitlement has been exhausted.

19. Right Of Appeal

Employees dismissed for either permanently unfit or incapability have the right of appeal against dismissal and should be informed of this right in their letter of termination. The letter of termination should also state that notification of intent to appeal must be submitted to the dismissing manager within five working days of the date of receipt of the letter notifying the outcome of the hearing.

The appeal is not normally a re-hearing of evidence submitted at the hearing.

Disputes about medical evidence cannot form the basis of an appeal. Such disputes should only be decided by an independent medical examiner, to be arranged by the Chief Executive Officer. The appeal must be made in writing and clearly state in detail the grounds for appeal, which must be one or more of the following reasons:

- Procedural flaw: failure to follow procedure had a material effect on the decision.
- The decision: the person who took the decision to dismiss came to a conclusion on the facts that no reasonable person would have come to.
- The penalty: the decision to dismiss rather than an alternative option was one that would not have been reached by a reasonable person.
- New evidence: evidence which the employee wishes to introduce for the first time at the appeal could not reasonably have been raised at the

stage 2 hearing and the absence of this had a material effect on the dismissal decision.

20. Appeal Hearing

The Appeal Hearing will be conducted by two trustees appointed by the Chair of Trustees, as far as possible the trustees should have had no involvement with previous hearings

Appeal hearings will take place as soon as reasonably possible upon receipt of the employee's written notice of appeal.

At the formal hearing, the authorised manager will initially review the proceedings to date to decide whether the appeal hearing will take the form of a review of the previous capability decision or a full rehearing of the case.

The appeal will normally be conducted as a review only where the acts/procedure are not in dispute but where the employee believes the judgement is unfair.

The appeal will normally be conducted as a rehearing in the following instances (not exhaustive):

- There was a procedural defect of substance at the original hearing,
- New evidence has come to light which needs to be heard in full, or there is a dispute about evidence given by witnesses

Where possible, the outcome of the appeal hearing will be confirmed orally at the conclusion of the appeal hearing. In some circumstances it may be necessary to adjourn, to complete further investigations. In these situations, the appeal hearing can be reconvened, and the decision confirmed orally at the conclusion of this hearing or it may be agreed to communicate the outcome in writing. All decisions will be confirmed in writing.

The trustees' decision is final. No further right of appeal exists within BEAT.

Where an appeal against dismissal fails, the effective date of termination of employment will be the date on which the employee was originally dismissed.

21. Return to Work Guidance

21.1. Purpose

Return to work interviews should be conducted after every period of absence, to:

- welcome employees back
- check they are well enough to be at work
- discuss the details of an agreed return to work based on advice given by the GP in the Statement of Fitness for Work. The return to work should already have been agreed in principle by talking through the issues on the phone or face to face
- update employees on any news while they were absent
- identify the cause of the absence

- find out whether they have a disability and whether the provisions of Disability Discrimination Act 1995 apply, such as making a reasonable adjustment
- establish if their sickness is work related and whether there are any health and safety issues that need to be addressed.

A return to work interview is also a good way of teasing out any other problems an employee may have, at work or at home. These problems may remain hidden unless tact and sensitivity is used during the interview.

Many of the causes of absence arouse very strong feelings and managers may need training to help them manage the relationships with their employees.

21.2. How to prepare for a return to work discussion

The majority of such discussions will be informal and brief. However, they should still be done, and it is recommended that managers take a short note of the ground covered. Where the discussion is more formal due to the sickness record, it must be remembered that it is confidential so a quiet meeting place without any distractions must be found. It must be noted that an employee may be building up the courage to reveal some information about their personal lives. If the employee is a home worker then a lengthy talk on the phone may be needed.

Managers need to think about:

- the employee's records and have everything to hand at the meeting
- any previous discussions that have been had with the employee
- following advice from the employee's GP on the 'Statement of Fitness for Work'. If a return to work has been agreed the manager might want to think about how this will work in practice, for example, what will the employee's work colleagues be told?
- what kind of questions you will ask. Open questions that give the employee the chance to talk freely are best - for example, 'how do you feel about being back at work?' may be better than a closed question like 'are you happy being back at work?'
- how the employee feels. Pick up clues by actively listening to what they say, making connections between the various points they make and seeking clarification. Also, being positive about the employee's value to the organisation
- the manager's body language - showing interest with appropriate nods, smiles and reassurance.

The manager should remind themselves about the individual employee. Are there any issues that might crop up during the interview? For example, it might be worth:

- familiarising BEAT's stress standards
- thinking of a response to a request for flexible working or a phased return to work - this might be one of the suggestions made by the employee's GP on the 'Statement of Fitness for Work'.

The manager must be prepared to discuss the employee's absence in detail. Have there been any patterns? Has a trigger point been reached?

If the employee is returning from a period of long-term sickness plan a 'return to work' programme should be agreed. It should be noted that where a phased return is agreed, the following will apply:-

- for those hours that the employee attends for, the normal rate of pay should be applied
- for those hours where the employee does not attend for work, the employee should be recorded as absent. The rate of pay applicable will be according to his or her sick pay entitlement.

The employee should be updated about any changes since they've been away - like progress on any jobs they were working on, changes to the team, etc.

Finally, what are the options for the future? All the options should be discussed with a focus on positive outcomes. Where appropriate the employee may agree to be referred to BEAT's occupational health service. In some instances, action may need to be taken in line with the BEAT's Conduct Policy if the manager is unhappy with the explanations for the absence. The manager should have an open mind, agree a shared action plan where possible, but not make any hasty decisions at the meeting.

22. Appendix 1 Improvement Notice Pro Forma

Dear Date.....

You attended an ill health meeting on I am writing to inform you of your written warning/final written warning*. This warning will be placed in your personal file but will be disregarded for disciplinary purposes after a period of 12 months, provided your attendance reaches a satisfactory level.

The nature of the unsatisfactory attendance was:

Insert summary of absences: Number of days and period

Insert Details of Absences

Dates	Number of days	Reason given	Certificated/Self Certificated
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At the meeting you agreed to the following actions to improve your attendance:-

Insert agreed improvement actions

At the meeting you agreed that the timescales to improve your attendance would be from the date of this letter until.....

At the meeting it was also made very clear to you that the likely consequence of further misconduct or insufficient improvement in your attendance is a Final Written Warning/Dismissal*.

Please sign and date the attached copy of this letter and return it to your line manager as confirmation of receipt of this letter.

Yours sincerely

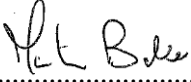
Signed Name

Received..... Name Date.....

* Modify as appropriate

23. Document History

Date	Reason for Change	Change Controller
November 2020	Total Revision	PSW
December 2022	Revised	SB PSW
August 2023	New format applied. No content changes	PSW
December 2024	Review	PSW

Signed..........Chair of Trustees

Name Martin Baker
Date 9 December 2024

Signed..........Chief Executive

Name Sharon Broughall
Date 9 December 2024