

Guidelines

Title: CAPABILITY PROCEDURE

Ref: HR/ER

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What is capability?

Capability refers to the skills, aptitude, health and qualifications which are required by an employee to carry out the work they are employed to do satisfactorily.

What is a capability procedure?

The purpose of the capability procedure is to ensure that staff achieve and maintain the level of work performance expected of them and to provide a fair and consistent mechanism for dealing with those employees who are unable to achieve a satisfactory level of work performance.

There are separate capability procedures for staff at levels 1 to 3 and staff at levels 4 and above. Both procedures are underpinned by the principles of natural justice and the ACAS code of practice.

What is the difference between the capability and the disciplinary procedure?

The aim of the capability procedure is to deal with matters relating to unsatisfactory performance and attendance, whereas the disciplinary procedure exists to manage effectively matters considered to be misconduct. Further guidance on which procedure to use is provided in the University's ordinances and procedures relating to discipline and capability, but the University has discretion in determining which procedure is most suitable given the circumstances of the case.

What responsibility do employees have in respect of their capability?

Employees should be able to achieve and maintain a satisfactory level of performance, but may from time to time need to be given appropriate training and development opportunities as well as support and encouragement to reach the required standard. If you are not clear as to what you are expected to do or achieve you should raise your concerns with your line manager.

What responsibility do managers have in respect of managing capability?

Managers and supervisors will be expected to manage the performance of their staff, tackling performance issues as soon as they become obvious and where there is a shortfall, address this in a supportive way. Regular formal or informal discussions, including the annual Personal Performance Development Review (PPDR), will help identify any problem areas and allow action to be taken promptly.

What can be expected during the informal stage of the capability procedure?

If a member of staff's performance is not up to the required standard the manager should counsel the employee to try to help them improve. It is important that concerns are brought to the member of staff's attention as soon as possible. The manager should explore possible causes of the poor performance, discuss what measures can be put in place to improve performance, and agree a timescale for improvement. It is important to set objectives that are realistic and achievable and to ensure that the member of staff understands what is required of them. A good way of doing this is to agree objectives which are SMART (Specific, Measurable, Achievable, Relevant and Time specific). The objectives should be reviewed with the

member of staff on a regular basis. In addition, it is important to consider other measures that could be put in place, such as increased supervision and training. It is always advisable to follow up the discussion and confirm the agreed actions in writing.

What if there are health concerns which may be hindering satisfactory performance of a member of staff?

If there are concerns relating to health, injury or disability, advice should be sought from HR and Occupational Health. If an underlying medical condition exists which is impacting on the employee's ability to do their job satisfactorily then the capability procedure may not be appropriate. However, if, for example, the employee has a high sickness absence record but there is no underlying medical condition impacting on the employee's ability to do the job satisfactorily then this may be the appropriate procedure to use. Similarly, if the employee has a high sickness absence record and an underlying medical condition but the absences are not necessarily linked to the medical condition, this may be the appropriate procedure to use. If in doubt, please discuss with your HR Adviser. The University's ordinances and procedures relating to Incapacity on Health Grounds and Capability give further guidance on which procedure to use.

When should matters be taken down the formal route under the capability procedure?

Managers are expected to use informal ways of addressing capability concerns. Early identification of problems provides an opportunity for the manager and member of staff to discuss the situation in an informal but structured way with the aim of agreeing a way forward.

If this informal action does not result in the required improvement then it may be necessary to progress matters under the formal capability procedure.

It is expected that informal management of capability issues will produce the necessary improvements in performance and negate the need to progress to formal action. However, the use of informal measures as a precursor to formal action is not always appropriate and for the avoidance of doubt, there may be exceptional circumstances where it is necessary to move straight to formal action under the capability procedure.

Under what circumstances would you expect a member of staff to be suspended?

In some situations it may be appropriate for a member of staff to be suspended pending the outcome of a preliminary report or capability hearing. Suspension is taken as a precautionary measure where it is considered in the best interests of the University, students or staff. For instance, it may be appropriate to suspend a member of staff for their own safety or the safety of others, to prevent him or her being influenced by others or influencing others, or to prevent possible interference with evidence etc. A member of staff will be suspended from duty at the normal rate of pay and the terms of the suspension will be confirmed in writing. An employee should be left on suspension for as short a period as is reasonably possible.

Suspension can only be authorised by the Vice-Chancellor (for staff in levels 4 and above) or Dean or Head of Professional Service or his or her nominee (for staff in levels 1 to 3) and you should always speak to your HR contact before initiating the suspension of an employee.

What is the purpose of the preliminary report?

In order to initiate formal action under the capability procedure, the line manager of the member of staff whose capability has been called into question needs to prepare a preliminary report for the Dean or Head of Professional Service or his or her nominee (for staff in levels 4 and above) or the initiator (for staff in levels 1 to 3). The preliminary report will outline the issues, detail the actions taken to date and recommend that formal procedures are started. The Dean or Head of Professional Service or his or her nominee or initiator will decide, on the basis of the report, whether to progress to a capability hearing and which level hearing is appropriate.

How should an individual be notified of the requirement to attend a capability hearing and how much notice is given?

The member of staff will be notified that they are required to attend a capability hearing in writing.

For staff in levels 1 to 3: The member of staff will receive at least five working days' notice of the hearing.

For staff in levels 4 and above: The member of staff will receive at least 10 working days' notice of the hearing.

What is the role of the member of staff's representative/companion?

The member of staff has the right, if they wish, to be accompanied by a workplace colleague or a trade union representative. The representative/companion is permitted to address the hearing in order to put forward the member of staff's case; they can sum up the case and comment upon any view expressed at the hearing. The representative/companion is also permitted to confer with the member of staff during the hearing.

It should be noted that the representative/companion has no right to answer questions on behalf of the member of staff, to address the hearing if the member of staff does not wish him or her to do so, or to prevent the employer explaining its case.

Representatives/companions have an important role to play in supporting a member of staff and are allowed to participate as fully as possible.

What happens if the representative/companion is not available at the time of the disciplinary meeting?

If the member of staff's representative is not available at the time proposed for the hearing then the member of staff may request that the hearing is postponed to another reasonable time. The member of staff should offer a date which is not later than five working days from the original time proposed.

Can an electronic recording of interviews, meetings and Hearings be taken?

No, neither the manager nor an employee can insist on making an electronic recording of any interview, meeting or Hearing.

In exceptional circumstances it may be appropriate to agree to a recording where the employee is disabled and requests such a recording as a reasonable adjustment to the usual procedure to enable them to cope with the process or where English is not the first language.

The usual course of action for producing a record of meetings is for another employee (often someone from Human Resources) with note-taking skills to attend and take notes on a confidential basis. The employee and their companion are also free to take their own notes.

When might it be appropriate to issue a warning?

If, during a formal capability hearing it is determined that the employee has not reached the required standard despite receiving appropriate support and guidance, a warning may be issued to the employee.

The warning will inform the employee that their performance still needs to improve and will state the timescale by which the improvement should be made. Specific objectives should be agreed so the individual is clear about what he/she needs to achieve. The warning will also make clear the potential consequences of not achieving the required standards.

How long are warnings held on an employee's personnel file?

For staff in levels 1 to 3: A first level warning will be retained on file and will be regarded as spent after between six months and one year. A second level warning will be retained on file and will be regarded as spent after between one year and two years. In both cases, the warning may be regarded as spent earlier where the achievement of objectives or performance standards have been sustained and the relevant manager confirms that the warning should be treated as expired.

For staff in levels 4 and above: A first level warning will be retained on file and will be regarded as spent after one year subject to satisfactory performance and/or conduct. A second level Warning will be retained on file and will be regarded as spent after two years subject to satisfactory performance an/or conduct.

In all cases further failure to meet and/or sustain the required improvement during the period of the warning may lead to further action being taken and in the event of more serious issues, a panel may be convened to determine whether or not the member of staff should be dismissed.

Once the warning is spent it will remain on the member of staff's file for other relevant employment purposes.

When is dismissal a reasonable outcome of a capability hearing?

A dismissal would be a reasonable outcome if the employee has failed to comply with the terms of any warnings issued at previous capability hearing(s). Or if the circumstances were such that the consequences of the lack of capability were so serious that the case was dealt with by a dismissal hearing as an initial step.

Can a member of staff appeal against formal capability action?

Where a member of staff feels that the decision made at a capability hearing was wrong or unjust they have the right to appeal. Employees should set out the grounds of their appeal in writing to the Director of Human Resources within 10 working days of receipt of the written notification of the decision.

What happens if someone involved in a capability process becomes absent through ill health?

If a member of staff becomes unwell during the course of a capability procedure, the member of staff should normally be referred to Occupational Health. This should be discussed with the member of staff and their consent obtained. An employee may become anxious and stressed in the run-up to a capability hearing and it is therefore important to establish from Occupational Health whether the employee is fit to attend a capability hearing, even if signed off sick. It is normally recommended by occupational health that it is in the interests of the member of staff's wellbeing for the hearing to proceed as the hearing offers the opportunity for them to address the capability issues and the reasons for these, rather than having the thought of the hearing 'hanging over them' for significant periods, so hopefully leading to a lessening of stress and anxiety.

What support is available to staff going through the capability process?

The University has an Occupational Health Service and members of staff who are unwell can access this service either by a referral from their manager or they can self-refer. Please refer to the [sickness absence policy](#) for further details on the role of [Occupational Health](#). The University [Counselling Service](#) is also available.

Trade Union members may wish to draw support from their union.