

CAPABILITY PROCEDURE (Regulation 33)

A. GUIDANCE NOTES

1. Introduction

- 1.1. The University is committed to supporting and developing its staff to ensure that they are able to fulfil their roles and responsibilities to a high standard of competence. Through the University's recruitment procedures, every effort is made to ensure that new staff have the appropriate skills and abilities, or a clear, demonstrated potential to achieve these, for the roles they are recruited to fulfil. At the start of their employment (or internal transfer/promotion), staff should be clearly informed of their responsibilities and the standards of work performance required. This should be reinforced through appropriate induction and training, and effective, regular feedback, both positive and negative, relating to work performance. The University's appraisal scheme which addresses all elements of each individual's responsibilities, development and performance supports this approach. Managers are responsible for ensuring that performance issues are addressed promptly and fairly, and that they receive

- (v) request a postponement of a meeting if the chosen fellow worker/trade union representative cannot attend on the date proposed and a suitable alternative person cannot be found. In this instance, the member of staff must offer an alternative date and time so long as it is reasonable and falls no later than five working days after the date first proposed by the University;
- (vi) be treated in accordance with the principles of natural justice. This includes representation; the right of appeal; and the provision of evidence and relevant documentation.

4.2 Managers

Managers are responsible for:

- (i) recruiting, selecting, training and managing staff appropriately thus minimising the risk of poor performance;
- (ii) setting standards of performance, and ensuring that these are communicated and understood. Standards of work performance should be outlined at the start of employment and then reinforced through the induction process and training;
- (iii) ensuring that staff have a reasonable workload;
- (iv) providing induction to:
 - a) new recruits;
 - b) staff transferring from another school or department;
 - c) staff who have been redeployed;
 - d) staff promoted within the school or department;
- (v) providing feedback on work performance to every member of staff for whom they are responsible;
- (vi) providing appropriate support and assistance to help staff reach and maintain the required standards of work;
- (vii) ensuring that they receive appropriate advice and training relating to the operation of the Capability Procedure, subject to such training being provided by the University;
- (viii) dealing with poor performance as it becomes apparent to avoid this having a detrimental effect on the performance of the school/central department, or on staff morale;
- (ix) ensuring that matters relating to an individual's work performance are dealt with sensitively and consistently, maintaining confidentiality, dignity and equality of opportunity.

Managers have a right to:

- (i) enquire, where appropriate, and with sensitivity, of issues that may be affecting a member of staff's work performance;
- (ii) be treated with dignity and respect at all times.

4.3 Human Resources

The Human Resources Department is responsible for:

- (i) training and advising managers on the Capability Procedure;
- (ii) monitoring the use of the Capability Procedure across the university;

- (iii) attending and keeping a formal record of meetings at all formal stages of the procedure.

5. Exclusions

- 5.1 The Capability Procedure does not apply to situations covered by other University procedures, in particular:
- staff under probation to whom a separate procedure applies;
 - cases of misconduct which should be handled under the Disciplinary Procedure. Managers should liaise with their Human Resources representative for assistance as to whether a case is one of misconduct or incapability;
 - cases of incapability due to ill health which should be handled under the Sickness Absence and Medical Incapacity Procedure.
 - cases where the lack of capability may be due solely or partly to a disability, in which case advice should be sought from a Human Resources representative, and reference made to the University's Disability Policy and/or the Sickness Absence and Medical Incapacity Procedure.

6. Statutory changes

- 6.2 Any enhancements to statutory provisions that affect this collective agreement will automatically be incorporated.

B. CAPABILITY PROCEDURE

7. Informal action

- 7.1 Cases of minor shortfalls in performance are usually best dealt with by the manager informally, and without delay. This informal stage provides an opportunity to encourage open discussion of the issues involved, and to seek effective solutions. The manager should speak to the member of staff in private, and advise him/her of the shortfalls and what is required of the member of staff to rectify them. The manager should consider appropriate support, guidance and/or training, and make arrangements for this to be provided. The member of staff should have a clear understanding of what is required to meet the expected standards of performance, and that if s/he fails to meet these standards in a reasonable time period, the formal procedure will be invoked. The manager should make a file note of the discussion and of the outcome, including any measures to be put in place to assist the member of staff to improve his/her performance to the required standard.
- 7.2 It is not expected that at any informal meeting between a manager and the member of staff there should be any third party involvement. However, a request by the member of staff to be accompanied by a fellow worker or trade union representative will not be unreasonably refused.
- 7.3 The Capability Procedure should only be used where informal action has failed or the individual's performance issue is considered to be sufficiently serious to warrant formal action.

8. Stage 1

- 8.1 Where it becomes apparent, during Stage 1, that ill health is a possible reason for the problems, the manager should follow the procedure set out in the Sickness Absence and Medical Incapacity Procedure (available on Human Resources website).
- 8.2 Where informal intervention has not resulted in the required improvement in performance, or where the manager feels that the individual would benefit from a more structured process of direction and support, the manager should inform the relevant Human Resources representative,

and hold a meeting under Stage 1 of the Capability Procedure. For the avoidance of doubt, nothing in this Procedure shall require the institution of formal proceedings to be preceded by informal action, in particular if the performance issue is considered too serious to be addressed through informal intervention.

- 8.3 The member of staff should be given advance notice of the meeting, his/her right to be accompanied (see guidance note 4.1), and the purpose of the meeting, in writing. Any previous appraisal documentation should be reviewed prior to the meeting. In advance of the meeting, the member of staff should be provided (as far as is reasonably practicable) with copies of any documents to be considered at the meeting.
- 8.4 The purpose of the meeting is to inform the member of staff that s/he has failed to perform his/her duties to an acceptable standard, to give the individual an opportunity to respond, and to set a timescale for the individual's performance to improve.
- 8.5 Those present at the meeting should include the manager, the member of staff, the member of staff's chosen colleague or trade union representative, and a Human Resources representative.
- 8.6 At the meeting, the manager should:
 - clarify the required standards of the role;
 - explain clearly the shortfall between the individual's performance and these standards;
 - give the member of staff an opportunity to respond.

8.10 The nature of the under-performance will determine the type and range of help to be provided but it could include:

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9. Stage 2

- 9.1 Where the manager decides to progress to Stage 2, the letter confirming the outcome of the Stage 1 monitoring process will outline those areas where performance remains unsatisfactory, detail the arrangements for a Stage 2 meeting (which should normally be held within five working days of the Stage 1 review meeting), confirm the member of staff's right to be accompanied (see guidance note 4.1) and warn the member of staff that his/her employment may be terminated if the required improvement is not achieved.
- 9.2 Those present at the meeting should include the manager, the member of staff, the member of staff's chosen colleague or trade union representative, and a Human Resources representative.
- 9.3 At the meeting the manager should:
- re-clarify the required standards of the role;
 - explain clearly the shortfall between the individual's performance and these standards;
 - give the member of staff an opportunity to respond to the issues raised about his/her performance;
 - seek to establish the cause of poor performance and any action which can be taken to help to improve the situation;
 - identify any further support services or investment which might be required;
 - seek to identify any adjustments to the working environment which could assist the individual in meeting the requirements of his/her role;
 - obtain commitment from all concerned to assist in resolving the problems;
 - propose a further action plan which sets out clear targets and timescales for demonstrable improvement. Input should be sought from the member of staff and the action plan should be agreed by the member of staff wherever possible;
 - agree a reasonable time-scale for the individual's performance to improve;
 - set a date for a Stage 2 review meeting to ensure that progress is being made.
- 9.4 The manager should write to the member of staff normally within five working days of the improvement.
- 9.5 The timescale for this stage of the procedure will vary depending on the individual situation and in proportion to the level of seriousness of the performance difficulty. As a guideline, a period of between four and ten working weeks may be normal, but this could be shortened or lengthened as appropriate. A written record of the monitoring process should be kept by the manager.

Stage 2 review meeting

- 9.6 At the end of the monitoring period, a further meeting involving all those present at the initial Stage 2 meeting will be held to review progress, confirm the outcomes of the monitoring process, and identify any further improvements needed. The manager should decide, in the light of the issues discussed, what action is appropriate. The options at this stage could include:
- no further action under the Capability Procedure as the member of staff's performance has improved sufficiently;
 - an extension of the Stage 2 monitoring period;
 - to issue a final warning that the individual's performance remains unsatisfactory and that further targets will be discussed and set at a meeting held under Stage 3 of the Capability Procedure.
- 9.7 The manager may adjourn the meeting in order to consider the issues and reach a decision. Wherever possible, the member of staff should be informed of the decision at the end of the

