

## RESEARCH COUNCIL CAPABILITY POLICY

### Guidance

This document provides additional guidance for managers, employees and HR in the handling of capability issues. It includes the Research Council Capability Policy and Procedure which is contractual. The additional guidance which is shaded is not intended to be legally binding and does not form part of the Research Council's Capability Policy and Procedure.

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## RESEARCH COUNCIL CAPABILITY POLICY

### Policy statement

The Research Council has a responsibility for the setting and monitoring of realistic and measurable standards of performance for its employees. These standards will support the timely and professional achievement of objectives across the organisation, which in turn enable the Research Council to operate and adapt effectively in its changing environments.

The Research Council has a right to expect high quality performance from employees. It is committed to ensuring that the required performance standards are explained carefully to employees and to supporting employees to achieve them.

This policy sets out guidelines for the management of under-performance. It is designed to ensure that cases of under-performance are dealt with promptly, fairly and in a supportive manner with the prime objective of improving an individual's performance to the required level. The Research Council will endeavour to assist employees as far as is practicable in meeting personal development needs and organisational changes.

For the purpose of this policy, 'capability' refers to an employee's skills, ability, aptitude and knowledge in relation to the job that they are employed to do.

This procedure is separate to the Disciplinary Procedure. The Research Council recognises that under performance and incapability should not be treated as disciplinary matters unless it is determined that any failure to reach the required level of performance is caused by misconduct, for example, carelessness, negligence, lack of effort or failure to cooperate with management. Such cases will be treated under the Disciplinary Procedure.

Attendance issues due to ill-health will be dealt with under the Sickness Absence Management Procedure.

The Capability Policy and Procedure are agreed with the Trade Union Side and comply with legislation.

The Research Council's Capability Policy and Procedure (the Capability Procedure) applies to all employees who have successfully completed their probationary period. It includes those employed on temporary or temporary contracts but excludes Visiting Workers, students or those workers provided by a third party agency.

The UK Shared Business Services Ltd (SBS) provides HR Services across the Research Councils. However some employees are deployed at establishments/facilities/ships that do not access services from SBS. In these cases references to the SBS or System (Employee Self Service) will not apply and employees should refer to their Research Council HR Team for assistance.

Whether a worker is deemed to be a worker or employee is not always clear under employment legislation. In cases where managers or employees have any doubt as to whether the Capability Policy and Procedure should apply, advice should be sought from the Research Council HR Team.

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### 1. Principles

- 1.1 All new employees will have their roles and responsibilities explained and shall be given any written guidance available and considered appropriate in relation to their area of work.
- 1.2 Employees will be given appropriate training and support to enable them to become familiar with their work.
- 1.3 Managers are responsible for the monitoring and management of the performance of those employees who report to them.
- 1.4 Managers will make employees aware of the standards expected of them and where these evolve over time inform them of the required changes.
- 1.5 All employees will have their performance reviewed, their developmental needs considered and clear objectives set on an annual basis as part of the Appraisal and Personal Development Review (APDR) process.
- 1.6 Employees have a contractual responsibility to perform their duties to required standards and will be given all reasonable support and encouragement to do so.
- 1.7 Wherever possible, an approach of coaching and counselling should be adopted before formal action is taken under this procedure.
- 1.8 At all stages of the formal procedure, the employee has the right to be accompanied by a work colleague or represented by a recognised Trade Union representative.

At all stages, the exact nature of an employee's under-performance will be explained to and discussed with the employee. The employee will be advised as to what formal stage, within the Capability Procedure, has been reached.

- 1.9 Should an employee's performance relapse within a reasonable timescale, the Research Council reserves the right to invoke the formal procedure at any point.
- 1.10 All discussions and written records about performance issues will be treated confidentially. Notes should be taken of meetings and made available to the employee. Any disagreements will be noted.
- 1.11 An employee may appeal against any formal action taken against them at any stage of the formal process.
- 1.12 The Research Council will endeavour to accommodate any reasonable adjustments or other special requirements needed by employees: for example, assistance in attending meetings, providing documentation in an alternative format.

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Employees may need additional assistance to enable them to comply with the procedure(s): for example, they may require reasonable adjustments (under the Equality Act 2012) such as requiring assistance in accessing a room or to have information reformatted.

Employees may have other requirements, for example, caring commitments or the desire to observe religious practice. As an employer, the Research Council is obliged to cater for such needs in compliance with statutory legislation.

Wherever possible, reasonable requests should be treated favourably in the implementation of this policy. For further advice or clarification, managers should seek the advice of their Research Council HR Team.

1.13 Please note that some underperformance issues will be dealt with under the following procedures:

TYPE OF ISSUE		PROCEDURE
Performance issues e.g. associated with changes in job roles and/or capability		Capability
Performance issue caused by misconduct, e.g. carelessness, negligence, lack of effort or failure to cooperate with management		Disciplinary
Attendance issues due to ill-health		Sickness Absence Management
Performance issues related to scientific misconduct		Scientific Misconduct

Where there are a combination of factors, management in consultation with the Research Council HR team, will make a decision on the most appropriate single policy to follow.

There will be rare occasions when employees have a short term dip in performance. These are usually resolved through discussion with the line manager as part of the normal day to day interactions and need not result in any further action. The Capability Policy and Procedure will be used for situations in which a short-term dip extends into a more persistent shortcoming, or when short-term dips are repeated.

A simple overview of 'Capability' is depicted at Annex A.

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### 2. Capability Procedure

#### 2.1 Ill Health

- 2.1.1 It is the manager's responsibility to ensure that questions are asked at initial meeting stages to try and identify any ill health issues as early as possible; the employee may also raise any ill health issues that may be affecting their performance. Where the line manager considers that underlying ill health has contributed to unsatisfactory performance they will seek advice from an Occupational Health Advisor (OHA) for guidance before taking action under the Capability Procedure (for more information on Occupational health referrals see the Sickness Absence Management Policy).
- 2.1.2 Referral to occupational Health will be carried out in accordance with the process set out in the Sickness Absence Management Policy. Any resulting report will be taken into account by management.
- 2.1.3 If an employee does not consent to or attend an Occupational Health appointment, a decision regarding the management of the case will be made on the information available.

#### 2.2. Informal process

- 2.2.1 An employee's performance should be monitored on an ongoing basis using the APDR processes of the Research Council.
- 2.2.2 Where there is evidence that an employee is not performing to the required standards, the area(s) of under-performance should initially be resolved, where possible, through informal discussion between the employee and their manager. The Research Council endeavours to deal with such issues as soon as they arise.

Where under performance could be related to an employee's disability the manager should contact their Research Council HR Team for further guidance.

- 2.2.3 The manager should arrange an informal discussion with the individual.

At this meeting the manager will:

- a) Make clear the specific areas in which the individual's performance is below expectations.
- b) Demonstrate and explain the grounds and/or evidence for this view.
- c) Explore with a view to identifying possible reasons for the under-performance.
- d) Give the individual the opportunity to explain their under-performance and to raise any concerns that they may have about the job.
- e) Ensure that the employee is aware of the required improvements in relation to each element of the duties about which there is a concern.
- f) Set a reasonable timeframe for the achievement of the improvements.

Managers must consider the complexity of the tasks involved in relation to the qualifications and experience of the employee, when establishing 'reasonable timeframes'.

- g) Detail when the employee's performance will next be reviewed.

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- h) Outline the steps to be taken to assist and encourage improved performance. This will include any training, guidance and/or support which is to be given.

When discussing under-performance managers must:

- be specific about their concerns
- demonstrate evidence and/or give examples to support their assertions.

2.2.4 The meeting should normally be conducted on a one to one basis.

2.2.5 The content and outcome of the meeting will be confirmed in writing by the manager to the employee.

2.2.6 A copy of this letter, together with any performance and development review documentation will be placed on the employee's personal file.

The letter should include:

- The specific areas where the individual's performance is below expectations.
- The specific improvements required in performance.
- Any additional support or training that will be provided.
- Any other agreed actions.
- The timescales for improvement and review.

A written record should also be kept of the arrangements for monitoring the employee's performance.

Following the stated timescale, the manager must review the employee's performance and meet with the employee to discuss progress. If the performance has improved to the required standard, this must be confirmed verbally and in writing to the employee. The employee's performance must then be sustained and should therefore continue to be monitored under the APDR process.

Where there are attendance issues as a result of ill-health, the matter should be dealt with under the Research Council's Sickness Absence Management Policy and Procedure.

### 2.3. Formal process

#### 2.3.1 First review

If, after the stated timeframes, the desired improvements in the employee's performance have not been met or where a first instance of reduced performance is sufficiently serious to warrant formal action (e.g. where there are health and safety issues and/or significant costs or liabilities are involved) the employee should be invited in writing to a formal meeting under the Capability Procedure.

2.3.1.2 The letter of notification must indicate:

- a) The specific areas where the employee's performance is below expectations and why the formal process has been initiated.

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- b) That the purpose of the meeting is to further discuss and review performance standards and to determine an appropriate course of action.
- c) That the meeting is being held formally under the Research Council's Capability Procedure.
- d) The date, time and location of the meeting.
- e) At all stages of the formal procedure, the employee has the right to be accompanied by a work colleague or represented by a recognised Trade Union representative. (See Section 5 & 6)

Managers should seek advice from their Research Council HR Team if desired. A member of the Research Council HR team should also attend the meeting.

### 2.3.1.3 At the meeting, the manager will:

- a) Remind the employee of the earlier informal discussions (where these have happened), why the formal process has been instigated and the steps taken to support an improvement in their performance.
- b) Explain as precisely as possible, the reasons for their concerns about the employee's performance.
- c) Give the employee the opportunity to explain their reduced performance.
- d) If no further action under the Capability procedure is required this will be confirmed in writing and a copy placed on the employee's personal file.

### 2.3.1.4 If after taking into consideration any explanations offered by the employee, the manager remains concerned, the manager will issue the employee with a formal warning which should cover:

- a) the exact details of the underperformance
- b) any previous discussions and or support given
- c) the specific improvements required in performance
- d) further consideration given to additional training and / or support
- e) any agreed actions and / or monitoring arrangements
- f) details of when the next review of the employee's performance will take place
- g) what further action(s) might take place should the required improvements not be achieved, i.e. moving to the next stage of the formal procedure.
- h) the employee's right to appeal and details of the appeal process
- i) a reasonable timeframe for the next review

### 2.3.1.5 A copy of this letter will be placed on the employee's personal file.

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- It is important that regular feedback on performance is maintained throughout any review period.
- Review periods should be up to three months depending on the nature of the employee's job, its associated responsibilities and the discrepancy between the required standards of performance and actual performance.
- No review period should exceed 12 months.
- Manager should monitor agreed dates for reviews.
- If referral to Occupational Health has not been utilised and is considered appropriate, this should be offered and a further meeting arranged once the report from Occupational Health is received.
- If a referral to Occupational Health is made no further action will be taken until the report is received. Any recommendations will be implemented, as far as is reasonably practicable. The Capability procedure will continue but any necessary adjustments to the procedure will be made (e.g. extending timescales given in which to demonstrate improvement in performance).

2.3.1.6 If the employee's performance improves to the required standard(s) within the timescale laid down, the manager should confirm both verbally and in writing to the employee that the formal Capability procedure has been closed. The employee's performance should continue to be reviewed within the APDR process to ensure that the enhanced performance is sustained.

A copy of any letter providing such confirmation must be recorded on the employee's personal file.

### 2.3.2 Second Review

2.3.2.1 If the required levels of performance have not been achieved by the end of the 1<sup>st</sup> review period, following discussion and consultation with an appropriate more senior manager, the manager should invite the employee to a further formal meeting. An HR representative must be involved and present at this meeting.

2.3.2.2 The letter of notification must indicate that the purpose of the meeting, referring to the previous meeting, is to review performance standards. The letter of notification must indicate:

- a) The specific areas where the employee's performance is below expectations.
- b) That the purpose of the meeting is to further discuss and review performance standards and to determine an appropriate course of action.
- c) That the meeting is being held formally under the Research Council's Capability Procedure.
- d) The date, time and location of the meeting.
- e) At all stages of the formal procedure, the employee has the right to be accompanied by a work colleague or represented by a recognised Trade Union representative.



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Managers should seek advice from their Research Council HR team. A member of the Research Council HR team must also attend the meeting.

2.3.2.3 At the meeting, the manager will :

- a) Review the history of the case.
- b) Remind the employee of the steps which have been taken to assist and support the employee to achieve the required level of performance, including any reasonable adjustments.
- c) Listen to any explanations, mitigating circumstances and concerns which the employee chooses to put forward as reasons for their under- performance.
- d) Give further consideration to any additional training and support which might reasonably be provided to enable the employee to achieve the required level of performance.
- e) Consider whether some duties can be carried out elsewhere or if the individual could be redeployed to a suitable alternative vacancy.
- f) Warn the employee that their job will be at risk if satisfactory performance levels cannot be achieved and subsequently maintained.
- g) Set a reasonable timeframe for the next review.

2.3.2.4 The outcome of the meeting will be communicated in writing to the employee. In addition, in the absence of a satisfactory explanation resulting from this second review meeting, the Research Council may issue a second formal warning. This should include:

- a) details of the underperformance (including reference to previous discussions and actions taken).
- b) the specific improvements required in performance.
- c) details of when the next review will take place.
- d) the employee's right to appeal and details of the appeal process.
- e) any further action should the required improvements not be achieved, i.e. moving to the next stage of the formal procedure.

2.3.2.5 A copy of this letter will be placed on the employee's personal file.

2.3.2.6 If the employee's performance improves to the required standard(s) within the timescale laid down, the manager should confirm both verbally and in writing to the employee that the formal Capability procedure has been closed. A copy of any letter providing such confirmation must be recorded on the employee's personal file. The employee's performance should continue to be reviewed within the APDR process to ensure that the enhanced performance is sustained.

### 2.3.3 Final Review

2.3.3.1 If the required levels of performance have not been achieved, following discussion and consultation the manager should invite the employee to a further formal meeting.

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2.3.3.2 The employee will be advised in writing of the purpose of the meeting and that it could result in the termination of their employment on the grounds of capability. The employee should also be reminded of their right to be accompanied by a work colleague or represented by a recognised Trade Union representative.

2.3.3.3 At this stage the manager will review all the evidence jointly with a representative from the Research Council HR team and the appropriate senior manager as described in the Research Council's delegation framework ('the Review Panel') available from Knowledgebase or contact the Research Council HR Team

2.3.3.4 The appropriate senior manager who, in order to avoid a conflict of interest, has had no previous involvement in the case, should act as Chair and decision-maker.

2.3.3.5 At the meeting, the Review Panel will:

- a) review the history of the case, including the steps taken to assist and support the employee in their achievement of the requisite standards of performance, including any reasonable adjustments made following referral to Occupational Health.
- b) hear and consider the employee's account of their current performance levels and progress made against agreed objectives.

2.3.3.6 The Review Panel will consider the possible outcomes. These may include:

- a) further time to allow for improvement. This should be considered where there is evidence to suggest that the extension of time is likely to lead to the required improvement in performance; or
- b) a decision to dismiss on the grounds of capability (with notice or with pay in lieu of notice) because there has been insufficient improvement in the employee's performance;
- c) redeployment to other duties, including retraining as appropriate, or to a more suitable post with the employee's consent which may include one of a lower band or reduced hours, (pay arrangements will be in accordance with the Research Council policy);
- d) no further action.

A decision to redeploy an employee to other duties or to a more suitable post is only possible with the employee's consent and care must be taken that the employee's consent is full and genuine.

Redeployment of employees should only be considered against existing vacancies. The Research Council is not obliged to create alternative employment or duties. Research Council selection processes will apply for anyone being redeployed.

Managers should seek advice from the Research Council HR team.

2.3.3.7 The outcome of the meeting will be communicated in writing to the employee, within five working days of the meeting.

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2.3.3.8 For outcomes short of dismissal the letter must include:

- a) details of the outcome, with timeframes and reasons for the action; and
- b) the likely consequences within a specified period of further failure to improve or deterioration in performance (which may be more severe action or a recommendation to dismiss).

2.3.3.9 Where the outcome is dismissal, the letter must include:

- a) the reason for the dismissal;
- b) whether the dismissal is with notice or with payment in lieu of notice;
- c) the date on which the employment will terminate; and
- d) details of the employee's right of appeal.

2.3.3.10 A copy of the letter must be placed on the employee's personal file.

A summary of the 'Capability' process is outlined at Annex A.

### **3. Right of accompaniment**

- 3.1 At all stages of the formal procedure, the employee has the right to be accompanied by a work colleague or represented by a recognised Trade Union representative.
- 3.2 In exceptional circumstances a family member may accompany the employee for moral support but is not permitted to act as a representative
- 3.3 Employees are not permitted to be accompanied by a solicitor.
- 3.4 Chosen representatives can:
  - a) address the meeting
  - b) put forward the employee's case
  - c) sum up the case
  - d) respond to views expressed at the meeting
  - e) confer with the employee
- 3.5 They cannot answer questions on the employee's behalf.

### **4. Timescales**

- 4.1 An employee should normally be given 10 working days' written notice to attend a formal meeting to discuss their performance in order for them to prepare and to organise representation if they so wish.

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- 4.2 Should the employee's companion not be able to attend on the date proposed by the Research Council, the employee can offer an alternative time and date as long as it is reasonable and falls within 5 working days' after the date first proposed by the Research Council.
- 4.3 Letters confirming the outcome of discussions should normally be sent within five working days' of the meetings. If there is a delay the employee will be made aware of this and provided with a revised timeframe.

Managers and employees should seek advice from their Research Council HR Team as they wish or as appropriate.

### 5. Appeals

#### 5.1 Principles

- 5.1.1 All employees have the right to appeal against formal action taken against them at any stage of the formal process.
- 5.1.2 Details of the person to whom the employee should appeal will be included in the letter detailing the outcome of the Review.
- 5.1.3 Appeals should be lodged in writing within seven working days of the receipt of the decision letter, clearly stating the ground(s) for appeal.
- 5.1.4 An employee can submit additional evidence or information that they consider relevant to the appeal
- 5.1.5 At all stages of the formal procedure, the employee has the right to be accompanied by a work colleague or represented by a recognised Trade Union representative.

#### 5.2 Purpose of the Appeal

- 5.2.1 The purpose of the appeal is to:
- Determine whether the sanction applied was fair and reasonable in all the circumstances.
  - Determine whether the Capability Procedure was followed correctly.
- 5.2.2 The aim is to review the basis upon which the original decision was made and to allow:
- The employee to submit any new evidence.
  - The employee or an accompanying work colleague or recognised Trade Union Representative of their choice to comment on any new evidence or,
  - The employee to raise any procedural issues, or comment on those matters they believe have been ignored and/or received insufficient consideration.

If there are sufficient reasons to question the initial process, a more detailed approach should be taken at the appeal stage. In certain circumstances, it may be found that the only way to remedy defective initial steps is to have a total rehearing of the case. This should not, however, be the norm.

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### 5.3 Authority Levels

5.3.1 Managers who have the authority to hear appeals within the Research Council's Capability procedure are described in the Research Council's delegation framework.

### 5.4 Appeal Hearing Process

5.4.1 Final appeals will be heard by a Senior Manager from within the Research Council who, in order to avoid a conflict of interest, has had no previous involvement in the case. In exceptional cases the appeal may be heard by someone outside of the Research Council.

5.4.2 The person hearing the appeal will be accompanied by an HR professional, who will normally be a member of the Research Council HR Team. However, the HR professional may be external to the Research Council.

5.4.3 The senior manager should act as Chair and decision-maker.

5.4.4 Upon receipt of an appeal, the responsible manager should:

- a) Send the employee details of the arrangements relating to the appeal hearing.
- b) Advise them of their right to be accompanied by a work colleague or recognised Trade Union representative of their choice. The employee should identify the person and confirm their attendance before the hearing commences.
- c) Hold the appeal hearing where possible within 10 working days of receipt of the letter containing the grounds of appeal. This is subject to the employee's right to request a postponement of up to five working days where their chosen representative is not available to attend on the original day or time.

Those hearing the appeal should study the relevant documentation including the notes of the review meetings.

### 5.5 The Appeal Hearing

Where an employee fails to attend a review meeting or Appeal Hearing managers should make all reasonable efforts to discover the reason for such failure to attend and another review meeting/Appeal Hearing should be arranged.

Where an employee fails to attend for a second time without valid justification, the review meeting/Appeal Hearing will take place in the employee's absence.

In very unusual circumstances, the employee may not be able to attend a rearranged review meeting/Appeal Hearing for legitimate reasons. In such cases, the employee may be allowed to make written submissions.

5.5.1 At the Appeal Hearing, the Chair should:

- a) introduce those present and explain their respective roles
- b) explain the purpose and format of the Appeal Hearing, including the possible outcomes

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- c) invite the employee to explain the basis on which they are appealing, referring to documents or evidence previously submitted or any new evidence which has come to light where they believe this may support their grounds for appeal.
- d) if an employee is accompanied by a work colleague or recognised Trade Union representative, they may outline the employee's grounds for appeal or make statements on an employee's behalf. They may not, however, answer any questions on an employee's behalf.
- e) ask all necessary questions and summarise the facts.
- f) decide on whether any further investigation/action is required. This may require an adjournment.

There should always be an adjournment to enable the Chair to consider everything stated in the evidence and where necessary to investigate matters or seek appropriate advice, before deciding on the most appropriate outcome.

- g) The Chair should, whenever possible and as soon as possible, verbally inform the employee of the decision reached and the reasons for it.

### 6.6 Appeal Outcomes

- 6.6.1 The decision of the Appeal Hearing will be confirmed in writing with reasons, normally within five working days of the Appeal Hearing concluding. This may be extended should further time be required. In such an instance, the employee will be notified of the proposed date upon which the decision is expected to be made.

Possible outcomes are as follows. The Appeal Panel may:

- a) Uphold the current decision-** i.e. confirm the outcome of the review meeting, thereby rejecting the employee's appeal
- b) Amend the current decision** i.e. substitute an alternative form of action. The decision could be changed in some way, for example, the improvements required might be redefined in some way or the timeframe(s) amended within which the improvements should be achieved.
- c) Overturn the current decision** i.e. set aside the original review decision, thereby upholding the employee's appeal.

- 6.6.2 The decision made at appeal hearing is final, with no further right of internal appeal.

The decision should be clearly communicated to the employee in the appeal decision letter. This response should explain the reason(s) for the decision and advise the employee that there is no further right of appeal.

## 7. Grievances

- 7.1 An employee may choose to raise a formal grievance during the formal stages of the Capability Procedure. In these circumstances, actions under the procedure may (if appropriate) be put on hold and a grievance hearing convened under the Research Council Grievance Procedure. Refer to the Research Council's Grievance policy for further guidance.

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7.2 As a general rule:

- a) Where the employee's grievance relates to contemplated dismissal or action under the Capability Procedure, the appropriate forum for addressing concerns is the Appeal Hearing.
- b) Where an employee claims that action under the Capability Procedure is in itself an act of discrimination, it should be pursued under the Grievance Procedure as a separate course of action.

Where a grievance is raised in the context of the Capability Procedure, decisions as to how to proceed should be taken in consultation with the Research Council HR Team.

### 8. Review of Policy

This policy will be regularly reviewed to incorporate any legislation changes. The Trade Union Side may request that a policy is reviewed.

### 9. Amendment history

Version	Date	Comments/Changes
2.0	November 2014	Para 2.3.3.3 provides information on where to find Delegation Framework
V3.0	August 2017	Para 2.3.3.4 amended to clarify that in order to avoid conflict of interest the manager must not have had previous involvement
V3.0	August 2017	Para 5.4.1 amended to clarify that in order to avoid conflict of interest the manager must not have had previous involvement

# RESEARCH COUNCIL CAPABILITY POLICY

## Annex A – Overview of the Capability Procedure

