Procedure for Handling Incapability on Grounds of Health (Academic Staff)
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1 Introduction

1.1 This procedure should be used rather than the Disciplinary Procedure for cases of established ill-health or where the individual who is continuing to work has a health problem which renders him/her incapable of carrying out his/her contractual obligations to the full and which needs to be addressed in the interests of both the individual and the University.

1.2 In the event that the individual objects to their case being treated as one of incapability due to ill-health, he/she has the right to request that his/her case be considered under the Disciplinary Procedure and such a request will not be unreasonably refused.

1.3 The procedure may be initiated either by the individual or by the University depending on the circumstances of the particular case. It may arise from:

a. A lengthy period of sickness.

b. The effect of a potential health problem being identified within the University, for example under Health and Safety legislation.

c. A health problem being identified during the instigation of the Grievance or Disciplinary procedures. In this case it would be normal practice for both parties and the individual’s representative, where appropriate, to discuss the method of transfer of the case to this procedure in the specific circumstances, taking particular notice of any sensitive issue relating to the individual’s situation.

1.4 It must be recognised that there could be a number of different outcomes resulting from a case being considered under this procedure.

It may be that by addressing the issue with the support of the University’s medical adviser, the individual may seek a specialist consultation, which may in turn identify the appropriate medical treatment for his/her condition. If this is not the case, then possible, practicable alternative solutions will be considered which address the interests of both the individual and of the University and which include alternatives other than to terminate employment on grounds of ill-health.

1.5 The primary aim of this procedure is to ensure that, when a problem has been identified in respect of health capability, managers handle the matter with sensitivity within an appropriate timescale and that they only do so either with the direct involvement of the Human Resources Team, or following consultation with the Human Resources Team.

It is also recognised that the individual may wish to initiate some consideration of his/her position.

1.6 If it is necessary to terminate the individual’s contract on health grounds, the effective date of termination may be mutually agreed, but in any event it will incorporate any outstanding sick leave entitlement payable during the twelve month period from the date the sick leave initially commenced.

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2 Principles

2.1 It is accepted that there is a need to establish good employment practices which are sensitive to the serious problems facing both the individual suffering from long term severe illness or disability and the individual who becomes disabled during his/her employment.

2.2 At the same time, this has to be balanced with the need for active management where there appears to be a question of ill-health incapability. This is necessary for a number of reasons:


b. Sensitivity to the position of the individual, his/her work colleagues and the students (to ensure minimal disruption of their studies).

c. Health and safety legislation.

d. Financial cost which could be incurred as a result of medium/long-term absence and/or possible legal implications.

2.3 Where, after the full consultation procedure has been exhausted, it is found that it is not possible for the individual to continue in his/her present position as it stands, then, where practicable, a range of alternative solutions will be examined before consideration is given to termination of employment on health grounds, for example:

a. Whether the provision of any practical aids can be obtained by the University in order for the individual to continue in his/her current position.

b. The consideration of alternative positions in which he/she could be employed where a vacancy exists or where transfers could occur without detrimental effect to the University, other employees, or students.

   The salary of such a transferred individual may be protected whenever possible in the circumstances of his/her case.

c. Whether it is possible to accommodate a change in working practice which would be of assistance (this may include a range of options including reduced hours on a temporary or permanent basis).

d. Retraining, rehabilitation or therapeutic treatment incorporated into a revised contract as (c) above.

2.4 When a decision to terminate employment is taken, it is an employment decision based largely on a balance of the individual’s and the University’s interests. These deliberations would lead ultimately to a consideration of whether, in all the circumstances, it is reasonable to expect the University to continue to employ the individual.

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2.5 In all cases of illness it is important that the problem can be perceived as having been dealt with sympathetically whilst meeting the interests of the University, other employees and the students in a fair manner.

2.6 At the time that a formal procedure is invoked, the individual will be reminded of his/her right to involve his/her recognised trade union.

3 Procedures in Cases of Substantial Absence Due to Ill Health

3.1 Legal Aspects

In many cases of long term absence matters may be resolved by mutual agreement. However, in some cases mutual agreement may not be reached and the University will need to make a decision with regard to termination of employment. In reaching a decision the University will consider the appropriate criteria under English Law.

3.2 Where any absence exceeds 10 weeks\(^1\), after contacting the individual to obtain his/her consent, the case will normally be referred for medical opinion. The individual has certain legislative rights in this respect. It is a condition of employment that staff are required to attend for a medical examination if requested to do so. In the event that the individual refuses to do so or declines to give permission for the University’s medical adviser to contact his/her GP, a decision may have to be taken on the basis of information which is available at the time.

In the case of disagreement between the University’s medical adviser and the individual’s GP, the opinion of a third, independent, qualified medical practitioner will be sought, the cost to be met by the University.

3.3 Where medical evidence confirms that the absence is due to genuine illness/injury and it is clear that the medical problem cannot be resolved satisfactorily by other means within a reasonable time frame, then the position should be treated as potentially one of termination on the grounds of health, not as a disciplinary termination.

3.4 It is important that during the process contact is maintained by informal visits and enquiries. This is in the interest of good personnel practice aiding sympathetic consideration of the circumstances of the case.

3.5 The Head of School or Department should seek advice from HR to ensure that each case is treated in line with the university’s policies and processes.

3.6 Where the employment of the individual on long term absence on health grounds (whether continuous or intermittent) is terminated, the normal conditions for giving notice should apply. If in practice the individual is unable to work a notice period, then providing a GP medical note is produced the statutory notice period will be at full pay.

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\(^1\) This will reduce to 4 weeks on a phased basis as agreed with UCU. It will reduce to 6 weeks once the university's Attendance Management Policy has been in place for 6 months and will be reviewed after a further 6 months before it is reduced to 4 weeks.

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4 Procedure in other Cases of Incapability Due to Ill Health

4.1 Cases of incapability due to ill health, unlike disciplinary cases, cannot always be treated rigidly in steps. This particularly applies in cases of chronic illness where it may be inappropriate to invoke formal interviews. Stages are not easily identified as progress may be variable. In such circumstances the procedures below should be applied, where it is appropriate to do so, within an informal setting.

4.2 Industrial injuries (where claims arise) should be treated no differently in respect of the procedures than for other health related capability matters. The employee should go through the various stages of consultation and advice that are specified throughout this document.

4.3 Stage one below may, in effect, have several different sub-stages. It is important that, if moving from the informal initial stage (one) to the more formal stage (two) it is made clear to the individual and/or his/her representative by the University management that the procedure is entering a formal stage. Where the formal procedure is being instigated by management, then this initially must occur through the Human Resources Team. In the initial stages of the process the individual will be given every opportunity to demonstrate his/her capability and will be assisted wherever possible to reorganise work by mutual agreement if this could facilitate the solution to a problem.

4.4 In this field, however, the procedures may be instigated by the individual or on many occasions arise mutually and it is not possible to define mandatory rules as to how the procedure should be followed. What is important is that the spirit of proper steps and consultation occurs in an appropriate way to meet the circumstances of the individual case.

4.5 The stages are as follows:

a. Stage 1

Informal discussion with the individual, including counselling, where appropriate, may occur in the School or Department and/or in conjunction with the Human Resources Team. During this stage there should be particular emphasis on assisting the individual. Sometimes it may be necessary to help him/her recognise and come to terms with a problem and to seek or obtain appropriate treatment. More frequently, the individual will be aware of his/her health problems and exploration of the difficulties will lead to a mutually acceptable plan emerging.

b. Stage 2

Formal health interviews and obtaining medical advice. Under consideration will be redeployment, reduced hours on a temporary or permanent basis; time frames may be set or other conditions that are to be associated with this process, e.g. in certain justifiable circumstances a change of some aspects of work or a proposal for a reduced workload for a defined fixed term period based on any appropriate medical advice available. Alternatively, retirement options may be explored.

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c. Stage 3

Consultation with the individual leading to a conclusion on the action to be taken. This could be termination of employment on health grounds and may involve consideration of matters such as retirement, ill health breakdown pension.

4.6 Decisions regarding the different stages of this procedure will be taken by the Head of Department in full consultation with an appropriate HR Partner. The employee may appeal against any decision to apply the procedure and/or against the outcome of any stage. Such an appeal will be considered by a more senior member of management not previously involved in the case in consultation with a more senior member of HR.

4.7 It is important that Stages 1 and 2 are carried out correctly, with supporting medical information and with due regard to timescales. Should the decision at Stage 3 be to terminate the individual’s employment, notice periods should be such that the date of any termination of employment should take into account the circumstances of the individual case together with the period of any sick pay entitlement (1.6 refers).

5 Medical Advice

5.1 Where regular or excessive intermittent absence occurs (without satisfactory supporting medical evidence) the individual may be referred to the University’s medical adviser for advice and an opinion on his/her case. As a final resort, where the absences are not supported by satisfactory medical evidence, disciplinary procedures for excessive absence will be followed.

5.2 Where the Human Resources Team refers the matter to the University’s medical adviser, the latter will normally seek a medical report from the individual’s own doctor or consultant and will follow this with an examination or interview. The examination or interview may be omitted should the medical adviser be satisfied of the facts in written correspondence with the individual’s own doctor. The individual has certain legislative rights, of which he/she will be informed in writing in the Consent Form, which, in all cases, should be completed before a referral is made.

5.3 In the event that the individual’s problems have been diagnosed as being either alcohol or drug related he/she will have the same consideration and protection as granted to the individual with other problems relating to ill health or personal stress.

5.4 Should the individual refuse diagnosis or treatment, or discontinue a recovery or similar programme, then the case will be sympathetically considered in the light of expert opinion and having regard to the welfare of the students and the reputation of the University. After such consideration, it may be necessary for the case to be heard under the Disciplinary Procedure.

6 Notes

6.1 The procedures involved in most cases will not be likely to exceed the normal periods of sick pay. This is important to ensure that the individual does not reach a ‘no pay’ situation before a decision is taken. However, there may be special circumstances where this is not practicable. Where the process has been instigated and is proceeding

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along mutually agreed lines then these time periods may not be appropriate and the University may extend the entitlement.

6.2 Any individual who is concerned about a health question should be encouraged in the first instance to consult the occupational nursing sisters in the Staff Medical Centre. Information given to them in confidence and all medical information will remain confidential and will only be passed on to others with the prior consent of the individual concerned.

6.3 Confidentiality of information will be maintained at every stage of the procedures. Information will not be disclosed other than to those necessarily involved with the case without prior discussion with the individual.

6.4 Individuals who so wish, may be accompanied by a member of the family, a work colleague or an employee representative at any stage of the procedure.

6.5 A process of monitoring the procedure will be established along the lines of the monitoring process now in operation as part of the Grievance Procedure.

On behalf of UCU:

___________________________           Date__________
(Signature)

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(Print name)

On behalf of
De Montfort University

___________________________           Date__________
(Signature)

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(Print name)