

Ordinance 68: Part II
Schedule II.1 – Capability Procedure

1. Scope and Definitions

- 1.1 The purpose of the Capability Procedure is to encourage and support employees to achieve and maintain required standards of performance.
- 1.2 Cases of incapacity due to ill health should normally be dealt with under the University's Sickness Absence Management policy. Where, having initially followed the Sickness Absence Policy, it is deemed the issue is one of capability the Capability Procedure will be used. Any subsequent sickness will be considered under the Capability Procedure.
- 1.3 An employee has the right to be accompanied by a fellow worker or trade union representative at any meeting and at any stage of this procedure.

2. What the University expects from Employees

- 2.1. The University expects employees to:
 - Undertake duties and responsibilities expected of the role and grade
 - Understand the impact of job performance on colleagues, service users and the wider University
 - Clarify expectations, tasks, objectives and behaviours with the line manager if unclear.
 - Bring all relevant issues which may affect performance to the attention of the line manager
 - Co-operate with the line manager to help improve any aspects of performance which are considered to be unsatisfactory
 - Attend meetings to discuss any aspects of performance which are considered unsatisfactory

3. Informal Procedure – What the Employee may expect from the University

- 3.1 Line managers are expected to discuss any concerns with employees regarding performance and to seek to identify the cause of the performance problem and assist with improving performance. This may be achieved through meetings with the line manager and the use of a work or development plan with appropriate timescales. In cases where capability is affected by temporary health issues which do not warrant the taking of sick leave, the line manager may consider whether it is possible to adjust an employee's workload/working conditions on a temporary basis. If the capability issues arise from a disability, the University has a duty to make reasonable adjustments in the workplace. In these cases HR & OD Services may obtain professional advice through Occupational Health.
- 3.2 The informal approach is aimed at bringing concerns to the attention of the employee, exploring causes, identifying responsibilities and agreeing actions to be taken.
- 3.3 Where there are concerns about an employee's performance, his/her manager will meet with him/her to reflect those concerns and explore ways of addressing them. The manager may issue advice and guidance to the employee or provide coaching and/or training or take other informal action.
- 3.4 It is advisable to confirm the outcomes of any discussions in writing to the employee. The manager should retain any notes of these informal discussions or meetings.

- 3.5 Following a satisfactory outcome to the use of the informal procedure, the matter will be considered resolved.
- 3.6 Line managers are responsible for providing feedback to employees regarding performance and will advise, normally within agreed timelines, whether or not performance has improved to meet the required standard.
- 3.7 If, following the informal process there is no improvement in performance within the agreed period (normally not less than 3 months), the improvement is not sustained or performance deteriorates further then the next, formal, stage of the procedure will be invoked.

4. Formal Procedure

If performance does not meet acceptable standards, and coaching or other informal action is not considered appropriate or has not succeeded in addressing the problem, the manager will meet with the employee to discuss the issues. The manager will outline the performance issues that have led to the meeting and the employee will be given the opportunity to state his/her case and raise any factors s/he wishes to have considered. If, in the view of the manager, the employee is unable to provide a satisfactory explanation for the performance shortfall, s/he will be advised of:

- The improvement in performance required
- The timescale for improvement
- Any support to be received
- The consequence of not meeting the performance targets

- 4.1. **Written Notification.** - The Dean of Faculty/Service Director will set out in writing the reason for formal action and invite the employee to attend a hearing to respond.
- 4.2. **Hearing** - A hearing will take place to consider and discuss the capability matter. After the hearing the employee will be informed of the decision and advised of their right to appeal.
- 4.3. **Appeal** - An employee who wishes to appeal will be required to submit the appeal in writing and an appeal hearing will be arranged. An appeal hearing need not take place before formal action takes place. After the appeal the employee will be informed in writing of the final decision.
- 4.4. Employees will be given at least 5 working days' notice of any hearing. At any hearing, the employee will be given the opportunity to state his/her case.
- 4.5. The purpose of the hearing will be to decide whether or not formal action is necessary and, if so, to establish what level of sanction is appropriate.
- 4.6. Decisions will be made by the Dean of Faculty/Service Director conducting the hearing who will be wholly responsible for the decision.
- 4.7. A formal sanction cannot normally be imposed without a hearing (this excludes cases where a hearing is heard in an employee's absence). No employee will be dismissed for a first instance of under-performance. However, where an employee commits a single significant error, or a number of substantial errors which are attributable to incompetence or inability to meet the required standards of the job and the actual or potential consequences of that error are, or could be, extremely serious, warnings may not be appropriate. This procedure allows for an employee in this situation to be suspended and the earlier stages of the procedure to be omitted.

4.8. An employee has the right to appeal against any penalty imposed.

5. Outcomes and Sanctions

5.1 The decision may be that no formal action is required. Formal action, other than that relating to gross misconduct may vary. Kinds of action can include the following;

- First written warning
- Final Written warning
- Dismissal on the grounds of Capability (including summary dismissal)

5.2 Other sanctions may be appropriate in certain situations, such as:

- The extension or renewal of a warning or final written warning issued under this procedure;
- Withholding an increment of salary
- The removal of any title or office held in addition to the substantive appointment
- The transfer of an employee to an alternative post within the University where possible and appropriate.

5.3 Any warnings issued will be confirmed in writing within 10 working days of the decision being made. The warning confirmation letter will contain the reason for the warning, any improvement expected, the duration of the warning and notification of disciplinary consequences of not meeting the requirements of the warning. The letter will also include information on the employee's right of appeal.

5.4 A copy of the written warning will be placed on the individual's personal file together with any documents relating to the case.

5.4 First Written Warning - A first written warning may be issued if an employee's performance record is such that the Dean of Faculty/Service Director believes that a first written warning is appropriate. A first written warning will normally be regarded as spent after 12 months.

5.5 Final Written Warning - A final written warning may be issued if the employee fails to comply with the terms of a first written warning which remains "live" or the employee's underperformance is serious and, although not considered by the Dean of Faculty/Service Director to be sufficiently serious to justify summary dismissal, justifies the issuing of a final written warning. A final written warning will normally be regarded as spent after 2 years.

5.6 Dismissal (including Summary Dismissal) - Dismissal with notice or pay in lieu of notice may be an appropriate sanction if an employee fails to comply with the terms of a final written warning which is still live.

5.7 If dismissal is a possible outcome of a hearing, this will be indicated clearly in the letter sent by the Dean of Faculty/Service Director requiring the employee's attendance at the hearing.

5.8 In cases of dismissal for reasons of capability, the employee will be notified in writing of the appropriate notice period (other than in the instance of summary dismissal) together with the reason for dismissal, the date at which employment will terminate and details regarding the appeal process.

6. Appeals

- 6.1 An employee has the right to appeal against any action taken against him/her as an outcome of the capability process.

- 6.2 An appeal should be submitted in writing to the nominated officer of the University, as stated in the letter detailing the disciplinary decision, within 10 working days of written confirmation of the disciplinary decision and should state the reason(s) for appeal.