

Ordinance XLI

Staff Capability Policy and Procedure

(Effective from 6 November 2014)

This ordinance shall apply to all staff to whom paragraph 3 of Statute XXI refers^[1]. Provisions for all other staff shall be found in the relevant Conditions of Service

1. Policy

1.1 The University is committed to creating and maintaining a work environment that is supportive and enables staff to achieve success in their role. However, it is recognised at times that staff may not perform at the required levels, for a variety of reasons. This policy and procedure is designed to help and encourage employees achieve and maintain required standards of performance.

1.2 All written documentation in relation to any part of this procedure should be considered within the University's Code relating to Data Protection.

1.3 Throughout this policy and procedure "days" refers to calendar days unless specified otherwise.

1.4 HR will provide advice and assistance on the use of the procedure.

1.5 All matters dealt with under this procedure will be kept strictly confidential.

1.6 Where an employee raises a grievance during the capability procedure, the capability procedure may be temporarily suspended in order to deal with the grievance. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently. Advice must always be sought from HR in such situations.

1.7 At all stages of this procedure, due consideration will be given to making adjustments to enable members of staff to participate fully in meetings and hearings. This may include ensuring rooms are accessible or arranging for an interpreter to be present for example.

1.8 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 (in accordance with the table of authority) 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.

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

1.10 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.

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

2. Capability or Lack of Performance Definition

2.1 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. When considering a situation where an employee has a physical or mental impairment, due consideration should be given to whether any obligations set out in the Equality Act (2010) apply.

2.2 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 non-probationary employee. Evidence of lack of capability could include despite attempts to rectify, a failure to meet agreed standards of performance in the job description, poorly finished work, customer or colleague complaints, low work rate or 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. It is important that appropriate action is taken to support and assist an employee promptly if it is noticed aspects of their job are appearing to be unsatisfactory as it is recognised that dealing with an issue promptly is likely to have greater chance of success.

3. Procedure

3.1 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.

3.2 If it is not health related then the procedure below should be followed, seeking appropriate advice from medical practitioners before any formal decisions are made.

3.3 If it is health related and the individual is absent (either continuously or discontinuously) from work, then the Managing Sickness Absence Policy and Procedure should be followed <http://www.lboro.ac.uk/media/wwwlboroacuk/content/humanresources/downloads/sicknessabsencepolicyfinalJan2011.pdf> Ill health, whether physical or mental is a capability issue, but is dealt with separately as it has distinct issues.

3.4 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 or engagement, failure to undertake reasonable instructions or inattention to duties, where there is no underlying capability issue, should be dealt with under the disciplinary procedure.

3.5 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.

4. Formal Action

4.1 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.

4.2 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.

5. Stage 1, First Review Meeting

5.1 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.

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

5.3 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.

5.4 If the responsible senior manager 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.

5.5 Following consultation with the employee and representative the responsible senior manager will produce a Capability Improvement Plan that will detail to be achieved by the date of the review meeting (see point 5.6 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.

5.6 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 (or for some roles, progress towards) 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.

6. Interim review

6.1 During this first improvement period, an interim review meeting will take place. This meeting should normally be half way 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.

7. End of first review

7.1 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 7.2 below.

7.2 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 in discussion with the employee. 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.

8. Stage 2, Second Review

8.1 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.

8.2 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 7.2 above.

8.3 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.

9. Stage 3, Third and Final Review

9.1 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 (or for some roles, progress towards) the targets set in the Capability Improvement Plan and would typically be no more than 12 weeks ahead.

9.2 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 9.3 below.

9.3 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 the Director of Human Resources (or nominee). 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 advised the member of staff of the right of appeal.

10. Appeal

10.1 An employee shall be entitled to appeal against any formal action taken, in accordance with Ordinance XXXVI.

[1] Staff where a substantial proportion of their duties involve the provision of teaching, learning or research.