

NASUWT

The Teachers' Union
NORTHERN IRELAND

Managing Sickness Absence

Model Policy and Procedure

the largest teachers' union in Northern Ireland

Introduction

This model policy and procedure has been developed for NASUWT Representatives to use as the basis for discussion with the employers to agree a policy for the workplace.

A commentary is provided to support Representatives in this process.

For ease of reference, the commentary replicates exactly each of the sections of the NASUWT model policy (in black typeface) and under each section provides the Union's commentary (in blue typeface) on the key issues to be considered when seeking to agree the policy.

The Union's recommended negotiating position is indicated in the NASUWT Commentary at the end of each section.

The model policy without the commentary can be downloaded from the NASUWT website at www.nasuwt.org.uk/ModelPolicySicknessAbsence.

Part 1 – General Policy

1 Introduction

- 1.1 (Add name of school) is committed to creating a positive working environment. Employees who are absent from work due to sickness need to be treated with consideration and respect and principals and managers will make every effort to assist staff in their recovery and return to work. The needs of the individual suffering from ill health must, however, be balanced against the needs of the school and the pupils.
- 1.2 (Add name of school) acknowledges that it has a responsibility towards promoting a positive health and safety culture and that from time to time employees may become ill and as a consequence be unable to attend work. (Add name of school) expects employees to co-operate in ensuring that all sickness absences are managed in line with this policy.
- 1.3 This policy applies to all permanent and fixed-term employees.

Commentary:

It is important that the policy is based on a clear set of principles and that these are set out at the beginning of the document. The introduction signals the employer's intentions to create and promote a positive health and safety culture and a positive working environment in which they treat workers with consideration and respect when they are absent from work due to illness. This demonstrates the employer's:

- intention to comply with the provisions of the Health and Safety at Work (Northern Ireland) Order 1978;
- intention to fulfil their responsibilities to pupils; and
- expectation that employees have regard to the policy.

It is important to acknowledge in discussions that the needs of individual employees who are suffering from ill health must be balanced against the needs of the school and the pupils. Clear recognition of this fact from the outset ensures that the position taken by NASUWT Representatives is credible as it sends a clear signal that the positions set out below are consistent with an approach that seeks to secure positive outcomes for pupils as well as staff.

It is equally important to establish the principle that staff will become ill throughout the year and that principals and managers will make every effort to assist and support staff in their recovery and return to work. The crucial element to this is that the wording commits the employer to assisting staff in their recovery as well as their return to work. This is particularly important in the context of phased return to work programmes and other measures made possible by the fit note provisions that are designed to enable employers to assist employees to return to work in a graduated, assisted or temporarily reduced capacity following illness.

2 Purpose

- 2.1 This policy is intended to support staff and enable managers to manage sickness absence in a way that is fair, consistent and complies with employment, health and safety and education legislation. It is essential that sickness absence and incapability due to ill health are managed effectively. The procedure balances the need to maintain service delivery and the interests of employees by ensuring that employees are fit and healthy for work. This policy is dependent on the openness and mutual trust and respect between employees and their line managers and the willingness of all parties to co-operate. This policy has been drafted in consultation with the recognised staff trade unions.

Commentary:

It is critical to the effective management of sickness absence that the employer demonstrates their commitment to the principles of fairness, consistency and legal compliance in terms of supporting staff and enabling managers to manage sickness absence. The NASUWT wants its members to be treated fairly, to be given the opportunity to fully recover before returning to work and not to be punished for being ill. Managers want fit and healthy workers who are productive and capable of fulfilling their contractual duties.

Accepting in discussions the employer's responsibility to balance service delivery and the interests of employees by ensuring that employees are fit and healthy for work serves to demonstrate members' commitment to the delivery of excellent educational provision while securing an undertaking from the employer that employee interests will be protected.

The 'Purpose' section sets out the scope and intention of the policy and confirms that the recognised staff trade unions were consulted as part of its development.

The relevant legislation referred to includes the following:

- Health and Safety at Work (Northern Ireland) Order 1978;
- Management of Health and Safety at Work Regulations 1999/ Management of Health and Safety at Work Regulations (Northern Ireland) 2000;
- Disability Discrimination Act 1995 as amended by the Disability Discrimination Act 1995 (Amendment) Regulations (Northern Ireland) 2004;
- Disability Discrimination (Northern Ireland) Order 2006;
- The Employment Rights (Northern Ireland) Order 1996;
- Safety Representatives and Safety Committees Regulations (Northern Ireland) 1979;

- Social Security (Medical Evidence) and Statutory Sick Pay (Medical Evidence) (Amendment) Regulations 2010/The Social Security (Medical Evidence) and Statutory Sick Pay (Medical Evidence) (Amendment) Regulations (Northern Ireland) 2010.

All legislation listed above is available at www.legislation.gov.uk.

The position of the NASUWT is that this section represents good practice and that NASUWT Representatives should negotiate to safeguard these provisions with little or no amendment or use the wording to negotiate improvements to existing procedures.

3 Equal opportunities

- 3.1 All policies and procedures will be applied fairly and in accordance with employment law and the (add name of school) Equal Opportunities Policy.

Commentary:

The Disability Discrimination Act (DDA) 1995, the Disability Discrimination Act 1995 (Amendment) Regulations (Northern Ireland) 2004 and the Disability Discrimination (Northern Ireland) Order 2006 are available at www.legislation.gov.uk.

It is essential that the policy clearly demonstrates the employers' commitment to both the principles of equal opportunities and to compliance with their legal duties.

The position of the NASUWT is that this section outlines statutory requirements and that NASUWT Representatives should either negotiate for it to be adopted with little or no amendment or use the wording to negotiate improvements to existing procedures. It is important that the policy refers to the employer's Equal Opportunities Policy so that managers and employees using the policy are aware of it and to provide a safeguard against sickness absence being used as a form of harassment.

4 Sickness and disability

- 4.1 The Disability Discrimination Act 1995¹ (DDA) defines a person with a disability as a person with a physical or mental impairment, which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.
- 4.2 Sickness absence may be related to a disability under the DDA. Where this is a possibility, specialist advice will be obtained (e.g. from occupational health and human resources) and reasonable adjustments to the individual's working systems or environment that may be appropriate will be considered. Under the DDA, employers have a duty to make 'reasonable adjustments' where any aspect of working arrangements (including premises) places a person with a disability at a substantial disadvantage.

¹ Disability Discrimination Act 1995 [online] www.legislation.gov.uk/ukpga/1995/50/contents. Disability Discrimination Act 1995 (Amendment) Regulations (Northern Ireland) 2004.

- 4.3 It is acknowledged that disability is by no means generally synonymous with sickness or absence from work. However, guidance² recognises that some people with a disability will have conditions, which will be from time to time subject to the Sickness Absence Monitoring Procedure.

Commentary:

The relevant legislation is available at www.legislation.gov.uk.

It is essential that the policy retains the DDA definition of disability, so that users of the policy can easily identify who is covered. It is equally important that the policy includes a specific reference to the right of disabled workers to have reasonable adjustments considered to ensure that employers fulfil this obligation. Managers are not always conversant with the rights that disabled employees have under the terms of the DDA and specifically about what reasonable adjustments may be appropriate. It is therefore critical to ensure that the reference to seeking specialist advice is retained.

The position of the NASUWT is that this section outlines statutory requirements and that NASUWT Representatives should either negotiate for it to be adopted with little or no amendment or use the wording to negotiate improvements to existing procedures.

5 Confidentiality

- 5.1 Information about sickness absence will be handled carefully and in accordance with the Data Protection Act 1998³ to ensure that sensitive details remain confidential.

Commentary:

The Data Protection Act 1998 defines the ways in which information about people may be legally used and handled. The main intent is to protect individuals against misuse or abuse of information about them. It is essential that the policy clearly states that information will be handled in accordance with the provisions of the Act to ensure that individuals handling sensitive information about employees' sickness absence are aware of their legal responsibilities and to ensure that individuals can have confidence that sensitive information provided will remain confidential.

The position of the NASUWT is that this section outlines statutory requirements and that NASUWT Representatives should either negotiate for it to be adopted with little or no amendment or use the wording to negotiate improvements to existing procedures.

² Equality Commission for Northern Ireland (2005) Disability Discrimination Act 1995: *Code of Practice: Employment and Occupation*. Belfast: Equality Commission for Northern Ireland. [online] www.equalityni.org/archive/pdf/DisEmploymentCOP05F.pdf

³ Data Protection Act 1998 [online] www.legislation.gov.uk/ukpga/1998/29/contents.

6 Responsibilities

- 6.1 (Add name or post) is responsible for maintaining fair, consistent and objective procedures for matters relating to staff sickness absence.
- 6.2 (Add name or post) has overall responsibility for the internal organisation, control and management of the policy in the school.
- 6.3 (Add name(s) or post(s)) have responsibility for the internal organisation, control and management in their area of responsibility.

Commentary:

The 'Responsibilities' section should be amended, as necessary, to reflect the division of responsibilities within the school, ensuring that all the roles outlined above are appropriately assigned in accordance with employees' contracts and their terms and conditions of employment. To ensure that the policy is effectively implemented and that everyone is aware of their roles and responsibilities it is essential that roles and responsibilities are clearly assigned within the policy.

7 Time off to attend medical appointments

- 7.1 Employees will be permitted paid time off to attend medical appointments with their doctor, dentist or optician and any other appointment of a medical nature. This includes paid time off for antenatal appointments.

Commentary:

The above provisions should be amended, as necessary, to reflect any local agreements. Some employers will wish to insert an amendment to the effect that employees should try to ensure that non-urgent medical appointments take place in their own time. Such an amendment would be acceptable where it is clear in the policy that this may not be possible in all circumstances, including hospital appointments and treatments.

The Northern Ireland, TNC Circular 2008/1, Teachers' Occupational Maternity Leave Scheme, states that a pregnant teacher has the right to paid time off to attend antenatal care. Medical appointments may be classified in the local agreement as either sickness absence, with pay – particularly if it is a medical emergency – or as an authorised absence, with or without pay. In all circumstances, the employee should produce evidence of appointments if requested to do so by the employer.

8 Absence due to disability or maternity

- 8.1 Absence relating to disability or maternity will be dealt with under a separate policy and records will be kept separate from sickness absence records.

Commentary:

The 'Absence due to disability or maternity' section should be adopted without amendment, unless it is to specify the relevant policies under which such absences would be handled. It would be unacceptable for such absences to be included in sickness absence records and it is important that this is clearly specified within the policy. These records should be stored separately and dealt with under separate procedures to safeguard against discriminatory practice.

9 Sickness absence during annual leave

- 9.1 If employees are sick whilst taking annual leave, the days on which they are absent due to sickness will be deemed as sickness absence and their annual leave entitlement will be credited in accordance with the Sick Pay Policy and Procedure.
- 9.2 Whilst employees are absent due to sickness they will continue to accrue annual leave. If due to sickness absence an employee is unable to take their annual leave entitlement during the relevant leave year, they will be allowed to carry the leave they have accrued over to the next leave year or will receive payment in lieu.
- 9.3 Further guidance is available in the Sick Pay Policy and Procedure.

Commentary:

Teachers now have an entitlement to accrue holidays during sickness absence following the decision of the House of Lords in the case of *Stringer v Her Majesty's Revenue and Customs (HMRC)*. The House of Lords ruled that:

- workers who are denied holiday pay while on sick leave can bring a claim to an Employment Tribunal for unlawful deduction of wages under the Employment Rights (Northern Ireland) Order 1996; and
- workers who are off sick will continue to accrue their right to paid holiday during their sickness absence and they must be able to take it on their return or carry it over to the next leave year.

It will be crucial to determine and define through negotiation what a teacher's 'annual leave entitlement' actually is. The statutory minimum legal entitlement is 5.6 weeks (28 days) for a full-time teacher or the pro rata equivalent for a part-time teacher.

Teachers are required to be available for work for 195 days a year, but have no specific annual leave entitlement beyond the statutory minimum of 28 days for someone working full time, or the pro rata equivalent for a part-time teacher.

The initial NASUWT negotiating position should be that any working days in excess of the days teachers are contractually required to be available for work (excluding Saturdays and Sundays) should be regarded as a teacher's 'implied' annual leave entitlement under their contract.

It is not yet clear in law whether tAlthough strictly the Stringer decision itself only applies to the statutory minimum leave entitlements, it can be argued that its effect should extend to a worker's entire annual leave entitlement. Therefore, the negotiating position in relation to section 9 should be that the annual leave entitlement that can be accrued and carried over to the next leave year is the whole of a teacher's implied annual leave entitlement and not just the statutory 28 days.

However, proposed changes to the relevant legislation may make it harder to agree such a position. The Government has proposed various amendments to the Working Time Regulations following the Stringer decision. If made law, these will clarify that it is only the statutory minimum entitlement that has to be carried over, and indeed will limit this to 20 rather than 28 days. Consultation on these proposals is currently taking place and we may need to revisit our approach after that is completed.

In the meantime, representatives should seek to negotiate as high an accrual and carry-over entitlement as possible. Employers may object to accrual and carry over of the entire leave entitlement by saying that Stringer does not require it. Equally though, it does not prevent it and the fact that the law has decided to take that approach to statutory minimum leave suggests that, as a matter of good practice, it should also apply to an entire leave entitlement. Further, if an employer does not do so, they may potentially breach disability discrimination laws. If this cannot be agreed, and an employer does limit accrual and/or carry over to the statutory minimum entitlement, then, unless and until the Government's proposals become law, this should be for 28 rather than 20 days. Employment tribunal and European case law suggests that as things now stand, employers must allow 28 days to be carried over.

The approach to payment in lieu of untaken leave is also complicated by the current Government consultation. Under the Working Time Regulations at present, payment in lieu of any untaken portion of statutory minimum leave is only permitted when employment comes to an end (subject to the point explained in the next paragraph). Following Stringer, there was some suggestion that the decision would require this to be changed to also allow payment in lieu for leave that was untaken because of sickness absence. However, the Government proposals do not make such a change. Until the proposals become law, it can still be argued that payment is permitted, so our negotiating position should be that payment in lieu is permitted as a result of Stringer, but this will also need revisiting following the consultation.

In any event, the Working Time Regulations do not prevent payment in lieu of untaken leave in excess of the statutory minimum entitlement when the parties agree this. Therefore, even if a general payment in lieu provision cannot be negotiated, representatives can still seek that payment in lieu is permitted for any untaken leave in excess of 28 days.

10 Review

- 10.1 This sickness absence policy will be monitored and reviewed every two years in consultation with all recognised trade unions.

Commentary:

It is important that policies are regularly reviewed, in consultation with trade unions, to ensure that they are fit for purpose and up to date. Sickness absence is a legitimate area of concern for the NASUWT in its role as a trade union. The policy should have effective arrangements for review, which take full account of the effect of the policy and procedure on staff.

This section should be amended, as necessary, to reflect local consultation arrangements.

Part 2 – Sickness Absence Procedures

- 11.1 A member of staff who is sick and likely to be absent should telephone (add name or post) as early as possible before their normal starting time (or the time agreed within the school) on the first day of absence so that arrangements for cover can be made. The employee should leave a message with reception or on an appropriate mobile phone where there is no other method of contact, following which (add name or post) will telephone the employee at home. The call should be made by the employee personally, or, if this is not practical, by a partner, friend or relative.
- 11.2 The employee should state:
- the reason for their absence as in the nature of their illness; and
 - the estimated period of absence, if known.
- 11.3 The employee, where possible, should alert someone in their department of any urgent work that may need to be covered during their absence.
- 11.4 If an employee feels unwell and wishes to go home during the course of the working day, they must notify (add name or post) before leaving. That day of absence will be recorded but will not constitute a day's sickness absence for the purposes of this policy. If he or she is off the next day, that day will be counted as the first day of sickness absence.
- 11.5 Sickness absence levels need to be consistently and accurately recorded in order to be effectively managed. The date and duration of each absence and the reason for it will be recorded by the designated person. This information will be retained by (add name or post) in accordance with the provisions of the Data Protection Act 1998.
- 11.6 If an employee provides false evidence of incapacity, or if an absence is not notified, or a valid reason for absence is not given, the employee may be subject to disciplinary measures subject to the agreed Disciplinary Procedure following the formal return to work meeting and in accordance with the Sickness Absence Monitoring Procedure.

Commentary:

The 'Reporting sickness absence' section is intended to ensure that there is an appropriate procedure in place to report, record and manage sickness absence in a professional manner that minimises the impact on the delivery of service, protects the member's interests and enables sickness absence to be appropriately managed by the employer.

The reporting procedure should provide clarity for managers and employees about what should be reported and when. It may be the case that reporting procedures differ locally and that those arrangements work perfectly well. Ambiguity in a reporting procedure can lead to confusion for staff and managers, which in turn, can cause problems. Where the procedures within a school are operating

effectively, cover the scope of the above section and are clearly defined within the existing policy, there is no need to make any amendment.

It is important that the policy provides clarity about what will happen in instances where the policy is deliberately circumvented or not adhered to by an employee. This provides for managers a clear structure within which to manage situations and safeguards against inappropriate decisions being made. Reference to the Sickness Absence Monitoring Procedure and the Disciplinary Procedure ensures that managers and employees are directed to the appropriate procedure to follow in situations where the employee is in breach of this procedure.

The position of the NASUWT is that this section represents good practice and that NASUWT Representatives should negotiate to safeguard these provisions with little or no amendment, or to use the wording to negotiate improvements to existing procedures.

12 Self-certification and doctors' certificates

- 12.1 From the fourth consecutive day of absence, the employee is required to complete the self-certification sickness absence form, which is to be signed by the designated person and sent to the appropriate administrator. A period of sickness in excess of seven calendar days must be certified by a doctor's medical certificate, which will then be checked by the designated person and sent to the appropriate administrator. This procedure should take place at the return to work discussion. Where no return to work discussion is necessary, or where the illness is of an intimate nature, the member of staff may directly submit the self-certification sickness absence form to the appropriate administrator in an envelope marked private and confidential.
- 12.2 If the absence continues, each medical certificate should be submitted by the employee to the designated person at each interval covering their periods of sickness absence consecutively.
- 12.3 Where a medical certificate provides advice in relation to the employee's return to work, the advice on the medical certificate will be taken into consideration and any specific instructions followed. These may include a phased return to work, altered hours, amended duties and/or workplace adaptation. If appropriate, and in all cases where agreement cannot be reached with the employee, advice should be sought from the occupational health officer.
- 12.4 If the employer fails to make the necessary changes or adaptation, then the employee will be deemed sick until either they fully recover or until the recommended changes and adaptation are made, whichever happens first. The employee will be entitled to trade union representation at any meetings to discuss changes to be implemented and/or the advice on the medical certificate. The employer has a duty to ensure that a sick employee is not allowed to return to work even where a doctor has recommended that they might be fit for work under certain circumstances.

- 12.5 Any unresolved disputes over changes to work or working times/patterns proposed as a result of recommendations contained in the medical certificate will be dealt with under the Grievance Procedures.

Commentary:

The 'Self-certification and doctors' certificates' section outlines what is common practice in many schools and is intended to ensure that sickness absence is appropriately reported, recorded and managed. It is important that the procedure is clear about when self-certification or a doctor's medical certificate is required and provides for members to keep illness of an intimate nature confidential, as appropriate. It is also crucial that the procedure details the employer's duty to ensure that a sick employee is not allowed to return to work even where a doctor has recommended that they might be fit.

The procedure also enables compliance with the new statutory provisions brought into effect by the Social Security (Medical Evidence) and Statutory Sick Pay (Medical Evidence) (Amendment) Regulations (Northern Ireland) 2010. The provisions contained within these Regulations are not well known by many managers and it is, therefore, necessary that the detail of 12.3 and 12.4 are retained to provide clear instruction about what should happen where a medical certificate provides advice in relation to the employee's return to work.

It is important that the procedure clearly outlines how disputes should be progressed. In most schools such issues would be most appropriately advanced via the Grievance Procedures, but amendments should be made, if necessary and appropriate, to accommodate local provisions.

The position of the NASUWT is that this section outlines statutory requirements and that NASUWT Representatives should either negotiate for it to be adopted with little or no amendment or use the wording to negotiate improvements to existing procedures to ensure statutory compliance and to provide clarity on how the new 'Fit Note' provisions will be accommodated within the procedure.

13 Short-term absence

- 13.1 Frequent short-term absences may indicate poor health, which may require further medical examination by a doctor or the occupational health officer. Alternatively, it could indicate work stress, domestic difficulties, problems with the job, bullying/harassment, or lack of capability to do the job. It is good practice for the designated person to hold a return to work discussion with an employee to explore the reasons for the absence(s) after each period of short-term absence. This is useful to ensure that the employee is fit to return to work, to ask if the school needs to take any action to aid the return to work and to ensure that the relevant medical certification has been received.

Commentary:

The primary focus of the 'Short-term Absence' section is to ensure that where short-term absences have been frequent, management, in the first instance, seek to offer

support to the member of staff concerned. It is in the interests of management and staff to help prevent illness, injury and disability leading to prolonged sickness absence and job loss.

Some sickness absence procedures include 'trigger points' that identify particular actions being taken by management if a certain number of absences occur within a specified timescale. The NASUWT believes that such an approach is too prescriptive and does not provide sufficient flexibility to allow for an individual's circumstances to be addressed appropriately, sensitively and in a supportive manner. It is important that managers are aware that sickness absence related to disability and maternity should not be included as traditional sickness absence, particularly in terms of trigger points, as this may be deemed to be discriminatory. In addition, a teacher's sick leave entitlement should not be affected by any absence that arises from an accident, injury or assault at work or an infectious or contagious disease contracted directly in the course of a teachers' employment.

Where the procedures within a school are operating effectively, cover the scope of the above section and are clearly defined within the existing policy, there may be no need to make any amendment. The position of the NASUWT is that this section represents good practice and that NASUWT Representatives should either negotiate to safeguard these provisions with little or no amendment or use the wording to negotiate improvements to local procedures, as necessary.

14 Long-term absence

- 14.1 Sickness absence of two weeks or more is generally considered to be long-term absence. Individuals may be absent on long-term sick leave for a variety of reasons (e.g. mental health issues, injury, operation, convalescence from illness, diagnosis of a long-term disability, terminal illness, etc.) and any action taken should be appropriate according to the circumstances of the particular case. (Add name or post) takes a sympathetic view of genuine cases of long-term ill health and will provide a supportive approach in all circumstances. This may constitute counselling, a referral to occupational health or other means of support.
- 14.2 (Add name or post) will maintain reasonable and sensitive telephone contact with employees who are absent from work owing to illness in accordance with paragraph 23 below. This contact is intended to be constructive and supportive to the employee's recovery and return to work.
- 14.3 The employee may be requested to contact their general practitioner in order to establish the likely length of absence and the long-term effect on the employee's capability in relation to the job and attendance at work. Following consultation with the employee and their trade union or other such representative, and with the occupational health officer, the designated person will thoroughly explore and fully consider and arrange for all possible and appropriate means of support, including reasonable adjustments. If

necessary, consideration will be given to providing alternative employment for employees who are deemed disabled under the DDA.

Commentary:

It is important to include a definition of long-term absence to provide clarity within the procedure.

It is crucial that the employer undertakes to apply a supportive approach in cases of long-term sickness absence and specifies that counselling, a referral to occupational health or other means of support will be made available in such cases to facilitate a return to work. Occupational health should be able to offer professional advice and support to staff returning from long-term absences. A properly managed and supported return to work will aid a return to full duties that minimises the risk of further absence. Further guidance can be found in the Health and Safety Executive (HSE) publication *Working together to prevent sickness absence becoming job loss*, which is available at www.hse.gov.uk/sicknessabsence/downloads.htm.

The position of the NASUWT is that this section represents good practice and enables statutory compliance with the Disability Discrimination Act 1995. NASUWT Representatives should either negotiate to safeguard these provisions with little or no amendment or use the wording to negotiate improvements to existing procedures.

15 Return to work

Informal

- 15.1 On return to work, the employee will be treated fairly and sympathetically. Short-term absences of up to a week each, due to common illnesses such as a cold or flu, will not normally trigger a formal return to work meeting. However, an informal return to work meeting may be conducted after an absence where the cause has not previously been reported to the principal (or designated person) in order to establish the reason for and cause of absence. An informal return to work meeting may also be arranged as an opportunity for the principal (or designated person) to ensure that the employee is fit to return to work, to alleviate any concerns the employee may have, to ascertain whether absence is work-related and to determine whether _____ can offer the employee any support. The meeting may therefore be used to discuss and agree what action or support could be of assistance to the employee and it should not be considered as any part of a disciplinary procedure. If a medical certificate has been issued, it will be checked and then sent to the appropriate administrator.
- 15.2 Employees suffering from conditions of an intimate nature may choose to discuss sensitive health issues with a person of the same gender or an alternative appropriate person, the identity of whom will be agreed between

the employee and the designated person. Intimate details of the illness do not need to be disclosed.

Formal

- 15.3 The principal should use discretion in deciding when it is reasonable and justified to invoke the formal procedure rather than operate mechanistic trigger points to query an employee's frequent sickness absence. Matters such as a previous medical condition, circumstances associated with the employee's post and/or working conditions, or medical conditions that are unlikely to recur (e.g. fractures of limbs) will be taken into account before invoking formal procedures. Each case will be considered on merit and in accordance with the Sickness Absence Monitoring Procedure. Absences that relate to leave or reasons other than sickness (e.g. attending jury service) or absences due to disability or injury at work will be disregarded for the purposes of invoking the formal procedure.
- 15.4 The formal return to work meeting will explore in more detail the reasons for the absence(s) and, if necessary and appropriate, further action will be taken by the designated person to improve the employee's attendance or wellbeing. The designated person will put his/her observations about any apparent pattern of absence to the employee directly so that the employee has the opportunity to provide an explanation and will seek, in conjunction with the employee, to identify ways in which _____ could assist him/her to improve future attendance and to set reasonable targets and time limits to that end.
- 15.5 Employees suffering from conditions of an intimate nature may choose to discuss sensitive health issues with a person of the same gender or an alternative appropriate person, the identity of whom will be agreed between the employee and the designated person. Intimate details of the illness do not need to be disclosed.
- 15.6 If there are any reasonable grounds for concluding that the employee's absence was not genuinely for the reason given, the principal (or designated person) will put the evidence to the employee directly so that s/he has the opportunity to respond and provide an explanation.
- 15.7 All parties involved in the sickness absence procedure are required to treat all cases of staff absence due to illness in a fair, consistent and constructive manner. It will be the responsibility of the principal to invoke the Capability/Unsatisfactory Work or Disciplinary Procedure, as appropriate. No employee will be dismissed on grounds of sickness absence without due warning and without the Capability/Unsatisfactory Work or Disciplinary Procedure, as appropriate, having been followed.
- 15.8 A record of the formal return to work meeting will be made detailing the discussion, date of and reason for absence and any other additional information and will be stored in accordance with the Data Protection Act 1988. A copy will be provided to the employee.

- 15.9 The employee shall have the right to trade union representation at any meeting under this Sickness Absence Procedure.

Commentary:

The 'Return to work' section outlines what is common practice in many schools and is intended to ensure that a return from short and long-term sickness absence is appropriately managed. It ensures that the procedure enables compliance with the Data Protection Act 1998 and the new statutory provisions brought into effect by the Social Security (Medical Evidence) and Statutory Sick Pay (Medical Evidence) (Amendment) Regulations 2010.

It is important to establish the principle that on returning to work the employee will be treated fairly and sympathetically. It is equally important that an employee's dignity at work is safeguarded where s/he is suffering from a condition of an intimate nature. Allowing an employee to choose to discuss sensitive health issues with a person of the same gender or an alternative appropriate person and specifying within the procedure that intimate details of the illness do not need to be disclosed will facilitate this.

It is essential that the policy stipulates that no employee will be dismissed on grounds of sickness absence without due warning and without the Capability or Disciplinary Procedure, as appropriate, having been followed. It is in a member's best interests that the appropriate policy is used where dismissal is a consideration and it should be clear within the procedure that an employee cannot be dismissed using the Sickness Absence Policy and Procedure.

The position of the NASUWT is that this section represents good practice and enables statutory compliance with the relevant legislation. NASUWT Representatives should either negotiate to safeguard these provisions with little or no amendment, or use the wording to negotiate improvements to existing procedures.

16 Occupational health

- 16.1 The use of occupational health service professionals can be an effective tool in both preventing sickness absence through advising on appropriate wellbeing strategies and in managing a return to work after sickness absence, especially in cases of a long-term sickness absence. The principal (or designated person) may refer an employee to an occupational health adviser for an occupational health consultation. The employee may refuse to attend if they have reasonable grounds, in which case a decision will be made using the medical information available.
- 16.2 The occupational health service will advise the employee that their written permission will be required to contact their doctor for a medical report and that the employee has the right to see the report and query any concerns before it is sent to the occupational health officer. The occupational health

service will request and secure the written permission of the employee before requesting a medical report from their doctor.

- 16.3 _____ will meet all costs associated with any examination undertaken by the occupational health service and/or the release of the employee's medical report should the employee agree to such a request. Any such report submitted to occupational health in respect of the employee will be made available to the employee on request.
- 16.4 The key objective of an occupational health service is to protect and promote employees' health and wellbeing, taking into account the working environment and all its challenges. Occupational health specialists have the dual role of supporting the employer by assessing the effect of employees' health and fitness on their ability to perform their job and supporting employees by examining the effect of their work and the working environment on their health and wellbeing, assessing the recovery and likelihood of return to work of employees who are off sick and through the provision of support services.

Commentary:

The 'Occupational health' section is intended to ensure that sickness absence is appropriately managed and that members receive suitable support from a qualified occupational health practitioner.

In 2008 the Department for Work and Pensions (DWP) published a review of rehabilitation called *Vocational Rehabilitation: What Works, For Whom, and When?*, which can be found at: www.dwp.gov.uk/docs/hwwb-vocational-rehabilitation.pdf.

Vocational rehabilitation was defined for the review as: 'whatever helps someone who has a health problem to stay at, return to and remain in work.'

The authors concluded that: 'Evidence shows that being out of work is bad for physical and mental health – while being in work can help recovery and lead to improved health outcomes. Therefore, helping people with health problems to stay at or return to work is beneficial for them, their families, business and society.'

The NASUWT would broadly endorse, however, that, for many workers the type of work they do actually leads to ill health or can make a condition worse. Forcing workers to return to work before they feel ready can lead to a relapse or a delay in recovery. In addition, if it is work itself that caused an illness in the first place (as is the case in many work-related stress illnesses and musculoskeletal disorders (MSDs) like back pain and repetitive-strain injury (RSI), then it is also important to remove the causes. A qualified occupational health practitioner can assist in this process and it is important that the procedure specifies that such support will be sought where appropriate.

The position of the NASUWT is that this section represents good practice and NASUWT Representatives should either negotiate to safeguard these provisions with little or no amendment, or use the wording to negotiate improvements to existing procedures.

17 Phased return to work

- 17.1 In many cases of sickness absence, a phased or gradual return to normal hours and responsibilities within a fixed timescale will be considered in conjunction with appropriate supportive measures to facilitate a sustained return to work whilst ensuring that employees do not incur any financial detriment. This may occur especially where reduced hours of work or reduced responsibilities are being undertaken for a specified and limited time.
- 17.2 An employee returning to work will receive their substantive pay and will not therefore be any worse off financially as a result of returning to work under this policy. Nor will an employee be deemed to be on sick leave if s/he returns to work in accordance with the recommendations of a general practitioner (e.g. a phased return, reduced working hours, reduced duties or workplace adaptation).
- 17.3 An 'Action Plan' will be agreed between the designated person, the employee, their trade union or other such representative and the occupational health officer that will determine the specific terms of the phased or gradual return to normal hours and responsibilities, including:
- timescale and review points;
 - training and support to be provided to the employee;
 - details of adjustments to the workplace;
 - details of the employee's duties;
 - details of the employee's duties to be allocated to another person;
 - details of information to be shared with other staff and pupils concerning the employee's return to work;
 - details of any alterations to working hours;
 - confirmation that the employee will be allowed to be absent during working hours for rehabilitation, assessment or treatment;
 - details of equipment to be acquired or modified and relevant modifying instructions or reference manuals;
 - details of any modified procedures for testing or assessment; and
 - any other relevant information.

Commentary:

The 'Phased return to work' section is intended to ensure that no employee suffers any financial detriment as a result of returning to work on temporarily reduced hours or reduced duties and that appropriate support is in place to facilitate a successful permanent return to full hours and duties, where possible.

Any teacher returning to work should receive their substantive pay, regardless of the hours they work or the work they undertake as part of a phased return to

work. This ensures that the procedure enables compliance with the new statutory provisions brought into effect by the Social Security (Medical Evidence) and Statutory Sick Pay (Medical Evidence) (Amendment) Regulations (Northern Ireland) 2010.

The Action Plan represents good practice in providing appropriate structured support to employees returning to work in a phased manner following a long absence. It is important to ensure that an Action Plan that details what structured support will be provided to the employee is agreed prior to a return to work, particularly in cases of long-term absence, as this can assist in ensuring that an employee is not ‘thrown in at the deep end’ on full hours and duties and exposed to factors that may have contributed to the initial absence.

The position of the NASUWT is that this section represents good practice and enables statutory compliance with the relevant legislation. NASUWT Representatives should either negotiate to safeguard these provisions with little or no amendment, or use the wording to negotiate improvements to existing procedures.

18 Sick pay and entitlement

- 18.1 The sick pay and sick leave terms and conditions for teachers for use in (add name of school) are shown in the:
- TNC Circular 2008/2 Teacher Attendance Procedure; and
 - (insert the title(s) of any relevant local sick pay and sick leave terms and conditions for teachers), which can be obtained at (insert where this can be easily obtained).
- 18.2 Upon their return to work and upon resumption of their duties, whether this is resumption of their full hours and duties or on a phased or gradual return to normal hours and responsibilities, an employee will be paid their substantive salary in accordance with their contract of employment and their sick leave and pay will come to an end.
- 18.3 Absence owing to injury sustained or disease contracted in the course of a teacher’s duties shall not be reckoned against the teacher’s entitlement to sick leave.
- 18.4 A teacher absent because of the contraction of pulmonary tuberculosis is entitled to 12 months’ full pay and a further period of full or half pay at the discretion of the employer.
- 18.5 A teacher suspended from duty, either because of an infectious disease in the teacher’s home or because of an infectious disease in the workplace that could be injurious to the teacher’s health, is entitled to full pay during the course of the absence.

Commentary:

The 'Sick pay and entitlement' section ensures that teachers' entitlements with regard to sick leave and pay are protected. It ensures that the procedure enables compliance with national and local agreements on sick leave and sick pay.

NASUWT Representatives should either negotiate to safeguard these provisions with amendment as necessary, or use the wording to negotiate improvements to existing procedures.

19 Further support

- 19.1 Teachers have access to the CareCall telephone counselling service on 0808 800 0002 or www.carecallwellbeing.com. This is a 24-hour, seven-day-a-week confidential telephone helpline.
- 19.2 Employees can also contact their trade union for support.

Commentary:

The 'Further support' section is intended to ensure that teachers are directed to where further support is available.

The position of the NASUWT is that this section represents good practice and NASUWT Representatives should either negotiate to safeguard these provisions with little or no amendment or use the wording to negotiate improvements to existing procedures.

20 Grievance

- 20.1 Any employee who feels aggrieved at the way in which their sickness absence has been dealt with may invoke the _____ Grievance Procedure.

Commentary:

The 'Grievance' section is intended to ensure that teachers are directed to where a grievance should be progressed if they feel aggrieved with the way in which their sickness absence has been dealt with by the employer.

The position of the NASUWT is that this section represents good practice and NASUWT Representatives should either negotiate to safeguard these provisions with little or no amendment, or use the wording to negotiate improvements to existing procedures.

21 Breach of policy or procedure

- 21.1 Serious breaches of the Sickness Absence Policy or Procedure may be dealt with under the Disciplinary Procedure.
- 21.2 Examples of offences that may be regarded as gross misconduct and could result in summary dismissal are contained within the Disciplinary Procedure.

Commentary:

The 'Breach of policy or procedure' section is intended to ensure that teachers who breach the policy or procedure are aware that the Disciplinary Procedure may be used to deal with the breach, where appropriate.

The position of the NASUWT is that this section represents good practice and NASUWT Representatives should either negotiate to safeguard these provisions with little or no amendment, or use the wording to negotiate improvements to existing procedures.

22 Role of the designated person

- 22.1 All parties involved in the Sickness Absence Procedure are required to treat all cases of staff absence due to illness in a fair, consistent and constructive manner. It will be the responsibility of the principal or other such designated person to monitor the attendance record of all staff in their school and to maintain records.
- 22.2 In exceptional circumstances, prolonged absence can result in dismissal. However, no employee will be dismissed on grounds of sickness absence without due warning and without the Capability/Unsatisfactory Work or Disciplinary Procedure, as appropriate, having been followed and implemented. In addition, in both short-term and long-term ill-health cases, (add name or post) will, in consultation with the employee and their trade union or other such representative, thoroughly explore all possible and appropriate alternatives to dismissal. The Employment Rights (Northern Ireland) Order 1996 requires an employer to consider all reasonable alternatives before coming to a decision about whether or not to dismiss an employee.

Commentary:

The 'Role of the designated person' section is intended to ensure that:

- the role of the designated person is clearly defined;
- all cases of staff absence due to illness are treated in a fair, consistent and constructive manner; and
- where appropriate, the Capability/Unsatisfactory Work or Disciplinary Procedure are used in compliance with the Employment Rights (Northern Ireland) Order 1996.

The position of the NASUWT is that this section represents good practice and enables statutory compliance with the relevant legislation. NASUWT Representatives should either negotiate to safeguard these provisions with little or no amendment, or use the wording to negotiate improvements to existing procedures.

23 Contacting employees who are at home on sick leave

- 23.1 Employees who have followed the reporting procedure for short-term sickness absence will not be contacted at home unless the principal (or

designated person) can demonstrate urgent or extraordinary circumstances justifying the contact. Contact will in no circumstances be intrusive and on no account will absent teachers be directed to set work for classes, prepare reports or undertake any other work when they are absent because of ill health.

- 23.2 Home visits will only be undertaken by mutual consent. Where a home visit is to be carried out it will be done in a sensitive and supportive manner by the principal and either one other colleague or trade union representative of the same gender as the employee. Contact will therefore only be made where absolutely necessary and in order to discuss the support that can be provided to facilitate a sustained return to work and the anticipated return date and in order to keep the employee informed about relevant matters/information about _____ (e.g. details of any new job advertisements). Employees may wish to remain in further contact with other work colleagues.
- 23.3 In cases of long-term sickness absence, the frequency of contact and a suitable procedure should be agreed with employees and/or their trade union representative.

Commentary:

The 'Contacting employees who are at home on sick leave' section is intended to ensure that teachers are appropriately supported in a sensitive and supportive manner and not in an intrusive way. It is essential that the procedure states that employees will only be contacted in urgent or extraordinary circumstances to ensure that employees are not pressurised into returning to work, or to undertake work, before they are fit to do so.

It is equally important to establish that home visits will only be undertaken by mutual consent. In some cases of long-term sickness absence the employee may prefer a meeting to take place at home, rather than in the school. The procedures should allow for this, but clearly state that a visit to the employee's home can only take place where both the employer and employee mutually consent. Unannounced visits to an employee's home would clearly be unacceptable.

The position of the NASUWT is that this section represents good practice and NASUWT Representatives should either negotiate to safeguard these provisions with little or no amendment, or use the wording to negotiate improvements to existing procedures.

NASUWT
The Teachers' Union
NORTHERN IRELAND

Ben Madigan House
Edgewater Office Park
Edgewater Road
Belfast BT3 9JQ
Tel: 028 9078 4480
Fax: 028 9078 4489
E-mail: rc-nireland@mail.nasuwt.org.uk

The largest teachers' union in Northern Ireland