Supporting and Managing Performance Regulation

1.1 This Regulation should be read in conjunction with Statute 35 and any amendments made from time to time.

1.2 The following terms are used:

a) ‘Department’ includes Schools, Colleges and Professional Support Departments;

b) “Executive Lead” means the individual with responsibility for that area of activity who would normally be the UEC lead.

c) Head of Department means the head of an academic or support department or college;

d) Manager means the member of staff’s immediate line-manager who may be the Head of Department, Head of College or a supervisor/manager.

1.3 Reference to any individual with responsibilities under this Regulation, includes his/her nominee.

1.4 Advice should be sought from HR if confirmation is required as to who the appropriate person is to be responsible for or to conduct any part of this Regulation.

2. Purpose and Scope

2.1 This Regulation is principally an aid to good management such that support and management of performance should be part of a regular dialogue between a member of staff and the Manager.

2.2 It is anticipated that in most cases performance will be managed as part of routine day-to-day management outside of this Regulation. Good management practice is encouraged to achieve improvements without the need for action under this Regulation, as often minor concerns about performance can be managed by way of a routine discussion/meeting(s), to talk about, engage with and act upon performance issues. Handled well, managing performance as part of day-to-day interactions can:

a) help to establish and maintain the highest standards of performance;

b) encourage members of staff to improve / sustain their performance;

c) demonstrate to all members of staff that the University acts fairly and consistently in maintaining these standards.

While this Regulation may be used to impose sanctions, this is not its primary purpose.

2.3 As day-to-day management meetings are not part of this Regulation, members of staff cannot be accompanied at these day-to-day management meetings.

2.4 For the avoidance of doubt, nothing in this Regulation shall require the institution of formal proceedings to be preceded by any informal action, in particular if the performance issue or concern is considered too serious to be addressed through informal methods.
2.5 This Regulation applies to all staff employed by the University (with the exception of the Vice-Chancellor for whom separate provision is made).

3. **Responsibility for Managing Performance**

3.1 For academic, teaching and research staff, the University Executive Lead has overall responsibility for managing performance and ensuring that performance meetings are conducted for staff in their departments; noting that day-to-day support and management of performance will normally be delegated to the Head of Department or other Manager.

3.2 For staff on Grade 6 to 10 and not included in 3.1 (above), the University Executive Lead has overall responsibility for managing performance and ensuring that performance meetings are conducted for staff in their departments; noting that day-to-day support and management of performance will normally be delegated to the Head of Department or other Manager.

3.3 For staff on Grade 1-5, the Head of Department or Head of College has overall responsibility for managing performance and ensuring that performance meetings are conducted for staff in their departments; noting that day to day support and management of performance will normally be delegated to the Manager.

3.4 For staff with dual roles the person with overall responsibility for managing performance will be relevant to the part of their role for which performance is being supported and/or managed and such management may be delegated on a day-to-day basis.

3.5 The appropriate University Executive Lead has responsibility for managing the performance of a Head of Department or Head of College.

3.6 The Vice-Chancellor or Provost has responsibility for managing the performance of those that report to them.

3.7 For confirmation of the appropriate person for managing the performance of any other member staff not included above, or where it may potentially be appropriate for someone other than those outlined in this Regulation to manage performance, advice should be sought from HR.

4. **Principles**

4.1 This Regulation provides a clear and transparent process to ensure all staff are treated consistently and issues are dealt with fairly, reasonably and in accordance with employment law.

4.2 The following principles will apply to use of this Regulation:

a) Supporting and managing performance will be part of the normal ongoing day-to-day discussions between the Manager and a staff member.

b) Performance matters will normally be managed by way of routine management and thereafter an informal Performance Framework before being considered under any formal stages.

c) Performance issues, including meetings, discussions, decisions or confirmation of decisions will be raised and dealt with without unnecessary
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d) During an informal Performance Framework and at every formal stage in this Regulation the member of staff will be advised of the nature of the performance issue(s) and will be given the opportunity to state his/her case before any decision is made.

e) At all meetings regarding an informal Performance Framework or formal stages under this Regulation the member of staff will have the right to be accompanied by a trade union representative or work colleague (not acting in a legal capacity).

f) In all cases, including where dismissal is contemplated as a potential outcome, the member of staff will be informed, in writing, in advance of any performance review meeting.

g) No member of staff will be dismissed for a first instance of poor performance except where the poor performance falls within the University’s definition of gross misconduct.

h) Staff will have the right to appeal against any formal warning imposed or against dismissal.

i) All staff will be treated consistently, fairly and with respect.

4.3 For day-to-day management of performance outside of this Regulation, meetings should normally be followed up by email confirming the discussion and any actions.

4.4 In an Informal Performance Framework meeting and any meeting under the formal stages of this Regulation notes should be kept of meetings to support and manage performance so that actions and mitigation are documented and, if any concerns are not rectified or they are repeated, there is the possibility of further steps being taken, which may include formal action.

5. Informal Performance Framework

5.1 An informal Performance Framework is a structured process sitting outside the formal stages of this Regulation. An informal Performance Framework may be appropriate if:

a) Day-to-day management is not considered sufficient to bringing about the desired performance or improved performance; and/or

b) Attempts to resolve a performance issue have not been resolved during day-to-day management; and/or

c) A more structured approach to supporting and managing performance is considered beneficial or necessary by the Manager; and/or

d) A first instance of underperformance is sufficiently serious or there is a longstanding performance concern, which has not recently been managed.

6. Formal stages of the Supporting and Managing Performance Regulation

Use of the formal stages of this Regulation may be appropriate if:

a) attempts to resolve a problem via an informal Performance Framework have not succeeded; or

b) the member of staff has previously received a warning which is still current at the time of the underperformance complained of; or

c) A first instance of underperformance is sufficiently serious; or

d) There is a longstanding and significant performance concern, which has not recently been managed.
7. **Overlapping grievance and performance improvement cases**

7.1 Where a member of staff raises a grievance during a performance improvement process, and the grievance and performance cases are related, both cases will be dealt with concurrently and within the same process.

7.2 Where a member of staff raises a grievance during a performance improvement process and any concerns are in part related to a performance process, those concerns may be dealt with under this Regulation and any concerns not related to performance may be dealt with under a separate grievance process.

7.3 Where it is not appropriate to deal with both issues concurrently the performance improvement process may be temporarily suspended in order to deal with the grievance or the grievance may be managed in parallel.

7.4 The approach will be mindful of the need to consider all concerns appropriately and to avoid multiplicity of procedures and associated delay.

8. **Confidentiality**

8.1 Statements, letters and other communications are confidential to those involved in the performance improvement process.

8.2 The Manager and those involved in any process under this Regulation must be mindful of GDPR and must store materials securely and only maintain them for as long as is reasonable and necessary.

9. **Non-attendance**

9.1 Members of staff are required to attend meetings convened under this Regulation.

9.2 If a member of staff does not attend a formal performance review meeting without good reason, the meeting may proceed in his/her absence. Normally, however, the meeting will be adjourned to enable contact to be made with the member of staff to ascertain the cause of his/her absence, unless the meeting has already been adjourned due to previous absence without good reason.

9.3 Should a staff member be unable to attend a meeting for a genuine reason (e.g. health), alternatives may be explored such as Skype.

9.4 Where a member of staff is persistently unable or unwilling to attend a formal performance meeting without good reason, the Manager will make a decision on the evidence available.

10. **Union Officials**

10.1 If a Manager or Head of Department has concerns in relation to the performance of a union branch secretary/shop steward or other official and considers that they should be managed under an informal Performance Framework or the formal steps of this Regulation, advice should be immediately sought from HR.
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10.2 Subject to the member of staff’s agreement, HR shall inform a senior trade union official or an official employed by the union about the performance management (informal or formal) of their union branch secretary/shop steward or other official.

11. **Representation**

11.1 All staff have the right at meetings (and appeals) under an informal Performance Framework or the formal stages of this Regulation, to be accompanied by a trade union representative or work colleague. For the avoidance of doubt, the work colleague must be a current employee of Durham University, not acting in a legal capacity. The member of staff must make all such arrangements for his/her own representative/work colleague to attend the meeting(s).

11.2 Staff should always be allowed adequate time to arrange representation and members of staff and their work colleagues should make every effort to attend the meeting. If a representative or work colleague is unavailable on the date of the formal meeting, the manager should rearrange the meeting on a suitable alternative date provided this is within a reasonable timescale, e.g. within five working days after the date initially proposed.

11.3 Under no circumstances should staff be refused the right of representation.

11.4 The trade union representative or work colleague accompanying the member of staff is entitled to put the member of staff's case, to sum up the member of staff's case, to respond on the member of staff's behalf to any view expressed at the meeting and to confer with the member of staff during the hearing. The representative or work colleague may request adjournments to discuss and give advice to the member of staff.

11.5 The trade union representative or work colleague does not have the right to answer questions on behalf of the member of staff and should not address the meeting if the member of staff does not wish it. Those present must not behave in a way that prevents the manager explaining his/her views or that prevents any other person present from making his/her contribution to the meeting.

12. **HR Representation**

A representative from HR may be present at meetings under this Regulation to provide advice and guidance.

13. **Notes and Recording of meetings**

13.1 Audio recording of meetings is not permitted.

13.2 The Manager shall take a note of the meeting and/or may ask that a member of the administrative staff from the department attend in a note taking capacity. Any notes should capture the main points and actions arising from the meeting and are not intended to be verbatim. The member of staff and his/her work colleague or trade union representative are free to take their own notes if they wish.

14. **Equal Opportunity**

All parties involved in the operation of these regulations shall ensure that the application is in line with the University’s Equality, Diversity and Inclusion Policy.
Using the Supporting and Managing Performance Regulation

Informal Performance Framework

15. Initial Informal Performance Framework Meeting

15.1 An informal Performance Framework is an informal structured process to allow a Manager and member of staff to discuss and manage performance but is not a formal stage of this Regulation.

15.2 The Manager should alert HR before commencing an informal Performance Framework.

15.3 The Manager should write to the member of staff informing him/her of the nature of the concerns about his/her performance and inviting the member of staff to a meeting to discuss the concerns and informing them of the right to be accompanied.

15.4 The invitation should inform the member of staff that this meeting is not part of the formal Supporting and Managing Performance Regulation but provides the opportunity to devise a framework to ensure the staff member is able to meet and sustain an appropriate level of performance.

15.5 The invitation should contain sufficient information about the alleged underperformance to enable the member of staff to appropriately prepare for the initial meeting and should invite the member of staff to raise any mitigating and/or contextual factors impacting on their performance. It should be made clear to the member of staff that there are no potential formal sanctions as an outcome of this meeting.

16. At the Initial Informal Performance Framework Meeting

16.1 The purpose of the meeting is to discuss performance issues and to consider and determine what help and support may be required to assist the member of staff (including suggestions from the member of staff), e.g. training. The Manager must be clear about the relevant performance expectations for the role and must explain the nature of the concerns to the member of staff, who will be given an opportunity to discuss them and any relevant contextual factors/mitigation.

16.2 The Manager should develop an action plan which clearly sets out the improvement and performance required and the actions which the member of staff should take to achieve these requirements. A draft action plan should normally be prepared in advance of the Initial Informal Performance Framework Meeting and shared with the member of staff in good time before the meeting and shall include:

16.2.1 details of any support mechanisms available to assist the member of staff to improve his/her performance;

16.2.2 the dates of review meetings under the informal Performance Framework (noting that these may be subject to change);

16.2.3 targets which should be reasonable, unambiguous, set to appropriate timescales and with measurable outcomes that are appropriate to the role and within the control/remit of the member of staff;

16.2.4 clear information about how performance will be measured; and

16.2.5 clear timescales for the achievement of key objectives and achieving and sustaining the level of performance required.
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16.3 The Manager should give careful consideration to any input to the action plan from the member of staff. The member of staff's agreement to the action plan should be obtained wherever possible, but the final decision on the content of the action plan sits with the Manager.

16.4 Following the meeting, the member of staff shall receive a written outcome of the meeting and a copy of the action plan and the timetable of review meetings.

17. **Informal Performance Framework Review Meetings**

17.1 Informal Performance Framework Review Meetings will:

- assess whether the member of staff is achieving (and sustaining) acceptable standards of performance;
- review the achievement or progress towards the requirements of the action plan;
- consider whether further support is required; and
- consider if further action should be taken under this Regulation.

17.2 Where appropriate, and if the member of staff agrees, alternative options may also be considered, including seeking redeployment or agreeing changes to the member of staff's role (noting redeployment will be subject to assessment and the availability of a suitable vacancy).

17.3 Informal Performance Framework Review Meetings should continue until the member of staff's performance has improved to an acceptable and sustained standard or the Manager considers that the member of staff's performance should be considered under the formal stages of this Regulation.

17.4 Should the Manager want to move to the formal stages of this Regulation, they must inform the member of staff.

17.5 The decision to proceed from the informal Performance Framework to the formal stages of this Regulation (or to institute the formal stage without any day-to-day management and/or an informal Performance Framework) shall be reviewed and agreed by HR. The review will be limited to the documents created during the informal Performance Framework Process and any report submitted in writing by the Manager. The member of staff will not be entitled to make representations to HR.

**Formal Supporting and Managing Performance Regulation**

18. **Formal review meetings**

18.1 The member of staff shall be invited in writing to a formal review meeting. The invitation should contain sufficient information about the alleged underperformance and its possible consequences to enable the member of staff to prepare to respond in the initial meeting and should invite the member of staff to raise any mitigating and/or contextual factors impacting on their performance.

18.2 The invitation should make it clear that the individual is now in the formal stages of this Regulation. If the member of staff has been managed under the formal stages of this Regulation for at least 3 months from the date of the invitation to the Formal Review Meeting to the date on which they are awarded their annual increment, they will not automatically receive incremental progression (subject to any mitigation) until such time as they are no longer managed under the Formal stages of this Regulation. The increment will normally be awarded when the member of staff is no longer being managed under the Formal stages of this Regulation.
18.3 The meetings should be held without unreasonable delay whilst allowing the member of staff reasonable time to prepare his/her case.

18.4 Reasonable notice of a Formal Review Meeting will be given, usually at least five working days, unless agreed otherwise with the member of staff. This will allow adequate time for the individual to consult with their trade union representative (if appropriate) and to prepare his/her case.

18.5 The member of staff will receive, in advance of the meeting, copies of any written documents to which reference will be made in the meeting including any action plan from the informal Performance Framework.

18.6 Any documentary evidence to be relied upon by the member of staff must be provided to the person who is to chair the Formal Review Meeting, at least two days in advance of the meeting.

18.7 The purpose of the Formal Review Meeting is to determine whether the member of staff is failing to perform his/her duties to an acceptable standard, if further (additional) support is required and whether formal action should be taken under this Regulation, including the issuing of a warning.

18.8 When dismissal is not contemplated, the Formal Review Meeting will be chaired by:

18.8.1 the Manager, Head of Department or, in the case of academic, teaching or research staff, the formal review meetings may be chaired by the Executive Lead.

18.8.2 if the allegation of underperformance concerns a Head of Department or Head of College, the meeting will normally be chaired by the relevant Executive Lead; or

18.8.3 if the allegation of underperformance concerns an Executive level colleague, the meeting will normally be chaired by an alternate Executive Lead.

18.9 If a possible outcome of the Formal Review Meeting is dismissal, a panel will be convened to hear the case. Anyone previously directly managing the performance issues shall not be a member of the panel. The panel will normally consist of:

- For staff in grades 1-5 a Head of Department to act as Chair and two other members of staff nominated by the HR Director (or his/her nominated deputy).
- For staff in grades 6-10 (save for as otherwise provided below) an Executive Lead to act as Chair and two other members of staff nominated by the HR Director (or his/her nominated deputy).
- For Executive level colleagues an alternate Executive Lead, not previously involved, to act as Chair and two other members of staff nominated by the HR Director (or his/her nominee) and approved by the Vice-Chancellor.

18.10 A representative from HR will normally be present at Formal review meetings to provide advice and guidance and will be present if dismissal is contemplated.

18.11 At the meeting, the nature of the concerns should be explained to the member of staff who will be given an opportunity to respond to them.
19. Possible outcomes of Formal review meetings

19.1 A Formal Review Meeting may result in the member of staff being given written warnings or in the dismissal of the member of staff. If a dismissal is contemplated as a possible outcome, the member of staff must be advised in writing before the meeting.

19.2 The outcome of a Formal Review Meeting may be as follows:

a. Where the member of staff’s performance has improved to an acceptable standard:

- It may decided that no further action should be taken under this Regulation or that a further Formal Review Meeting should be arranged to ensure that the improvement is sustained or that a further meeting should be arranged under the informal Performance Framework.
- The action plan shall be reviewed and amended as considered appropriate and any continuing or further support available to the member of staff, to assist in improving performance, shall be identified.
- The member of staff shall be encouraged to sustain the improved performance and will continue to be monitored and supported in line with good management practice.

b. Where, since the last formal review meeting, the member of staff has made significant progress in reaching acceptable standards of performance, but further improvement is required or the member of staff has not made significant progress in reaching an acceptable standard of performance:

- A date may set for a further Formal Review Meeting.
- Any mitigating factors (such as ill health or non provision of all or part of any previously identified supporting measures) will be considered.
- The action plan shall be reviewed and amended as considered appropriate and any continuing or further support available to the member of staff to assist in improving performance shall be identified.
- The Manager may also:
  - Issue a formal written warning; or
  - If a formal written warning has previously been issued under this Regulation, issue a final written warning.

c. Where the outcome of the Formal Review Meeting falls under section (b) above, and where a panel has been convened in accordance with section 18.8.4, and normally where a formal, final written warning has previously been issued under this Regulation:

- The panel may dismiss the member of staff, but only in cases where the member of staff has been expressly warned prior to the hearing that dismissal is a potential outcome.
- If a dismissal takes place, and the member of staff is in grades 6 to 10, this shall be reported to Council.

19.3 The outcome of the meeting shall be confirmed, in writing, to the member of staff and any action short of dismissal shall:

a) clearly set out (as appropriate) the areas in which the member of staff’s performance is considered to fall below acceptable standards;

b) clearly set out the nature of the improvement required and the action plan for achieving that improvement, highlighting any amendments to the action plan previously issued;
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c) include details of any support offered or available to assist improvement;
d) confirm the date of the next Formal Review Meeting or meeting under the informal Performance Framework (if reverting back to the informal Performance Framework);
e) state the consequence of failure to improve performance;
f) where the outcome is a formal warning, remind the member of staff that if no satisfactory improvement is made, this may, ultimately, result in dismissal;
g) where the outcome is a formal warning, remind the member of staff of his/her right of appeal and how this shall be exercised.

19.4 Where the outcome of the meeting is dismissal, this shall be confirmed in writing to the member of staff and shall:

a) clearly state the reason for the dismissal;
b) state the date on which the employment will terminate;
c) confirm any period of notice/pay in lieu of notice;
d) remind the member of staff of his/her right of appeal and how this shall be exercised;
e) (where the member of staff is in grades 6 to 10) confirm that the decision will be reported to Council.

19.5 If it is proposed that the University Secretary, or the Chief Financial Officer, be dismissed from post, no decision will be taken until the proposal has been considered by Council.

19.6 Where a formal warning is given, a record will be placed on the member of staff’s file in HR. Any formal warnings given under this Regulation will be considered spent when the member of staff has attained an acceptable standard of performance and the formal review process has come to an end.

20. Appeals

20.1 A member of staff who wishes to appeal against a formal warning or dismissal shall inform the HR Director within 10 working days of the date of the written notification of the warning or dismissal; full details of the grounds of appeal must be included.

All appeals will be heard without unreasonable delay. Notwithstanding the outcome of any appeal, any on-going formal performance review processes will not be unreasonably delayed as a result of the appeal process.

20.2 An appeal against a formal warning up to and including the level of formal final written warning, will be heard by an appropriate senior member of staff not previously involved in the case and nominated by the HR Director (or his/her nominated deputy).

20.3 An appeal against dismissal will be heard by an Appeal Panel (of people not previously involved in the case) comprising:

a) For staff in grades 1-5 three senior members of staff not previously involved in the case, nominated by the HR Director (or his/her nominated deputy).
b) For staff in grades 6-10 (save for otherwise provided below) two senior members of staff normally comprising the Executive Lead and a Head of Department (one to act as Chair) and one senior member of staff nominated by the HR Director (or his/her Deputy). The panel shall be comprised of members not previously involved in the case save for the Executive Lead may have had some previous
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20.4 In cases of an appeal against dismissal, where the member of staff is in grades 6 to 10, the decision of the Appeal Panel will be reported to Council.

20.5 Appeal hearings will normally involve the member of staff and the manager who took the action resulting in the appeal (assuming they are still employees of the University).

20.6 A representative of HR will be present at the appeal hearing.

20.7 A member of staff will normally be given at least 10 working days written notice of the date of an appeal hearing.

20.8 Staff will be entitled to be accompanied to any appeal hearing in accordance with section 11(above).

20.9 The member of staff will receive copies of any supporting documentation which the University intends to rely upon at least five working days in advance of the hearing. The member of staff must also provide copies of any documents upon which he/she intends to rely and/or his/her statement of case to HR as far in advance of the meeting as possible, and no later than two clear working days before the hearing for distribution to the individual(s) hearing the appeal and the other party or parties involved.

20.10 Members of staff should attend appeal meetings. In exceptional circumstances where the member of staff is unable to attend the appeal hearing, he/she must inform HR as soon as possible. Should a member of staff request a postponement to an appeal hearing on more than one occasion, the University will normally hold the hearing in the member of staff's absence.

20.11 In all cases, the person(s) hearing the appeal shall have the authority to reach any of the following conclusions:

a) that the original decision of the Formal Review Meeting be upheld in its entirety;
b) that the grounds for appeal be found in their entirety and that the formal warning be expunged from the member of staff's record or that the dismissal is overturned;
c) that a lesser sanction be substituted for that imposed by the original Formal Review Meeting.