



The communications union

**ATTENDANCE & MEDICAL RETIREMENT
PROCEDURES IN BT: A GUIDE FOR BRANCHES**

BT Attendance Procedure

Historically members with attendance problems were dealt with by two separate procedures. The Long Term Illness Procedure on the one hand and the Poor Performance and Attendance Procedure on the other.

Traditionally BT has treated people with long term illness sympathetically and the union hopes that this approach will continue. However, the new single procedure only differentiates between 'extended absence' and 'repeated absence'. The former leads on, quite correctly, to reasonable adjustment/alternative work under the Managing Capabilities Procedure, while the latter stage leads on to Formal Warnings and Monitoring Periods.

Whilst we have been successful in getting significant changes to the wording of the new procedure to allow reference to the Managing Changing Capabilities procedure, where it is appropriate, under repeated absence, the potential for confusion remains. This union guidance is designed to ensure the greatest possible protection for our members in these circumstances.

Repeated absence – no underlying health condition

Nothing has changed in respect of measures that branches should take when dealing with simple unsatisfactory attendance under the new procedure, where a member is facing a warning for repeated absence.

Branches should try and ensure that members keep them informed of return to work interviews and in some cases, BT will allow members to be at least accompanied to these interviews in the later stages, so it is always worth asking. Often this will come down to local relationships between the managers and the Branch.

For many years now the company, has operated unagreed triggers when dealing with poor attendance – those triggers remain. However, safeguards have been written into the new procedure which should help branch officers when BT managers try to argue they must issue a warning, regardless of mitigation.

Section 5 of the Procedure states:

“Similarly triggers generated by the BT People System or Accenture HR Services are simply a flag that management attention is required and should not be interpreted as the automatic initiator of a warning process”.

Underlying health condition causing repeated absence

The problem with the new procedure is that members with a long term illness may find that the effects manifest themselves as “Repeated Absence” and find they are, inappropriately in the unions view, being given Formal Warnings and/or Monitoring Periods to which they cannot respond. The union understands that if these members were taken down the Managing Capabilities route, this does not guarantee their future retention in employment but would hopefully ensure their sympathetic treatment and give them the best possible chance to recover. The procedure now allows for a reference to the Managing Changing Capabilities procedure as well as a reference to the OHS, in these circumstances.

However, the union believes that the potential for this abuse remains. The purpose of this guidance is to alert Branch Officers to the potential problem and ensure early escalation in the event it becomes a reality.

WHAT SHOULD BRANCHES DO?

- ✓ Ascertain whether the individual is covered by the DDA. (The DDA confers specific legal rights, see separate guidance). If so insist that the Managing Capabilities Procedure is enacted and adhered to.
- ✓ Even if the individual is not strictly covered by the DDA, if the absence problem is due to a long term illness or a recurrent underlying health problem then there is an obligation on the Company to consider reasonable adjustment/alternative work as detailed in the Managing Capabilities Procedure to resolve the issue.
- ✓ If individuals on long term sick or experiencing recurrent underlying health problems are not being dealt with under Managing Capabilities Procedure, but instead are being given Formal Warnings/Monitoring periods, seek Head Office advice.

DDA Guidance

Branches will be aware that BT is taking a far tougher stance on attendance issues. It is important in these circumstances that members are aware of their rights and Branch Officers are in a position to give effective advice.

Disability may manifest itself in periods of extended absence or recurring health problems resulting in repeated absence. In both cases, people covered by the DDA would have the right to expect reasonable adjustment in line with the Companies Managing Capabilities procedure. Even if a member does not qualify under the DDA, the Company is not absolved from its obligation to consider reasonable adjustment and/or alternative work, to resolve an attendance issue.

DAY TO DAY ACTIVITIES ARE DEFINED AS:

- Mobility objects
- Manual dexterity
- Physical co-ordination understand
- Continence
- Ability to lift, carry or otherwise move
- Speech, hearing or eyesight
- Memory or ability to concentrate learn or understand
- Perception of the risk of physical danger

WHO IS COVERED BY THE DDA?

- ✓ To be covered the member must have a physical or mental impairment.
(In the case of mental illness it must be a clinically well recognised illness)
- ✓ The impairment must be long term or likely to last for a year or longer
- ✓ The impairment must have a **substantial** effect on a members day to day activities

In this context **substantial** is defined in the Act as 'more than minor' and in the guidance as a 'limitation going beyond the normal differences in ability which may exist among people'.

A **substantial** effect in any one of these areas will qualify under the Act.

WHAT ADVANTAGE IS IT TO BE COVERED BY THE DDA?

If a member is covered by the DDA they are protected from discrimination in relation to their disability. An employer must not discriminate in any of the following ways:

- By not offering a disabled person a job
- By offering a job on less favourable terms than a non-disabled person
- By not offering opportunities for promotion, transfer, training or any other benefit
- By denying any other opportunity
- By dismissing or subjecting the employee to any other detriment such as harassment.

REASONABLE ADJUSTMENTS

An employer must also make reasonable adjustments. The procedure that BT uses for this is the Managing Capabilities Procedure. The first consideration must be whether the member can be retained in their existing work area. The Managing Capabilities Procedure is not a charter for managers to get rid of disabled members of staff. It is only in exceptional circumstances that it should be necessary for a job to be found outside the members normal work area and this should only arise if the member is seriously incapacitated for most of the work available in that area.

REASONABLE ADJUSTMENTS INCLUDE:

- Making adjustment to physical premises
- Allocating some of the member's duties to another person (light duties)
- Transferring members to an existing vacancy
- Altering the member's hours
- Moving the member to a different workplace
- Allowing time off for rehabilitation, assessment or treatment
- Training to do another job
- Acquiring or modifying equipment
- Modifying instruction manuals
- Modifying procedures
- Providing a reader
- Providing supervision

This list is not exhaustive. For an employer the size and scale of BT the requirement for reasonable adjustment and alternative work is far reaching and can be of great benefit to members who wish to retain employment. **Conversely members must never refuse reasonable offers of alternative work or training without very good reason and medical evidence.**

WHAT IS THE ROLE OF THE BRANCH?

1. Ensure that members see OHS who may say that the member is covered by the DDA.
2. If not, it may be appropriate to get medical evidence from the member's own doctor or specialist saying:
 - The condition has lasted or is likely to last for at least a year.
 - That the condition relates to a physical or mental impairment.
(Clinically well recognised in the case of mental illness)
 - Details of how the condition effects members **day to day** activity (See list above).

The Branch may need to pay for a Report, but it may prove very helpful to the member. If the Report is helpful, send it to management specifically asking them, in writing, to treat the member as disabled within the meaning of the Act.

MANAGING CHANGING CAPABILITIES PROCEDURE.

It is imperative that Branches are proactive in involving themselves at the earliest possible stage of this procedure. Do not assume you will be invited to participate. The Branch need to ensure:

1. All reasonable adjustments are made
2. If that fails, that suitable alternative work is found
 - Ensure that members work stations and work is reviewed where necessary and all necessary adjustments are made
 - Make sure that any government funding is accessed to deflect any cost arguments against reasonable adjustment.
 - Make use of CMF – (Churchill, Minty and Friends) who do bring independence to the process
 - Identify suitable vacancies, which members think they could do. Branch Officers are uniquely placed to have a view of vacancies across Lines of Business.
Write to management asking them to transfer the member to an existing vacancy. If management refuse without very good reason, they are contravening the DDA
 - Identify training that would help the member find work. **Ask the management in writing** to send the member on a training course to improve skills
 - In the case of discrimination or refusal to make reasonable adjustment, a Grievance should be submitted. It is important to make clear that the complaint is one of disability discrimination.
 - Ensure the member is aware of their rights to take a case to tribunal. If a member chooses to exercise that right, Head Office advice should be sought immediately.

How should the branch deal with long term illness cases?

It may come as a surprise to many BT members that there is no legal obligation upon a company to retain people in employment, if their attendance is deemed to be unsatisfactory, regardless of the reason for that absence. Having a 'genuine' illness does not mean that you cannot be dismissed for poor attendance.

Termination of employment could happen in cases of long-term illness or in cases of poor attendance. Of course the Company would need to demonstrate in either case that it acted reasonably or it could fall foul of unfair dismissal claims at a tribunal.

Long term illness can manifest itself in either a single extended absence or as a number of repeated absences from a single underlying or related cause. (*See separate union guidance on an underlying health condition causing repeated absence*).

1. In either case the first priority would normally be to help the member to retain their employment with BT, if at all possible. **Firstly:**
 - Ascertain whether the member's illness qualifies under the Disability Discrimination Act (DDA).
 - Whether the member is covered by the DDA, or not, ensure the Managing Changing Capabilities Procedure is enacted and adhered to. (*See separate union guidance on the DDA*).
2. In the event that despite the enactment of the Managing Changing Capabilities Procedure, termination on the grounds of capability due to ill health was still being considered, the member would need to be supported and represented at termination interviews and/or at appeal.
3. When termination on grounds of capability due to ill health is being considered, an assessment needs to be made as to whether the member's illness meets the requirements for medical retirement. Different criteria exist depending upon which pension fund the member belongs to. (*See separate union guidance for BTPS and BTRP*). If the member chooses to explore this route they may well need assistance in providing medical evidence. It's likely that a GP's note would not be sufficient and the member may need to commission a specialist medical report.

- 4.** In the event that an application for medical retirement was unsuccessful, the member may need assistance in obtaining fresh medical evidence and representation at an appeal. (See separate union guidance on Medical Retirement Appeals).
- 5.** In the event that an application for medical retirement has been unsuccessful, the member may qualify for Retirement on the Grounds of Efficiency. To qualify for this benefit the member has to be a member of the BTPS and 50 years of age or over. (See separate union guidance on Medical Retirement in the BTPS).
- 6.** If a BTRP or a BTPS member is suffering from a serious illness with a short life expectancy, the OHS Core Specialist, taking into account the members best interests, may recommend full commutation of the pension or to maintain the member in employment. (See para 5.1 of BT's Medical Retirement procedure)

Medical retirement appeals

The same Appeal Process applies whether the individual is a member of the BTPS or the BTRP. Medical retirement can only apply technically where an individual is **dismissed** on the grounds of impaired capability due to ill health **and** where the specific medical retirement criteria are met.

Individuals have the right of appeal **both** against termination of employment **and** against refusal of medical retirement **but not** at the same time.

If an individual decides to appeal against the termination decision but is unsuccessful there can still be a further appeal if medical retirement is not granted.

If an individual decides to accept the termination decision and appeal against the refusal of medical retirement there will be no further right of appeal against the termination decision.

This can be tricky – the arguments raised to oppose termination of employment may not sit easily with arguments for medical retirement.

Appeals against termination or against refusal to grant medical retirement are conducted by a higher authority manager (usually third line), and the member has a right to be accompanied by his union. Notice of intention to Appeal must be made within **five working days** of the original decision along with his/her intention to be represented by the union. The union has a further **ten working days** to provide a statement that we will be representing the member.

Appeals against refusal to grant medical retirement, or in the case of BTRP members the level of medical retirement, must be supported by **new written** medical evidence which must be submitted within **twelve weeks** of notification of intention to appeal.

New written evidence will be considered by the BT Chief Medical Officer along with previous evidence for a final determination on whether the medical criteria are met. This is a paper review and results in a recommendation to the appeal authority.

The appeal decision is final although the BT Grievance Procedure may apply if the criteria for high level review are met.

Medical retirement criteria for members of the BTPS

Branches will be aware that it has become increasingly difficult to achieve medical retirement from BT. Difficult, but not impossible. There were 44 successful applications in 2006. What is clear is that the criteria is strictly adhered to and medical evidence not just opinion must meet this criteria if an application is to be successful.

WHOSE DECISION IS IT?

The decision of whether criteria are met is made by the OHS Core Specialist after considering any medical evidence submitted by the member. A decision of the OHS Core Specialist can be appealed. A final decision is made by the BT Chief Medical Officer.

WHAT ARE THE CRITERIA?

The same criteria are applied for accessing medical retirement under Section A, B or C of the BTPS, although the benefits themselves vary. (*See below*). To fulfil the criteria an individual must be: **permanently incapable of giving regular and effective service in the duties of his/her position by virtue of ill health.**

- **Permanently** means to the normal pensionable age for that person (currently usually 60)
- **Incapable** means unable to work despite the individual's best efforts, which would include co-operation with any reasonable proposal for medical or surgical treatment.
- **Regular and effective service** means meeting acceptable standards of attendance and performance.
- **Duties of his/her position** means the substantive post, as reasonably adjusted, and suitable alternative work which is available.
- **By virtue of ill health** means that the foregoing is all a direct consequence of a recognised clinical illness or injury for which there is objective medical evidence.

The judgement applied is on a balance of probabilities.

It would be useful for a member's medical practitioner to be made aware of the criteria and this interpretation.

BENEFITS OF MEDICAL RETIREMENT

These vary according to which section of the scheme the member is in. Full details of entitlements are best found at www.btpensions.net This is a site set up by the Trustees and does not require intranet access.

SERIOUS ILL HEALTH COMMUTATION

If a BTRP or a BTPS member is suffering from a serious illness with a **short life expectancy**, the OHS Core Specialist, taking into account the member's best interests, may recommend full commutation of the pension or to maintain the member in employment. (*See para 5.1 of BT's Medical Retirement procedure*).

RETIREMENT IN THE INTERESTS OF EFFICIENCY

A member who is facing the prospect of termination of employment on the grounds of long term ill-health but has not met the criteria for medical retirement may be entitled to retirement in the interests of efficiency as long as the following conditions apply:

- Employee is a member of the BTPS
- Employee is aged 50 or over
- Termination of employment is justified and the criteria for Medical Retirement has **not** been met

In these circumstances the member would be entitled to immediate payment of pension benefits without actuarial reduction for early payment.

Additionally individuals who are members of Section A of the BTPS, over age 55, who are retired on the grounds of efficiency have a choice of receiving a pension and lump sum at age 60 plus a compensation payment of up to 104 weeks pay depending on length of service or an individual payment of the pension and lump sum with no compensation.

Medical retirement criteria for members of the BTRP

Branches will be aware that it has become increasingly difficult to achieve medical retirement from BT. Difficult, but not impossible. There were 44 successful applications in 2006. What is clear is that the criteria is strictly adhered to and medical evidence not just opinion must meet this criteria if an application is to be successful. Different criteria apply depending upon which pension fund the member is in, the BTPS or the BTRP, so it is important to ascertain this at the outset. The BTRP was introduced for most, but not all, new employees in April 2001.

WHO DECIDES?

The decision of whether criteria are met is made by the OHS Core Specialist after considering any medical evidence submitted by the member. A decision of the OHS Core Specialist can be appealed. A final decision is made by the BT Chief Medical Officer.

(See separate advice on Appeals).

WHAT ARE THE CRITERIA?

There are in fact two levels of criteria that apply to members of the BTRP, Standard level and Enhanced level, which attract different benefits *(See below)*.

Standard Level

Permanently incapable of giving regular and effective service in the duties of his/her position by virtue of ill-health.

Enhanced Level

Permanently incapable of giving regular and effective service in any capacity by virtue of ill-health

- **Permanently** means to the normal pensionable age for that person (currently 60)
- **Incapable** means unable to work despite the individuals best efforts, which would include co-operation with any reasonable proposal for medical or surgical treatment.
- **Regular and effective service** means meeting acceptable standards of attendance and performance
- **Duties in his/her position** applies only to Standard Level and means the substantive post, as reasonably adjusted, and suitable alternative work which is available
- **In any capacity** applies only to Enhanced Level and means any paid work (in BT or elsewhere) which the individual might reasonably be expected to undertake.
- **By virtue of ill-health** means that the foregoing is all a direct consequence of a recognised clinical illness or injury for which there is objective medical evidence.

The judgement applied for both criteria is on a balance of probabilities. Payment of benefits is dependent upon acceptance by BT's insurers.

It would be useful for a member's medical practitioner to be made aware of these two sets of criteria and these interpretations.

WHAT ARE THE BENEFITS OF MEDICAL RETIREMENT UNDER THE BTRP?

- Two levels – Standard pays a single contribution into the pension fund of 15% of basic salary for each remaining year of service up to 60
- Enhanced – pays 20% of basic salary for each remaining year of service up to 60

[I need a line here about the position of over 60's and may need to say something about the BTPS as well]

SERIOUS ILL HEALTH COMMUTATION

If a BTRP or a BTPS member is suffering from a serious illness with a **short life expectancy**, the OHS Core Specialist, taking into account the members best interests, may recommend full commutation of the pension or to maintain the member in employment. (See para 5.1 of BT's Medical Retirement procedure)

150 The Broadway
Wimbledon
London
SW19 1RX

020 8971 7200

www.cwu.org

General Secretary **Billy Hayes**
www.billyhayes.co.uk