

## Equality, Diversity and Inclusion Considerations

### Changes to Shielding in Northern Ireland: with effect 1 August 2020

With the general easing of lockdown restrictions, in Northern Ireland official advice (as of 28 July 2020) states that shielding has ended from 31 July 2020.

The guidance stated that from 1 August 2020:

- Those who were previously shielding can now return to the workplace, if they cannot work from home.
- Employers should still offer support to employees who have been shielding (as outlined below).

In line with this guidance, from 1 August 2020:

- any previously shielding staff can continue to work from home if they can do safely and effectively, or
- those who were previously shielding can now return to campus if they cannot work from home and their area of work has been risk assessed.

Those who were previously shielding will have received the following advice from Northern Ireland's Chief Medical Officer (July 2020):

- "If it has been possible for you to work from home while shielding, you should continue to do this. However, if your employer has taken the proper measures to ensure social distancing in your place of work, and you can travel to work in a way which allows for social distancing, the fact that you have been shielding is not by itself a reason not to return to work."
- "As you are considered vulnerable, if your workplace cannot follow guidance on social distancing at work or you cannot travel to work in way which allows for social distancing, you should tell your employer you need to follow government advice and that you must stay at home until it is possible for you to observe social distancing at work and during travel to work."
- "If you feel that there are other reasons why you cannot return to work, you should discuss these with your doctor and your employer."
- "You should be aware that if you refuse to attend work without a valid reason, it could result in disciplinary action. However, employers must be especially careful and take reasonable steps for anyone in their workforce who is in a vulnerable group."

### Tests

The CIPD states that employers must still consider three key tests before bringing their people back to the workplace:

- is it essential;
- is it sufficiently safe;
- and is it mutually agreed?

Managers must consider the following advice when preparing for the safe return of employees who have been shielding to the workplace, and plan how to support those who are not yet able to return.

### For employees returning to the workplace from shielding

The physical, emotional and mental wellbeing of the workforce remains the key principle of managing any return to the workplace.

The following advice and principles must be adhered to:

- Those returning from shielding “*must continue to follow public health advice at all times and be really strict about social distancing and washing your hands... minimising any risk as much as possible, being aware that all contacts with the outside world must be managed really carefully*” as per public health advice.
- Workplaces must be safe.
- Managers complete the Returning to Campus Manager Checklist (see appendix 2) for staff and to support previously shielding staff to return. These should be undertaken well in advance.
- Managers should speak to people individually and agree specific arrangements resulting from completing the Returning to Campus Manager Checklist and associated discussions. Specialist advice may be helpful, for example from an occupational health service, a doctor’s advice on the underlying condition, employment assistance programmes or counselling.

### Reasonable Adjustments

Many formerly shielding employees with underlying conditions may also meet the definition of disability under Disability Discrimination legislation if they have a long term physical or mental impairment which has a substantial and adverse effect on ability to carry out day to day activities.

Managers should therefore consider any reasonable adjustments to the way in which people are expected to work. This could include allowing the continuation of homeworking, reallocation of tasks (provided these are within their capabilities and capacity), or transferring the person to another role in a lower-risk area.

A request for continued home working could fall within the requests for flexible working and count as a reasonable adjustment for those who qualify under the disability provisions.

For example, an employee with severe asthma may be regarded as having a disability as severe asthma attacks can be life threatening and be accompanied by long term issues of feeling tired, stressed, anxious or depressed and lead to underperformance at work.

It is important to note that it is possible some staff members may be more at risk from the consequences of COVID-19, due to their race, age, or disability.

However, it is important not to base any ‘return to the workplace’ decisions solely on protected characteristics, including disability. For example, if employees over 60 were not being informed that the physical workplace is reopening, as you do not want them to return because

of the potential risk, this would be direct discrimination.

In line with [Return to Campus Guidance](#), managers must speak to people individually and agree specific arrangements resulting from the risk assessments, and depending upon their individual circumstances.

### **For employees not yet returning to the workplace**

Managers may wish to allow employees who have been shielding to continue to work from home where possible, as the health and safety protections at work are harder to meet for those who are clinically extremely vulnerable.

Employees may refuse to come into work if they reasonably believe there is a serious and imminent danger or the workplace is not safe.

If areas have carried out risk assessments and made the workplace as safe as possible, then anyone who still refuses to return to work may be unreasonable.

### **Refusal to return to work**

Responsibility for an employee's health and safety are of central importance and any employee who raises a justified health and safety concern may have extra protections from detriment or dismissal for a health and safety reason.

If an employee who was formerly shielding has a reasonable fear about health and safety relating to Covid-19, for example if they believe the workplace is not safe, we must take these concerns seriously.

The guidance remains that work that can be done from home should still be done from home, and employers should not insist on ending homeworking with no good reason.

In line with the [Return to Campus Framework and Guidance](#), managers will take all reasonable steps to ensure the health, safety and wellbeing of their team members and must meet with staff individually about their return to campus, completing a risk assessment based upon their individual circumstances and role prior to a return to campus.

The employer must consider the particular individual's circumstances and why they are refusing to attend.

However, when all appropriate alternatives have been considered, if an employee unreasonably refuses to attend work and cannot work from home, employers may consider disciplinary action.

### **Advice**

- It is inevitable that some shielding staff will be anxious about returning to work.
- Discussions with staff will be of critical importance.
- Managers must speak to people individually and agree specific arrangements resulting from the risk assessments, depending upon individual circumstances.
- Specialist advice may be helpful, for example from an occupational health service, doctor's advice on an underlying condition, an employment assistance programme or counselling.

- Shielding staff may need time to adjust, and reassurance that the workplace has been made as safe as possible.
- **Those caring for extremely clinically vulnerable family members do not fall within the definition of those shielding as a result of their health conditions. For employees who live in the same household as someone who was shielding, please refer to the guidance on the [FAQs for staff webpage](#).**

The contents of this note may change if and when more specific guidance from the NI Executive is made available.

Please [click on this link](#) to visit the NI Direct website on Shielding in Northern Ireland.

## **Contacts**

### **COVID-19 Community Helpline:**

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- email: [covid19@adviceni.net](mailto:covid19@adviceni.net)