



WITH EFFECT FROM OCTOBER 2016

THE CAPABILITY PROCEDURE

1. INTRODUCTION

- 1.1.** The Capability Procedure relates to matters of work performance. All action taken, either informal or formal should aim to resolve issues and/or to aid improvement.
- 1.2** In some circumstances, the procedure may need to be paused for consideration and consultation with Human Resources to determine the most appropriate procedure/next steps. This decision will be final.

2. PERSONAL OR DOMESTIC PROBLEMS

- 2.1.** If personal or domestic problems are revealed or suspected as being a contributory factor in performance issues, the staff member shall be reminded of the confidential University services available, and consideration may also be given to changing working arrangements on a temporary or permanent basis to support the individual in bringing his/her performance back up to the required standard. Any permanent changes to a role should be subject to the staff member's agreement where there may be contractual implications.

3. DISABILITY OR MEDICAL ISSUES

- 3.1** Should the staff member highlight that there is an impairment (disability or medical) which may be identified as a contributory factor in the performance issue, the procedure will be paused for consideration and consultation with Human Resources of next appropriate steps, if this has not already been considered. The following actions may be taken:
 - Referral to Staff Health and Wellbeing (if referral has not yet taken place).
 - Discuss with the staff member what reasonable adjustments, if any, could be (or have been) put in place. This can include any support or development needs identified either for the staff member or others in relation to the impairment. Records of Reasonable Adjustments considered and put in place should be documented and kept securely.

- Agree meetings at an appropriate date to review the effectiveness any reasonable adjustments have had on mitigating the disadvantage caused by the impairment.

If, having paused the procedure, the actions taken, including any reasonable adjustments have resolved the performance issue then action under this procedure will cease. If the actions have not resolved the performance issue, then action under the procedure will continue. If a separate procedure would be more appropriate (e.g. the Sickness Absence Management procedure), then case matters will be dealt with under the appropriate procedure.

4. ESTABLISHING THE FACTS

- 4.1.** Where concerns about a staff member's competence or performance occur it is important at the outset that the manager seeks to raise those issues directly.
- 4.2.** This should be done as quickly as is practicable and without unreasonable delay.
- 4.3.** The purpose of the discussion is to identify whether there is substance to the concerns and to identify whether there are any specific problems or underlying causes. The discussion should also explore how any underlying issues can be resolved, including if reasonable adjustments are needed, where applicable.
- 4.4.** If there are concerns, the manager should seek to remedy informally first if possible. Where the manager feels a staff member could benefit from a more structured process of direction and support, then a formal capability hearing will be arranged.

5. INFORMAL RESOLUTION

- 5.1.** Managers should first seek to resolve minor issues informally and expediently whenever possible. This includes ensuring that prior to commencing formal action, consideration in liaison with Human Resources, is given to ensure all appropriate informal means of resolution have been considered, depending upon the individual circumstances of the case.
- 5.2.** The manager should make and retain notes of any issue raised and discussed informally, and subsequent review meetings. The manager should retain a note of the discussion, including any agreed outcomes and support, and any timescales for assessment period, securely and confidentially in accordance with Data Protection principles.

- 5.3. Subsequent review meetings provide the opportunity to review informally the performance issue through constructive and supportive discussion.
- 5.4. If informally agreed action and support fail to remedy the performance issue within the agreed assessment period, a formal capability hearing will be arranged.
- 5.5. At the informal stage the manager is encouraged to seek advice from Human Resources
- 5.6. During the informal stage of the process the timescales for improvement and review periods will be dependent on individual circumstances. However as a guide the informal procedure should not exceed 6 months. Where the performance issue(s) are minor 3 months would be a reasonable timeframe.

6. FORMAL PROCEDURE: NOTIFICATION OF A FORMAL CAPABILITY HEARING

- 6.1. If it has not been possible to remedy the issue informally, or exceptionally where the issue is sufficiently serious to warrant formal action without initial informal considerations, the staff member will be invited, in writing, to attend a capability hearing before a panel (the composition of which is set out in the paragraph 7.2). The notice will usually be provided no later than 7 calendar days in advance of the hearing. For academic, teaching and research staff the notice provided will usually be 21 calendar days in advance of the hearing, unless agreed by all parties that a shorter period would be appropriate.
- 6.2. The staff member will be advised in the letter of the details of the performance concern, the standards that s/he should be reaching, the nature of the proposed discussion, and possible outcomes which may include a formal remedy / action detailed in Section 8 of this procedure.
- 6.3. No less than 7 calendar days (usually 21 calendar days for academic, research and teaching staff) in advance of the meeting the staff member will be provided with all the evidence that will be referred to during proceedings. This may include written documents and witness statements, depending upon the details of the case. The exact material to be provided to the staff member shall vary according to the details of the case.
- 6.4. Where further time is required to consider the evidence, there will be the ability to seek a reasonable adjournment where appropriate.
- 6.5. If the staff member decides to rely upon any evidence, s/he should provide this in advance of the capability hearing. This may include written documents

and witness statements. The staff member will have a reasonable opportunity to call relevant witnesses. The purpose of calling a witness would normally be to contribute to establishing the facts of the case. Witnesses who are to testify to the character of an individual can do so in writing. The staff member will be advised in writing of the timescales (which will usually be a minimum of 7 calendar days unless agreed otherwise) and the process for providing such information. Where further time is required to consider the evidence, the panel have the ability to implement a reasonable adjournment.

- 6.6. During formal proceedings the staff member can be accompanied by a companion. This may be: either a fellow worker; a workplace Trade Union representative; or an official employed by a Trade Union, and the individual will be notified of this right within the letter. For staff requiring certification to practice: Where the outcome of the case may have the potential to impact upon the individual's future professional certification to practice, the panel will determine in advance whether a companion may be a legally qualified professional.

7. THE CAPABILITY HEARING

- 7.1. At the hearing the Chair should outline to the staff member: the nature of the performance concern; the standard of performance expected; and what is expected to bring performance back to the required standard. The staff member will be given the opportunity to state the case.
- 7.2. The capability panel membership will consist of a minimum of 2 members (unless otherwise agreed), who will be appropriately skilled University managers. In all cases where dismissal of a member of academic, research or teaching staff is an option, panel membership shall include at least one Officer of the University, or deputy, selected from the approved List of Potential Panel Members provided in accordance with the Statutes, Section 6, paragraph 7, and not being a person subject to or otherwise connected with the proceedings.
- 7.3. The panel membership shall be made known to the staff member in advance of the hearing, and the staff member should raise any concerns with regards to the panel in advance.
- 7.4. The panel should seek to explore with the staff member: possible reasons for under-performance (the staff member will be given every opportunity to put the case during the hearing); and any interventions or support which may be needed to enable the individual to remedy the situation. This might include a discussion about the appropriate length of the assessment period and the interval of review meetings during the assessment period.

- 7.5. The panel will consider the case and then decide whether or not it is upheld and what appropriate action should be.
- 7.6. The staff member will be informed of the outcome in writing within 7 calendar days following the hearing. Where the usual timeframe is not practicable, this will be communicated to the individual, with reasons and an alternative timeframe specified.
- 7.7. Where the outcome of the hearing identifies that formal action is to be taken, formal remedies/action (as detailed in Section 8 below) will be either:
- A level 1 improvement note and warning;
 - A level 2 improvement note and warning;
 - A final improvement note and warning;
 - Other remedy/action short of dismissal;
 - Dismissal.
- 7.8 The normal expectation would be that formal remedies/action will commence at level 1, however, this will always be subject to the nature of the case and the seriousness of the performance issue. Dismissal would only be expected as an outcome of a first formal hearing in exceptional circumstances. Where formal action is taken, the staff member will be advised of the right of appeal.

8. OUTCOMES: FORMAL REMEDIES/ACTION

8.1A LEVEL 1 IMPROVEMENT NOTE AND WARNING FOR UNSATISFACTORY PERFORMANCE

- 8.1.1. The staff member will receive written details of the nature of the performance problem, the improvement required and the length of the assessment period and intervals for review, any intervention or support, and the right and arrangements for appeal. This assessment period will ordinarily be for a period up to 6 months. This will be decided at the discretion of the Chair of the capability hearing, to take account of factors such as the timescales required to develop reasonable targets and for achieving and demonstrating sustained improvements in performance.
- 8.1.2. The staff member will be informed that a manager may consider it appropriate to take further action during the assessment period. For example, a manager may consider extending the assessment period if the individual requires a slightly longer timescale to fully demonstrate a continuous and sustained improvement in performance. The manager may also consider taking further action prior to the end of the assessment period, if the staff member's performance is not likely to meet

the targets/expectations during the original period. In all such cases, the manager should discuss this with Human Resources.

8.1.3. The staff member would not normally expect pay progression where this could otherwise apply after the issue of an improvement note. Once performance improvements are achieved and sustained then the individual will receive pay progression on the following effective date for incremental progression, where this is applicable. Pay progression will not be backdated.

8.1.4. The staff member will also be informed that further action will be considered if performance is deemed not to have sufficiently improved.

8.1.5. A copy of the improvement note and warning will be kept on the individual's record but will be removed at the end of the warning period subject to achieving and sustaining satisfactory performance.

8.2. A LEVEL 2 IMPROVEMENT NOTE AND WARNING FOR UNSATISFACTORY PERFORMANCE

8.2.1. A panel may decide to issue an improvement note and warning at level 2 with a longer assessment period depending upon the seriousness of the performance problem.

8.2.2. The staff member will receive written details of the nature of the performance problem, the improvement required and the length of the assessment period and intervals for review, any intervention or support, and the right and arrangements for appeal. This assessment period will ordinarily be for a period up to 12 months. This will be decided at the discretion of the Chair of the capability hearing, to take account of factors such as the timescales required to develop reasonable targets and for achieving and demonstrating sustained improvements in performance.

8.2.3. The staff member would not normally expect pay progression where this could otherwise apply after issue of the improvement note. Once performance improvements are achieved and sustained then the individual will receive pay progression on the following effective date for incremental progression, where this is applicable. Pay progression will not be backdated.

8.2.4. The staff member will be informed that a manager may consider it appropriate to take further action during the assessment period. For example, a manager may consider extending the assessment period if the individual requires a slightly longer timescale to fully demonstrate a continuous and sustained improvement in performance. The manager may also consider taking further action prior to the end of the assessment period, if the staff member's performance is not likely to meet

the targets/expectations during the original period. In all such cases, the manager should discuss this with Human Resources.

8.2.5. The staff member will also be informed that further action will be considered if performance is not considered to have sufficiently improved.

8.2.6. A copy of the improvement note and warning will be kept on the individual's record but will be removed at the end of the warning period subject to achieving and sustaining satisfactory performance.

8.3. A FINAL IMPROVEMENT NOTE AND WARNING FOR UNSATISFACTORY PERFORMANCE

8.3.1. If there is a failure to improve performance during an assessment period, or exceptionally the performance issue is sufficiently serious, a final improvement note and warning may be issued.

8.3.2. The staff member will receive written details of the nature of the performance problem, the improvement required and the length of the assessment period and intervals for review, any intervention or support, and the right and arrangements for appeal. This assessment period will be decided at the discretion of the Chair of the capability hearing, to take account of factors such as timescales required to: develop reasonable targets and for achieving and demonstrating sustained improvements in performance.

8.3.3. The staff member will be informed that a manager may consider it appropriate to take further action during the assessment period. For example, a manager may consider extending the assessment period if the individual requires a slightly longer timescale to fully demonstrate a continuous and sustained improvement in performance. The manager may also consider taking further action prior to the end of the assessment period, if the staff member's performance is not likely to meet the targets/expectations during the original period. In all such cases, the manager should discuss this with Human Resources.

8.3.4. The staff member would not normally expect pay progression where this could otherwise apply after the issue of an improvement note. Once performance improvements are achieved and sustained then the individual will receive pay progression on the following effective date for incremental progression, where this is applicable. Pay progression will not be backdated.

8.3.5. The staff member will also be informed that failure to improve may lead to dismissal (or some other action short of dismissal).

8.3.6. A copy of the improvement note and warning will be kept on the individual's record but will be removed at the end of the warning period subject to achieving and sustaining satisfactory performance.

8.4. OTHER REMEDY /ACTION SHORT OF DISMISSAL

8.4.1. If there is still further failure to improve performance or exceptionally the performance is sufficiently serious to warrant it, dismissal or some other action short of dismissal may be issued. Action short of dismissal may include:

- Demotion
- Change to terms of employment
- Access to the Redeployment Register, by agreement
- No pay progression for a specified period where this could otherwise apply. Once performance improvements are achieved and sustained then the individual will receive pay progression on the following effective date for incremental progression, where this is applicable. Pay progression will not be backdated.

8.4.2. If some action short of dismissal is determined the staff member will receive written details, will be warned that dismissal could result if there is no satisfactory improvement, and will be advised of the right of appeal.

8.4.3. In the case of action short of dismissal a copy of the written details will be kept on the staff member's record but will be disregarded for capability purposes after a specified period subject to achieving and sustaining satisfactory performance. This period will ordinarily be for a period up to 12 months. This will be decided at the discretion of the Director of Human Resources or as delegated, to take account of factors such as timescales required to: develop reasonable targets and for demonstrating sustained improvements in performance.

8.5. DISMISSAL

8.5.1. In reaching a decision to dismiss careful consideration of other options will be given. If, on balance, other sanctions are deemed inappropriate due to the seriousness of the case, and the staff member is to be dismissed, the staff member will be provided in writing with reasons for dismissal, the date on which the employment will terminate, and the right of appeal and arrangements.

8.5.2. The authority to dismiss rests with the Chief Human Resources and Corporate Officer or deputy.

9. APPEALS

- 9.1.** A staff member's written outcome letter will include details of the arrangements to follow should s/he decide to appeal, e.g. to whom to appeal.
- 9.2.** A member of staff intending to appeal against the decision of a capability hearing must do so promptly, usually within 7 calendar days of receipt of the written outcome letter. Should the individual require additional time to submit an appeal, s/he may make a request to Human Resources, for a reasonable extension.
- 9.3.** The request to appeal should be communicated in writing, stating the grounds upon which the appeal is based. Grounds for appeal might be: the process was not appropriately followed; there is new evidence relevant to the case which was not previously available; or the hearing outcome is deemed to be disproportionate.
- 9.4.** The University will, as far as reasonably practical, seek to hear the appeal within 28 calendar days of receipt of the submitted appeal. The notice will usually be provided no later than 7 calendar days in advance. For academic, teaching and research staff the notice provided will usually be 21 calendar days in advance of the appeal hearing, unless agreed by all parties that a shorter period would be appropriate.
- 9.5.** The appeal is not a re-hearing of the original hearing, but rather a consideration of the specific area with which the staff member is dissatisfied in relation to the original hearing. Therefore, unless the Chair of the appeal determines that new evidence has a bearing on the whole appeal, the panel will confine discussion to those specific areas rather than reconsider the whole matter afresh.
- 9.6.** The appeal meeting will be chaired by a Senior University Manager, and a member of Human Resources will support the meeting. Neither will usually have been previously involved in the case. Where the staff member exercising the right of appeal is a member of academic, research or teaching staff, panel membership shall include at least one Officer of the University, or delegate, selected from the approved List of Potential Panel Members provided in accordance with the Statutes, Section 6, Paragraph 7, and not being a person subject to or otherwise connected with the proceedings. The Chair will ensure that the number of people present at the appeal is kept to a minimum. The appeal would usually be considered within 14 calendar days of receipt of the application.

- 9.7.** At the appeal meeting the documentary evidence made available at the original hearing will be made available for reference purposes. As the purpose of the appeal is not a reconsideration of all matters, it is the responsibility of the staff member to state the case and bring to the attention of the panel all relevant documentary evidence that should be considered. Based on the appeal case presented and the associated evidence, the appeal panel may either: uphold the grounds for appeal, reject the grounds for appeal, or require a rehearing of the whole or part of the case.
- 9.8.** Where a full or partial rehearing is required, the appeal panel may conduct such a rehearing should the panel deem it appropriate. The staff member can request that such a rehearing takes place at a later date.
- 9.9.** Witnesses may only be called with the permission of the Appeal Chair which shall usually only be given where there was good reason for the witnesses not being called to give this evidence at the capability hearing. If the staff member requests a witness to be called, s/he should name the individual and explain the reasons for the request in the grounds for appeal.
- 9.10.** Where the appeal is against dismissal a senior member of Human Resources will set up and service the Appeal Panel comprising: (i) A ProVice-Chancellor [or nominee]; (ii) One member of the University's Human Resources Committee; (iii) One appropriate staff member of the University, nominated by the Chair of the Panel (Acting on behalf of the University) and agreed by the relevant Trade Union (where applicable).
- 9.11.** In the case of appeals against the dismissal of a member of academic, research or teaching staff the panel shall include : (i) One Officer of the University, or deputy; (ii) One independent professional or academic nominated by Council, who is not employed by the University (both shall be selected from the approved List of Potential Panel Members provided in accordance with the Statutes, Section 6, Paragraph 7); and (iii) One appropriate staff member of the University nominated by the Chair of Panel (acting on behalf of the University) and agreed by the relevant Trade Union (where applicable). Panel members will not have previous involvement or be otherwise connected with the proceedings.
- 9.12.** Where appropriate the staff member will have the opportunity to comment on any new evidence arising during an appeal. All new evidence will have been disclosed in advance according to timescales agreed for the case.
- 9.13.** The staff member will be informed in writing of the appeal outcome, usually within 7 calendar days of the appeal meeting. If the timescales are to be longer, this will be communicated to the individual.

9.14. In the case of a rehearing, an appeal of the rehearing outcome would be permissible.

9.15. The Panel's decision is final.

10. IMPROVEMENT NOTES AND REVIEWS

10.1. An improvement note will contain details of: the aspects of the role requiring improvement; how these aspects of the role will be monitored, any support identified; and timescales for improvement. The note will also outline: when and how often, and for how long review meetings will take place; and who else shall be involved.

11. OTHER PROVISIONS

11.1. During formal proceedings, including appeals, the staff member can be accompanied by a companion (as defined in paragraph 6.6 above). The staff member should advise whether the secretary of the panel should copy the staff member's representative into all relevant documentation.

11.2. At any hearing or appeal meeting, the staff member's companion will be able to address the hearing/meeting in order to: put the staff member's case forward; sum up the case; respond on the staff member's behalf to any view expressed at the hearing/meeting; and confer with the individual. The representative should not usually answer questions on behalf of staff member, but may do so with the agreement of the panel.

11.3. Every effort should be made by all participants to attend hearings as arranged. Hearings will be made at date/times that are mutually acceptable, wherever possible. Where the staff member fails to attend on more than two occasions, the University may decide that a decision should be made in the staff member's absence on the evidence available at the third scheduled hearing.

11.4. If the staff member is absent due to sickness prior to the hearing, s/he may be invited to visit the University's Occupational Health Service to assess his/her fitness to attend a hearing, and to give advice on any special requirements or adjustments for the hearing.

11.5. Where a staff member seeks to activate a formal procedure, e.g. submits a grievance or appeal within another procedure, during a capability process which is related to the case it may be appropriate to deal with the issues as part of, or concurrently with, this procedure. Alternatively the capability panel may deem it appropriate to temporarily

suspend capability proceedings pending the outcome of the other procedural process in order to safeguard the fairness of the process.

- 11.6.** Where a staff member believes that an aspect of a disability (e.g. hearing difficulties, chronic fatigue etc.) or language skills (e.g. English is not his/her first language) may impact on the ability to participate as appropriate in the procedure, it is the staff member's responsibility to raise this with Human Resources as soon as possible. In such cases the University may consider providing appropriate reasonable support/adjustments during formal proceedings. Panel members shall be advised of any reasonable adjustments to be made.
- 11.7.** No formal action should be initiated against accredited Trade Union representatives until there has been discussion with the appropriate official employed by the Trade Union, in order to ensure compliance with the provisions of employment legislation.
- 11.8.** Records of action taken under the capability procedure will be kept confidential and retained in accordance with the University's Information Security Policy. The handling of personal data is controlled by the General Data Protection Regulation (GDPR) and associated legislation.
- 11.9.** Time limits are indicated in calendar days and are included in the procedures in order to ensure that matters are dealt with promptly and without undue delay. Neither the University nor staff members should unreasonably delay hearings, decisions or confirmation of those decisions. However, in complex matters it may be appropriate to extend time limits provided in the Procedure.
- 11.10.** Human Resources shall regularly monitor equality statistics relating to capability matters and these will be shared with the Human Resources Committee (HRC) and the Joint Union and Campus Committee (JUCC).
- 11.11.** The Procedure was formally approved by HRC and agreed by JUCC on 12 October 2016.