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Introduction to the NTF Employment Manual

Following correct procedure is vital in many employment issues and a failure to follow procedure can make an otherwise fair matter unfair with an employee able to claim in a tribunal. Failure to follow the correct procedure may also result in an increase by up to 25% of any award that an employment tribunal may make to a successful claimant.

In particular, employers' attention is drawn to the procedures for disciplinary warnings and dismissals contained in Chapter 4 the relevant chapters dealing with termination of employment due to Redundancy and incapacity through ill health (Dismissing an employee because of sickness) and the procedures for dealing with a request from an employee who wishes to work part time (The Right to Request Flexible Working).

NTF members benefit from **legal expenses insurance** for employment matters, subject to the terms and conditions of the policy. This insurance is merits based and for cover to be forthcoming there needs to be a reasonable chance of success. As part of this trainers will be expected to have followed correct procedures

This manual contains a number of policies and procedures to help employers. Employers do not have to use these particular policies and procedures but must have in place policies on disciplinary and grievance procedures and should have in place policies on anti-bullying a work and equal opportunities. Where employers chose not to use the policies in this manual, they should ensure that they have other satisfactory policies in place.

In this manual there are checklists for employers to use and guidance templates for carrying out disciplinary and grievance meetings. These are to be used in conjunction with the full advice contained in the relevant chapters of this manual.

The NTF website has an **Employment Matters** area with **Handbook** documents and policies and many other templates including inductions, contracts, appraisals and guidance on holiday entitlement.

Finally, employment law is constantly changing and developing, both through legislation and through case law. Updates to this manual will be sent out from time to time and employers should always check that they have the up to date advice - this can be done by checking the latest guidance on the NTF website www.racehorsetrainers.org

A reminder that out of office hours employment law is available – 0330 303 1329. This is a call back service operated on behalf of the NTF.

National Trainers Federation, 9 High Street, Lambourn, Hungerford, Berkshire, RG17 8XN. Tel: 01488 71719 www.racehorsetrainers.org

1. Chapter 1

Recruitment and Starting Employment

1.1 Employment Status

Status – employee, worker or self employed?

1.1.1 A person's employment status defines the rights and responsibilities of both parties. Getting it wrong could result in the employer facing a demand from HMRC for unpaid tax, NIcs, interest and penalties whilst the individual may also have a claim against the employer for statutory employment rights they had been denied, such as holiday or notice pay.

1.1.2 In our guidance we concentrate upon employee and self-employed to help trainers avoid mistakenly having an individual working on a self-employed basis. There is a third category known as a worker which falls between the two and a brief explanation of these statuses is set out at 1.14 – 1.16.

1.1.3 The status is not just down to what the contract states nor what the person wishes the status to be – it is determined by the realities of the working arrangement and there are various tests which are applied and more information on these is at 1.17 and in the Government guidance, link at 1.1.8.

1.1.4 **Employee** status means there is a high degree of certainty as to where, when and how work is carried out – there is an expectation that they will turn up and that there will be work for them to do. Employees may be full time, part time or casual such as fixed term or zero hours. An employee is entitled to all employment rights, some of which have qualifying criteria such as length of service or level of earnings.

1.1.5 **Workers** are more likely to have casual and flexible working relationships often with multiple employers. The person still has core statutory rights but a greater freedom as to how much, when and where they work.

Self employed individuals have the greatest flexibility and control over how, when and if they work. They are generally able to send someone else to do the work if they cannot personally attend – there is no contract for personal service. They are in business of their own account and have no statutory employment rights. A self employed person does have protection against unlawful discrimination and some health and safety protections.

1.1.6 There are no firm rules only guidance to help ascertain whether someone is an employee, worker or self-employed. This does mean that it can not always be straightforward to determine status.

However, there are some important principles:

Employee status

The employee has to provide personal service, i.e. do the work themselves. They are expected to turn up every working day to carry out their work unless sick or on leave. This is called mutuality of obligation – it is a two-way obligation.

The employer is in control of the employee. This includes the employer giving out the work duties, specifying when, where and how it is done and providing the equipment. That does not necessarily mean day to day control but the employer has ultimate control of what and how it is done. The employee risks disciplinary action if they do not perform their work satisfactorily.

Worker status

The individual must carry out the work themselves (unlike a self-employed person who can send a substitute to do the work). There is, though, unlike with an employee, little or no obligation upon the person to receive or do any work, with no adverse consequences if the person refuses the work.

This category should be used with great care and is not a replacement for employing a person as a part-time employee.

Self-employed

The person is in business of their own account.

A self-employed person should be given a contract for services (rather than a contract of service for an employee). This may specify what work has to be done and the rate that is being charged for it.

Self-employed workers are not covered by the Racing Industry Accident Benefit Scheme and trainers should inform self-employed workers of this and advise that they should have their own personal insurance and liability insurance in place.

Indicators of status include:

- Control - the more the employer controls the work that the person does (i.e. where it is done, how it is done, when it is done) the more likely the person is an employee
- Equipment – evidence that the employer provides the equipment for the job such as clothing, PPE and tools can point towards employee or worker status. This test has less application in racing than in many scenarios as the trainer will be providing the horse and the majority of equipment although PPE must be provided free of charge to employees and workers.
- Exclusivity – the more exclusive the arrangement the more likely the person is to be an employee but someone can work as a part time employee for more than one business., or even be employed in one business and be self-employed elsewhere.

- Financial risk – A strong indicator that someone is self-employed is that the person runs the direct risk of losing money if the job is not done well or stands to gain if the job is done efficiently. The absence of financial risk does not necessarily mean the person is an employee – the whole situation would need to be taken into consideration.
- if the employer is under no obligation to provide work and the person is under no obligation to accept it if offered, then there is unlikely to be sufficient mutual obligation to create a contract of employment.
- the tax status of a person does not determine the employment status – just because a person is paying tax on a self-employed basis does not mean that employment law will determine that the person is self-employed.
- It is looking at the reality of the situation as a whole rather than any one single indicator.

A good question to ask to determine the status is whether the person is truly in business on his or her own account.

The NTF's accountants have indicated that in their opinion only professional jockeys are likely to meet the HMRC criteria for self-employed work riders.

1.1.7 There is new Government guidance for employers at:

https://www.gov.uk/government/publications/employment-status-and-employment-rights/employment-status-and-rights-checklist-for-employers-and-other-engagers

and for employees at:

https://www.gov.uk/government/publications/employment-status-and-employment-rights/employment-status-and-rights-support-for-individuals

The HMRC has a status indication checker at https://www.gov.uk/employment-status-indicator which employers can use to check to see if an individual is self-employed or employed.

1.1.8 **Zero hours contracts** – these do not define the person's status. A person on a zero hours contract could qualify for any employment status including that of an employee with full employment rights. Again HMRC or an employment tribunal will look at the real relationship not what any documentation states. If considering using a zero hours contract advice should be sought.

1.2 Recruitment

Recruitment overview

1.2.1 Employers must avoid unlawful discrimination in recruitment see Discrimination in Recruitment and must not carry out pre-job offer health screening see Health and Medical conditions – Pre job offer A job applicant will have the ability to bring a claim against an employer if they consider they have been unlawfully discriminated against – be that in an advertisement, at selection, interview or job offer stage.

Employers must remember that if an applicant has a disability they should not be discounted for interview or job offer just because of that. The employer should instead consider whether any reasonable adjustments could be made. Employers interviewing applicants for a job should keep a record of why a job offer was not made so that if they have a claim they can show it was not related to any disability but because the applicant did not have the competencies needed for the job

A health questionnaire may form part of the recruitment process once a job offer has been made so that an employer can check there are no disability issues that require reasonable adjustments for new starters. Again, it is highlighted that if a job offer is made and then a disability issue comes to the light the employer must not withdraw the job offer but must consider whether there are any reasonable adjustments which can be made to enable that person to do the job. See Discrimination and Equality or ring the NTF office for advice. If after proper process and consideration it is the case that there are no reasonable adjustments it may be that the employee cannot do the job - if an employer is considering withdrawing a job offer due to an employee's disability it is essential that the employer seeks professional advice either from the NTF or other adviser due to the possibility of a claim for discrimination.

A Job Applicant Privacy Notice should be issued to any job applicant explaining how the company will use and protect their data. For more information see Chapter 23 Data Protection. A template notice is available in the GDPR area of the NTF website.

Diversity and Inclusion in Recruitment

1.2.2 The BHA Diversity in Racing team have produced guidance to inclusive recruitment which can be found on Racing2Learn.

Recruitment – Job Description

A job description is not legally required but as well as helping get the person with the right skills, a job description can be of assistance in any performance issues which may arise once an applicant is employed and helpful in defending a complaint from a unsuccessful job applicant.

A job description can be particularly helpful if recruiting for a new position which has not existed in the yard before or where a job is being restructured.

Recruitment Policy

1.2.3 A recruitment policy is not in itself a legal requirement. As outlined above an employer does have a legal responsibility to ensure that there is no unlawful discrimination in the recruitment process and having a recruitment policy which is adhered to could help ensure effective and consistently fair recruitment practices. A sample policy is set out below see: Recruitment Policy

Job Applications

1.2.4 A template job application form can be found in the Recruitment Guide in the Handbook Area of the NTF website.

Interviews

1.2.5 There is no obligation to interview a job applicant formally - if an employer does decide to interview that can be in person or by phone

It is acceptable to ask applicants to do a test but employers must ensure that it is not discriminatory - for example asking job applicants to do a written English test of a particular standard where that is not necessary for the job

Practical interview

1.2.6 Unfortunately there have been some accidents where job applicants have fallen off during a practical interview. An employer is in a vulnerable position with regards to their duty of care to an interviewee during the interview process as the trainer could be open to a personal injury claim if they have been negligent.

Job applicants who are already working in racing and registered as a paid racing employee on the Stable Employees Register with their current employer will be covered by RIABS in the event of an accident whilst riding or handling a horse during interview – for an interview period lasting up to one hour. It is recommended that if wishing to see a job applicant ride at interview that the trainer only does so if the applicant is either eligible for RIABS in current employment or has their own insurance. However, any RIABS claim or individual's own insurance is subject to the scheme rules/conditions of insurance and does not mean that the injured person will not bring a separate personal injury claim against the trainer alleging negligence.

The trainer must ensure that he has properly assessed the applicant before they ride – this will include looking at how the candidate has

approached the yard, the horses, equipment, etc, their general attitude and interaction.

1.2.7 The employer must also see the applicant's CV or otherwise be aware of their employment history, ask appropriate questions as to the employee's experience and skills, and use all this information to assess if the applicant is capable to ride the horse being used. A written record must be made of the assessment and signed by the applicant as being true. A simple template for recording a job applicant riding out at interview is set out at Template1 Template 1: Record for job applicant who is riding at interview

Ideally the trainer should obtain references before deciding if the applicant rides at interview – however this is likely to be unrealistic if the applicant does not want their current employer to know they are looking to move jobs.

The trainer must ensure the applicant is using a serviceable helmet and safety vest (body protector) which meet the requirements of the BHA rules of racing. In addition the trainer must check that the applicant is wearing correct footwear for riding (or horse handling if that is the practical test), that the tack is appropriate and in good condition (i.e. stirrup irons are the correct size) and, of course, ensure that the horse is suitable for the level of skill of the candidate and that the practical test is carried out in a safe area.

1.2.8 Payment for attending an interview

You do not have to pay a person for attending an interview or riding as part of that interview providing that any riding or other work they do is only what is reasonable for you to assess their capabilities as a trial for recruitment purposes and that they are being assessed during that period.

There is no set definition of what a trial shift or interview may be – but just be aware that it does not effectively turn into the person working a shift for which they should be paid the National Minimum Wage.

To avoid any misunderstanding, agree with the person in advance whether it is paid or not.

Do's and don'ts of applications forms and interviews

Do ask about skills, quality, relevant experience and ability to do the job

Do ask similar job related questions of all applicants (this does not mean to say that employers have to ask exactly the same questions of all applicants)

Do keep notes of interview (advice is to keep these for 6 months)

Do not ask about marital status or childcare arrangements, though if accommodation offered is single accommodation only will need to ensure that the applicant is aware of that.

Do not ask about health absence record prior to any job offer being made.

You can ask if an applicant is able to carry out a function that is intrinsic (absolutely fundamental) to the job on an application form or at interview - such questions should be asked about the person's ability to do a job with reasonable adjustments in place and consideration given to reasonable adjustments if the employee has a disability. The focus is on whether the person has the relevant skills and qualities to the job.

Do not refer an applicant to a doctor or occupational health support or ask an applicant to fill in a health questionnaire before the job offer is made.

If you ask for date of birth at recruitment or interview stage ensure that you do not unlawfully discriminate against an applicant based on their age. As some of the industry pay rates are based on age bands, you may instead wish to find out which pay band they fall into.

Do not make instant/personal judgments based on a protected characteristic – i.e. that a person looks too young or too old to do a job

Do not ask an employee if she is pregnant or planning to start a family. A pregnant job applicant does not have to tell a potential employer that she is pregnant but if a job applicant does, then the employer must not base any decision on that.

1.3 Avoiding unlawful discrimination in the recruitment process

Discrimination in Recruitment

1.3.1 Job applicants must not be unlawfully discriminated against because of a protected characteristic – namely age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation.

This is in some cases quite obvious – for example everyone accepts that it would be unfair to say that a job is only open to men because it involves heavy lifting when women could do the lifting too.

However, in some cases of indirect discrimination where an employer has a provision or practice which unfavourably affects a particular protected group, it could be far less obvious and those responsible for recruiting are recommended to read guidance on discrimination and avoiding it - see Discrimination and Equality

If during the interview an applicant mentions something which relates to a protected characteristic bear in mind not to use that information to rule them out of consideration. For example, a job applicant says that they have a disabled child and may need to take some hours off here and there for caring responsibilities. It would be unlawful associative discrimination to not offer the job to this person because of this if they are otherwise the best candidate. The employer should consider how they could work with that applicant to make reasonable adjustments to enable that person to take the job as the best candidate.

If during the interview process you ask a question which is not permitted under equality legislation that in itself is not discriminatory. However, if a candidate later makes a claim of direct discrimination because they believe that you used their reply to discriminate against them, it will be for you to show the Employment Tribunal that is not the case.

Also the Equality and Human Rights Commission can take action against you if you make enquiries that are not permitted.

Vacancies and maternity leave

1.3.2 It is a legal requirement to keep a person on maternity leave informed as to relevant promotion opportunities or job opportunities.

Health and Medical conditions – Pre job offer

1.3.3 In general, employers cannot ask questions about a job applicant's health or sickness absence prior to any job offer being made and should not ask applicants how many days off ill they have in previous jobs or raise health and disability questions in reference enquiries. Asking any such questions would shift the burden of a discrimination claim onto the employer as it would be assumed that the employer had not made a job offer because of the disability.

1.3.4 Employers can ask some limited questions pre-job offer to establish if an applicant can perform the intrinsic functions of the job once reasonable adjustments are in place.

Intrinsic means fundamental and a very narrow view will be taken as to what is intrinsic. Employers will also need to consider whether any reasonable adjustments can be made to the job role. To ascertain if something is intrinsic to a job role, the best advice is to focus on the function of the job and whether it can be varied. If it can be varied, it is not intrinsic. Reasonable adjustments include acquiring or modifying equipment, adjusting premises to accommodate the person or altering the person's hours of work. It may be that there are no reasonable adjustments which could enable the person to undertake an intrinsic role of the job but consideration must be given as to whether there are any. For more information on disability and reasonable adjustments, see Discrimination and Equality

- For example, riding is fundamental to the role of work rider. The test as to whether the employee can undertake the intrinsic function of the role is once any reasonable adjustments are in place.
- Lifting is not fundamental to a secretary's job as someone else could do any occasional heavy lifting.

1.3.5 Employers are advised not to ask about the person's health or sickness absence record prior to the offer stage (as that will relate to their health not their ability to perform an intrinsic function) and not to ask a previous employer about the person's health or sickness absence record until after a job offer has been made (see Health and medical conditions – Post job offer). Any questions should only relate to the ability to do an intrinsic function of the job as outlined above.

In practice, employers should not over focus on disability issues but ensure that that when assessing a disabled person's suitability for the job, the employer takes into account any reasonable adjustments which could enable them to do the job (very simple example, a yard stops using muck sacks and uses a wheelbarrow instead thus enabling someone with a long term back problem to take on a job as a yard worker). If after taking reasonable adjustments into account, they would not be the best person for the job, the employer does not have to offer the job to them.

Health and medical conditions – Post job offer

1.3.6 Asking about health and medical conditions can be done post job offer and it may be necessary so as to ascertain if any adjustments need to be made to enable the person to do the job. For example a secretary with a disability which causes fatigue is permitted to re-arrange some of her working day to take extra breaks

1.4 Offering the Job

Recruitment – the job offer

1.4.1 The job offer can be made verbally or in writing although it is important to realise that a job offer made verbally and accepted by the applicant is legally binding.

1.4.2 Once the offer has been accepted, unless otherwise agreed with the applicant, the employer should confirm the appointment in writing including advising of any probationary/trial period if appropriate. If the appointment is subject to satisfactory references or a satisfactory medical report then the letter must state that. Template job offer letters can be found at Template 2: Sample job offer letter to include contract and Template 3: Sample job offer letter – contract to follow separately

The right not to be discriminated against unlawfully applies during a trial period, so for example if an employee during the trial period was to

advise the employer that she was pregnant it would be automatically unlawful for the employer to dismiss or otherwise subject the employee to any detrimental treatment because of the pregnancy. See Trial Periods.

Conditional job offers

1.4.3 A job offer can be conditional upon completion of a health questionnaire or references. It is advised that if that is being done the employee is advised that the job offer is conditional upon that and that they should not resign from their existing job until the offer has been confirmed.

Health Questionnaires

1.4.4 If using a health questionnaire, the employer must bear in mind that if the replies to the health questionnaire indicate any medical problem which may amount to a disability the employer will be under a duty to consider whether any reasonable adjustments can be made and make such adjustments to enable the candidate to take up the job offer - the duty not to discriminate unlawfully still applies. The employer would also need to objectively justify any health and fitness criteria which they applied to the job.

If an employer withdraws an offer of employment because of unsatisfactory responses to a medical questionnaire and the person qualifies as disabled under the Equality Act, the potential employee (or employee if they have already started work) may bring a claim against the company.

Any employer considering withdrawing a job offer upon receipt of an unsatisfactory reference relating to sickness absence or health or because of an unsatisfactory medical report should seek advice.

References

1.4.5 Applicants should be advised upon what references will be taken, when they will be taken and if the job offer is conditional upon this. They should be advised as to what kinds of references will be taken, i.e. whether any personal referees are required in additional to employer ones.

It is a rule of racing that employers seek a reference from the previous employer where an applicant has previously worked in racing (Code 10, Stable Employees, clause 1).

If taking up references before a job offer is made and the candidate does not want their existing employer contacted, the employee's wishes should be respected.

1.4.6 A reference must be accurate and prepared with reasonable care and must not mislead a future employer who relies on it. The reference should give a fair overall impression.

A "bad" reference can be given provided it does not give an unfair or misleading impression overall and is not malicious. The employer must have taken reasonable care to ensure that the information is true – for example, if an employee had been dismissed, any statement in the reference about that must tie in with the reasons given for the dismissal.

1.4.7 The information contained in a reference is personal data. Essentially this means that the reference must be accurate, must be relevant and must not contain unnecessary information. It must be held securely and it must not be retained longer than necessary.

The Company should ensure that its Data Protection Policy and Employee Privacy Notice explains that personal data will be used for references and how long that data will be kept. There are template documents in the GDPR area of the NTF website.

Probationary/Trial Periods

1.4.8 Employment can be subject to satisfactory completion of a probationary period, which can be any reasonable length of time.

It must be included in the contract if there is a probationary period. It should also be made clear to the employee the length of notice needed to end the contract during the probationary period and that the employer's normal disciplinary procedure will not apply during the probationary period although in practice it is advisable to follow the procedure even when terminating someone on a probationary period.

During the first month of employment either party can give one hour's notice unless a longer period of notice has been agreed.

Regardless of the probationary period, once an employee has one month's service they are entitled to at least statutory minimum notice – contractual provisions may be greater or apply before one month's service. Statutory minimum notice is as follows:

- between one month and less than two years' continuous service – one week's notice
- between two years and twelve years' continuous service – one week notice for every completed year of service up to a maximum of twelve weeks
- twelve years or more continuous service – twelve weeks' notice

1.4.9 It should be noted that whilst an employee does not have a general right to unfair dismissal with under two years' service, an employee who is dismissed during the first two years including during a probationary period has the right to claim that they have been unfairly discriminated against and dismissed for a discriminatory reason. For instance, if an employee's employment is not confirmed during a trial period because she is pregnant, she would have a right to claim automatic unfair dismissal and sex discrimination.

1.4.10 An employer may want to extend a probationary period if they feel they need more time to assess the employee's suitability. The letter confirming the probationary period should state that employer has the right to extend the probationary period by the same period again. If it doesn't, then the employee will be deemed to have passed their probation once the probationary period has ended and the employer cannot compel the employee to agree to an extension. If the employer does need to extend the probationary period, the employer should clearly set out to the employee in writing the particular issues that need to be addressed.

1.5 Contracts

Contracts/Statements of the Main Terms and Conditions of Employment

1.5.1 The employer **must** issue a statement of the main terms and conditions of employment to all workers, not just employees, so including casual workers. This is a "day one right" and the Statement must be issued no later than the first day of work and should be updated if the details change.

This statement will often be referred to as a contract and whilst there are technical differences between a statement and a contract the same categories of information must be contained in whichever form of document is used.

The NTF provides two standard section 1 statements for trainers to use and members can download these from the NTF website. There is one standard document for trainees on apprenticeships and one for other employees.

Failure to provide a written statement of terms and conditions or providing an inadequate statement will carry a sanction of an award of up to four weeks' pay if the employee pursues an employment tribunal claim. It will also make it difficult to ascertain terms and conditions if there is an employment dispute.

If the contract is for a fixed period this should be specified, otherwise the contract will be open ended, i.e. no fixed end date. A fixed term contract can be as short as a day or week. For further information see Part-time Workers and Fixed Term Contracts .

From 1st April 2020, there is other information which must also be included in the contract, namely:

- The days of the week the employee/worker is required to work
- Whether the hours of work may be variable and, if so, how the variation will be determined

- In addition to details of holiday entitlement, information must be given about any entitlement to other types of paid leave, such as maternity or paternity leave
- Probationary periods (if any)
- Any required training which the worker will need to complete, or any other training in respect of which the organisation will not bear the cost

Recruitment – additional topics

The right to work in the UK

1.5.2 Employers must ensure that a potential employee is entitled to work in the UK before employing them and should be consistent in their checking and not simply check recruits they assume would not be eligible. See Checking the Employee's Right to Work in the UK.

BHA safer recruitment guidance

1.5.3 As part of its safeguarding policy the BHA recommends that appropriate steps are considered and undertaken to seek to ensure that a new employee does not present a known or foreseeable risk of harm to young people or adults. The BHA policy and steps that the BHA recommends are considered can be found at section 7 of its Safeguarding Policy

https://media.britishhorseracing.com/bha/Safeguarding/Safeguarding_Policy.pdf

1.5.4

The ACAS website (www.acas.gov.uk) has further information in its section on "Recruitment and Induction".

1.6 Registration with BHA

1.6.1 Under the Rules of Racing, all workers must be registered onto the Stable Employees Register within 24 hours of commencing employment. See the Rules of Racing (Code 10, Stable Employees, clause 2) or contact BHA Licensing Department for further information.

Failure to do so can result in a fine from the BHA and no cover for RIABS.

1.7 Induction, Handbook, Yard Rules, Health and Safety Policies

1.7.1 These should be given and explained to new employees and training given as necessary. Records should be kept so that an employer could

show that appropriate information and training has been given to employees.

Also consider what new employees need to know about the workplace, work performance, supervision and management, administrative procedures, training, union membership etc.

1.8 Working time opt out

1.8.1 Information on working time is set out in the BHA Red Book on health and safety. It should be noted that it must not be a condition of employment that employees are required to opt out of the 48 hour average working week. Employees must be free to opt out or refuse to opt out without detriment to being offered employment or continuing employment. Reference to opting out should not be contained in the contract but instead consenting employees should be asked to sign a separate form.

16 and 17 year old employees cannot opt out of their 40 hour maximum working week.

1.9 Rates of pay

1.9.1 The minimum rates of pay are agreed yearly between the NTF and NARS and a copy of the current agreement is set out at page 23 see NTF / NARS agreement – minimum terms and conditions

The deductions that can be made from pay are regulated by legislation – see Deductions from wages

Additionally, any amount being deducted or allowed for accommodation must take into account the provisions of the National Minimum Wage accommodation offset – see Accommodation

Example Recruitment Policy

[Employer Name] Recruitment Policy

[**name of business**] is an equal opportunity employer.

The aim of the recruitment policy is to find the right person for each job based on the key skills, knowledge or aptitudes required for the job.

We will not discriminate against job applicants because of a protected characteristic and we are committed to treating all applicants in the same way regardless of race or colour, nationality or ethnic origin, religion or religious belief, sex or marital status, pregnancy, sexual orientation, disability or age.

Our Job Applicant Privacy Notice sets out how we collect, store and use job applicants' personal data and how long such data is retained.

Template 1: Record for job applicant who is riding at interview

Name	
Address and phone number	
Emergency contact/next of kin	
Is applicant currently registered on the Stable Employees Register as a paid employee of a licensed/permit trainer?	Yes/No If No, see question below
Does applicant have his or her own accident insurance?	Yes/No If No and the job applicant is not currently registered as a paid employee on the Stable Staff Register, it is recommended that the applicant does not ride at interview.
CV checked	Yes/No If no, the potential employer must have obtained detailed employment history from the applicant
Qualifications	
Riding experience	
Yard experience	
References	
I confirm that the above information is true and that I am willing and capable of riding a racehorse as part of this interview. I have declared to the potential employer any medical information that the potential employer needs to know to be able to make any reasonable adjustments to enable me to undertake the practical part of this interview. I understand that any medical information that I have provided will be treated as sensitive personal data. Signed: Date:	

Template 2: Sample job offer letter to include contract

Dear

I am writing to offer you the post of [job title] at the pay rate of [insert pay rate] starting on [insert start date].

Full details of the terms and conditions of employment are set out in the attached Written Statement of Terms and Conditions of Employment. Also enclosed is our Employee Privacy Notice/A copy of our Employee Privacy Notice has already been issued to you [*delete as applicable]

As explained, the job offer is made subject to satisfactory results from pre-employment checks.

There will be a probationary period of [ ] which will have to be completed satisfactorily. We may extend this probationary period if we consider that a longer period of time is needed to properly assess your performance. If it is extended we will inform you of the reason for the extension as well as the new end date of the probationary period. During the probationary period the company disciplinary procedure is not applicable. [*delete if not applicable]

This is a permanent/fixed term/temporary post/temporary post to cover maternity leave/sickness absence. [*delete if not applicable]

On starting please report to [ ]. If you have any queries on the content of this letter, the attached Written Statement of Terms and Conditions of Employment or the pre-employment checks, please do not hesitate to contact me on [insert telephone number and/or email address].

I am delighted to offer you this opportunity and look forward to you joining our team and working with you.

Template 3: Sample job offer letter – contract to follow separately

Dear

I am writing to offer you the job of [insert job title] at the pay rate of [insert pay] starting on [insert start date]

The other main terms and conditions of your employment will be:

Place of work [insert address]
Hours of work [insert details of hours]
Holiday entitlement [insert days per year] The holiday year runs from [put in details]
Company pension [put in details]
Notice period [put in details, for example during the probationary period [providing this does not exceed 4 weeks] no notice is required by either party; after on month but under 2 years, one week from either party save in the case of gross misconduct when the employer may dismiss without notice]

Our Employee Privacy Notice is enclosed with this letter/has already been issued to you [*delete as applicable]

This is a permanent/fixed term/temporary post/temporary post to cover maternity leave or illness. [*delete as applicable]

As explained to you, this job offer is made subject to satisfactory results from pre-employment checks.

There will be a probationary period of [ ] which will have to be completed satisfactorily. We may extend this probationary period if we consider that a longer period of time is needed to properly assess your performance. If it is extended we will inform you of the reason for the extension as well as the new end date of the probationary period. During the probationary period the company disciplinary procedure is not applicable.

On starting please report to [ ].

Full details of the terms and conditions of employment will be given to you in a Written Statement of Terms and Conditions of Employment either prior to your start date or on your start date.

If you have any queries on the contents of this letter, pending the Written Statement of Terms and Conditions of Employment, or the pre-employment checks, then please do not hesitate to contact me on [insert phone name and/or email].

New employee administration checklist

Some general points for yards to adapt to suit their own practices and procedures.

	✓
Check entitlement to work in UK and identification check to comply with legislation. See Checking the Employee's Right to Work in the UK	☐
Apply for reference to last employer If previously employed in racing, requirement under Rules of Racing (Code 10, Stable Employees clause 1)	☐
Grade Check skill level and age if appropriate to ensure on correct scale if using MOA. See NTF / NARS agreement – minimum terms and conditions	☐
Register with BHA To comply with Rule (Code 10, Stable Employees clause 2) start RIABS cover (where applicable). Must register within 24 hours of commencing employment.	☐
Probationary period If a probationary period, confirm to employee the length of the probationary period and ensure included in contract.	☐
Issue with contract/statement of terms and conditions of employment and Employee Privacy Notice To comply with legislation. Must issue before on first day of employment. Standard terms and conditions available from NTF and refer to the following documents which should be given to or made ready available to the employee. The Employee Privacy Notice should be issued with the job offer/commencement of employment.	☐
• NTF/NARS Agreement on discipline and appeal procedures NTF /NARS Disciplinary and Dismissal agreement	☐
• NTF/NARS Agreement on minimum terms and conditions of employment. See NTF / NARS agreement – minimum terms and conditions	☐
• NTF/NARS Agreement on the resolution of disputes – the Grievance Procedure NTF/NARS Agreement on Resolution of Disputes	☐
Pension scheme Provide information about company's own auto enrolment scheme. By law the employer must provide information about terms and conditions of any pension scheme within 2 months of the employee commencing employment.	☐
Workplace induction Advise employee on the yard's policies, i.e. any domestic rules, safeguarding policy, anti-bullying policy, sickness absence reporting, requesting holiday, drug and alcohol policy, equal opportunities, NTF/NARS anti-bullying policy BHA Code of Conduct Safeguarding Policy – Chapter 19 Equal Opportunities – see Chapter 12 Social Media – see chapter 22 Sickness absence – see chapter 10 NTF/NARS anti bullying policy see chapter 11 And see NTF website – handbook area for further policies	☐

Consider training needs Job specific training Industry training – Racing2Learn online courses including Respect in Racing (the BHA Code of Conduct), Diversity and Inclusion, Safeguarding. There is a huge range of free training courses on Racing2Learn which may be appropriate for a new starter.	
Racing Industry Accident Benefit Scheme Explain RIABS scheme to employee see Chapter 18	☐
General Data Protection Regulations Issue employee with company's employee privacy notice	
Pool money Give employee a copy of pool money criteria (not compulsory but good practice).	☐
Guidance on BHA rules Inform about the rules including inside information. Provide training as necessary.	☐
Health and safety induction and advice for new employees, refer to the Industry Health & Safety Manual, the Red Book.	☐

Recruitment and Starting Employment

Checking the Employee's Right to Work in the UK

You should have a system in place to carry out "right to work" checks - it is a legal requirement for employers to make sure that prospective employees have the right to work before employment starts.

Who has the right to work in the UK?

UK and Irish citizens have an automatic right to work in the UK although right to work checks must still be carried out

EU, EEA or Swiss Nationals already resident in the UK as of 11pm on 31st December 2020 had a right to apply to protect their rights to live and work in the UK.

If the employee does not already have the right to work in the UK, then from 1st January 2021 an employer wishing to employ a new migrant worker (so both EU and non-EU citizens) will need to be a Home Office approved sponsor and the migrant worker will need to apply under the points based system unless they have a visa giving them permission such as the right as a spouse of a British Citizen. This does not apply to Irish citizens who will still have freedom to live and work in the UK.

The Points Based System

This requires the employer to hold a Sponsor's Licence issued by the Home Office and for the potential employee to meet a set of criteria meaning they have sufficient "points" to meet the test to be employed.

The criteria is that the job meets the required skill level of RQF3 or above, that the potential employee speaks English to the requirement standard and the job meets the minimum salary threshold. As an example, for the horse racing industry, skilled grooms and riders can qualify for sponsorship under the new Points Based System. This list of jobs that qualify can be searched here:

https://onsdigital.github.io/dp-classification-tools/standard-occupational-classification/ONS_SOC_occupation_coding_tool.html

- job code 6139 refers to stable staff.

From 4th April 2024, the minimum salary for a new skilled migrant worker working as a racing groom or work rider is £15.88 per hour, equating to £30,960 for a 37.5-hour week. The provision of accommodation cannot be used to calculate the £15.88 hourly rate but an accommodation charge can be deducted from wages. Existing skilled migrant workers pay rate must increase to a minimum of £11.90 per hour from the same date.

There is a fee payable by the employer to register with the Home Office as a sponsor (£536 for a small employer (max 50 employees) and £1476

for a medium/large employer). The employer also has to pay £239 for each certificate of sponsorship, so per person employed and an immigrations skills charge. The individual worker has to pay a visa fee (currently £464 for a visa for up to 3 years) and an immigration health surcharge, which is £1,035 per annum/£5,175 for a 5 year visa.

The Points Based System also includes the **Tier 5 Youth Mobility Scheme**. In this category, those between the age of 18 and 30 who hold the following citizenship can work in the UK for two years without requiring employer sponsorship:

- Australia
- Canada
- Hong Kong
- Japan
- Monaco
- New Zealand
- Republic of Korea
- San Marino
- Taiwan

There is no minimum salary (except minimum wage) or skill level. This category does not allow work as a professional sportsperson. There is now the possibility of switching into sponsored work after the two year period subject to qualification

Information on the points based system and how to apply to become a sponsor of a migrant worker can be found on the Government website **www.gov.uk.**

1.9.2 Commonwealth citizens and some British overseas citizens who have a grandparent who was born in the UK, Channel Isle or Isle of Man and can meet other eligibility criteria can apply for the right to live and work in the UK. The initial grant is for five years. For further information www.gov.uk/ancestry-visa

1.9.3 Once a migrant worker has lived legally in the UK for a certain length of time, they may be able to apply for permission to settle in the UK – known as indefinite leave to remain. Where a person has indefinite leave to remain, they have the right to work without further permission being obtained. Employers must carry out a document check and photocopy document – see Checking the Employee's Right to Work in the UK

1.10 New employee identity check

Right to work in the UK – employee identity check

1.10.1 An employer will have a defence if before employment begins, the employee produces specific documentation, the employer checks this and keeps a copy of the documentation. The defence will not apply if the employer knows that the employee is illegal and employs him regardless.

These checks should be made on all employees to avoid discrimination on racial grounds.

Right to work - Initial Documentation Checks

1.10.2 A right to work check means that the employer checks documentation which is acceptable for showing permission to work. This must be done before the person starts work. The employer will also be required to conduct a follow up check on people who have time limited permission to work in the UK.

1.10.3 Employers must carry out a check for those holding a Biometric Residence Permit, a Biometric Residence Card or a Frontier Work Permit using the Home Office's online right to work check. From this date, for holders of these rights you cannot do a manual check of these physical documents.

To do this check, the prospective employee will provide the employer with a share code and must also advise the employer of their date of birth. The share code is valid for 30 days. The employer can then check the right to work online. This service is free.

See links to further information:

Employee prove your right to work Prove your right to work to an employer - GOV.UK (www.gov.uk)

Employer check the right to work View a job applicant's right to work details - GOV.UK (www.gov.uk)

Further guidance for employers at:

Right to work checks: an employer's guide - GOV.UK (www.gov.uk)

1.10.4 For British and Irish Citizens manual checks can still be undertaken or employers will be able to use a digital Identity Document Validation Technology (IDVT which must be carried out through a third party Identity Service Provider – the Home Office recommends using a certified IDSP – there is a fee payable to an IDSP for carrying out a digital right to work check.

1.10.5 Where undertaking a manual check there are three steps to checking the right to do the work:

- Step 1. Obtain the person's original documents
- Step 2. Check them in the presence of the holder and
- Step 3. Make and retain a clear copy, and make a record of the date of the check.

1.10.6 **Step 1** Obtain original versions of one or more acceptable documents

The list of documents which could previously be included in the check for the right to work has been reduced and no longer include BRPs, BRCs

or FWP as checks must be done online for any one holding one of those documents (see 1.10. above).

The lists are now List A and List B, with List B split into two Groups, Group 1 and Group 2.

The list of documents are set out in the Home Office Right to Work Checklist at this link:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/311657/Employer_s_Right_to_Work_Checklist_final.pdf

Or at www.gov.uk and search for Right to Work Checklist.

1.10.7 **Step 2** Check the documents are genuine

The employer must check that the documents are genuine, the person presenting them is the prospective employee, the rightful holder and allowed to do the type of work the employer is offering. The Right to Work Checklist at the link above gives more guidance on this and includes a tick box to show what checks have been made.

The responsibility for checking the document is the potential employer's – however an employer will only be liable for a civil penalty if it is reasonably apparent a document is false.

1.10.8 **Step 3** Copy

The employer must copy each document in a format which cannot later be altered and must retain the copy securely either electronically or in a hard copy.

Where a passport is presented, the employer must copy and retain any page with the document expiry date, nationality, date of birth, signature, leave expiry date, biometric details and photograph and any page containing information indicating the holder has an entitlement to enter or remain in the UK and undertake the work in question.

For all other documents, the document in full must be copied and the copy retained. This includes both sides of a Biometric Residence Permit.

Right to work – employer's statutory excuse

1.10.9 If an employer carries out the checks and establishes that the potential employee is not permitted to work here then he is entitled to refuse employment. It is up to the potential employee to show that he is permitted to do the work being offered.

The employer must do these checks before the person is employed.

The UKVI advises that documents are kept for 2 years after the person stops working for the employer.

If a trainer is concerned that a document is a forgery or does not relate to the holder or for other advice, he can contact the Home Offices

Employers' Helpline on 0845 010 6677 for further advice or ring the NTF office on 01488 71719.

The frequency of document follow up checks for people with a time limit on their right to work is no longer 12 months.

There are now different time scales depending on the documents. It is mandatory for employers to keep a record of the date a document check was made. It is necessary to carry out the required follow up checks to maintain the statutory excuse.

List A

1.10.10 If an employer has checked and copied a List A document from an employee then the employer has a continuous statutory excuse for the full duration of the person's employment. There is no legal requirement to carry out any repeat right to work checks.

List B, Group 1

1.10.11 If an employer has checked and copied a List B, Group 1 document from an employee then the employer has a time limited statutory excuse which expires when the person's permission to be in the UK and undertake the work in question expires. The employer should carry out a follow up check when the document evidencing their permission to work expires.

As a practical tip, it is recommended that employers start discussing with their employees three months before their visa is due to expire to confirm the steps the employee is taking to renew the visa.

List B, Group 2

1.10.12 If the employer has checked and copied a List B, Group 2 document from an employee then again the employer has a time limited statutory excuse which expires 6 months from the date specified in the Positive Verification Notice. This means the employer should carry out a follow up check with the Notice expires.

Whilst therefore employers can do away with the need for annual checks, they should ensure that they still have a procedure in place to carry out the checks which are required.

Statutory excuse – extension

1.10.13 An employee can keep working after their visa expires if they produce certain documents to confirm that they made an application for a new or renewed visa in time (i.e. before visa expiry).

The defence against illegal working (the statutory excuse) has been extended for a maximum of 28 days beyond the expiry date, where the employer is reasonably satisfied that an employee has submitted an application or has an appeal pending against a decision on an application.

To benefit from this defence, the employer will need to make an Employer Checking Service check – see www.gov.uk for further information. If a positive verification notice is received, the employer will have a statutory excuse for a further 6 months from the check.

1.10.14 The employee will need to provide evidence that they have submitted their application (proof of postage, etc.) either before or on the date of the visa expiry.

1.11 The National Minimum Wage and National Living Wage

1.11.1 The National Minimum Wage and National Living Wage (jointly referred to in this section as NMW) are rates set by the Government and increased each April.

The racing industry minimum wages as set out in the Memorandum of Agreement (see below) are in some cases the same as the NMW and as such it is essential to ensure that you are not making deductions which may bring your employee's pay below the NMW.

The NMW is based on age, the age groups being 16 - 17 years, 18 – 20 and the adult rate for those agreed 21 and over.

The truly self employed are not entitled to the National Minimum Wage. However, all workers including casual workers and zero-hour workers are entitled to paid at that rate.

It is a criminal offence not to pay the NMW and HM Revenue and Customs (HMRC) officers have the right to carry out checks at any time and ask to see payment records. They can also investigate employers if a worker complains to them.

If HMRC finds that an employer has not been paying the correct rates, any arrears have to be paid back immediately. There will also be a fine and offenders might be named by the Government.

It is the employer's responsibility to keep records proving that they are paying the NMW – you will need timesheets and pay roll records.

1.11.2 Calculating the National Minimum Wage

The Government's Business, Enterprise and Industrial Strategy department has guidance running to nearly 60 pages on calculating the NMW. We have sought to give a summary of key points below and if any member has a query on whether their payment arrangements meet the NMW please contact the office for assistance.

The average hourly pay is worked out over a period called the pay reference period. This is usually the period of time that the person is

working and paid, so if a person is paid monthly it will be one month. A pay reference period cannot be longer than 31 days.

Not all pay will count towards the NMW and deductions made from wages may affect the NMW.

Pay that counts towards the NMW

- Gross pay (before tax and NI) being basic pay, performance related pay or other payments based on how well the person does their job

Pay that doesn't count towards the NMW is:

- Advance of wages
- Loans
- Pension payments
- Redundancy payments
- Rewards under staff suggestion schemes
- Any premium element of pay, i.e. enhanced overtime
- Allowances such as on call
- Tips or gratuities

1.11.3 The effect of deductions on the NMW.

Deductions made from an employee's wages may affect the NMW and bring the employee below the NMW even if the agreed rate of pay is at or over the NMW. It is important to be aware of the effect of deductions to ensure that the business is not inadvertently underpaying an employee.

Deductions which do not affect the NMW:

- Tax and National Insurance
- Penalties for misconduct provided these are set out in the employment contract
- Court attachment of earnings
- Paying back an advance of wages under an agreement for a loan or advance of wages
- Paying back an accidental overpayment of wages
- Money the employee has chosen to have deducted from their pay, such as pension contributions or a trade union subscription, so long as the deduction is required as part of the employee's work and isn't for the employer's own use or benefit.

  In 2019 the position of the RIABS deduction was considered by HMRC and is was decided that as the money did not go to the employer for the employer's own use or benefit that the RIABS

deduction does not reduce the NMW. Note: in the NTF standard contract of employment the employee consents to the deduction of RIABS from their wages. If using another form of contract the employer should ensure consent to the RIABS deduction is included.

- Payments the employee choses to make to buy goods or services from the employer – for example if the employee voluntarily buys food in the staff canteen (but if the deduction was made by the employer from wages then it would reduce the NMW).

Deductions and payments which reduce the NMW

Certain deductions made by the employer from the employee's pay, or payments made by the worker, reduce pay for minimum wage purposes. These are:

- Deductions or payments by an employee for expenditure connected with the job
- Deductions which the employer makes from the employee's pay or payments made by the employee to the employer for items or expenses that are connected with the job, for example uniforms or equipment needed for the job
- Payments made by the employee to another person for expenditure connected with the job, for example, uniforms, tools or other equipment.
- The HMRC treats uniform very widely – so for example if you require your employees to wear black trousers when going racing their expenditure to purchase that clothing is in connection with employment so would count as a reduction in their earnings.
- If an employee does not return uniform or other equipment then provided you have a right in the contract to make the deduction then it will not reduce the NMW.
- Deductions for the employer's own use or benefit such as deduction for meals or transport provided by the employer

Accommodation – this has specific treatment and information is set out below.

Benefits in Kind

Other than a set amount for accommodation, benefits in kind do not count towards the NMW pay. For example, you cannot set out an equivalent value in money for benefits such as meals, fuel, employer contribution to pension, medical insurance, meal vouchers or child care vouchers to count against the NMW.

Accommodation

If the employer provides accommodation some of the value of that can count towards the NMW. This figure is set yearly by Government and

is called the accommodation offset. The employer cannot count more than the accommodation offset rate which is in force at any given time.

There is detailed information in Chapter 22

NTF / NARS agreement – minimum terms and conditions from 1st April 2025

Preamble

1. The Agreement provides for a Racing Industry Minimum Rates of Pay Structure and certain standard conditions of employment for Racing Staff employed by trainers in the racing industry. This Agreement is effective from 1st April 2025

Racing Industry Minimum Rates

2. The Government National Minimum is taken into account and there are different minimum rates depending on age in Scales 1 – 3. Scale 4 upwards is not age related. Set out below are the minimum rates for a 40 hour week.

Please note that differing rates apply to staff who are provided with accommodation to those who are not.

Pay Scale

3 The following scale is used to differentiate between roles with Minimum Pay Rates varying depending on whether accommodation is provided as part of the package.

Scale	Type	Description
1	Trainee	Little, or no experience in horse racing. It is unlikely that those in such roles will have qualifications higher than NVQ1 or equivalent
2	Improver	Likely to have some experience and have NVQ2 or equivalent skills
3	Established	
4	Senior	May hold NVQ3 or equivalent
5	Skilled	Likely to have exceptional riding skills, to be capable of breaking and/or schooling young horses, of supervising equine swimming pool or similar facilities, have first aider and/or safety supervision duties
6	Supervisory	Likely to include head person, travelling head person or other supervisory/management roles

Minimum rates of Pay

4. The following minimum rates of pay apply from 1st April 2025

		Without Accommodation		With Accommodation	
Scale	**Age**	**Weekly rate**	**Hourly rate**	**Weekly rate**	**Hourly rate**
1	16-17	£302.00	£7.55	£302.00	£7.55
	18-20	£400.00	£10.00	£400.00	£10.00
	21+	£488.40	£12.21	£488.40	£12.21
2	16-17	£302.00	£7.55	£302.00	£7.55
	18-20	£400.00	£10.00	£400.00	£10.00
	21+	£488.40	£12.21	£488.40	£12.21
3	16-20	£400.00	£10.00	£400.00	£10.00
	21+	£488.40	£12.21	£488.40	£12.21
4	All	£489.60	£12.24	£488.40	£12.21
5	All	£496.80	£12.42	£488.40	£12.21
6	All	£540.00	£13.50	£488.40	£12.21

It is likely that within any one yard, there would be progressive differentials in pay between staff members in Scales 4 to 6.

Note: Where accommodation is provided, the employer can utilise the Government NMW accommodation offset of £74.62 per week (£10.66 per day). This is the maximum which can be deducted for accommodation where an employee is being paid at the NMW. For example, a Scale 3 employee aged 23 working 40 hours can be paid at £488.40 with an accommodation deduction of £74.62 or paid £413.78 plus free accommodation and still comply with the NMW and MOA. There is detailed guidance on deduction for accommodation on the NTF website.

Hours of Work

5. The normal full time week is 40 hours (excluding meal breaks) There is no set pattern on how a yard should work these hours. However, unless an individual's contact states otherwise the normal full time week will include 5 hours every Saturday morning. Any overtime above the basic 40 hour working week will be paid in accordance with paragraph 4. Time away racing is to be paid in accordance with paragraph 7.

5.1 In planning the working week, employers must have regard to the Working Time Regulations – further information on these is available in the BHA Health and Safety Manual (the Red Book).

5.2 Having regard to the requirements of the industry, racing staff shall work weekends as required by their employer to ensure there is adequate cover. It is the spirit and intention of this agreement to work towards an improved work/life balance for racing staff whilst taking into account the nature of the industry.

5.3 Working Time legislation limits the maximum working week for 16 and 17 year old workers to 8 hours a day and 40 hours a week. There are certain permitted exceptions whereby the limit may be exceeded – these will rarely apply. Further

guidance on the legislation and exceptions is available for NTF members in the NTF employment guide and from the NTF office.

5.4 For adult workers (those aged 18 and over) their working time should not exceed an average of 48 hours for each seven days applied over the reference period. By collective agreement between the NTF and NARS, the reference period is 52 weeks. Individual employees whose working time is likely to exceed an average of 48 hours over 52 weeks can be excluded from the weekly limit provided they sign an opt out agreement. Further information is available in the BHA Health and Safety Manual.

Overtime (in the yard)

6. Overtime for time worked in the yard will be paid at the rate of time and one half for each hour worked over the basic 40 hours in each given week.

Racing staff who have been absent part of the week through sickness will not be required to work 40 hours before receiving overtime.

Payment for time worked away from the yard

7. Time when a worker is travelling on the business of his employer in connection with duties carried out by the worker in the course of work is treated as working time whether or not the travelling takes place during his working hours.

7.1 Racing staff are to be paid for time worked away from the yard outside of normal hours at the following rate:

£12.21 for all racing staff regardless of age.

7.2 Time away from the yard within the normal daily working hours is paid at the normal rate of pay.

7.3 These payments are liable for PAYE and National Insurance deductions and should be put through the payroll.

7.4 If locally adopted rates are used then the hourly rate paid must meet or exceed the hourly rates set out in this agreement. It is accepted that employees of yards close to racecourses are unlikely to incur meal expenses when racing at their local course and as such the daily subsistence allowance will not apply to such employees. This is likely to mainly apply to Newmarket staff with runners at Newmarket and Epsom staff with runners at Epsom.

Subsistence allowances

Daily allowances (Monday to Saturday)

8. A daily subsistence allowance is to be paid to staff going racing Monday through to Saturday.

There is a tax free element to these allowances as set out below. The allowances may be paid in cash in advance to enable staff to buy refreshments but tax must be paid on the non-tax free element. The rate of daily subsistence allowance is based on the number of hours away from the yard outside of normal working hours.

Number of hours away from yard outside normal working hours	Up to 8 hours	8 hours or more
Daily Subsistence Allowance	£10	£13.50
Tax free element	£10*	£13.50*

Where a payment is tax free, it is also NI free.

***Note** by an agreement with HMRC the full amount of these payments (£10 and £13.50) can be now be paid tax free provided the employer complies with revised HMRC requirements in place since 6th April 2016. To meet these requirements the employer must apply to HMRC to use the racing industry bespoke payments and have a checking system to check around 10% of expenses claims to ensure they are being properly incurred, namely that the employee has gone racing and incurred expenses.

Sunday Racing and Sunday Racing Payment

9. The deployment of racing staff to cover designated Sunday racing fixtures and work in the yard will be determined by the trainer in consultation with the racing staff. However, where off-rota staff are asked to go racing or to cover work in the yard, it will be on a voluntary basis.

9.1 The payment for time worked away from the yard (not already paid in the employee's normal wages) shall be paid at the rate specified in paragraph 5.1 above. See paragraph 12 for compensatory time off.

9.2 It is recognised that racing on a Sunday involves some disruption of free time. To compensate for this, racing staff who go racing on a Sunday fixture in Great Britain will receive a Sunday Racing Payment of £30.00 (note, £16 of this allowance can be paid tax free).

Overnight

10. Racing staff will receive a £19.00 overnight allowance. This can be paid tax free. It is not payable for days when the abroad payment is paid.

Racing abroad

11. Racing staff who go racing abroad will receive the appropriate hourly payment for time worked away from the yard in excess of their normal daily working hours at the rate specified in paragraph 7.1. These payments are liable for tax and National Insurance deductions and should be put through the payroll.

11.1 In addition, racing staff will also receive a Racing Abroad Payment of £53.20 per day (£28.30 of this allowance can be paid tax free) for the first 14 days. After that the payment will reduce to £35.00 per day (£28.30 of which can be paid tax free).

The HMRC does not set a tax free amount for payment to staff who go abroad with their horses because expenses can vary significantly according to the country visited. However, it is agreed that provided staff are asked to make some sort of basic written claim stating the amounts they have spent, those amounts can be paid tax free by the employer, if the employer considers them to be reasonable. Receipts should be kept to support claims.

Compensatory time off

Returning after midnight

12. Racing staff returning from racing after midnight shall not be required to start work until 9.30 am; if staff are asked to start before 9.30 am, it is agreed that they will be paid at the rate of time and one half for each hour worked before that time. Where an employee returning from racing after midnight elects not to start work before 9.30, paid time will begin from when the employee begins to work, not the normal start time and any adjustment to pay for unworked time before 9.30 must be made at the employee's normal hourly rate, not the £12.21 rate for time worked away from the yard or at time and a half.

Designated Saturday evening fixture

13. Staff who go racing to a Saturday evening fixture when they would not otherwise have been working that Saturday afternoon are entitled to receive a paid weekday evening off in lieu, the weekday evening to be mutually agreed between the parties.

Travelling on Sunday

14. Staff who are traveling on a Sunday to race on a weekday, when they would not otherwise have been working that Sunday, are entitled to receive a day in lieu.

Racing on Sunday

15. Staff who go racing on a Sunday or who are racing abroad on a Sunday when they would not otherwise have been working that Sunday, are entitled to a paid alternative date off at the relevant rate. The arrangement of this day off will be

at the discretion of the trainer in consultation with the racing staff so that the day is taken within a rolling reference period of twelve months.

Holidays

16. The holiday year will be either 1st January to 31st December or 1st July to 30th June. The trainer will determine which is the most appropriate for each yard. Each year will stand on its own and cannot be carried over (see clause 14.6).

Holiday entitlement

Racing staff are entitled to:

First year of employment	30 days holiday per annum inclusive of 8 public holidays
Once an employee has served a continuous period of twelve months with the current employer, then during the next holiday year the entitlement increases to:	32 days holiday per annum inclusive of 8 public holidays
Once an employee has served a continuous period of five years with the current employer, then during the next holiday year the entitlement increases to:	34 days holiday per annum inclusive of 8 public holidays

Part time workers

16.1 Part-timers holiday entitlement will be the same as full time workers on a pro rata basis and paid at their usual rate (part-timers are defined as persons who work less than 40 hours per week).
Part time workers holiday entitlement increases in line with length of service as for full time workers.

Arrangements for taking holidays and holidays at termination

16.2 Holidays will be taken at times to be mutually agreed and will have regard to what is practice in the local circumstances.

16.3 Employees who have been given notice, or who have given notice, can be required to take their holiday entitlement during the period of notice and this will be effective even where the employer is unable to give the employee statutory notice of the requirement to take holiday. In the case where racing staff have holiday entitlement which exceeds the period of notice, they will be paid for the balance of their entitlement.
On termination of employment, racing staff should be paid for any holiday accrued in the current holiday year to the date of termination and not taken. Any part of the annual holiday entitlement that has already been taken at the

point of termination of service shall be deducted when calculating the holiday pay entitlement as referred to in 16.1.

Holiday accrual and calculations

16.4 There is a holiday calculator on the NTF website which may be of assistance particularly for calculating the holiday of part time workers.

To calculate holiday for an employee leaving part way through a holiday year, there are three steps:

- Calculate the full annual leave entitlement
- Work out the proportion of the leave year in employment
- Pro-rate based on the proportion of the year in employment

Example – 30 days holiday per annum

Holiday year 1st January to 31st December
Employee started work 1st March and is leaving on 25th August

- **Step 1** Employee in first year of employment entitled to 30 days holiday

- **Step 2** Proportion of leave year in employment – between 1st March and 25th August there are 178 days

  178 days employed out of 365 days in leave year
  178/365 x 100 = 48.767% of leave year
  Employee is employed for 48.767 of the leave year

- **Step 3** Pro-rate leave based on proportion of leave year

  30 days holiday / 100 x 48.767 = 14.63 days holiday

Bank Holidays

16.5 Bank and public holidays are included in the holiday entitlement set out at paragraph 16.
Where an employee works on a public holiday an alternative day will be taken to be mutually agreed or if an alternative day is not taken an additional day's pay will be paid up to a maximum of 2 days (pro-rated for part timers and in respect of incomplete holiday years in the first year of employment)

Carry over - Sickness absence and maternity/adoption leave periods

16.6 In certain circumstances where it is not possible for an employee to take their holiday entitlement during the current holiday year due to sickness absence, the entitlement to the holiday which can be carried over will be reviewed at the time in the light of the current legislation at the relevant time.

16.7 Contractual and statutory annual leave will accrue during maternity/paternity and adoption leave periods and will carry over where it cannot be taken in the current holiday due to the employee being on maternity/paternity or adoption leave.

Bereavement Leave

17. The purpose of bereavement leave is to ensure that racing staff who suffer bereavement in their family are able to attend the funeral and deal with family and legal matters without the additional hardship of losing money.

Racing staff shall be granted up to a maximum of five paid working days absence in the event of the death of a spouse, civil partner, child*, brother, sister or parent or other relation for whom they provide care at the discretion of the employer.

Employed parents and adults with parental responsibility who lose a child under 18 or have a stillbirth after 24 weeks of pregnancy have a right to two weeks statutory bereavement leave. Details from NTF and NARS.

In other cases, if the 5 days is insufficient or a serious family event has occurred which has not resulted in bereavement, the employer may at their discretion negotiate a period of unpaid leave to enable the outstanding personal matter to be dealt with.

Absence during sickness or accident

18. **Absence following injury at work**

In the case of absence due to injury caused by an accident at work, regardless of length of service, the first four weeks are paid at the usual weekly wage, with no waiting days (the usual wages will include statutory sick pay, if eligible). The RIABS claim form should be completed within the three month time limit

Sickness Absence

Racing staff who are off work as a result of sickness (except where an accident outside of work has been caused in the employer's reasonable opinion by the employee being involved in fighting, drunken behaviour or abuse of drugs) and who have been with the current employer at the commencement of the sickness absence for six months or more will receive from their employer their usual weekly wage (to include statutory sick pay if eligible) for a period of one month in any one year, such sick pay payable in the case of sickness absence from the fourth day of absence. Racing staff with less than six months service will receive SSP only, if eligible.

The three waiting days for sickness absence will not apply to a second period of illness linked to the first absence where such periods of absence would be linked for SSP purposes.

Racing Industry Accident Benefit Scheme

19. Racing staff who are off work as a result of accidental injury arising out of and whilst carrying out duties for a licensed trainer including bone fide journeys between normal place of residence and place of work shall receive from their employer their usual weekly wage pro rata for a period of one month's injury absence in any one year including the first three days of absence. A claim for benefit should be made as soon as soon as possible to the Racing Industry Accident Benefit Scheme (RIABS) within three months of the accident.

The scheme does not cover race riding accidents or accidents which occur whilst on or travelling to and from a racecourse when engaged to ride (in this instance refer to the Professional Riders Insurance Scheme (PRIS) tel. 01935 891974 info@pris.org.uk

19.1 Paid full or part-time racing staff of licensed and permitted trainers who are aged between 16 and 65 years and registered with the British Horseracing Authority will have deducted £4.00 from their net wage per week of employment as a contribution to RIABS. For trainees at the BRS or the NRC who were pre-employed by a trainer, the trainer will pay both the trainer's and employee's RIABS premium whilst the employee is attending the BRS or NRC.

19.3 Injury benefit is payable for a maximum period of up to 104 weeks from the established date of the accident, if the accident has been declared by the claimant's employer. The amount of benefit (subject to an overall maximum of £400 per week) is the difference between the claimant's pre-accident net wage and all statutory benefits receivable by the claimant as a result of the accident. RIABS claim forms must be submitted within three months of the date of the accident giving rise to the claim.

19.4 In the event of death, partial disability or being permanently and totally disabled (from working in a racing yard or any other occupation), the benefits as set out in the RIABS scale of benefits will be paid up to £154,500. The cover is extended to include dental expenses to a limit of £5,000.00 arising out of accidental injury to sound, natural teeth as a direct consequence of duties involving horses.

PPE and clothing

20. Trainers are recommended to assist racing staff in the purchase of working clothes such as jodhpurs and jodhpur boots if requested to do so and to arrange repayment in weekly instalments, such repayment agreement to be recorded in writing and signed by the employee.

Racing staff may be entitled to tax relief for work clothing – a form is available on the NARS website.

Skull caps and safety vests are personal protective equipment and should be provided free of charge by the employer. These items remain the property of the employer.

Procedure in the case of disputes

21. The procedures to be adopted for the resolution of disputes at yard level and disciplinary and appeal procedures are set out in the Memorandum of Agreement between the NTF and NARS on the Resolutions of Disputes and the Agreement between the NTF and NARS on Discipline and Appeal Procedures.

General

22. Where racing staff are already in receipt of a wage or pension in excess of the relevant minimum rates established by this Agreement, it is a matter for the trainer's discretion whether to maintain existing differentials. Where better conditions exist and racing staff are in receipt of higher wages and/or conditions, then these particular racing staff will not have their wages and/or conditions reduced to the minimum rates shown above.

Operation

23. This agreement operates from 1st April 2025.

Disputes on the interpretation of this Agreement will be determined in the NJC.

2. Chapter 2

Managing the Employment Relationship

2.1 The contract terms

The terms of a contract can arise in many ways – through the written contract of employment, through a verbal agreement, through custom and practice or through a collective agreement. A written statement of the terms and conditions of employment must be issued on or before the start of employment – the NTF standard contract covers the areas of law required to be contained in the written statement.

2.2 Varying the Contract of Employment

Employer wishing to vary a contract

2.2.1 An employer may wish to vary a contract term, say because of changed economic circumstance or a reorganisation of the business – this could be for instance where the employer wishes to change the hours of work.

An existing contract of employment can be varied only with the agreement of both parties. Changes may be agreed on an individual basis or through a collective agreement (i.e. agreement between employer and employee or their representatives).

In some cases, a contract may contain express terms which allow an employer to make changes in working conditions. Through flexibility clauses, for example, an employer may expressly reserve the right to alter the employee's duties. The contract may therefore be drafted to permit reasonable changes to be made within the terms of the existing agreement. Advice should be taken if seeking to rely on such a clause.

An employer who is proposing to change an employee's contract of employment should fully consult with that employee or their representative(s) and explain and discuss any reasons for change.

Where the parties agree to the variation, it should be recorded in writing. In particular, where a variation in the contract has been agreed and the changes result in a detrimental change to the employee or concern particulars which must be included in the written statement of terms and conditions, the employer must give written notification of the change to the employee, within a month of the change taken effect.

Varying a contract without the agreement of the employee

2.2.2 If an employer imposes changes in contractual terms without the agreement of the employee, there will be a breach of contract. The employee would have certain remedies against this depending upon how serious the breach by the employer may be – if there is a fundamental breach (for example the employer has imposed a

significant change such as a reduction in pay or alteration of working hours) the employee may be able to treat that breach as bringing the contract to an end and leave the job, which could give the employee the opportunity to claim constructive dismissal in the employment tribunal.

What can an employer do if the variation cannot be agreed with the employer?

2.2.3 Trainers are advised to seek individual advice upon the particular position. The situation may arise where the employer is considering dismissing the employee and then rehiring on a new contract. This is known as "fire and re-hire" although more formally it is dismissal and re-engagement. An updated ACAS Code from 18th July 2024 repeatedly emphasises that employers should only consider using "fire and re-hire" as a last sort having exhausted other options. It can come with significant risks and the ACAS Code must be followed. If any trainer has reached this point in discussions with an employee please contact the NTF advice for guidance. We have an advice sheet available and can discuss the situation with you.

2.2.4 It should also be noted that the Labour Government has indicated that it will make fire and re-hire unlawful other than in some very limited circumstances.

Pay – administrative issues

2.3 Pay slips

2.3.1 Employers must issue a written itemised pay statement. This must be provided at or before the time the wages are paid and must set out:

- the gross amount of the wages or salary
- the amount of any fixed or variable deductions from pay and the reasons for them (i.e. tax, National Insurance, loan repayments, RIABS deductions)
- the net amount of wages or salary

It must show on the pay slips where the pay varies by the amount of time worked. If the employee only works their standard hours and no overtime, then there is no requirement to show any of the hours worked and similarly if a salaried worker works no additional paid overtime then the hours do not have to be shown.

However, if a worker is paid by the hour and the hours of work are varied each week, then the number of hours worked each work must be included on the payslip. Similarly if a salaried worker works paid overtime, then the overtime hours would need to be shown as the pay has varied because of that overtime.

The BEIS guidance can be found here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/764576/payslips-legislation-april-2019-additional-info-on-payslips.pdf

Deductions from wages

2.3.2 Legally an employer cannot make deductions from a worker's pay unless certain conditions are met. This relates to self-employed workers and casual workers as well as employees.

An employer may lawfully make a deduction where one of the following conditions is met:

- the deduction is required or authorised by legislation (i.e. tax, National Insurance, CSA or Child Maintenance Service, attachment of earnings orders made by courts)
- the deduction is required or authorised by a term of the worker's contract. The employer must have given the employee a copy or a written explanation of the term before the deduction is made (i.e. in the NTF standard contract, the employee agrees to the deduction of the RIABS contributions).
- the worker has agreed in writing to the deduction before it is made and the deduction relates to an event that has not yet occurred (for example, if an employee neglectfully damages a company vehicle and the employer wishes to deduct the cost of repair from the employee's wages, this will only be lawful if the employee had agreed in writing to any such deduction before the damage occurred).

2.3.3 If an employer loans an employee money, then the employer should get a written authority from the employee to deduct the sum at an agreed rate from wages and stating that if the employee leaves the balance can be deducted from final wages and other monies (such as pool money) due to the employee. Without such an agreement, the employer would not have a right to make any deduction from the wages and if the employee refused to pay back the monies, the only remedy would be through the civil courts for a debt. See sample letter at Template 4: Sample letter where employee agreeing to regular deduction from wages.

2.3.4 If has overpaid an employee by mistake, it should agree a timetable for repayment with the worker and not deduct more than a reasonable proportion from each pay packet.

2.3.5 It is also important to bear in mind the effect that any deductions will have upon whether or not the employee is being paid in accordance with the National Minimum Wage (not the racing minimums). The National Minimum Wage Regulations 2015 (Regulation 12) states that

any deduction made from a worker or payment by the worker will reduce their pay for National Minimum Wage purposes unless it is:

- in respect of the worker's conduct
- on account of an advance under an agreement for a loan or advance of wages under an agreement for a loan or advance of wages
- as respect an accidental overpayment of wages made by the employer
- as respects the purchase by the employee of shares, other securities or share options

and

- payments as respect the purchase by the worker for goods or services from the employer, unless the purchase is made in order to comply with a requirement imposed by the employer in connection with the worker's employment.

As such if making a deduction other than for one of the above reasons, then you need to ensure that it is not at a level which will bring the employee's wages below the NMW. If it will have that effect, then you should reduce the amount of the deduction to keep the wage above the NMW or consider whether the employee can pay you for it rather than a deduction being made – contact the NTF for further advice on any specific query.

2.4 Managing employees – appraisals

Appraisals and Job Chats

2.4.1 Whilst not a legal requirement, employers may find it helpful to have an appraisal and/or job chat system in place.

An appraisal : relatively formal process either yearly or twice yearly looking at the employee's performance, highlighting good work and areas for improvement as well as considering what training if any the employee may require or like to do. More information on appraisals including suggested templates are available on the ACAS website or contact the NTF office to discuss.

Job Chat: chat covers the same topics but is a less formal process whereby the employer and employee can talk about how the employee is getting on – is the employee satisfied with their job, do they have any problems with their work or workplace or anything connected with work, is there any training they would like and what are their career plans? It may be that the employer cannot provide the training at that point but it is then something which the employer is aware the employee would like to do and it could highlight someone who wants to move up a grade, take over some additional responsibility, etc. It is also

an environment in which the employee may feel able to raise something outside of work which is affecting their work, for example caring responsibilities. Job chats are also an ideal opportunity to the employer to thank the employee for their work and for the employer and employee to have a two way conversation standing back from the day to day rush of normal work and as such can be a very useful aid to staff retention.

Template 4: Sample letter where employee agreeing to regular deduction from wages

To [**name of employer**]

I, [**name**], herby authorise the deduction of £[**amount**] from my wages each week in respect of [**reason for deduction**].

This letter does not authorise any other deduction(s) than that stated above, nor do I agree to any variation upward of the amount stated without my further written approval.

If at termination of my employment for whatever reason the full sum of £**[total of amount owed]** has not been repaid through the weekly deductions I further authorise a deduction of the remaining balance from my final wages and any other sums due to me at termination of employment including holiday pay and pool money*

Signed ……

Employee Name in block letters …… Date ……/……/……

*delete this clause if not applicable.

This clause would be applicable where the deduction is for the employee to repay a fixed sum lent to him or her by the employer or where the employer has purchased something for the employee and the employee is repaying the cost.

Unauthorised absence where employee has not contacted the employer

2.5 Procedure

2.5.1 What can an employer do where an employee has seemingly disappeared – perhaps not returned from holiday or simply stopped turning up for work?

The employer must not just assume that the employee has left. The contract remains in force until some action is taken by either the employer or the employee to bring it to an end. This could be the employer dismissing the employee or the employee resigning. If it is a dismissal, the employer must ensure it is fair to dismiss and follow correct procedures or may face a claim of unfair dismissal.

There could, of course, be a genuine and acceptable reason why the employee has not contacted the employer or it could be that the employee has simply decided to leave and not told the employer. The employer needs to get to the reason for the absence and then decide how to deal with it.

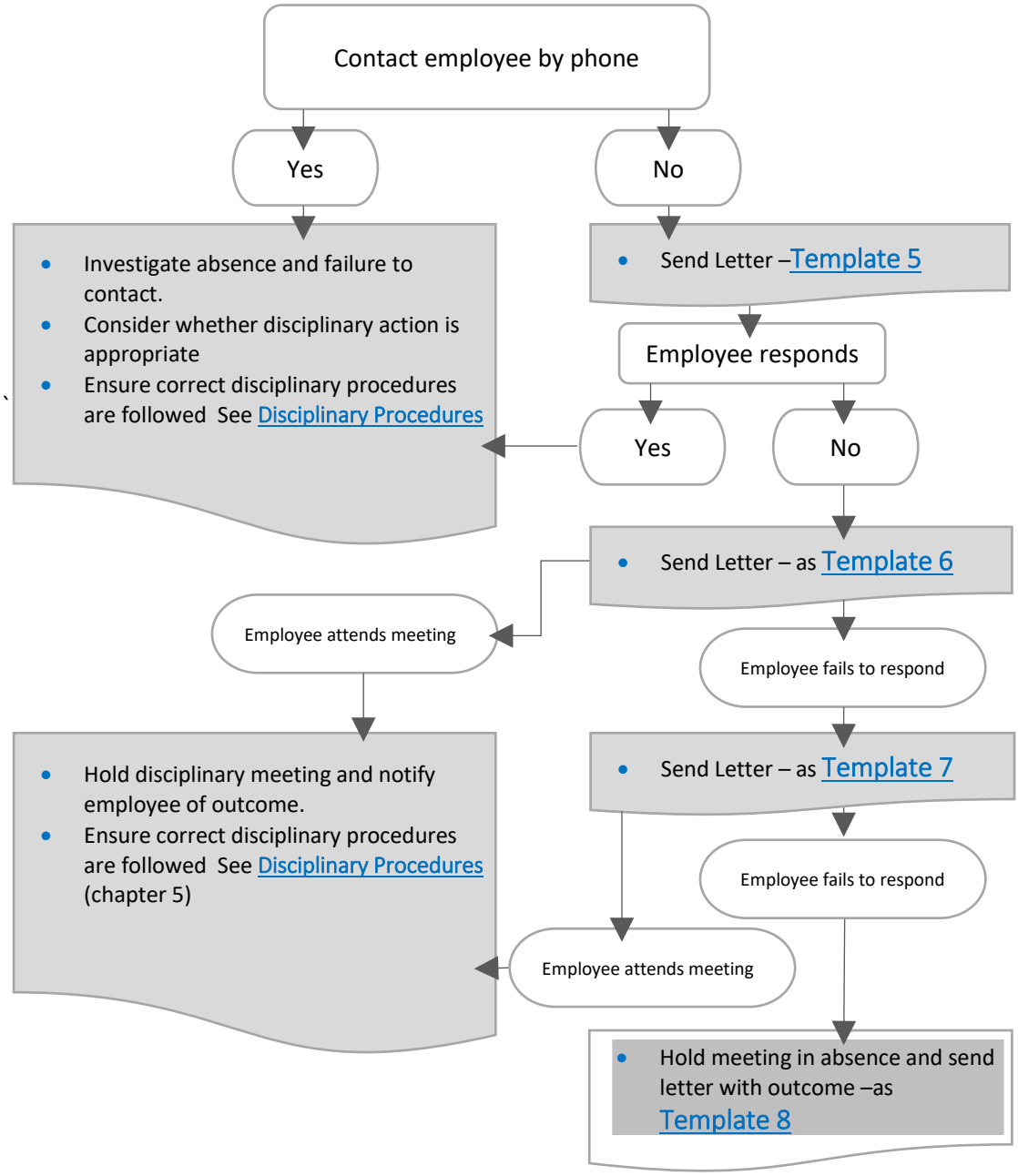
Whilst the following procedure may seem like a lot of work for an employee who has not bothered to be in contact with the employer, it is the best practice to try to prevent a claim from the employee that they have been unfairly dismissed or unlawfully discriminated against.

There are four template letters below and if the employee still fails to get in touch or attend any meeting, then a brief in absence meeting should be carried out and a record made. The various steps in the process can be carried out promptly but the employer must ensure the employee is given sufficient warning of any meeting which may lead to dismissal.

If at any point during the procedure it becomes apparent that the employee has a medical problem which is causing the absence, consideration must be given as to whether the employee has protection from unlawful detriment or dismissal on the grounds of disability. See Equality Act 2010 (Chapter 12) for further information or contact the NTF office for advice.

To help manage absence, it is good practice to have in place a reporting procedure so that employees know who they must contact and by when if they are unable to attend work. If employees are in the habit of texting or asking work colleagues to pass a message on for them, the employer should remind the employees of the yard rules and that they are to follow them. Having a procedure in place gives a more solid framework to discipline employees for failure to notify of an absence. An informal and then formal disciplinary route could be followed for repeated failures to follow reporting procedures.

Figure 1 : Procedure for employer to follow when employee has not been in contact



Step 1 - try to contact employee by phone

2.5.2 Try to contact the employee by phone, using their mobile and landline if both are available. Make notes as to when attempts to contact them were made and whether any message was left or if the phone number was unobtainable or rang out.

If the employee is contacted, the employer should ascertain the reason for the absence and decide whether any disciplinary action is appropriate for either the unauthorised absence or failure to get in contact. If formal disciplinary action (whether that be a warning or dismissal) is considered then the employer must follow the correct disciplinary procedures (see Disciplinary Procedures) (Chapter 5)

If the employee says they have left, they should be asked to confirm that in writing. If they are not prepared to do so, then the employer should write to the employee referring to the conversation and confirming acceptance of the resignation. Any outstanding holiday pay should be paid.

Step 2 - write to employee asking them to return or get in touch

2.5.3 If the employee cannot be contacted by phone, then the employer should write to the employee.

This letter will advise the employee that they are absent without having provided a clear and acceptable reason and asking them to return to work or make contact advising why they are not at work and how long their absence is likely to last. See Template 5: Initial letter to employee who is absent without having provided a reason.

The employer should then decide whether the absence and failure to notify were justified, i.e. was there an acceptable reason and if not, the employer may decide to commence disciplinary proceedings. The correct disciplinary procedures must be followed (see Disciplinary Procedures.

Step 3 Next step where no response – invite to disciplinary meeting

2.5.4 If the employee does not respond to the above letter then the employer should write to the employee advising them that their absence and failure to get in touch is being treated as a serious disciplinary matter and inviting the employee into a disciplinary meeting. The employee must be told that the outcome of the meeting could be a warning or dismissal and that they have the right to be accompanied by a work colleague or union representative at the meeting. See Template 6: Second letter to employee who is absent without having provided a reason

If the employee attends the meeting, then the employer should consider the employee's case and decide what, if any, disciplinary action is appropriate. The correct disciplinary procedure should be followed and a right of appeal given in respect of any disciplinary action or dismissal. See Disciplinary Procedures.

If the employee does not attend the meeting or get in touch to re-arrange then proceed to step 4.

Step 4 Next step where no response – re-arrange disciplinary meeting and then hold in absence if no response

2.5.5 The employer should write advising the employee that the meeting has been re-arranged to a new date and that if they do not attend the matter will be considered in their absence. See Template 7: Letter to employee who is absent without providing a reason and who has failed to attend a disciplinary meeting with regard to the absence.

If the employee attends this re-arranged meeting, then the employer should listen to their case and make a decision. The correct procedure must be followed – see Disciplinary Procedures.

2.5.6 If the employee does not attend then the matter should be considered in their absence and a note made as to what decision is made and by whom and then a letter written to the employee advising of the outcome of the meeting and giving a right of appeal. See template letter at

2.5.7

Template 8: Final letter to employee who is absent without providing a reason and who has failed to attend a disciplinary meeting.

2.5.8 If at any stage during the procedure, information comes to light which the employer needs to investigate, the procedure should be adjourned whilst enquiries are made. The advice in this guidance sets out the basic steps and individual circumstances may necessitate a different approach or additional steps to be taken.

Unauthorised absence - Shortening the process

2.5.9 Depending on the circumstances, steps 3 and 4 could be combined, so that the employee is invited to a disciplinary meeting about the absence and failure to contact and advised that if they do not attend the meeting will be held in their absence. The warning as to possible consequences of the meeting must be included as well as advising the employee of the right to be accompanied. This is not recommended where the employee would be able to claim unfair dismissal (i.e. has over two years' service) or the employer suspects there could be the potential for a discrimination claim.

Unauthorised absence - discrimination

2.5.10 As mentioned on the first page, if at any point during the procedure it becomes apparent that the employee is absent due to illness, consideration must be given as to whether the employee has protection from unlawful detriment or dismissal on the grounds of disability. See Chapter 10 for further information or contact the NTF office for assistance.

The procedure set out in this chapter is for dealing with an absent employee who either fails to contact the employer or who does not provide an acceptable reason for the absence. Chapter 10 of this manual sets out advice on managing sickness absence.

Template 5: Initial letter to employee who is absent without having provided a reason

Dear

You have been absent from work without providing us with a clear and acceptable reason since [**date**].

We have tried to contact you by telephone without success.

We ask that you either return to work or as a matter of urgency contact [**put in name and phone number of person at yard they should ring**] to advise as to why you are not at work and how long your absence is likely to last.

Please note that we will investigate with you the reason for your absence and your failure to notify us and following this investigation we will decide whether any disciplinary action is required. We refer you to the Employee Privacy Notice issued to you for information on how we process your personal data and sensitive personal data and your rights relating to such data. A further copy of the Employee Privacy Notice is available on request.

Yours sincerely

Template 6: Second letter to employee who is absent without having provided a reason

Dear

You have been absent from work since [**date**] without having provided us with a clear and acceptable reason.

We have tried to contact you by telephone on a number of occasions and wrote to you on [**date**] asking you to contact us, which you have failed to do.

We are now treating your absence and failure to contact us as serious disciplinary matters and write to invite you into a meeting on [**date**] at [**time**] in the presence of [**name**] where these matters will be considered.

The possible consequences of this meeting are a warning, a final warning or dismissal including dismissal without notice*

You have the right to be accompanied by a work colleague or an accredited trade union representative at the meeting.

We refer you to the Employee Privacy Notice issued to you for information on how we process your personal data and sensitive personal data and your rights relating to such data. A further copy of the Employee Privacy Notice is available on request.

Yours sincerely

*note to employer – any disciplinary sanction must be reasonable in all the circumstances. There is guidance in the NTF manual chapter 5 on disciplinary sanctions.

Template 7: Letter to employee who is absent without providing a reason and who has failed to attend a disciplinary meeting with regard to the absence

Dear

You have been absent from work since [**date**] without having provided a clear and acceptable reason.

We have tried to contact you by telephone on a number of occasions and wrote to you on [**date**] and more recently on [**date**] inviting you to a disciplinary meeting on [**date**] to consider your absence and failure to contact us.

As you failed to attend that meeting, we have now re-arranged this to [**date**]. The possible consequences of this meeting are a warning, a final warning or dismissal including dismissal without notice.

You have the right to be accompanied by an accredited trade union representative or work colleague.

We ask you to note that if you do not attend this meeting, then it will be held in your absence.

We refer you to the Employee Privacy Notice issued to you for information on how we process your personal data and sensitive personal data and your rights relating to such data. A further copy of the Employee Privacy Notice is available on request.

Yours sincerely

Template 8: Final letter to employee who is absent without providing a reason and who has failed to attend a disciplinary meeting.

Dear

We write further to our letters of [**date**] and [**date**], copies of which are enclosed. *

As you failed to attend the re-arranged meeting on [**date**] it was held in your absence and the decision was taken by [**name**] that you be dismissed without notice, so your last day of employment with the company is [**date**].

You have the right to appeal against this decision. If you wish to appeal then please contact us in writing with your grounds of appeal within the next 5 days.

We refer you to the Employee Privacy Notice issued to you for information on how we process your personal data and sensitive personal data and your rights relating to such data. A further copy of the Employee Privacy Notice is available on request.

Yours sincerely

Managing problems in the Employment Relationship

Advice on handling **disciplinary matters and dismissals** is set out in Chapter 4, Chapter 5 and Chapter 6 of this guide and advice on **handling grievances raised by employees** is set out in Chapter 14

This section explains some possible routes for resolving a breakdown in a relationship in the work place or for coming to a clean break on agreed terms. It also gives information upon early conciliation of employment claims. It should be read in conjunction with the above chapters.

Mediation overview

2.5.11 Mediation is where an impartial third party – the mediator – helps two or more people in dispute to attempt to reach an agreement.

In an employment relationship, it may be particularly useful where there is conflict between colleagues or between a manager and staff and in instances such as personality clashes, communication problems, bullying and harassment. It can help find a way forward for employees to continue to work together.

There are, of course, situations where mediation may not be appropriate and there is a cost involved in using an external mediator.

Mediators may be an employee trained and accredited by an external mediation service but in smaller businesses it is likely to be a mediator from an external mediation provider.

Mediation is flexible and relatively informal, voluntary, morally binding but normally has no legal status. It is confidential and generally there will be no right for the employee to be accompanied at the mediation meeting.

Mediation – the process

2.5.12 This can vary but generally the process would be that first the mediator will meet the parties separately. The aim of this is to allow each individual involved to tell their story and find out what they want out of the process.

The mediator will then generally bring the parties together and seek to summarise the main areas of agreement and disagreement and draw up an agenda for the rest of the mediation. The mediator will then help the parties explore the issue and encourage communication between them.

If an agreement is reached, then each party will be provided with a written copy of the agreement and their responsibilities towards making it work will be explained.

It may be that no agreement is reached and other procedures may be used to resolve the conflict. However, nothing that has been said during the mediation process can be used in future proceedings.

There may be some instances where the mediator deals with the matter by way of "shuttle mediation" - the mediator moving between the parties and relaying the views of each rather than the parties sitting in the same room but generally the aim is to bring the parties together.

ACAS has guidance on mediation at

http://www.acas.org.uk/media/pdf/2/q/Mediation-an-approach-to-resolving-workplace-issues.pdf

Settlement Agreements

2.5.13 A settlement agreement is a way of bringing an employment relationship which is no longer working to an end and to agree terms for a clean break.

It will be important for NTF members to take advice if considering using a settlement agreement and for the member to ensure that they maintain their protection against anything discussed being used at a subsequent tribunal hearing if the process has already been started. This applies from the start of conversations which may lead to a settlement and as such advice should be taken before commencing discussions with an employee.

It can be used with an under performer where there are no discrimination issues and can shorten the time process for bringing the employment to an end as there is no need to start a disciplinary procedure. It can also be used where a disciplinary process has already been started.

A settlement agreement can be used to settle disputes or complaints known at the time the agreement is entered into – it cannot compromise (prevent an employee or ex-employee from bringing) an unknown future discrimination claim.

It is not, though, an overnight solution as the employee has to have a reasonable time – at least 10 days – to consider the full details of any offer and a formal legal agreement has to be entered into with the employee taking independent legal advice upon it.

It is also likely that the employer will be making a financial payment to the employee as part of the agreement. A payment made under a settlement agreement is not a compensation award covered by the legal expenses insurance scheme in place for NTF members and would be a business expense borne by the business.

However, settlement agreements do have their place and they may be of use particularly where an employer wishes to bring an employment relationship to an end on agreed terms.

We have not produced detailed guidance in this guide on entering into a settlement agreement and any NTF member considering doing so should before entering into any discussions with an employee contact the NTF employment helpline for advice on 01488 71729/0303 303 1329.

Employment Tribunal Overview

2.5.14 An employee can make a claim to an employment tribunal over a number of employment rights. Generally the claim will arise once an employee has been dismissed (or resigned and seeks to claim constructive dismissal) but they can arise whilst an employee is still employed if there is, for instance, an unresolved issue over deductions from wages or unpaid holidays.

The most common Employment Tribunal claims are:-

- Unfair dismissal
- Workplace discrimination
- Redundancy payments or disputes around selection procedures
- Right to time off or flexible working
- Equal pay
- Deductions from wages or unpaid notice/holiday pay

Before an employee can submit a claim to an Employment Tribunal they will need to contact ACAS first. ACAS will then offer early conciliation to try to resolve the dispute. This is to try to settle matters before a claim is made and is an added step once the matter cannot be resolved within the workplace itself.

If no agreement can be reached between the employer and employee or if either party decides not to partake in early conciliation, ACAS will provide a certification number to the employee will enables the employee to submit a claim to the Employment Tribunal.

Insurance

2.5.15 Any NTF member who is contacted by ACAS in connection with an early conciliation matter must notify their legal expenses insurer straightaway and take advice upon dealing with the matter.

The NTF scheme contact number **for claim notification 0303 303 1329.**

If a settlement is agreed, the payment will not generally be covered under the NTF insurance scheme as it is a settlement not compensation however where the insurers have accepted the claim as an insured event there may be circumstances where the payment is

covered and it is therefore essential that the insurers are notified in accordance with the policy requirements and advice taken.

ACAS Early Conciliation Process

2.5.16 The Advisory, Conciliation and Arbitration Service (ACAS) is largely funded by the Department for Business and provides a conciliation service which is free to both employer and employee.

The ACAS conciliators are impartial.

If an agreement is reached through early conciliation it will be signed off on a legal document through ACAS and will be legally binding on both parties. An agreement reached in this way can be used to settle existing as well as compromise (prevent the employee from being) unknown future claims.

How early conciliation will work

2.5.17 If an employee is thinking about making an employment tribunal claim, the employee will – before they can start the formal claim - need to contact ACAS first and submit an early conciliation form.

The prospective claimant can do this online, by post or by telephone.

Once ACAS is notified, it is under a statutory duty to contact the person within one day to clarify details, gather basic information on the dispute and give the person a fuller understanding of early conciliation.

The matter will then be passed to a conciliator who will aim to make contact with both parties within one working day of receiving the case.

Trainers and their secretaries need to be aware that any communication from ACAS must not be ignored as a failure to respond could result in ACAS concluding there is no likelihood of settlement and issuing a conciliation certificate allowing the employee to commence a claim.

Trainers must also ensure **that they notify their legal expenses insurers as soon any initial contact is received from ACAS.**

- Once the form has been received by ACAS, there is a period of six weeks during which the ACAS conciliator will have a duty to assist the parties in trying to resolve the matter.
- If at any time during the six weeks, the conciliator concludes that settlement is not possible, then ACAS must issue an early conciliation certification and certification number. That would include if either party no longer wishes to try to seek early agreement.
- Similarly, if having received the form, the conciliator despite making reasonable attempts cannot contact the prospective claimant or respondent (employer) it must conclude that settlement is not possible and issue a certification number.

The early conciliation certificate will be sent to both prospective claimant and respondent – if the employer has been involved in conciliation. The employee is then free to commence a claim.

Time frame for submitting a tribunal claim

2.5.18 Generally an employee has three months in which to submit a tribunal claim. Those three months run from the date of the event, so for unfair dismissal the date of termination or if, say, a series of unlawful deductions from wages, the date of the last of those unlawful deductions occurred. The time period is 6 months if the claim is about redundancy payment or an equal pay claim.

When an application is received by ACAS, the three-month period will go on pause. The time limit will start to run again when the claimant receives the early conciliation certification. Once early conciliation has ended the claimant will have at least one month in which to present their claim.

This could considerably lengthen the current three-month period for bringing a claim - if the employee only notified ACAS near the end of the three month period, there would then be the six weeks conciliation period and then a further month during which the employee can decide whether to bring a claim – so a 5½ month period before an ET claim is submitted.

2.5.19 Should the parties wish to continue talking after the early conciliation period has ended, ACAS remains available to assist on request. If a claim is submitted by the employee, ACAS will continue to be available to both parties should they wish to continue to try to resolve the matter before the tribunal hearing.

Employment Tribunal Awards

2.5.20 The basic principle is to replace an employee's losses actually suffered or anticipated rather than to punish the employer. Compensation for unfair dismissal is capped at one year's pay or £115,115 (as at April 2024, this figure is revised each April) whichever is the lowest. Discrimination and whistleblowing have no cap. If an employee is successful in a discrimination or whistleblowing then an injury to feelings award will be made.

There is additionally a basic award calculated in the same way as statutory redundancy made to a successful claimant.

A claimant is expected to try to mitigate their loss, by looking for another job or finding another way of earning money such as becoming self employed.

Compensation can be increased by up to 25% if an employer fails to follow the ACAS code of practice without good reason and similarly compensation can be decreased if an employee fails to follow the same Code without good reason. Compensation can also be decreased if an employee has contributed to their own dismissal or not mitigated their loss or if the Tribunal conclude that despite the unfairness of the

dismissal, the employee would have been fairly dismissed in the near future.

Financial penalties for Employers

2.5.21 Employment Tribunals are able to impose financial penalties upon employers where the Tribunal finds that the employer has breached one or more of the worker's rights referred to in the claim and there have been one or more aggravating features. It is not yet clear how a tribunal will define an aggravating feature – it is likely to be where the employer's actions have been malicious, negligent and/or deliberate, so, for example, if an employer has failed to deal with a grievance or dismissed in an obviously unfair way.

The financial penalty range is from £100 to £5,000 and the fine goes to the Exchequer not the employee. If the Tribunal makes a financial award to the successful claimant, the financial penalty imposed will be 50% of that award up to the maximum of £5,000. There is a 50% reduction in the financial penalty (not the compensation award) for payment within 21 days.

The type of conduct by an employer which is likely to leave to a financial penalty could well be the type of conduct which could also result in any compensation award being increased by up to 25%.

3. Chapter 3

Family Rights

3.1 Overview

In this chapter detailed information is set out on the family friendly rights in the workplace.

The majority of the rights set out in this chapter are those given to employees by legislation and these extend not only to those with child care responsibilities but for some rights to those with the responsibility to care for certain adults and to deal with emergencies involving their dependents.

There is differing length of service requirements upon employees for these rights and in some cases the right exists from day one of employment. Some of the leave granted by these rights is paid whilst other leave is unpaid.

Employees are protected from suffering a detriment or dismissal for exercising their statutory rights – for example, it would be unfair to select someone for redundancy because they had exercised their right to request to work flexibly or had taken parental leave.

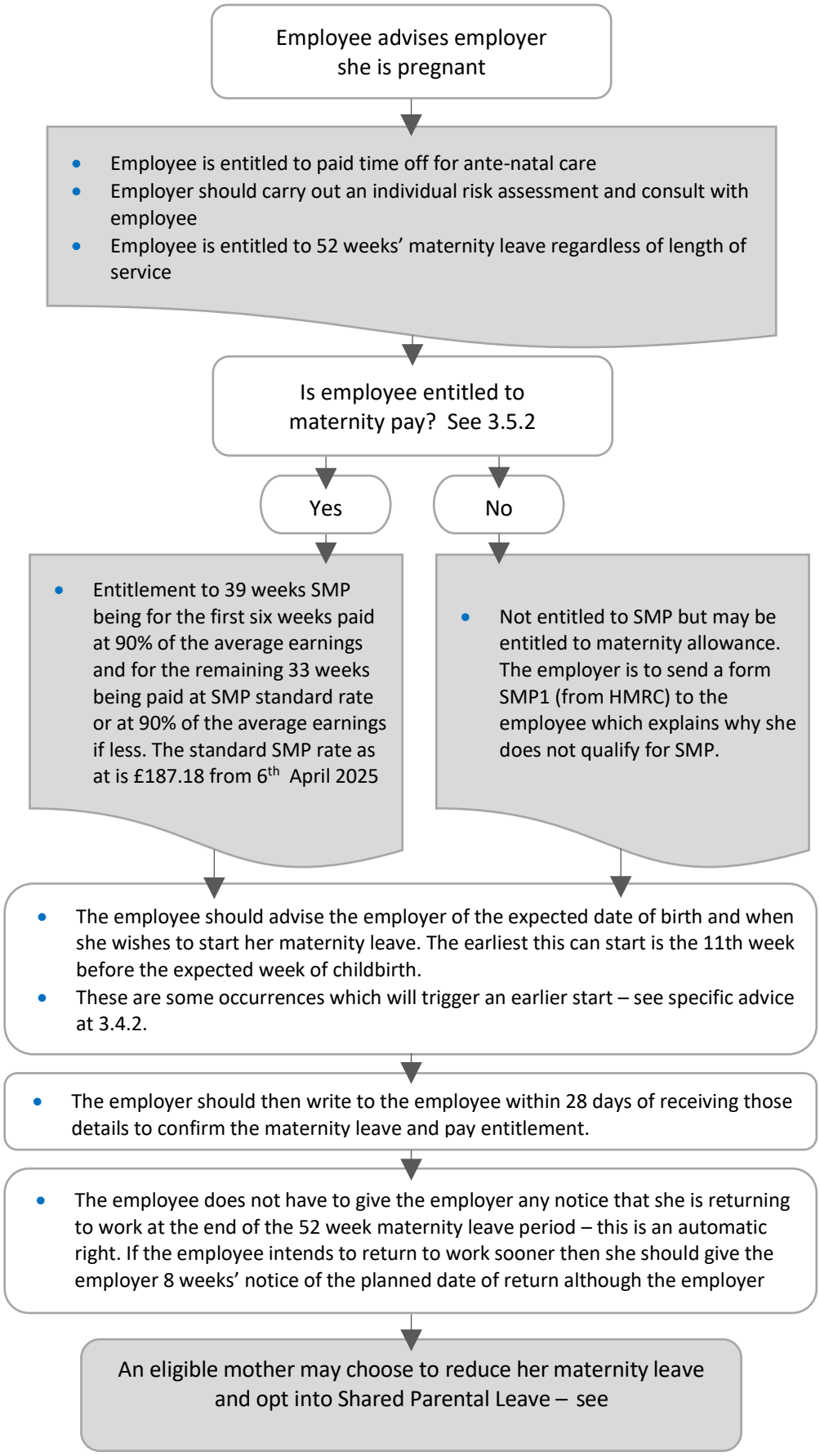
In addition to the rights explained in this chapter, an employee who is adopting a child might be eligible for Statutory Adoption Leave and/or Statutory Adoption Pay. The adopters may also be eligible to take Shared Parental Leave and Pay. Information on adoption leave and pay can be obtained from the NTF office.

The amount of statutory payments (maternity pay, paternity pay and adoption pay) increase in April each year and the latest rates can be found on the gov website www.gov.uk

In the Employment Matters/Handbook area of the NTF website, there are a selection of family rights policies which members may wish to have in place so that their employees are aware of their rights and responsibilities with regard to exercising family rights.

Maternity

Figure 2: Maternity Rights, a simple overview flowchart



3.2 What to do first when told employee is pregnant

Maternity - Health and Safety Risk Assessment

3.2.1 When the employee informs the employer that she is pregnant or where the employee has recently given birth or is breastfeeding an assessment of the risk specific to her and the baby from the working conditions or physical, biological or chemical agents must be made. Consider whether there are any risks to the employee's health and safety that need to be addressed. Carry out a risk assessment and consult with the employee.

If risks cannot be avoided the employer should:

- make temporary changes to working conditions or hours or
- offer suitable alternative work (at the same rate of pay) if available or if not possible
- suspend the employee on full pay for as long as necessary (note bonuses such as pool money should still be paid whilst the employee is suspended on normal pay)

Discuss the risk assessment with the employee and any alterations to her work which may be necessary. Medical advice can be sought if appropriate. The employer should make a formal record of the risk assessment.

The Health and Safety Executive has a guidance booklet on health and safety for new and expectant mothers which is available on the HSE website (www.hse.gov.uk). Both employers and employees may find this useful.

Maternity – meeting with the employee

3.2.2 To discuss and consult over the risk assessment see Maternity - Health and Safety Risk Assessment (section 3.2.1)

Ask when the baby is due and explain to the employee about her maternity leave and pay (see Maternity Leave – length of leave (section 3.4) and Maternity Pay – HMRC guidance Maternity Pay (section 3.5). Advise the employee that she needs to notify the employer by the 15th week before the expected week of childbirth of the date she intends to start her leave and ask her to confirm that in writing

Explain to the employee her rights for time off for antenatal care. See Ante-natal appointments – time off (section 3.3)

Discuss with the employee what she is going to do about her annual leave – whether she wishes to take it immediately before or after the maternity leave Annual Leave (section 3.7.5).

The Government has an interactive website which is useful for calculating maternity rights and pay: www.gov.uk and follow the links

to employing people, statutory time off – maternity and paternity calculator.

3.3 Ante-natal appointments – the rules

Ante-natal appointments – time off

3.3.1 A pregnant employee has the right by law to paid time off for ante-natal care which may include attendance at exercise or relaxation classes where advised by a health professional.

After the first occasion, the employer is entitled to request a certificate from a doctor, midwife or health visitor confirming that the employee is pregnant and written proof of the appointment, i.e. an appointment card. The employer cannot re-arrange the employee's working hours to accommodate the appointment or require the employee to make up for time lost.

See Section 3.8.10 for time off for partner's to attend ante-natal appointments.

3.4 Maternity Leave

Maternity Leave – length of leave

3.4.1 All employees regardless of length of service are entitled to 52 weeks maternity leave. This is somewhat confusingly made up of 26 weeks ordinary leave and 26 weeks additional maternity leave. In practice the difference should not affect the day to day management of the maternity leave.

It is up to the employee how much of the 52 weeks entitlement she wishes to take – provided she takes at least 2 weeks leave immediately after the baby is born.

Maternity Leave – start date and trigger of earlier state date

3.4.2 The employee chooses when to start maternity leave. This cannot be sooner than the 11th week before the expected week of childbirth. However, if the employee is absent from work due to a pregnancy related reason after the beginning of the fourth week before the expected week of childbirth the maternity leave period begins automatically on the day after the first day of her absence. The employer should explain this to the employee.

Maternity leave – notification from employee

3.4.3 To benefit from maternity leave the employee should notify the employer not later than the end of the 15th week before the expected week of childbirth (or as soon as is reasonably practicable) that she is

pregnant and the date on which she wishes to begin her maternity leave and the expected week of childbirth.

Employer's confirmation re maternity leave

3.4.4 When the employer has been informed by the employee of the date upon which she wishes to begin her maternity leave and the expected week of childbirth, the employer **must** then notify the employee of the date on which her leave will end (52 weeks from the start of the maternity leave period – see Template 9: Maternity – draft letter to employee). The employer must do this within 28 days of receiving the employee's notification.

Note: if the employee has not been properly notified of the date on which the leave will end by the employer then if she does not return to work on time she may have protection against dismissal for that reason. Similarly, she may not be obliged to comply with requirements to give notice to the employer if she wishes to return before the end of the leave period.

Changing the start date of maternity leave

3.4.5 If the employee wishes to change the date upon which she starts her maternity leave she can do this as long as she notifies the employer of the new start date. If she wants to delay the start date she must tell the employer 28 days before the date previously intended as the start date. If she wants to bring the start date forward she must tell the employer 28 days before the new start date (which must be no earlier than 11 weeks before the expected week of childbirth or as soon as is reasonably practicable).

3.5 Maternity Pay

Maternity Pay – HMRC guidance

3.5.1 The HMRC has detailed guidance which may answer many queries employers have and can be accessed at the HMRC website on www.hmrc.gov.uk – go to the employers area.

Maternity Pay – qualifying requirements

3.5.2 To qualify for statutory maternity pay the employee must:

- have been continuously employed for not less than 26 weeks at the beginning of the 15th week before the expected week of childbirth
- have average weekly earnings of not less than the Lower Earnings Level for the payment of National Insurance contributions (£125.00 per week as at April 2025), reviewed annually in April.

- still be pregnant at the 11th week before the expected week of childbirth or have had the baby at that time
- give her employer at least 28 days' notice of the date she wishes to start receiving her SMP (this can be done at the same time as giving notice for her leave)
- provide her employer with medical evidence of the date the baby is due and where appropriate born. This will normally be a maternity certificate (form Mat B1) although other evidence may be accepted which must be signed by the doctor or midwife no earlier than 20 weeks before the expected week of childbirth
- if the employee decides not to return to work at the end of her maternity leave period she is entitled to receive her full amount of statutory maternity leave and pay

Employees who do not qualify for maternity pay

Women who do not qualify for statutory maternity pay may be entitled to maternity allowance (MA) which they can claim direct from their local Job Centre plus office. The employer should give the employee form SMP1 available from the HMRC to explain why they are not paying SMP

Maternity Pay Rates

3.5.3 Employees who qualify for maternity pay are paid at the following rate:

- 6 weeks at 90% of the average weekly earnings
- 33 weeks at the standard rate of Statutory Maternity Pay which is £187.18 in from 6th April 2025 (and is reviewed every April) or 90% of the average weekly earnings if lower.

Employers can use the HMRC maternity pay calculator at the link below to work out how much to pay:
http://www.hmrc.gov.uk/calcs/smp.htm

Calculating SMP

3.5.4 A week is the period of seven days that begins at midnight between Saturday and Sunday. For the purposes of calculating SMP all earnings which have a National Insurance liability including bonus and overtime must be counted. The average earning is calculated from the eight weeks leading up to the last pay day before the end of the qualifying week (the qualifying week is the fifteenth week before the expected week of childbirth) including all weeks containing short-time and overtime.

Earnings are those earnings with a liability to attract Class 1 National Insurance Contributions. There is however no requirement for any NICs to have actually been paid before a person is eligible for SMP.

The SMP period can start on any day of the week and the weekly rate of SMP can be divided by 7 to help employers match SMP payments with the pattern of pay in the employment.

Reclaiming Maternity Pay

3.5.5 The amount the employer gets back normally depends on the total gross employer's plus employees Class 1 NICs in the appropriate tax year. The employer can use the form P35 Employer Annual Return, as a quick check of this.

If the annual liability for Class 1 NICs is £45,000.00 or less the employer is entitled to:

- 100 per cent of the SMP/SPP (statutory paternity pay)
- an additional amount as compensation for the NICs paid on the SMP which from April 2025 is increasing from 3% to 8.5%.

Add together all payments of SMP/SPP made in the same tax months for which the employer is entitled to recover and calculate 100 per cent plus 3 per cent of that total figure.

If the annual liability for Class 1 NICs is more than £45,000.00 the employer is entitled to 92 per cent of the SMP/SPP. Add together all payments of SMP/SPP made in the same tax months for which the employer is entitled to recover and calculate 92 per cent of that total figure.

If the employer only had part-year or no annual liability for Class 1 NICs for the previous tax year and this could be either more or less than £45,000.00, the employer will need to check whether it is £45,000,00, more than £45,000.00 or less than £45,000.00.

Detailed information can be found on the HMRC website: www.hmrc.gov.uk

3.6 Managing the employee's maternity leave

3.6.1 Before the employee goes on maternity leave, it is good practice to discuss how you will keep in touch with the employee – is the employee happy to be emailed with updates or how would they prefer contact to be made.

Ensure that the employee's terms and conditions are being observed

Keep in touch with the employee. See Keeping in Contact and Keeping in Touch Days

Confirm arrangements for the employee's return

If the employee requests flexible (i.e. part time) working on her return, ask her to complete an application form under the Flexible

Working Procedure (see The Right to Request Flexible Working (chapter 3.7.3)).

Keeping in Contact and Keeping in Touch Days

3.6.2 The employer may make reasonable contact with an employee on maternity leave and must inform her of any relevant promotion opportunities or job vacancies that arise during maternity leave.

Employees may undertake up to ten "keeping in touch days" during their maternity leave – allowing work under their contract of employment – by agreement with the employer. This means that the employee can do up to 10 days work under her contract of employment as long as both she and her employer have agreed for it to happen and agree on what work is to be done and how much she will be paid for it. This work can be undertaken without losing any SMP or MA.

Work during the maternity leave period may only take place by agreement between the employer and the employee. An employer may not require an employee to work during maternity leave.

The employee does not have the right to work "keeping in touch days" if the employer does not agree to them. If an employer offers an employee the opportunity to work keeping in touch days the employee is entitled to refuse to work such days without suffering any consequences as a result of not working on those days.

The employee is entitled to be paid at a rate to be agreed between the employer and the employee for "keeping in touch days". If the employee is receiving SMP the employer should continue to pay SMP for the week in which any "keeping in touch work" is done by the employee. The employer may count the amount of SMP for the week in which the work is done towards the pay agreed by the two parties. The employer will continue to be able to recover funding for the SMP as normal.

3.7 Right to return to work

Returning to work from maternity leave

3.7.1 The employee can return at the end of the 52 weeks without giving the employer any further notice.

This right is to return to the same job. If the employee takes more than 26 weeks maternity leave and it is not reasonably practicable for her to return to the same job on the same terms she is entitled to return to a suitable job on terms and conditions at least as good as the previous job

If the employee wishes to return to work before the end of the 52 weeks she must give her employer 8 weeks' notice of her return to

work. The employer can accept less or no notice at the employer's discretion.

If the employee wants to return earlier than the end of the maternity leave without giving notice to the employer, the employer can postpone that return and ask her to give a full 8 weeks' notice. The return cannot be postponed to a date later than the end of the maternity leave period.

If the employee who has notified the employer that she wishes to return to work before the end of her maternity leave period subsequently changes her mind, then she can do so provided she gives her employer notice of the new later date of return at least 8 weeks before the earlier.

If the employee lets the employer know that she is breastfeeding then the employer must liaise with her over any arrangements needed and the Equality Act 2010 provides explicit protection from less favourable treatment for mothers who are breastfeeding.

Resignation or illness on return to work

3.7.2 If the employee decides not to return to work at the end of her maternity leave period she is entitled to receive her full amount of statutory maternity leave and pay. She must give the employer at least the notice required by her contract.

If the employee is sick at the end of maternity leave period, normal contractual arrangement for sickness absence apply and the employee should notify the employer in the usual way. Pregnancy and maternity discrimination claims extends to cover unfavourable treatment after the protected period, where the treatment is because of the pregnancy or pregnancy related illness during the protected period. If the employee cannot return to work because of a pregnancy related illness – for example post- natal depression – the employer should seek advice as the employee may have protection under sex discrimination legislation

Right to request flexible working/part time upon return

3.7.3 Employees who are parents of young children have the right to request flexible working and this includes employees returning from maternity leave. If a request is received, it is important that this is considered correctly – see The Right to Request Flexible Working (chapter 3.12)

Managing Maternity Leave – Temporary replacements

3.7.4 If the business takes on a temporary replacement, the job offer should be put in writing and state clearly that it is a temporary job to cover maternity leave. The employer will need to discuss with the employee who is on maternity leave when she intends to return to work and keep the temporary replacement informed.

If a permanent vacancy arises during the maternity cover the employer must notify the temporary replacement of it.

The employer should still follow a fair dismissal procedure to help support that the dismissal was because of the ending of the maternity leave for the other worker who is returning and not because of another reason. Generally an employee taken on to cover maternity leave will not have the two years' service required to bring a general unfair dismissal claim but there may be circumstances where the person covering the maternity leave was already working for the employer in another position and has qualifying service. The temporary cover will have the general employment rights which do not need qualifying service such as protection from any detriment due to their fixed term status.

Maternity – other issues

Annual Leave

3.7.5 Employees on maternity leave retain their entitlement to holiday through all maternity leave.

It is not possible to take holiday at the same time as maternity leave. Women on maternity leave must be allowed to take their holiday at a time other than when they are on maternity leave even if this results in the employee carrying over some of her holiday until the next holiday year.

Holiday can though be taken either before the start of the maternity leave or once it has finished. The employer should discuss with the employee when she is going to take her holiday although the employer cannot force the employee to take the holiday in the current leave year.

For guidance on holiday entitlement for employees who are irregular hour workers (such as zero hour workers) or part year workers on maternity leave see the chapter on holiday pay.

If an employee resigns either during her maternity leave or at the end of her maternity leave, she will be entitled to accrued untaken holiday.

Pensions

3.7.6 Auto enrolment pensions and maternity leave

Once an employer has moved to auto enrolment pension, the employee on maternity leave will be treated like any other employee for the purposes of auto enrolment, the only issue being the level of contributions payable.

An employee about to go on maternity leave or is already on maternity leave should be assessed in the same way as any other employee. In both cases the employer would need to first make sure she falls into

the relevant age group i.e. is aged between 22 years of age and state retirement age. Once the employer has confirmed that she falls into this group, they should then work out whether or not she qualifies from an earnings point of view.

The reference for income eligibility is an employee's full income and in the case of an employee on maternity leave, this will be her Statutory Maternity Pay (SMP). If the SMP for the reference period (one calendar month) reaches or exceeds the earnings trigger point for auto enrolment and she falls within the age category, then she will need to be enrolled like any other employee.

In the case of an employee who is already enrolled in the pension scheme and subsequently takes maternity leave, the employee would qualify for contributions on her pay up to the point where she went on maternity leave and during maternity leave at their pensionable pay level. During maternity leave the required payment from the employee's point of view is determined by the actual maternity pay they receive. In other words, the employee has the choice to reduce their payments to the lower level or retain the contributions at the level of their full pensionable pay during their leave period.

Irrespective of whether or not an employee is receiving maternity pay, employers are required to make contributions for the full 26-week ordinary maternity leave period. If mothers decide to extend their leave, if they don't qualify for SMP or any other contractual income, the employer can cease their contributions. However, if the employee is entitled to SMP up to week 39 the contributions must continue and until occupational pay stops if it is after week 39.

Pool money

3.7.7 It is advised that the employee should continue to receive pool money as if she were at work as a failure to do so could potentially amount to sex discrimination.

Redundancy

Where the job of a person who is pregnant or on maternity leave is at risk of redundancy, the employee must be fully consulted and involved in the redundancy process. Employers considering such action are advised to take advice upon the specific case from the NTF or other adviser.

Where the job of a person who is pregnant or who is or has been on maternity leave becomes redundant but there is a suitable alternative position available, that person is to be given first refusal of the suitable alternative position. This applies even if the vacancy for the alternative position needs to be filled immediately and the person on maternity leave is not due to return for some time. The "protected period" during which the right of first refusal for any suitable alternative role applies is from the date when the employee informs the employer

of her pregnancy, for the full period of the pregnancy and continuing for 18 months from the first day of the estimated week of childbirth. The 18 month period can be altered to start from the child's actual date of birth where the employee informs the employer in writing of the actual date during their maternity leave period.

If an employee suffers a miscarriage before 24 weeks of pregnancy, they will have protection during their pregnancy and for a two week period following miscarriage. If they miscarry after 24 weeks of pregnancy this is classed as a still birth and the employee is entitled to maternity leave and will have the same protection as any other employee taking maternity leave.

It is important to ensure that employees who have taken do not get forgotten in a redundancy scenario (which is possible given the lengthy period 18 month period of protection). It is a good idea to place a flag on an employee records against those who have taken leave setting out the period of protection.

The right not to be subjected to unfair treatment and the right not to be dismissed

An employer must not subject an employee to unfair treatment at work because she is pregnant, has given birth to a child, has taken or sought to take ordinary or additional maternity leave, does not return to work at the end of her leave in circumstances where the employer gives her insufficient or no notice of when it should end or has been suspended from work for health and safety reasons connected with her maternity.

This protection applies regardless of the employee's length of service and starts as soon as the woman has told her employer she is pregnant.

It is unlawful to dismiss an employee, or select her for redundancy in preference to other comparable employees, for reasons connected with

- her pregnancy or childbirth
- maternity suspension on health and safety grounds
- taking or seeking to take maternity leave
- taking or seeking to take any of the benefits of ordinary maternity leave

It is also unlawful to dismiss an employee for not returning to work at the end of her leave in circumstances where her employer gives her insufficient or no notice of when it should end.

Any employee who is dismissed while pregnant or during her maternity leave period has an automatic right to written reasons for her dismissal. The employer must provide these reasons regardless of whether or not she has made a request for them.

Any employer considering dismissing a pregnant employee or one who has recently given birth should seek advice.

Situation where the employee works for more than one employer

3.7.8 If an employee has more than one employer and meets all of the conditions with each employer she will be eligible for SMP from each employer.

Where employee does some work during the maternity pay period

3.7.9 If the employee works for the employer during the maternity pay period, she will not be eligible for SMP for the whole of that week, except where the work is done as a Keeping in Contact and Keeping in Touch Days

Employee qualifies for maternity pay but does not intend to return to work

3.7.10 Provided the employee meets the qualifying criteria she is entitled to be paid SMP even if she has no intention of returning to work or resigns when she goes onto maternity leave.

Part-time employees

3.7.11 The rights described above apply to both full time and part time employees, no matter how many hours they work provided that the employee satisfies any appropriate qualifying conditions.

Template : Maternity Risk Assessment for new or expectant mothers
For more information on how to carry out a risk assessment, the Health and Safety Executive's guidance can be found at:
https://www.hse.gov.uk/simple-health-safety/risk/index.htm

The NTF has a maternity risk assessment for members to use – at present for technical reasons this is not included in this manual. For a copy please contact the NTF office – d.bacchus@racehorsetrainers.org

Template 9: Maternity – draft letter to employee

This letter must be sent to the employee within 28 days of her notifying the employer of her intended start date of maternity leave

Dear [**name**]

NOTIFICATION OF DATE OF RETURN TO WORK TO BE SENT BY EMPLOYER

Date

Thank you for telling me about your pregnancy and the date the baby is due. I am writing to tell you about your maternity leave and pay.

As we have discussed you are eligible for 52 weeks maternity leave (being 26 weeks ordinary maternity leave plus 26 weeks additional maternity leave).

Given your chosen start date of [**date**] your maternity leave will end on [**date**].

If you want to change the date your leave starts you must, if at all possible, tell me at least 28 days before your proposed new date or 28 days before [**insert date leave starts**] (your original start date) whichever is the sooner.

If you decide to return to work before [insert date leave ends] you must give me at least 8 weeks' notice.

As we discussed you are eligible for 39 weeks statutory maternity pay/not eligible for statutory maternity pay [**delete as appropriate**].

Your maternity pay will be £[**insert amount**] from [**date**] to [**date**] and £[**insert amount**] from [**date**] to [**date**] or

The form SMP1 (enclosed) explains why you do not qualify for SMP. You may however be entitled to Maternity Allowance. If you take this form to the Jobcentre Plus or the local social security office they will be able to tell you more. [**delete if not applicable**].

As your employer I want to make sure that your health and safety as a pregnant mother is protected while you are working and that you are not exposed to risk. I have already carried out an assessment to identify hazards in the workplace that could be a risk to new, expectant or breastfeeding mothers. Now that you have told me you are pregnant, I will arrange for a specific risk assessment of your job and we will discuss what actions to take if any problems are identified. If you have any further concerns following this assessment and specifically in relation to your pregnancy please let me know immediately.

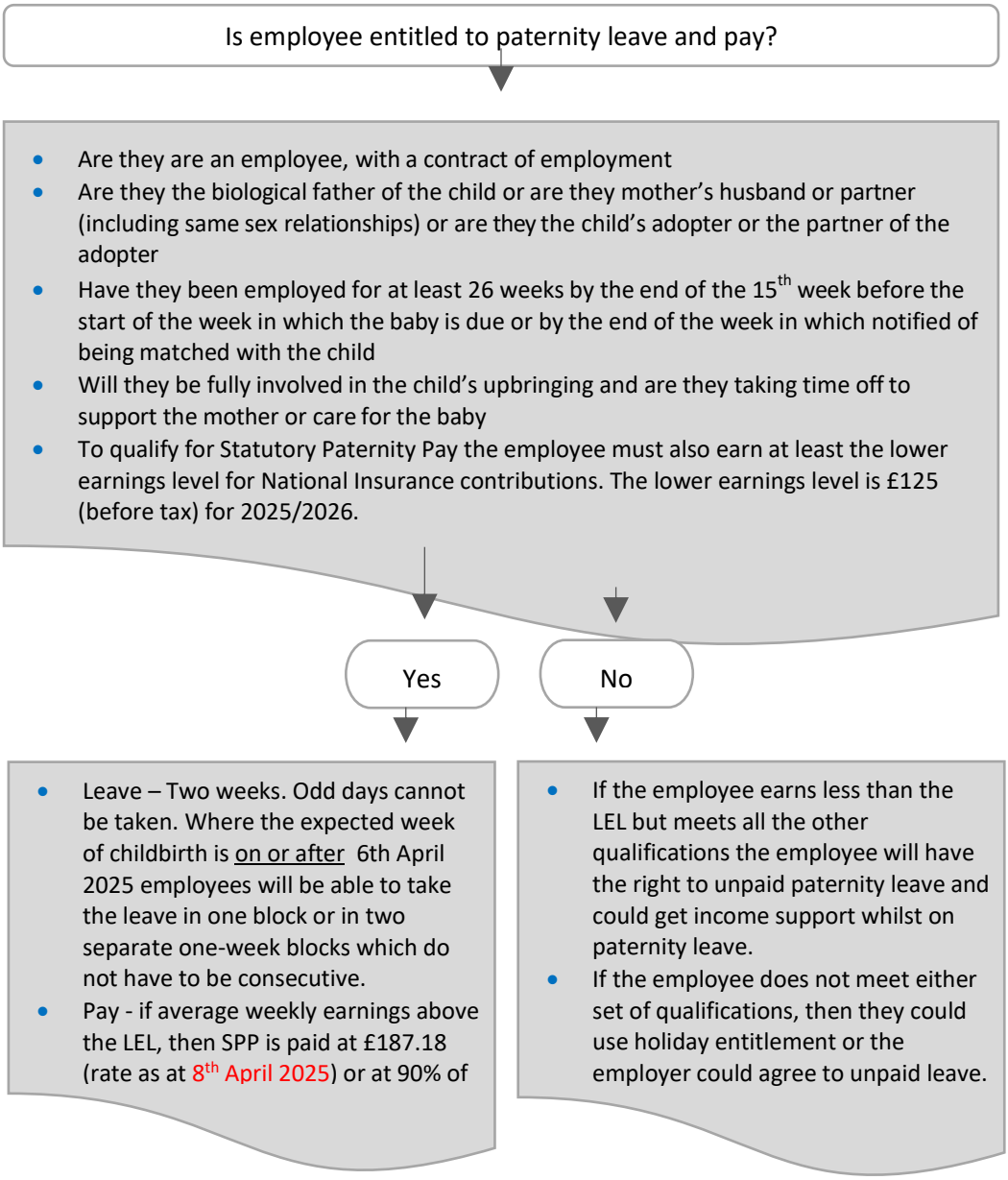
If you decide not to return to work you must still give me proper notice. Your decision will not affect your entitlement to SMP.

We refer you to the Employee Privacy Notice issued to you for information on how we process your personal data and sensitive personal data and your rights relating to such data. A further copy of the Employee Privacy Notice is available on request.

Yours sincerely

Paternity Leave

Figure 3: Paternity Leave Overview



3.8 Paternity

Paternity Leave -eligibility, leave and pay

3.8.1 Paternity leave is available to qualifying employees of both sexes on the birth or adoption of a child and gives qualifying employees the right to take 1 or 2 consecutive weeks leave on or around the time of birth (or adoption placement).

3.8.2 There is a paternity leave template policy in the handbook area of the NTF website.

Qualifying for paid Ordinary Paternity Leave and Pay

3.8.3 To qualify for this an employee:

- Has to be an employee with a contract of employment
- Has to be the biological father of the child or the mother's husband or partner (including same sex relationships) or be the child's adopter or the partner of the adopter
- Has to have 26 weeks continuous service by the end of the qualifying week (which is the week 15 weeks before the expected date of childbirth or the week in which the employer is notified of being matched with a child for adoption)
- Has to be fully involved in the child's upbringing and taking the time off to support the mother or care for the baby

Lower Earnings Level

3.8.4 To qualify for paid paternity leave the employee must also earn at least the lower earnings limit (LEL) for National Insurance contributions (£125 a week April 2025/2026), the figure increases each April).

Employees earning less than the Lower Earnings Level

3.8.5 The employee will have the right to unpaid paternity leave if they meet the other conditions set out above and may be entitled to income support whilst on paternity leave.

Employees who do not qualify for pay or leave

3.8.6 The employee could take paid holiday or the employer may be prepared to give some time off.

Length of Ordinary Paternity Leave

3.8.7 It is two weeks - it can be taken in two separate weeks which are not consecutive.

Odd days cannot be taken.

When Ordinary Paternity Leave can be taken

3.8.8 The leave can start:

- on the day the baby is born
- on a number of days or weeks after the baby is born

- from a specific date after the first day of the week in which the baby is expected to be born

The leave cannot be taken before the baby is born. It can be taken at any time in the 52 weeks after the birth.

Ordinary Paternity Pay

3.8.9 If the average weekly earnings are above the LEL Ordinary Statutory Paternity Pay is paid for one or two consecutive weeks at £187.18 (rate correct from 6th April 2025) or 90% of the average weekly earnings if less. The rate is reviewed each April. The employer can reclaim this in the same way as Statutory Maternity Pay.

Employee Notice requirements – OPL

3.8.10 To claim Statutory Paternity Pay, the employee should tell the employer by the 15th week before the baby is due (or within 7 days of being advised by the adoption agency that they have been matched with a child) of when the employee intends to take the leave.

The employee is required to give notice of their entitlement to take leave 15 weeks prior to the expected week of childbirth or if that is not possible then as soon as practicable. The notice must specify the expected week of the child's birth and confirm that the employee satisfies the conditions to take paternity leave.

The employee must then give 28 days notice prior to each period of leave.

The employee can amend or cancel the paternity leave on 28 days notice to the employer.

Paternity – Miscellaneous

Father/partner's entitlement re antenatal appointment

3.8.11 Fathers and partners of pregnant woman are entitled to unpaid time off to attend two ante-natal appointments. The maximum time which can be taken is six and a half hours for each one. The appointment must also have been made on the advice of a registered medical practitioner, midwife or nurse.

Whilst pregnant employees have the right to paid time off work for antenatal appointments, it is a right to unpaid time off for fathers and partners.

If an employee wanted to take paid time off then they could, of course, use holiday instead. To benefit from the right the employee or agency worker must be

- the pregnant woman's husband, partner or civil partner (i.e. in a same sex relationship)

- the father of the child or the parent of the child

The partner may not be the biological father of the child. The employer cannot ask for proof of an antenatal appointment.

An employer could ask the employee to make a written declaration stating that they have a qualifying relationship with the pregnant woman or her expected child, that they are taking time off specially to attend the antenatal appointment, that the appointment has been made on the advice of a registered medical practitioner, midwife or nurse and the date and time of the appointment. If the employer subsequently discovered that the employee had lied or misled the employer there would be grounds for disciplinary action.

The right will also apply to intended parents in a surrogacy situation who meet specified conditions.

Multiple births

3.8.12 The employee can only take one period of paternity leave.

Baby is still born

3.8.13 Provided the employee meets all the other conditions, they can still take paternity leave if the child is still born after 24 weeks of pregnancy or is born alive at any point of the pregnancy.

Neonatal Care Leave and Pay

3.9 Neonatal Care Leave and Pay Overview

3.9.1 Employees have an entitlement from day one of employment to neonatal care leave. There is a qualified period of employment for neonatal care pay.

3.9.2 It is intended to support employees whose baby is receiving or has received neonatal care.

3.9.3 To qualify, the baby must be born on or after 6th April 2025.

3.10 Neonatal Care Leave eligibility

3.10.1 At the birth of the baby, the employee must be one of:

- the baby's parents;
- the baby's intended parents (applicable to surrogacy)
- partner to the baby's mother (who are unrelated and living with them in an enduring family relationship) with the expectation they will have responsibility for raising the child.
- If adopting similar principles apply.

3.10.2 The leave must be taken to care for the baby. If the baby has died after the neonatal leave has been accrued, the employee is still able to take the leave as the care requirement is disapplied.

3.11 What is neonatal care

3.11.1 The neonatal care must have taken place or begun within the first 28 days of birth (counting from the day after the baby is born) and care must continue for a period of at least 7 continuous days (beginning on the day after the neonatal care starts).

3.11.2 If the baby has a significant hospital admission where the problems are discovered after this qualifying period, then the neonatal care does not apply and you should discuss with the employee what other leave and support may be available.

3.11.3 The following three categories of care count as neonatal care:

(i) any medical care received in hospital

(ii) medical care received elsewhere following discharge from hospital. This care must be under the direction of a consultation and includes ongoing monitoring and visits to the child by healthcare professions, or

(iii) palliative or end of life care.

3.12 Leave entitlement and when it can be taken

3.12.1 This is capped at 12 weeks and will depend upon how long the baby received neonatal care. Parents can take one week of leave in respect of each week the baby receives neonatal care without interruption. The week begins on the day after the care started.

3.12.2 Any leave must be taken within 68 weeks of the baby's birth (or placement or entry into Great Britain for adoption). There are two tiers of leave which are designed to cover both a need for immediate leave and more planned leave.

Tier 1 Leave - Tier 1 leave is taken while the child is in neonatal care or up to 7 days after neonatal care ends (the "tier 1 period") can be taken in non-consecutive blocks of a minimum of one week.

In practice Tier 1 leave could be considered emergency leave likely to be used by the father or partner whose paternity leave has run out whilst the baby is still in hospital.

Taking Tier 1 will end prior to maternity/adoption leave periods so is unlikely to be used by a person on longer term family leave.

Leave taken in the remainder of the 68 week period (the "tier 2 period") must be taken in one continuous block.

Tier 2 – Tier 2 leave is all other neonatal care leave. This must be taken in one continuous block. This is most likely to be taken at the end of maternity or other family leave to compensate for the time that the baby was in neonatal care – essentially meaning that the employee has not "lost" their family leave as the neonatal care. Stopping maternity leave to take neonatal leave would mean losing the rest of the maternity leave entitlement

3.13 Notice requirements

3.13.1

Tier 1 leave the notice must be given before the first day of absence or as soon as reasonably practicable.

For tier 2 leave, 15 days' notice is required for a single week of leave and 28 days' notice for two or more consecutive weeks of leave.

The employer and employee can agree to mutually waive any notice requirements for both tiers of leave.

3.13.2 If notice is required, the employee should provide notice of their intention to take the leave stating:

- the employee's name
- the baby's date of birth (or date of placement/entry to Great Britain for adoptions)
- the start date or dates of neonatal care

- the date the neonatal care ended (if applicable)
- the date on which the employee wants to take the leave
- the number of weeks of neonatal care leave the employee is taking
- that the leave is being taken to care for the baby
- confirmation that the employee is eligible to take the leave due to their relationship with the baby.

3.14 Neonatal Care Pay

3.14.1 Statutory Neonatal Care pay is similar to other paid family leave and is paid at the statutory rate in place at the time (£187.18 April 2025) or 90% of normal weekly earnings if lower.

3.14.2 To qualify employees must have notified the employer and have been continuously employed for at least 26 weeks ending with the relevant week which will normally be the 15th week before the expected week of childbirth and meet the lower earnings limited for NI contributions (£125 a week from April 2025).

3.14.3 The legislation contains a second option of calculation if the initial calculation shows that the employee's average earnings in that period are below £125. The intention is to make the benefit more accessible as there is at present no intention to have a government equivalent as there is with maternity allowance. Your payroll software should calculate if the person is entitled to the statutory payment and if you have any queries then please contact the NTF office.

Shared Parental Leave and Pay

3.15 Shared Parental Leave Overview

3.15.1

Eligible employees may be entitled to take up to 50 weeks Shared Parental Leave during the child's first year in the family. The parents do not have to decide to take Shared Parental Leave at the outset, they have the option to use it later while they are still eligible – provided they give the correct notice to their employer and take it within a year of the birth/adoption.

Eligible employees may be entitled to take up to 37 weeks Shared Parental Pay whilst taking Shared Parental Leave.

The mother is the birth mother or the adopter, being the person who is eligible for adoption leave and/or pay so can be female or male. The father is the child's biological father or the partner of the mother/adopter. This can be a spouse, civil partner or partner in an enduring relationship with the mother and the child.

Figure 4: Shared Parental Leave overview

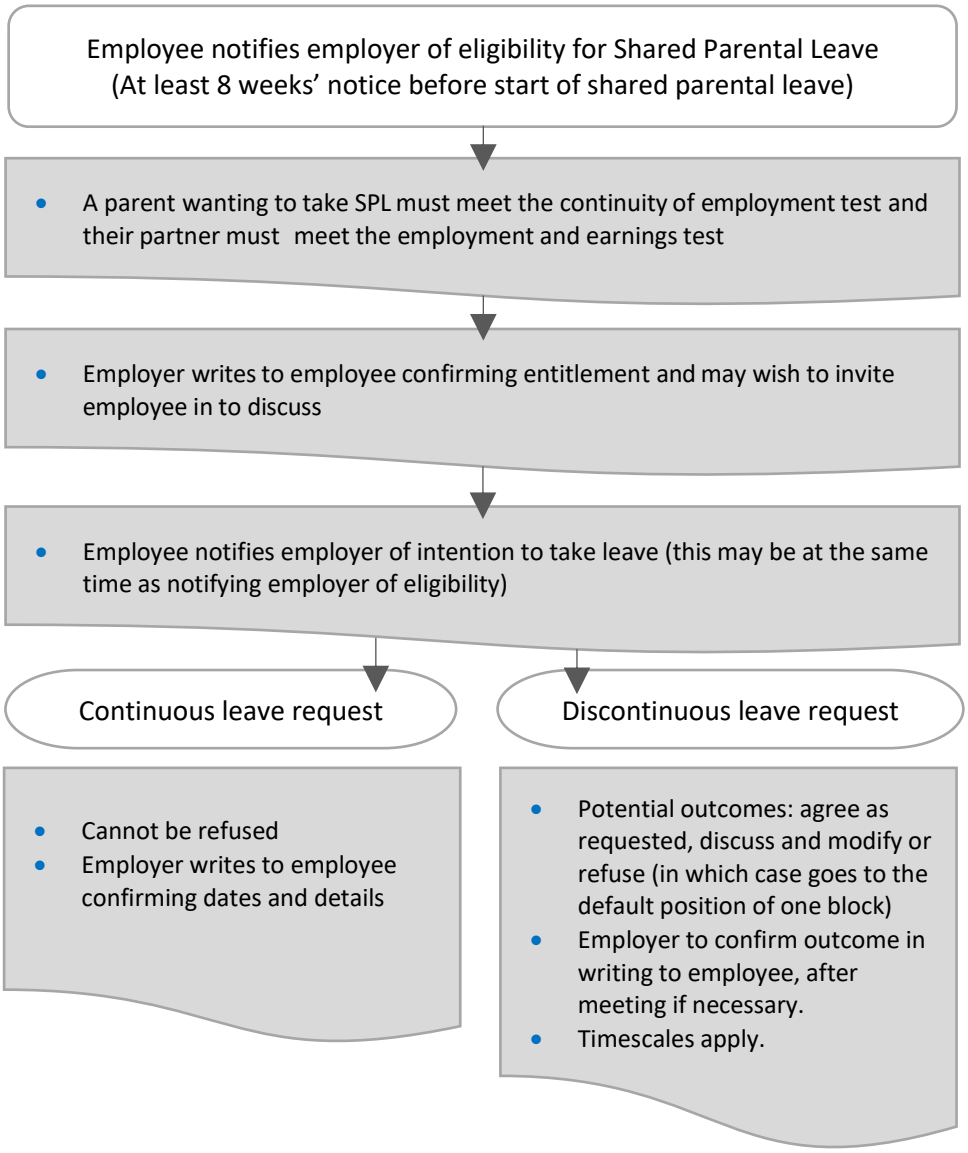
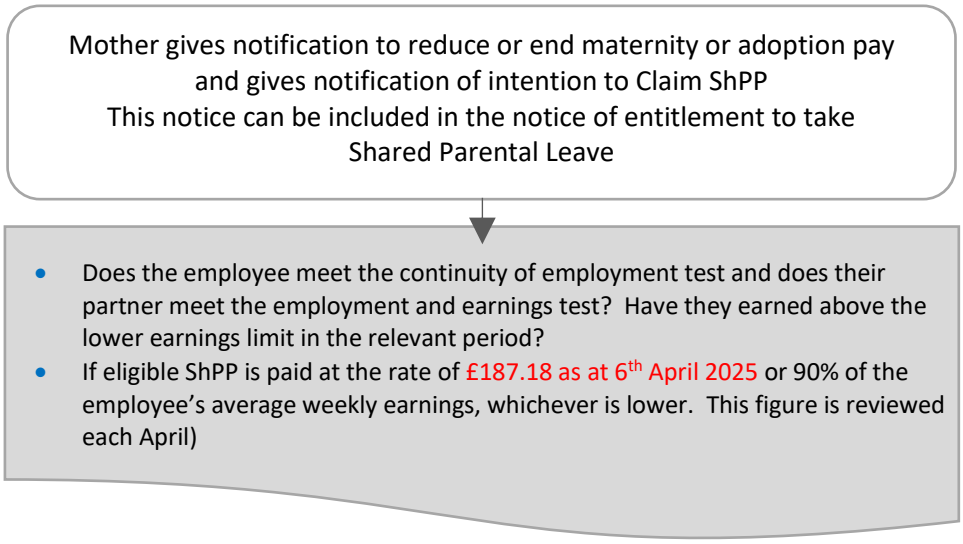


Figure 5: Shared Parental Pay (ShPP) overview



Eligibility for Shared Parental Leave

Example - A mother could decide to end her maternity leave after 12 weeks, leaving 40 weeks (of the total 52-week entitlement) available for Shared Parental Leave. If both the mother and her partner are eligible, they can share the 40 weeks. They can take the leave at the same time or separately.

3.15.2 The mother can take Shared Parental Leave after she has taken the legally required two weeks of maternity leave following the birth of the child.

The father/partner/spouse can take Shared Parental Leave immediately following the birth/placement of the child but may first choose to exhaust any paternity leave entitlement as the father/partner cannot take paternity leave or pay once they have taken any Shared Parental Leave or Shared Parental Pay.

Eligible employees can stop and start shared parental leave and return to work between periods of leave with each eligible parent able to submit three notices booking periods of leave.

Shared Parental Leave must be taken between the baby's birth and first birthday.

A parent intending to take Shared Parental Leave must

- be an employee
- share the primary responsibility for the child with the other parent at the time of the birth or placement for adoption
- have properly notified their employer of the entitlement and have provided the necessary declarations and evidence
- satisfy the continuity of employment test

The continuity of Employment test

3.15.3 The person has worked for the same employer for at least 26 weeks at the end of the 15th week before the child's expected due date/matching date and is still working for the same employer at the start of each leave period and their partner must meet the employment and earnings test:

The Employment and earnings test

3.15.4 In the 66 weeks leading up to the baby's expected due date/matching date, the person has worked for at least 26 weeks and earned an average of at least £30 (as of 2025) in any 13 weeks.

The Leave

- can start on any day of the week
- can only be taken in complete weeks (so for example starts on a Tuesday and finishes on a Monday)
- can be taken using three separate notices to book leave (although an employer can decide to accept more)
- can be taken by the partner whilst the mother is still on maternity or adoption leave if the mother reduces their entitlement.
- each notice to book Shared Parental Leave can be for either a continuous block or multiple discontinuous blocks

Types of shared parental Leave

3.15.5 **Continuous Block**. This is a period of unbroken leave. Eligible employees have a statutory right to take the leave in this way and the employer cannot refuse it.

3.15.6 **Discontinuous Block**. This is leave over a period of time, with breaks between the leave during which the employee returns to work. For example, 4 weeks leave followed by two weeks back at work, followed by a further four weeks of leave.

Once a request for discontinuous leave is made the employer and employee will have a discussion period of 14 calendar days to discuss the request.

If a request for a discontinuous leave block is not agreed, then the total amount of leave in the request must be taken as one continuous block unless the employee withdraws the notice and submits a new request.

Employee's notification of entitlement

3.15.7 If an employee is eligible for and intends to take Shared Parental Leave they must provide their employer with a notice of entitlement to take the Leave. This notice of entitlement must be submitted at least eight weeks before the employee intends to take the period of Shared Parental Leave.

The employee must provide their employer with:

- The names of the mother and the partner
- The start and end date of any statutory maternity or adoption leave
- The total amount of shared parental leave available
- The child's expected week of birth, actual date of birth, or date of placement
- How much shared parental leave the mother and partner each intend to take

- An indication as to when they intend to take shared parental leave (an employee does not have to take their leave as they indicate in this document)
- A signed declaration from the employee seeking to take SPL that:
- there will be shared responsibility for the care of the child
- the mother has given notice to end her maternity entitlement
- they meet the continuity of employment test
- the information they have given is accurate
- should they cease to be eligible they will immediately inform their employer

The partner of the employee must also provide their partner's employer with a signed declaration stating :

- Their name and address and national insurance number
- They are the father, mother of the child or partner of the mother of the child
- They meet the criteria for the employment and earnings test
- (if the mother) they are entitled to statutory maternity leave, statutory maternity pay or maternity allowance and that they have given notice to end that leave and pay/allowance
- That at the time of the birth or placement they shared the responsibility for the care of the child with the employee seeking to take the Shared Parental Leave
- They consent to the amount of leave and pay that the employee is seeking to take
- They consent to the employer receiving this declaration to process the information contained within it
- (in the case of the mother) that the mother will immediately inform their partner should the mother cease to satisfy the eligibility conditions

ACAS (www.acas.org.uk) has template letters for employees to use to book Shared Parental Leave, including indicating whether there is any wish to take Shared Parental Pay and further for the mother and the person she will share Shared Parental Leave with to use to confirm eligibility and entitlement with their employers. These are not set out here as they are for employees to use.

Action for employer receiving notification of entitlement from employee

3.15.8 The employer should confirm the entitlement with the employee.

The employer can have an informal meeting with the employee to get an idea of what leave the employee may wish to take, particularly if the employee is considering discontinuous leave. There is no legal

right for the employee to be accompanied at such a meeting but the employer may allow it as good practice.

Booking Shared Parental Leave

3.15.9 Leave can be booked at the same time as, or following, the employee notifying their employer of their entitlement to Shared Parental Leave.

An employee is entitled to submit three separate notices to book leave, although the employer may allow more.

This means that an employee could book three separate periods of leave during the child's first year.

Any variation to leave already booked will – in most circumstances – count as one of the three notices.

3.15.10 A notice to book Shared Parental Leave must be submitted at least 8 weeks before any period of leave would be begin.

The notice must

- be in writing
- be dated
- clearly state what leave the employee intends to take (if the child has not yet been born, then it is sufficient for the notice to state a period of time following the birth – so an employee could book two weeks' leave to begin "two weeks after the child's birth")

Shared Parental Leave can only be taken after the mother has returned to work or given notice to their employer which reduces their maternity/adoption leave, confirming when their maternity/adoption leave comes to an end.

Action for employer receiving a notice to take Shared Parental Leave

3.15.11 Shared Parental leave is a legal entitlement and employees have the right to choose to take it and how they take it. An employee must not suffer any detriment for taking it. An employer cannot refuse a continuous leave request but can refuse to agree to a discontinuous leave request - the entitlement remains and the number of weeks requested then become a single block of continuous leave.

Outcome of Leave Notification

Continuous Leave

3.15.12 A notification of continuous leave cannot be refused.

3.15.13 The employer should write to confirm the leave dates with the employee ideally within 14 calendar dates of receiving the notification

– See Template12 Letter for employer to send confirming Shared Parental Leave.

If the employer does not confirm the dates, then the employee still has the right to take the leave.

Discontinuous Leave

3.15.14 The employer may wish to have an informal meeting with the employee to discuss the discontinuous leave request. Whilst there is no legal right to be accompanied at such a meeting, the ACAS guidance is that the employer should inform the employee that they may be accompanied to the meeting by a colleague, trade union official or even a friend or family member. See Template11 Letter for employer to send to employee upon receipt of a notice to book Shared Parental Leave where employer wants to discuss it.

In considering a discontinuous leave request, the employer can take into consideration any important events/days planned by the business, challenging or busy periods coming up for the business, how the employee's role will be covered and staffing impact.

The employer accepts the discontinuous leave request

3.15.15 The employer should confirm agreement to the employee, ideally in writing, within 14 calendar days of the date notification was received. Such letter should confirm the relevant leave dates being taken Template12 Letter for employer to send Confirming Shared Parental Leave Booking

Note if the employer does not respond to a discontinuous leave notification the default position applies – see Booking Shared Parental Leave

Agree a modification to the discontinuous leave notification

3.15.16 If both employer and employee agree to a different discontinuous leave arrangement to the one originally requested, both should confirm their agreement ideally in writing within 14 calendar days of the date notification was received, confirming the agreed dates – see Template 12 Letter for employer to send Confirming Shared Parental Leave Booking

An employee should not be put under pressure to change the leave period or face any detriment if they refuse. A modification in this way will not count as a further statutory notification. That should be confirmed in the written confirmation.

Refuse a discontinuous leave notification

3.15.17 Where the employer does not agree to the notification immediately they should arrange a meeting to discuss the request with the employee.

If the notification remains unacceptable to the employer, they should provide the following, ideally in writing, within 14 calendar days of the date the notification was given:

- Proposed alternative dates for the employee to consider AND
- A confirmation of the refusal AND
- Clear information on what options are now available to the employee i.e. withdraw, move to the default position or agree a modified arrangement.

3.15.18 If no agreement is reached then it will go to the default position. See Template13 Letter for employer to send refusing a discontinuous leave booking. [Reminder that a continuous leave booking must be accepted}

Employer fails to respond to the discontinuous leave notification

3.15.19 If no response is provided to a request for a discontinuous leave it will be regarded as having been refused and it will go to the default position.

The Default Position (discontinuous leave only)

Within 14 days of the original notification

If an agreement is reached regarding when the employee will take their leave, no default position applies.

If no agreement is reached or the employer refuses the discontinuous leave notification or the employer makes no response, the default provisions will apply.

Within 15 calendar days of the original notification

If no agreement is reached, the employee may withdraw their discontinuous leave notification. If the employee does withdraw the request it will not count as one of the three notices to book leave. If the employee does not withdraw their request, the discontinuous leave notification automatically defaults to a period of continuous leave.

Within 19 calendar days of the original notification

The employee can choose when the continuous leave will commence but cannot start it sooner than eight weeks from the date the original notification was given. If the employee does not choose, the start date automatically defaults to the date the requested discontinuous leave would have first started.

3.16 Shared Parental Pay

Shared Parental Pay – Eligibility

3.16.1 A mother who meets the criteria will be eligible for statutory maternity pay/adoption pay/maternity allowance for up to 39 weeks (see Maternity Leave)

If the mother gives notice to reduce their entitlement before they will have received it for 39 weeks then any remaining weeks could become available as Shared Parental Pay.

3.16.2 To qualify for Shared Parental Pay the employee needs to have met the continuity of employment test and their partner must meet the employment and earnings test.

In addition, the employee must also have earned above the Lower Earnings Limit in the eight weeks leading up to and including the 15th week before the child's due date/matching date and still be employed with the same employer at the start of the first period of Shared Parental Leave.

If both parents qualify for Shared Parental Pay they must decide who will receive it or how it will be divided and they must each inform their employer of their entitlement.

If an employee's employment comes to an end whilst they are still entitled to some Shared Parental Pay then any remaining weeks will usually remain payable unless they start working for someone else.

Shared Parental Pay Rate

3.16.3 Eligible employees may be entitled to take up to 37 weeks Shared Parental Pay while taking Shared Parental Leave. The amount of weeks available will depend on the amount by which the mother/adopter reduces their maternity/adoption pay period or maternity allowance period.

Shared Parental Pay is payable at the rate set by the Government for the relevant tax year.

Notification of intention to claim Shared Parental Pay

3.16.4 If either the mother or partner wishes to claim Shared Parental Pay then the mother must also give notice to reduce or end their maternity or adoption pay or allowance entitlement.

If the employee intends to claim Shared Parental Pay they must give their employer notice which must include:

- how much Shared Parental Pay both parents are entitled to take
- how much Shared Parental Pay each parent intends to take
- when they expect to take Shared Parental Pay

- a declaration from the employee's partner confirming their agreement to the employee claiming their amount of Shared Parental Pay.
- this notice can be included within the notice of entitlement to take Shared Parental Leave.

Shared Parental Leave - Miscellaneous situations

Variations to arranged Shared Parental Leave

3.16.5 The employee is able to vary or cancel an agreed and booked period of Shared Parental Leave provided they advise the employer in writing at least eight weeks before the date of any variation. Any new start date cannot be sooner than eight weeks from the date of the variation request.

Any variation or cancellation notification made by the employee, including a notice to return to work early, will usually count as a new notification reducing the employee's right to book/vary leave by one notice. However, a change as a result of a child being born early, or as a result of the organisation requesting the change and the employee being agreeable to the change, will not county as further notification.

Shared Parental Leave In Touch (SPLIT) days

3.16.6 The employee can work up to 20 days during SPL without bringing to an end. These are called Shared Parental Leave in touch (SPLIT) days.

These days are in addition to the 10 keeping in touch days already available to those on maternity or adoption leave.

There is no obligation on an employer to offer these days or for an employee to agree to them. Both parties should agree how much the employee would be paid for any SPLIT days and whether the contractual pay will top up to full pay or whether the contractual pay will be additional to the Shared Parental pay. It would be normal for the employer to pay an employee at the rate they normally receive and offset any Shared Parental Pay against that total.

Returning to Work after Shared Parental Leave

3.16.7 When an employee returns to work following a period of Shared Parental Leave they are entitled to return to the same job if their combined leave total (comprising of maternity/paternity/adoption and shared parental leave) totalled 26 weeks or less. This is unaffected by unpaid parental leave of up to 4 weeks being taken as well.

3.16.8 If the number of weeks of maternity/adoption/paternity and shared parental leave exceeds 26 weeks in aggregate, or the total number of unpaid parental weeks exceeds 4 weeks, an employer must allow an employee to return to the same job unless it is not reasonably

practicable in which case they must be offered a suitable and appropriate job on terms and conditions that are no less favourable. It is rare to justify any change to an employee's role even after 26 weeks.

Annual Leave during shared parental leave

3.16.9 Employees continue to accrue annual leave while on shared parental leave.

The employee should try to take the annual leave during their leave year wherever possible but if it is not possible, the employer should permit the employee to carry it over.

Redundancy during Shared Parental Leave

3.16.10 If a redundancy situation arises whilst an employee is on Shared Parental Leave, they **must** be offered a suitable alternative vacancy if one available. This right of first refusal to any suitable alternative vacancy applies for a period of 18 months from birth provided that the employee has taken a period of at least six continuous weeks of shared parental leave. This protection will not apply if the employee otherwise has protection under either the maternity or adoption provisions. The protected period for "first refusal" is for the period of absence on shared parental leave only if fewer than six consecutive weeks of leave are taken.

Advice should be sought if considering making an employee on Shared Parental Leave redundant.

An employee must not suffer a detriment or be dismissed because they are seeking to take, are taking or have taken shared parental leave.

Employer checks on eligibility

3.16.11 It is the employee's responsibility to check they are eligible for shared parental leave and pay and the employer should grant leave and pay based on the information and declarations by the employee.

The employer will want to check that their own employee meets the continuity of earnings and employment criteria.

An employer can, within 14 calendar days of receiving the notice, request a copy of the child's birth certificate if one is available. They can also request contact details for the employee's partner's employer. If a request is made then the details must be provided within 14 calendar days. The criteria are such that the partner could be self-employed or no longer employed and still meet the requirements.

Early Birth

3.16.12 If a child is born before the expected due date and the employee had booked to take Shared Parental Leave within the first 8 weeks of the due date, they may take the same period of time off after the

actual birth without having to provide 8 weeks' notice, by submitting a notice to vary the leave as soon as is reasonably practicable. This would not count as one of the three notifications.

Any leave arranged after the first 8 weeks of the due date is still bound by the 8 week notice required to vary leave

If the child is born more than 8 weeks before the due date and the notice of entitlement to Shared Parental Leave and/or a notice to book SPL has not yet been given, then there is no requirement to give 8 weeks' notice before the period of leave starts. The notices should be given as soon as is reasonably practicable after the actual birth.

Parents no longer responsible for caring for the child

3.16.13 If the circumstances of an employee who has booked Shared Parental Leave change and it means they are no longer responsible for carrying for the child (unless it is because the child has died), then their entitlement to both Shared Parental Leave and Pay will immediately cease and they must tell their employer.

If the employee has any Shared Parental Leave arranged within 8 weeks of their entitlement ceasing, the employer can still require to them to take it as Shared Parental Leave if it is not reasonably practicable for the employer to have the employee in work, say because cover has been arranged.

Any weeks of Shared Parental Leave arranged after 8 weeks of their entitlement ceasing must be cancelled.

If the remaining parent will be continuing to care for the child, then they will still be eligible for their Shared Parental Leave entitlement. If the other parent, who is no longer caring for the child had any Shared Parental Leave entitlement outstanding, the remaining parent will only be able to transfer it into their own entitlement if they can get the signed agreement of the other parent to a notice confirming variation of leave entitlement.

Multiple births/adoptions

3.16.14 An employee is not entitled to additional Shared Parental Leave or Pay if they are expecting more than one child.

Checklist for Arranging Shared Parental Leave

3.16.15 This is a checklist supplied by ACAS for employers and employees to use to ensure everything is in place and keep as a record of actions. It is not essential to use it but could be a useful record.

Action	Completed (insert date and notes)
Does the employee know what the company policy is on SPL (if the company has one)	
Has maternity/adoption leave/pay ended or has a date been confirmed when it will end?	
Has the employee correctly completed a notice of entitlement to take SPL?	
How much SPL does the employee have available for them to take?	
Has a meeting been arranged to discuss possible leave?	
Has notice to book leave been made?	
Has a meeting to discuss the notice to book SPL been arranged?	
Has contact during SPL been discussed?	
Has a response to the notice to book SPL been given within 14 calendar days?	
What leave period has been arranged?	
How many notices to book leave are remaining?	
How much SPL does the employee still have available for them to take?	

3.16.16 Regardless of whether an employer has a Shared Parental Leave policy, the employer will need to ensure their employees know how to apply for Shared Parental Leave and must meet the statutory minimum requirements. ACAS have produced a Shared Parental Leave policy template which is available in the Handbook area of the NTF website. This will need adapting by employers to meet their own business requirements.

Template 10: Letter for employer to send to employee upon receipt of notification of entitlement to shared parental leave

Dear [**name**]

Date:

Thank you for advising us of your entitlement to take Shared Parental Leave.

We confirm that, based on the information you have provided to us, you are entitled to take Shared Parental Leave.

We can confirm that you currently have [**number**] weeks of Shared Parental Leave to take. You have [**number**] weeks of Statutory Shared Parental Pay.

If you and your partner wish to vary the amount of leave and/or pay that you are each entitled to them you must notify us of the change in writing and inform us:

- of any Shared Parental Leave or Pay that you and your partner have already booked
- the number of weeks you are adding to your entitlement from your partner's entitlement or the number of weeks you are deducting to give to your partner
- when you expect to take any additional weeks of leave.

You will also need to give us a declaration signed by you and your partner both consenting to the change.

We refer you to the Employee Privacy Notice issued to you for information on how we process your personal data and sensitive personal data and your rights relating to such data. A further copy of the Employee Privacy Notice is available on request.
If you have any questions about any aspect of your Shared Parental Leave and/or pay entitlement, please do not hesitate to contact us.

Yours sincerely

Template 11: Letter for employer to send to employee upon receipt of a notice to book Shared Parental Leave where employer wants to discuss it

Dear [**name**]

Date:

Thank you for your notice to book a period of Shared Parental Leave that was given on [**date**].

We would like to arrange a convenient time to discuss your notification with you.

I therefore suggest a meeting at [**location**] on [**date**] at [**time**]. You may if you wish be accompanied by a workplace colleague, trade union representative or personal friend or family member.

Please could you contact [**name**] to confirm whether you are able to attend the meeting suggested above or, if not, to arrange an alternative time and date.

We refer you to the Employee Privacy Notice issued to you for information on how we process your personal data and sensitive personal data and your rights relating to such data. A further copy of the Employee Privacy Notice is available on request.

Yours sincerely

Template 12: Letter for employer to send Confirming Shared Parental Leave Booking

Dear [**name**]

Date:

Thank you for your notice to take Shared Parental Leave commencing on [**date**]. We confirm that you are entitled to take Shared Parental Leave as set out in your notification.

I can confirm that you will be away from work on Shared Parental Leave from [**date**] to [**date**]. [**If leave is discontinuous then amend as necessary**]. You are expected to return to work on the first working day after your leave period ends.

During your leave period, you will receive Statutory Shared Parental Pay from [**date**] to [**date**]. [**If leave is discontinuous or where no pay is applicable then please amend as needed**].

If you wish to vary or reduce the leave you have booked, you must give at least eight weeks' notice before any amended dates occur. A notice to vary your booked leave will count as a new notice thereby reducing your entitlement to make three statutory notifications by a further one.

If you have any questions about any aspect of your Shared Parental Leave and/or pay entitlement, then please do not hesitate to contact us. We refer you to the Employee Privacy Notice issued to you for information on how we process your personal data and sensitive personal data and your rights relating to such data. A further copy of the Employee Privacy Notice is available on request.

Yours sincerely

Template 13: Shared Parental Leave – letter for employer to send refusing a discontinuous leave booking [reminder that a continuous leave booking must be accepted]

Dear [**name**] Date

Thank you for your notice booking Shared Parental Leave that was given on [**date**].

Having given the proposal thorough consideration, I regret that we are unable to agree to the pattern of discontinuous leave you requested.

Unless your notice is withdrawn the total amount of leave requested in your notice, amounting to [**number**] weeks, will automatically become a continuous block. Unless we are informed otherwise this will begin on the date you originally requested your leave period to start, namely [**date**].

If you would like the period to begin on a different date please confirm this to us on or before [**date**]. Please remember that the start date cannot be sooner than eight weeks from the date your original notice was given.

Alternatively you may withdraw your notification on or before [**date**]. This would not count as one of your notifications.

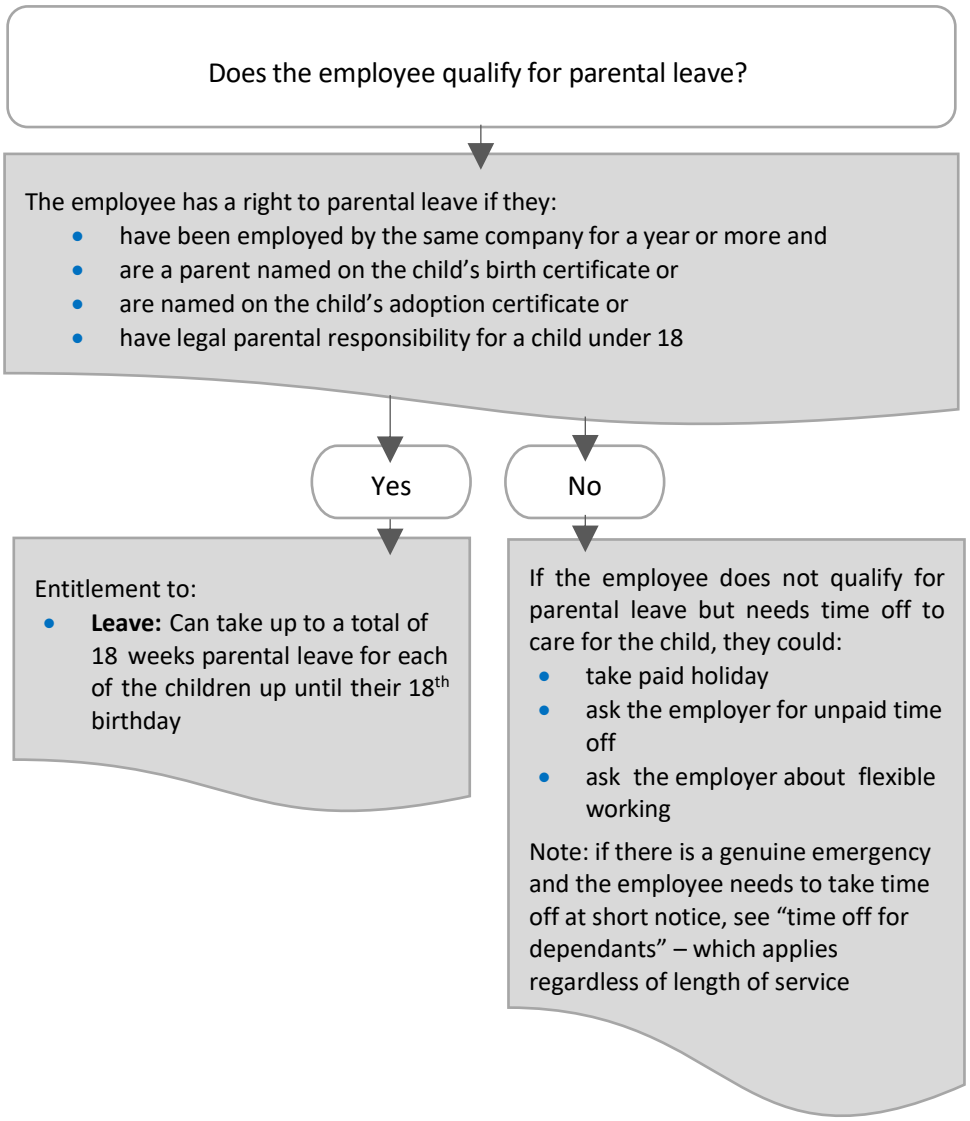
If you have any questions about any aspect of Shared Parental Leave and or/pay entitlement, please do not hesitate to speak to us. We refer you to the Employee Privacy Notice issued to you for information on how we process your personal data and sensitive personal data and your rights relating to such data. A further copy of the Employee Privacy Notice is available on request.

Yours sincerely

Parental Leave

Figure 6 : Parental leave overview

Parental leave offers qualifying parents the right to take unpaid time off work to look after a child or make arrangements for their welfare.



3.17 Parental Leave

Parental Leave – Entitlement

3.17.1 An employee has the right to unpaid parental leave if they:

- have been employed by the same company for a year or more and
- are a parent named on the child's birth certificate or
- are named on the child's adoption certificate or
- have legal parental responsibility for a child under 18

Parental Leave - Amount of leave

3.17.2 An employee can take up to a total of 18 weeks parental leave for each child up to their 18th birthday.

Taking parental leave

3.17.3 The employee must take the leave in blocks of full weeks – a week is based on the usual working pattern.

The employee cannot take more than four weeks leave for any one child in any one year.

For these purposes, a year starts when the employee becomes eligible for parental leave (i.e. when the child is born or when the employee has worked for the employer for one year, whichever comes later).

Parental Leave Miscellaneous

3.17.4 The employee must take the leave in blocks of full weeks – a week is based on the usual working pattern.

The employee cannot take more than four weeks leave for any one child in any one year.

For these purposes a year starts when the employee becomes eligible for parental leave (i.e. when the child is born or when the employee has worked for the employer for one year, whichever comes later).

The Right to Request Flexible Working

3.18 Right to Request Flexible Working – Overview

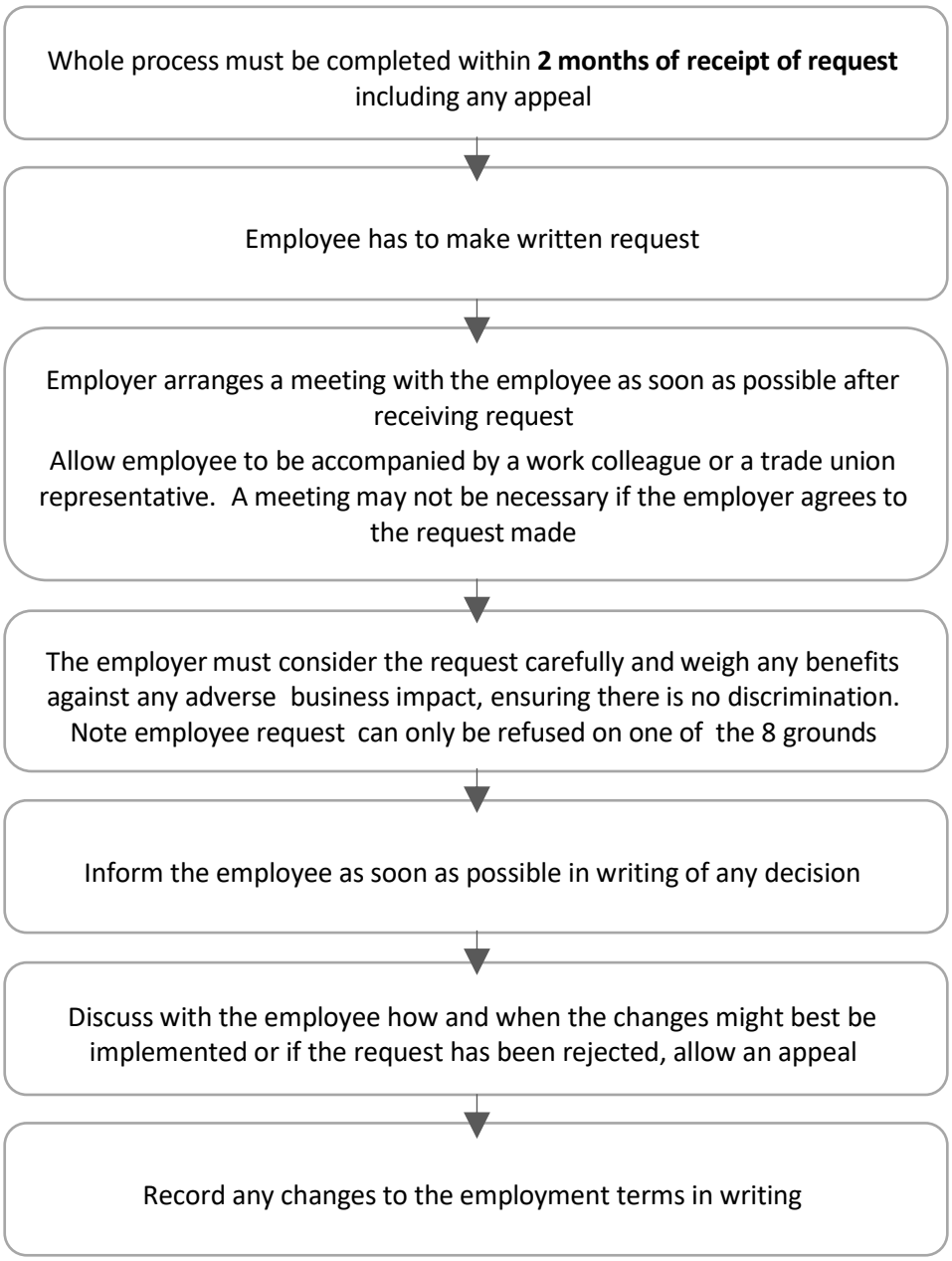
3.18.1 Employees have the statutory right to ask their employer for a change to their contractual terms and conditions of employment to work flexibility – **there is no length of service requirement and it is a right from day one of employment**.

The right is for employees to ask their employer to consider flexible work arrangements not an automatic right to work flexibly. However employers can only refuse a request on one of eight business grounds which are detailed below.

Failure to consider a request could result in a tribunal claim with a sanction of up to eight weeks pay, subject to the applicable statutory cap on a week's pay. A tribunal cannot usually investigate the rights or wrongs of the refusal only whether the procedure has been properly followed. However, a decision to refuse a request could in some cases lead to claims of discrimination with potentially unlimited compensation. Employers need to ensure that all requests are treated fairly to avoid any increased exposure to claims.

Important note – all requests including any appeals, must be decided and communicated to the employee within a period of TWO months from when the employer first receives the request. The employer and employee may agree to extend this period. If an extension is agreed, the employer should confirm this in writing to the employee. It is therefore very important to diarise dates and to keep on top of the process.

Right to Request Flexible Working - Process



Who has the right to request flexible working?

3.18.2 An employee has the right to make a flexible working request from day one of employment.

How often can a flexible working request be made?

3.18.3 An employee may make two statutory requests for flexible working within any 12 month period.

3.18.4 An employee may only have one live request for flexible working with their employer at any one time. Once a request has been made, it remains live until any of the following occur:

- a decision about the request is made by the employer

- the request is withdrawn
- an outcome is mutually agreed
- the statutory two-month period for deciding requests end

A request continues to be live during any appeal or any extension to the statutory two month decision period that an employer and employee may have agreed.

Right to request flexible working policy

3.18.5 There is no set legal format however it would be good practice for employers to have a policy for handling requests for flexible working.

The NTF has agreed a flexible working policy with NARS - Flexible Working Policy (page 99) or training businesses can agree with their employees their own policy.

Even if a training business does not adopt the NTF policy or agree its own, the law still applies and the employees need to know how to apply.

Flexible Working Application procedure

Making an application

3.18.6 The employer should provide guidance to the employee on what information the application must contain and how it should be made.

The employee must make their request in writing setting out

- the date of the request
- the change to the terms and conditions of the employment in relation to the hours, times or place of work they are seeking and when they would like the change to come into effect
- if and when the employee has made a previous request for flexible working to the employer
- There is a template letter for an employee to use to request flexible working see Template19 Flexible working request – template letter for employee to use

Short term informal arrangement

3.18.7 If the employee is only looking for an informal change for a short period, the employer may wish to consider allowing them to revert back to their old conditions after a specific period or after a specific event.

Considering the request

3.18.8 The employer must not reject a request without consulting with the employee. Unless the employer agrees to the written request in full, they should arrange to discuss it with the employee as soon as possible see Template14 Draft response from employer to flexible working request The meeting should be held without unreasonable delay but allow time for preparation for the discussion.

3.18.9 If there is likely to be any delay, it is good practice to inform the employee.

The law requires that the whole process is completed within two months of first receiving the request, including any appeal.

If for some reason the request cannot be dealt with in this time, then an employer can extend this time frame provided the employee agrees to the extension.

The employer should diarise when the request was received and when steps need to be completed by in order to meet the two month timescale.

Allowing the employee to be accompanied

3.18.10 The employer should allow the employee to be accompanied at any meeting by a work colleague or union representative. It is not a statutory right but is good practice.

The meeting

3.18.11 The employer should ensure sufficient time is set aside for the meeting

A meeting does not have to be face to face and the discussion could be held by phone if both employer and employee agree.

The meeting is an opportunity for the employer to explore with the employee what changes they are seeking and how these might be accommodated. The employee can explain the reasons why they are seeking the change if they choose to tell their employer that.

Employee failing to attend

3.18.12 If the employee fails to attend the meeting, then the employer should arrange a replacement meeting. If the employee then fails to attend that subsequent meeting without a reason then the law allows the employer to deem the application as withdrawn.

The employer should find out and consider the reasons the employee failed to attend both meetings before reaching any decision to treat the application as withdrawn. The employer must notify the employee of the decision.

Deciding on a request

3.18.13 The employer must consider the request carefully and look at the benefits of the changes for the employee and the business and

weigh these against any adverse business impact of implementing the changes.

An employer must agree to a flexible working request unless there is a genuine business reason not to. The business reason must meet one of the grounds set out below.

The business reasons for refusal

3.18.14 An employer can only refuse a request to flexible working if there is a genuine business reason for doing so – the business reasons are set out in the legislation and are:

- The burden of any additional cost is unacceptable to the organisation
- An inability to re-organise work among existing staff
- Inability to recruit additional staff
- The employer considers the change will have a detrimental impact on quality
- The employer considers the change would have a detrimental effect on the business's ability to meet customer demand
- Detrimental impact on performance
- There is insufficient work during the periods the employee proposes to work
- Planned structural changes, for example, where the employer intends to reorganise or change the business and considers the flexible working changes may not fit with these plans.

There are examples in the ACAS guidance which gives further ideas about this. The Code can be found at:

http://www.acas.org.uk/media/pdf/p/6/Handling-requests-to-work-flexibly-in-a-reasonable- manner-an-Acas-guide.pdf

In handling a request, employers must not discriminate unlawfully against the employee in relation to any protected characteristics. If an employee seeks a reasonable adjustment for their disability through a request for flexible working, the employer must consider this in line with its legal obligations under the Equality Act 2010.

Possible outcomes

3.18.15

The employer must let the employee know the outcome of the meeting. The possible outcomes are:

- The employer accepts the request. The employer should establish a start date with the employee and confirm that and any other action, or
- The employer confirms a compromise agreed at the discussion such as a temporary agreement to work flexibly with a review date, or
- The employer rejects the request. The employer must set out the clear business reasons for the rejection and how these apply to the application. The employer must also advise the employee of the appeal process. The outcome can be conveyed verbally but it is good practice to confirm it in writing. See the template letters at Template15 draft outcome letter agreeing flexible working request and Template16 draft outcome letter not agreeing flexible working request.

Trial period

3.18.16 It may be that the employer is unsure whether the arrangements requested are sustainable in the business or about the possible impact on other employees' requests for flexible working. In such a case the employer may wish to agree to the flexible working request on a temporary or trial basis.

If that is the case, then the employer should confirm that to the employee in writing and set out a review date when the employer and employee can discuss the arrangements and make any adjustments necessary.

Appeals

3.18.17 An employee should be able to discuss a refusal to grant their request if there is new information available that was not available at the time the request was originally made or if the employee thinks it was not dealt with in line with the employer's policy.

It would be good practice to allow an employee to be accompanied by a work colleague to any appeal meeting.

3.18.18 If an appeal is allowed, the employer must bear in mind that the whole request including any appeal must be considered within three months of first receiving the original request for flexible working unless an extension is agreed with the employee.

There are template letters at Template17, appeal letter responding to employee's appeal to refusal of flexible working request and Template18 letter advising outcome of flexible working appeal meeting.

Avoiding unlawful discrimination

3.18.19 The Equality Act 2010 prohibits unlawful discrimination because of age, disability, gender reassignment, marriage, civil

partnership, pregnancy and maternity, race, religion and belief, sex and sexual orientation.

Employers need to ensure that in deciding upon flexible working requests they are not discriminating against particular employees who are protected by the Equality Act. For example, a disabled employee who requests to start work later in the morning because his illness leaves him with severe fatigue in the morning – this would be a reasonable adjustment under the Equality Act.

In particular, the request to work flexibly often ties in with child care responsibilities and an employer must be aware that refusing a request to work flexibly – for instance a return to part time work from maternity leave – could give rise to a claim for indirect sex discrimination.

Multiple requests

3.18.20 The ACAS guidance provides help for employers in how to deal with an occasion where an employee receives more than one request to work flexibly closely together from different employees.

It may, of course, be possible to grant all the requests but it may be that having considered and approved one request, the business has now changed and that can be taken into account when considering the second request against the business reasons set out at paragraph 3.12.13.

The employer does not have to make a judgement about which is the most deserving request. Instead the employer should consider each case on its merits looking at the business case and the possible impact of refusing a decision.

If competing requests have been received for consideration at the same time and there is no compromise possible, the ACAS guidance suggests that the employer could get the agreement of the employees concerned to consider some form of random selection. If there are already employees working flexible, the employer could consider asking if there are any volunteers from the existing flexible working employees to change their contracts back to other arrangements thereby creating capacity for granting new requests to work flexibly.

Effect on pay and benefits

3.18.21 Where employees' hours are reduced, they remain contractually entitled to their other terms and conditions, including benefits (reduced pro rata where relevant). Further, the Part-time Worker Regulations give them specific legal protection from being treated less favourably than when they were working full-time, unless their employer can objectively justify doing so (see Part-time Workers and Fixed Term Contracts chapter 13Part-time Workers and Fixed Term Contracts)

Template 14: Draft response from employer to flexible working request

Dear [**name**]

Date:

I acknowledge receipt of your flexible working request under the Work and Families Act 2014.

So that I may discuss this request with you, I am inviting you to a meeting on [**date**]. At [**time**] with [**name of employer or manager who will hold the meeting**] to consider the request.

You may bring a work companion or a work colleague with you to the meeting as a companion if you so wish.

We refer you to the Employee Privacy Notice issued to you for information on how we process your personal data and sensitive personal data and your rights relating to such data. A further copy of the Employee Privacy Notice is available on request.

Yours sincerely

Template 15: Draft outcome letter agreeing flexible working request

Where request agreed either as per the original request or as discussed at meeting

Dear [**name**]

Date:

Following our meeting on [date], I write to confirm that your request to amend your working pattern under the statutory right contained in the Work and Families Act 2014 is granted.

As agreed, with effect from [date the new pattern starts] your new working pattern will be [insert details]:

The effect of the reduction in your working hours is to amend your pay to [……] Your holiday entitlement will be reduced on a pro rata basis. [delete if not applicable]

[Employer to insert details of any other changes]

This is a permanent change to your contract. You have the right to make one further statutory right to request another flexible working variation within a 12 month period.

or

We have agreed that this is a temporary change to your working pattern and you will revert back to your old conditions on [date].

[delete one of the above as applicable]

Please let me know if you have any queries on this. We refer you to the Employee Privacy Notice issued to you for information on how we process your personal data and sensitive personal data and your rights relating to such data. A further copy of the Employee Privacy Notice is available on request.

Note – this is a template letter only and there may be occasions where an employer is unsure whether the arrangements requested are sustainable and wants to agree a flexible working arrangement for a trial period rather than rejecting the request. If that is the case, the employer should confirm that in the letter and set out a review date or review points to discuss with the employee.

Template 16: Draft outcome letter not agreeing flexible working request

Where employer is not agreeing to the request

Dear [**name**]

Date:

Following our meeting on [**date**] I have given careful consideration to your request made under the Work and Families Act 2014 and I write to inform you that I am unable to agree to your request to work flexibly.

The business reason(s) for the rejection of your request is/are: [see clause 3.12.14]. The proposed change would affect the business in the following way [**reason**].

Should you wish to appeal against this decision, then please notify me in writing with your ground(s) of appeal and I will arrange a meeting to consider your appeal (or alternatively if you prefer discuss it with you by telephone) [**put in this option if considered appropriate**]. It will generally be preferable to arrange a meeting.

We refer you to the Employee Privacy Notice issued to you for information on how we process your personal data and sensitive personal data and your rights relating to such data. A further copy of the Employee Privacy Notice is available on request.

Yours sincerely

Template 17: Appeal letter responding to appeal to refusal of flexible working request

Inviting employee to appeal meeting

Dear [**name**]

Date:

Thank you for your letter of [**date**].

I invite you to an appeal meeting on [**date**] where your appeal will be considered by [**name**] at [**time**].

You may be accompanied by a work colleague or a trade union representative if you so wish.

We refer you to the Employee Privacy Notice issued to you for information on how we process your personal data and sensitive personal data and your rights relating to such data. A further copy of the Employee Privacy Notice is available on request.

Yours sincerely

Template 18: Letter advising outcome of flexible working appeal meeting

Dear [name]

Date:

You appealed against the decision not to grant your request to work flexibly and your appeal hearing was heard on [date].

I am now writing to advise you of the outcome of the appeal hearing which is: [employer to insert whether the request has been agreed on appeal or whether the refusal stands].

[If granted, the employer should put when the new working pattern starts, if there is any change to pay due to a reduction in working hours and that it is a permanent change to the contract and that the employee has a statutory right to request one further variation in contractual terms for a period of 12 months, or if it is a temporary change to the working pattern for a set period or for a trial period subject to review – see template 15 of this chapter]

We refer you to the Employee Privacy Notice issued to you for information on how we process your personal data and sensitive personal data and your rights relating to such data. A further copy of the Employee Privacy Notice is available on request.

Yours sincerely

Flexible Working Policy – this policy has been updated to reflect changes in legislation from 6th April 2024. The policy can also be downloaded from the Handbook Area of the NTF Website.

[Name of Employer] Flexible Working Policy

Flexible Working policy

Scope and Purpose

We recognise that a better work-life balance can improve employee motivation, performance and productivity and reduce stress and we want to support our employees in achieving a better balance between work and their other priorities where we are able to do so.

This policy is a source of information about the statutory and contractual employment rights that we owe to employees under the Flexible Working Regulations. It also describes the procedures that we have established to ensure that we comply with our duties.

If you think that you may benefit from flexible working, you are encouraged to contact [name of person] to arrange an informal discussion to talk about the options.

What is flexible working?

Flexible working is any type of working arrangement that gives some degree of flexibility on how long, where and when an employee works.

The following flexible working options are considered to be typical arrangements that employees will request but we recognise that there may be alternatives or a combination of options which are suitable to both us and you.

- Annualised hours
- Compressed hours
- Flexitime
- Home-working
- Job-sharing
- Part time working
- Term time working.

Type of flexible working

- .**Annualised hours** is where an employee's contractual working hours are calculated as the total number of hours to be worked over the year, allowing flexible working patterns to be worked throughout the year.
  Usually the hours will be divided into rostered hours which are set, and unallocated hours where an employee can be called into work as demand dictates (and to cover unplanned work and employee absence). Payment will be in 12 equal instalments (although arrangements may be permitted where the pay for the work actually done is in the period to which the payment relates).
- **Compressed Hours** is where an employee works their usual full time hours in fewer days by working longer blocks meaning there is no reduction in their pay. For example, a 5 day week is compressed in to 4 days, or a 10 day fortnight into 9 days.

Flexible working policy cont'd

- **Flexitime** allows an employee to choose, within certain limits, when to bring and end work. An employee is required to work during a core time and must work an agreed number of hours during the accounting period (four weeks/a month). Their hours of attendance will be recorded and added up at the end of each accounting period. An employee can carry over an excess of up to [x] hours or a deficit of up to [x] hours from one accounting period to another. A deficit of hours should be made up in the following accounting period. Excess hours may be used to either reduce attendance outside of core hours or, take additional leave (flexi-leave), subject to a maximum of [x] full days in any accounting period. Additional leave should be requested and agreed with the employee's line manager in the same way as annual leave.
- **Home working** is when an employee regularly carries out all, or part of, their duties from home rather than the employer's premises. It could be home working as on occasional agreed day, a mix of home and office based work each week or a full time arrangement.
- **Job-sharing** is an arrangement where a full time post is divided into two part time roles. The two job holders then share overall duties and responsibilities. Their skills and the hours each employee wishes to work must be compatible, and meet the needs of the business. Pay and benefits are shared in proportion to the hours each works. Job sharing can be considered where the creation of single part time post is difficult, or where two individuals wish to share part time work. The suitability of posts for job-share should be stated in any internal or external arrangements.
- **Part time working** covers any arrangement where an employee is contracted to work anything less than typical full time hours for the type of work in question which is a 40 hour standard week in racing.
- **Term time working** is where an employee reduces their hours or takes time off during any school holidays. Any weeks above their annual leave entitlement will be unpaid. Salary can though be paid in 12 equal monthly instalments (although arrangements may be permitted where an employee is only paid for the time worked and receive no pay during the holidays apart from their entitlement to annual leave).

The needs of the business

We are committed to providing appropriate working patterns. However employees need to be realistic as we are a business caring and responsible for animals and servicing race meetings, and as such employees are asked to recognise that not flexible working options may be appropriate.

Where a flexible working arrange is proposed we will need to take into account a number of criteria including:

- The burden of extra costs to the business
- Whether work can be re-organised among other staff
- Whether we can recruit additional staff to cover work
- Whether the flexible working will have a detrimental impact on quality and/or performance
- Whether the change will have a detrimental impact on out ability to meet customer demand

Flexible working policy cont'd

- If there is a lack of work to do during the proposed working times
- And if the business is planning changes or re-organisatoin

Eligibility

Every employee has the right to request flexible working. This applies from the first day of employment.

Time frame

By law all requests including any appeals, must be decided by us and communicated by us to you within a two month period when we first receive the request. We can agree with you to extent the period. If an extension is agreed we will confirm that with you in writing.

Submitting a flexible working request

All requests must be made in writing. That can be by email or letter. Any request must include:

- The date of your request
- The changes that you are seeking to your terms and conditions of your employment in relation to hours, times or places of work
- The date from when you would like the proposed change to come into effect
- If and when you have made a previous request for flexible working to us.

If you are making the request in relation to the Equality Act, e.g. as a reasonable adjustment relating to a disability, this should be made clear in your application.
If an application does not contain all of the required information we will explain to you what additional or amended information you need to provide and ask you to resubmit the request.
You are entitled to submit two flexible working requests in a 12 month period (you are entitled to additional requests if they relate to a statutory entitlement, for example the Equality Act 2010 right to request reasonable adjustments).
You are, though, only allowed to have one live request for flexible working with us at any time. Once a request has been made, it remains live until any of the following occur:

- A decision by us about the request
- The request is withdrawn
- An outcome is mutually agreed
- The statutory two month period for deciding requests ends.

Meetings regarding flexible working

Upon receiving a written request for flexible working, we will usually seek to arrange a consultation meeting with you without unreasonable delay. This meeting will be to

- Discuss the request
- Find out more about the proposed working arrangements
- How it could be of benefit to both you and us
- Ensure we have all the relevant information and that we both understand it.

- Discuss practical considerations involved in implementing the request

Where a request can, without further discussion, be approved as stated in your written application a meeting to discuss the request may not be necessary. If that is the case, you will be informed of our agreement to the request by a confirmation letter taking into account the two month period we have for deciding any request.

Where a meeting is required, we will give you advance notice of the time, date and place of the meeting. If the initial date is problematic then one further date will be proposed. If a face to face meeting is difficult to arrange then, then if agreed between us the meeting may be held over the telephone or by zoom or similar platform.

If you fail to attend a meeting and then fail to attend a rearranged meeting without good reason, your application will be deemed to have been withdrawn. If we consider that to be the case, we will inform you in writing.

Companion

You may be accompanied by a work colleague or a union representative at either the meeting or any appeal meeting.

Responding to a flexible working request

We will carefully and reasonably consider the proposed flexible working arrangements, looking at the potential benefits and adverse effects to you and to us in implementing the proposed changes.

We can only refuse your request if there is a genuine business reason.

Each request will be considered on a case-by-case basis. Agreeing to one request will not set a precedent or create the right for another employee to be granted a similar change to their working pattern.

You will be informed in writing of our decision as soon as is reasonably practicable, taking into account the two month period for deciding requests.

The request may be granted in full, in part or refused.

We may propose a modified version of the request, the request may be granted on a temporary basis, or you may be asked to try the flexible working arrangement for a trial period. If the request is agreed then you will be sent a confirmation letter which will include details of the new arrangements. You should contact us without unreasonable delay if you wish to discuss the new arrangements further, or have any concerns.

Right to appeal decision

You have the right to appeal the decision if your request is refused or is only agreed in part.

You should let us know in writing that you wish to appeal and set out the reason/s for your appeal. We will arrange a meeting with you and consider the appeal impartially. Once we

have made a decision about the appeal we will inform you without unreasonable delay, taking into account the two month period for deciding requests. We will explain to you the reason why the decision has been reached.

Trialling new working arrangements

Where there is some uncertainty about whether the flexible working arrangement is practicable for you and/or us a trial period may be agreed. If a trial period is arranged we will allow sufficient time for you and your manager to implement and become used to the new working practices before taking any decisions on the viability of a new arrangement.

Varying your contract

Where flexible working practices are agreed as a permanent change, a variation will need to be made to your contract of employment. A new contract of employment will be sent to you within 28 days of the change to your working pattern being agreed.

If you have any questions or concerns about the new contract of employment you should contact **[put in name]** to discuss the matter further.

Where a trial period has been arranged we will provide you with a document that details the new working pattern and makes clear that it is only a temporary variation to the terms of your contract. You will be informed in writing of the start and end dates of the trial period (although we may reduce or lengthen the trial period where necessary with your agreement). We reserve the right, at the end of the agreed trial period, to require you to revert to your previous working arrangement.

Complaints and further information

We are strongly opposed to any form of victimisation of individuals who submit a request under this policy or who work under a flexible working arrangement.

If you feel that you have been treated unfairly or are dissatisfied with any stage of the flexible process, you should raise your concerns informally with **[put in name]**.

If informal discussions do not resolve the matter to your satisfaction, you should raise a grievance under our grievance procedure.

Status of Policy

This policy is non-contractual and we may vary it at any time.

Template 19: Flexible working request - template letter for employee to use

The employee will need to fill in all the information relating to their request.

Dear [**name**]

Date of application:

This is a statutory request under the provisions of the Children and Families Act 2014, and I would like to apply to work a flexible working pattern that is different to my current working pattern.

I would like to change my working conditions to [**employee to insert details of days/hours/times to be worked**]

I would like this to come into effect from [**date**].

[**if previous request made**] I made a request to work flexibly under this right on [**date**].

[**Delete if not applicable**] I am making this request in relation to the Equality Act in respect of [**employee either to specify, for example that it is as a reasonable adjustment for a disability**].

Yours sincerely

Carer's Leave Regulations

Overview

3.18.22 From 6th April 2024, employees who have a dependant with a long-term care need and want to be absent from work to provide or arrange care for that dependant are entitled to up to one week of unpaid carer's leave in any 12 month period. A dependant includes a spouse, civil partner, child, parent, a person who lives in the same household as the employee (other than by reason of them being an employee, tenant, lodger or boarder) or a person who reasonably relies on the employee for care.

A long term care need is defined as an illness or injury (physical or mental) that requires or is likely to require care for more than 3 months, a disability under the Equality Act 2010 or issues of old age. Where the care is needed for short term care needs, other types of leave should be used, such as time off for dependants or annual leave.

Eligibility and length of leave

3.18.23 It is a day one employment right so no length of service is required

It is up to one week of unpaid carer's leave in any 12 month period. The entitlement is one week irrespective of how many dependants an employee has.

Requesting carer's leave

3.18.24 Employees must give notice which does not have to be in writing of their intention to take carer's leave – confirming their entitlement to take it and giving at least twice the amount of notice than the period of leave requested, or, if longer, three days' notice. The employer can waive the notice requirement provided the employee is otherwise eligible to take carer's leave. The employer is not able to require an employee to evidence their entitlement to the leave.

3.18.25 Requests can be made for consecutive, or non-consecutive, half days or full days. For example, it could be five separate days over a 12 month rolling period.

Employer's response

3.18.26 The employer cannot deny the request but can postpone a request if the operation of the business would be unduly disrupted. In these circumstances the employer must give notice of the postponement before the leave was due to begin, and must explain why the postponement was necessary. The employer must then allow the leave to be taken within one month of the start-date of the leave

originally requested. Rescheduling the leave should be done in consultation with the employee.

Protection from detriment

3.18.27 Employees are protected from detriment and dismissal because they take, or seek to take, carer's leave (or the employer believes they are likely to do so). For example, an employee cannot be disciplined, selected for redundancy or dismissed because they correctly took or sought to take carer's leave.

Policy

3.18.28 A carer's leave policy is available in the Handbook Area of the NTF website or from the NTF office.

Menopause and the workplace

Managing the impact of the menopause at work is an important health and wellbeing matter for both workers and employers.

Whilst most women will have the menopause in their late forties/early fifties it can happen much earlier but also later. The perimenopause which is the menopause transition being made by the body begins several years before the menopause itself. For most women symptoms last about four years but again it can be much longer. A trans man may go through perimenopausal and menopausal symptoms, whilst as many as one in 20 women may go through an early menopause. That may happen for various reasons, including if a woman has had certain medical conditions and health treatment.

For the worker experiencing symptoms it can be a difficult and stressful time and a sensitive and personal matter whilst the employer may see the worker taking time off or struggling with some of their duties. Many workers will not wish to disclose the reason for an absence feeling it too private or that, perhaps, it may affect their job security.

As an employer you should:

- seek to ensure that menopausal symptoms are not made worse by the workplace and/or its work practices and look to make changes to help a worker manage their symptoms when doing their job
- put in place the policy the NTF has drawn up [or such other policy as you may wish to use]
- ensure that managers, supervisors, team leaders know how the perimenopause and menopause can affect a worker and what support or changes may be appropriate
- that you and your managers feel able to have a conversation about concerns raised by a worker
- manage absence from work or dips in performance sympathetically because the menopause is a long-term and fluctuating health change.
- raise awareness amongst your staff that the company and its managers will handle menopause in the workplace sensitively

A worker knowing their organisation's managers are open and trained to talk and listen sensitively about the effects of the perimenopause and menopause should give them the confidence to approach their manager. Of course, there may be reasons why the worker does not want to speak to their manager and so they should be given the options of speaking to someone else in the business. The template policy provides for that.

There are potential legal penalties for not handling menopause properly - there are risks of disability discrimination and/or sex discrimination, and/or age discrimination if a worker is mismanaged because of their menopause or perimenopause symptoms. You may consider recording sickness absence because of the menopause or perimenopause in a way that can be distinguished from other absences as there could be times when it is unfair to treat them the same.

Remember also that, for example, unwanted comments, jokes, banter or ridicule about a woman's menopause or perimenopause symptoms could amount to harassment, or sexual harassment depending on the nature of the unwanted behaviour.

There are many sources of information including:

Menopause matters, which provides information about the menopause, menopausal symptoms and treatment options
The British Menopause Society;
British Menopause Society recognised menopause specialists (NHS and Private);
British Menopause Society videos - very helpful!;
Menopause in the Workplace;
Menopause Matters - lots of additional information
https://racingwelfare.co.uk/ - advice, support and occupational health information
https://www.acas.org.uk/guidance-for-employers-to-help-manage-the-impact-of-menopause-at-work

Menopause Policy

Scope and Purpose

We (company name) are committed to providing an understanding working environment where everyone understands what menopause is and is able to talk about it openly without embarrassment. Everyone should be aware of this policy and of the impact of menopause can have.

This policy is a source of information for all employees on providing and receiving the right support to manage menopausal symptoms at work.

The aim of the policy is to

• make managers aware of their responsibility to understand how the menopause can affect staff, and how they can support those experiencing the menopause at work
• foster an environment in which colleagues can openly and comfortably instigate conversations, or engage in discussions about the menopause in a respectful and supportive manner
• raise wider awareness and understanding among all employees about the menopause
• enable workers experiencing the menopause to continue to be effective in their jobs
• outline support and reasonable adjustments available
• help us recruit and retain employees experiencing the menopause

Those covered by this policy
This policy applies to all employees.

Background

The menopause is a natural event in many women's lives and usually occurs between the ages of 45 and 55, although premature menopause can be much earlier. It typically lasts between four and eight years. Menopausal symptoms can also affect transgender people including non-binary people.

There are some medical or surgical circumstances that will create an immediate menopause and much younger women can experience premature menopause. Peoples' individual experiences of the menopause may differ greatly.

Symptoms

Menopausal symptoms may include:

• Hot flushes – a very common symptom that can start in the face, neck or chest, before spreading upwards and downward, may include sweating, the skin becoming red and patchy, and a quicker or stronger heart rate.
• Heavy and painful periods and clots, leaving those affected exhausted, as well as practically needing to change sanitary wear more frequently. Some affected may become anaemic.

• Night sweats, restless leg syndrome and sleep disturbance.
• Low mood, irritability, increased anxiety, panic attacks, fatigue, poor concentration, loss of confidence and memory problems.
• Urinary problems - more frequent urinary incontinence and urinary tract infections such as cystitis. It is common to have an urgent need to pass urine or a need to pass it more often than normal.
• Irritated skin – including dry and itchy skin and dry eyes.
• Joint and muscle aches and stiffness.
• Weight gain.
• Headaches and migraines.
• Menopausal hair loss.
• Osteoporosis - the strength and density of bones are affected by the loss of oestrogen, increasing the risk of the bone-thinning disease osteoporosis.
• Side effects from hormone replacement therapy (HRT), a form of treatment for menopausal symptoms for some people (although not suitable or appropriate for all).
Menopausal symptoms may also exacerbate existing impairments and conditions that those affected may already be struggling to cope with

Each of these symptoms has the potential to affect an employee's comfort and performance at work.

Available support
We recognise that some employees experiencing the menopause may find that related symptoms impact on their health, wellbeing and performance at work, and we aim to provide as much support as is reasonably practicable for individuals.

Any employee experiencing menopausal symptoms should feel confident in discussing their needs and asking for support and reasonable adjustments to be put in place so that they can continue working and playing a full part in the life of the yard.

Employees experiencing the menopause are encouraged to let their line manager or the alternative contact (see below) know if they are struggling with symptoms that may impact on their work, so that appropriate support is provided.

Such information will be treated confidentially and in accordance with our data protection policy.

An alternative contact is available to employees experiencing the menopause should they not feel comfortable discussing their problems with their line manager. This is ..... [complete as appropriate].

All staff should take a personal responsibility to look after their health. Employees experiencing the menopause are encouraged to seek support through their GP and other external sources as listed later in this document.

Reasonable adjustments

There are a range of reasonable adjustments which may be able to be implemented to support an employee going through the menopause. These could include:

• Control over environmental factors – with provision of desk fans on request, review of office seating plans so that affected employees can be near the window or open doors, or away from direct sources of heat such as radiators, fitting blinds to windows, greater access to chilled drinking water, and to toilets and washing facilities.

• Flexibility over uniform and dress codes should they exacerbate symptoms such as hot flushes and sweating, and provision of additional spare uniforms.

• Changing/washing facilities for staff to change clothes during the working day.

• For employees who are required to drive as part of their usual work pattern, duration of travel to be reduced and increased rest breaks provided.

• Flexible working arrangements including options for flexitime (to work around symptoms or adjusting start and finish times for example)

• Flexibility around the taking of breaks, or increased breaks during the working day, and if required providing cover as necessary for these breaks.

• Temporary changes to the employee's duties, such as undertaking fewer high-visibility work like meetings or on a reception desk because it can be difficult to cope with symptoms such as hot flushes, or assessing how work is allocated or whether the employee is affected at particular points of the day.

• Provision of a private space to rest temporarily

This is not a definitive list of adjustments and additional suggestions put forward by employees will be considered.

All requests for support or adjustments will be dealt with confidentially and in accordance with the data protection policy and we will support employees in informing their colleagues about the situation if appropriate

Discrimination, harassment or victimisation
All staff have a responsibility to contribute to a respectful and productive working environment, be willing to help and support their colleagues, and understand any necessary adjustments their colleagues are receiving as a result of their menopausal symptoms. Employees should report any instances of harassment, victimisation or discrimination experienced because of issues related to the menopause. If an employee is found to have harassed, victimised or discriminated against another employee in relation to the menopause, then they will be seen as having committed a disciplinary offence.

Further help and support

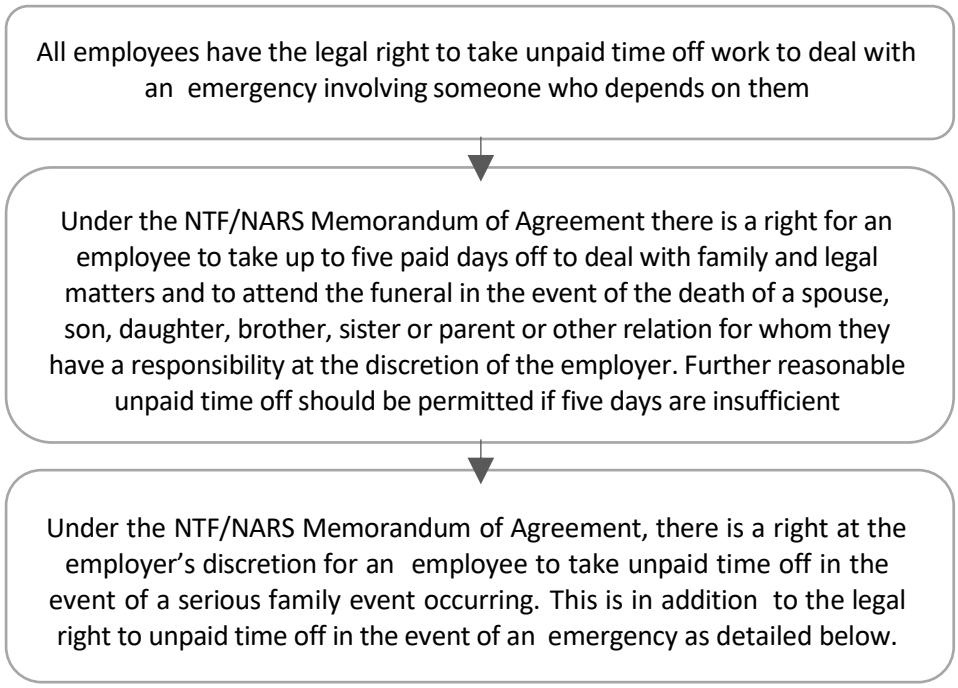
Menopause matters, which provides information about the menopause, menopausal symptoms and treatment options
The British Menopause Society;
British Menopause Society recognised menopause specialists (NHS and Private);

British Menopause Society videos - very helpful!;
Menopause in the Workplace;
Menopause Matters - lots of additional information
https://racingwelfare.co.uk/ - advice, support and occupational health information
https://www.acas.org.uk/guidance-for-employers-to-help-manage-the-impact-of-menopause-at-work

Status of Policy
This policy is non-contractual and may be changed by us at any time.
Date
……

Time off for Dependants/Compassionate leave

Figure 7: Time off for Dependents/Compassionate leave overview



3.19 The right to time off for dependants

All employees have this right

3.19.1 All employees have the right to unpaid time off work to deal with emergencies involving a dependant. This applies regardless of length of service or number of hours worked per week.

Definition of dependants

3.19.2 A dependant could be a spouse, civil partner, child, parent or anyone living in the household (other than a tenant, lodger or boarder). A dependant may also be anyone who reasonably relies on the employee for assistance or make arrangements for them if they are ill or injured.

Examples of "emergencies"

3.19.3 This is an unexpected or sudden problem involving someone who depends on the employee for help and care. Examples of this are:

- A dependant falls ill. The illness does not have to be serious or life threatening but may be something where the dependant requires occasional assistance when the condition deteriorates and the employee needs to take unexpected time off work
- A dependant is injured or assaulted

- Unexpected disruption or a breakdown of care arrangements for a dependant. This could be when child minding arrangements have fallen through.
- An unexpected incident involving a child at school – for example where a child has been injured at school or is being sent home for some reason.
- To deal with the death of a dependant. There are additional rights given under the NTF/NARS Memorandum of Agreement – see Bereavement Leave

What the employee has to do

3.19.4 The employee should advise the employer as soon as they know they need the time off – this does not have to be in writing nor does the employee have to provide any evidence.

Amount of time off

3.19.5 The legal right is to a reasonable amount of time off to deal with the emergency and make any arrangements that are needed. There is no set period of time to deal with any particular incident. Generally, though in most cases, one or two days should be sufficient – for example, if the employee is absent because a child has fallen ill, the employee can take sufficient time off to deal with the initial needs, such as taking the child to a doctor and arranging for care. If the employee wants to stay off work longer to care for the child, then the employee will need to make arrangements with the employer.

Amount of times an employee can take time off under this right

3.19.6 There is no limit to the amount of times an employee can take time off to care for dependants provided that it is for genuine emergencies. If an employer considers that an employee is taking more time off than the employer can cope with, the employer should discuss this with the employee. Note, an employee who is refused reasonable time off by an employer would have a claim against the employer.

Pay

3.19.7 The right is to unpaid time off though an employer can pay the time off if they wish – an employer wishing to do this must act consistently so as to avoid discriminating against any member of staff.

There is an agreement between the NTF and NARS for paid time off for bereavement leave – see Bereavement Leave

Protection from detrimental treatment

3.19.8 It is unfair for an employer to refuse to give an employee reasonable time off to deal with an unexpected event involving a dependant and to do so would give the employee the right to complain to the employment tribunal. If an employee is dismissed or made redundant or penalised in some way (i.e. refused promotion or

training) because they have exercised the right to take time off for an emergency then they can put in a claim to an employment tribunal.

Bereavement Leave

3.19.9 NTF/NARS Memorandum of Agreement

Under this agreement employees are granted up to a maximum of five working days paid absence to attend the funeral and deal with family and legal matters in the event of the death of a spouse, son, daughter, brother, sister or parent or other relative for whom they have a responsibility at the discretion of their employer. If five days is insufficient, then the employer may negotiate a period of unpaid leave to assist the employee in dealing with personal matters.

3.19.10 Paid Parental Bereavement Leave

Employed parents and adults with parental responsibility who have suffered the loss of a child under 18 are entitled to at least two weeks bereavement leave.

Adults with parental responsibility include adopters, foster parents and guardians. It is also expected to apply to those classed as kinship carers, who may be close relatives or family friends that have assumed responsibility for looking after a child in the absence of parents.

The entitlement will also apply to parents who suffer a stillbirth after 24 weeks of pregnancy. In this instance, female employees will still be entitled to 52 weeks maternity leave and/or pay as will a mother whose loses a child after it has been born.

Leave entitlement and pay

Workers who have been employed for at least 26 weeks prior to when the child dies and have received pay above the lower earnings limit (£125 April 2025) for the previous eight weeks are entitled to at least two weeks statutory paid leave at £187.18 (April 2025) or 90% of average weekly earnings where this is lower).

Workers who have not been employed for a continuous period of at least 26 weeks are entitled to unpaid leave.

The leave entitlement is two weeks leave which can be taken in one block of two weeks or as two separate blocks. It must be taken within 56 weeks of the date of the child's death. This is to allow for time to be taken off for difficult events such as birthdays or anniversaries.

Notice requirements Notice requirements for taking this leave can be flexible, so it can be taken at short notice.

Other points If an employee loses more than one child, they will be entitled to take a separate period of leave for each child.

Employers are not entitled to request a copy of the child's death certificate as evidence of an employee's right to the entitlement.

Small employers will be able to recover all statutory parental bereavement pay while larger organisations will be able to reclaim most of it.

Employers must bear in mind data protection and keep information confidential to those who need to know – it is good practice to discuss with the employee what they would like their colleagues to know.

Other serious incidents

3.19.11 Under the NTF/NARS Memorandum of Agreement if there is a serious family event which has not resulted in bereavement and which does not fall into one of the above categories then the employer may at his or her discretion negotiate a period of unpaid leave so that the employee may deal with the matter.

4. Chapter 4

Terminating employment

4.1 General advice

4.1.1 A contract of employment may be terminated in a variety of ways. See individual chapters for detailed advice on conduct/poor performance dismissals (Chapter 5), redundancy (Chapter 7) and sickness absence (Chapter 10)

4.2 Grounds for dismissal

Potentially Fair Grounds for Dismissal

4.2.1 There are five grounds whereby an employee can **potentially** be fairly dismissed. The dismissal may still be unfair if a fair procedure is not followed. The grounds are:

misconduct

incapability (poor performance but can also include ill health)

redundancy

illegality

some other substantial reason

Note "retirement" is no longer a fair ground for dismissal (see Retirement).

4.2.2 A fair procedure must be carried out and it must be reasonable in all the circumstances for the employer to dismiss.

4.2.3 With regard to dismissals for poor performance or misconduct the steps set out in chapter 5 Formal Disciplinary Action – the procedure **must be** followed where the employee has the ability to claim unfair dismissal as if the dismissal is found to be unfair any compensatory award to the employee could be increased by up to 25% see Formal Warnings and Disciplinary Dismissals (clause 5.2.2)

4.2.4 Before dismissing for any of the above grounds the advice in the relevant chapter of this guide should be read.

Length of service

4.2.5 An employee with under two years' service does not have the general right to claim unfair dismissal. However, if the reason for dismissal falls under the category of an automatically unfair reason for dismissal Automatically Unfair Dismissals (see section 4.2.15) the employee does not need any qualifying length of service to claim unfair dismissal and has protection from unfair dismissal from day one of employment.

Similarly the employee is protected from being unfairly dismissed for a discriminatory reason from day one of employment.

Misconduct

4.2.6 This can be general or gross misconduct. In either case, the procedure relating to a dismissal for misconduct set out in Chapter 5 must be followed. Where an employee has less than two years' service and the dismissal is not for an automatically unfair reason and the employer is confident that the employee would not be able to claim discrimination, the employer can decide to dismiss on a week's notice without following the procedure. It should be noted that if giving the employee a week's notice (or longer if the contract provides for longer notice) would take them over the two years' service, then again the procedure must be followed. It is best practice to always follow the full procedure even where an employee has under two years' service.

Incapability/Poor performance

4.2.7 Where the dismissal is for incapability (being incompetence) or for poor performance the procedure set out in chapter 5 must be followed (see Formal Warnings and Disciplinary Dismissals). Where an employee has less than two years and the dismissal is not for an automatically unfair reason and the employer is confident that the employee would not be able to claim discrimination, the employer can decide to dismiss on a week's notice without following the full procedure. It should be noted that if giving the employee a week's notice (or longer if the contract provides for longer notice) would take them over the two years' service, then again the procedure must be followed. It is best practice to always follow the full procedure even where an employee has under two years' service.

4.2.8 **However, the advice in chapter 5 does not apply where the incapability is due to ill health** – see chapter 10 Sickness Absence for advice on dismissals for unacceptable levels of absence due to frequent short term absences or for incapability due to long term sickness absences.

Redundancy

4.2.9 See Chapter 7 Redundancy for advice and procedures. A failure to follow the correct procedures for selection and dismissal could result in an unfair dismissal or discrimination claim.

Illegality

4.2.10 An employee may be fairly dismissed where he or she is unable to carry out the performance of their contract as it would be illegal – for example where the employee does not have valid permission to work in the UK. A fair procedure must be followed before dismissing

an employee in such circumstances. As a minimum this would involve investigating the position, holding a meeting with the employee to fully discuss the situation and offering the employee a right of appeal.

Some other substantial reason

4.2.11 This is a closely defined set of reasons developed through case law and is seldom applicable. Where an employer has an Employer Justified Retirement Age a retirement under that would be for "some other substantial reason". For further advice see Retirement (Chapter 8) and any employer considering using this as a ground for retirement should take individual advice.

Resignation

4.2.12 When an employee resigns, the employer should ideally obtain the resignation in writing and confirm acceptance, together with details of notice or money in lieu of notice. Problems can occur where it is not clear whether an employee is actually resigning or not. Where an employer is uncertain as to the employee's intention, the employer should clarify this with the employee and if the employee is resigning ask for written confirmation. Care must be taken though that an employee who has simply mentioned they are thinking of leaving or going for interviews must not be put under pressure to resign or treated as resigning until they give notice and state the date they are leaving.

An employee cannot unilaterally withdraw their notice – once it has been given and the employee has stated the date they will be leaving then that can only be withdrawn with the employer's agreement. Again all this should be recorded in writing.

However, where an employee resigns in the "heat of the moment" and then wants to withdraw the resignation, the employer should look carefully at the words of resignation objectively in all the circumstances of what has happened. The circumstances include anything that would have affected the way in which the language used would have been understood by a reasonable bystander – was the resignation "seriously meant", "really intended" or "conscious and rational". The employer should assess whether the words reasonably appear to have been really intended at the point in which they were said.

4.2.13 **Exit Interview**

Many organisations will undertake an exit interview with an employee who has resigned to gain the employee's perspective of working for the company and gather feedback on their time at the company.

The legal challenges to dismissal

Unfair dismissal

4.2.14 An unfair dismissal can arise where there is no fair reason to dismiss or if the employer does not follow a fair procedure. Examples would include unfair selection for redundancy or dismissal for performance where there was nothing wrong with the performance.

4.2.15 Generally an employee will need two years' service to claim unfair dismissal although there are various dismissals which will be automatically unfair from the first day of service. There is no minimum number of hours per week required to be worked to qualify.

Automatically Unfair Dismissals

4.2.16 There are a number of dismissals which would be automatically unfair and an employee does not need any qualifying period of employment to make a claim if dismissed for an automatically unfair reason. The reasons are dismissal because the employee :

- is pregnant, has taken or proposes to take maternity, paternity, adoption or parental leave or shared parental leave, or time off for a dependant
- is or proposes to become or refuse to become, a member of a trade union
- seeks to claim their employment rights, such as being paid the minimum wage
- takes certain specified action on health and safety grounds
- carries out their duties as trustee of a company pension scheme
- has disclosed certain kinds of wrongdoing in the workplace - e.g. whistleblowing
- has exercised their right to be accompanied, or act as a companion, at a disciplinary or grievance hearing
- has taken part in lawfully organised official industrial action lasting 12 weeks or less (or longer in some circumstances)
- has been summoned or had time off work for jury service
- has made a request to work flexibly in accordance with their right to make such a request
- enforced or sought to enforce a right under the Working Time Regulations 1998

The above does not mean that an employer has to, for example, say yes to a request from an employee to work flexibly – it means that the employee must not be dismissed because they have made such a request whether it has been agreed or refused by the employer.

4.2.17 If an employee can claim sex, race, disability, age, sexual orientation, religious belief or trade union discrimination he or she do not need any qualifying employment to make a claim.

Wrongful dismissal

4.2.18 This is where an employer breaches the employee's contract, normally by dismissing without notice where notice should be given. An employee does not need a minimum period of employment to bring a claim.

Constructive dismissal

4.2.19 If an employee resigns because of the employer's behaviour it may be considered constructive dismissal or where the employer is no longer honouring the terms of the contract - for example where an employer forces the employee to accept unreasonable changes to their conditions of employment or makes the employee work in dangerous conditions.

Notice periods

By employer – dismissal other than gross misconduct

4.2.20 The length of notice will be set out in the contract – the longer of the contractual notice or statutory notice must be given. The minimum statutory notice periods are:

If the employer dismisses an employee who has one month or more continuous service, the employer must give notice as follows:

- between one month and less than two years' continuous service – one week's notice
- between two years and twelve years continuous service – one week's notice for every completed year of service up to a maximum of twelve weeks
- twelve years or more continuous service – twelve weeks' notice

Historically money in lieu of notice has been paid as gross salary, i.e. without deductions for tax and national insurance. This is only permitted in cases where an employer has no contractual right to make a payment in lieu of notice. If there is such a contractual right or an established custom and practice of making payments in lieu of notice, then the usual deductions should be made.

By employer – gross misconduct

4.2.21 Where an employee is dismissed for an offence of gross misconduct, the contract of employment is terminated at the moment the decision is made and communicated to the employee although the correct procedures must have been followed before such a dismissal to avoid an unfair dismissal.

In these cases there is no requirement to give notice or money in lieu of notice. Indeed, giving notice or money in lieu may harm a defence in any subsequent claim as this action may be taken to show that it was not a case of summary dismissal.

Notice to be given by employee

4.2.22 If the employee has a month or more continuous service, he must give one week's notice. This notice remains at one week regardless of the number of years of continuous employment unless stated to the contrary in the contract of employment.

In practice there is little remedy if an employee does not give the correct notice and any holiday entitlement accrued and untaken should still be paid.

Effective Termination Date

4.2.23 Whilst the date of termination is always important for calculating wages and holiday, it may be crucial where there is a question over whether the employee has two years' service and the right claim general unfair dismissal.

The date of termination is when the employee understands they have been dismissed and it is important the employee has knowledge that the decision to terminate has been taken – if advising of the decision by letter, then send it first class post recorded delivery or hand the letter over in person. If using email, put in a read receipt notification and keep a record of that.

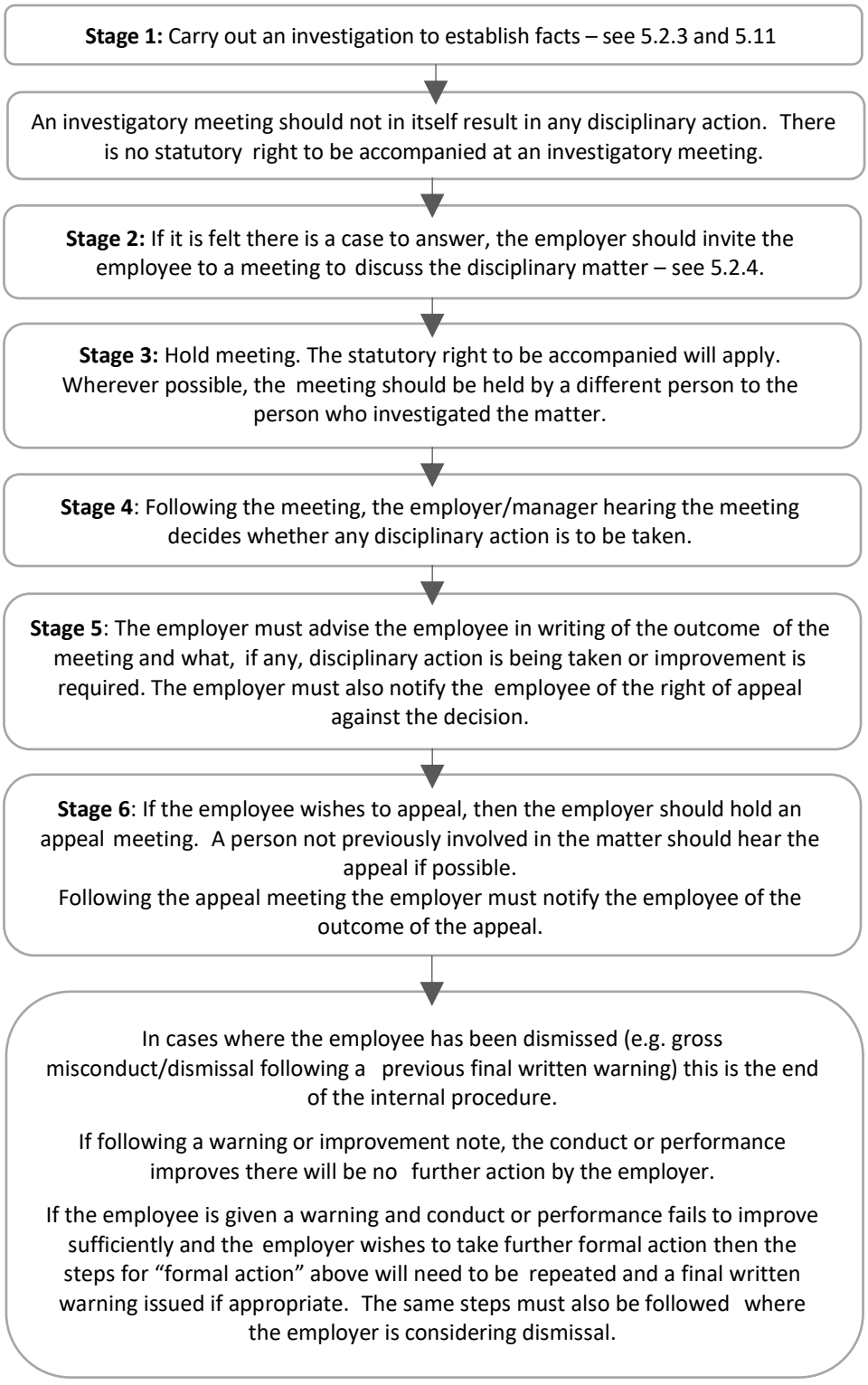
Giving an employee the right of appeal against the termination of employment does not stop the termination being effective. It may be the case, depending on the length of notice worked by the employee, that the appeal meeting takes place after the date of termination. In that situation, if the appeal is successful, the employee is re-instated. The effect of reinstatement is to treat the employee as if they had never been dismissed and they should be paid for the period between dismissal and reinstatement, taking into account any sums paid by way of notice, where that has been paid.

5. Chapter 5

Disciplinary Procedures

Application of the disciplinary and appeal procedures - Overview

Figure 8: Overview flowchart for handling a formal disciplinary matter



5.1 Disciplinary Overview

Disciplinary general principles

5.1.1 An employee whose conduct or performance becomes unsatisfactory will be dealt with through the Discipline and Appeal procedure set out in chapter 6, NTF/NARS Disciplinary and Dismissal agreement. This chapter sets out how to apply that procedure.

There are template letters in the appendices to this chapter, and guidance notes for use in meeting see Guidance notes for disciplinary meeting and Checklist of procedure prior to dismissal

5.1.2 Employers should bear in mind that:

- even if an employee is guilty of an offence for which he has been dismissed, the employer may lose at an Employment Tribunal if he has not followed a fair procedure or if the dismissal is considered too severe a penalty for the offence committed.
- every employee has the right to be accompanied throughout the procedure by a colleague or union representative, other than at an investigation meeting.
- employers should ensure that any senior staff with authority to dismiss employees are fully aware of the requirements.
- employers should be consistent in their approach to disciplinary matters.
- employers must wherever possible have the various stages dealt with by different members of staff, so that one person investigates, another person deals with the disciplinary hearing and a further person is available to hear any appeal.

5.2 Procedures

Informal warnings

5.2.1 If informal action is appropriate, the employer should talk to the employee in private to try to resolve the problem and bring about a way to improve the conduct or performance. Where improvement is required, the employer should make sure that the employee understands what needs to be done, when the performance or conduct will be reviewed and over what period. The employer should diarise a note of the informal warning and it may be useful to confirm in writing what has been decided, though it should be made clear that it is informal.

The employer must be careful that any informal action does not turn into formal disciplinary action as it may be that the employee is then denied certain rights, such as the right to be accompanied.

If during an informal discussion, it becomes apparent that the matter should be dealt with formally, then the employer should adjourn the meeting and advise the employee that he is going to commence the formal process.

Formal Warnings and Disciplinary Dismissals

5.2.2 Where formal action is appropriate; The basic steps are

- investigate
- advise employee of problem in written invitation to meeting
- hold a formal meeting
- notify employee of outcome and right to appeal
- hold an appeal meeting if employee appeals.

The employer must establish the facts of the case and then follow as a minimum the guidance set out below at Formal Disciplinary Action – the procedure. If these stages are not followed and an employee is successful in claiming unfair dismissal any compensation awarded to the employee could be increased by up to 25%.

Formal Disciplinary Action – the procedure

Stage 1. Establish the facts of the case – Investigation

5.2.3 Carry out any necessary investigation of a potential disciplinary matter without unreasonable delay.

Practical advice on carrying out investigations is set out at 5.11 Disciplinary Investigations. This may involve holding an investigatory meeting with the employee before proceeding to any disciplinary hearing or may just be the collation of information by the employer for use at the disciplinary hearing.

In misconduct cases, where practical, different people should carry out the investigation and disciplinary hearing. The investigation should ideally be carried out by someone with suitable seniority who has not previously been involved in the matter.

An investigatory meeting must not of itself result in any disciplinary action.

There is no statutory right for the employee to be accompanied at an investigatory hearing.

5.2.4 Suspending an employee

Suspension should not be used as a disciplinary action - it is to allow the employer to carry out the disciplinary or grievance investigation if there's a serious issue.

It is a paid suspension.

The situation should be carefully considered before deciding to suspend someone and it should not be a "knee jerk" reaction.

ACAS guidance is that the employer should only consider suspension if the employer believes it is needed to protect any of the following:

- the investigation – for example if the employer is concerned about someone damaging evidence or influencing witnesses
- the business – for example if there is a genuine risk to customers, property or business interests
- other staff
- the person under investigation

and the employer should also consider if there is an alternative to suspension. ACAS suggests alternatives include those listed below - some of which may or may not be practicable depending on the person's role and the size or layout of the business:

- changing shift patterns
- working in a different part of the organisation/working from home
- stop doing part of their job – for example stop handling stock if the employer is investigating a large amount of stock going missing
- working away from customers if investigating a serious complaint from a customer
- stop using a specific system or tool – for example if investigating a large amount of missing money, you could remove access to the finance system

The reason for any temporary change should be kept confidential where possible and the employer should discuss with the employee what others will be told about the change.

It may be an issue where there are two employees affected – if deciding between moving two people, ACAS guidance is that the employer should act fairly and reasonably – if the employer needs to separate 2 people after one has made a complaint against the other, you should not remove the person who made the complaint. That could be seen as a punishment. In all situations you should support the wellbeing and mental health of both people involved and encourage them to seek support if needed.

Any period of suspension should be as brief as possible, should be kept under review and it should be made clear that the suspension itself is not a disciplinary action. It is advised that it is confirmed to the employee in writing that the suspension is not a disciplinary action but is to enable the investigation and disciplinary procedure to be carried out and that the employer will continue to keep it under review.

Suspension should only be imposed after careful consideration and should be reviewed to make sure it is no longer than necessary.

If suspending an employee, the employer should consider the wellbeing and mental health of the person being placed on suspension and plan what support they will provide during the period.

Where an external body is investigating

If an employee is being investigated by the police or a regulatory body such as the BHA, the employer does not automatically have to suspend the employee and the decision should be made on the individual situation. It may be that the BHA or National Safeguarding Panel suspend the employee from working in a licenced yard in which case the employer will need to place the employee on suspension and take advice on the specific situation as to options that are available.

The ACAS guidance can be found here:

https://www.acas.org.uk/suspension-during-an-investigation

Stage 2. Inform the employee of the problem

5.2.5 After the investigation has been completed, the employer must notify the employee in writing that there is a disciplinary matter which the employer wishes to address and that disciplinary action including (where applicable) dismissal may result.

- This letter must invite the employee to a meeting at an agreed time and place.
- A reasonable amount of notice of the meeting must be given to the employee – say 5 days unless there are circumstances which make dealing with it sooner reasonable. It is important to ensure that the employee has sufficient time to prepare his or her case and to arrange for a companion to attend the meeting with them.
- The letter should contain sufficient information about the alleged misconduct or poor performance and its possible consequences so that the employee can prepare to answer the case at the disciplinary meeting.
- It would normally be appropriate to provide copies of any written evidence, such as any witness statements, with the notification.
- Where an employer or employee intends to call relevant witnesses, they should give advance notice that they intend to do this.

- The employee has a statutory right to be accompanied by a union representative or a work colleague at a meeting which could result in a formal warning being issued or dismissal – see Right for employee to be accompanied (chapter 15).

5.2.6 If the employee advises that their chosen companion cannot attend at the time specified for the meeting, then the employer must allow the employee to offer a reasonable alternative time within five days of the original date. If the employee cannot attend the meeting through circumstances outside of their control, such as illness, then the employer should also re-arrange it.

There are checklists and advice on conducting a meeting at Guidance notes for disciplinary meeting

5.2.7 There is a sample invitation letter for poor performance, general misconduct, first or second offence at Template20 Invitation to disciplinary meeting (performance or general misconduct, first or second offence).

5.2.8 There is a sample invitation letter for gross misconduct at Template21 Invitation to disciplinary meeting (gross misconduct).

Stage 3. At the meeting

5.2.9 the employee should be told it is a disciplinary hearing and of the offence of which he or she is accused or if the meeting relates to poor performance, the nature of the poor performance

The employee has the right to have a work colleague or union representative attend with them.

The employer should explain the complaint against the employee and go through the evidence that has been gathered. The employee should be allowed to set out their case and answer any allegations that have been made.

The employee should also be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses.

The employee should also be given an opportunity to raise any points about information provided by the witnesses. There is guidance on conducting meetings at Guidance notes for disciplinary meeting.

Stage 4. Notify employee of outcome of meeting

5.2.10 Following the meeting, the employer (or manager holding the meeting) must decide whether or not disciplinary or other action is justified.

The employer must inform the employee in writing of the outcome and the right of appeal and provide the employee with a copy of any minutes taken at the meeting (it may in certain circumstances be necessary to withhold some information e.g. to protect a witness).

The employer must advise the employee in that letter that the employee has a right of appeal against the decision and how to exercise that right.

First warning – unsatisfactory performance If the meeting relates to unsatisfactory performance, the employee should be given an improvement note setting out the problem, the improvement required, the timescale for achieving it, a review date and any support including training, which the employer is able to provide (see Template22 Notice of written warning/improvement or final written warning (to be amended depending on whether it is a misconduct or poor performance issue).

The notice should also state that it represents the first stage of a formal procedure and is equivalent to a first written warning and that failure to improve could lead to a final written warning and ultimately dismissal. The time frame for appeal should also be set. A record of the warning should be kept but disregarded for disciplinary purposes once the length of the warning has expired (6 months is appropriate).

or

5.2.11 **First warning – misconduct** if the meeting relates to misconduct, the employee should be given a written warning setting out the nature of the misconduct and the change in conduct required see Template22 Notice of written warning/improvement or final written warning (to be amended depending upon whether it is a misconduct or poor performance issue)

This warning should advise the employee that further misconduct could lead to a final written warning and ultimately dismissal. The time frame for appeal should also be set. A record of the warning should be kept but disregarded for disciplinary purposes once the length of the warning has expired (6 months is appropriate).

If the employer reasonably believes that the employee's unsatisfactory performance is sufficiently serious it may be justifiable to move directly to a final written warning.

5.2.12 **Final written warning** Where the outcome of the meeting is a final written warning. This would be appropriate where the employee already has a valid current warning or if the nature of a first offence is serious enough to warrant it but not serious enough to justify dismissal. The final written warning must specify the length that it will remain in effect, for example 6 or 12 months. It should also state that further misconduct or unsatisfactory performance may lead to a dismissal. The time limits for appeal should also be set out. There is a template letter at Template22 Notice of written warning/improvement or final written warning (to be amended depending upon whether it is a misconduct or poor performance issue)

5.2.13 **Dismissal** Where the outcome of the meeting is dismissal, the employee should be advised of this (see Template25 Letter advising of dismissal)

This would be appropriate where the employee has a current final written warning about conduct or performance or for use where the employee is being dismissed for gross misconduct. Note dismissal is unlikely to be a reasonable response to a first offence of misconduct or poor performance unless it is gross misconduct.

Other sanctions

If using a contract which contains the right, then an employer may decide that where an employee is on a final warning and there is further misconduct which may warrant dismissal, that the employer will instead impose suspension or demotion. Any such penalty must be confirmed in writing and the procedures and time limits for appeal set out. The letters to the employee about the proposed disciplinary action will need to be amended to refer to the right to impose some other sanction as contained in the contract. The NTF employment contract from 2008 onwards contains the right for an employer to suspend without pay or demote as an alternative to dismissal.

Stage 5. Right to appeal and appeal

5.2.14 If an employee appeals against a disciplinary decision the employer should arrange for the appeal to be heard without delay, say within 5-7 days. The employer should write to the employee inviting him or her to the appeal meeting – see Template23 Letter to employee arranging appeal meeting against a formal warning or Template24 Letter to employee inviting to appeal meeting to hear appeal against dismissal.

The employee should let the employer know the ground(s) for the appeal in writing.

The appeal should be dealt with if possible by a manager not previously involved in the case

Employees have a statutory right to be accompanied at appeal hearings.

See Conducting an Appeal Meeting for procedure at the meeting

5.2.15 The employee should be informed in writing of the results of the appeal hearing as soon as possible see Template24 Notice of outcome of appeal against warning or Template27 Letter notifying of result of appeal against dismissal

In all cases, we recommend that the checklist at Figure 10 is completed to record the steps that have been taken. (see Checklist of procedure prior to dismissal

5.3 Conduct

Misconduct

5.3.1 This will be where the employee was to blame for deliberate or careless action, inattention or conduct which he has the power to correct. Unacceptable conduct is classified as either

- general misconduct
- serious misconduct (also called gross misconduct)

General misconduct

5.3.2 This is any conduct which does not justify immediate dismissal and which can be corrected by the employee. For example lateness, absence (where there is no lawful reason), poor work, laziness, lack of co-operation (where absence due to illness see sickness absence advice at Chapter 10 Sickness Absence)

For general misconduct the warning procedures must be applied and dismissal is unlikely to be appropriate for a first offence. If dismissal is the eventual outcome, notice or money in lieu must be given. The procedures set out in 5.2.3 Formal Warnings and Disciplinary Dismissals must be completed before any formal warning is issued or an employee is dismissed.

Serious misconduct

5.3.3 This is any conduct which goes to the root of the contract and justifies dismissal. Types of conduct which fall within this category are listed below:

- falsification of records
- deliberate disregard of safety rules or precautions
- theft
- abuse of property
- fighting, threatened assault or intimidation
- drunkenness or abuse of drugs
- refusal to carry out a reasonable instruction
- abusing a horse
- serious breach of trust and confidence towards the employer's business. This list is not exhaustive.

5.3.4 For serious misconduct the warning procedures are not normally appropriate but the full five stage procedure Formal Disciplinary Action – the procedure (chapter 5.2.3) must be completed.

If after completing the procedure it is decided to dismiss the employee, it is summary dismissal i.e. without notice or money in lieu of notice.

Capability due to lack of skill or aptitude (but excluding incapacity)

5.3.5 Sometimes a disciplinary problem may turn out to be a question of capability. Incapacity and long term illness is dealt with separately in chapter 10 Managing long term absences.

5.3.6 It may be that the poor performance on the part of the employee can be corrected thus avoiding the need to dismiss. The employee should be given warnings in the style of improvement notes see 5.2.3 Formal Disciplinary Action – the procedure so that the employee knows what is expected of him and the timescale in which improvement is expected. If necessary assistance should be made available to the employee to help him improve his performance including training where appropriate.

5.3.7 If after warnings the employee does not improve, then the employer may decide to dismiss. If deciding to dismiss, the steps at Formal Disciplinary Action – the procedure (see 5.2.3) must be carried out once the warning procedure has been exhausted. If the contract permits, the employer may be able to move the employee to another job (if one exists and initially on a trial basis).

5.4 Deciding what disciplinary penalty is appropriate

Disciplinary penalty

5.4.1 ACAS gives guidance as follows on what to consider when deciding whether a disciplinary penalty is appropriate and if so, what form it should take:

- whether the rules of the organisation indicate what the likely penalty will be as a result of the particular misconduct (for example, the NTF/NARS agreement refers to what may constitute gross misconduct or yards may have other rules of their own)
- the penalty imposed in similar cases in the past
- whether standards of other employees are acceptable and that this employee is not being unfairly singled out
- the employee's disciplinary record (including current warnings), general work record, work experience, position and length of service
- any special circumstances which might make it appropriate to adjust the severity of the penalty
- whether the proposed penalty is reasonable in view of all the circumstances
- whether any training, additional support or adjustment to the work is necessary.

5.4.2 Whilst employers should be consistent and it should be clear what normal practice is for dealing with the kind of misconduct or unsatisfactory performance under consideration, it does not mean that all similar offences will always call for the same disciplinary action. The employer should look at each case on its own merits and take any relevant circumstances into account, such as health or domestic problems, provocation, justifiable ignorance of the rule or standard involved or inconsistent treatment in the past.

5.5 Overlapping grievance and disciplinary issues

5.5.1 If the employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary issues are related it may be appropriate to deal with both issues concurrently.

5.6 Unresolved Disputes

5.6.1 Where efforts following the disciplinary procedure have not succeeded in resolving a dispute and the dispute may result in a formal employment tribunal claim (i.e. the employee may make a claim for unfair dismissal or discrimination) but no claim has yet been made, the ACAS Pre-Claim Conciliation Service should be considered.

- This is a free service available nationally to employers and employees.
- To access this service, the employer, the employee or their representative contacts the ACAS helpline on 08457 474747.
- Once a party has asked for pre-claim conciliation, ACAS will talk through the different courses of action available and then invite the other party to discuss the issues.
- If a basis for settlement is reached, then the ACAS conciliator will also offer to help draw up a binding agreement recording the terms.
- If conciliation fails for whatever reason, the employee retains any right they had to enter a formal complaint to the Employment Tribunal should they so choose, at which point ACAS would again offer conciliation.
- More information, including the leaflet Pre Claim Conciliation Explained can be found on the ACAS website: www.ACAS.gov.uk

5.7 Disciplinary – some special cases and miscellaneous information

Evaluating the evidence

5.7.1 There are likely to be occasions where the it is “he said/she said” or there is contradicting evidence. Perhaps one employee states that an

incident happened on a Tuesday whereas the other employee says it was the Wednesday. The employer should look at what evidence there is that may support one recollection more than the other, so perhaps there is a document that backs it up, or it may be that the employer considers one side more credible than the other. Perhaps that that person has been more consistent in their evidence and there is other cogent evidence that makes the employer prefer their evidence. The employer should make notes of why they decided they believed one person over another.

Employees with difficulty reading and where English is not the first language

5.7.2 The employer needs to ensure that any correspondence sent as part of the disciplinary process has been read and understood and also that the employee at meetings follows what is being said. The employer should consider if it is necessary to provide an interpreter or for another employee who is able to translate to assist. There is a risk if using someone other than a trained interpreter that the conversation may not be translated properly either negligently or deliberately If the employer does decide that it is appropriate to use an interpreter or another employee to assist in translating then the employee will still have the right to be accompanied by a work colleague or a union representative.

Trade union officials

5.7.3 Normal disciplinary standards should be applied to the conduct of trade union officials where they are employees of a particular yard. However, disciplinary action against a trade union representative must be carefully handled to ensure that it cannot be construed as an attack on the union and under the NTF NARS agreement no sanction will be imposed upon a trade union official without the matter first being discussed with a senior or full time official of the trade union and it is good practice depending on the circumstances for the employer to discuss the issue at an early stage with an official employed by the trade union. The employer should obtain the employee's agreement to this before approaching the union. The purpose of involving the trade union at an early stage is to avoid any perception that the employee is being treated unfavourably because of their trade union work. An employee who is a trade union represent should not be subjected to a detriment or penalised because of the trade union activities – if an employer has concerns that an employing is abusing or behaving inappropriately in their role as a union representative then contact the NTF or other adviser for advice.

Suspected drug or alcohol problems

5.7.4 The NTF/NARS drug and alcohol policy is set out at Drug and Alcohol Policy**Error! Reference source not found.** in this guide. This provides guidance and advice upon handling a misconduct or performance issue where the employer suspects that the misconduct or poor performance is due to drug or alcohol misuse – see section of the policy headed "Disciplinary Action". The NTF and NARS encourage employers to consider whether it is appropriate to approach the presenting issue as a supportable health matter and not solely as a disciplinary matter.

Issues outside of work Criminal charges or conviction

5.7.5 If an issue arises outside of work, such as an employee alleging another employee has assaulted them, the employer will need to consider the extent it impacts upon the workplace and whether it is within the scope of the business to deal with it. If it impacts on work relationships, the reputation of the business or perhaps the employee is unable to do their work because of it then it is likely the business will need to investigate and take any disciplinary action that may be appropriate. That may well be being carried out alongside a grievance from another employee.

5.7.6 If an employee is charged with or convicted of a criminal offence, the employer must examine whether the employee's conduct or conviction merits action because of its employment implications and not take disciplinary action or dismiss solely because of the charge or conviction. There is more information on safeguarding investigations where the police are involved in chapter 12.

Request from employee for written reason for dismissal

5.7.7 An employee with two years or more service has the right to request a written statement of the reason for dismissal. If an employee requests this from an employer, then the employer should provide it within 14 days of the request.

It is good practice to give written reasons for all dismissals.

If a woman is dismissed during pregnancy or maternity or adoption leave, she is automatically entitled to a written statement of the reason for her dismissal without having to request and regardless of the length of service.

Use of expired warnings

5.7.8 A decision to dismiss should not be based on an expired warning.

Employee repeatedly unable to attend a disciplinary meeting

5.7.9 See advice in main chapter on re-arranging meetings.

If it is a case that the employee is repeatedly unable or unwilling to attend a meeting, the employer will need to consider how to progress.

Where an employee continues to be unavailable, the employer may decide to proceed on the evidence available although it is advised that the employer takes advice from the NTF or other adviser before proceeding on that basis.

Disciplinary record keeping

5.7.10 Employers should keep records of:

- The complaint against the employee
- The employee's defence
- Findings made and action taken
- The reason for actions taken
- Whether an appeal was lodged
- The outcome of the appeal
- Any grievances raised during the disciplinary procedure
- Subsequent developments
- Notes of any formal meetings.

Records should be treated as confidential and kept no longer than necessary in accordance with the General Data Protection Regulations (GDPR).

Employers are reminded that the GDPR gives employees the right to request and have access to certain personal data.

Employers are able to record disciplinary meetings as well as taking notes. If the meeting is being recorded the employee should be advised of that at the start of the meeting.

Template 20: Invitation to disciplinary meeting (performance or general misconduct, first or second offence)

Dear [**name**]

Date

I am writing to advise you that you are required to attend a disciplinary meeting on [**date, time and location**].

At this meeting the question of disciplinary action against you, in accordance with the NTF/NARS disciplinary procedure will be considered with regard to [**nature of offence and sufficient information so that employee knows what the alleged performance or misconduct issue is**].

I enclose the following documents [**witness statements etc if available or forward separately before meeting if not available**]*

The possible consequences of this meeting are [**insert as appropriate an improvement notice (capability), a first warning (misconduct), a final warning or dismissal**]**

You are entitled, if you wish, to be accompanied by another work colleague or a trade union representative.

We refer you to the Employee Privacy Notice issued to you for information on how we process your personal data and sensitive personal data and your rights relating to such data. A further copy of the Employee Privacy Notice is available on request.

Yours sincerely

Template 21: Invitation to disciplinary meeting (gross misconduct)

Dear [**name**]

Date

I am writing to advise you that you are required to attend a disciplinary meeting on [**date, time and location**].

At this meeting the question of disciplinary action against you, in accordance with the NTF/NARS disciplinary procedure will be considered with regard to [**nature of offence and sufficient information so that employee knows what the alleged performance or misconduct issue is**] which may constitute gross misconduct under the NTF/NARS agreement (copy enclosed).

I enclose the following documents [**witness statements etc if available or forward separately before meeting if not available**]*

The possible consequences of this meeting are [**insert as appropriate an improvement notice (capability), a first warning (misconduct), a final warning or dismissal including dismissal without notice**]**

You are entitled, if you wish, to be accompanied by another work colleague or a trade union representative.

We refer you to the Employee Privacy Notice issued to you for information on how we process your personal data and sensitive personal data and your rights relating to such data. A further copy of the Employee Privacy Notice is available on request.

* delete as appropriate

** if other disciplinary sanction such as demotion is being considered, the employer should mention this in the letter as a possible outcome. It should be noted that demotion can only be used as a disciplinary sanction where the employee provides written consent to this or a right to do so is contained in the contract. The NTF contract issued from 2008 onwards contains a right for employers to demote an employee in exceptional circumstances as an alternative to dismissal.

Template 22: Notice of written warning/improvement or final written warning [to be amended depending upon whether it is a misconduct or poor performance issue]

Dear [**name**] Date

You attended a disciplinary hearing on [**date**] and I am writing to inform you of the outcome of the meeting which is a written warning/improvement notice/final written warning*

This warning/improvement note* will be placed on your personal file but will be disregarded for disciplinary purposes after a period of [six] months, provided your conduct improves/performance reaches a satisfactory level*. For disciplinary purposes an improvement note is equivalent to a warning.

1. the nature of the unsatisfactory conduct or performance was [**insert details**]*
2. the conduct or performance improvement expected is [**insert details**]*
3. the timescale within which the improvement is required is [**insert details**]*
4. the likely consequences of further misconduct or insufficient improvement is a final warning/dismissal*

You have the right to appeal against this decision in writing to [**name**] within [5] days of receiving this disciplinary decision.

We refer you to the Employee Privacy Notice issued to you for information on how we process your personal data and sensitive personal data and your rights relating to such data. A further copy of the Employee Privacy Notice is available on request.

Yours sincerely

* amend/delete as appropriate

Template 23: Letter to employee arranging appeal meeting against a formal warning

Dear [**name}** Date

You have appealed against the written warning/improvement notice/final written warning* confirmed to you in writing on [**date**].

Your appeal will be by [**name**] on [**date and time**] at [**location**]

You are entitled to be accompanied by a work colleague or a trade union representative.

The decision of this appeal meeting will be final and there will be no further right of review.

We refer you to the Employee Privacy Notice issued to you for information on how we process your personal data and sensitive personal data and your rights relating to such data. A further copy of the Employee Privacy Notice is available on request.

Yours sincerely **amend as appropriate*

Template 24: Notice of outcome of appeal against warning

Dear [**name**] Date

You appealed against the decision of the disciplinary hearing that you be given an improvement note/a warning/a final warning* in accordance with the NTF/NARS disciplinary procedure.

The appeal hearing was held on [**date**].

I am now writing to inform you of the decision taken by [**name**] who conducted the appeal hearing, namely that the decision to [**insert the disciplinary action**] stands/be revoked*.

[**then specify if no disciplinary action is being taken or if there is reduced disciplinary action being taken**].

We refer you to the Employee Privacy Notice issued to you for information on how we process your personal data and sensitive personal data and your rights relating to such data. A further copy of the Employee Privacy Notice is available on request.

You have now exercised your right of appeal under the NTF/NARS procedure and the decision is final.

Yours sincerely

* The wording should be amended as appropriate

Template 25: Template Letter advising of dismissal

Dear [**name**] Date

On [**date**] you were informed that [employer's name] was considering dismissing or taking disciplinary action against you. You attended a disciplinary hearing on [**date**]. Following that meeting it was decided that:

Your conduct/performance was still unsatisfactory and you will be dismissed. I am therefore writing to confirm the decision that you be dismissed and that your last day of service with the company will be [put in termination date]. The reason/s for your dismissal is/are [**give reason/s**].

or

Your conduct is considered to have amounted to gross misconduct and you will be dismissed. I am therefore writing to confirm the decision to dismiss you and your last day of service with the company will be [put in termination date, for gross misconduct no notice is given].

or

Your conduct/performance was still unsatisfactory and the following disciplinary action will be taken against you. The reason[s] for this disciplinary action are [**give reason/s**].

or

No further action would be taken against you*

You have the right to appeal against this decision in writing to [**name**] within [5] days of receiving this disciplinary decision.

We refer you to the Employee Privacy Notice issued to you for information on how we process your personal data and sensitive personal data and your rights relating to such data. A further copy of the Employee Privacy Notice is available on request.

Yours sincerely [*use appropriate paragraph and amend/delete as appropriate]

Template 26: Letter to employee inviting to appeal meeting to hear appeal against dismissal

Dear [**name**]

Date

You have appealed against your dismissal on [**date**] confirmed to you in writing on [**date**].

Your appeal will be heard by [**name**] at [**location**] on [**date and time**]

You are entitled, if you wish, to be accompanied by a work colleague or a trade union representative.

The decision of this appeal meeting will be final and there will be no further right of review.

We refer you to the Employee Privacy Notice issued to you for information on how we process your personal data and sensitive personal data and your rights relating to such data. A further copy of the Employee Privacy Notice is available on request.

Yours sincerely

Template 27: Letter notifying result of appeal against dismissal

Dear [**name**]

Date

You appealed against the decision of the disciplinary hearing that you be dismissed.

The appeal meeting was held on [**date**].

I am now writing to inform you of the decision taken by [**insert name of person making the decision**] who conducted the appeal meeting, namely that the decision to dismiss stands/the decision to dismiss be revoked.*

[**If no disciplinary action is being taken or there is new disciplinary action being taken, then that should be specified**]

You have now exercised your right of appeal under the NTF/NARS/Company's Disciplinary Procedure and this decision is final.

We refer you to the Employee Privacy Notice issued to you for information on how we process your personal data and sensitive personal data and your rights relating to such data. A further copy of the Employee Privacy Notice is available on request.

Yours sincerely

* delete as appropriate

Guidance notes for disciplinary meeting

5.8 Preparing for the meeting

Ensure employee has been invited to a meeting

Ensure all relevant facts are available, such as disciplinary records, and any witness statements

If possible arrange for someone who is not involved in the case to take notes and act as a witness to what was said

Check if there are any special circumstances to be taken into account - this would be if there are personal or other outside issues affecting the performance or conduct

If using evidence from someone who wants to stay anonymous, this can be done but it is important to take a written statement, try to obtain corroborative evidence and consider if there may be ungenuine motives

Allow the employee time to prepare his or her case

Copy any relevant papers and witness statements to the employee in advance

If the employee is a trade union representative, bear in mind that the NTF NARS disciplinary procedure states that no sanction will be imposed on a trade union official without the matter first being discussed with a senior or full time official of the trade union. Depending on the circumstances it may be appropriate to seek consent from the employee to discuss the case with a full time trade union representative before the disciplinary meeting.

Arrange for the meeting to held as privately as possible with no interruptions

Allow the employee to call witnesses or submit witness statements

Consider if an interpreter or facilitator is needed

Make provision for any reasonable adjustments to accommodate the needs of a person with disabilities.

5.9 Conducting a disciplinary meeting

Introduction

Introduce those present and explain why they are there.

If employee has a companion, explain who they are and their role.

Explain that the purpose of the meeting is to consider whether disciplinary action is to be taken in accordance with the company's disciplinary procedure.

Explain how the meeting will be conducted

Statement of complaint

The employer should explain what the complaint against the employee is and outline the case by going through the evidence

Ensure the employee and his or her companion have seen any statements made by witnesses and are able to question them

Employee's reply

The employee should be asked to put their case and answer any allegations.

Allow the employee to ask questions, present evidence and call witnesses

Allow the accompanying person to ask questions and permit the companion to confer in private with the employee.

Establish if the employee accepts that they have done wrong or that they are under-performing. If so then agree the steps that should be taken to remedy the situation.

Witnesses

If a witness cannot attend, the evidence can be used if it is clear that the verbal evidence would not affect the substance of the complaint. It may be necessary to adjourn to allow questions to be put to a witness who cannot attend in person but has prepared a witness statement.

General discussion

Establish all facts if any are in doubt.

Ask the employee if they have any explanation for the alleged misconduct or underperformance.

Ask the employee if there are any special circumstances that should be taken into account.

If it becomes clear at this stage or any stage that the employee has provided an adequate explanation or there is no real evidence to support the allegation then the employer may close the

proceedings but it would be advisable to confirm the position in writing.

The employer should encourage the employee to speak freely with a view to establishing the facts.

Do not get involved in arguments or humiliating remarks and avoid physical contact or gestures which could be misinterpreted.

If new facts emerge it may be necessary to adjourn the meeting to investigate them and then reconvene the meeting.

It may be appropriate to take "time out" of a meeting if the employee is becoming upset or to adjourn and reconvene on another day. This does not mean that the issue should be avoided and not dealt with however.

It is also good practice to ask the employee if they have had a fair meeting. If the employee says that they have, then it will be more difficult for them to argue at a later stage that the meeting was conducted unfairly. If the employee says that they have not had a fair meeting, then there is an opportunity to consider anything they wish to say about the conduct of the meeting before it is closed.

Summing up the meeting

The employer should summarise the main points of the discussion This should ensure that nothing is missed

The employer should ask the employee if they have anything further to say. This will help demonstrate to the employee that they have been treated reasonably.

The decision

The employer must adjourn the meeting before a decision is taken as to whether a disciplinary penalty is appropriate.

Hints on questioning

Ask open ended questions, such as "what happened then?" to get a broad picture.

Ask precise closed questions requiring a yes/no answer only when specific information is needed.

Issues that may arise during the meeting

If the employee raises a grievance during the meeting, the employer must consider whether it is appropriate t o stop the meeting and suspend the disciplinary process. This may be appropriate where the grievance relates to a conflict of interest with the person holding the disciplinary meeting, where there may be bias in the conduct of the disciplinary meeting, where the person holding the meeting does not have all the information or where there is possible discrimination.

Disciplinary Procedures

5.10 The Appeal Meeting

Conducting an Appeal Meeting

The person hearing the appeal should:

introduce those present, explaining their presence if necessary

explain the purpose of the meeting, how it will be conducted and the powers the person/people hearing the appeal have

ask the employee why he or she is appealing.

If there is any new evidence introduced, pay particular attention to it and ensure the employee has the opportunity to comment upon it.

It is also good practice to ask the employee if they have had a fair meeting. If the employee says that they have, then it will be more difficult for them to argue at a later stage that the meeting was conducted unfairly. If the employee says that they have not had a fair meeting, then there is an opportunity to consider anything they wish to say about the conduct of the meeting before it is closed.

Once all the relevant issues have been thoroughly explored, summarise the facts and call an adjournment to consider the decision

A previous decision should be changed if it becomes apparent that it was not soundly based.

If the decision is overturned, the employer should consider if there is any training for senior managers required, do rules require clarification or are there other actions required or implications to be considered.

Inform the employee of the results of the appeal and the reasons for it and confirm it in writing. It should be made clear that the decision is final.

Remember – a property conducted appeal is an important part of the disciplinary process.

Figure 9: Checklist – dismissal process

Checklist of procedure prior to dismissal

Complete this form before dismissing an employee for misconduct or incapability (or taking disciplinary action such as a transfer, demotion or suspension without pay where the contract allows such other disciplinary action). This checklist must be read in conjunction with the advice given in this chapter.

See separate chapters for redundancy dismissals, retirement dismissals or dismissal for incapability due to ill health.

If any section cannot be completed, you should not proceed further without taking advice.

Before holding a meeting where dismissal is a possible outcome	✓
A full investigation has been carried out. Note, wherever possible a different person should hold the meeting to the person who carried out the investigation.	☐
The employee has received from the employer written notification of the meeting, which sets out what the employee is alleged to have done (misconduct) or the poor performance (incapability) which has led to the employer considering dismissal and that the letter warns that dismissal is a possible outcome of the meeting.	☐
The letter to the employee gives the evidence upon which the employer is relying and the background to the matter, including where appropriate reference to witness statements, any previous meetings or warnings, absence records etc. Witness statements should be enclosed.	☐
The letter informed the employee of his or her right to be accompanied by a work colleague or a trade union official.	☐
The letter was received by the employee so as to give him or her reasonable notice of the meeting.	☐
Date letter sent	

At the start of the meeting	✓
Ask the employee to confirm that he or she received the letter and any enclosures	☐
Ask the employee to confirm that he or she has had a reasonable opportunity to consider his or her response to the information in the employer's letter. If not, state the length of time the employee has had to consider his or her response and consider whether fairness demands postponing the meeting.	☐
If employee is not accompanied, check the employee has confirmed that he or she understands that he or she has the right to be accompanied but chose not to.	☐

Before concluding the meeting	✓
if matters have arisen in the course of the meeting that require further investigation, adjourn the meeting to allow the further investigations to be carried out.	☐
Ask the employee to confirm that he or she has been able to say all that he or she wants to about their case.	☐
Advise employee that they will be informed of the decision as soon as possible (give a timescale if possible)	☐
Date and time the meeting took place	

After the meeting	✓
After concluding the meeting, the employer should consider the decision. The decision should, where possible, be given to the employee face to face at a resumed meeting.	☐
Decision given to employee and confirmed in writing on [**date**]	☐
(Where decision to dismiss). The letter to the employee advising that the outcome of the meeting is dismissal, also advises the employee of their right to appeal (and advise that he or she must do so in writing, setting out the grounds of appeal and within a specified (probably 5) number of days of the decision).	☐

Disciplinary Investigations

5.11 Investigating misconduct

Importance of the investigation process

5.11.1 A fair investigation to gather all the relevant facts is key to a fair misconduct dismissal.

As well as interviewing witnesses or other employees who may have relevant information about an act of misconduct, it might be necessary to interview the employee who is accused of the misconduct.

It is essential to ensure that the investigation does not turn into a disciplinary meeting.

It is particularly important in bullying or discrimination cases where there may be various allegations being made that the investigation is carefully and thoroughly carried out and documented. In simple matters a formal investigation report may not be necessary although notes should always be made. There is more information on safeguarding investigations/investigations where the police are involved in chapter 12.

5.11.2 If an employee is reluctant to provide evidence, then the investigation should explore why, provide reassurance and seek to resolve any concerns.

5.11.3 The investigator should try to avoid anonymising witness statements whenever possible as it may disadvantage the employee under investigation as they will not be able to effectively challenge the evidence against them. Only in exceptional circumstances where a witness has a genuine fear of reprisals should an investigator agree that a witness statement is anonymised. However, if the matter becomes subject to legal proceedings, and it is necessary in the interests of fairness, an employer may be required to disclose the names of any anonymous witnesses.

Preliminaries for an investigation meeting

5.11.4 Before commencing an investigation ensure that there is sufficient time set aside and have somewhere private for the meeting where there are no distractions.

The person carrying out the investigation should consider what, if any, policies affect and if there is any personal interest. For example in an allegation about misuse of social media, consider whether the business has a social media policy and how that may affect the investigation. If there is personal interest, will that lead to potential conflict and if so can someone else carry out the investigation?

If more than one person is to be interviewed try to do as close together as possible to avoid collaboration

Before commencing an investigation, set out an action plan bearing in mind:

- What information is needed?
- Where can it be got from (records, interviews, recordings, documents)?

Arranging the investigation meeting

5.11.5 Invite the person to the meeting, explain the reason for the meeting and any right to be accompanied. There is no general right to be accompanied at an investigation meeting but the employer may decide to allow it. The employer should act consistently in deciding whether or not to allow people to be accompanied at investigation meetings. The employer should also consider if person's first language is not English or if unable to read documents.

5.11.6 There is a template letter at the end of this chapter for inviting an employee to an investigation meeting.

Questioning techniques

- Only ask relevant questions
- Try to obtain specific answers
- Respect requests for anonymity – take further advice if a witness requests this
- Ask open questions such as – "can you explain to me why?" or "can you tell me the reason that led you to that course of action?"
- Give scope for the person to think about the reply and provide information.
- Sometimes a closed question so "did you need more time to finish the job" can be useful particularly to build rapport or bring an interview back on the rails. That sort of question would then be followed up by "Why did you need more time".
- Avoid leading questions so don't say "you don't have any problem working with John do you?" or "your health is okay isn't it?"
- Avoid multiple questions in one go.

Listening techniques

- Have someone else there to take notes so that the investigator can concentrate on the questions and responses.
- Don't second guess what the person is going to say
- Don't interrupt or hijack the conversation
- Acknowledge answers
- Remember investigate not interrogate

At the meeting

The investigator should:

5.11.7 Remind employee of the seriousness and need for accuracy in their replies. If they don't know they should say.

Tell them of the reason for the interview – the investigator is trying to find out their involvement and their interpretation of what happened

Remind employee of confidentiality

Where appropriate, the investigator should reflect and check – so "just to confirm my understanding of what you have said….can you confirm that is right or wrong"

At the end of the meeting the investigator should summarise:

5.11.8 The investigator should note any refusal to answer questions and clear up any inconsistencies or contradictions – i.e. "I'm a little confused, at first you said you didn't see it, now you have said that you saw it but don't know who it was. Could you clarify that for me?"

Notes of meeting

5.11.9 Comprehensive notes should be made so the date, time, who is present, start and finish times, what was said, any breaks or adjournments.

Once those are drawn up, the note taker should send them to the investigator and employee and ask them to sign and agree them

Recording an interview meeting

5.11.10 This can be done - if employee refuses to give consent to recording, a note should be made of that.

Other evidence

5.11.11 The investigator should consider what other evidence is available such as emails, CCTV, telephone records, instant messages – data protection considerations should be borne in mind as well as the time frame for evidence that may only be kept for a short period, such as CCTV.

5.11.12 Evidence which the investigator does not consider to be helpful should not be held back. The investigation must be fair and reasonable. If evidence is not disclosed as part of the disciplinary process, it would need to be disclosed if a tribunal claim was brought or the employee may discover it through a subject access request.

After the investigation

5.11.13 After interviews have been completed and evidence gathered, the investigator should consider if there are any further actions, such as a further or re-interview of a witness if additional information has come to light.

5.11.14 The investigator should prepare a report on the circumstances that led to the investigation, nature of the alleged misconduct, how the investigation developed, information and evidence obtained,

statements, interview, documents, details of any weaknesses identified in any of the organisations procedures or instructions

This should then be evaluated either by the investigator or by someone given that duty.

The purpose of the investigation is to ascertain could the employee have done whatever is alleged - there will not always be conclusive evidence that they did.

Evaluate the evidence gathered

5.11.15 Is the disciplinary procedure to be invoked? If it is, then proceed to stage 2 at Formal Disciplinary Action – the procedure (see 5.2.3)

Are there any management training or changes within the business needed to be made? If so decide upon those and implement them.

Reminder - The investigation meeting is not a disciplinary meeting

5.12 Record of Investigation

5.12.1 This form of record does not have to be kept but could prove useful particularly in more complicated cases or where there is significant potential of a claim from an employee.

Date of meeting	
Investigating Officer	
Note taker	
Employee	
Time meeting commenced	
Introductions	Explain that the investigator is conducting an investigation in connection with xxxx and that xxxx is attending to take notes. Then (if it is the case) that would like to record the meeting as well and that the employee has the right to decline but that recording will assist in accuracy and be able to confirm any concerns over the accuracy of the note taker's minutes. The recording will only be referred to in the event of a discrepancy within the written notes or if legally required. The recording will be kept securely. Then ask for consent and write down whether that is given.
Purpose of investigation	Insert details with regard to the reason for the meeting [written notes to go in here with the name of who has said what]
To close meeting	Thank the employee for attending. Then advise that it is essential that confidentiality adhered to.
Time meeting closed	

5.12.2 This is for use as an aide memoire recording the outcomes of the investigation – again in simple matters a formal report like this will not be needed although a note should always be kept summing up the investigation and the reason for the conclusion that there is a disciplinary case to pursue or that no further action is considered necessary.

Bear in mind though that even whilst it is an aide memoire it could be used in a tribunal claim.

Purpose of Investigation

The purpose of the investigation was [**put in the details**]

The investigation was undertaken by [**name**] by means of a series of interviews and the examination of documents.

Interviews

The following employees were interviewed and an agreed written record of each interview was obtained:

Name	Job Title	Reason for Interview	Date

Documents

The following documents have been examined:

Findings

[insert a summary of the findings and also include if didn't find the answer to something, i.e. no one witnessed the event]

I find/conclude that: [note this is not a disciplinary decision, this sets out the findings from the *investigation for example "the employee's evidence and that of the head lad is contradictory. The head lad's statement is supported by the witness statement of two other employees".]*

Recommendations

When reviewing the findings the Investigating Officer should consider the following options and recommendations which are available to them:

- No further action required
- Inconclusive for lack of evidence (consider if any avenues of evidence have not been investigated)
- Recommend that the matter be dealt with informally
- Recommend that the matter proceed to a Disciplinary Hearing

and consider the overall main conclusions, specifically whether there is sufficient evidence to proceed to the formal disciplinary procedure or not.

Invite letter to investigation meeting

Date

Dear

We are currently in the process of conducting an investigation into [*put what is being looked into*]

I am writing to invite you to attend an investigation meeting on ……at……..so that I may discuss this matter with you.

In attendance at the meeting will by myself and [*name of note taker*] who will be present to take notes. Please bring with you any information that you think might be useful to the investigation.

*If you wish, you may be accompanied by a trade union representative or a colleague. However, your companion will not be able to answer questions on your behalf**

To ensure the investigation can be conducted as fairly as possible we request that you keep this matter, and anything discussed at the investigation meeting, confidential. Any breach of confidentiality may be considered to be a disciplinary matter.

Yours sincerely

* Employees do not have the statutory right to be accompanied at disciplinary investigation meetings but you can allow them to be accompanied if you wish. . If you do not notify the employee of the right to be accompanied, then you must be very careful that the investigatory meeting does not turn into a disciplinary hearing which could result in a warning or other sanction.

6. Chapter 6

NTF /NARS Disciplinary and Dismissal agreement

AGREEMENT BETWEEN THE NATIONAL TRAINERS FEDERATION & THE NATIONAL ASSOCIATION OF RACING STAFF ON DISCIPLINE AND APPEAL PROCEDURES

Agreement

1. This Agreement is effective from 15th February 2018. This updated agreement reflects the change in name of the National Association of Racing Staff (formerly National Association of Stable Staff).

Purpose

2. To maintain good relations with justice in a yard so that horses can be prepared for racing at the highest possible standards.

3. To ensure consistent and fair treatment of disciplinary and performance issues and to help and encourage employees to achieve and maintain appropriate standards of conduct and performance.

General Principles

4. The purpose of this document is to set out the current procedure and rules for the handling of disciplinary matters. It does not confer any contractual rights.

5. The employer and his or her managers can choose to deal with minor instances of initial unsatisfactory levels of performance or misconduct informally, by way of counselling, guidance or instruction or by informally cautioning the employee. The employer may wish to diarise a record of this.

6. If a problem continues or the employer or his or her manager judges it to be sufficiently serious, the procedure will apply.

7. The employer will not dismiss any employee for a first offence, unless the offence amounts to gross misconduct (see section on gross misconduct below) in which case the employee will be dismissed without notice and without payment in lieu.

8. The employer will not usually take any formal disciplinary action under this procedure without:

8.1 having carried out a prompt investigation. The employer will inform the employee whether any meeting he or she is asked to attend is investigatory or disciplinary.

8.2 giving or sending a letter setting out the complaint made against him or her and possible outcomes of the disciplinary hearing. The letter will also inform the employee that he or she must attend a disciplinary hearing to discuss the matter and confirm the time, date and location of the meeting. Any employee who has difficulty understanding such a letter should ask the employer or his or her office for an explanation.

8.3 before the meeting, providing the employee with relevant evidence (for example witness statements, anonymised if appropriate)

8.4 giving the employee a reasonable opportunity to consider his or her response to that information

8.5 explaining the employer's case at the meeting and giving the employee an opportunity to put his or her case in respect of the allegations made. The employee has the right to answer any allegations made, is allowed to ask questions, present evidence, call relevant witnesses and raise points about information provided by witnesses.

9. Employees have the right to appeal against any formal action taken against them under the procedure.

10. Depending upon the seriousness of the misconduct or poor performance or the employee's disciplinary record taken as a whole, the first written warning may be omitted and a final written warning issued.

11. Depending upon the circumstances, it may be appropriate to suspend the employee from work on full pay to enable the investigation to take place. Suspension on full pay does not amount to a disciplinary sanction.

12. If the employer has other policies which are relevant to disciplinary matters, such as a bullying/harassment policy, equal opportunities policy, and/or health and safety policy, then this procedure should be read as incorporating provisions relating to discipline in other such procedures.

13. No sanction will be imposed on a trade union official without the matter first being discussed with a senior or full time official of the trade union.

14. Each stage of this procedure will be carried out without unreasonable delay.

15. The company will keep records of any action taken under these disciplinary procedures. These will be treated as confidential.

Gross Misconduct

16. The following are examples of conduct falling within the definition of gross misconduct and which entitle the employer to dismiss without notice or payment in lieu:

i. falsification of records
ii. deliberate disregard of safety rules or precautions
iii theft, fraud or dishonesty
iv. abuse of property
v. fighting or bullying
vi. threatened assault or intimidation
vii. drunkenness or abuse of drugs
viii. refusal to carry out a reasonable instruction.
ix. abusing a horse
x. serious breach of trust and confidence towards the employer's business

This list is not exhaustive. It illustrates the type of conduct that normally amounts to gross misconduct.

17. If the employer is satisfied, following investigation and a disciplinary hearing, that the employee has committed gross misconduct, the employer will normally dismiss the employee without notice and without payment in lieu.

Other Misconduct or Poor Performance

18 In other cases coming within the ambit of this procedure a first offence will not ordinarily result in dismissal. Instead the employer may issue a formal warning to an employee, which may be a first written warning or a final warning as appropriate.

Conduct of Meetings under the Procedure, including Appeals

19. All disciplinary meetings, including appeals, will be held at a reasonable time and place. An employee who has been invited to attend a disciplinary meeting must take all reasonable steps to attend the meeting.

20. In any disciplinary proceedings under the procedure, including appeals, an employee has the statutory right reasonably to request to be accompanied by a fellow worker. The employee may alternatively be accompanied by a trade union representative. Where the companion is a trade union representative he or she must be either an employed official of the trade union or, alternatively, an official who has been certified by the applicable union as competent to act as a companion. The companion may address the hearing to put the employee's case, sum up his or her case or respond on the employee's behalf to any view expressed at the hearing. He or she may also confer with the employee during the hearing, but does not have the right to answer questions on his or her behalf, address the hearing if the employee does not want him or her to or prevent anyone, including the employee, from making his or her contribution to the hearing.

21. The appropriate level of management will conduct the meetings. At the meeting, the person conducting the meeting will explain the role of all those attending on its behalf and will explain the employer's case against the employee and will give the employee the opportunity to respond in full. At appeal meetings, the employee will present his or her reasons for appealing the decision and the employer will consider these.

22. If matters come to light during a disciplinary meeting which require further investigation, the employer may at his or her discretion, adjourn any disciplinary meeting to enable further investigation to be carried out.

Possible outcomes of a disciplinary hearing:

First Written Warning/Improvement Note

23. The employer may issue a first written warning if the employee's conduct does not meet the employer's standards or an improvement note if the employee's performance does not meet the employer's standards.

24. A first written warning or improvement notice may be issued normally by the employee's employer, immediate manager or a nominated deputy. Where, at the conclusion, of the disciplinary hearing, the employer or manager or nominated deputy decides to issue a warning or improvement notice, he or she will inform the employee of the following:

- the reason for the warning or improvement notice
- that it is the first stage of the disciplinary procedure
- the action or improvement (if any) which is required of the employee
- if appropriate, the timescale for implementing any such action
- the consequences for the employee of not implementing required action or of further misconduct
- when the warning will cease to have effect, subject to satisfactory conduct or performance. This will normally be after 6 months but a longer period may be stated in exceptional cases
- the right of appeal.

This will be confirmed to the employee in writing.

Final Warning

25. The employer may issue a final warning if:

- the required improvement is not achieved within any timescale set in a second warning; or
- further misconduct or poor performance takes place during the currency of a first written warning, whether or not involving a repetition of conduct or poor performance which was the subject of a previous warning; or
- the seriousness of the misconduct or poor performance merits it, regardless of whether it has issued any previous warnings.

26. A final warning may be issued by employer (or a nominated deputy). Where at the conclusion of the disciplinary meeting, the employer or nominated deputy decides to issue a final warning he or she will inform the employee of:

- the reason for the final warning
- the action or improvement (if any) which is required of the employee
- if appropriate, the timescale for implementing any such action
- the fact that this is a final warning and that the next stage of the procedure will be dismissal
- when the warning will cease to have effect, subject to satisfactory conduct or performance. This will normally be after 6 months but a longer period may be stated in exceptional cases
- the right of appeal

All of these matters will be confirmed to the employee in writing.

Dismissal

27. The employer may dismiss an employee where:

- the required improvement is not achieved within any time scale stated in a final warning; or
- further misconduct or poor performance takes place during the currency of a final warning – whether or not involving a repetition of conduct (or poor performance) which was the subject of a previous warning; or
- it is reasonably believed that he or she has committed an act of gross misconduct.

28. Unless dismissal is for gross misconduct, the employee will be dismissed with notice.

29. An employee will only be dismissed after he or she has received a written invitation to a disciplinary hearing as set out in clauses 8.2 and 8.3 of this agreement and the disciplinary hearing has been held, the employee having had a reasonable opportunity to consider his or her response prior to the meeting and having been able to put his or her case to the employer at the meeting. Where the decision is taken to dismiss the employee, the person making the decision will state the reason, the date on which the dismissal takes effect and inform the employee of his or her right to appeal as soon as possible after the end of the disciplinary meeting, or if not, as soon as reasonably practicable. These matters will be confirmed in writing.

Appeals

30. Any employee who is dissatisfied with a disciplinary decision taken in respect of him or her may appeal against that decision. Appeals should be in writing, setting out the reason for the appeal and should be delivered to the employer

within five working days of the disciplinary decision. If an employee submits an appeal outside of the permitted 5 days he or she should advise the employer as to the reason for the delay. If the employer considers the reason for the delay was reasonable then the appeal should be heard. The employer will then invite the employee to an appeal meeting which will normally take place within five working days. The appeal meeting may take place after the disciplinary decision has taken effect.

Wherever possible an appeal will be heard by a manager who has not been previously involved in the case.

The decision on the appeal will be communicated to the employee in writing within a reasonable time frame following the hearing. The decision is final.

Employees with difficulty reading or where English is not first language

31. If the employee has difficulty reading, or English is not their first language, the employer should explain the content of the letter or note orally to them.

7. Chapter 7

Redundancy

7.1 Definition of redundancy

7.1.1 Redundancy occurs where:

- the employer has ceased or intends to cease to carry on the business either completely or in the place where the employees are employed or
- the employer requires or expects to require none or fewer employees to carry out work of a particular kind at the place where the employees were employed.
- If a business is being closed entirely then the procedure may be amended but a fair procedure must be undertaken and correct notice/redundancy payment made. See Redundancy due to closure of business (chapter 7.5)

Meaning of lay-off

7.1.2 This is a term which is frequently incorrectly used.

Lay off is where a business does not have sufficient work immediately available to keep the present workforce gainfully employed but expects the work load to increase in the near future. Employees can only be laid off where there is a right to do so in the contract of employment and laid off employees may be entitled to be paid or may become entitled to a redundancy payment depending on the timescales involved. There is no right to lay off employees in the current standard contract of employment. Employers considering laying-off staff (as opposed to making redundancies) should contact the helpline for specific advice.

Redundancy examples

7.1.3 The need for redundancy may be because of a lack of work or because of re-organisation. For example, if two people can perform the work previously done by three people then one of the three is redundant.

Redundancy payments and notice period

7.1.4 The amount of redundancy payment depends on the length of service, age and weekly pay. There is a ready reckoner at the end of this chapter see Redundancy payment calculator. There is a limit on the amount of a week's pay which can be taken into account in working out the entitlement. This limit changes annually and from 6th April 2025 is £719 per week. Income tax is not payable on statutory redundancy payments.

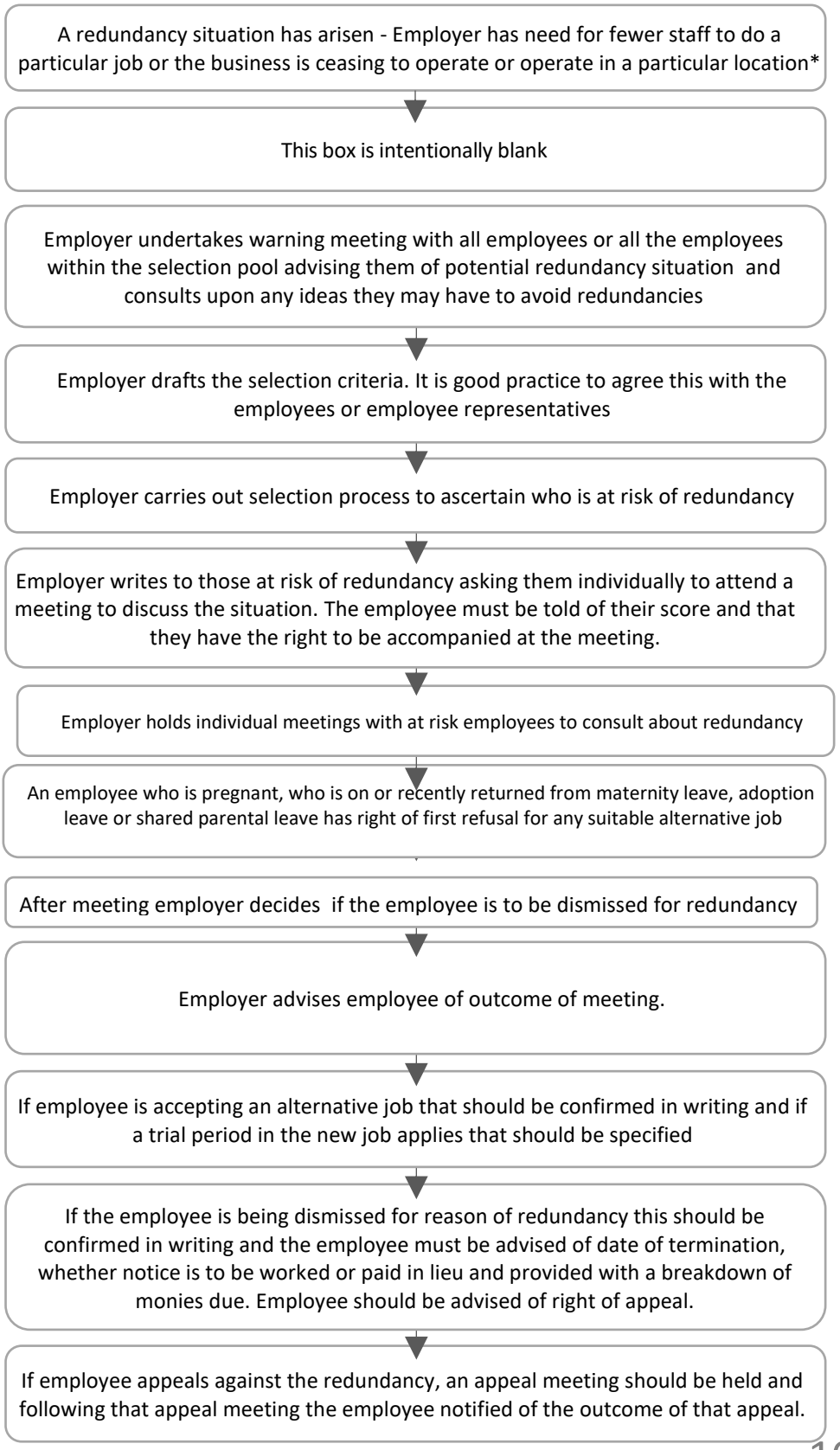
The employee is also entitled to their normal notice which the employer can require to be worked (a week per year of service up to a maximum of 12 weeks).

The redundancy payment is not a payment covered by the legal expenses insurance. It is compensation for the redundancy payable by the employer to the employee.

Figure 10: Redundancy procedure, overview

7.1.5 Overview of procedure where less than 20 employees being made redundant within a 90 day period.

If making 20 or more employees redundant in a 90 day period see Dismissing as redundant 20 or more employees



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Selection and Procedure

7.1.6 The selection and procedure are both important in seeking to make a fair redundancy.

Redundancy is a dismissal – so a fair dismissal procedure must be followed – see below (7.4).

A fair selection procedure must also be followed – see below (7.3.3 – 7.3.5).

The selection pool

7.1.7 In instances where it is not all employees who are potentially at risk of redundancy the trainer will have to identify the pool of employees at risk and carry out the selection process on that pool. This may be the case, for instance, where a yard has two head people and due to fewer horses or a re-organisation only requires one head person. The pool could potentially be the head people not the entire workforce. However, employers must avoid defining the pool too narrowly if it is not applicable and must also ensure that the pool does not discriminate in any way. For example, it would potentially be discriminatory to only consider making part time workers redundant. Where a pool is being drawn up, the employer will need to be able to show why it was reasonable to focus upon those roles/people fulfilling those roles .

7.1.8 The pool of one employee – where the pool may be just one person the employer should consider consulting with the employee upon the selection pool as an otherwise fair dismissal may be ruled unfair. This may arise where the employer decides upon a pool of one where others could have been included. The consultation must take place when the individual has a chance of influencing the outcome.

7.1.9 An employee who is off ill can still be included in a redundancy process if their job falls into the selection pool but employers must ensure that the process does not put the employee at a substantial disadvantage and may need to make adjustments to alleviate the disadvantage. Where the employee has a long term medical condition the sickness absence should be discounted from the scoring procedure, see below.

Method of selection – Selection criteria

7.1.10 The selection criteria used must be fair and where possible include some criteria which can be measured objectively, such as attendance which can be checked against the attendance records, timekeeping which can be checked against clocking in records and experience which can be checked against the duties carried out by the employee.

The selection matrix could also include criteria such as disciplinary records, qualifications, skill, performance, initiative and flexibility. If including attendance records as part of the matrix then periods of

non-attendance due to pregnancy or maternity leave should be disregarded and any periods of non-attendance because of disability or connected to a disability or because of associative disability should also be disregarded.

See Examples for redundancy selection criteria for samples of some redundancy selection criteria as a guide. Employers will need to make their own decision as to what relates to the needs of the business, what key skills need to be retained and what criteria are relevant to the business and then decide the criteria they are going to use.

There is no set legal criteria but the employer has to ensure that the system is fair and non- discriminatory. For more information on discrimination and in particular disability discrimination see Discrimination and Equality

It would be potentially discriminatory to only consider making part time workers redundant – see Part-time Workers and Fixed Term Contracts Part-time Workers and Fixed Term Contracts and take advice if necessary.

Historically many employers used last in first out. However since the age discrimination legislation was introduced, if an employer uses length of service as the only selection criterion he risks unlawfully discriminating on grounds of age. Length of service can though be used as one of the selection criteria within a redundancy selection provided this is not the deciding factor. Length of service is more likely to be justified where it is important for the business to retain an employee with a certain level of experience in a particular job.

Care should be taken to avoid using overlapping criteria, for example, if attendance is being used then any disciplinary warnings for poor attendance should not be used as well.

It is unlikely to be appropriate to use the same criteria for every type of job within a business – for example if a yard is making a head lad redundant, then management skills may be important to that role, whereas if the yard has a redundancy for a yard worker it is unlikely to be a relevant criterion.

It is good practice to seek to agree the selection criteria with the employees or employee representatives or union. A copy of the draft selection criteria should be provided to the employees (or representatives or union) and them given time to challenge the appropriateness of it. In practice, there are less challenges to the selection criteria than to how an individual employee is scored and it will be up to the employer to decide whether he needs to agree the selection criteria before any scoring is undertaken.

Applying the criteria and scoring

7.1.11 Where possible two people who know the work and ability of those being assessed should carry out the assessment. Ideally they should carry these out separately so that they are not influenced by

each other. In this way there should be some "quality control" over the process.

Where there is only one person who can carry out the assessment, it is, of course particularly important that the assessment is carried out objectively.

One of the areas most open to challenge in a redundancy situation is that the selection was not carried out fairly and that the person or people doing the scoring did not have objective evidence to justify the scores allocated. For example, if using "performance", an employee should not be given a low score if the employee has never been told that their work was not up to the standard required. This could lead to a claim by an employee made redundant that they had been unfairly selected and unfairly dismissed.

The employee must be allowed the opportunity to challenge his or her score at the individual meeting and the employer will need to be able to explain why a particular score was given.

When measuring attendance any absence for disability related illness or for pregnancy/maternity leave or other parental leave must be disregarded. Where employees have exercised other statutory rights – for example the right to take emergency leave for dependants – they must not be penalised for this.

It is automatically unfair to select an employee for redundancy because she is pregnant or because she has taken maternity leave or adoption leave.

Pregnancy and family leave – priority for vacancies over other at risk of redundancy employees.

In a redundancy situation, an employee who is pregnant, on maternity leave, on adoption leave or shared parental leave has the right of first refusal for any suitable alternative vacances. This right extends to an additional protection for employees returning from such leave. The protected period in which the right to first refusal for a suitable alternative vacancy is:

Pregnancy The employee is protected from the date the employee informs the employer of her pregnancy for the full period of pregnancy

Maternity Leave Protected for 18 months from the day of the estimated week of childbirth. The 18-month period can be altered to start from the child's actual date of birth where the employee informs the employer in writing of the actual date during the maternity leave period.

Adoption Leave Protected for the period of 18 months from the date of placement for adoption.

Shared Parental Leave Protected for 18 months from birth/placement for adoption provided that the employee has taken a period of at least

six continuous weeks of shared parental leave. This protection will not apply if the employee otherwise has protection under either the maternity or adoption provisions. Protected during period of absence on shared parental leave only if fewer than 6 consecutive weeks of leave are taken.

Where an employee suffers a miscarriage before 24 weeks of pregnancy they will have protection during their pregnancy and for a two week period following miscarriage. If they miscarry after 24 weeks of pregnancy this is classed as a still birth and they are still entitled to maternity leave and will have the same protection as any other employee taking maternity leave.

This additional protection applies:

- for pregnant employees, where they inform their employee of their pregnancy on or after 6th April 2024;
- for employees returning from maternity or adoption leave where they return on or after 6th April 2024
- for employees returning from shared parental leave, where they take a period of at least six consecutive weeks of shared parental leave take commences on or after 6th April 2024

This does not mean that an employee is protected from redundancy, the protected period is the period during which they have the right of first refusal for any suitable alternative roles in a redundancy situation. If considering making an employee redundant who falls into any of the above categories, advice should be sought from the NTF office or helpline.

Part time workers and redundancy

Employers must not discriminate against part time workers in the selection process by using criteria which adversely affect part time workers or which part time workers would find more difficult to satisfy.

Additional rules apply where making redundant 20 or more employees – see Dismissing as redundant 20 or more employees

7.2 Procedure (less than 20 employees being made redundant)

Redundancy procedure

7.2.1 The procedure is

- warning meeting and consultation
- inviting those at risk of redundancy to an individual consultation meeting
- holding the individual consultation meeting

- the decision
- the appeal

Redundancy - Warning Meeting and consultation

7.2.2 The employer should undertake a first warning meeting with employees as early as possible explaining that there is a redundancy situation, why it has come about, the areas of the business likely to be affected and explaining what happens next, namely that individual meetings will be held. This meeting will also be used to consult with the employees to discussed the proposed redundancies and see what ideas the employees may have to avoid redundancies. It could, for example, be that some employees would like to reduce their hours. Employees should be given time to consider the information and come up with any suggestions. The purpose of the consultation is to avoid redundancies or reduce the impact of them.

This first meeting should be with the workforce –who that is will depend on the situation. Where the redundancies are being implemented because of cost meeting and consulting with the whole workforce would be required. However, where there is perhaps in how the business operates, then it will be a matter of fact as to who the employer consults with. The employer should make a note of who they consulted with and why.

If any employees potentially affected by the redundancy are off ill or on leave they should still be invited to the meeting. If they cannot attend then the employer should ensure that they are informed as to the content of the meeting. Where the job of a person on maternity leave is at risk of redundancy, the employee must be fully consulted and involved in the redundancy process.

The employer can before the formal meeting then have a brief individual meeting with each of those selected at being at risk of redundancy in order to break the news to them and to arrange a place and time for the formal individual consultation meeting.

It is good practice to seek to agree the selection criteria with the employees or their representatives or union before applying the selection criteria to those individuals at risk. At this stage the employer could provide a draft blank selection criteria to the employees or their representations for any comments.

This brief individual meeting is followed by the written invitation, see next step.

Redundancy - individual consultation meeting

Written invitation to individual consultation meeting

7.2.3 The employer must write to the employee inviting him or her to an individual meeting to discuss the redundancy. There are sample letters

at Template28 Sample letter inviting employee to individual meeting where no selection from pool required.

and Template29 Sample letter to individual meeting where selection from a pool of employees is needed

detailing the necessary content depending upon whether or not there is a selection pool.

The individual consultation meeting

7.2.4 When this meeting is held, the employee is still only at risk of redundancy, the employer must not have made any decision to dismiss. The meeting is to consult about the potential redundancy. The employee has the right to be accompanied at the meeting by a work colleague or a union representative.

The employer should run through the situation and allow the employee to respond, having the opportunity to raise any concerns, to come up with any ideas to avoid the potential redundancy and to discuss any suitable alternative employment. If the employee raises any new points which need to be considered the employer should investigate these, holding further meetings with the employee if necessary.

The employee should have an opportunity at the meeting to discuss his or her selection for redundancy – for example the employee may have been selected because of his or her poor work record and the employee may wish to put forward a reason for this and ask the employer to reconsider.

Redundancy - outcome of individual meeting

7.2.5

If the employee does not raise any points for consideration or investigation, or if the redundancy is not averted as a result of these discussions, the employer should have a further brief meeting with the employee to inform him or her that he or she is to be made redundant.

This must be followed up with a letter to the employee confirming that he or she is to be made redundant, confirming the date on which the employment will terminate, whether the notice is to be worked or money paid in lieu of notice (or a combination of the two) and setting out a breakdown of all monies to be paid, particularly showing how the redundancy payment has been calculated. The letter must also offer the right to appeal. There is a sample letter at Template 30: letter confirming outcome of meeting where the decision is to dismiss for redundancyfor use when the outcome of the meeting is dismissal for redundancy.

Redundancy - Appeal

7.2.6 If the employee requests an appeal against the decision to make him or her redundant, the employer should invite the employee to an appeal meeting at a time and location which is reasonable. If an employee requests an appeal outside of the timeframe requested it should still be heard unless the reason for delay by the employee is unreasonable.

At the appeal the employer should if possible be represented by a more senior manager although this will not always be possible in a small business.

At the appeal both parties must have the opportunity to explain their cases. The employee has the right to be accompanied by a work colleague or a union representative at the meeting (for further information see Right for employee to be accompanied(chapter 15)). After the appeal the employer must write to the employee informing him or her of its final decision. This must be done without unreasonable delay.

7.3 Closure of business

Redundancy due to closure of business

7.3.1 Where all employees are being made redundant due to the business being closed and there are no alternative jobs with the company either at another location or another part of the company, then the selection procedure will not apply. A fair procedure must still be carried out which will be as a minimum advising the employees collectively of the closure of the business, holding individual meetings with employees to discuss their particular position and rights (i.e. the right to go to job interviews, position regarding redundancy pay etc) at which meeting the employee may be accompanied by a union representative or work colleague and following the meeting confirming the redundancy and the sums due to each employee in writing. Correct notice based on the contract must be given or paid in lieu if the employer does not require the employee to work the notice.

7.4 Alternative jobs

7.4.1 As part of the redundancy procedure, the employer must offer any vacancies within the company to the employees to be made redundant – regardless of how different those jobs are – and the employees must be allowed to apply for them. An employer may accept or reject these applications for the alternative jobs but must be prepared to justify any rejection.

If the employee accepts the alternative job, then it is generally on a trial basis of 4 weeks (or longer if agreed between the parties). If the new job is not a suitable alternative to the old one (say because of

differences in capacity, location or terms and conditions of the employment) and the employee turns it down before the end of the trial period, the employee will still be considered to have been made redundant from the date the original employment ended and be entitled to the redundancy payment.

If the employee however refuses an offer of a job that is a suitable alternative without good reason, he or she will not be entitled to a redundancy payment. This will only apply if the new job is offered before the old employment contract expires.

7.4.2 It is advisable to obtain the employee's agreement in writing to the alternative job see Template31 Alternative Job and Trial Period.

7.5 Maternity leave and redundancy

7.5.1 Where the job of a person on maternity leave becomes redundant but there is an alternative position available, the person on maternity leave is to be given first refusal of the alternative position. This applies even if the vacancy for the alternative position needs to be filled immediately and the person on maternity leave is not due to return for some time. The employer's failure to comply will make the dismissal of the employee automatically unfair.

7.6 Notice periods

7.6.1 If following the meeting, redundancy is confirmed to the employee the employee will be entitled to the appropriate length of notice to terminate their employment. This will be the statutory notice period of one week per year of service to a maximum of 12 weeks or any longer notice period specified in the contract.

Employee finishing sooner

7.6.2 An employee who resigns after being given notice of dismissal may be entitled to a redundancy payment. The employer can however ask the employee to work until the end of the notice period given by the company and refuse to make the employee a redundancy payment if he or she does not do so. If the employee is refused a payment in these circumstances, he or she can apply to an employment tribunal which will decide whether the company should pay the whole or part of the payment, according to what it considers to be fair in the circumstances.

7.7 Job-hunting

7.7.1 During the notice period an employee with two years' service is entitled to reasonable time off with pay to seek alternative employment or to arrange training.

7.8 National Association of Racing Staff

7.8.1 Set out below is the requirement to consult where 20 or more employees are being made redundant. However, trainers are asked to note that where multiple redundancies of less than 20 are being made, it is good practice to notify NARS so that the Association can assist and advise employees.

Dismissing as redundant 20 or more employees

7.8.2 If an employer is proposing to dismiss as redundant 20 or more employees within a period of 90 days or less the employer must consult "appropriate" representatives of the employees.

Consultation must be completed before any notices of dismissal are issued to employees. A complaint of failure to consult may be made to an employment tribunal and if upheld, the tribunal may make a protective award to employees of up to 90 days' pay.

Appropriate representatives means where those who are affected are represented by NARS, the employer must inform and consult an authorised official of the union. This may be an employee who is a representative of NARS or if appropriate it may be consultation with a regional or national official. If the employees are not represented by NARS, then the employer must inform and consult other appropriate representatives which may be existing or simply selected for the current redundancy situation. Further advice on the election of employee representatives is available from the NTF office.

The representatives must be consulted in good time (before any notices of dismissal are issued) and be given the following information, in writing:

- the reason for the redundancy
- the numbers and description/job categories of those who it is proposed to dismiss as redundant
- the total number of employees of the appropriate descriptions/job categories employed
- the proposed method selection
- the proposed method of carrying out the dismissals, taking account of any agreed procedures, including the period over which the dismissals are to take effect
- the proposed method of calculating the amount of any redundancy payments to be made other than the statutory redundancy procedures.

These must be handed to each of the appropriate representatives or sent by post to an address notified to the employer, or in the case of a trade union to the union's main office.

The employer must begin the consultation in good time and complete the process before any redundancy notices are issued. Consultation must begin at least :

- thirty days before the first of the dismissals takes effect (that is, when the employment contract is terminated) in a case where between 20 and 99 redundancy dismissals are proposed within a period of ninety days or less;
- forty five days before the first of the dismissals takes effect (that is, when the employment contract is terminated)in a case where 100 or more redundancy dismissals are proposed at one establishment within a period of ninety days or less.

The consultation must include discussions about ways of avoiding the dismissals, reducing the number of employees proposed to be dismissed and mitigating the consequences of dismissal.

Apart from the statutory requirement for consultation with the representatives, employees selected for redundancy must be consulted on an individual basis. The employer must be able to show that all the circumstances and alternatives were explored with the employee prior to the decision to dismiss. A fair procedure as outlined above (invitation to individual meeting, meeting and right of appeal) must still be followed for issuing the notices of dismissal to individual employees once the consultation has been completed.

When dismissing 20 or more employees for redundancy within a 90 day period the employer must notify the Department for Business Innovation and Skills (BIS) on form HR1 available from the Insolvency Service website (insolvency.gov.uk or www.gov.uk). A copy of the completed form must be given to the employee representatives. This form must be returned at least 30 days (or 90 days when 100 or more employees are to be dismissed) before the first of the dismissals takes effect.

Redundancy payment calculator

	Length of service (years)																		
Age	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**11**	**12**	**13**	**14**	**15**	**16**	**17**	**18**	**19**	**20**
18	1	1½	2																
19	1	1½	2	2½															
20	1	1½	2	2½	3														
21	1	1½	2	2½	3	3½													
22	1	1½	2	2½	3	3½	4												
23	1½	2	2½	3	3½	4	4½	5											
24	2	2½	3	3½	4	4½	5	5½	6										
25	2	3	3½	4	4½	5	5½	6	6½	7									
26	2	3	4	4½	5	5½	6	6½	7	7½	8								
27	2	3	4	5	5½	6	6½	7	7½	8	8½	9							
28	2	3	4	5	6	6½	7	7½	8	8½	9	9½	10						
29	2	3	4	5	6	7	7½	8	8½	9	9½	10	10½	11					
30	2	3	4	5	6	7	8	8½	9	9½	10	10½	11	11½	12				
31	2	3	4	5	6	7	8	9	9½	10	10½	11	11½	12	12½	13			
32	2	3	4	5	6	7	8	9	10	10½	11	11½	12	12½	13	13½	14		
33	2	3	4	5	6	7	8	9	10	11	11½	12	12½	13	13½	14	14½	15	
34	2	3	4	5	6	7	8	9	10	11	12	12½	13	13½	14	14½	15	15½	16
35	2	3	4	5	6	7	8	9	10	11	12	13	13½	14	14½	15	15½	16	16½
36	2	3	4	5	6	7	8	9	10	11	12	13	14	14½	15	15½	16	16½	17
37	2	3	4	5	6	7	8	9	10	11	12	13	14	15	15½	16	16½	17	17½
38	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	16½	17	17½	18
39	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	17½	18	18½
40	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	18½	19
41	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	19½
42	2½	3½	4½	5½	6½	7½	8½	9½	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½
43	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
44	3	4½	5½	6½	7½	8½	9½	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½	21½
45	3	4½	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
46	3	4½	6	7½	8½	9½	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½	21½	22½
47	3	4½	6	7½	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23
48	3	4½	6	7½	9	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½	21½	22½	23½
49	3	4½	6	7½	9	10½	12	13	14	15	16	17	18	19	20	21	22	23	24
50	3	4½	6	7½	9	10½	12	13½	14½	15½	16½	17½	18½	19½	20½	21½	22½	23½	24½
51	3	4½	6	7½	9	10½	12	13½	15	16	17	18	19	20	21	22	23	24	25
52	3	4½	6	7½	9	10½	12	13½	15	16½	17½	18½	19½	20½	21½	22½	23½	24½	25½
53	3	4½	6	7½	9	10½	12	13½	15	16½	18	19	20	21	22	23	24	25	26
54	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	20½	21½	22½	23½	24½	25½	26½
55	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22	23	24	25	26	27
56	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	23½	24½	25½	26½	27½
57	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25	26	27	28
58	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	26½	27½	28½
59	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28	29
60	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28½	29½
61*	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28½	30

* The same figures should be used when calculating the redundancy payment for a person aged 61 and above.

Template 28: Sample letter inviting employee to individual meeting where no selection from pool required

For example, total closure of yard or only one person doing the particular job (for example where a yard has decided to re-organise how the work is done and no longer have an assistant trainer).

Dear [**name**]

Date

As you know, we announced at a group meeting on [**date**], that [**set out situation that has arisen, i.e. decision to close satellite yard at x and to centralise the business at y**]. As a result, we will be [**set out action being taken, i.e. closing the business at x**] and we will need to make some redundancies. Unfortunately, you are at risk of redundancy.

As agreed with you on [**date**], a further meeting will take place between you and [**insert name(s)**] on [**inset date time and place**] for a further discussion of your situation. At the meeting you will be able to raise any alternatives you may have identified to redundancy [**and to discuss whether you would be interested in any of the other vacancies available in the business**]. [**if any other jobs available, include this and attach list**].

You have the right to be accompanied at that meeting by a fellow employee or an accredited trade union representative, should you so wish.

We refer you to the Employee Privacy Notice issued to you for information on how we process your personal data and sensitive personal data and your rights relating to such data. A further copy of the Employee Privacy Notice is available on request.

If you have any queries, please contact me.

Yours sincerely

Template 29: Sample letter to individual meeting where selection from a pool of employees is needed

For example, making two redundancies from 10 stable staff

Dear [**name**]

Date

As you know, we announced at a meeting on [**date**] that up to [**number**] redundancies are to be necessary due to [**put in reason, i.e. falling number of horses in training**]. As a result of [**less horses in the yard**], we have a reduced requirement for stable staff.

Provisional selections for redundancy have now been carried out. These selections were carried out by [**names of people making selection**] using the criteria of [**put in the criteria, see paragraph 2 above**]. An explanation of the scoring system, together with your own score sheet, are attached. Unfortunately you are "at risk" of redundancy as a result of this selection procedure.

As agreed with you, a meeting will take place between you and [insert name] on [details of time and place] for a further discussion of the situation. The meeting will serve as an opportunity for you to raise any questions you may have relating to your score sheet and your provisional selection for redundancy, any alternatives you have identified to redundancy [**and to discuss whether you would be interested in any of the vacancies in the company**] [**include if any vacancies and attach list of vacancies**].

You have the right to be accompanied at the meeting by a fellow employee or an accredited trade union representative should you wish.

We refer you to the Employee Privacy Notice issued to you for information on how we process your personal data and sensitive personal data and your rights relating to such data. A further copy of the Employee Privacy Notice is available on request.

If you have any queries please contact me.

Yours sincerely

Template 30: letter confirming outcome of meeting where the decision is to dismiss for redundancy

Dear [**name**]

Date

Further to our letter of [**date of letter inviting to meeting**] and the meeting on [**date of meeting**], I write to confirm that a decision has been taken to terminate your employment on the grounds of redundancy.

You are entitled to [**number**] weeks' notice.

You will be required to work your notice and your contract of employment will therefore terminate on [**put in termination date at end of notice period**]*

or

You will not be required to work out your notice period and you will be paid in lieu. Your contract of employment will therefore terminate on [**insert last working day**]*

On termination you will be entitled to any holiday accrued for the current holiday year which has not been taken.

You are also entitled to a redundancy payment of £[**amount**], which is [**number**] weeks salary [**capped at £700 per week**]** based on your length of service of [**number**] years and your age of [**age**]***

If you wish to appeal against this decision will you please write to me with your grounds of appeal within 5 days.

We refer you to the Employee Privacy Notice issued to you for information on how we process your personal data and sensitive personal data and your rights relating to such data. A further copy of the Employee Privacy Notice is available on request.

Yours sincerely

*Delete as applicable. If it is a combination of working some of the notice but not all of it that should be stated.

** The figure is £719 from 6th April 2025. The figure is normally increased in February each year. The reference to the capped figure can be deleted if the employee's weekly wage is less than the cap figure.

**use the ready reckoner see Redundancy payment calculator to calculate these figures.

Template 31: Alternative job and trial period

Dear [**name**]

Date

During the recent redundancy situation you were declared redundant from the position of [**job title**], but have accepted the alternative job of [**job title]** on a trial basis under the following conditions.

Trial period of [**number**] weeks from [**date**].

Should either party find the new position unsuitable for any reasonable reason (other than misconduct) then your contract of employment will be terminated by reason of redundancy. Redundancy terms will be based upon your employment under the previous contract.

Should the trial prove satisfactory you will be confirmed in the new job on terms and conditions of employment [**applicable to the new job**] or [**state such terms as have been agreed**], and your contract of employment will be altered accordingly.

We refer you to the Employee Privacy Notice issued to you for information on how we process your personal data and sensitive personal data and your rights relating to such data. A further copy of the Employee Privacy Notice is available on request.

Yours sincerely

7.9 Redundancy Dismissal Checklist

7.9.1 This checklist may be of assistance when dismissing an employee for redundancy. It should be used in conjunction with the full advice given in this chapter and advice must be sought from the legal helpline and the insurer put on notice.

7.9.2 If making more than 20 or more employees redundant within a period of 90 days or less, there are additional steps to be completed – see detailed information in this chapter

Before holding a meeting where dismissal for redundancy is a possible outcome	✓
The employer should seek to agree the selection criteria being used with the employees or their representatives.	☐
Invite employee in writing to a meeting explaining the redundancy situation and why less staff are needed or that particular job is no longer needing to be done. The letter must warn that redundancy is a possible outcome.	☐
Ensure letter gave details of the evidence upon which the company is relying and the background to the meeting, including where a selection from a pool is being made, the selection criteria and the employee's score. The letter should also refer to any previous meetings with regard to redundancy	☐
The letter informed the employee of his or her right to be accompanied by a work colleague or a trade union official	☐
Date letter sent	
Date, time and place of meeting	

At the start of the meeting	✓
The employee confirms that he/she received the letter and any enclosures	☐
The employee confirms that he/she has had a reasonable opportunity to consider his/her response to the information in the company's letter. If not, state the length of time the employee has had to consider his/her response and to consider whether fairness demands postponing the meeting.	☐
If the employee is not accompanied, the employee has confirmed that he/she understands that he or she has the right to be accompanied but has not chosen to	☐

Before concluding the meeting	✓
If matters have arisen in the course of the meeting that require further investigation then adjourn the meeting for further investigation	☐
Ask the employee to confirm that he or she has been able to say all that he or she wishes to about their case including any challenge to their scores.	☐
The employee has been notified of any vacancies within the business.	☐

After the meeting	✓
After concluding the meeting, the employer should consider the decision. The decision should, where possible, be given to the employee face to face at a resumed meeting and then confirmed in writing.	☐
Decision given to employee and confirmed in writing on [**date**]	
(Where decision to dismiss) The employee has been informed of his or her right to appeal and advised that he or she must do so in writing, setting out his or her grounds of appeal within a reasonable time (say 5 days) of the decision being given.	☐
Signed as a record of events Date	

Examples for redundancy selection criteria

This is guidance only and employers should decide what selection criteria are relevant to the redundancy situation. See Selection and Procedure for more information

Criterion	Score*** 1 -2	3 – 5	6 – 7	8 – 10
Number of days absence in last year (not disability or pregnancy or family rights related)*	20 or more	11 – 20 days	4- 10 days	0 – 3 days
Quality of work/performance **	Correction often needed and work needs checking	Usually acceptable few errors	Reliable, seldom makes errors	Consistently reliable
Versatility of skills/flexibility	Limited to own job	Can carry out other tasks closely related	Can undertake a broad range of work within discipline	Capable of wide range of work across business
Disciplinary record	Final warning or more than one final warning	One written warning or more than one verbal warning	One verbal warning	No warnings
Team working skills	Can be un-co-operative or unhelpful with others	Generally co-operates with others	Generally works well with others and respected by them	Works well with others and is looked to for guidance
Supervision/management skills	Does not supervise effectively	Generally effective	Effective and respected	Effective and looks at ways to improve
Organisational skills	Generally unorganised	Organised but does not plan ahead	Organised and plans ahead	Organised, plans ahead and identifies areas to improve

*this criteria could just be unauthorised absences. Need to ensure that sickness absences which are of an unacceptable level and have been dealt with under the disciplinary procedure are not judged twice.

** the person(s) carrying out the scoring must be able to justify the scores and know the individual's work well enough to be able to do. Appraisal records can be useful.

*** these are only suggestions for the scoring bands – using marks out of 10 gives flexibility for change when consulting with the individual. Employers could decide that certain criteria are more important and mark those out of say 20.

8. Chapter 8

Retirement

8.1 Retirement – post the default retirement age

8.1.1 The Default Retirement Age was phased out and after 6th April 2011 and since then employees do not automatically retire at the age of 60 or 65.

An employee can still decide to voluntarily retire at a time of their choosing and draw any occupational pension they are entitled to.

8.1.2 An older worker's contract of employment can only be terminated on one of the potentially fair grounds for any age of worker and a fair procedure must be follow.

These grounds are set out in Chapter 4 of the NTF employment manual (see Potentially Fair Grounds for Dismissal) and are misconduct, capability, redundancy, illegality or some other substantial reason. The appropriate procedures will need to be followed, as set out in Formal Disciplinary Action – the procedure.

This means that terminating the employment of an employee aged 65 or over is no different from terminating the employment of an employee under 65.

8.2 Managing employees

8.2.1 There is no requirement upon an employer to talk to employees about their future plans and employers should not single out older workers to ask if they intend to retire at a certain age.

Employers should not ask employees if they are planning on retiring or say to them something along the lines of "that they do not appear to be up to the job, are they planning on retiring in the near future" as that could lead to a claim of age discrimination.

However, good management practices include having appraisals or job chats from time to time with employees of all ages and as part of these employees can be asked about their future plans and how they see themselves developing over the next year or so.

Performance/capability issues

8.2.2 If an older worker is performing poorly the employer should discuss this with them as he would any worker. The employer should establish the reasons for the poor performance and set goals and timeframes for improvement, offering any training and development which may be necessary. The formal procedure set out at Formal Disciplinary Action – the procedure must be followed and members should refer to Chapter 4 and Chapter 5 for detailed information on managing disciplinary and capability issues.

8.2.3 The employer must bear in mind that in capability issues due to health problems the employee may have protection under the disability provisions of the Equality Act 2010 (see Disability Discrimination). An employee will be disabled if he or she has a "physical or mental impairment which has a substantial and long-term adverse effect on his or her ability to carry out normal day to day activities". This could include age related conditions and it does not alter the legal obligations upon the employer that someone over 65 has a problem which is more associated with or perhaps even normal for an older person, such as say rheumatism, arthritis or diabetes.

8.2.4 If considering dismissal because the employee is not capable of carrying out their duties to the required level and the employee falls under the protection of the disability provisions of the Equality Act (even where the employee is not actually absent from work) the employer must follow the procedure set out at Long Term Sickness Absence – terminating the contract in consultation with the employee, obtaining a medical report, considering whether there are any reasonable adjustments which can be made – such as a phased return to work, additional equipment or an alternative role or downsizing - as part of managing the performance and as part of the procedure leading to dismissal for lack of capability if the employee cannot improve and if no reasonable adjustments can be made or suitable alternative jobs exist. If there are any reasonable adjustments which can be made then the employer is under a duty to make them.

8.2.5 If after having carried out the appropriate procedures (see managing long term sickness) the employee is moved to a lesser role or fewer hours the rate of pay can be reduced accordingly. If the redeployment is temporary or a phasing back to work then it may be a reasonable adjustment to maintain the pay level.

8.3 Employer justified retirement age

8.3.1 There are certain circumstances in which an employer can have a justified retirement age but since 1st October 2011 there has not been a national or industry-wide default retirement age.

For an employer to adopt a justified default retirement age i.e. a set age at which retirement can be objectively justified, the employer will need to show that it is a proportionate response to a legitimate aim.

If a trainer wishes to consider having an Employer Justified Retirement Age in his individual business then he will need to take specific advice upon the circumstances, since the employer will need to be able to show that it meets a legitimate aim such as workforce and succession planning, the health and safety of employees, their colleagues or the general public and in addition establish that the compulsory retirement age is a proportionate means of achieving that aim. Employees need to note that the reference to health and safety is not the same as the physical capability of an individual employee to do a job.

The objective justification test is a difficult test to pass and an employer would need to have strong evidence to support it and then must consider if there is the evidence to support the justification and whether there is a non-discriminatory way or a less discriminatory way of dealing with the issue. For example, should an employer be able to justify that there is an increased health and safety risk with older employers, a less discriminatory way of dealing with this may be increased health and safety monitoring of all staff.

Any trainer considering adopting an Employer Justified Retirement Age within his business should seek individual advice from the NTF or an employment solicitor. Case law will develop over time with regard to what is legitimate and proportional with regard to justifying a retirement age.

8.4 Insured benefits

8.4.1 It remains legal for assured benefits such as sickness and accident insurance not to be provided to a worker over 65 or above the State Pension age for men, even if the employee continues working.

The age at which group risk insured benefits can be withdrawn will increase in line with increases to the State Pension Age.

8.5 What to do if an employee says he wants to retire.

8.5.1 Employees can still decide to retire. If an employee says that they wish to retire the employer should ask them to confirm that in writing, given their notice and the date upon which they will retire. Once an employee has given formal notice to leave, the employer is under no obligation to let them withdraw that notice.

If an employee says that they are retiring and do not give formal notice, then if they do not retire or change their mind then an employer cannot force them to retire.

9. Chapter 9

Fitness for Work and Sick pay

Please note this chapter does not contain advice on additional sick pay provisions in place due to the Coronavirus pandemic. For up to date advice please refer to the Coronavirus section on the front page of the NTF website.

9.1 Statement of fitness for work (doctor's notes), sick pay and statutory sick pay

Statement of Fitness for Work

9.1.1 A doctor can advise an employee that they:

- are unfit for work or
- may be fit for work

"May be fit for work" will mean that the doctor thinks that the patient's health condition may allow them to work if they get suitable support from their employer.

The Government's advice on this can be accessed at www.dwp.gov.uk/fitnote

Not fit for work

9.1.2 This means that the doctor has assessed that the employee is not fit to work – this is the same as the old sick note.

May be fit for work taking account of the following advice

9.1.3 The doctor has assessed that the employee's condition does not necessarily stop them from returning to work – for instance that they can return to work but may not be able to complete all their normal duties or may need an adjustment such as amended working hours.

9.1.4 The doctor may suggest the following as a way of helping the employee get back to work:

- a phased return, being a gradual increase in the intensity of work or their working hours
- altered hours, perhaps being reduced hours or a changed start time
- amended duties, for example, removing heavy lifting for someone with a back problem and/or
- workplace adaptations, for example, moving someone to work on the ground floor when they normally have to go up steps

Where an employer does not understand or is unsure as to how to act upon recommendations from a doctor on the Statement then the employer should discuss it with the employee as the employee may have more information. The employer could also seek advice from the employee's GP or may decide to seek advice from an occupational health specialist. The NTF can put trainers in contact with an occupational health specialist.

Period of "may be fit for work"

9.1.5 The doctor can state on the form the period that the advice covers – which during the first 6 months of sickness can be up to a maximum of 3 months at a time. If the advice is that it covers a number of days, this will be the calendar period, not working days.

If the employee is able to return to their normal duties either during this period or at the end of the period they do not need to obtain another Statement from their doctor.

Whether employee needs to see the doctor again

9.1.6 The Statement contains provision for the doctor to state whether or not they need to see the employee again. If the doctor does not need to see the employee again then it would normally be the case that the employee will return to work or their usual duties at the end of the Statement period.

Employer's action on receiving a "may be fit for work statement"

9.1.7 The employer should meet with the employee and see if the changes suggested by the doctor can be made.

If the changes can be made the employer should:

- agree what changes are being made
- agree a return to work date
- agree a date to review
- discuss effect on pay (if applicable)
- discuss effect on RIABS (if applicable)
- carry out a revised workplace risk assessment based on the evidence from the doctor
- record the above in writing

9.1.8 If after meeting with the employee, the employer cannot make the changes to support the employee in a return to work, the employer should

- use the Statement as if the doctor has advised "not fit for work" and pay the employee appropriately for sickness absence (note the employee does not need to return to the doctor for a new statement to confirm this)

- agree a date with the employee to review the situation depending on why the employer cannot make the adaptations or adjustments

Can an employer refuse to follow the doctor's recommendations

9.1.9 The employer should consider the recommendations but if the employer cannot reasonably make the adaptations or adjustments to help a return to work or because there are industry or sector guidelines or regulations that the doctor may not be aware of, then the employer will not have to make the adjustments or adaptations.

However, employers do need to be aware that ignoring a GP's recommendations or failing to properly consider the recommendations could lead to a claim for constructive and/or unfair dismissal, personal injury and/or disability discrimination.

9.1.10 Under the Equality Act, it is unlawful not to make any reasonable adjustment that may enable a disabled person to return to work or to continue working. Information on the Equality Act can be found in chapter 12 of this guide (see Disability - Potential Adjustments and also on the Department of Work and Pensions website (www.dwp.gov.uk) .

Employers should seek advice from the NTF or other specialist adviser if they are unable to make a workplace adjustment to enable an employee to return to work as outlined in the doctor's recommendations

Employee returning before the end of an "unfit for work" statement

9.1.11 If an employee decides that they are able to return before the end of a statement period where a doctor has advised that they are not fit for work, then it is up to the employer to agree with the employee that it is appropriate for the person to return to work. The employee does not need to wait until the end of the Statement period. If the fit note states that the doctor does need to see them again/reassess them, then the employee should not return to work before the end of the fit note period.

It should be noted that the new form does not include an option for doctors to advise someone that they are fully fit for work. If any employer feels that they need a medical opinion stating that an employee is fit to carry out their role safety, then the employer will need to arrange that privately on a paid basis with a GP or with an occupational health specialist. The NTF can put trainers in contact with an occupational health adviser.

Insurance

9.1.12 An employer's liability insurance should not prevent employees who may be fit for work from returning – if an individual trainer has any concern on this, then they should contact their insurer.

Pay whilst working under a "may be fit for work statement"

9.1.13 See 9.3.6 (sickness) and 9.3.7 (injury at work)

9.2 The Health and Work Service

Fit for Work scheme

9.2.1 The Government introduced a new Health and Work service across the country in 2015 called Fit for Work. The service has been reduced and reshaped from 2018 but still provides occupational health advice which may be beneficial in managing health conditions and supporting a faster return to work from sickness absence.

9.2.2 Fit for Work can help supplement the advice an employee receives from their employer's occupational health provider or through their own private insurance. It can also be used to supplement employers' sickness absence policies and procedures.

9.2.3 Fit for Work offers free, expert and impartial advice to anyone looking for help with issues around health and work. Employers and employees can browse their online resources (www.fitforwork.org), chat online to a specialist advisor, email a question or call the free advice line on 0800 032 6235 (English) or 0800 032 6233 (Cymraeg).

9.3 Sick Pay

9.3.1 An employer has a legal obligation to pay Statutory Sick Pay (SSP) and to keep records. For more information see Statutory sick pay overview section 9.6 of this chapter.

9.3.2 The NTF/NARS agreement (see NTF / NARS agreement – minimum terms and conditions (chapter 1) sets out the agreed terms on sick pay for stable staff and these are explained at points below.

Sick pay - employee off due to illness or non-work related accident

9.3.3 Sick pay - employee off due to illness

If at the start of the absence the employee has been with the employer for under 6 months, then SSP only is paid for up to a maximum of 28 weeks. See section on SSP for details of eligibility. This is paid from the fourth day of absence. The rate of SSP is increasing to £118.75 from 6th April 2025 normally increases on or around 1st April each year.

9.3.4 **If at the start of the absence, the employee has been with the employer for 6 months or more**, then the employee is entitled to normal wages for one month's sickness absence in any one year. The three qualifying days still apply before the normal wages are paid.

Once that entitlement has been used up, the employee reverts to SSP only.

9.3.5 Where in such a case the employee is off due to an accident outside of work which has been caused in the employer's reasonable opinion by the employee being involved in fighting, drunken behaviour or abuse of drugs, the employer can refuse to pay normal wages and just pay SSP.

If the period of absence is linked under the SSP regulations to a previous absence, then the three qualifying days for normal wages do not apply.

These are the minimum requirements and employers can pay normal wages for longer if they wish – trainers should be consistent and non-discriminatory if deciding to pay wages for longer.

9.3.6 If the doctor has issued the sick employee with a "may be fit for work statement" and the employee is returning to some duties, then if the employee would be entitled to normal wages if off ill, logically the employee should be paid their normal wages for the reduced hours or restricted duties, as otherwise there is little incentive for the employee to return to work. It is important that employers manage this appropriately.

If the employee would only be entitled to SSP if off ill (i.e. where the employee has less than 6 months service or has already used up their entitlement to normal wages whilst off sick), it is for the employer and employee to agree how the employee will be paid – whether it will be normal pay or whether the employee will just be paid for the hours worked. It is advisable to record what has been agreed in writing.

Sick pay - employee off due to accident at work

9.3.7 Regardless of how long the employee has worked for the employer, the employee will be entitled to one month of normal wages if off injured for that length of time. After one month, SSP only is payable by the employer. The three waiting days do not apply when the employee is off due to an accident at work.

Alongside this, the employer should submit a claim to the Racing Industry Accident Benefit Scheme (see RIABS) which tops up the individual's wages whilst they are off as a result of an accident at work.

When submitting the RIABS form, the employer should enclose a note from the employee authorising that the RIABS money be paid to the employer for the period during which normal wages are being paid. In this way the employer receives partial reimbursement of monies paid whilst the employee is off injured.

In the event of an employee being issued with a "May be fit for work" note by their GP, RIABS will respond in one of two ways:

- If the employer is unable to adapt work duties and hours, then RIABS will accept the claim for weekly benefits as being for Temporary Total Disablement, and payment will be made in full subject to all other qualifying criteria.
- If the employer is able to adapt work duties and hours, but this results in a reduction of the employee's net weekly wage, RIABS will pay the difference between pre accident and post accident net wage. Again, this is subject to qualifying criteria. This applies both to new claims, and ongoing claims where the employee is recovering and the doctor has changed the type of note issued.

It is essential that the claims managers, SLS Crawford, are kept fully advised on claims where persons are working but at reduced capacity to ensure that benefit payments are adjusted accordingly

Sick pay - conditional and apprentice jockeys

9.3.8 The same conditions apply with regard to the employer paying normal wages whilst off sick or injured as outlined above. Any holder of a jockey's licence who has not had more than 74 rides in the previous season is covered by RIABS for accidents at work other than for race riding accidents or when he or she is at the races in a race riding capacity. Such accidents will be covered by the Professional Riders Insurance Scheme (contact number 01935 891974)

Where an apprentice or conditional has had 75 rides in the previous season, he or she will not be covered by RIABS for any accident at work and instead will be covered by PRIS.

Position if employer doubts the genuineness of a self-certification certificate

9.3.9 The employer is entitled to investigate the matter and decide whether or not to accept it.

Position if an employer doubts the genuineness of a doctor's statement

9.3.10 The employer is entitled to investigate the matter but unless there is other proper medical evidence or medical opinion the doctor's certificate should be accepted as genuine.

If an employer decides that a claim is unjustified the employer may withhold SSP but must give the employee a statement showing for which days the employer is paying SSP and how much, for which days it is being withheld, and the reason for it being withheld. See Statutory sick pay overview for further details.

9.4 Other Absence

9.4.1 Other absence such as a failure to return from leave or where the absence is unauthorised, not for sickness or injury and there is no good reason for the absence, the employer should consider whether there are grounds for disciplinary action and if so the normal disciplinary procedure should be used.

9.5 Sick leave and holiday entitlement

Sickness and pre-booked holiday

9.5.1 A worker's entitlement to paid annual leave is different from a period of sick leave as annual leave is designed to allow a worker to relax whilst sick leave is to allow a worker to recover from illness.

It is recommended that employers allow an employee to reschedule holiday which coincides with a period of sickness to avoid being at risk of a claim from any employee who has not been permitted to re-schedule holiday if they have been sick during a holiday. See Taking Holiday Whilst on Sick Leave (section 16.10.2) for detailed information.

Long term sick leave – holiday entitlement

9.5.2 Statutory holiday accrues whilst an employee is on sick leave and there are special rules applying when an employee is on long term sick leave which can result in holiday being carried over from one holiday year to another. See Carrying Over Holiday when off sick (section 16.10.2) for detailed information.

9.6 Statutory Sick Pay

Statutory sick pay overview

9.6.1 Statutory sick pay (SSP) is an earnings replacement for employees who are off work through illness/injury and the employer has a legal obligation to pay it to employees who satisfy the qualifying conditions.

There is now a Statutory Sick Pay calculator available on H M Revenue and Custom's website at:

www.hmrc.gov.uk/calcs/ssp.htm.

This calculator helps an employer work out whether an employee is entitled to SSP and if so provides a schedule of weekly payments to be made.

Employers should decide for which days SSP will be payable ("the qualifying days") which will usually be normal working days and to decide on rules for notification of sick absence. It should be made clear to the employees what must be produced by them as evidence of incapacity when they fall sick (see Chapter 10, Staff Absence Notification Policy – basic or Staff Absence Policy –detailed policy).

For SSP purposes an employer cannot insist that an employee notifies him in person, earlier than the first qualifying day, by a fixed time on the first day, more often than once a week during the sickness or on a special form. For yard management reasons you can request that notification be made by a certain time or as soon as possible.

The following guidance intends to provide an overview of the administration of sick pay. More detailed guidance regarding employer obligations can be found at the HMRC website and in particular the HMRC E14 Employers Helpbook at www.hmrc.gov.uk .

Statutory Sick Pay Qualifying conditions

9.6.2 In addition to full time employees, part time, temporary, agency and casual employees may be entitled to SSP if they satisfy the qualifying conditions.

The qualifying conditions are that the employee:

- has advised the employer of their sickness
- be employed by the organisation and have done some work under their contract
- be sick for four or more days in a row (this is the "period of incapacity for work" "PIW")
- have average weekly earnings of at least the lower earnings limit for National Insurance contribution purposes (£125 per week

from April 2025/2026) regardless of whether or not they are required to pay NICs.

- have earnings on which the employer is liable for pay employer's Class 1 NICs or would be liable to pay but for their age or level of earnings

9.7 Notification by employee

9.7.1 Self-certification normally covers the fourth to seventh days of absence but it may cover from the first to seventh day at the discretion of the employer.

Doctor's certificates cover absence from the eighth day onwards.

9.8 No SSP liability

9.8.1 There is an exclusion of SSP liability if on the first day of PIW an employee:

a) is not personally ill - unless he is deemed incapable of work. For example, convalescence, a carrier of or contacts with infectious diseases or precautionary reasons;

b) has already had 28 weeks' worth of SSP from the employer and this new spell of sickness links to the last one

c) was not entitled to SSP last time they were sick for any reason and this spell of sickness links to that one

d) was getting incapacity benefit (IB) from the DWP within the last 8 weeks, or started or returned to work for you after getting IB from the DWP and they are a Welfare to Work beneficiary who is sick within the first 104 weeks of starting or returning to work.

e) is a new employee and has not yet done any work;

f) has already received 28 weeks SSP from the previous employer and there is a gap of 56 days or less;

g) is involved in strike or is in legal custody;

h) is in receipt of maternity pay or maternity allowance;

i) receives a normal weekly earning of below the lower earnings limit –see Statutory Sick Pay Qualifying conditions (section 9.6.2)

9.8.2 After first four days, if the above exclusions apply, the employer must complete the exclusion form (SSP1) and send it to the employee within seven days.

The sick pay period

9.8.3 Statutory sick pay should only be paid once the employee has been sick for at least four calendar days in a row up to a maximum of 28 weeks.

If a PIW starts within eight weeks of a previous PIW, the periods are linked and count as one period of sickness, i.e. the employee does not have to wait for the qualifying days.

Notification to employee that SSP is being stopped

9.8.4 If an employer stops paying SSP to an employee who is still off sick, the employer must complete form SSP1 and send it to the employee immediately. The employee will then be able to use this form to claim employment and support allowance.

If the employer knows that an employee will be off for more than 28 weeks, the employer should send the form SSP1 to the employee up to six weeks before the end date for SSP to enable the employee to claim the employment and support allowance as soon as possible.

Administration of SSP

9.8.5 Payments can be by bank transfer, cash or by cheque on the normal pay day and at the normal pay intervals.

If the employee delays notifying the employer that he is absent due to sickness or injury SSP can be withheld for the number of QDs late (but days withheld do not count towards the 28 weeks) if the employer does not accept that there was good cause for the delay.

Holiday pay and contractual sick pay may be offset against SSP.

SSP is liable to tax and National Insurance contributions from both employer and employee.

The employer's liability to pay SSP is limited to 28 weeks in any one PIW or series of linked PIW (even if those weeks cross a tax year).

SSP can only be paid in respect of qualifying days. The daily rate is the appropriate weekly rate divided by the number of qualifying days in the week beginning with Sunday.

Recovery of SSP

9.8.6 From 6th April 2014, the Percentage Threshold Scheme whereby employers could recover some SSP was abolished.

SSP Record Keeping and Forms

9.8.7 The requirement to record keep for SSP purposes has been abolished. However employers will still be required to keep sickness records for PAYE purposes but can use a system which suits their organisation. Records also need to be kept so as to deal with any queries from employees over sick pay and to manage absences. It is likely to be useful to have records which show dates of PIWs, dates of SSP not paid (with reasons), details of QDs in each PIW, details of SSP paid, notification, self-certification, doctor's certificates etc.

If an employee has claimed certain State benefits within 57 days of going sick he should give the employer a DWP form. The employer should contact the DWP office before paying any SSP (although this circumstance will normally lead to exclusion).

If an employee leaves and has had an entitlement to SSP in the previous eight weeks, he should be given a "leaver's statement" (a form provided by the DWP) which he will give to his new employer. If he falls sick again within eight weeks of the last period of entitlement the new employer will take the leaver's statement into account in calculating his own maximum liability.

Where an employee is excluded from receiving SSP he should be given Form SSP1 Change over Form which should be available from the HMRC.

If an employee falls sick outside of the European Economic Area or they go outside of the EEA during a period of sickness, they are entitled to SSP provided that they satisfy all the relevant qualifying conditions as above. This applies to employees who are on holiday, those seeking treatment abroad and those sent temporarily to work abroad by their employer.

An employer is not liable to pay SSP to an employee who is outside of the UK if there is no liability to pay Class1 National Insurance on behalf of them. If SSP is payable and then the employer's liability to pay Class 1 National Insurance contributions ceases, the employee continues to be entitled to SSP until her or her entitlement stops for another reason, for example, because the employee has received the maximum 28 weeks entitlement.

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10. Chapter 10

Sickness Absence

Please note this chapter does not contain advice on additional sick pay provisions in place due to the Coronavirus pandemic. For up to date advice please refer to the Coronavirus section on the front page of the NTF website

10.1 Managing sickness – Overview and Absence Policies

Overview

10.1.1 An employee who is absent due to sickness - however long that absence – remains an employee until they either resign or the employer dismisses them. The contract does not end automatically due to the incapacity for work or using up their SSP entitlement.

Notification

10.1.2 An employer is entitled to have rules in place requiring the employee to notify them by a particular time if they are going to be off sick – see Absence Policies

Evidence of Incapacity

10.1.3 For SSP purposes an employer is entitled to ask for a self-certification form if the employee's sickness lasts more than 3 days and for a doctor's note if it lasts more than one week. An employer can also require self-certification for sickness absences of less than 3 days and the employer's requirements should be set out in the yard's absence policy.

Sick Pay

10.1.4 The provisions regarding sick pay are set out in the NTF / NARS agreement – minimum terms and conditions (Chapter 1) and also see Fitness for Work and Sick pay (Chapter 9)

What are the key risks?

Unfair dismissal (Chapter 4)

Disability discrimination (Chapter 12)

Sex discrimination (pregnancy related sickness) (Discrimination and Equality)

There are also issues surrounding health and safety legislation, breach of duty of care and holiday accrual during sickness absence.

Dismissing an employee because of sickness

10.1.5 An employee can potentially be fairly dismissed because of frequent short term absences (see Short Term Sickness - Formal Absence Management 10.3) or for lack of capability where an employee has a protracted absence (see Long Term Sickness Absence – terminating the contract clause 10.6).

It is essential that in both cases correct procedures are followed taking into account the requirements of the ACAS Code of Practice. Do not dismiss an employee for absence without following the procedures set out Chapter 10.3 Short Term Sickness - Formal Absence Management **or Chapter 10.6** Long Term Sickness Absence – terminating the contract **or taking advice from the NTF office/NTF legal helpline or other adviser.**

In the case of longer term absences, part of the procedure will be the employer obtaining an up to date medical report and the employer will need to consider any reasonable adjustments or alternative jobs which would enable the employee to return to work, and if there are any the employer is under a duty to make them.

Reasonable adjustments could include altering the working hours or allowing a phased return to work or providing different equipment. See advice on avoiding disability discrimination at Equality Act 2010 and Adjustments under the Equality Act. Whilst an employee does not have the right to claim general unfair dismissal until they have two years' service, the right to claim unfavourable treatment because of a disability applies from day one of employment (and indeed before at the recruitment stage).

Timing of a dismissal

10.1.6 There is no set time when an employer can start considering dismissal of an employee who is absent on a long term injury or sickness absence – it will be fact specific to each case and will take into account the business needs and the medical prognosis for a return including if any reasonable adjustments can be made to facilitate a return.

An employment tribunal may expect to see a greater degree of patience for an employee with long service or one who has been injured at work.

Of course, if the service is less than 2 years, it may be balancing the risk of dismissal before the employee acquires two years' service and the right to claim general unfair dismissal against the possibility of a disability discrimination claim which does not need any length of service.

An employment tribunal will not be particularly concerned with what has happened in the past with regard to capability but are interested in whether the employer has taken reasonable steps to investigate what is likely to happen in the future. So even after a long absence, if the employee's return to work is imminent, it will be unfair to dismiss. That is why having up to date medical advice is important – see the more detailed advice in **Chapter 10.6** Long Term Sickness Absence – terminating the contract

10.2 Sickness absence policy

Absence Policies

10.2.1 Absence can be for many reasons, so sickness, family or caring responsibilities or simply that the employee does not want to come into work due to a lack of motivation or unhappiness at work.

Having an absence policy means that employees know what is expected of them if they are absent and absence management should include a prompt return to work discussion even if an employee has just been off for one day.

New policies and procedures should be brought into effect in consultation with employees. If there is a policy in place and the employee fails to abide by it, then following proper investigation the employer will have the ability to discipline an employee, say, for failing to notify of an absence if there is not an acceptable reason for the failure.

Set out at the end of this section are two sample absence policies - a basic absence policy simply setting out notification requirements see Staff Absence Notification Policy – basic and a more comprehensive policy for employers wishing to manage staff more actively – Staff Absence Policy –detailed policy

It is possible to have a sickness absence policy which states the level of sickness which can be tolerated and provides a series of warnings to operate if the rate of sickness absence does not improve. This has the advantage to both parties of making it clear the levels of sickness absence which can be tolerated and the consequences of sickness exceeding those limits. If any trainer would like to discuss putting such a policy in place then contact the NTF for advice. The potential downside of such a policy is that employees can think they are "allowed" a certain number of days sickness each year and that the implementation and use of such a policy takes up management and office time.

Employee notification of sickness absence and evidence of incapacity

Notification of absence

10.2.2 A condition of entitlement to SSP is that employees must notify their employer of any date on which they are unfit for work within 7 calendar days of that date and a failure to comply with this condition can result in SSP being withheld.

Evidence of incapacity

10.2.3 Another condition of entitlement to SSP is that the employee must provide evidence of incapacity - an employer cannot however withhold SSP for late medical evidence.

For SSP purposes, an employer may accept as evidence for incapacity for 4 – 7 days a self-certification verbally or by letter, the Government form SC2 or the employer's own form. There is no statutory right to require a doctor's certificate during this period.

10.2.4 A template self-certification form can be found at Template32Template32 Self Certification Form

Where the incapacity lasts more than 7 days the medical evidence will generally be a doctor's statement of fitness for work (a fit note). If an employee has been absent for more than 4 weeks and has been referred to Fit for Work, then a Fit for Work Return to Work plan can be used as evidence instead of a fit note.

A written notice issued by a GP or 111 with regard to self-isolation for Coronavirus has the effect of deeming the employee to be incapable of work under the Statutory Sick Pay regulations and so they are entitled to SSP.

Withholding SSP

10.2.5 **SSP** can be withheld if there are any dates for which the employer has not been notified but cannot be withheld for late medical evidence.

Contractual sick pay

10.2.6 This is as set out in the NTF NARS agreement on minimum terms of employment See NTF / NARS agreement – minimum terms and conditions (Chapter 1)

Recording absences

10.2.7 All absences should be recorded for staff management purposes.

Return to work interview

10.2.8 Return to work interviews give an employer the opportunity to welcome a member of staff back to work. In addition:

- They provide the opportunity to confirm the details of the absence for record-keeping purposes
- They provide an opportunity to discuss any changes that might be needed in order to facilitate a return to work
- In the case of someone who has had several short, intermittent absences (and who is unlikely to be on a phased return to work programme), they provide the opportunity to establish whether there may be an underlying health or other (for example disciplinary) issue that the employer should investigate further.

10.2.9 The purpose of this is to manage absence and must not turn into a disciplinary meeting. It should be informal and private.

A return to work interview can help show the employee that their absence was noticed and they may be less inclined to take time off for a non-genuine absence. It can also help bring to light if the absence was not for sickness but for some other reason such as a problem at work or a family problem.

These work best if carried out as soon as the employee returns to work and for each and every employee after every absence.

Preparing for a Return to Work interview

10.2.10 Have the employee's records to hand including the attendance record, statement of fitness for work with any suggestions, think about what questions will be asked to try to get to any underlying issue there may be.

If a phased return or light duties have been suggested by a doctor think how the business can cope with those.

Consider if there is a pattern of short term absences and whether these may indicate general ill health which requires medical investigation or if continued may indicate work stress or lack of capability to do the job. Consider also if appropriate to seek consent to obtaining a medical report to establish any underlying problem.

Consider whether it will be helpful or appropriate to discuss whether there are any domestic difficulties or problem with the job.

Conducting a return to work interview

10.2.11 An outline of a meeting would be:

- Short absences
  - Identify the cause
  - Check if employee well enough to be at work
  - Establish if the absence is work related and if it is whether there is any health and safety or other issues the employer needs to address

- If the absence is not for illness, should it have been covered in another way such as time off for a family emergency

- Longer absence
  - Update the employee with any news from whilst they were off
  - Discuss any agreed return to work plan based on advice from GP or Fit for Work
  - Find out if there is any long term or ongoing problem and if there are any reasonable adjustments the employer can make – see Discrimination and Equality (chapter 12)
  - Depending upon the reason for the absence, the employer may need to carry out a specific risk assessment with regard to the returning employee's activities.

Actions out of a return to work interview

10.2.12 If there is any action which the company will take arising out of the meeting, then agree what is to be done by when and arrange a follow up.

If after the meeting the employer is unhappy with the explanation for the absence then further investigation and possibly disciplinary action may be necessary. Remember not to let a return to work discussion or investigation turn into a disciplinary.

If during the return to work discussion it becomes apparent that an absence has been caused or made worse by problems with other members of staff, then ensure any grievance is fully investigated and action taken. The use of a mediator could be considered to try to re-establish good working relationships.

If the employer is concerned that the employee is too sick to return then the employer should refer the employee back to the GP although care should be taken in doing this. It may instead be appropriate to seek occupational health advice or advice from the Government Fit for Work scheme.

Although the majority of return to work interviews will be brief and informal it is advisable to keep a note of what was said.

Staff Absence Notification Policy – basic

Staff Absence Notification

Any member of staff who is absent from work due to sickness or injury must:

- notify us by ringing [ ] or [ ] advising that you will not be able to report for work, the reason for the absence and an estimate of how long you will be way from work. Where due to the sickness or injury you are personally unable to ring in, then you should arrange for a relative or friend to ring in.

You must:

- ring in by [ ] Texting is not acceptable.
- complete a self-certification form to cover the first seven calendar days of any absence. A form is available from the office and can be sent to you on request
- provide a doctor's Fit Note to cover all periods of absence longer than seven calendar days
- keep us informed of your progress.
- All accidents and injury which occur whilst you are on our premises or carrying out duties for us must be reported as soon as possible to [ ] with full details as to how the injury happened, together with the extent and nature.

Failure to comply with the above may result in disciplinary action under the yard's disciplinary procedures.

We refer you to the Employee Privacy Notice issued to you for information on how we process your personal data and sensitive personal data and your rights relating to such data. A further copy of the Employee Privacy Notice is available on request

Staff Absence Policy –detailed policy

This is a more complex absence management template for businesses to adapt to suit their particular circumstances.

If introducing any new policy, staff must be consulted upon it. It is particularly important to discuss with and explain to employees the reporting requirements etc. under this policy to ensure that they are aware of the rules and the effect of failure to comply.

Note to employers – this does not form part of the policy

- There are template letters for absence review meetings and detailed information in Chapter 10.3.6 Short Term Sickness - Formal Absence Management or Chapter 10.6 Managing long term absences
- Whilst an attendance policy applies equally to all staff, disabled employees must not be put at a substantial disadvantage and it should be noted that there are a number of potential claims which can arise when managing an employee. These include direct/indirect discrimination and unfair/constructive dismissal, as well as the failure to consider or make any reasonable adjustments. Absence relating to the disability of an employee or to pregnancy should be kept separate to sickness absence records.
- Section 10 of the policy relates to pay when an employee is on a phased return to work, so either working shorter hours or doing different duties to their normal job. There are two suggested options here as to how an employee is paid in that period and employers need to delete the one that is not applicable to their business or put in their own alternative pay arrangements for any such period.

Staff Absence Policy

1. Policy Statement

We are committed to improving the health, wellbeing and attendance of our employees and this policy sets out what we expect from managers and employees when handling absence.

This policy has been introduced in consultation with employees and we welcome the continued involvement of employees in implementing this policy

You should familiarise yourself with this policy so that you know what is expected of you should you become ill or injured.

This policy and the procedures in it do not give contractual rights to you and we reserve the right to make amendments to it from time to time.

This policy applies to all employees.

2. Key Principles

Regular, punctual attendance is an implied term of your contract of employment – we ask you to take responsibility for achieving and maintaining good attendance.

We will pay you if you are unable to work due to sickness or injury in accordance with the collective agreement between the NTF and NARS from time to time in place.

It is recognised that most employees will occasionally have genuine and acceptable reasons to be absent from work but any absence has an impact on the business. The aims of this policy are to set out what we will do and what we expect you to do.

The company disciplinary procedures will be used if an explanation for an absence is not forthcoming or is not thought to be satisfactory.

We respect the confidentiality of all information relating to an employee's sickness and this policy will be implemented in line with the Employee Privacy Notice issued to you and the Access to Medical Records Act 1988. A further copy of the Employee Privacy Notice is available on request.

3. Notification of Absence

If you are absent from work due to sickness or injury you must notify us by ringing […….] or [……].

Where due to sickness or injury you are personally unable to ring in, then you should arrange for a relative or friend to ring in. You should ring in by [……].

Texting is not acceptable.

You should:

- Give a clear indication of the nature of the illness or injury
- A likely return date
- And whether you are intending to seek medical advice.

If you do not contact us by the required time, we will attempt to contact you at your home number or address.

If you do not feel able to discuss your medical problems with [……..] or [……], we will be sensitive to individual concerns and make alternative arrangements where appropriate, for example you may prefer to discuss health problems with a person of the same sex.

4. Evidence of incapacity

For any absence of up to seven days you must self-certify using the company's self-certification form which is available from [……..]. A form will be sent to you upon request.

For any absence of over seven days a doctor's note in the form of a Statement of Fitness for work (Fit Note) must be provided to [……].

We reserve the right to require you to provide a medical certificate, at your own cost, to cover an absence lasting less than eight days. You will be told in writing if this applies to you and company sick pay will not be payable without one. A medical certificate is always required if you intend to postpone a period of holiday due to sickness.

5. Keeping in touch

There is a shared responsibility for you and us to maintain contact at agreed intervals.

You should telephone [……..] once a week unless we agree with you a different arrangement as to how frequently you need to contact us to keep us informed of your progress. We may also arrange to meet you periodically either at work or home

Any day where you have not complied with your obligations under this procedure on notifying us of your absence, keeping in touch or

providing medical certificates, will be treated as a day of unauthorised absence under the disciplinary procedure.

6. Sick Pay

The provision regarding sick pay is set out in the NTF NARS Memorandum of Agreement on Minimum Standards of Employment from time to time in force

The company sick pay under the Agreement is inclusive of SSP or any state incapacity or industrial benefits you are entitled to.

Your eligibility for company sick pay will be lost:

- if you fail to follow the rules set out above on notifying us of your absence
- if you fail to co-operate with us throughout your absence
- if you fail to co-operate with us in providing further medical information
- and for any day not covered by a certificate

7. Sickness absence and holidays

If you fall ill immediately before or during a period booked off as part of your holiday entitlement, you will be able to postpone the holiday until a later dated provided:

- you comply with normal notification and keeping in touch rules set out in paragraph 3 and 5
- you provide a medical certificate to cover each day of absence. You will not be able to self-certify your absence even if it is for less than eight days. The medical certificate must be at your own cost.

These requirements apply even if you are abroad although in such instance we may agree with you a different reporting structure.

Days converted from a period of holiday to sickness absence count in the normal way for any absence review.

Requesting paid holiday during sickness absence

If you are absent on long term sick leave, you can apply to take some or all of your statutory holiday entitlement. You must complete a holiday request form in the normal way. We reserve the right to refuse your request. We will not normally accept a request where you have time left in the holiday year on your return to take outstanding leave entitlement.

When you take a period of paid holiday at a time when you are absent on sick leave, SSP is still payable If the usual qualifying

conditions apply. This means your holiday pay is inclusive of any SSP due to you. Your period of holiday and your period of SSP will run concurrently. You will not be entitled to company sick pay and holiday pay for the same period of time.

Company notification of holiday during sickness absence

If you have exhausted your entitlement to company sick pay and it is clear to us that you are unlikely to return to work before the end of the company's holiday year, we may nominate days of your sickness absence as a period of your outstanding holiday entitlement.

If we choose to do this, we will give you advance written notice of at least twice the number of days of holiday we are nominating (so two weeks notice for one week's holiday). If you do not wish to take the period of holiday at the nominated time, you should let us know within 7 days of receiving our letter to confirm that it is your wish.

8. Working whilst signed off

If you are absent on sick leave, you are not expected to do anything that is inconsistent with being unfit for your duties or which would delay your return to work. This includes working for another employer without our prior permission and taking part in inappropriate activities likely to aggravate your condition. If it is found that you have done something inconsistent with your absence on sick leave, this may result in the suspension of sick pay (other than statutory sick pay) and/or disciplinary action.

9. Further medical information

We may at any time ask you to attend a health professional (doctor, specialist or occupational health practitioner) or we may ask your permission to seek a medical report from your own doctor or other medical professional. This is to enable us to get a clear picture of the way your condition is affecting your ability to work, whether there is anything the company can do to help you return to work and to ensure that we are meeting our health and safety obligations. The medical report may also be taken into account when making decisions about your future employment.

10. Injury at work

All accidents and injury which occur whilst at the company premises or on authorised company business must be reported as soon as possible to [……]. Full details must be given as to how the injury happened together with its nature and extent.

Failure to report that an accident or injury at work has occurred may affect any RIABS claim or sick pay (other than SSP).

11. Phased return or amended duties

May be fit for some work

If your doctor advises on the Fit Note that you may be fit for some work, we will discuss with you ways of helping get you back to work such as a phased return to work or amended duties.

If it is not possible to provide the support you need to return to work – for example by making the necessary workplace adjustments – or you feel unable to return then the Fit Note will be used in the same way as if the GP had advised that you were not fit for work.

Pay during a phased return

If your doctor or an occupational health adviser or a return-to-work plan indicates that a temporary adjustment including a phased return that enables you to return to work and we can accommodate the suggestion, then:

- *you will not suffer any financial penalty by returning to work under temporary adjustments, which means in practice you will be paid a normal day's pay for any day that you work, even if it is not a normal full working day or your normal duties, or*
- *you will be paid your normal pay for any hours worked even if you are not carrying out your normal duties or are working them at a different time**

employer to delete as appropriate.

If you are eligible for company sick pay and have not yet exhausted your entitlement you will be paid company sick pay for the days or part days you are not working and for which company sick pay would have been payable if you had not returned under a phased return.

If you are off because of an accident at work you should advise RIABS that you are returning on a phased return and of your earnings so that RIABS benefit can be adjusted accordingly.

If by returning to work on temporary adjustments you lose your entitlement to SSP, the company may in its absolute discretion pay a sum equivalent to it assuming that all the normal qualifying conditions are met.

12. Return to Work Discussions

Unless it has been agreed with you otherwise, we will discuss with you upon your return to work:

- the reason for and cause of your absence
- if there is anything the company can do to help
- that you are well enough to work

If you do have any underlying problems or reasons that are causing you to take time off, this is a good opportunity to discuss them as we may be able to help you.

If there are exceptional circumstances and you do not wish to discuss the reason for your absence with the person nominated to do so, then please advise us and we will arrange for you to discuss with another senior person within the company

13. Absence reviews

13a. We recognise that employees will sometimes be too unwell to work and need time off to recover but there are unfortunately limits to the amount of absence that the business and your colleagues can sustain. Therefore we will monitor absence and where there is a cause for concern or an unacceptable absence pattern such as regularly off ill on a Monday, we will hold a formal attendance review meeting to bring about an improvement. Before any formal action is taken we will send you a letter setting out your attendance record and informing you of the possible outcomes of the meeting and the letter will also tell you that you have the right to be accompanied at the meeting by a co-worker or trade union official. At the meeting we will discuss your attendance record and the impact it is having on the business and you will be given the opportunity to explain the reason for the absence. You will be given the right to appeal against any decision.

If you have a long lasting illness this will normally be managed in the way set out below at 13b. However, we may at our entire discretion deal with any kind of absence under either 13a or 13b or both where appropriate.

Management of Longer Term Conditions or Injuries

13b. This paragraph normally applies where you have an underlying medical condition or injury that is preventing you from working normally perhaps causing you to have frequent short term absences or a single lengthy absence.

We are committed to helping employees return to work from long term sickness absence. As part of our absence review meetings procedure, we will, where appropriate and possible, support a return to work by:

a) obtaining medical advice

b) making reasonable adjustments to the workplace, working practices and working hours

c) considering re-deployment and/or

d) agreeing a return-to-work programme with everyone affected.

Where it is appropriate we aim to help employees overcome the problems they have which are stopping them from working normally. In practice this means we will

Keep your absence under review

Maintain contact with you as and when appropriate, which may include periodic case meetings, either at work or home, to help you keep us informed of progress. We can also let you know what has been happening in your absence.

Ask your permission to obtain medical reports which may also involve you attending one or more medical examinations with a doctor or other health professional appointed by us.

Where appropriate identify and consider with you measures which might help you return to work earlier than might otherwise be possible including, where applicable, taking into account any comments made by your GP on your medical certificate

Keep any measures we have put in place under review

Research shows that the longer an employee is off sick, the less likely they are to return to work. The steps set out above are designed to help us prevent that happening and so are in everyone's interest. Therefore, we expect you to co-operate fully with us in managing this kind of absence. If, in our view, you do not co-operate fully then it may affect your continued employment and may affect your entitlement to sick pay.

Should the situation arise where because of your continuing absence it becomes necessary to consider whether your employment should be terminated, we will invite you to a formal meeting before a decision is made to consider all the circumstances and probable future pattern of absence, taking into account any medical advice and the likely success of any adjustments that could reasonably be made. We will also take into account the needs of the business. You will be informed of your right of appeal.

14. Reminder of time off for family emergencies

You have the legal right to take a reasonable amount of unpaid time off work to deal with an unexpected or sudden family emergencies and to make necessary longer term arrangements. This right applies in the following circumstances:

- If a dependant falls ill or has been involved in an accident or assaulted
- If the dependant is having a baby
- To make longer term care arrangements for a dependant who is ill or injured
- To deal with the death of a dependant, for example to make funeral arrangements or to attend a funeral
- To deal with an unexpected disruption or breakdown in care arrangements for a dependant, for example, when a childminder or nurse fails to turn up

- To deal with an incident involving your child during school hours

A dependant means your spouse or civil partner, child or parent, or someone who lives with you as part of your family or anyone else who reasonably relies on your to provide assistance, make arrangements or take action of the kind referred to above. In case of illness, injury or where care arrangements break down a dependant may also be someone who reasonably relies on you for assistance.

If you do need to take time off for a family emergency, you must notify the company as soon as possible that you need time off, the reason for the absence and when you expect to return. You may be required to provide evidence of the reason for your absence.

No-one who takes time off in accordance with this paragraph will be subjected to any detriment.

The NTF/NARS have agreed that stable employees shall be granted paid absence for up to five days in the event of the death of a spouse, civil partner, child, brother, sister or parent or other relation for whom they provide care at the discretion of the employer. In the event that the five days is insufficient or that a serious family event has occurred which has not resulted in bereavement, we may at our discretion negotiate a period of unpaid leave to enable that outstanding personal matter to be dealt with.

Self certification form

Template 32: Self certification of sickness absence form

SELF CERTIFICATION FORM

Name _____

To be completed by the employee:

I was absent from	
To	

The reason for my absence was: [**Please provide brief details, do not just put sick or ill**]

If the absence was caused by an accident at work, if it was not recorded in the Accident Book, then please supply details of the accident below:

I confirm that I was absent from work for the period stated above for the reasons given and that this is true and accurate to the best of my knowledge. I understand that giving false or misleading information could result in disciplinary action including dismissal.

I consent to the employer using this information in connection with normal employment purposes.

Signed (employee) _____

Date _____

Employe note : Data Protection

We refer you to the Employee Privacy Notice issued to you for information on how we process your personal data and sensitive personal data and your rights relating to such data. A further copy of the Employee Privacy Notice is available on request

Signed (employer or authorised signatory) _____

Date _____

Managing Short Term Absences

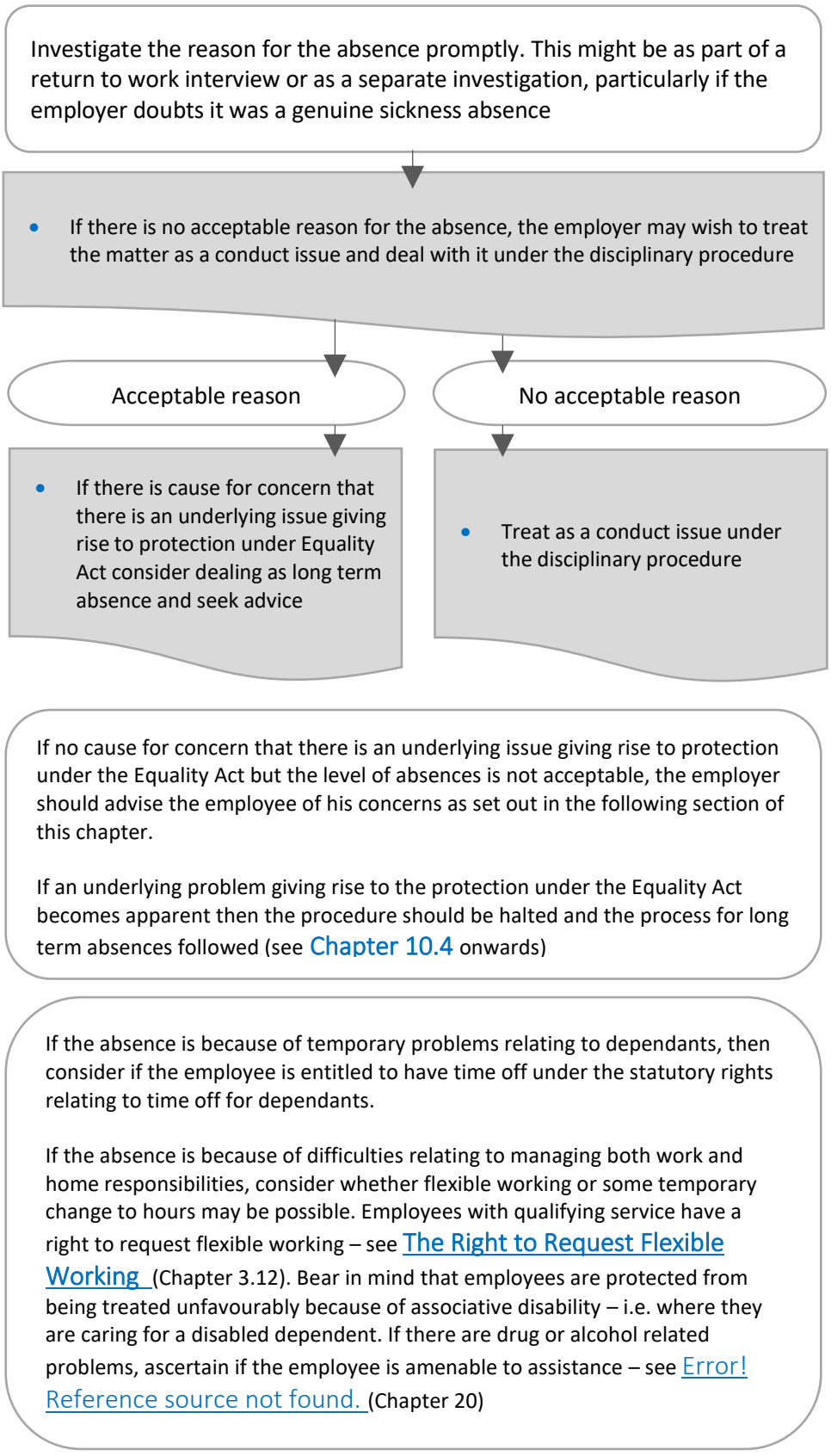
10.2.13 The management of sickness absence falls into two categories, those where an employee is off frequently for short periods and those where the employee is off long term.

This section gives advice on managing an employee with an unacceptable absence record.

It is important that the employer ascertains if there is an underlying medical condition in which case it is likely to be appropriate to use the principles of long term sickness absence and consider whether the provisions of the Equality Act relating to disability apply. For instance, an employee with a progressive illness such as multiple sclerosis or cancer will be covered by the Equality Act from the point of diagnosis. If in any doubt, the employer should treat an employee who could be protected by the Equality Act as if the employee is protected. For the further information see Equality Act 2010 and Discrimination and Equality (chapter 12).

Adopting the practice of carrying out return to work interviews after each and every absence is useful in helping manage absences (see Return to work interview section 10.2.8).

Figure 11: Absence, overview



If no cause for concern that there is an underlying issue giving rise to protection under the Equality Act but the level of absences is not acceptable, the employer should advise the employee of his concerns as set out in the following section of this chapter.

If an underlying problem giving rise to the protection under the Equality Act becomes apparent then the procedure should be halted and the process for long term absences followed (see Chapter 10.4 onwards)

If the absence is because of temporary problems relating to dependants, then consider if the employee is entitled to have time off under the statutory rights relating to time off for dependants.

If the absence is because of difficulties relating to managing both work and home responsibilities, consider whether flexible working or some temporary change to hours may be possible. Employees with qualifying service have a right to request flexible working – see The Right to Request Flexible Working (Chapter 3.12). Bear in mind that employees are protected from being treated unfavourably because of associative disability – i.e. where they are caring for a disabled dependent. If there are drug or alcohol related problems, ascertain if the employee is amenable to assistance – see Error! Reference source not found. (Chapter 20)

Short Term Absences procedures

10.2.17 Where it is a matter of conduct rather than of sickness - for example unauthorised absence with no acceptable reason - that should be dealt with under the disciplinary procedure see Chapter 5.

As a result of the Equality Act more employees are likely to be able to meet the definition of disabled and if the employer has any doubt as to whether or not the employee is protected under the Equality Act, then the employer should treat the employee as if they are protected and follow the advice for long term absences.

Where it is a case that the absence has reached an unacceptable level but there is no concern that the employee is protected under the disability provisions within the Equality Act, then the procedure set out below should be used.

If an employer has an absence management policy in place, then ensure that the policy is followed and any review meetings are in line with the procedures set out in the policy

Short term sickness - Informal absence management

10.2.18 The first stage before moving to the formal procedure would be to have an informal absence management review meeting with the employee and this could tie in with a return to work interview. It is always important to ensure that any informal review meeting does not turn into a formal disciplinary meeting, as the right to be accompanied applies at the formal meeting.

Short Term Sickness - Formal Absence Management

10.2.19 Step 1 - Write to employee to invite to a meeting

If the employer is considering formal disciplinary action or dismissal, then the employer must arrange a meeting with the employee. The employee must be invited to such a meeting in writing.

10.2.20 There is a template letter for inviting employees to a formal absence management meeting where result may be a warning. Template33 Frequent short term absences warning invite letter

10.2.21 There is a template letter for inviting employees to a formal absence management meeting where the employer is considering dismissal. Before dismissing ensure the letter at Template34 Frequent Short Term Absences Dismissal Letter Invite is used and the employee must have had previous formal warnings. Template 34: Frequent short term absences dismissal invite letter

The employee has the right to be accompanied by a colleague or union representative.

10.2.22 Step 2 - Hold the meeting

At the meeting the employee should be informed that he is not being disciplined for being sick but that a fair procedure is being used to monitor absence and that dismissal will only occur if he is unable to satisfactorily fulfil his contract of employment. Note first and final formal written warnings would normally be appropriate and dismissal only considered if the attendance record does not improve. Employers need to act fairly and consistently in applying any warnings or considering dismissal.

If during the meeting it becomes apparent that there is an underlying problem and that the employee may have protection under the disability provisions of the Equality Act, the employer should adjourn the meeting and undertake further investigations and obtain a medical report if necessary.

10.2.23 Step 3 Outcome of Meeting

The employer should not make a decision at the meeting but consider all the facts following the meeting and then notify the employee of the decision without unreasonable delay. If the decision is to give a formal warning/improvement note or to dismiss, that should be confirmed in writing and the employee told that they can appeal the decision – see Template35 Frequent short term absences outcome of meeting letter

Before reaching the point at which dismissal is considered, the employer should check that the employee has received previous warnings about their attendance record and that the employee has previously been formally warned that dismissal is a possible outcome of further absence. The employer should also take into account the employee's length of service, performance, the likelihood of improvement and the effect that the past and future absences have on the organisation.

10.2.24 Step 4 – Appeal

If the employee appeals against the decision to issue a warning or to dismiss, then the employer should arrange an appeal hearing and consider the appeal. If possible someone not previously involved in the matter should consider the appeal although if this is not possible the same person can hear the appeal but must do so impartially. See letters at Template36 Letter to arrange appeal meeting against warning/dismissal (unacceptable short term absence)
and Template37 Notification of outcome of appeal hearing (appeal against warning or dismissal for unacceptable level of short term absences) for inviting employee to appeal meeting and confirming the outcome of the appeal.

Managing Short Term Absences

Template 33: Frequent short term absences warning invite letter

Letter to meeting where a first warning/improvement, second improvement note or final written warning may be issued:

Dear [**name**]

Date

I write to invite you to a meeting on [**insert date**]. at [**insert time**]. with [**insert name(s)**]

The purpose of the meeting is to consider your attendance record. According to our records you have been absent on the following dates:

date reason for absence

(insert details)

The outcome of this may be a [**first or second**] improvement note/a warning, or final written warning*

[**If appropriate**: Our records show you have already been issued with a warning/s on […] in respect of your attendance].

You have the right to be accompanied at the meeting by a trade union representative or a work colleague.

We refer you to the Employee Privacy Notice issued to you for information on how we process your personal data and sensitive personal data and your rights relating to such data. A further copy of the Employee Privacy Notice is available on request

Yours sincerely

Template 34: Frequent short term absences dismissal invite letter

Letter inviting to meeting where considering dismissal because of frequent short term absences (where employer satisfied no disability discrimination issues) (previous valid warnings as to attendance record already issued)

Dear [**name**]

Date

I write to invite you to a meeting on [**insert date**]. at [**insert time**]. with [**insert name(s)**]

The purpose of the meeting is to consider your attendance record and whether we are able to continue to employ you. Despite previous cautions, you have not improved to the standard required and the outcome of this meeting may therefore be dismissal. You will of course be given the opportunity in the meeting to put forward your case.

According to our records you have been absent on the following dates:

date reason for absence

(insert details)

and you have received formal warnings on [ ] and [ ].

[**If appropriate** – I also enclose a copy of a medical report from your doctor which states the reasons for the absences are not related and do not stem from an underlying condition]

You have the right to be accompanied at the meeting by a trade union representative or a work colleague.

We refer you to the Employee Privacy Notice issued to you for information on how we process your personal data and sensitive personal data and your rights relating to such data. A further copy of the Employee Privacy Notice is available on request

Yours sincerely

Template 35: Frequent short term absences outcome of meeting letter

Letter being notification of outcome of meeting considering disciplinary action or dismissal due to levels of short term absence (for use where employer satisfied there are no disability discrimination issues)

Dear [**name**]

Date

I write further to our meeting on [**insert date**] at which we discussed our concerns about your attendance record.

The outcome of the meeting is that we are issuing you with an improvement note/warning or a final written warning that your attendance is unsatisfactory and we require an improvement in this. The likely consequence of insufficient improvement is a final warning/dismissal.*

The outcome of the meeting is that we have decided that you will be dismissed and that your last day of service with us will be [**insert date**]*

You have the right to appeal against this decision in writing to [**insert name**] within [5] days of receiving this disciplinary decision.

We refer you to the Employee Privacy Notice issued to you for information on how we process your personal data and sensitive personal data and your rights relating to such data. A further copy of the Employee Privacy Notice is available on request

Yours sincerely delete as appropriate. If the outcome of the meeting that no action is being taken,

Template 36: Letter to arrange appeal meeting against warning/dismissal (unacceptable short term absence)

Dear [**name**] Date

You have appealed against the written warning/improvement note/final written warning/decision to dismiss confirmed to you in writing on [date of letter].

Your appeal will be heard by [**insert name**] on [**insert date and time**] at [**insert location**].

You are entitled to be accompanied by a work colleague or a trade union representative.

The decision of this appeal meeting will be final and there will be no further right of review.

We refer you to the Employee Privacy Notice issued to you for information on how we process your personal data and sensitive personal data and your rights relating to such data. A further copy of the Employee Privacy Notice is available on request

Yours sincerely

* delete as appropriate. If the outcome of the meeting that no action is being taken, this should also be confirmed to the employee.

Template 37: Notification of outcome of appeal hearing (appeal against warning or dismissal for unacceptable level of short term absences)

Date

Dear [**name**]

You appealed against the decision of the disciplinary hearing that you be given a warning/an improvement note/a final warning/dismissed.

The appeal meeting was held on [**enter date**].

I am now writing to inform you of the decision taken by [**insert name of person making the decision**] who conducted the appeal meeting, namely that the warning/final warning/decision to dismiss stands or the warning/final warning/decision to dismiss be revoked.

[if no disciplinary action is being taken or there is new disciplinary action being taken, then that should be specified].

You have now exercised your right of appeal under the NTF/NARS/Company's Disciplinary Procedure and the decision is final.

We refer you to the Employee Privacy Notice issued to you for information on how we process your personal data and sensitive personal data and your rights relating to such data. A further copy of the Employee Privacy Notice is available on request

Yours sincerely

* delete as appropriate. If the outcome of the meeting that no action is being taken, this should also be confirmed to the employee.

10.3 Long term sickness absence

Managing long term absences

10.3.1 This section relates to managing the absence. If the stage has been reached where a formal warning or dismissal is being considered, see section 10.6.

Whilst some absences will be long term due to the nature of the injury or illness, employers should try to case manage absences to try to prevent unnecessary long-term absence.

The Government sickness advice is that employees who are off work sick for more than 4 weeks may be considered long-term.

In managing absence, employers can:

- keep in touch with employees throughout their absence. This can include meeting with the employee either at their home, the yard or a neutral location.
- the nature of such contact will depend upon the individual situation and could be with a view to commencing rehabilitation towards returning to work or where a diagnosis or prognosis is unclear simply to maintain contact. If the employee is very sick, such contact may be for welfare reasons. Any such contact should be kept separate from any discussions about the employee's continuing employment where a dismissal is being considered.
- try to establish what is preventing the employee working.
- in conjunction with medical advice establish if there are temporary adjustments that can be made to an employee's job or the workplace if that enables the employee to return to work. If the employee falls under the protection of the disability provisions of the Equality Act, then the employer has a duty to consider reasonable adjustments but it is good practice in any event.
- consider in conjunction with medical advice whether a phased return to work is appropriate
- be pro-active about obtaining medical reports which may help establish why the employee cannot work. This could be via Fit for Work (see below) or a doctor's report.

If considering dismissal ensure that a fair procedure is carried out and that it is reasonable to dismiss, taking into account the provisions of the Equality Act if these apply, considering reasonable adjustments and offering any vacancies within the organisation to the employee. For detailed advice go to Long Term Sickness Absence – terminating the contract (section 10.6) and Equality Act 2010 (section 10.6.12).

When an employee returns from an absence the employer should carry out a risk assessment of the employee's activities and consider

any particular vulnerability of the returning employee. There is advice on the Health and Safety Executive's website at http://www.hse.gov.uk/sicknessabsence/

The NHS http://www.nhs.uk/conditions/pages/hub.aspx has guidelines available on the typical lengths of absence and effects associated with common conditions. These can be of help in knowing how to manage an illness and when it would be appropriate to obtain a medical report.

10.4 Managing the Absence –

Phased return or adjusted duties

10.4.1 Where an employee returns on a phased return or adjusted duties, it should be agreed with the employee that this is a temporary adjustment and a review date set. Should the adjusted duties become permanent then the contract of employment should be amended to reflect the new arrangement – this should be done in consultation with the employee.

Helping an employee back to work – other sources of assistance

10.4.2 An employee who is signed off ill should not have pressure put on them to return to work before their medical adviser indicates they are fit to return either to their full normal duties or on a phased return.

However, as part of managing absence, discussions with employees about helping with treatment may assist their recovery and there are various organisations available within racing who may be able to help either by arranging complimentary treatment, having exercise facilities to enable an employee to work on their fitness pre a return to work or simply having someone to discuss their health or other issues with. Racing has the following centres:

- Oaksey House, Lambourn.
- Jack Berry House, Malton
- Racing Centre, Newmarket
- Racing Welfare.

There is considerable assistance available to employers to help manage absence and help their employees.

Employers must not discuss confidential medical information (sensitive personal data) with other providers unless they have the employee's specific consent but instead should ensure employees are aware of assistance which might be available to them and discuss as part of their absence management.

10.5 Terminating the employment for lack of capability due to ill health

Long Term Sickness Absence – terminating the contract

10.5.1 The correct procedures must be followed if considering dismissing an employee who is absent on long term illness – see 10.6.2 to 10.6.8. The employee is being dismissed not because he is sick or injured but because he is incapable of fulfilling the contract for which he was employed.

Before any dismissal, the employer must ensure that up to date medical advice has been obtained, reasonable adjustments considered and any alternative jobs offered and that it is reasonable for the employer to dismiss. If there are reasonable adjustments that can be made to enable the employee to return to work, the employer is under a duty to make such adjustments. See below for further information.

The duty to make reasonable adjustments arises under the disability discrimination provisions of the Equality Act and a failure to make reasonable adjustments is in itself a discriminatory act. Ultimately only the courts can decide whether a particular employee is disabled but employers can manage the risk of claims by knowing the extent of the protection of the Equality Act - see advice later in this chapter (Equality Act 2010).

Investigatory meeting

10.5.2 There is a sample letter for inviting an employee to an investigatory meeting at see Template38 Long Term Absence – First Request for Investigation Meeting – meeting to consider whether a medical report is appropriate and look at adjustments or alternative work

This meeting is to ascertain the employee's condition and prognosis for return and if necessary to ask for consent to obtain a medical report. The employer can discuss with the employee whether there are any adjustments or steps the employer could make to enable the employee to return. The purpose of this meeting is not to discuss any potential dismissal.

There is no statutory right for the employee to be accompanied by a work colleague or union representative at an investigatory meeting or meeting whereby the employer is keeping in contact with an absent employee but it is important to ensure that the meeting does not turn into a disciplinary or dismissal meeting as an employee has the right to be accompanied at such meetings.

Obtaining a medical report

10.5.3 The employer can only obtain a medical report with the consent of the employee.

There is a sample letter for the employer to use to notify the employee of the intention to seek a medical report together with a sample letter for the employee to use to consent see Template39 – Long Term Absence Notification to Employee of Intention to seek Medical Report and Template40 Long Term Absence – Authority from Employee to Employer to obtain a Medical Report

The employer will be expected to pay for the report.

In some cases it may be appropriate or necessary to seek occupational health advice. Any trainer wishing to be put in contact with an occupational health adviser can contact the NTF for assistance.

There is a template letter for sending to the doctor or specialist to request the medical report see Template41 Long Term Absence – Form of Letter for Employer to Send to medical Adviser Seeking Report

If the employee refuses to give consent to the employer obtaining the medical report, then the employer will have to proceed on the basis of the information available. This should be made clear to the employee.

Arrange meeting to consider continued employment

10.5.4 Once the employer has the up to date medical report, the employer can then move on to the next step of arranging a further meeting with the employee to discuss the continued employment. The employer must formally invite the employee to the meeting – see Template42 Long Term Absence – Meeting to Discuss Continued Employment. See below for further information on what should be discussed at this meeting.

Preparation for the meeting

10.5.5 Consider what adjustments may be possible and what, if any, others jobs are available. It may be advisable to speak to outside bodies such as Disability Employment Advisers to see what adjustments or assistance is available, for instance:

Disability Employment Advisers are contacted through the relevant local Job Centre Plus (www.jobcentreplus.uk). Other bodies which could be approached include specialist groups about a particular illness, for example, the ME association if an employee is suffering from chronic fatigue syndrome. Access to Work https://www.gov.uk/access-to-work/overview is a Government scheme providing practical support to employees with physical or mental health problems returning to work.

Sickness absence termination - The meeting

10.5.6 The employee has the right to be accompanied at this meeting – see Right for employee to be accompanied for further information (chapter 15).

The employer should discuss with the employee any medical reports that have been received. If there is conflicting advice, it may be necessary to seek a further opinion.

The employer must consult with the employee over any reasonable adjustments that may be made to the job, premises, tools, hours, etc. to enable the employee to do his or her job. It is not the employee's responsibility to suggest adjustments though they should be asked if there are any they can think of.

If there are any reasonable adjustments that can be made, then the employer is under a duty to make them. Again it may be appropriate to speak to the local Disability Employment Adviser or an association dealing with the specific type of medical problem to ascertain what help is available. The employer should try to ascertain what is preventing the employee from working – are there some temporary adjustments that could be made to the employee's job or the workplace to enable the employee to return to productive work. Whether a phased return to work is appropriate should be considered.

If making temporary work adjustments, these should be made in consultation with the employee and in the light of medical advice. It should be made clear that any adjustments are temporary and will be subject to regular review. The details of the adjustment should be confirmed in writing and reminders made to review.

If the employee is receiving Incapacity Benefit the employer should check with the local job centre plus (www.jobcentreplus.uk) to ascertain what hours they can work and income they can receive without losing any benefit.

If contemplating dismissal, the employer has to decide whether a decision to dismiss is fair taking into consideration all the factors. If there is a reasonable adjustment that can be made to enable the employee to return to work and the employer does not make that adjustment, then it is likely to amount to unlawful discrimination – see Equality Act 2010 (section 10.6.9) for further information.

The employer must also consider the importance of the employee and the job to the business, the impact their continued absence is having on the business and the difficulty and cost of continuing to deal with their absence before contemplating dismissal.

Following the meeting

10.5.7 Any decision as to continuing employment should generally not be made at the meeting but after the meeting when the employer has had the opportunity to consider the case put forward by the employee at the meeting. It may be necessary for the employer to adjourn the meeting for further enquiries or for further medical information.

If after considering the matter a decision is taken to dismiss the employee, then they should be advised of this and the decision confirmed in writing – Template43 Long Term Absence – Confirmation of Dismissal. The employee must be advised of their right to appeal against the decision.

Appeal

10.5.8 If the employee does appeal, the employer should arrange an appeal meeting. Where possible the appeal should be heard by a manager or director of the company not previously involved in the matter. The template letters in Template36 Letter to arrange appeal meeting against warning/dismissal (unacceptable short term absence)

and Template37 Notification of outcome of appeal hearing (appeal against warning or dismissal for unacceptable level of short term absences) inviting the employee to an appeal meeting and confirmation of outcome of appeal meeting (in respect of unacceptable short term absences) can be used but amended where necessary.

Equality Act 2010

10.5.9 The definition of a disability under the Equality Act is a person who has "a physical or mental impairment which has a substantial and long-term adverse effect on his or her ability to carry out normal day to day activities".

The Equality Act 2010 harmonises previous discrimination legislation and the provisions previously contained in the Disability Discrimination Act are now included in and extended by the Equality Act. An employee who is protected under the disability provisions of the Equality Act must not be discriminated against or treated less favourably because of the disability or a reason connected to the disability. The Act also covers new forms of discrimination being associative and perceptive discrimination – see Discrimination and Equality for detailed information (Chapter 12). **Employers must be aware that for the purposes of employment law, disability covers a wide range of conditions and is not restricted to physical disability.**

It also protects employees from unfavourable treatment because of something in consequence of the disability where the employer cannot legitimately justify it. Note that this is unfavourable treatment not less favourable treatment so an employee would not have to show that they

have been treated less favourably than another employee, just that they have been unfavourably treated.

The effect of the condition on a person's ability to carry out day to day activities must be substantial (which is more than minor or trivial) and any medical treatment is discounted. Employees are covered if the condition has substantially affected their ability to do normal day to day activities for at least 12 months or is likely to do so and one thing to bear in mind is that people who qualified in the past continue to be protected even if they have recovered. Some conditions such as cancer are covered from the moment of diagnosis.

It is likely to be easier for an employee to qualify as disabled under the Equality Act than previously under the Disability Discrimination Act and if in doubt as to whether an employee is protected under the Act, then the employer should treat them as if they are.

Adjustments under the Equality Act

10.5.10 An employer has a legal duty to consider if there are any reasonable adjustments that can be made to enable the employee to do their job and if there are any then there is a duty to make these.

The duty to make adjustments contains three main requirements which are:

- changing the way things are done (a provision, criterion or practice)
- overcoming barriers created by the physical features of the workplace
- providing extra equipment which the law calls an auxiliary aid.

Potential adjustments under these requirements could be

- adjusting premises
- allocating some of the disabled person's duties to another person
- transferring the disabled person to another job, where there is an existing vacancy
- altering the disabled person's hours of work
- a phased return to work/allowing the disabled person time off work for rehabilitation, assessment or treatment
- arranging training or mentoring for the disabled person or any other person such as a work colleague or supervisor
- acquiring or modifying equipment
- providing supervision or other support

10.5.11 Whilst this seems a long list of potential adjustments, any adjustments have to be reasonable.

The employer can ask the employee if he or she can think of any adjustments but it is not up to the employee to suggest them. The employer has to consider what may be done and should, where appropriate, take advice from external bodies, as mentioned above.

To decide whether an adjustment is reasonable the employer can take into account

- the effect the adjustment would have on the disabled person's disadvantage – i.e. would it enable them to do their job or make a significant improvement to underperformance
- how practical is it to make the adjustment
- the cost of making the adjustment.
- the size of the company and its resources
- what financial assistance may be available, for example from specialist agencies or the Government. Contacts include the Disability Employment Advisers through Jobcentre Plus, the DEAs will have specialist knowledge of the Access to Work Scheme which may provide assistance with financial costs.

The merits of the employer's actions are likely to be of importance in any tribunal claim and it is likely to become harder to justify any failure to make a reasonable adjustment. Cost alone is unlikely to be a justification so employers considering not carrying out an adjustment because of the cost should take advice as to the reasonableness or otherwise of their decision.

Employers should ensure that they keep good records of what has been considered and why, including assessing the impact of any reasonable adjustments.

Examples of reasonable adjustments could be:

- Changing the way things are done – altering the hours of someone whose disability causes severe fatigue
- Dealing with physical barriers – re-arranging the furniture and layout of the office so that someone using a wheelchair could work in the office
- Providing extra equipment or aids – this will very much depend on the individual disabled person and the job which they are doing or being recruited to do. It may be that someone applying for the position of secretary requires a special chair or keyboard because of their disability.

As mentioned above, an adjustment has to be effective and reasonable for the employer to provide.

Template 38: Long Term Absence – First Request for an Investigation Meeting – meeting to consider whether a medical report is appropriate and look at adjustments or alternative work

Dear [**name**]

Date

I am sorry to see that you are absent suffering from (state injury/complaint) [and that we have not heard from you since (date) apart from the receipt of doctor's sick notes]*

I would like to meet with you on [time and place] to discuss your absence [and if appropriate to explore options for a return to work and [to discuss with you consent for a medical report]].

If the above date and time are not possible would you please contact me so that we may arrange a more convenient date and time for a meeting at my office or, if you are unable to travel, at your home?

We refer you to the Employee Privacy Notice issued to you for information on how we process your personal data and sensitive personal data and your rights relating to such data. A further copy of the Employee Privacy Notice is available on request

Yours sincerely

* delete if not appropriate.

Template 39: Long Term Absence – Notification to Employee of Intention to seek Medical Report

Dear [**name**]

Date

It is the Yard's intention to seek a medical report from your medical practitioner concerning your medical situation.

This report is required in order to ascertain if you are likely to return to work within a reasonable time or whether the prognosis for return is poor.

If you consent to this, would you please sign, date, and return the attached letter giving your authority for the Yard to seek a medical report.

If you do not consent to this please inform us in writing.

Your legal rights are:

1 to refuse to authorise the Yard to seek a medical report;

2 to ask your medical practitioner for access to the report before it is supplied to the Yard, or at any time up to six months after it has been supplied.

3 after having seen the report to withhold or refuse consent to it being supplied to the Yard

4 to request that the medical practitioner should amend any part of the report which you consider to be incorrect or misleading. This request must be in writing to your medical practitioner.

5 if the medical practitioner does not agree to amend the report you may request that he attaches to it a written statement of your views in respect of any part which he declines to amend or withdraw your consent;

6 under certain circumstances the medical practitioner is entitled to withhold access to you to any part, or the whole of the report. If he does so he must inform you of the fact;

7 if you wish to have access to the report before it is supplied to the Yard your medical practitioner will not supply it until either:

   a you have seen it and consent to its being supplied; or

   b a period of 21 days has elapsed from the date the medical practitioner was asked for a report and you have not contacted him to arrange access to it.

8 If the medical practitioner withholds access to you to the medical report being supplied he will not give it to the Yard unless you so consent.

If you withhold or otherwise refuse, consent under sub-paragraphs 1 to 8 to the medical report being supplied the Yard would have to make a decision based upon current circumstances.

Signed Date

Template 40: Long Term Absence – Authority from Employee for Employer to obtain a Medical Report

Name and Address of Employee

To [**Medical Practitioner**]

I hereby authorise my Employer to seek from you a medical report concerning my medical situation, and I consequently agree to you giving the appropriate medical information.

I *request/do not request access to the report before it is supplied to the company.

My Employer has provided me with a summary of my rights under the Access to Medical Reports Act 1988.

Signed

Date

Please delete either “request” or “do not request”

Template 41: Long Term Absence – Form of Letter for Employer to Send to Medical Adviser Seeking Report

Dear [**name**]

Date

Re [**Employee name and address**]

We are reviewing the above named employee's absence and it would be helpful to have a report on your patient who works for us as a [**job title**].

The job has the following major features [**for example, management responsibility, seated, standing, mobile, light/medium/heavy effort, working patterns (i.e. early start, shifts, late finishes), driving, riding etc**]. * *[You may wish to add into the letter depending on the nature of the role any of the following – that you ask the doctor/specialist to note that in general terms racehorses are larger and stronger than ordinary horses. They can be unpredictable. A racehorse gallops at 30 – 40 miles an hour. To ride safely at racing speed the individual controls the horse with hand, arm and leg pressure and moves. Employees must be able to predict danger. Employees must be sufficiently agile and mobile to take evasive action.*]

The absence record for the past year is summarised as [**put in details of absences**].

Attached is your patient's permission to this enquiry.

He/she wishes/does not wish to have access to the report under the Access to Medical Reports Act 1988.*

We would be pleased to know if you consider that there are any functional problems that are preventing the employee from returning to their normal duties, such as stamina, manual handling (lifting, carrying, mobility, dexterity), the side effects of medication, mental state/concentration or motivation and how these functional problems may impact on their duties.

We would also be pleased to know your view of the likely date of return to work and will there be any disability at that time, and if so, how long it is likely to last.

If there is a disability, are there any reasonable adjustments we could make to accommodate such disability

Is there any specific recommendation you wish to make about him/her* which would help in a return such as a phased return to work, reduced hours, altering the content or pattern of work, adaptations to the workplace or equipment or in finding an alternate job if there is an opportunity for redeployment or such further suggestions as you may have.

Would you also please advise if the employee is awaiting [**specialist appointment, treatment, referral etc**]

I would be grateful for an early reply and enclose a stamped addressed envelope.

Please attach your account to the report. If you anticipate this exceeding **[£budget**] please let us know in advance of preparing the report.

Yours sincerely.

* delete as appropriate

Template 42: Long Term Absence – Meeting to Discuss Continued Employment

Dear [**name**]

Date

I write to invite you to a meeting on [**date, time and location**] with [**person hearing the meeting**].

The purpose of the meeting is to consider your continued absence and whether there are any further measures we can take to enable you to return to work.

We have up to date medical information and enclose a copy of the report dated [**date**].

I enclose a copy of the notes of our previous meeting[s] in which we considered whether there were any adjustments or further adjustments we could make. After discussion with you and further consideration, we concluded that there were no reasonable adjustments/we concluded that there were no reasonable adjustments that could successfully be implemented. We also offered you alternative employment but you felt that this was unsuitable/We considered with you whether we had any alternative employment to offer you and none was available.*

In the light of present circumstances [for example, company busy and needing a permanent replacement for the position], we may be unable to hold your job open for you. Unless suitable alternative roles or adjustments can be agreed, we may have to consider terminating your employment.

You have the right to be accompanied at the meeting by a union representative or a work colleague.

We refer you to the Employee Privacy Notice issued to you for information on how we process your personal data and sensitive personal data and your rights relating to such data. A further copy of the Employee Privacy Notice is available on request

Yours sincerely

Template 43: Long Term Absence – Confirmation of Dismissal

10.5.12

Note: Any decision to dismiss must be taken with benefit of medical advice and following a meeting (at which right to be accompanied applies) being held prior to this being issued and consideration having been given to any reasonable adjustments and other jobs offered.

Dear [**name**]

Date

Further to the interview on [**date**] in the presence of [**state persons and appointments**]. This letter is to confirm the decision to terminate your contract of employment, by reason of lack of capability due to ill health, in that you are no longer able to perform the contract for which you were employed.

Your contract of employment will terminate on [**date**] and the yard will pay [**number**] weeks/months money in lieu of notice.

[Please find enclosed your P45 and a cheque for (**£.....**)

Wages/salary to (termination date)	(£.....)
Money in lieu of notice	(£.....)
Holiday Pay	(£.....)
Other	(£.....)
Total	(£.....)
Less deductions (state which)	(£.....)
Final Total	(£.....)

OR

Please return on (date) to collect your P45 and all monies due to you.

If you wish to appeal against this decision please write to me without unreasonable delay setting out the grounds for the appeal.

We refer you to the Employee Privacy Notice issued to you for information on how we process your personal data and sensitive personal data and your rights relating to such data. A further copy of the Employee Privacy Notice is available on request

Signed

Date

* delete as appropriate.

Mental health

10.6 Mental health and well being in the work place

10.6.1 Mental ill health can range from feeling 'a bit down' to common disorders such as anxiety and depression and, in limited cases, to severe mental illnesses such as bipolar disorder or schizophrenia. Mental health conditions may emerge suddenly, as a result of a specific event or incident, or gradually, over a period of time when the condition may worsen or improve. Some illnesses are persistent and may give the employee protection under disability discrimination legislation, while others may be short term and the employee suffer and recover. NHS figures are that at any one time, one in six adults will be experiencing a mental health condition

In the content of mental well being in the workplace, stress is broadly defined as "the adverse reaction people have to excessive pressures and other type of demands placed upon them".

ACAS have a good advice booklet for employers upon mental health at
http://www.acas.org.uk/media/pdf/l/a/Promoting_positive_mental_health_at_work(SEPT2014).pdf

Mental Health - Legal framework

Under health and safety legislation employers have a duty to undertake risk assessments and manage activities to reduce the incidents of stress at work – see suggestions below on trying to reduce stress factors.

The Working Time Regulations restrict working hours – although of course adult employees can opt out but have the right to cancel any opt out on appropriate notice. The BHA Red Book on Health and Safety has detailed advice on working time and the opt out.

Employees with mental health issues may as mentioned above fall under the protection of the disability discrimination legislation see - Disability Discrimination

There are other forms of discrimination or harassment which can result in stress, anxiety or depression and employers have a duty to protect their employees against stress arising from harassment or bullying. There could also be a claim of constructive dismissal if the employee resigned because they felt that the employer had breached the implied term and confidence by allowing bullying, harassment or other discriminatory behaviour towards them.

Risk assessment and trying to reduce stress factors

10.6.2 When working long hours, whilst these may seem manageable at first or for a while, a lack of sleep and relaxation time can take its toll and lead to irritability so to help manage this it is important for

employers to engage employees in their work, let employees know where the business is heading and let them feed back their views.

The employer should ensure that all employees including managers are aware of the anti-bullying and anti-harassment policies and ensure employees know who they can approach if they have a problem. The NTF/NARS anti-bullying and anti-harassment policy can be found at Error! Reference source not found. (Chapter 11)

Employers have a statutory duty to make a suitable and sufficient assessment to risks of health and safety to which an employee is exposed at work – this includes risks to mental health.

If a risk assessment indicates that there is a risk of psychiatric injury to a particular employee and the employee does nothing, the employer could be fixed with constructive knowledge for the purposes of establishing that the injury was foreseeable.

In trying to reduce workplace stress employers should consider:

- Does the employee's workload match his or her ability and experience?
- Does the employee have clearly defined roles?
- Can repetitive duties be reduced or varied?
- Does the employee need training to help them do their job or develop their skills?
- Is the employee able to express any concerns they may have about their work or workload?

Employers and managers should try to be aware of relevant personal issues affecting staff such as illness, bereavement, financial worries or stress-related factors which might be contributing to the employee struggling to cope in the workplace and the employer should ensure that if delegated to a manager that the manager has appropriate training or can get help in dealing with any such issues. Racing Welfare run mental health first aid at work training courses, presently either a half day course or a full two day course.

Of course employees will not always want to share their work or personal problems with their employer and employers need to be vigilant to signs of stress and act on knowledge of vulnerability where it is identified.

Signs of stress can include:

Regression	**Aggressive**
Crying	Malicious gossip
Arguments	Criticism of others
Undue sensitivity	Vandalism
Irritability/mood changes	Shouting
Over-reaction to problems	Bullying or harassment

Personality clashes	Temper outbursts
Work Performance	**Withdrawal**
Declining/inconsistent performance	Arriving late/leaving early
Uncharacteristic errors	Absenteeism
Loss of motivation or commitment	Resigned attitude
Lapses in memory	Reduced social contact

The ACAS guidance mentioned above has more information.

Managing an employee with a mental health issue

10.6.3 A starting point in managing and helping an employee who is off – or indeed able to come into work but having mental health difficulties – is to manage physical and mental illness in the same way by focusing on good communication with the employee and having a culture in which employees feel able to discuss their problems.

Managers should explore with employees reporting mental health problems how to address any difficulties which are work-related, which might in turn help the employee to cope with any problems in other areas of their lives.

It may be appropriate for the manager to encourage the employee to see their GP if they have not already done so and to ensure employees are aware of any support available either from their employer, from within the racing industry such as Racing Welfare, or from other sources, such as Mind's telephone helpline.

If the employee reports that they are having problems with another employee or a manager, then a more senior manager or the employer should investigate the allegations and take appropriate action. It may be that there is no issue and the employee is just reacting adversely to proper management or that the allegation is false or it could be that there is a bullying or harassment problem which must be addressed. The employer will need to consider if any training is needed or whether any disciplinary action against the offender is appropriate. The complainant should also be advised as to what is being done to address their concerns. See chapter 14 Handling grievances Chapter 11 Harassment and Bullying - Dignity at work) and Chapter 5 Disciplinary Procedures for more information.

Where an employee has a mental health issue which brings them under the protection of the disability discrimination legislation contained in the Equality Act, then the duty to consider and make any reasonable adjustments applies the same as it does with a physical illness. Even if the employee does not come under these provisions, it is good practice to consider adjustments.

The adjustment needed could be as simple as a change in practice or workload, or say, coming in later because medication is making the employee tired. Often the person will be the expert on their

condition and know their own support needs. It could also include allocating different work or providing counselling – Racing Welfare should be able to assist with the provision of counselling.

Employers should also consider using the advice and guidance of other professionals such as the individual's GP or asking for support from Fit for Work (www.fitforwork.org) or Access to Work (www.gov.uk/access-to-work).

As such, an employer can conduct a disciplinary or capability procedure with a employee who has a mental health issue but the employer needs to be sensitive to the situation, ascertain if it is a possible disability and take advice where appropriate. That could include asking the employee for consent to obtain a medical report and then considering and making any reasonable adjustments.

If the stage is reached where an employer is considering dismissal due to incapability for work then it is essential that the correct procedures would need to be followed and a medical report obtained (see chapter 10.6 Long Term Absence). Remember capability is a potentially fair reason for dismissal of a long term sick employee but a fair process must be followed which would include ascertaining the up to date medical position and prognosis (through an appropriate medical report), consulting with the employee, formal warnings and the employer considering the impact on the business of the ongoing absence. The employer must also consider if there are any options such as alternative employment and another factor to consider in any dismissal procedure is whether the employer was responsible for the ill health.

There is more information upon what constitutes a disability at Discrimination and Equality (Chapter 12).

Mental Health Information and helplines

Racing Welfare **24 hour helpline 0800 6300 443** Providing support and assistance to racing's workforce

Mind info line **0300 123 3393** info@mind.org.uk

Mind will send out printed information to individuals in unmarked envelopes, or can help guide employers and employees to online information available on its website. Mind helplines are open Monday to Friday, 9.00am to 5.00pm and they provide information on a range of topics including types of mental distress, where to get help, drug and alternative treatments and advocacy

www.fitforwork.org

http://www.fitforworkscotland.scot/

Government occupational health support with telephone and online help.

www.nhs.uk/livewell

Information on different types of mental health conditions and links to mental health support groups.

http://www.nhs.uk/conditions

Information on different type of mental health conditions.

www.gov.uk/access-to-work

Information on grants for practical support to help an employee with a disability, health or mental health condition.

11. Chapter 11

Harassment and bullying

Sexual Harassment

11.1 Harassment and bullying

Harassment at work may give rise to a claim by an employee that they have been discriminated against on the grounds of

- sex,
- race,
- age,
- religion or belief,
- sexual orientation,
- disability or
- gender re-assignment.

It does not have to relate to the person's own protected characteristic *example a worker has a son who is a trans man and his work colleagues joke about his son's transition. That could lead to a claim for harassment related to gender re-assignment.*

To amount to unlawful harassment under the discrimination legislation, the conduct at issue must be:

- unwanted, and
- have the purpose or effect of violating the individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the person.

Unwanted conduct covers a wide range of behaviour. It can include:

- Spoken or written words
- Banter, jokes, pranks
- Posts or contact on social media
- Imagery, graffiti
- Physical gestures, facial expressions, mimicry

Harassment on grounds other than one of the grounds listed in the first paragraph is not unlawful discrimination. This means that a person who is simply harassed or bullied has no remedy under discrimination law. However **an employer who fails to deal with a**

complaint of such harassment or bullying could find themselves facing an unfair constructive dismissal claim if the employee resigns and claims that the employer has broken the implied contractual obligation to maintain trust and confidence towards that employee. It is also likely to affect the working environment adversely.

An employer could be liable to pay compensation towards anyone harassed by its employees if the harasser pursued a course of conduct during the course of his or her employment that the person knew or ought to have known amounted to harassment.

11.2 Sexual Harassment

From 26th October 2024, there is a new duty upon employers to take proactive steps to avoid sexual harassment of their workers, including sexual harassment by third parties.

Sexual harassment is when a worker is subjected to unwanted conduct as defined above and which is of a sexual nature. It does not need to be sexually motivated.

Example, a male worker alters a pornographic image by posting an image of a female's colleague face on to it. He then sends it to other colleagues, causing them to ridicule her. There was no sexual motivation behind this act but the use of the image is sexual in nature.

11.3 Victimisation

Victimisation is where a worker is subjected to a detriment (treated badly) because they have done a protected act – for example making a complaint of harassment or helping someone else bring a complaint. It also means subjecting a worker to a detriment because it is believed that they have done or are going to do a protected act, even if they have not done so.

11.4 Third Party Harassment

From 26th October 2024, the new preventative duty includes a duty to prevent sexual harassment by third parties. Whilst there is no specific protection from other types of third-party harassment, you should take reasonable steps to prevent all types of harassment.

11.5 Preventing Sexual Harassment at work

Employers have a legal duty to prevent sexual harassment of their workers – this is in an anticipatory duty and employers should not wait until a complaint of sexual harassment has been raised before they take any action.

It requires the employer to anticipate scenarios where its workers may be subject to sexual harassment in the course of employment and to take action to prevent such harassment taking place. If an employer

fails to take reasonable steps to comply with the preventative duty, the Equality and Human Rights Commission have power to take enforcement action against the employer and if the employee succeeds in a claim for sexual harassment and is awarded compensation, the award could be increased by up to 25%.

Employers are advised to ensure all workers are aware of the policy and that workers understand their obligations and the behaviour expected of them. **Training upon the yard's anti sexual harassment policy should be included as part of the induction process for new workers with refresher training at least yearly**.

Some employers may find it useful to have employees trained as counsellors to provide support advice and information to workers. ACAS (www.acas.org.uk) provide training courses throughout the country.

Policies and procedures are not sufficient to stop misconduct whether that be sexual harassment or other unacceptable behaviour.

The Equality and Human Rights commission has produced a checklist and action plan for employers to have prevent sexual harassment at work. Whilst this was designed for the hospitality sector, much of it is easily carries across into other workplaces and trainers may find this useful.

Reasonable steps will vary from employer to employer and it will be an objective test dependant upon the facts and circumstances. An employer should:

- Consider the risk of sexual harassment occurring in the course of employment and consider what steps it could take and implement those steps There is more guidance on risk assessment in the Sexual Harassment area of the NTF website.
- Have an effective policy in place
- Engage their staff
- train their staff
- have a good procedure in place for handling complaints
- ensure staff are aware that third party sexual harassment is not acceptable and have a process in place to deal with that
- monitor and evaluate

There is a dedicated area of the NTF website on preventing sexual harassment which includes:

- Risk assessment
- Sexual Harassment policy

Training can be found on Racing2Learn. It is likely though that a reasonable step would be additional training for managers and yourself as employer. ACAS offers training courses.

Whilst there is no legal duty to prevent other forms of harassment at work, it is of course good practice to seek to try to avoid problems arising and you should ensure that your employees are aware of the standards expected of them with regard to bullying, harassment and dignity at work, as set out in the NTF NARS bullying and harassment policy and the BHA Code of Conduct.

11.6 Handling a safeguarding, harassment or bullying complaint

As a first step the employer should investigate the matter promptly and objectively. Once the matter has been investigated the employer can decide what action needs to be taken.

In some cases it may be possible to rectify matters informally. Where the matter cannot be resolved informally, the employer must deal with the grievance formally under the yard's grievance procedure and if disciplinary action is necessary use the yard disciplinary procedure see Handling grievances (Chapter 14) and NTF /NARS Disciplinary and Dismissal agreement (Chapter 6).

Set out below is detailed guidance upon handling a safeguarding or harassment complaint:

ACAS has guidance which will be of assistance to employers in this situation and in this section we refer to ACAS's good practice advice:

https://www.acas.org.uk/sexual-harassment/handling-a-sexual-harassment-complaint

Remember that whatever the complaint you must still follow a full and fair procedure in line with your company grievance procedure and if a disciplinary arises out of the complaint, you must follow your disciplinary process.

Advice for employer where an employee raises a grievance

11.6.1 The complaint may be from an employee about another employee, or a third party connected with the yard. Guidance is also provided on where it is an incident not connected to work but has been brought to your attention.

An employee is most likely to raise the complaint verbally – either by coming to you or talking to another employee about it. It could come out of a conversation you are having with the employee because you have noticed something of concern, perhaps a change in the employee's usual demeanour.

The complaint could also come from someone who has witnessed unacceptable conduct.

If the employee raises a formal grievance that will be done by the employee in writing.

It may be that even if the employee has raised it verbally you ask them to raise it formally in writing given the seriousness of the matter. If the employee does not wish to put it in writing (perhaps it is too upsetting for them at that stage or they are just not comfortable writing it down), you can still decide that the matter needs to be dealt with as a formal grievance. If this is the case, ensure the employee is informed that this is how you are handling the complaint and why.

As well as ensuring that the employee or employees are properly managed, the procedure that you follow is important should the employee bring a tribunal case against you.

See "Grievance procedure" below and Handling grievances (Chapter 14)

Initial steps when the person raises the complaint

11.6.2 Your initial steps will depend upon the situation – it may be that the employee is in great distress and their immediate safety is the first concern, in which case you should contact appropriate authorities.

Can you contact the police?

11.6.3 Depending on the nature of the incident, the person may want to report it to the police. You should not put any pressure on them to make any particular decision. If they do not want to tell the police, they do not have to.

In most cases, you should go along with the employee's decision but you might decide you have to tell the police yourself in some circumstances. That could be the case if you or the person who made the complaint think there is an ongoing risk to their safety or the safety of others, or because it involves a young person or vulnerable adult.

Before telling the police, you should talk about it with the person who has made the complaint. You should also let them know once you have told the police.

If not sure what to do, then seek advice – if it is safeguarding matter contact the BHA safeguarding team

https://www.britishhorseracing.com/regulation/safeguarding/

where you can find contact details including phone numbers of key BHA safeguarding team members.

safeguarding@britishhorseracing.com

Again depending on the nature of the incident, ascertain if the employee needs medical assistance.

In all cases, you should ask the employee if they need to take some time off work or what they would like to do. If they are under 18 you may decide that you should contact their parents or guardian.

What if you think it is a minor issue?

11.6.4 You must still treat it seriously even if it seems minor to you. It might be behaviour you personally do not find offensive or unwanted but it might have a very different effect on someone else.

Grievance procedure

11.6.5 The NTF and NARS have an agreed grievance procedure which reflects good practice as set out by ACAS.

The basic steps are

- investigation
- a grievance meeting with the employee who raised the grievance. The invitation to this meeting must be in writing.
- holding the meeting
- informing employee of the outcome and their right of appeal
- holding an appeal meeting, if the employee has lodged an appeal

The employee has the right to be accompanied by a work colleague or union representative at any formal meeting.

Investigation

11.6.6 You have to carry out your own investigation. If the police or BHA are investigating you cannot just rely on their investigation.

It is important to decide who will carry out the investigation as ideally the investigator should not be the person holding the grievance meeting or any disciplinary of another employee that may arise out of the process although in a small business it may not be possible to have different people to do the investigation, meeting and any appeal meeting.

The person carrying out the investigation should clarify points which are not clear and where possible, verify information given to them.

They not pre-judge and need to ensure they look for evidence that supports both innocent and guilt.

It will be important to allow plenty of time for the investigation – the person carrying out the investigation may need to pass some of their duties over to someone else to ensure they have time for a thorough investigation.

The investigator must take written records and allow the individual employees to check the content of the notes and ask them to state and sign that the**y** believe the record is correct.

Do you need to wait for a charge or conviction if the police are involved?

11.6.7 The ACAS advice is that if the incident has been reported to the police or is going through the court it is unlikely you will have to wait for the criminal process to finish to:

- investigate the complaint
- carry out a workplace disciplinary process

but you should check with the police before doing either of these things, and consider getting legal advice, to make sure there is no risk of prejudicing the criminal process.

What if it is one person's word against another?

11.6.8 It may be the word of one person against the word of the person they have accused, for example, if the incident happened away from other people. You need to investigate what evidence there is and if you believe the person who made the complaint, then you can proceed on that basis.

Investigation – what if the accused employee does not co-operate?

11.6.9 It may be that the employee accused does not wish to answer questions, perhaps because they feel it might incriminate themselves. You do still need to deal with the matter without unreasonable delay and the ACAS guidance is that you should investigate as far as possible and advise the employee that the fact that they do not want to co-operate does not mean that you cannot proceed with your investigation and any disciplinary proceedings. You need to advise the accused that unless they provide further information a disciplinary decision will be taken on the basis of information available and could result in dismissal.

What if the police decide not to charge?

11.6.10 You are not bound by the outcome of the police decision and a decision by the police not to charge does not necessarily mean that you cannot proceed with an employment investigation and disciplinary. The standard of proof for an employment matter is different to that for a criminal matter - as an employer you have to have a reasonable belief of the misconduct based on a reasonable investigation. The standard of proof for a criminal offence is much higher – it is beyond reasonable doubt.

Supporting the employee who has made a complaint

11.6.11 The person may be very distressed and they may be worried that they may not be taken seriously. It is important to reassure the person as to the process and assure them they will not be victimised for making the complaint.

Confidentiality

11.6.12 You should keep the complaint as confidential as possible. People should only have information on a strictly need-to-know basis. For example:

- the person who made the complaint and their trade union representative

- the person who has been accused of sexual harassment and their union representative
- the person investigating the complaint.

The importance of confidentiality should be explained to everyone involved.

Can you suspend the accused?

11.6.13 This will to some extend depend upon the nature of the allegation and the size/layout of the business.

For example if there is a serious risk to the employee who has made the complaint or other employees, you may decide to suspend the person who's been accused while you are dealing with the complaint. It must not be a knee jerk reaction as you could potentially face a constructive dismissal claim from an employee suspended where it is not appropriate. You should consider if there are other options – perhaps the accused could work from a different location if you have two yards.

Suspension is on full pay and kept as short as possible.

It is possible where there is a safeguarding complaint the BHA may place a restriction on the employee working in a licensed yard – if that arises please ring the NTF for advice as your position as employer will vary depending on the employee's length of service and the circumstances.

You must be careful not to put restrictions on the complainant as that could be treated as victimisation

What if the complaint is about a contractor or client?

11.6.14 An employer has a duty to prevent sexual harassment by a third party although for other harassment the employer is generally not liable for harassment of an employee by a third party such as a contractor or client.

You owe all your employees a general duty to look after their health and safety at work and the employee could claim unfair dismissal if they were forced to leave their job because the employer had failed to protect them or deal with a complaint.

You should offer support to the employee and look at what steps need to be taken to protect that employee and others.

It may be that you need to tell the other party's employer and bring it to the attention of other authorities.

What if the complaint is about someone outside of the workplace?

11.6.15 It may be that the employee has come into work upset or injured and has told you they are suffering from domestic violence or other abuse. You should ensure that the employee is aware of the help and assistance available to them – that may be helping them contact the

police or other authorities and putting them in touch with Racing Welfare or other support bodies.

Grievance meeting

11.6.16 Once the investigation has been undertaken, you then need to have a grievance meeting with the person who has raised the complaint. It may be that you also need to go through a disciplinary process with another employee or employees for misconduct.

The employee must be invited into the formal grievance meeting by letter and advised in writing of their right to be accompanied by a colleague or union representative. You should allow them to bring a second person if it is a reasonable request – that could perhaps be someone from Racing Welfare to help support them or a family member if they are a vulnerable person.

Remember, that as part of the meeting to ask the employee how they see it being resolved, what would they like done. It may be that what they want is unrealistic but it is important to consider it as part of the process.

After the meeting

11.6.17 You must inform the employee of the decision (see "the outcome" below) including any action you intend to take to resolve the grievance. If you do this verbally then you must confirm it in writing and advise the employee of their right to appeal.

Grievance process – the outcome

11.6.18 Once you've carried out a full and fair procedure looking into the complaint, you should decide on the outcome, including whether the complaint is upheld or not.

If you have decided the complaint is valid, you then need to decide what actions need to be taken to resolve the complaint and if there is a disciplinary procedure against another employee.

Steps could include counselling for the complaint and other staff, staff training and reviewing the procedures you have in place.

If you decide that the complaint is not upheld you may still need to consider what steps are needed to help manage working relationships going forward between the people involved the complaint. That could again include counselling, training, or looking at other roles if a working relationship has broken down and cannot be resolved.

Appeal

11.6.19 If the employee appeals as they are not satisfied with your decision or the process, then you should invite them to a further meeting. Again that should be a written invitation advising of the right to be accompanied. This meeting should be heard by someone from the

company not previously involved in the case if possible. After the appeal meeting, the employee must be given the outcome as soon as possible.

Can you tell the complainant the action you are taking against the accused?

11.6.20 This is a decision to take depending on the circumstances. ACAS advice is that you should tell them if you can. You do need to bear in mind that the accused also has a right to appropriate confidentiality – you may need to limit what you tell the complainant or tell them on the condition that who they can tell is limited and that those people must keep it confidential.

Support

11.6.21 Ensure that the person is offered support through Racing Welfare or other organisation throughout the process.

Employment Tribunal Claim

11.6.22 Depending on the circumstances an employee could bring a claim through the employment tribunal and the tribunal will look to see what steps you have in place to prevent bullying and harassment and will consider how you have handled the complaint, looking at the process including the investigation and the reasonableness of the decision made.

Malicious complaints

11.6.23 Whilst rare, it is possible that a grievance has been made maliciously and is deliberately intended to make life difficult for someone - this could be perhaps where a relationship has broken down between employees or an employee has fallen out with a manager.

It must still be approached in the same way so thoroughly investigated and handled through the grievance procedure. You must presume at the outset that it is made in good faith unless and until there is clear evidence the country.

If it is found that the grievance was brought maliciously and there is evidence to support that it was designed to mislead or cause trouble for someone, you would then consider disciplinary proceedings against the complainant and go through the disciplinary process.

Just because a grievance is unfounded does not of course mean it was malicious - it may have been as the result of misunderstanding or the claimant have believed their complaint to be genuine.

What else could you do?

11.6.24 It is important that your employees and others involved in the business know the standards of behaviour accepted from them – the NTF and NARS have agreed anti harassment and anti sexual harassment policies and there is the BHA Code of Conduct all of which can be used as a framework for this. An explanation of those standards should form part of your induction for new staff and be refreshed at suitable intervals and particularly if there is a problem.

Racing2Learn has a number of training resources that you could look to use including the safeguarding module and there are industry courses for supervisory staff aimed at helping them manage staff and issues which arise.

Not only will training staff help minimise the risk of a problem arising and help manage one if it does, it also means that should an employee bring a tribunal claim you will be able to show what you have done to protect your employees.

An employer may defend a harassment or discrimination claim if it can show it took all reasonable steps to prevent the harassment or discrimination from taking place – providing training is a way of doing this. The training does need to be updated from time to time and not allowed to become stale.

Outsourcing handling a complaint

11.6.25 Generally with the help and information available, employers are able to manage grievances themselves, but if you do not feel able to manage the process of handling a complex investigation or complaint, it is possible to outsource an investigation or disciplinary matter to a specialist HR provider.

What if it happened a long time ago?

11.6.26 If the complaint has been made a long time after the incident took place, you should still take it seriously and deal with it as far as you can. This may be limited if the person accused no longer works for you or witnesses no longer work for you. You should still investigate and follow the grievance procedure and let them know the outcome. If it is a safeguarding matter then the complainant or you should notify the BHA safeguarding team.

Disciplinary procedure against accused

If you decide to follow up with a disciplinary procedure, it is unlikely that you will need to investigate the complaint again. But if you feel you need more information for the disciplinary procedure, you should investigate

again. NTF /NARS Disciplinary and Dismissal agreement (Chapter 6) and see also chapter 5 which sets out the process for disciplinary action.

Managing the situation afterwards

11.6.27 Whatever the conclusion of the grievance, you will need to consider how you manage the situation going forward – ensuring that the employee still has support if needed, checking in with team members to check that are no issues and ensuring that training is carried out and policies are being followed. Always keep records of staff training so that you can show what you have done to reduce the risk.

Monitoring and Evaluation

11.6.28 You should evaluate the effectiveness of policies – ways you could do this include:

Staff surveys

During your job chats/appraisals ensuring staff are aware of the procedures in place and if they have had any harassment, have they reported it, if not why hot, if they reported it, were they satisfied with how it was dealt with

Do not assume because there are no complaints that there are no problems.

Anti Sexual Harassment Policy

A word version of this policy is in the Handbook Policies Area of the NTF website

ANTI SEXUAL HARASSMENT POLICY

The National Trainers Federation and the National Association of Racing Staff have agreed this policy and believe it is in everyone's interests to promote a safe, healthy and fair environment in which people can work effectively without fear of sexual harassment. The NTF and NARS will review this policy annually and welcome feedback from their members on it.

BUSINESS NAME …….

INTRODUCTION

We are committed to ensuring a safe and supportive working environment where everyone is treated with dignity and respect.

STATUS

This policy is non-contractual and it may be amended at any time.

PURPOSE AND SCOPE

Everyone working for us has the right to work in an environment free from sexual harassment and this policy sets out:

- A definition of sexual harassment
- Your responsibilities
- How you can report sexual harassment
- How we will respond to a report
- Our commitment to preventing sexual harassment of our employees.

This policy applies to all employees, others working for us and visitors. It covers all workplace settings including business trips, work related social events and digital communications.

If you have a grievance arising directly out of your employment or working practices then we ask that you raise a grievance under our grievance procedure

DEFINITION OF SEXUAL HARASSMENT

Sexual harassment includes any unwanted conduct of a sexual nature which has the purpose or effect of violating someone's dignity or creates an intimidating, hostile, degrading, humiliating, or offensive environment. This can include but is not limited to:

- Unwanted physical contact or advances
- Unwelcome comments or jokes about a person's appearance, sexual orientation or gender identity
- Displaying sexually explicit images or content
- Making inappropriate sexual propositions or suggestions
- Online inappropriate sexual remarks or materials shared via email, social media or other digital platforms including any workplace WhatsApp groups.

Examples of the above in a racing yard could include:

- A legger-up patting a rider on the bottom or making a sexual or derogatory comment
- In the break-room, a couple of people looking at sexual images on a mobile phone – it would not necessarily need a colleague to see the images themselves to find this degrading
- Someone in a senior position harassing a young rider to go out with them on the basis they could get them more race rides or preferred treatment

VICTIMISATION

Victimisation is treating someone badly because they have made a complaint of discrimination or helped someone else to make a claim by giving evidence or information.

YOUR RESPONSIBILITIES

You have a responsibility to be aware of this policy and to comply with it.

You must not sexually harass or victimise anyone. **Sexual harassment and victimisation will not be tolerated. Both are unlawful.**

You are expected to:

- Treat all others with dignity and respect.
- Be aware of your own behaviour and ensure it does not cause offence.
- Report any incidents of sexual harassment you experience or witness.
- Support colleagues who may be victims of harassment

It is important to realise that conduct which one person may find acceptable another may find totally unacceptable and that all employees must treat their colleagues with respect and appropriate sensitivity. For example, banter which you and others may find funny may be offensive to another employee.

Anyone can be a victim of sexual harassment, regardless of their sex, sexual orientation or gender identity or that of the harasser. Sexual harassment can occur between people of the same sex.

If you are a supervisor or manager, you have an additional responsibility to foster a culture of respect and inclusion where sexual harassment is neither ignored nor tolerated. If you receive a report or complaint of sexual harassment you should act on that immediately and inform [put in person in the yard responsible for handling a complaint] for advice and assistance.

TRAINING

Failure to complete any training when reasonably requested by us will be investigated and could result in disciplinary action.

REPORTING PROCEDURE

We understand that reporting sexual harassment can be difficult. We encourage anyone who has experienced or witnessed sexual harassment to come forward. Reports can be made confidentially and will be taken seriously.

You can report informally or you may prefer to put in a formal report in writing.

Please make any report to: *[put in who to report to and how – you should provide multiple routes for people to report to ensure that the person is not required to report an incident to the perpetrator or someone who they feel may not be objective].*

We do hope that you can come to us with any concerns but if for any reason you feel unable to do so, you can speak to NARS or the BHA – see contacts at the end of this policy.

INVESTIGATION AND ACTION

All reports of sexual harassment will be investigated promptly and thoroughly.

When you raise a grievance, we will discuss with you whether it may be appropriate for you to raise the issue directly with their harasser if you feel able to do so, explaining to the harasser directly how their conduct has made you feel and why you would like it to stop. Of course, you may not wish to do this and we will not place any pressure on you to take this approach.

OUTCOME INCLUDING DISCIPLINARY ACTION

Many people are unaware that their behaviour is unacceptable and if this is pointed out to them, the problem can often be resolved. In some circumstances, we may be able to resolve the complaint informally by talking privately with the people involved.

Should the investigation indicate that a disciplinary offence has been committed our disciplinary procedure will be instigated which may result in disciplinary action up to and including dismissal being taken against the offender. In considering what disciplinary action may be applicable, aggravating factors such as abuse of power over a more junior colleague will be taken into consideration.

Sexual harassment or victimisation may lead to disciplinary action up to and including dismissal if it is committed:

- in a work situation as defined above
- against a colleague or other person connected to us outside of a work situation, including on social media or against anyone outside of a work situation where the incident is relevant to the harasser's suitability to carry out their role.

This is to be read in conjunction with our disciplinary and grievance procedures.

CONFIDENTIALITY

All reports and investigations will be handled confidentially with information only shared with those who need to know to conduct a fair investigation and implement appropriate actions. In some cases, we may need to share information with third parties, for example where we may need to report to the BHA or where a criminal act is suspected to have occurred.

Any breach of confidentiality on the part of the complainant or the alleged harasser may itself be considered as a disciplinary issue.

THIRD PARTY HARASSMENT

Harassment of our employees and workers by third parties will not be tolerated.

If whilst carrying out your duties at work or otherwise in connection with your work, you are sexually harassed by a third party, you should raise it with your immediate manager so that we can decide how best to deal with the situation in consultation with you. This may involve us warning the third party about their behaviour and if a criminal act is suspected reporting it to the police.

Remember that this covers third party harassment whilst you are working away from the yard as well.

WELLBEING AND SUPPORT

It is recognised that being involved in a sexual harassment at work case can be difficult for anyone involved and there are support mechanisms in place both for the complainant or the alleged harasser.

Please speak to us regarding support and we will discuss the options with you.

External support is available from NARS and Racing Welfare along with other non-racing specific support networks and you are encouraged to consider accessing support to maintain health and wellbeing during the process.

The BHA has a dedicated safeguarding team – contact details for the BHA, NARS and Racing Welfare are set out at the end of this document.

INDUSTRY CODE OF CONDUCT

The British Horseracing Authority Code of Conduct is a standard for behaviour which the BHA expects from everyone in racing. The Code should be read alongside this policy and employees should familiarise themselves with it. The Code applies to everyone in racing and is part of the BHA Rules of Racing. The BHA may suspend or prevent someone from working in racing if they are in breach of the Code.

LEGAL FRAMEWORK

This policy aligns with the Equality Act 2010 which protects individuals from harassment related to sex and gender. Additionally, the Workers Protection Amendment places a proactive duty of employers to take proactive measures to prevent sexual harassment and this policy is part of the steps we are taking to prevent sexual harassment of our workers.

MONITORING AND REVIEW

This policy will be reviewed to ensure it remains effective for our organisation and compliant with legal requirements. We welcome feedback to consider.

OTHER POLICIES

This policy should be read in conjunction with our following workplace policies and procedures:

Disciplinary
Grievance
Equal Opportunities
Bullying and Harassment
Data Protection
Health and Safety
Whistleblowing
Workplace WhatsApp policy

If you do not have a copy of any of these policies and would like one, they are available from [office/handbook etc].

Anti Bullying and Harassment Policy

A word version of this policy is in the Handbook Policies Area of the NTF website

ANTI BULLYING AND HARASSMENT POLICY

The National Trainers Federation and the National Association of Racing Staff have agreed this policy and believe it is in everyone's interests to promote a safe, healthy and fair environment in which people can work effectively without fear of bullying or harassment. The NTF and NARS will review this policy annually and welcome feedback from their members on it.

BUSINESS NAME ……

INTRODUCTION

This policy relates to anti bullying and harassment in the workplace. There is a separate policy on preventing and avoiding sexual harassment.

We are committed to ensuring a safe and supportive working environment where everyone is treated with dignity and respect.

STATUS

This policy is non-contractual and it may be amended at any time.

PURPOSE AND SCOPE

Everyone has the right to work in an environment free from harassment and bullying. This policy sets out:

Definition of bullying and harassment
The responsibilities everyone has
Outline of the procedure when behaviour falls short of acceptable.

This policy applies to all employees, others working for us and visitors. It covers all workplace settings including business trips, work related social events and digital communications.

If you have a grievance arising directly out of your employment or working practices you should raise a grievance under the grievance procedure.

WHAT IS BULLYING AND HARASSMENT?

It is treatment from one person (or a group of people) to another relating to one or more protected characteristics that is unwanted and has the purpose or effect of violating that person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.

"Protected characteristics" are aspects of a person's identity and are protected under the Equality Act 2010. The 9 protected characteristics are:

age
disability
gender re-assignment
marriage and civil partnership
pregnancy and maternity
race (including colour, nationality, ethnic origin, national origin)
religion or belief
sex
sexual orientation

There is a separate anti-sexual harassment policy but please do not be put off reporting sexual harassment if you only have this document - it is important that all concerns are raised with us, however that is done.

Examples of bullying and harassment include:

verbal or written abuse, jokes, banter or pranks
related to a person's protected characteristics in front of others or behind the victim's back
or related to a person's perceived protected characteristics (for example where someone is a victim of unwanted banter and jokes that they are gay, even though their work colleagues know the person is not)
or related to a person's associated protected characteristics (for example, where someone is a victim of bullying because they have a disabled son)
the display of pin-ups, pornography, abusive or offensive literature
physical intimidation including assault
unfair work allocation, changing work without consultation to include impossible deadlines
unwanted sexual advance
unwanted derogatory remarks, lewd or suggestive gestures
refusing to work with or deliberately isolating fellow employees or withholding information that the person needs to enable them to do their job
cyber bullying including through social media and messaging platforms or other electronic communications
refusing to call someone by their preferred pronoun or name

Bullying does not include appropriate and reasonable criticism of an employee's behaviour or proper performance management.

VICTIMISATION

This is treating someone badly because they have made a complaint of harassment or bullying or helped someone else to make a claim by giving evidence or information.

YOUR RESPONSIBILITIES

You have a responsibility to be aware of this policy and comply with it.

You must not bully or harass or victimise each other nor help anyone else to do so. **Bullying, harassment and victimisation will not be tolerated and are unlawful.**

You are expected to:

Treat all others with dignity and respect
Not to behave in a manner which is offensive to others
Be pro-active in developing and maintaining effective working relationships

It is important to realise that conduct which one person may find acceptable another may find totally unacceptable and that all employees must treat their colleagues with respect and appropriate sensitivity

You have a responsibility to comply with this policy. Senior staff and supervisors have a responsibility to communicate with and supervise staff to develop and maintain a working environment in which harassment and bullying are understood by all to be unacceptable.

You have a responsibility to report any witnessed or suspected incidents of bullying or harassment to your manager or employer – see reporting procedure below.

TRAINING

Failure to complete any training reasonably requested by us will be investigated and could result in disciplinary action.

REPORTING PROCEDURE

We understand that reporting bullying or harassment concerns can be difficult. We encourage anyone who has experienced or witnessed harassment or bullying to come forward. Reports can be made confidentially and will be taken seriously.

You can report informally or you may prefer to put in a formal report in writing.

Please make any report to: *[put in who to report to and how – you should provide multiple routes for people to report to ensure that the person is not required to report an incident to the perpetrator or someone who they feel may not be objective].*

Whilst the emphasis will be to resolve the matter informally, you have the absolute right to raise the matter formally using our grievance procedure.

INVESTIGATION AND ACTION

Where a complaint under this policy is made, we will investigate promptly and thoroughly.

We will discuss with you whether it may be appropriate for you to raise the issue directly with the harasser or bully if you feel able to do so, explaining to the harasser directly how their conduct has made you feel and why you would like it to stop. Of course, you may not wish to do this and we will not place any pressure on you to take this approach.

OUTCOME INCLUDING DISCIPLINARY ACTION

Should the investigation indicate that a disciplinary offence has been committed, our disciplinary procedure will be instigated which may result in disciplinary action being taken against the harasser or bully, which may result in dismissal. We will take into account any aggravating factors such as abuse of power over a more junior colleague.

Care will be taken during any investigation of the allegations made under this policy to protect the interests and confidentiality of both the complainant and the alleged harasser.

Any breach of confidentiality on the part of the complainant or the alleged harasser may itself be considered as a disciplinary issue.

This is to be read in conjunction with our disciplinary and grievance procedures.

THIRD PARTY HARASSMENT

If whilst carrying out your duties at work or otherwise in connection with your work, you are bullied or harassed by a third party, you should raise it with your immediate manager so that we can decide how best to deal with the situation in consultation with you.

WELLBEING AND SUPPORT

It is recognised that being involved in a dignity at work case can be difficult for anyone involved and there are support mechanisms in place. Support is available from us and externally from NARS and Racing Welfare along with other non-racing specific support networks. Employees are encouraged to consider accessing support to maintain health and wellbeing during the process.

INDUSTRY CODE OF CONDUCT

The British Horseracing Authority Code of Conduct is a standard for behaviour which the BHA expects from everyone in racing. The Code should be read alongside this policy and employees should familiarise themselves with it. The Code applies to everyone in racing and is part of the BHA Rules of Racing. The BHA may suspend or prevent someone from working in racing if they are in breach of the Code.

MONITORING AND REVIEW

This policy will be reviewed to ensure it remains effective for our organisation and compliant with legal requirements. We welcome employee feedback to consider.

OTHER POLICIES

This policy should be read in conjunction with our following workplace policies and procedures

- Sexual Harassment
- Disciplinary policy
- Grievance (resolution of disputes)
- Equal Opportunities
- Data Protection

Health and Safety
Whistleblowing
Workplace WhatsApp policy

If you do not have a copy of any of these policies and would like one, they are available from [office/handbook]

12. Chapter 12

Discrimination and Equality

12.1 Overview

12.1 The Equality Act 2010 in force from October 2010 harmonised and replaced previous anti- discrimination legislation such as the Race Relations Act.

12.1.1 The Act makes it unlawful to discriminate against employees who have "protected characteristics". These are quite wide ranging and are explained in detail below. The protected characteristics are:

- Age
- Disability
- Gender re-assignment
- Race
- Religion or belief Sex
- Sexual orientation
- Marriage and civil partnerships
- Pregnancy and Maternity

The new Act has also widened protection to include associative discrimination and perceptive discrimination see below.

12.1.2 Particular issues to be aware of in training yards

Whilst employers need to be aware of all issues, those which are most likely to arise are sex discrimination where a female worker is treated less favourably because of pregnancy or a request to work flexibly for child care; less favourable treatment of a part time worker where they are selected for redundancy because of their part time status or disability discrimination where an employee is unfavourably treated or dismissed because of their disability or a reason related to it or indeed where an employee is not recruited because of a disability.

Employers need to be aware that from October 2010 it is illegal to undertake pre-employment health screening – (Health and Medical conditions – Pre job offer section 1.3.3).

12.2 When discrimination can occur

12.2.1 Discrimination can occur when a person is seeking employment, during employment or in some instances after employment has ended. A recruitment advert could be discriminatory and potentially result in a claim.

To make a claim during employment, an employee does not need any minimum period of service nor to work any minimum number of hours.

An example of this would be where a new employee on the first day of employment advised the employer that he had a chronic back problem which limited his ability to do certain aspects of the job and the employer dismissed him immediately because "he wasn't up to the job" without making any investigations, following correct procedures and considering any reasonable adjustments or alternative jobs.

An employer is liable for the acts of his employees and a claim may be made against an individual employee as well as the business. The yard will have a defence where it has taken reasonable steps to prevent the discrimination from occurring. An employer can be liable for discrimination which occurs at a social event outside the workplace if the event can properly be regarded as an extension of employment.

12.3 Types of discrimination

Direct discrimination

12.3.1 This occurs when someone is treated less favourably than another person because of a protected characteristic that the person has or is thought to have or because they associate with someone who has a protected characteristic.

For example, most obviously, an employer refuses to employ a person of a particular nationality because of it. For an example of a less obvious case see Associative discrimination below.

Indirect discrimination

12.3.2 This occurs when an employer has a condition, rule, policy or practice in a company that applies to everyone but particularly disadvantages people who share a protected characteristic.

Indirect discrimination can be justified if the employer can show that they acted reasonably in managing the business – namely that the way the employer acted was a proportionate means of achieving a legitimate aim.

A legitimate aim is a lawful decision in the running of the business and has to be fair and reasonable. The employer has to look at whether there are any less discriminatory alternatives to the decision.

Employers must note that cost alone is not likely to justify a decision which causes indirect discrimination.

Example

An employer does not employ someone because English is not their first language and they do not have a certain standard of written English. The job does not require such a standard so the employer

would be unable to justify it as a legitimate aim. Similarly restricting training opportunities to full time workers is likely to be discriminatory unless the employer can show that it acted legitimately and proportionally.

Associative discrimination

12.3.3 This is direct discrimination against someone because they associate with another person who possesses a protected characteristic.

Example

An employee is not promoted because she cares for her disabled child and the employer considers that she will not be able to concentrate on the job due to these caring responsibilities. This could be associative discrimination.

An amendment to the Equality Act from January 2024 clarifies that associative discrimination can also be indirect – so a person without a protected characteristic could bring an indirect discrimination claim if the provision, criterion or practice puts, or would put, them at substantively the same disadvantage as persons who do share the relevant protected characteristic.

Perceptive discrimination

12.3.4 This is direct discrimination against an individual because others think that they possess a certain characteristic. It applies even if the person does not actually possess that characteristic.

Example

A male employee frequently comes to work dressed in clothes that his work colleagues link with homosexuality but he is not gay and his work colleagues know that he is not. Nonetheless they continually make jokes and comment about him being gay. This is likely to be perceptive discrimination. It is also likely to be harassment.

12.4 Harassment

12.4.1 Harassment is defined as

"unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment to that individual".

Employees can complain of behaviour that they find offensive regardless of whether that behaviour is directed at them and regardless of whether or not the employee possesses the relevant characteristic him or herself.

It is also unlawful for employees to be harassed because of perception and association. There are some grounds where an employee would not be able to claim harassment and these are pregnancy and maternity, marriage and civil partnership. Other than these, all the protected characteristics are covered.

Example – see the example under perceptive discrimination above.

Third party harassment

12.4.2 The Government repealed employer liability under Section 40 of the Equality Act 2010 for harassment of their employees by a third party.

However, employers could still be liable if an employee is harassed by a third party if the employee suffers unwanted conduct which is related to a "protected characteristic (i.e. sex, race, age, sexual orientation) and an employer takes no action to prevent that harassment from taking place or continuing. That could amount to a breach of the general anti- harassment provisions of the Equality Act or an employee could potentially argue that the harassment by a third party and the employer's failure to take reasonable steps to prevent it constitutes a fundamental breach of contract which entitles the employee to resign and claim constructive unfair dismissal (if the employee has sufficient service to make such a claim).

Accordingly employers should investigate any complaints of third party harassment by employees and consider whether any action can be taken to prevent the harassment from continuing (for example, by not requiring the employee to deal with a particular third party).

Victimisation

12.4.3 If an employee makes or is suspected of making a complaint or grievance or supports a complaint under the Equality Act and is then subsequently treated badly by the employer because of it, the employee may be able to claim that they have been unlawfully victimised.

If the employee has themselves acted maliciously in making the complaint or grievance they will lose the protection from harassment.

Example

An employee has made a complaint because he feels that he is being discriminated against on racial grounds by his manager. As a result of that, a promotion that he has been promised is withdrawn. The employee could claim victimisation.

Discrimination - The Protected Characteristics

12.4.4 These are the old grounds for discrimination which were contained in individual acts such as the Sex Discrimination Act and the Race Relations Act.

Some of these grounds have been extended to give wider cover - in particular the Equality Act has widened the scope for an employee to claim protection from disability discrimination.

Disability Discrimination

12.4.5 As a result of the Equality Act, it is anticipated that more employees will be able to claim protection from discrimination on the grounds of disability and there are now six types of potential disability discrimination claim.

Definition of disability

12.4.6 The definition of disability is: "if the person has a physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out normal day to day activities".

Substantial simply means more than minor or trivial and it will include long term medical conditions such as asthma, diabetes, epilepsy, ME, depression and learning difficulties Long term means that the impairment has lasted or is likely to last 12 months or longer.

Normal day to day activities is something people do on a regular basis such as shopping, having a conversation, carrying out household tasks, walking, using transport to travel and/or taking part in social activities. It also includes the person's ability to participate fully and effectively in working life on an equal basis with other workers.

People suffering from cancer, multiple sclerosis and HIV/AIDS are covered by the Act from the date of diagnosis – they do not need to show that the illness is having a substantial and long term effect.

It should be noted that:

- it protects past disability so someone who suffers harassment because of a disability they had in the past will be protected
- it protects a person from being treated less favourably because they are associated with a disabled person – for example a parent who has disabled child and is treated unfavourably because of that
- it protects a person who is mistakenly perceived to be disabled.

The six types of disability discrimination claim

- Direct discrimination because of a disability
- Disability connected discrimination (this is new, see below)
- Indirect discrimination
- Failure by the employer to make reasonable adjustments
- Harassment
- Victimisation

The new protection from disability connected discrimination protects an employee from being unfavourably treated because of something arising in consequence of the employee's disability and the employer cannot show that the treatment is a proportionate means of achieving a legitimate aim. It should be noted that the wording is "unfavourably" rather than "less favourably" so a disabled employee only has to show that they have been unfavourably treated not that they have been less favourably treated than a non-disabled colleague.

Disability - Areas of employment covered

12.4.7 In employment it is unlawful to discriminate against a person because of their disablement or for a reason relating to their disability in:

- recruitment including the advertisement, procedure, offer and terms of employment
- in employment (i.e. terms and conditions, opportunities for training, transfer, promotion, benefits etc.)
- by dismissing them or subjecting them to other detriment
- in failing to make "reasonable adjustments" to the premises equipment or working conditions which would enable them to work

Disability - Potential Adjustments

In practice, the duty to make reasonable adjustments is the most important aspect of managing disability.

The employer must consider what reasonable adjustments can be made to accommodate the disabled person and to take reasonable steps in the circumstances. Trainers in this position may wish to take further advice from the NTF.

These could include:

- adjusting the premises to accommodate the disabled person
- allocating some of the disabled person's duties to another person
- transferring the disabled person to another job where there is an existing vacancy
- altering the disabled person's hours of work or training
- allowing the disabled person time off work for rehabilitation, assessment or treatment
- giving or arranging training or mentoring for a disabled person
- acquiring or modifying equipment
- providing supervision or support

Advice is given in sections 10.4 to 10.6 of this manual on handling long term sickness – see Managing long term absences

Age Discrimination

12.4.8 This covers workers of all ages and less favourable treatment can include having a provision criteria or practice which puts people of a certain age group at a disadvantage, say a provision that training is only available to people with a certain length of service.

An employer can lawfully discriminate against employees on the ground of age if they can justify that the discrimination is a proportionate means of meeting a legitimate aim. If any trainer wishes to have specific advice upon whether or not a practice is justified they should contact the NTF for individual advice.

Example

Advertising for a job asking for young enthusiastic person.

Sex Discrimination

12.4.9 It is unlawful for an employer to discriminate against a person on the grounds of his or her sex.

The law does acknowledge that some jobs may be more suitable for a particular sex, where it is a genuine occupational qualification. The circumstances in which this would apply are tightly defined.

A job can be limited to a particular sex if the nature or the location of the workplace means that the job holder must live on the premises and the premises lack separate sleeping accommodation and sanitary facilities for each sex and it would not be reasonable for the employer to provide separate facilities.

Example

Direct discrimination on grounds of sex – an employer only considers men for a particular job because the work is heavy. This is not a

genuine occupational qualification because although heavy lifting is involved, both men and women can fit the criterion.

An example of indirect discrimination would be where an employer offered training only to full time workers. The business has a number of female workers who work part time because of child care responsibilities and they could claim that the practice of only offering training to full time workers is discriminatory.

Maternity and pregnancy discrimination

12.4.10 This is not a new concept and has previously been covered under sex discrimination.

It is automatically unlawful discrimination if an employer discriminates against a woman because she is pregnant or because she has taken or will need to take maternity leave.

It is key to note that an employee claiming discrimination under this ground does not have to show that they have been less favourably treated than an employee who is not pregnant.

Sex discrimination claims can also arise relating to breastfeeding which is a protected characteristic of sex.

Example

The yard's secretary who is pregnant has been taking more rest breaks and toilet breaks because of her pregnancy. The employer disciplines her for being away from her desk and not answering the phone as he would any other person. This is discrimination because of the pregnancy and the employer would not have a defence that he was acting the same as he would with a non-pregnant secretary who was taking too many breaks.

Sexual orientation

12.4.11 It is unlawful to discriminate against employees because of their sexual orientation or perceived sexual orientation.

Gender re-assignment

12.4.12 The Equality Act provides protection for transsexual people and it is discrimination to unlawfully treat a person less favourably for absences from work because they are undergoing or have undergone gender reassignment than how they would be treated if they were absent because of an illness.

12.4.13 Transgender people are those who adopt a different gender because they do not feel their gender identity matches that assigned at birth. A person undergoing the process of change to the new gender

identity is transitioning. This may involve surgical procedure but not everyone who is transitioning will undergo surgery.

The Gender Recognition Act 2004 provides that a person who has transitioned can apply for a gender recognition certificate and the law then recognised them as having all the rights and responsibilities of their acquired gender. There is, though, no obligation upon a person to apply for a gender recognition certificate. It can be a criminal offence to disclose information about the gender history of a person who has a gender recognition certificate without the person's consent.

Racing with Pride has produced information for employers and employees on transitioning at work – a copy can be accessed from the Handbook Area of the NTF website.

Married status/civil partnerships

12.4.14 It is unlawful to discriminate against a person because he or she is married or because the person is in a registered civil partnership.

Race discrimination

12.4.15 It is unlawful to discriminate against a person on racial grounds which include not only race but also nationality, colour and ethnic or national origins.

For an example, see the example in indirect discrimination above.

Religion and belief

12.4.16 It is unlawful to discriminate against employees because of their religion or similar beliefs. This includes religion, religious belief or similar philosophical belief.

12.5 Discrimination other than contained in the Equality Act

Trade Union Discrimination

12.5.1 Trade union discrimination includes refusing to consider or offer employment, dismissal and action short of dismissal on this ground.

It is unlawful to refuse to consider an application or to fail to offer employment if the reason can be shown to be either because the person was a member of a union (or a particular union) or because the person was not a member of a union (or a particular union).

It is unlawful to dismiss an employee because he was, or proposed to become a member of a union, he had taken part or proposed to take part, in the activities of any union, or he was not a member of a union or had refused, or proposed to refuse, to become or to remain a member.

It is unlawful to take other action short of dismissal for the purpose of preventing an employee from being or seeking to become a member of a union or penalising him for doing so, preventing him or deterring him from taking part in activities of the union or penalising him for so doing, or compelling him to be or become or remain a member of a union.

See Chapter 23 for further advice in connection with trade union matters.

Criminal records

12.5.2 The law gives ex-offenders some protection against being discriminated against because of their criminal record.

Under the Rehabilitation of Offenders Act 1974 amended in March 2014 and the Police, Crime, Sentencing and Courts Act 2022 which came into force on 28th October 2023, an ex-offender who has not re-offended for a specific length will be considered "rehabilitated" and the person will be entitled to present him or herself to employers as if he or she had never been convicted in the first place.

The length of period differs according to the type of sentence imposed and the age of person when convicted of the offence.

For people aged 18 or over when convicted:

- custodial sentences up to six months become spent after 1 year
- custodial sentences of 6 months to 1 year become spent after 1 year
- custodial sentences of 1 – 4 years become spent after 4 years
- custodial sentences over four years – 7 years although certain offences are exempt and never spent including offences classified in the Code as serious violent, sexual and terrorism offences.

These time periods are extended in the event of re-offending during the declaration period and any new conviction attracts its own disclosure period and both the previous conviction and the new conviction need to be declared until the end of the original conviction's active period or, if later, the end of the new disclosure period applied to the most recent conviction.

Most rehabilitation periods are halved if the person was under 18 when convicted.

- For probation, supervision, care orders, conditional discharge or bind over, the rehabilitation period is one year or until the order expires.

The effect of rehabilitation is:

- the person is entitled to be treated for all purposes in law as a person who has not committed, been charged with or prosecuted for the offence
- evidence cannot be produced in Courts or Employment Tribunals about the spent convictions nor can the individual be asked about them
- the person need not treat questions asked otherwise than in Court (e.g. in the job application forms) about convictions as relating to spent convictions
- a spent conviction cannot be a proper ground for dismissing or excluding a person from any employment or for prejudicing him in any way in any employment
- if a conviction disclosed at the beginning of employment becomes spent by the end of employment that conviction should not be referred to when giving references to a prospective employer

Further information is available on the Government's Disclosure and Barring Service website.

Part time workers and fixed term workers

See _Chapter_13Chapter 13 for advice.

Equal Pay and Equal Opportunities

12.5.3 Equal Pay

Legislation implies an equality clause into every contract of employment. This means that all terms in a female employee's contract must be no less favourable than those of a male colleague engaged in work of equal value.

The Equality Act prevents employers from restricting employees from discussing their pay and conditions of employment with other employees of the same company.

12.5.4 Employers should have in place an equal opportunities policy which sets out the company's policy on fairness and equality of treatment. A sample policy is set out below (see Equal Opportunities Policy). If any yard would like a more individual and detailed policy, then contact the NTF for assistance.

Trainers should ensure that their employees are aware of the policy and that as a minimum employees have understood their obligations under it. Trainers should ensure that managers within their business are aware of and trained upon the policy and ensure that it is fairly and consistently applied.

Having a policy in place and staff aware of it will help trainers deal with any problems that arise and would be an important part of an employer's defence were an employee to claim that they had suffered discrimination or less favourable treatment.

[Employer Name] Equal Opportunities Policy

It is the [**name of business**]'s policy that there should be equal opportunity for, and no discrimination against employees or applicants for employment with the yard on any grounds including:

- colour, race, nationality or ethnic or national origins;
- sex, marital status, sexual reassignment or sexual orientation;
- disability;
- religion or belief;
- age
- pregnancy and maternity

The business commits to make reasonable adjustments for disabled employees.

Discrimination can be direct or indirect. Direct discrimination occurs when one person is treated less favourably than another on one or more of the protected characteristic set out in (a) above. Indirect discrimination occurs when a requirement is imposed which can be complied with by a smaller proportion of persons having one of the protected characteristics than persons in another group and is not objectively justifiable.

Discrimination can also be associative where a person is associated with someone who has a particular protected characteristic and by perception where someone thinks a person has a particular protected characteristic whether they do or not.

a) It is responsibility of all employees to comply with this policy and if an employee is found to have discriminated against someone then legal proceedings can be taken against the employee as an individual as well as against the yard;

b) The yard will not tolerate any unlawful discrimination committed by an employee whether direct or indirect or in any way. If an employee commits such discrimination they will be liable to disciplinary action which could include dismissal

c) An employee who considers themselves to be the victim of discrimination may in the first instance be able to resolve the matter informally by explaining clearly to the perpetrator that their behaviour is unacceptable. Where it is not possible to resolve a matter informally, the employee should raise a grievance with their employer using the standard grievance procedure (as set out in the Agreement between the NTF and the NARS dated February 2018 a copy of which is available from ……

[**date**].

13. Chapter 13

Part-time Workers and Fixed Term Contracts

13.1 Overview

13.1.1 All part timers have protection from being treated unfavourably because they are part timers under the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000.

Additionally since woman make up the majority of part time workers, discrimination against part timers may also amount to indirect sex discrimination against women.

The Regulations broadly require that part timers are dealt with in the same way as comparable full timers, unless the employer has objective grounds for treating them differently. Treating part timers less favourably than full timers may be justified on objective grounds if the employer can show that it is necessary and appropriate to achieve a legitimate business objective. When considering whether a part time worker is being less favourably treated their treatment is compared with a comparable worker working under a similar type of contract.

Basically part time workers should be paid the same basic rate of pay as full timers and should be given the same premiums for working shift and anti-social hours. Part timers do though not have to be paid overtime until they have worked 40 hours per week. If they do work overtime then it should be at the same rate as full-timers.

The same principle of equal treatment applies to all contractual terms such as holiday pay and sickness benefit on a pro-rata basis. Accordingly a part timer working half the hours of a full time worker would be entitled to half the holiday entitlement of the full time worker.

Part time workers and redundancy

13.1.2 If a business is deciding to select part time workers for redundancy before full time workers it would need to be able to objectively justify its decision to do. In addition to being potentially unlawful under the Part-time Workers legislation, it is also likely to be indirect sex discrimination against woman.

Similarly the selection of a part time worker for redundancy because he or she could not work full time will be in breach of the Part-time Workers legislation and an employer would have to be able to objectively justify such a decision. Again it is also likely to be indirect sex discrimination.

Less favourable treatment can only be justified on objective grounds – that is if the business can show that it is necessary and appropriate

to achieve a legitimate and genuine business objective. Cost in itself is not an objective justification.

Any trainer considering treating a part time employee on less favourable terms or selecting a part time worker for redundancy should take advice.

Fixed term contracts

13.1.3 This is a contract which from the outset specifies an end date. This could be a period, i.e. 6 months or a task, such as until a particular project is completed.

Employees working under a fixed term contract are protected by the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002.

Employers must not treat those on fixed terms less favourably than permanent employees on the grounds of their fixed term status unless they can objectively justify doing so.

This applies to their terms and conditions of employment, access to training, opportunity to apply for permanent vacancies and dismissal including redundancy.

In order to claim protection under the Regulations, a fixed term employee must be able to show that he or she has been less favourably treated than a comparable permanent employee.

In deciding whether a fixed term worker has been less favourably treated, the pro-rata principle would apply – so a fixed term employee on a 6-month contract would be entitled to half the full year's holiday entitlement of a comparable permanent employee.

An employer can lawfully treat a fixed term employee less favourably than a comparable permanent employee if the employer can objectively justify doing it. This will be where the less favourable treatment is a necessary and appropriate way of achieving a genuine business objective. If a trainer is considering employing fixed term workers on different terms to comparable permanent workers they should seek advice from the NTF or other legal adviser.

If a fixed term employee believes that they are being less fairly treated, they can write to their employer for an explanation of the way in which he or she is being treated. If an employer receives such a request from a fixed term worker, they should seek advice from the NTF or other adviser upon responding to it.

Successive fixed term contracts

If a fixed term employee has already been employed on a fixed term basis for four continuous years or more, the employee will be treated as working under an open-ended contract from the date that the contract is renewed or a new contract entered into.

Termination of a fixed term contract

The non-renewal of a fixed term contract is deemed to be a dismissal for unfair dismissal and redundancy purposes. Accordingly, if an employee has over two years' service and a fixed term contract is not renewed, that should be handled by the employer as being a dismissal and the employer would need to be able to show that the non-renewal was fair.

A fixed term contract can be terminated before the end of the fixed term if there is a provision in the contract permitting that. It would be wrongful dismissal for a company to terminate the contract before the end date if the fixed term contract does not include a notice clause of this type.

A decision not to renew a fixed term contract because of pregnancy would automatically give the employee the right to claim unfair dismissal regardless of the length of service.

If a fixed term contract is being terminated or not renewed for a disciplinary reason then the disciplinary procedure in chapter 5 –see Formal Disciplinary Action – the procedure should be followed where the employee has sufficient service to claim unfair dismissal or if the employee may have a potential discrimination claim or automatic unfair dismissal claim where no qualifying service is needed.

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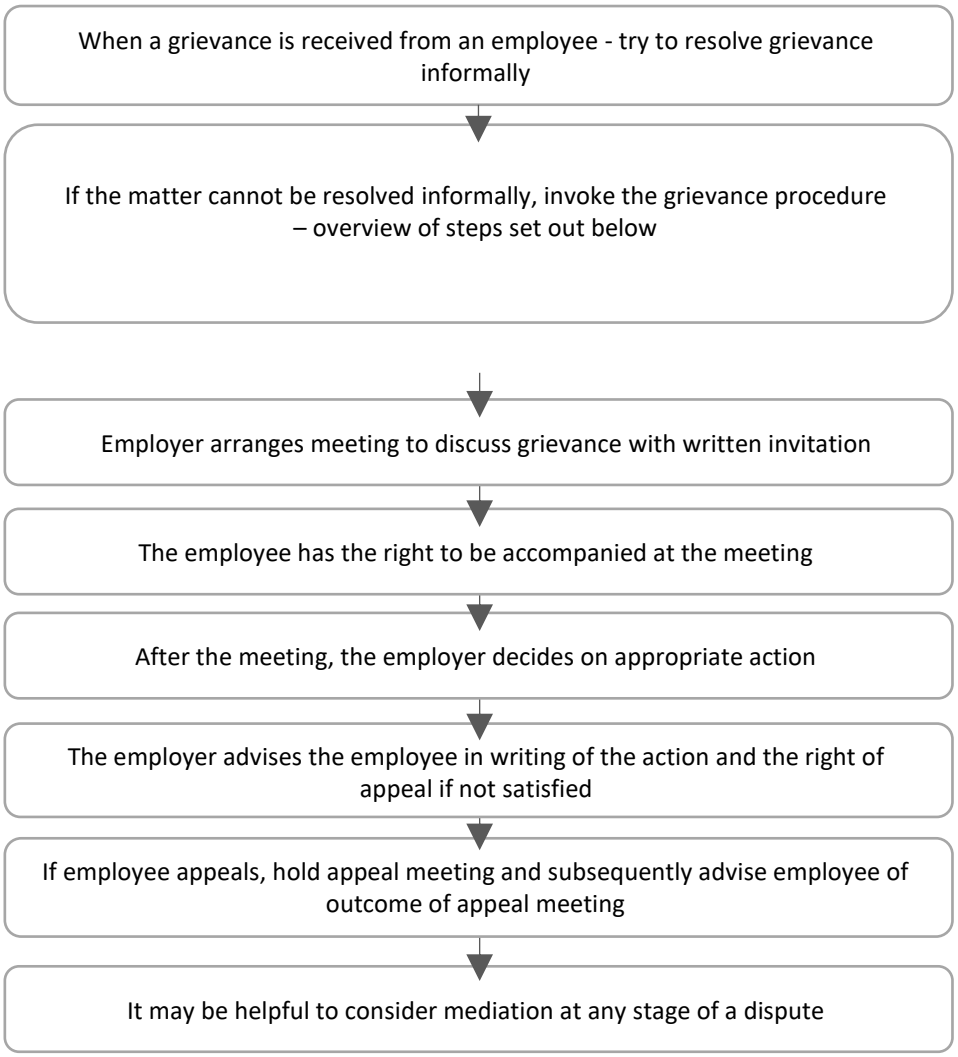
14. Chapter 14

Handling grievances

14.1 Overview

A grievance is a concern, problem or complaint that an employee raises with their employer, such as a problem to do with their work or the people they work with.

Figure 11: Grievance procedure, overview



Informal grievances

14.1.1 Employers and employees should try to resolve grievances informally where possible – often a quiet word is all that is needed.

However, it is important that employers and their managers are aware that a grievance even if not formally raised in writing could lead to a claim from an employee and that informal or formal verbal grievances

should be properly dealt with and the procedure set out in the NTF/NARS agreement followed – NTF/NARS Agreement on Resolution of Disputes

Formal grievances

14.1.2 If it is not possible to resolve a grievance informally the employee should raise the matter formally and without unreasonable delay with a manager who is not the subject of the grievance. This should be done in writing and should set out the nature of the grievance.

In small businesses run by an owner/manager, there may be no alternative manager for an employee to raise a grievance with. In such a case, the employer must make it clear that they will treat all grievances fairly and objectively even if the grievance is about something they have said or done. Independent mediation may be appropriate in some circumstances.

Procedure for a formal grievance

14.1.3 Investigation

As part of the grievance an investigation will be needed – this should be started as soon as possible, to try to establish the evidence surrounding the grievance. The investigation needs to be impartial. In a complex grievance consideration may need to be given as to whether an external investigator should be instructed.

The person undertaking the investigation needs to be given time away from their normal duties to concentrate upon the investigation.

They should ask the complainant for sufficient details such as who, when, what, where, any witnesses etc and clarify if the complaints raised are all ones that they want a finding upon or if it is simply mentioned as background.

The investigator should try to keep the complainant's trust and meet any deadlines they have given for dealing with the matter or if there are going to be delays ensure the person is informed.

The investigator needs to ensure that any inconsistencies are queried and if there are issues that could have been brought up earlier but were not find out why they were not mentioned at the time.

The investigator should question relevant witnesses and review documents and give the complainant an opportunity to comment on the evidence that has been gathered. Of course, there may be circumstances where that could be difficult if the complainant is still working for the company – if that is the case then contact the NTF or other adviser for specific advice.

If there is a witness who has left the company and the company does not have their contact details, then ask the complainant if they have any contact details for the person.

14.1.4 (I) invite the employee by letter to a grievance meeting

(ii) hold the meeting

(iii) decide on appropriate action, advise employee of outcome and right of appeal

(iv) if the employee lodges an appeal, hold an appeal meeting.

The grievance should be heard and considered by a senior person with authority to resolve the grievance. If the employee subsequently appeals the decision then the appeal should be heard impartially and ideally by a different manager who has not been previously involved in the case. This should be borne in mind when deciding who will hear and consider the initial grievance.

Invitation to a formal meeting

14.1.5 When a formal grievance is received, the employer must arrange for a meeting to be held without unreasonable delay. The employer should write to the employee to invite him or her to the meeting and to advise the employee that he or she has the right to be accompanied at the meeting by a union representative or a work colleague – see Template44 Invitation to a grievance meeting following receipt of a written grievance.

The right for the employee to be accompanied by a work colleague or union representative arises at any grievance meeting dealing with a complaint about any duty owed by them to a worker, for example the employer is breaching the employee's contract or employment legislation. However, the NTF NARS Agreement on the Resolution of Disputes gives the employee the right to be accompanied by a colleague or union representative at each stage of any grievance. Chapter 15 has detailed information on this – see Right for employee to be accompanied

The meeting

14.1.6 The employer and employee and any companion should make every effort to attend. The employee should explain their grievance and how they think it should be resolved – ask the employee what they want as an outcome of the process. That may, of course, not be the outcome but it could be that what the employee suggests is easily achievable or indeed the same outcome as the employer concludes is appropriate at the end of the process.

If any investigation is necessary, the employer should adjourn the meeting to undertake investigation.

The employee has the right to be accompanied at the meeting.

Decide on appropriate action and advise employee of outcome and right of appeal

14.1.7 Following the meeting the employer must decide on what action to take, if any. The decision should be communicated to the employee, in writing, without unreasonable delay and where

appropriate should set out what action the employer intends to take to resolve the grievance – see Template45 Sample letter to employee with outcome of grievance meeting

14.1.8 The employee should be informed that they can appeal if they are not content with the action taken.

It is generally good practice to adjourn the meeting before a decision is taken to give the employer time to properly consider the employee's grievance.

If the employee's grievance is not upheld, the employer should carefully explain the reasons in the letter.

The employee should be advised that if they consider that their grievance has not been satisfactorily resolved they have a right of appeal. They should let their employer know the grounds for their appeal without unreasonable delay and in writing.

Right of appeal

14.1.9 The appeal should be heard without unreasonable delay and at a time and place which should be notified to the employee in advance.

Where possible the appeal should be heard by a manager who has not been involved in the case previously. Where this is not possible, then whoever hears the appeal must consider it as impartially as possible.

After the appeal meeting the employer should write to the employee with a decision on their grievance as soon as possible. They should also tell the employee that the appeal meeting is the final stage of the grievance procedure unless the organisation has its own set of rules with a further right of appeal.

14.2 Grievance raised post termination

14.2.1 An employer should hear a grievance raised post termination as this may enable an employer to resolve a matter without the former employee raising a claim through the employment tribunal. The employer may decide to deal with this by way of a meeting or to respond in writing.

Care should be taken not to confuse a grievance with an appeal in relation to termination, especially where issues may be overlapping.

14.3 Bullying and harassment

14.3.1 See Chapter 11 Harassment and Bullying at Work. The same procedure should be followed but employers must bear in mind additional confidentiality issues that may arise and whether mediation or counselling is appropriate

14.4 Mediation

14.4.1 Workplace mediation can help restore and maintain employment relationships and may be appropriate in some circumstances. Mediation is a voluntary process – the agreement comes from those in dispute, not the mediator.

Further advice and information on medication is available on the ACAS website (www.ACAS.org.uk).

It may be helpful say where it is necessary to rebuild relationships after a formal dispute has been resolved or where there are personality clashes, communication problems, bullying or harassment.

14.5 Unresolved grievances –

Using ACAS

14.5.1 Where the internal grievance procedures has not succeeded in resolving a grievance or dispute and the dispute may result in a formal ET claim but no claim has yet been made, use of the ACAS Pre-Claim Conciliation Service should be considered.

This is a free service available nationally to employers and employees. The type of matter with which ACAS can assist under this service include:

- potential unfair dismissal workplace discrimination
- redundancy payments or selection procedures deductions from wages or unpaid notice/holiday pay rights to time off or flexible working.

To access this service, the employer, the employee or their representative contacts the **ACAS helpline on 08457 474747**.

Once a party has asked for pre-claim conciliation, ACAS will talk through the different courses of action available and then invite the other party to discuss the issues.

If a basis for settlement is reached, then the ACAS conciliator will also offer to help draw up a binding agreement recording the terms.

If conciliation fails for whatever reason, the employee retains any right they had to enter a formal complaint to the Employment Tribunal should they so choose, at which point ACAS would again offer conciliation.

More information, including the leaflet Pre Claim Conciliation Explained can be found on the ACAS website (www.ACAS.gov.uk).

Formal grievance meeting checklist

Preparing for a formal grievance meeting

Preparing for a formal grievance meeting	✓
On receiving a complaint arrange a meeting without unreasonable delay (see letter in template 44) . The meeting to be held in private where there should be no interruptions.	☐
Consider arranging for someone who is not involved in the case to take a note of the meeting and to act as a witness to what was said	☐
Find out before the meeting whether similar grievances have been raised before, how they have been resolved and any follow-up action that has been necessary	☐
Consider arranging for an interpreter where the employee has difficulty speaking English	☐
Consider whether any reasonable adjustments are necessary for a person who is disabled and/or their companion	☐
Consider whether to offer independent mediation	☐

Conduct of the meeting

Conduct of the meeting	✓
Treat the meeting as a grievance hearing not a disciplinary hearing and bear in mind that that discussions may lead to an amicable solution	☐
Make introductions as necessary at the start of the meeting	☐
Invite the employee to re-state their grievance and how they would like to see it resolved	☐
Put care and thought into resolving grievances. The employee may have been holding the grievance for some time. The employer should make allowances for any reasonable letting off of steam by the employee	☐
If any new facts arise, the employer should consider adjourning the meeting to investigate the new facts	☐
At the end of the meeting the employer should sum up the main points	☐
The employer should tell the employee when they might reasonably expect a response if one cannot be made at the time	☐

After the meeting

After the meeting	✓
when the employer has decided what action to take or if the grievance is not upheld the employer must advise the employee without unreasonable delay in writing of the decision and any action the employer intends to take to resolve the grievance (see sample letter at template 45)	☐
the employee should be informed that they can appeal if they are not content with the action taken and if the grievance is not upheld, the employer should include in the letter the reasons	☐
if the grievance has highlighted any issues concerning policies, procedures or conduct the employer should consider those and decide if any policy or procedure changes should be implemented	☐
if any improvement action is set out for the employee, the employer should monitor and review as appropriate	☐

Appeal	✓
If the employee wishes to appeal the decision, the employer should write to the employee advising the employee of the date, time and location of the appeal meeting, who will be hearing the appeal and reminding the employee of their right to be accompanied at the meeting	☐
The employer should hold the appeal meeting, following the guidance for meetings above and ask the employee to set out their grounds for appeal	☐
The employer should sum up at the end of the meeting and advise the employee of a timescale for notification by the employer of their decision	☐
After considering the employee's grounds and case for their appeal, the employer should confirm the outcome of the appeal meeting to the employee and advise the employee that the decision is the final stage in the grievance hearing.	☐

Template 44: Invitation to a grievance meeting following receipt of a written grievance

Dear [**name**]

Date

I am writing to confirm receipt of your letter setting out your grievance and to invite you to attend a meeting at [**put in location time and place**] to discuss your grievance.

The grievance will be heard by [**name**] [and also in attendance will be [**name**] who will take notes of the meeting]

You have the right to be accompanied at the meeting by a union representative or a work colleague.

We refer you to the Employee Privacy Notice issued to you for information on how we process your personal data and sensitive personal data and your rights relating to such data. A further copy of the Employee Privacy Notice is available on request

Yours sincerely

Template 45: Sample letter to employee with outcome of grievance meeting

Dear [**name**]

Date

Further to the meeting held on [**date of meeting**] to address your grievance [**put in details of grievance**], I write to confirm the outcome of that meeting.

After investigation and due careful consideration, I write to advise you that:

I have decided not to uphold your grievance for the following reasons [**put in the reasons**]

or

I have decided to recommend the following resolution [**set out the action the employer has decided to take**] *

If you are not content with the action taken then you have a right to appeal the decision. If you wish to appeal, please write to me setting out the reasons for your appeal without unreasonable delay. I will then convene an appeal meeting.

We refer you to the Employee Privacy Notice issued to you for information on how we process your personal data and sensitive personal data and your rights relating to such data. A further copy of the Employee Privacy Notice is available on request

Yours sincerely

*delete and complete as appropriate

NTF/NARS Agreement on Resolution of Disputes

MEMORANDUM OF AGREEMENT BETWEEN THE NATIONAL TRAINERS FEDERATION AND THE NATIONAL ASSOCIATION OF RACING STAFF ON THE RESOLUTION OF DISPUTES

THE GRIEVANCE PROCEDURE

INTRODUCTION

1. The National Trainers Federation (NTF) and the National Association of Racing Staff (NARS) have reached this agreement to provide a way of resolving differences at yard level without damaging the business of training horses for racing and to provide a means of monitoring and enforcing the agreements reached in the National Joint Council (NJC).

2. In this joint approach, the NTF and NARS have a common objective in ensuring the efficiency and prosperity of the racing industry in order to promote security of employment and advancement of all employees.

PROCEDURE FOR THE RESOLVING OF DIFFERENCES AT YARD LEVEL – GRIEVANCE PROCEDURE

3. If an employee has a grievance or a complaint to do with work or the people he or she works with, the employee should wherever possible try to resolve it informally by discussing it with their manager, the trainer or an appointed representative. The employee may also wish to discuss the matter with NARS. If no satisfactory agreement is reached and the employee wishes to proceed further, the issue should be formally raised with the trainer or employer if not already done so and the following procedure used.

4. At each stage of the procedure the employee may be accompanied by a fellow worker. The employee may alternatively be accompanied by a trade union official Where the companion is a trade union representative he or she must be either an employed official of the trade union or, alternatively, an official who has been certified by the appropriate union as competent to act as a companion. The companion may address the meeting on behalf of the employee but may not answer questions for the employee.

5. To raise a formal grievance, the employee will as the first stage write to their manager or employer with an explanation of the basis for the grievance. Where the grievance is against that person, the employee should write to another manager if there is one. If there is no alternative person to raise the grievance with, then the employee should still raise the grievance and the employer will treat the grievance fairly and objectively even if it is about something they have said or done. Employees should refer to their individual contracts of employment which may specify the name of the person in the organisation to write to with a grievance.

5.1 The employer will then invite the employee to a meeting, the meeting will normally be held within a reasonable period of the formal grievance being raised. The employer should advise the employee in the letter inviting the employee to the meeting of his or her right to be accompanied at the meeting.

5.2 After the meeting, the employer must inform the employee in writing without unreasonable delay of the decision including any action the employer intends to take to resolve the grievance and also advising the employee of the right to appeal.

5.3 All parties should make every effort to attend the meeting.

5.4 If the employee's chosen companion is unavailable at the time appointed for the meeting but the employee proposes a reasonable alternative time, the meeting must ordinarily be postponed to that time. If the employee is unable to propose an alternative time within the next five working days, then the meeting may go ahead if reasonable to do so without the chosen companion.

5.5 Following being notified of the outcome of the grievance meeting, if the employee wishes to appeal he or she must write to the employer without unreasonable delay setting out the grounds for the dissatisfaction of the decision.

5.6 The employer will then invite the employee to a further meeting, in writing, reminding the employee of his or her right to be accompanied at the meeting by a work colleague or union representative. This meeting must be held without unreasonable delay.

5.7 The appeal meeting should be heard by someone from the organisation not previously involved in the case if possible.

5.8 The decision will be given to the employee as soon as possible after the appeal meeting. The employer must confirm the outcome of the meeting to the employee in writing.

5.9 The decision at the appeal is the final stage of the internal meeting.

6. If the employee is not satisfied that the matter has been resolved following completion of the internal procedure, the external procedure set out below may be invoked.

6.1 The matter may be referred on behalf of either the trainer or the employee(s) directly concerned to officials of the NTF and NARS who will be responsible for convening, without unreasonable delay, a meeting of the interested parties.

6.2 Failing settlement the matter may be referred to the NJC which will be the last stage in the procedure unless the issue concerns the implementation of national agreements.

6.3 Failing settlements in these circumstances the matter will be referred to the British Horseracing Authority under the Rules of Racing.

6.4 At this stage the Joint Secretaries of the NJC will send to the British Horseracing Authority an agreed statement about the dispute setting out the facts, the NJC's interpretation of the National Agreement.

7. It is agreed by all parties that there shall be no stoppage of work either of a partial or general character such as a strike, locking out, go slow, work to rule and overtime ban, or any other restriction until the procedure mentioned above has been exhausted. For the avoidance of doubt, this will not be treated as preventing an employee from pursuing legal proceedings in an employment tribunal or court. NARS representatives will however use their best endeavours to encourage the employee to exhaust the internal procedures set out in this Agreement before resorting to an employment tribunal or court.

8. The employer will keep records of any action taken under this grievance procedure. These will be treated as confidential although may be used if the issue is unresolved and is taken to external stages of the procedure or to a tribunal.

9. This procedure is non-contractual.

COLLECTIVE ISSUES WITHIN THE NJC

10. Matters will be discussed according to the Constitution of the NJC.

ALTERATION AND TERMINATION

11. Each party wishing to alter or terminate this agreement shall do so by giving three months' notice in writing.

12. This agreement shall operate from 15th February 2018.

15. Chapter 15

Right for employee to be accompanied

The right to be accompanied – when it applies

15.1.1 Employees and workers have a statutory right to be accompanied by a companion where the disciplinary meeting could result in:

- a formal warning being issued or
- the taking of some other disciplinary action or
- the confirmation of a warning or some other disciplinary action (i.e. an appeal hearing).

and at grievance meetings where the grievance relates to a complaint by an employee about any duty owed to the employee by the employer.

The companion

15.1.2 The companion may be a work colleague, a trade union representative or an official employed by a trade union.

The employee may ask for an official from a trade union to accompany them even if they are not a member or the union is not recognised.

If the companion is a work colleague, then the employee is entitled to take a reasonable amount of paid time off to fulfil that responsibility.

A lay trade union official is permitted to take a reasonable amount of paid time off to accompany a worker at a hearing, as long as the worker is employed by the same employer. Where the lay official agrees to accompany a worker employed by another organisation, time off is a matter for agreement by the parties concerned.

The employee should tell the employer who they have chosen as a companion before the hearing.

The employer cannot refuse to permit the employee to be accompanied where there is a statutory right to be accompanied. The employer should permit the employee to be accompanied by his or her first choice of companion provided they meet the criteria above. However if an employer does have a serious concern about the choice of companion they should contact the NTF or other adviser for advice on the specific case.

Request

15.1.3 To exercise the statutory right to have a companion at a meeting, the employee should make a reasonable request. However, the

employer should tell the employee that he or she can have a companion at the meeting, the employer should check at the meeting that an unaccompanied employee does not want to have a companion and should not refuse a companion just because the employee has not put in a request.

Rights of companion

15.1.4 The companion should be allowed to address the hearing to put and sum up the employee's case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee during the hearing.

The companion does not have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it nor prevent the employer from explaining their case.

Informal discussions

15.1.5 The employee does not have the right to be accompanied at informal discussions or an investigatory meeting.

The employer must be aware that if it becomes apparent during either an informal meeting or an investigatory meeting that disciplinary action may be needed, then the employer should adjourn the meeting and arrange a formal meeting at which the employee will have the right to be accompanied.

Re-arranging the date

15.1.6 If the chosen companion cannot attend on the date proposed by the employer for the meeting, the employee can suggest an alternative time and day so long as it is a reasonable time. How long is reasonable will depend – the legislation refers to a 5 day period but a longer period of two weeks has been considered by an Employment Tribunal to be reasonable. If thinking of refusing a request to re-arrange, then contact the NTF office or other adviser for assistance.

Not permitting the employee to be accompanied

15.1.7 If an employer fails to comply with a reasonable request by the employee to be accompanied, the employee may present a complaint to the employment tribunal and an employee can also complain to the tribunal if an employer fails to re-arrange a hearing to a reasonable date proposed by the worker when the companion cannot attend on the originally proposed date. The tribunal may order compensation of up to two weeks' pay and an increase in any award by up to 25%.

Non-union companion

15.1.8 Where the companion is not from a union, it may be helpful for the employer to explain the role to the companion if they are uncertain as to what they can say or do during the meeting.

16. Chapter 16

Holidays

16.1 Overview

- The right to paid holiday is set down in the Working Time Regulations and there have been reforms in January 2024 which confirm the position under case law including that holiday pay should reflect normal wages so include regular overtime.

16.2 Holiday entitlement

Holiday entitlement - accrual

16.2.1 The right to holiday starts from the first day of employment – during the first year of employment this accrues on a monthly basis.

Workers and employees are entitled to holiday regardless of whether they work full time or part time. This includes casual staff and those who work irregular hours.

The self-employed are not entitled to paid holiday

Holiday entitlement – amount

16.2.2 Throughout this chapter references will be seen to contractual holiday and statutory holiday.

Contractual holiday is the amount of holiday that a yard may agree on a domestic basis with its own employees bearing in mind the NTF/NARS agreement on minimum terms and conditions of employment.

Statutory holiday is the legislative minimum which has relevance in some specific instances as referred to in this document but should not be confused with the contractual holiday which is the agreed holiday entitlement.

Contractual holiday entitlement

16.2.3 Under the NTF/NARS wage agreement, stable staff are entitled to 30 days paid holiday per annum which is inclusive of 8 public holidays. For staff who work part time this will be calculated on a pro-rata basis.

Once an employee has served a continuous period of twelve months with the current employer, he/she will be entitled to an additional two days holiday commencing in the next holiday year, making an annual entitlement of 32 days.

Once an employee has served a continuous period of five years with the current employer, he/she will be entitled to an additional two

days holiday commencing in the next holiday year, making an annual entitlement of 34 days.

Calculating holiday entitlement

Holiday - Full time workers

16.2.4 From 1st January 2024, there is new Government guidance that holiday should be calculated using the following 3 step process. It brings about almost identical results to using the calculations currently set out in the NJC memorandum of agreement and discussions are ongoing to update that document.

Three Step Process

Step 1 - Calculate the full annual leave entitlement

Step 2 – Work out the proportion of the leave year in employment

Step 3 -Pro-rate based on the proportion of the year in employment

Example 1

Holiday year 1st January to 31st December

Employee started work 1st March and is leaving on 17th May. It is the first year of employment so a full leave entitlement would be 30 days.

***Step 1** – full leave entitlement is 30 days*

***Step 2** – the proportion of the leave year in employment is 1st March to 17th May – 78 days*

*78 days employed out of 365 in leave year**

78/365 x 100 = 21.369%

The employee has been employed for 21.369% of the leave year

***Step 3** – Pro rate leave based on proportion of leave year*

30 days holiday / 100 x 21.369 = 6.4 days holiday

**this calculation has not taken into account that 2024 is a leap year and real time calculations should.*

Example 2

Holiday year 1st January to 31st December

Employee has been employed for 3 years and is entitled to 32 days holiday per annum. They are leaving on 5th March and are carrying over no holiday from the previous year.

***Step 1** – annual leave entitlement is 32 days*

Step 2 *– Proportion of leave entitlement in employment – between 1st January and 5th March there are 64 days**

*64 days employed out of 365 days in leave year**

64/365 x 100 = 17.534

Employee has been employed for 17.534% of the leave year

Step 3 *– pro-rate leave year based on proportion of leave year*

32 days holiday / 100 x 17.534 = 5.61 days holiday.

**this calculation has not taken into account that 2024 is a leap year and real time calculations should.*

Holiday - Part time workers

16.2.5 This is calculated on a pro-rata basis. Where there are no normal hours of work, the average hours should be calculated over the preceding 52 week period. Any week in which no work was done is replaced by the last previous week in which pay was due.

There is a part time worker holiday calculator on the NTF website

Holiday entitlement – irregular hour workers and part year workers

16.2.6 For leave years beginning on or after 1st April 2024, there is a new accrual method and guidance on rolled up holiday pay for irregular hour workers and part year workers throughout their employment.

16.2.7 **An irregular hours worker** is someone who during a leave year has wholly or mostly variable hours under the terms of their contract in each pay period, for example a zero hours worker.

A pay period is how frequently the person gets paid, for example, weekly or monthly

A worker with a rotating shift pattern would not be an irregular hours worker. A worker working regular core hours and then overtime will not fall into this category as their contract has the set basic hours.

16.2.8 **A part year worker** is someone who under the terms of their contract is only required to work part of that year and there are periods of at least a week which they are not required to work and for which they are not paid. This could be someone who works term time only as they take the school holidays off.

Someone who works part the year and leaves is not a part year worker nor would it include someone who took a period of unpaid leave as their contract would not state they are a part year worker.

Accrual of Holiday entitlement for Irregular Hours Workers and Part Year Workers

16.2.9 Statutory holiday will accrue at 12.07% of actual hours worker in a pay period. The entitlement for racing staff is higher than the statutory 28 days holiday and so the percentage has to be adjusted to reflect the actual holiday.

The method of calculation based on the 12.07% is:

Worker works irregular hours under a zero hour contract and is paid monthly ("the pay period"). The yard leave year started on 1st July 2024.

In July Alex worked 68 hours

- Divided the hours in the pay period by 100 68/100 = 0.68
- Multiply the answer in step 1 by 12.07 8.2076
- Round up or down to the nearest hour 8 hours

Employee has 8 hours holiday from July.

Note the hours can be rounded down to zero if less than 30 minutes but rounded up to one hour if it is 30 minutes or more than 30 minutes.

Calculating the holiday entitlement for irregular hours and part year workers who are on maternity or family leave or off sick

16.2.10 During these period the employee coninutes to accrue leave. Leave cannot be taken during maternity or family leave. The following applies to such workers where their leave year starts on or after 1st April 2024.

The calculation method follows the same principle as above but to find out the relevant hours worked, the employer must used a 52 week period to calculate the hours. The relevant period starts the day before the worker commences their maternity leave, family related leave or sick pay, going back 52 weeks. You must not include weeks where the person is on maternity, family leave or sick for any amount of time. Any weeks not worked for other reasons should be included. If the person has not worked for 52 weeks, the period is shortened to the time worked for you. You are only required to perform this calculation once per leave. There are various examples in Section 3.3 of the Government guidance showing how this works in practice

–https://www.gov.uk/government/publications/simplifying-holiday-entitlement-and-holiday-pay-calculations/holiday-pay-and-entitlement-reforms-from-1-january-2024

Rolled up Holiday Pay for Irregular Hours and Part Year Workers

16.2.11 Rolled up Holiday Pay allows employers to include an additional amount with every payslip to cover a worker's holiday as opposed to paying holiday pay when a worker takes annual leave.

This can only be used for irregular and part year workers. You cannot operate rolled up holiday pay for other workers.

You do not have to operate rolled up holiday pay for irregular hours or part year workers and can instead pay them holiday when the holiday is taken as you do for other employees.

How to calculate rolled up holiday pay

The calculation of holiday pay for statutory purposes of 28 days is 12.07% of a worker's total pay.

The entitlement for racing staff under the NTF NARS wage agreement is higher than the statutory rate and so a different percentage accrual rate will apply.

The holiday pay calculation is based on a worker's total pay in a pay period.

Changing to rolled up holiday pay is likely to be a variation of the employee's contract. If you are looking to change to using rolled up holiday pay you should discuss this with your workers and agree the change.

The itemised pay statement must set out the amount of holiday pay paid in each pay period. It is paid at the same time as the normal pay.

If you do not want to use rolled-up holiday pay for irregular hour and part year workers, you can continue to use the existing 52 weeks reference period to calculate holiday pay for irregular hour workers (see below).

Rolled up holiday pay and sickness/family rights leave

If a worker who receives rolled up holiday pay goes off sick or takes maternity/family leave during a pay period their rolled up holiday pay would be calculated according to the average amount of the total earnings in each pay period during the 52 week relevant period.

Taking holiday

Rolled up holiday pay does not mean that workers can work all year without taking holiday. The employer must still make sure the person has at least 5.6 weeks off – the difference is that when they do take the time off it is unpaid as the holiday has been paid for in the rolled up holiday pay supplement.

Example – irregular hour work in first year of employment based on the 12.07% for a 28 days holiday entitlement.

Employee is paid weekly. The hourly rate is £11.44 per hour. In the week 1st October to 7th October they worked 30 hours.

Step 1 Multiply the hours worked by the hourly rate to find the total pay for that week	30 x £11.44 per hour = £343.20
Step 2 Divide the answer to Step 1 by 100, rounding to the nearest pence	£343.30/100 = £3.43
Step 3 Multiply the answer to Step 2 by 12.07%	£3.43 x 12.07 = £41.4001
Step 4 Round the answer to Step 3 up or down to the nearest pence	£41.40

The employee is entitled to £41.40 rolled up holiday pay in the payslip for the period 1st October to 7th October.

The 52 week reference period to calculate holiday pay

16.2.12 If not paying rolled up holiday pay you can calculate ethe holiday pay using an average from th last 52 weeks in which the employee worked for you. If they have not worked for you for 52 weeks, use however many complete weeks of data you have.

You only include weeks in which the person was paid. Any weeks off sick or on maternity or family leave are also excluded.

You do not go back further than 104 weeks for the data and you should only count back as far as needed to get the 52 weeks.

The holiday pay reference period starts from the last whole week ending on or before the first day of the period of leave which is likely to be Sunday to Saturday but could be another day of the week if the person is paid on a weekly basis. If the worker's pay is calculated weekly with the week ending other than on a Saturday, the week is treated as ending on that day. For example if the pay is calculated by a week ending on a Wednesday the employer should treat a week as Thursday to Wednesday for the holiday pay reference period.

Calculating the pay

Where the 52 week period of accrual is used, the holiday pay for irregular hour or part year workers will be their average pay over the previous 52 weeks. Again you only use weeks in which the worker was paid and discount weeks on sick leave or maternity/family leave.

As for regular hour employees, an irregular hour or part year worker who does not take their accrued holiday by the time they leave employment should be paid for that accrued leave.

Calculating hours for holiday purposes where fixed hours but variable length days

16.2.13 Where a worker works a fixed number of hours each week but not the same hours each day, the advice is that it is appropriate to use the worker's average working day and calculate the leave entitlement in days. The average working day being the hours worked per week divided by the days worked per week.

This is not applicable where the person is an irregular hours casual worker or zero hours worker whose hours under their contract vary each week.

Example

Worker work 30 hours over 4 days a week. On Monday and Tuesday they worker 9 hours a day. On Wednesday and Thursday they work 6 hours each day.

Holiday is 30 days in the first year – which is pro rate 22.4 days for a 4 day a week worker

The average working day is 30 hours divided by 4, so 7.5 hours per day.

Holiday entitlement for a full leave year is 22.4 x 7.5 hours or 168 hours per year.

Depending on which days the employee takes off as leave, it will either be 6 hours or 9 hours from the total leave entitlement.

Holiday pay

16.2.14

Holiday is split into two different legal entitlements. There is 4 weeks leave based on European law which must be paid at normal pay and an extra 1.6 weeks leave based purely on UK law which confusingly can be paid at basic pay.

In practice many employers treat the holiday the same for pay purposes as it simplified the process and reduces administration time.

Normal pay

The calculations for normal pay must include:

- Overtime which has been regularly paid to the employee in the last 52 weeks. This should include overtime whether it is voluntary or contractual overtime except when it is worked on a "genuinely occasional and infrequent basis".
- Payments including commission payments which are intrinsically linked to the performance of tasks which the employee is obliged to carry out under the terms of the contract, and
- Payments for professional or personal status relating to length of service, seniority or professional qualifications

Expenses

16.2.15 The case law indicates that genuine expenses are not included when calculating holiday pay.

The daily subsistence allowances when away racing will in most cases reflect genuine expenses.

However, the Sunday Racing Payment of £30 acknowledges disruption of time as well as expenses. It may be that the £16 tax free element is considered appropriate as expenses and the balance as wages for calculating holiday pay but trainers will need to decide on each occasion how much of the £30 genuinely reflects the employee's expenses.

Holiday – domestic arrangements within yard

16.3 Approval

16.3.1 Holiday is to be taken at mutually agreed times so it is always open to employers to reject holiday at a particular time though the employer must ensure it is not done in such a way or with such frequency that the employee may argue that the employer is trying to deprive them of the right to take holiday.

16.4 Holiday year

16.4.1 This should be specified in the contract of employment. Generally in racing it is either 1st January to 31st December or 1st July to 30th June.

16.5 Notice to be given by an employee that he or she wishes to take holiday

16.5.1 Unless the employer has different rules, the employee must give the employer advance notice of the wish to take holiday. The notice should be at least twice as long as the amount of holiday the employee wants to take (for example, two weeks' notice for one week's holiday).

An employer can specify rules about when an employee can or cannot take holiday – however the employer should of course act reasonably and must not prevent the employee from taking holiday at all. It is preferable to have any such requirements set down either in the contract of employment or yard handbook.

If an employer is considering implementing new rules with regard to holiday, this should only be done through consultation and agreement with the employees

16.6 Untaken holiday

Being paid in lieu (other than at termination of employment)

16.6.1 The law does not allow an employee to be paid in lieu of their statutory holiday entitlement except on termination of employment. The statutory holiday entitlement is 28 days.

The NTF/NARS agreement provides for stable staff to have 30 days holiday or 32/34 days holiday depending on length of service.

Accordingly an employee may be paid in lieu for 2 days per annum if their entitlement is 30 days (30 days holiday – 28 days statutory holiday) or 4 days if their entitlement is 32 days (32 days holiday – 28 days statutory holiday) or 6 days if their entitlement is 34 days (34 days holiday – 28 days statutory holiday).

Carrying over holiday

16.6.2 Holiday is carried over to the next holiday year where sickness or family leave has prevented an employee from taking their holiday. Where it is carried over due to sickness, there is a limit on the amount of holiday carried over and the period it is carried over - See section 16.8 and section 16.9 below.

16.6.3 An employee is also entitled to carry over holiday into the next leave year if:

- The employer has not given the individual a reasonable opportunity to take their leave and encouraged them to do so
- The employer has failed to inform the employee that untaken leave must be used before the end of the holiday leave to prevent it being lost

- Or the employer has not permitted the worker to take annual leave – this could arise because the person is wrongly classified as self employed.

It is important to have good records in place so that you can show where employee has been given the opportunity to take leave and has been told that it will be lost if not taken. We advise that at a suitable point or points during the holiday year, employees are notified in writing of their outstanding holiday, when it must be taken by and that it will be lost if not taken.

These carry over rights in paragraph 16.6.3 apply to the four week entitlement based on EU law.

16.7 Holiday pay on termination

Holiday pay on termination

16.7.1 When employment is terminated, the employee is entitled to his or her holiday accrued in that holiday year up to the time they leave less any holiday already taken.

In some cases where the employee has been off on maternity leave (or other family leave) or on long term sick leave the employee may also be due holiday accrued by untaken from the previous holiday year – see section 16.8 and section 16.9 below.

Holiday pay accrued at termination must be paid even where the employee has walked out without notice or has been dismissed for gross misconduct.

The NTF/NARS memorandum of agreement provides that the employer may request that an employee takes accrued untaken holiday during the notice period

16.8 Maternity

Maternity leave – holiday accrual

16.8.1 The employee is entitled to her full holiday entitlement for the holiday year even if she is on maternity leave for some or all of it.

When an employee advises the employer that she is pregnant, arrangements should be discussed with regard to taking holiday entitlement and the employee can be encouraged to take some of her holiday before her maternity leave begins.

A women on maternity leave should be allowed to take their holiday outside of the maternity period even if this means some holiday is carried over until the next holiday year.

Annual holiday should not be taken at the same time as maternity leave

16.9 Holidays and sickness absence

Sickness coinciding with pre-booked holiday

16.9.1 Employees cannot be made to take holiday when off sick.

If an employee is on holiday and becomes ill or injured, the employee can ask the employer to change the holiday period (or such part of it during which the employee is ill/injured) to sick leave. The normal NTF/NARS sick pay and SSP provisions will then apply to the period which has been reclassified as sick leave.

Unless the employer has a different policy in place, the normal requirements with regard to notification/self certification and doctor's notes will apply.

In these circumstances the holiday can be carried over to the next holiday year if there is not time to take it in the current holiday year.

Accrual of holiday entitlement whilst on sick leave

16.9.2 Holiday accrues whilst an employee is on sick leave and there are special rules applying when an employee is on long term sick leave which can result in holiday being carried over from one holiday year to another (see below).

Taking Holiday Whilst on Sick Leave

An employee who is on sick leave can ask the employer to change the sick leave to a period of holiday leave in order to receive holiday pay.

If they wish to do so they should make a holiday request in the normal way, giving the employer the required amount of notice. In effect this is most likely to happen when an employee runs out of paid sick leave.

In theory an employer could refuse such a request but the employer would either have to permit the holiday to be taken at a later stage or if the employee's contract was terminated they would still be entitled to be paid for the holiday accrued but not taken.

The employee remains eligible for SSP even though they have opted to take holiday unless of course they are no longer ill. The holiday period runs concurrently with the sickness absence and the employer can claim the national insurance rebate if eligible.

Carrying Over Holiday when off sick

16.9.3 If an employee has not been able to take their holiday because of sick leave and has insufficient time in the current leave year to take the holiday then they are entitled to carry it over up to 20 days holiday. In other circumstances the employer should continue to operate their existing policy that the holiday is a stand alone year and

holiday is not carried over. The employee should be advised of that in writing.

If the employee returns from illness and has time to take holiday within the current holiday year, that leave should be taken during that leave year and if the employee decides not to take the holiday there is no right for it to be carried forward or paid in lieu.

For example an employee who had a balance of accrued but untaken holiday of, say, 2 weeks returned to work from long term sick leave on 1st December would have time to take that holiday during the leave year ending 31st December. However, if the employee did not return to work, until, say 27th December, they would not have time to take the 2 weeks holiday before the end of the leave year. In that later case, they should be permitted to carry over the holiday. If the employee returned to work on 1st December but decided not to take the 2 weeks holiday, there would be no right to carry it over provided the employee had been notified that they must take their holiday by 31st December or lose it.

The holiday carried over is limited to the 20 days working time holiday. Any holiday already taken is deducted from the 20 days provided the employer is using a contract which states that the first 20 days of holiday in any holiday year is the Working Time Directive holiday (the NTF standard contract states this).

This carry over is limited to 18 months after the end of the leave year in which the holiday accrued and an employee returning from long term absence will have the right to take this holiday or if they leave to be paid for it upon termination.

Employee wanting to take a sick day as a holiday

16.9.4 Sometimes particularly where the sick period is unpaid, an employee may call in sick and ask if they can have the day treated as a day's holiday. In principle this can be agreed but a written note of the employee's request should be kept in case there are any queries later upon whether the day was a day's sickness or a day's holiday.

Employers agreeing to this approach would need to take care to ensure that it did not result in increased short term absence

16.10 Periods of extended unpaid leave

If allowing employees extended periods of unpaid leave, for instance to allow overseas employees to visit their home country, trainers must ensure that they are consistent in applying their policy relating to such leave and be prepared to apply it to all employees.

Employers also need to check the employee's visa or sponsorship status where applicable to ensure that any unpaid leave will not affect the employee's ability to re-enter the United Kingdom.

Good practice is to ensure that any conditions and the date of return in particular are carefully explained to the employee and the employee's signature obtained to acknowledge that he or she accepts them. If the employee then does not return on the date that he or she should, it should be dealt with as any normal disciplinary matter – the employer should investigate the reason for the non or late return, and then decide if disciplinary action is appropriate. In considering whether or not dismissal is an appropriate, the employer should take into account the employee's length of service, reliability, record and any explanation given by the employee.

A period of unpaid leave will generally preserve continuity of employment even though the leave is unpaid.

17. Chapter 17

Pensions

17.1 Auto-enrolment overview

The Government introduced legislation making it compulsory for an employer to set up an auto enrolment pension scheme with employer and employee contributions This is not racing industry specific and will apply to all employers.

There will not be an industry run pension scheme as there has been in previous years and employers will have to make their own decision as to what pension provider they will use.

The NTF cannot recommend a scheme to trainers but has information and advice to help trainers cope with auto enrolment. Detailed information is available on the NTF website – go to business/auto enrolment section. There is further guidance on the Pension Regulator website at

https://www.thepensionsregulator.gov.uk/

Pensions – racing staff industry pension scheme

17.2 Stakeholder pension scheme overview

Historically trainers were required to contribute to a stakeholder pension scheme for their employees pursuant to the BHA Rules of Racing. This scheme closed to employer contributions when all trainers had reached their auto enrolment staging date.

The industry pension scheme was with Aviva (formerly Friends Life/Friends Provident).

The default address for stable staff who are members of the Aviva pension scheme is the trainer's address. Employees should be encouraged to provide home addresses to Aviva. This can be done direct by contacting Aviva at PO Box 1550, Milford, Salisbury, SP1 2UU or via the NTF (please e-mail any change of addresses for scheme members to d.bacchus@racehorsetrainers.org). A notice is set out at below for trainers to give to employees leaving racing or otherwise going out of the pension scheme.

Any queries relating to employee existing benefits in the Aviva scheme should be made by the employee direct to Aviva at the above address or by ringing 0345 602 9221.

Template 46: Notice to give to leavers re pension scheme

Aviva (previously Friends Life) National Trainers Federation Registered Stakeholder Pension Scheme

If you are a member of the NTF Aviva stakeholder pension scheme and you are going out of racing or will otherwise become ineligible for pension contributions then **you should advise Aviva of your change of address:**

Aviva can be contacted on:

0345 602 9221 or

Aviva, PO Box 1550, Milford, Salisbury, SP1 2UU

If you are writing to Aviva with a change of address, we suggest that you either include your pension scheme membership number if you know it (this is likely to start F52386 or F57539) or include National Insurance number or date of birth to ensure that the correct records are updated.

If you are going out of racing, you have the option of:

- arranging for any pension contribution from your new employer to be paid to Aviva
- keeping your pension as a benefit with Aviva in a "global scheme" for when you retire or
- transferring your pension to another approved scheme.

If in doubt as to what you should do, you should take advice from an independent financial adviser.

18. Chapter 18

RIABS

18.1 Racing Industry Accident Benefit Scheme (RIABS)

RIABS overview

18.1.1 This chapter sets out a brief synopsis of the RIABS scheme to assist trainers in day to day administration of claims. There are full scheme rules which apply and which are available on the NTF website and this chapter should be read in conjunction with the full rules.

RIABS provides weekly benefits to eligible persons who are off work following accidental injury, arising out of and in the course of employment including bona fide journeys between normal place of residence and place of work. The scheme also includes "capital benefit" for disablement, loss of limb/eye or death, arising from a work accident or commuting as above.

The purpose of the scheme is to top up statutory benefits to the claimant's pre-accident net wage subject to a maximum of £400 (weekly benefit) and/or to provide a capital lump sum (£154,000 or part thereof) in the event of serious injury or death (capital benefit).

RIABS Dental Expenses

18.1.2 Dental expenses are covered (up to a limit of £5,000) arising out of accident injury to sound, natural teeth as a direct consequence of duties involving horses.

RIABS Overseas

18.1.3 Medical and repatriation expenses extend up to a limit of £2,000,000, whilst temporarily working overseas for their UK trainer. The medical and repatriation element of this scheme is operated by Argo Assistance Tel: +44(0)1243 621105

www.argoassistance@cegagroupcom

Figures correct as at April 2024

18.2 In the event of an accident at work:

RIABS Payment of Wages

18.2.1 The employer pays the usual weekly wage for a period of one month's injury absence including the first three days of absence. The employer should ensure that the employee puts on the RIABS form that the RIABS payment is to be made to the employer for the period

during which the employer has been paying normal wages (see page 3 of claim form).

A successful claim to RIABS made on this basis should reimburse the employer the net wage up to the scheme maximum for the period during which the employer has been paying normal wages and the RIABS payments after that period will be made direct to the employee. The employer continues paying Statutory Sick Pay in line with the statutory government policy.

RIABS payments – may be fit for work note

18.2.2 In the event of an employee being issued with a "May be fit for work" note (as opposed to an unfit for work note) by their GP, RIABS will respond in one of two ways:

If the employer is unable to adapt work duties and hours, then RIABS will accept the claim for weekly benefits as being for Temporary Total Disablement, and payment will be made in full subject to all other qualifying criteria

If the employer is able to adapt work duties and hours, but this results in a reduction of the employee's net weekly wage, RIABS will pay the difference between pre- accident and post accident net wage. Again, this is subject to qualifying criteria. This applies both to new claims, and ongoing claims where the employee is recovering and the doctor has changed the type of note issued.

It is essential that the claims managers, SLS Crawford, are kept fully advised on claims where persons are working but at reduced capacity to ensure that benefit payments are adjusted accordingly. See RIABS Contact details

18.3 How to make a claim to RIABS

RIABS – the claims procedure

18.3.1 A claim for benefit should be made to RIABS on a current claim form within three months of the date of the accident and preferably as soon as possible. Claim forms may be downloaded from the NTF website (www.racehorsetrainers.org) or from the NTF office by e mail to riabs@racehorsetrainers.org or by telephoning 01488 71792.

The completed claim form should be sent to the administrators, SLS, A Crawford Company (address on the claim form) together with a copy of the pay slip for the week prior to the accident. In the case of irregular working hours the employer calculates an average of the last 12 weeks' payslips.

Any sick notes available should be enclosed with the claim form.

All payments will be made direct to the claimant unless otherwise advised (see page 3 of claim form).

SLS, A Crawford Company administers payment of weekly benefits, on behalf of the RIABS trustees under a delegated authority.

RIABS Capital Claims

18.3.2 SLS, A Crawford Company advises of individual incidents which appear to have potential to qualify for a capital payment. If it is evident that an incident qualifies for such a payment, for example in the case of loss of limb or sight, then the case will automatically be referred to the insurers for consideration and the claimant will be advised of this.

Where an individual has continued to claim for weekly benefit for a 12 month period, the trustees will usually commission a consultant's report, and this may include an opinion on the likelihood of the individual recovering sufficiently to return to their occupational duties. If the prognosis is poor, then an individual may be nominated for capital payment.

It is the responsibility of the claimant to make an application for capital benefit, and to explain under which heading benefit is sought, and this should be made within the time frame stipulated in the scheme rules.

Once a formal capital benefit claim has been submitted, full medical evidence will be reviewed and the individual may be referred to a specialist consultant for further review of the medical prognosis. A decision will then be made on assessment of the full information, and taking account of the scheme rules.

Whilst RIABS endeavours to assist persons who appear to qualify for benefit, no responsibility is accepted for any case where an application has not been made whatever the circumstances.

Contributions

18.3.3 The annual employer contributions are collected by Weatherbys through the employers account for each eligible employee registered on the 1 April currently £205.00.

The employee's contributions are also collected by Weatherbys through the employer's account every 13 weeks for each eligible employee and charged currently £4.00 per week pro rata. Employers may deduct this from each eligible employee's net wage. The right to make this deduction is contained in the NTF standard statement of terms and conditions of employment and employers using other statements/contracts are advised to put in a right to make the deductions.

Any change to these rates is published in the NTF newsletter.

RIABS Further information

18.3.4 The full scheme Rules and Claim Form are available from the NTF office and available to download from the NTF website homepage; www.racehorsetrainers.org

RIABS Contact details

For general queries contact Jill Crook the NTF office in the first instance on 01488 71792 j.crook@racehorsetrainers.org

For queries relating to submitted claims and payments, contact : Michelle Dean at SLS, A Crawford Company direct line : 0117 970 5926

email : riabs@slscrawco.co.uk

18.4 Accident insurance for SELF EMPLOYED workers and employees aged 65 or over

18.4.1 Self employed workers **ARE NOT** eligible for RIABS and any self employed person should consider putting in place their own insurance. Self employed workers can contact Lycetts insurance services on 01638 676700 or at www.lycetts.co.uk for advice upon bespoke policies.

Workers aged 65 or over are not eligible for RIABS and should consider putting in place their own insurance.

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19. Chapter 19

Employment of Children and Young Workers

Children and Young workers – overview

19.1.1 There are constraints on the recruitment of children (defined as being below the minimum school leaving age) and also the hours that young workers (those above the minimum school leaving age but below the age of 18) may work.

The School leaving age in England and Wales is the last Friday of June of the school year in which the person is 16.

In Scotland, school age is defined as a person who has attained the age of five years but who has not attained the age of sixteen years.

However, all young people in England are required to continue in education or training until their 18th birthday under "the raising of the participation age". The school leaving age itself is not though changing and there are a number of post 16 options available to the person. These are

- Full time study in a school, college or with a training provider
- Full time work or volunteering combined with part-time education or training
- Work based learning such as an Apprenticeship or a Traineeship

The requirements of the new legislation can be met by being an apprentice on a training course with the BRS or NRC (or other accredited provider) and working in a trainer's yard.

Local Authority Permits – Children of school age

19.1.2 Trainers must contact their local authority to obtain a work permit and to check the local bye laws for restrictions as individual local authorities may have further rules about the employment of children in their area.

Any employer who allows a child of school age to work without first obtaining a work permit is breaking the law.

This applies regardless of whether the work is paid or unpaid.

The Local Authority may also require sight of the risk assessment (see below) and the organisation's safeguarding policy.

Children and young workers – health and safety

19.1.3 For workers under 18, the employer must do an assessment of possible risks and must pay attention to the age, lack of experience and other things that could be a risk.

Where the person is under school leaving age, the employer must also tell one of the child's parents the results of the assessment – this must include any risks identified and any measures put in place to protect their health and safety (i.e. supervision, personal protective equipment).

Induction

In the Work Experience area of the NTF website, there is an induction form for use with students on work experience from schools or colleges and trainers may find this helpful as a guide to what areas to consider in the induction process.

BHA Registration – Children of school age

19.1.4 The requirement to register on the BHA Stable Employees Register applies and BHA safeguarding have requested that trainers advise them when a child of school age starts working in the yard safeguarding@britishhorseracingauthority.com

Children - restrictions on hours

19.1.5 No child can work

- before 7.00 am or after 7.00 pm.
- during the hours they should be at school
- in any job where they are likely to suffer injury as a result of being required to lift, move or carry heavy items.
- throughout the year. Children are entitled to two weeks free from work during the school holidays.

19.1.6 Children aged 13

- Children aged 13 may only be employed in light work in specified occupations – advice should be sought from the appropriate local authority.

19.1.7 13 and 14 year olds can work:

During term time

- a maximum total of 12 hours per week being:
- no more than a total of 2 hours on a school day
- no more than 5 hours on a Saturday
- no more than 2 hours on a Sunday

During school holidays

- a maximum of 5 hours on any weekday and the total hours must not exceed 25.

19.1.8 15 and 16 (under school leaving age)

During term time

- a maximum total of 12 hours per week being:
- no more than 2 hours on a school day
- no more than 8 hours on a Saturday
- no more than 2 hours on a Sunday

During school holidays

- a maximum of 8 hours on any weekday (except Sundays) and the total must not exceed 35 hours.
-

19.2 Summary – children permitted hours of work –and weekly limits

	Daily limit			Weekly limit	
	On a school day	Non school day Mon-Sat	Any Sunday	In school term	During school holidays
Children under 15	2 hours	5 hours	2 hours	12 hours	25 hours
Children aged 15 and over but under school leaving age	2 hours	8 hours	2 hours	12 hours	35 hours

Insurance

19.2.1 Trainers should check with their insurers that their insurance will be valid in the event of a child having an accident at work.

RIABS does not cover children under 16 who are officially still at school.

Welfare and safeguarding of Children and Vulnerable Adults

19.2.2 Employers should be mindful of the child's welfare when in their employment and of child protection issues. All children and young people (defined as under 18) have a right to protection from harm or abuse. Trainers and their staff should ensure that they are never placed in a situation where abuse may be alleged and should consider how an action or activity may be perceived as opposed to how it is intended.

19.2.3 Employers have a duty of care to their employees and employers who have children, young workers and vulnerable adults in the workplace are advised to have in place a safeguarding policy so as to reduce opportunities for abuse and to help protect all employees from any false allegation. See Safeguarding Policy.

Trainers who take learners and work experience trainees from the BRS, NRC and other training providers should discuss with the training provider their safeguarding measures.

The BRS has its own template safeguarding policy which can be found on its website (www.brs.org.uk)

From 1st January 2019, the BHA has in place a safeguarding policy, regulations and code of conduct and completion of a training programme formed part of the licence renewal during 2020. The BHA safeguarding regulations places requirements upon trainers with regards to reporting safeguarding concerns to the BHA – further information can be found at

https://www.britishhorseracing.com/regulation/safeguarding/

Pay and Holidays

19.2.4 There is no set wage for under 16s nor is there any entitlement for those under school leaving age to receive paid holiday from work.

Summary of actions where employing child of school age

19.2.5 Summary of steps prior to having a child of school age working in yard. This applies whether paid or not.

- Carry out specific risk assessment and share with parent or guardian or carer
- Ensure safeguarding policy in place and staff aware of it/trainer
- Obtain child work permit from local authority where business is based
- Register child on BHA stable employees register
- Inform BHA safeguarding that child is working in yard
- Discuss with yard insurers
- Ensure hours accord with legislation and any local authority requirements
- Undertake full induction

19.3 Young Workers– over school leaving age but under 18 Overview

Young workers – working time

19.3.1 Working time regulations provide that for workers aged over school leaving age but under 18, the maximum working hours permitted by law are

- a maximum of 8 hours a day
- a maximum of 40 hours per week
- Unlike adult workers, a young worker cannot opt out of these maximum hours and the hours cannot be averaged out.

19.3.2 A young worker is also entitled to a 30 minute rest break when working for longer than 4 ½ hours.

Young workers are generally not permitted to work at night – that is between 10 pm and 6 am.

Effect of regulations

When these Regulations came into force, the NTF sought specialist legal opinion upon the impact of the Regulations which is summarised below:

Young workers - Daily Limits

19.3.3 A young worker is permitted to work a maximum of 8 hours per day.

An employer must take all reasonable steps in keeping with the need to protect the health and safety of his workers, to ensure the 8 hour limit is complied with.

There are some narrow exceptions to this rule and a young worker could work longer hours where:

There is a force majeure event (regulation 27), namely where an employer requires the young worker to carry out work which no adult worker is available to perform and is occasioned by either:

- an occurrence due to unusual and unforeseeable circumstances, beyond the employer's control or
- by exceptional events, the consequences of which could not have been avoided despite the exercise of all due care by the employer and
- is of a temporary nature and
- must be performed immediately

This regulation is quite narrow and will only cover unusual one off occurrences.

There is also an exception relating to continuity of service (regulation 27A). A young worker is not governed by the 8 hour daily limit if he satisfies all three of the following requirements.

- the young worker's employer requires him to undertake work that is necessary in order to maintain continuity of service or production or to respond to a surge in demand for a service or product and
- no adult worker is available to perform the work and
- performing the work would not adversely affect the young worker's education or training.

If the young worker satisfies the requirements of either Reg. 27 or Reg. 27A he is then governed by the Regulations relating to workers generally i.e. an average of 8 hours a day rather than a maximum limit of 8 hours a day. Again the circumstances in which this applies are very limited.

Young workers – maximum working week

19.3.4 A young worker is permitted to work a maximum of 40 hours per week and for the purposes of the Regulations, a week starts at midnight between Sunday and Monday.

Again an employer is required to take all reasonable steps in keeping with the need to protect the health and safety of workers, to ensure that the 40 hour limit is complied with. The same force majeure and continuity of service exceptions apply as to the 8 hour daily limit (see above).

If a young worker has more than one employer, the 8 hour and 40 hours limit are calculated by aggregating the number of hours worked for each.

In summary, trainers should consider carefully whether any overtime for a young worker is required in order to maintain continuity of service and in particular whether other workers can be used to do the work. If it is not strictly necessary for the young workers to do the additional hours in order to maintain continuity of service, then they will not be permitted to do so under the Regulations and the employer is likely to be in breach of Health and Safety/Working Time rules.

19.3.5 If trainers do employ young workers who are participating in other education or training, they should be aware of the impact that overtime would have on these activities and ensure that the work would not adversely affect the education or training.

19.3.6 Where the need for the overtime is not foreseeable, it may exceptionally fall into the continuity of service or the force majeure provisions but the force majeure provisions are really to deal with "out of the blue" occurrences and exceptions falling into this are likely to be rare.

Young workers – night time working

19.3.7 A young worker must not work between 10pm and 6am (or if the worker's contract provides for him to work after 10pm, the period between 11pm and 7am).

The force majeure exception and a continuity of service exception apply. The continuity of service exception applies if the young worker is employed in various activities one of which is "in connection with sporting activities" and meets all three of the requirements under Regulation 27(A)(1), namely

- the work is necessary in order to maintain continuity of service or production or to respond to a surge in demand or product and
- no adult worker is available to perform the work and
- performing the work would not adversely affect the young worker's education or training.

The young worker is then not bound by the prohibition on working during the restricted period BUT the employer must still not assign a young worker to work during the restricted period on any more than an exceptional basis unless he has ensured that the young worker will have the opportunity of a free assessment of his health and capacities before he takes up the assignment or the young worker has had an assessment of his health and capacities before being assigned to work during the restricted period on an earlier occasion and the employer has no reason to believe that the assessment is no longer valid.

If a registered medical practitioner advises an employer that a worker is suffering from health problems connected with the fact that the worker performs night work, the young worker should be transferred if possible to suitable non night work.

Trainers should bear in mind that in respect of young workers working during the restricted night time period, they must:

- only permit the young worker to work if he or she is supervised by an adult where supervision is necessary for the young worker's protection
- ensure that if the young worker's work at night involves special hazards or heavy physical or mental strain, he should not work more than 8 hours in a 24 hour period.
- afford the young worker an equivalent period of compensatory rest if he works during what would otherwise be a rest period or rest break
- provide certain regular health checks, if a young worker is required to carry out work at night on more than an exceptional basis. Should this apply, further details can be obtained from the NTF office.

19.3.8 Please refer to section 19.1.3 and 19.2 above and also to the BHA Red book

Young workers going racing overnight

It is good practice, if you are sending under 18s racing where it will involve an overnight stay, to obtain the consent of the employee's parent/carer. There are templates for this in the New Employees are of the NTF website. The employee should be made aware of who to speak to if they have any concerns about the racecourse accommodation provided and provided with an emergency contact number should any problems arise. A young worker aged under 18 should not be required to share accommodation with anyone unless it is someone known to them and it is appropriate for them to share with that person and the young worker has explicitly confirmed they are happy to share with that person. It is important that if booking overnight accommodation for an under 18, the trainer notifies the racecourse on the booking form of the age of the employee and that single accommodation is needed or if they are sharing who from the yard they are sharing with.

Safeguarding Policy

Safeguarding Policy

This policy applies to employees, clients and any sub-contractors working with children, young people and vulnerable adults.

The following guidelines are intended to be a common sense approach that both reduce opportunities for the abuse of children/young people and vulnerable adults and help to protect all employees from any false allegation.

This policy aims to:

- Provide clear direction to all staff and others about expected codes of behaviour in dealing with safeguarding issues

- Ensure that safeguarding concerns are identified early so that informed prompt action can be taken.

RESPONSIBILITIES

As an employer the welfare of young people and vulnerable adults is important to us and this policy is based upon the principle that all children/young people and vulnerable adults, whatever their age, culture, disability, gender, language, racial original, socio-economic status, religious belief and/or sexual identity have the right to safeguarding from abuse.

All those who come into contact with children, young people and vulnerable adults in their work have a duty to safeguard and promote their welfare.

Employees should ensure that all children/young people and vulnerable adults are treated with respect and respect their right to personal privacy.

If an employee witnesses or suspects any behaviour which would contravene this policy they should challenge and report it.

To avoid the risk of safeguarding concerns arising, employees must not:

- Engage in inappropriate physical behaviour
- Make over-familiar or sexually suggestive comments or approaches to a child/young person or vulnerable adult even as a “joke”
- Let any potential abuse go unchallenged or unrecorded
- Do things of a personal nature that children/young people or vulnerable adults can do for themselves
- Allow inappropriate computer activity whether internet or network related. This includes mobile phones or related technologies.

BREACHES OF SAFEGUARDING

Incidents of abuse will be dealt with as a disciplinary matter and dealt with under the yard's disciplinary procedures and could result in dismissal without notice.

DEFINITION OF ABUSE

Abuse is any behaviour towards a person that deliberately or unknowingly causes them harm, impairment of health and development, endangers life or violates their right.

Abuse may be:

- Physical – for example, hitting, slapping, pushing, restraining
- Sexual
- Psychological – for example, repeatedly being made to feel unhappy, humiliated, afraid or devalued by others, shouting, swearing, frightening, blaming, ignoring or humiliating a person, threats of harm or abandonment, intimidation, verbal abuse
- Financial or material – stealing or denying access to money or possessions
- Neglect
- Discriminatory – abuse motivated by discriminatory attitudes towards race, religion, gender or gender identity, age, disability, sexual orientation or cultural background
- Grooming or behavioural stalking
- Via social media, internet or other technology and includes cyber bullying.

DEFINITION OF CHILD AND YOUNG PERSON

A child is someone who has not reached school leaving age.

A young person is someone aged under 18.

DEFINITION OF A VULNERABLE ADULT

A vulnerable adult is someone aged 18 or over who is, or may be, in need of community services due to age, illness or a mental or physical disability and who is, or may be, unable to take care of himself/herself, or unable to protect himself/herself against significant harm or exploitation.

A **vulnerable person** may fall into any one of the following groups: older and frail people; people with a mental health need, a learning difficulty, a physical impairment, a sensory impairment, people who are substance or alcohol dependent, or family carers providing assistance to another vulnerable adult.

REPORTING SUSPECTED ABUSE

It is everyone's responsibility to report any concerns about abuse. Any employee who has concerns that they themselves are at risk or any employee who has cause to believe that any child/young person or vulnerable adult involved is at risk should contact …….

Any concerns about safeguarding should be reported immediately.

We will make a note of the allegation and the matter will be investigated as appropriate.

All incidents of alleged poor practice, misconduct and abuse will be taken seriously and responded to swiftly and appropriately. Where appropriate, the police may be notified.

All personal data will be processed in accordance with the requirements of the General Data Protection Regulations.

Records will be kept of all such incidents and their outcomes held in accordance with the General Data Protection Regulations.

RELATED POLICIIES

We have a range of other policies within our organisation and employees should familiarise themselves with the following:

Health and Safety Policy
Dignity at Work Policy
Equal Opportunities Policy
Disciplinary and Dismissal Procedure
Grievance Procedure (resolution of disputes)
Social Media Policy

This list is not exhaustive and other polices may apply from time to time.

This policy is non-contractual and does not give contractual rights to individual employees, workers or anyone else covered by it. We reserve the right to alter any of it terms at any time and will notify employees of any changes.

20. Chapter 20

Drug and Alcohol misuse

Information on drug and alcohol misuse and the template substance misuse policy along with information on support and testing is located in the separate “Drug and Alcohol Misuse” section of the NTF website within the employment area.

21. Chapter 21

Administration of Pool Money Payments and Tips

21.1 Pool money

Pool Money Overview

21.1.1 The employer or trainer **must not** decide or be involved in the decision as to who gets what pool money.

The allocation must be made based on a criteria agreed by the employees or a committee elected by the employees. Employees can obtain advice and guidance upon agreeing a pool money criteria from **NARS on 01283 211522** or see www.naors.co.uk

The employees should record their decision in a written and dated criteria and the BHA requires that the trainer displays a copy of this criteria in the stable yard in a place where it can be inspected by all employees.

On a tax inspection HM Revenue and Customs may require sight of such evidence of who decided the pool money criteria.

Where the trainer is not the employer but is an employee of the business, to comply with the rules of racing, the trainer should still not be the person making the decision as to the allocation of the pool money.

21.2 Avoiding potential discrimination

The trainer (and employer if different) must distance themselves from the allocation of the pool money as outlined above. However, in some circumstances an employer can be vicariously liable for the actions of his employees. As such, it is advisable that the employer or trainer is aware of the contents of the criteria and if the trainer or employer is concerned that the criteria is potentially discriminatory they should advise the employee or committee who agreed the criteria of their concerns and suggest that the employee or committee contact NARS for advice. The employer or trainer should make a diary note of this.

In particular, the trainer must ensure there is no discrimination on the basis of race, age, pregnancy/maternity, disability, part time status, gender reassignment, religion or belief, sex, sexual orientation and married status.

For example, an employee on maternity leave is entitled to pool money as if at work and a part time employee should receive a pro-rata entitlement – a part time worker working half the normal working week would be entitled to 50% of the normal full-time share.

21.3 Pool money National Insurance and income tax

Pool money – National Insurance

21.3.1 Pool money is paid without National Insurance being deducted. This is on the basis that the payment is not directly or indirectly allocated by the employer – i.e. that the employees decide the allocation.

Pool money – income tax

21.3.2 Income tax must be deducted from pool money.

21.4 Administration advice for employers/trainers

Pool money – BHA procedures

21.4.1 The BHA places requirements upon trainers in respect of pool money and these are set out in Code 11 Stakes and Prize Money.

On four occasions during the year, the BHA sends trainers duplicate sheets setting out the amount of pool money won by the yard staff for the relevant pool money period. This list will include the names of all people on the stable employees register for the trainer concerned at the time the list is printed. This is known as the pool money "return".

The return should be completed setting out the amounts to be paid to individual members of staff based on the yard criteria for the allocation of the pool money. The trainer has to sign the completed return.

One copy of the return must be sent to the BHA within 21 days of the date upon which the sheets were dispatched to the trainer (this date will be shown on the sheets).

The other copy of the return must be displayed in the stable yard in a place where it can be inspected by all employees. From 3rd January 2017, the Rules provide that this must be displayed for at least the 10 day period following the return sheet being sent to the BHA. This is to employees the opportunity to raise any queries before pool money is paid out.

Unless the BHA raise any objection the payment of the pool money must be made not less than 11 days and not more than 21 days after the trainer has signed and returned the return.

No part of the pool money may be withheld by the trainer for payment at a later date. Note, the rules do not preclude employees from asking a trainer to hold the money for him or her but in such cases the BHA expect the trainer to deposit the money with a building society or make some other suitable investment so that it may earn interest. Furthermore, any employee leaving must be paid his or her share of

the money held in this way at the time of leaving. The NTF recommend that if a trainer is asked by an employee to hold pool money for them that the trainer contact the NTF for advice upon documenting the request and agreement.

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21.5 Pay roll advice

It is advised that payment is made through the payroll and that payment is made by cheque or bank transfer. If in exceptional circumstances it is paid in cash, the employer should obtain a signed receipt from the employee confirming receipt of the payment, the date on which payment was made, that the money is pool money and the period covered by the payment.

If payment is made to an employee who has already had a P45 issued, the payment should be made under the deduction of basic rate tax. The ex-employer should accompany the payment with a letter to the former employee explaining that tax has been deducted and a calculation thereof.

No deductions are to be made from pool money other than income tax.

21.6 Miscellaneous

21.6.1 The NTF suggests that that employees being offered a job with the training business are advised of the stable pool money criteria when the job offer is made and then as part of the induction process the employee should be given a copy of the pool money criteria.

21.7 Tips – "The Tipping Act"

Allocation of tips, tipping policy

21.7.1 The Employment (Allocation of Tips) Act 2023 came into force on 1st October 2024 which sets out requirements with regard to employer received tips from customers (owners) which the employer allocates to employees, and tips received by employees which the employer then allocates to the staff. This does not affect pool money nor does it apply to individual tips or gifts to an employee which are kept by that employee. There is guidance in the Handbook area of the NTF website.

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22. Chapter 22

For information on accommodation and template licence agreements, please go to the Accommodation area on the Employment Matters area on the NTF Website.

23. Chapter 23

Various Employment Issues

23.1 Recognition of NARS

23.1.1 The NTF has a recognition agreement with NARS which sets out the understanding between the associations on matters relating to recognition, representation, union facilities, health and safety and resolving differences of opinion at national level. **A copy of this is available from the NTF.**

23.2 Trade union duties

Time off for trade union duties

23.2.1 Employees who are officials of an independent trade union recognised by their employer (for example NARS) have a right to reasonable time off during working hours to carry out certain trade union duties. This is paid time off.

There is no obligation to pay for time off when the trade union duty is carried out at a time when the employee would not otherwise have been at work. However, an employee who works part time will be entitled to be paid if a full time employee would be entitled to be paid.

There is detailed advice on the ACAS website (www.acas.org.uk) or for individual advice please ring the NTF office.

Employers should bear in mind that if they are intending to carry out disciplinary action against an employee who is a trade union representative they are advised to discuss the case with a full time trade union representative before issuing any disciplinary action. This is to avoid any such disciplinary action being seen as an attack against the union.

23.3 Data protection

General Data Protection Regulations

The General Data Protection Regulation came into force on 25th May 2018. There is a dedicated area of the NTF website for GDPR containing template documents for trainers to use.

Under GDPR employers need to have in place a Data Protection Policy which explains how they collect, use, store and keep secure personal data and how long such data is retained. This is not just employee data but customer data as well.

Employers must issue their employees (and self employed workers and job applicants) with a Privacy Notice which sets out how the data protection policy is implemented with regard to their own data.

Alongside general information and guidance documents, the following template documents can be found on the GDPR area of the NTF website:

- Data Protection Policy
- Employee Privacy Notice
- Job Applicant Privacy Notice
- Employee data processing record
- Data retention policy
- Breach policy (how the company will respond to a data breach)
- Electronic communications policy
- IT security policy
- Subject Access Request

Subject access rights

23.3.1 As mentioned above, there is a template document for handling a Subject Access Request – this is when an individual ask the employer what information is held on them. A person can make a request in writing to the employer for access to this information and the employer must respond within one month. We suggest that if contacted under a SAR, that advice is sought from the NTF or other adviser.

Notification requirements

23.3.2 Most training businesses are unlikely to need to register with the Information Commissioner's Office for their day to day activities with regard to employees. Any business that wishes to check whether it needs to register can find out more information on the Information Commissions website www.ico.org.uk or the Government website www.gov.uk search for data protection.

Monitoring employees

23.3.3 If an employer monitors his employees by collecting or using information about them then the GDPR will apply. The Regulations do not prevent monitoring but set out the principles which apply when it is carried out. This may apply where employees are videoed to prevent crime or if e-mails or internet use is monitored.

If workers are monitored, then the employees must be aware of the nature, extent and reasons for any monitoring.

Any employer considering monitoring his employees should take advice upon whether it is justified and how to implement monitoring.

23.4 The Transfer of Undertakings (Protection of Employment) Regulations 2006

The Transfer of Undertakings (Protection of Employment) Regulations - "TUPE".

23.4.1 It is complicated legislation which basically protects employee's terms and conditions of employment when a business is transferred from one owner to another. It works to preserve continuity of service and other employment rights – the employees of the previous employer automatically become employees of the new employer on the same terms and conditions.

This is a very brief outline to flag up to trainers that if transferring a business or taking over a business that TUPE may apply and legal advice should be sought. In most circumstances it is likely that the parties will have instructed solicitors in connection with the sale/purchase of the business and those solicitors will be able to assist. If solicitors have not been instructed, then advice should be taken early on in any transaction as there are duties upon both the outgoing employer and the new employer to consult with affected employers.

TUPE can apply when the whole or part of a business is sold or when a business contracts out or contracts in some of its activities and those activities remain fundamentally or essentially the same as before the change.

The sale of a whole or part of a business may affect trainers – one way of looking at it is whether it is possible to identify an economic entity that will be the subject of the transaction. For example, a business may be running a stud operation part of which is a racehorse training business which is easily identified by the people and assets involved in it i.e. the employees, the premises, the customers, the equipment, the know-how. The stud operation decides to sell off that entity perhaps to the employed trainer – if that sale involves the new employer taking over all or some of these assets then the TUPE regulations may apply.

TUPE Consultation

23.4.2 Before the transaction takes place, both the old employer and the new one must consult with their workforces. This will include information that the transfer is to take place, when it is likely to happen and the reasons for it. The employees should be made aware of the protection they have under TUPE and be told of any measures the company envisages taking in connection with the transfer. Any employer in these circumstances should take individual advice to ensure compliance with the Regulations.

23.4.3 When the Regulations apply, the business is transferred and the employees who work in the business are transferred to the new employer and the new employer effectively steps into the shoes of the old employer.

The new employer must respect the pre-existing terms of the contract of employment of the transferred employees and their length of service.

The law prohibits any change to the employees' contracts of employment even with their consent if the sole or principal reason for the change is the transfer.

There are some exceptions to this, being

(i) where the variation is unrelated to the transfer,

(ii) where the sole or principal reason for the variation is an economic, technical or organisational reason entailing changes in the workforce provided the employer and the employee agree that variation,

(iii) where the employment contract permits the variation although employees cannot waive their rights under the Regulations, (iv) in some limited circumstances relating to collective agreements but only after a date more than year after the date or transfer and provided that the contract after the variation is no less favourable than immediately before the transfer and (v) when the changes are entirely positive from the employee's perspective. It should be noted that what constitutes an "economic, technical or organisation reason" is not always easily identified.

Variations can also be made in certain insolvency situations.

23.4.4 This is only a very brief summary of a complex area of legislation and any trainer either selling or buying a business affected by TUPE and wanting to make a change to the employees' contracts must take advice on their particular circumstance.

It is automatically unfair to dismiss an employee if the principal or sole reason for the dismissal is the transfer. This applies whether the employee is dismissed by the outgoing employer or the new employer. The employee would need the normal qualifying service to claim unfair dismissal in these circumstances.

If the dismissal relating to a transfer is for an economic, technical or organisational reason entailing changes in the workforce of either the old employer or the new employer, the dismissal will not however be automatically unfair. The reason for the dismissal would either be redundancy or some other substantial reason. Any such dismissal would need to be carried out following a formal dismissal procedure and the employer would need to act reasonably in dismissing. Again if an employer is considering dismissing for this reason, advice should be sought to ensure that the reason would fall within the test of an economic, technical or organisational reason for TUPE purposes.

The new employer as buyer of the business could inherit liability for an unfair dismissal prior to the transfer if the sole or principal reason for the dismissal was the transfer and not an economic, technical or organisation reason. A new employer should therefore ensure that full disclosure is obtained from the outgoing employer of any potential employee liability.

23.5 Whistleblowing

Whistleblowing – explanation

23.5.1 Employees who "blow the whistle" on certain types of wrongdoing and in a specified way – a qualifying disclosure - have special legal protection.

23.5.2 Qualifying disclosures are disclosures which are in the public interest that one or more of the following matters is either happening, has taken place, or is likely to happen in the future.

- A criminal offence
- The breach of a legal obligation
- A miscarriage of justice
- A danger to the health and safety of any individual
- Damage to the environment
- Deliberate attempt to conceal any of the above.

If a worker is going to make a disclosure it should be made to the employer first, or if they feel unable to use the organisation's procedure the disclosure should be made to a prescribed person, so that employment rights are protected. Guidance is available from GOV.UK - Blowing the whistle: list of prescribed people and bodies.

Workers who 'blow the whistle' on wrongdoing in the workplace can claim unfair dismissal if they are dismissed or victimised for doing so. An employee's dismissal (or selection for redundancy) is automatically considered 'unfair' if it is wholly or mainly for making a protected disclosure. From 25th June 2013 if a case goes to a tribunal and the tribunal thinks the disclosure was made in bad faith, it will have the power to reduce compensation by up to 25%.

There are various other aspects to this legislation and members wanting further information should contact the NTF office.

A template whistleblowing policy is set out below – see Whistleblowing Policy. This is not required by law but is good practice.

It is a way for employees to raise an issue internally rather than immediately going to someone external to the business.

If using this policy and an employee raises a concern under, it is advised that the employer seeks advice from the NTF or other adviser. Good records should be kept of the concern raised, the way in which it is

investigated, handled and any disciplinary action that may be carried out as a consequence.

Whistleblowing Policy

[Employer Name] Whistleblowing Policy

This procedure aims to encourage you to raise any genuine concerns you may have about certain wrongdoings within the company without fear of reprisal, to provide you with information as to how to raise those concerns and to enable us as your employer to investigate your concerns and deal with them appropriately.

This procedure applies to all employees and workers but does not apply to genuinely self employed workers, namely those who are running a business on their own account.

This policy is not the correct procedure to follow if you have a personal issue with regard to your own circumstances such as the way you have been treated at work and if you have such an issue you wish to raise you should use the grievance procedure or the dignity at work (anti-bullying) procedure. If you are uncertain as to which is appropriate please speak to [**insert name**]

This policy applies if you reasonably believe that we or any of your co-workers has taken, is intending to take or has failed to take action that you reasonably believe could lead to or amount one or more of the following

- a criminal offence
- a failure to comply with any legal obligation
- a miscarriage of justice
- danger to the health and safety of any individual
- damage to the environment or
- deliberate concealment of information concerning any of the maters listed above

and it is in the public interest that the wrongdoing is disclosed.

You should disclose this informally verbally or in writing to [**appropriate manager or trainer**]. Any such disclosure should include full details and, where possible, supporting evidence. If you disclose information in accordance with this procedure, we will seek, if practicable, to keep your identify confidential.

If you feel unable to use this procedure and report to us, then the disclosure should be made to a prescribed person – guidance is available from

GOV.UK - Blowing the whistle: list of prescribed people and bodies.

We will investigate your allegation and may require your assistance during that investigation.

We will keep you informed of progress but you must bear in mind that sometimes the need for confidentiality may mean that we cannot give you specific details of the investigation or any disciplinary action that may be taken as a result.

Cont'd

Whistleblowing Policy cont'd

Any information which we give you about the investigation should be treated as confidential.

We cannot guarantee the outcome may be what you are seeking but we will try to treat your concern fairly and appropriately.

If you are not happy with the way in which we handle your concern, you can raise it with [**name of most senior person in company**].

No action will be taken against you if you reasonably believe that the nature of your concern relates to any of the above areas and you disclose this information to the appropriate person under this policy in good faith.

If however anyone is found to be victimising another person for using this procedure (if you think you are being victimised for using this procedure please tell [**name**] or raise it formally under the grievance procedure if the matter is not remedied) deterring another person from making a report about a genuine concern under this procedure or making a disclosure/allegation in bad faith maliciously, vexatiously or for personal gain we will take appropriate action which could result in formal disciplinary action including dismissal.

Please also remember that social media sites are public rather than private spaces and they are not the appropriate channel for raising concerns.

This procedure does not give contractual rights to individual employees, workers or anyone else covered by it. We reserve the right to alter any of its terms at any time and will notify you of any changes.

23.6 Miscellaneous

Information and Consulting

23.6.1 The employees of a business which employs more than 50 employees can make a request to the company to put in place information and consultation arrangements. To be valid such a request has to be made by at least 10% of the employees, subject to a minimum of 15 employees and any employer receiving such a request should contact the NTF or other advisers for assistance.

However, an employer can take the decision to put information and consultation arrangements in place and there are advantages to this as once a valid employee request has been received it is too late for employers to establish a simple flexible and tailor made agreement

An information and consultation agreement is likely to cover matters such as how consultation about business transfers, health and safety issues and collective redundancies would be dealt with.

Any trainer wishing for further advice upon the regulations affecting information and consulting or looking to put an agreement in place should contact the NTF for individual advice.

Right to request training

23.6.2 Employees with 26 weeks' continuous employment who work for employers who employ 250 or more employees have a statutory right to make an application to their employer to undertake courses of study or training which they believe will "improve their effectiveness at work and improve the performance of the employer's business".

It will be a right to request the time off to undertake training, not a right to insist upon being allowed to take the time off. It is not a right to paid time off for training although an employer may choose to pay it.

There are timeframes in which an employer must consider any application and respond to the employee – any trainer receiving such a request can contact the NTF for further advice

24. Chapter 24

The social media policy

24.1 Overview

24.1.1 The growing popularity of social media use can lead to problems where employees using such media in their private lives post information or comments about their employer or their employer's business which could damage the company's reputation or breach commercial confidentiality.

It is important that employees know what is and what isn't acceptable and the NTF has produced a social media policy template for employers to use, which sets out what will be deemed unacceptable behaviour and the potential consequences of unacceptable behaviour.

This policy relates to the use of social networking sites and does not relate to the use of computer equipment/internet access by employees in the work place using such equipment as part of the job. The NTF has available an Electronic Security Policy and an IT Security Policy in the GDPR area of the website.

Introducing a social media policy

24.1.2 Employers wishing to adopt this policy should consult with their employees about the introduction of the policy, ensuring that the employees are aware of the purpose of the policy and that the company does respect their right to a private life but has to protect its interests.

The policy needs to be communicated to employees and employers should ensure that if any concerns are raised by any employees over the introduction of the policy that these are addressed. If an employer wishes to rely on the policy in disciplinary proceedings it is vital the employee was aware of the policy and understood it at the time of the misconduct.

The policy is non-contractual so the introduction of it will not be a change to the employment contract.

The policy relates to various actions which could constitute gross misconduct which could result in dismissal without notice.

Employers must remember that the correct procedures must still be followed including an investigation, written invitation to a disciplinary meeting, holding a disciplinary meeting and the right of appeal offered to the employee against any dismissal or other disciplinary action.

[Employer Name] Social Media Policy

This document sets out the Company's policy on the use by its employees and workers of social networking sites such as Facebook, Bebo, Myspace and others.

The Company acknowledges that online social networking sites are an important part of many people's lives and useful ways to keep in touch.

The Company respects its employees' and workers' right to a personal life but to protect the Company from breaches of commercial confidentiality or damage to its reputation through the way in which employees and workers conduct their personal lives, the Company has this policy so that employees are aware of the reasonable conduct which is expected of them in their private lives online.

Employees and workers should bear in mind that depending on the nature of the posting and their security setting, it is possible that the posting can be read by anyone, anywhere in the world and it may be accessible for some time afterwards.

It is accepted that employees and workers may want to talk about the Company. However, if the Company is brought into disrepute this could constitute misconduct or gross misconduct and may result in disciplinary action including dismissal without notice.

The following will be deemed as unacceptable behaviour which could constitute misconduct or gross misconduct and which may result in disciplinary action including dismissal without notice:

- publishing defamatory and/or knowingly false material about the Company, an employee's colleagues and/or the Company's customers on social networking sites
- disclosing confidential information relating to the Company, work colleagues or horses either at the yard or previously at the yard
- disclosing any information which could comprise "inside information" under the British Horseracing Authority's rules of horseracing

This list is not exhaustive but is an example of behaviour which would be deemed to be unacceptable conduct and which may result in disciplinary action against you.

If talking online on a social networking site about other employees or clients (owners of horses in the yard) their privacy and feelings must be respected. If a complaint is received from another employee or a client about a posting made by an employee, then this will be investigated and if the posting is deemed to be unacceptable, then disciplinary action against the employee making the posting may result.

Employees must obtain the permission of work colleagues before posting pictures of them and must obtain the permission of the Company before posting pictures of horses that are in training or otherwise kept at the Company's stables.

Social Media Policy cont'd

If any employee has concerns that someone has made contact with them on line because they are aware that the employee may have information which could give them an unfair advantage (inside information) then please raise your concerns with [**name**].

If an employee has any concerns or grievances relating to his or their employment these can be raised through the Company's grievance procedure a copy of which is available on request and it is not appropriate to raise such concerns on a social networking site.

If an employee is uncertain as to what may constitute "Inside Information" or confidential information then the employee should ask [**name**] for advice.

If an allegation of online bullying is made to us by an employee in respect of social media postings by another employee, we will investigate such allegation and deal with it in line with the NTF/NARS dignity at work policy.

The Company may ask an employee to remove a post which it considers to be inappropriate and if the employee fails to comply with a reasonable request that could result in disciplinary action.

Where disciplinary action is mentioned in this policy such disciplinary action will be in line with the Company's disciplinary policy and such action could result in disciplinary action ranging from a verbal warning to dismissal including dismissal without notice in the case of gross misconduct.

This policy is non-contractual.