Procedure for Handling Lack of Capability

Scope

1. For all employees except those covered by Statute XXI – Academic staff.

2. This procedure does not apply to the termination of appointment of a probationary employee, or an employee with less than six months' service.

Capability

3. The following procedure applies only to circumstances connected with capability. In this context capability means:

- having the necessary skills and aptitude, and
- having physical and mental capacity

to carry out the duties of a job satisfactorily.

4. Lack of capability may be seen in relation to separate tasks, or as a pattern covering most, or all, of an employee’s duties. It should be assessed with reference to the performance and attendance that would normally be expected from a competent employee. Evidence of lack of capability could include a failure to meet agreed standards of performance in the job description, poorly finished work, customer or colleague complaints, low work rate, non-attendance or poor attendance due to ill health. It can occur because of a number of factors such as inability to adapt to new ways of working, the working environment, personal problems or ill health.

5. Line Managers will ensure that all measures have been taken to ensure that the member of staff understands what they are expected to do within their role and receives appropriate support.

6. Continued unacceptable levels of performance, after reviews and opportunities for improvement, may lead to the termination of the contract of employment.

Principles

7. For all employees, the intention should be to adopt a positive developmental approach, with clear indications of what is required and carefully defined targets, over a reasonable timescale. Before any formal action is taken, the responsible senior manager must ensure an investigation is undertaken to establish the likely cause. This may lead to a referral to the Occupational Health Department, or Counselling Service, instead of, or in advance of, action under this procedure. It may also lead to reasonable adjustments being considered in respect of disability, in accordance with equalities legislation.
Further Action

8. Having carried out the investigation, and obtained guidance from Occupational Health, where necessary, the responsible senior manager must identify whether the issue is health related or not.

9. If it is not health related then the procedure below should be followed.

10. If it is health related then the Managing Sickness Absence Policy and Procedure should be followed [link to policy]

Ill health, whether physical or mental is a capability issue, but is dealt with separately as it has distinct issues.

11. At this time the responsible senior manager will also check whether the matter should be dealt with under this Capability Procedure or the Disciplinary Procedure. Lack of commitment, failure to undertake reasonable instructions or inattention to duties, where there is no underlying capability issue, should be dealt with under the disciplinary procedure.

Capability Procedure

12. Minor issues relating to capability shall be raised and discussed informally, including but not limited to, the Performance and Development Review process, and are not part of this procedure.

13. The normal sequence of events for formal action is set out below. In circumstances where lack of capability has, or may, lead to serious consequences in terms of health and safety or the protection of the business or assets of the University, this procedure may be started at any stage including dismissal, notwithstanding the right of appeal.

14. At any formal meeting the employee may be accompanied by a trade union representative, or fellow employee of their choice – legal representation is not allowed. A responsible senior manager may appoint a suitable nominee to deal with stages at points 15 to 22 below.

Stage 1, First Review Meeting

15. The employee will be informed in writing of the areas in which capability is seen to be inadequate and called to a meeting with the responsible senior manager. The employee will be given a minimum 5 calendar days’ notice of the meeting. At this meeting, the employee will be given the opportunity to state their case before any decision is reached. If the Head of Department/Service or nominee does not accept the explanation given by the employee and no agreement can be reached, a formal notification that action is being taken under this procedure will be issued. Further guidance for managers on the structure of this meeting is given at Appendix A. Following consultation with the employee and representative the responsible senior manager will produce a Capability Improvement Plan that will detail reasonable and
realistic targets, ideally agreed by both parties, performance for improvement to be achieved by the date of the review meeting (see point 16 below) and any necessary support that has been agreed. In all cases, the appropriate resources required to implement the improvement plan must be identified and provided. In particular, where an inadequate level of skill has been identified, the Capability Improvement Plan must include details of any staff development support to be made available or other appropriate measures that will be taken. A copy of the notification and the Capability Improvement Plan will be placed on the employee's personal file and if requested by the employee, also be given to the employee's representative.

16. A formal review meeting must be scheduled between the responsible senior manager and the employee – the date should allow a realistic period for the achievement of the targets set in the Capability Improvement Plan. Depending on the nature of the work involved and the type of targets that have been set this meeting would typically be between 12 to 16 weeks ahead.

Interim review

17. During this first improvement period, an interim review meeting will take place. This meeting should normally be halfway through the review period. The purpose of this meeting is to provide interim feedback between the responsible senior manager and the employee on progress so far.

End of first review

18. If the conclusion of the formal review meeting is that capability has improved sufficiently, no further action will be needed. This should be recorded in a letter to the employee which will include a reminder that if performance should fall to an unacceptable level within 12 months of the formal notification the responsible senior manager will re-convene the review meeting and re-start the procedure at point 19 below.)

19. If, by the time of the formal review meeting, there has been insufficient improvement, without an acceptable explanation, the employee will be given a formal written warning. The formal written warning will indicate that failure to reach the required standard of capability by the next review date could lead to demotion, re-assignment to a more suitable post, or dismissal. The responsible senior manager will review the Capability Improvement Plan produced when the first formal notification was issued and amend or add to it as appropriate. A copy of the formal written warning and any amendment to the Capability Improvement Plan will be placed on the employee's personal file and, if requested by the employee, also be given to their representative. This formal written warning shall be disregarded after 12 months if no further action is taken.

Stage 2, Second Review

20. A further review meeting must be scheduled between the responsible senior manager and the employee – as before, the date should allow a realistic period for the achievement of the targets set in the Capability Improvement Plan and would typically be no more than 12 weeks ahead.
21. If the conclusion of the review meeting is that capability has improved sufficiently no further action will be needed. This should be recorded in a letter to the employee with a reminder that if performance falls to an unacceptable level within 12 months of the formal written warning the responsible senior manager will re-convene the review meeting and re-start the procedure at point 22 below.

22. If the responsible senior manager’s judgment is that capability remains inadequate without an acceptable explanation, then the employee will be given a final written warning. The final written warning will indicate that failure to reach the required standard of capability by the next review date could lead to demotion, re-assignment to a more suitable post, or dismissal. The Capability Improvement Plan will be updated as appropriate with reasonable targets for improvement.

Stage 3, Third and Final Review

23. A final review meeting must be scheduled between the responsible senior manager and the employee – as before the date should allow a realistic period for the achievement of the targets set in the Capability Improvement Plan and would typically be no more than 12 weeks ahead.

24. If the conclusion of the final review meeting, is that capability has improved sufficiently, no further action will be needed. This will be recorded in a letter to the employee which will include a reminder that if performance should fall to an unacceptable level within 12 months of the formal notification the responsible senior manager will re-convene the review meeting and re-start the procedure at point 25 below.

25. If, by the time of the final review meeting, there has been insufficient improvement, without an acceptable explanation, the meeting shall be adjourned to allow the responsible senior manager to discuss the matter with Human Resources. The findings of Stages 1, 2 and 3 will be taken into account as well as the views and explanation of the member of staff. A decision will be made on the appropriate action, this may include demotion, re-assignment or dismissal. The meeting will reconvene and the responsible senior manager will advise the member of staff of the outcome and explain the reasons behind the decision. This will be confirmed in writing and will also advise the member of staff of the right of appeal.

Appeal

26. An employee shall be entitled to appeal against any formal action taken, in accordance with the procedures set out in the document ‘Procedure for appeals against actions taken under the disciplinary and capability procedures.’ a copy of which may be seen on the HR web pages or obtained on request from Human Resources.
Appendix A

Manager guidance for the First Review Meeting.¹

At this meeting the managers approach should not be punitive, it should be open, positive and directed towards joint resolution of the problem. The meeting should include:

- Confirming the facts of the situation
- Ensuring understanding of the performance required and explaining why the performance is not satisfactory
- Giving the employee the opportunity to respond and comment on the performance issues raised.
- Identifying and discussing the possible cause/s of poor performance, including any mitigating factors.
- Consideration of whether training, coaching, counselling or additional resources are appropriate.
- Discussing with the employee and their representative what improvements are required and the timeframes for review, ensuring that the objectives are relevant and achievable. This will form the Capability Improvement Plan.

¹ This appendix is for Manager Guidance only and does not form part of the Policy and Procedure.