

## CAPABILITY POLICY & PROCEDURE

<b>Contents</b>	<b>Page Number</b>
1. Policy Statement and Scope	2
2. Principles	2
3. Procedures	3
3.1 Stage One – Informal	3
3.2 Stage Two – Formal Review Meeting	4
3.3 Stage Three – Capability Hearing	5
3.4 Stage Four – Final Capability Hearing	6
4. Appeals	8
5. Capability in Special Cases	10

## 1. POLICY STATEMENT AND SCOPE

- 1.1 In order to achieve Royal Holloway's stated aims and objectives all employees are expected to perform to the best of their ability. Where there is concern that an employee may not be fulfilling their duties to the required standard, it may be necessary to invoke this policy and procedure.
- 1.2 The College is committed to ensure that fair and effective arrangements exist for dealing with capability matters. This procedure is compliant with relevant legislation and ACAS Codes of Practice.  
Matters concerning incapacity due to ill health should be dealt with under the College's absence management policy, which is available at <https://www.royalholloway.ac.uk/humanresources/policiesproceduresandforms.aspx>  
  
Matters concerning misconduct should be dealt with under the provisions of the College's Disciplinary Policy, which is available at <https://www.royalholloway.ac.uk/humanresources/policiesproceduresandforms.aspx>
- 1.3 This policy and procedure applies to all employees of the College who have completed their probation period.
- 1.4 This policy and procedure is intended to be used in situations where there are concerns that an employee may not be adequately performing the duties required under their contract of employment due to lack of ability or competence.
- 1.5 Data on the number of capability proceedings, reasons for such proceedings, and outcomes will be collected by the Human Resources Department as part of the annual monitoring arrangements. Such data are reported to the Equality and Diversity Steering Group and Committee, and reported to the Joint Negotiating and Consultative Committees on an annual basis. Policy issues arising from the monitoring procedure will be investigated by the Human Resources Department and College management as appropriate.

## 2. PRINCIPLES

- 2.1 The aim of this policy and procedure is to support employees who may not be adequately performing the duties of their role, and to seek solutions to enable continued employment. It is recognised that employee performance may be influenced by a number of factors; the College will offer reasonable assistance to all its employees to resolve issues of underperformance.
- 2.2 Managers and heads of department have a responsibility to ensure that expectations of employees are clear and are entitled to meet employees where they have concerns about the individual's performance. Employees are entitled to know what is expected of them, and are responsible for meeting with their manager to discuss any concerns about their work. It is expected that all employees will endeavour to meet the requirements of their role, and they are encouraged to identify any support they may need.
- 2.3 It is the responsibility of managers or heads of department to communicate regularly with their staff. In the normal course of their management of staff they will be expected to identify where a problem exists or is anticipated, which may impact on an employee's ability to fulfil their role. Managers are responsible for providing support in order to resolve matters in an appropriate manner.
- 2.4 Any initial concerns relating to an individual's duties and responsibilities should be raised in

this manner at the earliest opportunity. This policy should only be invoked where a manager or head of department has significant or sustained concerns.

- 2.5 An employee has the right to be accompanied by a trade union representative or workplace colleague of their choice at all formal stages of the procedure.
- 2.5 Representatives of the Human Resources Department are available to give advice and assistance to both managers and employees.
- 2.6 The Human Resources Department will be responsible for ensuring that any necessary reviews arising from capability proceedings (e.g. of management practice, recruitment and selection processes, performance management) are undertaken in a timely manner.
- 2.7 No employee will be dismissed on the grounds of capability without following each stage of this procedure.

### **3. PROCEDURE**

#### **3.1 Stage One – Informal**

- 3.1.1 When it seems to a manager (or head of department) that an employee's capability to perform the duties required is in question, and it has not been resolved through day-to-day communication, they should explore whether there is a question of underperformance. The manager shall provide the employee with factual examples of any underperformance and meet with the employee to give them an opportunity to respond.

Before convening a meeting under the informal stage of this procedure, a manager must seek advice from the Human Resources Department.

The following steps should be taken by a manager in addressing concerns of underperformance:

- (a) Provide factual evidence of underperformance, discuss this with the employee concerned and explore possible causes (which may include lack of skills, inadequate training, lack of support, staff, tools or other resources, ineffective communication);
  - (b) Make the employee aware of the standards expected of them and any shortfalls;
  - (c) Give the employee an opportunity to respond;
  - (d) Confirm any support/supervision/training or informal means to assist or resolve the problem;
  - (e) Discuss any relevant issues such as unrealistic workloads or expectations, and lack of clarity over workloads or expectations.
  - (f) Confirm a time period over which monitoring will take place, if necessary;
  - (g) Prepare notes of the meeting and agree these with the employee concerned.
- 3.1.2 If an informal review period is deemed necessary, the manager should explain to the employee that if there is no improvement during that period, the formal stages of the Capability Procedure may be initiated.
  - 3.1.3 The manager must have attempted to manage underperformance informally before entering the formal Capability Procedure, unless the situation is serious enough to pose significant risk to individuals or the College to warrant moving directly to the formal stage.
  - 3.1.4 If the causes of underperformance appear to be health related, the manager should seek

advice from Human Resources and refer to the Ill Health Policy and Procedure.

### 3.2 Stage Two – Formal Review Meeting

3.2.1 The Human Resources Department must be informed of any capability cases before a manager or head of department proceeds to the formal stage of the Capability Procedure.

3.2.2 Where no improvement is demonstrated during the informal stage of the procedure, the employee will be invited to a formal review meeting with the manager. The manager will confirm the meeting in writing, giving at least ten working days' notice.

3.2.3 The notification to attend a meeting must include the following:

The date, time, location of the meeting, and confirmation that it is to be held under Stage Two of the Capability Procedure;

The employee's right to be accompanied by a trade union representative or workplace colleague. If the companion is not available the employee may offer an alternative time and date as long as it is reasonable and it is not more than five working days after the original date;

The identity of the person chairing the meeting, usually the line manager, and of the

Human Resources representative;

The nature of the employee's underperformance to be considered; A copy of the Capability Policy & Procedure;

Any documentation or evidence, including witness statements, to be relied upon at the hearing.

3.2.4 At the meeting, the manager should tell the employee the standards expected and current shortfalls using specific examples. The employee and/or companion will have the opportunity to respond. The employee will have the opportunity to explain, where relevant, why claims of underperformance are inappropriate, or explained by lack of resources, unrealistic or unclear expectations, or workloads. S/he may also explain failings in the informal stage proceedings. A formal development plan should be discussed, where necessary, with the employee, clearly specifying measurable improvement objectives, with agreed timescales. The plan will identify any unresolved performance issues and outline measures to address these, including appropriate support and training, and any monitoring arrangements during the review period.

3.2.5 The employee will be sent a written record of the meeting, which will include: an overview of the discussion;

the agreed development/action plan;

details of monitoring arrangements;

the length of the formal review period;

any training and/or support to be provided;

future review dates;

an explanation of what will happen if the required improvement is not achieved by the end of the formal review period.

3.2.6 If the necessary improvement is achieved by the end of the formal review period the papers relating to the matter will remain on file for a period of 12 months.

3.2.7 Should the same issues arise again within 12 months, they will be addressed through the next stage in the procedure. If any problems arise after the 12 month period they will be

dealt with starting from stage 1 of the procedure.

### 3.3 Stage Three – Capability Hearing

3.3.1 If following a formal review period, agreed at stage two, satisfactory performance has still not been achieved, the employee will be requested to attend a capability hearing. This must be confirmed in writing, giving the employee at least ten working days' notice.

3.3.2 The purpose of the capability hearing will be for a Panel to consider the case and supporting evidence.

For employees not covered by Statute 9, the Panel will consist of:

A Head of Department having no previous involvement with this case;

Someone with appropriate knowledge of the duties and/or work environment.

Where appropriate, an independent expert or independent experts relevant to the matter concerned, who may advise the panel.

For members of Academic staff covered by Statute 9, the Panel will be constituted according to that statute, namely:

A chair, being an Independent Member of College Council;

A senior member of staff of the College, not otherwise concerned with the matter, and defined as a professor or where appropriate a member of senior management;

A Member of Academic Staff, not otherwise concerned with the matter, from a list nominated by the Academic Board;

Where appropriate, an independent or independent experts relevant to the matter concerned, may advise the panel.

3.3.3 Panels will be provided with administrative support and advice by the Human Resources Department. Panels should be appointed by a member of the Human Resources Department not directly involved with the case.

3.3.4 Any concern about a potential conflict of interest involving a panel member should be raised at the earliest opportunity with the Director of Human Resources or their delegated nominee who will consider the matter and amend the panel membership if appropriate.

3.3.5 The notification of a capability hearing must include the following:

The date, time, location of the meeting, and confirmation that it is to be held under Stage Three of the Capability Procedure;

The employee's right to be accompanied by a trade union representative or workplace colleague. If the companion is not available the employee may offer an alternative time and date as long as it is reasonable and it is not more than five working days after the

original date;

the identity of the members of the panel, and the Human Resources representative; the identity of the manager presenting the case;

the nature of the employee's underperformance to be considered; a copy of the Capability Policy & Procedure;

any documentation or evidence, including witness statements, to be relied upon at the hearing.

3.3.6 At the hearing, the manager presenting the case will outline the current nature of the employee's underperformance, and what steps have previously been taken to support the

employee in addressing these issues. The employee and/or their representative will respond, including any mitigating factors, if relevant.

3.3.7 Having considered the case outlined by the manager, the employee's response, and all relevant evidence, the panel will determine whether or not there are capability issues to be addressed.

3.3.8 Where there are capability issues to be addressed, the Panel may make recommendations which may include:  
a new development/training plan and timescale; issuing a first formal warning;  
re-assessment of the duties and responsibilities of the role;  
consideration of alternative employment elsewhere in the College.

Where the Panel determines that there are no capability issues, the case will be dismissed and the Panel should make recommendations for appropriate future practice.

3.3.9 The decision of the panel will be notified to the employee, normally within 10 working days. The notification letter will include an overview of the hearing, and the decisions and recommendations of the panel and where relevant what will happen next if standards are not achieved.

3.3.10 If the necessary improvement is achieved by the end of the new review period the papers relating to the matter will remain on file for a period of 12 months.

3.3.11 Should the same issues arise again within 12 months, they will be addressed through the next stage in the procedure. If any problems arise after the 12 month period they will be dealt with starting from stage 1 of the procedure.

3.3.12 If recommended by the panel, and if the employee is agreeable, Human Resources will explore the possibility of alternative employment within the College, taking into account the individual's skills and competencies. This may be at a lower grade.

3.3.13 If possible alternative employment is identified, the Director of Human Resources will make the offer in writing, giving the employee a timescale in which to consider the offer. If accepted a trial period of a minimum of four weeks and a maximum of 6 months will be arranged.

3.3.14 In circumstance where an employee accepts a post on a lower grade as a consequence of capability proceedings, pay protection will not apply but the employee will transfer to the top point of the lower grade, excluding the contribution points.

3.3.15 If, following the recommendations of the stage three panel, an alternative role has not been found within a reasonable period, or if the employee has declined an offer of an alternative role, or the employee is not suitable for the post at the end of a trial period, the case would proceed to stage four.

#### 3.4 Stage Four – Final Capability Hearing

3.4.1 If implementation of Stage Three recommendations does not lead to a satisfactory outcome, the employee will be requested to attend a final capability hearing. This must be confirmed in writing, giving the employee at least ten working days' notice.

3.4.2 The purpose of the capability hearing will be for a Panel to consider the case and

supporting evidence, and consider whether employment should be terminated on grounds of capability. All stage four panel members must have had no previous involvement with the case.

For employees not covered by Statute 9, the Panel will consist of:  
Chief Operating Officer or a Vice-Principal/Dean, as Chair;

A member of staff with appropriate knowledge of the duties and/or work environment;  
Where appropriate, an independent expert or independent experts relevant to the matter concerned, may provide advice.

For members of Academic staff covered by Statute 9, the Panel will be constituted according to that statute, namely:

A chair, being an Independent Member of College Council;

A senior member of staff of the College, not otherwise concerned with the matter, and defined as a professor or where appropriate a member of senior management;

A Member of Academic Staff, not otherwise concerned with the matter, from a list nominated by the Academic Board;

Where appropriate, an independent or independent experts relevant to the matter concerned, may provide advice.

The Panel will be supported by an advisor from the Human Resources department. A panel will be appointed by a member of the Human Resources Department not directly involved with the case. Any concern about a potential conflict of interest involving a panel member should be raised at the earliest opportunity with the Director of Human Resources or their delegated nominee who will consider the matter and amend the panel membership if appropriate.

3.4.3 The notification of a final capability hearing must include the following:

The date, time, location of the meeting, and confirmation that it is to be held under

Stage Four of the Capability Procedure;

The employee's right to be accompanied by a trade union representative or workplace colleague. If the companion is not available the employee may offer an alternative time and date as long as it is reasonable and it is not more than five working days after the original date;

the identity of the members of the panel, and the Human Resources representative: the identity of the manager presenting the case;

the nature of the employee's underperformance to be considered; a copy of the Capability Policy & Procedure;

any documentation or evidence, including witness statements, to be relied upon at the hearing.

3.4.4 The employee will have the opportunity to submit to Human Resources a written case along with any documentation to be relied upon at the hearing at least 3 days before the hearing.

3.4.5 All witnesses should be available to attend the hearing, unless it is agreed in advance by all parties that their statements are taken as statements of fact.

3.4.6 At the hearing the manager presenting the case will outline the current nature of the employee's underperformance, and what steps have previously been taken to support the employee in addressing these issues. The employee and/or their representative will respond, including any mitigating factors, if relevant.

- 3.4.7 The Panel will reach its decision after having heard all the evidence at the hearing. The possible outcomes include all those available at stage three and, in addition, the employee's dismissal on grounds of capability.
- 3.4.8 The Panel may give their decision immediately following an adjournment, or defer the decision for further consideration. In either case, the decision will be communicated to the employee and their manager, in writing within 10 working days of the conclusion of the hearing.
- 3.4.9 The letter should include:  
The decision and reason(s) for it;  
The right of Appeal, where relevant;  
Details of the Appeal Procedure, where relevant, including the requisite timescale.

## **4. APPEALS**

An employee may appeal against the decision of a final capability hearing. Formal written notification of an appeal, containing the grounds of appeal, should be sent to the Director of Human Resources within 10 working days of receipt of the letter confirming the decision.

### **4.1 Grounds of Appeal**

The grounds of appeal may include one or more of the following:

- a) procedure – the procedure was not correctly followed and because of this there was a material failure which adversely affected the decision;
- b) decision – the evidence did not support a finding of incapability;
- c) proportionality - the decision was too harsh taking into account the nature of the incapability, previous or comparable cases, and/or the mitigating circumstances and/or the employee's previous service;
- d) New evidence – the provision of evidence not available at the stage four hearing, which would have had a material impact on the decision.

### **4.2 Appeals Procedure**

- 4.2.1 Once notification of an appeal has been received then an appeal hearing will normally be heard within twenty working days.
- 4.2.2 An appeal will not normally involve a re-hearing of the whole capability case, unless the Appeal Panel concludes that earlier proceedings were so flawed as to materially affect the outcome.
- 4.2.3 For employees not covered by Statute 9, the Appeals Panel will be comprised of three senior members of staff including the Director of Human Resources, or their delegate. The panel members will be identified by Human Resources. The Chair of the panel will also be nominated at this stage. Where appropriate, independent expert or experts relevant to the matter concerned may be appointed to advise the panel.

For members of Academic staff covered by Statute 9, the Appeals Panel will be constituted according to that statute, namely:

- i. Two Independent Members of College Council, one of which shall be chair of the panel;

- ii. At least one Member of the Academic Staff from the approved list of nominated by the Academic Board, not otherwise concerned with the matter.
- iii. Where appropriate, independent expert or experts relevant to the matter concerned may advise the panel.

The Appeals Panel will be supported by an advisor from the Human Resources Department.

A panel who have not directly been involved with the case should be appointed by a member of the Human Resources Department. Any concern about a potential conflict of interest involving a panel member should be raised at the earliest opportunity with the Director of Human Resources or their delegated nominee who will consider the matter and amend the panel membership if appropriate.

#### **4.3 Prior To The Hearing**

4.3.1 The Human Resources department will notify the panel members, the employee, the employee's representative, and Chair of the Final Capability Hearing of the details of the appeal hearing.

4.3.2 The notification of the hearing must include:-

The date, time, location of the appeal hearing;

The employee's right to be accompanied by a trade union representative or workplace colleague. If the companion is not available the employee may offer an alternative time and date as long as it is reasonable and it is not more than five working days after the original date;

the identity of the members of the appeal panel,

a copy of the employee's grounds of appeal;

any documentation, including any new evidence, to be relied upon at the appeal hearing;

a copy of the Capability Policy & Procedure.

#### **4.4 The Appeal Hearing**

4.4.1 At the appeal hearing both parties will be given the opportunity to state their case, call witnesses and ask and answer questions.

4.4.2 All witnesses should be available to attend the appeal hearing, unless it is not required as it has been agreed in advance by all parties that their statements are accepted as statements of fact.

4.4.3 If new evidence is submitted as part of the grounds of the appeal, or during the appeal hearing itself, the Panel may decide to rehear the original case as part of their consideration of the appeal. In such circumstances it may be necessary to recall the original presenting manager and any witnesses who presented evidence at the original hearing.

4.4.4 The appeal panel may, at their discretion, adjourn the appeal in order that further clarification of the points raised may be produced by either party or for any other reason.

#### **4.5 The Outcome Of The Appeal Hearing**

4.5.1 Having heard the appeal, the panel members will consider the evidence and reach one of the following conclusions:

To uphold the appeal fully, and overturn the decision of the final capability hearing panel;  
To partially uphold the appeal, which may lead to a change in sanction;  
To dismiss the appeal, and confirm the decision of the final capability hearing panel.

- 4.5.2 If it is the view of the Appeal Panel that the decision of the final capability hearing was unfair and that the employee demonstrated a satisfactory level of performance, no further action will be taken and all records of the original proceedings will be removed from the personal file of the employee.
- 4.5.3 In all other instances a record of the original hearing and the appeal will be placed on the employee's personal file.
- 4.5.4 In all cases the decision of the Panel hearing the appeal is final and will be confirmed in writing to all parties within five working days of the hearing. There is no further right of appeal.

## **5 CAPABILITY IN SPECIAL CASES**

### **5.1 Trade Union Representatives**

Where a trade union representative is to be the subject of capability proceedings, Human Resources must inform the appropriate full-time union official as soon as is reasonably practical and, in any case, before the date of any capability meeting or hearing is fixed.

### **5.2 Vice Principals, Deputy Principal, Deans, and Registrar/Chief Operating Officer**

- 5.2.1 Where there are concerns about capability or evidence of underperformance, by senior staff reporting directly to the Principal (i.e. Vice Principals, Deans, Registrar / Chief Operating Officer) the same principles for managing capability as outlined in section 2 will apply.
- 5.2.2 In the case where the Principal decides to proceed with a formal capability hearing, they will request the Council of the College to appoint a panel to hear the evidence and to determine the outcome.
- 5.2.3 The panel appointed by the Council of the College will consist of two lay members of the Council, one of whom will be the Chair, and a senior member of staff nominated by the Principal. The Director of Human Resources or representative will be in attendance in an advisory capacity (unless party to the case already).
- 5.2.4 The format of the capability hearing shall follow the steps set out in Section 3.3 of this procedure.
- 5.2.5 In such cases appeals should be lodged with the Principal within ten working days of the receipt of the letter outlining the decision of the Council panel.
- 5.2.6 An appeals panel will be convened at the request of the Principal to Council within twenty days of receipt of the appeal letter.
- 5.2.7 In case of an appeal, the Principal will request the Council to appoint an appeals panel which will consist of two lay members of the Council, one of whom will be the Chair and a senior

member of staff nominated by the Principal, none of whom have previously been involved. The Director of Human Resources or representative will be in attendance in an advisory capacity (unless party to the case already).

5.2.8 Procedures for the appeal hearing shall follow the steps set out in Section 4 of this procedure.

<b>Policy Schedule</b>	
Policy Title	Capability Policy and Procedure
Policy Owner	Human Resources Department
Policy lead contact	Human Resources Director
Consultation with College Unions	UCU, UNITE and GMB
Approving Body	College Executive and Council
Date of Approval	6 July 2016
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