

UNIVERSITY OF ABERDEEN

CAPABILITY PROCEDURE

1 INTRODUCTION

The University is committed to ensuring that its staff receive appropriate support and guidance to enable them to perform the full scope of their duties to a professional and consistent standard and make an effective contribution to the work of the University.

In particular, the University recognises that wellbeing at work is central to ensuring that all members of staff are able to undertake the full scope of duties associated with their role. However, it is recognised that, for genuine reasons, individuals may find that they lack the capability¹ to meet the standards expected of them because of e.g. ill health, changes to the role, extension of responsibilities out with their ability, technological advances, lack of appropriate skill(s) or aptitude etc.

In such circumstances, the University aims to provide individuals with assistance and support to meet all the expectations of their role. However, it is recognised that in some cases, alternative options should be considered e.g. redeployment to a more appropriate position, reasonable adjustments to the role or, if no alternatives can be found, to carry out a fair dismissal process on the grounds of capability.

2 SCOPE

This procedure aims to provide all members of staff with a clear framework within which any concerns related to capability will be addressed in a constructive, fair and equitable manner. It also aims to ensure that a positive and consistent approach is adopted at all times across the University.

It does not apply to situations which are more appropriately dealt with under the Disciplinary Procedure and which are not related to capability matters.

Certain members of staff may be afforded additional protections under the Ordinance of the University Court of the University of Aberdeen No. 142 [Employment] and in line with the Further and Higher Education (Scotland) Act 2005. These individuals are referred to as "Relevant Persons" within this Procedure. ²

3 GENERAL PRINCIPLES

- Staff should be made fully aware of the performance standards they are expected to deliver and should have regular meetings with their managers to discuss their work and performance and what activities and resources can help support such objectives.
- It is the responsibility of line managers to ensure that any performance issues are addressed at an early stage and where possible resolved without recourse to either the informal or formal stages of this procedure (ie through regular meetings and discussions with their line manager).
- Action will not normally be taken under this procedure without previous discussion that will be recorded about performance at regular catch up meetings. It is the normal expectation that staff will remain in the informal stage of the procedure for no more than 12 months.
- Where it is felt that a concern is related to a capability issue, the primary aim is to assist and support staff to undertake their full duties to the required standard. At every stage of the Procedure, staff will be given the opportunity to state their case

¹ Capability is defined under Section 98 of the Employment Rights Act 1996 as 'capability assessed by reference to skills, aptitude, health or any other physical or mental quality'.

² *Relevant Persons* are those who are engaged in teaching and/or the provision of learning and/or research at the University of Aberdeen

before any decision is made, including being able to respond to the issues raised, put forward any mitigating circumstances and make suggestions to changes or support that would allow them to perform to the standards expected of them in their role.

- Where it is felt that a concern is related to a health issue, advice and guidance will be sought from the Occupational Health Service.
- Where performance issues are identified, the relevant line manager will discuss and agree an improvement plan with the member of staff, which will outline the performance improvements required and the support that will be provided. Appropriate review periods will also be agreed which provide reasonable time for performance to improve – timescales will vary depending on individual circumstances.
- The formal stages of the Procedure will not be invoked until the concerns have been fully investigated.
- Each step and action under the Procedure will be undertaken as quickly as practicable and without unreasonable delay. Decisions on capability matters will normally be taken as quickly as practicable and at the lowest managerial level within the University, other than those as detailed in Section 7.2 (Formal Capability Procedure). No formal action will be taken against a Relevant Person without the involvement of another Relevant Person in the Procedure.
- Staff have a right to appeal against the outcome of any decision taken under the Formal Capability Procedure.
- The Capability Procedure will be used for the purpose intended i.e. to resolve performance problems, by providing appropriate support to enable staff to perform to the standard required. Where a member of staff believes that they have been treated unfairly under the Capability Procedure they will be entitled to use the Grievance Procedure. In such instances, the Grievance Procedure and the Capability Procedure may overlap in accordance with the ACAS Code of Conduct which allows for the procedures to run concurrently where matters are related.
- Staff are entitled to reasonable preparation time ahead of being required to attend an investigation, formal Review, Hearing or appeal meeting.
- Staff have the right to be accompanied by a work colleague or Trade Union representative at any formal Review, Hearing or Appeal meeting. A Human Resources Adviser will attend all formal meetings in the role of clerk.
- Staff must take all reasonable steps to attend any meetings which they are required to attend. If staff fail to attend a formal capability Hearing or Appeal Hearing, they will be provided with a final invitation to attend a second Hearing. If they do not attend the second Hearing, consideration will be given to reaching a decision in their absence on the evidence available.
- If new information emerges during the course of the Formal Review or Hearing stages, it may be necessary to adjourn pending further investigation or, in the event of any health issues, whilst they undergo treatment.
- All written records, including documentary evidence and witness statements, will be classified as confidential in line with current legislation and held within the Human Resources Office in accordance with the University's records retention schedule.
- The University is committed to providing support to members of staff who are or who become disabled and/or are diagnosed with a chronic underlying health condition during their employment. In such circumstances, advice and guidance on appropriate reasonable adjustments will be sought from the Occupational Health Service to accommodate the individual's needs.

4 OCCUPATIONAL HEALTH SERVICE

The Occupational Health Service for the University is provided by NHS Grampian Occupational Health Service. This service is contracted to provide independent advice, guidance and support to members of staff and Line Managers on employee wellbeing and health matters. The advice and recommendations received from the Occupational

Health Service will be used to inform any actions which are taken under the Capability Procedure.

5 ADDITIONAL SOURCES OF SUPPORT

If a line manager has concerns about a member of staff's capability or the member of staff has concerns about their own capability to undertake a role, additional support is available from the following sources:

- Line Manager
- HR Adviser
- Trade Union representative
- University Counselling Service
- Your GP

6 RETIREMENT ON THE GROUNDS OF ILL HEALTH

If the University receives confirmation from the Occupational Health Service (taking account of any information received from a GP/specialist where appropriate), that a member of staff will not be fit to return to undertake the duties of their post, and if the post cannot be modified, or re-deployment is neither possible or appropriate then the member of staff may be eligible to request the release of their pension and lump sum benefits on the grounds of retirement due to ill-health. Retirement due to ill-health normally attracts an enhancement to pension. In the first instance staff should contact their Human Resources Adviser/Partner to discuss their circumstances and the appropriate process.

7 CAPABILITY PROCEDURE

The Capability Procedure comprises an Informal and a Formal Procedure.

7.1 *Informal Capability Procedure*

Line managers will hold regular discussions with staff during their employment with the University regarding their performance at regular catch up meetings as well as formally within annual reviews.

Where discussion at regular catch up meetings does not lead to improvement, or where a member of staff's performance falls below the acceptable standard and it is deemed appropriate to move to the informal stage of the Capability Procedure, the line manager will arrange a meeting with the member of staff under the Informal Capability Procedure.

Where appropriate, the line manager will informally investigate the concerns and this may include them speaking to the member of staff, and possibly other appropriate individuals if necessary, to ascertain the background to the situation.

If it is felt that the matters of concern are the result of a health or disability related issue, the line manager will contact the Human Resources Section to request that a referral is made to the Occupational Health Service, with a view to identifying what reasonable adjustments could be made to support the member of staff.

Once a line manager is in possession of the relevant information, the concerns will normally be addressed through a discussion between the member of staff and their line manager, with the objective of encouraging or helping the member of staff to improve. This may include the identification of any support mechanisms which may be required e.g. reasonable adjustments being made to the role, work location, hours of work in line with Occupational Health Service advice, the provision of additional supervisory support, training/coaching/mentoring etc.

The line manager will advise the member of staff of the standards expected of them in performing their role and their progress will be reviewed regularly. It is the normal expectation that a review period will be agreed with the member of staff, and that they will receive written confirmation of performance/attendance targets which are discussed at such review meetings. Staff will also be notified that if there is no improvement or if any improvement is not sustained, action may be taken under the Formal stages of the Capability Procedure.

7.2 Formal Capability Procedure

The formal Capability Procedure will be used when:

- the support mechanisms agreed during the Informal Capability Procedure have failed to bring about a demonstrable and/or sustained improvement in the standards expected
- there is a reasonable expectation (based on Occupational Health Service advice) that a member of staff will be unable to continue in or return to their role in the foreseeable future
- a serious issue of performance as a result of capability is identified

There are 3 stages within the formal Capability Procedure:

- Stage 1 – Formal Review
- Stage 2 – Hearing
- Stage 3 – Appeal

Stage 1 - Formal Review

Formal Reviews which are conducted under the formal Capability Procedure will be carried out thoroughly, in strictest confidence and as quickly as practicable given the circumstances of the case.

The Formal Review will normally be carried out by your immediate Line Manager. However, if either you or your Line Manager believes that this would result in a conflict of interest, the Head of School/Section (or Head of College/University Secretary if the potential conflict involves the Head of School/Section) will nominate another individual to conduct the Formal Review.

You will be required to attend a Formal Review meeting and you will be provided with an opportunity to respond fully to the concerns which are raised regarding your capability to carry out your role. You will be provided with a written statement outlining the concerns, accompanied by any supporting documentation (if available), prior to the meeting taking place.

You must take all reasonable steps to attend this meeting. If you or your companion cannot attend at the time specified, you should immediately inform the individual carrying out the investigation in writing and reasonable efforts will be made to agree an alternative time.

You will be advised of the outcome in writing as quickly as practicable. The outcome of the Formal Review could include a decision that:

- No further action is required. In such circumstances, you will be advised that the matter has been concluded. The individual undertaking the Formal Review may make recommendations and/or provide suggestions in relation to working practices or training and development if s/he deems it appropriate.

- The review period agreed at the Informal stage should be extended. A period of extension will not normally be for longer than 6 months. In such circumstances, the individual undertaking the Formal Review will specify the period of extension to be applied and the standards/objectives which you will be required to meet. Any additional support needs will also be identified. You will be informed that the consequences of failing to meet the standards/objectives outlined may result in further formal action as detailed in this Capability Procedure.
- The matter should be progressed to a Capability Hearing under Stage 2 of the Procedure. In such circumstances, the individual undertaking the Formal Review will indicate whether s/he believes that dismissal may be an outcome.

Stage 2 – Hearing

If the matter is not concluded after the Formal Review (Stage 1), you will be required to attend a formal Hearing. The purpose of the Hearing will be to review the outcome of the Formal Review and to consider the action which should be taken to address the situation.

You will normally be provided with at least 3 working days' notice of the date of the Hearing.

You will be advised of the outcome of the Hearing in writing, normally within 3 working days of it taking place.

Capability Hearing (Action Short of Dismissal)

Capability Hearings to consider recommendations for further action falling short of dismissal (see Section 8.1) will normally be heard by an individual at the next higher managerial level within the management structure to the individual who undertook the Formal Review. Capability cases involving Relevant Persons will be heard by another Relevant Person at an appropriate level within the University. This individual will not have been subject to or otherwise connected with the case.

Dismissal Hearing

Hearings to consider recommendations for dismissal on the grounds of capability (see Section 8.2) will normally be heard by (i) an individual at the next higher managerial level within the management structure to the individual who undertook the Formal Review and (ii) at least one other individual at an equivalent level within the University. Neither individual will have been subject to or otherwise connected with the case.

Capability Hearings involving a Relevant Person will be heard by the Head of School/Section and at least one other Relevant Person who has not been subject to or otherwise connected with the case.

Both you and the individual who undertook the Formal Review will have the right to call witnesses to attend Dismissal Hearings. Similarly, the convener may, in the light of the report received from the individual who undertook the Formal Review, request witnesses to attend the hearing to provide further clarification on any issues. You will have the opportunity to respond to the issues raised, put forward any pertinent facts or mitigating circumstances and make suggestions on how the necessary could be secured.

Stage 3 - Appeal

You are entitled to appeal against any formal decisions taken under the Capability Procedure (up to and including dismissal). Notification of an intention to appeal must be made in writing within 5 working days from the date of the penalty. The detailed grounds of the appeal should normally be lodged within 10 working days from the date of the original intimation of intention to appeal. Appeal hearings shall be heard as expeditiously as possible and, for dismissal, wherever possible within the contractual notice period (if any notice period is applicable).

All appeals will be held in line with the University's Procedure for Hearing an Appeal which is available at: http://www.abdn.ac.uk/staffnet/documents/Appeal_Procedure_final_April2015.pdf

Appeals Against Formal Action Up to Dismissal

The appeal will be heard by an individual in the next appropriate level of management structure.

Appeals against formal action taken on capability grounds (up to but not including dismissal) against Relevant Persons will be heard by another Relevant Person at an appropriate level within the University. This individual will not have been involved previously in the case.

The Appeal Hearing need not take place before the formal decision takes effect and the level of any action taken will also be reviewed.

Appeals Against Dismissal on Capability Grounds

Appeals against dismissal from members of staff who are not Relevant Persons will be heard by the individual in the next appropriate level of management structure not previously involved in the disciplinary case.

If a Relevant Person wishes to appeal against their dismissal, the appeal will be heard by a person not employed by the University and who has had no previous involvement in the case. This person will be selected by the Principal (or a member of staff nominated by the Principal) from a panel constituted by agreement with the recognised Campus Trades Union.

The panel is attached as Appendix 1.

If the appeal is upheld, the dismissal will be deemed not to have taken place. In the case where an appeal is upheld but the dismissal has already been actioned, the member of staff will be reinstated with full continuity of service, (including National Insurance and superannuation contributions), as if the dismissal had never taken place.

8 FORMAL ACTION

The following formal action may be taken upon the conclusion of the formal Capability Procedure. In addition, consideration may also be given to other action being taken based upon the individual circumstances of the case.

In taking a decision about the appropriate outcome, consideration will be given to:

- whether any further adjustments are viable within a reasonable timeframe
- the possibility of identifying suitable alternative roles/duties

- whether further medical evidence is required
- whether termination of employment is an appropriate outcome

8.1 Formal Action Short of Dismissal

Initial Warning

Where formal action is considered appropriate, it is the normal expectation that you would receive an Initial Warning in the first instance. The Initial Warning will be confirmed to you in writing and it will be held on record and considered spent after 6 months (unless otherwise notified to you at the time of the warning being given), subject to satisfactory improvement being demonstrated.

The Warning will detail the reason for it being given, the improvement required and the timescale within which improvement is expected. You will also be advised that if there is no satisfactory and/or sustained improvement, further formal action may be taken under the Capability Procedure. You will also be advised of your right of appeal.

Second Warning

A Second Warning will be issued where you have been unable to demonstrate a sustained improvement in relation to capability concerns which had previously resulted in an Initial Warning being issued. It could also be issued as a result of more serious concerns related to capability matters. It will be held on record and considered spent after 12 months (unless otherwise notified to you at the time of the warning being given), subject to satisfactory improvement being demonstrated.

The Warning will detail the reason for it being given, the improvement required and the timescale within which improvement is expected. You will also be advised that if there is no satisfactory and/or sustained improvement, further formal action may be taken under the Capability Procedure. You will also be advised of your right of appeal.

Final Warning

A Final Warning may be issued in the following circumstances:

- if the concerns relating to capability matters are sufficiently serious;
- as a result of failure to demonstrate and/or sustain improvement as detailed in a Written Warning;

A Final Warning will be held on record and considered spent after 12 months (unless otherwise notified to you at the time of the warning being given), subject to satisfactory improvement being demonstrated.

The Warning will detail the reason for it being given, the improvement required and the timescale within which improvement is expected. You will also be advised that dismissal will result if there is no satisfactory and/or sustained improvement and of your right of appeal.

Alternative Outcomes

In addition, consideration may be given to the following outcomes (which may be applied independently of or in addition to the Warnings outlined above):

Redeployment

It may be appropriate that consideration is given to redeploying to another suitable role within the University. In such circumstances, you will be provided with the support of a

Redeployment Co-ordinator from the Human Resources Section and will be placed on the Redeployment Register for a defined period of time (normally for a period of 4 weeks). Whilst every effort will be made to identify a redeployment opportunity, it should be noted that this is not guaranteed.

Further Review Period

It may be determined that you should be provided with further opportunities to demonstrate and/or sustain an improvement in relation to the concerns which were identified. In such circumstances, you will be advised of:

- the standards/objectives which you will be required to meet
- additional training and/or support mechanisms which will be provided to you
- the timescale and process for reviewing your progress

If any Formal Action Short of Dismissal is initiated in your circumstances, you will be informed that a failure to demonstrate and/or sustain an improvement will result in further formal action being taken in line with the Capability Procedure. In addition, you will be advised of your right of appeal (see Section 7.2).

8.2 Capability Dismissal

You may be dismissed on the grounds of capability if:

- you have been made aware of the concerns and provided with appropriate support but have been unable to make sufficient improvement
- there is no reasonable expectation that you will be able to continue in or return to your role in the foreseeable future (based on Occupational Health Service advice)
- it has not been possible to redeploy you to a suitable alternative role through the redeployment Process

You will be advised of the reasons for your dismissal and of your right of appeal (see Section 7.2)

APPEAL PANEL

Mr Alex Green, The Law Agency

Mr David Burnside, Paul & Williamson LLP (Consultant)

Mrs Lili Norris, Lili Hunter Consulting - Mediation, Employment Law and Training Solutions Aberdeen
(Director)

Mr David Bleiman

Ms Ann Kettle (OBE)

Ms Margaret Main (OBE)

CAPABILITY PROCEDURE FLOWCHART

