



PRIFYSGOL
BANGOR
UNIVERSITY

**CAPABILITY AND SUPPORTING PERFORMANCE POLICY
PROCEDURES**

Contents

1.0	Introduction.....	3
2.0	Defining Capability	3
3.0	Informal Stage	3
4.0	Formal Stage 1	4
5.0	Formal Stage 1 Review meeting	6
6.0	Formal Stage 2.....	7
7.0	Formal Stage 2 Review meeting	8
8.0	Formal Stage 3.....	9
9.0	Appeals	10

List of Appendices

Appendix 1

Appendix 2

Factors affecting performance

Responsibilities and rights

1.0 Introduction

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 Procedure. It should be remembered that promptness is important in dealing with capability and performance matters effectively and fairly.

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 resources where appropriate. The timescales adopted for the various stages of this Procedure will vary in accordance with the seriousness of the problem, 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 stage of the Procedure.

2.0 Defining Capability

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
- Where the staff member is unable to sustain attendance in the workplace to fulfil their contractual obligations.

Where the concerns relate to attendance this procedure must be read in conjunction with the Sickness Absence Policy and Accompanying Procedure.

3.0 Informal Stage

As part of their managerial responsibilities, managers may from time to time discuss aspects of performance with a member of staff on a one to one basis. 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. The member of staff should be informed of the informal status of such discussions. The fact that

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

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 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 Manager that they are proceeding to the formal Stage 1 of this Procedure. . It may also be possible to begin the formal process at Stage 2, with the prior agreement of the Director of HR.

For factors that may affect performance and Responsibilities of Members of Staff and Managers, see Appendices.

Throughout the stages noted in this procedure, should the member of staff highlight that there is an impairment (disability or medical) which may be identified as a contributory factor in the performance issue, the procedure will be paused for consideration of next appropriate steps which may include a referral to Occupational Health, discussion as to what reasonable adjustments, if any, could be (or have been) put in place, and a review of the effectiveness any reasonable adjustments have had on mitigating the disadvantage caused by the impairment.

Where the staff member is absent from the workplace, this will be managed in accordance with the Sickness Absence Policy and Procedure. Only 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. The steps undertaken initially within the Sickness Absence procedure will therefore constitute the informal stages.

4.0 Formal Stage 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.

Where a manager identifies apparent under-performance by a member of staff, and where informal guidance and support have either not been effective or appropriate, s/he 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.

At least 5 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 the 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.

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.

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;
- agree reasonable targets and time-scales for the individual's performance to improve;
- 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 members absence, additional matters for discussion would include:

- discuss the staff members health;
- consider any medical advice received to date;
- review any previous actions discussed;
- consider any further support (to include reasonable adjustments where appropriate to improve attendance or facilitate a return);
- identify a possible return to work date

Within 5 working days after the meeting, the manager should advise 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 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.

5.0 Formal Stage 1 Review meeting

At the end of the monitoring period or sooner in exceptional circumstances, the manager will meet with the member of staff to review progress. Those present at the review meeting should include the manager, the member of staff, the member of staff's chosen colleague or trade union representative, and an HR Officer.

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 his/her 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 no extenuating circumstances can be evidenced.

The manager may adjourn the meeting in order to consider the issues and reach a decision. Wherever possible, the member of staff should be informed of the decision at the end of the meeting. This should be confirmed in writing by the manager as soon as possible, normally within five working days.

6.0 Formal Stage 2

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

At least 5 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.

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 members absence, additional matters for discussion would include:

- discuss the staff members health;
- consider any medical advice received to date;
- review any previous actions discussed;
- consider any further support (to include reasonable adjustments where appropriate to improve attendance or facilitate a return);
- identify a possible return to work date

The manager should write to the member of staff normally within five working days of the meeting either saying that no further action is to be taken or giving a formal improvement notice. The letter should detail the standards expected, targets, action plan and timescale for improvement, and warn the member of staff that his/her employment may be at risk if the required improvement is not achieved.

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.

7.0 Formal Stage 2 Review meeting

At the end of the monitoring period, or sooner in exceptional circumstances, a further meeting involving all those present at the initial Stage 2 meeting will be held to review progress, 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 the this Procedure as the member of staff's performance has improved sufficiently / attendance is now being sustained;
- in extraordinary circumstances 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.

The manager may adjourn the meeting in order to consider the issues and reach a decision. Wherever possible, the member of staff should be informed of the decision at the end of the meeting. This should be confirmed in writing by the manager as soon as possible, normally within five working days. Where the decision is to progress to Stage 3, the letter should warn the member of staff that failure to improve to the required standards may result their employment being ended.

The manager should inform his/her 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 time-scale;
- 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)

8.0 Formal Stage 3

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

At this stage a panel will be set up. The panel will normally be chaired by the Dean of College/Director along with two other managers (referred to as the panel), who have not been involved in the previous stages. In normal circumstances one of the two managers will not be a member of the College/Department involved.

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

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 colleague or trade union representative
- and given a copy of this Procedure.

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 his/her continued failure to achieve and maintain the required level of capability, and/or the circumstances under which the manager considers that s/he has 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.

The member of staff's chosen colleague or trade union representative will also be present. It is in the staff members 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.

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. Available options are:-

- no action;

- 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 necessary on a trial basis. Where a member of staff is transferred to a lower grade job, s/he 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;
- dismissing the individual with due notice

9.0 Appeals

Formal Stages 1, 2 and 3

A member of staff may appeal against the outcome of the above stages on the grounds of:

- (i) perceived unfairness of the outcome;
- (ii) severity of the outcome;
- (iii) new evidence coming to light that could not have reasonably been known at the time of the meeting;
- (iv) procedural irregularities.

A member who wishes to appeal against an outcome shall submit the appeal to the Manager concerned within two weeks, who in conjunction with Human Resources will arrange for the appeal to be heard by a Senior member of the University with no previous involvement in the case and from outside of the area concerned. For Academic and Professional Staff members (those employed at Grade 7 and above) they shall inform the University Secretary within two weeks. A Pro Vice-Chancellor shall hear all such appeals and his/her decision shall be final.

Appeals against dismissal

Appeals against dismissal are normally heard by a panel of senior level of management none of whom have been involved in any of the three stages of the Capability and Supporting Performance Procedure. In an exceptional case an appeal panel should be constituted with a composition advised by the Vice-Chancellor or by his (or her) representative.

Appeals must be submitted in writing to the University Secretary within five working days of receipt of the dismissal letter, specifying the grounds for appeal as detailed above. The appeal will normally be held within 28 working days of the senior manager's receipt of the paperwork, and the member of staff will be given notice in writing of the arrangements for the appeal hearing.

The appeal hearing will represent the final stage in the Procedure.

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;
- (viii) 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/central 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 2 and 3.

The Sickness Absence Procedure (LINK) also lists responsibilities for staff members, managers, Human Resources, Occupational Health, and Trade Union representatives specifically in relation to absence.