Absence Management Guidance - Chair of Medical Capacity Review Meeting

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Action	Supporting Information
Familiarise yourself with the Policy	This guidance must be read in conjunction with the Absence Management Policy.
Confirm that you are **available** to be the Chair and that you have no **conflict of interest** in the case	You need to be available to chair the Medical Capacity Review Meeting, deal with the subsequent paperwork and potentially be available for an appeal. If you are scheduled to be away on leave or at events etc. over the next 1-6 weeks, discuss with the HR Case Manager supporting the case if you can manage the meeting, or whether you need to deputise this task to an alternative manager. Check that you do not have any conflicts of interest that would prevent you chairing the meeting and reaching a decision objectively. If you do have a conflict advise the HR Case Manager supporting you at the earliest opportunity. Check the Conflict of Interest Policy for guidance.
Familiarise yourself with the circumstances leading to the medical capacity review meeting	Having agreed you are available and there is no conflict of interest, the HR Case Manager supporting you will send you the 'case' documentation. Make sure you go through all documents thoroughly and highlight any areas where you want to find out more or have queries. Consider what questions you have for the employee. Make sure you are familiar with the Absence Management Policy, particularly section 12.4 (Medical Capacity Review Meeting).
Confidentiality	You must at all times be mindful of the sensitive and personal nature of the information you will have access to in order to familiarise yourself with the case. This information is classed as a "special category" of personal information. It is legitimately justified that this is shared with you as per the University's Privacy Notice for Staff, as we are required to be able to support staff at work, manage their attendance, carry out our obligations relating to Statutory Sick Pay and assess their capacity to work. You must not disclose any of the personal information you are privy to, beyond those involved in advising on and/or supporting you in managing the case.
Agree a date for the meeting and arrange a suitable venue	One or two other managers need to be appointed to the panel, depending on the nature of the case. They may be appointed by you or you may ask the HR Case Manager supporting the case for help in identifying appropriate panel members. As this meeting may result in dismissal, you may prefer to have an HR Case Manager present at the meeting in an advisory capacity. Speak to the HR Case Manager supporting the case to request this, if you deem it necessary. Ask your Case Manager to contact the HR Business Support team who will allocate a note taker to support you.

	Agree a date with other panel member(s), HR Case Manager (if applicable) and note taker. The employee will need at least one calendar week's notice of the meeting. Arrange a suitable venue where the discussion can't be overheard, won't be disturbed/interrupted and noise is minimal. Find somewhere where there is an adjoining room or waiting area where the employee (and their companion if they have one) can wait during the meeting adjournment. Alternatively, you may need/wish to conduct the meeting online via Microsoft Teams, for example. If so, see section below on 'Setting up and hosting meetings and hearings remotely' for more information.
Invite the employee to the meeting	Write to/email the employee using the appropriate Attendance Review Invite template letter (which you can obtain from your HR Case Manager), and **include any documents with the invitation which you will refer to in the meeting**. The employee must provide you with any documents which they wish to use to support their case, at least three working days before the meeting. As advised in the invite letter/email, the employee should advise you if they need an adjustment for the meeting e.g. if they need a hearing loop. You must organise any adjustments requested or seek advice from the HR Case Manager supporting the case.
Role of the companion	The invite template will advise the employee of their right to be accompanied at the meeting, normally by a trade union representative or workplace colleague. A companion may also be someone to support the employee if they have particular needs. For example, if the employee has a disability, we have a duty to consider reasonable adjustments, or they may need help if English is not their first language. This companion may be in addition to a TU representative or workplace colleague. Therefore, in some circumstances the employee may have more than one companion. The companion cannot be a lawyer. A family member cannot act as a companion unless this is deemed to be a reasonable adjustment e.g. a family member is experienced in managing the employee's disability. The employee must tell you in advance of the meeting if they are bringing a companion/companions, and who this is. A companion can set out the employee's case, sum up the employee's case, respond on the employee's behalf to any views expressed during the hearing, speak to the employee and take notes. **The companion should not answer questions on behalf of the employee.**
Prepare for the meeting	It can be helpful to meet the note taker in advance to give them any useful information which will help them when taking notes e.g. it might help them to be familiar with names, job titles, acronyms, technical terminology etc. that are likely to be discussed. Liaise with the note taker

	to arrange a suitable time to brief them. Alternatively provide the note taker with a written summary of the key details of the case. There is guidance available for note takers, which you should direct them to. Ensure the note taker and all other participants understand the confidential/sensitive nature of the meeting, and their responsibility to maintain confidentiality. Think about what you want to find out at the meeting and prepare any questions you want to ask the employee. The purpose of this meeting is to determine whether or not the employee's employment should be brought to an end on the grounds of incapacity, taking account of all the information available to you. You must also ensure you are fully conversant with the outcome of the prolonged absence review meeting(s) and all subsequent actions and investigations into support which could be offered to the employee. For example: – any adjustments which have been made – any opportunities which have been considered for redeployment – any adjustments which could be made but have not yet been made – the requirement for further medical information, if any – the outcome of any investigation into ill-health retiral, if applicable – the operational impact of the employee's continuing absence from work – the requirement for the employee in particular to do the work – any additional cost being incurred as a result of the employee's illness/infirmity – any other relevant information. If you receive any new information from the employee that they want you to be aware of ahead of the meeting, you must make sure it is passed to the other members of the panel and the HR Case Manager if they will be attending the meeting. Arrange a pre-meeting with the other panel member(s) to agree how the meeting will proceed and who will ask what questions. This can be immediately before the meeting if an alternative time cannot be found.
Employee may request to **rearrange the meeting** or fail to attend on an agreed date	The employee may request to rearrange the meeting so that they or their companion can attend. The employee must make this request to you, including proposing an alternative date/time, normally within one week of the original date. If possible, the new date proposed by the employee should be agreed in the first instance.

	If the proposed date can't be accommodated, suggest another date that all parties can attend as long as it will not cause any undue delay. The employee should make themselves available wherever possible but there may be some appointments they cannot reschedule e.g. if they are timetabled to teach or have another meeting which cannot be moved. If a **companion** cannot attend on a rescheduled date and no suitable alternative time can be found, you should advise the employee to find someone else to act as their companion. If the employee has not attended the meeting as expected, **find out the reason**. Liaise with the HR Case Manager supporting the case about how to proceed. It's only fair that an employee be given the chance to explain and discuss their health/attendance in order for a decision to be made on appropriate action, particularly if circumstances are complex. **You must reschedule a meeting at least once**. It may be necessary to reschedule on further occasions depending on the circumstances. If you, in conjunction with the HR Case Manager supporting the case, determine that there is no good reason for **repeated non-attendance or no realistic prospect of the employee attending,** you may proceed in the employee's absence. However, as it is helpful to have a written statement from them that can be considered if they are not there, you must make every effort to obtain this in advance of proceeding.
If the employee raises a **grievance** during the process contact the HR Case Manager supporting the case	You do not necessarily have to halt the process if the employee raises a grievance. You must however discuss this with the HR Case Manager supporting the case and agree on how best to proceed in the circumstances.
The Meeting - Process	If the employee has a companion with them, they can take notes, set out the employee's case and speak to the employee during the meeting. The employee or companion may request an adjournment at any time during the meeting to discuss matters in private. The companion cannot answer questions on behalf of the employee. Make introductions. If the employee does not have a companion with them, reiterate that they were informed of their right to be accompanied and have chosen not to. This should be noted by the note taker. Ask everyone to turn off any electronic devices and remind them that the meeting cannot be recorded. If the employee requests to electronically record the meeting, explain that this is not allowed but they will be provided with meeting notes. They may also wish to make their own notes which is acceptable. Explain what will happen during the meeting. The meeting will normally follow this structure: • You will summarise the actions and considerations taken up to this point

	• You will ask the employee to summarise the current state of their health, to provide any updates of treatment or support they have received and how this is progressing • You will ask the employee to offer their views on support previously offered and/or provided and ask for any suggestions as to what else might be helpful to them in improving their attendance at work, and whether they feel a return to work is likely/possible • You will discuss whether there are any underlying health conditions or disabilities which have/are contributing to their absence, how these conditions/disabilities impact on their ability to work and what, beyond the solutions already investigated, could be put in place to help reduce the impact of their health on their ability to attend work. • You will discuss any additional advice and information received from OHS • The meeting will be adjourned (see 'During the adjournment' section below) The employee should be asked to wait in another area (with their companion if they have one) while you consider the information gathered and reach a conclusion • The employee is called back to the meeting • The employee is advised of the outcome, and if they are dismissed, they must be told of their right to appeal. The employee is advised that the outcome will be confirmed in writing • Meeting ends If the outcome is **dismissal** the employee must be discretely accompanied out of the building and their pass, keys and any other appropriate items collected, or agreement reached on how belongings will be collected from or passed to them. Agree who will do this during the adjournment. Ensure the employee's manager is informed at the earliest opportunity of the decision to dismiss the employee. Agree whether you or the HR Case Manager supporting the case will advise them.
Panel responsibilities and outcomes	A Medical Capacity Review meeting is arranged when an employee has been on a prolonged period of absence, their manager has conducted a review meeting and investigated options to support the employee's return to work, but they continue to be unable to return. The purpose of a Medical Capacity Review is to give full consideration to all of the relevant information you were provided with in your preparations for the meeting (refer to the list in the 'Prepare for the meeting' section above) and to any information provided by the employee during the meeting. Having considered all of the above, your role, supported by the other panel members, is to determine whether the School/Department in which the employee is based, and ultimately the University as the employee's employer:

	• has exhausted all options available to it • can further accommodate the employee remaining off sick for a further, defined or undefined period of time. If you believe they should be given further time to recuperate/ rehabilitate or for the manager to further investigate options which may still be available to them to support the employee, then you should discuss and agree with the panel on an acceptable timescale/ deadline for this. If you believe all options to support the employee back to work have been explored and exhausted and it is no longer reasonable to support their inability to work, the employee's employment should be brought to an end, i.e. they should be dismissed. During the **adjournment** the panel must decide what action is appropriate based on the circumstances leading to the meeting, any current warnings the employee has, the likelihood of a successful return to work etc. The panel should reach a decision collectively. You must take due time to consider the information gathered during the review meeting. However, an adjournment should **not be for an extended period** and you should reach a decision as soon as practicably possible. It will be stressful for the employee waiting to know the outcome. Once a decision has been reached, you must reconvene the meeting and deliver the outcome verbally, explaining that it will also be confirmed in writing and informing the employee of their right to appeal (if they are dismissed). If you need more time because there is a lot to consider or you need clarification on any issues e.g. procedural or OHS advice, you can advise the employee that you require more time to reach a decision and they will be notified of the outcome verbally and in writing and when you will do so. If the outcome is likely to be **dismissal**, liaise with the HR Case Manager supporting the case before communicating the outcome to the employee to ensure all considerations have been made and any risks have been appropriately assessed. In case of a dismissal outcome, the dismissal takes effect immediately. When discussing this outcome with the HR Case Manager supporting the case, clarify whether pay in lieu of notice applies.
Agree the notes of the meeting	The note taker will send you a draft set of the notes of the meeting, normally within two calendar days of the meeting. You may amend them if there are any details that have not been recorded accurately e.g. spelling, terminology or where key details have been missed. You cannot change the substance of what a person said during the meeting, including your own comments.

	If possible, you should send them to the employee with the letter confirming the outcome of the meeting. Alternatively agree with the HR Case Manager supporting the case if they are to be sent separately.
Write to the employee confirming the outcome of the meeting	You must write to the employee within **one calendar week** of the meeting confirming the outcome. Use the appropriate template letter which you can obtain from the HR Case Manager supporting the case and send a copy to the employee's manager and the HR Case Manager, who will upload it to the employee's digital file and update the case management tracker.
Attend the **appeal hearing** if applicable	If the employee appeals the decision, you will need to attend the appeal hearing. You will be provided with the grounds of appeal. You must ensure you familiarise yourself with the case again. On the day of the appeal hearing, make sure you have the relevant documentation and notes with you. You will need to explain how the panel reached its decision to dismiss the employee. The appeal panel and the employee will ask you questions. Please note however, it is not a re-hearing of the case.
Be aware of **Data protection** and **Subject Access Request** requirements	Information relating to the management of an employee's absence from work must be held in line with the University's Retention Schedule. This includes all email correspondence as well as all formal letters and sanctions. Remember that an employee may make a subject access request (SAR) to see information about their case which will include any emails between you and HR or any other person you raise the case with. Therefore, it is vital any written notes or records made about the case are factual, considered and professional, noting only relevant information, and saved to the employee's digital file – therefore, please provide your HR Case Manager with all notes and records on conclusion of the case. SAR's may be requested by individuals for ALL information held about them, even where they are only referenced using initials or other aliases.

Guidance for setting up and hosting meetings and hearings remotely

Action	Supporting information
Agree that all participants have **the equipment and access** to attend an online meeting and are **willing to participate** using this forum	It is important to check that all participants of a meeting have the appropriate equipment and access to meaningfully take part in a remote, online meeting – and to do so prior to making any of the necessary arrangements. If the employee does not have **access to a PC or MS Teams** contact your HR Case Manger to consider alternatives e.g. providing the technology required or seeking alternative means of holding the meeting. Check if the employee has a **suitable environment** where they can attend the meeting/hearing in private. Be aware that they may work in a shared space on campus or at home. If they don't have a suitable environment liaise with your HR Case Manager to see if there are any alternatives. For example, could the meeting be held face to face, or a room be found for them in a designated building on campus to attend the meeting remotely (subject to appropriate Health & Safety requirements)? Note: the employee is responsible for ensuring their companion can support them at an on-line meeting/hearing.
Prepare for the meeting/hearing	Set up the meeting via **Microsoft (MS) Teams**. Information about hosting and joining MS Teams meetings is available here. Make sure you invite all the relevant parties including a note taker. Be aware that attendees may have particular needs in order to participate in the meeting/hearing via MS Teams e.g. if they have a hearing or visual impairment, you may need to investigate whether additional technology or support is required. The employee should let you know if they require any **reasonable adjustments** to take part. Please refer to the Reasonable Adjustments Policy for more information.

Pre- meeting, where applicable	You should have a meeting with other panel members/HR Case Manager prior to your meeting/hearing with the employee. If you hold the pre-meeting directly before the meeting/hearing with the employee, it is best to set this up as a **separate MS Teams meeting.** This ensures that you cannot be interrupted or cut short if the employee or their companion 'arrive' earlier than expected. Alternatively use the **lobby room** function to allow the employee and companion to join the meeting/hearing when the panel is ready. Information about hosting MS Teams meetings, privacy guidance and lobby areas can be found here.
Establish familiarity with technology	It is possible that the employee may have limited experience of MS Teams meetings. At the start of the meeting/hearing establish how familiar they are with **technical functions**. If they are not familiar, walk them through functions such as how to mute their microphone, raise a hand, use the chat function etc. If use of the written 'chat' function is to be utilised during the meeting, make sure that all participants are mindful that anything noted in the chat section, will be captured by the note taker after the meeting as part of the record of the meeting. In the event of any Subject Access Request, the 'chat' has to be included in the information provided.
Meeting etiquette	If you are chairing the meeting/hearing establish basic rules at the start. These should include: • Everyone should be on mute unless speaking • Raise a hand if need to make a point • The note taker should be off camera after introductions • Everyone else to keep cameras on unless there are connectivity issues • The meeting cannot be recorded either through MS Teams or other devices e.g. mobile phones • Clarify what participants should do if they lose connection or are unable to hear during the meeting (e.g. post a note in the 'chat', email or call the Chair, etc.) • If an adjournment is required everyone will leave the meeting and return at an agreed time

	Note: If the meeting is such that an adjournment is necessary, a separate meeting should be arranged so that all participants may meet, outside of the main meeting. Prepare and share a proposed **running order/schedule** for the meeting/hearing so that everyone understands when it will be their turn to speak or answer questions.
Progress of meeting/hearing	You may have to **adapt** how the meeting/hearing progresses to take account of the remote circumstances. Outline to and agree with the employee at the start if you are likely to deviate from the normal procedural format. If all parties are agreeable, you can confirm that the employee will be **notified in writing** of the outcome within the timescale specified in the policy. Otherwise, reconvene the meeting by calling the employee, and companion if they have one, back at a specified time.

Letter Templates (available from the HR Case Manager supporting the case):
Medical Capacity Review – Invite Medical Capacity Review – Outcome