

PROCEDURE FOR DEALING WITH CASES OF INCAPACITY BY REASON OF ILL-HEALTH

PART 1

1 POLICY STATEMENT & SCOPE

- 1.1 The Royal Veterinary College is committed to the creation of a safe working environment and supporting the staff who work here. To this end the College takes seriously its responsibilities under Health & Safety, Equality and general Employment legislation.
- 1.2 This policy is an expression of that commitment, and aims to ensure that appropriate support is provided to those absent from work due to ill-health. It also provides a framework for the provision of appropriate support and assistance to those looking to return to work on a sustained basis after a period of sickness absence.
- 1.3 Although for operational reasons it is not possible to accommodate indefinitely all sickness absence, whether repeated short-term or long-term, this policy confirms the intention of the College to:
- provide a sympathetic, equitable and consistent process for dealing with employees whose attendance or work performance are affected by ill health;
 - ensure that there is regular and appropriate communication between an employee suffering from ill health, their manager and Human Resources (HR);
 - ensure that if an employee's attendance or work performance is affected by ill health, appropriate steps are taken to ascertain the nature of their illness and that no decision is taken concerning their employment without consulting with them first.
- 1.4 Employees should be interviewed on their return from any absence in order to explore its cause, to facilitate the individual's return to work and to identify any reasonable and practical steps which may help ensure that attendance for work on a sustained basis is achieved and maintained.
- 1.5 Performance problems arising from ill health will normally be dealt with under this procedure. Performance problems arising from any other cause will be resolved in accordance with the appropriate disciplinary procedure.
- 1.6 Human Resources can provide support to managers to ensure consistency in dealing with absence and related issues, and if appropriate advice on how such matters might be managed on a constructive and consistent basis.
- 1.7 The College's first priority is, in partnership with affected employees, to achieve satisfactory levels of attendance, but in cases where absence levels exceed acceptable levels managers may need to take formal action. This could include termination of employment on grounds of incapacity due to ill-health.

- 1.8** This policy and procedure applies to all staff groups. Managers are responsible for ensuring that their staff are familiar with it and that they understand their own responsibilities under it.
- 1.9** The policy and procedure are non-contractual, do not form part of any employee's contract of employment and may, after consultation, and wherever possible agreement with the recognised trade unions, be amended at any time by the College.
- 1.10** For academic staff, this procedure constitutes the relevant Regulations in respect of Incapacity matters under paragraph 2 of Statute 18 of the College's Charter and Statutes.

2 DEFINITIONS

An employee:

- Whose ability to perform his or her employment duties has been adversely affected due to ill health,
Or
- with a pattern or level of absence due to ill health,

may be regarded as having an incapacity problem, which may be short or long term.

2.1 Short-term absence due to ill-health

- 2.2** For the purpose of this procedure a short-term absence due to ill health is a single absence, or a series of absences, up to a maximum of 20 working days .
- 2.3** If short-term absences persistently recur (e.g. if an employee repeatedly takes one or two days off over several months) this could be cause for concern. The causes of short-term absence can be varied and each case will be treated on its merits but the same standards will be applied to all employees.

3 Long-term absence due to ill-health

- 3.1** For the purpose of this procedure a long-term absence due to ill-health is a single period of continuous absence exceeding 20 working days.
- 3.2** Long term absence is generally handled most effectively through early interventions and actions, with the aim of facilitating the individual's return to work at the earliest reasonable point; recognising that in some cases the employee may ultimately be unable to return.

4 Performance problems resulting from ill-health

- 4.1** Employees may sometimes be affected by ill-health which does not prevent them from attending work but is serious enough to undermine their long term work performance. In such cases the provisions of this policy and procedure will apply. Ultimately dismissal may be necessary if it arises as a result of the employee's incapacity to do their work because of their long term ill-health.

5 MEDICAL ASSESSMENT

5.1 Before the commencement of any formal action under this policy and procedure, it is essential to ascertain the medical position of the employee.

5.2 Where:

- a regular pattern of short term absence has been identified by an employee's manager; or
- an employee is absent from work due to long term ill-health; or
- the performance of an employee attending for work may be affected by ill-health; and
- where it has been established that resolution of the operational problems caused by such ill-health cannot be achieved by informal means, the manager will consult with HR. If appropriate, HR will request that occupational health conduct a medical assessment of the employee, which will be obtained at the College's cost.

5.3 HR will advise the employee that an assessment by the College's Occupational Health Advisor has been requested. It may be possible to refer the employee to an alternative, appropriate medical specialist if in the opinion of the College this would be an appropriate course of action. The non-availability of an alternative medical specialist will not be an acceptable reason for delaying any incapacity hearing indefinitely.

5.4 The College would normally regard any request that an employee attends such an assessment as reasonable, and the employee will be expected to co-operate in this process. Where necessary the College will arrange transport and/or reimburse costs incurred to enable them to attend. If the employee is unwilling to co-operate with reasonable requests to attend a medical assessment, the College reserves the right to move to an incapacity hearing on the basis of the information available.

6 PURPOSE OF THE MEDICAL ASSESSMENT

6.1 The purpose of the medical assessment is to better understand the nature of the employee's ill-health and its implications for their future attendance or work performance. On completion a report will be forwarded in confidence to HR.

6.2 The report should include matters such as the following:

- the nature of the ill-health;
- the estimated level of sickness absence likely to arise from the ill-health;
- the likely employment significance of any underlying medical condition and treatment;
- the likelihood and timescale of a full return to work;
- any steps the College could reasonably take to facilitate a sustained return to work, improvement in performance or to eliminate any pattern of short term absence.

7 REPORT FROM THE EMPLOYEE'S GP OR SPECIALIST

7.1 As part of the medical assessment a report from the employee's GP or specialist may be sought by the College's Occupational Health Advisor. This will ensure that all available appropriate information has been obtained before decisions affecting employment are made.

7.2 GP's or specialist medical advisers will not be approached by the College, unless the employee has consented to this by signing the standard medical consent form. This will be provided to them by Occupational Health, together with written confirmation of their referral for a medical assessment. Any costs associated with obtaining the medical assessment will be borne by the College.

7.3 Employees have the following rights in relation to any report provided by their GP or specialist:

- to withhold consent to the obtaining of a medical report, in which case the College would be obliged to act solely on the basis of the information available to it, and the employee would be advised of that fact;
- to request to see any medical report before it is sent to the College (they have 21 days in which to do so before it is sent);
- to request any amendments before issue, or if the GP or specialist is not willing to comply with such a request, to add a statement of their own.

7.4 This policy envisages a medical assessment being made at the outset of any procedure but updates to any medical assessment may be sought at appropriate times by the College during the course of a review procedure.

8 OUTCOMES OF THE MEDICAL ASSESSMENT

8.1 On receipt of the medical assessment, HR will discuss with the employee's manager the relevant facts from the report. On the basis of these facts the manager will decide, in consultation with HR, on the appropriate course of action. This could be:-

- to take no further action, in which case the employee will be formally advised;
- to convene an incapacity hearing if the medical assessment establishes there **is** an underlying medical reason for the absence or performance concerns;
- to consider the employee's absence, (or poor performance), as a case for disciplinary action if the medical assessment establishes there is **no** underlying medical reason, in which case the employee will be formally advised, and an investigation commenced in accordance with the appropriate disciplinary procedure.

8.2 A copy of the medical assessment will be made available to the employee on request to HR.

8.3 The medical assessment will be considered at any formal incapacity or disciplinary hearings subsequently arranged.

9 INCAPACITY HEARINGS

9.1 Where absence is leading to operational difficulty and the medical assessment indicates that the absence is ill-health related, the employee's manager will invite the employee to an incapacity hearing where the situation can be openly and fairly discussed.

9.2 The employee:

- will receive five working days notice, in writing, of the date, time and location of the hearing;
- will be given details of what will be discussed including copies of any documents to be considered;

- will be entitled to be accompanied by an official of a Trade Union or work colleague;
- must advise HR if they are being accompanied, and by whom, at least two working days in advance of the hearing;
- must submit any additional medical evidence they wish to be considered at the hearing at least two working days in advance.

9.3 If the employee wishes to be accompanied at the hearing, they must give the name of the person to their manager two working days beforehand. It is the responsibility of the employee to ensure that the person accompanying them is provided with all and any documentation and information they consider necessary, including the date, time and location of the hearing. At the hearing, the person accompanying the employee may put the employee's case, sum up and confer with the employee, but they may not answer questions on the employee's behalf or prevent the manager from explaining his or her case. It is normally helpful to agree on the respective roles of the different parties at the commencement of the hearing.

9.4 If the employee or their companion cannot attend on a proposed date they can suggest another date if reasonable and no later than five working days after the original date proposed by the manager unless otherwise mutually agreed. The College reserves the right to hear the case in the employee's absence should the circumstances require it. In the sensitive matter of ill-health it is preferable that the employee attends the hearing in person and the College will seek to make all reasonable arrangements to enable them to do so. However, provided the specified notice has been given the College reserves the right to hold long term incapacity hearings in the employee's absence.

9.5 At the hearing the manager will be accompanied by an HR representative who can advise on procedure.

10 PROCEDURE FOR INCAPACITY HEARINGS

10.1 At the start of the hearing, the manager will detail the instances of absence, the reasons for concern and review:

- the medical evidence and the prognosis (how soon and to what extent the employee's health is likely to improve);
- whether there is alternative work available that it would be appropriate for the employee/College to consider;
- the effects of the employee's absence/performance issues on the College;
- any adjustments that could be considered.

10.2 The employee or their representative will be able to:-

- comment on the manager's concerns;
- mention any difficulties they are experiencing;
- refer to additional medical evidence if relevant and previously supplied.

10.3 When the manager has heard all the facts and is in a position to decide on a course of action one or more of the following outcomes may be appropriate:

- to take no further action, in which case the employee will be formally advised;
- to agree appropriate adjustments to the employee's job content, work patterns, working environment, equipment or training;

- to monitor the situation and review it regularly with the employee, setting targets if appropriate for improvement in attendance, in which case the date and purpose of the initial review meeting will be agreed;
- to advise the employee that ultimately dismissal may be considered at a later stage if attendance targets are not met or improved attendance is not achieved;
- to advise the employee that dismissal is to be considered due to the serious nature of their ill health and that a recommendation to this effect will be made.

10.4 The outcome of the hearing, including all agreed future action, will be confirmed in writing, normally within five working days. The employee will also be notified in this letter of their right to appeal (see Part 2 below).

11 DISMISSAL IN ACCORDANCE WITH THIS PROCEDURE

11.1 If it is established that an employee's ill-health permanently prevents them from performing their current role to an acceptable standard, wherever possible, consideration (subject to operational constraints) will be given to redeploying the employee to another role appropriate to their skills, knowledge and experience.

11.2 Where the medical assessment is one of permanent ill-health, early retirement on grounds of ill-health will be arranged wherever possible, bearing in mind the consideration of whether the employee is a member of the College pension scheme, and subject to the rules of that scheme pertaining at that time. However, there is no obligation on the part of the College to seek to obtain ill-health retirement on the part of the employee, and the success of any such application cannot be guaranteed.

11.3 Regrettably, where the medical assessment indicates continued long term absence of such duration that the College could not reasonably be expected to wait for recovery and where ill health retirement is not a viable option, dismissal may be the only alternative.

11.4 Any decision to dismiss would be on the basis that full contractual pay in lieu of notice would be paid.

12 RESPONSIBILITIES UNDER THE PROCEDURE

Employee's responsibilities

12.1 Employees are responsible for ensuring that they follow the appropriate sickness notification procedures. If the absence exceeds the maximum for self-certification (seven calendar days) the employee must provide a medical certificate covering the full period of absence.

12.2 Failure to comply with either of the above requirements may be considered as a disciplinary matter and could affect the employee's occupational sick pay.

12.3 In addition, employees are responsible for keeping their manager and if appropriate, HR, fully up to date with any changes in their medical condition so that any necessary adjustments to their work or working environment can be made. Failure to comply with this responsibility could prevent the College from offering support it might otherwise be able to provide.

Manager's responsibilities

- 12.4** Managers are responsible for the monitoring of attendance levels and patterns of absence of their staff.
- 12.5** As part of their normal management responsibilities, managers should conduct informal return-to-work discussions with staff coming back to work after a period of sickness absence. Such discussions should certainly be held on the return to work of any member of staff whose attendance is a matter of concern.
- 12.6** The purpose of return-to-work discussions is to ascertain the reasons for the sickness absence, whether further absences for the same or related reasons can be anticipated, and whether any support can be provided to the employee to ensure that such absence is kept to a minimum. Managers should make and retain a note of the content and outcome of return-to-work discussions.

Guidance on return-to-work interviews is available from HR by clicking [here](#)

- 12.7** When a manager decides that application of this procedure is appropriate, they have a responsibility to act consistently, promptly and reasonably when dealing with individual employees and their particular circumstances. This includes taking cognisance of any medical evidence supplied by, or on behalf of, the employee concerned.

PART 2

APPEALS AGAINST DECISIONS TAKEN IN ACCORDANCE WITH THIS PROCEDURE

1 THE PURPOSE OF AN APPEAL

- 1.1** Employees are entitled to appeal against any decision taken in accordance with this procedure, and to be represented at the appeal hearing by an official of a recognised trade union or work colleague.
- 1.2** If, in respect of either of the two grounds upon which appeals are allowed (see paragraph 2.1), the employee is able to demonstrate that the decision about which they are appealing is unfair, the appeal is the means by which such action is formally withdrawn or amended. If they are unable to do so, the fairness of the decision will be confirmed and upheld.
- 1.3** The College reserves the right to rule the grounds of an appeal out of order and not to allow the appeal to proceed. If the College decides to exercise this option, a written explanation of the reasons will be provided to the employee.

2 THE REMIT OF THOSE HEARING AN APPEAL

- 2.1** An appeal will only be held on the following grounds:
- Whether serious procedural errors have materially contributed to the outcome of the proceedings against which the appeal has been lodged.
- Or
- The coming to light of new information, which was not available at the time of the incapacity hearing.
- Or
- To establish whether some further reasonable adjustment might be agreed to facilitate the appellant's return to work on a sustained basis.
- 2.2** Therefore, the function of an appeal is not to conduct a full rehearing of the facts of the case, though it is inevitable that reference will have to be made to the earlier incapacity hearing.

3 NOTIFICATION OF APPEAL HEARINGS

- 3.1** An employee wishing to appeal against a decision taken at an incapacity hearing should inform the Director of Human Resources in writing. They should state the full grounds of their appeal and provide all necessary supporting documentation. This should be done within *ten working days* of receipt of written confirmation of the outcome of the incapacity hearing.
- 3.2** An appeal hearing will normally be convened within *twenty working days* of receipt of notification by the Director of Human Resources of the employee's decision to appeal. A copy of the appellant's written statement will be passed to the line manager who conducted the incapacity hearing and took the decision in question.
- 3.3** The manager will prepare a written response to the appeal, which they will present at the appeal hearing. A copy of this statement will be sent to the appellant, together with details of the date, time and location of the hearing, not less than *five working days* prior to the hearing.

- 3.4** In line with College policy the appellant may be accompanied by a work colleague or an official of a recognised trade union. The College does not permit the attendance of solicitors or other external representatives at internal meetings.
- 3.5** If the appellant wishes to be accompanied at the appeal by an official of a recognised trade union or work colleague, it will be their responsibility to provide Human Resources with the name of their representative, and to provide that person with all information and documentation relating to their appeal. This will include the date and time of the hearing.
- 3.6** Delays caused by the unavailability of the appellant or their chosen representative to attend on given dates without good reason will not be an acceptable ground for postponing the hearing indefinitely, provided the specified notice has been given. Where the employee's representative cannot attend on the date specified, the College will offer an alternative date and time, but it may not be possible to do this more than once. If, after reasonable efforts to do so, it proves impossible to agree a mutually acceptable alternative date, it may be necessary for the College to hold the appeal hearing in the appellant's absence.

4 AUTHORITY TO HEAR AN APPEAL

- 4.1** Appeals against the outcome of incapacity hearings *short of dismissal* will normally be held by the manager of the manager who took the decision being appealed against, provided that person has not previously been involved in the case.
- 4.2** Where an appeal has been lodged against *dismissal*, a senior manager, not previously connected with the case will be nominated by the Principal to hear the appeal. The Principal may at their absolute discretion decide to hear the appeal them self.
- 4.3** In cases of academic staff (as defined in Statute 18), an appeal will be heard by a panel made up of the Principal (or the Principal's nominee - see below) and a person not employed by the College holding, or having held, judicial office or being barristers or solicitors of at least 10 years' standing. In the event of disagreement between the members of the panel the Principal's decision shall be final. Where the Principal determines not to hear the appeal in person, authority to hear the appeal will normally be delegated to the Deputy Principal or appropriate Vice-Principal/COO.

5 ROLES AND RESPONSIBILITIES OF THE OTHER PARTICIPANTS

The Appellant

- 5.1** Having set out the written grounds of their appeal beforehand, the appellant must concentrate on the issue(s) that the appeal has been called to consider. They must not attempt to present all the facts of the case afresh.

The Appellant's Trade Union Representative/Work Colleague

- 5.2** If the appellant is to be accompanied, it must be agreed beforehand whether that person is to do so as a "representative", i.e. to speak for them, or as their "colleague", i.e. to support them and act as witness to the proceedings.

The Responding Manager

- 5.3** Having set out their written response to the appellant's case beforehand, the role of the responding manager is to summarise why they took the decision that they did, explaining why their decision was reasonable, given the circumstances.

The HR Adviser

- 5.4** A senior member of Human Resources will advise those hearing the appeal on matters of procedure, Employment Law and best practice. HR will also provide an administrator to act as clerk to the hearing and take a record of proceedings.

6 CONDUCT OF APPEAL HEARINGS

- 6.1** Those hearing the appeal will consider the written submissions of the appellant and responding manager, together with any oral statement they might wish to make. Both sides may question each other and call and question witnesses in support of their case. If witnesses are called, they may only remain at the hearing for the period of their evidence and questioning. At the end of the appeal, both sides will be given the opportunity to sum up.
- 6.2** The appellant will receive written notification of the outcome of the appeal within *ten working days* of the hearing. They will also be advised that the outcome of their appeal marks the end of internal consideration of their case.

7 OUTCOMES

The available outcomes under this procedure are as follows:

7.1 Appeals Other than Against Dismissal

- To allow the appeal and expunge the decision from the appellant's record.
Or
- To adjust the decision.
Or
- To dismiss the appeal.

7.2 Appeals Against Dismissal

- To allow the appeal and reinstate the appellant, making recommendations as to any appropriate reasonable adjustments to facilitate the appellant's return to work on a sustained basis.
Or
- To reject the appeal and uphold the dismissal.

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