

Capability Procedure

Purpose and Context

The primary purpose of this procedure is to support staff when difficulties arise. Every reasonable effort will be made to support staff in remedying deficiencies.

The procedure allows managers to deal with issues of unsatisfactory work performance fairly, quickly and effectively. The procedures ensure that:

1. Realistic and measurable standards of performance are identified
2. Support mechanisms are set up to ensure unsatisfactory performance is identified and that employees are helped and encouraged to meet the required standard
3. Action taken, including dismissal, is handled fairly

Scope

This procedure applies to all staff save for Senior Staff dismissal arrangements, to comply with the Articles of Government.

This procedure will be used when performance is sub-standard. However, if the sub-standard performance is due to an employee's negligence or lack of application then normally the matter will be dealt with under the Disciplinary Procedures. If sub-standard performance is due to ill health and/or disability, then the matter will be dealt with under the University's policy on Management of Sickness Absence.

It would be usual to follow all stages of the procedure. However, in certain circumstances where the actual or potential consequence of the poor performance are, or could be, extremely serious, for example causing a risk to health and safety, or serious risk to the University, then the procedure may be implemented at any stage.

1. Setting Standards

- 1.1 When employment begins, the standards of work required should be fully explained so that all employees know what is expected of them. Standards are reflected in University policy and in job descriptions. Standards should cover what work will be done, how it will be done and in what timeframe. Formal standards are also set for some employees (academic staff and senior support staff managers) where there is a general consensus regarding 'professional conduct' and professional codes of practice exist.

2. Causes of Poor Performance

- 2.1 Poor performance at work or failing standards of performance may occur for a variety of reasons. It is important to establish the reason in order to provide appropriate support. For example:

- a) Employees may not have the necessary knowledge or skills to do a job. This may have arisen through poor recruitment or because skills have changed over time, e.g. the introduction of information technology. These problems can be addressed through targeted training in specific skills/knowledge.
- b) The sector has coped with significant change and increasing demands are being placed on employees. Whilst the vast majority adapt with ease to new work requirements some employees can lose confidence and feel de-skilled. Targeted training, observation and coaching may assist in rebuilding confidence and help to meet any skill or knowledge gap that has occurred.
- c) Factors outside the workplace may affect work performance, e.g. relationship breakdowns, illness in family or friends, financial difficulties. Where these issues occur they should be explored sensitively and support provided to allow the employee time and assistance to deal or adjust to life changes, e.g. counselling, time off.
- d) Work will often suffer when someone is ill. Most often this is temporary. Where ill health persists assistance should be provided using the University's procedure on Management of Sickness Absence. If poor performance is or may be due to an employee's disability, then the University is committed to helping such an employee stay in employment through redeployment and/or adaptations and adjustments to duties or the workplace (see section 6).

3. Support Mechanisms

- 3.1 Capability procedures concentrate on identifying the precise nature and cause of problems and the support process to correct and deal with incapability. Central to the procedure is drawing up a programme of action and support. Listed below are examples of support strategies. Not all are appropriate in every case.

a) Regular Planning meetings with Line Manager

Regular meetings allow discussions of problems, solutions to be identified and for progress to be discussed and monitored. Future work programmes can be settled. It also allows for the early identification and resolution of difficulties.

b) Mentor

A member of staff, other than the employee's line manager, who has expertise in the particular area(s) of concern may be assigned as a mentor providing advice to the employee. The mentor's role is to act as a 'critical friend' to the employee. Discussions between the employee and the mentor are confidential although a summary of the advice provided by the mentor will be provided to the manager as evidence of

the support provided. A copy of this will be provided to the employee in the assessment report.

c) Work Observation

The line manager, or other appropriate person, may directly observe the work performance of an employee. The employee will be informed of the date and time of the observation prior to it taking place. Immediate verbal feedback will be given to the employee and the employee will be released from their normal duties to ensure that adequate time is made available. The verbal feedback will be followed by a written report. The employee will be invited to make written feedback on these observations.

d) Visits

Arrangements may be made to observe the work of others within or outside the University. This may include both brief visits to seek advice or a period of work shadowing.

e) Training

This includes long and short courses, reading, distance learning resources and 'on-the-job' training.

f) Technology

The technology available to employees may be revised, as may the employee's use of such technology in performing their duties. If the line manager or other appropriate person thinks it necessary, then the employee may receive training or re-training in the use of such technology. Managers will carefully consider whether the introduction of new technology is likely to assist an employee in the performance of their duties. If so, then appropriate training will be given.

g) Resources

Consideration may be given to the range of resources available to the employee and to whether these are adequate and appropriate to the job.

- 3.2 The employee is encouraged to identify any area in which they consider support is required and identify how support may be delivered. The manager will give careful consideration to such suggestions.

4. Disability

- 4.1 The University recognises that disability can be the cause or a contributing factor to absence and performance issues. As a disability symbol user and as a matter of good employment practice, the University is committed to making every effort when employees become disabled, or where disability changes, to help employees stay in employment.

- 4.2 A disability may affect an individual's ability to carry out certain tasks or require a change to hours of work, the workplace itself or the way certain duties are carried out.
- 4.3 When considering absence or performance issues where disability may be a factor the Human Resources Manager should be consulted who may seek specialist advice. Practical advice on how adjustments may be made and available equipment can be provided by the Disability Employment Advisor through the Job Centre Plus. A record of suggested adjustments and action taken should be maintained.
- 4.4 Consideration must always be given to whether adjustments to the workplace might reasonably be made and so facilitate a return to work from long-term sickness absence, address short term absence issues and/or performance/capability issues.
- 4.5 Examples of adjustments that could be considered are as follows:
- Adjustment to premises – structural or physical, e.g. widening doorways; providing ramps; relocating light switches, door handles and shelves; providing appropriate contrast in decorations.
 - Allocating duties to another person – minor duties could be allocated to another person, e.g. if a job occasionally involves going on to an open roof of a building an employer might have to transfer work away from an employee whose disability involves severe vertigo.
 - Transferring a person to fill an existing vacancy – if an employee becomes disabled, or has a disability which worsens and cannot work in the same place or under the same arrangements, then the person should be considered for any suitable alternative posts that are available.
 - Altering working hours – this could include flexible hours to enable additional breaks or changing hours to fit treatment and care programmes.
 - Changing the workplace – when buildings or part of a building become inaccessible the employer should always consider transferring the person and their work station to a place with access.
 - Paid and/or unpaid absence for rehabilitation, assessment or treatment – time off during work may be needed for treatment, e.g. psychoanalysis for the employee to become rehabilitated into the work environment.
 - Training – this could be training in the use of a piece of equipment unique to the disabled person or general training that needs to be adapted.
 - Acquiring or modifying equipment – this involves providing specialist equipment needed to do the job, e.g. providing an adapted telephone for someone with a hearing impairment or providing an adapted keyboard for someone who is visually impaired.
 - Modifying instructions and manuals – the format of instructions and manuals may need to be modified, e.g. produced in Braille or on audio tape or

instructions for people with learning difficulties conveyed orally with individual demonstrations.

- Modifying procedures for testing – this ensures that tests do not adversely affect people with certain disabilities, e.g. where a person with restricted manual dexterity would be disadvantaged by a written test the employer could give an oral test.
- Providing a reader or interpreter – this could involve reading mail to a person with a visual impairment or hiring a sign language interpreter.
- Providing supervision – where someone's disability leads to uncertainty or a lack of confidence.

4.6 Most adjustments require little change to the workplace and are easy to arrange in consultation with the individual. Support is available through the Disability Employment Advisor and in particular Access to Work. Access to Work provides practical help for disabled people and assistance is tailored to the needs of a particular job. Assistance can apply to any job, permanent or temporary, full-time or part-time. Examples of support include:

- A communicator to attend meetings etc., training for people who are deaf or have a hearing impairment.
- A reader for someone who is blind or has a visual impairment.
- A job coach to assist someone while they familiarise themselves with a new job or changing job.
- An assistant to help with personal needs.
- An escort to assist travel to and from work.
- Adaptations to a vehicle.
- Assistance with transport costs and/or taxi fares for someone who is unable to use public transport.
- Equipment or adaptations to existing equipment, e.g. enlarged keyboards, telephone aids.
- Alterations to premises or the working environment, e.g. lowering machinery, installing alarms with flashing lights.

5. Procedure

5.1 Informal Procedure

In the vast majority of cases issues of under-performance are temporary and may be informally resolved with a manager's support and guidance. If matters cannot be resolved informally, or if the under-performance is sufficiently serious, then the formal procedure may be adopted.

5.2 First Formal Meeting

5.2.1 A formal meeting will be held to discuss the employee's performance. The employee will be given five working days' notice of the meeting and be advised of their entitlement to be represented by a trade union representative or friend.

A Human Resources Manager will also be present at this and future meetings to advise on procedural issues.

- 5.2.2 Evidence of how performance is unsatisfactory and any action taken to date, including details of any support provided and work observation records, will be provided in writing to the employee before the meeting. Targets, standards, deadlines and further support will be identified and compiled into a draft action plan. The draft action plan will be in writing and given to the employee before the meeting. This information will be provided at least five working days before the meeting.
- 5.2.3 At the meeting the employee will be given the opportunity to provide any relevant evidence of matters that may affect performance and which may be unknown to the manager. The employee will also have opportunity to comment on the action plan and will be invited to suggest further sources of support.
- 5.2.4 A review date will be set where progress will be measured against the action plan targets. The actual length of the review period will depend on what targets have been set. However, targets should be set in a way that progress can be measured over a medium time frame of six to eight weeks. The manager should identify how progress against the action plan will be measured and what evidence will be used for review purposes.
- 5.2.5 The manager will prepare a note of the meeting and send a copy to the employee, together with a copy of the finalised action plan.
- 5.2.6 If the employee does not accept that their performance is unsatisfactory and/or if they disagree with any of the manager's notes, then the employee may enter a note of dissent which will form part of the record.

6. First Review Meeting

- 6.1.1 The manager will write a report that provides an assessment of where targets have/have not been met and other supporting documentation, e.g. copies of observation reports, details of support provided. The report and supporting documentation will be sent to the employee five working days before the review meeting.
- 6.1.2 At the meeting the employee will have opportunity to provide details of any relevant matters that may be affecting performance and which may be unknown to the manager. The employee will also have opportunity to comment on the report and will be invited to suggest further sources of support that may be required. The employee is entitled to be represented by a trade union representative or friend.

6.1.3 The outcomes of the meeting and appropriate responses are likely to include:

| Outcome | Response |
|---|---|
| All targets are met and the employee is performing at a satisfactory standard | No further action required. |
| Significant progress has been made but further limited support is required to secure a permanent satisfactory standard | Extension of the review period. |
| Targets not met with mitigating circumstances, e.g. a period of ill health or it became impossible to provide a vital part of the agreed support package. | Extension of the review period. |
| Targets not met. | The employee will be notified that their performance remains unsatisfactory, and that performance continues to be monitored against the action plan (which may be revised). The employee is warned that if there is no substantial improvement after a further period of monitoring further formal action will be taken that could ultimately lead to dismissal on grounds of capability. |

6.1.4 The manager will prepare a note of the meeting including the assessment of where targets have/have not been met. A copy of the note will be sent to the employee together with a copy of any revised action plan.

6.1.5 If the employee does not accept that their performance remains unsatisfactory or if they disagree with any of the manager’s notes, then the employee may enter a note of dissent which will form part of the record.

6.1.6 Alternatively, the employee may appeal in writing within 10 working days of receiving the manager’s note of the Second Formal Meeting. The employee’s

notice of appeal shall set out the grounds of that appeal and enclose any supporting documentation.

6.2 Procedure for Appeal from First Review Meeting

- 6.2.1 Appeals will be heard by two senior managers, one of whom will be a member of the Senior Staff (the Appeal Managers).
- 6.2.2 The employee's manager will prepare a written response setting out the informal/formal action that has been taken to date and enclosing all of the notes and supporting documentation.
- 6.2.3 The employee shall be given 10 working days' notice of the hearing and a copy of the manager's report and be advised of their entitlement to be represented by a trade union representative or friend.
- 6.2.4 The employee may submit a written response or other information they want the appeal managers to consider.
- 6.2.5 All available papers will be given to the appeal managers 5 working days before the appeal.
- 6.2.6 At the hearing the manager will present their report, and the employee may make oral submissions. All parties will have the opportunity to ask questions.
- 6.2.7 The employee has the right to be represented by a trade union or friend at the hearing.
- 6.2.8 The appeal managers will decide whether to:
 - i) Uphold the appeal and end the procedures
 - ii) Uphold the appeal, in part and extend the initial review period
 - iii) Dismiss the appeal
- 6.2.9 The outcome of the appeal hearing will be notified in writing to all parties.

6.3 Second Review Meeting

- 6.3.1 The procedure for this meeting shall be the same as that applying to the second meeting.
- 6.3.2 Outcomes of this review meeting and appropriate responses are likely to include:

| Outcome | Response |
|--|---------------------------------|
| All targets are met and the employee is performing at a satisfactory standard. | No further action required |
| Significant progress has been made but further limited support is required to secure a | Extension of the review period. |

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|---|---|
| permanent satisfactory standard. | |
| Targets not met with mitigating circumstances, e.g. a period of ill health or it became impossible to provide a vital part of the agreed support package. | Extension of the review period. |
| Targets not met. | The employee should be notified that their performance remains unsatisfactory and that the matter will be referred to a Panel Review for consideration of dismissal on grounds of capability. |

6.3.3 The manager will prepare a note of the meeting including the assessment of where targets have/have not been met. A copy of the note will be sent to the employee.

6.3.4 The employee may enter a note of dissent, which together with any observations forms part of the record.

6.4 Panel's Review

6.4.1 If performance remains unsatisfactory at the third formal meeting the case will be referred to a Panel Review. The Panel will comprise three senior staff not in the School/Service that the employee works in who have had no prior involvement in the case, and drawn from at least two categories of senior staff.

6.4.2 The employee will be given 10 working days' notice of the meeting and be entitled to be represented by a trade union representative or friend.

6.4.3 The procedure for the Panel Review shall be the same as that applying to appeals against the decision of the Manager's Meeting.

6.4.4 Before reaching a decision the Panel should consider:

- i) The level of under-performance
- ii) The consequences of this under-performance on the quality of service and effect on colleagues
- iii) Whether the capability procedures have been followed
- iv) The extent to which the employee has been warned regarding the consequences of continuing under-performance
- v) Whether the support set out in the action plan has been provided in full
- vi) Representations made by or on behalf of the employee

6.4.5 The Panel may decide:

- That all targets have been met and the employee is performing at a satisfactory standard
 - Set a further review period where performance is monitored against the action plan
 - Dismiss on grounds of capability
- 6.4.6 The Panel shall inform the employee in writing of the decision.
- 6.4.7 Where the Panel decides to dismiss an employee the employee has a right of appeal against that decision to a Panel of three senior staff members from outside the School/Service, one of whom must be senior to the members of the Review Panel. The employee will be dismissed with contractual notice or with pay in-lieu of notice (PILON). The Panel will determine what duties may be required from the individual during any notice period.
- 6.4.8 The employee may exercise their right of appeal by writing to Human Resources within 10 working days of the date of the Panel's written notice and setting out the grounds of their appeal.

7. Appeal Against the Panel's Decision to Dismiss

- 7.1 The employee must be given at least 10 working days' notice of the appeal hearing and advised of the entitlement to be represented by a trade union representative or a friend. The letter giving such notice should state the date, time and place of the appeal hearing, attach all relevant documentation, give the names of those hearing the appeal and any witnesses to be called in person. If the employee wishes to call any other witnesses or include any more documentation, then they must inform Human Resources and send any information at least five working days before the meeting. Responsibility for notifying employee witnesses and arranging their attendance rests with the employee. A copy of the employee's witness list and documentation will be sent to the manager.
- 7.2 All relevant documents including the grounds of appeal, manager and employee response, will be made available to the Appeal Panel in sufficient time to enable the Panel to read the evidence on both sides and prepare questions. Appeal Panel members must not discuss the case with anyone prior to the hearing save each other.
- 7.3 A member of Human Resources staff will be present to advise the Appeal Panel on proceedings.
- 7.4 The manager should explain to the hearing all action that has been taken in accordance with this procedure. The employee and/or their representative must be given the opportunity to make representations.
- 7.5 Once all the evidence has been presented and all questions asked, the appeal hearing will be concluded, all parties except the Appeal Panel and any advisers will leave the room. The Appeal Panel must consider all the evidence presented to them and decide whether to confirm, modify or overturn the decision.
- 7.6 The outcome of the hearing must be confirmed in writing to the employee within five days.

- 7.7 Where an appeal against dismissal is successful the notice will be immediately withdrawn or where PILON has operated the employee will be immediately reinstated and adjustments to salary made to reclaim any PILON payments already made.
- 7.8 The Appeal Panel's decision is final. There is no further right of appeal. This does not affect the individual's statutory right to appeal to an Employment Tribunal.

8. Procedure at Appeal Against Panel's Decision to Dismiss

- 8.1 The Appeal Panel, manager, employee and their representative, and any advisers to the Panel will be present at the start of the hearing.
- 8.2 The Chair of the Appeal Panel will introduce those present explaining roles (whether decision-making or advisory).
- 8.3 The Chair will explain the purpose of the hearing and the procedures which will be followed.
- 8.4 The manager will present the case and introduce other documentary or witness evidence presented to the Appeal Panel.
- 8.5 The Appeal Panel will have the opportunity to ask questions or clarify any issues raised during the presentation and following witness evidence.
- 8.6 The employee and/or representative will be invited to ask questions on the case presented and following witness evidence.
- 8.7 The employee and/or representative will present evidence, including presenting documentary or witness evidence.
- 8.8 The Appeal Panel will have the opportunity to ask questions or clarify any issues raised during the presentation and following witness evidence.
- 8.9 The manager will be invited to ask questions on the case presented and following witness evidence.
- 8.10 The manager and the employee and/or representative will be invited to make their closing statements.
- 8.11 All parties will withdraw excepting the Appeal Panel and any advisors.
- 8.12 The manager and the employee may be recalled to clarify points of uncertainty on evidence already given. If recall is necessary, both parties will return irrespective of the point of clarification sought.
- 8.13 The Appeal Panel will consider the case and decision of the Panel. The Panel will determine:
- To uphold the appeal and confirm that all targets have been met and the employee is performing at a satisfactory standard; or
 - To set a further review period where performance is monitored against the action plan (or amended action plan); or

- Dismiss the appeal and confirm the Panel's decision to dismiss on grounds of capability
- 8.14 The Appeal Panel's decision will be confirmed in writing to the employee within five working days.
- 8.15 The Appeal Panel's decision is final. There is no further right of appeal. This does not affect the individual's right to appeal to an Employment Tribunal.
- 8.16 The Appeal Panel hearing the case shall determine any question of procedure not explicitly set out here and if the Appeal Panel thinks it necessary/appropriate it may vary the procedure.

POLICY SIGN-OFF AND OWNERSHIP DETAILS

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| Version | Date | Revision description/Summary of changes | Author |
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| V1.1 | November 2016 | Formatting updates (minor amends not requiring committee approval) | HR Manager |
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