

## PERFORMANCE CAPABILITY POLICY & PROCEDURE

### 1. INTRODUCTION

The success of the University depends upon effective contributions from all staff. Performance capability refers to an individual member of staff's ability to perform the work expected of them to required standards. Where problems arise and a member of staff still cannot achieve a satisfactory level of performance, despite receiving appropriate support and training, the Performance Capability Policy and Procedure provides a framework for managing such issues in a fair, supportive, and consistent way.

#### 1.1 Purpose

**1.1.1** This policy sets out the principles for the fair and equitable management of staff performance issues. The framework for managing staff performance is outlined in the supporting procedure (Annex A).

#### 1.2 Scope

**1.2.1** This policy, and supporting procedure, applies to all staff. For staff whose employment is governed by the University Statute 31, the provisions of that Statute, as may be amended from time to time, will also apply and take precedence where appropriate<sup>1</sup>.

**1.2.2** New members of staff who are within their probationary period will be managed in accordance with the University's Probationary Procedure which provides for alternative arrangements for dealing with issues of underperformance.

**1.2.3** Where poor performance is believed to be the result of deliberate negligence or misconduct (which includes an unwillingness to undertake duties), managers should refer to the relevant Disciplinary Procedure.

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<sup>1</sup> This is applicable to situations in which removal from office is contemplated. Part III of Statute 31 will apply instead of Stage 4 of the Performance Capability Procedure and Part V of Statute 35 will apply to appeals under the procedure.

## **2. POLICY**

### **2.1 General principles**

**2.1.1** The University will at all times endeavour to ensure that staff achieve and maintain a high level of performance in their work. To this end the University will ensure that standards are established, with advice from Human Resources where required, and that members of staff are made aware of the standards they are expected to work to, that performance is monitored, and that staff are given appropriate training and support to meet these standards.

**2.1.2** Underperformance can have a negative impact on other employees and on the quality of service provided to our customers. For these reasons maximising performance for all employees is integral to the University.

**2.1.3** When it is apparent that a member of staff is not capable of achieving the required level of performance, the University will deal with the situation in a reasonable manner according to the procedure outlined in Annex A.

### **2.2 Principles relating to the application of the formal stages**

**2.2.1** Managers should seek advice from Human Resources prior to initiating any formal action under this policy. This will ensure fair and equitable application throughout the University.

**2.2.2** Members of staff have a right to be accompanied at all formal meetings convened under any procedure that could result in:

- a) a formal warning;
- b) dismissal;
- c) the confirmation of a warning or dismissal (such as an appeal meeting).

**2.2.3** The representative may be:

- a) a University employed work colleague; or
- b) an Official employed by a Trade Union, or a lay Trade Union Official<sup>2</sup>.

**2.2.4** A Human Resources Manager/Advisor will attend formal meetings and appeal meetings to support the manager conducting the meeting and this will include asking questions relevant to the case and advising on process. They will also ensure that notes are taken of the meeting and if necessary, appoint an appropriate person to undertake that task.

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<sup>2</sup> Lay Trade Union officials not employed by the University will be required to provide proof in writing that they have been certified by their union as having experience of, or having received training in, acting as a representative at such meetings

**2.2.5** In circumstances where it is necessary to appoint a manager outside the management line to conduct the formal meeting or appeal meeting, this will be agreed with Human Resources.

**2.2.6** No formal action under the procedure will be taken against an accredited representative of a recognised Trade Union until the matter has been discussed with an employed Trade Union Official of the Union concerned.

**2.2.7** Members of staff will have the right of appeal against any formal action under the procedure, up to and including dismissal, and will be advised of this right and the procedure for submitting an appeal.

**2.2.8** Any member of staff who has been involved in determining the outcome of a formal performance capability meeting will automatically be excluded from playing such a role in an appeal meeting.

### **3. ROLES AND RESPONSIBILITIES**

**3.1** Managers are responsible for managing staff performance and should seek advice from Human Resources before taking any formal action.

**3.2** The Chief People Officer, Human Resources, has strategic oversight of the policy.

**3.3** The University has a responsibility to ensure that managers using and operating the procedures associated with this policy have the necessary skills and support.

### **4. RELATED POLICIES AND PROCEDURES**

a) Probationary Procedure

### **5. REVIEW, APPROVAL & PUBLICATION**

**5.1** As a general principle, the Policy will be reviewed by the HR Department, in consultation with recognised Trade Unions after four years or where operational and/or legislative requirements change. Any revisions will be approved in accordance with UEC and Council procedures, where applicable.

**5.2** This Policy is not contractual and is not intended to be incorporated into individual terms and conditions of employment. It may be subject to review, amendment or withdrawal.

**5.3** This Policy will be published on the University policy zone web page and will also be accessible via the Human Resources web pages.

**5.4** Equality issues have been taken into account during the development of the Policy and all protected characteristics have been considered as part of the Equality Analysis undertaken.

## 6. ANNEXES

**Annex A** – Procedure for Managing Staff Performance.

**Annex B** – Arrangements relating to the formal stages of the Performance Capability Policy & Procedure

## 7. DOCUMENT CONTROL INFORMATION

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## **Annex A – Procedure for Managing Staff Performance**

**A1** The primary aim of this procedure is to assist staff to achieve satisfactory work performance, however continued underperformance may also result in relevant warnings and ultimately to dismissal.

**A1.1** The stages in this procedure are:

### **Informal Process:**

- Stage 1: Investigation of problem, identification of causes and provision of guidance/advice/adjustments (for staff with disabilities), where applicable

### **Formal Process:**

- Stage 2: First Formal Written Warning
- Stage 3: Final Formal Written Warning
- Stage 4: Dismissal

## **A2 Procedure**

**A2.1** If, at any stage in this procedure, there is a suggestion that the underlying cause of underperformance may be linked to a disability or medical condition, the matter must be discussed with Human Resources, and Occupational Health where appropriate, at the earliest opportunity. Reference should also be made to the University's Sickness Absence Policy where appropriate. Where the issues directly or materially relate to a member of staff's disability, managers will need to give consideration to reasonable adjustments, taking advice from Human Resources.

**A2.2** At any stage in this procedure, the manager may also need to consider whether redeployment into another role (either at the same or a different grade) would be appropriate. Any redeployment would be at the discretion of the University and would normally mean a change to the terms and conditions of employment, so the Human Resources Department would need to be involved prior to any decisions being made. Any decision to redeploy would be with the agreement of the member of staff.

## **A3 Informal Process**

**A3.1** Stage 1: Investigation of the Problem, Identification of the Causes and Provision of Guidance/Advice.

**A3.2** Stage 1 should be handled informally as part of the normal line management discussions with the member of staff.

**A3.3** Where there is evidence of significant problems with performance it is very important to address the situation at the earliest opportunity. The purpose of informal guidance/advice is to provide a positive framework in which the individual concerned can seek to improve their performance and to enable the unit in which they work to support such efforts. There is an obligation on those managing staff to provide support that offers an individual a genuine opportunity for improvement within a timescale that takes account of the context of the problem, the individual concerned

and the needs of the unit/University. Measures which may prove helpful include advice, guidance, coaching, training or supervision and the use of Personal Development Plans.

#### **A4 Formal Proces**

**A4.1** Where, following the informal stage above, the member of staff's performance has not improved to the required standard, or improvement has not been maintained, the formal process may be invoked. A move to the formal stages will necessitate continued attempts to guide/advise a member of staff about performance with a view to improvement.

**A4.2** The expectation is that any of the formal stages short of dismissal will involve continued efforts to support an individual to improve performance through a mixture of monitoring, support and advice/ training.

#### **A5 Warnings and Monitoring Periods**

**A5.1** As formal meetings held under this procedure may result in a warning or, ultimately, dismissal, members of staff have the right to be accompanied by a University employed colleague or trade union representative. The outcome of a formal meeting will be confirmed in writing, normally within five working days of the decision.

**A5.2** The reviewing manager would normally be in the immediate management line, however in circumstances where it is necessary to appoint an alternative manager to conduct the formal meeting, this will be agreed with Human Resources.

**A5.3** Where a warning is issued at Stages 2 or 3 of this procedure, the reviewing manager will also specify a monitoring period over which the member of staff's performance will be closely monitored and reviewed. The monitoring periods specific to Stages 2 and 3 must be sufficient to provide a reasonable opportunity for improvement and for any remedial measures to take effect. At Stage 2 this will normally be no less than 6 weeks in length and at Stage 3 normally no less than 8 weeks but may be longer if appropriate.

**A5.4** Interim reviews will normally be conducted throughout the monitoring period to ensure that performance is adequately supervised and monitored and to inform the member of staff of progress. In some circumstances insufficient progress (i.e. where it becomes clear that the targets cannot be met) towards the required improvement will be evident before the end of the monitoring period and, following advice from Human Resources, the manager may consider progressing to the next stage before the end of the monitoring period.

**A5.5** Any warning issued shall be confirmed in writing and shall:

a) state the reason for the warning;

- b) state the nature of the improvement required and any steps that will be taken to help the member of staff achieve the improvements;
- c) state the timescale within which the improvement is to be achieved and over which performance will be monitored (the 'monitoring period');
- d) state the duration of the warning;
- e) state the consequence of any further failure to improve and sustain the required standards of performance (including, where relevant, that the consequence of further failure to improve may be an escalation of performance capability warnings and ultimately dismissal);
- f) remind the member of staff of their right of appeal and how this right may be exercised.

**A5.6** Where a warning is given, a record of the warning will be placed on the member of staff's file in the Human Resources Department and retained in line with the University Record Retention Schedule. The warning will be considered spent at the end of the warning period (normally 12 months for a written warning at Stage 2 and 24 months for a written warning at Stage 3 of this procedure), unless otherwise specified.

**A5.7** The warning period extends beyond the monitoring period in order to give the member of staff the opportunity to demonstrate sustained improvement. If, following the end of the monitoring period, the member of staff's performance deteriorates to an unacceptable level, the manager can consider progression to the next stage, provided the warning has not expired.

**A5.8** In most cases it is expected that the warning will result in the required improvement. If so, the manager will write to the member of staff noting the progress made. The member of staff will be reminded that they will be expected to sustain the improvement and that failure to do so before the expiry of the warning may result in progression to the following stage.

**A5.9** Where a period of long-term absence, whether planned or unplanned, would render a monitoring period and/or warning meaningless, the monitoring period and duration of the warning may be suspended during the absence, thus extending the date on which the monitoring period and/or warning expires. Alternatively, the date on which the warning period will commence may be deferred until the member of staff resumes their duties.

**A5.10** Where a member of staff with a current formal warning on file moves to an alternative role within the University the warning will remain in place for the designated warning period.

**A5.11** Where a member of staff is on a fixed-term contract, and is given a formal warning, this can be continued beyond the end of the fixed-term contract where the contract is extended or the member of staff secures alternative employment within the University.

## **A6 Stage 2: First Formal Written Warning**

**A6.1** The member of staff will receive notice, in writing, to attend a formal meeting convened to review their underperformance, which will be chaired by a reviewing manager. The aim of this meeting, in light of the member of staff's failure to achieve the required improvements through the informal process, is to further explore the performance problems and any additional measures that can be taken by the member of staff and/or the University to address any issues and ultimately improve their performance.

**A6.2** The outcome of this meeting may be a first formal written warning (for staff whose employment is governed by Statute 31, it is referred to as an "oral warning").

## **A7 Stage 3: Final Formal Written Warning**

**A7.1** Where the required improvements set out as part of the first formal written warning have not been achieved during the monitoring period, or appropriate improvement has not been maintained throughout the warning period, the member of staff will be given notice, in writing, to attend a formal meeting at Stage 3 of this procedure which will be chaired by a reviewing manager.

**A7.2** The aim of this meeting is to review the member of staff's failure to achieve the required improvements determined at the formal meeting held at Stage 2 of this procedure. The member of staff will be given the opportunity to put forward any relevant information that they wish to be taken into consideration. Consideration will be given to any further measures that could be taken to assist the member of staff to achieve the required improvements.

**A7.3** The outcome of this meeting may be a final formal written warning (for staff whose employment is governed by Statute 31, it is referred to as a "written warning"). The letter will emphasise that unless improvement is achieved within the specified period, further formal action, which may include dismissal may be contemplated.

## **A8 Stage 4: Dismissal**

**A8.1** Where the required improvements set out as part of the final formal written warning issued at Stage 3 of this procedure have not been achieved during the monitoring period, or improvement has not been maintained during the warning period, the member of staff will be given notice, in writing, to attend a formal meeting at Stage 4 of this procedure, which will be chaired by a reviewing manager. The letter must advise the member of staff that an outcome of the meeting could be dismissal.

**A8.2** At this meeting the facts of the case will be discussed with the member of staff. The meeting will be conducted by a reviewing manager. The member of staff's manager will also normally attend the meeting to present details of the performance issues causing concern, the measures that have been implemented to assist the member of staff to improve their performance and any support that has been offered to the member of staff. Records of the meetings that have taken place throughout the



process will also be made available. The member of staff will be given the opportunity to put forward their case.

**A8.3** A decision will be taken, based on full consideration of the facts of the case and any other relevant information, as to whether the member of staff's employment should be terminated.

## **A9 Appeals**

**A9.1** Any member of staff who is issued with a formal warning or is dismissed under this procedure will have the right to appeal to the designated Appeals Manager detailed in the letter confirming the outcome of the meeting.

**A9.2** Appeals should be lodged, in writing, within ten working days of the date on which the letter confirming the outcome of the meeting is sent and must specify the grounds for appeal.

**A9.3** The member of staff will be notified of the date of the appeal meeting within ten working days of the submission of the appeal (the meeting itself will not take place within this timescale although every effort will be made to hold the meeting as soon as possible). This timescale may be extended by mutual agreement.

**A9.4** A member of staff will be given at least five working days written notice of the date of an appeal meeting, except in the case of an appeal against dismissal, in which case seven working days written notice will be given.

**A9.5** In advance of an appeal meeting, the member of staff must provide, in good time, and normally no later than 5 working days prior to the appeal meeting, copies of any documents on which they intend to rely on and/or their statement of case. The member of staff will also receive, in good time, and normally no later than 5 working days prior to the appeal meeting, copies of any documentation, on which the University intends to rely.

## **ANNEX B - ARRANGEMENTS RELATING TO THE FORMAL STAGES OF THE PERFORMANCE CAPABILITY PROCEDURE**

**B1** If a formal meeting is to be convened under this procedure (i.e. a meeting that could result in a formal warning or dismissal), the member of staff should be given a reasonable opportunity to consider their response to the issues to be discussed. The member of staff will receive the following, in writing, at least five working days in advance of the meeting:

- a) the date and time and location of the meeting;
- b) details of the performance incapability issues, and any other related information, which leads the University to contemplate taking formal action (which may include dismissal) against the member of staff;
- c) the name of the person who may be asked to present the case to the manager conducting the meeting;
- d) the names of any witnesses;
- e) the member of staff's right to be accompanied;
- f) any other documentation to which the University will refer.

**B2** Not later than two working days before the meeting the member of staff should similarly provide:

- a) the name and status of the member of staff's representative, if any;
- b) any documents the member of staff may wish to rely on at the meeting;
- c) the names of any witnesses.

**B3** Where reasonable adjustments need to be made relating to a disability, the member of staff should inform the manager in advance of the meeting so that appropriate action may be taken.

**B4** The manager conducting the meeting shall consider the evidence that has been gathered. The member of staff will be given an opportunity to present their case and any evidence in mitigation of the alleged underperformance.

### **B5 Failure to Attend a Meeting**

**B5.1** If a member of staff fails to attend a meeting without reasonable justification and without notifying the manager in advance, the meeting may go ahead in the member of staff's absence, based on the available evidence. The outcome of the meeting will be communicated to the member of staff in writing.

**B5.2** If the representative cannot attend the meeting on the proposed date, the member of staff can offer an alternative time and date so long as it is reasonable and it is not more than five working days after the original date.

**B5.3** All members of staff are expected to cooperate with any requests from the University for evidence to support their reasons for non-attendance at meetings. This can include medical evidence and/or a statement from the member of staff justifying their non-attendance with supporting documentation, if it is available.

**B6** Time limits are included in this procedure in order to ensure that matters are dealt with promptly and without undue delay. However, in complex matters it may be appropriate to extend these time limits.