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Key Concepts
Supporting Staff through Sickness &
Managing Persistent Sickness Absence

Why manage attendance?

An active approach to managing sickness has successfully reduced levels of absence in a range of organisations.

High levels of absence are costly and disruptive. They often mean:
- poorer services
- high stress, low morale and extra work for other staff
- lower productivity, higher costs, missed work targets, delay and disruption to the flow of work
- extra wage costs to cover absence.

It is in the College’s own interests to be systematic in seeking to:
- understand the employee’s condition and plan for its effect on work; and
- support those who are off sick; and
- take action to assist or enable them to return to work (if possible)

Which Code of Practice?

Code of Practice on Supporting Staff through Sickness

The Code of Practice on Supporting Staff through Sickness must be completed before starting to deal with a case under the Code of Practice on Managing Persistent Sickness Absence.

It comprises the following actions:
- informal discussion with the employee
- taking informal advice from HR
- if need be, formal referral to OHS
- a further meeting to discuss the options in the light of the medical advice.

Code of Practice on Managing Persistent Sickness Absence

This Code of Practice is used where:
- you have completed action under the Code of Practice on Supporting Staff through Sickness; and
- the medical advice from the OHS is that
  - the employee has no underlying health condition; or
  - the employee will be unable to give regular and efficient service.
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**Code of Practice on Discipline**

Consider disciplinary action only if you have strong evidence that an employee has breached the College’s rules. It is not reasonable for managers to prefer their own medical judgement over that of a doctor set out in a medical certificate.

To take action under the disciplinary procedure you would need evidence that the employee is in breach of College rules. It might be appropriate to treat the case as a matter of discipline, if for example, someone is found to be:
- failing to follow the sickness absence reporting procedure;
- reporting sick at Queen Mary but working for another employer; or
- recovering from an injury by taking an activity holiday incompatible with their condition.

Without that kind of evidence, you should use the two “sickness” Codes of Practice. These two Codes examine the effect of the employee’s attendance on service. There is no requirement under these Codes for you to show or assume that an employee is not sick when they say they are.

**Short-term and long-term absence**

You can use the two Codes of Practice on Sickness to handle both:
- long-term; and
- frequent short-term absence.

From the College’s perspective, the basic issue for both kinds of sickness is the employee’s ability to give regular and efficient service. The issue is not whether the employee is guilty of misconduct.

With longer term absence there is generally an underlying medical condition. This is not always the case with shorter term absences. Where there is no underlying medical condition, the emphasis should be on:
- setting clear and reasonable standards of attendance
- monitoring for achievement of the standards set
- giving clear information about the effect of absence on the service and other staff
- keeping the employee informed about where they stand and if their job is at risk.
If there is no underlying medical condition give less attention to:
- giving time for attendance to improve (there is no illness to recover from)
- redeployment on medical grounds (there are no medical grounds)
- adapting the work, work-place or working arrangements (there is no medical problem to adapt to).

However, such issues would all need to be addressed in any case which involves an underlying medical condition, whether or not this manifests itself as short-term or long-term absence.

**Investigating absence**

This is a normal part of your duties as a manager and happens, for example, when:
- the employee notifies you that they are not coming to work
- the employee self-certifies sickness (on return to work)
- the employee provides doctor’s certificates
- you meet the employee to discuss work after each period of absence
- you refer the employee to the occupational health service for medical advice.

Be sympathetic: absence attributed to sickness sometimes masks underlying problems. Talk to employees whose attendance is poor and invite them to discuss any health, domestic or work problems that may contribute to their absences. Give the employee the chance to put their side of things and be accompanied to the meeting. Seek to agree the need to improve attendance, and the means of doing so. However, staff have the right to medical confidentiality and are not required to disclose their medical condition or discuss it with the employer.

Make a special effort to keep in contact with any employee who is sick over a long period. Keep them up-to-date with any changes, and consult them about any reorganisations on which you would consult other staff - unless the nature of their condition makes this inappropriate.
Home visits may be appropriate to express concern and sympathy, and to explain procedure. However, be aware that some staff may find the notion of a home visit intrusive and worrying. A face-to-face meeting at another appropriate location may be a helpful alternative. Or you may wish to get the College’s HR Department to arrange or carry out such a visit for you.

Two reminders for medical certificates are sent to members of staff who have failed to submit them as required. Thereafter, the amount of sick pay paid under the scheme is reclaimed from the employee’s salary.

In cases which you feel may require formal action, take competent advice. You can get:
- medical advice from the occupational health service
- advice on HR procedure through your contact officer in the Human Resources department.

More guidance about referring staff to the Occupational Health Service and getting medical advice is set out on page 6 of these notes.

**Responding to guidelines for action**

The College’s guidelines for action are set out in the relevant Code of Practice. Staff with terminal illnesses are excluded from the processes described here and advice on how to handle such cases is set out on pages 13 and 14. And you should take advice from HR when dealing with nursing mothers or staff who are pregnant.

Otherwise, decide what action is appropriate. As you are expected to deal with each case on its merits, action is not automatic, but don’t just let matters drift.

Discuss things with the employee, and in the light of your knowledge of the medical position, consider if, for example:
- an improvement in attendance is likely;
- you can tolerate attendance at present levels indefinitely;
- you are prepared to wait for attendance to improve, and for how long;
- the work can be adapted to allow for the medical difficulty.
For those on long term sick leave, check model letters carefully to see if they are appropriate in the circumstances of the case. Be careful with timing. If somebody is, for example, having an operation, consider delaying the letter or amending its content.

**Keeping the employee informed**

Set standards and communicate with staff. Make sure your staff understand that absence, for whatever reason, disrupts work, reduces the quality of service offered, places a burden on other colleagues and reduces the College’s ability to compete with other organisations.

If an employee’s attendance record causes concern, say what improvement you expect, and the consequences if this does not happen. The employee should know where they stand. If you believe there is no problem because the level of absence is not persistent, say so. If you can wait until the employee’s health improves, say so. Tell the employee if you intend to review at a later date.

If the level of absence puts the job at risk, you must say so. (This is normally done at the formal stage of the Code of Practice on Managing Persistent Sickness Absence). Give time for improvement where appropriate.

Keep the employee informed, and keep good records of your contact with staff - you may need to show later that you have been open, reasonable and consistent.

**Getting Medical Advice**

You need to take formal medical advice, for example, if:
- you are dealing with a medical issue under the Code of Practice on Supporting Staff through Sickness
- you wish to up-date your advice, or new issues arise while you are using the Code of Practice on Managing Persistent Sickness Absence
- you are unsure how the employee’s attendance or work will be affected by their medical condition
- you are considering the benefits of - medical redeployment, or - making reasonable adaptations to working arrangements
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- your information is incomplete or out of date
- the employee reports a stress- or work-related condition.

But taking medical advice may be unnecessary if, for example, you already know that: the employee has an underlying condition or disability, and either:
- the condition is likely to improve, or
- absence is at a level that allows you to sustain service to students or other customers.

Decide what level of advice you need. Before making a formal referral to the OHS under the Supporting Staff through Sickness Code, always consult OHS informally for medical advice and speak to HR about the personnel aspects of the case. In straightforward cases, the informal advice may be sufficient. In other cases you will need to make a formal referral. Be aware of the speed with which the OHS can respond. Before giving advice they may need to:
- see the employee, or
- get consent from the employee for a medical report from the employee’s GP or consultant
- seek the report
- allow the employee up to 21 days to comment on the report.

Technically, at any time, a member of staff is bound by their contract to submit to a medical examination by a registered medical practitioner nominated by the College, and at the College’s expense. The member’s own doctor may be present at such examination at the member’s request and own expense.

In practice, the College will not require an employee to submit to such an examination against their will. However in such cases the College reserves the right to:
- act on the basis of the medical evidence available to it
- remove the employee from the College’s sick pay scheme.

The employee may however retain the right to receive statutory sick pay.
Medical confidentiality

Staff are entitled to medical confidentiality and a report by the Occupational Health Service will focus on whether there is an underlying medical condition and its effects on the employee’s work and working life. It may not be appropriate for them to spell out explicitly what the condition is. You are entitled to understand, though, how any medical condition is likely to affect the employee’s work. The OHS will happily clarify such issues.

The employee has the legal right to refuse the College access to medical reports from their GP or Consultant. In such circumstances, the OHS and College managers are entitled to act on the basis of the medical information that is available to them. It is not normally in the best interests of the employee to have their managers make critical employment decisions on the basis of poor, inaccurate or incomplete information.

What is “regular and efficient service”?

The basic issue in sickness cases is the employee’s ability to give regular and efficient service - not whether the employee is guilty of misconduct. Even genuine cases of sickness will affect an employee’s ability to provide the service that their contract with the College requires of them.

If you have good evidence that the employee has breached the College’s rules (for example by reporting sick when they are not) treat the case as a matter of misconduct. If not, simply use the procedure to examine the effect of the employee’s attendance on service.

Where there is no underlying medical condition:
- set clear and reasonable standards of attendance
- monitor for achievement of the standards set
- give clear information about the effect of absence on the service and other staff
- keep the employee informed about where they stand and if their job is at risk.
Where there is an underlying medical condition:
- consider whether the employee’s health may improve and how long it would be reasonable to wait
- consider redeployment on medical grounds
- adapting the work, work-place or working arrangements to allow for the medical condition.

### Conducting return to work interviews

The aim of such an interview is to:
- provide information on any developments at work in their absence;
- show concern and offer support for an employee after their sickness;
- ensure that the employee is fit to return to work and identify any health and safety risks for the employee, co-workers and customers of a premature return;
- offer reasonable support for the employee;
- discuss any action needed to assist the employee in managing their sickness absence.

Tailor the discussion to the circumstances. Often, a brief and informal discussion while the employee completes a self-certificate will suffice.

Where the circumstances of the case require it, prepare well. Ensure that you:
- structure your discussion beforehand
- have relevant notes and other information to hand
- are not disturbed or interrupted - bar or switch off the phone
- give the employee time to settle in if it is their first day back.
- allow enough time for the discussion
- make the seating and atmosphere informal - but professional.
- ask open questions, to encourage the person to respond with more than a yes or no answer
- don’t make assumptions or personal comments about their medical condition or circumstances
- remember they do not have to tell you anything about the nature of their condition
- remember some illness are not obvious - but are none-the less genuine.

1 further information can be found in the Redeployment Key Concepts
At the **meeting**:  
- welcome the employee back to work, tell them that the meeting is confidential and will not be discussed with other members of staff  
- ask about their health following their sickness absence (whether they feel fit enough to undertake the full range of duties)  
- inform the employee of any changes that may have happened in their absence e.g. any developments with the students, customers or procedures in the area in which they are working;  
- if appropriate say to the employee that if they are worried about any aspect of their health and the effect it has on their work you can take advice on this by referring them to Occupational Health;  
- ask if they wish to raise any work, domestic or welfare issues that may affect their attendance;  
- offer support and assistance on issues raised  
- tell the employee if their sickness record is near to one of the “guidelines for action” in one of the Codes of Practice, and explain what the next step would be;  
- thank them for attending the meeting and reaffirm that their discussion is confidential - and keep it confidential;  
- keep brief notes of the discussion on the supervision file (the employee has the right to see these).

**Formal meetings**

Formal meetings are required under the Code of Practice on *Persistent Sickness Absence*.  

<table>
<thead>
<tr>
<th>Managers may:</th>
<th>Employment Review Panels may:</th>
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<tr>
<td>deal with matters up to and including final warnings; and</td>
<td>hear any case where action more severe than a final warning is to be considered; and</td>
</tr>
<tr>
<td>consider other options <em>in mutual agreement</em> with the employee.</td>
<td>impose one or more of the other available options without the agreement of the employee.</td>
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Normally, the facts of the case are not in dispute, and unlike a disciplinary hearing, there is no suggestion that the employee has done anything wrong.
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The agenda for the hearing will usually include:

1. The line manager's presentation (which should cover):
   - the employee's sickness record;
   - the record of contact, discussion between the employee and the manager;
   - an account of the medical position, the prognosis and any medical advice taken;
   - the suitability of the employee for alternative employment, any restrictions that apply, and any action taken to find alternative work within the College;
   - any warnings given to the employee;
   - any actions taken to support ease or enable a return to work;
   - the effect of the absence on the service.

2. Questions for clarification of the manager's case.

3. The employee's response (which should cover the issues in the manager's presentation).

4. Questions for clarification of the employee's case.

5. Discussion with both parties on the scope for further medical reports, treatment, time scales, other available options (redeployment etc - see below.)

6. Summaries from both sides.

7. Adjournment.

8. Decision.

It is particularly useful for the manager presenting the case to prepare a report on the issues to be considered at the hearing. They must make this available to the employee in good time, at least 5 days before the employment assessment meeting. A check list for such a report is on page 12, and a pro forma is in section 3 of this document.
Options following formal meetings

Managers hearing a case may opt to:
- review the case after getting more information, or
- keep the job open until the employee recovers from any underlying illness, or
- keep the situation under review within a specified period

In mutual agreement with the employee, the manager may:
- explore redeployment (if appropriate)¹
- explore the possibility of ill-health retirement (the College’s pension schemes have stringent criteria for this and these must be met)
- explore a compromise agreement with the individual: such an agreement may be practical, for example, if
  - the employee is on long-term sickness; and
  - there is a genuine underlying medical condition;
  - there is little prospect of regular and efficient service; and
  - the College needs to fill the post; and
  - the employee is prepared to accept a rolled up payment of any outstanding entitlement to paid sick leave.

A employment review or appeal panel hearing a case may also consider:
- dismissal; or
- imposing an appropriate option without the agreement of the employee.

It will not normally be appropriate to dismiss unless the panel considers that the College has:
- progressively made it clear to the employee:
  - that absence is a problem and that attendance must be improved
  - that their job is at risk
- investigated and considered the medical position as fully as possible, given the employee’s right to withhold consent to a medical report from his or her GP or consultant
- treated the employee with sympathy, compassion and understanding
- considered redeployment
- if appropriate, explored a compromise agreement
- considered if there are reasonable adjustments to the work, workplace or the organisation of work which would enable the employee to attend work and give efficient service.

¹ Further information can be found in the Redeployment Key Concepts
Preventing reports for formal meetings

Check list:

- the name of the employee
- their job title
- a brief work history giving the date they started work for the College and the kind of work they have been doing
- the dates and amount of relevant sickness absence
- dates the employee has been contacted to discuss sickness
- date and nature of any “warnings” given, and specifically whether the employee has been told that their job is at risk.
- dates reviewed by OHS
- prognosis and advice of OHS
- general nature of underlying sickness
- suitability for alternative employment
- restrictions that apply
- action taken to find alternative work within department
- outcome of any job search and dates
- action taken to find alternative work outside department
- outcome of job search and dates
- options or action to support, ease or enable a return to work
- effect of the absence on the service
- additional comments
- recommendations
- appendices of any letters or other documents which set out the manager’s dealings with the employee on the issue of sickness.

Terminal illness

Handle such cases sympathetically, normally using the Code of Practice on Supporting Staff through Sickness. Take advice from HR and keep your Head of Department informed, and if need be involve them in the decision-making.

Take medical advice, if need be referring the employee to the OHS. If possible establish the prognosis for the employee, and the effect, over time of the employee’s condition on their ability to work. Take into account the view of the GP or Consultant in disclosing to the employee any medical report they may give.
If appropriate, contact the HR department to arrange for sensitive home or hospital visits.

Explore the issue of confidentiality with the employee, and respect their wishes. They may seek to manage which of their colleagues know about the situation and when they are told.

Assist the employee to:
- plan the remainder of their working life. Take into account the prognosis and the expressed wishes of the employee. However, you would also need to consider health and safety and service delivery issues.
- take financial advice. The pensions section may assist them to consider the financial implications of ill-health retirement as opposed to “death in service”. The College also retains the services of an independent financial advisor for use by staff.

In appropriate cases, consider:
- extending the employment beyond the period of the entitlement to sick pay; or
- extending the period of paid sick-leave;
- paying the half-pay period on full pay.

“Appropriate cases” would include those in which:
- the prognosis is reasonably clear; and
- the financial implications for the College are reasonably finite; and
- the costs are not prohibitive.

Terminal illnesses count as a “disability” in the Disability Discrimination Act, and this brings a legal duty:
- not to treat the employee less favourably on the grounds of the disability (unless this can be objectively justified); and
- to make “reasonable adjustments” (unless the failure to make such adjustments can be objectively justified).
Defining Disability

The Disability Discrimination Act defines disability by focusing on the medical or health condition of the person. You can take advice from the OHS on whether an employee falls within the scope of the definition in the Act.

There is, though, a difference between having an impairment and the experience of disability. An impairment will be less disabling if you seek to design work-places and equipment to overcome it. The detriment to a person with a disability is not caused solely by the impairment, but rather, by attitudes to that impairment and the willingness to make adjustments.

Considering “Reasonable Adjustments”

Under the Disability Discrimination Act, disability discrimination can happen in two ways. Firstly, it occurs if an employer treats the disabled person less favourably than they would treat another person when:
1. the reason for the treatment is related to the disability, and
2. the employer cannot show that the treatment is justified.

Secondly, disability discrimination happens if the employer:
1. fails in their duty to make reasonable adjustments for the disabled person; and
2. they cannot show that the failure is justified.

In practical terms, it is in the College’s best interests to consider reasonable adjustments even in cases where the employee does not meet the definition in the Act.

Take into account the following factors when deciding what is reasonable:
- how effective the adjustment will be in overcoming the difficulty
- the financial outlay
- external sources of funding, resources or other assistance
- the size, resources and revenue of the College
- any consultations and agreements with other bodies, including organisations that represent disabled people.
For example you might (where reasonable):

- supply information and accept job application forms in different formats (in Braille, on tape, by e-mail, and so on)
- modify procedures for testing and assessment
- restructure a job, re-allocate tasks (grading implications may follow from this), offer part-time work or alter work schedules
- redeploy a disabled employee to a different place of work or to another, more suitable job (if one is available)
- adapt the work-place, equipment and aids (for example, providing a loop system)
- provide qualified signers, readers or interpreters
- give extra training, support from a colleague or extra supervision
- allow absences for rehabilitation, assessment or treatment
- modify instruction or reference manuals (tape, Braille, large print, and so on)
- make alterations to premises (improving access, modifying lighting, and so on).

These examples of what is reasonable are taken (largely) from the Government’s code of practice. They do not constitute a comprehensive list.

1 Please see Redeployment Key Concepts for further information