

IMPERIAL COLLEGE LONDON

ORDINANCE D12

INCAPACITY ON HEALTH GROUNDS

This Ordinance is made pursuant to Part IV of the Appendix to the College's Statutes

1. This Ordinance must be read in conjunction with the Appendix to the Statutes (hereinafter the "Appendix") and with Ordinance D7 and the other Ordinances dealing with staff matters. In the event of conflict the Appendix shall take precedence.

GENERAL

2. This Ordinance, which provides for incapacity on medical grounds as a potential cause for dismissal or removal from office, should be read in conjunction with the College's Sickness Absence Policy and Procedure as amended from time to time.

3. The provisions of this Ordinance, and the College's Sickness Absence Policy and Procedure, shall be conducted in accordance with the requirements of the Equality Act 2010. Medical conditions may include physical or mental health issues.

ACTION UNDER THIS ORDINANCE

4. Concerns about performance or conduct shall normally be raised under Part III of the Appendix and either the College's Capability Procedure or Disciplinary Procedure. However, where it is evident 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 Ordinance. The decision as to whether the matter shall be dealt with under this Ordinance or under the Capability or Disciplinary Procedure shall be a decision of the Director of Human Resources or his or her nominee. There is no right of appeal against this decision.

5. If, at any stage, a member of staff wishes to seek to retire early on medical grounds, he or she will be permitted to do so in accordance with the criteria, rules and benefits of the relevant pension scheme and subject always to the provisions of paragraphs 53 - 55 below.

6. An academic may be asked to refrain from work and/or attending College premises, pending a decision on their capability to remain in employment. Any decision would be in accordance with the following principles:

a. A decision to instruct an academic to refrain from work and/or not to attend College premises should only be taken after careful consideration of the impact on the academic, including on their work and of those researchers and students supported by the academic.

- b. They may be required not to attend the College's premises or have contact with students, colleagues or funding bodies without the prior written permission of the Provost or their authorised delegate.
- c. The College will continue to pay the member of staff their normal basic salary and benefits in line with their terms and conditions of service during the period they are required to refrain from work.

MEDICAL REPORTS

7. Where it has been identified that conduct or performance, including 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. The member of staff's consent in writing shall be sought to obtaining the report, in accordance with the requirements of the Access to Medical Reports Act. The member of staff's written consent will also be sought for the disclosure of the medical report beyond the original recipient (being the member of HR overseeing the proceedings), to the person(s) conducting the proceedings (ie the panel).
8. In addition, after obtaining the written consent of the member of staff, the College (either of its own volition or on request of the member of staff) may obtain medical evidence from the member of staff's GP, own medical specialist and/or an independent medical specialist. Again, the member of staff's written consent will be sought for the disclosure of the medical report beyond the original recipient (being the member of HR overseeing the proceedings), to the person(s) conducting the proceedings (ie the panel).
9. Medical evidence will normally be sought at an early stage to inform any decisions made by the College in respect of the member of staff under this Ordinance. However, medical evidence may be sought at any stage of any proceedings under this Ordinance, at the instigation of either the College or the member of staff. 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.
10. If the production by the nominated professional(s) of any medical evidence requested is delayed through no fault of either the member of staff or the College, the hearing to review the member of staff's performance/attendance may be rescheduled as appropriate. Following the conclusion of any proceedings under this Ordinance, any medical evidence obtained in relation to the member of staff will be stored securely, and retained (and, where applicable, destroyed), in accordance with the College's established protocols and in any event in accordance with the College's obligations towards the member of staff in respect of confidentiality and data protection.
11. If a member of staff refuses consent for an Occupational Health report, any action taken under this Ordinance will be on the basis of there being no confirmed underlying medical condition. The procedure under Paragraphs 15-17 below, in line with the College's Sickness Absence Policy and Procedure, will proceed without the benefit of medical advice.

TYPES OF SICKNESS ABSENCE

12. Repeated Short Term Sickness Absence: this is where a member of staff has been absent from work through sickness or injury on a number of occasions over a rolling 12 month period, or absences which fall into a pattern over the same period.
13. Long-term Sickness Absence: this is where a member of staff has been, or is expected to be absent from work for more than four consecutive weeks.
14. The College recognises that not all patterns of absence fall neatly into one of the categories set out in this paragraph 12 - 13 and/or that the pattern may change over a period of time, so some flexibility of approach may be needed.

INTRODUCTION TO MANAGING SICKNESS ABSENCE

15. The objectives of managing sickness absence are as follows:
- a. To provide a fair and consistent approach in dealing with the absence of members of staff due to periods of short term, long term or frequent sickness absence. This Ordinance contains two procedures for managing sickness absence, one to cover short term absences (at paragraphs 18 - 20) and the other to cover long term absence or recurring absence due to underlying health issues (at paragraphs 36 - 47).
16. To manage absence owing to sickness in a manner that enables the College to maintain staff effectiveness and efficiency while at the same time providing assistance, where possible, to staff to overcome or cope with health issues.
17. To ensure that all staff and line managers are aware of their respective responsibilities and that working practices or environments that may be contributing to sickness absence are dealt with at an early stage.

INFORMAL SICKNESS ABSENCE REVIEW MEETING FOR SHORT TERM ABSENCE

18. Where the member of staff's absence record gives cause for concern, the line manager should discuss this with the member of staff on an informal, one-to-one basis, in the first instance. The line manager should consider if the member of staff should be referred to Occupational Health to understand if there is an underlying problem resulting in the sickness absence(s) and consideration should be given to relevant factors which may include:
- a. The reasons for the absence. The member of staff should be given an opportunity to explain any circumstances which might be contributing to their level of absence, or any other matter which they feel ought to be taken into account; and
- b. Identifying any appropriate support, including referral to Occupational Health or the College's Employee Assistance Provider, Confidential Care (www.imperial.ac.uk/occhealth/services/eap).

19. As this is an informal one-to-one meeting, there is no right at this stage for the member of staff to be accompanied by a trade union representative or work colleague, and Human Resources will not be present. The line manager should record notes of the informal meetings and these should be copied to the member of staff but will not be retained on their personnel file.

20. The member of staff should be made aware that if sufficient improvement is not demonstrated, the matter may be referred for review under the formal process.

FORMAL PROCESS FOR SHORT-TERM ABSENCE

21. There is no requirement that an Occupational Health report be obtained in advance of any formal meeting under paragraphs 21 - 35. However, in accordance with paragraph 9 above, either the College or the member of staff may propose at any time during proceedings under this Ordinance that such a report is obtained.

22. Notwithstanding paragraph 21 above, the formal procedure under paragraphs 21 - 35 will be conducted in situations including (but not limited to) where Occupational Health advice has been received and this indicates that a member of staff's condition will not affect their ability to carry out the responsibilities of their role, or will not affect their attendance beyond a certain level, but there remain ongoing absence issues.

23. Staff may be accompanied by a colleague or (where they are a member of that trade union) a trade union representative at all formal meetings under this Ordinance.

Stage 1 – First Formal Stage

24. A formal meeting should be convened in accordance with paragraphs 24 - 27 when a recurring/or an underlying condition sickness absence is having an impact on the member of staff's ability to fully perform the functions of the post.

25. At the meeting the management representative should (where applicable):

- a. Explain that the member of staff is not meeting the level of attendance required for the job.
- b. Ask the member of staff if there are any factors that may be contributing to their level of attendance.
- c. Outline the operational impact that the absences are having on the department.
- d. Discuss and agree with the member of staff any additional support that will help them achieve an acceptable level of attendance.

26. Following the meeting, the management representative should fully consider all the evidence that has been presented (both oral and written) and should either decide to take no action or, if they decide that it is appropriate to do so, issue the member of staff with an improvement notice.

27. The improvement notice should advise the member of staff:
- a. Of the expected attendance level.
 - b. Outline what support will be put in place to help the member of staff achieve the level of attendance required.
 - c. That failure to reach the level of attendance required may result in further action.
 - d. Of their right to appeal.
 - e. The period to which the improvement notice applies

Stage 2 – Second Formal Stage

28. If the level of sickness absence continues, the line manager will advise their Human Resources representative to convene a second formal sickness review meeting with the member of staff.
29. At the meeting, the management representative should (where applicable) discuss possible redeployment and the points set out at paragraph 25 above.
30. Following the meeting, the management representative should fully consider all the evidence that has been presented (both oral and written) and should either decide to take no action or, if they decide that it is appropriate to do so, issue the member of staff with a further improvement notice.
31. The improvement notice should advise of the points set out at paragraph 27 above.

Stage 3 – Final Formal Stage

32. If the level of sickness absence continues, the line manager will advise their Human Resources representative to convene a formal employment review hearing (see paragraphs 53 - 55 below).
33. At the employment review hearing, the management representative will describe to the panel hearing the management case, the member of staff's level of attendance and explain the measures that have been taken to support the member of staff to improve their attendance.
34. The member of staff or the representative may offer an explanation for any of the points raised.
35. After hearing and considering all the evidence and representations the following options are available to the panel hearing the case:
- a. To take no further action;

- b. Redeploy the member of staff to alternative work on the same grade or a lower grade and pay with their agreement; or
- c. To dismiss the member of staff, with appropriate notice, on the grounds of lack of capability.

FORMAL PROCESS FOR LONG TERM ABSENCE OR RECURRING ABSENCE DUE TO UNDERLYING HEALTH ISSUE

36. Long-Term Sickness Absence

37. For the purpose of this Ordinance, long-term sickness absence is identified as certified sickness absence which lasts for more than four consecutive weeks. Recurring absence due to an underlying health issue means recurring absence due to a medical condition or injury that may be contributing to sickness absence.

38. It is recognised that there are occasions when members of staff may need to take a protracted period of absence to recover from more serious health conditions, which may include:

- a. Long/medium term planned absence to cover health conditions where the length of absence can be predicted (e.g. broken bones or in-patient operative procedures requiring rehabilitation).
- b. Long/medium term unplanned absence where it is much more difficult to predict the likely duration of the sickness absence period (e.g. diseases, infections, mental health issues etc.).

Sickness Review Meetings

39. Where a member of staff has long term or recurring short term sickness absence due to an underlying health issue, as identified in an Occupational Health report, a sickness absence review meeting (or meetings, where appropriate) will be convened in order to review and discuss the situation with them.

40. The process for dealing with sickness absence under this section will very much depend on the individual circumstances of the member of staff. In situations where there is an underlying health issue, a member of staff may have one or several sickness absence review meetings before action under paragraphs 48 - 51 below is agreed and implemented. This will depend on 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. The appropriate Human Resources contact will be able to give guidance on this.

41. At the meeting(s), the management representative should ask the member of staff to give their opinion on matters which may include:

- a. Their health.

- b. Their anticipated recovery progress.
- c. Whether they expect to be able to return to work in the foreseeable future.
- d. What type of support they feel they need in the event of their return to work.
- e. Exploring with the member of staff facilities and adjustments (see paragraph 52 below).

42. If the member of staff has an identified disability, the management representative must give full consideration to their duty to make reasonable adjustments in accordance with the Equality Act 2010.

43. Following the meeting(s), the management representative will consider the discussion and any written information in the decision making process. Any decision should take into account paragraph 52 below.

44. Monitoring long term or frequent absence caused by an underlying health issue

45. A reasonable period of review should be allowed for support arrangements to be put in place, or for any treatment and recuperation that might enable a return to work in the near future to take effect. Medical advice should be sought where appropriate.

46. Where it is possible that in the longer term the sickness absence will not be able to be sustained by the department, then the member of staff should be advised of this. The member of staff should be given the opportunity to make comments on this point and have these considered by the line manager.

47. At this stage, consideration should be given to medical retirement or alternative work on different working arrangements and pay, if this is deemed appropriate and is accepted by the member of staff (see paragraphs 52 and 53- 55 below).

FORMAL EMPLOYMENT REVIEW HEARING

48. A Formal Employment Review Hearing will be considered only where:

- a. The member of staff has either received two improvement notices under the short term absence procedure set out at paragraphs 21 - 35 above or otherwise had the fullest opportunity to comment on their fitness to work and/or the likelihood of returning to work under the long term absence procedure set out at paragraphs 36 - 47 above, and these views have been taken into account in any earlier meetings or decisions; and
- b. In the case of members of staff being managed under the Long-Term Sickness Absence procedure set out at paragraphs 36 - 47 above:

- (1) Medical opinion indicates that the member of staff will remain insufficiently fit to return to their post or carry out the functions of their post in the foreseeable future;
- (2) Redeployment, adjusted working arrangements and medical retirement have not been possible or agreed; and
- (3) Medical retirement under paragraphs 54 - 56 below has not been agreed or otherwise has not been possible.

49. The purpose of the meeting will be for two individuals appointed by the Provost (or his/her designated nominee, who shall normally be a Dean of Faculty, Principal, or the authorised nominee of such Dean of Faculty or Principal) to review the case and to consider whether and for how long the College can support continued employment. A member of the Human Resources Division will also be present at the meeting.

50. At the hearing, the management case will be presented by the management representative, 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.

51. Following the meeting, the two individuals conducting the meeting will consider whether or not to terminate the member of staff's employment. The person conducting the meeting should discuss his or her decision with the representative from Human Resources. If the decision is taken not to terminate the member of staff's employment, Facilities and Adjustments (see paragraph 53 below) will be revisited. If the person conducting the meeting decides to terminate the member of staff's employment, the representative of the Human Resources Division 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, which is dealt with below.

FACILITIES AND ADJUSTMENTS

52. 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 act in accordance with the provisions within the Equality Act 2010 as well as the guidance set out for disabled staff and their managers. The College will review how reasonable adjustments to working arrangements or the workplace could enable the staff member to continue with their role. Reasonable adjustments will be put in place with the requirements of the role and health and safety protocols.

MEDICAL RETIREMENT

53. The College offers membership to pension schemes that may provide early or enhanced payment of benefits, where a member of staff can no longer carry out the duties of their post or equivalent work as a result of a medical condition.

54. Consideration of this option will usually take place only after all other alternatives have been considered and those alternatives (if any) have been ruled inappropriate (whether following a trial period or otherwise).

55. The decision on whether or not a pension is awarded is taken by the Pension Trustees. The decision is based on the member of staff having the requisite pensionable service and a review of reports submitted by either the College or the member of staff. Usually two medical reports are required: one from the staff member's own GP/ Consultant and one from the Occupational Health Physician. In addition, the University Superannuation Scheme (USS) requires a report from the staff member's manager on their performance at work. The Pension Office will facilitate the individual's application.

SELECTION OF PANEL CONDUCTING APPEAL HEARINGS

56. The Director of Human Resources or his or her nominee will be responsible for ensuring that an appropriate individual or panel is chosen to conduct any appeal hearing.

57. Appeals against improvement notices will be heard by one person who has no prior substantive involvement in the case or people concerned and (wherever possible) is more senior than the person who reached the decision to issue the improvement notice being appealed.

58. Appeals against dismissal shall consist of a panel of three persons, none of whom shall previously have had any substantive involvement with the case or people concerned and who, wherever possible, shall be more senior than the person(s) who reached the decision being appealed. The three person panel shall include one lay member of the Council, one College Consul and one person drawn from a list agreed from time to time by the Council. If no College Consul is eligible, or if the panel is an appeal panel considering the position of a College Consul, two persons will be drawn from the list agreed by the Council. The Director of Human Resources or his or her nominee will determine in his or her discretion a member of the panel to act as Chair.

ACTION PRIOR TO APPEAL

59. The Director of Human Resources (or his or her nominee) shall be responsible for the conduct of hearings under the Appendix as required, and for taking charge of the proceedings, including:

- a. Arranging and notifying the parties of a date for the hearing, which shall be as soon as is reasonably practicable;
- b. Notifying or reminding the member of staff of his or her right to be accompanied by another member of staff or (where they are a member of that trade union) a trade union representative. Consideration will be given by the Chair of the meeting to requests from staff to be accompanied by a friend or relative who is not a legal representative;
- c. Giving the member of staff no less than ten working days' notice to provide their written response to the allegations and availability to attend a formal hearing and giving both parties, where possible, not less than five full working days' notice (running from

the deadline for the member of staff to provide their written response to the allegations and availability) of the date for the planned hearing;

d. Any necessary administrative and accommodation arrangements to enable the hearing to take place;

e. Any necessary administrative and accommodation arrangements for the attendance of witnesses or persons entitled to make oral representations to the panel;

f. Upon receipt of relevant documentation, the production and distribution of documents in a timely manner (where possible, by no later than five working days before the hearing) and in accordance with the relevant Ordinance or appropriate procedure to allow for the proper presentation and consideration of the matters before the person or panel conducting the hearing.

g. Once documentation has been circulated in accordance with paragraph 60.f. above, no new documents will be accepted from the member of staff or the management side, save for where the documents are demonstrably relevant or constitute new material relevant to the case and subject always to the discretion of the Chair which shall not be unreasonably withheld.

CONDUCT OF APPEAL

60. The Chair (of the panel or the individual conducting a hearing) shall set the procedure to be followed as appropriate for the proper consideration of the matter, to include provision for adjournments during the hearing (if necessary) by request of either party (e.g. to allow for the finalisation of actions or proceedings by another body). The Chair shall be guided by the requirement that the evidence, written and oral, must be confined to the matter which is the subject of the hearing. An appeal hearing will not usually be a rehearing of the original hearing. The Chair shall have complete discretion as to the admissibility of evidence.

61. The procedure for a hearing shall generally include the following steps:

a. The Chair shall facilitate any introductions as are necessary and refer to any matters appropriate to the conduct of the hearing;

b. The Chair may make provision for witnesses to give evidence in a way which reduces the witness's distress or discomfort;

c. The party bringing the case before the person or the panel conducting the hearing or his or her representative shall present his or her case and call his or her witnesses if appropriate;

d. The respondent or their representative may question the party bringing the case and their witnesses;

- e. The person or panel conducting the hearing may question the party bringing the case and their witnesses;
- f. The respondent or their representative shall present their case and call their witnesses if appropriate;
- g. The party bringing the case or their representative may question the respondent and their witnesses;
- h. The person or panel conducting the hearing may ask questions of the respondent and their witnesses;
- i. The party bringing the case or their representative shall make any final representations they wish;
- j. The respondent or their representative shall make any final representations they wish;
- k. The Chair may, at their discretion, adjourn or postpone the hearing in order that further evidence may be produced by either party or pending the outcome of proceedings or action by another body or employer, or to obtain advice; and
- l. The person or panel conducting the hearing shall consider its decision in private. The person providing support to the person or panel conducting the hearing shall be able to support the person or panel when making its decision but shall not participate in making the decision itself.

APPEALS

Formal

62. In all cases of action taken under this Ordinance, the member of staff has the right of appeal against the decision. The member of staff must submit grounds for appeal within ten working days of receipt of the written notification of the formal action taken.
63. Appeal hearings will generally be conducted in accordance with the following terms of reference, or as prescribed in the individual Ordinance:
- a. To review whether the matter under consideration was adequately investigated and substantiated;
 - b. To review whether the College's procedures were correctly and fairly implemented; and
 - c. To consider whether the action was reasonable in the circumstances known to management at the time of the hearing.

64. If new evidence is introduced during an appeal hearing it may be referred back to the person who conducted the original Hearing in order that they may review the employment review decision. The appeal hearing may be reconvened in the event that the member of staff does not accept the subsequent decision of the original meeting.

65. Prior to the appeal hearing, the appeal panel may, if it considers it appropriate, appoint a specialist/medically qualified assessor to provide an opinion on the member of staff's medical condition. Similarly, the member of staff may request that a specialist/medically qualified assessor is appointed to advise the panel, in which case the panel will consider whether to do so at its own discretion.

66. The appeal panel may uphold the member of staff's appeal, in which case it will inform the Director of Human Resources (or his or her nominee), who will ensure that the member of staff's continuous employment is maintained and there is no loss of pay or other benefits. The College reserves the right, in appropriate cases, to conduct and factor into its decision regarding such payments to a member of staff an assessment of any income received by the member of staff while not in the employment of the College.

GENERAL

67. Notes will be taken of any formal meeting under this Ordinance. Notes usually will be taken by a member of HR. A copy of the notes will be sent to the member of staff as soon as practicable after the meeting. If the member of staff does not agree with the contents of the notes of the meeting, they should make handwritten amendments (and initial each amendment). A copy of the amended notes should be attached to the original typed version and will be added to the hearing papers. If the individual makes substantive changes to the notes, the changes should be discussed with the individual and consideration should be given as to whether the changes should be referred to in any documents referencing the notes.

68. Where the relevant member of staff is an official of a trade union, the relevant full-time regional officer of that trade union should be informed of the commencement of formal proceedings under paragraphs 21 - 51 of this Ordinance.

Approved by the Council 23 March 2007

Effective from 8 July 2007

Revisions approved by the Council: 7 February 2014

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