

BR20-18

SF/KF

19th April 2018

To NPS Reps

(To All Reps, Branch Chairs, Secretaries, Vice-Chairs and Convenors for information)

Because of the pressure we have put on HMPPS HR over the last year and a quarter, there has finally been some progress on achieving a 'suitable and sufficient' (EA) Equality Analysis (as attached) of the AMP policy (NOMS Attendance Management Policy P1 01/17). It may be useful to be aware of aspects of this revised assessment when representing members with protected characteristics who are subject to this policy.

Background

In late 2016 Napo submitted a dispute over the employers intention to introduce the AMP policy – a policy that Napo thought draconian and designed to get staff to dismissal more quickly. Because of our dispute Michael Spurr met with the TUs to discuss our concerns. Of the many issues we raised with him the only item he agreed with us about was in connection with the EIA, about which he wrote *'Concerns were raised with regard to the Equality Impact Assessment for this policy. I accept the concerns raised and I have asked colleagues in the HR Directorate to review and revise the Equality Impact Assessment for this policy and consider comments already received by trade unions'*.

HMPPS took months to finalise this review (in which time they swapped from using Equality Impact Assessments to Equality Assessments). In the revised document HMPPS included many of the issues we had raised with them - for example in relation to impact of the policy on sickness absence for older workers, women and disabled staff - but they did not include information on how to mitigate the possible impact of these protected characteristics on sickness absence levels. Given this we asked for the assessment to be revised once again. Following a series meetings and emails they came back with the attached 3rd version of the document, which is much improved on previous versions as it addresses the concerns we raised and explains how to mitigate these.

The significance:

This is a step in the right direction. It is not a re-write of the policy – we are still a long way from this (we need statistical evidence that the policy is having a detrimental impact for those with protected characteristics, but this data is not available as yet due to problems with SOP). We continue to pursue HMPPS for this data.

But the additions to the assessment (as listed below) may be worth mentioning if you are representing an older worker, a woman or a disabled member (and of course consider intersectionality as some members may tick a number of these boxes), as the items below are issues that should be considered when formal action is a potential outcome.

Additions to version 3 of the EA are as follows (see the attached EA if you want to read the following text in context):

In the general introduction to the assessment, the added text relates to trigger points and PSED (Public Sector Equality Duty):

Trigger points

Neither should be an automatic action just because an individual has reached a trigger level of days and / or spells. Rather, that should be a trigger for the manager to ensure they understand the reasons for the absence(s) and that appropriate action is being taken.

PSED

To ensure compliance with the Public Sector Equality Duty, decision-makers and managers should:

- exercise discretion around warnings/sanctions in appropriate circumstances;
- act fairly and reasonably, considering each case on its own facts and merits;
- make reasonable adjustments to aspects of the policy to take into account disability;
- receive appropriate training on diversity issues e.g. unconscious bias training;
- Obtain appropriate occupational health advice before making key decisions to ensure disability issues are taken into account.

Protected Characteristics under the Equality Act 2010, age, disability and sex:

Age (in relation to older workers)

This policy allows line managers to mitigate against this by using their discretion to decide not to issue a warning when an employee reaches or exceeds their trigger point. Line managers should consider the circumstances of the absence and the employee's absence history. In applying discretion over whether or not to issue a warning, line managers should consider the employee's overall attendance record. A line manager may decide not to give a Written Improvement Warning following a sickness absence which is uncharacteristic for an employee who has a positive work-focused approach and whose sickness absence record is otherwise satisfactory. Occupational Health advice may help line managers to determine whether the employee is likely to be able to meet the attendance standard expected of them in future. In dealing with individual cases, line managers are able to exercise discretion, and they need to look at individual circumstances once a trigger point has been reached and to tailor their action accordingly. Further information on using discretion is available on [My Services](#).

Older employees are more likely require regular health screenings to preserve their health. Employees should schedule medical appointments/health screenings outside of normal working hours. Exceptionally, when this is not possible employees should seek to arrange appointments that minimise the disruption to work, and paid time off should be allowed. A sympathetic approach should be taken to employees who are undergoing specialist treatment particularly in relation to facilitating paid time off to attend appointments. Further information on this is available in the HMPPS Absence Management policy (PSI 18/2010 & PI 33/2014).

Disability

Although not specifically within the remit of the attendance management policy it should be highlighted that there have been a number of recent examples of recommended reasonable adjustments not being implemented due to difficulty in obtaining the required equipment. This is a particular problem for assisted technology users, especially in the NPS, however, this should improve with the roll out of the Technology Transition Project (TTP), which should be completed in mid-2018 for NPS staff and the end of 2018 for all HMPPS staff. TTP should ensure that all assistive technology requirements are met as the needs of AT users have been integrated into the project.

Accessibility to buildings for staff with disabilities is also a concern, however, there is a move across all government departments to have an accessibility champion in place to make sure that all departments meet the civil service and country wide governance around this area. There are a large number of establishments in the NPS that are not accessible for staff with disabilities, which is something that HMPPS recognise and need to address. In the first instance local senior managers should be trying to resolve accessibility issues and to escalate accordingly if these issues are not resolved satisfactorily. An accessibility champion will help the service to move forward and become more compliant with the needs of disabled staff. Where reasonable adjustments are not in place managers must review the impact of this on the individual's sickness absence prior to taking any remedial action. This must be documented and reviewed after the reasonable adjustments are put in place. This should be done irrespective if a reasonable adjustment was to forego a warning letter.

The HMPPS HR Directorate, in liaison with the HMPPS Disability Network lead, are now in the process of developing a 'Reasonable Adjustment Passport' and supporting guidance. The aim of the Workplace Adjustment Passport is to improve the ease with which employees with a disability, health condition or where other workplace adjustments may be needed, can move jobs in the Civil Service.

There are three functions within the passport:

- to support a conversation between an employee and their line manager about the disability, health condition or requirements around gender reassignment and any workplace adjustments that might need to be made;
- to act as a record of that conversation and of the adjustments agreed;
- to act as a record of any adjustments made for individuals as a temporary supportive measure.

Sex (in relation to women workers)

This policy allows line managers to mitigate against this by using their discretion to decide not to issue a warning when an employee reaches or exceeds their trigger point. Line managers should consider the circumstances of the absence and the employee's absence history. In applying discretion over whether or not to issue a warning, line managers should consider the employee's overall attendance record. A line manager may decide not to give a Written Improvement Warning following a sickness absence which is uncharacteristic for an employee who has a positive work-focused approach and whose sickness absence record is otherwise satisfactory. Occupational Health advice may help line managers to determine whether the employee is likely to be able to meet the attendance standard expected of them in future. In dealing with individual cases, line managers are able to exercise discretion, and they need to look at individual circumstances once a trigger point has been reached and to tailor their action accordingly. Further information on using discretion is available on [My Services](#).

We know that female employees are more likely to take sick absence to cover childcare responsibilities, especially if they are single mothers. Female employees are also more likely to report stress related health complaints, often due to outside pressures, such as childcare responsibilities.

There are a number of supporting tools and guides available to staff on the [Attendance & Wellbeing](#) intranet page (under the Health & Safety and Occupational Health links). In addition to this there is a How to Guide on "supporting employees experiencing stress at work" and one on "supporting staff with caring responsibilities"

What next?

We have made some progress, but need to make more.

Because of Napos input, HMPPS have added information to the EA on age, sex and disability. They are now looking into producing some additional guidance in relation to the menopause – which will ensure that women suffering with menopause symptoms feel confident to discuss this, ask for support and reasonable adjustments so that they can continue to be successful in their roles and reduce absenteeism due to menopausal symptoms.

Again this is because of Napo's work on this front in raising the menopause as a workplace issue. Particularly through our work with academics from King's College London, Professor Myra Hunter and Doctor Claire Hardy, our 2016 survey on women's premenstrual experiences and the menopause at work and the subsequent Napo guide 'Napo guide to the menopause at work' <https://www.napo.org.uk/health-safety>

Additionally HMPPS have agreed to add to the AMP guidance documents information we have sent through to them on women's occupational health and the potential impact on sickness absence. Because of the very high density of women staff within the NPS such work is important as it goes some way to addressing the concerns caused by the implementation of a policy across two services - probation and prisons with very different density of women workers. Ultimately, of course, we need to get policy change – this is still 'work in progress'.

Sarah Friday
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