

Regulation pertaining to incapacity on health grounds

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1. Application

- 1.1 This Regulation is made pursuant to the College's Ordinance Relating to Dismissal, Grievance Procedures and Related Matters for Academic Staff.
- 1.2 This Regulation must be read in conjunction with the College's Ordinance Relating to Dismissal, Grievance Procedures and Related Matters for Academic Staff (hereinafter the 'Ordinance') and the other Regulations dealing with staff matters. In the event of conflict the Ordinance shall take precedence. The purpose of these Regulations is to enable managers to assist staff in maintaining the required levels of attendance and to ensure that in cases where staff have failed to achieve such levels, a fair and systematic process is followed to help them improve. However, whilst action taken under these Regulations is primarily intended to identify and rectify problems, dismissal may be an outcome in certain circumstances.
- 1.3 These procedures apply to all academic employees with the title of Lecturer, Senior Lecturer, Reader and Professor, and any other academic title, as adopted by the College.

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2. General

- 2.1 This Regulation, which provides for incapacity on medical grounds as a cause for dismissal or removal from office, should be read in conjunction with the College's Sickness Absence Management Policy as amended from time to time.
- 2.2 Medical grounds may include physical or mental health issues.

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3. Action under this Regulation

- 3.1 Concerns about capability (unrelated to health) or conduct will normally be raised under the Regulations pertaining to the Capability Procedure or Disciplinary Procedure. However, where it is evident, or where it emerges during proceedings under either the Capability or Disciplinary Regulations that performance or conduct may have been wholly or partly attributable to a medical condition, consideration shall be given to dealing with the matter under this Regulation. The decision as to which Regulation shall apply will be at the discretion of the Director of Human Resources or his/her nominee and the individual shall be notified accordingly. There is no right of appeal against this decision.

- 3.2 A decision to deal with the matter under this Regulation shall not invalidate any other action taken previously under the Regulations pertaining to the Disciplinary Procedure or the Capability Procedure.
- 3.3 If, at any stage, a member of staff wishes to seek to retire early on medical grounds, he/she will be permitted to do so subject to the criteria, rules and benefits of the relevant pension scheme.
- 3.4 Where suspension is considered, pending a decision on the member of staff's capability to remain in employment, then this decision will be taken by either the Principal, Vice-Principal(s), Senior Vice-President (Operations) or Director of Human Resources in consultation with the relevant Head of Department/Division. A decision to suspend a member of staff under this Regulation will only be taken after careful consideration of the facts in question and they will be informed in writing of the grounds for suspension. The member of staff, on notice of suspension, will be given the opportunity to set out in writing why the suspension should be lifted. A member of staff who has been suspended may write to the Director of Human Resources and request that the decision to suspend be reviewed. The decision of the Director of Human Resources is final and the member of staff will be notified in writing of the outcome of the review.

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4. Medical reports

- 4.1 If the member of staff provides evidence that their short term persistent absence or long term absence may have been wholly or partly attributable to sickness or a medical condition, the College will normally obtain a report from the Occupational Health Service with the member of staff's consent dealing with the sickness or medical condition.
- 4.2 The member's consent in writing shall be sought in accordance with the requirements of the Access to Medical Reports Act if the College wishes to obtain medical evidence from the member of staff's GP, own medical specialist and/or an independent medical specialist. A member of staff may request that this information be obtained if the College does not plan to do so of its own volition.
- 4.3 Medical evidence will normally be sought at an early stage to ensure that the College has obtained relevant medical advice before decisions are made in respect of the member of staff. However, medical evidence may be sought at any stage of this Procedure.
- 4.4 Non-exhaustive examples of when it will be appropriate to obtain a medical report are set out in the College's Sickness Absence Policy and Procedure.
- 4.5 If a member of staff refuses consent for an Occupational Health report, any action taken under this Regulation will be on the basis of no confirmed underlying medical condition.

The procedure under Paragraphs 6.1-7.1 below, in line with the College's Sickness Absence Policy and Procedure, will proceed without the benefit of medical advice.

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5. Long term sickness absence or recurring absence due to an underlying health issue – consultation meetings

- 5.1 The Occupational Health report may reach the conclusion that a member of staff has an underlying health issue resulting in long term or recurring sickness absence. If so, consultation meeting(s) should be held between the line manager or their nominee and the member of staff to review and discuss the situation with them. Arrangements will be conducted in line with the College's Sickness Absence Management Policy.
- 5.2 The member of staff will be given the opportunity to be accompanied at any consultation meetings by a trade union representative, work colleague or carer (who is not legally qualified). A member of the Human Resources Department may be present at a consultation meeting. If the member of staff is unable to attend a consultation meeting then they should be given the opportunity to submit comments in writing. Where the member of staff's health is such that they are not able to respond, communication may be through an appropriate family member or partner or authorised representative.
- 5.3 The process of dealing with sickness absence where there is an underlying medical condition will very much depend on the individual circumstances. A member of staff may have one or several consultation meetings before action below (Facilities and Adjustments) is agreed (so far as possible) and implemented. This will depend on a number of factors including the medical condition, the treatment, the long-term prognosis, and the sustainability of the absence after considering the effects on the Department and the comments made by the member of staff.

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Facilities and adjustments

- 5.4 Where a condition has a substantial and long-term adverse effect on a member of staff's ability to carry out day-to-day activities, the College will review whether reasonable adjustments to working arrangements or the workplace can be made to address any disadvantage or other practical effects of the medical condition. Reasonable adjustments will be considered in line with those in the College's Sickness Absence Management Policy.

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Medical retirement

- 5.5 Consideration should also be given, in appropriate cases, as to whether it is possible to offer the member of staff ill health retirement. The decision on whether or not a person may proceed on ill health retirement and be awarded a pension is taken by the Pension Trustees and is subject to the rules of the Pension Scheme.

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Employment review meeting

- 5.6 An employment review meeting will take place where:
- a) The member of staff has been given the opportunity to comment on their fitness to work and/or the likelihood of returning to work, and these views have been taken into account and;
 - b) Medical opinion is unable to confirm that the member of staff will be fit to return to their post or carry out the functions of their post adequately and;
 - c) Redeployment and/or adjusted working arrangements or medical retirement have not been possible or agreed.
- 5.7 The purpose of the meeting will be for a person appointed by the Director of Human Resources or his/her nominee, who shall normally be a Head of School or authorised nominee of such Head of School, to review the case and to consider whether and for how long the College can support continued employment. The person hearing the case will be assisted by a senior member of academic staff. A member of the Human Resources Department will normally be present at the meeting.
- 5.8 The member of staff will be given no less than five working days' notice, in writing, of the employment review meeting to consider the issue of their capability to remain in employment. The member of staff will be offered the opportunity to be accompanied by a trade union representative or work colleague. Consideration should be given to requests from staff to be also accompanied by a carer, friend or relative who is not a legal representative.
- 5.9 At the meeting the issues will be presented by the line manager and the member of staff, or their representative, will be invited to respond and comment. Alternatives to termination of employment will be considered wherever possible.
- 5.10 Following the meeting the person conducting the meeting will consider whether or not to terminate the member of staff's employment. The person conducting the meeting should discuss their decision with a member of the Human Resources Department. If they decide to terminate the member of staff's employment, the Human Resources Department will write

to the member of staff confirming termination of employment with notice or pay in lieu of notice and providing the reasons for the dismissal and details of the right to appeal.

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6. Managing short term intermittent sickness absence

- 6.1 The Occupational Health Report may advise that a member of staff has no underlying health condition that should affect future attendance or performance at work. In this situation, meetings will be held with the member of staff in accordance with the College's Sickness Absence Management Policy.
- 6.2 The implications of the absence on the Department/Division or School and other operational issues should also be discussed. Where possible, support should be offered to the member of staff to assist them to improve their attendance levels.
- 6.3 The meetings will usually be held with the member of staff's line manager or their nominee, if appropriate. The member of staff will be given the opportunity to be accompanied at any formal meeting by a trade union representative or a work colleague. (In exceptional circumstances the person conducting the meeting will consider requests from members of staff to be accompanied also by a friend or carer not employed by the College who is not legally or medically qualified). A member of the Human Resources Department may also be present to assist the person conducting the meeting.
- 6.4 If the member of staff cannot, for good reason, attend the meeting then they should be allowed an opportunity to reschedule usually within 5 working days of the date the meeting was originally scheduled. If a member of staff refuses to attend a Sickness Absence Review meeting, then, if time allows, they should be offered an opportunity to provide written submissions for consideration at the meeting which will proceed in their absence. If the member of staff refuses to attend a sickness absence review meeting and fails to provide written submissions they will be advised that the meeting may proceed in their absence. The member of staff should also be advised that the issue of their poor attendance and the impact this has on their role will have to be considered on the basis of the evidence that is available.
- 6.5 Following the sickness absence review meeting, a letter confirming the discussion in the meeting will be sent to the member of staff and retained on the member of staff's personal file. The letter will set out the concerns that have been discussed, any actions agreed (so far as possible), any support to be provided by the line manager, any monitoring arrangements and details of any formal notification that is being issued. Any formal notification should indicate that, if the member of staff's attendance record does not improve to an acceptable level, a further sickness absence review meeting in relation to incapacity may be arranged which could result in the issue of a second formal notification and may ultimately result in the termination of the member of staff's employment. The member of staff will have the

opportunity to add comments to the file if they are not in agreement with the summary of the discussion.

- 6.6 If the member of staff is concerned that they are not being treated reasonably or fairly, they may write to request an appeal against a formal notification within 10 working days of the issue of the letter confirming the outcome of the meeting. This appeal will normally be conducted by another manager and a member of the Human Resources Department not previously involved in the case.

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Sickness absence review meeting – consideration of termination of employment

- 6.7 Termination of employment will normally be considered after two formal warnings to ensure that the member of staff has been given sufficient opportunity to address the problem and has been warned of the consequences of not doing so.
- 6.8 The provisions set out in Paragraphs 6.3 and 6.4 above will apply to any sickness absence review meeting to consider termination of employment, save that the meeting will be conducted by a person appointed by the Director of Human Resources or his/her nominee, who shall normally be a Head of School or nominee of such a Head of School. The person hearing the case will be assisted by a senior member of academic staff. A member of the Human Resources Department may also be present to assist the Panel conducting the meeting.
- 6.9 Following the meeting the person conducting the meeting will decide whether or not to terminate the member of staff's employment. The person conducting the meeting should discuss their decision with a member of the Human Resources Department. If they decide to terminate the member of staff's employment, the Human Resources Department will write to the member of staff confirming termination of employment with notice or pay in lieu of notice and providing the reason(s) for the dismissal and details of the right to appeal, which is dealt with under Paragraphs 7.1 below.

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7. Appeals against termination of employment

- 7.1 Members of staff who has been dismissed in accordance with this procedure will have the right of appeal as follows:
- a) A member of staff who wishes to appeal against any formal action arising under this procedure including dismissal must submit notice of the appeal in writing, including the

grounds for the appeal and any supporting documentation, to the Director of Human Resources within ten working days of receipt of the written notice of the capability/disciplinary action. The grounds for appeal will be one or more of the following:

- (i) against the finding of the original Panel (the verdict);
- (ii) new evidence having come to light that was not available at the original hearing;
- (iii) the procedure not having been applied correctly.

Once this is received the following procedure will be followed:

- b) The appeal will be heard by an Appeal Panel convened by the Director of Human Resources or his/her nominee. The Panel will comprise three members of staff who have not been directly involved in the particular case. One member of the Panel will be designated as Chair and take charge of proceedings. There may be circumstances where the Director of Human Resources at his/her sole discretion considers it appropriate to include a person independent of the College as one of the members of the Appeal Panel. A member of the Human Resources Department may also be present to assist the Panel in conducting the meeting.
- c) The appellant will be advised of the right to be accompanied by their trade union representative, a work colleague and/or carer (who is not legally qualified). The appellant will be given at least seven working days' notice in writing in advance of the hearing together with copies of all documents and written reports presented at the capability hearing. Witnesses may be called only with the Chair of the Appeal Panel's permission. The appellant should notify Human Resources no later than 3 working days ahead of the scheduled hearing of the name of their trade union representative or work colleague if choose to be represented and of the names of the representative and any witnesses they intend to call. Any witness called should provide a written statement no later than 3 working days before the scheduled date of the appeal hearing.
- d) Prior to the appeal hearing, the Appeal Panel may, if it considers it appropriate, appoint a medically qualified assessor to provide an opinion on the member of staff's medical condition. The member of staff may request that a medically qualified assessor is appointed to advise the Panel. The Panel will consider whether to do so at their own discretion.
- e) The appeal hearing will consider the grounds for appeal and will review the information presented in relation to the grounds for appeal. This information will be that which was previously submitted to the capability hearing, the notes of the hearing and the decision letter from the hearing. In addition it will include any new information arising pertaining to the grounds of the appeal.
- f) The Appeal Panel will invite the appellant (or trade union representative or work colleague) to make a statement in the presence of the College representative(s) in support of the appeal. The appellant may call witnesses. The College representative(s) shall respond to the

appellant's statement of appeal and may also call witnesses. Both parties shall have the opportunity to question each other and any witnesses called. The members of the Appeal Panel may ask questions of the appellant, College representatives and witnesses.

- g) The College representative(s) and appellant (or trade union representative or work colleague) shall have an opportunity to summarise their case. They will then withdraw from the hearing.
- h) After considering the matter the Appeal Panel will decide its course of action be to:
 - (i) Uphold the decision to dismiss;
 - (ii) Uphold the appeal against dismissal, imposing such alternative action or sanction as the Appeal Panel considers appropriate.
- i) The decision will be confirmed to the member of staff in writing. The decision of the appeal hearing will be final and there will be no further avenue for appeal within the College.
- j) If the Appeal Panel allows the appeal, the member of staff's continuous employment will be maintained and there will be no loss of pay.

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