

ORDINANCE 32

**ILL HEALTH/INCAPACITY PROCEDURE**

Part I: PRINCIPLES AND STANDARDS

- 1 The following principles and standards apply to all procedures detailed in these Ordinances.
- 2 These procedures apply to all members of staff except those engaged on a claims basis and Graduate Teaching Fellowships.
- 3 Where there is an issue as to the meaning of 'academic freedom' in any proceedings under these Ordinances, regard shall be had to the agreement with the University and College Union regarding the definition of academic freedom dated 31 July 2009.
- 4 The decision of the appropriate manager/panel on which procedure is to be followed shall be final.
- 5 The application of these Ordinances/Procedures may be modified by the Director of Human Resources in cases where a member of staff employed by the University works in, or is managed by employees of, a third party organisation, including in cases of secondment. In particular:
  - the Director of Human Resources may authorise managers employed by the partner organisation to take action under these procedures, in conjunction with, or in substitution for, appropriate University Managers;
  - where a member of staff raises a complaint about his/her treatment by a partner organisation or any of its employees, the University shall endeavour to deal with the complaint within the spirit of the Grievance Procedure, as far as is practicable to do so;
  - for the avoidance of doubt, action under these procedures may be taken in respect of the member of staff's conduct or performance during his/her work for the partner organisation.
- 6 An employee has the right to be accompanied by a fellow worker or trade union representative at any meeting under the formal stages of these procedures.
- 7 An employee may ask for meetings under the formal stages of these procedures to be postponed for up to one week, on one occasion only. Following such a postponement, the University reserves the right to proceed with the meeting in the employee's absence.
- 8 The Director of Human Resources must be involved at all formal stages of these procedures. References to the Director of Human Resources include a designate of the Director of Human Resources.
- 9 Time limits (other than those for prior notification of meetings/disclosure of documentation before meetings) are indicative – there may be circumstances, particularly in the case of complex cases, where these are not realistic. If it is not possible to respond or take action within the time limits referred to in this Procedure, the employee should be given an explanation for the delay and told when a response can be expected. The time limits may be varied by mutual agreement in individual cases.
- 10 References to academic managers in these procedures means staff in the academic job families with line management responsibility.

## **Part V: ILL HEALTH/INCAPACITY PROCEDURE**

### **1 Purpose and Principles**

- 1.1. The purpose of this procedure is to ensure that the University responds to each case of ill health on an individual, flexible basis while maintaining fairness and common standards, including seeking medical advice from the University's Occupational Health Service at an early stage and consulting with the employee and/or their representative.
- 1.2. At each stage of the formal procedure and before any formal action is taken under this procedure: the University will:
  - give the employee reasonable, written notification of meetings;
  - send to the employee details of the medical information available to the employee's managers and Human Resources;
  - advise the employee that they have the opportunity to present their own medical evidence;
  - advise the employee of their right to be accompanied by a fellow worker or trade union representative
  - apply the University's Code of Practice on Managing Absence and Attendance.
- 1.3. The University reserves the right to proceed with meetings under this procedure in the absence of the employee if they are not well enough to attend in person.
- 1.4. These procedures refer at various stages to the University obtaining medical reports from its Occupational Health Service and/or the employee's doctor. Where the employee refuses consent for medical reports to be obtained or disclosed the relevant manager or panel will make their decision as to the appropriate course of action using the information available at the time.
- 1.5. Nothing in this Procedure shall prevent an application to the appropriate pension scheme being made or accepted at any stage for the employee to retire on ill health grounds. The initiation of the Procedure and any dismissal taken by the University under this Procedure does not imply that the appropriate pension scheme will accept an application for the employee to retire on ill health grounds.

### **2 Scope**

- 2.1 This procedure does not apply to formal action or dismissals taken under the procedure for probation.
- 2.3 There are two separate procedures in this Ordinance which relate to:
  - recurrent short term sickness absence; and
  - long term sickness absence or other medical incapacity.

### **3 Authority to take formal action under this procedure**

- 3.1. The Vice-Chancellor, Registrar and Secretary, Deputy Vice-Chancellors, College Deans, Heads of Service and College Managers are authorised, (subject to any appropriate training), to take action at all stages detailed in paragraphs 4 and 5, including the authority to dismiss, in accordance with this procedure and following consultation with the Director of Human Resources.
- 3.2. Formal action under this procedure in respect of staff in the academic job families will be taken by academic managers.
- 3.3. The Director of Human Resources may authorise other named managers (subject to any appropriate training) to take defined levels of action in accordance with this procedure and following consultation with the Director of Human Resources.

#### 4 Procedure for Recurrent Short-term Sickness Absence

4.1 In any case where an employee's manager is concerned about the employee's attendance level, this procedure may be followed.

4.2 When the absence levels of an employee are to be reviewed under this procedure, the manager must advise the employee in writing, at least one week before the date of the meeting:

- that there will be a meeting under the Ill Health/Incapacity procedure to discuss the employee's attendance;
- of the date, time and venue of the meeting;
- of the concerns about their attendance and absence record, including a summary of his/her absence record for the relevant period
- of the possible outcomes under the Ill Health/Incapacity procedure;
- of their right to be accompanied by a fellow worker or trade union representative.

The purpose of the meeting will be to consider the total absence pattern and its effect on the work area, to explore the employee's views and to identify action that may support or assist.

4.3 At the meeting, if it appears to the manager that there was or may have been an underlying medical condition causing the absence, the manager may adjourn the meeting to refer the employee to the University's Occupational Health Service.

4.4 At the end of or after the meeting (or reconvened meeting), the manager will decide on the appropriate action to be taken, if any, and will send the employee a letter confirming this. The manager's decision may be:-

- to take no formal action, but a further review period may be implemented;
- to give the employee a formal caution in relation to his/her absence levels;
- to give a final caution, where the employee has previously been given a formal caution;.
- to give the employee notice of dismissal, where the employee has previously been given a final caution.

4.5 If the manager decides to give the employee a caution, the manager should set out in his/her letter the next review date and the level of improvement in attendance that is expected in the period to the next review date ('the Review Period'). The caution shall state that if the employee's absence levels do not improve to a satisfactory level, the University may consider dismissing the employee as a result of his/her sickness absence.

4.6 At the end of any Review Period, the manager may:

- write to the employee informing the employee that he/she will be removed from this formal procedure;
- repeat the review process above and, following the meeting under paragraph 4.4, issue a further formal caution or final caution or where the employee has previously been subject to a final caution, give the employee notice of dismissal.

4.7 The employee will have the right to appeal against a caution or notice of dismissal issued under the Procedure for Recurrent Short-term Sickness Absence in accordance with paragraph 6 below.

#### 5 Procedure for Long Term Sickness Absence or Medical Incapacity

5.1 This procedure shall apply:

- where an employee has been absent from work due to ill-health for a period in excess of four weeks (such absence being deemed to be 'long term' for the purposes of this Procedure) and where, applying the University's Code of Practice on Managing

Absence and Attendance, the University has reasonable concern that the employee may not return to work within a reasonable timescale; or

- where, due to any medical condition, illness or other incapacity, an employee is, or has become, or is considered to have become or likely to become, unable to perform his/her duties (or any part thereof), either in whole or in part, or to be able to do so only with difficulty, or to be unable to perform his/her duties to an acceptable standard.

#### Part A: Informal Consideration

- 5.2 The purpose of this part of the procedure is to explore through meetings with the employee (and/or their representative), and with the assistance of medical or other expert advice as appropriate, the following issues, as appropriate:
- 5.2.1 the nature of the employee's medical condition, illness or incapacity;
  - 5.2.2 the likely prognosis for the employee's health and fitness to carry out his/her duties;
  - 5.2.3 where the employee is absent from work, the likely prognosis for him/her returning to work on a sustained basis and being fit to carry out his/her duties in full and/or to perform them to an acceptable standard;
  - 5.2.4 where relevant, the likely prognosis for the employee being able to perform his/her duties, in whole or in part, and/or to perform them to an acceptable standard;
  - 5.2.5 whether any changes can be made to the employee's role or duties or to his/her work environment, or to the way in which his/her duties are organised or performed, in order to resolve the situation to the satisfaction of the employee and the University and/or (in cases of absence) to facilitate the employee's return to work on a sustained basis; and/or
  - 5.2.6 whether any other action could be taken to address the issues raised by the employee's ill-health incapacity.
- 5.3 An employee on long term sick leave, shall also have a responsibility to update the University regularly on his/her likely date of return to work.
- 5.4 The University may seek medical information from its Occupational Health Service and/or the employee's doctor, and may refer the employee to be examined by the Occupational Health Service or a doctor nominated by the University. This process may be repeated if it is considered appropriate to do so. The stage at which the first and any subsequent meeting(s) are held will depend on the circumstances of the particular case.
- 5.5 For the avoidance of doubt, the changes or actions referred to in paragraphs 5.2.5 and 5.2.6 above may include the permanent or temporary transfer of the employee to alternative employment or a permanent or temporary variation to the employee's duties or other terms and conditions of employment. Nothing in this Procedure shall oblige the University to maintain, in making such changes or taking such action, an employee's existing terms and conditions of employment, in particular (but without limitation) in respect of pay or other remuneration.

#### Part B: Formal Consideration

- 5.6 If it is not possible to resolve the situation to the satisfaction of the employee or the manager, the manager may refer the issues to the Director of Human Resources for consideration (under paragraph 5.7 of this procedure), as appropriate, whether the employee should be dismissed and/or what other action (including the matters referred to in paragraphs 5.2.4 and 5.2.5 above) should be taken. The manager shall inform the employee of the decision to refer the issues to the Director of Human Resources. The manager's report should summarise the relevant issues and the action taken under this Procedure and the issues which it is proposed should be considered.
- 5.7 Human Resources shall inform the employee in writing as soon as possible after receiving the reference under paragraph 5.6 above :

- summarising the issues to be considered at the hearing and enclosing a copy of the manager's report and any other documentation or information which shall be referred to at the Hearing in support of the action recommended by the manager;
- giving notification of the time, date and venue of the hearing;
- informing the employee in accordance with paragraph 1.2 above.

5.8 Decisions taken under this part of the Procedure will be taken by a manager with no previous involvement in the case (the 'manager'). The manager may, at their discretion, determine which witnesses (if any) shall be called and questioned and whether it would be appropriate to adjourn or postpone the hearing at any time prior to or during the hearing to obtain further medical information of any kind prior to making their decision.

5.9 As soon as is reasonably practicable after the hearing, the manager shall reach his/her decision as to whether the employee should be dismissed or as to any alternative action that should be taken in respect of the employee. The manager responsible for considering the case shall produce a reasoned written decision, normally within two weeks of the hearing, which will be sent to the employee. Where the decision is to dismiss the employee, the employee will be sent a notice of termination of employment on behalf of the University.

5.10 The employee shall be notified of his/her right to appeal against the manager's decision in accordance with paragraph 6 below.

## 6 Appeals

6.1 An employee has a right of appeal against any formal action under this Ordinance.

6.2 The right of appeal must be exercised within two weeks of the date of the written outcome of the manager's decision.

6.3 The appeal, stating the grounds on which it is made, must be in writing addressed to the Director of Human Resources.

6.4 An appeal will be heard by a panel comprising two senior managers who have had no previous involvement in the case. In the case of an appeal against a final warning or against dismissal, the panel will be drawn from members of the Senior Management Group from a different College/Service.

6.5 The University will aim for an appeal to be heard within four weeks of the appeal being lodged, unless otherwise agreed between the parties.

6.6 The appeal will be a review of the decision taken by the manager under paragraph 4 or paragraph 5. No new evidence may be presented to the Appeal Panel unless the Appeal Panel is satisfied that there are exceptional reasons why such evidence was not produced at the meeting which led to the decision under appeal and/or that consideration of this evidence is necessary in the interests of fairness, in reviewing that decision.

6.7 Where appeal is against action taken by the manager under the Procedure for Recurrent Short-term Sickness Absence, the appeal panel may:

- confirm the decision of the manager; or
- overturn that decision and substitute one of the lesser outcomes referred to in paragraph 4.4

and shall send a letter to the employee confirming this.

6.8 Where appeal is against action taken by the manager under the Procedure for Long Term Sickness Absence or Medical Incapacity, the appeal panel may:

- confirm the decision of the manager; or
- overturn that decision and/or reinstate the employee and/or impose any other action that the appeal panel considers appropriate is to be taken in the circumstances.

and shall send a letter to the employee confirming this.

- 6.9 The decision of the appeal panel (communicated in writing to the employee) shall be final within the procedures of the University.
- 6.10 The procedure to be followed at appeal hearings is detailed in Ordinance 33.

## ORDINANCE 33

### **PROCEDURE TO BE FOLLOWED BY APPEAL PANELS**

The following procedure shall be followed at appeal hearings in respect of appeals made under the following procedures:

- Disciplinary Procedure
  - Capability/Performance Procedure
  - Ill Health/Incapacity Procedure
  - Redundancy Procedure
  - Fixed Term Contract Procedure
  - Procedure for Dismissal on Other Grounds
1. The University's representative shall put the case in the presence of the appellant and their representative.
  2. The appellant (or their representative) may ask questions of the University's representative.
  3. The appeal panel may ask questions of the University's representative.
  4. The appellant (or their representative) shall put their case in the presence of the University's representative.
  5. The University's representative may ask questions of the appellant.
  6. The appeal panel may ask questions of the appellant.
  7. The University's representative may sum up the University's case.
  8. The appellant (or their representative) may sum up the appellant's case.
  9. The University's representative and the appellant and their representative shall withdraw.
  10. The appeal body shall deliberate in private, but may recall both the University's representative and the appellant (and their representative) to clear points of uncertainty on evidence already given.

(Note: reference to the University's representative above includes both the manager who took the formal action under the procedure which is being appealed against and any other person appointed by the University to present the University's case.)