

Teachers' Conditions of Service

Assessment of Industrial Injury Policy

1. Teachers' Conditions of Service

- 1.1 Teachers' Conditions of Service make provision for an extended period of full sickness pay during absence caused by industrial injury, which is defined as "absence due to accident, injury or assault attested by an approved medical practitioner to have arisen out of and in the course of the teacher's employment".
- 1.2 The following procedural guidance which applies to all Teachers, agreed with the Teachers' JCC, indicates how the Trust will manage the decision-making process and assist the Trust's Occupational Health Service to come to a decision on the basis of all the circumstances surrounding individual cases where this entitlement may apply. A decision on this matter is usually straightforward. However, in cases where the circumstances leading to the period of the teacher's absence are unclear or disputed, occupational health practitioners may be able to state that the illness is consistent with a claim about the circumstances which led to the absence, but cannot make any judgement about the actual cause. These guidelines are particularly designed to reduce the number of disputed cases and assist in their efficient resolution.

2. Preliminary Evaluation

- 2.1 Where a teacher's absence is either prolonged already (e.g. two to three months) or is likely to take the teacher concerned beyond his/her period of entitlement to full sickness pay, the Trust will normally seek HR support and initiate a referral to the Occupational Health Service. As part of the process of gathering relevant information, the Chief Executive Officer and/or the Academy Head (or nominated person making the referral) will indicate in the referral whether s/he has any knowledge of the circumstances surrounding the absence, which might indicate that it could be attributable to accident injury or assault arising out of and in the course of the teacher's employment. In particular information would be provided about any recorded or claimed incident(s) at work, complaints of bullying or harassment or similar. It may be evident that the absence is the result of a specific identifiable incident which is known about by the school or the Trust (e.g. via an incident report), in which case additional enquiries may not be required.

3. Referral for an Occupational Health Report

- 3.1 Any information known to the person making the referral from these enquiries will be included in the written referral to the Occupational Health Physician. If it is possible to form a view at this stage that the teacher is absent as a result of industrial injury this will be indicated in the referral. In other circumstances, s/he will present the relevant circumstances surrounding the absence to the Occupational Health Physician and ask whether it is possible to form a view about the probable cause of the medical condition underlying the absence.

4. Decision Following Occupational Health Report

- 4.1 In most cases it is expected that the Occupational Health Physician will be able to make a decision as to whether s/he can state that, on the balance of probabilities, the condition causing absence meets the definition set out in paragraph 1 above. If it is clear at this stage that the absence is due to industrial injury, appropriate steps will be taken in respect of sickness pay entitlement. If it is clear from the Occupational Health report that this is not a case where absence is attributable to industrial injury, the person making the referral will not pursue any further enquiries. Any further action to pursue a claim will then rest with the employee and/or his/her representative.

- 4.2 If the Occupational Health report indicates a possibility that the cause of absence may be industrial injury, if it is unclear, or asks for further information, or if s/he believes the report overlooks significant information (which may come from his/her own knowledge of the case, or information provided by or on behalf of the teacher), the person making the referral will make further enquiries. These enquiries may include as appropriate: further information from the school or the teacher; information submitted by a trade union representative; discussion with Occupational Health; and other relevant enquiries. These enquiries may be made by telephone, letter, e-mail or meeting, but will not assume the characteristics of a formal investigation. The enquiries may be made at the same time as any other contact or enquiry connected with the teacher's absence. On the basis of both original knowledge of the case and these further enquiries, the person making the referral will take a view (which should be agreed with the Chief Executive Officer and/or Academy Head or other Senior Manager, in cases where they are not making the referral) as to whether or not s/he believes that the absence qualifies to be treated as industrial injury and advise the teacher and/or his/her representative of this view. This may be by letter, e-mail, telephone or meeting as appropriate to the case. The person making the referral will communicate his/her view and the reasons for it to the Occupational Health Physician – this may be immediate or in the course of arrangements for a further appointment made for the teacher.
- 5.0 **Referral to an Advisory Panel**
- 5.1 The Occupational Health Physician will normally be able to attest independently on the basis of all the evidence available to him/her. The caseworker dealing with the case will endeavour to resolve any differences of views as to whether or not a case may be appropriately regarded as industrial injury.
- 5.2 If the Occupational Health Physician is unable to reach a decision because there is significant disagreement about the circumstances under which the condition leading to the teacher's absence has arisen, or whether the condition qualifies the teacher for consideration under industrial injury provisions, the Occupational Health Service has agreed to accept the guidance of an advisory panel which will assess the evidence relating to circumstances leading to the illness. The task of the panel is to assess whether on the balance of probabilities, the medical condition causing the teacher's absence is due to accident, injury or assault which has arisen out of and in the course of the teacher's employment.
- 5.3 The panel will advise the Occupational Health Physician before s/he takes a formal decision and the Occupational Health Service has agreed to follow the guidance of an advisory panel in respect of the facts and circumstances leading to the teacher's absence. The panel is not a means of appeal against the decision of the Occupational Health Physician.
- 6.0 **Constitution of the Advisory Panel**
- 6.1 The advisory panel will consist of the Chair (or suitable nominee) from The *Consortium* Trust Board, a trade union representative chosen by the Teachers' Panel of the JCC and a representative from the Trusts' HR Team. None of the three panel members should have any significant prior knowledge of the case to be assessed and all should be in a position to reach an impartial view based on the evidence presented to them.
- 7.0 **Collecting and Presenting Written Evidence**
- 7.1 The trade union representative and the person making the referral should each prepare separately the written evidence on which they have formed their respective views of the case. Where the referral is made by a member of the school's staff then a representative of the Trusts' HR Team will assist with this process. The evidence may include:
- > Occupational Health, and other, medical reports
 - > Relevant incident reports
 - > A statement by the Teacher, and by the Chief Executive Officer and/or Academy Head
 - > Witnesses' statements, where relevant incidents have been observed
 - > This list is not exhaustive, and not all of the above will be required in all cases.



- 7.2 There should also be a summary statement of the trade union representative/HR representative involved with the case. The summaries should then be exchanged, and the two sides allowed a given time to comment in writing on the portfolio of evidence presented to them. The evidence will be presented to the panel.
- 8.0 **The Panel Meeting**
- 8.1 The panel will meet to consider the written evidence. There will be no live hearing of evidence or questioning of witnesses or representatives. If appropriate, the panel may ask for expert advice on technical points. The panel will make a decision on the basis of the evidence presented and will give its opinion to the Occupational Health Physician dealing with case in writing, normally within ten working days. The decision of the panel will also be notified in writing to the trade union representative and the HR representative who submitted the evidence, indicating the broad reasons for the view taken. The Occupational Health Physician will review the panel's opinion and then consider if s/he is able to reach a decision about industrial injury in the light of the panel's opinion. Having done this, the Occupational Health Physician's decision will be communicated to the member of staff and the person making the original referral. This decision will be final.



Document Control

Changes History

Version	Date	Amended By	Details of Change
V2	10/02/2021	L Frere-Smith	Minor changes to union and Trust terminology

Approval

Name	Job Title	Signed	Date
Andrew Aalders-Dunthorne	Principal/CEO	Electronic signature	06/01/2017
Dawn Carman-Jones	On behalf of the Trust Board	Electronic signature	09/01/2017
Andrew Aalders-Dunthorne	Principal/CEO	Electronic signature	25/2/2021
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