

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. 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 such issues should be dealt with informally at a local level within the Faculty or Division.
- 1.2. The University recognises that capability problems may be outside the employee's direct control and can be symptomatic of underlying work problems or other personal issues and as such will treat all capability issues with care and sensitivity in a fair, supportive and consistent way.
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 University staff are treated fairly and consistently and that high standards of performance at the University are maintained.
- 1.3 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, loss of qualifications may also be considered under this heading.
- 1.4 As far as reasonably practicable any member of staff who is involved in, or subject to this procedure, and his or her representative, must ensure that they maintain the confidentiality of the process and of University documents, as any unjustified breach of confidentiality may be treated as a disciplinary offence. This is subject to an individual's right to seek and obtain appropriate confidential advice or make a disclosure under the Public Interest Disclosure Act or otherwise as required by law or any statutory authority
- 1.5 There are many reasons why a performance issue may arise. No action under this policy will be taken until the causes of the problem have been established.
- 1.6 In some cases a fact finding exercise may take place to determine the reasons behind the capability issues and the performance gap.

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 employed on indefinite, fixed term, sessional and other temporary contracts.
- 2.2 This procedure concerns matters of capability. Concerns about matters of misconduct should be addressed using the Disciplinary Procedure. Managers will need to make a judgement about whether a situation is a capability or a disciplinary issue. Care should be taken to distinguish between the two. The Human Resources Division is available to advise and assist line managers in dealing with matters of capability.
- 2.3 In managing capability issues relating to disability, managers should bear in mind the provisions of the Disability Discrimination Act and in particular, the legal obligation to consider reasonable workplace adjustments when dealing with an employee with a disability. Further guidance on the Act should be sought from the Human Resources Division.
- 2.4 The University undertakes to make every effort to ensure that an employee who acquires an impairment, that makes it impossible for them to do their existing job, and who wishes to remain in employment, is supported to do so.

3. Context

- 3.1 The University is responsible for creating an environment in which successful performance is encouraged, made possible and rewarded. This is achieved by carrying out good recruitment, management and staff development practices that motivate staff and by actively supporting members of staff in their work.
- 3.2 The University has a responsibility 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.
- 3.3 These standards will be communicated to staff in a variety 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 to identify the causes as early as possible and offer appropriate training and/or support to reach the required standard.
- 3.4 All members of staff have a responsibility to perform their duties to a satisfactory level of performance and should bring to the attention of their manager or Head of Department, as soon as possible, any work related or personal circumstances that they believe are hindering their performance.
- 3.5 The Human Resources Division is available to advise and assist line managers in dealing with matters of performance. Their involvement aims to assure fairness and consistency in application of this procedure throughout the University.
- 3.6 The Human Resources Division will also be responsible for monitoring and reviewing the effectiveness of this policy and procedure, and will provide training in management responsibilities established under this policy.

4. Informal Procedure

- 4.1 The informal approach is aimed at bringing concerns to the attention of the member of staff, exploring causes, identifying responsibilities and agreeing actions to be taken.
- 4.2 Many cases of unsatisfactory performance can be resolved informally in the first instance by discussing the issues with the member of staff concerned. The manager/supervisor undertaking the discussion should ensure that the member of staff is aware of the areas in which improvement is sought, and the reasons for the identified shortcomings, and should determine appropriate actions to enable the member of staff to achieve the desired outcome. These may include appropriate training and reasonable time away from normal duties for this to be carried out.
- 4.3 During the informal procedure it is appropriate to bear in mind a range of possible outcomes including:
 - Continuing with an informal approach
 - Reviewing the duties, responsibilities, reporting line or other aspects of the job
 - Providing appropriate training or development opportunities
 - By agreement, transferring the employee to a different post within the department
 - By agreement, investigating the possibility of re-deployment
 - No further action taken

A record of the discussions and the actions taken as a consequence should be made and retained by the manager/supervisor and confirmed in writing to the member of staff. Consideration to sensitivity of any personal issues related to the performance gap should be given. If appropriate, a performance improvement plan may be agreed with the member of staff outlining where performance improvements are required and how support will be given to achieve the improvements

A performance improvement plan should cover:

- Details of the performance gap
- Possible causes and details of the improvement required in performance
- Time scale for this improvement
- Support to be received
- Consequence of not meeting performance targets
- Timing of the next review meeting to review performance (normally 1-3 months)

4.4 Before deciding whether a formal capability meeting is appropriate the manager/supervisor should consult with a member of the HR Division and would normally involve the member of staff where further fact finding is required

5. **Formal procedure**

5.1 The focus of the formal procedure will be to give a member of staff support to help them achieve the expected performance standard and should normally be used where an informal approach does not in the opinion of the Head of Department or manager result in a sustained improvement in performance over a reasonable time period, or where serious capability issues are raised which make an informal approach inappropriate.

5.2 Staff will not normally be dismissed for capability reasons without previous warnings. However, in serious cases of gross negligence dismissal without previous warnings may be appropriate. If a capability problem or a problem relating to the loss of an employee's essential qualification makes it impossible to carry out his or her job, an employee may be dismissed under this policy if no reasonable redeployment or training opportunity exists

5.3 If the perceived incapability is considered serious enough to have an adverse effect on the delivery of services or may have an effect on the health and safety of the member of staff or any other individual, the member of staff may be suspended from work on full pay upon authorisation by the Vice Chancellor (or nominee), or Director of Human Resources. The use of suspension is expected to be infrequent and confined to serious capability matters where other actions such as working from home or being placed on alternative duties are deemed inappropriate. Such suspension shall not normally exceed 2 weeks and will be reviewed every 2 weeks by the Vice Chancellor (or nominee), or Director of Human Resources. During any period of suspension, the member of staff will normally be required to cooperate fully with any fact finding and to be available for interview during normal office hours. The Director of Human Resources will agree in advance what access the member of staff will be allowed to University premises, or the use of the University's internet/intranet facility, or to engage in his or her normal day to day duties, during any period of suspension.

5.4 There are normally three stages of the formal procedure:

- First formal meeting
- Final formal meeting
- Dismissal

At every stage of the formal procedure the manager/supervisor with the appropriate level of responsibility must;

- Ensure that the member of staff understands that the formal capability process is being applied to them in accordance with this procedure
- Ensure a letter inviting the member of staff to a capability meeting, showing the relevant stage of the procedure, along with full details of the performance gap and the content of any fact finding report is received at least 5 working days prior to the meeting.

- Provide the member of staff with an opportunity to explain their position in relation to the performance gap through a capability meeting.
- Ensure the member of staff is aware of their right to be accompanied at a capability meeting or appeal hearing, if so desired, by a work colleague or a recognised Trade Union representative.
- Confirm the outcome of the capability meeting in writing where possible within 5 working days of the meeting.
- The member of staff is given a right of appeal.
- Provide members of staff with agreed action plans, including objectives, where performance has not met the required standard and wherever possible and reasonable, the offer of training and other support, to help them improve their performance.

6. Capability meeting

- 6.1 In all cases the member of staff must be invited in writing to the capability meeting. A capability meeting will normally be carried out by the manager of the member of staff, accompanied by a member of HR, together with the employee's representative. There may be rare occasions where it might be appropriate for there to be an independent meeting chair in the formal stages after agreement with HR, the member of staff and their representative.
- 6.2 During the capability meeting the member of staff will be provided with the opportunity to give an explanation for the alleged performance gap.
- 6.3 A member of staff may request the attendance of colleague(s), who will normally be University staff, at their capability meeting as witnesses. The member of staff will be required to advise the chair of the meeting who their witnesses are prior to the meeting. Where deemed suitable, witness evidence may be accepted in writing.
- 6.4 If the member of staff intends to introduce their own evidence at the meeting then a copy should be sent to the manager conducting the meeting in adequate time for this to be reviewed prior to the meeting, a minimum of 24 hours in advance.
- 6.5 A written record of the meeting must be made and a copy of this will be provided to the member of staff together with the guidance as outlined in section 8, first formal meeting. If the member of staff declines the right to be accompanied this must be noted in the record of the meeting.

7. Right to be accompanied

- 7.1 At each stage of the formal procedure the member of staff has the right to be accompanied by a work colleague or a recognised trade union representative. The timescale of capability proceedings must be sufficient to allow for the chosen companion to attend. The member of staff should notify the HR Department in advance of the identity of their chosen companion.
- 7.2 At the capability meeting the companion will be allowed to address the meeting to put the member of staff's case, to sum up that 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 meeting. The companion is not normally permitted to answer questions on the member of staff's behalf. No one attending the meeting is permitted to act in a way that wilfully obstructs the conduct of the meeting, or prevents any other person from making their contribution to the meeting.
- 7.3 The chosen companion should not have a conflict of interest and should be available for the meeting, or within 5 working days if an alternative meeting date is required.

8. Meetings

- 8.1. **First Formal Meeting:** If performance does not meet acceptable standards, and informal interventions are not considered appropriate or have not been successful in addressing the problem, the manager/supervisor will invite the employee to a formal capability meeting. If the evidence is found to justify bringing a formal action and, taking into account any explanation or mitigating factors the employee provides, a written warning may be issued, supported by guidance on the improvement in performance required; the timescale for improvement; the support to be received and the consequence of not meeting performance targets.
The warning will remain on file for 12 months and must be confirmed in writing.
- 8.2. **Final Formal Meeting (Final Written Warning):** If performance remains unsatisfactory or if the problem is sufficiently serious but falls short of the need to dismiss, the manager/supervisor will invite the employee to a final formal capability meeting. If the evidence is found to justify bringing a formal action, taking into account any explanation or mitigating factors the employee provides, a final written warning may be issued, supported by guidance on the improvement in performance required; the timescale for improvement; the support to be received and the consequence of not meeting performance targets.
A final written warning will remain on file for 12 months and must be confirmed in writing.
- 8.3. **Dismissal:** If the performance of the member of staff is still unsatisfactory and they fail to reach the required standards dismissal will normally result. In exceptional circumstances, where the alleged performance issues are such that it is appropriate to dispense with the earlier stages dismissal may be considered as the action to be taken. Potential dismissal hearings will be heard by a panel of 3 managers as determined by a Pro-Vice Chancellor or Chief Operating Officer with advice from the Director of Human Resources. In cases involving technical or professional matters, this may mean those with the relevant technical or professional background. Dismissal will be with contractual notice and will be confirmed in writing to the member of staff.

9. Records

- 9.1 Copies of formal warnings and any performance improvement plans will be filed in the member of staff's personal file and will normally lapse after 12 months, provided the member of staff has sustained the required standards of performance.
If a pattern of similar underperformance develops shortly after the lapse of a warning, the member of staff's record may be borne in mind in deciding at what stage any subsequent warning may be issued and the time period of that warning.

10 Appeals

- 10.1 Where a member of staff has received a formal capability warning or has been dismissed in accordance with the University capability procedure, they will be allowed a right of appeal.
A member of staff wishing to appeal against the receipt of a warning letter must lodge a notice of appeal in writing to the Faculty Dean or Divisional Director, stating the ground(s) upon which the appeal is based, within 5 working days of receipt of the letter confirming the outcome of the capability meeting.
The appeal against a warning will normally be heard by a more senior manager who has not previously been involved with the case and will normally be from a different department. However where this is not possible the University reserves the right to allocate a manager of an equivalent level from elsewhere in the University to conduct the appeal hearing.

- 10.2 The member of staff must be invited in writing to attend an appeal meeting. The manager that hears the appeal should give their decision in writing normally within 10 days of hearing the appeal where this is possible or within a reasonable time frame thereafter. This decision is final and there are no further rights of appeal. Where an appeal against any formal warning is upheld, reference to it will be removed from the member of staff's record and they will be advised in writing accordingly. Where the Chair decides capability issues remain, recommendations may be made. The implementation of these recommendations will be discussed and agreed in a meeting between the member of staff, their Line Manager, a member of the HR team and where applicable the member of staff's representative.
- 10.3 In the event of an appeal against dismissal, notice of the appeal must be lodged with the Director of HR within 10 working days of receipt of the dismissal letter. The appeal will be heard by a panel of 3 managers as determined by a Pro-Vice Chancellor or Chief Operating Officer with advice from the Director of Human Resources. An appeal should be heard by those with appropriate expertise and experience. In cases involving technical or professional matters, this might mean by those with the relevant technical or professional background. At the appeal meeting against dismissal the member of staff has the right to be accompanied by either another member of staff, a recognised trade union representative, or a legal representative at the member of staff's expense. The name of the person accompanying the member of staff must be notified to the Director of HR a minimum of 24 hours in advance of the appeal meeting
- 10.4 A member of staff who has been dismissed as a result of a capability meeting ceases to be an employee from the date on which the dismissal takes effect, irrespective of whether or not an appeal against dismissal has been lodged.

11 Review

- 11.1 This policy and procedure will be kept under regular review and may be amended or withdrawn following appropriate negotiations with campus trade unions to reflect changes in legislation or changing University requirements.