

The Ordinances Part 3: Dismissal, Discipline, Grievance Procedures and related matters pursuant to Statute 7

3.7 Incapacity on Health Grounds Procedure

Part I : Introduction and Definitions

1. This Ordinance is promulgated in accordance with the provisions of Part IV Clause 15 of Statute 7 and sets out procedures for dealing with members of staff because of incapacity on health grounds.
2. In this Ordinance, unless the context indicates otherwise:-
 - i. 'The Statute' shall mean Statute 7;
 - ii. 'member of staff' shall mean any member of staff as defined by Clause 1(1) of The Statute;
 - iii. in relation to any decision or action that the University is required to make or to perform under this Ordinance, 'the University' shall mean: any member of staff who usually makes such decisions or performs such actions on behalf of the University, or who in the normal course of events may reasonably be expected to do so;
 - iv. a reference to 'clinical staff' shall be taken to mean a reference to any member of staff defined in Clause 20(1) of The Statute;
 - v. references to Deans shall be construed so as to include references to Heads of Professional Services or other equivalent units (and vice versa), and where there is no Dean, Head of Professional Service or equivalent unit, the President and Vice-Chancellor or his or her nominated representative may appoint a member of staff from such Faculty, Professional Service or equivalent unit to undertake the duties required of a Dean or Head of Professional Service by this Ordinance;
 - vi. references to University postholders (including those referred to in sub-paragraph (v) above) shall be construed to refer either to the postholder or to an appropriate member of staff nominated by the postholder to act with full authority on the postholder's behalf;
 - vii. where a post is held jointly by two or more postholders, a reference to the postholder shall be construed as a reference to any or all postholders holding that post, and any action authorised or required under this Ordinance may be taken by any such postholder.

Part II : Application and Scope

3. This Ordinance applies to members of staff as defined in Clause 1(1) of The Statute with the exception of the President and Vice-Chancellor, namely:-
 - i. members of the academic staff,
 - ii. members of staff with a grade of Level 4 or above in the University's grading structure, or an equivalent grade.
4. The procedures in this Ordinance are designed to deal with situations in which:
 - i. the member of staff may be unable to fulfil the duties of his or her appointment in the University as a result of prolonged or intermittent sickness absence from work, for which the cause is an underlying medical condition (or combination of conditions); or

- ii. the member of staff may have difficulty in fulfilling the required standards of his or her appointment due to an underlying medical condition, whether or not the member of staff is absent from work.
5. This Ordinance is not intended to apply to misconduct in relation to sickness absence or the falsification of sickness absence reports, which will normally be dealt with under Ordinance 3.5 ('Disciplinary Procedure'). If, after commencing a procedure under this Ordinance, the relevant manager or panel considers that the issue under review may be one of misconduct, the manager or panel may decide to discontinue proceedings under this Ordinance and transfer the matter to the appropriate stage of the Disciplinary Procedure.
6. Recurrent, short-term sickness which is not attributable to an underlying medical condition will normally be dealt with under Ordinance 3.6 ('Capability Procedure').

Part III : General Principles

7. The University wishes to treat with consideration and respect those members of staff who are ill or who have a serious or long-term medical condition. The University in exercising its duty of care aims to provide support to such members of staff and to consider all reasonable options to assist their recovery and return to work, and, where appropriate, to maintain their employment.
8. It is the responsibility of all members of staff to look after their own general health and well-being and as far as possible to minimise absence from work. Members of staff are expected to attend for work regularly at the times required, and to comply with the University Rules as to Absence through Ill Health and with policies and procedures for reporting and recording sickness absence.
9. Nothing in this Ordinance shall prevent the University from seeking to resolve instances of incapacity on health grounds by informal means rather than through the use of the procedures set out in this Ordinance, or the member of staff from making an application for early retirement on ill health grounds if he or she is a current member of a pension scheme and subject to the qualifying conditions of the relevant scheme.
10. This Ordinance may be applied in relation to members of staff who have a disability within the meaning of the Equality Act 2010 where applicable, and the University recognises its specific responsibilities under this statute.

Right to be accompanied

11. At any hearing of a Panel or Appeal Panel convened under this Ordinance the member of staff may be represented or accompanied by a workplace colleague, friend or relative, or trade union representative. If a member of clinical staff is called to a hearing under this Ordinance in relation to a proposal to terminate his or her employment and the hearing will involve consideration of issues related to the member of staff's clinical conduct or competence, the person conducting the hearing (or chair of the panel as appropriate) may permit the member of staff to be represented or accompanied by a member of his or her defence organisation. Such a representative may be legally qualified but he or she will not, however, be representing the member of clinical staff in any legal capacity.
12. If the member of staff's representative is not available at the time proposed for the hearing, the member of staff may request that the hearing be postponed to another reasonable time and must offer a date which is not later than five working days after the date first proposed for the hearing. The representative may attend the hearing with the member of staff and may speak on the member of staff's behalf, but that representative may not answer questions (relating to the issues in dispute) on the member of staff's behalf.

Confidentiality

13. Throughout any proceedings under this Ordinance, the University shall seek to ensure that confidentiality is maintained. However, this shall not preclude the University from disclosing information where necessary for the discharge of duties or as required by law, nor shall this preclude the University, where appropriate, from disclosing information about any outcome under this Ordinance.
14. There may be cases where it is appropriate to preserve confidentiality in relation to the identity of witnesses, where there is reasonably perceived to be a need to protect any member of staff from the risk of intimidation or retribution. Likewise, it may be necessary to adapt these procedures where it is considered undesirable for any one person to give evidence in the presence of another.

Part IV : General Considerations

Referral to the Occupational Health Service

15. In circumstances where there are concerns about the member of staff's health, or where follow-up action is being instigated, the manager may refer the member of staff to the Occupational Health Service in order to obtain medical advice. The manager shall refer to the Occupational Health Service for advice where it appears that any absence or difficulty in fulfilling the required standards has been caused by or exacerbated by the duties of a post. Any absence resulting from an accident or incident at work must be reported in accordance with Health & Safety Office guidelines. The member of staff should be advised of the reasons for the intended referral.
16. The Occupational Health Service will seek the member of staff's permission if it wishes to approach the member of staff's doctor or specialist for further information, if necessary, having due regard to the provisions of the Access to Medical Reports Act 1988.
17. On receipt of the medical report, the manager (having consulted with Human Resources as appropriate) shall discuss the medical advice received with the member of staff, including any temporary or permanent adjustments that may be made to the member of staff's job (see 'Adjustments' below).
18. If the member of staff fails to cooperate with a referral to the Occupational Health Service, or refuses to comply with a request to seek further information from the member of staff's doctor or specialist, the relevant manager or panel shall make a decision as to the appropriate course of action on the basis of the information available at the time.

Provision and admissibility of further or supplemental medical reports

19. Where the University requires any further or supplemental medical reports, the University shall arrange for those reports to be provided at the University's expense. The member of staff shall be entitled to provide further or supplemental medical reports at his or her own expense, and such reports may be presented in evidence at any hearing under this Ordinance, provided that they are produced within the relevant deadline for such hearing.

Adjustments

20. To give support to a member of staff and help facilitate a return to work after a period of sickness absence, or where concerns have arisen about the health of a member of staff, it may be necessary or advisable to make temporary or permanent adjustments to the range and nature of contractual duties undertaken by the member of staff and/or to make changes in the working environment.
21. Any adjustments shall be made taking into account medical advice; discussion with the member of staff concerned; the requirements of the Equality Act where applicable; and the reasonableness and practical feasibility of the proposed arrangements within the Faculty or elsewhere.

Suspension on medical grounds

22. A Dean or his or her nominee may suspend a member of staff within their Faculty on medical grounds as a precautionary measure if, in their judgement and on advice from Human Resources, there are reasonable grounds to believe that continuation at work by the member of staff will pose a risk to the health and safety of the member of staff or others. Any suspension and its terms shall be confirmed to the member of staff in writing by the Director of Human Resources or his or her nominee.
23. During any period of suspension on medical grounds (that is not covered by a medical certificate) the member of staff will be paid at his or her normal rate of pay.
24. The suspension shall be reviewed by the Dean or his or her nominee in conjunction with Human Resources in the light of medical advice and the member of staff shall be notified accordingly.

Part V : Short-term Sickness Absence, Long-term Sickness Absence or Long-term Medical Incapacity

Follow-up action

25. The manager will normally initiate follow-up action:-
 - i. wherever the amount of absence gives cause for concern, but in any event after four incidents of sickness absence of whatever length in a consecutive twelve-month period, or where the total number of days' sickness absence amounts to twenty or more working days in a consecutive twelve-month period; or
 - ii. where the member of staff may have or appears to have difficulty in fulfilling the required standards of his or her appointment as a result of an underlying medical condition, whether or not the member of staff is absent from work.
26. Appropriate follow-up action will depend on the nature of the illness and the circumstances of the case, and will include discussion with the member of staff and, in most cases, a referral to the Occupational Health Service for advice. Further advice on appropriate follow-up action may be sought from Human Resources.

Maintaining contact

27. In the case of sickness absence, both the manager or his or her nominee and the member of staff have a duty to maintain contact with each other by appropriate means (advice may be sought from Human Resources). Such means may include letter, email, telephone, or home visits by prior arrangement with the member of staff or his or her representative. The purpose of this is to demonstrate concern for the member of staff's welfare and give him or her the opportunity to ask questions or discuss any concerns; to establish the likely duration of the absence or condition; and for the member of staff to update the manager regularly on progress or future medical consultations which may provide further information and the anticipated date of return to work.

Return to work

28. If medical opinion suggests that the absence is due to a medical condition and there is a prospect of recovery and/or return to work within a reasonable timescale (normally within the entitlement to sick pay), then the manager, with advice from Human Resources as appropriate, shall make any necessary arrangements to facilitate the member of staff's return to work. In other cases further options shall be considered (see Part VI below).
29. Medical advice may indicate that a phased return to work would be appropriate and this shall be for a defined period of time within the entitlement to sick pay.
30. The aim of the phased return to work is to support the member of staff and to facilitate a gradual and successful return to the workplace, taking into account the member of staff's health and capability. It may involve temporary adjustments to the range and nature of

contractual duties undertaken by the member of staff and/or to changes in the working environment.

31. For the duration of the phased return period, the member of staff will receive pay appropriate to the hours worked and/or the work being done, but no less than his or her sick pay entitlement would have been if he or she had been absent from work.

Part VI : Consideration of other options

32. Where there are indications:-
- a) that the absence will be prolonged or indefinite; or
 - b) that the member of staff may have difficulty in fulfilling the required standards of his or her appointment due to an underlying medical condition, whether or not the member of staff is absent from work;

the manager will need to review the situation, taking such medical advice as is available into account, and arrange a meeting to discuss possible ways forward with the member of staff, who may be represented by a fellow member of staff, friend or relative, or trade union representative. The meeting may be held at the member of staff's home if necessary. A member of Human Resources will normally accompany the manager when meeting with a member of staff in these circumstances.

33. At the meeting, the manager will discuss the possible options with the member of staff in the light of the available medical advice, and the member of staff or his or her representative will be given the opportunity to put forward alternative suggestions. The possible options may include a phased return to work, reasonable adjustments on a temporary or permanent basis, redeployment, ill-health early retirement or dismissal on the grounds of medical incapacity.
34. All reasonable options will be investigated and discussed with the member of staff and his or her representative and further meetings held as appropriate.
35. Managers must consult with Human Resources before any proposal relating to termination of employment is taken forward.

Redeployment

36. Where medical advice indicates that it is unlikely that a member of staff will be able to carry out the particular duties of his or her current post within the foreseeable future, it may be appropriate to explore the possibility of redeployment to an alternative role within the University.
37. Arrangements for redeployment shall be as set out from time to time in the University's procedure on redeployment.

Ill-health early retirement

38. Where the member of staff is a current member of a pension scheme it may be appropriate to explore the possibility of early retirement on the grounds of ill-health, subject to the qualifying conditions of the relevant scheme. This may be in accordance with advice from the Occupational Health Service, or where the member of staff has indicated that he or she would like to be considered for ill-health early retirement. The manager, following discussions with the member of staff, should contact Human Resources to formalise the request. Human Resources will then liaise with the Superannuation Office for advice on making an application to the relevant scheme.

Dismissal on grounds of medical incapacity

39. The University may terminate the employment of a member of staff on the grounds of medical incapacity if other reasonable options such as adjustments, redeployment or ill health early retirement have been considered and have been found to be unavailable or inappropriate, or

where absence through illness substantially impairs the functions or the running of the University or the relevant business unit.

40. The Director of Human Resources or his or her nominated representative shall write to the member of staff to advise that his or her employment may be terminated on the grounds of medical incapacity through ill health and the reasons for this, and to invite him or her to a meeting to discuss this. The member of staff may be accompanied at the meeting by a workplace colleague, friend or relative or trade union representative.
41. The absence or presence of medical diagnosis does not necessarily prevent dismissal. In cases where the member of staff has chosen to exercise his or her right not to disclose medical reports, decisions regarding his or her further employment shall be made in the light of the information available. A member of staff may be dismissed before sick leave entitlement is exhausted where, having considered all the circumstances of the case including any available medical evidence, the University reasonably considers that the member of staff will not be fit to return to work within a reasonable period of time (normally within the entitlement to sick pay period).

Termination by mutual agreement

42. Where, having consulted with the member of staff, there is mutual agreement that termination of the contract on the grounds of ill health is the most appropriate way forward, the Director of Human Resources or his or her nominated representative shall write to the member of staff confirming the arrangements for this, which will be subject to the member of staff's written agreement.

Referral to a panel hearing

43. Where the member of staff does not agree that the circumstances justify termination of his or her contract on the grounds of ill health, then the matter shall be referred to a panel to consider, as appropriate, whether the member of staff should be dismissed and/or what other action should be taken. The Dean or Head of Professional Service (or other nominated person acting on his or her behalf) shall inform the member of staff of the decision to refer the issues to a panel hearing and shall prepare a report summarising the relevant issues, the actions taken and the issues which it is proposed that the Panel should consider.

Part VII : Panel Hearing

44. Where it is decided that the matter shall be considered by a Panel under this Part, the Panel shall be convened by the Director of Human Resources or his or her nominee on a case-by-case basis in accordance with the following rules:-
 - i. subject to sub-paragraph (v) below, each panel shall consist of three persons;
 - ii. at least one member of the panel shall be a lay member of the Council and one shall be a member drawn from a list agreed from time to time by the Senate. The third member may be another lay member of the Council or may be chosen from among the senior management of the University, such as a Vice-President, a Pro Vice-Chancellor, Dean, Chief Operating Officer or Head of Professional Service who shall chair the panel unless the panel resolves otherwise;
 - iii. if the hearing will involve consideration of issues related to a member of clinical staff's clinical conduct or competence, the chair of the panel may permit the member of clinical staff to be represented or accompanied by a member of his or her defence organisation. Such a representative may be legally qualified but he or she will not, however, be representing the member of clinical staff in any legal capacity;
 - iv. no panel member shall have had any previous involvement in the case;
 - v. where the panel is dealing with a member of clinical staff then a representative of a National Health Service or other relevant body may be appointed to the panel: where

this occurs the panel may consist of more than three members, but shall not exceed five persons.

45. The Director of Human Resources or his or her nominee shall appoint a member of Human Resources to act as Secretary to the Panel.
46. The member of staff shall be notified in writing of the reasons and given no less than ten working days' written notice of:
 - i. the date, time and place of the Panel Hearing;
 - ii. so far as they are known at the time, the names of the persons to be present at the hearing including the members of the Panel, and the name of any person attending to present the case to the Panel;
 - iii. the issues to be considered at the Panel Hearing (and the member of staff shall be provided with a copy of any documents to be referred to or relied on at the hearing);
 - iv. his or her right to be represented and/or accompanied at the Panel Hearing;
 - v. his or her right to call relevant witnesses at the Panel Hearing;
 - vi. the names of any witnesses who will be called to give evidence in relation to the issues being considered at the Panel Hearing;
 - vii. the potential outcome(s) of the Panel Hearing including, if dismissal is a possible outcome, a statement to that effect;
 - viii. a reference to this Ordinance.
47. The member of staff may be represented or accompanied at the Panel Hearing in accordance with the provisions of paragraph 11 above.
48. If the member of staff is or becomes unable to attend the hearing, he or she should notify the Secretary to the Panel as soon as possible, giving the reasons for the non-attendance. A member of staff who fails to attend a hearing without valid reason shall be informed that if he or she fails to attend any rearranged hearing without a valid reason, the matter may be considered in his or her absence.
49. At least five working days in advance of the Panel Hearing, the member of staff shall:-
 - i. provide details of proposed witnesses and of his or her representative;
 - ii. provide copies of any documents to which he or she wishes to refer at the Panel Hearing. Any documentary evidence not disclosed within this timeframe may only be considered at the hearing with the permission of the Panel.
50. The procedure to be followed in preparation for and at the Panel Hearing shall be at the discretion of the Panel, which may include without limitation:-
 - i. which documents including medical evidence (if any) shall be provided for the Panel's consideration and at what stage;
 - ii. the issues being put to the member of staff, including if relevant the calling of any witnesses;
 - iii. the member of staff having the opportunity to raise questions of any witnesses called. The manner in which such questions are to be raised is at the discretion of the Panel;
 - iv. the member of staff having the opportunity to set out his or her case in response and to call any relevant witnesses; and
 - v. the questioning of any witnesses called by the member of staff.
51. The Panel may, at its discretion:-

- i. postpone or adjourn the hearing including (without limitation) where the member of staff, his or her representative, the person presenting the case, any witness or any member of the Panel is or becomes unable to attend;
- ii. continue the hearing in the absence of a party, witness or representative where, in the opinion of the Panel, no good cause has been put forward for an adjournment;
- iii. recall the parties or any witness to clarify any relevant issue. In the event that any person is recalled, the member of staff and his or her representative shall also (subject to paragraph 14 above) be entitled to be present.

Notification of decision

52. The Panel shall produce a reasoned written decision, normally within ten working days of the Panel Hearing, which will be sent to the member of staff. A report of the decision will also be sent to the Council and to the Dean or Head of Professional Service.
53. Where the Panel decides that a member of staff should be dismissed, the Director of Human Resources shall give effect to the Panel's decision and the member of staff shall be advised of his or her right to appeal under Part VIII below.

Part VIII : Appeals

54. A member of staff (hereafter called the 'Appellant') who wishes to appeal the findings of the Panel should do so in writing to the Director of Human Resources within ten working days of the date of written notification of the Panel's decision. The Appellant should set out in full the grounds of his or her appeal and, if the Appellant is proposing to rely upon new evidence, he or she should provide details and a copy of any relevant documentation.
55. The appeal will be heard by a panel (the 'Appeal Panel') convened by the President and Vice-Chancellor or his or her nominated representative on a case-by-case basis in accordance with the following rules:-
 - i. subject to sub-paragraph (v) below, each Appeal Panel shall consist of three persons;
 - ii. at least one member of the Appeal Panel shall be a lay member of the Council and one shall be a member drawn from a list agreed from time to time by the Senate. The third member may be another lay member of the Council or may be chosen from among the senior management of the University, such as Vice-President, a Pro Vice-Chancellor, Dean, Chief Operating Officer or Head of Professional Service who shall chair the Appeal Panel unless the Appeal Panel resolves otherwise;
 - iii. if the Appellant is a member of clinical staff and the appeal hearing will involve consideration of issues related to his or her clinical conduct or competence, the chair of the Appeal Panel may permit the Appellant to be represented or accompanied by a member of his or her defence organisation. Such a representative may be legally qualified but he or she will not, however, be representing the member of clinical staff in any legal capacity;
 - iv. no panel member shall have had any previous involvement in the member of staff's case, and accordingly no person may sit on both the Hearing Panel and the Appeal Panel in a particular case;
 - v. where the panel is dealing with a member of clinical staff then a representative of a National Health Service or other relevant body may be appointed to the panel and where this occurs the panel may consist of more than three members, but shall not exceed five persons.
56. The Director of Human Resources or his or her nominee shall appoint a member of Human Resources to act as Secretary to the Appeal Panel.

57. An appeal under this Part shall not normally take the form of a re-hearing of the evidence and witnesses may be called only with the Appeal Panel's permission. However, if there is evidence that could not reasonably have been presented at the hearing, and/or if new evidence has emerged since the hearing, this may be presented at the appeal.
58. No later than ten working days before the Appeal Panel Hearing the Appellant shall be notified by the Secretary to the Appeal Panel of:-
- i. the date, time and place of the Appeal Hearing;
 - ii. his or her right to be represented or accompanied at the Appeal Hearing; and
 - iii. so far as they are known at the time, the names of the persons to be present at the hearing including the members of the Appeal Panel, and the name of any person attending to present the reason for the decision to dismiss on behalf of the University.
59. The Appellant may be represented or accompanied at the Appeal Hearing in accordance with the provisions of paragraph 11 above.
60. At least three working days before the Appeal Hearing the name and address of the Appellant's representative must be notified in writing to the Secretary to the Appeal Panel.
61. The Appellant shall take all reasonable steps to attend the Appeal Hearing and/or any adjournment or postponement of the Appeal Hearing. Where the Appellant indicates to the Appeal Panel that he or she does not wish to exercise his or her right to be heard or fails to attend or leaves the Appeal Hearing or any postponement or adjournment of the Appeal Hearing without good cause, the Appeal Panel shall be entitled to proceed in the Appellant's absence.
62. The procedure to be followed in preparation for and at the Appeal Hearing shall be at the discretion of the Appeal Panel, which may include without limitation:-
- i. determining which documents including medical evidence (if any) shall be provided for the Appeal Panel's consideration and at what stage;
 - ii. determining the extent (if any) to which witnesses may be called and questioned; and
 - iii. deciding whether it would be appropriate to adjourn or postpone the Appeal Hearing.
63. The Appeal Panel shall notify the Appellant in writing of the reasons for its decision, normally within ten working days of the Appeal Hearing. A report of the decision will also be sent to the Council and to the Dean or Head of Professional Service. The Appeal Panel may:-
- i. uphold the decision reached by the Hearing Panel; or
 - ii. overturn that decision; or
 - iii. remit the matter to a further new Panel, or to such person or persons as the Appeal Panel shall specify, for reconsideration or re-hearing in whole or in part.
64. The decision of the Appeal Panel shall be final.
65. Any dismissal under this procedure shall remain in force pending the outcome of an appeal. If the decision to dismiss is overturned, continuity of employment shall be restored.