# UNIVERSITY OF LEICESTER

## ORDINANCE

## ILL HEALTH CAPABILITY

(Ordinance Procedure)

<table>
<thead>
<tr>
<th>For use in:</th>
<th>All Divisions/Schools/Departments/Colleges of the University</th>
</tr>
</thead>
<tbody>
<tr>
<td>For use by:</td>
<td>All University employees</td>
</tr>
<tr>
<td>Owner</td>
<td>Staffing Policy Committee</td>
</tr>
</tbody>
</table>
| Dates of Trade Union Consultation and Negotiation | Start: 8 January 2010  
                           End: 2 March 2011  |
| Date of Approval by Strategy, Policy and Resources Committee | 15 November 2010 |
| Date of Approval by Senate | 30 March 2011  |
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| Contact - Comments    | Alun Reynolds – Geraldine McAughtry                          |
ILL HEALTH CAPABILITY ORDINANCE: PROCEDURE

1. Introduction

1.1. This document outlines the University’s procedure for handling issues arising from ill health and incapacity. The Ill Health Capability Ordinance 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 a 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, 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 a staff member’s attendance or performance is affected by prolonged or repetitive absence from work and there is no underlying medical condition, the issue should normally be managed under the relevant part of the Performance Management Ordinance.

1.4. The University’s expectation is that the Ill Health Capability Ordinance Procedure will only be used for serious cases of ill health capability. This 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. Where there is doubt over which procedure to use, line managers and staff are encouraged to contact HR for clarification.

2. Scope

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

3. Outline of Ill Health Capability Procedure

3.1. There are a number of steps that a line manager and/ or chair of an ill health capability hearing (in consultation with HR) need 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.

4. Establishing Medical Evidence

4.1. The relevant manager (in consultation with HR) will obtain a medical report from the staff member’s GP, specialist and/or the University’s Occupational Health provider.

4.2. Medical evidence must be relevant and up-to-date. Where additional or more up-to-date information is required, permission to access medical records will be made to the individual for a GP/Specialist or Occupational Health report under the Access to Medical Reports Act 1988.

4.3. Where medical evidence has already been obtained in the course of any other University process or procedure, then the existing documentation will satisfy the requirement of this Ordinance to establish medical evidence of ill health capability. However, the medical evidence must be relevant and up-to-date.

4.4. The University will meet the reasonable costs of any medical opinion required.

5. Assessing whether a Return to work (or full duties) is possible

5.1. The line manager (in consultation with HR) will begin formal consultation with the member of staff by meeting them to discuss the medical evidence and to assess whether a return to work (or full duties) is possible.

5.2. Where a member of staff is too ill to meet their line manager at work, alternative communication methods will be considered e.g. telephone, written correspondence via trade union or other representative.

5.3. A line manager (in consultation with HR) will discuss and consider all possibilities with the member of staff to facilitate, where possible, a return to work (or full duties). This could include asking the member of staff to suggest options that could facilitate their return to work (or full duties).

6. Where a Return to work (or full duties) is likely

6.1. Where medical evidence supports a return to work (or full duties) within what the University deems to be a reasonable timescale, the line manager (with advice from Occupational Health and HR) will consider reasonable adjustments to the staff member’s role. This may include changes in responsibilities, duties, working hours, location, or physical/ergonomic aspects. However, the University will decide whether an adjustment is reasonable based upon the consideration of the working environment or operational requirements.
6.2. A line manager (in consultation with HR) will discuss and consider all possibilities with the member of staff before a decision is made.

6.3. Where any reasonable adjustments affect the terms of pay, compensation or remuneration, the University will alter the staff member’s contract of employment with the staff member’s consent. HR will confirm the details, in writing.

6.4. Once any adjustments have been made, the case will be closed and the member of staff will be subject to normal day-to-day management by their line manager. The case will normally remain closed, unless any further ill health issues arise.

7. Where a Return to work (or full duties) is unlikely or cannot be established

7.1. Where a definitive return to work date within a reasonable timescale cannot be established or is unlikely, the line manager (in consultation with HR) will meet with the member of staff to begin consultation and to consider other appropriate options.

8. Considering alternative options

8.1. A line manager (in consultation with HR) will explore with the member of staff the alternative options that may be appropriate in the circumstances. They may include:

- operational/departmental transfer (in consultation with the receiving area);
- a reduction in hours or part-time working;
- home working;
- ill health retirement (partial or full) – in consultation with the University’s Pensions Office and relevant Pension Scheme;
- early retirement – in consultation with Senior management, the University’s Pensions Office and relevant Pension Scheme;
- ill health capability dismissal (with notice).

8.2. A member of staff has the right to be accompanied to meetings to discuss alternative options.

9. Suspension

9.1. Where a suspension is required, the chair of the ill health capability hearing (on the advice of HR) will notify the member of staff, in writing.

9.2. Suspension is not disciplinary action. It is a neutral act. A member of staff on suspension will continue to be paid.

9.3. The duration of a period of suspension will be as brief as possible and subject to regular review. The review will be undertaken by the PVC Resources (for academic staff) and the Registrar and Secretary (for all other staff), every three weeks.

9.4. The outcome of each review (including reasons for the continued suspension) will be communicated, in writing, to the member of staff.
10. **Dismissal on Grounds of Ill Health**

10.1. The decision to use the formal dismissal procedure will only be taken after:

- medical evidence has been sought;
- all possible alternative options have been explored;
- a detailed ill health capability report has been written.

11. **Ill Health Capability Report**

11.1. In the event that no alternative options or adjustments are appropriate, the line manager, having consulted HR, will write an ill health capability report.

11.2. An ill health capability report must include:

- A description of the department in which the staff member’s role sits;
- A description of the role/duties and how it fits into the department;
- A detailed description of the absence or disability (including absence data);
- A comment on the medical evidence/recommendations (if any);
- A detailed description of the impact that absence or incapacity has on the business area (e.g. on students, service levels, other staff etc);
- Reason(s) why employment is no longer sustainable and cannot continue;
- A list of alternative options that have been considered;
- Reasons why each alternative option considered was not implemented;
- A recommendation to dismiss on the grounds of ill health capability.

12. **Notification of an Ill Health Capability Hearing**

12.1. Once the ill health capability report is complete, the chair of the ill health capability hearing (see Appendix 2 for guidance) will notify the member of staff, in writing, that they are required to attend an ill health capability hearing. A member of staff will be given a minimum of 5 working days’ notice of the hearing. HR must be consulted for advice in drafting the letter.

12.2. The letter will state:

- the reasons why the procedure has been invoked;
- the date, time, location and chair of the hearing;
- the right of the member of staff to be accompanied to the hearing (e.g. by a Trade Union representative or work colleague);
- notification that the hearing may be adjourned if further investigation is required;
- a copy of the ill health capability report and all relevant paperwork;
- notification that the member of staff will have the opportunity to respond to the reasons which might warrant dismissal;
- notification that the hearing may be held in their absence if they do not attend or offer a reasonable explanation for non-attendance;
- the possible consequence and outcome of the hearing.
13. Ill Health Capability Hearing

13.1. The ill health capability hearing should be chaired by the relevant manager (see Appendix 2 for guidance).

13.2. Attendees will normally include:

- the member of staff;
- the Trade Union representative or work colleague of the member of staff;
- a member of HR;
- the line manager (as author of the Ill Health Capability Report);
- a note-taker.

13.3. During the hearing, the chair will:

- inform all parties at the hearing of the confidential nature of the matter;
- state the names, roles and responsibilities of all parties present;
- state the reason for the hearing and how it will be conducted;
- ask the line manager to present their report;
- give the member of staff the opportunity to fully state their case and respond to the issues;
- ask the member of staff to provide details of any additional mitigating factors;
- give all parties the opportunity to ask questions;
- explain what will happen next.

13.4. During the hearing, the chair will consider the ill health capability report and relevant additional information.

13.5. The author of the Ill Health Capability report is required to be in attendance throughout the hearing to present the investigation report and answer questions.

13.6. The hearing can be adjourned at any time, at the discretion of the chair.

13.7. Where a member of staff is too ill to meet, alternative communication methods will be considered e.g. telephone, written correspondence via trade union or other representative.

13.8. The member of staff has the right to call witnesses. 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. Please refer to the Witnesses section in the Ill Health Capability Ordinance Policy.

14. Outcomes

14.1. There are three possible outcomes that the chair of the hearing can take:

- Take no action;
- Make a series of recommendations or adjustments;
- Terminate the staff member’s employment on the grounds of ill health.
14.2. Where a decision is made by the Chair to terminate the staff member’s employment, ratification by the appropriate person will be sought before this is communicated to the member of staff (see Appendix 2 for guidance).

14.3. The chair of the ill health capability hearing will normally communicate the outcome to the member of staff in writing, within 10 working days of the hearing.

14.4. All relevant parties will receive a copy of the decision, where appropriate.

14.5. The member of staff will be informed, in writing, that they have the right of appeal.

15. Ratification for Ill Health Dismissal

15.1. The chair of the ill health capability hearing will compile a dismissal report to include the ill health capability report, any supplementary evidence (e.g. medical reports) and a summary of the salient points from the hearing and the recommendation to terminate the staff member’s employment. The report must be sent to HR.

15.2. HR will forward a copy of the dismissal report to the ratifying manager (see Appendix 2 for guidance).

15.3. The ratifying manager will contact HR to confirm his/her decision after consideration of the dismissal report.

15.4. The ratifying manager may choose:

- To ratify the proposed dismissal;
- Not to ratify the proposed dismissal;
- To remit the case back to the original chair of the ill health capability hearing for further consideration;
- To confirm an alternative outcome that would have been open to the chair of the ill health capability hearing.

15.5. Where a ratifying manager has concerns about the proposed dismissal, a meeting will be arranged with the ratifying manager, the chair of the hearing and a member of HR to decide a way forward.

15.6. On ratification of dismissal, the chair of the hearing will write to the member of staff at the earliest possible convenience. The letter must be drafted on the advice of HR and include:

- the reason for the dismissal;
- the date on which the staff member’s employment will end; and
- confirmation of the right to appeal.
16. **Right of Appeal**

16.1. A member of staff has the right to appeal against dismissal which could include any of the following grounds:

- failure to follow the Ill Health Capability Ordinance;
- disproportionate sanction;
- new evidence;
- relevant evidence which was not taken into account.

**Notification of Appeal**

16.2. A letter stating the grounds of the appeal must be submitted, in writing to the Director of HR, within 10 working days of the date of the written confirmation of the decision.

16.3. The Director of HR will notify the relevant person who will hear the appeal (see Appendix 2 for guidance).

**Constitution of the Appeal Hearing**

16.4. An appeal will normally be heard by the relevant person (see Appendix 2 for guidance).

16.5. An appeal will normally be heard by a person who is more senior than the person who chaired the Ill Health Capability hearing. To ensure independence and objectivity, the person hearing the appeal should not have been involved in the matter, previously.

16.6. The attendees will normally include:

- the member of staff;
- the Trade Union representative or work colleague;
- a member of HR (not previously involved); and
- a note-taker.

**The Appeal Hearing**

16.7. An appeal hearing will normally be held within 15 working days of the appeal being lodged.

16.8. An appeal hearing is not normally a re-hearing of the case. It is a review of the case by a person who is tasked with hearing the appeal.

16.9. The person who heard the appeal will confirm the outcome to the member of staff, normally within 10 working days, in writing. Where further investigation is required, he/she will confirm the outcome to the member of staff as soon as reasonably practicable.

16.10. There is no further right of appeal.
**Remit of person hearing the Appeal**

16.11. A person hearing an appeal may interview key individuals (such as the chair of the ill health capability hearing or line manager) involved in the case to clarify information, where required, as part of the appeal process.

16.12. Where required and HR deem it appropriate, key individuals (such as the chair of the ill health capability hearing) may choose to be accompanied to an appeal meeting by the relevant member of HR who supported them prior to appeal.

16.13. The person hearing an appeal may:

- allow it (in whole or in part);
- dismiss it (in whole or in part);
- substitute any alternative outcome that would have been open to the chair of the ill health capability hearing who heard/pronounced the original decision.

16.14. The decision made by the person who hears an appeal is final.
APPENDIX 1

Ill Health Capability Ordinance
Roles and Responsibilities

All parties involved in the operation of the Ill Health Capability Ordinance must conduct their behaviour in an appropriate and professional manner - treating all parties with respect and dignity.

1. Line Manager:

The line manager is responsible for:

1.1. Understanding and adhering to the University’s Ill Health Capability Ordinance.

1.2. Seeking guidance from HR on all ill health capability cases, before taking action.

1.3. Requesting advice from HR as early as possible (or at any point in the process), if they are unsure about any aspect of the Ill Health Capability Ordinance.

1.4. Ensuring sickness/ill health cases are dealt with in a sensitive and consistent manner whilst maintaining confidentiality, dignity and equality of opportunity.

1.5. Attempting informal resolution of issues, where appropriate.

1.6. Writing and issuing letters to members of staff throughout the procedure (seeking guidance from HR, where required).

1.7. Writing ill health capability reports and gathering all relevant information and evidence to support an ill health capability dismissal.

1.8. Proposing a list of witnesses, required to attend a hearing, to the chair.

1.9. Attending an ill health capability hearing and presenting the findings of their report to the chair of the hearing, in an impartial manner.

1.10. Answering questions from the chair or member of staff during the ill health capability hearing, where appropriate.

1.11. Attending appeal meetings, if required, to give evidence.

2. Chair of an Ill Health Capability Hearing:

The chair of an ill health capability hearing is responsible for:

2.1. Writing and issuing letters to members of staff, (seeking guidance from HR).

2.2. Preparing for ill health capability hearings, including setting dates for hearings, writing letters and formulating questions to ask of all the relevant parties.
2.3. Chairing ill health capability hearings (including asking questions of all the relevant parties).

2.4. Deciding the outcome of an ill health capability hearing, which may be to:
   - take no action;
   - Make a series of recommendations or adjustments;
   - terminate the staff member’s employment.

2.5. Writing and sending a dismissal report (where required) to HR.

2.6. Confirming the outcome of the ill health capability hearing, in writing, to the member of staff (on the advice of HR). In dismissal cases, this must first be ratified by the relevant person (see Appendix 2 for guidance).

2.7. Attending appeal meetings, if required, to give evidence.

3. **Ratifying Manager**

   The ratifying manager is responsible for:

   3.1. Reviewing and considering the dismissal report to ensure fairness and consistency in decision making prior to termination of employment.

   3.2. Meeting with the chair of the ill health capability hearing and a member of HR to discuss the case further where he/she has any concerns about the decision to terminate employment.

   3.3. Deciding on the appropriateness of termination of employment where this has been proposed by the chair of the ill health capability hearing, or otherwise to consider alternative action:
      - Choose not to ratify the dismissal;
      - Remit the case back to the original chair of the ill health capability hearing for further consideration;
      - Confirm an alternative outcome that would have been open to the chair of the ill health capability hearing.

   3.4. Communicating his/her decision, in writing, to HR.

4. **Member of staff**

   The member of staff is responsible for:

   4.1. Understanding and complying with the University’s Ill Health Capability Ordinance (Policy & Procedure).

   4.2. Asking questions of his/her line manager or HR if he/she is unsure about any aspect of the Ill Health Capability Ordinance (Policy & Procedure).
4.3. Responding positively to informal attempts to resolve issues by his/her line manager.

4.4. Cooperating fully during the formal Ill Health Capability procedure including providing consent to medical records, where requested.

4.5. Assisting to obtain or provide medical reports, if required.

4.6. Identifying, requesting and organising the support or attendance of a Trade Union representative or work colleague at formal meetings.

5. **Staff Companion (Work Colleague or Trade Union Representative)**

The role of the member of staff’s companion is as follows:

5.1. The companion has the right to:

- attend formal meetings, in the role of companion;
- address meetings at the outset (to put forward a case);
- address meetings at the end (to sum up a case);
- respond to any views expressed at meetings;
- confer with the member of staff during meetings;
- ask questions during meetings.

5.2. The companion **does not** have the right to:

- answer questions on behalf of the member of staff (i.e. where a question is directed at the member of staff);
- address meetings if the member of staff does not wish it;
- prevent any party from explaining their case.

6. **Division of Human Resources**

The Division of Human Resources is responsible for:

6.1. Ensuring that formal proceedings comply with employment law and the University’s policies and procedures.

6.2. Advocating on the part of the institution by acting as an independent, advisory guardian and regulator of the process. Members of HR will not be an “advocate” for a manager or a member staff.

6.3. Providing advice to managers and staff, in accordance with employment law and the University’s policies and procedures.

6.4. Pointing out any issues in respect of employment law or the University’s policies and procedures during formal meetings.

6.5. Attending and recording formal meetings. Members of HR are not permitted to chair formal meetings or undertake the role of decision maker on individual cases. Any questions from HR must be asked through the chair of a formal hearing/meeting.
6.6. Advising managers on the content of informal and formal letters to members of staff.

6.7. Accompanying managers who attend appeal meetings in a management capacity, where requested or as appropriate.

6.8. Collating all relevant documentation from all relevant parties involved in ill health capability cases and filing it appropriately.

6.9. Providing support and advice to managers with any resultant resourcing issues.

6.10. Monitoring the outcome and impact of the Ill Health Capability Ordinance on protected groups of staff as per the University’s equal opportunities obligations.

7. **Pensions Office**

7.1. Providing accurate and timely information to individual members of staff on any questions or queries about their pension, in particular the pension scheme rules, the options available, actuarial reductions and pension calculations.

7.2. Providing accurate information and options to members of staff (and HR) regarding early retirement and ill health retirement in a timely manner, upon request.

7.3. Providing accurate and timely pension calculations to members of staff and HR in cases of early retirement and ill health retirement.

7.4. Providing accurate and timely information to members of staff and HR regarding the procedure for ill health retirement or early retirement, upon request.

7.5. Confirming to members of staff and copying HR, in writing, the outcome of all applications for:

- early retirement (including details of when pension benefits will be paid); and
- ill health retirement.

7.6. Ensuring that the pension aspects of all retirements are processed in an accurate and timely manner.
**APPENDIX 2**

**Levels of Management normally involved in operating the Ill Health Capability Ordinance**

This table is for “Guidance” purposes only. The University may use its discretion to depart from the table below, where appropriate.

<table>
<thead>
<tr>
<th>Grade of staff member</th>
<th>Chair of Ill Health Capability Hearing</th>
<th>Ratification of Dismissal</th>
<th>Appeal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grade 7 &amp; below (in Colleges)</td>
<td>Line Manager or Head of Department</td>
<td>PVC or Director of College Administration</td>
<td>A PVC or Director of College Administration, not previously involved</td>
</tr>
<tr>
<td>Grade 7 &amp; below (in Corporate Services &amp; Library)</td>
<td>Line Manager or Head of Department/Office</td>
<td>Head of Division</td>
<td>A Head of Division, not previously involved, or Registrar</td>
</tr>
<tr>
<td>Grades 8 &amp; 9 (in Colleges)</td>
<td>Relevant Panel*</td>
<td>Vice-Chancellor</td>
<td>A panel comprising 3 Lay Members of Council, nominated by the Chair of Council</td>
</tr>
<tr>
<td>Grades 8 &amp; 9 (in Corporate Services &amp; Library)</td>
<td>Relevant Panel*</td>
<td>Vice-Chancellor</td>
<td>A panel comprising 3 Lay Members of Council, nominated by the Chair of Council</td>
</tr>
<tr>
<td>Professorial</td>
<td>Relevant Panel*</td>
<td>Vice-Chancellor</td>
<td>A panel comprising 3 Lay Members of Council, nominated by Council</td>
</tr>
<tr>
<td>Grade 10 (in Corporate Services)</td>
<td>Relevant Panel*</td>
<td>Registrar, if not previously involved or Vice-Chancellor</td>
<td>A panel comprising 3 Lay Members of Council, nominated by Council</td>
</tr>
<tr>
<td>Grade 10 (in Colleges)</td>
<td>Relevant Panel*</td>
<td>Vice-Chancellor</td>
<td>A panel comprising 3 Lay Members of Council (not previously involved), nominated by Council</td>
</tr>
<tr>
<td>University Librarian or Pro-Vice-Chancellor</td>
<td>Vice-Chancellor</td>
<td>Chair of Council</td>
<td>A panel comprising 3 Lay Members of Council (not previously involved), nominated by Council</td>
</tr>
<tr>
<td>Registrar &amp; Secretary</td>
<td>Chair of Council</td>
<td>Council</td>
<td>An External Body to be determined by Council.</td>
</tr>
<tr>
<td>Vice-Chancellor</td>
<td>Chair of Council</td>
<td>Council</td>
<td>An External Body to be determined by Council.</td>
</tr>
</tbody>
</table>

* For Academic staff the relevant panel will be the Chair of Staffing Policy Committee (as Chair) and 2 members of Senate. For all other staff, the relevant panel will be the Registrar and 2 senior members of staff.