ABSENCES DUE TO INJURY CAUSED BY NEGLIGENCE OF A THIRD PARTY

1. A teacher who is absent from work as the result of injury sustained in an accident shall not be entitled to sickness allowance if and to the extent that damages are receivable from a third party in respect of such injury.

2. In the case of such absence sums equivalent to the amount which would have been paid if the absence had been due to ordinary sickness may be paid as an advance, pending the outcome of any claim for damages.

3. Notwithstanding the provisions of paragraphs 1 and 2 above, no sickness allowance, and no advance in respect of such allowance, shall be paid in the case of absence due to injury attributable to active participation in sport as a profession, nor in a case in which the absence arises from or is attributable to a teacher's own misconduct, unless the employer by resolution decides otherwise.

4. A teacher who is absent from work as a result of an injury attributable to the negligence of a third party should, as soon as is practicable following the injury, provide his/her employer with a report giving the date and place of the accident, a detailed account of the circumstances in which the injury was sustained and the name and address of the person(s) responsible. The submission of the report should not be delayed until the teacher decides whether or not to make a claim against a third party. When a decision has been taken on whether or not to submit a claim, the teacher should notify his/her employer accordingly. Where the decision is to claim against the third party the teacher should provide the name and address of his/her solicitor.

5. Where a claim for damages is to be made the teacher should, except in the circumstances outlined in Paragraph 6 below, include in any such claim a specific amount for loss of earnings in accordance with the provisions of Annex 1.

6. Where the third party responsible for the teacher's injury is employed by the same employer and at the time of the accident was acting during the course of his/her employment, or where it is alleged that a breach of duty by the employer has caused the accident, the teacher should not normally include any amount for loss of earnings in his/her claim against the employer. However, a claim for loss of earnings may be made where the teacher is not in receipt of full sick pay for the period of absence from work.

7. Where a claim for damages is to be made the teacher shall be required to sign an undertaking (as prescribed in Annex 2 attached) to refund to the employer, from any damages received, the total amount of any sums advanced under Paragraph 1 above less such part of that amount as is proportionate to any contributory negligence or fault on the teacher's part, or, if the claim is settled by a lump sum in which no specific amount is identifiable as loss of earnings, to refund the advance to the same extent as the total claim is successful, or such other amount as is, in the opinion of the employer, fair and reasonable. The employer will provide verification of earnings in support of the teacher's claim for damages only when the undertaking, duly completed, signed and witnessed, has been received.

8. If the teacher does not claim any damages from a third party, or if his/her claim is wholly unsuccessful, he/she will not be required to refund any advance paid under Paragraph 1 above, or any part of it.

9. In any case where the sums advanced under Paragraph 1 above are refunded in full from damages received, the period of sickness absence shall not be recorded for the purposes of this Scheme. Where however the refund is made in part only, the employer may at its reasonable discretion decide to what extent, if any, the period of absence may be so recorded.

10. In this Scheme employer means:

    a. in relation to teachers employed in controlled schools, the board by which they are employed;

    b in relation to teachers employed by the Council for Catholic Maintained Schools, that Council;

    c. in relation to teachers employed in a voluntary school (other than a Catholic maintained school), the Board of Governors of that school;

    d. in relation to teachers employed in a grant-maintained integrated school, the Board of Governors of that school;

    e. in relation to peripatetic teachers, the board by which they are employed.

ANNEX 1

CLAIM FOR DAMAGES AGAINST A THIRD PARTY

1. If the circumstances of an assault on duty or an accident (on or off duty) are such that a claim for loss of earnings or damages lies against a third party, the teacher should be advised to include a specific amount for loss of earnings in any claim which he/she might decide to make against the third party.

2. Irrespective of the amounts paid to him/her during his absence, the claim should be based on the gross salary which would have been paid to him/her had he/she not been absent from work due to the injury, less anticipated income tax on the total amount and the employee's primary Class 1 National Insurance Contributions which would have been deducted from his/her remuneration during the period concerned if he/she had been working; the amounts withheld as equivalent to primary Class 1 contributions should be treated in all other respects as though they were earnings related contributions. Employers' superannuation contributions should also be included in the calculation of the claim.

ANNEX 2

UNDERTAKING BY A TEACHER INJURED DUE TO THE NEGLIGENCE OF A THIRD PARTY

In consideration of the _____ (name of employer) advancing to me sums during my absence from duty due to an accident in which I was involved on the _____ day of _____ 199__.

I hereby undertake to refund to said _____ (name of employer) from any damages received, the total amount of the sums so advanced less such part of that amount as is proportionate to any contributory negligence or fault on my part, or, if my claim is settled by a lump sum in which no specific amount is identifiable as loss of earnings, to refund the advance to the same extent as my total claim is successful, or such other amount as is, in the opinion of the employer, fair and reasonable.

Signed _____

Address _____

_____

_____

Witness _____

Address _____

_____

_____

Date _____