

# **III Health Capability Procedure**

**AUGUST 2021**

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## **Introduction**

As a leading university, it is essential that Ulster University considers the health, safety and wellbeing of all employees and that appropriate support mechanisms and procedures are in place and utilised to support employees with significant health problems, and to address the associated employment issues that can arise. No decision regarding employment will be taken without prior consultation with the employee. The University will act fairly, without discrimination and consistently when applying this procedure and will ensure compliance with all relevant equality legislation.

The aim of this policy is to:

- provide a fair, non-discriminatory and consistent process for all employees who, through Ill Health or Disability may be no longer capable of fulfilling their contractual role,
- ensure regular and appropriate contact is maintained between the Employee, their Line Manager and / or Employee Wellbeing Advisor as outlined in the Sickness Absence Policy, and
- ensure that appropriate advice is obtained from Occupational Health and / or other relevant medical practitioners.

## **Scope**

This procedure will apply to all categories of staff, this procedure is effective from 1<sup>st</sup> August 2021.

This procedure is designed to be used in cases where employees are experiencing considerable health/absence problems through Ill Health or Disability and are unable to fulfil their contracted role. In this context, the

Procedure is intended for use in conjunction with the Sickness Absence Policy and used in situations where it is referenced within that policy. Each case will be treated individually on a case by case basis.

This procedure reflects the relevant Regulations in respect of incapacity due to Ill Health under [Ordinance XXXVI \(Medical Incapacity Ordinance pursuant to Statute V Part IV\)](#), for all employees.

Performance problems arising from any other cause will be resolved in accordance with either the University's [Capability Procedure](#) or the [Disciplinary Procedure](#).

## **Procedure**

### **Meetings/information obtained before formal capability meeting**

The Line Manager will consider the use of this procedure in conjunction with the Sickness Absence Policy and information obtained to date where an employee has experienced significant health problems/absence from work due to ill-health.

The Line Manager and the Employee Wellbeing Advisor will have met with the employee and their trade union representative or work colleague, to discuss all reasonable options/adjustments recommended by GP or Occupational Health, which might facilitate a return to work or enable them to sustain regular and effective service. Examples of when the formal Ill Health Capability procedure will apply include:

- where all reasonable adjustments including possible redeployment have been investigated and exhausted,

- where applicable, the latest medical advice from a G.P, third-party consultant and / or Occupational Health indicates that the individual is not fit to return to work in the near future in any capacity, even with agreed reasonable adjustments,
- where applicable, the latest medical advice from a G.P, third-party consultant and / or Occupational Health indicates that, even with reasonable adjustments, the individual is unable to sustain regular service and are unable to fulfil their contractual responsibilities, and
- where applicable, ill-health retirement is not granted.

If the employee is a member of a pension scheme, they may wish to be considered for ill health retirement, if this is case, this will be explored with the employee before the ill health capability procedure is initiated. Where an application for ill-health retirement is accepted, the pension scheme and the University will confirm this in writing.

### **Formal Capability Meeting**

A Formal Capability Meeting will be held where the termination of employment on grounds of capability due to ill-health is being considered. The University's People and Culture Department will appoint a Relevant Manager (who must be at least a grade 8 and at least one grade above that of the employee), to conduct matters at this stage on behalf of the University.

### **Prior to meeting**

The employee should receive an invitation to attend a formal meeting and will be advised in writing prior to attending the meeting of the following:

- that the Manager wishes to discuss the employee's medical capability and absences at a meeting,
- who will be in attendance,
- the proposed date, time and location on which the meeting will take place,
- that the employee has the right to be accompanied at the meeting by a trade union representative or work colleague, and
- that the University will be considering the possible termination of their contract of employment on ill-health capability grounds.

At least 72 hours prior to the meeting, the employee will also be provided with copies of any documents or reports which will be referred to at the formal ill-health capability meeting.

In advance of the formal ill-health capability meeting the employee should provide any evidence including medical information to the University's People and Culture Department which the employee intends to refer at the meeting. This must be done at least 72 hours before the meeting takes place, unless discussed and agreed with People and Culture.

The employee must take all reasonable steps to attend any meetings arranged and/or any rearranged. If the employee or their chosen companion cannot attend at the time specified for a meeting, the employee must inform the University's People and Culture Department immediately, and the University will arrange an alternative time. Normally only one postponement will be granted in line with LRA guidelines / Code of Practice.

## **Meeting**

The purpose of the meeting is to explore the employee's ability to continue in employment and to also review the adjustments and redeployment options already considered and to enable the Manager to reach a decision. The Manager will be accompanied at the meeting by a member of the University's People and Culture Department, acting in an advisory capacity.

Further medical advice will not normally be required at this meeting as all relevant medical information should already have been obtained prior to reaching this stage. If considered appropriate by either party, however, then a third party independent medically qualified person who has not been involved in the case may be in attendance. The reason why attendance is considered appropriate must be given in advance. The role of the relevant independent medically qualified person at the meeting (as appropriate) will not be to make decisions but to provide clarity on medical information that has been provided.

The procedure to be followed at the meeting will include:

- the employee having an opportunity to make representations and produce evidence relating to his or her state of health; and
- where medical evidence has been provided, an opportunity to allow the Manager, and/or the employee, to seek clarification from any medical expert giving evidence in respect of the employee's absence.

The meeting may be adjourned and reconvened at a later date if the Manager needs to obtain further information.

## Decision

In making a decision as to what action may be taken in relation to the employee's employment, the manager, in partnership with People and Culture, will consider:

- all relevant medical information,
- all reasonable adjustments and redeployment options have been explored,
- the nature of the illness and prognosis based on the information available,
- the latest medical advice from a G.P, third-party consultant and /or Occupational Health that indicates that, even with reasonable adjustments, the individual is unable to sustain regular service and is unable to fulfil their contractual responsibilities,
- the effect of continued absence on the efficient operation of the department, and
- the employee's representations on the matter.

The outcome of the meeting may be:

- that no further action is required,
- to implement any agreed accommodations to facilitate the employee's return to work or their ability to sustain regular service and fulfil their contractual responsibilities, and
- that it is appropriate to dismiss the employee as a consequence of their incapacity on health grounds.

The outcome of the meeting will be communicated to the employee in writing as soon as possible following the meeting, normally within 10 working days of the final reconvened meeting.



Where an employee is dismissed, the Manager will confirm the reasons for the decision and the employee's right of appeal.

## **Appeal**

If the employee is dissatisfied with the decision to dismiss and wishes to appeal, they must do so in writing to the University's People and Culture Department within 10 working days following the date on which the employee received notification of the decision. The employee must set out their grounds of appeal in writing.

The University's People and Culture Department will determine appropriate personnel to conduct the appeal. In cases of dismissal the Appeal Panel will comprise of a senior member of University staff, a lay member of Council and an elected member of Senate (the Appeal Panel). For the appeal panel, the senior member of staff will be at Director level or above. The Appeal panel will be accompanied at the meeting by a member of the University's People and Culture Department, acting solely in an advisory capacity.

The employee will be invited to attend an appeal meeting which will take place as soon as possible, normally within 10 working days following receipt of the Appeal by the University. The employee will be informed of the composition of the Appeal Panel and of their right to be accompanied to the meeting by a union representative or work colleague.

The employee must take all reasonable steps to attend any rearranged meetings. If the employee or their chosen companion cannot attend at the time specified for a meeting, the employee must inform the University's People and Culture Department immediately, and the

University will arrange an alternative time. Normally only one postponement will be granted in line with LRA guidelines / Code of Practice. However, consideration will be given to postponements depending on the employee's health.

### **The Appeal Meeting**

The appeal meeting will take the form of a full re-hearing of the matter. The appeal meeting may be adjourned and reconvened at a later date, at the discretion of the Appeal Panel, if the Appeal Panel needs to carry out additional investigations.

### **Confirmation of Outcome of Appeal Meeting**

The decision of the appeal meeting will be communicated to the individual in writing, normally within 10 working days of the hearing. The Appeal Panel will also provide the employee with the reasons for the decision that it has reached. The decision will be final and exhausts the University's procedures.

### **Support and Advice – Who to Contact**

[Employee Wellbeing Advisors](#) are available to advise and assist managers and individual members of staff on the application of this policy.

Advice on cases related to disability or gender identity issues can also be sought from the [Equality, Diversity and Inclusion Team](#).

The University [Occupational Health](#) team is available to support employees and managers by providing professional occupational health

advice on fitness to work, adjustments to work tasks or the work environment.

A free, confidential and independent employee assistance programme is available to all employees of Ulster University, 24 hours a day/7 days per week. '[Inspire](#)' gives access to highly trained, professional staff with no referral necessary. Further information can be found on the staff portal.

[Trade Union Representatives](#) from the recognised Trade Unions are available to advise their members on the application of this policy.

## **Review**

This policy should be reviewed in conjunction with a review of the Ill-Health Capability Procedure and Emergency Special Leave Policy in consultation with the Trade Unions. Minor revisions to clarify, update or aid with the administration of above documentation including this policy may be made by the University Health, Safety and Wellbeing Committee and the JUCNC. The [procedures and guidelines](#) which accompany this procedure may be updated from time to time in accordance with technological upgrades and legislative changes in consultation with the Trade Unions. This will ensure continued compliance, efficiency and best practice in the management of sickness absence.