**Appendix 1**

**CAPABILITY HEARING - PROCEDURAL DETAILS**

1. **INTRODUCTION**

1.1 The procedural detail in this appendix provides information that will be of assistance for anyone attending a capability hearing to understand the formal process. It should be noted that minor variations to the process may reasonably occur in response to the circumstances of a particular case or at a particular time, for instance timescales may be varied following discussion between the parties. Any variations to the procedure must be reasonable in the circumstances.

1. **TERMINOLOGY/PARTIES**

The person presenting the case is referred to as “the manager”. The person who is subject to the managers recommendation to attend a capability hearing is sometimes referred to as “the employee “or the “the individual”.

The person the member of staff has invited to accompany him/her in accordance with paragraph 4.2 of the procedure is referred to as “the companion”.

The “Chair” is the person hearing the case who is responsible for making the decision under the Absence Management Policy. Only the Vice-Chancellor, Deputy Vice-Chancellor, a Pro Vice-Chancellor, Director of Finance and Performance or the Chief Operating Officer can take the decision to dismiss a member of staff under this procedure and as such it is only these post holders who may chair a Capability Hearing.

A working day refers to any day Monday to Friday inclusive, but excludes bank holidays or publicised University closure days.

**3.0 WRITTEN NOTIFICATION OF CAPABILITY HEARING**

1. Should it be found that, following informal resolution that the employee is unable to maintain sufficient sustained improvement in attendance or is unlikely to be fit to return to work in their current role within a reasonable timeframe due to medical incapability, the member of staff will be informed, in writing, giving 7 working days’ notice of the capability hearing. This notification will include; the purpose of the capability hearing, the issues to be considered as outlined in the management case which will document the informal resolution undertaken including any actioned taken under section 9, Phased Return to Work and recommendation to proceed to ill health dismissal, any supporting documentation including relevant medical evidence that might be referred to during the hearing, possible outcomes of the hearing, the names of any witnesses that the manager might intend to call during the hearing, details of the date, time and venue for the hearing, the right to be accompanied and a copy of the Absence Management Policy.
2. Where an employee is too ill to meet, alternative communication methods will be considered at their request, e.g. telephone, written correspondence, etc.
3. The notification letter will advise the member of staff that s/he is invited to submit a written statement in response, together with any supporting documentation and the names of any additional witnesses s/he intends to call and that this should be received at least 3 working days in advance of the hearing.
4. After this time limit, no further documentation shall be considered and taken into account at the hearing, unless the Chair agrees such an exception.

3.4 All documentation provided by the employee will be copied to the manager. The Chair and HR representative present at the hearing will receive copies of all documentation provided by both parties.

1. **THE CAPABILITY HEARING**
2. The Chair shall make introductions, outline the format for the capability hearing and have responsibility for the orderly conduct of proceedings.
3. Present at the hearing will be; the Chair, accompanied by a member of the HR department acting in an advisory capacity, the presenting manager, accompanied by a member of the HR department and the individual who may choose to be accompanied. There may be supporting personnel present (e.g. note-taker, or a person to assist an individual with a disability).
4. The employee’s companion is allowed to address the hearing to put and sum up the individual’s case, respond on behalf of the individual to any views expressed at the meeting and confer with the individual during the hearing. The companion does not however have the right to answer questions on the individual’s behalf, or address the hearing if the individual does not wish it, or prevent the University from explaining its case.
5. Any witness(es) shall join the hearing, in turn, to give evidence and answer questions and shall leave the room when this is concluded.
6. The Chair and his/her advisor from HR may ask questions of either party and/or their witnesses during the proceedings.
7. Either party may request an adjournment at any stage of the proceedings.
8. The manager will be invited to present the case and call witnesses (whose names have been notified in advance).
9. The individual will have opportunity to question the manager and his/her witnesses.
10. The individual will be invited to respond to the management case and call witnesses (whose names have been notified in advance).
11. The manager will have opportunity to question the individual and his/her witnesses.
12. When both parties have concluded their evidence and questioning has been completed, the chair may invite the manager and individual respectively to give a short concluding statement.
13. The Chair may, if s/he so wishes, give a summing up.
14. The Chair will call an adjournment when the hearing is concluded in order to consider his/her decision.
15. **THE OUTCOME AND WRITTEN CONFIRMATION**

5.1 The individual will be informed of the decision and the reasons for the outcome at the earliest opportunity. The Chair may reconvene the hearing on the same day to advise the individual and manager of the outcome, or if it is not possible to reach a decision on the day, an indication will be given within one working day of the likely timescale for a decision to be reached and reason for delay.

5.2 The decision and reasons will be confirmed in writing to the individual, normally within 3 working days after the decision has been made. This notification will include reference to the right of appeal, together with the name of the person to whom any appeal should be lodged. A member of staff wishing to appeal should do so, in writing, stating the grounds for the appeal within 7 working days of receiving the outcome letter. Further details about the appeals procedure can be found at appendix 2.

5.3 The outcome may be that: there is no case to answer; the case should be referred back to the informal resolution stage of the Absence Management Policy with recommendations, or ill health dismissal of the employee on the grounds of capability. In the latter case, the letter will also include the information as set out in paragraph 5.4 below.

5.4 Written confirmation of ill health dismissal on the grounds of capability will include; the written reasons for dismissal, the date on which the employment terminates; explanation of the right to be considered for redeployment up to the date of termination, final payment details, including those relating to notice, or pay in lieu of notice; and advise of the right of appeal.