

Lancaster University - Human Resources

Policy Statement and Procedure Capability

Version 3.1

SUBJECT TO AGREEMENT WITH CAMPUS UNIONS

Capability Procedure

1 Policy Statement

- 1.1 The University recognises that the vast majority of its staff meet or exceed the high standards of performance required to meet its stated objectives.
- 1.2 Where capability issues do arise it is expected that both the University and the member of staff will address them positively and promptly to help the latter achieve the standards required. As far as practicable they should be dealt with informally at a local level within the Department or Faculty.
- 1.3 Capability problems may be outside the employee's direct control and can be symptomatic of underlying work problems or other personal issues. Consequently there is a need to treat all capability issues with care and sensitivity and to identify and address the real causes.
- 1.4 The formal procedure will only be instigated where improvement in performance has not been demonstrated or sustained, or where serious issues of capability are raised that make an informal approach inappropriate. The formal procedure is designed to ensure that all members of staff are treated fairly and consistently regardless of their job category and that high standards of performance at the University are maintained.
- 1.5 For the purposes of this procedure 'Capability' is defined by the Employment Rights Act 1996, s. 98(3)(a) as 'capability assessed by reference to skill, aptitude, health or any other physical or mental quality'. Where it is a fundamental requirement for the role, lack of qualifications may also be considered under this heading.

2 Scope

- 2.1 This procedure applies to all members of staff at the University regardless of the type of contract that they are employed under. For the avoidance of doubt this includes staff on indefinite, fixed term, sessional and other temporary contracts.
- 2.2 The procedure will only apply to staff that are jointly appointed with other institutions or are seconded from other institutions if their contract of employment specifies that these procedures pertain to them.
- 2.3 This procedure concerns matters of capability; concerns about matters of misconduct should be addressed using the Disciplinary Procedure.
- 2.4 A copy of this procedure will be made available to all members of staff via the University intranet and will be made available in hard copy form on request to the Human Resources Department.
- 2.5 This procedure does not apply to staff during the probation period (see the University's Probation Policy).

3 Context

- 3.1 The University has a responsibility for setting realistic and achievable standards, for making sure members of staff understand what is required of them and for providing staff with adequate support towards achieving those requirements.

Standards should be capable of being measured in terms of quality, quantity, time and where appropriate cost.

- 3.2 These standards are communicated to staff in a number of ways including; job descriptions, person specifications, Performance and Development Reviews, induction processes and probation agreements. Any shortfall in performance should be explored with the employee concerned and consideration given as to whether this is due to inadequate instruction, training, supervision or some other issue.
- 3.3 All members of staff have a contractual responsibility to perform their duties to a satisfactory level of performance and to bring to the attention of their line manager or Head of Department, as soon as possible, any work related problems that they believe are affecting their ability to fulfil their contract.
- 3.4 Where action is taken (short of dismissal) a development plan will be agreed between the line-manger and the member of staff and will detail the standards to be achieved and the support and training to be provided to help the member of staff address the problems. Advice about drawing up the development plan is available from HR.

4 Principles

- 4.1 Decisions regarding entering into an informal or formal Capability process can only be made by the line management of the member of staff concerned. Specific details by department of authority levels to deal with Capability matters are contained in Appendix 3.
- 4.2 No formal action will usually be taken until the matter has been explored on an informal basis by the HoD/Line Manager and the facts established as far as is practicable.
- 4.3 Members of staff involved in Capability Meetings will have the opportunity to hear details of the alleged performance or other capability issues, state their case and may be accompanied by a colleague or a Trade Union official. The member of staff should notify the HR Department in advance of the identity of their chosen companion.
- 4.4 No action under the formal procedure will be taken until the matter has been considered in a Capability Meeting and the manager or panel Chair discussed it with a representative from Human Resources to help ensure consistency and to obtain guidance on the procedure to be followed.
- 4.5 If a warning is issued, the member of staff will be informed of what improvements are required, the timescale for the improvements to be made and the consequences if the improvements are not met or sustained.
- 4.6 Capability Warnings will remain current for a specified period of time.
- 4.7 Progression from one stage to another can occur at anytime whilst a Capability Warning is current as long as reasonable time has been given for an individual to demonstrate improvement in their performance.
- 4.8 Staff have the right to appeal against formal action applied under this procedure including dismissal in the manner provided for in Section 10.

4.9 If it appears that concerns about performance are related to an individuals' health or any medical condition, the University will seek specialist medical advice from the University's Occupational Health providers and, where appropriate, from the individual's general practitioner or consultant (whichever appears to be most appropriate in the circumstances).

4.10 Where a member of staff raises a grievance during a capability process, the capability process may be temporarily suspended in order to deal with the grievance. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.

5 Disability

5.1 Where under-performance is in any way linked to a member of staff's physical or mental health as defined under the Disability Discrimination Act every effort will be made to make reasonable adjustment to the member of staff's working environment and conditions (see Disability – Access to Work Procedure). Formal procedures will only be considered after such adjustments have been made and the Human Resources Department has been fully consulted.

6 Informal Approach

6.1 The informal approach is intended to allow a member of staff's line manager to bring concerns to the attention of the member of staff in a constructive way and to explore causes, identify responsibilities and agree actions to be taken.

6.2 Consideration may also be given to the use of other University policies or support services including:

- Drugs and Alcohol Policy
- Sickness Absence Policy
- Staff Development Policy
- Premature Retirement/Voluntary Severance Scheme
- Counselling service
- Occupational Health Service
- Harassment Network

6.3 Wherever possible the member of staff will be offered training and other support as appropriate to help them to improve their performance. This support might include reviewing the job design or redeployment to a more suitable role. Where appropriate a file note should be kept.

6.4 If performance does not improve or is not sustained, a structured approach may be required. The line manager and the member of staff will meet and this will result in the help and support being documented in a formal Development Plan (see Appendix 1) and a letter being sent to the member of staff concerned outlining clearly the:

- i. Nature of the performance concerns
- ii. Improvement required in performance
- iii. Time scale for this improvement
- iv. Support to be received
- v. Consequence of not meeting performance targets

- vi. Timing of the next review meeting to review performance (normally 1 - 3 months)

6.5 Guidance on the above should be sought from the Human Resources Department.

6.6 The formal procedure described below will be used where this informal approach does not in the opinion of the Head of Department or line manager result in a sustained improvement in performance over a reasonable time period or where serious capability issues are raised which make it inappropriate.

7 Formal Procedure - Introduction

7.1 A formal approach should only be undertaken if an informal approach has not been successful or is deemed inappropriate by the Head of Department or line manager.

7.2 Before entering into the formal procedure managers should first discuss the situation with a member of the HR Department and seek advice on best practice.

7.3 The following sections should be read in conjunction with Section 9 'Conduct of Meetings'.

8 Formal Procedure

8.1 STAGE 1 – Written Warning

8.1.1 If there are concerns that a member of staff's performance does not meet standards acceptable to the University, the member of staff will be invited to attend a Capability Meeting with the Head of Department or line manager to discuss the problem. At least seven days beforehand the member of staff will be advised of the reason for the meeting, be given details of the evidence that may be relied on, be advised of the right to be accompanied and be informed that it is the first stage of the Capability Procedure.

8.1.2 At this meeting the Head of Department or line manager will make clear the areas in which the individual's performance is believed to be below expectations (explaining the grounds / evidence for this view) with the aim of identifying any problems or reasons for the performance concerns, which could be resolved. Solutions to the problem could include further clarification of role and expectations, additional training, providing a mentor, coaching or some other kind of ongoing support to the individual.

8.1.3 The member of staff will be given the opportunity to explain their performance and to raise any concerns they may have about the job, or the support and guidance they have been given to do it.

8.1.4 If after considering all the facts and circumstances the allegation(s) are substantiated the member of staff will normally be issued with a Stage 1 Written Warning (with a copy to the Director of Human Resources) who shall give written acknowledgement of receipt. The member of staff will be advised of the:

- i. Nature of the performance concerns (reference should be made to performance targets established at the informal stage or new performance targets should be established – see appendix 2)
 - ii. Improvement required in performance
 - iii. Time scale for this improvement
 - iv. Support to be received
 - v. Consequence of not meeting performance targets
 - vi. Timing of the next review meeting to review performance (normally 1 - 3 months)
 - vii. Right of appeal.
- 8.1.5 The Stage 1 Warning will remain current for capability purposes for a maximum period of 1 year, subject to the Head of Department or line manager agreeing that performance is satisfactory.
- 8.1.6 As soon as practicable following the issuing of a Stage 1 Warning the line-manager or Head of Department and member of staff concerned will meet and agree a development plan (see Appendix 1) that will detail the support and training to be provided to the member of staff to help them to address the concerns about their performance.

8.2 Stage 2 – Final Written Warning

- 8.2.1 If it is alleged that there is a failure to meet the performance targets and there appears to be continued evidence of performance concerns whilst a Stage 1 warning is current (as long as reasonable time has been given for an individual to demonstrate improvement in their performance), or exceptionally in cases of serious performance problems, the member of staff will be invited to attend a meeting with the Head of Department, Dean or Divisional Director or their nominee to discuss the problem.
- 8.2.2 At least seven days beforehand the member of staff will be advised of the reason for the meeting, be given details of any evidence that may be relied on, the right to be accompanied and be informed that it is the final stage of the Capability Procedure before dismissal.
- 8.2.3 At this meeting the Head of Department, Dean or Divisional Director or their nominee will:
- i. Make clear the areas in which the individual's performance appears to remain below expectations (explaining the grounds / evidence for this view)
 - ii. Review the history of the case
 - iii. Review progress towards achievement of performance targets established at previous reviews
 - iv. Review progress towards completion of the development plan
- 8.2.4 The member of staff will be given the opportunity to explain their performance and to raise any concerns they may have about the job, or the support and guidance they have been given to do it.
- 8.2.5 If after considering all the facts and circumstances the allegation(s) are substantiated the member of staff will normally be issued with a Stage 2 Final Written Warning and advised of the:

- i. Nature of the performance concerns, reference should be made to performance targets established at Stage 1
- ii. Improvement required in performance
- iii. Time scale for this improvement
- iv. Support to be received
- v. Consequence of not meeting performance targets
- vi. Timing of the next review meeting to review performance (normally 1 - 3 months)
- vii. Right of appeal

8.2.6 A written record of the Final Capability Warning (with a copy to the Director of Human Resources) will be given to the member of staff who shall give written acknowledgement of receipt.

8.2.7 The Final Capability Warning will remain current for capability purposes for 1 year, subject to satisfactory performance.

8.3 Stage 3 – Dismissal

8.3.1 If there is an alleged failure to meet the performance targets and there is continued evidence of under-performance whilst a Stage 2 warning is current (as long as reasonable time has been given for an individual to demonstrate improvement in their performance) or, in exceptional cases of very serious performance problems where there is an immediate and/or serious impact on the University, its reputation, staff, a third party or students, the member of staff will be invited to attend a meeting with a panel of 3 people chaired by the Dean or Divisional Director or their nominee. The panel will include a senior member of the Faculty or Division not previously involved in the case and a senior member of staff from outside the Faculty or Division. The Chair should consult with the Director of Human Resources or nominee about who is to sit on the panel.

8.3.2 At least seven days beforehand the member of staff will be advised of the reason for the meeting, be given details of any evidence that may be relied on, the right to be accompanied and be informed that it is the final stage of the Capability Procedure.

8.3.3 At this meeting the Dean or Divisional Director or their nominee will:

- i. Make clear the areas in which the individual's current performance remains below expectations (explaining the grounds / evidence for this view)
- ii. Review the history of the case
- iii. Review progress towards achievement of performance targets established at previous reviews
- iv. Review progress towards completion of the development plan.

8.3.4 The member of staff will be given the opportunity to explain the reasons for their performance at that time and to raise any concerns they may have about the job, or the support and guidance they have been given to do it.

- 8.3.5 If after considering all the facts and circumstances the allegation(s) are substantiated, and after considering any mitigation, the member of staff may be dismissed with notice.
- 8.3.6 A written record of the outcome and the reasons for it will be sent to the member of staff (with a copy to the Director of Human Resources) and will include information about their right of appeal.
- 8.3.7 The Panel may, depending on the individual circumstances of the case and after the Chair has consulted with the Director of Human Resources (or nominee), consider imposing a further sanction in addition to a written warning as an alternative to dismissal which may result in a reduction in pay, such as transfer, demotion, loss of seniority or loss of increment

9 Conduct of Meetings

9.1 These protocols apply to formal Capability Meetings at all stages:

- 9.1.1 At least seven days before any Capability Meeting the member of staff will be given written details of the performance shortfalls and any documents to be relied upon, a copy of the Capability Procedure and a written statement detailing the reasons for the meeting and the stage at which the meeting is to take place.
- 9.1.2 The member of staff will be expected to make every effort to attend the meeting.
- 9.1.3 If a member of staff is persistently unable or unwilling to attend a Capability Meeting the University reserves the right to conduct the meeting and make a decision on the evidence available without the member of staff being present.
- 9.1.4 The member of staff involved will have the right, and will be strongly encouraged to be accompanied at the meeting by a colleague or trade union representative. The member of staff should notify the HR Department in advance of the identity of their chosen companion.
- 9.1.5 The colleague or union representative will be given the opportunity to participate in meetings and will be invited to ask questions and speak as appropriate on behalf of the member of staff concerned but will not have the right (unless agreed by the Chair) to answer questions on behalf of the member of staff.
- 9.1.6 Relevant witnesses may be called by either party where appropriate. Where this is intended, advance notice will be given to the other party.
- 9.1.7 A representative of the Human Resources Department will attend all Capability Meetings at Stage 2 and above to take notes of the meeting and to advise on the procedure. These notes will be shared with all attendees present at the meeting.

10 Appeals

- 10.1 If a member of staff considers at any stage that they have been unjustly subject to actions under this procedure, they may appeal against the decision to a more senior level of management (refer to section 11.). A member of staff who wishes to appeal should give written notice of their appeal to the Director of Human Resources, setting out the grounds on which the appeal is based, within 14 calendar days of the date of the letter notifying them of the imposition of a sanction. The appeal will be heard as soon as is reasonably practicable.
- 10.2 For appeals against dismissal, if the manager hearing the appeal considers that it will best serve justice and fairness, they may co-opt two other members of the University with relevant experience and expertise previously not involved in the case.
- 10.3 An Appeal Meeting will take place at which the member of staff will have the opportunity to explain their grounds of appeal. The member of staff will be informed in advance of the date, time and location of the meeting and must take all reasonable steps to attend. An appeal will usually involve a review of all the relevant documentation including the member of staff's grounds for appeal.
- 10.4 A member of staff may be accompanied to the Appeal Meeting by a colleague or trade union official. The member of staff should notify the HR Department in advance of the identity of their chosen companion.
- 10.5 Following the Appeal Meeting, any penalty imposed will be reviewed but it cannot be increased. The outcome of the appeal will be relayed in writing as soon as possible after the Appeal Meeting has been held. The appeal decision will be final and there will be no further right of appeal.
- 10.6 Until the outcome of the appeal has been decided, any sanction (including dismissal) will remain in force. If, following a successful appeal against dismissal, an employee is reinstated; he/she will be reimbursed in respect of lost salary for the period between the dismissal and the date of reinstatement and any break in service will be disregarded for the purposes of continuity of service.

11 Authority Levels Capability Matters

ACTION	MINIMUM LEVEL OF AUTHORITY	APPEAL
Stage 1 Written warning	Head of Department or Line Manager	HoD or Dean or Divisional Director
Final Written Warning	HoD/Dean or Divisional Director	Dean/Divisional Director/Pro-Vice Chancellor or Deputy Vice Chancellor
Dismissal	Panel	Pro-Vice Chancellor or Deputy Vice Chancellor

12 Review

- 12.1 Neither the policy statement nor the procedure are contractual, nor are they intended to be incorporated into individual terms and conditions of employment. They will be kept under regular review and may be amended or withdrawn following appropriate discussions with campus unions to reflect changes in legislation or changing University requirements.
- 12.2 University managers and staff are expected to abide by this policy statement and procedure when dealing with matters covered by this document.

Valerie Walshe
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Appendix 1 – Development Plan Template

Development Opportunities	Development Actions		Measures
	What	When	

Appendix 2 – Performance Targets Template

NAME		TITLE	
HOD/LINE MANAGER		DATE	

NO	OBJECTIVE	% WEIGHTING	PERFORMANCE STANDARDS		PROGRESS AGAINST OBJECTIVES
			FULLY PERFORMING	EXCEEDING	
1.					
2.					
3.					
4.					
5.					
6.					

Signed by Employee: _____
(name)

Date: _____

Signed by Line Manager _____
(name)

Date: _____

Reviewed by Head of Department: _____
(name)

Date: _____

Appendix 3 – Authority Levels

Division/Faculty	Department	Stages of Capability				
		Written warning	Final written warning	Disciplinary	Other Sanctions	Appeal