

**UNIVERSITY OF LEICESTER  
ORDINANCE**

**ILL HEALTH CAPABILITY  
(Ordinance Policy)**

For use in:	All Divisions/Schools/Departments/Colleges of the University
For use by:	All University employees
Owner	Staffing Policy Committee
Dates of Trade Union Consultation and Negotiation	Start: 8 January 2010 End: 2 March 2011
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**DRAFT**  
**ILL HEALTH CAPABILITY ORDINANCE: POLICY**

**1. Introduction**

- 1.1. The Ill Health Capability Ordinance Policy & Procedure outlines the University's approach to handling employment issues arising from serious, long-term ill health and incapacity. The policy and procedure should be read together.
- 1.2. The Ill Health Capability Ordinance Policy and Procedure will only normally apply where a member of staff has a certified, long term medical condition, disability or an illness or injury that has the potential to be long- term from the outset (e.g. injury resulting from serious car crash or heart attack) and is impacting upon their:
  - attendance at work (e.g. a member of staff is absent from work suffering from a long-term or recurring chronic illness); or
  - performance at work (e.g. a member of staff who is unable to carry out the full range of their contractual duties due to a medical condition or disability).
- 1.3. Where the attendance or performance of a member of staff is affected by prolonged or repetitive absence from work and there is no underlying medical condition, the issue should normally be managed under the Performance Management Ordinance.
- 1.4. The University's expectation is that the Ill Health Capability Ordinance will only be used for serious cases of ill health capability. The formal procedure will normally be invoked once all other avenues of support have been explored. For further details about the management of sickness absence issues, please refer to the University's Sickness Absence Policy or contact HR.
- 1.5. Staff will be consulted on changes via the established channels for consultation and negotiation with the recognised Trade Unions, where the University wishes to amend the Ill Health Capability Ordinance.

**2. Aims of the Policy**

- 2.1. To ensure that members of staff who are suffering from long term illnesses and disabilities are treated sympathetically and sensitively, in line with legislative requirements.
- 2.2. To provide support and guidance to managers and members of staff regarding serious issues of long-term ill health and incapacity.
- 2.3. To ensure that, as far as possible, the Ill Health Capability Ordinance (Policy and Procedure) is efficiently managed in a fair and equitable manner.
- 2.4. To facilitate the University in meeting its performance objectives.

### **3. Scope**

- 3.1. The Ill Health Capability Ordinance Policy & Procedure applies to all University employees.

### **4. Principles**

- 4.1. This Ordinance will only be applied in cases of long-term, serious ill health and incapacity.
- 4.2. Sickness which is not attributable to an underlying health condition will be managed as a performance issue (for poor attendance) under the Performance Management Ordinance.
- 4.3. In cases of ill health capability, the University will take all reasonable steps to consider a range of options to accommodate a disability or facilitate a return to work, where possible, in line with prevailing legal requirements.
- 4.4. The University will seek up-to-date, relevant medical evidence where dismissal for ill health capability may be a possibility.
- 4.5. A member of staff may, with good reason, object to the appointment of any individual involved in hearing their case. The objections will normally be considered by a manager of a higher grade than the chair of the hearing.
- 4.6. A member of staff will not be dismissed where there is evidence to suggest that a full recovery is likely to be made within what the University defines as a reasonable timescale. Timescales will be decided on a case-by-case basis and will take into account medical evidence and the business case.
- 4.7. The decision to dismiss a member of staff under this Ordinance will not be taken until after reasonable adjustments, redeployment and an application for ill health retirement have been considered.
- 4.8. In cases where a member of staff has an inter-dependent contract of employment with the NHS and the University, representatives from the NHS may be included in formal proceedings (e.g. in an Investigation or Hearing).
- 4.9. The University reserves the right to dismiss a member of staff on the grounds of ill health capability where:
  - a return to work date cannot be established from the medical evidence;
  - the staff member's state of health prevents a sustained return to work within what the University defines as an acceptable timescale;
  - no suitable work alternative can be found;
  - reasonable adjustments, redeployment and/or an application for ill health retirement are inappropriate or have been unsuccessful;
  - the continued employment of the staff member is unsustainable.
- 4.10. The University will meet the reasonable costs of any medical opinion required.

4.11. The Ill Health Capability Ordinance will be operated in accordance with the principle of Natural justice. Natural justice includes the notion of procedural fairness, which includes the following:

- A right to advance warning - a person should be given adequate notice about the proceedings and access to relevant documentation in a timely manner;
- Proceedings should be conducted so they are fair to all the parties;
- Each party to a proceeding is entitled to ask questions and challenge the view/ proposal of the other parties;
- A person who makes a decision should be unbiased and act in good faith;
- A person (or panel) making a decision should declare any personal interest they may have in the proceedings;
- Justice should be seen to be done.

## **5. Role of HR**

- 5.1. The role of HR is to ensure that formal proceedings comply with employment law and the University's policies and procedures. The primary role of HR is to advocate on the part of the institution, not for a manager or a member staff.
- 5.2. During formal proceedings, members of HR will act as independent, advisory guardians and regulators of the process. Members of HR will point out any issues in respect of employment law or the University's policies and procedures during formal meetings.
- 5.3. Members of HR are not permitted to undertake the role of decision maker on individual cases. Questions from members of HR must be asked through the chair of a formal meeting.
- 5.4. Once informed of a formal ill health capability case, HR will issue the Ill Health Capability Ordinance (Policy and Procedure) to all parties involved.

## **6. Occupational Health**

- 6.1. The role of Occupational Health is to meet, confidentially, with a member of staff, and based on the medical evidence, to provide recommendations (in the form of a written report) to the University about the staff member's health.
- 6.2. A member of staff may be referred to Occupational Health where a line manager is concerned about the staff member's attendance, performance and/or behaviour, even if the member of staff has not taken time off work.
- 6.3. The University normally requires staff to attend Occupational Health appointments so that medical evidence can be appropriately obtained and communicated to the University for consideration.
- 6.4. The recommendations made by Occupational Health will be considered by line managers but may not be implemented in all cases, if the University considers it not to be reasonable in consideration of the working environment or operational requirements.

- 6.5. All Occupational Health referrals are made by HR, on behalf of a line manager.
- 6.6. The University or Occupational Health may request GP or specialist medical reports for the exact details or further clarification of a staff member's medical condition(s). All requests will be made in accordance with the Access to Medical Reports Act 1988.

## **7. Access to Medical Records**

- 7.1. The University expects staff to provide access to their medical information and undergo a medical examination, where requested.
- 7.2. Where a member of staff refuses to give permission for the University to access their medical information or to undergo a medical examination, the University may make decisions about the staff member's employment based on the information available.

## **8. Disability-related illness/issues**

- 8.1. Discrimination against disabled people is unlawful under the Equality Act 2010. This includes harassment because of a disability, less favourable treatment because of a disability or for a reason related to the disability that cannot be justified, or unjustifiable failure to make reasonable adjustments to the workplace.
- 8.2. Reasonable adjustments may include, but are not limited to, provision of specialist equipment, giving training, altering working hours, making adjustments to premises, providing flexible working arrangements, etc.
- 8.3. The Equality Act 2010 defines a disabled person as "a physical or mental impairment that has a substantial and long term adverse effect on a person's ability to carry out normal day-to-day activities".
- 8.4. For the purposes of the Equality Act:
  - substantial means neither minor nor trivial;
  - long term means that the effect of the impairment has lasted or is likely to last for at least 12 months (there are special rules covering recurring or fluctuating conditions);
  - normal day-to-day activities mean everyday things like eating, washing, walking and going shopping.
- 8.5. Line managers are advised to contact HR for advice about whether a member of staff may be protected by the Equality Act 2010 or any ill health issues regarding the management of a member of staff with a disability.
- 8.6. Where an ill health capability issue arises and HR considers that the member of staff is a disabled person under the Equality Act 2010 the Ill Health Capability Ordinance (Procedure) will be followed, in line with legislation.

## **9. Ill Health Capability Procedure**

- 9.1. There are a number of steps that a line manager and/ or chair of an ill health capability hearing (in consultation with HR) are required to follow, in line with legal requirements when handling a case of ill health capability. They include:
- Establishing up-to-date, relevant medical evidence;
  - Engaging in meaningful consultation with the member of staff;
  - Assessing whether a return to work (or full duties) is likely;
  - Considering a range of options including reasonable adjustments, redeployment and ill health retirement;
  - Where none of the above are appropriate, informing the member of staff that their employment may be at risk;
  - Considering dismissal on the grounds of ill health capability;
  - Writing a detailed ill health capability report;
  - Holding an ill health capability hearing;
  - Delivering an outcome;
  - Giving the member of staff the right to appeal.
- 9.2. For further details of the steps involved in managing a serious ill health capability issue, please refer to the Ill Health Capability Ordinance (Procedure).

## **10. Right to be accompanied**

- 10.1. A member of staff has the right to be accompanied to formal meetings. The chosen companion will normally be a trade union representative, an official employed by a trade union or a fellow worker.
- 10.2. Where requested, a member of staff may be accompanied or represented by a responsible relative or friend, in addition to (or instead of) that member, where approved by the HR Director. Decisions will be made on a case-by-case basis.
- 10.3. Where the right to be accompanied is exercised, the normal expectation is that a member of staff will be accompanied by a local Trade Union representative at formal meetings and, where required, by an official employed by the Trade Union at appeal.
- 10.4. Where the Ill Health Capability Ordinance (Policy and Procedure) refers to a "Trade Union representative", this includes an official employed by the Trade Union.
- 10.5. A medical opinion will be sought in order to determine whether a member of staff should be accompanied/represented by a friend or relative in formal meetings (to ascertain whether the illness or disability requires it).
- 10.6. In cases where the outcome is likely to end, prematurely, the staff member's professional career, the Registrar or a Pro-Vice-Chancellor (with advice from the University's Legal Adviser) may permit the member of staff to have legal representation at the individual's own cost.

- 10.7. A member of staff who has an inter-dependent contract of employment with the NHS and the University may be accompanied to formal meetings by a representative of a medical defence union.

## **11. Stress/Illness During the Ill Health Capability Procedure**

- 11.1. The University has a duty of care to all of its members of staff. Therefore, where a member of staff is experiencing stress or continued illness during this process the University will request a medical report (from the staff member's GP, specialist or Occupational Health) to determine if and when a member of staff is fit to attend a hearing.
- 11.2. The role of Occupational Health is to meet, confidentially, with a member of staff and based on the medical evidence, to provide recommendations to the University about a staff member's health.
- 11.3. Where a member of staff is deemed fit enough to attend by a medical practitioner or Occupational Health, the hearing will be arranged in the normal way. Where the medical advice suggests that a hearing may go ahead with adjustments, the hearing will be arranged accordingly.
- 11.4. Where a member of staff is deemed to be too unwell to attend by a medical practitioner or Occupational Health, the hearing will normally be rescheduled. However, where the member of staff is persistently unable to attend, the chair (or panel) may take a decision to hold the ill health capability hearing in their absence using the documentary evidence available and written submissions where appropriate.

## **12. Witnesses**

- 12.1. The member of staff has the right to call witnesses to a hearing. However, the staff member's witnesses are not obliged to attend if they do not wish to.
- 12.2. Witnesses and the relevant individual(s) involved in an ill health capability case may be interviewed as part of the formal investigative process.
- 12.3. Interviews with witnesses will be documented. A note of the interview must be signed by each witness or relevant individual to confirm that the information is accurate and complete.
- 12.4. The member of staff under investigation will receive a copy of all appropriate paperwork relevant to the investigation that they are entitled to see (including witness statements).
- 12.5. Where requested, the note of an interview may be disclosed to other appropriate individuals involved in an ill health capability case (e.g. a witness). However, in accordance with data protection regulations, these documents may be redacted to items relevant only to that individual.

- 12.6. Where the member of staff wishes to call witnesses, the request must be made to the chair at least 72 hours in advance of the hearing. Where the author of the ill health capability report wishes to call relevant witnesses, the member of staff will be informed at least 72 hours in advance of the hearing.
- 12.7. Any member of staff called to attend an ill health capability hearing may request that alternative arrangements are made to reflect the sensitivity of the situation (i.e. submissions may be made in writing or HR may have the member of staff in a separate room). The Chair of the hearing will decide, after seeking advice from HR, if the request is appropriate.
- 12.8. Any relevant information including evidence from witnesses or relevant individuals must be made available to the member of staff against whom misconduct is alleged of misconduct at least 5 working days before a hearing.
- 12.9. Witnesses and the relevant individual(s) involved in an ill health capability case have the right to be accompanied to formal meetings, if they choose, by a Trade Union representative or work colleague.

### **13. Suspension**

- 13.1. Depending on the nature and severity of the health issues, a line manager or the chair of an ill health capability hearing (on the advice of HR) may deem it necessary to suspend a member of staff, *in exceptional circumstances*. Reasons for this could include *but are not limited to* the following: the manager has reasonable belief that the staff member's health issues has presented or is likely to present a risk to the staff member's health and safety or that of others, or to systems, processes and relationships necessary for good management.
- 13.2. Suspension is not disciplinary action. It is a neutral act. A member of staff on suspension will continue to be paid.

### **14. A Grievance arising out of the Ill Health Capability Process**

- 14.1. Where a member of staff raises a grievance during an Ill Health Capability process the Ill Health Capability process may be temporarily suspended by the University in order to deal with the grievance. Where the grievance and Ill Health Capability cases are related it may be appropriate for the University to deal with both issues concurrently.
- 14.2. The decision to suspend or continue the Ill Health Capability process will normally be made by the PVC Resources (for academic staff) or the Registrar and Secretary (for all other staff).



## **15. Rearranging or Non-Attendance at Hearings**

- 15.1. A member of staff must make every effort to attend formal hearings. Failure to attend without good reason may be treated as misconduct.
- 15.2. Where a member of staff is unable to attend for any reason then he/she must notify the chair of the hearing as soon as possible and fully explain the failure to attend.
- 15.3. Where the chair of a hearing/appeal considers that a member of staff has failed to attend without good reason, the chair may take a decision (in consultation with HR) based on the available evidence, where appropriate.
- 15.4. Where the member of staff is persistently unable to attend (for example for health reasons), the chair of the hearing/appeal may take a decision on how to progress the case (in consultation with HR) based on the available evidence, where appropriate.

## **16. Documentation**

- 16.1. All documentation (informal and formal) relating to this Ordinance will be written sensitively by line managers, treated as confidential and forwarded to HR for filing on the staff member's personnel file. Informal documentation will be retained for data protection purposes, only.