

# ARCHBISHOPS' COUNCIL

## CAPABILITY PROCEDURE CODE OF PRACTICE SUPPORTING ADVICE

*This advice is issued by the Archbishops' Council for information and to assist the development of good practice, and is referred to in paragraph 1.2 of the Capability procedure. It does not constitute formal guidance under the Ecclesiastical Offices (Terms of Service) Measure 2009.*

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## **PART 1 - INTRODUCTION**

### **1.1. Basic Considerations**

*“The principal objective of a capability procedure is to help office holders whose performance falls below an acceptable minimum standard to improve in cases where the problems are not disciplinary in nature. It is expected that most performance-related matters will be identified and addressed informally without engaging this procedure. Nevertheless, there will be occasions where informal steps are not appropriate and in such cases it will be necessary to implement the procedure. If an improvement in performance cannot be achieved through the capability procedure, there is a real possibility that the office holder will be removed from his or her current office, but only as a last resort.”*

*Paragraph 2.1 of the Procedure*

#### **1.1.1. Capability in ministry is of crucial importance to the Church**

The great majority of those serving the Church do so to a high standard. Office holders receive support in their ministry in a variety of ways: pastoral care and guidance from bishops, archdeacons and others, as well as the challenge and nourishment that comes by participating in training, continuing ministerial development (CMD) and ministerial development review (MDR).

#### **1.1.2. Following good practice from the start can help to prevent poor performance**

Examples include:

- following good appointments procedures<sup>1</sup> that seek to test the candidate transparently against the requirements of the role;
- clearly articulating expectations through descriptions of the requirements of the particular office;
- entering into regular, sensitive but frank discussion on how work is being done;
- providing the appropriate training.

#### **1.1.3. All resources available to achieve an improvement in performance should be exhausted before invoking the procedure**

The procedure should only be activated when other solutions have been attempted and are not getting anywhere. Clergy should be encouraged to develop ways of reflecting on:

- How they take up their role;
- the strategies they develop;
- the networks of support they have, or need to have, in place;
- what the role does to them as a person; and
- the range of activities that can affect their performance including: CMD aimed at personal and role development; a mentor, work consultant or coach; access to a peer or ‘cell’ group and a spiritual director.

#### **1.1.4. Issues of under-performance should be addressed promptly before they become acute**

Immense harm can be done to the Church’s mission if an issue escalates. Where relationships are under strain, the provision of a range of support mechanisms can be particularly effective. These include facilitated conversations with skilled people; more formal mediation; and training in understanding and developing team working. These mechanisms may result in an outcome that is acceptable to everyone, enabling both priest and parish to flourish in their ministry. A timely offer of help or advice can often resolve an issue before it becomes acute or leads to pastoral breakdown to avoid the capability procedure being used.

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<sup>1</sup> <https://www.churchofengland.org/clergy-office-holders/clergy-appointments-adviser/guidance-on-parochial-appointments.aspx>

### **1.1.5. Where there is insufficient improvement there should be a procedure for the Church to offer focussed support**

Having a procedure helps to ensure that there is a clear framework for supporting an office holder in the expectation that he or she will be able to recover and restore his or her ministry. Where sufficient improvement is not achieved, the procedure allows proper consideration to be given to whether someone is capable in continuing their ministry in that place.

### **1.1.6. Only when all reasonable efforts have been made, should removal from the particular office be considered**

In order to be fair in the eyes of the law, removal from office for unacceptable performance must be preceded by a significant effort to identify the issues and the underlying reasons, together with evidence of sustained attempts to turn the situation around; the support that has been offered or put in place; timings; and the evidence used in making judgements that a permanent and sustainable change has not happened and is not capable of happening.

### **1.1.7. The procedure should not be regarded as a process that, once started, must run its full course**

In many cases, the procedure will be discontinued once the appointed person (normally an archdeacon) decides that the required improvement has taken place.

### **1.1.8. Lack of capability in one particular office does not necessarily mean that the office holder is not capable of exercising any ministerial function**

It may be that a minister's performance is generally adequate but capable of improvement or they may be fulfilling the basic requirements of the role, but no more, and doing 'just well enough'. In this situation the broader context of an individual's role description, team, parish, and relationships over a period of time, all need to be considered so that there is a clear overview of a pattern of behaviour or attitude. In such cases an individual may benefit from additional CMD and mentoring etc. Alternatively the situation may be more serious.

## **1.2. When not to invoke the procedure**

### **1.2.1. The procedure should not be used:**

- to pursue trivial matters, which are best resolved informally;
- until other possible approaches have been tried first without success;
- when the issue is one of conduct and is a disciplinary issue that should be handled according to the Clergy Discipline Procedure (See paragraphs 1.6.1 to 1.6.3 on the relationship with the Clergy Discipline Procedure);
- in the case of a curate in training, activating the procedure should be unnecessary as the training incumbent will already be monitoring the curate's performance and may raise concerns about performance in a timely way applying the options set out at paragraph 6 of Annex 2.

## **1.3. The relationship with the Acas Code of Practice**

1.3.1. Whilst clergy office holders are not employees, there is a clear expectation that, like employees, they should be treated in accordance with professional good practice. This includes clarity of process and a fair and transparent framework within which all parties are clear about their responsibilities and accountabilities. The capability procedure and this supporting guidance have therefore been written with reference to the ACAS Code of practice. Employment tribunals are legally required to take the Acas Code of Practice on disciplinary and grievance procedures into account when considering relevant cases. Tribunals will also be able to adjust any compensatory awards made in these cases by up to 25% for unreasonable failure to comply with any provision of the Code:

1.3.2. <http://www.acas.org.uk/media/pdf/f/m/Acas-Code-of-Practice-1-on-disciplinary-and-grievance-procedures.pdf>

#### **1.4. The relationship between capability and ministerial development review (MDR)**

1.4.1. MDR (along with its associated reviews) and the capability procedure are two separate and self-contained procedures. The processes and procedures for ensuring that clergy have access to, and are required participate in, professional development will not be identical in every diocese.

1.4.2. MDR and its associated reviews must not be used as a substitute for the capability procedure or its informal stages, although it may be a helpful support mechanism for working through issues.

1.4.3. A capability process is led by the appointed person. If there is an issue of capability that remains outstanding after being raised appropriately in the course of MDR the appointed person must go through the initial stages of the capability procedure, and make it clear to the office holder that their performance is not of an acceptable standard, and that the formal procedure will be activated unless their performance improves.

1.4.4. If an MDR or review process is in train during a capability procedure, it is essential that whoever is conducting the review is fully apprised of the situation. It is more usual for review processes to be suspended during the capability process, as a more thorough and regular assessment of performance against objectives will already be taking place as part of the capability procedure.

#### **1.5. MDR, review processes and good practice**

1.5.1 Ministerial development review (MDR) is a requirement under Regulation 18 of the Ecclesiastical Offices (Terms of Service) Regulations 2009. Dioceses will have a variety of mechanisms in place for review and support.

1.5.2. The review processes are opportunities for ensuring office holders are as equipped and supported as they can be for the role to which they are called. It involves frank and supportive discussion of that role, how it has been done in the recent past, what needs to be done in the future. It is an opportunity to discuss development needs which can be provided by training, education, mentoring, secondments, networking and other ways.

1.5.3. Where there may be a gap in skills or behaviours, this will be identified and reflected on as part of the review process, which will seek to draw out developmental lessons.

1.5.4. Where an issue has been identified that requires development or improvement, this will be noted and a plan to support the improvement agreed. Usually, to enable effective review, a role description will have already been agreed as part of the appointment process, but it may be timely to review this, as the role description and objectives arising from it are not fixed, and will change and develop over time. The office holder, the Bishop and the PCC have an interest in the role description and changes to it should not be made without the agreement of all three.<sup>2</sup>

#### **1.6. The relationship with the Clergy Discipline Measure 2003**

1.6.1. The capability procedure is only intended to deal with capability issues. It is not intended to deal with issues amounting to misconduct under the Clergy Discipline Measure 2003 (CDM) or the Ecclesiastical Jurisdiction Measure 1963 (EJM). If, therefore, in the course of the capability procedure, matters come to light which appear to amount to misconduct, the capability procedure may be suspended so that disciplinary proceedings can be begun. In no circumstances may capability procedures and proceedings under the CDM or EJM be operated simultaneously in respect of the same particular issue.

1.6.2. Participation in MDR and reviews and appropriate Continuing Ministerial Education and development (CMD) is a requirement under Regulations 18 and 19 of the Ecclesiastical

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<sup>2</sup> <http://www.ministrydevelopment.org.uk/mdr>

Offices (Terms of Service) Regulations 2009. Some individual CMD needs will be identified during the MDR processes, and some CMD will be a diocesan requirement for all office holders, for example on safeguarding. A wilful or serious refusal to participate in MDR or CMD is, technically, capable of amounting to misconduct under the CDM. However, in practice, the reasons for such a failure to participate need to be explored and any underlying issues identified will usually be most appropriately addressed under the capability procedure, at least initially.

1.6.3. Similarly, neglect of duties or prolonged or repeated absence from work without acceptable reason should not normally be the subject of disciplinary proceedings unless the behaviour is wilful and serious in nature.

## **1.7 The roles and responsibilities of the appointed person and HR Advisers**

1.7.1 Archdeacons / Appointed persons are expected to take appropriate action when a potential capability issue arises and are responsible for:

- Informing Human Resources;
- Collating evidence as a part of the preliminary investigation;
- In conjunction with HR, deciding if the informal stage of the capability procedure needs to be activated
- In conjunction with HR, deciding if suspension is warranted
- Carrying out the suspension;
- Informing the Office Holder of the capability issue;
- Writing to the office Holder informing them that they will be undertaking the investigation;
- To interview the Office Holder and any potential witnesses;
- To collate any other documentation relating to the matter;
- To present the case at the capability meeting;
- To follow protocol set out in Annex for hearing;

1.7.2. Appointed persons should consult with their Human Resources representative at the earliest where formal or informal capability is contemplated.

1.7.3. The role of HR is to advise and support, and 'hold' the process to ensure that the appointed person, senior clergy, individuals, and all those involved have clarity on each aspect of the process and are aware of their roles and accountabilities within it at every stage.

1.7.4. In dioceses with an HR Adviser, it may be helpful for the HR adviser to administer the process, arrange all meetings, provide all required paperwork; and be responsible for ensuring clear notes and minutes are taken by appropriate people throughout; and that follow up letters with decisions are sent out, and that further arrangements are made as necessary.

1.7.5. Where HR advice is not available, suitable alternative advice can be sought from the Diocesan Registrar and others; and an appropriate named person put in place to act as administrator throughout the process.

## **PART 2 – INFORMAL STAGES**

Although this stage is described as being informal, it is formal in its effect, and needs to be followed precisely and be properly documented. A checklist of actions is provided below.

### **2.1. Informal Stage 1: Initial steps**

#### 2.1.1. The appointed person should

- take HR advice
- gather information about the issues, including obtaining evidence
- review the role description and recent MDR/review records
- check that the grounds for there being a capability issue are not vexatious<sup>3</sup> or insubstantial or the result of misunderstandings
- consider whether there are other ways of resolving the issue.

#### 2.1.2. The appointed person will then meet the office holder to assess whether there is a capability issue. If he or she decides that there is, then he or she:

- agrees with the office holder a form of action to improve performance
- explains to the office holder that the formal stage of the procedure will be activated if improvement does not take place by a set date
- ensures appropriate support is in place
- sets clear timescales
- gives clarity about how feedback or further evidence will take place/ be considered
- records what has been agreed and set out.

### **2.2. Informal Stage 2: Review of progress**

#### 2.2.1. After the agreed interval, the appointed person:

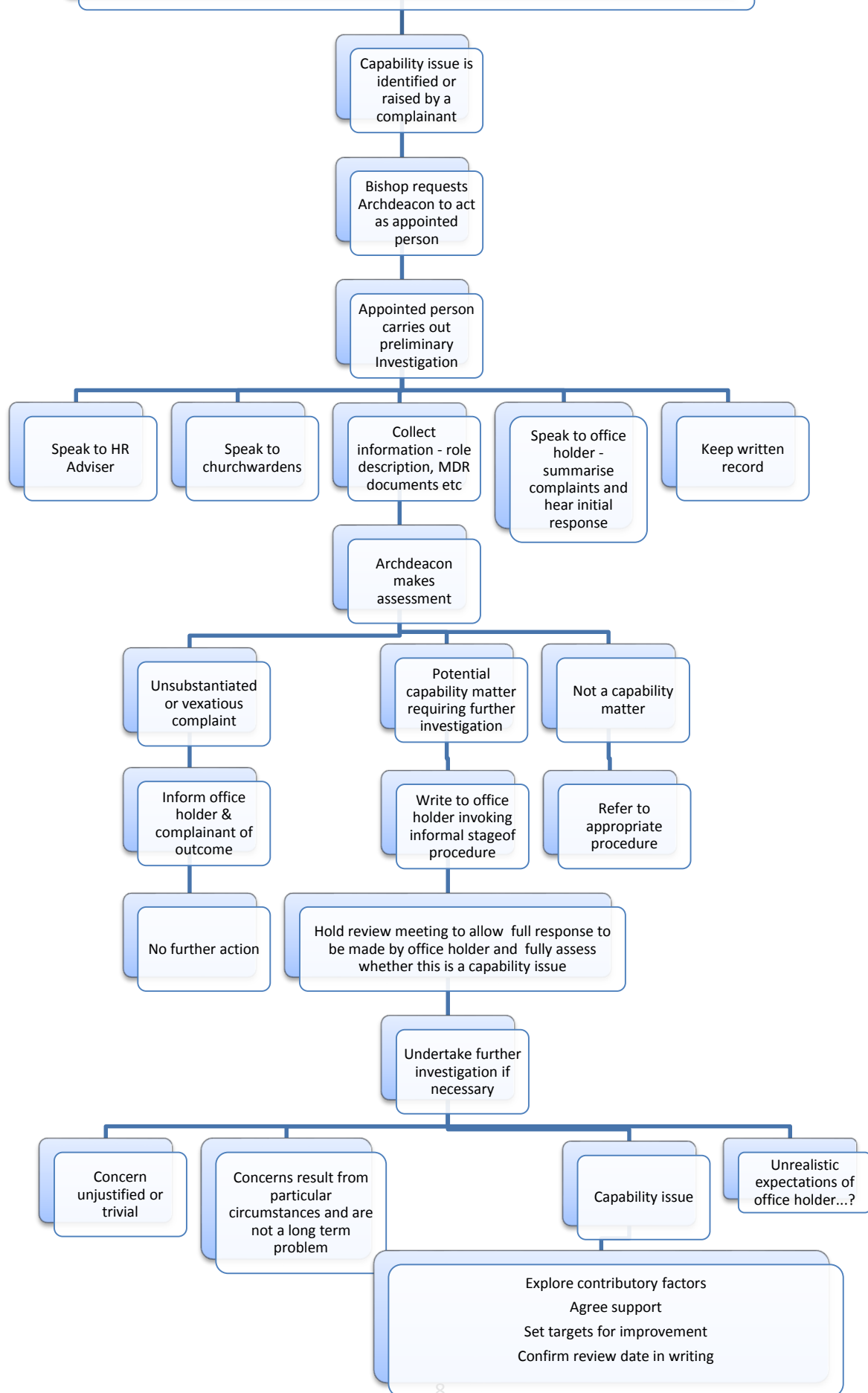
- takes HR advice while;
- reviewing the performance to see if there has been an improvement, taking advice as appropriate from Churchwardens and those who raised the issue;
- reviewing the position with the office holder;
- informs the office holder and those who raised the issue that no further action will be taken, if the improvement has taken place;
- moves to the first formal stage if the improvement has not taken place.

2.2.1. Flow charts summarising the informal stages: initial steps and review of progress can be found below:

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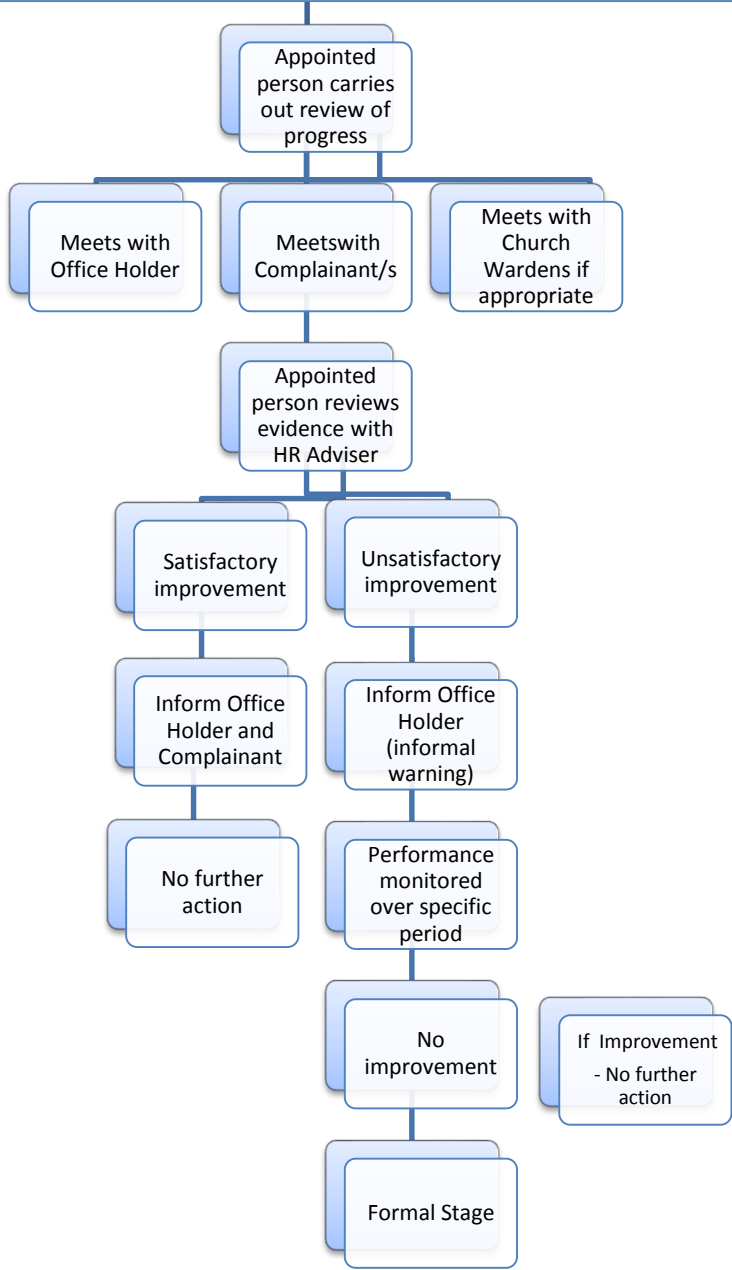
<sup>3</sup> This is taken to mean action or complaint instigated without sufficient grounds and serving only to cause annoyance to an individual.

# INFORMAL STAGE 1: INITIAL STEPS





# INFORMAL STAGE 2: REVIEW OF PROGRESS



## **PART 3: FORMAL STAGES (section 11)**

This section is a checklist of actions as the formal processes begin.

### **3.1. Informing the office holder of the issue in writing**

#### **3.1.1. The appointed person:**

- consults the human resources adviser (if the HR adviser has not been involved to date, the start of the formal process is the time bring them in) (section 9 of the capability procedure)
- writes to the office holder, setting out details of the unacceptably low performance (section 11 of the capability procedure)
- invites the officeholder to a meeting with a capability panel to discuss the matter - the meeting should be held without unreasonable delay whilst allowing the office holder reasonable time to prepare (section 11.1 and 11.2)
- informs the post holder of his or her right to be accompanied by a companion. (See section Annex 5 on the right to be accompanied and section 10 of the procedure.)

### **3.2. First capability meeting**

#### **3.2.1. See the protocol for the handling of a capability panel at Annex 7 and section 11.7 to section 11.12 of the procedure.**

#### **3.3.2. A capability meeting to consider the details of unacceptably low performance and to decide on the outcome and course of action is attended by:**

- the appointed person
- the human resources adviser in the diocese
- the capability panel (for membership, see the annex to the procedure)
- office holder and his or her companion (if any) and
- any relevant witnesses for either party where due notice has been given (section 11.3 of the procedure)

### **3.3. Issuing notice after the first capability meeting including a possible issue of a first formal written warning**

#### **3.3.1. The appointed person confirms the result of the panel's decision at the meeting (section 11.1 to section 11.17). This should be given or sent to the office holder as soon as possible, either to dismiss the matter; or to issue a first formal written warning indicating:**

- details of how their performance is insufficient or unacceptable
- the improvement that is required
- the timescale for achieving this improvement (normally between 3 and 6 months, depending on the nature of the issue)
- that the appointed person will set a review date
- that the appointed person will review the support required to assist the office holder
- details of the right to appeal.

#### **3.3.2. The office holder has the right to appeal within 7 days of receiving the notice (or longer if in all the circumstances 7 days is unreasonable). If the office holder wishes to appeal, he or she should write to the appointed person setting out the reasons for the appeal. Appeals may be on the ground that fresh information has come to light or that the procedure was not followed (section 14 of the procedure).**

### **3.4. Appeal meeting**

#### **3.4.1. If the office holder appeals, the appeal administrator invites the officeholder to a meeting with the appeal panel which should be held without unreasonable delay whilst allowing the office holder reasonable time to prepare his or her case (section 11.18- 11.20 and section 14).The appeal meeting is attended by:**

- the appointed person
- the human resources adviser
- the appeal panel (for membership, see the annex to the procedure)
- the office holder and his or her companion (if any) and

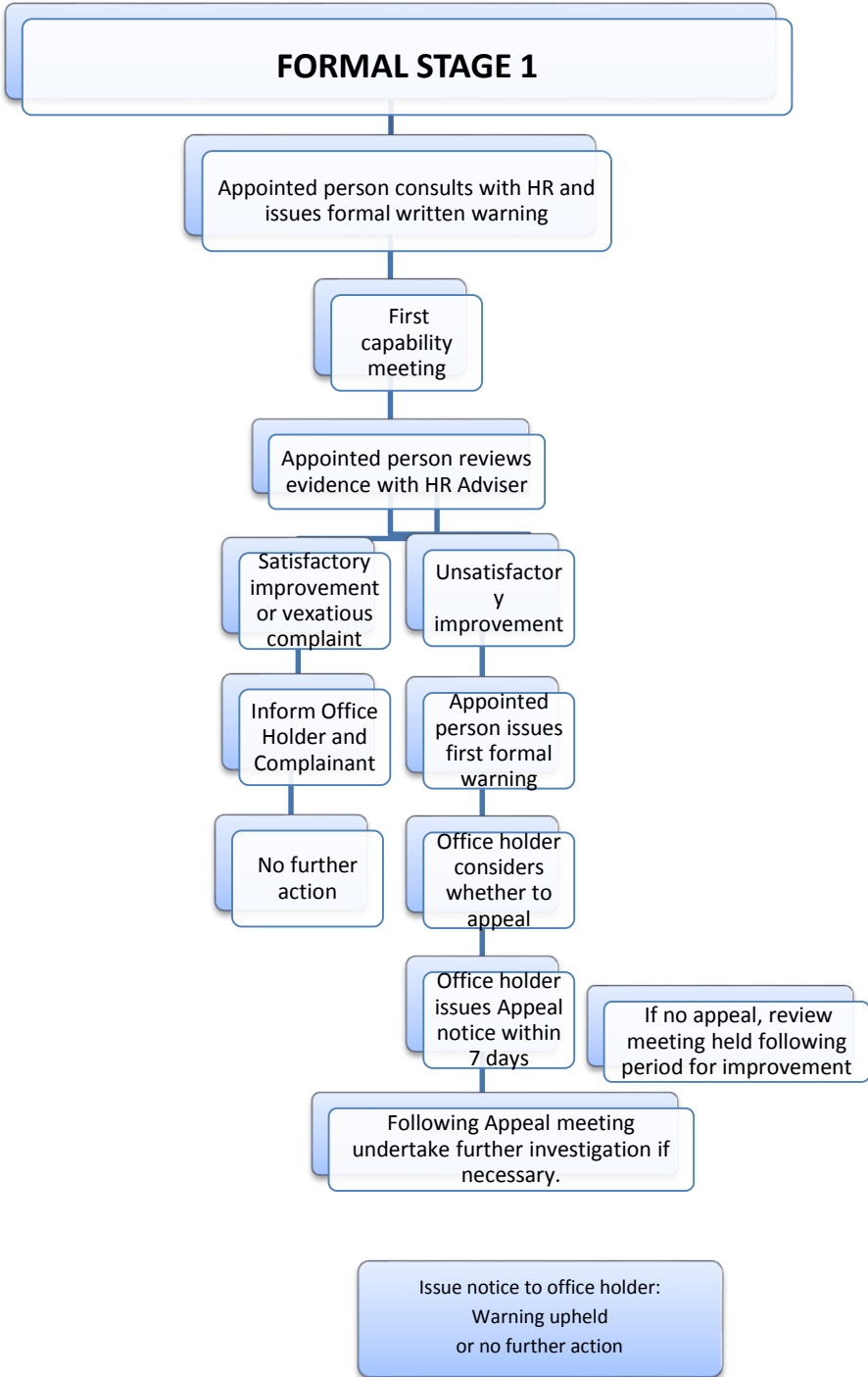
- any relevant witnesses for either party where due notice has been given.

3.4.2. The HR adviser will share the grounds of the appeal with the appointed person so that he or she is able to attend the Panel meeting with information that may be helpful.

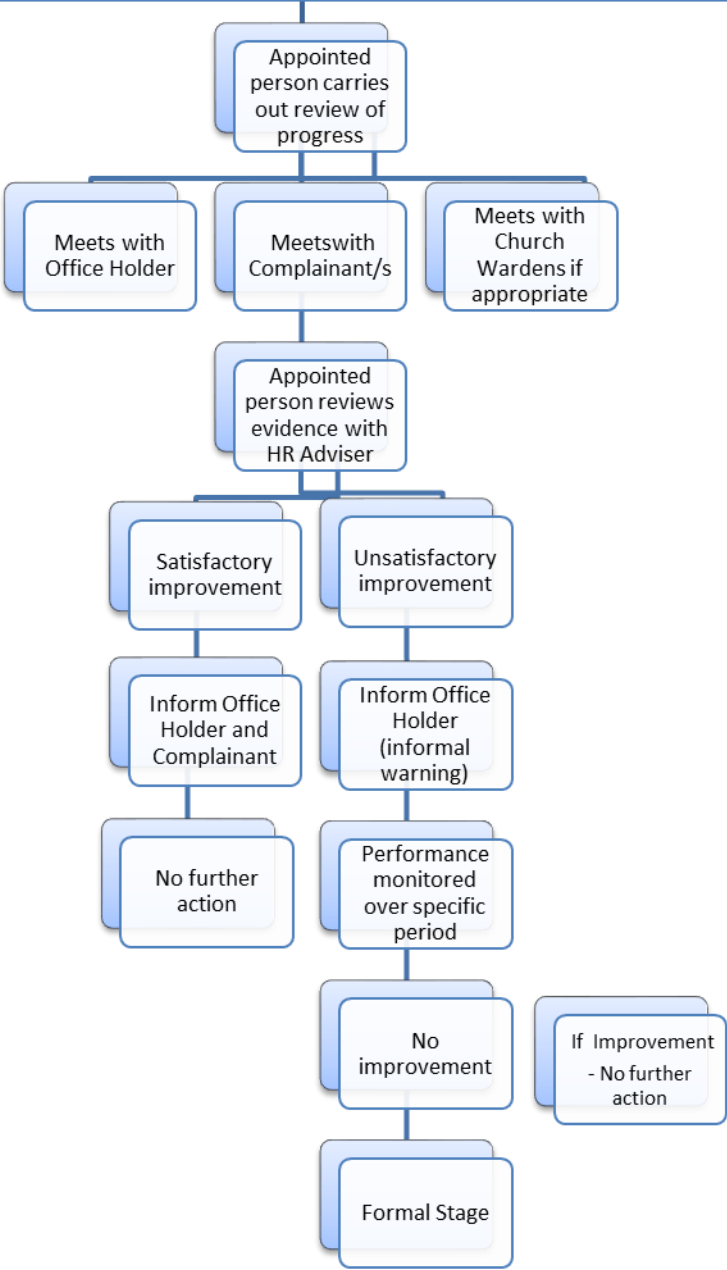
3.4.3 The appeal meeting is not a re-running of the original hearing, but will review the process, the evidence put forward in the original hearing, the decisions made, the evidence put forward by the office holder and the appointed person during the appeal and the grounds for the appeal.

### **3.5. Issuing notice after the appeal meeting**

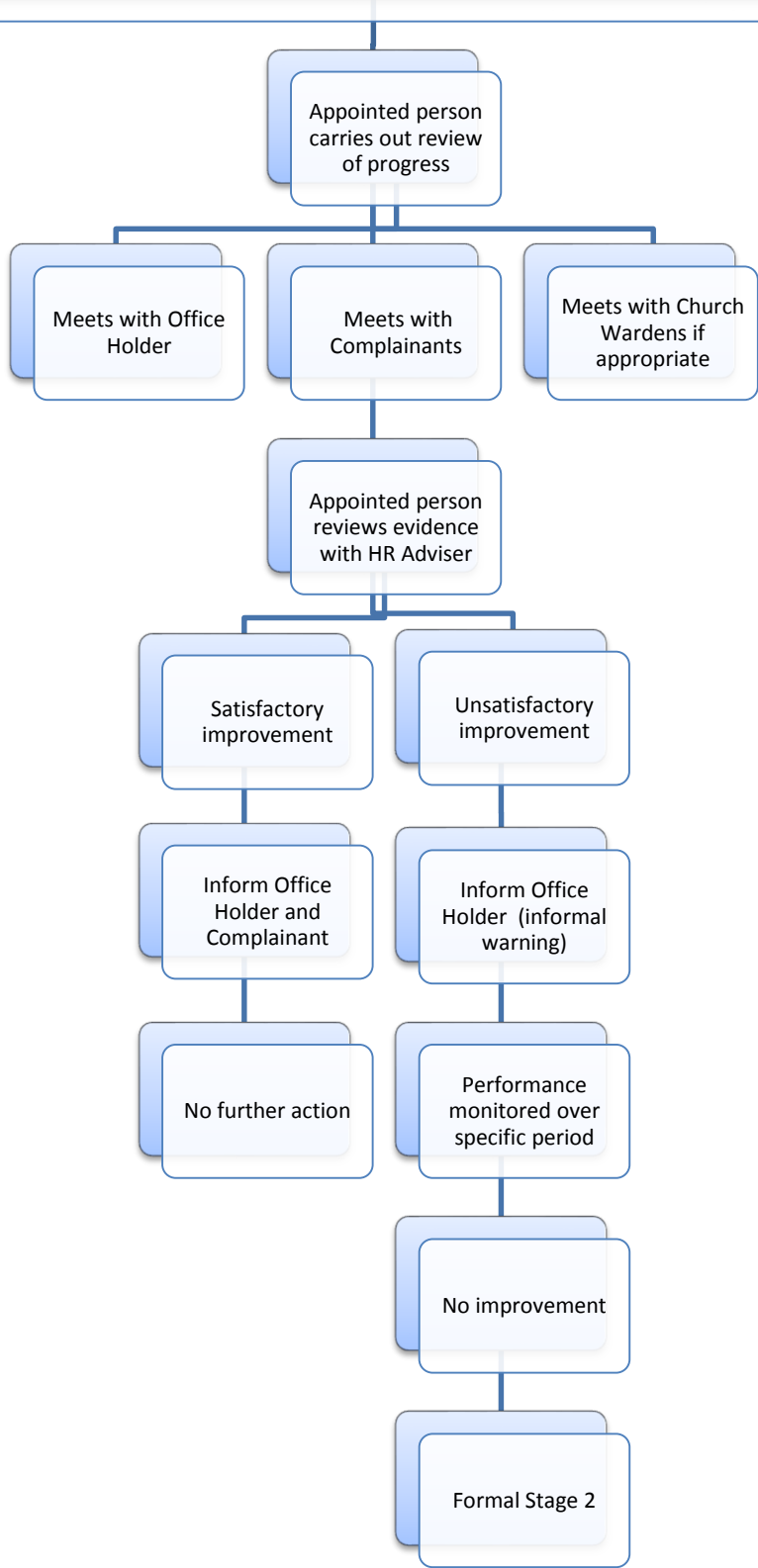
3.5.1. The chair of the appeal panel confirms the result of the panel's decision at the meeting. The HR Adviser will draft a letter to include this information and ensure that it is given to the office holder as soon as possible either to uphold the warning or to let the office holder know that the appeal has been successful and no further action will be taken.



# INFORMAL STAGE 2: REVIEW OF PROGRESS



# FORMAL STAGE 1 - REVIEW OF PROGRESS



## **PART 4 – FORMAL STAGE 2: FINAL WRITTEN WARNING (Section 12 of the Procedure)**

### **4.1. Reviewing progress after first formal written warning**

4.1.1. The appointed person will be aware of any improvement and progress or otherwise that takes place during the period set for improvement and will be able to offer guidance on developments and to begin to gather information and evidence to support further decisions. At the end of the period set for improvement in the first written warning, the appointed person will review the office holder's performance, along with any improvements made and consider generally how things are going.

### **4.2. Informing the office holder of the outcome including possible attendance at a second capability panel**

4.2.1. At the end of the period set for improvement in the first written warning, the appointed person meets the office holder to confirm whether the necessary improvement has taken place, and to hear the office holder's views. If the improvement has not taken place, the appointed person will inform the office holder that the appointed person is referring the issue once more to a capability panel and moving to the second and final written warning stage.

4.2.2. The HR adviser co-ordinates the panel and provides all the relevant paperwork. The meeting should be held without unreasonable delay whilst allowing the office holder reasonable time to prepare his or her case.

### **4.3. Second capability meeting (which should follow the same procedure as the first as set out at section 11 of the procedure)**

4.3.1. The second capability meeting to discuss the continued unacceptably low performance and decide on an outcome and a course of action is attended by:

- the appointed person
- the human resources adviser
- the capability panel (for composition, see the appendix to the procedure)
- the office holder and his or her companion (if any) and
- any relevant witnesses for either party where due notice has been given.

### **4.4. Issuing notice after the second capability meeting including a possible final formal written warning**

4.4.1. The diocesan bishop confirms the panel's decision as soon as possible after the meeting in a letter drafted by the HR adviser, either to dismiss the matter; or to issue a final formal written warning setting out:

- details of how the performance is insufficient or unacceptable
- the improvement that is required
- the timescale for achieving this improvement (normally between 3 and 6 months)
- review date
- support that will be given to assist the office holder
- a reminder to the office holder that failure to improve may result in removal from office
- details of the appeals process.

4.4.2. The office holder has the right to appeal within 7 days of receiving the notice (or longer if in all the circumstances 7 days is unreasonable.) If the office holder wishes to appeal, he or she should write to the appointed person setting out the reasons for the appeal. Appeals may be on the ground that fresh information has come to light or that the procedure was not followed (section 14 of the procedure).

## **4.5 Appeal meeting**

4.5.1. If the office holder appeals, the appeal administrator invites the officeholder to a meeting with the appeal panel which should be held without unreasonable delay whilst allowing the office holder reasonable time to prepare his or her case (section 11.18- 11.20 and section 14). The appeal meeting is attended by:

- the appointed person
- the human resources adviser
- the appeal panel (for membership, see the annex to the procedure)
- the office holder and his or her companion (if any) and
- any relevant witnesses for either party where due notice has been given.

4.5.2 The HR adviser will share the grounds of the appeal with the appointed person so that he or she is able to attend the Panel meeting with information that may be helpful.

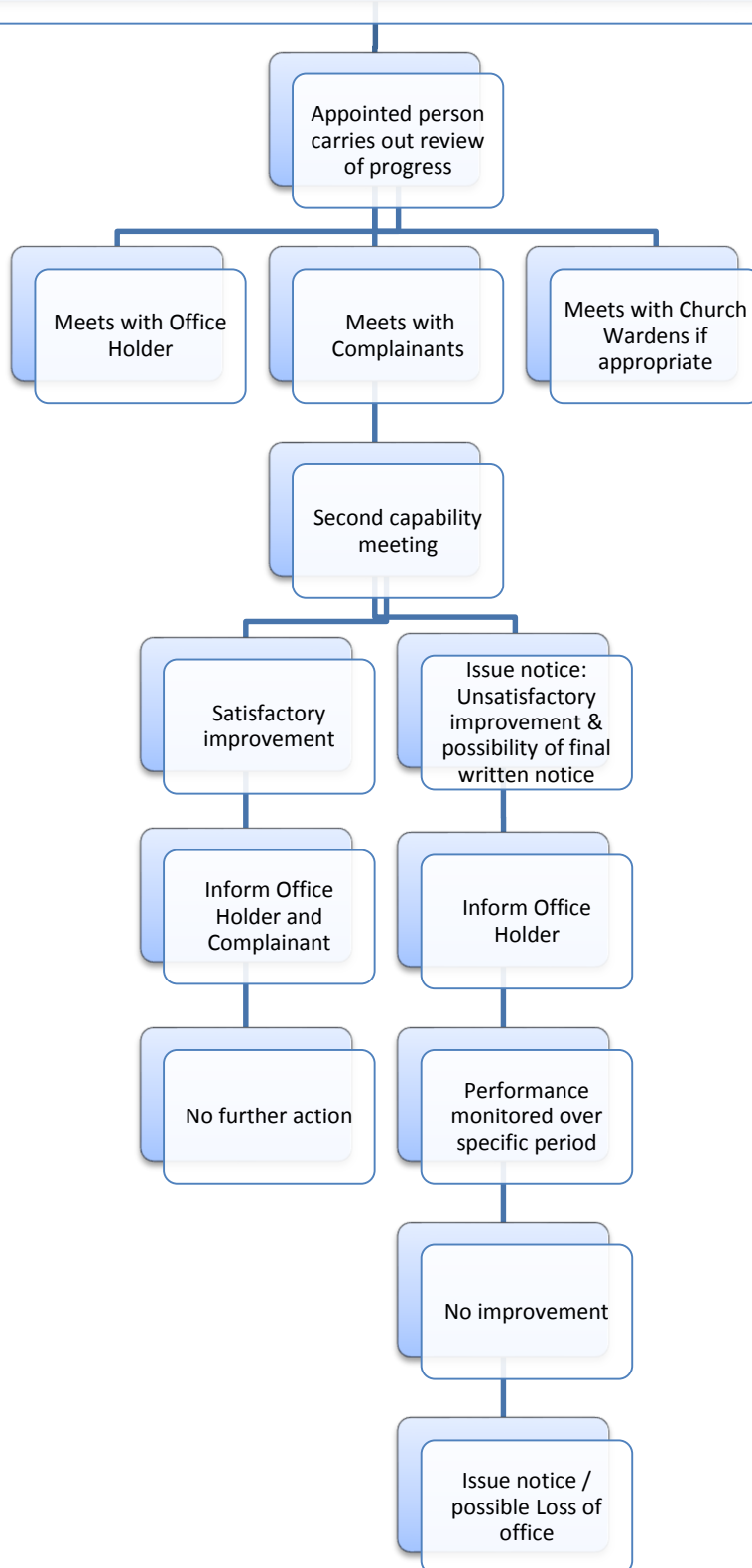
4.5.3 The appeal meeting is not a re-running of the original hearing, but will review the process, the evidence put forward in the original hearing, the decisions made, the evidence put forward by the office holder and the appointed person during the appeal and the grounds for the appeal.

## **4.6 Issuing notice after the appeal meeting**

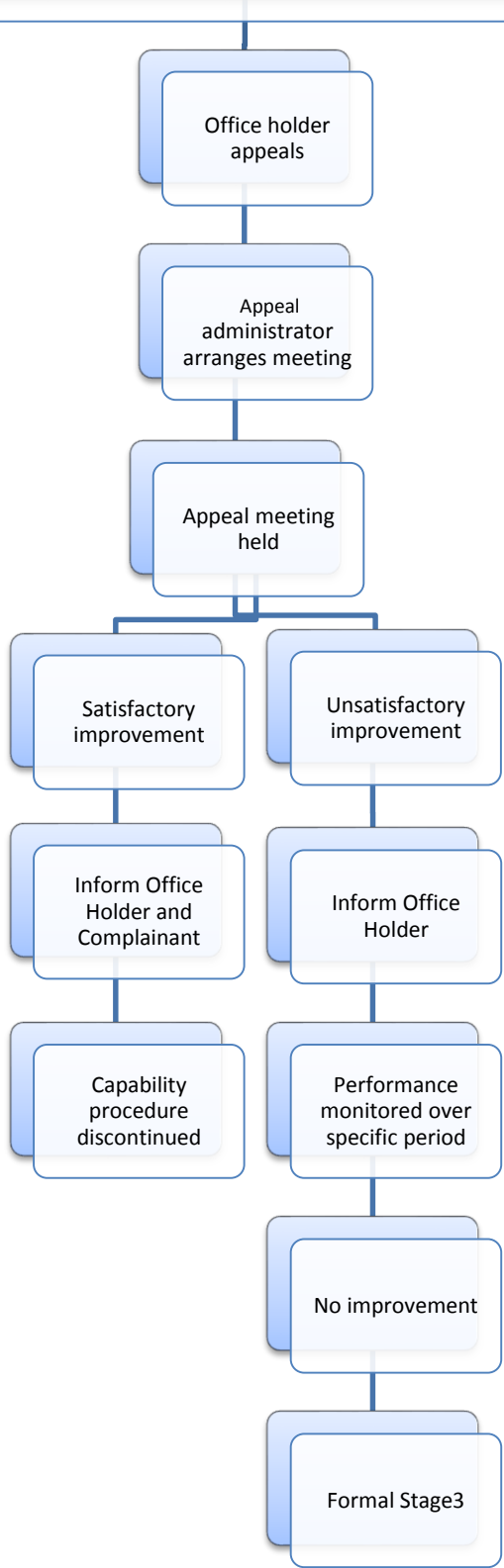
4.5.4. The chair of the appeal panel confirms the result of the panel's decision at the meeting. The HR Adviser will draft a letter to include this information and ensure that it is given to the office holder as soon as possible either to uphold the warning or to let the office holder know that the appeal has been successful and no further action will be taken.



## FORMAL STAGE 2 - REVIEW OF PROGRESS



# FORMAL STAGE 2 - APPEAL



## **PART 5: FORMAL PROCEDURE: STAGE 3: REMOVAL FROM OFFICE**

### **5.1. Reviewing performance after issue of final formal written warning**

5.1. The appointed person will be aware of any improvement and progress or otherwise that takes place during the period set for improvement and will be able to offer guidance on developments and to begin to gather information and evidence to support further decisions. At the end of the period set for improvement in the first written warning, the appointed person will review the office holder's performance, along with any improvements made and consider generally how things are going.

### **5.2. Informing the office holder of the outcome including possible attendance at a final capability panel**

5.2.1. At the end of the period set for improvement in the first written warning, the appointed person meets the office holder to confirm whether the necessary improvement has taken place, and to hear the office holder's views. If the improvement has not taken place, the appointed person will inform the office holder that the appointed person is referring the issue once more to a capability panel which has authority to remove the office holder from their current office.

5.2.2. The HR adviser co-ordinates the panel and provides all the relevant paperwork. The meeting should be held without unreasonable delay whilst allowing the officeholder reasonable time to prepare.

### **5.3. Final capability meeting**

5.3.1. The final capability meeting is attended by:

- The appointed person
- The diocesan bishop and other members of the capability panel (for composition see the annex to the procedure)
- The human resources adviser
- The office holder and his or her companion (if any) and
- any relevant witnesses for either party where due notice has been given.

### **5.4. Issue of notice of outcome following final capability meeting**

5.4.1. As soon as possible after the meeting, the diocesan bishop confirms the decision either to dismiss the matter; or to issue a notice of removal from office setting out:

- the reasons for removal from office;
- the date on which the removal from office will come into effect;
- the appropriate period of notice
- details of practical issues (which may include a separate meeting to discuss these)
- the appeals process.

5.4.2. The office holder has the right to appeal within 7 days of receiving the notice (or longer if in all the circumstances 7 days is unreasonable). ) If the office holder wishes to appeal, he or she should write to the appointed person setting out the reasons for the appeal. Appeals may be on the ground that fresh information has come to light or that the procedure was not followed (section 14 of the procedure).

### **5.5. Appeal meeting**

5.5.1. If the office holder appeals, the appeal administrator/HR Adviser invites the officeholder to a meeting with the appeal panel which should be held without unreasonable delay whilst allowing the office holder reasonable time to prepare his or her case (section 11.18 to section 11.20 and section 14).

5.5.2. The appeal meeting is attended by:

- the appointed person

- the human resources adviser
- the appeal panel (for membership, see the annex to the procedure)
- the office holder and his or her companion (if any) and
- any relevant witnesses for either party where due notice has been given.

5.5.3. The HR adviser will share the grounds of the appeal with the appointed person so that he or she is able to attend the Panel meeting with information that may be helpful.

5.5.4 The appeal meeting is not a re-running of the original hearing, but will review the process, the evidence put forward in the original hearing, the decisions made, the evidence put forward by the office holder and the appointed person during the appeal and the grounds for the appeal.

## **5.6. Issuing notice after the appeal meeting**

5.6.1. The chair of the appeal panel confirms the result of the panel's decision at the meeting. The HR Adviser will draft a letter to include this information and ensure that it is given to the office holder as soon as possible either to uphold the removal from office or to let the office holder know that the appeal has been successful and no further action will be taken.

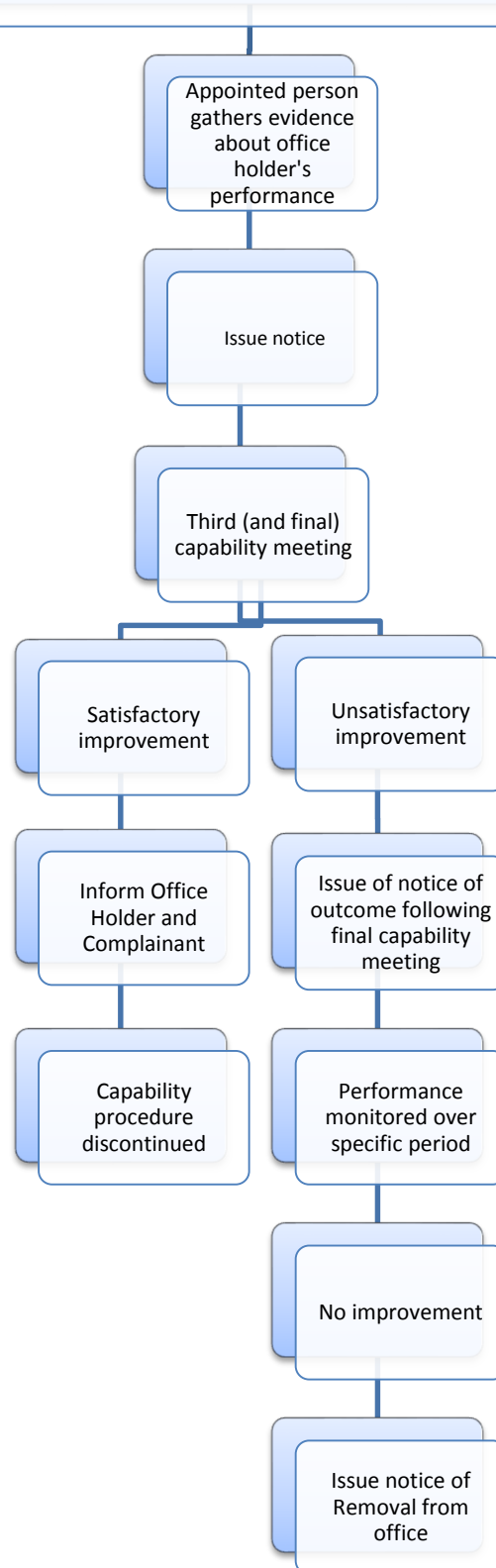
5.6.2. There is no further right of appeal within the capability procedure. The office holder has the right to make an application to an Employment Tribunal. Further information on making a claim can be found at:

<https://www.gov.uk/employment-tribunals/when-you-can-claim>

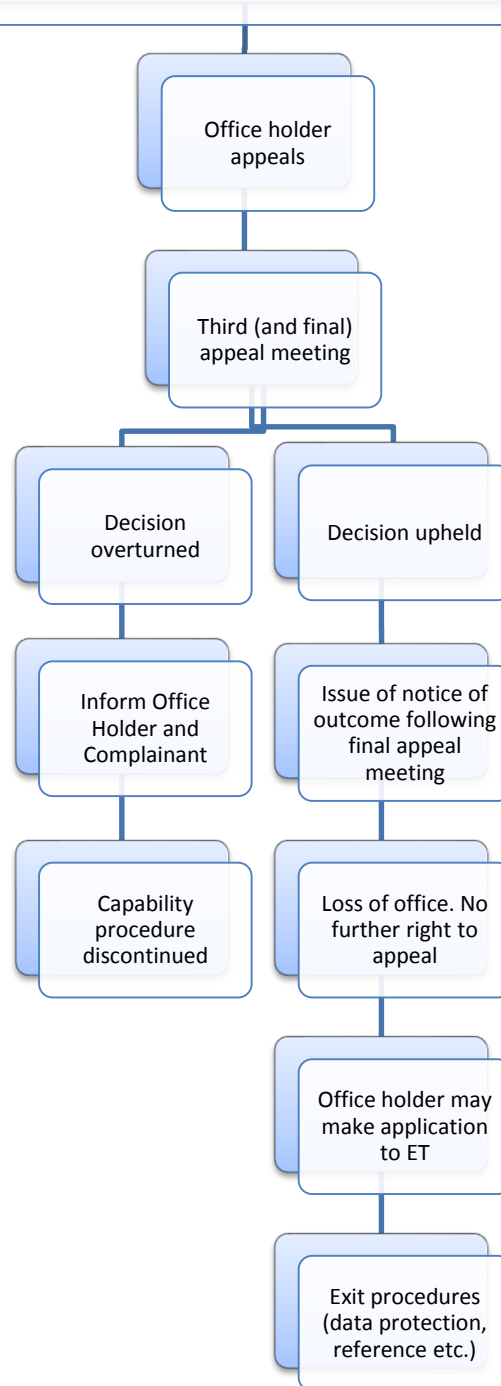
## **5.7. Removal from office processes**

5.7.1. The removal from office may trigger a number of administrative, pastoral and practical requirements, including communication with the PCC and wider parish, family issues regarding moving home etc. This is likely to be a very stressful time for all involved and due regard should be given to who is the most appropriate person to act as a link for the office holder and his or her family with the diocese and the various people who will be involved with these last stages.

## FORMAL STAGE 3 - REMOVAL FROM OFFICE



## FORMAL STAGE 3 - APPEAL AGAINST REMOVAL FROM OFFICE



**Guidance for the Appointed Person:  
Preliminary Investigation and decision to invoke Capability Procedure**

The first thing to determine will be whether there actually is a capability issue. The required standard will be evident from the role description, the agreed objectives set in the MDR process, the Ordinal and the Canons, and will have been articulated during the MDR. Things to consider before invoking the procedure include the following:

**1. How will confidentiality be preserved?**

1.1 At the information gathering stage, it will be appropriate for the appointed person to consult and collaborate with senior colleagues. This may involve discussion at the bishop's staff meeting. However, this needs to be done with some care in order to ensure that:

- proper confidentiality is preserved;
- the information is soundly based rather than merely anecdotal; and
- the impartiality of those hearing an appeal or the second stage of a procedure has not been prejudiced. (See Annex 4 on data protection.)

**2. How will information be shared?**

2.1 At all stages, it is important to ensure that information is given only to those who need to know, and that those involved realize the need for proper confidentiality, as unnecessary disclosure of information could undermine the position of the office holder involved. Nevertheless, office holders and those who raise concerns must be made aware that absolute confidentiality and anonymity are not, and cannot be, guaranteed.

2.2 Equally, individuals subject to capability processes may themselves share information as they see fit. Clergy may need to be warned that a failure to co-operate with the procedure by sabotaging it may be regarded as further evidence of lack of capability (for example by telling parishioners that if they don't report positively, the office holder will lose his or her job. The danger is this can then undermine parish relationships, but it is important that those bringing/raising concerns have a clear 'line' and know what is – and is not - advisable to say. Advice from the Archdeacon, HR adviser, and diocesan communications staff can be invaluable here.

**3. Is the reason for questioning the capability of the office holder that expectations are clear and realistic?**

3.1 If not, it may be necessary to review the role descriptions and objectives.

**4. Is someone well suited for ministry, but in the wrong post?**

4.1 If so, do not assume that the office holder will never be able to carry out the requirements of the post to an acceptable standard. The emphasis must be what action can be taken to equip the office holder to carry out the duties of his or her current office, although it may also be worth exploring whether an office holder who is finding ministry difficult in one parish might be willing consider applying for a post in another parish that might be more suitable for the office holder's talents.

4.2 However, it is important to emphasise that the Bishop has no powers to put someone in another parochial post: the proper appointments procedure has to be followed including obtaining the consent of the parish representatives and (where required) the patron.

## **5. Has the complainant provided sufficient evidence for a lack of capability?**

5.1 Given the lack of direct supervision, where a capability issue originates from a second-hand source, particular care must be taken to question, investigate and if necessary to challenge such sources in order to establish facts and the evidential basis for them.

5.2 Complaints about lack of capability can arise because of unjustified assumptions by a complainant about what constitutes appropriate behaviour or because the office holder's cultural upbringing or ethnic background is different from that of the majority of his or her parishioners.

## **6. Has the office holder let themselves down in one or two small but possibly important areas, while performing the duties of their office to a high standard overall?**

6.1 Evidence of conflict in a parish, or a clergy or ministry team, a fall in congregational numbers, or a failure of the congregation to pay the parish share or the non-achievement of agreed objectives may have nothing to do with the capability of an office holder. Indeed, sometimes courageous, prophetic ministry has such consequences.

6.2 However, there are situations when such evidence is symptomatic of a ministry going awry, and it is necessary to investigate whether there are specific areas where the office holder needs to improve his or her performance, which, if the office holder fails to address, might result in the capability procedure being activated. On the other hand, after investigation, it may be clear that the situation has come about for reasons unrelated to the office holder's capability, and use of the procedure may be premature or inappropriate.

## **7. Is the office holder taking concerns seriously?**

7.1 The procedure should only be invoked (even at an informal stage) once it is clear that other measures are not working. For example, if a cleric refuses to take concerns seriously, or acknowledge that he or she is failing to perform to an acceptable standard, or refuses to co-operate with the setting of particular objectives and on-going review.

7.2 Once the procedure has been invoked, it may be necessary to repeat some of the remedies and support measures that have previously been attempted in the hope that invoking the procedure has made the office holder take the issues seriously.

## **8. Is there a health issue?**

8.1 Using a capability procedure might be appropriate where the poor health of the office holder is preventing him or her from carrying out their duties properly or results in persistent long term absence from work (see Annex 3 on Capability and =health ). However, the use of the language of capability in such cases needs careful handling, and it may be better in a particular situation to refer to sickness, absence from work, wellbeing and the possibility of early retirement on specific grounds (which will require taking occupational health advice). See Annex 3 on Capability and health.

## **9. Is there evidence that the office holder has demonstrated a persistently abrasive manner that adversely affects relationships with parishioners?**

9.1 Using a capability procedure might be appropriate in the event of a breakdown in pastoral relationships. It will not be possible to make use of the Incumbents (Vacation of Benefices) Measure for clergy who are on common tenure. These clergy will be subject to the capability procedure, but it may prove more helpful to try facilitated conversations or more formal mediation processes or to encourage clergy to consider the possibility of moving to another parish and then actively supporting them in their applications.



9.2 Once it has been established that there is a potential capability issue, consideration needs to be given to some of the practicalities around invoking the procedure and of further options.

## **10. What evidence will be relied on should the procedure be invoked?**

10.1 If the capability issues are raised anonymously, there is no right of reply or natural justice. The procedure states at 4.4 that, if someone complains but is not prepared to go on record, the appointed person should not take the matter any further.

10.2 Clergy colleagues and laity in the parish are sometimes reluctant to go on record with a complaint or provide evidence. If the Churchwardens, and members of the ministry team and PCC are not prepared to go on record, or are unwilling to substantiate claims of poor performance, or there is insufficient support from the laity for invoking the procedure, there may be nothing that can be done, until and unless people change their minds – something which they might be willing to contemplate if a situation deteriorated further.

10.3 Where the facts are disputed at any stage of the procedure, the standard of proof should be the civil standard ('the balance of probabilities') and not the criminal standard ('beyond reasonable doubt').

## **11. Is reaching a settlement agreement an option?**

11.1 Sometimes the office holder may be all too aware that he or she is not carrying out the duties of the office to a high standard and is seeking (or might be open to) a dignified way to resolve the situation. In such cases, it can be beneficial for both sides to explore a solution that enables the office holder to take a way out with honour that avoids the need to invoke the procedure. It is important to remember that this is an avenue that both the individual and the diocese may want to explore, and something that, during the process, either party may want to put on the table. It is therefore worth taking some care to ensure that space is given for allowing and preparing for this option both before and during the procedure.

11.2 Human Resources advice (whether from a diocesan HR advisor or from the NCIs) should always be taken first. Protected conversations, without prejudice letters and other correspondence relating to a potential negotiated settlement should never be included with correspondence relating to a particular capability issue, but sent under separate cover so that it is clear that the processes are entirely separate. ACAS has produced advice on settlement agreements. See the link below:

[http://www.acas.org.uk/media/pdf/o/a/Settlement\\_agreements\\_\(the\\_Acas\\_Guide\)JULY2013.pdf](http://www.acas.org.uk/media/pdf/o/a/Settlement_agreements_(the_Acas_Guide)JULY2013.pdf)

## **12. What are the risks of invoking the procedure?**

12.1 There are particular difficulties in a parochial and church context. Activating the procedure has the potential to poison the relationship between laity and the priest; priest and other clergy colleagues; and between the diocese and the priest.

12.2 The difficulty of booking time in senior clergy diaries can have the effect of dragging the procedure out, as it will be difficult to convene capability panels. It may be helpful to have a series of dates provisionally booked from the outset, so that, should the process continue, timelines do not slip more than is reasonable for all parties concerned.

12.3 The procedure will take a great investment of time and effort. Consideration needs to be given to the impact this will have on key individuals and in ensuring that there are sufficient resources available before invoking the procedure.

### **13. Are the objectives clear?**

13.1 An important part of the procedure will be measuring performance against agreed objectives. It is important for those running the procedure to be clear about what these objectives should be and how progress towards them will be measured before invoking the procedure.

### **14. Who will provide Pastoral support?**

14.1 The diocesan bishop<sup>4</sup> has ultimate responsibility for the welfare of clergy within the diocese and for ensuring that they receive appropriate pastoral support. Pastoral support needs to be available for office holders whose performance is the subject of a capability procedure, but also for other people involved, for example:

- members of the office holder's family may need support, as the capability process has the potential to be quite a public issue and it an general stress for spouses, children and other dependants;
- other clergy in an area deanery or team or group ministry who may feel that they are having to cover the work of the office holder, or whose relationship with the office holder has come under strain;
- churchwardens and other lay people in the parish (particularly where they have raised a capability issue and relationships are coming under strain);
- archdeacons and others operating the procedure, who will also need to have access to good HR advice.

14.2 This does not necessarily mean that the bishop has to provide pastoral support personally. The important thing is to make arrangements to ensure that it is provided by someone. In some circumstances, pastoral support is more likely to be well received if it comes from a source that is independent of the bishop, so that the office holder can be confident that what is said will remain confidential. For example, it might be possible for dioceses to have reciprocal arrangements with a neighbouring diocese to provide support or to have experienced retired clergy, counsellors or other support in place.

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<sup>4</sup> An area or suffragan bishop may exercise the functions of the diocesan bishop under this procedure where he or she has been given authority by the diocesan bishop so to do. In such cases another suitable person (such as the dean) should take the place of the area or suffragan bishop as a member of a capability panel.

**Guidance for Appointed Person:  
Checklist on decision to invoke the procedure**

1. If the appointed person has considered the questions raised in Annex 1, and finds that the office holder's performance remains insufficient or unacceptable, the appointed person will need to consider advising the office holder that action may follow if no improvement occurs.
2. HR Advice should be sought from the outset so that administrative issues, support plans, evidence gathered, and correspondence, notes and minutes from meetings, can be properly and carefully recorded, as these may be required at a later stage. The office holder will also want to know what information is kept and where e.g. on the blue clergy file.
3. Any notes and minutes from meetings should be shared with office holder as confirmation of the content of the discussions that has taken place. Where the office holder disagrees with any element, their own version/amendments should be appended to the original paperwork.
4. The role description and objectives should be reviewed in case the issue is the result of unclear or unrealistic expectations.
5. MDR records should be checked to see whether they record concerns about performance: if concerns have not been previously raised at the MDR stage, then there may not be sufficient evidence to take forward a capability issue formally and informal processes may need to be gone through to make it clear that concerns about performance have been raised.
6. Alternative ways of addressing poor performance should have been exhausted. Examples include:
  - Providing coaching and mentoring and making full use of CMD;
  - Providing regular on-going review against carefully drawn up objectives;
  - Providing feedback on the ways in which someone is preventing their ministry from being effective and how they can address this;
  - Raising concerns in conversation (it may also be helpful to record briefly in writing what was discussed);
 Exploring the question of whether the office holder is in the wrong parish and should consider a move to another more suitable parish.
7. The evidence that can be used to justify why the procedure is being invoked should have been identified before the procedure starts. Where the facts are disputed at any stage of the procedure, the standard of proof should be the civil standard ('the balance of probabilities') and not the criminal standard ('beyond reasonable doubt').
8. It is vital to be clear in advance how performance improvement will be measured (including any revisions that might need to be made to the role description and objectives to make them sufficiently specific).

**Time for improvement**

9. It is necessary to work out how much time needs to be given for improvement. Periods given for improvement (as distinct from the expiry of warnings) do not have to be lengthy. It should be sufficient for improvement to be achievable, but not so lengthy that the office holder is left in unnecessary suspense about whether improvement has happened. In many

cases, this will be around three months, but this is an example, not a prescription, and a shorter period – of no more than a month - may sometimes be sufficient.

### **Temporary Improvements**

10. Sometimes there will be cases where there is a temporary improvement during the period while someone's capability is under review. However, once the procedure is halted and the warning has expired, the insufficient or unacceptable level performance may start again. This may happen repeatedly.

11. In such a case it may be advisable, when issuing a warning, to specify a longer period than usual for demonstrating improvement, in order to avoid the risk of having to start the procedure again from scratch. If a person who had demonstrated such a pattern of behaviour were ultimately removed from their current office, the expired warnings could be used as evidence of a continuing lack of capability in the event of an application to an Employment Tribunal.

12. Appropriate pastoral support measures need to be in place. See Annex 1.

## Capability and health

1. Section 20 of the Procedure addresses incapability due to sickness, injury or disability and should be referred to in the first instance. Section 20.6 sets out key considerations in dealing with such cases fairly and sensitively considering if the Disability Act 2005 applies.
2. Where performance is affected by ill health the procedure is there to provide a fair framework for ensuring that all possible ways of supporting the welfare of an office holder are considered and that the full range of possible outcomes is explored. Reassurance should be given to the office holder that a fair process will be undertaken, and that an assessment will be made of the possibilities for reasonable adjustments, support and rehabilitation.
3. There are a number of courses of action that may be appropriate in the case of long-term sickness, depending on the circumstances of the particular case:

### Occupational health advice

4. In cases of long term sickness, it will be useful to consult the Human Resource Adviser about referring the office holder to an occupational health adviser. All dioceses should have access to professional Occupational Health advice and support (often accessed/referred by HR Advisers). No medium to long term changes and adjustments should be made or agreed with an office holder without professional advice and follow up. This will help to address the following points:

- whether there is an underlying medical condition;
- whether sickness absence is likely to improve and the timescales;
- if currently absent, when the office holder is likely to be fit to return to work
- whether there are any health and safety issues;
- any recommended work restrictions or adjustments considered appropriate to the workplace, whether they are likely to be permanent or temporary, and, if the latter, their duration;
- whether further review is recommended and by whom;
- whether the office holder is likely to be within the scope of the Equality Act
- if the Equality Act applies, then what reasonable adjustments are required and what is their likely duration.

### Changes to the role or making other adjustments that would enable the person to carry out the role

5. This might involve some reasonable adjustments to the parsonage facilities or providing specialist technology. It might mean making arrangements for some of the duties of the office to be covered for a limited period. It is important to be imaginative and explore possibilities here, and bear in mind the requirements of the Equality Act to make reasonable adjustments if they will enable a person with a disability to carry out the requirements of the office. The Government's Access to Work scheme supports people whose health and disability affects the way they do their jobs. It might pay towards equipment needed at work or adapting premises, or a support worker. For further details contact the Disability Employment Adviser at the local Jobcentre Plus.

### Communications with the parish

6. Particular care is needed in communicating matters around an individual's health, as office holders may want to keep the nature of their illness confidential. However, churchwardens, other members of the parish staff team, and the area dean (who may be involved in trying to organise cover) need to be kept informed about the likelihood of, and timescales for, a possible return to work. Sharing the diocesan sickness policy will help office holders understand the broader context of supporting and managing sickness and absence for a diocese.

### **Impact on the parish**

7. In reaching a decision about how to proceed, it is valid to weigh the impact of long-term sickness on the parish and the need for cover. Uncertainty over a sustained period can be very damaging, especially if there does not appear to be a timescale for resolving that uncertainty. This is likely to become more difficult over time, as people find that the office holder's absence from work results in increased demands on them. The circumstances of each individual case will determine what would be considered reasonable.

### **Sickness reporting and regular meetings**

8. Clergy may sometimes need to be reminded that Regulation 27 of the Ecclesiastical Offices (Terms of Service) Regulations 2009 requires clergy to inform the officer nominated by the bishop if they are unable to carry out the duties of their office for reasons of sickness. A discussion with the office holder on each occasion that he or she returns to work should help to create a climate for discussion of sickness and the surrounding issues.

9. In cases of long term sickness where recovery and return to work are expected, it is nevertheless important that the appointed person has regular meetings with the office holder or their representative to keep the position under review. Discussion of these matters is sensitive but best not avoided. Keeping someone in suspense and leaving them unclear where they stand can be stressful for them, and is not kind in the long run either to the individual or to the people he or she serves.

10. All dioceses should have a clear sickness policy (which may include well-being, occupational health provision, arrangements for sick pay) that they can share easily with any office holder.

11. Regulation 28 of the Ecclesiastical Offices (Terms of Service) Regulations 2009 gives the bishop power where there are reasonable grounds for concern about the physical or mental health of an office holder to direct that the office holder undergoes a medical examination.

### **Providing alternative work to which the office holder may be more suited**

12. Sometimes it may be that the requirements of the particular office are such that it would be beneficial for the office holder to consider a move. See the section on redeployment following capability procedure.

### **Early Ill health retirement**

13. Ill health retirement may be an option in cases where the office holder is unable to work, the condition is permanent and there is no likelihood of a return to work either in the current office (whether to full duties or duties adjusted after mutual agreement) or in an alternative position (whether in priestly ministry or not). This will require a full occupational health assessment.

### **Removal from the current office**

14. Removal from office requires the use of the capability procedure. It might be used, as a last resort, in a case where the office holder was no longer capable of carrying out the duties of their current office and was unlikely to achieve an acceptable standard in another ministerial appointment, but ill health retirement pension was not available. In certain circumstances, it might be appropriate to use the shortened procedure, which would miss out one stage, but using the procedure will always include a formal warning stage with appeal rights, prior to holding a final capability meeting that might result in removal from office. However, where the office holder is terminally ill or has a long-term serious condition and is requesting ill health retirement, all possible support should be provided without recourse to a formal process but taking the necessary occupational health advice.

### Written records and data protection

1. The appointed person should keep written records of issues raised and conversations held, even at the informal stage of the procedure. This helps to identify if a pattern is emerging, and ensures clarity about what has been raised with the office holder.
2. When the procedure has come to an end (for whatever reason) the appointed person should review the papers and delete any duplicate or unimportant material before passing papers to the bishop's office to be placed on the clergy blue file.
3. It is important to preserve a clear audit trail that provides a record of action taken (e.g. written records of conversations where performance issues were raised, MDR summaries, and courses of action agreed with the office holder). Spent warnings should be retained on file in a sealed envelope for as long as the office holder remains in post but should then be destroyed, unless the next post to which the office holder is appointed is designated as a probationary post or there are other circumstances which justify retaining them. Refer to currency of warnings (part 7 of the procedure).
4. Where a potential capability issue has proved to be trivial or unsubstantiated, the records should nonetheless be retained in a sealed envelope in case it proves necessary to demonstrate that the issue was considered and addressed. This is for the protection of all the parties, including the office holder.

### Guidance on confidential files relating to clergy

5. Lambeth Palace has revised guidance notes for bishops and bishops' secretaries on confidential files relating to clergy: [www.cofe.anglican.org/about/librariesandarchives](http://www.cofe.anglican.org/about/librariesandarchives). Those guidance notes about the Data Protection Act (DPA) and subject access state the following:

*The DPA confers a right of access by an individual to see personal data held about him or her. This does not mean, however, that clergy can simply walk into the bishop's office and demand to see their files. Under the DPA, a subject access request must be made in writing and a fee of up to £10 can be charged. Once the fee has been paid and the data controller has received any information needed from the applicant, the data controller has 40 days to respond to the request. The information should be supplied in the form of copies unless that would involve disproportionate effort.*

*Not all personal data held should necessarily be disclosed on a subject access request, and bishops' offices should seek advice from the diocesan registrar. In particular, care must be taken in relation to any information which relates to an identifiable third party. Such information should not normally be disclosed without the third party's consent, unless it is reasonable in all the circumstances to do so. There are also exemptions which permit data to be withheld where disclosing it would prejudice the prevention or detection of crime, or the proper exercise of functions designed to protect the public from professional misconduct or incompetence.*

### Recording and monitoring of formal capability procedures in the diocese

6. The HR Adviser and archdeacons can support the bishop by encouraging him or her to consider making an appropriate person responsible for recording, monitoring and analysing the number and nature of capability cases. In particular, it will be important to look out for trends or changes, such as an increase in the number of capability cases, or whether the same parish/deanery/person is repeatedly involved (whether as the subject of the procedure, or as someone who persistently refers capability issues to the archdeacon). This is particularly important, as this could indicate weak appointment processes, parishioners who were over-zealous about raising issues of concern or potential discriminatory behaviour.

### Right to be accompanied

1. Office holders should be given the right to bring a lay or ordained colleague or trade union representative to accompany them to the all formal stages of the procedure. Their companion should have an awareness of the context in which the issue of capability is being raised. The companion must not be someone who would prejudice the hearing or who might have a conflict of interest (for example if they might be called as a witness).
2. 'Colleague' should be interpreted flexibly. For example, it could be a reader or a churchwarden or someone from a different team or archdeaconry. A colleague might in certain circumstances include a member of another church in a local ecumenical project or partnership. It may sometimes be appropriate to agree to the companion being a legal adviser (especially at a final stage hearing or appeal).
3. If an office holder wishes to be accompanied, he or she should normally make a request in writing and should inform the appointed person whom they have chosen.
4. The office holder should not be given an entitlement to be accompanied during the informal stage of the procedure, but the appointed person has the discretion whether to allow a companion to attend and this may be helpful.
5. Whether a request for a particular individual to accompany the office holder is reasonable will depend on the circumstances of the individual case. The chair of the capability panel will have the final decision, and may use his or her discretion.
6. The companion should be allowed to address the meeting to:
  - put the office holder's case;
  - sum up the case on behalf of the office holder;
  - Respond on the office holder's behalf to any view expressed.
7. The companion may:
  - confer with the office holder during the hearing;
  - Participate as fully as possible including asking witnesses questions.
8. The companion should not be permitted to:
  - answer questions on behalf of the office holder;
  - address the meeting if the office holder does not wish it;
  - prevent the appointed person from explaining the position.
9. See also Annex 7 on Protocols for those attending a capability panel.



### Redeployment of a priest who has been subject to the capability procedure

1. Removal from one particular office on capability grounds does not remove a cleric from holy orders or disqualify him or her from being appointed to another office. Regulation 29(1) (e) of the Ecclesiastical Offices (Terms of Service) Regulations 2009 allows office holders, who have been removed from one office on capability grounds to be appointed to another office on a probationary basis. Regulation 29(6) states that:

*An office may be designated as a probationary office if the office holder has been removed from a previous office by a final adjudication under the capability procedures and the office designated as a probationary office under this paragraph is the first office occupied by the office holder after his or her removal from office.*

2. The power in Regulation 29 allows a bishop to appoint a person to a probationary office on a fixed or limited term basis. So the appointment may be terminated on the expiry of the fixed term or the occurrence of the specified limiting event (for example, the failure of the office holder to complete some recommended training satisfactorily within a certain period, or to reach a certain standard).

3. As the appointment cannot be terminated before the end of the fixed term except by going through all the stages of the capability procedure, the bishop should bear this in mind when setting the length of the fixed term, which can be renewed for further periods. The designation of the post as a probationary office must be recorded in the statement of particulars, along with the date on which it is to end (if a term is specified) or the particular event that will bring it to an end (if one is specified).

4. Except in the limited circumstances prescribed in Canon C8.2, clerics are unable to carry out any ministerial function unless the bishop has instituted them to a benefice or granted them a licence or permission to officiate. Before giving such authority to a cleric who has been removed from office for incapability, the bishop should satisfy himself that their new duties are demonstrably different in nature from those in their previous post or that there is some other good reason why the previous lack of capability is no longer an issue. He should consult the human resources adviser before offering someone who has been removed from office because of capability another post or granting them a licence or permission to officiate.

5. Whilst the bishop may well wish to assist the office holder to find another appointment, he will need to work within the constraints of the recognised appointments procedures, and it is important not to offer another appointment unless and until all the necessary consultations have been undertaken.

6. Office holders whose capability in a particular role is coming under question may benefit from career counselling and coaching, to improve their understanding of their strengths and weaknesses and the kind of ministry that would be appropriate for their particular talents. This is particularly likely to be helpful if the problem has been caused by being in the wrong post, and it is unlikely that capability would be an issue in another appointment. Resources are available from a variety of sources such as Ministry Development Officers. Office holders are most likely to benefit from this approach when it is tried at an early stage. In exploring these possibilities, it is important not to make assumptions about someone's long term capability in a post, which is a distinct issue from whether they would be benefit from a move.

7. Another option might be for the office holder to have an interview with the Human Resources Adviser or equivalent person responsible for providing advice to clergy on 'career' development. If office holders are to derive the full benefit from this, they need to prepare thoroughly and provide detailed and accurate information.

## CAPABILITY HEARING PROTOCOL FOR THOSE ATTENDING A CAPABILITY PANEL

This information has been provided for the benefit of all those attending a capability hearing, including panel members, office holders and companions.

### Composition of capability panels

The appointed person must not chair or be a member of the capability panel. Whenever appropriate and possible, capability panels should have a membership that includes:

- a) both men and women;
- b) at least one member from the same ethnic background as the office holder whose capability is the subject of the procedure;
- c) at least one member whose theological tradition is similar to that of the office holder whose capability is the subject of the procedure.

1. The Appointed Person provides all panel members, the Office Holder and their companion with a copy of the information pack prior to the meeting.
2. The Appointed Person ensures that a room is provided for any witnesses to wait.
3. The Chair introduces him/herself and the other members of the panel.
4. Other attendees at the meeting introduce themselves and their roles in the hearing, where appropriate.
5. The Chair runs through housekeeping points, to include:
  - a. fire procedures;
  - b. timing of any lunch break;
  - c. where and how adjournments can be taken;
  - d. rooms available to use for adjournments
6. The Chair requests details of any witnesses present to be called during the hearing.
7. The Chair checks that everyone is in agreement with the process so far.
8. The Chair checks that everyone has the information they require and are ready to commence.

### Appointed Person Presents Case

9. The Chair invites the Appointed Person to present his or her report and to call any witnesses.
10. The Chair calls any witnesses for questioning.
11. The Chair invites any questions of the Appointed Person by the Office Holder and companion.
12. The Chair invites the panel to ask any questions.
13. The Chair may also ask questions of the Appointed Person.

### Office Holder Presents Case

14. The Chair invites the Office Holder to respond to the case outlined by the Appointed Person and to call any witnesses.
15. The Office Holder responds to the Appointed Person's presentation of the case and questions any witnesses.
16. The Chair invites the Appointed Person to ask any questions of the Office Holder.
17. The Chair reminds the Companion of his or her role in the meeting.
18. The Chair invites the panel members to ask any questions of the Office Holder.
19. The Chair may also ask questions of the Office Holder.
20. The Chair informs any witnesses called that they can leave.
21. The Chair calls an adjournment.
22. The Appointed Person, the Office Holder and Companion reflect and consider the information presented during the hearing and to reflect and consider the information presented during the hearing and to prepare anything else that they would like to add, should they wish to.
23. The Chair will then resume the hearing and will ask the Appointed Person and the office holder /Companion whether there is anything further they wish to add.
24. After any final representations, the Chair will then end the hearing and the Chair and the panel will adjourn to consider their response. The Appointed Person and the Office holder/ Companion will leave the hearing at this point.
25. The decision of the panel will be sent in writing to the office holder without undue delay along with details of how to appeal any decision.

## Glossary of terms & roles in the procedure

*Appeal Administrator:*

the person who runs the appeal, as this cannot be done by the Appointed Person as he or she would have been involved in the original procedure.

*Archdeacon:*

see 'appointed person'

*Appointed person:*

this is the person who is appointed by the bishop to run the capability procedure. It will usually be the archdeacon.

*Bishop:*

the bishop will be kept informed of the investigation process but not informed of the detail of the investigation until the final report is reported at the capability panel, which will usually be chaired by the bishop.

*Capability:*

whether an office holder is discharging his or her duties to an acceptable standard

*Capability Panel:* the body that is responsible, after a meeting with the office holder, for coming to a view on whether his or her performance is acceptable or a formal warning needs to be issued

*CMD:*

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*Companion:*

a lay or ordained colleague or trade union representative who may accompany the office holder who is the subject of a capability procedure to a capability panel.

*Complainant:*

person making a complaint about an office holder's capability

*MDR:*

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*Office holder:*

used interchangeably with cleric to indicate someone whose capability is being questioned and who is the subject of the procedure.

*Under performance:*

whether someone is failing to carry out their duties to a satisfactory and acceptable standard