NHS
Barnsley
Clinical Commissioning Group

BARNSLEY CLINICAL COMMISSIONING GROUP

MANAGING SICKNESS ABSENCE POLICY

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THIS POLICY HAS BEEN SUBJECT TO A FULL EQUALITY IMPACT ASSESSMENT

MANAGING SICKNESS ABSENCE POLICY

DOCUMENT CONTROL

Version No	Type of Change	Date	Description of change
V.1	Final	February 2014	With CCG for initial comment
V1.1	Final updated following review	October 2015	Minor changes and clarifications made following review by HR Manager
V1.2	Review	September 2017	Minor changes and clarifications made following review by Head of HR
V1.3	Review	July 2019	Guidance on reasonable adjustments added as an appendix following discussion at E&EC in May 2019. Opportunity taken to review and update the whole policy – only minor additional changes required.

CONTENTS

PART 1 – POLICY

1. POLICY STATEMENT

1.1 The organisation recognises the importance of balancing the health needs of employees against the needs of the organisation, and is committed to providing excellent working conditions and appropriate support to achieve that balance.

1.2 Encouraging employees to attend work, and supporting them back into the workplace is known to maintain employee health and wellbeing, and improve organisational effectiveness.

1.3 The overall purpose of the policy is to set out the organisation's approach to the management of sickness absence within the workplace. This document also sets out guidance to employees and managers about their responsibilities in relation to Sickness Absence Management.

1.4 This procedure should be read in conjunction with the Sickness Absence section contained within Agenda for Change terms and conditions.

1.5 This procedure will apply to all employees.

2. PRINCIPLES

2.1 Definitions

Persistent Short Term Absence	Short term sickness is identified as a series of absences, often unconnected, which results in persistent short term absences from the workplace.
Long Term Absence	Absences that are at least 28 calendar days

2.2 This procedure enables managers to address sickness absence issues, both short and long-term, in a fair, consistent and equitable manner. It is recognised however that all cases must be dealt with on an individual basis because of differing circumstances therefore this procedure gives an outline of the principles to be observed.

2.3 It should be noted that all other types of absence should be dealt with in accordance with the appropriate policy, e.g. maternity, adoption, employment break, etc. Line managers should consider, and take due account of, individual circumstances and all relevant factors before action is taken e.g. maternity related absence, stress, disability related absence, work related factors.

2.4 Confidentiality will be maintained in all aspects of absence management and records will be kept in line with the Data Protection Act.

2.5 Guidance and support will be provided to line managers who implement and apply policies and procedures relating to absence. All new employees will be made aware of this policy during their induction.

2.6 The organisation recognises that, on occasion, anyone may become unwell or subject to emergency absences, however regular attendance at work is a contractual requirement.

2.7 The appropriateness of referral to the organisation's Occupational Health provider will be discussed between the individual, their line manager and a HR representative. A referral will be made in all cases of long term sickness absence, and where short term absences gives rise for concern a referral should also be considered.

2.8 It is acknowledged that on occasion people may be away from work on a long-term basis as a result of chronic or acute ill health. Although each case will be dealt with on an individual basis this policy outlines certain principles that will always be observed.

2.9 In dealing with any sickness absence cases, managers must be mindful of obligations that they and the organisation may have under the Equality Act 2010. In identifying whether or not an employee is covered by the act advice will be sought from appropriate medical professionals and Occupational Health.

2.10 Advice should be taken from Human Resources at all formal stages of this procedure to ensure the consistent application of this procedure throughout the organisation.

2.11 Employees may be accompanied by a trade union representative or work colleague at any formal meeting in connection with their absence.

3. RESPONSIBILITIES

3.1 Manager Responsibilities

Line managers have an important role to play in the management of absence. The key responsibilities for managers include:

- Ensuring that they are familiar with this policy and their obligations in relation to the management of the policy.
- Communicating appropriately with absent employees.
- Dealing with any actions in a timely manner, balancing the needs of the individual with those of the organisation, and ensuring that relevant sickness notification forms are completed and submitted in line with agreed procedure.

- Maintaining and retaining accurate records of all absences in line with the Data Protection Act.

- Conducting effective return to work meetings after each individual episode of sickness and formal absence review meetings where required.
- Maintaining appropriate levels of confidentiality at all times.
- Making Occupational Health referrals as appropriate.
- Attending any training provided on policy updates, and/or legislation.
- Identifying a 'nominated deputy' for staff to report sickness absence to during periods of annual leave/out of the office/non-working time and communicate this to staff.
- Referring any cases of suspected fraud to the CCG's Counter Fraud Specialist for further investigation.

3.2 Employee Responsibilities

Employees are expected to:

- Ensure regular attendance at work.
- Report absences promptly to their line manager, or 'nominated deputy' – usually on the morning of the first day of absence.
- Communicate appropriately with their manager when absent from work.
- Co-operate fully in the use of these procedures, completing and submitting relevant sickness notification as specified and within time frame.
- Attend an appointment with a medical practitioner nominated by the organisation, where appropriate.
- Comply with all requirements of the sick pay scheme.
- Attend review meetings, and return to work meetings with the appropriate manager when discussing periods of absence or planning a return to work, reasonable adjustments or alternative employment.

3.3 Trade Union Responsibilities

- Representing members in the procedure and providing support and advice;
- Working in partnership with management, HR and Occupational Health to ensure employees are treated fairly and consistently;
- Articulating the issues and suggesting solutions.

3.4 Accountability

The Chief Officer is accountable for this policy.
The Governing Body is responsible for formal approval of this policy.
Subsequent review and routine updating of the policy will be through the Equality & Engagement Committee.

4. GENERAL POINTS

4.1 If an employee knowingly gives any false information, or makes false statements about their sickness, it may be treated as misconduct and may result in disciplinary and legal action being taken.

In proven cases of gross misconduct it could lead to dismissal (an example of this may include: absent on sick leave and working elsewhere) Cases of suspected fraud should be referred to the CCG's Counter Fraud Specialist Chris Taylor on 01709 428717 or christaylor2@nhs.net for consideration , which could result in criminal proceedings in accordance with the CCG's Fraud, Bribery and Corruption Policy. Possible fraud can also be reported to the CCG's Chief Finance Officer or the NHS Counter Fraud Authority via https://cfa.nhs.uk/reportfraud or the national NHS fraud and corruption reporting line 0800 028 4060.

4.2 Any employee who unreasonably fails to comply with the organisation's Sickness Absence policy and procedure may have their occupational sick pay withheld. Any decision to withhold sick pay must be made in conjunction with advice from the HR representative. Advice may also be sought from the organisation's Occupational Health provider.

4.3 The organisation has the right to dismiss employees whilst they are receiving sick pay entitlement. Any decision to dismiss on capability grounds will be subject to Occupational Health advice.

4.4 The organisation reserves the right to request a doctor's certificate for periods of absence of less than seven calendar days in cases of short-term persistent absence. However this should normally follow an Occupational Health referral where there is no underlying medical reason for continued short-term persistent absence. Furthermore, this option should only be used for a finite period and should be reviewed on a regular basis. Should the employee incur a cost in obtaining a doctor's certificate, then this will be reimbursed by the organisation.

4.5 Employees may not usually undertake any secondary employment, either paid or unpaid, or in their own private business while on sick leave and receiving sick pay from the CCG. This could be considered as possible fraud and must be reported immediately to the CCG's Counter Fraud Specialist as directed at section 4.1 of this policy. Any secondary work or possible conflicting business interests must be declared to and agreed by the CCG.

5. SCHEME OF DELEGATION

5.1 The table below outlines the CCG scheme of delegation specific to the stages and actions associated within this policy.

Informal procedure	Line manager or equivalent level manager from elsewhere within the organisation
Formal procedure: First Stage Formal Meeting	Line manager or equivalent level manager from elsewhere within the organisation.

Second Stage Formal Meeting Third Stage Formal Meeting	NB: It is reasonable that the same manager conduct first, second and third stage of this process
Appeal following formal procedures above	Line manager's manager or equivalent who has not previously been involved or implicated
Formal Procedure: Final Formal Meeting	Chaired by an appropriate member of the Senior Management Team and a HR representative
Appeal against dismissal	Chaired by the Chief Officer or Chief Finance Officer plus one other member of the Senior Management Team and a HR representative

6. EQUALITY

6.1 In applying this policy, the organisation will have due regard for the need to eliminate unlawful discrimination**,** promote equality of opportunity**,** and provide for good relations between people of diverse groups, in particular on the grounds of the following characteristics protected by the Equality Act (2010); age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sexual orientation, in addition to offending background, trade union membership, or any other personal characteristic.

7. MONITORING & REVIEW

7.1 The policy and procedure will be reviewed periodically by the Equality and Engagement Committee in conjunction with trade union representatives, staff and the CCG's Counter Fraud Specialist. Where review is necessary due to legislative change, this will happen immediately.

PART 2 - PROCEDURE

1. REPORTING AND RECORDING ABSENCE

1.1 All employees must contact their line manager on the first day of absence as soon as is reasonably practicable or within one hour of their normal starting time. The employee must make contact. The only exception is where it is clearly not possible for employees to make contact personally, such as admission to hospital.

1.2 Employees should wherever possible talk directly to their line manager. Alternative methods of communications such as text messages, e-mail or leaving messages with anybody else should not be used unless there are exceptional circumstances. If the line manager is unavailable, then the employee should contact an alternative nominated manager.

1.3 If an employee does not have a telephone at home alternative arrangements for reporting sickness must be made by the employee.

1.4 When reporting absence employees must give the following information:

- The reason for the absence (if known).
- The expected length of absence (if known).
- Whether a visit will be made to their GP, and if so, the date of the appointment.

Where possible the manager should be advised of any outstanding work that may require urgent attention during the period of absence. This will enable managers to better plan and allocate work.

If an employee leaves work early or arrives at work late due to sickness they must speak to their line manager (or an alternative appropriate manager) to make them aware. Details of the employee's start and finish time should be included on the CCG's 'Sickness Absence Return to Work' form. A period of absence of more than half a shift (i.e. the employee's normal working hours for that day) will be recorded for absence monitoring purposes and will count towards triggers as per Section 3.2 of this policy.

1.5 In cases of continued absence, employees and line managers should agree appropriate levels, and methods of communication. As a minimum the employee must contact their line manager again on the fourth day of absence to provide them with up to date information. Should the absence continue then the employee and the manager must decide upon the frequency of further/continued contact and the form that this will take. It is not sufficient to provide medical certificates as a means of maintaining contact.

1.6 It should be noted that failure to maintain contact as per the agreement with the line manager, may result in the payment of occupational sick pay being delayed or withheld. Any decision to take disciplinary action or to withhold or

delay payment of occupational sick pay must be made in conjunction with a HR representative

Evidence of Incapacity for work

1.7 For absences lasting seven calendar days or less, on the first day back at work, employees will be required to complete a Sickness Self-Certificate. This is available on the organisation's intranet or from Human Resources. This should include the reason for absence. The Certificate must be countersigned by a manager and subsequently will be kept in a confidential file.

1.8 If an absence exceeds seven calendar days a doctor's medical certificate must be submitted to the line manager, no later than the tenth day of absence, covering the absence from the eighth day. The medical certificate is normally retained by the line manager and the absence recorded on the appropriate staff absence record form.

1.9 If an absence continues beyond the period covered by the initial medical certificate, further medical certificates must be submitted to give continuous cover for the period of absence. On eventual return to work employees must complete the organisation's Sickness Self-Certificate in respect of the first seven days or less not covered by a doctor's medical certificate.

1.10 Failure to submit consecutive medical certificates in a timely manner may be considered in breach of the Sickness Absence Management policy and may invoke the disciplinary procedure.

1.11 If the doctor's medical certificate does not specify the period of absence covered, it will be taken as covering a period of seven calendar days only.

1.12 For reporting purposes, reports will show long-term absence as at least 28 calendar days.

Statement of Fitness to Work (FIT Note)

1.13 The Statement of Fitness to Work, known as the 'FIT Note' was introduced in April 2010. It allows a doctor/GP to advise whether an employee is either:

- Not fit to work.
- May be fit to work.

If the doctor/GP suggests that they 'may be fit to work' there are now a number of options open which may help to get the employee back to work:

- Phased return to work
- Amended duties
- Altered hours
- Workplace adaptations

Any such recommendations should be discussed and agreed with the individual and line manager prior to commencement of work at a return to work interview.
Whilst *not fit to work* it is not permissible to undertake work secondary work for another employer and/or voluntary organisation in any capacity unless agreed by the CCG.

Employee Occupational Sick Pay Entitlements

1.14 The amount of paid sickness leave entitlement depends on length of service, as outlined below:

• During 1st year of service	One months' full pay and two months' half pay
• During 2nd year of service	Two months' full pay and two months' half pay
• During 3rd year of service	Four months' full pay and four months' half pay
• During 4th and 5th years of service	Five months' full pay and five months' half pay
• After 5th year of service	Six months' full pay and six months' half pay

1.15 The period during which sick pay is paid and the rate of sick pay for any period of absence is calculated by deducting from the employee's entitlement, on the first day of absence, the aggregate periods of paid sickness during the 12 months immediately preceding that day.

1.16 Sick pay will be calculated on the basis of what the individual would have received had they been at work. It will include regularly paid supplements, including any recruitment and retention premia and payments for work outside normal hours. It will be based on the previous three months at work or any other reference period that may be locally agreed.

1.17 Full pay is inclusive of any statutory benefits. Half pay plus statutory sick pay will not exceed full pay.

1.18 For the purpose of calculating entitlement to sick pay, a previous period or periods of NHS service will be counted towards the employee's entitlement to sick leave with pay where there has been a break, or breaks, in service of 12 months or less.

1.19 In the event of employment coming to an end, entitlement to sick pay ceases from the last day of employment.

1.20 Absence for planned elective medical treatment, which is for cosmetic reasons alone, must be taken as annual leave and not sick leave. Where planned medical treatment has a cosmetic and health improvement purpose, absence should be reported as sick leave.

Occupational Sick Pay Conditions

1.21 The conditions for sick pay are financial provisions indicating an entitlement to occupational sick pay and in no way indicate the amount of absence to which an employee is entitled.

1.22 If sick pay entitlement is exhausted before a Final Review meeting takes place, and where the failure to undertake the Final Review is due to delay by the manager, sick pay will be reinstated at half pay as follows:

- Employees with more than 5 years reckonable service – sick pay will be reinstated if the entitlement is exhausted before the Final Review meeting takes place.
- Employees with less than 5 years reckonable service – sick pay will be reinstated if the entitlement is exhausted and the Final Review meeting does not take place within 12 months of the start of their sickness absence.

Reinstatement of sick pay in these circumstances will continue until the Final Review meeting takes place. It is not retrospective for any period of zero pay in the preceding 12 months of service.

1.23 The period of full or half sick pay may be extended:

- Where there is the expectation of a return to work in the short term and an extension would materially support a return and/or assist recovery. Particular consideration will be given to those staff without full sick pay entitlements.
- Where it is considered that individual circumstances mean that an extension will relieve anxiety and/or assist recovery.

When an extension to sick pay is being considered for any reason this must first be discussed with a HR representative.

1.24 Sick pay is not normally payable for an absence caused by an accident due to active participation in sport as a profession, or where contributable negligence is proved.

1.25 An employee who is absent as a result of an accident is not entitled to sick pay if damages are received from a third party. Under these circumstances the employee will be advanced a sum not exceeding the amount of sick pay payable under this scheme providing the employee repays the full amount of sickness allowance when damages are received. Once received, the absence

will not be taken into account for the purposes of the scale set out in 1.13 above.

2. SICKNESS DURING ANNUAL LEAVE

2.1 If an employee falls sick during a period of annual leave either in this country or overseas, and the period of incapacity seriously interrupts the period of leave, then they may count the absence as sick leave provided they;

- Notify their line manager either in writing or by telephone at the earliest opportunity, in line with organisation/departmental procedures and no later than the fourth continuous day of illness; and
- Provide a statement by a qualified medical practitioner; the statement should cover the period of the illness and the nature of the illness.

For information, a serious interruption of annual leave would be deemed as four or more days of continuous illness.

2.2 If an employee is absent on sick leave and has pre-booked annual leave then they must notify their manager as soon as possible of the nature of the leave, otherwise it will be assumed that the annual leave is being taken. If the employee intended to spend time at their normal place of residency then the leave may be credited back upon receipt of appropriate medical statements/doctors notes.

2.3 If the employee intends to spend more than one night away from their normal place of residency whether it be overseas or in the UK, then the employee must provide a written statement from a medical practitioner advising that the holiday would be beneficial to their condition or recovery, and in no way would aggravate or cause detriment to the illness/injury. Where necessary, the organisation will reimburse the cost of such letters. In addition, the organisation may also choose to obtain a medical opinion from the Occupational Health provider. If the leave is supported by a medical practitioner then the employee will have the option to continue with sick leave and have the annual leave credited back or take the time as annual leave, in which case sick pay, occupational and/or statutory as appropriate, will cease. If an employee is physically unable to return to work after a holiday they must submit a medical certificate which covers them from the day on which they were expected to return to work. Should the employee take the leave as sickness, then entitlements to sick pay both occupational and statutory will be in line with the normal eligibility rules.

2.4 Where the request to continue with a pre-booked holiday is not supported by a medical practitioner, then annual leave should be taken.

2.5 Employees will not be entitled to an additional day off if they are sick on a statutory holiday.

3. SHORT TERM ABSENCE

3.1 The organisation operates an accurate method of recording and monitoring levels of absence. If the amount of time being taken off for illness is giving cause for concern, managers will discuss this with employees at the return to work meeting and provide them with a record of all absences from work. The individual will have the opportunity to explain any personal or work-related issues which may be a factor in the absence. This will provide an opportunity to discuss informally the employee's health status, required improvements in attendance and the time period in which any improvements should be achieved.

3.2 To ensure the consistency with the application of the Sickness Absence Management policy, trigger points are used to monitor short term sickness and long term sickness. The triggers for short term absence are:

- Four occasions of absence in any rolling 12 month period; or
- 12 days absence in any rolling 12 month period

3.3 Where an employee's attendance fails to improve and reaches a trigger, a formal meeting will be held with the individual - please refer to section 5: Scheme of Delegation. The purpose of the meeting is for the manager to investigate the reasons for this continued absence and to provide support and assistance to overcome any short-term issues, patterns or problems which are identified in order to support and encourage improved attendance. At this stage an action plan of improvement will be set.

3.4 Where an individual fails to maintain regular attendance deemed acceptable for the organisation, they will progress through the stages identified in the scheme of delegation. This process may, eventually result in dismissal if the absence continues.

3.5 At any stage during this process, it may be appropriate to seek advice from an organisation appointed medical practitioner or Occupational Health service.

3.6 Employees are entitled to have a staff side representative or work place colleague not acting in a professional capacity to accompany them to any of the formal stages of this procedure if they so wish.

3.7 If at any stage the employee achieves a better attendance record than is required by a warning, no further action will be taken. The manager will continue to monitor the level of attendance or pattern of absence.

3.8 Prior to formal action being taken advice must be sought from Human Resources.

4. LONG TERM ABSENCE

4.1 Long-term absence is classed as absences of at least 28 calendar days.

4.2 In all cases of long term absence, Occupational Health advice must be sought. This will be facilitated via the HR representative.

4.3 In cases of long-term absence, line managers must arrange to conduct regular review meetings to discuss possible courses of action should the absence continue. These may include rehabilitation and return to work requirements, redeployment and ill-health retirement. The meetings should be recorded and notes sent to the employee concerned. Employees may be accompanied by a trade union representative or a workplace colleague. The line manager may also be accompanied. The frequency of such meetings will depend upon the circumstances of the individual case.

4.4 These meetings should be held at mutually convenient locations, with due regard made to the employee's circumstances. If an employee is too ill to travel, the line manager may arrange to conduct a home visit at a mutually convenient time, if the employee agrees. However it should be noted that, as part of the return to work process, it may be more relevant to hold the meetings at a business location, or a suitable alternative venue.

4.5 The first formal stage of this process should take place no later than the 3 months stage, or when full sick pay is due to expire if this is earlier. This meeting should be held in line with Section 5 - Scheme of Delegation.

4.6 The purpose of this meeting is to allow all parties to consider a range of options that may be available. These options could include, but are not limited to:

- Possibility, and likelihood of return to work, and when.
- Possibility of alternative employment.
- Identifying and implementing 'reasonable adjustments' (see Appendix 2 for further guidance).
- Ill Health retirement.
- Termination of contract on the grounds of medical capability. The organisation would only ever consider this after exhausting all other options.

4.7 Where an individual continues to remain absent from the workplace through ill health, they will progress through the stages indicated in Section 5 - Scheme of Delegation.

4.8 Employees who fail to attend review meetings, and formal meetings may still be subject to the various sanctions contained within this policy.

5. ONGOING MEDICAL CONDITIONS

In some situations an employee may have ongoing health related problems which may impact upon their ability to perform the duties of their role. The employee may still be in work, or have long-term or short-term absence. This will be addressed by any or all of the following three steps.

1. **Medical / Occupational Heath advice**, support and guidance to help determine the best course of action for the individual.
2. **Reasonable adjustments / Redeployment** – consider what adjustments can be made to role including hours or lighter duties. Identify if there is any suitable alternative role the individual could undertake either on a permanent basis or Interim basis (see Appendix 2 for further guidance).
3. **Final Review Panel -** if the individual's substantive post is not suitable due to their ill health and the above stages have been unsuccessful in supporting the employee to resume full duties, the Final Review Hearing is the next stage (See appendix 1).

Before any decision to terminate an employee on medical grounds the following must have been meaningfully considered:

- Rehabilitation
- Phased return
- A return to work with or without adjustments
- Redeployment with or without adjustments

6. RETURN TO WORK MEETING

6.1 Following each period of sickness absence, employees will attend a return to work meeting with their line manager to discuss their absence. If the employee has been absent with a highly sensitive condition he/she may ask for a manager of the same gender to manage the absence.

6.2 The discussion should allow for an exchange of information and be as frank and as open as possible as this will prevent any misunderstandings concerning the nature of the absence. Managers should also take this opportunity to discuss any patterns or trends of absence that may emerge.

6.3 A fundamental purpose of this meeting is to allow the line manager the opportunity to discuss any assistance, help, counselling or action on work-related issues that may be provided to enable an employee to return to work or prevent further absence occurring.

6.4 Notes and outcome of the meeting will be agreed and retained on file.

7. OCCUPATIONAL HEALTH SERVICES

7.1 In all cases of long-term absence, managers are expected to make a referral, via the HR representative, to the Occupational Health Service (or *organisation Appointed Medical Advisor where a dedicated Occupational Health service is not available)* and the following principles should be applied:

- The Occupational Health Service can be consulted for advice when the likelihood of a return to work or cause of absence is not known.
- A member of staff may be referred to the Occupational Health Service at

an early stage in the absence if it considered that a referral may benefit the employee or the organisation.

- The Occupational Health Service is available to give both general and specific advice on the fitness of an employee for work, adjustments to the workplace where appropriate and likely return dates.
- An employee may request an occupational health referral, via their manager, for advice and support on the best way of seeking a return to work.

7.2 Where there is doubt regarding an employee's ability to return to work on a permanent basis advice must be sought from the Occupational Health Service. Employees may be eligible to ill-health retirement benefits if they have two years continuous membership of the NHS Pension Scheme. Ill-health retirement may be discussed with the individual during the review meetings.

7.3 Employees must make themselves available to attend Occupational Health referrals (this may include home visits by an Occupational Health representative or the attendance at an Occupational Health Office). However, due regard should be made to the accessibility of the location in relation to the nature of absence. Following the referral, Occupational Health will then provide a written report to management, a copy of which will also be sent to the individual. In all cases, management will meet with the individual to discuss the content of the report.

7.4 In some cases it may be more appropriate for Occupational Health to contact a third party for a medical opinion e.g. GP, Consultant etc. and consent must be obtained from the employee concerned before accessing any third party medical records, in accordance with the Access to Medical Reports Act 1988.

In these cases, any information provided by a third party is always disclosed to Occupational Health and not to management. Occupational Health will then provide management with a written summary of information provided which is pertinent to the employee's ongoing employment. Employee consent is not required for the release of this report.

7.5 Occupational Health may recommend appropriate treatment, such as physiotherapy or cognitive behavioural therapy, in supporting staff to remain in work, or return to work, at the earliest opportunity.

8. DISABILITY RELATED ABSENCE AND REASONABLE ADJUSTMENTS

8.1 If an employee is disabled or becomes disabled during their employment, then the organisation is legally required under the Equality Act 2010 to make reasonable adjustments to enable the employee to continue working. The Act broadened the provisions of the Disability Discrimination Act of 1995, for public sector employees.

8.2 Advice must be sought from Occupational Health as to what they suggest are 'reasonable adjustments.' However it will be the line manager's decision as to whether those adjustments are also reasonable for the service. Any adjustments made must be discussed with the individual concerned. Further guidance can be found in Appendix 2: *Staff with Disabilities - Guidance for Managers*.

8.3 The amendment to the Disability Act (now Equality Act 2010) also introduced the concept of positive discrimination where a disabled member of staff can be treated differently in order to ensure they remain in work. E.g. An internal disabled applicant, who has been displaced from their current role, may be considered favourably against an able bodied candidate.

8.4 Where there is a lack of understanding, on any part, if the absences are linked to a disability Occupational Health advice should be sought at the earliest opportunity.

9. SUBSTANCE MISUSE

9.1 Where an employee's absence is as a result of a suspected or admitted substance misuse problem, they should be offered the appropriate support to overcome this. See the Substance Misuse policy for further guidance.

10. RETURNING TO WORK

10.1 Wherever possible the organisation will aid a return to work on a permanent basis. To establish the most effective way of doing this the organisation may seek further medical advice.

10.2 This may include making reasonable adjustments to the employee's job, allowing a phased return to work, or by allowing the employee to return to work on a reduced or alternative hour's basis.

Phased Return

10.3 Where a phased return to work is recommended by the Occupational Health provider, or a medical practitioner, the employee will be able to return to work on a part-time basis whilst receiving their full pay. This will be for a maximum period of four weeks, thereafter the employee must either substitute their annual leave for days not worked or receive payment only for the hours worked.

10.4 Where an employee requests a phased return to work themselves, they must take annual leave for days not worked or receive payment only for the hours worked.

Redeployment

10.5 If medical opinion is that an employee is unfit to return to their role, the possibility of alternative employment must be considered.

10.6 Where an employee's pay reduces because of ill-health or injury, and they have the required membership of the NHS Pension Scheme, or the new NHS Pension Scheme, their membership at the higher rate of pay may be protected.

Temporary Injury Allowance

10.7 Employees on sick leave, and receiving either reduced pay or no pay, as a result of an injury or illness that is wholly or mainly attributable to their NHS employment will be eligible to apply for Temporary Injury Allowance. Applications should be made by the employee to their line manager who will make the decision on whether payment should be made, in conjunction with a HR representative. Further guidance may be sought from the Occupational Health Service or NHS Pensions.

10.8 Employees do not need to be members of the NHS Pension Scheme to apply for Temporary Injury Allowance.

10.9 Temporary Injury Allowance will stop when the individual returns to work or leaves their employment.

Ill Health Retirement

10.10 Throughout the absence management process all options, such as rehabilitation, redeployment, part time working, job redesign etc. must be considered in conjunction with the employee.

Where the medical opinion indicates that an employee is permanently unfit for any employment or for the duties of their current role, the individual has the option of applying for early retirement on the grounds of ill health, in line with the provisions of the NHS Pension Scheme. This option is only available to employees who have at least two years continuous, pensionable NHS employment.

If an application for ill-health retirement is made, this constitutes a mutual decision that the employee is unable to fulfil their contractual obligations due to their ill-health condition and therefore a termination date will be agreed between the individual and their line manager.

This option should be discussed with the individual in full at the appropriate time and as much information as possible will be provided to enable the employee to make an informed decision. For more information regarding this procedure please contact Human Resources.

Dismissal on the Grounds of Capability

10.11 Before dismissal is considered, all other options as outlined above must have been discussed with the employee during the regular meetings that have taken place throughout the absence. Managers must be satisfied that all relevant information has been obtained and all relevant facts investigated. Documentation supporting this must be provided to the employee. In cases of long-term sickness, managers must also be mindful of the cessation of occupational sick pay entitlements in conjunction with the long-term prognosis.

In cases of short-term absence, managers must also consider the potential loss of specialist knowledge / an experienced member of staff, the cost of replacing the employee, whether or any flexible working arrangements could be accommodated in order to retain the skill and knowledge in the organisation.

10.12 Should the dismissal of an employee be identified at any stage in the process as the only appropriate option (i.e. all other options as outlined above have been investigated and found to be inappropriate) a Final Review Hearing will be convened. This will be chaired in line with the Scheme of Delegation and will be attended by the employee in question, their line manager and a Human Resources representative.

10.13 Prior to this meeting the employee will receive a copy of the report, detailing the case history to date and considerations taken into account (eg Equality Act, implications, suitable alternative employment, ill health retirement) together with all other relevant documents, made to the person authorised to dismiss.

10.14 At this meeting the employee will have the opportunity to present their case and submit supporting evidence. They have the right to be accompanied by a trade union representative or work colleague. The employee has the right to appeal this decision.

10.15 Following the meeting the employee will be given a letter confirming the reason for dismissal, the date of dismissal, their right to appeal, details of any payment in lieu of contractual notice and any other outstanding payments to which they are entitled e.g. annual leave.

10.16 After investigation, consultation and consideration of other alternative posts, and where there is no reasonable prospect of the employee returning to work, the CCG may terminate employment before the employee has reached the end of the contractual paid sick absence period, plus payment in lieu of contractual notice and any outstanding annual leave.

11. MATERNITY RELATED ABSENCE

Should an employee be absent from work due to pregnancy related sickness, these absences should be recorded separately and not counted towards

absence triggers. However they should continue to be monitored.

12. MEDICAL SUSPENSION

There may be exceptional instances when it is appropriate to medically suspend an individual from work e.g. where an employee presents for work and a manager suspects they are unfit to carry out their duties. During the suspension the employee will receive full pay based on their notional working rota/pattern. Advice should always be sought from Human Resources if this situation should arise.

13. APPEAL

13.1 Employees do not have the right of appeal against informal action e.g. implementation of an action plan.

13.2 Employees do have the right of appeal against any formal action taken up to and including dismissal, in addition to redeployment.

13.3 Employees may appeal by writing to the appropriate manager in line with the Scheme of Delegation, giving clear reasons for the grounds of appeal. This must be done within 10 working days of any action being taken.

13.4 The manager to whom the appeal is addressed will identify an appeal panel in line with the Scheme of Delegation and a hearing will take place

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APPENDIX 1

Stages of the formal process relating to managing sickness absence

	Period of Absence	**Improvement Target**	**Action**	**Decision**
First Stage Formal meeting	If the employee has had 4 occasions, or 12 days absence in any rolling 12 month period they will be required to attend a formal meeting.	During the next 12 months, if the employee has a further 3 occasions or 10 days absence in total, they will progress to the next stage	Formal meeting: Review absence record and reasons for absence. Agree standard of attendance and support if necessary. Possible OH referral if needed	Decision in writing, copy kept on personnel file. Will remain on file for 12 months. Right of appeal.
Second Stage Formal Meeting	From the date of the first stage meeting, if the employee has had 3 occasions or 10 days absence in total, they will be required to attend a second stage formal meeting	During the next 12 months, if the employee has a further 3 occasions or 10 days in total, they will progress to the next stage	Formal meeting: Review absence record, reasons for absence and medical advice. Agree standard of attendance and support if necessary. Refer to Occupational Health	Decision in writing, copy kept on personnel file. Will remain on file for 12 months. Right of appeal
Third Stage Formal Meeting	From the date of the second stage meeting, if the employee has had 3 occasions or 10 days absence in total, they will be required to attend a third stage formal meeting	During the next 12 months, if the employee has a further 3 occasions or 10 days in total, they will progress to the final stage	Formal meeting: Review absence record, reasons for absence and medical advice. Agree standard of attendance and support if necessary. Refer to Occupational Health	Decision in writing, copy kept on personnel file. Will remain on file for 2 years. Right of appeal

Final Review Panel	During the next 2 years, if the employee has a further 3 occasions or 10 days absence in total, in any 12 month period, they will progress to stage 4 – Final Review Panel	If the employee hasn't met the improvement notification issued at stage 3 consider review or reissuing of improvement targets	Final review hearing: Review absence record, actions taken to support improvement and any supporting medical advice. Alternatives to dismissal will be discussed including redeployment	Decision in writing, copy kept on personnel file. Possible outcome- Dismissal Right of appeal

*Please note – Triggers should be pro rata for part time employees and calculated on contractual days

APPENDIX 2

STAFF WITH DISABILITIES – GUIDANCE FOR MANAGERS

The aim of this guidance is to support managers in understand the CCGs responsibilities under the Equality Act 2010 in relation to removing the barriers that may deny disabled people equality of outcome in the workplace. The guidance also covers suggestions and examples of good practice that will help the CCG create the best working environment in which all staff with a disability are able to reach their full potential. Further information can be obtained by contacting Human Resources and Occupational Health.

The social model of disability states that it is society which disables impaired people. Examples of some of the ways people are disabled by society include prejudice, labeling, ignorance, not having information in formats which are accessible to them and a lack of reasonable adjustments. By adopting the social model, managers and staff will be able to meet the needs of both the CCG and the employee.

1. What are the legal requirements/obligations of the CCG?

Protection against discrimination due to disability was first legislated in the Disability Discrimination Act 1995 (DDA95) and is now covered by the Equality Act 2010. Whilst the Act aimed to streamline and harmonise all discrimination legislation it does allow that, due to the additional barriers faced by disabled people, they can be treated more favourably than non-disabled colleagues. Understanding this, and the reasons for it, is crucial to removing the barriers that continue to deny disabled people equality of outcome in work.

The Equality Act 2010 defines a disabled person as "... Someone who has a mental or physical impairment that has a **substantial** and **long-term** adverse effect on the person's ability to carry out normal day-to-day activities."

Substantial: The Equality Act 2010 says that a substantial effect 'means one that is more than a minor or trivial effect'.

Long-term: Have lasted or be likely to last 12 months or more. However certain conditions are deemed to be disabilities from day one, these are: Cancer, HIV infection and multiple sclerosis.

The Equality Act 2010 protects all employees, and covers areas including:

- application forms
- interview arrangements
- aptitude or proficiency tests
- job offers

- terms of employment, including pay
- promotion, transfer and training opportunities
- dismissal or redundancy
- discipline and grievances.

The definition of disability for the purposes of the Equality Act 2010 is a legal definition and it is only adjudicating bodies such as an industrial tribunal which can determine whether a person meets that definition. In the vast majority of cases there is unlikely to be any doubt whether or not a person has or has had a disability, but this guidance should prove helpful in cases where the matter is not entirely clear.

In most circumstances, people who have had a disability in the past are protected from discrimination even if they have since recovered.

It is important to realise that the definition of disability regards the person as they are without aids, support or medication (the exception being visual impairment that can be addressed by use of wearing prescription spectacles). This is particularly relevant for those with mental ill health who are able to control their condition with medication, and also for those with conditions such as epilepsy and diabetes that are otherwise controlled by medication.

As well as providing protection against discrimination and harassment due to a person's disability, the Equality Act 2010 provides protection from direct disability discrimination and harassment where this is based on a person's association with a disabled person, or on a false perception that the person is disabled. This is of particular relevance to carers of disabled people (children or adults).

The Equality Act 2010 also contains a provision which limits the type of enquiries that a recruiting employer can make about disability and health when recruiting new staff. This provision will help prevent disabled candidates from being unfairly screened out at an early stage of the recruitment process.

A significant part of the Equality Act 2010 is the Public Sector Equality Duty that places obligations on public sector bodies to act proactively, and can be seen as an extension (albeit a diminished one) of the former Disability Equality Duty under DDA95.

The Duty has three aims. When developing or implementing policy, it requires public bodies to have due regard to the need to:

- Eliminate discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010
- Advance equality of opportunity between people from different groups
- Foster good relations between people from different groups.

2. What is a disability?

A disability can arise from a wide range of impairments which can be:

- sensory impairments, such as those affecting sight or hearing;

- impairments with fluctuating or recurring effects such as rheumatoid arthritis, myalgic encephalitis (ME), chronic fatigue syndrome (CFS), fibromyalgia, depression and epilepsy;
- progressive, such as motor neurone disease, muscular dystrophy, and forms of dementia;
- auto-immune conditions such as systemic lupus erythematosis (SLE);
- organ specific, including respiratory conditions, such as asthma, and cardiovascular diseases, including thrombosis, stroke and heart disease;
- developmental, such as autistic spectrum disorders (ASD), dyslexia and dyspraxia;
- learning disabilities;
- mental health conditions with symptoms such as anxiety, low mood, panic attacks, phobias, or unshared perceptions; eating disorders; bipolar affective disorders;
- obsessive compulsive disorders; personality disorders; post-traumatic stress disorder, and some self-harming behaviour;
- mental illnesses, such as depression and schizophrenia;
- produced by injury to the body, including to the brain.

NHS organisations have a legal obligation to consider reasonable adjustments in the workplace.

3. Reasonable Adjustments (section 20 Equality Act 2010)

The Equality Act 2010 requires that adjustments are considered in three areas and if these are assessed as reasonable adjustments then they must be made. The three areas that must be considered are:

- Where a 'provision, criterion or practice' puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with peers who are not disabled, to take reasonable steps to avoid the disadvantage
- Where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take reasonable steps to avoid the disadvantage
- Where a disabled person would (but for the provision of an auxiliary aid) be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take reasonable steps to provide the auxiliary aid.

How a policy, criteria or procedure impacts on a disabled staff member needs to be considered on an individual basis and in line with current case law. This could include making changes to how a particular policy or practice is applied to a disabled person. Managers dealing with individual cases should seek advice from Human Resources or the Occupational Health Service if they are unsure.

The Equality Act 2010 requires that reasonable adjustments are made to working conditions, policies and practices that put a disabled member of staff at a disadvantage. A reasonable adjustment could include any of the following:

- making physical adjustments to the structure of the workplace

- acquiring and modifying equipment
- modifying instructions or reference manuals or policies
- providing a reader or interpreter
- reallocating disabled employee's duties to another person
- providing supervision or other support
- transferring the staff member to fill an existing suitable vacancy without competitive interview or allowing more time to apply to a vacancy
- altering the staff member's working hours
- assigning the staff member to a different place of work
- allowing the staff member to be absent during working hours for rehabilitation, assessment or treatment
- arranging for the staff member to be given, training or mentoring
- modifying procedures for testing or assessment
- employing a support worker
- modifying disciplinary or grievance procedures
- ensuring that meetings are in an environment which is disability supportive and inclusive.

The list is by no means exhaustive. The manager is invited to be creative in their thinking and working together with the staff member. It is helpful to ask the staff member what could be put in place to help carry out the role.

3.1 Moving and Handling

The Health and Safety Manager can provide work-place assessments and advice on purchasing/seeking funding (Access to Work) for specialist adaptive equipment following referral of employee with a disability or long term health condition.

It is important to act on this advice as soon as possible to ensure that the correct support is put in place to create the best working environment to enable the staff member to carry out their role.

3.2 Access to Work

Access to Work grants can pay for practical support for a disabled employee or applicant to start working or stay in work. Grants are available for people over 16 who have a disability, health condition or mental health condition that affects the person's ability to work. Grants can pay for some of the adjustments listed above.

Disabled staff should apply for the grant themselves, however it is important that managers are aware of this option and provide advice and information to staff who may be disabled or become disabled while they are in employment. Applications must be made within six weeks of starting a new position for a maximum contribution to be paid by Access to Work.

Making reasonable adjustments is an on-going requirement which should be reviewed at regular intervals. Managers should ensure that where reasonable adjustments have been agreed that this is facilitated and documented in a timely manner. Delays in providing adjustments may impact negatively on disabled staff therefore arranging adjustments must be prioritised.

Steps should be taken to identify if reasonable adjustments are needed at the start of a recruitment process i.e. when an applicant applies for a post and wherever the need arises during the employment cycle i.e. annual appraisals, return to work interviews after sickness absence and access to training.

Further information can be found here: https://www.gov.uk/access-to-work

Appendix A: Frequently Asked Questions

1. The meaning of disability
In order to avoid discrimination, it is recommended that instead of trying to make a judgement as to whether a person falls within the statutory definition of disability, we focus on meeting the needs of each employee and applicant.

2. When is a person disabled?
A person has a disability if he/she has a physical or mental impairment, which has a substantial and long-term adverse effect on his/her ability to carry out normal day-to-day activities.

3. What about people who have recovered from a disability?
In most circumstances, people who have had a disability within the definition in the past are protected from discrimination even if they have since recovered.

4. What does 'impairment' cover?
It covers physical or mental impairments; this includes sensory impairments, such as those affecting sight or hearing.

5. Are all mental impairments covered?
The term 'mental impairment' is intended to cover a wide range of impairments relating to mental functioning, including what are often known as learning disabilities. Hidden impairments such as mental illness, mental health conditions, diabetes and epilepsy may count as disabilities where they meet the definition in the Act.

6. What is a 'substantial' adverse effect?
A substantial adverse effect is something which is more than a minor or trivial effect. The requirement that an effect must be substantial reflects the general understanding of disability as a limitation going beyond the normal differences in ability which might exist among people. Account should also be taken of where a person avoids doing things which, for example, cause pain, fatigue or substantial social embarrassment; or because of a loss of energy and motivation.

An impairment may not directly prevent someone from carrying out one or more normal day-today activities, but it may still have a substantial adverse long-term effect on how they carry out those activities. For example, where an impairment causes pain or fatigue in performing normal day-to-day activities, the person may have the capacity to do something but suffer pain in doing so; or the impairment might make the activity more than usually fatiguing so that the person might not be able to repeat the task over a sustained period of time.

7. What is a 'long-term' effect?
A long-term effect of an impairment is one:
- which has lasted at least 12 months, or
- where the total period for which it lasts is likely to be at least 12 months, or
- which is likely to last for the rest of the life of the person affected.

Effects which are not long-term would therefore include loss of mobility due to a broken limb which is likely to heal within 12 months, and the effects of temporary infections, from which a person would be likely to recover within 12 months.

8. What if a person has no medical diagnosis?
There is no need for a person to establish a medically diagnosed cause for their impairment. What it is important to consider is the effect of the impairment, not the cause.

9. What if the effects come and go over a period of time?
If an impairment has had a substantial adverse effect on normal day-to-day activities but that effect ceases, the substantial effect is treated as continuing if it is likely to recur; that is if it is more probable than not that the effect will recur.

10. What are 'normal day-to-day activities'?
They are activities which are carried out by most people on a fairly regular and frequent basis.

The term is not intended to include activities which are normal only for a particular person or group of people, such as playing a musical instrument or a sport to a professional standard or performing a skilled or specialised task at work. However, someone who is affected in such a specialised way but is also affected in normal day-to-day activities would be covered by this part of the definition. Day-to-day activities thus include – but are not limited to – activities such as walking, driving, using public transport, cooking, eating, lifting and carrying everyday objects, typing, writing (and taking exams), going to the toilet, talking, listening to conversations or music, reading, taking part in normal social interaction or forming social relationships, nourishing and caring for one's self. Normal day-to-day activities also encompass the activities which are relevant to working life.

11. What about treatment?
Someone with an impairment may be receiving medical or other treatment which alleviates or removes the effects (though not the impairment). In such cases, the treatment is ignored and the impairment is taken to have the effect it would have had without such treatment. This does not apply if substantial adverse effects are not likely to recur even if the treatment stops (i.e. the impairment has been cured).

Members of staff requiring treatment for an impairment must be allowed time off work to attend.

12. Does this include people who wear spectacles?
No. The sole exception to the rule about ignoring the effects of treatment is the wearing of spectacles or contact lenses. In this case, the effect while the person is wearing spectacles or contact lenses should be considered.

13. Are people who have disfigurements covered?
People with severe disfigurements are covered by the Act and are automatically treated as this having a substantial adverse effect on their ability to carry out normal day-to-day activities. However, they do need to meet the long-term requirement.

14. Are there any other people who are automatically treated as disabled under the Act?

Anyone who has HIV infection, cancer or Multiple Sclerosis is automatically treated as disabled under the Act. In addition, people who are registered as blind or partially sighted, or who are certified as being blind or partially sighted by a consultant ophthalmologist, are automatically treated under the Act as being disabled. People who are not registered or certified as blind or partially sighted will be covered by the Act if they can establish that they meet the Act's definition of disability.

15. What about people who know their condition is going to get worse over time?

Progressive conditions are conditions which are likely to change and develop over time. Where a person has a progressive condition he/she will be covered by the Act from the moment the condition leads to an impairment which has some effect on ability to carry out normal day-today activities, even though not a substantial effect, if that impairment is likely eventually to have a substantial adverse effect on such ability in the future. This applies provided that the effect meets the long-term requirement of the definition.

16. Are people with genetic conditions covered?

If a genetic condition has no effect on ability to carry out normal day-to-day activities, the person is not covered. Diagnosis does not in itself bring someone within the definition. If the condition is progressive, then the rule about progressive conditions applies.

17. Are any conditions specifically excluded from the coverage of the Act?

Yes. Certain conditions are to be regarded as not amounting to impairments for the purposes of the Act. These are:

- addiction to or dependency on alcohol, nicotine, or any other substance (other than as a result of the substance being medically prescribed)
- seasonal allergic rhinitis (e.g. hay fever), except where it aggravates the effect of another condition
- tendency to set fires
- tendency to steal
- tendency to physical or sexual abuse of other persons
- exhibitionism
- voyeurism.

Also, disfigurements which consist of a tattoo (which has not been removed), non-medical body piercing, or something attached through such piercing, are to be treated as not having a substantial adverse effect on the person's ability to carry out normal day-to-day activities (from The Equality Act 2010, Employment statutory code of practice).

The following guidance has been written using best practice guidance from NHS Employers, Office for Disability Issues, Unison and NHS Sheffield Health & Social Care.

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Equality Impact Assessment

Title of policy or service:	Managing Sickness Absence Policy	
Name and role of officer/s completing the assessment:	Head of HR and Heads of Governance and Assurance	
Date of assessment:	September 2017	
Type of EIA completed:	**Initial EIA 'Screening'** ☒ ***or*** **'Full' EIA process** ☐	*(select one option - see page 4 for guidance)*

1. Outline	
Give a brief summary of your policy or service • Aims • Objectives • Links to other policies, including partners, national or regional	The overall purpose of the policy is to set out the organisation's approach to the management of sickness absence within the workplace. This document also sets out guidance to employees and managers about their responsibilities in relation to Sickness Absence Management. The aim of the policy is to comply with statutory requirements and NHS Standards and best practice.

Identifying impact:

- **Positive Impact:** will actively promote the standards and values of the CCG.
- **Neutral Impact:** where there are no notable consequences for any group;
- **Negative Impact:** negative or adverse impact: causes or fails to mitigate unacceptable behaviour. If such an impact is identified, the EIA should ensure, that as far as possible, it is eliminated, minimised or counter balanced by other measures. This may result in a 'full' EIA process.

2. Gathering of Information

This is the core of the analysis; what information do you have that might *impact on protected groups, with consideration of the General Equality Duty*.

(Please complete each area)	What key impact have you identified?			For impact identified (either positive or negative) give details below:	
	Positive Impact	Neutral impact	Negative impact	How does this impact and what action, if any, do you need to take to address these issues?	What difference will this make?
Human rights	☐	☒	☐		
Age	☐	☒	☐		
Carers	☐	☒	☐		
Disability	☐	☒	☐		

Sex	☐	☒	☐		
Race	☐	☒	☐		
Religion or belief	☐	☒	☐		
Sexual orientation	☐	☒	☐		
Gender reassignment	☐	☒	☐		
Pregnancy and maternity	☐	☒	☐		
Marriage and civil partnership (only eliminating discrimination)	☐	☒	☐		
Other relevant groups	☐	☒	☐		
HR Policies only:	☐	☒	☐	Procedure legally compliant and in line with NHS practice	

IMPORTANT NOTE: *If any of the above results in '**negative'** impact, a 'full' EIA which covers a more in depth analysis on areas/groups impacted must be considered and may need to be carried out.*

Having detailed the actions you need to take please transfer them to the action plan below.

3. Action plan				
Issues/impact identified	**Actions required**	**How will you measure impact/progress**	**Timescale**	**Officer responsible**
No actions have been highlighted	No actions have been highlighted	N/A	N/A	N/A

4. Monitoring, Review and Publication				
When will the proposal be reviewed and by whom?	**Lead / Reviewing Officers:**	Head of HR and Heads of Governance and Assurance	**Date of next Review:**	September 2019

Once completed, this form **must** be emailed to the Equality Lead barnsleyccg.equality@nhs.net for sign off:

Equality Lead signature: **13 November 2017**