



CAPABILITY POLICY & PROCEDURE



UNIVERSITY OF
WOLVERHAMPTON

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POLICY

1. Introduction

The effective management of performance is central to the relationship between our managers and employees and is critical to the University's success. It is however, recognised that from time to time an individual's performance / capability may fall below the standards expected of the role.

The Capability Policy has been designed to provide a transparent framework to help improve individual performance in a fair and consistent manner where capability is a cause for concern. Capability in this policy refers to skills, aptitudes and knowledge in relation to the job the individual is employed to do.

The University has a responsibility for setting realistic standards of performance, for explaining the standards carefully to employees and for supporting employees to achieve the standards set through monitoring performance and providing appropriate training.

This policy relates to managing underperformance only. Any matters relating to misconduct, health/disability, personal circumstances or work related reasons will not be dealt with under this policy and reference will be made, where appropriate, to the Staff Disciplinary Policy, Managing Absence Policy and the Dignity at Work and Study Policy.

This policy does not replace the normal systems for monitoring performance and development, such as regular 1:1 meetings and appraisal.

The purpose of this policy is to:

- Support and encourage all employees to achieve and maintain the standard of performance expected.
- Provide managers with a framework and guidance to improve the performance of employees where performance concerns have been identified.
- Ensure a fair, consistent and transparent process is followed for every employee who may experience difficulties in achieving standards to a satisfactory level.

2. Scope

The Capability Policy applies to all employees of the University excluding those within their probationary period (please see Probation Policy).

Casual workers are not covered by this process, any performance problems should be dealt with informally and, where necessary, no further work should be offered.

3. Responsibilities

3.1 Managers

Managers will:

- Set out clear expectations of performance and what is necessary to achieve that performance standard.
- Discuss the role responsibilities and accountabilities, with reference to duties, objectives and outputs and ensure mutual understanding and awareness of the expected standards.
- Carry out regular, effective 1:1 meetings, providing fair and constructive feedback on performance.
- Identify areas for development that enable employees to realise their potential and progress their careers, as well as agreeing a plan for any development aimed at improving performance.
- Identify where performance is not satisfactory at the earliest possible opportunity and provide appropriate advice, coaching and guidance whilst considering any special circumstances that may exist.
- Manage and arrange meetings at the various stages of the procedure and confirm, in writing, the outcome to the employee and the improvements required.
- Identify and involve the support of other parties (e.g., Human Resources Service, Organisational Development and Occupational Health Service) as required.
- Ensure that the operation of the procedure does not discriminate on the grounds set out in the Equality Act 2010.
- Ensure that employees are aware of their role in this process e.g. engagement with relevant training/other support offered to them.

3.2 Employees

Employees will:

- Engage constructively in discussions about the responsibilities and accountabilities of their role to ensure a mutual understanding and awareness of the standards expected.
- Contribute constructively to any discussions and feedback about the standards of performance being achieved.
- Bring to the attention of the manager any difficulties in meeting the requirements of the role, discussing any training and support required to meet the full responsibilities of the role.
- Maintain awareness of new developments and acquire/ learn the necessary skills for continued personal and professional development in discussion with their manager.
- Attend any meetings in relation to performance management issues as requested by their manager and provide any reasonable relevant information as required.
- Participate with performance management action planning and comply with any reasonable objectives set as part of this.
- Explore with their manager, support available from other parties e.g. Human Resources Service, Organisational Development, Employee Assistance Programme and Occupational Health Service as required.

3.3 Human Resources Service:

Human Resources Service will:

- Oversee the introduction, operation and monitoring of the Capability Policy
- Provide advice, guidance and support to managers and employees on the interpretation and application of the Capability Policy
- Identify and involve the support of other parties e.g. Occupational Health Service as required

4. General Principles

- The Capability Policy will be applied in a fair, consistent and transparent manner.
- Employees should be supported in their efforts to improve and maintain the standards of work through advice, coaching and guidance.
- In exceptional circumstances, it may be necessary to progress straight to the formal stages of the capability procedure. Each case will be assessed on an individual basis after discussions with the Human Resources Service.
- Progression straight to a formal Capability Hearing may occur where there are serious concerns in relation to an employee's performance, or where the health and safety of other work colleagues, students, visitors and/or members of the public are at risk.
- An employee may be accompanied by a Trade Union Representative or work colleague to any formal stages of the procedure.
- In the interests of justice and fairness where information pertinent to a capability issue was not available prior to the deadline for papers, it may be considered at a formal capability review meeting/hearing but may result in an adjournment if further investigation is needed.
- Where it is identified that an employee's performance has taken a further shortfall following the expiry of a formal warning under the formal capability procedure, the manager will have the ability to refer back to a formal stage if performance levels decline within the qualifying periods set out below. This will avoid having to commence the process again from the beginning of the formal capability procedure:
 - Stage One – First Formal Capability Review meeting – within 1 year of concluding a formal action.
 - Stage Two – Final Formal Capability Review meeting – within 2 years of concluding formal action.
- Where there is a recurrence of a performance concern following the conclusion of any formal action, consideration will be given to the appropriate stage at which to re-enter the process. This may be to re-start at the informal stage or re-enter stage one or stage two.
- If it is deemed necessary to re-enter the procedure, consideration will be given to the previous interventions to support the employee's improved performance, these include; the time elapsed since action has been taken; the reasons for the new performance concerns (including the seriousness of these) and the level the case had previously progressed to before determining at which stage the procedure will re-start.
- A written record of all meetings conducted under this procedure will be made, either by the person holding the meeting or an additional person arranged by the University to take notes.

- The implementation of this policy is in accordance with the University's core values which are to be:
 - Ethical
 - Respectful
 - Transparent
 - Inclusive and fair
 - Challenging
 - Confident
 - Collaborative
 - Professional

PROCEDURE

5. Managing Performance

5.1 Informal Capability Management

Where an employee demonstrates an ongoing inability to perform their duties to the required standards, and it has not been possible to resolve this through the normal performance channels, the matter should be dealt with informally wherever possible. The manager should meet with the employee in a timely manner to discuss their concerns. A member from the Human Resources Service or Trade Union/ workplace colleague representative will not usually be required at this stage of the process.

The purpose of the meeting is to discuss the employee's performance and agree what measures should be taken, with a view to securing the required improvement in the employee's performance.

The outcome of the meeting may be:

- A decision to take no further action.
- Issue guidance to the employee on what is required to improve their performance.
- A decision to refer the matter straight to the formal stages of this procedure.

A review period will be agreed by the manager to monitor employee performance. Dependent on the number of issues and their complexity, this period will not usually exceed two months.

The manager will confirm the outcome of the informal meeting in writing to the employee, addressing the main points of the discussion.

If the employee's performance does not meet the required standards, the matter will move to the formal stages of the procedure. The manager should discuss the areas of concern with a member of the Human Resources Service. This is to clarify the issues and ensure the procedure is being followed correctly and consistently.

5.2 Formal Capability Management Procedure

The formal procedure will consist of three stages and will be initiated if it has not been possible to remedy the issue informally, or exceptionally, where the issue is sufficiently serious to warrant formal action without initial informal considerations in relation to a shortfall in employee performance.

Progression through the formal stages of the procedure will occur where the required standards have not been achieved and, following the conclusion of the formal procedure, maintained within one year for stage 1 or two years for stage 2.

In order to ensure that any meetings held under the formal procedure are not delayed or postponed unnecessarily, the hearing manager should agree a mutually convenient time and date for the meeting with the employee and their Trade Union Representative or work colleague.

5.2.1 Stage One; First Formal Capability Review

If the informal process does not lead to a satisfactory improvement in the employee's performance or where serious concerns arise, the manager must inform the employee of the concerns and arrange for a stage one formal capability meeting to take place.

The manager will write to the employee giving at least five working days' notice of the meeting, setting out:

- The purpose of the meeting, including the nature of the shortfall in the performance and any informal action already taken.
- The date, time and venue of the meeting.
- The employee's right to be accompanied by a Trade Union Representative or work colleague.
- The possible outcomes of the meeting.
- The Capability Policy and Procedure should be enclosed with the letter, together with a copy of the evidence to be referred to at the meeting.
- Should the employee wish to submit any evidence for consideration at the meeting, they should send this to the manager at least two working days in advance of the meeting. Failure to submit the information within this timescale may result in the information not being considered at the meeting

If for any reason the meeting needs to be rescheduled, all parties should work together to aim for it to take place within seven working days of the original meeting date.

It is the employee's responsibility to ensure that their representative is fully informed at the earliest opportunity as to when meetings are proposed. Failure to attend a re-arranged meeting without reasonable cause may lead to a decision being made in the employee's absence.

An employee has the right to request that their representative speaks on their behalf or to produce a written submission to be taken into account at the review meeting. For further advice, please speak to the Human Resources Service.

Reasonable adjustments will be made to enable any employee with specific requirements covered under the Equality Act to attend and participate in the capability review process.

At the meeting, the following points should be addressed:

- The manager should set out the nature of the performance concerns, with reference to examples and evidence as required, and the standards of performance expected.
- The employee will be given the opportunity to respond in full, with reference to examples and evidence as required.
- An explanation of the possible reasons for underperformance, and any difficulties the employee may be having in achieving the required standards.

- What interventions, support and adjustments are required to enable the individual to meet the required standard.
- The length of the assessment period and review meetings required during this time.
- The possible consequences of failure to achieve the required standards.

The outcome of the meeting may be:

- a decision to take no further action;
- a decision to refer the matter for consideration under an appropriate University procedure;
- a decision to present a first written warning in accordance with this procedure;
- the implementation of a performance improvement plan, designed to bring the employee's performance to an acceptable level, using SMART (Specific, Measurable, Achievable, Relevant and Time-bound) objectives;
- a decision to refer the matter to stage two of this procedure.

The manager will confirm the outcome of the meeting to the employee in writing within ten working days. Where an employee is issued with a first written warning, this will remain current for a period of twelve months following the review period. The letter will include the employee's right of appeal.

A reasonable period of time for improvement should be set, together with the arrangements for monitoring the employee's progress during the period. The timescale for improvement will be determined by individual circumstances of the case and will usually not exceed two months. At the end of the review period, a meeting will normally take place to discuss performance progress and offer any support where required. A member from the Human Resources Service will be present and the employee will be given the right to be accompanied by a Trade Union Representative or work colleague.

The assessment period may be suspended in the event of an employee's prolonged absence from work and will normally re-commence upon their return to work. However, a decision regarding this would depend on the circumstances and will be assessed on a case by case basis.

5.2.2 Stage Two Final Formal Capability Review

Where performance levels remain unsatisfactory following stage one, or where improvements in performance are not being maintained to the required standard, a further capability review meeting will be held under stage two of the procedure and will be led by the manager.

The order of the meeting should be followed as described under stage one of this procedure.

The manager will confirm the outcome of the meeting to the employee in writing within ten working days. Where an employee is issued with a final written warning this will remain current for a period of twelve months following the review period. The letter will include the employee's right of appeal.

If, at the end of the stage two review period, the required standards of performance are not being achieved, a decision will be taken whether to progress to stage three of the procedure. Options may include:

- a decision to take no further action;
- a decision to institute another performance improvement plan
- a decision to refer the matter to stage three of the procedure.

5.2.3 Stage Three – Formal Capability Hearing (Potential Dismissal)

Where employee performance has not improved by the expiry date of the review period set out in the final written warning, or if there is evidence of further poor performance whilst a final written warning is still active, or, in exceptional circumstances, where serious concerns arise (please refer to Section 4. General Principles of this policy), the employee will be required to attend a capability hearing in accordance with stage three of this procedure.

The case will be heard by a minimum of two panel members one of whom will be drawn from the following groups of senior staff:

- A member of OVC - Office of the Vice Chancellor
- A Dean of Faculty
- A Director of a Professional Service department with executive, overarching responsibility *e.g.: Director of Estates and Facilities*

They will be supported and advised by a representative from the Human Resources Service.

Where a capability hearing is required, the employee will be notified in writing giving a minimum of five working days' notice to enable him/her to arrange representation, if required.

The manager will produce a capability report and send a copy to the employee, along with the capability hearing letter. The employee will be requested to submit any information in addition to what is included in the capability report, to the Chair of the panel at least two working days prior to the capability hearing taking place. Failure to submit the information within the timescale may result in the information not being considered at the hearing.

Any employee required to attend a capability hearing will be provided with sufficient time off work to prepare for the hearing as agreed by their manager.

If a meeting needs to be rescheduled, all parties should work together to aim for it to take place within seven working days of the original date. It is the employee's responsibility to ensure that their representative is fully informed at the earliest opportunity as to when the meetings are proposed. Failure of an employee to attend a re-arranged meeting without reasonable cause may lead to decision being made in their absence.

If an employee is unable to attend a capability hearing due to ill health, the hearing may be rescheduled. Should the health issue be long term, advice will be sought from the Occupational Health Service as to whether the employee is fit to attend. If they believe that the employee is fit to attend, the hearing will be scheduled. If the Occupational Health Service advise that an employee is medically unfit to attend and the University feels this will not change within a reasonable timescale, the hearing may be undertaken in their absence, following conversations with medical specialists and their Trade Union Representative or work colleague, based on the information available. This will be confirmed to the employee.

Where possible the capability hearing should be held away from the employee's normal area of work. The Chair of the capability hearing will be supported by a member of the Human Resources Service who will advise on procedure. An independent note taker may attend the capability hearing or the hearing may be recorded in order to ensure that the hearing is fully documented. The employee has the right to request that their representative speaks on their behalf or to produce a written submission to be taken into account at the hearing. For further advice, please speak to the Human Resources Service. Reasonable adjustments will be made to enable any employee with specific requirements covered under the Equality Act to attend and participate in the capability hearing process.

At the hearing, the manager will be requested to present their case.

The employee will be given every opportunity to respond to the points raised and to explain any difficulties they may be having in achieving the expected standards of work performance. They will be encouraged to put forward any issues for consideration.

Where the decision is taken to dismiss the employee on the grounds of capability, the Chair of the panel must be satisfied that all avenues to resolve the performance issues have been exhausted.

The outcome of the hearing will be confirmed in writing and sent to the employee along with the notes within ten working days of the hearing. The letter will include the right to appeal.

Employees who are dissatisfied with the outcome will have the right to appeal. Appeals must be submitted in writing within ten working days of the outcome letter sent to the employee.

The appeal should clearly state the basis on which it is being made and can be submitted for one of the following reasons:

- a procedural irregularity
- inappropriate sanction based on the nature of the issue
- new evidence not presented at the original hearing;
- one appeal will be allowed at each stage of the procedure

Appeals against dismissals will be heard by a panel chaired by a member of staff with delegated authority from the VC, accompanied by two senior managers who have not previously been involved in the case.

A senior member of the Human Resources Service will also be present at the hearing.

The decision of the appeal hearing panel will be final.

During the appeal meeting, the employee will be given the opportunity to present their case in full and the manager making the original decision will be present to respond.

Following full and thorough consideration of the appeal including any related written documentation, a decision to uphold or dismiss the decision will be made. The Chair of the appeal meeting will, where possible, notify the employee of the outcome at the conclusion of the appeal meeting and will confirm the outcome in writing within ten working days.

6. Capability Proceedings concerning Accredited Trade Union Representatives

Where an accredited Trade Union Representative is to be managed under this policy and procedure the relevant full time office will be notified at the earliest opportunity, with the consent of the employee, that potential action (whether informal or formal) may be taken against the representative to improve their performance, and that they may represent the employee at any stage of the formal stages of the procedure.

7. Grievance during the Capability Procedure

Where a grievance is submitted whilst a capability matter is being investigated, and they are related, both cases will be dealt with concurrently to avoid any undue delay to their respective procedures. The decision as to whether they are related will be taken by the Human Resources Services following due consultation with the employee raising the grievance.

Where an employee raised a grievance during the capability process, it may be temporarily suspended in order to deal with the grievance.

8. Right of Appeal

An employee has the right of appeal against a sanction issued under the formal stages of the capability procedure. The request should be made in writing in accordance with each stage of the procedure and clearly set out the grounds on which the employee believes that the decision was flawed or unfair.

The outcome of the appeal will be confirmed to the employee in writing, explaining the grounds on which the decision was reached. The outcome of the appeal will be final.

9. Right of Representation

All employees have the right to be accompanied by a Trade Union representative or work colleague at any of the Formal Stages of the procedure and it is their responsibility to arrange this.

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