

Incapacity on Medical Grounds Policy and Procedures



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Human Resources

This policy will be reviewed periodically to ensure compliance with changes in employment law and equality and diversity legislation. In the event that this policy or procedure is not so compliant, the relevant legislation shall prevail.

Changes to this policy will be subject to consultation and agreement with the University's recognised Trade Unions before implementation

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1. Introduction

The success of Brunel University London (the University) depends on effective contributions from all employees. The University recognises that the vast majority of its staff meet or exceed the demands of their respective roles and responsibilities, however health issues can and do arise. This policy and procedure provides a framework for dealing with cases of ill health and incapacity, in a fair, supportive and consistent way. This policy should be read in conjunction with the Sickness Absence Management Policy.

The University recognises that there are many different causes of absence from work. This Policy stems from a need to provide support for employees during sickness, to monitor and manage sickness absence from work and to assist staff in an early return to work. All staff benefit from better levels of attendance and studies show that work is generally good for health and prolonged sickness absence can produce its own set of problems. Keeping people at work and helping them get back to work as soon as possible can help maintain an employee's health and wellbeing and improve organisational effectiveness. Further having the appropriate resources available to carry out the necessary work lessens the potential workload and impact on other staff.

Managing health, work and wellbeing is the responsibility of both the employer and the employee. The Fit for Work statement enables a GP to advise that an employee is either unfit for work, or "may be fit for work" with suggested recommendations. The focus is now on what a person can do at work, rather than what they cannot, in order for an early return to the workplace. An employee can often make a valuable contribution to work before they are 100 per cent fit.

This document outlines the University's procedure for handling issues arising from ill health and incapacity. This policy will only normally apply where a member of staff has a certified, long-term medical condition, disability or an illness or injury that 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 or adjusted duties and to an agreed standard of competence, due to a medical condition or disability)

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 Sickness Absence Management Policy and/or the relevant part of the Disciplinary policy.

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The University's expectation is that the Incapacity on Medical Grounds Policy will only be used for serious cases of ill health capability. This policy will normally be invoked once all other avenues of support have been explored at the relevant procedural stages.

For most cases of illness the Sickness Absence Management Policy should be used in the first instance. This will ensure that the relevant reporting is followed, certificates provided, appropriate consultation has taken place and any support/adjustments considered. If the appropriate stages of the Sickness Absence Management Policy have been followed and/or an illness, condition or injury is impacting on long-term absence or performance at work then this policy should be followed. For further details about the management of sickness absence issues, please refer to the University's Sickness Absence Management Policy or contact Human Resources.

Where there is doubt over which procedure to use, Line Managers and staff are encouraged to contact Human Resources for clarification.

An employee who is off sick for a prolonged period of time can be fairly dismissed if they are unlikely to be fit to work and capable to return to work/normal working within a reasonable time frame. What amounts to a reasonable timeframe depends on the nature of the job, the impact on the service, staff and students, and the specific difficulties encountered by the University in covering for the absence. However, the University is not expected to have to keep the job open indefinitely.

This Policy sets out the University's Incapacity on Medical Grounds process and procedures to be followed in the handling of long term ill health or incapacity situations. It indicates the various stages involved in the process, who is involved and why and explains the steps that the Procedure will follow from outset to outcome, including clarification of the right to appeal decisions and the relevant outcomes that may be applied, which may include dismissal.

2. Scope

The policy applies to all staff employed at the University, who have successfully completed their probation period. It does not apply to casual staff, hourly paid staff, agency workers or contractors.

Those members of staff who have not completed their probation are subject to a separate probationary procedure; however, the University reserves the right to invoke the statutory (ACAS) dismissal procedure in cases of alleged incapacity issues. All other cases of incapacity will be dealt with within the probation procedures.

Where there are procedural variations for different staff groups, these are clearly defined.

Staff with special needs such as language difficulties or disabilities that may prevent them from full participation in the procedure, will be provided with reasonable adjustment/appropriate assistance. In all instances reasonableness will be applied when considering how best to proceed.

3. Aims of the Policy

- To ensure that members of staff who are suffering from long term illness and/or disabilities that prevent them from attending the University for a significant continuous period or undertaking their roles on medical grounds are treated sympathetically and sensitively, in line with legislative requirements
- To provide appropriate support and guidance to Managers and members of staff and to aim to enable a return to work within a reasonable timescale
- To ensure that, as far as possible, the Incapacity on Medical Grounds Policy is efficiently managed in a fair and equitable manner.

To facilitate the University in meeting its performance objectives.

4. Definitions and expectations of roles

Line Manager

A Line Manager\Supervisor\Team Leader is the staff member who has direct managerial responsibility for a particular employee. All managers with a responsibility for the management of staff will need to be aware of the requirements of this Policy and related Policies and should ensure that their direct reports are familiar with its contents. The raising of Manager's awareness of the requirements of this Policy will be undertaken through the opportunity to attend training and dissemination of the Policy. Line Managers may nominate another appropriate member of staff to act on their behalf under this Policy.

Companion who may be a Trade Union Representative

A representative from Trade Union recognised by the University or an official thereof employed by a Trade Union. A Trade Union representative, who is not an employed official, must be certificated by their Union, and must provide evidence, as being competent to accompany an employee.

Companion who may be a Work Colleague

A member of staff, employed by Brunel University London, who should not be placed in a conflict of interest by accompanying an individual under this Policy.

The companion should be suitable, willing and, ideally, available on site rather than someone from a geographically remote location. The member of staff's chosen companion can act as a witness, take a note of the proceedings, address the meeting/Hearing and confer with the member of staff and sum up the case as necessary. They may not answer questions on his/her behalf, address the Hearing if the member of staff does not wish this, nor prevent the employer from explaining their case.

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Witness(es)

A current member of staff who would be asked to provide a statement or confirm notes from any investigation meeting, which would be included within any Management report/Hearing documentation. Witness statements should be concerned with the facts relating to the case and not consist solely of unsubstantiated opinion. To ensure fairness, confidentiality and consistency of the process, anonymous statements will not be accepted. Where a member of the team/department, who is a key witness, is employed by a 3rd party, it could be relevant to include their statement.

Independent Manager

An Independent Manager is one who is, wherever possible, sufficiently detached from the content or detail of the case, to be able to give an impartial and unbiased judgment at a Formal Final Hearing as part of the Hearing Panel. This does not preclude the head of Department or Senior Manager within the Department from participating on the Hearing Panel and the Independent Manager may also be the Head of Department. The role of the Independent Manager is to act as Chair of the Panel, to listen to all information provided and, based on the facts of the case as presented, form a judgment regarding a suitable action, outcome or resolution, as agreed with the Hearing Panel. Further, they must ensure that all parties have the opportunity to present their case. Where a case goes to Appeal, they will be responsible for presenting the rationale for the Panel's decision to the Appeal Hearing, if requested, whether in person or by correspondence.

Presenting Manager

If a Presenting Manager is nominated, they will prepare and present the case and answer any questions asked of them by the Panel or member of staff/companion at the Hearing. It will not always be the case that a Presenting Manager will be required.

The Respondent

The member of staff against whom the management case and concerns has been brought.

The Appellant

The member of staff submitting an appeal.

5. Confidentiality

Matters will be handled with as high a degree of confidentiality as is practicable, particularly when the issue is one of a sensitive nature. Any Manager, member of staff and their representative must ensure that they maintain the confidentiality of the process and of University documents; any breach of confidentiality may be treated by the University as a disciplinary matter and appropriate action taken. No electronic recordings of any part of the proceedings are permitted.

6. General Principles

- This Policy will only be applied in cases of certified long-term ill health/medical conditions, disability or an illness/injury/condition that has the potential to be long-term and is impacting on the member of staff's attendance at work, or performance at work
- The Policy should be read in conjunction with the Sickness Absence Management Policy and that Policy should be followed for any ill health/incapability issues in the first instance
- The University will take all reasonable steps to consider a range of options to accommodate a disability or facilitate a return to work, where possible, in line with prevailing legal requirements and medical recommendations.
- The University will seek up-to-date, relevant medical evidence, in particular where dismissal for Incapacity on Medical Grounds may be a possibility, and the member of staff must take all reasonable steps to engage in this requirement and in a timely manner.
- Staff members who are subject to this Policy and proceedings are expected to engage fully with this procedure. Avoidance or refusal to engage/co-operate may be taken into account in any formal process and /or in consideration of whether disciplinary action may be required to be followed
- A member of staff on long term sick leave, shall have a responsibility to update their Line Manager regularly and in particular if a return to work date has been medically recommended
- A member of staff will not be dismissed under this Policy where there is evidence to suggest that a full recovery and return to work is likely to be made within what the University defines as a reasonable timescale. Timescales will be decided on a case-by-case basis and will take into account medical evidence and the business case.
- A staff member may be suspended on full pay at any stage of the Procedure should suspension be deemed necessary for reasons of Health and Safety, or essential to facilitate an Incapacity investigation. Suspension is not a Disciplinary sanction and must not be used as such. Suspension should always be for as short a time as possible and will be subject to appropriate review.
- The decision to dismiss a member of staff under this Policy will not be taken until all reasonable options have been considered.
- In cases of serious medical conditions, and where an employee is permanently incapable of doing their job or any other job, and is a member of a pension scheme administered through the University, an ill health retirement application may be considered to be made to that pension scheme, although this does not imply that a successful outcome will result. This may be considered prior to, or in parallel with, any dismissal process.
- The University reserves the right to dismiss a member of staff following the appropriate procedure on the grounds of Incapacity on Medical Grounds e.g. where:
 - a return to work date within a reasonable timescale cannot be established from the medical evidence
 - the staff member's state of health prevents a sustained return to work within what the University defines as an acceptable timescale
 - the staff member's state of health is impacting on their ongoing performance at work

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- no suitable work alternative or adjustment of duties can be found
 - reasonable adjustments, redeployment and/or an application for ill health retirement is inappropriate, not possible, or has been unsuccessful
 - the continued employment of the staff member is unsustainable.
- The University will meet the reasonable costs of any medical opinion required.
 - A formal Incapacity Hearing will not be convened until a Management Case has been prepared and provided in advance to the member of staff and notice given to enable them to prepare for their response. At each stage of the formal procedure staff are entitled to be accompanied by a companion. When attending formal meetings and Hearings staff members should ensure that they inform the University of their choice of companion. All parties should try to avoid undue delays to the process and should take all reasonable steps to attend any meetings.
 - A staff member subject to this Policy will be informed in writing of the outcome of the meetings/Hearings and advised of their right of Appeal where appropriate.

7. Roles, Responsibilities and Expectations

All parties involved in the operation of the Incapacity on Medical Grounds Policy must conduct their behaviour in an appropriate and professional manner - treating all parties with respect and dignity.

Line Manager:

The Line Manager is responsible for:

- Understanding and adhering to the University's Sickness Absence Management Policy and Incapacity on Medical Grounds Policy.
- Seeking guidance from Human Resources on all ill health capability cases, before taking any formal action.
- Requesting advice from Human Resources as early as possible (or at any point in the process), if they are unsure about any aspect of the Sickness Absence Management Policy or Incapacity on Medical Grounds Policy.
- Ensuring sickness/ill health cases are dealt with as early as possible and in a sensitive and consistent manner whilst maintaining confidentiality, dignity and equality of opportunity.
- Attempting resolution of issues through the Sickness Absence Management Policy, where appropriate.
- Writing/initiating ill health capability reports and gathering all relevant information and evidence to support an ill health capability Hearing or potential dismissal.

Member of Staff:

The member of staff is responsible for:

- Understanding that they have a responsibility to achieve and maintain appropriate standards of work and ensuring their work performance meets the requirements of their role and targets set and that such performance is maintained

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- Understanding that they have a responsibility to attend work on a punctual and regular basis
- Raising health issues that are affecting work performance or attendance levels with their Line Manager at the earliest opportunity
- Understanding and complying with the University's Sickness Absence Management Policy, reporting procedures and the Incapacity on Medical Grounds Policy
- Asking questions of their Line Manager or Human Resources if they are unsure about any aspect of the Policies, Procedures or reporting procedures
- Responding positively to informal attempts to resolve issues by their Line Manager.
- Cooperating and engaging fully during all stages of the procedures including providing consent to medical records, attending medical appointments, or attending meetings where requested.
- Assisting in obtaining or providing medical reports, if required.
- Identifying, requesting and organising the support or attendance of a Trade Union representative or work colleague at formal meetings

The Occupational Health Service

The role of the Occupational Health Service is to meet, confidentially, with a member of staff and based on the medical evidence, to provide recommendations to the University.

Normally if after four weeks of continuous absence (or earlier if there is a particular reason for concern), there is no date or prognosis for a return to work, the Line Manager should consult with Human Resources to consider whether a referral to the Occupational Health service is appropriate. For stated reasons of work related stress, anxiety or depression on a Fit Note, any absence should be referred to Occupational Health at that time. If a referral is made, members of staff should be aware that should they fail to take reasonable steps to co-operate with the requirements of the Occupational Health referral or to follow its advice in order to aid their recovery/return to work, then disciplinary action may be taken.

Access to Medical Records

The University expects staff to attend Occupational Health appointments when required and to take all steps to engage with the process in order that the University can be sufficiently informed. This includes providing consent to access their relevant medical information, which will normally take place through the Occupational Health service. Staff may be required to undergo medical examinations where necessary. Where a member of staff refuses to give permission for their medical information to be made available or to undergo a medical examination, the University will need to make decisions about the staff member's employment based on the information available, which could be detrimental to them, and it may also lead to disciplinary action being taken.

Illness during the Incapacity on Medical Grounds Procedure

The University has a duty of care to all of its members of staff. Therefore, where a member of staff is experiencing continued illness during this process such that they are unable to attend meetings/Hearings for instance, the University will request a medical report from the Occupational Health service to determine if and when a member of staff is fit to attend a

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meeting/Hearing or engage in other aspects of the Procedure. This may also require information from the member of staff's GP/specialist.

Where a member of staff is deemed fit enough to attend a meeting/Hearing or engage in the process, the meeting/Hearing/process will be arranged or continue in the normal way. Where the medical advice suggests that a meeting/Hearing may go ahead with adjustments, this will be arranged accordingly.

Where a member of staff is deemed to be too unwell to attend by the Occupational Health service (taking advice from a medical practitioner as appropriate), the meeting/Hearing will normally be rescheduled, according to medical advice as to timescales. However, where the member of staff is unable to attend the rescheduled meeting or the timescale is unreasonable, the meeting/Hearing may be held in their absence using the documentary evidence available, together with any written submissions provided or through a nominated companion to speak on their behalf.

8. Incapacity on Medical Grounds – The Procedure

There two formal stages in relation to this procedure. At the early stages of sickness absence, the Sickness Absence Management Policy should normally be used as appropriate. If the appropriate stages have been followed, or the employee is deemed to be unlikely to be fit to work long-term and/or capable to return to undertake their work or adjusted duties, then this procedure should be followed.

Stage One - Formal Hearing

Where there are concerns about an employee's long-term medical incapacity or attendance, the member of staff will be invited to a Formal Stage One Hearing. This will be done in writing by Human Resources and will set out the issues to be considered including details of the Management case to be discussed and all relevant documentation/medical reports available and advise that the member of staff will have the opportunity to respond. The letter will advise the staff member of their right to be accompanied and of the need for confidentiality. The letter will also advise of the outcomes that could result from the Hearing and advise that a written warning/Stage Two Final Hearing would only follow if there was sufficient cause for concern that the member of staff would continue to remain absent with no reasonable timescale for return indicated, or they were unable to sustain their attendance/performance, or that they were incapable of undertaking their duties or adjusted duties.

The Hearing will normally take place within 10 working days from the date of the letter and will request the staff member to provide any supporting documentation at least 5 working days prior to the Hearing.

The Panel will comprise of a minimum of three members: the next Line Manager/Head of Department, another Manager of equivalent level or more senior Manager (if appropriate), and the relevant Human Resources representative, although the composition may be varied depending on the nature and complexity of the issue concerned.

At the Hearing the Line Manager (or nominee) will present the Management case. The member of staff will be reminded of the earlier discussions/recommendations (where these have happened), medical advice available and any steps taken to support their return to work. The

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member of staff/companion may ask questions of the Presenting Manager, together with the Panel members. The member of staff will then be given the opportunity to respond and to raise any factors to be taken into account, or possible alternative action/solutions that could be considered.

Staff with special needs such as language difficulties or disabilities that may prevent them from full participation in the procedure, will be provided with reasonable adjustment/appropriate assistance. In all circumstances, reasonableness will be applied when considering how best to proceed.

Short adjournments will be possible during the hearing for instance to confer with a representative/companion or if breaks are required for medical reasons.

It is expected that the Hearing will provide for an open and honest discussion at which all parties will:

- jointly review the content of the medical opinion and any advice received from the Occupational Health service;
- discuss the member of staff's own feelings about the content of the report and of any recommendations made;
- establish the member of staff's own assessment of their condition, whether there has been any improvement in their condition, and how any treatment is going;
- discuss any possible return to work and proposed timeframe, if this has been confirmed as an option by the Occupational Health Adviser or on medical advice;
- look at any possible adaptation of duties or suitable alternative work which may enable an early return to work for the member of staff;
- draw up, in agreement with the member of staff, a return to work programme with review dates in order to discuss progress and amend if necessary;
- consider, and if possible agree, the next steps including a future review date;
- advise on the possible termination of appointment if the staff member does not return within a reasonable timeframe, does not sustain their level of attendance, or the agreed programme does not provide a sustained and acceptable standard of work;
- consider alternative options.

Considering Alternative Options

The Panel may need to explore with the member of staff alternative options/outcomes: they may include:

- A reduction in hours or part-time working on a longer-term/permanent basis with reduced salary/terms and conditions;

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- Operational/departmental transfer to a vacant position (in consultation with the receiving area);
- Retraining where practical and within a reasonable timeframe;
- Partial home working on a temporary basis;
- Application for Ill health retirement (partial or full) – in line with the requirements of the employee's relevant Pension Scheme administered by the University.

Stage One – Formal Hearing – Outcome

After the Hearing the Chair of the Panel (or nominee) will issue the staff member with a letter clearly setting out the decision of the Panel. Depending on the circumstances, this may be an agreed programme for a return to work, together with the required timeframes, level of attendance expected and review dates; or agreement reached regarding further information to be obtained before a decision can be made, or issuing a warning that failure to return within a set timeframe will result in a Stage Two Final Incapacity Hearing being held, etc.

The letter will provide the staff member with details of:

- The findings of the Panel or agreements reached at the Hearing;
- The improvement in attendance/performance expected and the expected timeframe with any review periods as appropriate;
- The consequences of failing to return to work within a reasonable timeframe, or of achieving the levels of attendance or failing to sustain the required improvement;
- Any support or training that may be required;
- The right to appeal and to whom it should be submitted in writing by them within 10 working days of the date of the letter containing the decision. In exceptional circumstances where the outcome letter can only be delivered through the external postal system, a longer deadline of 15 working days may be applied.

The written warning will remain live for 12 months from the date of issue. If the Staff member is absent for any reason for a period of more than one month during the 12 month period then the warning will be extended for the equivalent length of time.

Stage Two – Final Incapacity Hearing

The decision to use the formal Stage Two procedure will only be taken after:

- There has been no return to work within the expected timeframe/there is no likelihood of a return to work within a reasonable timeframe;
- Improvement in attendance levels or in a sustained and acceptable level of performance has not been achieved;
- Medical evidence has been sought. If permission has not been granted to access medical records or it has not been provided, the information available to the Panel will be used;
- All possible alternative options have been explored;
- An opinion from Occupational Health has been sought as to whether the employee (if in a pension scheme administered by the University) could be retired on ill health grounds where appropriate.

In the event that no alternative options or adjustments are appropriate, an Incapacity on Medical Ground Management Case will be produced which would normally include:

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- 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 report of the absence (including absence data);
- Medical evidence/Occupational Health service 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 or if implemented may have failed;
- A recommendation to dismiss on the grounds of ill health capability.

The Staff member will be required to attend a Stage Two Formal Final Hearing and advised that the outcome could be their dismissal.

Staff with special needs such as language difficulties or disabilities that may prevent them from full participation in the procedure, will be provided with reasonable adjustment/appropriate assistance. In all circumstances, reasonableness will be applied when considering how best to proceed.

Short adjournments will be possible during the hearing for instance to confer with a representative/companion or if breaks are required for medical reasons.

The Panel will comprise a minimum of three members of staff: an Independent Senior Manager of the University, another Senior Member of Staff, the Line Manager/Head of Department, and a representative from Human Resources, although the composition may be varied depending on the nature and complexity of the issue concerned.

The University will invite the staff member to a formal hearing in writing, setting out the issues to be considered and including the Incapacity on Medical Grounds report. It will advise the staff member of their right to be accompanied and of the need for confidentiality. The letter will advise the stage of the process that will be followed and the outcome that could result from the Hearing. The Hearing will normally take place within 10 working days from the date of the letter and will request the staff member to provide any supporting documentation and/or witness statements at least 5 working days prior to the Hearing

At this Hearing, the Presenting Manager will outline the issues that have led to the Hearing and the Panel will explore whether there are any further mitigating circumstances that may be impacting on the staff member's performance at work or attendance. The staff member will be given the opportunity to state their case and raise any factors that s/he wishes to be considered.

Stage Two – Final Hearing – Outcome

As soon as possible after the Hearing, the Panel will consider the case and decide on the outcome. At this stage a termination could result. It may be necessary for the Panel to seek

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further information/clarification following the Hearing, and such action will impact on the timeliness of the outcome being determined.

The Chair of the Panel (or nominee) will issue the staff member with a written outcome, normally within 5 working days of the Hearing/Panel decision.

On the basis of the information presented the Panel may decide on one of the following outcomes:

- Terminate the staff member's employment on the grounds of Capability (Medical Incapacity);
- Extend a Stage One warning;
- Make a series of recommendations or adjustments.

The above list is not exhaustive and the outcome may be varied according to the circumstances of the case.

- In the event that the Panel decision at the Hearing is to dismiss the staff member, the letter will inform the staff member of the reasons for their dismissal, their period of notice/pay in lieu of notice (if applicable), the date on which their Contract of Employment with the University will be terminated and the right to appeal the decision and to whom it should be submitted in writing by them within 10 working days of the date of the letter containing the decision. In exceptional circumstances where the outcome letter can only be delivered through the external postal system, a longer deadline of 15 working days may be applied.

If witnesses have provided a statement but have not attended the Hearing, they will be provided with a brief statement normally by their interviewer in order to inform them that the matter has been heard.

9. Right of Appeal

There is no right of appeal against the outcome of the Informal procedure of this Policy.

An individual has the right to appeal against any outcome of a formal stage of this Procedure, including any sanction against them. Appeals must be lodged in writing to the Director of Human Resources/nominated Human Resources Manager within ten working days of the date of the letter containing the decision, clearly stating the grounds for the appeal. In exceptional circumstances where the outcome letter can only be delivered through the external postal system, a longer deadline of 15 working days may be applied.

An Appeal Hearing is not usually a re-hearing of the case. The Appellant must be specific about the grounds of appeal as this will form the agenda for the Appeal Hearing. The Appeal Panel should normally confine discussions to the specific grounds of appeal rather than reconsider the whole matter afresh. The documentary evidence from the Hearing outcome being appealed will be available for reference purposes however and the Chair of that Hearing

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Panel (or nominated Panel member) will be responsible for presenting the rationale for their Panel's decision, if requested, whether in person or by correspondence.

Grounds for Appeal may be raised on the basis of:

- Procedural irregularity which has a material effect on the decision;
- Disregard of material evidence;
- The severity of the sanction in the face of the evidence presented;
- Demonstrable bias or prejudice on the part of the Panel;
- New evidence – which has genuinely come to light since the Hearing. Where new evidence is raised, further investigations may need to be carried out which may require the Appeal Hearing to be postponed, pending the outcome of the investigations.

An Appeal Hearing will be arranged as soon as possible, allowing for factors such as Panel member availability. The Appeal will be heard by two senior Managers who have not previously been involved in the case and a Human Resources representative. The Panel where possible should reflect a varied profile.

The individual will have the right to be accompanied by a companion and should make the necessary arrangements to enable their companion to attend.

For Academic Staff (as defined in Statute 1 – 1.1), where a dismissal outcome has been decided, an Appeal Panel shall be constituted as specified under that Statute, and will consist of at least three members, including a Chair being a member of Council not being a person employed by the University; at least one other member of Council not being a person employed by the University and at least one member of the academic staff nominated by the Senate.

Possible outcomes of an Appeal Hearing may be for the Appeals Panel to:

- Confirm the decision of the previous hearing;
- Uphold the Appeal and rescind the decision; in which circumstances the Appeals Panel may consider it appropriate to determine an alternative, lesser sanction.

The outcome may be varied according to the circumstances of the case.

The outcome of the Appeal will be set out in a letter from the Chair of the Panel (or nominee) to the Appellant who will be advised that the decision is final and that there is no further right of appeal.

10. Special Cases

Staff members who are accredited trade union representatives

Where this Policy is being considered against a staff member who is an accredited trade union officer/representative of a trade union recognised by the University, no formal action will be

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initiated under this Policy until the University has made reasonable efforts to discuss the matter (with prior agreement of the staff member) with a regional official of that trade union. This does not prevent the University from suspending the staff member in line with this Policy.

If the trade union official/representative concerned objects to the regional officer being contacted, the University will continue with the capability process.

Overlapping Grievance and Incapacity on Medical Grounds cases

Where a member of staff raises a grievance when the Incapacity on Medical Grounds process is already underway or vice versa, consideration will be given as to whether it is appropriate to deal with both issues concurrently. The same Panel would be used. Only in exceptional circumstances will an Incapacity procedure be adjourned to consider the grievance.

Counselling

Staff may wish to consider utilising the University's Counselling service which offers emotional, psychological and mental health support. Counsellors are trained to listen, understand and to help clarify and address problems that may be interfering with the wellbeing and enjoyment of life for staff. This service is free and confidential.

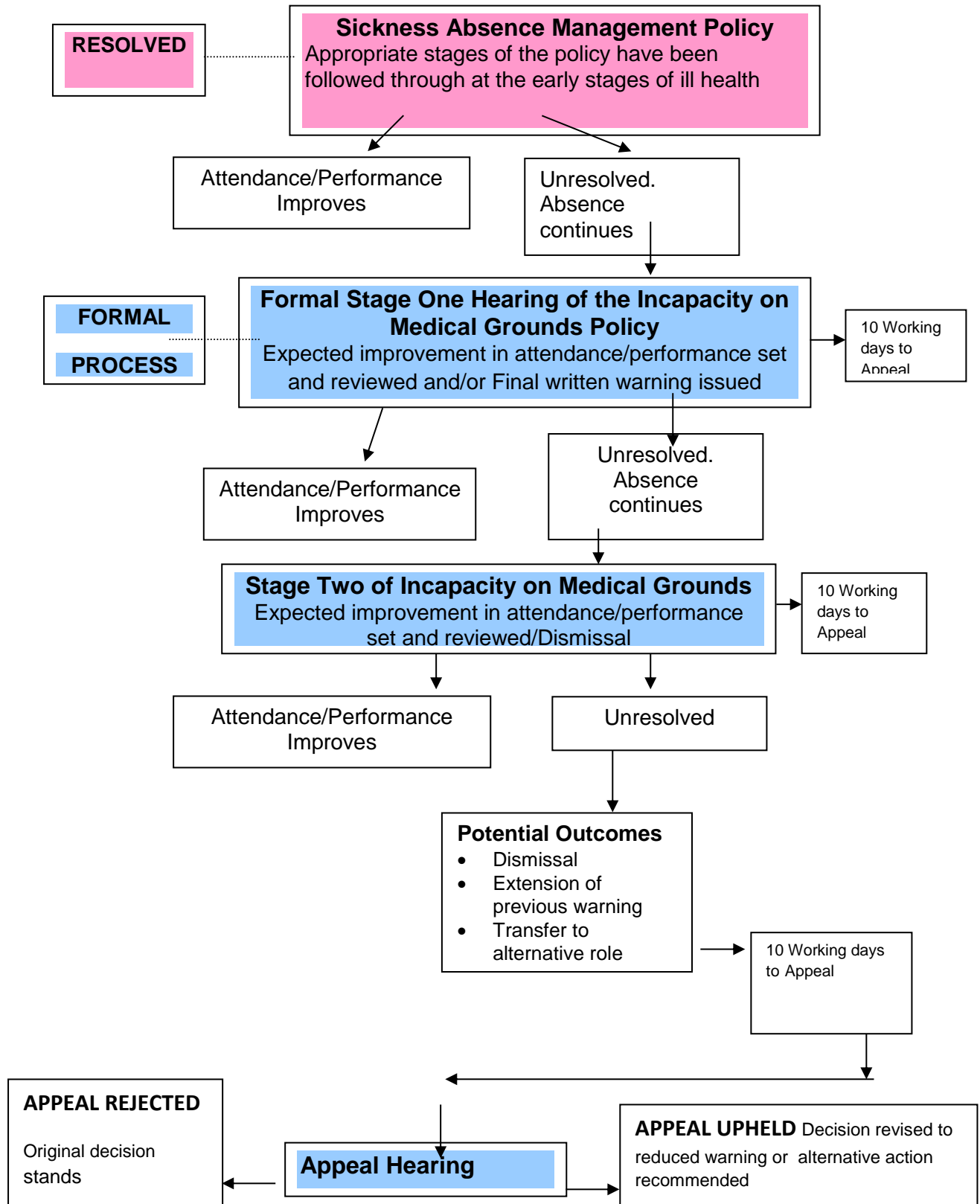
11. Further Information

A full list of all available policies and guidelines are available on the HR intranet.

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Appendix A – Incapacity on Medical Grounds Process Flowchart



Appendix B – Suggested Incapacity Hearing Process

Only the Panel and if applicable, the note taker should be present in any pre-meeting.

The Presenting Manager presenting the case together with the member of staff and their companion (Trade Union representative or work colleague) should not enter the meeting room until the Panel asks them in at the time of the actual Hearing.

The following is a guide for the Chair of the Panel to use in managing the Hearing process.

The Chair should:

1. Introduce all parties present and their role.
2. Establish if witnesses have been called and confirm timings.
3. Ensure that all parties are aware of the background to and the purpose and conduct of the hearing, e.g. the issues to be heard, the Incapacity Stage and the format to be followed. Chair to confirm confidentiality and that breaks will be provided if requested.
4. Confirm that all documents relevant to the Hearing have been received. In the event that a party wishes a document to be tabled, agreement by all parties will be sought.
5. Advise what the possible outcome could be e.g. the issue of a written warning.

Either party may wish to provide witness statements in advance of the Panel Hearing and it is the responsibility of each party to ensure that their witnesses are available to attend the Hearing should that be necessary. It is the decision of the Panel, however, as to whether or not to call a witness to attend the formal Hearing.

Witness statements should be concerned with the facts relating to the issue and not consist solely of unsubstantiated opinion. If a witness provides a statement who is unable to attend a Hearing, or declines to attend, it will be up to the Panel members' discretion as to whether or not to accept the statement. The Panel may decide, however, that witness statements alone will be sufficient.

Suggested order of Hearing:

The Presenting Manager will present the Management case/report and offer potential resolutions if appropriate and call witnesses where required.

The member of staff or their trade union representative will have the opportunity to state their case, call witnesses where appropriate and to offer a resolution.

Both the member of staff and the Presenting Manager, together with Panel members, will have the opportunity to question the parties and their witnesses.

Both parties will then have the opportunity to sum up their case with a concluding statement, including how they believe the matter could be resolved, with the member of staff presenting their statement last.

Incapacity on Medical Grounds Policy and Procedures



The Chairperson may at any time during the Hearing decide to adjourn in order to seek clarification of any evidence presented, or to request further information. The aim is to achieve a clear understanding of the capability issues, why they have arisen and how they may be resolved.

Chair to adjourn Hearing and advise that the outcome will be delivered in writing as soon as possible.

Should any new evidence come to light during the adjournment, this will be disclosed either through paper submission or at a reconvened Hearing. This will provide all parties with visibility of the new evidence and the opportunity to respond.

If witnesses have been approached as part of the Management case, they will be provided with a brief statement once the Hearing has taken place, in order to inform them that the matter has been heard.

Appendix C - Suggested Capability Appeal Hearing Process

Only the Panel and if applicable the note taker should be present in any pre-meeting. The Appellant and their representative, together with the Chair from the previous Hearing, if invited to attend, should not enter the meeting room until the Panel asks them in at the time of the actual Hearing.

The following is a guide for the Chair of the Panel to use in managing the Hearing process.

The Chair should:

Introduce all parties present and their role

Advise that the meeting is being held to consider the specific grounds stated in the Appeal statement.

Emphasise that confidentiality must be followed and that breaks will be provided if required.

Advise that the decision of the Appeal Panel is final and that there is no further right of appeal.

The order of the hearing should be:

The Appellant or their representative will be asked to put forward their case

The Panel will ask questions of the appellant

The Panel will ask questions of the previous Chair if their presence is required

The Chair will confirm that no further information is being put forward

The previous Chair to sum up if present

The Appellant or their representative will sum up

The Chair will adjourn the Hearing for the Panel to deliberate on the information presented which may include further investigation as necessary

The decision shall be advised in writing to all parties, normally within 5 working days of the Hearing unless a different timeframe has been advised.

The decision of the Appeal Panel shall be final. There is no further right of appeal.