# Procedure

**Title:** CAPABILITY FOR STAFF LEVEL 1-3  
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PART I

Introduction and Definitions

1. This sets out the procedure in relation to capability.

2. In this Procedure, unless the context indicates otherwise:-
   
   (i) In relation to any decision or action that the University is required to make or to perform under this Procedure, ‘the University’ shall mean: any member of staff who usually makes such decisions or performs such actions on behalf of the University, or who in the normal course of events may reasonably be expected to do so;

   (ii) Reference to Heads of School shall be construed so as to include references to Heads of Professional Services or other equivalent units (and vice versa), or their nominated representatives and where there is no Head of School, Professional Service or equivalent unit, or it is not appropriate, the Vice-Chancellor or his or her nominated representative may appoint a member of staff from such School, Professional Service or equivalent unit to undertake the duties required of a Head of School or Professional Service by this Procedure;

   (iii) Reference to University post holders (including those referred to in sub-paragraph (ii) above) shall be construed to refer either to the post holder or to an appropriate member of staff nominated by the post holder to act with full authority on the post holder’s behalf;

3. For the avoidance of doubt, ‘capability’, in relation to a member of staff, means his or her capability assessed by reference to skill, aptitude, health or any other physical or mental quality for performing work of the kind which he or she is employed by the University to do.

4. Lack of qualifications may be considered under this Procedure, and ‘qualifications’ in relation to a member of staff, means any degree, diploma or other academic, technical or professional qualification or accreditation relevant to the position which he or she holds.
PART II

Applications and Scope

(i) This Procedure applies to members of staff with a grade of Level 3 or below in the University’s grading structure, or an equivalent grade.

5. This procedure shall not apply to:

(i) The proposed dismissal of a member of staff where that dismissal would arise from the expiry without renewal of a fixed-term contract;
(ii) Any member of staff during his or her probationary period;
(iii) The proposed dismissal of a member of staff on the ground of medical incapacity.

Relationship with Disciplinary Procedure

6. There may be cases where it is difficult to distinguish at the outset between conduct and capability issues in a particular situation. Cases which clearly involve conduct rather than performance will normally be dealt with separately under the Disciplinary Procedure. Additionally, where it is considered that poor performance results from negligence or lack of application, it will normally be appropriate to use the Disciplinary Procedure. However, it must be noted that the University reserves the right to deal with matters under whichever Procedure it deems appropriate, considering the circumstances and the information available.

Relationship with Sickness Absence Policy

7. If it emerges that the issue relating to a member of staff’s capability may be attributable, in whole or in part, to a medical condition, the person or panel considering the issue may:

(i) Postpone or adjourn any action or hearing under this Procedure to allow investigation of the member of staff’s medical condition, including obtaining, if appropriate, any medical report;
(ii) Taking into account available medical advice, determine that:
(a) no further action should be taken under this procedure, and may also, as appropriate, direct that the issue should be dealt with under an appropriate stage of the Sickness Absence Policy; or
(b) continue with proceedings under this Procedure, taking the member of staff’s medical condition into account, as appropriate.

Relationship with University’s Personal Performance and Development Review Process

8. The University operates a Personal Performance and Development Review Process for all staff that is designed to allow structured discussions about performance and development and to agree future objectives. This may inform proceedings under this Procedure but action under this Procedure may be instigated outside of the Personal Performance and Development Review process.
PART III

General Principles

9. This procedure is designed as a constructive and supportive framework with which to help members of staff undertake the work expected of them to required standards in relation to their role and responsibilities. It is the University’s intention wherever possible to be supportive and encouraging, to help maximise the contribution of members of staff and the performance of their duties.

10. Managers, supervisors and members of staff who are accountable for the work of others are responsible for addressing capability issues as early as possible and for initiating appropriate informal or formal action, with advice from Human Resources as appropriate, and guidance for managers shall be issued by the University from time to time. The Procedure is not intended to replace normal, day-to-day management activities in relation to supporting and monitoring staff performance.

11. Members of staff are responsible for bringing to the attention of their manager or supervisor as soon as possible any work-related problems or other circumstances that may hinder their ability to perform their duties.

Confidentiality

12. Throughout any proceedings under this Procedure, the University shall seek to ensure that confidentiality is maintained. However, this shall not preclude the University from disclosing information where necessary for the discharge of duties or as required by law, nor shall this preclude the University, where appropriate, from disclosing information about any outcome under this Procedure.

13. There may be cases, where it is appropriate to preserve confidentiality in relation to the identity of witnesses, where there is reasonably perceived to be a need to protect any member of staff from the risk of intimidation or retribution. Likewise, it may be necessary to adapt these procedures where it is considered undesirable for any one person to give evidence in the presence of another.

Right to be accompanied

14. At any hearing convened under this Procedure the member of staff may be represented or accompanied by a workplace colleague or trade union representative.

15. If the member of staff’s representative is not available at the time proposed for the hearing, the member of staff may request that the hearing be postponed to another reasonable time and must offer a date which is not later than five working days after the date first proposed for the hearing. The representative may attend the hearing with the member of staff and may speak on the member of staff’s behalf, but that representative may not answer questions (relating to the issues in dispute) on the member of staff’s behalf.

Suspension

16. The Head of School/Professional Service or his or her nominated representative, having taken advice from a member of Human Resources, may as a precautionary measure where this is considered appropriate and in the best interest of the University or of its students or staff, suspend a member of staff from duty at the normal rate of pay pending the outcome of a report or hearing. Any suspension and its terms shall be confirmed to the member of staff in writing by the Director of Human Resources or his or her nominee and is not considered a sanction or punishment.
PART IV

Overview of Procedures

Grounds for Action

17. Action under this Procedure may be taken in respect of; inability to perform some or all of the duties or to comply with some or all of the conditions in a satisfactory or adequate manner.

18. Each case will be judged on its own merits and in accordance with the evidence and circumstances presented. The University therefore has absolute discretion to determine which stage of the Procedure will be applied in any particular case, taking into account the matters under consideration.

Informal Action

19. Prior to the institution of formal action under this Procedure, it will normally be appropriate to deal with concerns about capability through informal methods. If such informal methods do not lead to the required improvement, formal action may be taken. However, for the avoidance of doubt, in order to institute formal proceedings it is not necessary to precede this by informal action.

20. The informal approach is aimed at: bringing concerns to the attention of the member of staff; ensuring that the member of staff is aware of the standards expected; considering causes and exploring possible solutions and actions to be taken. The line manager shall meet with the member of staff to discuss the matters and identify a suitable way forward. Further guidance can be found in the HR document ‘Performance Management – A Managers Guide’ available on the HR website. www.soton.ac.uk/hr/forms/publications/managersguide.pdf.

Possible ways forward may include:

(i) increased supervision, counselling and/or mentoring by an appropriate person;

(ii) reviewing the duties, responsibilities, reporting line, career pathway capability standards or other aspects of the post;

(iii) providing appropriate training or development opportunities;

(iv) seeking advice through a referral to the Occupational Health Service (where the member of staff’s health appears to be a contributory cause);

(v) informing the member of staff of other available support services as appropriate, such as the University Counselling Service.

21. The manager should make a note of the discussion, and outline in writing to the member of staff: the main points discussed; future expectations; the timescale in which improvement is expected; the support or training to be given; over what period and when reviews will occur; and potential consequences of failure to improve (which may include taking formal action under this Procedure). Further discussions may be held to review progress in accordance with the targets and expectations outlined. This may include reviewing and revising the support or training required.

Formal Action

22. Formal action may be taken under this Procedure as follows:

(i) the Capability Hearing (First-Level and Second-Level Warnings);

(ii) the Capability Hearing (Dismissal)

Institution of procedures

23. The procedures referred to in paragraph 22 above shall normally be instituted by the next level manager; and any reference in this Procedure to an ‘initiator’ shall be construed as a reference to a person who institutes the procedures referred to above.
Preliminary Report

24. If informal action has not resulted in the required improvement, the line manager shall present a report (the 'Preliminary Report') to the Initiator which will outline the issues, detail the actions taken to date and recommend that formal procedures be instituted. On the basis of the Preliminary Report, the Initiator shall decide, taking into account advice from Human Resources, whether formal procedures should be instituted, and whether the matters should be dealt with under the Capability Hearing (First-Level and Second-Level Warnings) (Part V below) or under theCapability Hearing (Dismissal) (Part VII below).

25. Matters of alleged lack of capability shall normally be dealt with under the Capability Hearing (First-Level and Second-Level Warnings in Part V of this Procedure) if informal action has not resulted in the required improvement and/or it is considered that if the allegation(s) or lack of capability are upheld, a sanction consisting of a warning (whether First-Level Warning or Second-Level Warning) would be appropriate.

26. Matters of alleged lack of capability shall be dealt with under the Capability Hearing (Dismissal Hearing) in Part VII of this Procedure if action under Part V Capability Hearing (First-Level and Second-Level Warnings) has not resulted in the required improvement; and/or if it is considered that the alleged lack of capability is such that, if the allegation(s) are upheld, any of the following may be appropriate:

(i) dismissal with notice or pay in lieu of notice;
(ii) withholding a forthcoming increment in salary;
(iii) further training, if appropriate;
(iv) other action short of dismissal (the Head of School may offer the member of staff regrading or demotion where this is considered to be appropriate in all the circumstances).
PART V

Capability Hearing (First-Level and Second-Level Warnings)

Hearing

27. Where it is decided by the Initiator that, on the basis of the recommendations in the line manager’s report, matters should proceed to a hearing under this Part, the member of staff shall be informed in writing of the grounds for the alleged lack of capability, and requested to attend a hearing at which the issue shall be considered. The member of staff will have a full opportunity to respond to the allegations against him or her and shall be entitled to present any additional information in support of his or her case, and to provide any ground of mitigation which he or she feels relevant. The member of staff shall receive at least five working days’ notice of the hearing, and shall be given a copy of this Procedure and reminded of his or her right to be represented or accompanied in accordance with the provisions of paragraph 14 above. The hearing will usually be heard by the Initiator.

28. A member of Human Resources, appointed by the Director of Human Resources or his or her nominee, may be present at both a first or second level hearing in an advisory capacity. This is discretionary and at the request of the Initiator.

29. The member of staff shall be provided five working days in advance of the hearing with copies of any evidence to be considered at the hearing, including the Preliminary Report and (where applicable and subject to the provisions of paragraph 13 above) names of any witnesses from whom it is intended that evidence will be considered at the hearing and any statements obtained from those witnesses.

30. The member of staff shall indicate, at least two working days prior to the hearing, the nature of any evidence that he or she intends to present in his or her defence or mitigation, including the names of any witnesses and their relevance to the allegations and shall provide copies of any documents to which he or she intends to refer.

31. The member of staff shall have the right to be represented or accompanied at the hearing in accordance with the provisions of paragraph 14 above.

32. If the member of staff is or becomes unable to attend the hearing, he or she should notify the person who is due to conduct the hearing as soon as possible, giving the reasons for non-attendance. A member of staff who fails to attend a hearing without good cause shall be informed that if he or she fails to attend any rearranged hearing without good cause, the matter may be considered in his or her absence. It is expected that the hearing will be conducted without unreasonable delay.

Procedure at hearing

33. The procedure to be followed in the hearing shall be at the discretion of the person conducting the hearing, which may include without limitation:-

(i) the allegation(s) being put to the member of staff and the information and evidence in respect of the alleged lack of capability, including if relevant the calling of any witnesses;

(ii) the member of staff having the opportunity to raise questions of any witnesses called. The manner in which such questions are to be raised is at the discretion of the person conducting the hearing;

(iii) the member of staff having the opportunity to set out his or her case in response to the allegation(s) and to call any relevant witnesses;

(iv) the questioning of any witnesses called by the member of staff;

(v) the power to postpone or adjourn the hearing;

(vi) the power to continue the hearing in the absence of a party, witness or representative where, in the opinion of the person conducting the hearing, no good cause has been put forward for an adjournment.

34. Where it is concluded that the alleged lack of capability has been established, a formal warning may be issued. The warning may be a First-Level Warning or Second-Level Warning, as is considered appropriate having regard to the circumstances and any previous unspent warnings given to the member of staff in respect of capability. For the avoidance of doubt, a member of staff may be issued with a Second-Level Warning even though he or she has not previously received any First-Level Warning under this Part.
Notification of decision

35. Following the hearing, the member of staff shall be notified in writing, normally within five working days:

(i) of the outcome of the hearing

(ii) of any warning issued and the reasons, and whether the warning is a First-Level Warning or a Second-level Warning;

(iii) of the required improvement in work performance and, if appropriate, of specific arrangements which are to be made to assist or facilitate the required improvement;

(iv) of the timescale within which this improvement must be achieved and how the improvement will be monitored or reviewed;

(v) of his or her right to appeal under Part VI and how that right should be exercised;

(vi) In the case of a First-Level Warning:

(a) that the warning be retained on his or her file and will be regarded as spent between six months and one year, or earlier where the achievement of objectives or performance standards have been sustained

(b) that further failure to meet and/or sustain the required improvement during the period of the warning may lead either to further action being taken under this Part or, in the event of more serious issues in relation to capability, action under the Capability Hearing (Dismissal) under Part VII being instituted (under which the Head of School may determine that the member of staff shall be dismissed).

(vii) In the case of a Second-Level Warning:

(a) that the warning will be retained on his or her file and will be regarded as spent between one year and two years, or earlier where the achievement of objectives or performance standards have been sustained

(b) that further failure to meet and/or sustain the required improvement may lead to the procedure under Part VII being instituted (under which the Head of School may determine that the member of staff shall be dismissed).
PART VI

Appeals Against Action under Part V

36. A member of staff (in this Part referred to as the ‘Appellant’) may appeal under this Part against a warning issued under the Capability Hearing (First-Level and Second-Level Warnings in Part V).

37. Appeals should be made in writing to the Director of Human Resources within ten working days of receipt of the written notification of the decision concerned. The Appellant shall set out in full the grounds of his or her appeal and, if the appellant is proposing to rely upon new evidence, he or she should provide details and a copy of any relevant documentation.

38. The appeal shall be heard by a more senior manager within the School or Professional Service who has had no prior involvement in the matter. Where the Initiator is the Head of School or Professional Service, the Dean or the Head of another School or Professional Service may be asked to deal with the appeal.

39. A member of Human Resources appointed by the Director of Human Resources or his or her nominee shall be present at the appeal hearing in an advisory capacity.

40. The person hearing the appeal shall have full discretion to decide on the conduct of the appeal hearing. Without limitation, the person hearing the appeal shall have power to continue a hearing in the absence of a party, witness or representative if no good cause (in the opinion of the person hearing the appeal) is put forward in support of a request for an adjournment.

41. The Appellant shall be given written notification of the date and time of the appeal hearing and shall be notified of his or her right to be represented or accompanied in accordance with paragraph 14 above.

42. Where the Appellant fails to attend the appeal hearing without good cause, the appeal may proceed in the Appellant’s absence.

43. The appeal can take the form of a re-hearing of the evidence if the person hearing the appeal (at their discretion) believes there to have been flaws in the previous process.

44. Following the appeal hearing, the Appellant will be advised in writing, normally within five working days, of the outcome of the appeal which, without limitation, may include the cancellation of the decision being appealed or the substitution of a lesser sanction. However, it shall not be open to the person hearing the appeal to increase the severity of the warning being appealed.

45. The decision of the person hearing the appeal shall be final.
PART VII

Capability Hearing (Dismissal Hearing)

Decision to proceed

46. Where the member of staff has failed to comply with the terms of any warning under Part V, or in the light of the Preliminary Report referred to in paragraph 24 above, the Initiator shall bring the matter to the attention of the Head of School or his or her nominated representative, who after making such enquiry as is appropriate shall determine whether:–

(i) the matter should be dismissed as being without substance;
(ii) the matter should proceed to a dismissal hearing and the member of staff shall be informed in writing of that decision.

Hearing

47. The hearing will be heard by the Head of School, Professional Service or their nominated deputy.

48. The Head of School should have had no formal involvement with the case. If such involvement has already been established then the hearing should be delegated to an alternative Head of School.

49. A member of Human Resources appointed by the Director of Human Resources or his or her nominee shall be present at the hearing in an advisory capacity.

50. The member of staff shall be notified in writing of the nature of the allegation(s) and normally given no less than ten working days’ written notice of:–

(i) the date, time and place of the Hearing;
(ii) so far as they are known at the time, the names of the persons to be present at the Hearing including the name of any person attending to present the case;
(iii) the issues to be considered at the Hearing (and the member of staff shall be provided with a copy of the Preliminary Report and any documents to be referred to or relied on at the hearing);
(iv) his or her right to be represented or accompanied at the Hearing;
(v) his or her right to call relevant witnesses at the Hearing;
(vi) the names of any witnesses who will be called to give evidence in relation to the issues being considered at the Hearing;
(vii) the potential outcome(s) of the Hearing including, if dismissal is a possible outcome, a statement to that effect;
(viii) a reference to this Procedure.

51. The member of staff may be represented or accompanied at the Hearing in accordance with the provisions of paragraph 14 above.

52. If the member of staff is or becomes unable to attend the hearing, he or she should notify the Human Resources representative as soon as possible, giving the reasons for the non-attendance. A member of staff who fails to attend the hearing without good cause shall be informed that if he or she fails to attend any rearranged hearing without good cause, the matter may be considered in his or her absence. It is expected that the hearing will be conducted without unreasonable delay.

53. Normally at least five working days in advance of the Hearing, the member of staff shall:–

(i) provide details of proposed witnesses and of his or her representative;
(ii) provide copies of any documents to which he or she wishes to refer at the hearing. Any documentary evidence not disclosed within this timeframe may only be considered at the Hearing with the permission of the Head of School.

54. The procedure to be followed in preparation for and at the Hearing shall be at the discretion of the Head of School, which may include without limitation:–

(i) which documents (if any) shall be provided for the Head of School’s consideration and at what stage;
(ii) the allegation(s) being put to the member of staff and an account of the actions taken and support given to date, including if relevant the calling of any witnesses;
(iii) the member of staff having the opportunity to raise questions of any witnesses called. The manner in which such questions are to be raised is at the discretion of the Head of School;
(iv) the member of staff having the opportunity to set out his or her case in response to the allegation(s) and to call any relevant witnesses;
(v) the questioning of any witnesses called by the member of staff.

55. The Head of School may, at his/her discretion:–
(i) postpone or adjourn the hearing including (without limitation) where the member of staff, his or her representative, the person presenting the complaint, any witness or the Head of School becomes unable to attend;
(ii) continue the hearing in the absence of a party, witness or representative where, in the opinion of the Head of School, no good cause has been put forward for adjournment;
(iii) recall the parties or any witness to clarify any relevant issue. In the event that any person is recalled, the member of staff and his or her representative shall also (subject to paragraph 13 above) be entitled to be present.

Notification of decision

56. The Head of School shall produce a reasoned written decision, normally within ten working days of the Hearing, which will be sent to the member of staff. A report of the decision will also be sent to the Director of Human Resources. The Head of School may:–
(i) dismiss the matter, in whole or in part; or
(ii) uphold the allegation(s), in whole or in part; and
(iii) where the allegation(s) are upheld in whole or in part, act as he/she considers appropriate, which may include one or more of the following:
(a) directing the member of staff be dismissed either with notice or with a payment in lieu of notice;
(b) issuing a warning, which may be a First-Level Warning or a Second-Level Warning. In each case the warning shall set out: the required improvement in work performance and if appropriate the specific arrangements which are to be made to assist or facilitate the required improvement; the timescale within which this improvement must be achieved and how the improvement will be monitored or reviewed; and the consequence of further failure to meet and/or sustain the required improvement during the period of the warning;
(c) withholding a forthcoming increment in salary;
(d) other action short of dismissal (the Head of School may offer the member of staff regrading or demotion where this is considered to be appropriate in all the circumstances).

57. Where the Head of School decides that the allegations should be upheld, the Director of Human Resources or his or her nominee shall give effect to the decision and the member of staff shall be advised of his or her right to appeal under Part VIII against the Head of School’s findings or against any sanction imposed.
PART VIII

Appeals against Decisions under Part VII

58. A member of staff (hereafter called the ‘Appellant’) who wishes to appeal against the findings of the person who made the decision under Part VII of this Procedure against any sanction imposed by him or her should do so in writing to the Director of Human Resources within ten working days of the date of written notification of the decision. The Appellant should set out in full the grounds of his or her appeal and, if the Appellant is proposing to rely upon new evidence, he or she should provide details and a copy of any relevant documentation.

59. The Appeal Panel shall be convened by the Director of Human Resources or his or her nominated representative on a case by case basis in accordance with the following rules:
(i) each Appeal Panel shall consist of two persons;
(ii) the appeal shall be heard by a panel (the ‘Appeal Panel’) drawn from a list of persons approved by the Vice-Chancellor to hear appeals.
(iii) no panel member shall have had any previous involvement in the member of staff’s case, and accordingly no person may sit on both the Hearing Panel and the Appeal Panel in a particular case;
(iv) The Chair of the Panel will make the final decision.

60. A member of Human Resources appointed by the Director of Human Resources or his or her nominee shall be present at the appeal hearing in an advisory capacity.

61. The appeal can take the form of a re-hearing of the evidence if the Chair of the Panel (at their discretion) believes there have been flaws in the previous process.

62. Normally no later than ten working days before the Appeal Panel Hearing the Appellant shall be notified of:
(i) the date, time and place of the Appeal Hearing;
(ii) his or her right to be represented or accompanied at the Appeal Hearing in accordance with the provisions of paragraph 14 above; and
(iii) so far as they are known at the time, the names of the persons to be present at the hearing including members of the Appeal Panel, and the name of any person attending to present the reason for the decision to dismiss on behalf of the University.

63. The Appellant may be represented or accompanied at the Appeal Hearing in accordance with the provisions of paragraph 14 above. At least three working days before the Appeal Hearing the name and the address of the Appellant’s representative must be notified in writing to the Appeal Panel.

64. The Appellant shall take all reasonable steps to attend the Appeal Hearing and/or any adjournment or postponement of the Appeal Hearing. Where the Appellant indicates to the Appeal Panel that he or she does not wish to exercise his or her right to be heard or fails to attend or leaves the Appeal Hearing or any postponement or adjournment of the Appeal Hearing without good cause, the Appeal Panel shall be entitled to proceed in the Appellant’s absence.

65. The procedure to be followed in preparation for and at the Appeal Hearing shall be at the discretion of the Appeal Panel, which may include without limitation:
(i) determining which documents (if any) shall be provided for the Appeal Panel’s consideration and at what stage;
(ii) determining the extent (if any) to which witnesses may be called and questioned; and
(iii) deciding whether it would be appropriate to adjourn or postpone the Appeal Hearing.

66. The Appeal Panel shall notify the Appellant in writing of the reasons for its decision, normally within ten working days of the Appeal Hearing. A report of the decision will also be sent to the Director of Human Resources. The Appeal Panel may:
(i) uphold the decision reached by the Panel;
(ii) overturn that decision and where appropriate reinstate the member of staff and/or impose some lesser or alternative sanction.

67. The decision of the Appeal Panel shall be final.