



## **PROCEDURE for dealing with matters of PERFORMANCE**

### **PURPOSE AND SCOPE**

- 1.1 This procedure sets out a framework for dealing with the management of poor performance. The ill health, performance and conduct procedures are intended to help and encourage all employees to achieve and maintain satisfactory standards of work and performance satisfactory to the University. They are designed to inform staff of the likely consequences of their inability or failure to fulfil their work obligations. The aim is to provide a framework within which managers can deal with staff in a fair and consistent manner.
- 1.2 Notwithstanding the existence of these procedures managers, including senior managers, are encouraged where practicable, to raise informally with an employee any matter which gives cause for concern before recourse to these formal procedures and without a formal record being made.
- 1.3 These procedures apply to all staff (other than those within their probationary periods to the extent that they are covered by separate arrangements) with the exception of those defined as 'senior postholders' for the purposes of the Articles of Government.
- 1.4 These procedures are subject to and to be interpreted in the context of the Articles of Government of the University. They take account of existing legislation and relevant Codes of Practice and need to be read in conjunction with other policies and procedures of the University.
- 1.5 The Vice-Chancellor has the authority to suspend or dismiss any employee other than a senior postholder and can delegate these powers to other members of the Directorate or the Director of Personnel.
- 1.6 These procedures will be reviewed every two years to ensure relevance but may be revised more frequently if necessary to take account of changes in the law.

## **Addressing ill health, performance and conduct of staff – policy statement.**

In line with UWE's core values and principles the University will strive to be a friendly, supportive, collaborative and trusting environment where staff in all roles are treated as individuals and diversity is valued. The University aims to assist all staff to work effectively, to maximise their contribution, enjoy job satisfaction and achieve their full potential. All staff have a responsibility to behave as professionals and a right to be treated with respect.

It is recognised that from time to time there will be issues relating to staff ill health, performance or conduct that need to be addressed. It is the policy of the University that all such matters will be dealt with in line with its core values, in accordance with the principles of natural justice and in a fair, impartial, consistent and timely manner.

Formal procedures and advice have been developed to support this policy and authority to take action under these procedures is as delegated by the Vice Chancellor. They need to be read and understood in the light of other policies and procedures of the University notably the Equal Opportunities policy, Dignity at Work policy, Probation procedures, Appraisal procedures, Grievance procedures and terms and conditions of service relating to sickness absence.

Note: There are three separate procedures – dealing with matters of ill health, performance and conduct. They have been developed so that there is a commonality in guiding principles, levels of intervention, response and sanctions. The definitions, guiding principles and supporting appendices are common to all three.

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**These definitions apply to all three procedures – ill health, performance and conduct – but need to be interpreted in the light of the particular procedure being used.**

## **2. DEFINITION OF TERMS USED**

The following terms are used in the document and it is important that all managers, staff and representatives have a clear understanding of their meaning.

**‘Accompanied’** refers to the statutory right an employee has to be accompanied by either a fellow worker or official/representative of a Trade Union during a meeting or appeal hearing held under these procedures.

**‘Capability/ ill health’** – where an employee is not capable of meeting the requirements of the role as a result of ill health (usually manifesting itself in long term absences or frequent short term absences from work or attendance at work despite an impairing and underlying medical condition).

**‘Colleague’** is a person chosen by the employee to accompany/represent him/her to a meeting or hearing and who is either a fellow worker employed by the University or an employee or official/representative of a Trade Union. The ‘colleague’ has an important role to play in supporting an employee and may present the employee’s case, confer with the employee, be nominated to ask questions and otherwise participate on the employees' behalf. However they cannot be nominated to answer questions in substitution for the employee.

**‘Competence’** – refers to matters associated with the employee’s suitability, capacity, and efficiency to carry out his/her work to a standard acceptable to the University. This will include the employee’s sustained ability in terms of meeting specific statutory or professional requirements necessary to undertake their work.

**‘Formal meeting’** a meeting held under the terms of these procedures.

**‘Line Manager’** is the person to whom a member of staff reports and is directly responsible.

NB. A line manager taking formal action under these procedures should be at a minimum level of grade F, or Head of Department for academic staff. Informal action can be taken by managers below this level as considered appropriate.

**‘Misconduct’** – matters connected with an employee’s behaviour, inappropriate actions, deliberate wrongful acts or omissions, or other such substantial reason.

**‘Panel’** comprises a minimum of two people who will consider the case under these procedures and make a decision regarding the outcome.

**‘Poor Performance’** – occurs where an employee for reasons of competence is unable to undertake all of a role or to meet and/or maintain acceptable standards.

**'Representative'** refers to the person accompanying the employee and may more readily be used to describe an official/representative of a Trade Union. It does not however extend the role of colleague described above.

**'Recognised Trade Union'** is a trade union formally recognised by the University for the purposes of collective bargaining (e.g. NATFHE, UNISON & TGWU).

**'Senior Manager'** is Head/Deputy Head of Service; Dean/Associate Dean of Faculty; or equivalent.

**'Sanction'** refers to a penalty decided by a formal panel set up under these procedures. This may be a written warning, final written warning, dismissal.

### **Role of Human Resources**

Human Resources has a number of roles and responsibilities to undertake in support of these procedures. It is responsible for:

- ensuring the procedures are applied and operated in a consistent manner by advising managers on the interpretation and use of the procedures
- ensuring that managers are appropriately briefed and trained
- advising managers during the informal stages of a case
- issuing communications to employees required to attend formal meetings
- liaising with union representatives on interpretation of the procedures
- acting as a panel member or presenting a case during its formal stages
- setting up and communicating details of appeals (Stages 1&2)
- ensuring a proper record is maintained of the formal stages of a case

### 3. GENERAL PRINCIPLES

These are applicable to all three procedures but need to be read and interpreted in the context of the particular procedure in use.

- 3.1 The University will encourage a sensitive and constructive approach to addressing matters dealt with under these procedures and ensure that matters are handled as efficiently as possible, within reasonable time periods and that clear outcomes are achieved and communicated at all stages. Concerns about ill health, performance or conduct must be brought to an employee's attention without undue delay by the appropriate line manager. The University will normally offer managers help, support and reasonable appropriate training and development before activating these formal procedures – see also Appendix B for guidance on conducting informal meetings.
- 3.2 It is likely that a line manager will normally seek the opinion of a more senior manager before judging how best to deal with a particular issue. This is normal management communication and in no way compromises the more senior manager or prevents him/her from becoming involved in the issues at a later stage. Line management will seek the advice of Human Resources in all cases likely to involve formal action.
- 3.3 No action will be taken against an employee until an investigation has been carried out. Other than in exceptional or special circumstances, for example; fraud, or where there would be unacceptable personal risk, the employee concerned will be informed at an appropriate time that an investigation is being conducted. The investigation should be conducted within as short a timescale as is practicable, normally not exceeding 20 working days. Guidelines for conducting the investigation are set out in Appendix A.
- 3.4 Where a formal meeting is held under these procedures it will involve a panel of at least two managers, one of whom will be a member of Human Resources.
- 3.5 The procedures would normally be initiated at Stage 1 but may be initiated at Stage 2 or Stage 3 if the employee's alleged conduct, performance or ill health warrants such action. The procedure would be entered at stage 2 where an individual is failing to perform effectively within the reasonable expectations of the role and the consequences of such under performance is so serious that implementation of a lower level sanction would be inappropriate. Examples of this could include actions which result in significant financial loss; have a significant impact on the reputation of the University; or which have a significant adverse managerial impact on the staff group. Where such action is appropriate the University will discuss this with the Trade Union representative or colleague as appropriate.
- 3.5.1 In some circumstances it may be appropriate to move to the next stage well within the currency of a warning.
- 3.5.2 No employee will be dismissed on the first occasion except in the case of gross incompetence or misconduct, where the incompetence/misconduct is deemed so serious that it could justify dismissal without notice or payment in lieu of notice, or has otherwise caused a substantial breakdown in trust and confidence.
- 3.6 An employee will have the right of appeal against any formal sanction imposed. The person(s) hearing the appeal will not have acted as a panel member in respect of any earlier decision in the case and will follow the procedures set out in Appendix C.

- 3.7 Where evidence of a combination of misconduct/ poor performance/ ill health is raised at the same time, this will normally be subject to one investigation. Where appropriate, one formal meeting will be arranged with all issues being addressed in that one forum, but with any sanctions being appropriate to the issues.
- 3.8 Ill health, sickness absence, poor performance and misconduct are all covered in separate procedures. It is possible however that a situation being dealt with under one element evolves into one that should be dealt with under another, for example a case of poor performance becomes one of capability due to ill health. In such situations Human Resources will advise on the most sensitive approach and it may be appropriate in such a case to implement the provisions of the ill health rather than performance procedure.
- 3.9 Where an employee presents a grievance relating to the case then the University's response will depend on the stage in the procedure that has been reached;
- a) Where a grievance is raised during a disciplinary process then, if the matters are unrelated, consideration should be given to temporarily suspending the disciplinary process in order to deal with the grievance until completion of stage two of the grievance.
- b) Where a disciplinary matter is raised during a grievance process then, if the matters are unrelated, the disciplinary process would normally be suspended until the completion of stage two of the grievance. Where the disciplinary matter is deemed serious it will be appropriate to deal with both issues concurrently. Consideration should also be given to appointing different managers to deal with each process.
- c) Where the grievance and disciplinary cases are related, then the cases would normally be dealt with concurrently. Consideration should also be given to appointing different managers to deal with each process.
- d) If the grievance fails and is judged to be vexacious this could become a separate allegation which could be dealt with under the conduct procedure
- e) In all cases both parties will seek to ensure that the grievance process is concluded within appropriate timescales.
- 3.10 No formal action under these procedures will be taken against any employee who is an accredited Recognised Trade Union representative until the circumstances have been discussed with a full-time official of the Recognised Trade Union concerned.
- 3.11 The line manager, senior manager, the member of Human Resources sitting as a Panel member and other Panel members will as far as is possible have received briefing and/or training in the operation of these procedures.
- 3.12 All matters relating to the application of these procedures will normally be confidential to the parties concerned and their managers until the final decision (including any appeal) is taken and normally thereafter no information other than the decision may, unless the parties agree otherwise, be made known to any party or persons other than the employee, the employees representative, the Vice Chancellor, representatives of Human

Resources and any person with line management or similar responsibility for the employee unless there are legal, professional or health and safety obligations.

- 3.13 Warnings given to an employee shall be placed on the University's personal file of the employee kept in the Human Resources department. The warning shall be disregarded after a specified period of time has elapsed without further incident taking place; these are as detailed - where appropriate - under each of the following specific sections in these Procedures. In exceptional circumstances, the times specified may be subject to variation – any such variation being notified to the individual at the time the warning is issued.
- 3.14 It is important that the personal file is a factually correct record of employment. Although background papers will be removed from the file a copy of the 'spent' warning will be kept in a sealed envelope within the file in order that the University may, for example, respond to claims against it or comply with requests for information from professional bodies or the police. This envelope will be accessible only to the Director of Human Resources or his/her deputy.
- 3.15 Where they are not directly involved, the Dean/Associate Dean/Head of Service/Deputy Head of Service should be kept informed of informal and formal action being taken.

## **4 MANAGING PERFORMANCE**

- 4.1 Handling issues that fall within these procedures is both complex and time consuming. Advice is always available from Human Resources and no formal action can be taken without the involvement of a member of Human Resources. Before beginning a particular process you may find it helpful to gain an overview of the various steps and issues to take account of via the flow chart at Appendix E.
- 4.2 The Appraisal and Development Scheme is separate from formal procedures such as conduct and performance management. In practical terms this means that appraisal documentation cannot be used as contributory evidence in any formal proceedings. However the appraisal and development process is an essential element in the ongoing process of performance management. Although appraisal meetings occur infrequently they are nevertheless an important opportunity for appraisee and appraiser to review the previous period, to consider activities and achievements and discuss any issues that have arisen. Clearly the main focus of this discussion will be the positive aspects of performance but it is also the responsibility of the appraiser to raise concerns, where they exist, and to agree with the appraisee the action needed to address these concerns. Ideally the appraisal meeting should contain no surprises for the appraisee but should bring together any concerns already raised in the ongoing discussions between appraiser and appraisee.
- 4.3 The outcome of appraisal is an agreed action plan which identifies the activities that are to take place over the forthcoming period. If during the appraisal meeting there have been concerns raised about the performance of the appraisee then follow up action will be appropriate. This should be pursued under the normal performance management arrangements and at the next appraisal meeting (or review meeting) appraiser and appraisee will reflect on the progress that has been made.
- 4.4 If at the time of the appraisal/review meeting there is evidence that progress is being made further action may not be appropriate. In such cases the next appraisal meeting is likely to be the forum for further discussions about performance. In cases of more serious under performance or where adequate improvement has not been achieved through the normal appraisal processes, it may be appropriate to take action under the performance procedure. In cases where such action is being taken appraisal meetings are unlikely to take place.

### **4.5 INFORMAL ACTION**

- 4.5.1 The managerial role encompasses responsibility for managing resources, facilitating effective working and development and staff well being. All managers are expected to manage the performance of their staff - to make the expectations of the role clear, to give support, feedback and facilitate development. Performance management is a day to day activity underpinned by the appraisal process which provides for a more structured review. For the vast majority of staff this is all that is necessary. Where there are shortcomings but they are not of a serious nature much can be achieved via support and guidance.
- 4.5.2 The formal procedure will not normally be implemented without there first having been a period of support and guidance, the aim being to encourage an unsatisfactory employee to understand what is expected, to improve and thus meet the University's standards. It is good practice that any identified shortcomings are drawn to the employee's attention as soon as possible. This would suggest that the only issues to be raised would be

recent ones and generally this will be the case. In the light of such recent issues however there may be some circumstances in which previous issues may have to be reviewed.

- 4.5.3 Performance would be a usual topic in the appraisal process however when concern about performance becomes significant enough to warrant informal or formal action the matter cannot be dealt with as part of appraisal. It must be taken out of that process and dealt with under this procedure. Appraisal records cannot be transferred for use in this procedure although base documents i.e. items which may have given rise to concern and which exist outside the appraisal process can be utilised.
- 4.5.4 Any failure to meet the standards expected of the postholder, after a reasonable period of adjustment to a new post or changing duties, cannot be allowed to continue. It is important therefore to identify performance and competence problems at the earliest opportunity and to provide the necessary support and agreed timeframes in which the employee is expected to reach the standard required by the University. There are a number of ways in which poor performance might manifest itself. These could include;
- (a) slow completion rate of workload/tasks
  - (b) frequent or serious misjudgments or mistakes
  - (c) lack of adaptability
  - (d) unwillingness/inability to work with colleagues
  - (e) unwillingness/inability to deal with clients/students
  - (f) unwillingness/inability to reach agreed goals and expectations of the role in relation to academic/support/manual staff role.

Managers should be mindful that such symptoms may be a result of ill health rather than a lack of competence and bear this in mind in discussions with the employee. Where this happens it may be more appropriate to deal with the case under the terms of the ill health procedure.

- 4.5.5 It is neither possible or appropriate to define expectations of performance in this procedure. There are generic role descriptions for some groups of staff which together with other performance management frameworks – bar progression, probation and appraisal – create an overall framework within which performance management should occur. For each individual post the detailed scope and expectations of the role will be defined at local level and should be consistent with these generic frameworks where they exist.
- 4.5.6 The manager will meet with the member of staff and explain the standard of job performance that is required, outline in what respect the employee's performance or competence fails to meet an acceptable standard, and that if he/she does not achieve a satisfactory level of performance within the agreed timescale, then he/she will be subject to these formal performance procedures. The manager will explore the reason(s) for the alleged poor performance with the employee and take full account of all the circumstances surrounding the apparent lack of ability or application..
- 4.5.7 Where an individual requests that s/he is accompanied at an informal meeting then this request will be agreed. The manager may request that a member of Human Resources is also present at the meeting. A summary of the meeting must normally be confirmed in writing.
- 4.5.8 Performance management would normally progress from support and guidance through to stage 1 of this procedure. In some circumstances, however, it may be appropriate to

initiate this procedure at a higher stage if the employee's alleged poor performance warrants such action. (See para 3.5)

#### 4.6 FORMAL STAGE 1

- 4.6.1 Where the employee has failed to reach an acceptable level of performance, (despite support and guidance and time to improve or the reason for concern is sufficiently serious), the formal stage will be invoked. The line manager should keep the senior manager informed of any issues that might warrant action under the formal procedures and consult with both the senior manager and Human Resources before taking any action. As a result of that discussion a decision will be made about whether to invoke the first formal stage of this procedure.
- 4.6.2 If the formal procedure is to be invoked the employee will be given five working days' notice in writing of a meeting. The employee will be given the details of the concerns about his/her alleged poor performance in writing in advance which will include a) the evidence to be discussed, b) that a formal stage is being invoked and c) advised to the effect that s/he can be accompanied at the meeting by a colleague.
- 4.6.3 The meeting will be led by the line manager, accompanied by the HR Adviser/Manager, and will discuss the alleged shortcomings, concerns or complaints. Depending on the circumstances of the case it may be appropriate to involve another line manager in the meeting. At the meeting, the employee will be given the opportunity to respond to the evidence presented and to state his/her position.
- 4.6.4 The line manager, in consultation with Human Resources must then decide whether:
- (a) to take **NO FURTHER ACTION** , in which case s/he will confirm this outcome in writing to the employee;
  - (b) in the light of the issues discussed to require a **PERIOD OF MONITORING**;
  - (c) to issue a **FIRST FORMAL WARNING** and establish an action plan.
- 4.6.5 The warning will be confirmed in writing and would normally remain on file for 12 months. The employee will have a right of appeal, see Appendix Ci. An action plan will be established with the employee. This will set out levels of acceptable performance and targets, together with appropriate support, guidance and training to be given and state the timescale within which improvement is expected. This timescale will depend on the nature of the role and the type of concerns expressed about performance. A review date will be set when progress can be assessed. The employee will be warned of the possible consequences of a failure to improve or in the event that further shortcomings are identified.
- 4.6.6 At the end of the review period, which may well be shorter than the duration of the warning, the manager will hold a meeting with the employee, who will be entitled to have a colleague present, to discuss progress. If the employee's performance has improved sufficiently that s/he meets the required standard, this will be confirmed in writing, and possibly a further review meeting will be arranged to check that this can be sustained. If however, the employee's performance remains below the required standard, the employee will be informed that further action will be taken under Formal Stage 2 of this procedure.

4.6.7 If Stage 2 is being invoked as a result of a failure to meet the required standards it must normally be initiated within the duration of the previous warning.

#### 4.7 FORMAL STAGE 2

4.7.1 If, in cases of serious poor performance or, having exhausted Formal Stage 1 of this procedure, the employee's performance remains unsatisfactory and below the standard that is required, or were to fall below this standard at any time during the next twelve months, the matter will be referred to the senior manager.

4.7.2 The line manager will prepare a report on the employee's poor performance, including the action taken under Formal Stage 1, where appropriate, and forward it to the senior manager. The employee will be given five working days' notice in writing of a meeting to discuss this. The employee will be given the details of the concerns about his/her alleged poor performance in writing in advance, informed that Formal Stage 2 is being invoked and be advised that s/he can be accompanied by a colleague.

4.7.3 The meeting will be led by the senior manager, accompanied by a member of Human Resources, who will discuss with the employee the alleged shortcomings, concerns or complaints and any further action that may be necessary to rectify the problem. S/he will state the precise nature of the targets and/or performance standards to be achieved and the time limit, and consider whether further training would be appropriate and/or practicable. The employee will be made aware that unless a standard of work that is satisfactory to the University is achieved, then further action could be taken which could lead to dismissal.

4.7.4 At the meeting, the employee and/or the employee's colleague will be given the opportunity to respond to the evidence presented.

4.7.5 The senior manager will, in consultation with the Human Resources representative, then decide:

- (a) either to take **NO FURTHER ACTION**, in which case s/he will confirm this outcome in writing to the employee;
- (b) in the light of the issues discussed to require a further **PERIOD OF MONITORING**
- (c) or to issue a **FINAL FORMAL WARNING**.

4.7.6 The warning will be confirmed in writing and remain on file for 24 months. The employee will have a right of appeal, see Appendix Ci. An action plan will be established. This will set out the targets and/or levels of acceptable performance and the time limit for achieving them, together with an outline of the appropriate support, guidance and training that will be provided. A review date will be set when progress can be assessed. The employee will be warned that failure to reach the required level of performance will result in further action being taken under this procedure.

4.7.7 At the end of the review period which may well be shorter than the duration of the warning the senior manager and Human Resources representative will hold a meeting with the employee, who can be accompanied by a colleague, to discuss progress. If the employee's performance has improved sufficiently that he/she now meets the required standard, this will be confirmed in writing, and possibly a further review meeting will be arranged to check that this can be sustained. If however, the employee's performance remains below the required standard, the employee will be informed that further action will

be taken under Formal Stage 3 of this procedure which could result in the employee's dismissal.

4.7.8 If Stage 3 is being invoked as a result of a failure to meet the required standards it must normally be initiated within the duration of the previous warning.

#### **4.8 FORMAL STAGE 3**

4.8.1 If, in cases of gross professional negligence or incompetence or, following action under Formal Stage 2 of this procedure, the employee's performance/competence remains below the standard required, or falls below the standard required during the following 24 months, the senior manager will prepare a statement of case to the Vice-Chancellor or nominee, as appropriate.

4.8.2 When a serious allegation or complaint is brought to his/her attention, the senior manager will report the case to Human Resources for a decision on whether the employee should be suspended (See Appendix D)

4.8.3 Where a decision is made to proceed with formal action, the employee will be given 5 working days notice in writing of the meeting. He/she shall be notified of the details of the complaint in writing, informed that Stage 3 of this procedure is being invoked, that there is a possibility of dismissal and be advised that he/she can be accompanied and represented by a colleague. The employee shall have access in advance to any documents which are to be produced at the meeting. Any written evidence to be submitted by the employee in response to the complaint must be received at least 24 hours in advance of the meeting so that all parties can consider it.

4.8.4 The Vice-Chancellor, or nominee, as appropriate, and the Director of Human Resources or nominee, will conduct the meeting following the format outlined at Appendix Bii.

4.8.5 The Vice-Chancellor or nominee will then decide:

- (a) to take **NO FURTHER ACTION**, in which case s/he will confirm this outcome in writing to the employee;
- (b) to **EXTEND THE PERIOD OF REVIEW** and require further monitoring NB this is the review period that was set up at the time that the formal stage 2 warning was issued. Where a further review period is agreed then this review period should be completed whilst the stage 2 warning is current, i.e within 24 months
- (c) to consider **ACTION** short of dismissal \* see below, which might include transfer, demotion, loss of seniority, loss of increment and issue a **FINAL FORMAL WARNING**;
- (c) to **DISMISS**. This will normally be with notice.

The employee will be informed in writing of the decision and the reasons for it and of his/her right to appeal, see Appendix Cii.

\*Alternative action to dismissal, which may include, if the University is in the position to make such arrangements, demotion or re-deployment (with no automatic protection of previous salary) within the University, or suspension without pay, loss of seniority may be considered by the chair of the meeting following agreement with the employee. The option chosen would be at the absolute discretion of the chair of the meeting.

**These appendices apply to all three procedures – ill health, performance and conduct – but need to be interpreted in the light of the particular procedure being used.**

## APPENDIX A

### GUIDANCE NOTES ON INVESTIGATION PROCEDURE

#### 1. The Purpose of the Investigation

- 1.1 An important element for the fair and expeditious handling of matters of concern, complaints and allegations is an adequate investigation. This does not necessarily mean exploring every avenue, but it does mean:
- (a) enquiring into the circumstances surrounding the suspected or alleged issue;
  - (b) informing the employee that an investigation is being conducted and giving the employee a chance to offer an explanation (only in exceptional circumstances would the employee not be informed);
  - (c) taking a balanced view of the information that emerges;
  - (d) reaching a decision whether or not there are sufficient grounds for proceeding and, if so, deciding whether the issue should be dealt with informally or under formal procedures.

**Note:** In cases concerning allegations of serious or gross misconduct, where suspension of the employee on full pay pending further investigation is considered appropriate, there may be no preliminary interview. In such cases, the suspension procedure will be followed (see Appendix E).

#### 2. Who should conduct the investigation?

- 2.1 The relevant line/senior manager or other appropriate nominee, the 'Investigating Officer', will normally investigate the allegations although there may be particular circumstances where it could be more appropriate for a member of Human Resources to fulfil this role. The 'Investigating Officer' should aim to begin the investigation normally within 2 working days and to complete it in as short a period as possible, normally not exceeding 20 working days. The 'Investigating Officer' may be supported by a member of Human Resources. The investigation will be confidential.

#### 3. The Procedure

- 3.1 The Investigating Officer will inform the employee at an appropriate time that an investigation is being carried out. He/she will be advised of the nature of the allegation(s), including any written complaints that have been made.
- 3.2 The employee should be advised that s/he may be interviewed as part of the investigation and that it may be necessary to have more than one meeting. The

- employee should be given the opportunity to be accompanied by a colleague at any meeting.
- 3.3 It is normally helpful for any witnesses or other persons believed to have significant information about the allegations, or pertinent knowledge about relevant procedures, etc to be interviewed as soon as possible before memory fades. Written statements, or countersigned notes, should be obtained from witnesses at the earliest opportunity and it should be made clear to them the use to which the statements could be put and the fact that witnesses may be required to attend a subsequent meeting and be cross examined on their evidence.
  - 3.4 On completion of the investigation, the Investigating Officer in consultation with a member of Human Resources, should analyse the facts and evidence and consider whether formal action under the procedure is appropriate. If stage 2 or stage 3 of the formal procedure is being initiated the Investigating Officer should prepare a report which should include relevant documents/procedures/witness statements etc. This should be passed to the senior manager (in the case of stage 2) or Vice Chancellor or nominee (in the case of stage 3) who will consult the Director of Human Resources or nominee (for stage 2) or the Vice Chancellor or nominee (for stage 3) about appropriate action.
  - 3.5 Human Resources will advise on consistency of practice across the University and the validity of the approach being proposed.
  - 3.6 It is important not to delay unreasonably the investigation process and it should be conducted within as short a period as practicable, normally not exceeding 20 working days. Once the relevant facts have been established it should be possible to inform the employee whether management intends to take the matter to a formal stage.
  - 3.7 The appropriate Dean/Associate Dean/Head of Service/Deputy Head will be kept informed of the case (where he/she is not the Investigating Officer).

## CONDUCT OF MEETINGS

### 1. INFORMAL MEETINGS

- 1.1 As informal meetings are not held under the formal procedure and their purpose will vary it is not appropriate to adhere to a specific format for the meetings. In fact bringing unnecessary formality to the meeting may well hinder progress. The following is however a guide to holding informal meetings which managers may wish to follow when they are considering such action.
- 1.2 The manager should contact the employee to arrange the date and time of the meeting. He/she should be advised of the purpose of the meeting. Given the possible anxiety associated with such a meeting, the manager should consider whether it would be useful to provide any written information prior to the meeting which will help the employee prepare. There should not be any unnecessary delay between the announcement of a meeting and when the meeting takes place. Where the individual requests that s/he be accompanied at an informal meeting then this request will be agreed. The manager may also request that a member of Human Resources is present.
- 1.3 At the start of the meeting the manager should confirm its purpose and agree a structure ensuring that the employee has an opportunity to raise any issues that are of concern to them. If it becomes clear that the employee wishes to be accompanied then this should be discussed and the meeting adjourned as necessary.
- 1.4 The manager will explain the standard required, outline in what respect the employee is failing to achieve this, explore the possible explanations for this and agree a plan of action, and any further support and/or training and development that is required. The manager should also indicate the timescale within which an improvement should be achieved.
- 1.5 It may be appropriate at the end of the meeting for the manager to advise that the formal procedure may be invoked if insufficient progress is made. In some circumstances it may be appropriate to issue an oral warning. Any such warning is outside the formal procedure, however reference may be made to it if formal action is necessitated within 12 months.
- 1.6 A summary of the meeting and its outcomes should be confirmed in writing. A copy should be given to the employee and a copy should be retained by the manager.
- 1.7 Arrangements should be made for a further meeting to consider the actions agreed and the progress made.
- 1.8 The senior manager should normally be kept informed of the action being taken.

## 2. OUTLINE FORMAT FOR FORMAL MEETINGS (STAGES 1,2,3)

In the majority of cases (except where otherwise stated in this document) the formal procedure will be preceded by informal meetings between the manager and employee. In most cases informal meetings will achieve the necessary improvement and invoking the formal process will not be necessary.

### FORMAL STAGE 1

- 1.1 The case will normally be heard by the line manager, accompanied by a member of Human Resources. A summary of the case will be explained to the employee by the line manager. This will include the nature of the complaint and the outcome of the investigation. The panel may question the employee or seek further clarification.
- 1.2 The employee/colleague will have an opportunity to put his/her case.
- 1.3 Where appropriate, witnesses will be called by the panel or the employee and can be questioned by the panel and the employee/colleague.
- 1.4 Both sides will have the opportunity to summarise their points if they so wish, the employee's statement being the last.
- 1.5 When the discussion has been concluded the panel will adjourn to make its decision. Where possible the decision will be communicated to the employee by the chair of the panel shortly after the hearing. Otherwise he/she will communicate the decision in writing as soon as practically possible afterwards. In all cases the outcome will be communicated in writing to the employee after the meeting normally within five working days.

### FORMAL STAGE 2/3

- 2.1 Formal stage 2 - the panel will comprise a minimum representation of the senior manager and the Director of Human Resources (or nominee).  
  
Formal stage 3 – the panel will comprise a minimum representation of the Vice Chancellor (or nominee) and the Director of Human Resources (or nominee).
- 2.2 The chair of the panel will outline the status of the meeting, his/her role and that of the other panel members. He/she will explain the role of the Presenting Officer (see 2.3 below). He/she will also explain the process, introduce all parties present and check that all parties have had the documents to which reference will be made by either side.
- 2.3 The Presenting Officer will present the case i.e. the nature of the complaint, the investigation and the findings. He/she will call any witness(es) one at a time, as appropriate. The panel, employee and his/her colleague will have the opportunity to ask questions of the witness(es).

- 2.4 The employee or his/her colleague will put his/her case and may call additional witnesses, provided that they have given notice that they intend to do this. Management will have the opportunity to question these witnesses.
- 2.5 If appropriate, the chair may ask that a witness be re-called and be asked further questions for clarification.
- 2.6 The Presenting Officer may make a final statement of summing up.
- 2.7 The member of staff or his/her colleague will sum up the case.
- 2.8 After the discussions have been concluded the panel will adjourn to consider the evidence and reach a decision. NB If the panel decide that an adjournment is necessary to enable time for further reflection upon the evidence, the employee will be advised of this and will be advised when the decision will be communicated to him/her.
- 2.9 Having reached a decision the chair will convey this to the employee as soon as possible after the meeting. This may be conveyed orally but in all cases the decision will be confirmed in writing with details of the appeals process, as appropriate. The written confirmation will normally be passed to the employee within five working days.

#### **GENERAL POINTS:**

- (i) Exceptionally, at the discretion of the chair and normally by mutual agreement of all parties, this outline format for conducting the meeting can be amended provided that the general principles are still followed.
- (ii) Witnesses  
Either party to any of the formal stages will have the right to call witnesses to appear before the meeting, subject to signed witness statements having been provided by them in advance. However it is envisaged that both parties will restrict to a minimum the number of witnesses to be called, limiting them to witnesses of fact rather than character. At the meeting, it shall normally be the practice that witness(es) will not be expected to read out their statement(s) and that the cross-examination will, wherever possible, be limited.
- (iii) If, for good cause including ill health or the non-availability of the chosen colleague, the employee is unable to attend the meeting, it will be adjourned to a suitable alternative date. If the employee is unable to attend the re-arranged meeting date, it will normally proceed in his/her absence, but with his/her representative being provided with the opportunity to present the employee's case on his/her behalf. In this circumstance any written submission by the employee, or by his/her representative will be considered.
- (iv) Requests for adjournment by either party will be at the discretion of the chair and not unreasonably withheld.
- (v) It is important that formal proceedings are concluded within a reasonable timescale. The meeting will thus normally take place within 20 working days of the investigation being concluded.
- (vi) Normally the HR Adviser will take notes of the meeting. These notes of the proceedings will not be circulated subsequently but kept for record purposes only and used in the event of any subsequent appeal at which time they will be circulated to all parties.

- (vii) It is the responsibility of the member of staff and/or colleague to keep their own notes of the meeting.
- (viii) Proceedings may by mutual agreement be tape-recorded and all phones and pagers must be switched off throughout the process.

## APPEAL HEARINGS

### 1 APPEAL HEARING - FORMAL STAGE 1 AND 2 - OUTLINE FORMAT OF THE PROCEEDINGS

- 1.1 An employee who is subject to formal disciplinary action other than dismissal has a right to appeal using the following procedure. To exercise this right the employee must notify the Director of Human Resources in writing within ten clear working days of the date of the letter confirming the warning. In this letter the employee must clearly state the grounds of his/her appeal.
- 1.2 The appeal will be heard by the following:
  - (a) In the case of an appeal against a **FIRST FORMAL WARNING** this should be heard by a panel comprising the minimum of a senior manager and the Director of Human Resources (or nominee).
  - (b) In the case of an appeal against a **FINAL FORMAL WARNING** this should be heard by a panel comprising a senior manager or a member of the Directorate (including members of the extended Directorate) and the Director of Human Resources (or nominee).
- 1.3 When notification of an appeal is received by the Director of Human Resources, the chair of the disciplinary panel will be advised and will be asked to provide a report which can be considered by the appeal hearing. This report should summarise the main elements of the case and the reasons for the decision reached by the panel. This report will be made available to the employee in advance of the appeal hearing.
- 1.4 The Director of HR (or nominee) will arrange the hearing giving the employee a minimum of ten working days' notice in writing of the place, date and time of the hearing, and advising him/her of his/her right to be accompanied by a colleague. The hearing should normally take place within 20 working days of the appeal being lodged.
- 1.5 Both the employee and the chair of the panel who made the original decision must submit all evidence or documents to which reference shall be made at the hearing, including where the ground(s) for appeal relates to new evidence the names of any witnesses it is proposed to call (or witness statements where a witness is not to be called). These papers should be submitted to the Director of Human Resources no later than three working days before the date set for the appeal hearing for distribution to all parties. Papers not submitted by this date will not normally be eligible for consideration.
- 1.6 The appeal hearing will operate on the basis of reviewing the earlier decision. Ordinarily it will not be conducted as a re-hearing of the evidence made when the initial decision was taken but rather be concerned with reviewing the application of the procedures, whether the sanction is proportionate to the misdemeanour and considering any new material evidence not available or produced at the original hearing which the member of staff wants to raise. Normally, only in the case of new evidence will witness statements, and the attendance of those witnesses in person, be admissible.

- 1.7 The appeal panel may require the attendance of the chair of the original panel.
- 1.8 The members of the appeal panel may ask questions of the employee and, where called the chair of the original panel. Where the appeal is based on new evidence, any witnesses may be required to answer questions.
- 1.9 Both parties will be given reasonable opportunity to ask questions of each other. Questions will be directed through the chair who will manage the process.
- 1.10 The appeal panel shall deliberate in private, only recalling the parties to clear points of uncertainty on evidence already given. If recall is necessary, both parties are to return.
- 1.11 The panel will reach a decision and this will be conveyed by the chair of the appeal panel. Alternatively, the chair of the appeal panel may defer and communicate the decision later, either in person or in writing. In either case the decision of the panel will be confirmed in writing normally within five working days.

The decision of the appeal panel shall be final, exceptionally it may order a rehearing.

**NOTES:**

- (i) Exceptionally, by mutual agreement of all parties, this outline format for conducting the appeal hearing can be amended provided that the general principles are still followed.
- (ii) Where witnesses attend the hearing, it shall normally be the practice that they will not be expected to read out their statement and further that the cross-examination of witnesses, where called, may be limited in time at the discretion of the chair.
- (iii) Proceedings may by mutual agreement be tape-recorded.
- (iv) All phones and pagers must be switched off throughout the process.
- (v) Requests for adjournments by either party will be at the discretion of the Chair and not unreasonably withheld.
- (vi) Normally the HR Adviser will also take notes although in some instances it may be appropriate for an additional HR representative to fulfil this role.
- (vii) Notes of the proceedings will not be circulated subsequently but kept for record purposes only and used in the event of any subsequent appeal at which time they will be circulated to all parties.
- (viii) It is the responsibility of the member of staff and/or colleague to keep their own notes of the appeal hearing.

## 2. APPEAL AGAINST DISMISSAL TO BOARD OF GOVERNORS

2.1 Appeals to the Board of Governors can only be made in the case of dismissal. Once a decision to dismiss has been made it will normally be actioned and the employee will cease to be paid. Following a successful appeal an employee would normally be reinstated and paid arrears of salary.

Note: Where the appeal is based on new material evidence emerging during the period between a decision being made by the panel and the holding of the appeal, the matter will be reverted to the panel, as appropriate, for further consideration, and only in that circumstance will witness statements, and the attendance of those witnesses in person, be admissible. In such circumstance, the Director of Human Resources (or nominee) will take responsibility for arranging a review hearing at which the new evidence can be presented and the attendance of those witnesses in person be admissible.

2.2 Any panel established by the Board of Governors shall consist of three Governors including at least one lay Governor<sup>1</sup>.

2.3. The appeal hearing will operate on the basis of reviewing the earlier decision, based on submissions made by the member of staff and management. Ordinarily it will not be conducted as a re-hearing of the evidence made when the initial decision was taken but rather be concerned with reviewing the application of the procedures and whether the sanction is proportionate to the misdemeanour.

2.4. The procedure of a hearing before the Governors shall be as follows:

2.4.1 Any appeal to the Board of Governors must be submitted in writing to the Director of Human Resources within ten working days of the date on which the written decision was received. The employee must clearly state the reasons for and grounds of his/her appeal.

2.4.2 The Clerk to the Board of Governors will notify the Vice-Chancellor (or his/her nominee), as appropriate, that an appeal has been lodged. He/she will arrange the hearing and will give the employee a minimum of ten working days' notice in writing of the place, date and time of the hearing, and advise him/her of his/her right to be accompanied and represented by a colleague. The hearing should normally take place within 20 working days of the appeal being lodged.

2.4.3 When notification of an appeal is received by the Director of Human Resources, the chair of the disciplinary panel will be advised and will be asked to provide a report which can be considered by the appeal hearing. This report should summarise the main elements of the case and the reasons for the decision reached by the panel. This report will be made available to the employee in advance of the appeal hearing.

2.4.4 Both the employee and chair of the disciplinary panel must submit all evidence or documents to which reference shall be made at the hearing at least three working days in advance to the Clerk to the Board for distribution to all parties.

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<sup>1</sup> The Clerk to the Board of Governors will, where possible, seek to arrange for more than one lay Governor

2.4.5 The Director of Human Resources (or nominee) will attend to advise the panel which may also have another professional adviser present who is also an employee of the University.

2.4.6 The appeal panel may require the attendance of the chair of the original panel.

2.4.7 The members of the appeal panel may ask questions of the employee and where called the chair of the original panel. Where the appeal is based on new evidence any witnesses may be required to answer questions.

2.4.8 Both parties will be given reasonable opportunity to ask questions of each other. Questions will be directed through the chair who will manage the process.

2.4.9 The appeal panel, with the officer appointed as Secretary to the panel and the Director of Human Resources (or nominee) to assist as required, shall deliberate in private, only recalling the chair and the member of staff (and his/her colleague) to clear points of uncertainty on evidence already given. If recall is necessary, both parties are to return.

2.4.10 The panel will recall the employee and will convey its decision, and the reasons for this. Alternatively, the panel may defer and communicate its decision later, either in person or in writing.

2.4.11 The panel's decision on the appeal shall be final. It shall be confirmed in writing to the employee normally within five working days.

**NOTES:**

- (i) If any party seeks to address the appeal panel, this must be in the presence of the other party.
- (ii) It must be made clear at the outset who will be the person presenting the employee's case to the appeal panel - either the employee or the colleague, but not both.
- (iii) If any employee who has been dismissed with or without notice is re-instated on appeal, the re-instatement shall take effect from the date of the original dismissal and no loss of earnings shall be incurred.
- (iv) Proceedings may by mutual agreement be tape-recorded.
- (v) All phones and pagers must be switched off throughout the process.
- (vi) Requests for adjournments by either party will be at the discretion of the Chair and not unreasonably withheld.
- (vii) The Secretary to the panel will take notes of the proceedings, but these will not be circulated subsequently but kept for record purposes only and may be used in response to any subsequent employment tribunal or legal action.
- (viii) It is the responsibility of the member of staff and/or colleague to keep their own notes of the appeal hearing.

**SUSPENSION**

- 1 Suspension, in itself, is not a sanction.
- 2 The Vice Chancellor (or nominee) may suspend from duty on full pay any employee for alleged gross misconduct or for other good and urgent cause. The power to suspend from duty, with pay, any member of staff, other than the holder of a senior post, shall be exercisable on behalf of the Vice Chancellor by the holder of a senior post who has management responsibility for the member of staff concerned, or the Director of Human Resources.
- 3 Except where delay would be prejudicial to the interest of staff and students or the safe and efficient conduct of the work of the University, the power to suspend shall not be exercisable without prior consultation with the Vice Chancellor or the Deputy Vice Chancellor with responsibility for HR matters, or if the Vice Chancellor/Deputy Vice Chancellor is not available, from an Assistant Vice Chancellor, or the Director of Human Resources.
- 4 Except where circumstances do not allow, the manager shall state orally to the member of staff at the time of suspension the reasons for the suspension. As soon as practicable after the suspension has taken place the employee will be informed in writing by the Vice-Chancellor (or nominee) of the reason for the suspension and that the suspension will be on full pay. The extent of permitted contact with colleagues, students and others will be explained in the letter but a member of staff will not normally be allowed on University premises whilst on suspension. Contact will normally be through a designated manager who is not part of the investigation.
- 5 The suspension will not be for an unreasonable length of time.

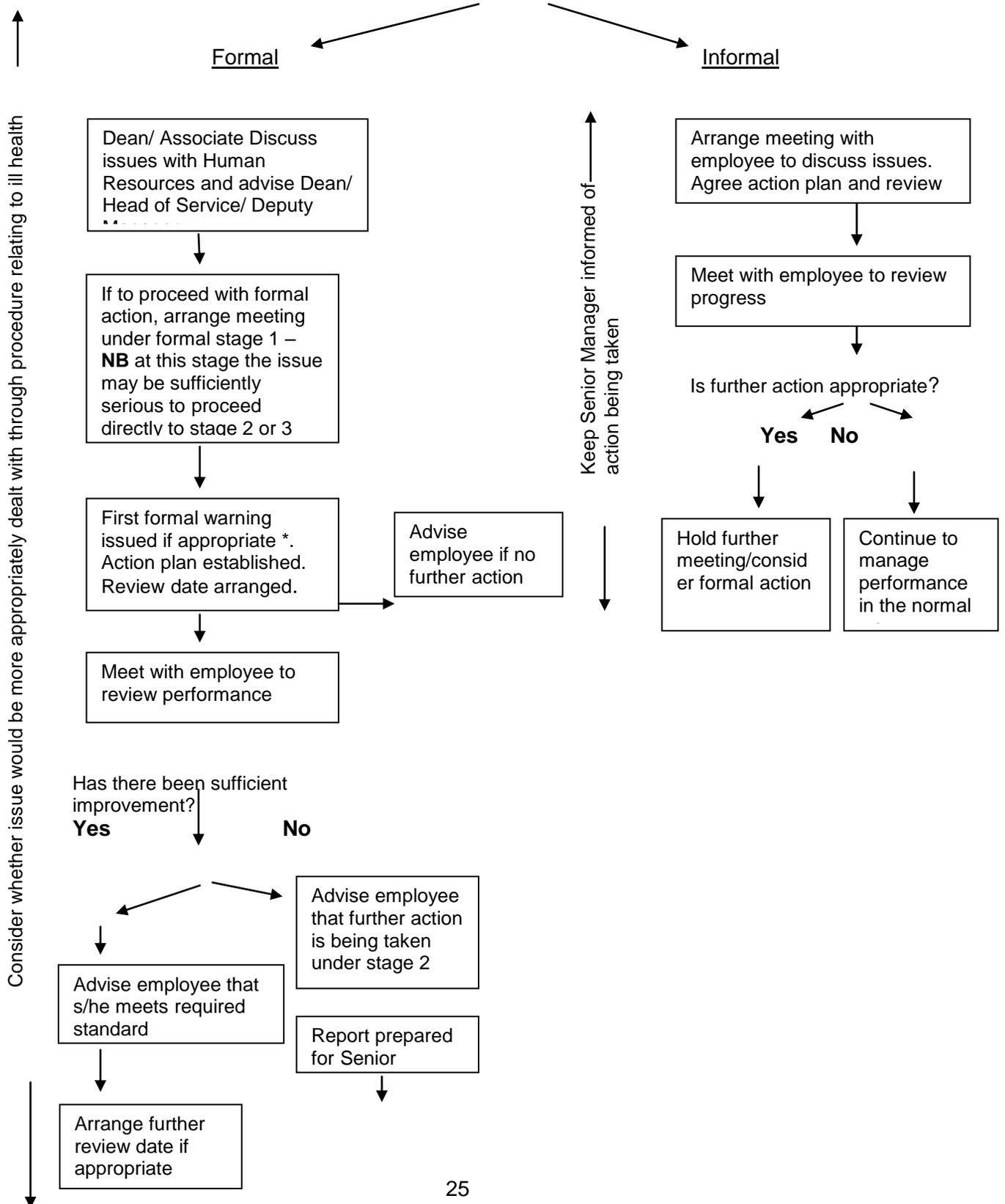
**RIGHT OF APPEAL AGAINST SUSPENSION**

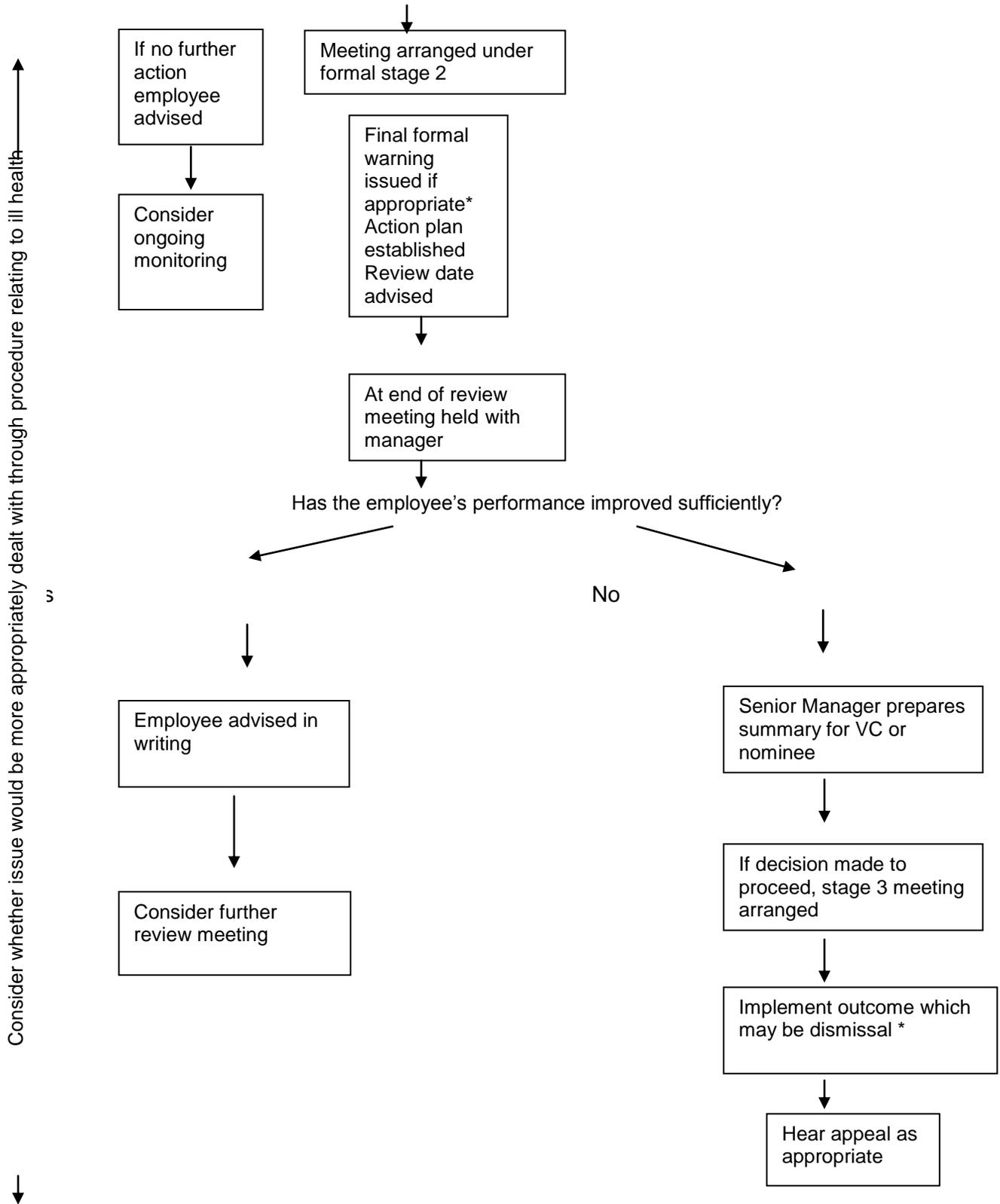
- 6 Except where the Vice-Chancellor (or nominee) has given notice of a proposal to dismiss the employee, an employee who has been suspended for longer than 21 days may appeal in writing to the Board of Governors against the suspension.
- 7 Upon receipt of the notice of appeal a meeting of a panel of the Board of Governors shall be arranged to hear the appeal. At the hearing the employee may be accompanied by a colleague.
- 8 The suspension will continue until the outcome of the appeal is determined.

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**Dealing with Poor Performance – Outline of Steps**      **APPENDIX E**  
**(Should be read in conjunction with procedure, this is purely illustrative)**

Employee has failed to reach an acceptable standard of performance – is informal or formal action appropriate?





\* See guidance notes for full details of action that can be taken at meetings

NB. Human Resources will be responsible for setting up formal meetings under these procedures and for advising the employee of arrangements.