



# **Capability Policy (including Capability and ill-health) 2018-21**

Date of issue: January 2018

Policy owner: Director of Human Resources

Vice-Chancellor's Group approval

TLT Solicitors

Governors Strategy and Resources Committee

Date: 14 February 2018

Date: 5 January 2018

Date: 27 March 2018

## 1. Introduction

This Policy deals with capability and performance. The term 'capability' refers to an employee's ability to perform the work expected of them to the standard required. The University has a responsibility for setting realistic standards of performance, for explaining these standards carefully to employees during induction and probationary periods, during regular one-to-one meetings and through the annual PRDP (Performance Review Development Plan) process. The policy differs from the Disciplinary Policy as its primary focus is that of improving performance to the standard required.

All employees have a contractual responsibility to perform their duties well and they should be given all reasonable support and encouragement to do so. Where any instances of poor performance are identified, the University will provide the employee with an opportunity to make improvements. An informal approach brings concerns to the attention of the employee, exploring causes, identifying responsibilities and agreeing actions to be taken. An informal approach should be used before entering into the formal capability procedure.

Whilst the majority of staff meet or exceed the standards required of them, performance problems may arise. The Capability Policy is not intended for use in situations where there is a deliberate failure by the employee to perform to the standards of which he/she is capable. Failure to perform to the required standards through negligence, lack of effort or insubordination would be viewed as misconduct and would likely be dealt with under the Disciplinary Policy.

It is recognised that capability problems may result from underlying work problems or personal issues that may be outside the employee's direct control. Consequently there is a need to treat all capability issues with care and sensitivity and to identify and (where appropriate) address the underlying causes. Incapacity due to ill health or sickness absence which affects the employee's capability to fulfil the requirements of their role should be addressed under 'Capability and Ill-Health' in **Appendix B** (pages 11-15).

## 2. Principles of the Policy

This policy applies to all employees who have successfully completed their probationary period and establishes guidelines for managers and staff when an employee's work performance falls below the standard appropriate for the role due to underperformance. The policy comprises:

- 1) Details of the Capability Policy
- 2) Appendix A: Questions and Answers
- 3) Appendix B: Procedure for dealing with Capability and ill-health

The Capability Policy is based on some general principles which will accord with most people's views of 'fairness' but which are also well established in statute or case law. These principles are as follows:

- The procedure provides consistency in how staff, with widely differing responsibilities and duties, are given opportunities to attain satisfactory levels of performance.
- The procedure assists in identifying the most appropriate form(s) of support for the employee.
- The application of the procedure will be without discrimination. Action will be taken which is reasonable, necessary, and understood.
- All parties involved have the right to be heard with courtesy and respect and to state their case. Any action taken under this policy must be in line with the University's Equality and Diversity Policies.
- At all formal stages of the Capability Policy, an employee is entitled to be accompanied by a trade union representative or by a work colleague. Should an employee wish to be accompanied at any informal stage of the process they should discuss this with Human Resources.
- All statements, letters and other communications should be regarded as confidential to those involved in the process.

## 3. Responsibilities

Managers are responsible for:

- Ensuring that they identify underperformance and seek to address this at the earliest opportunity.
- Considering whether there are any issues in or outside of work which may be impacting on the

- employee's ability to undertake the work to a satisfactory standard.
- Setting realistic objectives and standards for performance in consultation with employees.
- Ensuring that employees are continually aware of their duties and responsibilities through the PRDP (Performance Review Development Plan) process and on-going dialogue.
- Giving honest and constructive feedback on performance. Managers should ensure that they have regular review meetings with those they manage and that there is opportunity for discussion.
- Offering advice and direction which is supportive and enabling rather than destructive and negative. Any problems that occur should be brought to the attention of the employee promptly.

Employees are responsible for:

- Performing their duties and responsibilities to an acceptable standard.
- Advising their managers at the earliest opportunity of any issues, in or out of work, affecting or likely to affect their performance.
- Raising with their manager any concerns they might have relating to the completion of tasks or objectives and/or responsibilities.
- Fully engaging with their managers when dealing with issues relating to their own performance.
- Ensuring their performance meets the requirements of their role and any targets set.
- Maintaining and developing their skills and expertise in order to accommodate change and adapt to new working requirements.
- Participating in the PRDP (Performance Review Development Plan) process, one-to-one meetings and on-going dialogue with their manager.

#### 4. Stages of the capability process

There are four stages of the capability process:

- **Informal stage** – Involving informal meetings between the manager and the employee to explore ways in which improvements can be made and to agree any additional support required (page 3, point 5).
- **Formal Stage 1** – First capability hearing (pages 4 and 5, point 9.1).
- **Formal Stage 2** – Second capability hearing (page 6, point 9.2)
- **Formal Stage 3** - Dismissal or redeployment (pages 6, 7 and 8, point 10)

#### 5. Informal Stage

The University recognises that there may be occasions when performance falls below expectations. In the majority of cases, where employees are experiencing difficulties with performance, the problem should be immediately addressed when it first becomes apparent, either through the normal daily/weekly meetings, or in an informal, supportive way through dialogue between the line manager and the employee.

Where there is evidence that an individual is not performing to an acceptable level, the manager should address the circumstances without delay and endeavor to ascertain the reasons for the under-performance, which could be resolved. The manager will arrange to meet with the employee to reflect those concerns and explore ways of addressing them. At this meeting the manager will set a reasonable timeframe within which improvement is expected. The manager may issue advice and guidance to the employee or provide mentoring, coaching, training or some other kind of ongoing support to the individual.

If, after discussion, both parties agree that it will help to provide a structured approach to addressing the performance issue, clear guidance should be given using SMART (specific, measurable, achievable, realistic and time-bound) objectives. It is advisable to confirm the outcomes of any discussions in writing to the employee and to retain any notes of these informal discussions or meetings.

Following a satisfactory outcome using the informal procedure the matter will be considered resolved. It is expected that with support, and through drawing attention to the fact that there is a problem, performance will in most cases return to expected standards.

Where managers have taken informal steps to improve performance, and these have not led to the required improvements within an agreed review period, the manager should advise the employee that a formal process will be entered into, providing clear reasons.

The employee should be clear about the expectations arising from informal discussions relating to capability.

## **6. Sustaining levels of performance**

Review periods set for improving performance within the informal and formal procedure can vary, dependent on the level of poor performance and the amount of support required to assist an employee to make the required improvements. As a general rule, review periods should be as short as possible (so as not to cause undue anxiety or concern for the employee), but always give the opportunity for the employee to improve.

If there is a live warning on file relating to capability, then there is no option for managers to deal with new instances of poor performance informally and the formal process will be followed.

If performance reaches the required standard within the review period as outlined in the performance improvement plan, and the employee maintains this standard within the warning period, the line manager will take no further formal capability action and normal monitoring of performance resumes.

If the employee's performance deteriorates during the review period at Formal Stage 1, or the employee's performance has not been sustained throughout the warning period, despite further support having been provided, the manager may move to Formal Stage 2 of the procedure without waiting for the review period to end.

If the employee's performance deteriorates during the review period at Formal Stage 2, or the employee's performance has not been sustained throughout the warning period, despite further support having been provided, the manager may move to Formal Stage 3 of the procedure without waiting for the review period to end.

## **7. Performance Improvement Plan**

Where any of the formal stages of the Capability Policy lead to a formal warning, the manager and employee should immediately work together to create a performance improvement plan (rather like an action plan) covering all relevant information, and taking into account the review period set, and any recommendations made as a consequence of the capability hearing. Information contained in the performance improvement plan must:

- make clear the areas in which the employee's performance is below expectations ensuring the employee is aware of the level of performance/productivity required
- indicate the method of improving performance i.e. how the improvement can be made or supported which may include the undertaking of further training or development activity, or mentoring
- indicate review dates, including how often and by whom performance will be regularly reviewed within the overall period, as well as the overall target date set by the warning (where a warning has been issued as part of the formal capability procedure).

## **8. The Formal Capability Procedure**

At all stages of the formal capability procedure, employees have the right to be accompanied at meetings by a trade union representative or a workplace colleague. When arrangements for meetings are confirmed, it is the employee's responsibility to notify their chosen representative of the arrangements, and to notify the chair of the meeting of the name of the person accompanying them.

Where formal action is being considered in respect of capability, it is the responsibility of the manager to involve their Human Resources Officer at the earliest opportunity. The formal stage should only be commenced once informal methods have been tried but without success. The line manager will assemble as much factually based information and evidence as is practicable about the shortfall in the employee's performance and the effect this is having on their department/team/area of work.

## **9. The Formal Process**

### **9.1 Formal Stage 1: First Capability Hearing**

Where an employee remains unable to meet the required standards of performance following the informal stage of the capability procedure, they will be invited in writing to a capability hearing with their manager (who will be accompanied by a Human Resources Officer) to discuss the manager's areas of concern and to hear the employee's views. A capability hearing is a formal hearing to discuss

concerns regarding performance or capability, at or following which a sanction may be issued, which could include a warning or dismissal. A capability hearing will be held at each stage of the formal procedure. The employee will be advised, in writing, of the following:

- that the line manager intends to address the employee's performance through the formal capability procedure (a copy of which should be enclosed with the letter), since informal performance management outside of this procedure has not brought about the required or sustained improvements.
- that he/she is expected to attend a formal capability hearing at a specified place and time.
- details supporting the fact that the individual's performance has fallen below the level required in the job.
- that the member of staff has the right to be accompanied at the meeting by a trade union representative or a workplace colleague.
- that following the meeting a First Written Warning may be issued.

The employee will be provided with written notice of the date, time and place of the capability hearing as agreed with the employee's manager. The employee will be given reasonable notice of the date for the meeting to enable him/her to prepare; usually five working days unless another acceptable timeframe is agreed.

Prior to the meeting, the line manager should make available to the employee any documentation that is to be relied upon during the meeting, if applicable. The employee should have a reasonable opportunity to consider this information before the capability hearing.

The employee must take all reasonable steps to attend the capability hearing. Failure to attend a hearing without good reason may be treated as misconduct. If the employee or their representative cannot attend at the time specified they should inform their manager immediately who will seek to agree an alternative time.

A hearing may be adjourned if the employee's manager needs to gather any further information or give consideration to matters discussed at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

Where the relationship between the line manager and the employee has deteriorated to the extent that it would be counter-productive for the line manager to carry out the Formal Stage 1 or Formal Stage 2 hearing, then the matter will be referred to the Head of Department or the next most senior line manager, who will conduct the hearing.

The purposes of the first capability hearing include:

- a) setting out the required standards that are considered not to have been met;
- b) establishing the likely causes of poor performance;
- c) allowing the employee the opportunity to explain the poor performance and ask any relevant questions;
- d) discussing measures, such as additional training or supervision, which may improve performance;
- e) setting targets for improvement; and
- f) setting a timescale for review.

Following the hearing, if it is decided that it is appropriate to do so, the Manager will give the employee a first written warning setting out:

- a) the areas in which the employee has not met the required performance standards;
- b) targets for improvement;
- c) any measures, such as additional training or supervision, which will be taken with a view to improving performance;
- d) a timescale for review;
- e) the consequences of failing to improve within the review period, or of further unsatisfactory performance.

The first written warning will be issued in writing. An agreed performance improvement plan should be detailed in writing to the employee, outlining the improvement required within the agreed time period, and a date for review specified. The manager will monitor and review the employee's performance. At the end of the review period the manager will inform the employee of the next step and confirm the Capability Policy 2018-21 (including Capability and Ill Health)

following outcomes:

- a) no further action is required because the required improvement has been achieved and there is reasonable confidence that this will be sustained;
- b) give further time (under the formal procedure) for the employee to make improvements and to review and adapt the performance improvement plan and/or extend the period for improvement if there is a legitimate and genuine reason; or
- c) progress to Stage 2 of the formal capability procedure, usually because there has been no improvement or because progress falls well short of what was required.

The manager should confirm the outcome of the hearing to the employee as soon as possible after the hearing, orally and in writing (normally within five days unless another timeframe is agreed). The employee should also be warned that failure to reach the required standards may result in the employee being taken through to Stage 2 of the procedure.

The warning will remain active on the employee's personal Human Resources record for an agreed period.

### **9.2 Formal Stage 2: Second Capability Hearing**

If performance does not improve within the review period, or if there are further instances of poor performance while the employee's first written warning is still active, a second capability hearing will be held.

The purposes of the second capability hearing include:

- a) setting out the required standards that are considered not to have been met;
- b) establishing the likely causes of poor performance including any reasons why the measures taken so far have not led to the required improvement;
- c) allowing the employee the opportunity to explain the poor performance and ask any relevant questions;
- d) identifying further measures, such as additional training or supervision, which may improve performance;
- e) setting targets for improvement; and
- f) setting a timescale for review.

Following the hearing, if the manager decides that it is appropriate to do so a Final Written Warning will be issued, setting out:

- a) the areas in which the employee has not met the required performance standards;
- b) targets for improvement;
- c) any measures, such as additional training or supervision, which will be taken with a view to improving performance;
- d) a further timescale for review;
- e) the consequences of failing to improve within the timescale or of further unsatisfactory performance.

The manager will monitor and review the employee's performance. At the end of the review period the manager will inform the employee of the next step, as follows:

- a) no further action is required because the required improvement has been achieved and there is reasonable confidence that this will be sustained;
- b) to review and adapt the action plan and/or extend the period for improvement if there is a legitimate and genuine reason, and to set a further review date; or
- c) to progress to Stage 3 of the Capability Policy, usually because there has been no improvement or because progress falls well short of what was required;

The manager should confirm the outcome of the hearing to the employee as soon as possible after the hearing, orally and in writing. Where it is decided to review and adapt the performance improvement plan and/or extend the period of improvement, the employee should be informed in writing of the areas

where the employee's performance is still below the required standard; the proposed actions needed to secure a satisfactory level of performance, and a time-scale for improvement (this will depend on the circumstances of each case but should normally be no shorter than one week and no longer than three months). The employee should also be warned that failure to reach the required standards may result in the employee being taken through to Formal Stage 3 of the procedure.

A final written warning will be placed on the employee's personal Human Resources record for an agreed period.

### **10. Formal Stage 3: Dismissal or Redeployment**

If performance does not improve within the further review period set out in the final written warning, or if there are further serious instances of poor performance while the final written warning is still active, the Manager will refer the matter to a senior manager (e.g. Director or Head of Department), who will hold a further capability hearing. This final stage parallels the previous stage, but now includes the possibility of employment being terminated on the grounds of capability should the required improvements not be achieved and sustained.

The purposes of the Formal Stage 3 hearing include:

- a) setting out the required standards that are considered not to have been met;
- b) identifying areas in which performance is still unsatisfactory;
- c) allowing the employee the opportunity to explain the poor performance and ask any relevant questions;
- d) establishing whether there are any further steps that could reasonably be taken to rectify the poor performance;
- e) establishing whether there is any reasonable likelihood of the required standard of performance being met within a reasonable time; and
- f) considering whether there is any practical alternative to dismissal, such as redeployment to any suitable job that is available at the same or lower grade.

In addition to the above options, the range of options now includes:

- dismissal on the grounds of capability.

In exceptional cases where the senior manager believes that there is a reasonable likelihood of the necessary improvement being made within a reasonable time, a further review period will be set and the final written warning extended.

If performance remains unsatisfactory and there is to be no further review period, the senior manager will consider whether to:

- a) redeploy the employee into alternative employment at the same or a lower grade; or
- b) dismiss the employee.

In the event that it is not possible to offer appropriate alternative employment, or the employee has not accepted it where offered, or the senior manager believes that there is no realistic alternative but to dismiss the employee, the senior manager holding the Capability Hearing should satisfy themselves of the following:

- The Capability Policy has been properly followed
- That the employee has had a reasonable opportunity to improve
- That support and training has been offered where appropriate
- That options short of dismissal such as redeployment have been considered and have been rejected or are not feasible
- That there is no underlying medical condition/reason affecting performance

A member of the Vice-Chancellor's Group will consider the information supplied by the senior manager. Where the member of the Vice-Chancellor's Group agrees with the recommendation to dismiss, the employee will be invited to a meeting to confirm the terms of the dismissal. The employee is under no obligation to attend the meeting, and they also have the right to be accompanied at the meeting.

If a decision is made to dismiss the employee, this will be put in writing and the letter will confirm:

- The nature of the unsatisfactory performance
- The process followed before reaching this stage
- The fact that the employee is to be dismissed, outlining the relevant notice period and related contractual matters
- The employee's right to appeal

Dismissal will normally be with full notice or payment in lieu of notice, unless the employee is guilty of gross misconduct within the meaning of the University's Disciplinary Policy, in which case they may be dismissed without notice or any pay in lieu.

### **11. Retaining records of formal warnings**

Written warnings will be retained on the personal file retained in Human Resources. They will remain as live warnings for the period of time stipulated by the Capability panel, and will be taken into account during their active period where further formal action is to be taken.

After the warning period has expired, records will be kept as part of an employee's history, but will not be taken into account when considering any new matter warranting further formal action.

### **12. Appeals**

An employee who wishes to appeal against any formal action (including dismissal) under this procedure should appeal in writing, stating the full grounds of the appeal, to the Director of Human Resources within five days of the date on which they were informed of the decision. The employee will be given written notice of the date, time and place of the appeal hearing. The appeal hearing will be held as soon as practicable and the employee should set out the grounds on which they wish to appeal.

The appeal hearing will be held by a panel of three drawn from the Vice-Chancellor's Group and the Senior Management Team, details of which will be confirmed in writing by the Director of Human Resources not less than five working days prior to the date of the hearing.

In the case of dismissal, the manager(s) involved in the decision to dismiss the employee will be asked to attend the hearing to provide the reasons for recommending dismissal.

The employee may be accompanied at the appeal by a trade union representative or a workplace colleague.

Following the appeal hearing, the Panel may:

- a) confirm the original decision;
- b) revoke the original decision; or
- c) substitute a different outcome.

The employee will be notified of the outcome of the appeal hearing by the Director of Human Resources in writing, as soon as possible after the hearing (normally within five working days unless another timescale has been agreed).

The decision of the Appeal Panel will be final and binding. Where the decision to dismiss is upheld, appropriate notice and outstanding holiday entitlement will be paid. Where the decision to dismiss is not upheld, the employee may be reinstated to his/her post or to an agreed alternative post. There will be no further right of appeal.

The date that any dismissal takes effect will not be delayed pending the outcome of an appeal. However, if the appeal is successful, the decision to dismiss may be revoked with no loss of continuity or pay, and the employee will be reinstated to their post or to an agreed alternative.

**What causes under performance?**

It is important to establish as far as possible the reasons for the poor performance so that appropriate support can be provided. The cause could relate to the employee not having necessary knowledge or up-to-date skills where the role has changed or grown over time and/or new or specialist skills required to deliver new areas of work. Work performance can be affected by a range of factors inside and outside of work, e.g. family illness, financial difficulties or the breakdown of a relationship. Managers will explore such issues sensitively and consider the support that can be provided, e.g. training, coaching and mentoring.

**What mechanisms are available to support the employee?**

It is important when capability issues arise, that the nature and cause of under performance is identified so that appropriate support can be provided. This allows problems to be discussed, solutions identified and for progress to be monitored. Regular meetings between managers and employees will usually support a return to the required standard of performance. The Human Resources team will also be able to advise on specialist support, for example, counselling or possibly a referral to Occupational Health.

**Where does PRDP (Performance Review Development Plan) fit with this process?**

PRDP meetings occur on an annual basis and provide an opportunity to allow structured discussions about achievements during the past year, particular successes, the allocation of workload, key responsibilities, professional development activities and overall performance in the role. If there are any issues to do with performance they should not be stored up for the annual PRDP meeting and should be addressed at the time.

**What is a reasonable period to provide an employee with adequate opportunity to improve or sustain their performance?**

The timescales adopted for the various stages of this procedure will vary in accordance with the seriousness of the problem, the employee's role, whether the problem relates to a specific or broader difficulty, and the time period over which the problem has existed. As a guideline, the review period given for improvement agreed at the informal or formal stages of the process will range between two and twelve weeks. It will be for the manager to determine what is a reasonable period to ensure a sufficient time to improve.

**Can I tackle poor performance through the Disciplinary Policy?**

The University operates a disciplinary policy to ensure the effective management of its employees. The policy is designed to encourage and help all staff to achieve and maintain high standards of conduct and to ensure that all disciplinary matters are dealt with in a correct, fair and consistent manner. The disciplinary policy is for matters of misconduct or negligence, rather than poor performance, and therefore the disciplinary policy is not used where the issue appears to be one of capability.

**Conducting capability meetings**

Where a performance issue is identified, the manager must establish the facts and gather information to ensure that they are clear about the problem, with supporting evidence where available. Meetings will provide an opportunity to discuss a problem with the employee and to try and jointly find a solution.

Managers conducting capability meetings should make allowances for the employee to be potentially concerned and anxious. At the formal stages, a private room should be available where the employee can confer with his/her trade union representative or work colleague.

Managers will ensure that the employee has every opportunity to state their view and at the end of the meeting will summarise what has been agreed and what will happen.

**Improvement plans**

An improvement plan should clearly set out the required standards of performance and the action that is required by the employee to achieve those standards. It should also set out the support mechanisms available to the employee. The improvement plan will set out:

- the areas for improvement

- the improvement/action required and the reasons
- support/training to be provided
- the timescale and review period
- the dates of review meeting(s)
- Any other information that will help to clarify expectations

A copy of the improvement plan will be given to the employee.

**How do I manage an employee's poor performance if it is due to incapacity and/or ill health?**

An individual's capability to carry out their role to the required standard may be affected by their health and/or sickness absence record. The procedure is set out in Appendix B: Capability and Ill-Health.

## **1. Introduction**

This section of the Capability Policy outlines the procedure to be used in relation to ill health which, in this context, is defined as 'incapacity which affects the employee's capability to fulfil the requirements of their role'. Ill health can either be considered to be persistent and frequent short-term absences, or long-term absence. Occupational Health will be consulted before action is taken in all such cases, to seek medical guidance on the nature of the employee's condition and the question of whether it amounts to a disability within the meaning of the Equality Act 2010. Further guidance on managing sickness absence is available in the University's Sickness Absence Policy and the Employee Handbook.

## **2. On-going medical conditions**

There may be occasions where an employee's performance does not reach the required standard due to an on-going medical condition or disability. In this case, where the employee is able to attend work but there are capability and performance issues, the University may refer the case to the University's Occupational Health Physician, the employee's GP or an appropriate external professional organisation for advice, and will confirm to the employee the reasons for making this referral. The line manager, in conjunction with a Human Resources Officer, will normally provide the following information when making the referral:

- Details of the employee's performance issues
- A copy of the employee's job profile
- Brief details of the medical condition or disability

The manager will seek to establish the employee's ability to perform their job at the required level bearing in mind their medical condition or disability. Specific questions should always be agreed which will enable the manager and the Human Resources Officer to make informed decisions about the employee's performance and ability, and this may include:

- Whether the employee's medical condition or disability would have an effect on their ability to carry out their duties effectively
- Whether the employee should be physically able to satisfactorily carry out all of the tasks listed in their job profile
- If their condition is classed as a disability under employment legislation
- Whether there are any reasonable adjustments that could be made to enable the employee to perform their job to the required level
- How long it might take for the employee to make necessary improvements once the reasonable adjustments are in place
- What type of work the employee might be able to undertake if their condition prevents them from carrying out some or all of their current duties

The manager and Human Resources Officer will discuss with the employee the professional advice received and consider any recommended adjustments to individual objectives and/or role. The outcome of this meeting will be confirmed to the employee in writing.

Once any reasonable adjustments have been made, it would be expected that performance will improve. If, however, performance does not reach the required standard within a specified period, then managers may continue to move through the formal stages of the capability procedure.

## **3. Persistent and short-term absence**

Recognition is given that such absences can be an indication of, for example, morale problems, depression, or personal difficulties. In such circumstances, appropriate support will be identified and given wherever appropriate.

Where persistent short-term absence or prolonged absence is due to medically certificated sickness, the issue usually becomes one of capability and should be dealt with under the procedure outlined below, modified appropriately to the circumstances. In deciding what action to take in these cases a sympathetic and considerate approach should be taken, and the following should be considered, in consultation with Human Resources:

- the likelihood of an improvement in health, and subsequent attendance (based on professional occupational health medical advice);
- the possibility of adapting the current duties;
- the availability of suitable alternative work and/or consideration of the type of work the employee might be able to undertake if their condition prevents them from carrying out some or all of their current duties;
- the effect of past and future absences on the University;
- whether there are any reasonable adjustments that could be made to enable the employee to perform their job to the required level;
- how long it might take for the employee to make the necessary improvements once the reasonable adjustments are in place.

#### **4. Long-term ill health**

Cases of long-term ill health will be referred to the University's Occupational Health Physician for a professional medical prognosis. It is recognised that some conditions may result in long-term absence, and therefore every case will be treated individually. Every reasonable effort will be made by the University to provide appropriate support to an employee diagnosed with a serious illness or condition.

It is important to stress that action taken under this policy is taken because the illness may create an untenable employment situation, and render the person incapable of performing their contractual duties.

There may be occasions where an employee is unable to continue to perform effectively in their role due to their health, and the impact a condition may have on their physical or mental capabilities. In these circumstances, where reasonable adjustments cannot be made, or where they have been made but failed to enable improved performance, the employee and their manager may discuss the possibility of ill health retirement rather than following the formal procedure to Stage 3. In all such cases, managers should seek advice from their Human Resources Officer.

If an employee has a high level of absence due to intermittent sickness or is absent due to sickness for a continuous period of at least eight weeks (depending on the circumstances), then he/she should be referred to the University's Occupational Health Physician for review. The purpose of such a review is to:

- take a positive and pro-active approach to supporting the employee at a time of ill health;
- confirm the nature of the illness/absence;
- seek a prognosis of the likely duration and some estimation of a return to work;
- establish any contributory factors, including work related issues, and secure advice on addressing these;
- consider if the University can assist a return to work in whatever form;
- enable informed decisions to be made about re-distribution of duties in the medium term and in respect of consequential temporary staff cover; and
- where there is no reasonable prospect of a return in a reasonable timeframe, or a likelihood that a return to work will be viable, consider the appropriate procedures to be followed. In particular, where there is a known diagnosis, which is serious or sensitive, all the circumstances and options (including ill-health retirement) will have to be considered in reaching any conclusion.

The information provided by the Occupational Health Physician will be reviewed by the manager, Human Resources Officer and the employee to a) ascertain the nature of the problem and b) identify any action which needs to be taken to support the employee (e.g. counselling support or a phased return to work).

Factors which will be taken into account include:

- the length of the employee's absence
- the degree of disruption caused to their team and department

- the level of seniority or degree of specialism of the employee's job
- the feasibility of employing a temporary replacement
- the urgency of having the work done
- the prospects of recovery from the illness
- the availability of any suitable alternative employment

The manager and the Human Resources Officer will discuss with the employee the professional advice received and consider any recommended adjustments to individual objectives and/or role.

## **5. Procedure for dealing with long-term absences**

### **Stage 1 – Review Meeting with Manager**

Human Resources will write to the employee inviting them to a meeting with their line manager to discuss their current state of health and capacity for work. A minimum of five working days' notice should be given.

It may be necessary, after taking advice and consulting with the employee, to arrange a home visit to carry out such a meeting if the employee is on a period of long-term absence. The employee will be given a copy of the Capability Policy.

The employee will be asked to attend an appointment with the Occupational Health Physician, which may involve a medical examination by the physician or a relevant third party i.e. specialist or consultant. Occupational Health will provide a written report to the University, subject to the terms of the Access to Medical Reports Act 1988. The employee is obliged to co-operate with such a referral but the employee's consent will be required if further medical advice is required (e.g. GP or Consultant). This information is crucial to the discussion, as it will set out any likely improvement in the health of the employee. If consent is withheld, managers will base any decisions on the information available at that time

When the Occupational Physician's report has been received, the manager will invite the employee to attend a meeting to discuss their current state of health and capacity for work. A minimum of five working days' notice should be given. The employee may be accompanied at the meeting by a trade union representative or a workplace colleague. A relative or friend may attend instead if the employee requests this. The purpose of the meeting is to:

- Jointly review the content of the medical opinion/prognosis and advice received from the Occupational Health Adviser;
- Discuss the employee's own feelings about the content of the report and of any recommendations made (a second opinion may be sought, for example from the employee's own GP or Consultant if there is disagreement over the prognosis – costs to be borne by the University);
- Establish the employees' own assessment of his/her condition, whether there has been any improvement and how any treatment is going;
- Discuss any possible return to work, if this has been confirmed as an option by the Occupational Health Physician;
- Look at any possible adaptation of duties or suitable alternative work which may enable return to work for the employee;
- Draw up, in agreement with the employee, a return to work programme with review dates in order to discuss progress and amend if necessary; and
- Consider and if possible agree the next steps including setting another review date if further improvement is likely.

If the prognosis is that the employee can return to work within a reasonable period, arrangements will be made accordingly, including appropriate workplace adjustments where identified and agreed. A phased return to work may be agreed with the employee within an established timescale where appropriate (e.g. a period of part-time working). More permanent changes may be made to the role where necessary and feasible, including redeployment where possible. Any permanent change would be subject to consideration and approval by the Vice-Chancellor's Group Staffing Group.

Physical changes to the workplace may be required and these will be implemented before the employee's return. The employee's terms and conditions will be protected while the necessary adjustments are made.

If a return to work is not an option for the near future, according to the professional medical advice, which has been obtained, then another review meeting should be arranged, to determine if there is to be any future improvement through either further treatment or recuperation.

## **6. Stage 2 – Review Meeting with Senior Manager**

Progression to Stage 2 shall usually occur when the University does not realistically believe, having followed the previous stages of the procedure, that the employee's health will improve sufficiently in order to resume work and maintain a satisfactory level of attendance.

Stage 2 involves a senior manager (i.e. a member of the senior management team or a member of the Vice-Chancellor's Group); they will Chair the meeting. Also present at the meeting will be the manager from meetings at Stage 1, the employee, his or her representative or companion if he/she so chooses, and a Human Resources representative.

The discussion that takes place during a Stage 2 meeting should involve:

- The senior manager's concerns about the employee's attendance/ability to perform/health;
- The professional medical report regarding the employee's state of health and advice given to the employer;
- Any review period set and any improvement in the health of the employee; and
- The employee's feelings regarding his/her own state of health and how he/she feels about the future.

The possible outcomes of this meeting at Stage 2 are:

- To re-initiate a review programme between the employee and his/her manager, if it is felt appropriate;
- To reach agreement that an application for ill health retirement would be appropriate (note that this decision is ultimately made by the Pension provider, not the University);
- To review actions taken on exploring options to adapt duties or to redeploy to other duties and whether any further action can reasonably be taken;
- Discuss any possible return to work, if this has been confirmed as an option by the Occupational Health Adviser;
- Look at any possible adaptation of duties or suitable alternative work which may enable return to work for the employee;
- To decide to progress to Stage 3: Dismissal on the grounds of capability. This means that, having given full consideration to Stages 1 and 2, the employee's employment will be terminated on capability/health grounds.

Should there be conflicting medical opinion, an independent medical opinion may be sought, depending on the circumstances. Ultimately the University will decide to give weight to the advice it believes may be more valid, having carefully considered the options given.

## **7. Stage 3 – Dismissal on the grounds of capability**

Where the prognosis is that the employee is unlikely to return to work within an acceptable period, and ill-health retirement is not feasible, the contract of employment will be terminated. In this event, appropriate notice in accordance with the employee's terms and conditions of employment, and outstanding holiday entitlement, will be paid at full salary.

If the employee's employment is terminated they will have the right to appeal this decision in accordance with the Capability Policy. In these circumstances, if an employee decides to make an appeal against a dismissal, he/she must specify the clear grounds on which he/she is appealing. Where an employee has been dismissed on the grounds of capability and has decided to appeal against the decision to dismiss, the dismissal takes effect irrespective of the appeal. If the appeal is upheld, the individual will be reinstated with no loss of continuity of service.

## **8. Early retirement on medical grounds**

There may be occasions where an employee is unable to continue to perform effectively in their role due to their health, and the impact a condition may have on their physical or mental capabilities.

In these circumstances, where reasonable adjustments cannot be made, or where they have been made but have failed to enable improved performance, the employee and their manager may discuss the possibility of ill health retirement through the Pensions Scheme (LGPS or TPS) rather than following the formal procedure to Stage 3. Where the employee and the University consider that an application for ill health retirement would be appropriate, it should be noted that this decision is ultimately made by the pension provider, not the University, and each pension scheme has their own rules and regulations.

If an application for ill-health retirement is supported by the pension provider, Human Resources will write to the employee to confirm their last date of service and confirm details with Finance and/or Payroll.