

Capability Procedure	
Enabling Policy Statement; Executive Owner; Approval Route:	Our Colleagues – Chief Operating Officer – Operations Committee
Is the Procedure for internal use only (Non-disclosable) ?	Disclosable
Associated Policy Statements:	N/A
Authorised Owner:	Human Resources Director
Authorised Co-ordinator:	Associate Director (People Services)
Effective date:	08 July 2025
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Sub documentation:	N/A

Approval History

Version	Reason for review	Approval Route	Date
1.0	Migration to POPP structure	Operations Committee (Chair's Action)	08 July 2025

1. Purpose

The University is committed to supporting and developing its staff to ensure that they are able to fulfil their roles and responsibilities to an agreed standard of competence. The purpose of this procedure is to:

- Provide a means of monitoring performance and setting expectations, in conjunction with the annual staff Appraisal/Performance Development Review (PDR) process.
- Provide consistency in how staff, with widely differing responsibilities and duties, are given opportunities to attain satisfactory levels of performance.
- Assist in identifying the most appropriate form(s) of support and providing that support.
- Ensure that if a member of staff fails to overcome their difficulties, any consequential action will be based on:
 - i.) A fair procedure;
 - ii.) Adequate evidence that the member of staff is incapable of performing their duties satisfactorily;
 - iii.) The fact that the member of staff was given all reasonable assistance to overcome such failings.
- Provide a mechanism for the dismissal of employees who demonstrate continued unsatisfactory performance, after support, training and guidance have been given.
- Provide a mechanism for managing the remuneration of employees who demonstrate continued unsatisfactory performance. In accordance with the contract of employment, automatic increments will be halted if performance is unsatisfactory, after support, training and guidance have been given. This action will be taken if an individual is in Stage 1, 2 or 3 of the capability process at the time of the 1st of April automatic increment and has a formal warning live on file. Exceptionally, where an individual has a live capability warning on file but has demonstrated an improvement in performance which is sustained and satisfactory, the Head of Department can request that the automatic increment is paid as normal on 1st April. This should be done in writing to the local HR representative at the time of the annual increment process. In these circumstances, increments will not be backdated or given mid-year.

2. Scope and Exceptions to the Procedure

- 2.1** This procedure applies to all permanent and fixed term University staff including those employed in our subsidiaries.
- 2.2** At any point during the academic probation period the Faculty Executive Dean (or designate) may refer to the University Capability Procedure, if there are concerns that the probationer is not meeting targets set. For Academic¹ probationers, these guidelines should therefore be read in conjunction with the University Academic Probation guidelines.
- 2.3** For academic staff, this procedure applies until section 5.4.1 *Dismissal*. Where dismissal is recommended, *Ordinance 11.4, Capability Procedure for Academic Staff* also applies. Whilst this

¹ For the purpose of the academic probation guidelines the term 'academic' refers to all academic staff (as defined by University Ordinances). It does not, in this context, include research staff

procedure has been written to ensure that the process outlined in Ordinance 11.4 is followed, this Ordinance should be referred to when an Academic member of staff is going through the capability process.

- 2.4** This Procedure does not form part of any employee's contract of employment, and it may be amended from time to time with appropriate consultation with recognised trade union representatives. We may vary any part of this procedure, including time limits, as appropriate in any case.

A flowchart of this procedure is shown in Appendix 1.

3. Definitions and Terminology

- 3.1** For the purpose of this Capability Procedure, a lack of capability is defined as:

"Where a member of staff is failing to carry out their responsibilities or duties in a satisfactory manner, due to a lack of ability."

- 3.2** Such failings will be identified, and steps will be taken to improve performance through the application of this procedure. Where such steps prove unsuccessful, the member of staff may have their employment terminated on the grounds of **Capability**.

- 3.3** For clarification this refers to a situation where an employee is unable (capability) to carry out responsibilities or duties to an acceptable standard, rather than unwilling to do so (conduct). Situations arising where there are employee conduct issues are covered in the Disciplinary Procedure.

4. Procedural Principles

- 4.1** Employees have a contractual responsibility to perform to a satisfactory level. Where substandard performance is found to be due to negligence or lack of application on the part of the employee, then the Disciplinary Procedure will normally be appropriate.

- 4.2** Job Purposes and Academic role profiles should also provide clear guidelines which identify the expected standards of performance, and the annual staff Appraisal/PDR process provides the opportunity for formal review of that performance. However, none of these are exhaustive, therefore it is essential that standards of performance are clearly and regularly explained and reviewed during an employee's induction and continued employment.

- 4.3** There are many reasons why a performance issue may arise.

- For example, the possibility that poor performance may arise from misunderstandings due to ethnic/cultural/disability/gender or other issues will be explored and, if necessary, the University Equality & Diversity team will be consulted. Where disability may be an issue, consideration will be given to whether there are reasonable adjustments that could be made to the employee's working arrangement. Consideration of this will be taken in dealing with cases that fall into this category. If the cause of poor performance is due to ill health, then Occupational Health will be consulted and the procedure will be followed as below, with the necessary adjustments made.

- If the cause of poor performance proves to be a work-related matter outside the control of the individual, the University will seek to resolve the issue and explore options with the employee.
- Where the responsibility for poor performance lies partly or wholly with the individual employee, the University will give encouragement and support to a member of staff who is willing to take reasonable steps towards resolving their problems.
- Where an individual employee lacks experience or has had insufficient training relevant to the role, the University will seek to provide the employee with the necessary training prior to this Procedure being formally applied.

No action under this Procedure will be taken until the causes of the problem have been established and properly investigated.

4.4 At each stage in the Procedure, an employee:

- will be told about the performance problem and will be given an opportunity to state their case and improve before any action is taken;
- Will have the right to be accompanied at formal meetings (including review meetings) by a work colleague or a recognised trade union representative. It is the employee's responsibility to make such arrangements;
- May be accompanied at formal meetings by an appropriate person to provide support in the case of a disability or language issue. The employee has the responsibility to inform the relevant manager of their specific requirements in this respect so that the University can source this support.
- All employees must treat any information communicated to them in connection with this procedure as confidential.
- The names of witnesses whose evidence may be used in a capability hearing will be provided, unless there are exceptional grounds for keeping their identity confidential.
- If an employee has any concerns regarding the manager who will be chairing the formal meetings (including at appeal stage), they should raise these with their HR representative, who will consider the employee's concerns and may arrange for another manager to chair the meeting.

At all times the responsibilities placed on the University by employment legislation will be observed and the individual's right to confidentiality respected.

If at any stage within this procedure the performance issue relates to conduct or is related to an employee being unwilling to improve performance (conduct) the matter will then be dealt with under the Disciplinary Procedure and the capability process will cease.

Nothing in this Procedure removes the right of a member of staff to invoke the relevant Grievance Procedure. Should a member of staff believe they have been treated unfairly, or that problems with work outside their control have been inadequately dealt with, they have the right to raise a grievance. In the event that any formal complaint or grievance is raised against the University and/or named individuals whilst formal capability proceedings have been instigated under this procedure, the Capability Procedure *may* be held in abeyance pending the conclusion of any connected grievance proceedings.

An employee being reviewed under this Procedure will continue to have an annual staff Appraisal/PDR. Any relevant information regarding an ongoing capability review must be incorporated into the annual staff Appraisal/PDR documentation. This information may have an influence and affect the overall performance rating for that specific annual staff Appraisal/PDR.

The University will provide training to Heads of Department, managers and supervisors in the appropriate handling of capability issues under this procedure, through the HR department.

All capability records should be treated as confidential and will be kept no longer than necessary in accordance with the data protection guidelines.

4.5 Timescales

Timescales in the Capability Procedure are, of necessity, variable as they depend on the particular circumstances of each case. Core principles apply:

- the employee is aware of the standards of performance expected;
- the employee is made aware of any shortfall as objectively as possible;
- the employee is given reasonable assistance, training and support to enable them to meet the standards, as deemed appropriate by the manager;
- the employee is given reasonable time, as deemed appropriate by the manager (following discussion with the employee), to make the necessary improvements;
- the employee is made aware of the consequences of not meeting the standards.

Whilst there are suggested timescales for review within the procedure, it is noted that these will differ depending on the capability issue and individual circumstance. HR will discuss recommendations on timescales as requested by the manager on a case-by-case basis.

4.6 Process

Performance problems are most effectively dealt with early and as close to the source of the problem as possible. Performance issues should be continuously monitored through the performance management process. In most cases, meetings between the line manager and a member of staff will resolve any issues informally or formally through the appraisal process; in many instances this will often be a more satisfactory method than formal action and is encouraged as a mechanism to initially address identified performance issues.

Where an employee commits a single significant error, or a number of errors and the actual or potential consequences of that error are, or could be, extremely serious, a formal investigation will commence (in line with the Disciplinary Procedure). This could lead to disciplinary action, the outcome of which could be dismissal.

In all circumstances, the capability process should commence at the informal stage, unless it is a continuation of a capability issue, and the process is ongoing or completed within the last 12 months.

4.7 Informal Stage

If there are concerns about an employee's performance, the line-manager should meet with the employee to explain their concerns and state that they are addressing the individual's performance gaps "**informally**" within the Capability Procedure.

This will seek to establish:

- the performance gap
- the causes
- the impact of the poor performance
- the actions to be taken
- who has responsibility for the actions
- the performance standards that are required
- the support to be given to the employee
- a timetable for improvement against agreed objectives (this would not normally exceed a period of up to five weeks depending on the role).

The line-manager must ensure notes of meetings are taken and kept in accordance with relevant records retention schedule and confirm the outcomes in writing to the employee. These notes must clearly state that this is the **Informal Stage** of the Capability Procedure.

If there is a satisfactory improvement in performance following the informal stage of this procedure, the matter will be considered resolved and the individual informed in writing of this. In the event that the improvement is not maintained / or if a related capability issue reoccurs within 12 months, the process should move to Formal Stage 1.

Should the matter of the individual's performance remain unresolved, the line manager should inform the individual in writing that the procedure will be entering the **Formal Stage 1** of the procedure. A member of HR will need to attend all formal meetings beyond this point.

A decision to enter the formal stages of the procedure may be taken only after the line manager discussing this with an HR representative.

4.8 Formal Stage 1

4.8.1 Meeting with the Line Manager

Following consultation with HR, the line manager will write to the employee, giving reasonable notice, inviting them to the **Formal Stage 1** capability meeting to discuss the employee's performance in the job.

The employee should be notified of the nature of the alleged deficiencies in performance, their right to be accompanied by either a work colleague or a recognised trade union representative and informed that, should the necessary improvements not be achieved, this could ultimately affect their continued employment. A copy of any documentary evidence which will be considered at the meeting will be provided to the employee in advance of the meeting.

The meeting should be structured so that the cause of the problem is examined, the technical and core competencies required of the job purpose/role profile are identified, and any shortfall against these assessed.

The meeting will seek to establish or confirm (noting any comments made by the employee):

- the performance gap

- the causes
- the impact of the poor performance
- the actions to be taken
- who has responsibility for the actions
- the performance standards that are required
- the support to be given to the employee
- timescale for improvement against agreed objectives, this may include interim targets.

Support may include: further training or development; changes in the employee's duties which might improve performance, and assistance from other colleagues.

The plan for improvement and timescales will be agreed at this meeting. The line-manager must ensure notes are kept of meetings. Taking into account any comments made by the employee, it may be appropriate to issue a **first written warning** letter to be sent to the employee, detailing the areas and level of improvement required, with timescales and targets as appropriate, the period of time for which the warning will remain active (from the end of the review, normally 12 months) and an appropriate review date (normally up to five weeks). The letter should also advise the employee of their right to appeal the decision. This letter will also advise the employee that due to unsatisfactory performance, any automatic increment due on 1st April will be halted until the capability procedure has concluded (Further information in 4.11).

Copies of all documentation must be forwarded to HR to be retained on the individual's personal record. The warning will remain permanently on the personnel file but will be disregarded in deciding the outcome of future capability proceedings.

This stage in the process gives the employee the right to appeal. See 4.11

4.8.2 Review meeting with the Line Manager

On the date set for the review (usually up to five weeks later), the manager should meet with the employee, review progress and evaluate any improvement/deterioration in performance. The line-manager must ensure notes of the meeting are taken and kept in accordance with relevant records retention schedule.

If the performance is in line with the targets/objectives and no further action is required, then this should be acknowledged and noted in writing by the manager.

A copy of this confirmation must be forwarded to the individual and HR where it will be retained on the individual's personal record. In the event that the improvement is not made/ maintained / or if the capability issue reoccurs within 12 months, the line manager should consult with HR with a view to progressing to the Formal Stage 2.

4.9 Formal Stage 2

4.9.1 Meeting with Senior Manager

The Formal Stage 2 capability meeting should be chaired by a manager at the next (or equivalent) level of authority. Where there is not an appropriate manager at a more senior level, an independent manager of equivalent seniority who has not already been involved in the process will be assigned.

Following consultation with HR, the employee should be invited in writing, giving reasonable notice, to the **Formal Stage 2** capability meeting to discuss the employee's performance in the

job.

The employee should be notified of their right to be accompanied by either a work colleague or a recognised trade union representative and informed that, should the necessary improvements not be achieved, this could ultimately affect their continued employment. A copy of any documentary evidence which will be considered at the meeting will be provided to the employee in advance of the meeting.

At the meeting the line manager will summarise their concerns about the individual's performance, outline what has previously taken place in the process, and invite the employee to state their case. The senior manager must ensure notes of the meeting are taken and kept in accordance with relevant records retention schedule.

Following this meeting, the senior manager will consult with HR in relation to the decision and any action to be taken, taking into account any comments made by the employee. The HR representative will convey the decision in writing. If performance is still deemed to be unsatisfactory, this letter will take the form of a **final written warning** letter to the employee detailing the areas of concern, the level of improvement required, the period for which the warning will remain active (from the end of the review period, normally 12 months) and appropriate review date (normally up to five weeks). The letter should reiterate to the employee that their job is at risk if the required level of improvement is not achieved and sustained. The letter should also advise the employee of their right to appeal the decision.

Copies of all documentation must be retained on the individual's personal record. These notes must clearly state this is **Stage 2** of the formal capability procedure. The warning will remain permanently on the personnel file but will be disregarded in deciding the outcome of future capability proceedings.

4.9.2 Review Meeting with the Senior Manager

On the date set for the review (usually up to five weeks later), the senior manager should meet with the employee, review progress and evaluate any improvement/deterioration in performance. The senior manager must keep notes of the meeting.

If the performance is in line with the targets/objectives and no further action is required, then this should be acknowledged and noted in writing by the senior manager.

A copy of this confirmation must be forwarded to the individual and HR where it will be retained on the individual's personal record.

In the event that the improvement is not maintained, or if the capability issue reoccurs within 12 months the line manager should consult with HR to confirm progression to the **Formal Stage 3** of the capability procedure.

4.10 Formal - Stage 3 Dismissal (or alternative action)

4.10.1 Dismissal (For employees not covered by Ordinances)

On reaching the Formal Stage 3 of the procedure, a senior manager, not previously involved with the earlier stages of the process, should be nominated to chair the meeting. If it is not possible to involve a manager within the department, HR will nominate someone at the appropriate level from another department.

The Stage 3 panel should normally comprise:

- As Chair, a senior manager independent from the case;
- One other manager independent from the case (as appropriate).
- An HR representative

The employee will be invited to the **Formal Stage 3** capability meeting, giving reasonable notice, to discuss the alleged poor performance. The employee, along with the panel members will be provided with a copy of any documentary evidence which will be considered at the meeting in advance of the meeting.

The employee will be notified that the meeting will be the final stage of the capability procedure and informed of their right to be accompanied by either a work colleague or a recognised trade union representative and advised that one of the potential outcomes of the meeting includes dismissal.

During this meeting, the employee will be given a final opportunity to make representations and provide any additional evidence not previously submitted. It will usually be the case that the line manager will present the case, and the employee will have the opportunity to respond. The chair may then be able to make a decision after a brief adjournment having reviewed the evidence. However, it may be necessary to defer the decision pending further consideration of the evidence. In any event, the individual will be informed of the outcome in writing as soon as possible.

Consideration should be made as to whether the individual could be redeployed to an alternative role at an appropriate level within the University. The paragraph on alternative action provides further detail.

If the decision to dismiss is taken, the individual will be informed that they are being dismissed on the grounds of **Capability**. Dismissal will normally be with full notice or payment in lieu of notice.

A formal record of the meeting will be made by HR and retained on the individual's personal record. The decision will be communicated to the employee in writing by HR, confirming the employee's right to appeal the decision.

4.10.2 Dismissal (For employees covered by Ordinances)

On reaching the Formal Stage 3 of the procedure, a senior manager, not previously involved with the earlier stages of the process, should be nominated to chair the meeting. If it is not possible to involve a manager within the department, HR will nominate someone at the appropriate level from another department.

The Stage 3 panel should normally comprise:

- As Chair, a senior manager independent from the case;
- A senior member of Academic staff (e.g. an Associate Dean, a Head of Department, a Head of School, or another senior member of staff who holds an academic contract of employment);
- An HR representative

The employee will be invited to the **Formal Stage 3** capability meeting, giving reasonable notice, to discuss the alleged poor performance. The employee, along with the panel members will be provided with a copy of any documentary evidence which will be considered at the meeting in advance.

The employee will be notified that the meeting will be the final stage of the capability procedure in nature and informed of their right to be accompanied by either a work colleague or a recognised trade union representative and advised that one of the potential outcomes of the meeting includes dismissal.

During this meeting, the employee will be given a final opportunity to make representations and provide any additional evidence not previously submitted. It will usually be the case that the line manager will present the case and the employee will have the opportunity to respond. The chair may then be able to make a decision after a brief adjournment having reviewed the evidence. However, it may be necessary to defer the decision pending further consideration of the evidence. In any event, the individual will be informed of the outcome in writing as soon as possible.

If the decision to dismiss is reached, then the Chair of the panel should put the outcome of the Stage 3 meeting, and the recommendation to dismiss in writing and should refer to *Ordinances, Ordinance 11, 11.4 Capability Procedure for Academic Staff*. Under paragraph 11.4.4.

Where the charges are upheld, and the panel finds good cause they can dismiss the employee on the grounds of **Capability**. Dismissal will normally be with full notice or payment in lieu of notice.

A formal record of all meetings under this stage will be made by HR and retained on the individual's personal record. The decision will be communicated as soon as possible to the employee in writing by HR, confirming the employee's right to appeal the decision.

4.10.3 Alternative Action (applicable to all staff)

If redeployment is considered an option, HR should first refer to the redeployment process. Given the nature of the capability issue, a role at a lower grade might be appropriate. If the candidate is felt to be suitable for a vacancy available at that time (or within a defined period), this redeployment will carry a probationary period (normally three months but may be more depending on the seniority of the post) reviewed on a monthly basis with training support provided if necessary. The terms and conditions will be appropriate to the grade of the alternative role and therefore pay protection will not apply. If the employee fails the probation in the new role, the dismissal meeting will be reconvened and the subsequent termination of the employee's contract of employment will follow immediately. Dismissal will normally be with full notice or payment in lieu of notice aligned to the new grade.

Once probation has been satisfactorily completed in the new role, any capability issues that subsequently arise should be dealt with from the informal stage of the procedure.

Whilst the above paragraph relates to redeployment at the final stage of the capability procedure, it is noted that this could be an option earlier in the process should a post be available and the employee agrees to the redeployment.

4.11 Appeals Procedure

4.11.1 For employees not covered by Ordinance 11

There is no right of appeal against the outcome of the informal stage of this procedure.

If the employee wishes to appeal any of the decisions made at any other stage of the Capability Procedure they should appeal to the Director of HR in writing, within 10 working days of receiving the written decision, stating the grounds for appeal.

An Appeal Hearing may or may not be a re-hearing of the case depending on the circumstances of the case. The employee must be specific about the grounds of appeal; these will effectively form the agenda for the hearing. Appeals may only be raised on the grounds of:

- Procedure - a failure to follow procedure had a material effect on the decision;
- Decision - the evidence did not support the conclusion reached or is inconsistent with other decisions within the University.
- New evidence - which has genuinely come to light since the first hearing. Where new evidence is raised, further investigations may need to be carried out which may require the Appeal Hearing to be delayed pending the outcome of these investigations and to give the employee an opportunity to consider any new information obtained.

The Director of HR, or their delegate, will arrange a meeting of the Appeals Committee at the earliest convenient date. This should normally be within one month after the matter has been formally raised with the Director of HR.

The Director of HR or nominated deputy, will establish the Appeals Committee which should comprise:

Appeals against Stage 1 of the process:

- As Chair, a senior manager independent from the case;
- An HR representative

Appeals against Stage 2 and 3 of the process:

- As Chair, a senior manager independent from the case;
- One other senior manager independent from the case.
- An HR representative

Senior managers are defined as staff at Grade 6 level or above.

The individual raising the appeal will be informed of the composition of the Appeal Committee. Should they have any concerns these should be raised with the Director of HR or delegate who will consider the employee's concerns and may reconstitute an agreed panel.

The Appeals Committee will invite the employee in writing to attend an appeal meeting (with reasonable notice), informing the employee of the entitlement to be accompanied by a colleague or recognised trade union representative.

The decision of the Appeals Committee shall:

- a) confirm the original decision;
- b) revoke the original decision; or
- c) substitute a different decision.

The decision of the Appeal committee shall be final and there shall be no further right of appeal.

4.11.2 For employees covered by Ordinance 11

As per the process outlined at 4.11.1 but with the exception that the Director of HR, or nominated deputy, will establish the Appeals Committee for Stage 3 of the process to comprise:

Appeals against Stage 3 of the process (dismissal)

The process for appealing against dismissal for academic staff is set out in *Ordinance 11.4.6* and is set out below:

- As Chair a senior manager independent from the case;
- A senior member of Academic staff (e.g. an Associate Dean, a Head of Department, a Head of School, or another senior member of staff who holds an academic contract of employment);
- A suitably qualified individual, not employed by the University or an external member of Council, selected from a maintained pool of suitably qualified individuals.
- A Human Resources representative

4.12 Rearranging Hearings

If the employee or their work colleague/trade union representative cannot attend at the time specified for a hearing, the employee must inform their line manager and/or HR immediately and an alternative time will be arranged. The employee must make every effort to attend a hearing and failure to attend without good reason may be treated as misconduct. If the employee fails to attend without good reason, or persistently is unable to attend, the hearing may be heard in their absence on the available evidence.

4.13 Right to be Accompanied

The employee must tell their line manager who they have chosen to act as their work colleague/trade union representative in good time before the hearing. The employee can be required to choose an alternative if the chosen work colleague/trade union representative is unavailable for the scheduled hearing and will not be available for more than five working days.

The work colleague/trade union representative may make representations, and sum up the employee's case but is not allowed to answer questions on the employee's behalf.

5. Governance Requirements

5.1 Implementation: Communication Plan

The procedure was embedded when first published and is available on SurreyNet (HR Procedures Page) for all staff to access.

5.2 Implementation: Training Plan

The procedure was embedded when first published. Further support will be provided to colleagues implementing the procedure when required.

5.3 Review

This procedure will be reviewed every 3 years or sooner if required by a change in legislation or practice.

5.4 Legislative Context and Higher Education Sector Guidance or Requirements

5.4.1 Applicable Legislation

This procedure complies with the following legislation:

- The Employment Rights Act 1996

5.5 Sustainability

This procedure supports the principles of the United Nations Sustainable Development Goals (SDGs), particularly by promoting continuous learning and development (SDG 4), fair and decent work practices (SDG 8), and the equitable treatment of all individuals (SDG 10). It also reflects our commitment to transparent, fair, and accountable processes in line with SDG 16.

6 Stakeholder Engagement and Equality Impact Assessment

6.1 An Equality Impact Assessment was completed on 26 July 2024 and is held by the Authorised Co-ordinator.

6.2 Stakeholder Consultation was completed, as follows:

Stakeholder	Nature of Engagement	Request EB Approval (Y/N)	Date	Name of Contact
Governance	Review of Version 1.0	N	30 July 2024	Kelley Padley, Governance Officer
H&S	Review of Version 1.0	N	10 September 2024	Matt Purcell, Director of Health and Safety
Sustainability	Review of Version 1.0	N	15 July 2025	Martin Wiles

APPENDIX 1: Capability Procedure Flowchart

