

# Capability (Ill-Health) Procedure

## Contents

1. Introduction.....	1
2. Who is Covered by this Procedure? .....	2
3. Before Starting the Procedure.....	2
4. Starting the Procedure.....	3
5. Inviting You to the Capability Review Hearing.....	3
6. At the Capability Review Hearing.....	4
7. Right of Appeal.....	5
8. Further Information and Support.....	6
9. Policy Review .....	6

**Policy Owner:** Human Resources

**Last Review Date:** May 2024

**Version:** 1.1

## I. Introduction

At Strathclyde, we're committed to supporting you when you're unwell. We'll always allow a reasonable amount of time for recovery or improvement to be demonstrated, but we must also meet our obligations to our students, customers, and colleagues, delivering the level of service they expect from us. Sometimes, after following our [Formal Sickness Absence Management Procedure](#) and giving time and support, it becomes no longer possible to sustain your continued absence(s) from work and we need to consider terminating your employment on the grounds of capability.

This procedure sets out the steps we'll follow when we consider that you're no longer able to perform your job satisfactorily, due to one of the following reasons:

- Where you have a significant period of continuous long-term sickness absence, with no reasonable prospect of return within a reasonable timescale.
- Where you have high levels of intermittent/ short-term sickness absence due to an underlying medical condition, with no reasonable prospect of a satisfactory improvement in your attendance levels within a reasonable timescale.
- Where you have high levels of intermittent/ short-term sickness absence due to minor unrelated illnesses, with no reasonable prospect of a satisfactory improvement in your attendance levels within a reasonable timescale.
- where you're at work, but unable to fulfil your main duties to the standard required due to ill-health or an underlying health condition.

We know if this happens, you'll be anxious and worried, but please be assured that this will always be a last resort, and we'll only consider terminating your employment once we have fully considered alternatives. We'll handle things as sensitively as possible, consulting with you at every stage.

Please note, if this policy refers to additional guidance, FAQs, online forms, or training, these are accessible to University colleagues on our [People Hub](#).

## 2. Who is Covered by this Procedure?

This procedure applies to all employees of the University.

## 3. Before Starting the Procedure

We'll only ever start our capability (ill-health) procedure where you have had a minimum of two formal Health Review Meetings, and we have fully explored alternatives under the [Formal Sickness Absence Management](#) procedure. This means:

- you have been given a reasonable period of time, to allow for recovery/ improvement.
- you been offered all appropriate support.
- you have had the opportunity to comment on your fitness to work and/or the likelihood of returning to work and/or likelihood of sustaining regular and effective service in the longer term.

In addition to the above, where you have an underlying health issue, the Capability (Ill-health) procedure will normally only be commenced where:

- medical opinion indicates that you will remain insufficiently fit to return to your job or carry out the main functions of your job for the foreseeable future.
- Where applicable, all [reasonable adjustments](#) (staff log in required) which might facilitate a return to work, a regular pattern of attendance, or an improvement in performance have been adequately considered. This means:
  - where you have been fully involved and consulted on potential reasonable adjustments to your job and/or working environment.
  - where reasonable adjustments have been implemented, their ongoing effectiveness has been reviewed with you on a regular basis.
  - where suggested or recommended reasonable adjustments have not been implemented, the reasons for this have been fully explained to you, and alternatives explored.
- Where applicable, reasonable adjustments have been implemented but have not been effective.

- [redeployment](#) to a suitable alternative role has not been possible or agreed (if applicable).
- ill-health retirement has not been granted (pension scheme members only).

Nothing should be a surprise, so your manager will have already informed you, at a previous health review meeting, that your level of absence and/or level of performance may be considered unsustainable and, therefore, that your continuing employment with the University may be at risk.

## 4. Starting the Procedure

Your manager will arrange to meet with you to inform you that they're recommending that your case be progressed to a Capability Review Hearing and to explain their reasons for this.

Your manager will complete a [Capability Report](#) (staff login required) and send this to your Head of Department. The report will outline the steps that have been taken so far under the formal absence management procedure to support you to return to work or, if you're at work, to sustain regular and effective service and/or to fulfil your main duties to the required standard.

Your manager will provide you with a copy of the capability report.

## 5. Inviting You to the Capability Review Hearing

You'll be invited to attend a formal Capability Review Hearing via letter or email, with your Head of Department (or nominee) and a member of the Human Resources team not previously involved in your case.

We'll give you at least five working days' notice of the meeting and a copy of any supporting evidence and documentation that will be used during the meeting (for example, the capability report, your sickness absence record, any OH reports, records of previous meetings, return-to-work forms and so on).

We'll confirm your right to be accompanied by a trade union representative or work colleague. If you wish to be accompanied, just let your manager or Human Resources know in advance. It's your responsibility to arrange this and to share with your representative the relevant information in relation to your case.

You can find more information on the role of workplace or trade union representatives in our [Guidance on Workplace Representatives](#) (staff login required).

## 6. At the Capability Review Hearing

The purpose of the hearing will be for the Head of Department to review your case and to determine whether the formal absence management procedure has been exhausted and for how long the University can support your continued employment.

At the meeting your Head of Department (or nominee), in partnership with the Human Resources representative, will consider:

- all medical information (such as reports from your GP or treating specialist), where you've provided consent for this.
- all Occupational Health reports.
- whether all reasonable adjustments have been adequately considered and implemented (if applicable).
- the nature of your illness and prognosis based on the information available (if applicable).
- the likelihood of an imminent return to work (in cases of long-term absence).
- the likelihood of you being able to sustain regular and effective service in the future.
- the likelihood of you being able to fulfil the main duties of the post to the required standard.
- the effect of your continued long-term absence and/or high levels of intermittent absence and/or poor performance on the efficient operation of the department.
- your views and representations on the matter.

You don't have to consent for the release of any medical information. However, if you refuse consent, we're entitled to take decisions based on the information we do have available to us.

We'll confirm any decision to terminate your employment on capability grounds in writing, setting out the reason for the dismissal. We'll normally do this within 5 working days, or as soon as is reasonably practical.

Where your employment is terminated, you'll be given paid notice, in line with the minimum notice periods set out in your [terms and conditions of employment](#). If you're in work, you'll be expected to take any remaining (untaken) annual leave prior to your termination date. But, if you're off sick, you'll receive payment in respect of any untaken annual leave in your final pay.

## 7. Right of Appeal

You've the right to appeal against any decision to terminate your employment on capability grounds.

Normally, you must lodge your appeal, in writing, and within 10 working days of having the decision confirmed to you in writing. Appeals should be submitted to the Assistant Director-Business Partnering, Human Resources, and you must state your grounds of appeal in reasonable detail.

The grounds for your appeal should normally fall within one of the following reasons:

- New information is now available which could not reasonably have been provided at the Capability Review meeting.
- The issues of concern were not serious enough to justify dismissal and the decision to terminate your employment was therefore unreasonable.
- The University's [Sickness Absence Policy](#) and [Formal Sickness Absence Management Procedure](#) was not followed correctly.

If you've any difficulty in submitting your appeal in this format, you should contact Human Resources or your trade union representative as soon as possible to discuss what support or alternative options are available.

We'll arrange to hear your appeal as soon as possible – normally within 10 working days - and you'll be invited to attend an appeal meeting.

Your appeal will be heard by a panel of two: an independent and normally more senior manager (from outside your line management structure) and a Human Resources representative, both of whom have not previously been involved in your case.

Following the appeal meeting, the manager hearing the appeal will write to you as soon as reasonably practical, normally within 10 working days of the meeting. They will set out their decision and their reasoning.

The decision taken at appeal is final and there's no further right of appeal.

## 8. Further Information and Support

If you have any queries about this procedure, please talk to your manager or contact [Human Resources](#). If relevant, you may also want to refer to our [Guidance on Support and Workplace Adjustments](#) (staff login required), and our [Redeployment Policy](#).

Both staff and managers can also find more detailed information, guidance, and support on our [Sickness Absence](#) (staff login required) pages on our People Hub.

And remember, our free and independent Employee Assistance Programme (EAP) provider, can also offer confidential support. Visit our [Wellbeing Hub](#) for more information.

## 9. Policy Review

This procedure is reviewed by Human Resources on a regular basis. To see when the next review is due, please see our [Policy Review Schedule](#) on our People Hub.