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## **Mental Health – Trigger Points on Absence Management**

**White Paper Conference**

Stuart Neilson  
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*Weighing up all the tactical scenarios, **when and how** do you amend trigger points and progress warnings for frequent short-term absences due to an underlying mental health condition?*

First consider **risks** on use of trigger points

Second consider **objectives** for mental health absence management.

Third consider **when and how** to amend trigger points and progress warnings.



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## When and how to amend trigger points and progress warnings

### Risks - Disability

- Consider whether the mental health issue is a disability.
- Disabled employees are protected in respect of direct/ indirect discrimination, unfavourable treatment because of something arising in consequence of disability and by the duty to make reasonable adjustments. (*Sections 13, 15, 19 and 20 of the Equality Act 2010*)
- Definition of disability: the impairment has a substantial and long-term adverse effect on the employee's ability to carry out normal day-to-day activities. A condition is 'long term' if it lasts, or is likely to last, 12 months.
- Even if the employee has only recently disclosed the mental health issue it may still be a disability – they may have concealed it, or even if a recent development, it may still have a potentially long term impact.
- If the mental ill health is caused or aggravated by work, do not think that terminating employment will avoid the impairment being long term and, consequently, a disability. See *Parnaby v Leicester City Council 2019*.



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## When and how to amend trigger points and progress warnings

### Risks - Disability

- It may be necessary to consider adjusting trigger points. (*Court of Appeal in Griffiths v Secretary of State for Work and Pensions 2017*)
- However ignoring disability related absences entirely is not a reasonable adjustment (*EAT in Bray –v- London Borough of Camden 2001*)
- A dismissal for disability related absences may amount to discrimination arising from a disability contrary to Section 15 of the Equality Act 2010 (*Griffiths*)
- For claims under Section 15 trigger points are acceptable if they are a proportionate means of achieving a legitimate aim.
- Proportionality should in most cases be assessed on an individual basis (*Buchanan –v- Commissioners of Police for the Metropolis 2017*)
- Consider Unfair Dismissal as well



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## When and how to amend trigger points and progress warnings

### Risks - Pregnancy

- An employer discriminates against an employee if, during the protected period, it treats them unfavourably because of illness suffered by them as a result of their pregnancy. The protected period begins when the pregnancy begins and ends when AML ends or when the employee returns to work, if that is earlier. (*Section 18 of the Equality Act 2010*)
- Consider whether the mental health issue is pregnancy related and make suitable allowances in the management process.
- Such employees should not be dismissed or subjected to a detriment because of pregnancy absence.
- If an employee has a pregnancy related absence in the four week period before the EWC, maternity leave is automatically triggered.



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## Objectives for mental health absence management

### Financial objectives

- Minimise working days lost to absence – collective absence rate targets may exit across the organisation or business unit.

### Wellbeing objectives

- Supporting employee wellbeing is increasingly part of organisations' culture/ values.

### Legal objectives

- Duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.
- Avoiding liability for discrimination/ personal injury.



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## Objectives for mental health absence management

These objectives can be complementary to the overall benefit of the business.

- Boosting employee wellbeing can boost employee engagement and productivity.
- Early intervention in wellbeing issues can avoid more serious problems arising requiring more management time/ legal risk.
- Supporting wellbeing can aid recovery and reduce time off.
- A supportive culture will encourage employees not to conceal the reasons for absence.



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## Objectives for mental health absence management



The blended objective for mental health absence management should be on **supporting** and not **punishing** employees for absences relating to mental health.



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## When and how to amend trigger points and progress warnings

- **Stage 1:** What is your current absence management policy for short-term mental health absences?
- **Stage 2:** How does it compare to a good absence management policy for short-term mental health absences? Amend where necessary.
- **Stage 3:** What protected characteristics may impact short-term mental health absence management?



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## When and how to amend trigger points and progress warnings

### Stage 1

What is your current absence management policy for short-term mental health absences?



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## When and how to amend trigger points and progress warnings

- Identify what the **trigger points** are in your own organisation (ie: at which an employee's level of absence requires intervention).
- The Bradford Factor is used by more than one in five employers. Triggers such as this often place emphasis on short-term absenteeism. *(Source: Use of trigger points and targets in managing absence: XpertHR survey 2019)*



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## When and how to amend trigger points and progress warnings

- Identify what **intervention/ action** is likely at each trigger point.
- Many absence policies are progressive, for example, allowing warnings on the first two trigger points and dismissal on the third. A warning is likely to be issued after an employee reaches a first trigger in among 30% of organisations. *(Source: Use of trigger points and targets in managing absence: XpertHR survey 2019)*
- At trigger points employees are also likely to be reminded of absence policies and referred to OH.



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## When and how to amend trigger points and progress warnings

### Stage 2

- How does it compare to a good absence management policy for short-term mental health absence? Amend where necessary.



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## When and how to amend trigger points and progress warnings

What should a good absence management policy for short-term mental health absence incorporate?

- ✓ Start by taking a **proactive approach to mental health absence management**. Reduce short-term mental health absence in first place through wellbeing at work policies. For example, training for:
  - managers to support staff with mental ill health,
  - staff aimed to build personal resilience (such as coping techniques, mindfulness, wellbeing champions)

**Less than two-fifths of employers may be doing this.** (Source: CIPD *Health and Wellbeing at Work Survey April 2019*)



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## When and how to amend trigger points and progress warnings

- ✓ Trigger mechanisms to review attendance are good. They help to show that absence is being **actively managed**.

78% of employers consider the use of absence triggers to be **effective in helping manage absence**. (Source: *Use of trigger points and targets in managing absence: XpertHR survey 2019*)



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## When and how to amend trigger points and progress warnings

- ✓ Consider what outcomes to trigger points are in keeping with the blended objective of the policy.



Should **disciplinary warnings** be incorporated into the framework at all? Are they effective in reducing mental health absence given the punitive connotation?

Only 32% of employers place disciplinary processes in the **top three methods** of managing short-term absence. *(Source: CIPD Health and Wellbeing at Work Survey April 2019)*



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## When and how to amend trigger points and progress warnings

What could be **more effective** than disciplinary warnings as outcomes to initial and intermediate trigger points?

- ✓ Return to work interviews
- ✓ Early OH referral
- ✓ Changes to work patterns or environments
- ✓ At an intermediate trigger point set a long term attendance target. Take into account individual circumstances.
- ✓ Without negating continued offers of support, be clear that failure to achieve this target could result in future dismissal.

Adopt a **case management** approach similar to long-term ill health involving the line manager, OH and HR.

- ✓ Dismissal remains a legitimate **end stage** trigger outcome.



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## When and how to amend trigger points and progress warnings

### Stage 3

What individual circumstances may impact short-term mental health absence management?



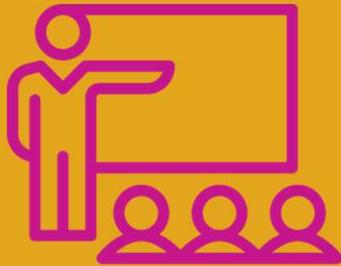
Discrimination risks may need to be managed if the employee's mental health is linked to **pregnancy** or **disability**.



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# Conclusion



- ✓ Proactive wellbeing strategies to minimise short-term mental health absences.
- ✓ Regular and frequent trigger points.
- ✓ Avoid outcomes to trigger points that are punitive.
- ✓ Implement outcomes that are supportive of wellbeing and return to work.
- ✓ Dismissal remains an option at the end of an appropriate supported period.



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# Final Questions (..and keeping up to date)

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