



CAPABILITY AND SUPPORTING PERFORMANCE POLICY AND PROCEDURE

ORDINANCE 23

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2				
3.				
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1.0 Introduction

- 1.1 This Policy and Procedure represents the relevant Ordinance in relation to the University's approach to capability and performance matters. This Policy and Procedure has been negotiated and agreed with the Unions, approved by the Council and forms a term of all relevant employment contracts of staff members of the University.
- 1.2 Through the University's recruitment procedures, every effort is made to ensure that new staff have the appropriate skills and abilities, or a clear, demonstrated potential to achieve these, for the roles they are recruited to fulfil.
- 1.3 At the start of their employment (or internal transfer/promotion), staff should be clearly informed of their responsibilities and the standards of work performance required. Staff should receive appropriate induction and timely training, and effective, regular feedback relating to work performance. The University's Performance and Development Review (PDR) which addresses all elements of each individual's responsibilities, development and performance, supports this approach.
- 1.4 Managers are responsible for ensuring that performance issues are addressed promptly and fairly, and for arranging to attend appropriate training sessions organised by the University, for example, in relation to recruitment, staff management, and performance management.
- 1.5 When a staff member's performance/absence falls below the expected standard, this procedure provides opportunities for improvement through a series of stages. Wherever possible, managers should seek to address any single or minor performance problems as they occur, and without the need to implement this policy and procedure. It should be remembered that promptness is important in dealing with capability and performance matters effectively and fairly.
- 1.6 No member of staff will be dismissed or have sanctions applied because of a failure to perform to the required standard unless warnings and an opportunity to improve have been given, together with reasonable support where appropriate. The timescales adopted for the various stages of this policy and procedure will vary in accordance with the seriousness and circumstances of the particular case, the member of staff's role, whether the problem relates to a specific or broader difficulty, and the time period during which the problem has existed. An employee has a right to be accompanied by a colleague or Trade Union representative at each formal stage of the procedure.
- 1.7 The Capability and Supporting Performance Procedure (Capability Procedure) provides a structured support framework for managers and individuals where difficulties arise in undertaking the duties of their role to a good standard. Issues relating to conduct should be addressed in line with the University's Disciplinary

Policy & Procedure. Capability refers to matters where the individual cannot meet the set standards without support. Disciplinary addresses matters where the individuals won't meet the standards set or choose to ignore these.

2.0 Scope

- 2.1 This policy and procedure should be applied equally and consistently to all staff, except staff under probation, to whom a separate policy and procedure applies.
- 2.2 This policy and procedure addresses the inability to carry out a job to the required standards (the 'can't') as opposed to issues of wilful inadequacy or misconduct (the 'won't'), which are handled through the University's disciplinary procedure.
- 2.3 If the member of staff concerned is a trade union representative, the HR Department will discuss the case with a Trade Union full time officer after seeking the member of staff's agreement.

3.0 Defining Capability

- 3.1 Capability is defined in Section 98(3)(a) of the Employment Rights Act 1996 as follows: "capability, in relation to an employee, means his (cap)ability assessed by reference to skill, aptitude, health, or any other physical or mental quality."

This procedure is therefore applicable where:

- the staff member is attending work, but their work performance falls below that which is deemed to be acceptable,
- the staff member is unable to sustain attendance in the workplace to fulfil their contractual obligations.

- 3.2 Where the concerns relate to attendance this procedure must be read in conjunction with the Sickness Absence Policy and Procedure.
- 3.3 Where individuals disclose impairments or difficulties resulting from a disability, due consideration of reasonable adjustments in accordance with the requirements of the Equality Act should be fully explored as part of informal steps to improve performance and provide support for individuals to undertake their role duties. Where adjustments do not provide the required improvement, additional support can then be provided through the Capability Procedure.
- 3.4 Throughout the stages noted in this procedure, should the member of staff highlight a disability or a medical condition which may be identified as a contributory factor in the performance issue, the line manager must consider next appropriate steps in consultation with HR, and will **seek appropriate up to date medical advice** in relation to the member of staff's medical condition. This may include discussion as to what reasonable adjustments, if any, could be (or have been) put in place, and a review of the effectiveness any existing reasonable

adjustments have had on mitigating any substantial disadvantage caused by the impairment. In relation to the medical advice:

- Such advice may be sought from the University's Occupational Health service, the staff member's GP or specialist consultant, or from a medical practitioner or consultant appointed by the University. Further information on the Occupational Health Service can be accessed on the HR Web at <https://my.bangor.ac.uk/humanresources/occupationalhealth/index.php.en>
- Where access to medical information is required, a request for permission to access medical records will be made to the member of staff in accordance with applicable legislation.
- The member of staff is expected to attend medical appointments as requested by the University but is also able to provide additional medical information produced by a recognised medical expert, as they feel is relevant.
- Where medical evidence has already been obtained in the course of any other University process or procedure (for example, through the management of long-term absence via the Managing Sickness Absence policy and procedure), and it is up to date, then the existing documentation may satisfy the requirement of this Ordinance to establish evidence of ill health.

3.5 Where the **staff member is absent from the workplace**, this will be managed in accordance with the Sickness Absence Policy and Procedure. Where the absences are likely to continue and a return-to-work plan cannot be facilitated during the initial attendance reviews held in the first 1 – 3 months, the matter will be dealt with in accordance with this procedure. Any steps undertaken initially within the Sickness Absence procedure will therefore constitute the informal stages.

4.0 Informal Stage

4.1 As part of their managerial responsibilities, managers may from time to time discuss aspects of performance with a member of staff on an informal one to one basis. The member of staff should be advised of the informal status of such discussions. Such discussions will take place informally and should not be constrained by, or come within, the scope of the Capability and Supporting Performance Procedure, nor shall guidance, advice, and support given in this informal way count as warnings under the Capability and Supporting Performance Procedure.

4.2 The fact that attempts have been made previously to informally improve aspects of an employee's performance may, contribute to the decision to deal with subsequent performance issues under the Capability and Supporting Performance Policy and Procedure. This will be summarised in writing and shared with the member of staff.

- 4.3 If, after informal guidance and support has been provided, the employee's performance continues to be unsatisfactory, or if there is a management view that an informal approach would not be appropriate, the matter should be dealt with under the formal Capability and Supporting Performance Procedure. The employee should be advised in writing by their line manager that they are proceeding to the formal Stage 1 of this Procedure. It may, in some circumstances be appropriate to begin the formal process at Stage 2, with the prior agreement of the Chief People Officer or other person whom they nominate.
- 4.4 For examples of factors that may affect performance and responsibilities of employees and line managers, see the Appendices.

5.0 Formal Stage 1

- 5.1 This stage provides an opportunity to encourage open discussion of the issues involved, and of any relevant circumstances and to seek effective solutions, including the involvement of appropriate support services, such as Human Resources, Staff Development or Health and Safety Services.
- 5.2 Where a manager identifies apparent under-performance by a member of staff which appears to be for reasons of capability and where informal guidance and support have either not been effective or appropriate, they should arrange to meet the individual. Should the staff member be absent from work, Occupational Health advice should be sought to ascertain their fitness to attend the meeting.
- 5.3 At least working days before the meeting, the member of staff should be advised by the manager of:
- the fact that there will be a meeting under Stage 1 of this Procedure
 - the date, time and venue of the meeting
 - the concerns about their performance, with any statements or other relevant evidence
 - the possible outcomes of the meeting
 - their right to be accompanied by a fellow worker or trade union and given a copy of this Procedure.
- 5.4 Those present at the meeting should include the manager, the member of staff, the member of staff's chosen colleague or trade union representative, and a HR Officer. The Manager reserves the right to include others in the meeting as they deem appropriate, and this is applicable to all formal stages of this policy, (examples include where technical or specialist input and discussion on the duties and improvements under review is required, for consistency where the current line manager may be absent during further review/monitoring period i.e. due to maternity, planned sickness absence).

Where the concerns relate to performance, at the meeting the manager should:

- identify and evidence the level of under-performance, and clarify the required standards;
- explain clearly the shortfall between the individual's performance and the required standards;
- endeavour to establish the cause of poor performance and any action which can be taken to help to improve the situation;
- identify any support services or reasonable adjustments which might be required;
- give the member of staff the opportunity to ask questions and to respond;
- obtain commitment from all concerned to assist in resolving the issues;
- discuss and agree reasonable targets and timescales for the individual's performance to improve and for this to be demonstrated prior to any further reviews;
- agree and set a date for a review meeting to ensure that progress is being made or
- consider whether further action is necessary.

Where the meeting relates to the staff member's absence, additional matters for discussion will include:

- the staff member's health;
- consideration of any medical advice received to date;
- review of any previous actions discussed;
- consideration of any further support (to include reasonable adjustments where appropriate to improve attendance or facilitate a return);
- identification of a possible return to work date.

5.6 Within 10 working days after the meeting, the manager should follow up and confirm the discussion and outcomes agreed at the meeting with the member of staff in writing:

Whether a formal improvement notice is being given (or that no improvement notice is being given) and the reasons for that decision; of any remedial action, in the form of a written action plan that contains:

- a clear summary of the improvements required and the standards to be met;
- specific areas where support is needed, and the means of achieving that support;
- any agreed adjustments to the working environment;
- clear targets and reasonable timescales for demonstrable improvement;
- if it is decided that the unsatisfactory performance emanates from a change in the University's standards, the revised standards will be reiterated to the individual and help will be offered to reach and maintain these standards;
- the manager will monitor and assess the member of staff's performance for an appropriate period of time depending upon the issue. A written record of the monitoring process should be kept by the manager with a copy on the member of staff's personal file.

5.7 At the end of the monitoring period or sooner if appropriate in the circumstances, the manager will review the employee's progress. Review periods may be brought forward where a significant improvement in performance is demonstrated earlier than agreed or alternatively if a significant deterioration in performance is observed during a review period and needs to be addressed promptly.

5.8 The manager will:

- Give a clear indication of the outcomes of the monitoring process, and identify any progress made and any further improvements needed.
- Give the member of staff the opportunity to ask questions for clarification, and to respond to the outcomes of the monitoring process, including raising any relevant factors that should be taken into account when deciding future action. It may be possible that circumstances outside the member of staff's control have caused or contributed to their reduced effectiveness over the period monitored.

The manager should decide, in the light of the issues discussed, what action is appropriate. Available options include:

- No further action under the Capability and Supporting Performance Procedure as the member of staff's performance has improved sufficiently/attendance is now being sustained.
- An extension of the Stage 1 monitoring stage; a timescale for review should be set.
- Progression to Stage 2 of the Capability and Supporting Performance Procedure if no significant improvement is evident, and if reasonable in the circumstances.

6.0 Formal Stage 2

6.1 Where the manager decides to progress to Stage 2, the member of staff should be invited to a further meeting.

6.2 At least working days before the meeting, the member of staff should be advised in writing by the manager:

- That there will be a meeting under Stage 2 of the Procedure,
- of the date, time and venue of the meeting,
- of the remaining concerns about their performance/absence, with any statements or other relevant evidence,
- of the possible outcomes of the meeting, namely a formal improvement notice being issued,
- of their right to be accompanied by a colleague or trade union representative,
- and given a copy of this Procedure.

6.3 Those present at the meeting should include the manager, the member of staff, the member of staff's chosen colleague or trade union representative, and a HR Officer.

At the meeting the manager will:

- Outline the aspects of the member of staff's work which are still unsatisfactory,
- outline the process followed to date and the outcomes,
- give the member of staff the opportunity to ask any questions for clarification and to respond to the issues raised,
- discuss, and agree as far as possible, a plan of action, targets and timescale for improvement.

Where the meeting relates to the staff member's absence, additional matters for discussion will include:

- Discussion of the staff members health,
- consideration of any medical advice received to date,
- a review of any previous actions discussed,
- consideration of any further support (to include reasonable adjustments where appropriate to improve attendance or facilitate a return),
- identification of a possible return to work date.

6.4 The manager should write to the member of staff normally within 10 working days of the meeting with the outcome and informing the staff member whether no further action will be taken or giving a formal improvement notice. The letter will detail the standards expected, targets, action plan and timescale for improvement, and warn the member of staff that their employment may be at risk if the required improvement is not achieved.

6.5 The timescale for this stage of the Procedure will vary depending on the individual situation and in proportion to the level of seriousness of the performance difficulty/nature of the absence. A written record of the monitoring process should be kept by the manager.

6.6 At the end of the monitoring period, or sooner if appropriate in the circumstances, the line manager will review the employee's progress during this period, confirm the outcomes of the monitoring process, and identify any further improvements needed. The manager should decide, in the light of the issues discussed, what action is appropriate. The options at this stage could include:

- No further action under this Procedure as the member of staff's performance has improved sufficiently/attendance is now being sustained.
- Where there is a good reason, extend the review period further.
- Progression to Stage 3 of this Procedure if no significant improvement is evident, and no extenuating circumstances can be evidenced.

6.7 The manager should inform their own line manager of any decision to progress to Stage 3.

- Where the staff member remains absent, and a return to work has not been achieved, progression to Stage 3 would be considered where there is no predicted date of return.
- Medical evidence indicates that the staff member is permanently unfit for work (and ill health retirement may not be applicable).
- A return to work may be unlikely within a reasonable timescale.
- There is a high level of intermittent absence relating to an underlying health condition.
- The member of staff is unable to fulfil their role effectively (after appropriate interventions to facilitate their return).

7.0 Formal Stage 3

7.1 Where the manager decides to progress to Stage 3, the member of staff should be invited to a formal Stage 3 meeting.

7.2 At this stage a panel will be set up. The panel will normally be chaired by the Pro-Vice Chancellor/Head of College/ Director along with two other managers (referred to as the panel), who have not been involved in the previous stages. One of the two managers will not be a member of the College/Department involved.

7.3 The purpose of the panel is to consider all relevant information and make a decision about the staff member's employment situation, and their capability to undertake their role.

7.4 At least 5 working days before the meeting, the member of staff should be advised in writing:

- That there will be a meeting under Stage 3 of the Procedure;
- of the date, time and venue of the meeting;
- of the remaining concerns about their capability, with any statements or other relevant evidence (it is expected that this would normally be compiled by the Manager who handled the previous stages, and provide an overview of the capability issues, and the attempts made at improvement);
- of the possible outcomes of the meeting, to include potential dismissal with notice;
- of their right to be accompanied by a work companion or represented by a trade union representative;
- and given a copy of this Procedure.

7.5 At the Stage 3 meeting, the manager who has handled the first two stages will confirm the process followed and the outcomes. The member of staff will be given an opportunity to respond to the manager's view regarding their continued failure to achieve and maintain the required level of capability, and/or the circumstances under which the manager considers that they have become incapable of

performing the required duties. A HR Officer will be present to advise on the procedure and keep a formal record of the meeting.

7.6 The member of staff has a right to be accompanied to the meeting by a chosen work companion or trade union representative. It is in the staff member's best interests to attend the meeting, however a written submission may be made if they are unable to attend in person. Should they not attend the meeting, the case and any documentation submitted may be reviewed and a decision reached in their absence.

7.7 Having taken the member of staff's explanation into account, the Stage 3 Chair, in consultation with the other panel members, will consider what action is appropriate, depending on the seriousness of the case. Options can include:

- No action being taken.
- Issuing a final improvement notice, which shall state that the consequences of further poor performance/absence may lead to dismissal. The final improvement notice will remain on file for a period which shall be determined by the Panel; up to a maximum of two years.
- The possibility of a transfer to a more suitable post, if appropriate on a trial basis. Where a member of staff is transferred to a lower grade job, they will be transferred to the grade of that job with pay according to the grade of the new post. The member of staff should be allowed sufficient time, normally 5 working days, to consider the offer, and should be informed that a refusal will normally result in termination of employment. The member of staff should be asked to give a written response within the specified time period.
- Dismissal with notice.

7.8 The Stage 3 Chair will notify the member of staff of the outcome in writing, normally within 10 working days. Where a decision is made by the panel to terminate the staff member's employment, the notification letter will include:

- The reason for the dismissal,
- the date on which the staff member's employment will end, and
- confirmation of their right to appeal against the decision, the timescale and how to do so.

7.9 The member of staff (and their companion) should make every effort to attend meetings forming part of this process. If at any stage they cannot attend a meeting, for good reason, the meeting Chair should be notified by the member of staff in advance of the meeting, and as soon as possible. If the member of staff does not attend the hearing without good reason, the hearing may be conducted in their absence and a decision taken on the evidence available.

8.0 Appeals

8.1 A member of staff may appeal against the outcome at any of the above formal stages.

- 8.2 The staff member's written outcome letter will include details of the arrangements to follow should the staff member decide to appeal, e.g. to whom to appeal.
- 8.3 Staff intending to appeal against a decision taken under this policy, must do so promptly, within 10 working days of receipt of the outcome letter. Should the employee require additional time to submit an appeal, they may make a request for a reasonable extension of time. This request must be made within the 10 day timeframe. Any such request for an extension of time will be granted at the discretion of the University.
- 8.4 The appeal must be communicated in writing, stating the grounds upon which the appeal is made.
- 8.5 The University will, as far as reasonably practical, seek to hear the appeal within 28 working days of receipt of the submitted appeal. The employee will be informed in writing of the time, date and venue for the appeal hearing no later than 5 working days in advance of the appeal hearing. Employees will also be advised of their right to be accompanied at the hearing.
- 8.6 The appeal chair will be a senior member of staff at the University with no previous involvement in the case and who is no less senior than the individual who reached the original decision.
- For Academic and Professional Staff members (those employed at Grade 7 and above) they shall also inform the University Secretary of their appeal within 10 working days of receiving the outcome letter. A Pro Vice-Chancellor shall hear all such appeals, and their decision shall be final. A member of the Human Resources Department will support the meeting. For those employed at Grade 7 or above, and where the appeal is against dismissal, the panel will be chaired by a trained lay member of Council and a senior academic nominated by Senate, neither of whom will have any connection with the employee concerned.
- 8.7 As the purpose of the appeal is not a reconsideration of all matters, it is the responsibility of the staff member to state their case and bring to the attention of the appeal chair all relevant documentary evidence that should be considered.
- 8.8 The staff member will be informed in writing of the appeal outcome, usually within 10 working days of the appeal meeting. If the timescales are to be longer, this will be communicated to the employee. The decision is final within the procedures of the University and will conclude the process.
- 8.9 An appeal will not prevent or delay the termination of the staff member's appointment but if the outcome of the appeal overturns the termination, then the employee will be reinstated and paid any back pay. Where an appeal against dismissal fails, the termination date will be as set out in the outcome letter.

9.0 Policy Review

9.1 This Capability and Supporting Performance Policy and Procedure will be reviewed 12 months after its implementation, and at regular intervals of not less than three years, and will at all times be read and applied subject to the general law. All reviews will be undertaken in negotiation with the recognised campus Trade Unions and any changes agreed with them, prior to approval from the University Council.

10.0 Equality Impact Assessment

10.1 This Capability and Supporting Performance Policy and Procedure has been Equality Impact Assessed based on consultation and information available at the time of the policy being developed. A further Equality Impact Assessment will be carried out in conjunction with any review of the policy.

APPENDIX 1

FACTORS AFFECTING PERFORMANCE

It is recognised that various circumstances hinder or prevent satisfactory performance, such as workload, relations with colleagues or other personal reasons, the work environment, etc. Such factors should be explored fully to determine the most appropriate solution.

Although not exhaustive, possible reasons could be:

- Lack of aptitude, skill or experience, which may be the result of inappropriate recruitment selection, induction or training,
- Lack of proficiency and poor overall organisation,
- Lack of facilities crucial to the individual's performance,
- Changes in the nature, volume, and allocation of work,
- Changes in technology,
- Changes in research criteria,
- Personal/family difficulties,
- Short-term and long-term health problems,
- Reorganisation or redefinition of role,
- Poor attendance at work, related to medically diagnosed ill-health,
- Lack of motivation to perform role.

APPENDIX 2

RESPONSIBILITIES AND RIGHTS

Members of staff

Members of staff are responsible for:

- (i) ensuring that they are aware of their responsibilities;
- (ii) performing their duties to a satisfactory level;
- (iii) engaging in any reasonable training and development that will be provided to reach the required level of performance for the job;
- (iv) Engaging with their Line Manager, Occupational Health, or Human Resources as requested to address unsatisfactory performance, including meeting attendance;
- (v) understanding that if their work performance falls below that which is deemed to be acceptable, managers will be obliged to address this;
- (vi) responding to corrective measures that are identified;
- (vii) familiarising themselves with university procedures relating to their employment;
- (viii) informing their manager of any known issues which could be affecting their work performance. This could include personal issues outside the workplace; health or disability issues;
- (ix) keeping up to date with appropriate and reasonable external demands and professional standards.

Members of staff have a right to:

- (i) be informed of the requirements/performance standards of their job;
- (ii) seek help from their manager if they have their own concerns about anything which may be affecting their performance, without prejudice;
- (iii) be treated with dignity and respect at all times;
- (iv) be accompanied or represented at all stages of the Capability and Supporting Performance Procedure by a fellow worker or recognised trade union representative. The chosen companion will be allowed to participate fully in the meeting, and has the right to address the meeting, but not to answer questions on the member of staff's behalf;

- (v) request a postponement of a meeting if the chosen fellow worker/trade union representative cannot attend on the date proposed and a suitable alternative person cannot be found. In this instance, the member of staff must offer an alternative date and time so long as it is reasonable and falls before the end of the period of five working days beginning with the first working day after the day proposed by the University;
- (vi) be treated in accordance with the principles of natural justice. This includes representation; the right of appeal; and the provision of evidence and of relevant documentation;
- (vii) have access to all records on their personal file in accordance with the University's Data Protection Policy;
- (viii) be treated with dignity and respect at all times.

Managers

Managers are responsible for:

- (i) recruiting, selecting, training and managing staff appropriately thus minimising the risk of poor performance;
- (ii) setting standards of performance and ensuring that these are communicated and understood. Standards of work performance should be outlined at the start of employment and then reinforced through the induction process and training;
- (iii) ensuring that staff have a reasonable workload;
- (iv) providing induction to:
 - a) new recruits;
 - b) staff transferring from another school or department;
 - c) staff who have been redeployed;
 - d) staff promoted within the school or department;
- (v) establishing clear and up to date performance objectives and providing feedback on work performance to every member of staff for whom they are responsible;
- (vi) providing appropriate support and assistance to help staff reach and maintain the required standards of work, including arranging training where appropriate;
- (vii) dealing with poor performance as it becomes apparent to avoid this having a detrimental effect on the performance of the school/department, or on staff morale;

- (viii) ensuring that matters relating to an individual's work performance are dealt with sensitively and consistently, maintaining confidentiality, dignity and equality of opportunity.

Managers have a right to:

- (i) enquire, where appropriate, and with sensitivity, into issues that may be affecting a member of staff's work performance;
- (ii) be treated with dignity and respect at all times;
- (iii) guidance and support from their respective Manager and Human Resources in dealing with matters of performance.

Human Resources

The Human Resources Department is responsible for:

- (i) training and advising managers on the Capability and Supporting Performance Procedure;
- (ii) monitoring the use of the Capability and Supporting Performance Procedure across the University;
- (iii) attending and keeping a formal record of meetings at stages 1, 2 and 3.

It is the responsibility of the Chief People Officer, reporting to the Executive to implement, monitor and review this Capability and Supporting Performance Policy and Procedure across the University.

Pro Vice Chancellors, Heads of School, and Heads of Department

Pro Vice Chancellors, Head of College, Heads of School, and Heads of Department are responsible for the implementation of the Policy within Colleges and Professional Services. All those with Line Management responsibility are to ensure that performance/attendance issues are addressed promptly and fairly, and for arranging to attend appropriate training sessions organised by the University, for example, in relation to recruitment, staff management, and performance management.

The Sickness Absence Procedure also lists responsibilities for staff members, managers, Human Resources, and Occupational Health, specifically in relation to absence.