

# Capability Policy and Procedure

## Research, Teaching-only and Professional Services staff

King's is committed to developing and improving the performance and capability of our teams and everyone is expected to perform their duties to the best of their ability.

All employees are responsible for meeting the standards expected of them in the performance and delivery of their duties. The Capability Policy and Procedure provides a framework to manage occasions where standards of performance, productivity and or quality are not met in a fair and consistent way.

Where appropriate concerns will be raised informally in the first instance by providing constructive feedback and allowing opportunity to develop. Capability issues will be managed with dignity and respect and employees will be given appropriate feedback and achievable performance expectations.

Whilst action taken in line with this procedure is primarily taken to facilitate improvement, action including and up to dismissal may be an outcome.

### Application

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The Capability Policy applies to all employees on, research, teaching-only and professional services terms and conditions of employment. Academic employees should refer to the [Academic Staff Capability Regulation](#).

The university [Probation Process](#), applies to employees who have not yet completed their probationary period.

Cases of sickness absence will be managed in line with the [Sickness Absence Management Policy](#).

Where formal action against a representative of one of our recognised trade unions is being considered, the [Head of Employee Relations and Policy](#) will be informed, so that, with the employees consent, the appropriate full-time union official and Senior Local Representative of the relevant union may be notified of the matter.

The university aims to treat capability issues sensitively and with respect for the privacy of those concerned. All employees must treat any information communicated to them in connection with a capability matter as confidential.

This policy does not form part of employees' contract of employment and the university has reserved the right to amend the terms of this policy, should the need arise, without further reference to employees.

## **Informal Discussions**

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Regular feedback should be provided to an employee by the manager through one-to-one meetings and Performance Development Review meetings. Where a manager has concerns regarding the capability of an employee to perform in their role, which have not been addressed through regular feedback, this will usually be dealt with informally in the first instance. The manager should contact the [HR Business Partnering Team](#) for advice.

The Manager will arrange a dedicated meeting with the employee, informally and confidentially, to discuss:

- the details of the concerns,
- the areas where improvement is required, ‘the objectives’,
- the timescale for achieving this improvement, ‘the review period’.

The manager should also explore if there are other factors affecting the employee’s performance and any support or training that can be provided to facilitate improvement.

The manager should keep a record of the discussion.

### **Informal Review Period**

Where an employee has agreed objectives there will be a review period, providing sufficient time and opportunity to meet these. The length of the review period is typically 3 months however will vary, dependent on objectives and circumstances. During this time the objectives will be monitored and any support and training identified will also be provided.

Regular feedback should be provided by the manager throughout the period through one-to-one meetings. These meetings and the progress made should be documented and a written summary, clearly stating that further formal action may be taken if there is no improvement, provided to the employee.

### **Outcomes**

At the end of the informal review period, the manager will meet with the employee to explain the outcome. The outcome may be that:

- The objectives have been met and there is no longer cause for concern.
- Some of the objectives have been met but not all, and the review period will be extended.
- The objectives have not been met and the capability procedure will be initiated.

## **Capability Procedure**

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If following an informal review period there are still concerns the capability procedure will be initiated.

The manager should take advice from the [HR Business Partnering Team](#) before initiating the formal procedure.

### **Right to a Companion**

All employees will be advised of their right to a companion (either a trade union representative, official or another King’s employee) at any, capability meeting, hearing or appeal hearing.

If the employee wishes to be accompanied, they will need to notify the [HR Business Partnering Team](#) of the name of their companion and if relevant the Trade Union they are from. The employee will be responsible for providing details of the scheduled hearing or appeal hearing and any related documentation to their companion.

If an employee's chosen companion is unable to participate in the procedure within a reasonable timeframe the employee may have their request refused and be asked to find another suitable companion.

If the companion is unavailable at the time scheduled for a formal review meeting, capability hearing or appeal hearing, the employee should propose an alternative time. This should be within 5 working days after the day originally scheduled and should be chosen so that it is mutually convenient to those involved.

At a formal capability hearing or appeal hearing the companion will be able to:

- address the hearing to put and sum up the employee's case,
- respond on behalf of the employee to any views expressed at the hearing and
- confer with the employee during the hearing,

either orally or in writing as may be applicable.

The companion will not be able to:

- answer questions on the employee's behalf,
- address the hearing, if the member of staff indicates that they do not wish the companion to do so, or
- use their position, in a way that prevents the university from explaining their case, or any other person making their contribution.

The employee will not have the right to be accompanied or represented by a barrister or solicitor acting in a professional capacity at any stage of the capability procedure.

## **Formal Capability Meetings and Hearings**

If following an informal review period, there are still concerns, the employee will be invited to participate in the Formal Capability Procedure.

The Formal Capability Procedure will be managed through a series of meetings which will normally be held with the manager and employee. The series of formal meetings should usually be followed in order unless the employee has an active Improvement Notice or the concerns are deemed serious enough to warrant immediate action.

The employee has the option to request that a meeting be held as a hearing and have a panel to review the case, if they wish. A Capability Panel will normally comprise at least two people a Chair, usually the appropriate Head of Department/Division/School and another senior employee, who will not have had any direct involvement in the matter.

If the employee would like their case to be heard by a panel at a hearing, they must request this by the date stated in the invitation.

The employee will be given at least 5 working days' written notice of a meeting or hearing, including details of the concerns and any supporting evidence (usually summaries of any Review Periods).

If the employee wishes to present their own supporting evidence, they are asked to present this at least 3 working days in advance.

The employee will be informed of the right to be accompanied and will be asked to notify the [HR Business Partnering Team](#) no later than 3 working days ahead of the scheduled meeting or hearing if they intend to be accompanied, the name of the companion and if relevant the trade union they are from.

A member of the [HR Business Partnering Team](#) will be present in capability meetings and hearings in addition to an assigned note taker.

Notes of each hearing will be taken and held in the Human Resources Department. The employee (and companion if appropriate) will receive a copy and will have the opportunity to comment if they feel that the notes do not accurately reflect the meeting.

## **Formal Review Periods**

Where an employee has objectives there will be a review period which allows the employee sufficient opportunity and time to meet these. During the review period objectives will be monitored, the length of the review period is typically up to three months, dependent on objectives and circumstances. Any support and training identified will also be provided during this period.

Regular feedback should be provided by the manager throughout the review period, through one-to-one meetings. These meetings and the progress made must be documented and a written summary provided to the employee.

The formal review period may be extended to allow fair measurement of objectives, where this is the case, this will be confirmed in writing to the employee.

At the end of a review period, the manager should confirm the outcome in writing, which could be that:

- The objectives have been met and there is no longer cause for concern, subject to ongoing review, or
- The objectives have not been met and the relevant capability hearing will be arranged.

## **Ongoing review**

Following the successful completion of a formal review period, performance will continue to be monitored. If at any stage, within an agreed timeframe, capability falls below previously agreed standards, the manager may decide to arrange a further capability hearing under this procedure.

## **Formal Capability Procedure - Stage One**

Following an informal review period, if there are still concerns, the employee will be invited to participate in a Stage One Capability Meeting.

The purpose of the stage one meeting is to discuss,

- the areas where improvement is required,
- progress made during the informal review period,

- any training and support provided, and
- any further training or support that can be offered.

The information presented will be considered to decide if action is necessary.

The outcome will be confirmed in writing to the employee, usually within 5 working days of the meeting.

## **Stage One Outcomes**

The outcome of the stage one capability meeting may be:

- To end the process, subject to ongoing review, as objectives have been met and there is no longer cause for concern.
- To refer the matter for investigation under the disciplinary procedure; or
- To initiate a formal review period and issue a First Improvement Notice, as the required objectives have not been met, in some cases a Final Improvement Notice may be issued.

An Improvement Notice will remain active for 6 months, where an Improvement Notice is issued incremental progression may be delayed.

A written record of the outcome will be kept on the employee's file.

## **Formal Capability Procedure – Stage Two**

Following a Formal Review Period, if there are still concerns, the employee will be invited to participate in a Stage Two Capability Meeting.

The purpose of the stage two meeting is to review:

- the details of the continued concerns,
- the progress made during the formal review period,
- any training and support provided,
- the areas where improvement is required, and
- any further training or support that can be offered.

The information presented will be considered to decide if action is necessary.

The outcome will be confirmed in writing to the employee, usually within 5 working days of the meeting.

## **Stage Two Outcomes**

The outcome of the stage two capability meeting may be:

- To end the process, subject to ongoing review, as objectives have been met and there is no longer cause for concern.
- To refer the matter for investigation under the disciplinary procedure; or
- To extend the formal review period and issue a Final Improvement Notice as the required objectives have not been met.

An Improvement Notice will remain active for 6 months, where an Improvement Notice is issued incremental progression may be delayed.

A written record of the outcome will be kept on the employee's file.

## **Formal Capability Procedure - Stage Three**

Following an extended formal review period, if there are still concerns, the employee will be invited to participate in a Stage Three Capability Hearing at which point dismissal may be considered.

The purpose of the stage three hearing is to discuss,

- the continued concerns,
- progress made during the review period,
- any training and support provided.

The Panel will consider the information presented to the hearing and will decide if action is necessary.

The outcome will be confirmed in writing to the employee, usually within 5 working days of the hearing.

## **Stage Three Outcomes**

The outcome of the stage three capability hearing may be:

- To end the process, subject to ongoing review, as objectives have been met and there is no longer cause for concern.
- To dismiss the employee, as a Final Improvement Notice has already been issued and the required objectives have not been met.

In some cases, action short of dismissal may be considered, this could include demotion to an alternative role in another department or campus. This will only be considered if it can be offered and accepted by the employee as an alternative to dismissal.

## **Right to Appeal**

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An employee who has been subject to capability action, including a First Improvement Notice, Final Improvement Notice or dismissal, will have the right of appeal.

An employee who wishes to appeal against any capability action including dismissal must submit notice of the appeal in writing, including the grounds for the appeal and any supporting documentation, to the relevant [Director of People](#) or as advised, within 10 working days of receipt of the written notice of the capability action.

## **Grounds for Appeal**

The employee should clearly state the grounds for appeal, which may include:

- That the findings of the hearing are unreasonable
- That the sanction applied is too severe
- That there is new evidence that was not previously available
- That the capability procedure has not been applied correctly

## **Appeal Procedure**

The appeal will be heard by a Panel appointed by the relevant [Director of People](#) or their designate.

The appeal Panel will comprise up to three members who have not been previously involved in the particular case. There may be circumstances where the relevant [Director of People](#) or their designate considers it appropriate to include an independent external person on the Panel.

A member of the [HR Business Partnering Team](#) will normally be present in addition to an assigned note taker.

The appellant will be given at least 10 working days' written notice of the appeal hearing together with copies of all relevant documents and reports presented at the capability hearing.

The appellant can provide any new information concerning the grounds of the appeal that they wish the Panel to consider. This is to be presented to the Panel no later than 3 working days before the scheduled date of the appeal hearing.

The appellant will be informed of the right to be accompanied. They will be asked to notify the [HR Business Partnering Team](#) no later than 3 working days ahead of the scheduled appeal hearing if they intend to be accompanied, and to provide the name of the companion and if relevant the trade union they are from.

## **Appeal Hearing**

The appeal Panel will review the information presented in relation to the grounds for appeal. This information will comprise:

- That which was previously submitted to the capability hearing,
- The notes and decision letter from the capability hearing,
- Any new information arising pertaining to the grounds of the appeal.

The appeal Panel may make any additional inquiries or request additional information about the case under consideration as they see fit.

The Panel Chair will determine the procedure for the appeal which should:

- adhere to the Capability Policy and Procedure
- ensure that all submissions made to the Panel (including written submissions made in accordance with the stipulated timeframes) are considered; and
- ensure that a decision is reached without undue delay.

## **Appeal Outcomes**

The outcome will be confirmed by the Panel Chair in writing to the appellant, usually within 10 working days of the appeal hearing.

For an appeal against action short of dismissal, this may be to

- Support the appeal and remove the first/final improvement notice, if appropriate,
- Support the appeal and modify the action, or
- Reject the appeal and confirm the action or any alternative action.

For an appeal against dismissal, this may be to:

- Support the appeal and reduce the dismissal to a lesser action,
- Reject the appeal and confirm the decision to dismiss.

An appeal will never result in an increase in the original action.

Should an appeal against dismissal be supported, the appellant will receive salary payment at the appropriate rate as if they had not been dismissed and there will be no break in their continuity of employment.

The decision of the appeal Panel will be final and there will be no further avenue for appeal within the university.

## Meetings

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Meetings will be conducted in-person or by using the appropriate technology such as Microsoft Teams.

The recording of meetings will not normally be permitted. Any deliberate recording of meetings obtained without the express agreement from all participants before the commencement of the meeting may result in disciplinary action.

## Adjustments to Proceedings

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Under the Equality Act 2010, the university has a legal responsibility to consider reasonable adjustments in the application of this policy, to ensure that employees with disabilities or specific needs can fully participate and understand the process.

Reasonable adjustments will be considered on an individual basis, taking into account the specific needs and circumstances of an employee, this could include adjustment to the location and timing of meetings, use of a translator, referral to Occupational Health and adjustment to a review period.

Employees facing difficulty at any stage of the procedure due to a disability should contact the [HR Business Partnering Team](#) for advice.

### VERSION CONTROL

Policy	Capability Policy and Procedure Research, Teaching-only and Professional Services staff
Implementation Date	4 September 2023
Review Date	September 2027
Policy Owner	Employee Relations and Policy Team

## APPENDIX A: Capability Process Flowchart

