

# **Capability Procedure**

## Version Control History

<b>Version Number</b>	<b>Date of Change</b>	<b>Summary of Revisions Made</b>
1	March 2013	Published on website 7 May 13 (CMT mins not released but advised approved by Susan Bald). Some minor changes made to that seen at CMT to correct paragraph numbering and footer. Further minor revision made and published 4 Mar 14 in section 3.3 to bring this into line with the Staff Disciplinary Procedure (QUAL027 V2, effective September 2013) and the ACAS Code of Practice. Change requested by Susan Bald 4 Mar 14. Footer and version number etc remain stat.
1.1	July 2016	Footer updated to reflect new template model. Role Title changed: Head of Quality.
1.2	December 2018	Role change to Quality Manager and other job title changes to adhere to the new structure.
1.3	December 2022	Footer updated to reflect new template model.
1.4	January 2024	Updated to UHI Perth branding and to reflect current organisational structure.

# Capability Procedure

## 1 Purpose

- 1.1 The purpose of this procedure is to ensure that employees who are not meeting acceptable standards of performance at work are treated in a fair and consistent manner, and that employees are encouraged and supported to meet the expected standards of performance. This document outlines the courses of action which will be taken in tackling performance problems. It provides a method of dealing with any shortcomings in performance and can help encourage an employee, whose performance is unsatisfactory, to improve.
- 1.2 If performance is related solely to ill health, it should be dealt with in line with the Managing Absenteeism Procedure.
- 1.3 If performance is related to work-life balance issues, the manager should refer the employee to UHI Perth's family friendly policies and procedures, for example, the Maternity and Adoption Pay and Leave Policy and Procedures, Paternity Leave Procedure, and Flexible Working Procedure.

## 2 Scope

This procedure applies to all employees, except for those who are subject to a probationary period.

## 3 Definitions

- 3.1 Unsatisfactory performance – in dealing with unsatisfactory performance, a distinction needs to be made between poor performance resulting from unacceptable conduct and unsatisfactory performance which is due to a lack of capability. The first instance is a conduct issue and should be dealt with under the Disciplinary Procedure; the second is an issue of capability.
- 3.2 An employee's lack of capability to carry out the duties of his/her job may be assessed in relation to the following areas:
  - a the employee's level of skill;
  - b the employee's aptitude for the work.

The under-performance arising from a lack of capability will not be a one-off incident but a pattern of regular and/or sustained under-performance, for these procedures to be invoked, for example, on-going poor student retention and/or achievement, on-going customer complaints. Appendix A provides examples that may trigger the use of these procedures.

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**Owner:** Depute Principal  
**Lead Author:** Head of HR and Organisational Development  
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- 3.3 Staff Companion – another employee of UHI Perth, chosen, if desired, by the individual to provide support during interviews and to address hearings but not to respond to questions on behalf of the individual.
- 3.4 Trade Union Representative – a trade union official from a certified trade union.

## 4 Responsibilities

- 4.1 The Head of Human Resources and Organisational Development shall be responsible for ensuring the proper application of the terms of this procedure. This shall include the provision of relevant training to those managing staff performance and those conducting capability hearings.
- 4.2 Managers are responsible for ensuring that these procedures are followed when dealing with unsatisfactory performance as a result of capability. First line managers will use the informal procedure to address staff under-performance and will refer matters to their line manager for advice if the formal procedure is to be invoked.
- 4.3 A member of staff who has had an issue of under-performance raised with him/her by his/her manager, has a responsibility to co-operate during meetings held to manage the situation and to comply with the terms of this procedure.
- 4.4 The Human Resources (HR) Department shall be responsible for the administration and co-ordination of capability hearings and appeals hearings. The HR Department shall also provide advice and support as appropriate.
- 4.5 Quality approval check of this procedure is the responsibility of the Head of Human Resources and Organisational Development who will arrange for the procedure to be published on the web.

## 5 Procedure

There must be a measure of flexibility within the procedure to enable managers to respond to individual circumstances. Therefore, the procedure is not intended to exclude other measures which in specific circumstances may be considered appropriate for the purpose of encouraging an employee to improve his/her performance. Human Resources advice and support is always available to all managers and their staff.

## 5.1 Informal Procedure

- 5.1.1 This section is not part of the formal procedure and is a guideline for managers to deal with under performance as part of day-to-day management.
- 5.1.2 If there is evidence of problems with an employee's performance, the manager should arrange for an informal discussion with the employee as soon as possible.
- 5.1.3 During the meeting, the manager should discuss with the employee the areas identified where there are problems with performance, ascertain whether the employee agrees that there is a problem and listen to and consider any explanations or statements the employee wishes to make.
- 5.1.4 The manager should also share with the employee any factual evidence and/or indicators used in forming his/her judgement about the employee's performance, since the management view needs to be objective rather than subjective.
- 5.1.5 Every effort should be made to ascertain the root causes for the performance issues and full consideration given to appropriate measures to help the employee improve his/her performance; for example, training, guidance and supervision, work-life balance considerations, and referral to professional support.
- 5.1.6 Particular consideration should be given to training issues if it is apparent that there have been notable changes in the requirements of the job and the skills and knowledge needed.
- 5.1.7 Following this discussion, arrangements will be made to meet with the employee to discuss the support arrangements that have been put in place and the extent to which these are supporting the employee to make the necessary improvements.
- 5.1.8 A fair and reasonable timescale for improvement should be agreed between the employee and Manager. The details of the support arrangements and expected improvements in performance and how these will be evaluated can be confirmed to the employee in writing using the standard letters contained in the Manager's Guide.
- 5.1.9 If an employee is not able to make the necessary improvements to his/her performance, the immediate line manager should discuss this with the senior manager and a decision will be made if the matter is to be dealt with under the formal procedures and this will be communicated to the employee.

## 5.2 Right of Accompaniment

- 5.2.1 An employee has the right to be accompanied at any formal capability hearing which takes place in line with these procedures.
- 5.2.2 The accompanying person may be a staff companion or a trade union representative.
- 5.2.3 The person selected by the employee should be readily available to attend the hearing.

## 5.3 Alternative Employment/Redeployment

- 5.3.1 If, despite encouragement, support and assistance, the employee is unable to reach the agreed standards of performance, alternative work or redeployment should be considered before formal action is implemented (Stages 1 to 3). However, alternative employment or redeployment can be considered as an alternative at any stage of these procedures.
- 5.3.2 Any offer of alternative work or redeployment should be made in writing, with the reasons for the offer and the possible consequences if the employee refuses the offer and is unable to achieve satisfactory performance in his/her current job.
- 5.3.3 If alternative work or redeployment is available, the member of staff will be required to undertake any selection process normally required and will be paid the conditions applicable for that post. Advice should be sought from the HR Department when considering alternative work.

## 5.4 Formal Procedure

- 5.4.1 If at any stage of the formal procedure the employee's explanation for his/her performance is accepted and a formal warning is therefore considered inappropriate, the formal procedure ceases and the situation should be monitored and the procedure re-instituted, if necessary, at the informal stage.
- 5.4.2 The formal procedure provides for 3 stages of management intervention where an employee fails to make the necessary improvements in his/her performance. Advice from the Human Resources Department should be sought at any stage of the procedure.
- 5.4.3 The employee has a right to be accompanied by a staff companion or trade union representative at a formal capability meeting.
- 5.4.4 The manager must ensure that she/he has gathered factual evidence of any under-performance, and that the employee is provided with a copy of this before any formal hearing is held and is given the opportunity to respond before any decision is taken to issue a capability warning.

- 5.4.5 All warnings issued should state the nature of the under-performance, refer to any informal proceedings, or to any previous current formal warnings, specify the improvements required, the review process and timescales, and inform the employee that his or her continued employment may be at risk if satisfactory performance is not achieved and sustained. Warning letters will also provide the employee with details of how to appeal. Formal warnings will be confirmed in writing using the standard letters contained in the Manager's Guide and will give details of how to appeal.
- 5.4.6 Following the issuing of a warning, arrangements should be made to monitor the employee's performance on a regular basis. After a period of 6 months (or other period as appropriate to the job or nature and level of under-performance and as notified by the manager), if the manager considers the employee's performance to have improved and been sustained at an acceptable level, he/she should inform the employee of this, in writing, and confirm that any warnings issued will be regarded as having lapsed. The Manager's Guide provides standard letters.
- 5.4.7 Issues relating to an employee's performance in their role will normally be dealt with under the capability policy, but where after due consideration of the facts it appears that the performance issue relates to the employees conduct, it may be appropriate for that matter to be dealt with under the disciplinary procedure.

## 5.5 Formal Capability Hearings

- 5.5.1 If an employee does not meet the required improvements to his/her performance, he/she should be asked to attend a capability hearing at the end of the previous informal or formal review period.
- 5.5.2 The employee should be advised in writing of the arrangements and grounds for the hearing including the right of accompaniment. At least 5 working days' notice will be given or otherwise by agreement, to facilitate adequate preparation by the employee and his/her representative.
- 5.5.3 It is the responsibility of the employee to ensure he/she is accompanied and that his/her representative is present at any stage of the formal procedure.

- 5.5.4 The purpose of this formal meeting is to restate the expected improvements in the employee's performance and the steps being taken to encourage and support improvement, and to explain as precisely as possible the nature of the employee's under-performance and the results of the monitoring process. The employee should be given an opportunity to raise any points which he/she wish to be taken into consideration.
- 5.5.5 The manager chairing the meeting may choose to adjourn proceedings at any stage if necessary; for example, to obtain further information (the nature of which should be stated). An adjournment should normally be for a stated period.
- 5.5.6 The formal meeting should be conducted by the employee's line manager (or the line manager's manager) who should be accompanied either by an HR representative or another member of management.
- 5.5.7 The discussion and action taken must be recorded. The manager must restate the expectations required of the employee and/or the outcomes of the capability meeting.
- 5.5.8 Formal capability warnings will be confirmed in writing and detail the employee's right of appeal.
- 5.5.9 Appropriate monitoring and any other measures felt to be appropriate should continue during any warning period.

## 5.6 **Stage 1 – Formal Capability Hearing**

- 5.6.1 If, at the conclusion of the formal capability hearing, the manager considers the employee's explanation unacceptable, and/or that it would not be appropriate to extend the review of performance on an informal basis, the employee should be issued with a formal written capability warning. This warning should make it clear that immediate and sustained improvement is required and should clearly specify the level of performance expected. The warning letter will also give details of the employee's right of appeal. Standard letters are contained in the Manager's Guide.
- 5.6.2 After 6 months (or other period as appropriate to the job or nature and level of under-performance and as notified by the manager), if the manager considers the employee's performance to have reached and sustained the required level he/she should meet the employee to review the monitoring process that has taken place and inform the employee that the warning is regarded as having lapsed and will be disregarded. This will be confirmed in writing using the standard letters in the Manager's Guide.

## 5.7 Stage 2 – Formal Capability Hearing

- 5.7.1 If, after a reasonable time has been allowed for improvement (up to 6 months, or other period as appropriate to the job or nature and level of under-performance and as notified by the manager), the Manager considers that the employee's performance has not reached the necessary standard, a Stage 2 formal capability hearing should be convened.
- 5.7.2 The employee should be advised in writing of the arrangements and grounds for the hearing including the right of accompaniment. At least 5 working days' notice will be given or otherwise by agreement, to facilitate adequate preparation by the employee and his/her representative.
- 5.7.3 Stage 2 can be triggered within the 6-month period of the Stage 1 warning, if the manager has reasonable belief that the employee's performance is not improving. If after the Stage 2 hearing, the employee is unable to give an acceptable explanation, he/she should be issued with a second written capability warning. This should clearly state the level of performance required and make it clear that if satisfactory performance is not achieved and sustained, the employee's continued employment is at risk. The warning letter will also give details of the employee's right of appeal. Standard letters are contained in the Manager's Guide.
- 5.7.4 After 6 months (or other period as appropriate to the job or nature and level of under-performance and as notified by the manager), if the Manager considers the employee's performance to have improved to and be sustained at an acceptable level, he/she should inform the employee of this, in writing, and that any warnings issued will be regarded as having lapsed, using the standard letters in the Manager's Guide.

## 5.8 Stage 3 – Formal Capability Hearing

- 5.8.1 After 6 months (or other period as appropriate to the job or nature and level of under-performance and as notified by the manager), if it is considered that the employee's performance still has not met required standards, a further and final formal capability hearing should be convened.
- 5.8.2 The employee should be advised in writing of the arrangements and grounds for the hearing including the right of accompaniment. At least 5 working days' notice will be given or otherwise by agreement, to facilitate adequate preparation by the employee and his/her representative.

- 5.8.3 Stage 3 can be triggered within the six-month period of the Stage 2 warning, if the Manager has reasonable belief that the employee's performance is not improving.
- 5.8.4 If, at the conclusion of the final formal capability hearing, the Manager considers the employee's explanation unacceptable, a decision will be taken as to whether to allow more time for improvement or whether to transfer, redeploy, demote or dismiss the employee.
- 5.8.5 Dismissal must be with relevant contractual or statutory notice or with pay in lieu of such notice (which is taxable). The Manager's Guide contains the standard letter of dismissal which also details the employee's right of appeal.
- 5.8.6 Where dismissal is the appropriate action, the decision may be taken by:
- i the Principal in person or another person nominated by the Principal who must be at least one line management level above the person to be dismissed; or
  - ii where the person of whom dismissal is contemplated is the Principal, or another member of the senior management team, a sub-committee of the Board of Management consisting of no less than 3 members of the Board.

## 5.9 Appeals

- 5.9.1 An employee has the right to appeal against any formal action taken in accordance with this procedure.
- 5.9.2 Appeals must be made in writing by the employee within 10 working days of receipt of the written warning or dismissal and must state the grounds of the appeal.
- 5.9.3 Written acknowledgement of the employee's appeal should be issued within 5 working days of its receipt; an appeal hearing will ordinarily be held within 10 working days from this date. An extension to this time limit will normally be made only in exceptional circumstances.
- 5.9.4 Appeals against dismissal will be heard by the Principal, or by an Appeal Sub-Committee of the Board of Management.
- 5.9.5 The purpose of any appeal is to give the employee an opportunity to present the grounds for his/her appeal. In all cases the decision of the appeal hearing will be final.

## 5.10 Failure to Attend a Capability Meeting or Appeal Meeting

5.10.1 Failure to attend any informal or formal capability meeting without giving notice and providing a suitable reason is a serious conduct issue and may itself be the subject of disciplinary action.

5.10.2 If an employee fails to attend an appeal hearing without giving notice and/or providing an acceptable reason on the day, the appeal is automatically rendered void. Any decision to allow a further appeal hearing to be set should be at the sole discretion of the appeal panel.

## 5.11 Probationary Employees

If, during his/her probationary period, an employee is failing to meet the necessary standards of performance, the line manager should discuss the issue with the employee in accordance with the Probationary Procedure, and not the Capability Procedure.

## 6 Linked Policies/Related Documents

Annual Professional Review Procedure  
Disciplinary Procedure  
Grievance Procedure  
Managing Absenteeism Procedure  
Probationary Policy and Procedure  
Induction Procedure  
Family Friendly Policies and Procedures  
Maternity and Adoption Pay and Leave Policy and Procedures  
Paternity Leave Procedure  
Flexible Working Procedure

## Appendix A

### Examples of under-performance which could lead to formal action being taken under the Capability Procedure.

**Note:** This list is not exhaustive.

- 1 A pattern of student complaints about standard of teaching, student support or service delivery.
- 2 A pattern of customer complaints about level or standard of service delivery.
- 3 Statutory or legislative requirements and standards not being met.
- 4 A number of course unit/module Performance Indicators highlighting poor student retention and/or attainment over a sustained period of time.
- 5 External examiner or assessor reports highlighting poor standards over a period of time.