

## **CAPABILITY POLICY AND PROCEDURE**

### **Policy Statement**

This policy has been developed with reference to the ACAS Guidance on Capability Procedures and the University of Cambridge Capability Policy.

It applies to all contracted non-academic employees who have successfully completed their probationary period, regardless of whether their contract is temporary or permanent. It will apply in the event that an employee's conduct falls below expected standards. Matters relating to deliberate poor performance may also be dealt with as a disciplinary matter.

Issues that arise during a probation period will be managed as part of the probation review process.

This policy is non-contractual and may be reviewed and altered, in consultation the HR Committee and other appropriate staff groups as required.

All employees subject to any form of capability process whether it be informal or formal, must treat as confidential, any information communicated to them in connection with the matter. This also extends to any other individual involved in the process e.g. witnesses.

### **Introduction**

Capability refers to an employee's ability to perform their duties to the standard required.

The purpose of this policy is to provide a framework for managing underperformance in a fair and consistent manner with the primary focus of improving performance to the standard required of the post holder.

The following process acts as a guide to the stages that will be followed in the event an employee's work performance falls below the standard appropriate for the role, and does not sufficiently improve with feedback and reasonable support and training.

It is a line managers' responsibility to identify underperformance and seek to address this at the earliest opportunity, having sought advice from the HR Manager in the first instance and prior to any discussions taking place with the employee for whom there are concerns.

Every effort will be made to comply with the indicative timescales stated in this Policy. If, however, due to the complexity and/or specific circumstances of a case, timescales need to be extended, the employee will be advised of the reasons for any delay.

If the performance concerns relate to a lack of capability that poses a risk to the health, safety or well-being of members of the college community, or is likely to result in serious damage to the college operations, immediate action is required. In such cases, the senior manager may exceptionally decide to issue a first and final formal written warning without following an informal process as to do otherwise would expose members of the college community to serious risk in terms of their health, safety and wellbeing.

### **Sickness absence and capability proceedings**

It is important that sickness absence should not delay or avoid the use of capability procedures. In the event an employee is deemed unfit to work, that should not preclude them engaging in discussions regarding their performance. It is in the interests of all parties to address concerns about performance without undue delay.

Adjustments to the process may be considered to facilitate engagement by the employee, if required.

Consideration will be given to whether poor performance may be related to a disability. If so, reasonable adjustments will be explored e.g. temporary or permanent changes to working arrangements, additional equipment or training or redeployment.

If an employee's medical condition is not serious enough to warrant a consideration of termination of employment on the grounds of ill health, the college may seek the advice of an Occupational Health (OH) adviser to assess whether an employee absent through sickness, is fit enough to attend a meeting under this procedure and whether there are mitigating factors to consider.

### **Informal capability process**

In the first instance, line managers should seek to address performance issues informally and as early as possible as part of normal day to day management. Ideally this would be within a few days of the issue(s) being identified but there may be occasions when preparation for such a discussion is required that may necessitate a longer time frame.

It is expected that initially, during informal discussions the line manager should:

- explain the nature of the concerns (providing specific examples as appropriate)
- set out the expected standards of performance
- establish the likely causes of underperformance and identify any actions required to aid improvement e.g. training or other sources of support
- set targets and timescales for improvement and review dates (where possible these will be agreed between the employee and the manager)
- explain the potential consequences of not achieving the required improvements in performance

The line manager should confirm the outcomes of any informal discussion in writing to the employee and retain any notes of these informal discussions or meetings for reviewing the standards and expectations set during the informal stage of the procedure. The attached Performance Improvement Plan (PIP) should be used to outline the targets and expectations.

Where there is satisfactory improvement, the matter will be considered resolved and the normal appraisal process will resume.

### **Formal capability process**

There are three stages to the formal process as outlined below.

If following a reasonable timescale, satisfactory and sustained improvement has not been met, the line manager will convene a formal capability meeting to consider whether a formal process is required. If, following the formal capability meeting, concerns are identified that need addressing, the employee will be issued with a formal capability warning. Whilst it remains 'live' on the individuals' personnel file, the warning will be referred to in the event that a reference is requested from the college.

### First formal capability meeting

The meeting will be chaired by the employee's line manager or other senior manager and the HR Manager will attend to advise on process.

The employee should receive at least five working days' written notice of any meeting held under the formal stage of this process.

The invitation letter will include:

- The date, time and place of the formal capability meeting
- Details of the performance issues and the possible outcomes of the meeting
- Their right to be accompanied either a trade union representative or a work place colleague
- The titles of enclosed copies of any documents that may be referenced
- The names of any witnesses to be called by the manager chairing the meeting
- Their right to call witnesses on their behalf
- The name and position of any other parties who will be present, e.g. HR Manager, note taker

The employee must advise the manager chairing the meeting of the following at least 3 working days' in advance of the hearing:

- The name and position of their companion
- Any documentation they wish to be considered that has not previously been available
- The names of any witnesses at that they wish to call
- Any special requirements (e.g. disability, language requirements)

### Formal capability meeting agenda

The agenda of a formal capability meeting will include:

- setting out the required standards that it is considered the employee has failed to meet and consider relevant evidence
- giving the employee the opportunity to ask questions, present evidence, call witnesses, respond to evidence and make representations
- establishing the likely causes of underperformance including any reasons why measures taken so far have not led to the required improvement
- identifying whether there are any further measures, such as additional training
- discussing and agreeing where possible targets for improvement and a timescale for review; ensuring a reasonable period of time is provided for the individual to demonstrate improved performance
- if dismissal is a possible outcome (stage 3 only), establishing whether there is any likelihood of a significant improvement being made within a reasonable timeframe and whether there is any practical alternative to dismissal

The line manager chairing the meeting will provide a summary of the process and support provided to date, and will explore evidence to support a significant and sustained improvement in performance.

Where required, either party may request an adjournment to the hearing.

The senior manager may also adjourn the meeting if it is decided that further investigation is needed, or that more time is needed in which to consider any additional information.

#### Possible outcomes of a first formal capability meeting

The employee will normally be informed in writing of the outcome of the first formal capability meeting and the reasons for it within five working days.

If the employee's performance is considered to be unsatisfactory, the manager will write to the employee, issuing a First Improvement Notice. The Notice will state the improvement in performance required, targets and timescales for improvement ('the review period'), any support to be provided and the consequence of not meeting the performance targets within the review period. It will also set out the employee's right of appeal.

The Notice will remain live at least until the date of the next review meeting. If following that meeting the employee's performance is deemed to be acceptable, a copy of the written warning will be held on the employee's personnel file for a period of 6 months from the initial date it was issued.

The line manager may conclude that there are insufficient grounds for pursuing the capability issue. In such cases, the capability procedure will come to an end and the appraisal process will resume. In such circumstances, no formal warning will be issued.

#### Monitoring and review period following a formal capability meeting

A performance monitoring and review period will follow either a first or second formal capability meeting. The purpose of the review period is to continue to evaluate performance and establish guidance and support at a level deemed appropriate by the line manager. The individual will not have the right to be accompanied to review meetings.

The line manager will monitor the employee's performance during the review period and hold regular review meetings with the employee. On completion of the review period, the line manager will write to the employee to inform them of the outcome that either:

1. the employee has met the performance standards set and no further action will be taken; or
2. the employee has not met the performance standards set and the matter will be progressed to formal stage two; or
3. progress has been made towards meeting the standards set, but they have not been achieved fully (or other factors have been present e.g. sickness or leave) and the review period will be extended or other options considered.

If, following a first formal capability meeting the outcome of the review period is no. 2, the employee will be invited to a second formal capability meeting; the process, agenda and considerations will be the same as outlined for the first formal capability meeting. This pattern will be repeated between the second and final formal capability meetings if required.

### Possible outcomes of a second formal capability meeting

The employee will normally be informed in writing of the outcome of the second capability meeting and the reasons for it within five working days.

If the employee's performance is considered to still be unsatisfactory, the line manager will write to the employee, issuing a Final Improvement Notice. The Notice will state the improvement required, targets and timescales for improvement ('the review period'), any support to be provided and the consequence of not meeting the performance targets within the review period. It will also set out the employee's right of appeal. The Notice will remain live at least until the date of the next review.

### Monitoring and review period following a second formal capability meeting

A performance monitoring and review period will follow the second formal capability meeting as per the arrangements for the review period outlined above.

If, following a second formal capability meeting the outcome of the review period is again no. 2 (see above), the employee will be invited to a final formal capability meeting; the process, agenda and considerations will be the same as outlined for the first formal capability meeting but the possible outcome will include reference to dismissal and redeployment.

### **Final Formal Capability Meeting**

If the employee's performance has failed to improve sufficiently as detailed in the Final Improvement Notice whilst that Notice is still live, or if the underperformance has been so serious as to warrant moving straight to a final formal capability meeting, the employee will be invited to a final formal meeting. This meeting will be chaired by a Senior College Officer (SCO) and the agenda will include:

- reviewing the required standards that it is considered the employee has continued to fail to meet and consider relevant evidence
- giving the employee the opportunity to ask questions, present evidence, call witnesses, respond to evidence and make representations
- establishing the likely causes of the ongoing underperformance including any reasons why measures taken so far have not led to the required improvement
- identifying whether there are any further measures to consider that have not yet been explored
- establishing whether there is any likelihood of a significant improvement being made within a reasonable timeframe and whether there is any practical alternative to dismissal e.g. redeployment

### **Possible outcomes of a Final Formal Capability Meeting**

Having considered the facts of the case, the SCO will decide whether:

1. the employee has met the performance standards set and no further action will be taken; or
2. some progress has been made towards meeting the standards set, but they have not been achieved fully (or other factors have been present e.g. sickness or leave) and a further review period or alternatives to dismissal can be considered; or
3. performance remains at an unacceptable level and alternative options are not possible. In which case the employee will be dismissed.

### Dismissal

If dismissal is an outcome of this process, the employee will normally be dismissed with notice as per their contractual entitlement.

In cases of gross incompetence, an employee will normally be dismissed without notice, or pay in lieu of notice.

Payment for any outstanding leave entitlement will be made up to the date of dismissal.

### **Grievances arising during the procedure**

Where an employee has a grievance against the way any person has conducted the procedure this will normally be dealt with through the appeals process.

### **Appeals**

If an employee is dissatisfied with any formal decision affecting them, they must submit the grounds of their appeal to the HR Manager within 5 working days' of receipt of the outcome letter. The HR Manager will arrange for an SCO, previously unconnected with the proceedings, to hear the appeal.

Appeals will be limited to the individual appealing the reasonableness of the decision made by the line manager or SCO or any procedural irregularities. If the individual raises any new matters as part of their appeal, the college reserves the right to consider or discount the information depending on relevance to the matter. If that approach is necessary, the individual will be informed and may be required to participate in a further brief investigation or be prepared to explain the evidence during the appeal hearing.

The same arrangements for notifications of meetings and the right to be accompanied by a companion will apply for appeal hearings as per the formal capability meetings.

Pending the outcome of an appeal, the employee will be expected to:

- continue to work in accordance with targets set for the next stage of the procedure and their progress towards the achievement of these targets may be monitored during this period; or
- in the event they have been dismissed and are appealing the dismissal, they should not attend work.

If new information or documentation is obtained, it will be circulated to all parties, prior to the appeal hearing. Appeal hearings will normally take place between 2 and 5 working days' after the notice of the hearing is issued, to allow relevant parties time to prepare.

Following the appeal hearing, the SCO may:

- confirm the original decision; or
- revoke the original decision; or
- instigate an alternative arrangement.

Following the conclusion of the appeal process, there is no further recourse to have the matter considered further under this policy.

**Implementation, Monitoring and Review of this Policy and Procedure**

The HR Manager has overall responsibility for implementing and monitoring this policy.

This policy takes effect from 1 June 2021 and will be reviewed every 3 years unless changes in legislation require that to take place sooner.

Any queries or comments about this policy should be addressed to the HR Manager.

**PERFORMANCE IMPROVEMENT PLAN TEMPLATE**

**Name:**

**Department:**

**Start of Support Plan period:**

**End of Support Plan period:**

<b>Targets</b> What you need to achieve	<b>Actions</b> What you intend to do to achieve the targets	<b>Success criteria</b> What you will use to measure success against objective target	<b>Support</b>	<b>Outcome evaluation</b> Evidence of meeting objectives and whether fully/partially met

<b>Signed:</b> (Reviewee/Employee)	<b>Date:</b>
<b>Signed:</b> (Reviewer)	<b>Date:</b>