

Neurodiversity Champions

# Sickness & Absence

Your Rights & What the Policy Actually Means

University of Warwick • Neurodiversity Champions Initiative

## About this document

This guide has been written by neurodivergent people, for neurodivergent people. It is not an official University document — it is our plain-language interpretation of Warwick's Sickness Management Policy, combined with the legal protections that exist under the Equality Act 2010.

Our aim is to make sure you know exactly what your rights are, what the University is required to do, and what to watch out for — before you need it.

**Always keep a copy of this.** If you are currently in a difficult situation with absence management, you can also reach out to a Champion or your Trade Union representative for support.

## Part 1: The Equality Act 2010 — Your Legal Foundation

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Everything in this guide sits on top of the Equality Act 2010. This is the law that protects you — it exists independently of any University policy and cannot be overridden by it. It is important to note that the Equality Act does not prevent the University from managing sickness or capability concerns, but it does require disability-related circumstances and reasonable adjustments to be properly considered.

### What counts as a disability under the law?

Under the Equality Act, you are considered to have a disability if you have a physical or mental impairment that has a **substantial** and **long-term** adverse effect on your ability to carry out normal day-to-day activities. Under the law, you do not need an official medical diagnosis to be protected – the law cares about the impact on your life, not the label. However, in practice, if you request protections or adjustments without a diagnosis, the University will almost certainly refer you to Occupational Health. This is standard practice to verify how your condition limits day to day activities, so see it as a tool to get your workplace needs formally recognised.

Term	What it means in practice
Substantial	More than minor or trivial. For most neurodivergent conditions, this threshold is easily met.
Long-term	Has lasted, or is likely to last, 12 months or more. Autism, ADHD, dyslexia, dyspraxia, and most other ND conditions meet this automatically.
Day-to-day activities	Broadly interpreted — includes things like concentrating, remembering, communicating, managing sensory input, and regulating emotions.
No diagnosis needed	You do not need a formal diagnosis to be protected. If the impairment exists and meets the criteria, the protection applies.

## The duty to make reasonable adjustments

Once the University knows (or should reasonably know) about your disability, it has a **legal duty** to make reasonable adjustments.

The duty applies across everything — your day-to-day work, how your absence is managed, any formal processes you are involved in, and how your performance is assessed.

**What counts as ‘reasonable’?** The law does not define this precisely, but courts consider: the cost of the adjustment, how effective it would be, the University’s resources, and how much disruption it would cause. A large, well-funded institution like a university is expected to have a high threshold for what is ‘reasonable’.

## Indirect discrimination

Even if the University applies a policy to everyone equally — such as an absence trigger point — it can still be **indirect discrimination** if it puts neurodivergent people at a particular disadvantage, and the University cannot justify it.

This matters for sickness absence: if a blanket absence trigger is applied without considering whether absences are disability-related, that can constitute indirect discrimination.

## Discrimination arising from disability

This is a protection that many people do not know about. It covers situations where you are treated unfavourably because of **something arising as a consequence of your disability** — even if the treatment is not directly about the disability itself.

Examples relevant to ND staff:

- Being disciplined for communication style that is a feature of autism
- Being put on a performance plan for slower output caused by ADHD or dyspraxia
- Receiving a warning for absence that is directly caused by your condition

The University would need to show that the **treatment was proportionate and justified** in the circumstances.

## Part 2: The Sickness Management Policy — What It Says and What It Means

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The University's Sickness Management Policy (April 2019, reviewed April 2024) applies to all staff. This section walks through the parts most relevant to neurodivergent employees.

### Do you have to disclose your disability?

No. The policy is clear: **there is no obligation to disclose a disability or health condition** (Section 14.2).

**However — and this is important —** the protections described in this guide are much harder to access if the University does not know about your disability. The duty to make adjustments, and the requirement to handle your absence differently, only apply once disclosure has been made.

### The practical case for disclosing

If you disclose your disability, the University is required to:

- Consider and discuss reasonable adjustments with you (Section 14.3)
- Apply this sickness policy flexibly in light of your disability (Section 14.5)
- Treat disability-related absence as a mitigating factor in any absence review (Section 16.3)
- Review whether reasonable adjustments would resolve the situation before any capability process (Section 22.2)

Without disclosure, you may be managed as if none of these protections exist.

### How disability-related absence should be handled

Section 14 of the policy acknowledges that absence can result from a disability. But it is brief and does not spell out what 'handling it differently' actually means in practice.

The Equality Act provides additional protections and context. In practice, this often means the University should consider the following when absence is related to your disability:

What the University must do	What this means for you
Consider disability-related absence separately from other absence when applying trigger points	The University should take into account whether your absences are linked to your disability before deciding whether further action is appropriate
Treat your disability as a mitigating factor at any informal or formal meeting	Name your disability and ask them to record that it is a mitigating factor. Do not assume they will raise it themselves
Involve Occupational Health when disability may be relevant	You can request an OH referral yourself (Section 11.2). Although you do require your manager and/or HR to send the referral
Make reasonable adjustments to the policy itself	The policy explicitly states adjustments may need to be made to how the policy is applied to you (Section 14.5)

## Return to work discussions

Section 10 of the policy requires your manager to hold a return to work discussion after **every** period of absence — even a single day.

These are intended to be supportive but can feel intrusive or anxiety-inducing. As a reasonable adjustment, you can ask your manager to send the return to work questions/form to you via email in advance, or request that the discussion takes place via Teams chat if verbal processing is difficult for you following a period of illness.

The discussion should cover the reasons for absence, any support needed, whether work was a contributing factor, and any adjustments recommended in a fit note or by OH.

## Things to know about return to work discussions

- You should be told the purpose of the meeting in advance. If a form is being used, you should know about it.
- If your absence was disability-related, say so explicitly at this meeting and ask for it to be recorded – you can also self-report this in Success Factors.
- If adjustments were discussed at a previous return to work meeting but have not been put in place, raise this.
- After a long-term absence (4 weeks or more), this process should involve Occupational Health — not just an informal catch-up.
- You can ask for a copy of any notes made or a written summary of the meeting. If none is forthcoming, write a summary of your understanding and request confirmation it is correct. If no correction is provided, your written summary creates a contemporaneous record of how you understood the discussion at the time, and may be helpful if there is later disagreement about what was said.

## Medical appointments

Section 7 of the policy is clear and important: **medical and hospital appointments are not counted as sickness absence**. This includes ongoing appointments for your condition.

You are expected to make appointments at the start or end of the working day where possible, but the policy acknowledges you may not control hospital or consultant appointment times (Section 7.4).

You will **not** normally be required to make up the time taken for medical appointments (Section 7.5).

## Long-term absence (4 weeks or more)

If you are absent for four weeks or more, the policy sets out a framework for how the University should manage your case. Key points:

- The policy states contact should normally be made at least every four weeks, but how contact is maintained should be mutually agreed, and the timing and nature should be appropriate to your health condition (Section 12.2). If frequent contact causes you distress, you can ask for it to be adjusted.
- Face-to-face meetings can be held at a mutually agreeable venue — it does not have to be on campus (Section 12.3)
- No manager should visit you at home or a location off-campus unaccompanied, or without first liaising with HR (Section 12.4)
- A phased return to work is available and the first four weeks are paid at full base pay (Section 13.1)

If you are in a long-term absence situation and feel the contact or meetings are being handled in a way that is not appropriate to your health condition, you can raise this with HR or your Trade Union representative.

## Formal procedures and capability reviews

If the University moves towards formal absence management, there are important protections you should know about.

### Before any formal process, the University must:

- Have conducted regular return to work discussions (Section 17.5)
- Have considered OH guidance where relevant (Section 17.5)
- Have made you aware that the case may progress to formal procedure (Section 17.5)

**At any formal meeting, you have the right to be accompanied** by a work colleague or, if you are a member, a Trade Union representative (Section 17.2). You do not need to be in a union to exercise this right — a colleague you trust is equally valid.

**Crucial Timing Note:** If your chosen companion cannot make the date scheduled by HR, the policy states that the re-arranged meeting date must normally be scheduled **within 1 working week** of the original date. Contact your companion immediately upon receiving a meeting notice so you don't run out of time to secure support.

For further information about **Occupational Health and what to expect**, please ask a Neurodiversity Champion to send our guidance.

## The capability review and the Equality Act

Section 22.2 of the policy states that where a medical condition has a substantial and long-term adverse effect on your ability to do your job, the University must **first review whether reasonable adjustments would overcome the practical effects** before proceeding further.

This is part of the University's legal obligations under the Equality Act. If you reach this stage and reasonable adjustments have never been properly considered or discussed with you, that is a failure of both the policy and the Equality Act. Raise it. Put it in writing. Seek support — see the support options in Part 3.

The order in which the University must consider options is:

- Reasonable adjustments to the role or workplace
- Redeployment to an alternative role
- Ill health retirement (if applicable)
- Dismissal on grounds of capability — this is the last resort only

**What to watch out for:** While the university must consider reasonable adjustments, section 17.6 of the policy explicitly states that there is no requirement for an Occupational Health report to have been obtained before formal procedures commence. If management triggers a formal stage before you have seen OH, do not panic, but immediately request that an OH referral be fast-tracked so your adjustments are formally documented before any final decisions are made. The University may start the administrative process without medical input, but the Equality Act severely limits what they can legally do if medical advice is still pending.

## Part 3: Practical Steps and Self-Advocacy

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### If you are currently off sick

- You should agree with your manager how contact will be maintained. You can request that contact is by email rather than phone if that is better for you.
- You do not need to provide a fit note until day 8. Self-certification covers the first 7 calendar days.
- If your absence is related to your disability, inform your manager in writing so there is a record and record this on Success Factors.
- You cannot self-refer to Occupational Health, but you can ask your manager or HR to arrange a referral on your behalf. You do not have to wait for them to decide one is needed — Section 11.2 of the policy lists an employee request as a valid trigger for referral.
- Keep records of all contact: dates, what was said, and any commitments made.

### If you are being called to an absence management meeting

- Ask in advance what the purpose of the meeting is and whether any forms will be completed.
- You have the right to bring someone with you to any formal meeting. This can be a work colleague or a Trade Union representative if you are a member. You do not need to be in a union to use this right.
- Before the meeting, write down how your disability relates to your absences, so you are not put on the spot.
- At the meeting, explicitly state that your absences are disability-related and ask for this to be recorded in the notes.
- Ask what adjustments are being considered. If adjustments have been agreed previously but not implemented, raise this.
- Ask for a copy of the meeting notes afterwards.

### If the University does not follow its own policy

The gap between what a policy says and what actually happens is real. Managers do not always hold return to work discussions. Contact during long-term absence is sometimes absent entirely. Disability is not always treated as a mitigating factor even when it should be.

Knowing the policy exists is partly about being able to name the failure when it occurs. You do not need to do this aggressively — but you are entitled to note, calmly and in writing, when something required by policy has not happened.

For example: if you have been off long-term and your manager has not made contact or held a return to work discussion, you can note in any subsequent meeting that Section 10 and Section 12.2 of the Sickness Management Policy set out requirements that were not met. Put this in writing. It creates a record.

This matters particularly if the University later tries to use your absence against you in a formal process. A failure to provide the support and contact the policy requires is relevant context — and you are entitled to raise it.

### If the policy has not been followed

- Note the specific section that was not followed and when the failure occurred
- Put it in writing — an email to your manager or HR creates a record
- Raise it at any return to work or formal meeting and ask for it to be noted
- If you are in a formal process and policy was not followed in getting there, this is grounds to raise at that meeting or as part of an appeal

### If you think you have been treated unfairly

- Document everything: dates, what was said, what was not done. Written records are essential.
- Contact a Neurodiversity Champion or other support (see below). We can help you understand your rights and navigate next steps.
- You can raise a formal grievance under the University’s grievance procedure if you believe the policy has not been followed or you have been discriminated against.
- If you believe the treatment amounts to disability discrimination, you may also be able to bring a claim to the Employment Tribunal. ACAS, Citizens Advice, or an employment law solicitor can help you understand whether this applies to your situation.

### Where to get support

You do not need to be a Trade Union member to get support. There are several options depending on your situation.

Who	What they can do
<b>Neurodiversity Champions</b>	Help you understand your rights, identify what should have happened, and think through your options with you. We have lived experience of neurodiversity and are not part of the management structure.
<b>A trusted colleague</b>	Can accompany you to any formal meeting as your companion. You do not need a union rep — a colleague you trust is equally valid under the policy (Section 17.2).
<b>Your Trade Union (if you are a member)</b>	Can advise on your rights, accompany you to meetings, and formally represent you in disputes. If you are not currently a member, you can join at any point, though some unions have a waiting period before full representation rights apply.
<b>HR (People Team)</b>	The policy states HR has a duty to provide advice to employees as well as managers (Section 3.4.1). You can contact your HR Business Partner directly. Be aware HR

	works for the University, so treat their advice as one source among several.
<b>ACAS</b>	Free, independent employment advice available to everyone regardless of union membership. Their helpline (0300 123 1100) can help you understand your rights before anything formal happens. They also offer free early conciliation if a dispute escalates.
<b>Citizens Advice</b>	Free, confidential guidance on employment rights. Available online, by phone, or in person. A good starting point if you are not sure where to begin.
<b>Employment law solicitor</b>	For serious situations, particularly where discrimination is involved. Many offer a free initial consultation. Worth considering if other routes have not resolved the issue.
<b>Your GP</b>	Ensure you speak to your GP about how your condition is affecting you at work, or when experiencing any deterioration in your mental health. Notes will be placed on your medical record, creating an independent record of your difficulties, and your GP may be able to suggest helpful measures such as issuing a fit note or recommending adjustments.

## Part 4: Key Policy References

The following sections of the University’s Sickness Management Policy are most relevant to neurodivergent staff. You may wish to quote these directly in meetings or written correspondence.

Section	Topic	Why it matters for ND staff
7.1–7.5	<b>Medical appointments</b>	Appointments are not sickness absence and you should not have to make up the time, but be aware evidence of the appointment may be asked for
10.1–10.2	<b>Return to work discussions</b>	A discussion must happen after every absence. If unexpected face-to-face meetings cause you high anxiety or processing issues, ask your manager in advance to share the questions over email. This discussion can be used to put disability context on record
11.2	<b>OH referrals</b>	You can ask your manager or HR to request a referral — you do not have to wait for them to decide one is needed, although they will have to send the referral on your behalf
14.2	<b>No obligation to disclose</b>	Disclosing is your choice, but protections are much stronger once you do. You do not need a formal diagnosis to trigger legal protection, but the University

		will likely use an OH referral to assess your needs once you do disclose
14.3	<b>Adjustments after disclosure</b>	Once you disclose, the University must actively consider and discuss adjustments with you
14.5	<b>Policy adjustments</b>	The policy itself must be applied flexibly when disability is involved — a blanket approach is not acceptable
16.3	<b>Mitigating factors</b>	Disability must legally be considered as a mitigating factor at any informal absence review — raise it explicitly and ask for it to be recorded
17.2	<b>Right to be accompanied</b>	At any formal meeting you can bring a colleague or Trade Union representative — use this right. <b>Note:</b> If your companion can't make it, the new meeting must normally be within 1 working week, so act fast to rearrange
22.2	<b>Capability and the Equality Act</b>	Reasonable adjustments must be reviewed before any capability process can proceed. However, note that under <b>Section 17.6</b> , the University <i>can</i> technically start the formal process before an OH report is obtained. Raise the need for adjustments and OH input immediately.

Note: the table above simplifies. The full policy document should always be consulted for complete wording.

## Neurodiversity Champions — University of Warwick

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This document reflects our interpretation of University policy and the Equality Act 2010.

It is not legal advice. For individual situations, contact your Trade Union, ACAS, Citizens Advice or an employment law advisor.