CAPABILITY AND POOR PERFORMANCE
POLICY AND PROCEDURE

Approval

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Capability and Poor Performance Policy and Procedure
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Capability and Poor Performance Policy and Procedure

1 Scope

1.1 This policy and procedure applies to all employees of the University, except for staff serving their probationary period and holders of senior posts as defined in the Memorandum and Articles of Association. The policy applies to hourly paid lecturers and staff on fixed term contracts. The policy and procedure applies to students that are also employees: action under this policy and procedure relates only to their employment and not their status as a student.

1.2 The policy is independent from the appraisal process and may be used at any point during the year when there are performance or capability concerns, regardless of the last appraisal assessment.

1.3 Performance and capability concerns for staff serving their probationary service should be addressed promptly during their probationary period under that procedure.

1.4 This policy does not apply to agency workers or self-employed contractors.

2 Aims

2.1 The success of the University depends upon the effective contribution of all employees. The University recognises that the vast majority of its employees meet or exceed the demands of their respective roles. However, performance and capability problems can and do arise. The procedure provides a framework for dealing with capability and performance concerns in a fair, supportive and consistent way.

2.2 The primary objective of the policy is to ensure employees have all reasonable opportunities to improve and maintain their performance to the required level. The procedure should be used primarily to help and encourage employees to improve. It provides a method of dealing with any apparent shortcomings in performance and can help an employee to become effective again.

3 Policy

3.1 Capability refers to an individual’s ability to perform the work expected of them to the required standards. The University is responsible for creating an environment in which successful performance is encouraged. This is achieved by carrying out good recruitment, management and learning and development practices that motivate employees, and by actively supporting employees in their work.

3.2 Capability problems that arise may be outside the employee’s direct control and can be symptomatic of underlying work problems and/or other personal issues. Consequently, there is a need to treat all capability issues with care and sensitivity and to identify and, where appropriate address the real causes.
3.3 Employees have a responsibility to perform their duties to an acceptable standard and they should be given all reasonable support and encouragement to do so.

3.4 Managers are responsible for setting realistic and measurable standards of performance, for ensuring their members of staff understand the standards required and for supporting staff to achieve the standards set.

3.5 Clear expectations, management supervision and support should be available to all employees. Employees can expect to receive appropriate guidance, training and support to carry out their duties. Where expectations change and evolve over time, managers have a responsibility to inform staff of these changes.

3.6 Expected standards of performance include a satisfactory level of attendance. Concerns relating to unacceptable levels of sickness absence will be addressed through this procedure, so that job related performance and attendance can be managed concurrently where necessary. For the purpose of this policy job related performance and attendance are referred to as “performance”. Capability action regarding unacceptable levels of sickness absence (including absence covered by Fit Notes) are addressed under this policy. See section 7 regarding the Managing Attendance and Wellbeing policy.

3.7 The line manager is responsible for managing performance (including attendance) and for initiating informal and formal capability actions under this policy.

3.8 Where performance issues first arise the line manager should discuss these informally with the employee in a timely manner. See section 4.2 for further information on the informal stage.

3.9 Expectations for improvement together with any timescales for achievement and a clear outline of support to be offered will be clearly communicated to the employee.

3.10 Where formal action is commenced, the employee will be invited to attend a formal meeting with their line manager, where they will have a right to be accompanied by a trade union representative, a trade union official, or a workplace colleague. See section 6 for further information on Accompaniment. Appendix 2 sets out guidance on conducting a capability meeting.

3.11 Electronic recordings of meetings will not be permitted.

3.12 The University will seek to maintain the confidentiality and dignity of employees. All parties involved in a capability and poor performance matter must exercise due care to maintain confidentiality. Records must be stored in line with Data Protection requirements.
3.13 Where performance remains below the required standards, employment may be terminated by reason of capability. A meeting at formal stage 3 which may result in dismissal will be heard by a panel. See sections 4.4-4.7 for further information on the formal stages.

4 Procedure

4.1 The stages in this procedure are:

- Informal
- Stage 1
- Stage 2
- Stage 3
- Appeal

4.2 Informal stage

4.2.1 Managers should be in regular contact with their staff to ensure they are given appropriate levels of supervision and guidance. Performance concerns should be addressed informally through discussion as soon as they become apparent. Wherever possible, cases of unsatisfactory performance should be raised as part of the normal management process in order to resolve the problem without recourse to formal action.

4.2.2 Through routine management and supervision, managers are able to clarify the standards required, identify any areas of concern, establish possible causes of poor performance, including any mitigating circumstances and identify any training needs or additional support which may be required.

4.2.3 Standards and expectations should be discussed, monitored and reviewed with the employee at an informal stage. In dealing with the matter informally the manager should discuss the concerns in private with the employee and remind them of the performance standards expected. The line manager should consider carefully the employee response and take that into account.

4.2.4 An informal meeting is a meeting between the manager and the employee alone and not attended by others. Examples of support which may be appropriate include additional training, guidance or coaching. Managers should make a written note of informal discussions in a timely fashion, clearly setting out their expectations, any support to be provided and timescales, and provide a copy to the employee. The employee has the opportunity to comment on the notes provided. For the avoidance of doubt the manager is advised to clearly label the note “Informal Meeting”. Notes of informal action are not placed on the employee’s HR record.

4.2.5 Where there are health concerns, Occupational Health advice should be sought. Where disability is known about, reasonable adjustments will be provided.
4.2.6 Where appropriate the line manager should recognise and congratulate the employee on improvements made to encourage them to maintain and build upon this.

4.2.7 At the end of the agreed timescale, the line manager should review progress with the employee. If informal measures have not resulted in the improvements required the line manager should discuss this with the employee at an informal meeting. The manager should explore whether the previously-agreed support, guidance or training was made available or whether there were organisational failures that inhibited satisfactory performance.

4.2.8 Where performance remains below the required standards despite being given adequate support and opportunities to improve, the manager should advise the employee accordingly and notify them that they will be invited to a formal meeting at stage 1 under the Capability procedure.

4.3 Redeployment

4.3.1 Where an employee recognises that they are unable to perform to the standards required in their current job they may wish to explore the possibility of redeployment. See appendix 3 for further information on redeployment.

4.3.2 Action under the Capability and Poor Performance procedure will continue during any period in which the employee may be pursuing redeployment options.

4.4 Formal Capability Meeting – Stage 1

4.4.1 The meeting at stage 1 is held by the line manager. A letter will be sent to the employee inviting him/her to attend a meeting. The letter will give details of the performance or capability concerns with enclosed copies of all information / documentation gathered subject to confidentiality and the Data Protection Act.

4.4.2 The employee will be given at least 10 working days’ notice of the meeting. If the employee wishes to provide additional information for consideration at the meeting, they should submit this no later than 3 working days before the meeting. A summary of timescales for the formal stages is provided at section 5.

4.4.3 The employee will have a right of accompaniment at the meeting by a trade union representative, trade union official, or workplace colleague. See section 6 for more information on Accompaniment.

4.4.4 A representative from Human Resources will attend the meeting to provide procedural advice. A note-taker will also attend. The line manager should make the necessary arrangements.

4.4.5 The employee must be given an opportunity to respond to the performance concerns and raise any mitigation.
4.4.6 Guidance for the conduct of a capability meeting is set out at Appendix 2.

4.4.7 Minutes of the meeting will be shared with the employee. These will be provided as soon as possible and normally within 10 working days. Minutes are not verbatim but are a summary. The employee can ask for corrections to the minutes. If the requested amendments are not made, their comments will be appended to the minutes.

4.4.8 Following the meeting the manager will confirm the outcome in writing. Potential outcomes from the meeting include:

- Agreement that the employee has met the required standards
- Further informal measures. This may be appropriate where the employee is responding well but has not yet fulfilled all objectives
- Confirmation that the employee has failed to meet the required standards / objectives

4.4.9 Having taken into account any mitigating factors raised by the employee, where it is considered that performance remains below the required standards, the manager will advise the employee accordingly in writing.

4.4.10 The letter must clearly set out the performance standards required, the nature and extent of the improvement needed and the period over which improvement will be monitored.

4.4.11 These expectations, milestones and support will normally be set out in a structured performance improvement plan. Improvement plans should be drawn up in consultation with the employee with the aim of developing an agreed plan. Guidance on performance improvement plans is provided in Appendix 1.

4.4.12 The line manager will provide appropriate supervision, coaching, guidance and support during the monitoring period. If there are health or disability concerns, up to date advice should be sought from Occupational Health.

4.5 Line Manager Review

4.5.1 The line manager will review performance regularly with the employee during the performance improvement plan period and monitor performance against the expectations set out following the stage 1 meeting. See Appendix 1. The line manager should acknowledge progress and offer encouragement as appropriate. The line manager must assure themselves that any reasonable adjustments for disability have remained in place and that any support agreed is put in place in a timely fashion. Timescales will be extended in accordance with any delay if reasonable adjustments or resources are not put in place as agreed.

4.5.2 It may sometimes be the case that an employee fails to meet the requirements set out early on in the improvement plan period. If it is not possible for
them to reach the required performance standards during the remaining period, it may be appropriate to bring the plan to a close. In cases where the manager intends to bring an improvement plan to an early close, this must be discussed with Human Resources. Plans must not be ended early if the employee considers there is still an opportunity for them to demonstrate improvement by the end of the improvement period.

4.5.3 The line manager will meet with the employee at the end of the performance improvement plan period to discuss achievement of the objectives. Potential outcomes from the meeting are:

- Performance standards / objectives have been met
- Performance standards / objectives have not been met. However significant progress has been made and it is considered that a further period of time would enable the employee to demonstrate the required standards, i.e. the improvement plan will be extended
- Performance standards / objectives have not been met and the case should be considered at stage 2.

4.5.4 The line manager will advise the outcome of the meeting to the employee in writing.

4.5.5 Where the performance standards / objectives have been met, the letter will state that satisfactory performance must be maintained for a further period of 12 months and that failure to do so will normally result in the procedure being recommenced at the next higher stage.

4.5.6 Where performance remains below the required standards of the performance improvement plan, the manager should consult with Human Resources without delay. The line manager will inform the employee accordingly and prepare a report for consideration at stage 2.

4.5.7 The report should include all evidence collated at the informal and formal stages, including details of support, reviews and outcomes from the improvement plan. A copy will be provided to the employee.

4.5.8 The employee will be given the opportunity to add their comments in writing if they wish. This must be submitted to the line manager no later than 3 working days before the meeting. The line manager will append the employee’s comments to the report.

4.6 Formal Capability Meeting - Stage 2

4.6.1 The report will be passed to the Pro-Vice Chancellor or Director where the member of staff is employed, who will invite the employee to a formal meeting. A copy of all documentation will be provided to the employee.
4.6.2 The steps to be followed are as shown at section 4 as appropriate.

4.6.3 In considering the case the Pro-Vice Chancellor or Director will take into account:

- Whether the expectations set out in the improvement plan were reasonable and took into account the employee’s responses
- Whether the agreed support/resources were provided at the appropriate time
- Whether a reasonable period of time was available to meet the requirements
- Any mitigating factors

4.6.4 Potential outcomes from the meeting are:

- Performance standards / objectives have been met
- Performance standards / objectives have not been met. However, evidence indicates that extending the plan for a further period would enable the employee to demonstrate the required standards
- Performance standards / objectives have not been met. However evidence indicates that a revised plan would enable the employee to demonstrate the required standards (see appendix 1)
- Performance standards have not been met. In particular cases where evidence shows that a revised plan, or extending the existing plan, would not result in the employee being able to demonstrate the required standards, the Pro-VC or Director can recommend moving to stage 3.

4.6.5 The Pro VC or Director will advise the outcome of the meeting to the employee in writing.

4.6.6 Where the Pro VC or Director considers the required performance standards / objectives have been met, the letter will state that satisfactory performance must be maintained for a further period of 12 months and that failure to do so will normally result in the procedure being recommenced at the next higher stage.

4.6.7 Where the Pro VC or Director considers an improvement plan should be revised or extended this will be actioned. (see Appendix 1)

4.6.8 Where performance standards/objectives have not been met and no further improvement plan is appropriate the employee will be invited to a meeting at stage 3.

4.6.9 In the latter case, all documentation collected from previous stages will be collated for consideration at stage 3. This will be shared with the employee and they will have an opportunity to add any further comments in writing no later than 3 working days before the meeting.
4.7 Formal Capability Meeting - Stage 3

4.7.1 The procedure to be followed is as set out at 4.4.2-4.4.7. Consideration should be given to the points set out at 4.6.3.

4.7.2 The panel at stage 3 will comprise the VC or their nominee (excluding Director of HR) and a Deputy Vice Chancellor.

4.7.3 As there is the potential for a stage 3 meeting to result in dismissal, the employee will be advised of this in advance.

4.7.4 Dismissal is a last resort and alternatives to dismissal will be considered on a case by case basis.

4.8 Appeal

4.8.1 Any appeal against the decision at stage 3 must be submitted in writing to the person named in the decision letter and set out their grounds of appeal.

4.8.2 In the case of appeal against dismissal, the appeal is made to the University Secretary.

4.8.3 The employee must submit any appeal within 10 working days of receiving the written decision. The employee should submit any additional documentary evidence they wish to be considered no later than 3 working days before the appeal meeting. A copy of the appeal letter must be sent to Human Resources.

4.8.4 An appeal against dismissal will be heard by a panel comprising two members of Court and the Director of HR. A member of Court will be in the chair. In the event that the Director of HR was previously involved in the case, an alternative senior manager will be identified.

4.8.5 If the Director of HR is not present at the appeal, Court members will be advised by a person with HR expertise. In exceptional circumstances, this may be someone from outside the University. A relevant manager will attend to answer questions and provide clarification.

4.8.6 Grounds for appeal can include, but are not limited to:

- failure to follow the Capability and Poor Performance procedure
- new evidence has come to light which should be considered
- insufficient time given for improvement
- incorrect interpretation of facts used
- resources / adjustment agreed in the improvement plans were not provided in a timely fashion
4.8.7 All documentation from the previous stages must be made available to those present at the appeal.

4.8.8 An appeal against dismissal will normally be heard during the notice period.

4.8.9 Following delivery of an appeal decision, there is no further right of appeal

5 Summary of timescales

5.1 No standard timescales are set under this policy for addressing performance concerns at an informal stage. The line manager must clearly set out expectations to the employee and provide any necessary supervision, support and training. It is for managers to do their best to assist the employee to improve at the informal stage and provide a measured and fair process. Human Resources is available to provide advice and guidance to managers as appropriate. The line manager should make a record and share this with the employee so that previous guidance can be referred to. Poor performance must not be permitted to continue unchecked and appropriate enquiries and action must be commenced at the formal stage where appropriate.

5.2 A capability meeting will be arranged as soon as reasonably practicable, subject to the need to carry out prior enquiries, including any Occupational Health referral. Every endeavour will be made to arrange a meeting without undue delay. The manager holding the meeting should keep the employee informed about any delays.

5.3 The employee will be given at least 10 working days' notice of a formal meeting. If the employee wishes to provide additional information for consideration at a formal meeting or appeal against dismissal, they should submit this no later than 3 working days before the meeting.

5.4 Minutes of meetings will be provided as soon as possible and normally within 10 working days of the meeting.

5.5 If circumstances beyond the control of all concerned prevent a meeting from taking place in a timely way, consideration will be given to appointing alternative managers.

5.6 The employee and any companion are obliged to make every effort to attend a capability meeting on the requested date. See section 6 for rearranging to allow accompaniment. It is sometimes the case that an employee may be fit to attend a meeting although a Fit Note from their GP may show they are not fit to work. Where an employee is persistently unable or unwilling to attend a capability meeting without good cause, a decision may be made on the information available. In these circumstances the employee will be informed in advance in writing. Alternative arrangements will be offered such as inviting the employee to arrange for a trade union representative, trade union official, or workplace colleague to attend the meeting on their behalf or to submit their representation in writing.
5.7 Any appeal against dismissal should be submitted to the person named in the decision letter within 10 working days of receiving the written decision. An appeal hearing will be arranged as soon as reasonably practical.

5.8 Decisions from formal capability meetings will be communicated in writing to the employee normally within 5 working days of the meeting (10 for an appeal against dismissal).

5.9 Where a performance improvement support plan is provided, it should be available in a timely manner. Where resources such as training or equipment or reasonable adjustments for disability are not provided as indicated in the plan, the improvement plan will be extended to provide an equivalent time for achievement of the objectives.

5.10 Coaching, training, guidance or other assistance agreed as support must be provided in a timely way so the employee has an opportunity to benefit.

5.11 Where improvement under a performance improvement plan is achieved, satisfactory performance must be maintained for a further period of 12 months.

6 Accompaniment

6.1 An employee may be accompanied at a formal capability meeting or appeal against dismissal by a workplace colleague or trade union representative or an official employed by the trade union. A companion should not answer questions on behalf of the employee but may make representations and ask questions. The employee and companion may talk privately at any time during the meeting.

6.2 If the chosen companion is not available at the meeting time offered, the employee can request that the meeting is postponed to an alternative time provided this is not more than five working days after the original date.

7 Relationship with other policies

7.1 Grievance: If an employee wishes to raise a complaint about the implementation or operation of the Capability and Poor Performance procedure this should be dealt with in the context of the Capability meeting. If an allegation of bullying or harassment is raised during the capability process the employee should be informed of the availability of the appropriate procedure. If the employee raises a grievance during the Capability procedure the procedure may be temporarily suspended in order to deal with the complaint. Where the grievance and capability issues are related it may be appropriate to deal with both issues concurrently. Where the grievance is heard concurrently with the capability process, the outcome of the grievance must be known in advance if this could impact on any capability meeting. The purpose of this approach is to allow substantive issues and any complaint to be considered expeditiously avoiding use of multiple procedures and associated delay.
7.2 Sickness Absence: High levels of sickness absence which can no longer be tolerated are addressed under this policy as a performance and capability issue. The Managing Attendance policy and procedure sets out the levels, frequency and patterns of sickness absence that are a cause for concern.

7.3 Drugs or Alcohol: Where poor performance or incapability is due to a drug or alcohol problem, the employee will normally be supported while they access appropriate treatment and counselling. During this period where appropriate the formal Capability and Poor Performance procedure will be suspended. However, where an employee fails to comply with treatment or counselling or whose performance continues to be of concern following a period of treatment, the formal Capability and Poor Performance policy will be commenced/resumed.

8 Capability reasons not related to performance

8.1 There may be circumstances where it is necessary to terminate employment for reasons which do not relate to the member of staff’s performance but are because of some other substantial reason, for example, where the employee no longer meets the statutory right to work in the UK.

9 Review

9.1 The University will keep this policy and procedure under review with the recognised trade unions.
Appendix 1

Guidance on Performance Improvement Plans

The purpose of a performance improvement plan (PIP) is to take all reasonable steps to help the employee improve and maintain their performance. A structured improvement plan can help to provide clarity for managers and employees.

Following a formal meeting, a performance improvement plan (PIP) should be drawn up in consultation with the employee. Discussion between the employee and their manager should take place with the aim of jointly drawing up an agreed plan. The employee must be given the opportunity to contribute to the plan and suggest any additional support or training they consider necessary.

Objectives should be SMART* and the plan should make clear how achievement will be demonstrated.

The length and content of the PIP will be appropriate to the circumstances. In designing a PIP it is normally helpful to refer to the following:

- the nature of the performance that requires improvement
- timing relevant to the particular improvement required and to other duties of the post
- the extent of any period previously provided for improvement at the informal stage
- what support will be provided, for example additional training or supervision, coaching, guidance
- SMART objectives should take account of any time spent on additional training
- any reasonable adjustments for disability
- milestones for measuring progress
- timescales for monitoring progress (review dates)
- the start and end date for the performance improvement plan period

For academic staff, depending on the nature of the performance that requires improvement, it may be necessary to take account of periods of time when members of staff are not carrying out their normal duties, such as annual leave or Research and Scholarly Activity (RSA) time.

The employee will be asked to sign or comment within 5 working days of receiving the plan. If the employee disagrees with the content they can ask that another manager reviews the plan together with the supporting documentation. Following review by another manager, the plan will be considered an agreed version.

During the course of an improvement plan period, the manager and employee should meet at regular intervals to discuss progress against the plan. It is advisable
to set out in advance dates for monitoring meetings so that employees are fully aware of review dates, especially the final review date.

The employee is expected to alert the line manager without delay of any change of circumstances which may impact on achievement of the plan.

Employees are required to perform all aspects of their role effectively. Whilst the improvement plan itself may focus on particular elements where under-performance has been identified, the expectation is that by the end of the improvement plan the employee will have demonstrated effective performance in all aspects of their role carried out during that period.

Any concerns identified during the improvement plan period should be raised in a timely manner and where appropriate the plan adjusted. Progress made and any remaining concerns should be noted in writing.

Monitoring against the plan will help to ensure the manager and employee are fully aware of progress throughout the improvement plan period and whether the employee is on track to meet the required standards by the end of the improvement plan period. Monitoring and discussion will ensure there are no surprises at the end of the improvement plan period.

*Specific, Measurable, Achievable, Relevant, Time-bound*
Appendix 2

Guidance on Holding a Capability and Poor Performance Formal Meeting

- Introductions – all

The manager will:

- State roles of those present
- Remind those present that electronic recording of the meeting is not permitted
- Check those present have the same documents
- Check employee has read the capability and poor performance procedure
- The manager will explain the performance concerns and invite the employee to respond

- The employee or his/her representative may ask questions (including questions about the information referred to)
- The employee or his/her representative should present their case. Alternatively, the employee may ask their companion to do so.
- The companion may not respond to questions on behalf of the employee or prevent the employee from answering but may ask questions, present the case and respond on the worker’s behalf to any view expressed at the hearing

- The manager will ask questions
- The manager will summarise their understanding of what is being presented
- The employee (or their companion) may sum up
- The manager will check if the employee has anything to add
- The manager will advise of next steps including proposed timescales for conveying the outcome of the meeting
- The manager will advise that the decision will be provided in writing as soon as possible following the meeting

- Adjourn to consider evidence provided and reach a decision
Appendix 3

Redeployment

1. Where an employee recognises that they are unable to perform to the standards required in their current job they may wish to explore the possibility of redeployment. They may do so at any stage of the Capability and Poor Performance procedure although action under the procedure will continue during any enquiries or trial periods.

2. Employees will not be pressured into seeking or accepting alternative posts. Redeployment is employee-led except at stage 3 when management will normally explore whether redeployment is available and appropriate as an alternative to dismissal.

3. If an employee wishes to explore opportunities for redeployment they may ask for their name to be added to the redeployment register. This means they will receive prior notice of, and the opportunity to apply for, vacant posts before these are advertised more widely.

4. If the employee chooses to be added to the redeployment register the onus is on them to apply for vacancies if they so wish.

5. An employee can apply for a vacancy at a lower grade post.
   - If they are successful in their application, the Capability and Poor Performance procedure will cease upon transfer.

6. An employee may apply for a vacancy at the same grade reporting to the same line manager if they consider the post is more suitable.
   - If they are successful in their application the line manager and employee will meet to discuss whether previous improvement plan is still valid.
   - Where appropriate, the improvement plan will be adjusted or set aside.

7. An employee may apply for a vacancy at the same (or higher) grade that reports to a different line manager.
   - The performance improvement plan will only be disclosed to the recruiting manager after the employee has been successful in securing the role.
   - If they are successful in their application, the new manager will be provided with a copy of the previous improvement plan and will meet with the employee to discuss whether it is still valid.
   - Where appropriate, the improvement plan will be adjusted or set aside.
   - The employee will be offered the post on a trial basis.

8. If the trial period is successful the employee’s substantive transfer to the post will be confirmed. The formal stage of the Capability and Poor Performance Procedure will cease following the successful trial period. The employee will be advised in writing that satisfactory performance must be maintained for a
further period of 12 months. The letter will advise the employee that failure to maintain performance will normally result in the procedure being recommenced at the next higher stage.

9. If the trial period is unsuccessful, a report will be prepared and the employee will be invited to a stage 2 meeting.

10. Redeployment is not appropriate where the employee has had an unacceptable level of sickness absence or other concerns where it is considered they will not improve as a result of doing a different job. Where there are disability or health concerns which may be disability-related Occupational Health advice must be sought.