

PROCEDURE FOR CONDUCTING A CAPABILITY HEARING

1. Pre-Hearing Preparations

- 1.1 The Capability Hearing may be arranged by the manager conducting the hearing, (the 'Chair'), or by the HR Department.
- 1.2 Employees must be given at least **ten days notice** of the hearing. Letters and accompanying paperwork should be sent to the employee's home by first class mail, or recorded delivery, or handed to them personally.
- 1.3 The following paperwork must be sent to the employee at least **ten working days** before the hearing:
 - A letter stating:
 - The concerns about them
 - The time, date and location of the hearing
 - The names of any witnesses to be called
 - The name and job title of the Chair, HR representative and management representative
 - The right to be represented or accompanied by a union official or other employee of the employee's choice
 - If the employee wishes to be accompanied by another individual, they must discuss this with HR and it will be accommodated where possible
 - A copy of any relevant paperwork
 - The College's Capability Policy
 - Any statements to be relied on by the management representative
- 1.4 The letter and accompanying paperwork must be signed by the Chair but will normally be prepared by the HR Department.
- 1.5 This paperwork must also be copied to the management representative.
- 1.6 Both sides are responsible for making arrangements for their witnesses to attend.

2. Procedure for Conducting a Capability Hearing

- 2.1 The Chair introduces those present. Normally the other people in attendance will be the HR representative, the management representative, the employee concerned and their representative (or person accompanying them). In exceptional cases, it may be appropriate for another specialist to be present to assist the Chair where there is a need for professional/technical advice.
- 2.2 The Chair will explain the purpose of the capability hearing and refer to the concerns about the employee's performance. The Chair will also explain the procedure to be followed during the hearing and will confirm that all parties have copies of the appropriate paperwork. If the employee is unaccompanied, the Chair will confirm that the employee understood that they had the right to be accompanied, but chose not to exercise this right. If the employee confirms at this stage that they wish to be accompanied, the Chair will adjourn the hearing to a mutually acceptable date when a representative will be available.

- 2.3 The management representative will present their findings to the hearing, indicating the evidence gathered and referring to any documents previously circulated.
- 2.4 The management representative will call any witnesses named in the documents previously circulated.
- 2.5 The employee and their representative may question the management representative and any witnesses on the evidence they presented.
- 2.6 The Chair and HR representative may question the management representative and any witnesses on the evidence they presented.
- 2.7 The employee and/or their representative will present their case to the hearing, indicating the basis of their defence and referring to any documents previously circulated.
- 2.8 The employee and/or their representative will call any witnesses named in the documents previously circulated.
- 2.9 The management representative will question the employee, their representative and any witnesses on the evidence they presented.
- 2.10 The Chair and HR representative may question the employee, their representative and any witnesses on the evidence they presented.
- 2.11 The management representative and then the employee and/or their representative are given the opportunity to sum up their case.
- 2.12 On completion of the presentation of the evidence, the management representative, the employee and their representative will withdraw, leaving the Chair to deliberate with the HR representative. If the Chair considers that any points raised by either party require further clarification both parties should be recalled even if only one of the parties is concerned with the point(s) giving rise to doubt.
- 2.13 The Chair may call a short break at any time in the proceedings. If the Chair considers that more than a short "break" for deliberation is necessary they will formally adjourn the hearing. The hearing should be reconvened as soon as possible and within five days.
- 2.14 If at any time, those present become too upset to continue or the hearing is becoming heated, the Chair will arrange for an adjournment to allow people to compose themselves before continuing. If either side requests an adjournment, the Chair will consider the request sympathetically.

3. Options Available

The options available to the Chair are:

- 3.1 To take no action if the concerns are unfounded or could be dealt with ore appropriately in another way. If this is the case, all papers relating to the hearing will be destroyed.
- 3.2 To recommend that the employee is counselled and/or supported by their line manager in connection with the concerns over their performance. This option is appropriate if the misdemeanour is of a minor nature and the employee has a clean employment record.

- 3.3 To issue the employee with an ORAL warning if the complaint(s) or allegation(s) is/are substantiated and the employee has a previously clean employment record. A record will be retained on the employee's personal file of the oral warning. It will be deleted after **nine months**.
- 3.4 To issue the employee with a WRITTEN warning if there is a current ORAL warning on the employee's file for capability or if the concerns about performance are serious enough to move straight to a WRITTEN warning. The warning will be confirmed in writing and will remain in force for **twelve months** after which time it will be deleted from their personal file.
- 3.5 To issue the employee with a FINAL WRITTEN warning if there is a current WRITTEN warning on their file for capability or if the concerns about performance are serious enough to move straight to a FINAL WRITTEN warning. The FINAL WRITTEN warning will be confirmed in writing and will remain in force for **eighteen months** after which time it will be deleted from their personal file.
- 3.6 To DISMISS the employee if there is a current FINAL WRITTEN warning for capability on file or if the concerns about performance are serious enough that the employment cannot be sustained. The employee will be required to work their period of notice, or if the DISMISSAL is effective immediately, they will be paid in lieu for their contractual notice. Notice will be paid at the normal pay rate for the employee. Any other contractual entitlements such as outstanding holiday pay and overtime will be made to the employee. The dismissal will be confirmed in writing to the employee in accordance with the provisions of the College's Capability Policy.
- 3.7 To SUMMARILY DISMISS the employee, if the concerns about performance are serious enough that the employment cannot be sustained and notice cannot be paid. In this case, the dismissal will be effective immediately and will be made without pay in lieu of notice. Any other contractual entitlements such as outstanding holiday pay will be made to the employee. The dismissal will be confirmed in writing to the employee in accordance with the provisions of the College's Capability Policy.
- 3.8 The employee has the right to appeal any level of formal capability action and will be advised of whom they should appeal to and the date by which they should appeal.

4. After the Capability Hearing

- 4.1 The decision will be confirmed in writing to the employee within **five working days** of the hearing, which will include the following:
- (i) The nature of the poor performance standard and (except in dismissal cases) clarify the standard of conduct required so as to prevent a recurrence
 - (ii) Confirm the capability penalty imposed and the reasons for this
 - (iii) Except in dismissal cases, specify the consequences if there is no further improvement in performance
 - (iv) Except in dismissal cases, specify how long the capability penalty will remain 'live' on the employee's file
 - (v) Advise the employee of their right to appeal against the capability penalty imposed and the timescale in which to do this
- 4.2 A copy of the written decision will be provided to the employee's representative.

- 4.3 Where the capability penalty imposed is dismissal written confirmation will also include the following:
- The reasons for dismissal
 - The date upon which the employment will end
 - Details of any outstanding monies owed or owing (including for example annual leave or repayment of training costs)

5. Summary

- 5.1 All those involved in capability issues should remember that the hearing is an opportunity for the employee to hear the concerns about their performance, put their case forward and to be treated under a fair process. Attending a capability hearing is a distressing experience for employees and it is also a difficult time for the management representative, particularly if they know the employee well. The hearing must be conducted with sensitivity, absolute confidentiality and in a fair and consistent manner.
- 5.2 The HR representative is available to provide support and advice to the Chair (and other parties) if needed.

PROCEDURE FOR CONDUCTING AN APPEAL HEARING (AGAINST CAPABILITY ACTION SHORT OF DISMISSAL)

1. The Chair will introduce all those present. If the appellant (the employee appealing) is not accompanied by a union representative or another employee, then the Chair should check with them that they understand they have the right to be accompanied, but have chosen not to do so. If the appellant wishes to be represented, the Chair should normally adjourn the hearing to allow a representative to be present. In exceptional circumstances the Chair may wish to proceed in the absence of a representative, and they should take appropriate HR advice before proceeding. If they take this action, they must explain this to the appellant, together with their reasons for doing so.
2. The Chair will outline the roles of the people present at the Appeal Hearing. They will explain that they will be making a decision on the appeal presented to them. The Executive Director of Human Resources (or HR Manager in their absence) is present to provide legal and procedural advice to the Appeals Panel. The management representative is present to present his case as to why they took the decision to dismiss the employee. The appellant is present with their representative.
3. The Chair will explain that the Appeal Hearing has been called in accordance with The College's Capability Policy and the Instruments and Articles pertaining to Appeal Hearings.
4. The Chair will check that all parties have received the appropriate documentation (if they have not, an adjournment may be called to ensure that all parties have the correct paperwork). The Chair will check that the management representative and the appellant are aware that he/she may not introduce any new written documentation at this stage that has not previously been agreed on, nor call any witnesses not previously notified.
5. If, at any time, any party requests an adjournment, the Chair will consider this.
6. If the employee wishes to submit additional paperwork at this stage, the Chair must consider whether or not it is appropriate to consider it as the management representative will not have had an opportunity to review it prior to the Hearing. The Chair should normally accept such paperwork unless it is not relevant to the Hearing.
7. The procedure to be adopted at the Appeal Hearing will be as follows:
 - 7.1 The management representative will present his/her case, detailing why he/she took the decision to discipline the appellant.
 - 7.2 The management representative will call any witnesses previously notified.
 - 7.3 The appellant and/or their representatives will have the opportunity to question the management representative and their witnesses on their statements.
 - 7.4 The Chair and the Executive Director of Human Resources may question the management representative and their witnesses if they require clarification on any issue.
 - 7.5 The appellant and/or their representatives will present their case detailing why they are appealing against the decision to discipline them.

- 7.6 The appellant and/or their representatives may call any witnesses previously notified to support their case.
- 7.7 The Management representative (and the HR representative if present) will have the opportunity to question the appellant, their witnesses and representatives, on the statements.
- 7.8 The Chair and the Executive Director of Human Resources may ask the appellant, their representatives and their witnesses any questions if they need to clarify their statements.
- 7.9 The management representative will be asked to summarise his/her case.
- 7.10 The Appellant and/or their representatives will be asked to summarise their case.
- 7.11 Both parties and all witnesses will be asked to withdraw, and the Chair will consider their action. The Chair may be accompanied by the Executive Director of Human Resources in their deliberations.
- 7.12 If the Chair wishes to clarify any issues, then all parties will all be asked to reconvene.
- 7.13 The Chair will normally announce their decision orally on the same day, in the presence of the management representative, the Executive Director of Human Resources, the appellant and their representative.
8. If the Chair cannot make a decision on the day, he/she will withdraw to consider their decision. All parties will normally be recalled at an agreed date (which will be as soon as possible) to hear the decision. The decision will be confirmed in writing to all parties as soon as possible within **five working days**.
9. There will be no internal appeal beyond the decision of the Chair of the Appeals Panel.
10. The decision of the appeal hearing will be to:
- uphold the capability action taken
 - reject the capability action taken
 - substitute a lower level of capability action
 - substitute an alternative form of action to improve the employee's performance

The appeal hearing cannot substitute a higher level of capability action than that taken in the capability hearing.

11. The table below details who may take capability action and hear appeals against such action.

Level of Action Taken	Capability Hearing is Chaired by	Appeal to
Formal capability action up to and including Final Written Warning	SMT Member	Executive Member
Dismissal	Principal	Board of the Corporation

PROCEDURE FOR CONDUCTING AN APPEAL HEARING AGAINST DISMISSAL FOR CAPABILITY

1. The Chair will introduce all those present. If the Appellant (the employee appealing) is not accompanied by a union representative or another employee, then the Chair should check with them that he/she understand they have the right to be accompanied, but have chosen not to do so. If the Appellant wishes to be represented, the Chair should normally adjourn the hearing to allow a representative to be present. In exceptional circumstances the Chair may proceed in the absence of a representative and he/she should take appropriate HR advice before proceeding. If they take this action, they must explain this to the Appellant, together with their reasons for doing so.
2. The Chair will outline the roles of the people present at the Appeal Hearing. They will explain that they and the other two Board members form the Appeal Panel and will be making a decision on the appeal presented to them. The Executive Director of Human Resources is present to provide legal and procedural advice to the Appeal Panel. The Clerk to the Corporation is present to take notes of the meeting and advise on procedural issues where appropriate. The management representative is present to present his case as to why he/she took the decision to dismiss the employee. The appellant is present (with their union representative/fellow employee if appropriate).
3. The Chair will explain that the Appeal Hearing has been called in accordance with The College's Capability Policy and the Instruments and Articles pertaining to Appeal Hearings.
4. The Chair will check that all parties have received the appropriate documentation (if they have not, an adjournment may need to be called to ensure that all parties have the correct paperwork). They will check that the management representative and the appellant are aware that they may not introduce any new written documentation at this stage, nor call any witnesses not previously notified.
5. The procedure to be adopted at the Appeal Hearing will be as follows:
 - 5.1 The management representative will present his/her case, detailing why he/she took the decision to dismiss the appellant.
 - 5.2 The management representative will call any witnesses previously notified.
 - 5.3 The appellant and/or their representatives will have the opportunity to question the management representative and their witnesses on their statements.
 - 5.4 The Appeal Panel members and the Executive Director of Human Resources may question the management representative and their witnesses if they require clarification on any issue.
 - 5.5 The appellant and/or their representatives will present their case detailing why they are appealing against the decision to dismiss them.
 - 5.6 The Appellant and/or their representatives will call any witnesses previously notified to support their case.
 - 5.7 The management representative will have the opportunity to question the appellant, their witnesses and representatives, on their statements.

- 5.8 The Appeal Panel members and the Executive Director of Human Resources may ask the appellant, their representatives and their witnesses any questions if he/she needs to clarify their statements.
- 5.9 The management representative will be asked to summarise their case.
- 5.10 The appellant and their representatives will be asked to summarise their case.
- 5.11 Both parties and all witnesses will be asked to withdraw, and the Appeal Panel will consider their action. The Appeal Panel may be accompanied by the Executive Director of Human Resources and the Clerk to the Corporation in their deliberations.
- 5.12 If the Appeal Panel wish to clarify any issues, then the management representative, the appellant and their representatives will all be asked to reconvene.
- 5.13 If possible, the Appeal Panel will announce their decision orally on the same day, in the presence of the management representative, the appellant and their representative.
6. If the Appeal Panel cannot make a decision on the day, they will withdraw to consider their decision. All parties will normally be recalled at an agreed date to hear the decision. The decision will be confirmed in writing to all parties within **ten working days**.
7. The decision of the appeal hearing will be to:
- uphold the dismissal for capability
 - reinstate the employee to their previous post and clear their capability employment record
 - reinstate the employee to their previous post and substitute a lower level of capability action
 - reinstate the employee to their previous post and substitute an alternative form of action to improve the employee's performance
8. There will be no internal appeal beyond the decision of the Appeal Panel, and the appellant will be informed of this.
9. If, at any time there is a request for an adjournment by any party, this will be considered by the Chair and accommodated where possible.

APPENDIX TWO: PROCEDURE FOR CONDUCTING A CAPABILITY HEARING

1. Pre-Hearing Preparations

- 1.1 The Capability Hearing may be arranged by the manager conducting the hearing, (the 'Chair'), or by the HR Department.
- 1.1 Employees must be given at least **ten working days notice** of the hearing. Letters and accompanying paperwork should be sent to the employee's home by first class mail, or recorded delivery, or handed to them personally.
- 1.3 The following paperwork must be sent to the employee at least **ten working days** before the hearing:
 - A letter stating:
 - The capability issues that will be discussed at the hearing
 - The time, date and location of the hearing
 - The names of any witnesses to be called
 - The name and job title of the Chair, HR representative and management representative
 - The right to be represented or accompanied by a union official or other employee of the employee's choice.
 - A copy of the investigation report (if applicable)
 - The College's Capability Policy and Procedure
 - Any statements to be relied on by the management representative
- 1.4 The letter must be signed by the Chair but will normally be prepared by the HR Department.
- 1.6 This paperwork must also be copied to the management and union or staff representatives (where appropriate).
- 1.6 All parties are responsible for making arrangements for their witnesses to attend, where witnesses are to be called.

2. Procedure for Conducting a Capability Hearing

- 2.15 The Chair introduces those present. Normally the other people in attendance will be the HR representative, the management representative, the employee concerned and their representative (or person accompanying them). In exceptional cases, it may be appropriate for another specialist to be present to assist the Chair where there is a need for professional/technical advice.
- 2.16 The Chair will explain the purpose of the capability hearing and refer to the complaint(s) or allegation(s) against the employee. The Chair will also explain the procedure to be followed during the hearing and will confirm that all parties have copies of the appropriate paperwork. If the employee is unaccompanied, the Chair will confirm that the employee understood that they had the right to be accompanied, but chose not to exercise this right. If the employee confirms at this stage that they wish to be accompanied, the Chair will adjourn the hearing to a mutually acceptable date when a representative will be available.
- 2.17 The management representative will present their findings to the hearing, indicating the evidence gathered and referring to any documents previously circulated.

- 2.18 The management representative will call any witnesses named in the documents previously circulated.
- 2.19 The employee and their representative may question the management representative and any witnesses on the evidence they presented.
- 2.20 The Chair and HR representative may question the management representative and any witnesses on the evidence they presented.
- 2.21 The employee and/or their representative will present their case to the hearing, indicating the basis of their defence and referring to any documents previously circulated.
- 2.22 The employee and/or their representative will call any witnesses named in the documents previously circulated.
- 2.23 The management representative will question the employee, their representative and any witnesses on the evidence they presented.
- 2.24 The Chair and HR representative may question the employee, their representative and any witnesses on the evidence they presented.
- 2.25 The management representative and then the employee and/or their representative are given the opportunity to sum up their case.
- 2.26 On completion of the presentation of the evidence, the management representative, the employee and their representative will withdraw, leaving the Chair to deliberate with the HR representative. If the Chair considers that any points raised by either party require further clarification both parties should be recalled even if only one of the parties is concerned with the point(s) giving rise to doubt.
- 2.27 The Chair may call a short break at any time in the proceedings. If the Chair considers that more than a short “break” for deliberation is necessary they will formally adjourn the hearing. The hearing should be reconvened as soon as possible and within **five working days**.
- 2.28 If at any time, anyone present become too upset to continue or the hearing is becoming heated, the Chair will arrange for an adjournment to allow people to compose themselves before continuing. If either party requests an adjournment, the Chair will consider the request sympathetically.

3. Options Available (Stage Two and Three Hearings)

The options available to the Chair are:

- 3.1 To take no action if they consider that there is no action that needs to be taken. If this is the case, all papers relating to the hearing will be destroyed. If the employee requests a letter to confirm that there were no grounds to allegations against them, this will be provided and kept on the employee’s file, if they request that this is so.

3.2 To recommend that the employee is counseled and/or supported by their line manager in connection with the complaint(s) or allegation(s). This option is appropriate if the misdemeanor is of a minor nature and the employee has a clean employment record.

3.3 To implement one or more of the following actions to improve performance:

- Staff development activity
- Temporary or permanent reduction in workload (the employee's salary will be adjusted in line with changes to their contract if their hours change)
- Temporary or permanent alteration of duties and/or workload
- Mentoring by an internal (or exceptionally, an external) person
- Job shadowing within their area or elsewhere in The College
- Coaching by an internal or external person

3.4 To institute a process to redeploy, demote or transfer the employee on a temporary or permanent basis (this will be dependent on there being a suitable vacancy for the employee to move to).

The College will make every effort to identify a suitable vacancy, where it is appropriate to do so.

4. Options Available (Stage Four Hearings)

4.1 *To implement one or more of the following actions to improve performance:*

- Staff development activity
- Temporary or permanent reduction in workload (the employee's salary will be adjusted in line with changes to their contract if their hours change)
- Temporary or permanent alteration of duties and/or workload
- Mentoring by an internal (or exceptionally, an external) person
- Job shadowing within their area or elsewhere in The College
- Coaching by an internal or external person

4.2 To institute a process to redeploy, demote or transfer the employee on a temporary or permanent basis (this will be dependant on there being a suitable vacancy for the employee to move to).

4.3 To dismiss the employee if there is sufficient evidence of previous actions to improve performance not being effective. The employee will be required to work their period of notice, or if the dismissal is effective immediately, they will be paid in lieu for their

contractual notice. Notice will be paid at the normal pay rate for the employee. Any other contractual entitlements such as outstanding holiday pay will be made to the employee. The dismissal will be confirmed in writing to the employee, setting out the full reasons in accordance with the provisions of the College's Capability Policy and Procedure.

5. After the Capability Hearing

5.1 The decision will be confirmed in writing to the employee within **five working days** of the hearing, which will include the following:

- (i) The nature of the capability issue and (except in dismissal cases) the standard of conduct required. This will normally include an action plan for improvement, as set out in Appendix One of this Policy and Procedure.
- (ii) Confirm the action taken and the reasons for this.
- (iii) Except in dismissal cases, specify the consequences if there is no further improvement in performance.
- (iv) Advise the employee of their right to appeal against the action taken and the timescale in which to do this.

5.2 A copy of this letter will be provided to the employee's representative, if they have one.

5.3 In cases where the employee is dismissed, the letter will also include the following:

- The reasons for dismissal
- The date upon which the employment will end
- Details of any outstanding monies owed or owing

6. Summary

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6.1 For an employee, attending the hearing is an opportunity for them to hear the case against them, put their case forward and to be treated under a fair process. Attending a capability hearing is a distressing experience for employees and it is also a difficult time for the management representative, particularly if they know the employee well. The hearing must be conducted with sensitivity, absolute confidentiality and in a fair and consistent manner.

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6.2 The HR representative is available to provide support and advice to the Chair (and other parties) if needed.

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6.3 All employees have access to counselling and support via Occupational Health and DAS.

6.4 Where statements from other employees are part of the evidence anonymised statements will be only be used when not to do so will be prejudicial to working relationships between colleagues.

APPENDIX THREE: PROCEDURE FOR CONDUCTING AN APPEAL HEARING (AGAINST ACTION TAKEN UNDER STAGE TWO, THREE OR FOUR)

In the event of a College restructuring, the job titles detailed in this appendix will be revised.

11. The Chair will introduce all those present. If the Appellant (the employee appealing) is not accompanied by a union representative or another employee, then the Chair should check with them that they understand they have the right to be accompanied, but have chosen not to do so. If the Appellant wishes to be represented, the Chair should normally adjourn the hearing to allow a representative to be present. In exceptional circumstances the Chair may wish to proceed in the absence of a representative, and they should take appropriate HR advice before proceeding. If they take this action, they must explain this to the Appellant, together with their reasons for doing so.
12. The Chair will outline the roles of the people present at the Appeal Hearing. They will explain that they will be making a decision on the appeal presented to them. The Executive Director/Deputy Director of Human Resources is present to provide legal and procedural advice to the Appeals Panel. The Management Representative is there to present his case as to why they took the decision to take action against the employee. The Appellant is present with their representative.
13. The Chair will explain that the Appeals Hearing has been called in accordance with The College's Capability Policy and Procedure and the Instruments and Articles pertaining to Appeal Hearings.
14. The Chair will check that all parties have received the appropriate documentation (if they have not, an adjournment may be called to ensure that all parties have the correct paperwork). They will check that the Management Representative and the Appellant are aware that they may not introduce any new written documentation at this stage that has not previously been agreed on, nor call any witnesses not previously notified. This does not prevent the employee from appealing on the grounds of new evidence coming to light and from presenting documentation in relation to this new evidence. Any such documentation must be presented before the hearing as part of the Appellant's case.
15. If, at any time, any party requests an adjournment, the Chair will consider this.
16. If the appellant wishes to submit additional paperwork at this stage, the Chair must consider whether or not it is appropriate to consider it as the management representative will not have had an opportunity to review it prior to the Hearing. The Chair should normally accept such paperwork unless it is not relevant to the Hearing.
17. The procedure to be adopted at the Appeal Hearing will be as follows:
 - 17.1 The management representative will present his/her case, detailing why they took the decision to take the action they did with the appellant.
 - 17.2 The management representative will call any witnesses previously notified.
 - 17.3 The appellant and/or their representatives will have the opportunity to question the management representative and their witnesses on their statements.
 - 17.4 The Chair and the Executive Director/Deputy Director of Human Resources may question the management representative and their witnesses if they require clarification on any issue.
 - 17.5 The appellant and/or their representatives will present their case detailing why they are appealing against the action that was taken against them.

- 17.6 The appellant and/or their representatives may call any witnesses previously notified to support their case.
- 17.7 The management representative will have the opportunity to question the appellant, their witnesses and representatives, on the statements.
- 17.8 The Chair and the Executive Director/Deputy Director of Human Resources may ask the appellant, their representatives and their witnesses any questions if they need to clarify their statements.
- 17.9 The management representative will be asked to summarise his/her case.
- 17.10 The appellant and/or their representatives will be asked to summarise their case.
- 17.11 Both parties and all witnesses will be asked to withdraw, and the Chair will consider their action. The Chair may be accompanied by the Executive Director/Deputy Director of Human Resources in their deliberations.
- 17.12 If the Chair wishes to clarify any issues, then all parties will be asked to reconvene.
- 17.13 The Chair will normally announce their decision orally on the same day, in the presence of all parties.

18. If the Chair cannot make a decision on the day, they will withdraw to consider their decision. The decision will be confirmed in writing to all parties within **five working days**.

19. There will be no internal appeal beyond the decision of the Chair of the Appeals Panel.

20. The decision of the appeal hearing will be to:

- uphold the capability action taken
- reject the capability action taken
- make a recommendation to the manager and Appellant for an alternative form of action

11. The table below details who may take action in capability cases and hear appeals against such action.

Lecturing Staff		
Level of Action Taken	Hearing Chaired by	Appeal Heard By
Stage Two	Deputy Director, Head or equivalent	SMT Member
Stage Three	Deputy Director, Head or equivalent	SMT Member
Stage Four*	SMT Member	Executive Member
Business Support Staff		
Level of Action Taken	Hearing Chaired by	Appeal Heard By
Stage Two	Line Manager	SMT Member
Stage Three	Line Manager	SMT Member
Stage Four *	SMT Member	Executive Member

* If the employee is dismissed, the appeal will be heard by an Appeals Panel of the Board of the Corporation.

APPENDIX FOUR: PROCEDURE FOR CONDUCTING AN APPEAL HEARING AGAINST DISMISSAL

1. The Chair of the Appeals Panel will introduce all those present. If the appellant (the employee appealing) is not accompanied by a union representative or another employee, then the Chair should check with them that they understand they have the right to be accompanied, but have chosen not to do so. If the Appellant wishes to be represented, the Chair should normally adjourn the hearing to allow a representative to be present. In exceptional circumstances the Chair may proceed in the absence of a representative and they should take appropriate HR advice before proceeding. If they take this action, they must explain this to the appellant, together with their reasons for doing so.
2. The Chair will outline the roles of the people present at the Appeal Hearing. They will explain that they and the other two Board members form the Appeals Panel and will be making a decision on the appeal presented to them. The Executive Director/Deputy Director of Human Resources is present to provide legal and procedural advice to the Appeals Panel. The Clerk to the Corporation is present to take notes of the meeting and advise on procedural issues where appropriate. These notes will be copied to all parties after the hearing. The management representative is there to present their case as to why they took the decision to dismiss the employee. The appellant is present (with their union representative/fellow employee if appropriate).
3. The Chair will explain that the Appeals Hearing has been called in accordance with The College's Capability Policy and Procedure and the Instruments and Articles pertaining to Appeal Hearings.
4. The Chair will check that all parties have received the appropriate documentation (if they have not, an adjournment may need to be called to ensure that all parties have the correct paperwork). They will check that the management representative and the appellant are aware that they may not introduce any new written documentation at this stage, nor call any witnesses not previously notified. This does not prevent the employee from appealing on the grounds of new evidence coming to light and from presenting documentation in relation to this new evidence. Any such documentation must be presented before the hearing as part of the Appellant's case.
5. The procedure to be adopted at the Appeal Hearing will be as follows:
 - 5.1 The management representative will present his case, detailing why he/she took the decision to dismiss the appellant.
 - 5.2 The management representative will call any witnesses previously notified.
 - 5.3 The appellant and/or their representative will have the opportunity to question the management representative and their witnesses on their statements.
 - 5.4 The Appeals Panel members and the Executive Director/Deputy Director of Human Resources may question the management representative and their witnesses if they require clarification on any issue.
 - 5.4 Why they are appealing against the decision to dismiss them.

- 5.5 The appellant and/or their representative will call any witnesses previously notified to support their case. Late requests by either party for witnesses not previously notified will be considered where such witnesses can add to the evidence.
- 5.6 The management representative will have the opportunity to question the appellant, their witnesses and representative, on their statements.
- 5.7 The Appeals Panel members and the Executive Director/Deputy Director of Human Resources may ask the appellant, their representative and their witnesses any questions if they need to clarify their statements.
- 5.8 The management representative will be asked to summarise their case.
- 5.9 The appellant and their representative will be asked to summarise their case.
- 5.10 Both parties and all witnesses will be asked to withdraw, and the Appeals Panel will consider their action. The Appeals Panel may be accompanied by the Executive Director/Deputy Director of Human Resources and the Clerk to the Corporation in their deliberations.
- 5.11 If the Appeals Panel wish to clarify any issues, all parties will be asked to reconvene.
- 5.12 If possible, the Appeals Panel will announce their decision orally on the same day, in the presence of all parties.
6. If the Appeals Panel cannot make a decision on the day, they will withdraw to consider their decision. The decision will be confirmed in writing to all parties within **ten working days**.
7. There will be no internal appeal beyond the decision of the Appeals Panel, and the appellant will be informed of this.
- 7 If, at any time there is a request for an adjournment by any party, this will be considered by the Chair of the Appeals Panel.