

Capability Procedure

Purpose and Context

The primary purpose of this procedure is to support members of staff when work-related concerns arise.

The procedure allows managers to deal with issues of poor performance fairly, quickly and effectively and ensures that;

1. Realistic and measurable standards of performance are identified.
2. Staff are supported and encouraged to meet the required standard in a timely manner.
3. Any action taken, including dismissal, is handled fairly.

Scope

This procedure applies to all staff employed by the University.

This procedure will be used when poor performance has been identified. The manager should explore the reason for the poor performance, which may be related to work or personal factors, such as illness. Depending on the reason, it may be more appropriate to deal with the matter in accordance with the University's Disciplinary Procedures or in line with the University's Management of Sickness Absence Policy.

It would be usual to follow all stages of the procedure. However, where it is identified by the manager that 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, the procedure may be implemented at any stage.

1. Setting Standards

On the commencement of employment, the standards of work required should be fully explained to ensure that all members of staff know what is expected of them. This should cover what work will be done, how it will be done and in what timeframe. Formal standards are also set for some members of staff (academic staff and senior support staff managers) where there is a general consensus regarding 'professional conduct' and where professional codes of practice exist.

2. Support Mechanisms

2.1 A range of the following support mechanisms can be used to support colleagues at any point during their employment and can be particularly beneficial when poor performance has been identified;

a) Regular meetings with manager

Regular meetings allow issues to be discussed, solutions to be identified and for progress to be monitored. It also allows for the early identification and resolution of difficulties.

b) Mentoring

A member of staff, other than their manager, who has expertise in the particular area(s) of concern may be assigned as a mentor for the member of staff. The mentor's role is to act as a 'critical friend' to the member of staff.

c) Observation

The manager, or other appropriate person, may observe the work activities of the member of staff. The member of staff will be informed of the date and time of the observation prior to it taking place. Constructive feedback should be provided, verbally initially, and then followed by a written summary of feedback.

d) Visits

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

e) Training

This may include long and short courses, reading, distance learning resources and 'on-the-job' training including training on all new technology introduced by the University.

f) Other Support available

The manager should give consideration to any other support that may be appropriate, for example, providing physical resources as identified or extensions to work timescales.

2.2 The member of staff 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 and discuss these with the member of staff. All support and agreed resources, if applicable, will be confirmed in writing to the member of staff.

- 2.3 When considering managing work performance issues where disability or a health condition may be a contributing factor, the manager should consult a member of Human Resources. It may be necessary to seek specialist advice from Occupational Health.

3. Informal Procedure

- 3.1 In most cases issues of poor performance are temporary and may be informally resolved with a manager's support and guidance.
- 3.2 Where poor performance is identified the manager will invite the member of staff to a meeting to discuss the poor performance ensuring the member of staff is informed that the purpose of the meeting is discuss their performance. At the meeting an action plan detailing improvements required, deadlines and support required should be considered. A reasonable review period will be set (typically four to eight weeks) where it is expected that the member of staff will meet the required standards.
- 3.3 If the issues cannot be resolved informally then matters will progress to the formal stage of the procedure.

4. Formal Procedure

4.1 First Formal Meeting

- 4.1.1 A first formal meeting will be held to discuss the member of staff's performance. The member of staff will be given at least five working days' notice of the meeting and be advised of their entitlement to be represented at the meeting by a trade union representative or friend. A member of Human Resources will also be present at this meeting.
- 4.1.2 Evidence of how the individual's performance is poor and any action taken to date, including details of any support provided and / or work observation records, will be provided in writing to the member of staff before the meeting. Targets, standards, deadlines and further support will be identified and compiled into a draft action plan. This information will be provided at least five working days before the meeting.
- 4.1.3 At the meeting the member of staff will be given the opportunity to provide any relevant information that may have affected their performance and which may be unknown to the manager. They will also have the opportunity to comment on the action plan and will be invited to suggest further sources of support.
- 4.1.4 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 but typically may be four 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.

4.1.5 Following the meeting the manager will prepare a letter for the member of staff, detailing the key discussion points from the meeting together with a copy of the finalised action plan.

4.2 Review Meeting One

4.2.1 Following the first formal meeting and before review meeting one, the manager will provide a written summary of progress against the action plan including any other supporting documentation, e.g., copies of observation reports, training course attendance etc.

4.2.2 The summary will be sent to the member of staff five working days before review meeting one. The member of staff is entitled to be represented by a trade union representative or friend at the meeting. A member of Human Resources will be in attendance at the meeting.

4.2.3 At the meeting the member of staff will have the opportunity to comment on the summary.

4.2.4 Possible outcomes of review meeting one include:

Outcome	Response
All targets are met and the member of staff is performing at a satisfactory standard.	No further action required.
Progress has been made but further support is required to ensure all identified areas are satisfactory and sustained.	Extension of the review period.
Targets not met due to mitigating circumstances, e.g. a period of ill health or it was not possible to provide a key part of the agreed support package.	Extension of the review period.
Targets not met.	The member of staff will be notified that their performance remains poor and continues to be monitored against the action plan (which may be revised or updated following discussion in review meeting one). The member of staff is informed 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.
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4.2.5 Following the meeting the manager will prepare a letter for the member of staff, detailing the key discussion points from review meeting one together with a copy of any revised / amended action plan.

4.3 Review Meeting Two

4.3.1 The procedure for review meeting two will follow the process set out above for review meeting one.

4.3.2 Possible outcomes of review meeting two may include:

Outcome	Response
All targets are met and the member of staff is performing at a satisfactory standard.	No further action required.
Targets not met.	The member of staff will be notified that their performance remains poor and that their case will be referred to a Panel Review for consideration that could ultimately lead to dismissal on grounds of capability.

4.3.3 Following the meeting the manager will prepare a letter for the member of staff, detailing the key discussion points from review meeting two and the outcome.

4.4. Panel Review Meeting

4.4.1 If performance remains unsatisfactory following review meeting two the case will be considered at a panel review meeting. The Panel will comprise three senior staff not in the School/Service that the member of staff works in who have had no prior involvement in the case and taken from at least two categories of senior staff.

4.4.1 The member of staff will be given 10 working days' notice of the meeting and be entitled to be represented by a trade union representative or friend. A member of Human Resources will be in attendance at the meeting.

4.4.2 At the meeting the member of staff's manager will present their report and the member of staff will have the opportunity to state their case. All parties will have the opportunity to ask questions.

4.4.3 The procedure to be followed at the meeting can be found at Appendix 1.

4.4.4 Before reaching a decision the Panel should consider:

- i) The level of poor performance.
- ii) The consequences of the continuing poor performance on the quality of service and effect on colleagues.
- iii) Whether the capability procedure has been followed.
- iv) Whether the support set out in the action plan has been provided in full and the employee engaged with the support provided.
- v) Representations made by or on behalf of the member of staff.

4.4.5 The Panel may decide:

- To set a further review period if for example the agreed support has not been in place, or the impact of the poor performance is less than initially identified.
- Dismiss the member of staff on grounds of capability

4.4.6 The Panel shall inform the member of staff of the outcome of the meeting as soon as practicably possible. A letter, detailing the outcome, will follow and be provided to the member of staff no later than 5 working days of the date of the meeting and where dismissal is the outcome the member of staff will be advised of their right of appeal. The member of staff must exercise the right to appeal within 10 working days of being notified of the outcome and must provide written grounds of appeal to Human Resources.

4.4.7 Where the decision is made to dismiss the member of staff and the contractual terms provide for pay in lieu of notice (PILON), the dismissal will take effect on that basis. Where PILON is not provided within the contractual terms, the manager will determine what duties may be required from the member of staff during any notice period unless PILON is agreed by both parties.

4.5 Appeal Against the Panel's Decision to Dismiss

4.5.1 The appeal will be heard by three senior staff not in the School/Service that the member of staff works in who have had no prior involvement in the case and drawn from at least two categories of senior staff.

4.5.2 The member of staff should be given 10 working days' notice of the appeal hearing and advised of the entitlement to be represented by a trade union representative or a friend. A member of Human Resources will be in attendance at the meeting.

4.5.3 The Chair of the panel review meeting will prepare a written response for the panel to consider and will present the case at the appeal hearing. The member

of staff will be informed of the date, time and arrangements for the hearing and be provided with the names of the senior managers hearing the appeal and the names of any witnesses. If the member of staff wishes to call any witnesses or provide any additional documentation, they must inform Human Resources and send any information at least five working days before the hearing. Responsibility for notifying witnesses called by the member of staff and arranging their attendance rests with the member of staff. A copy of the member of staff's witness list and documentation will be sent to the panel and the Chair of the review panel meeting.

- 4.5.4 All relevant documentation including the grounds of appeal and the Chair of the panel review meeting's response to the appeal will be made available to all parties five working days before the meeting.
- 4.5.5 The procedure to be followed at the meeting can be found at Appendix 2.
- 4.5.6 The appeal panel may decide;
- To set a further review period if for example the agreed support has not been in place or the impact of the poor performance is less than initially identified. or
 - Confirm the decision to dismiss on grounds of capability
- 4.5.7 The appeal panel shall inform the member of staff of the outcome of the appeal as soon as practicably possible. A letter, detailing the outcome, will follow and be provided to the member of staff no later than 5 working days of the date of the hearing.
- 4.5.8 Where an appeal against dismissal is successful the notice will be immediately withdrawn or where pay in lieu of notice (PILON) has operated the employee will be immediately re-instated and adjustments to salary made to reclaim any PILON payments already made.
- 4.5.9 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.

Appendix 1 - Procedure to follow at the Panel Review Meeting

The Panel, manager, employee and their representative, and any advisers to the Panel will be present at the start of the hearing. The Panel will be made up of three senior staff, not in the School/Service that the member of staff works in, who have had no prior involvement in the case and drawn from at least two categories of senior staff.

Agenda for the panel review meeting

The Chair of the Panel will introduce those present explaining roles (whether decision-making or advisory).

The Chair will explain the purpose of the hearing and the procedures which will be followed.

The manager will present the case and introduce other documentary or witness evidence presented to the Panel.

The employee and/or representative will be invited to ask questions on the case presented and following witness evidence.

The Panel will have the opportunity to ask questions or clarify any issues raised during the presentation and following witness evidence.

The employee and/or representative will present evidence, including presenting documentary or witness evidence.

The manager will be invited to ask questions on the case presented and following witness evidence.

The Panel will have the opportunity to ask questions or clarify any issues raised during the presentation and following witness evidence.

The manager, firstly, and then the employee and/or representative, will be invited to make their closing statements.

All parties will withdraw excepting the Panel and any advisers.

The manager and 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.

The Panel will consider the case. The panel will determine:

To set a further review period if for example the agreed support has not been in place, or the impact of the poor performance is less than initially identified, or

To dismiss the member of staff on grounds of capability.

The Panel's decision will be confirmed in writing to the employee within five working days.

The Panel hearing the case shall determine any question of procedure not explicitly set out here and if the Panel thinks it necessary/appropriate it may vary the procedure.

Appendix 2 - Procedure to follow at appeal against dismissal

The Appeal Panel, Chair of the panel review meeting, employee and their representative, and any advisers to the Appeal Panel will be present at the start of the hearing. The Appeal Panel will consist of three Senior Managers one of whom must be senior to the Hearing Panel members. None of the members of the Appeal Panel should have had any previous involvement in the case and must be from outside the School/Service.

Agenda for the appeal meeting

The Chair of the Appeal Panel will introduce those present explaining roles (whether decision-making or advisory).

The Chair will explain the purpose of the hearing and the procedures which will be followed.

The employee and/or representative will present evidence, including presenting documentary or witness evidence.

The Chair of the panel review meeting will be invited to ask questions on the case presented and following witness evidence.

The Appeal Panel will have the opportunity to ask questions or clarify any issues raised during the presentation and following witness evidence.

The Chair of the panel review meeting will present the case and introduce other documentary or witness evidence presented to the Appeal Panel.

The employee and/or representative will be invited to ask questions on the case presented and following witness evidence.

The Appeal Panel will have the opportunity to ask questions or clarify any issues raised during the presentation and following witness evidence.

The employee and/or representative, firstly, and then the Chair of the panel review meeting will be invited to make their closing statements.

All parties will withdraw excepting the Appeal Panel and any advisers.

The employee and Chair of the panel review meeting 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.

The Appeal Panel will consider the case. The panel will determine:

To set a further review period if for example the agreed support has not been in place or the impact of the poor performance is less than initially identified, or

To confirm the decision to dismiss on grounds of capability.

The Appeal Panel's decision will be confirmed in writing to the employee within five working days.

The Appeal Panel's decision is final. There is no further right of appeal. This does not affect the individual's statutory rights to appeal to an Employment Tribunal.

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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Related Policies/Procedures:	

REVISION HISTORY

Version	Date	Revision description/Summary of changes	Author
V1.1	November 2016	Formatting updates (minor amends not requiring committee approval)	HR Manager
V1.2	November 2019	Formatting updates (minor amends not requiring committee approval) and transference to new template	HR Manager
V1.3	August 2020	Correction	HR Manager
V2.0	October 2022	Full review in consultation with the Trade Unions. Approved via JCNC.	Head of HR / Director of HR