

REGULATION 33 CAPABILITY PROCEDURE

A. GUIDANCE NOTES

1. Introduction

- 1.1. The Capability Procedure provides a framework for dealing with staff who do not achieve the performance standards expected of them. The procedure applies to all staff at Sussex and its related HR policies. It aims to manage under-performance, by identifying the causes or contributing factors and, where possible, all staff

- 1.4. The procedure also recognises that a proportion of University staff will not perform to the required standard. It provides managers with the mechanism to deal effectively with those who under-perform, ultimately by dismissing someone who does not show adequate improvement.

2. Principles

- 2.1. Circumstances which may be work-related, or personal, may impact on an individual's performance. Wherever possible, managers should seek to address any individual or minor performance problems as they occur, and without the need to implement the Capability Procedure. Where the problems are serious, repetitive, and/or frequent, more structured support and assessment over a period of time is needed, and the Capability Procedure will be invoked. The procedure provides opportunities for improvement through a series of informal and formal

- 2.2. 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. Normally the total period given for improvement will be no longer than two terms after the formal Capability Procedure has begun. For academic staff, the period may need to be a full academic year, during which SMART (see page 5) targets would be set. However, in certain cases, for example, where the provision of a key service is jeopardised, the period given for improvement will need to be considerably shorter.
- 2.3. In most cases, a member of staff should not be dismissed because of a failure to perform to the required standard, unless warnings and an opportunity to improve have been given. However, where a member of staff commits a single significant error, or a number of substantial errors due to negligence, or failure, 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 a member of staff in this situation to be dismissed without notice, in which case Stage 3 of the procedure should be followed.

3. Reasons for poor performance

- 3.1 The reasons for poor performance should be explored fully, to determine the most appropriate solution. Concerns about an individual's performance may arise from a number of factors, including:

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- (vi) familiarising themselves with university procedures relating to their employment;
- (vii) informing their manager of any issues which could be affecting their work performance.
This could include personal issues outside the workplace; health or disability issues.

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 formal stages of the Capability Procedure, by a fellow worker or 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 no later than five working days after the date first 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 relevant documentation.

4.2 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) 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;
- (vii) ensuring that they receive appropriate advice and training relating to the operation of the Capability Procedure, subject to such training being provided by the University;
- (viii) 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

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

Managers have a right to:

- (i) enquire, where appropriate, and with sensitivity, of issues that may be affecting a member of staff's work performance;
- (ii) be treated with dignity and respect at all times.

4.3 Human Resources

The Human Resources Department is responsible for:

- (i) training and advising managers on the Capability Procedure;
- (ii) monitoring the use of the Capability Procedure across the university;
- (iii) attending and keeping a formal record of meetings at all formal stages of the procedure.

5. Exclusions

The Capability Procedure does not apply to situations covered by other University procedures, in particular:

staff under probation to whom a separate procedure applies;

- seek to identify any adjustments to the working environment which could assist the individual in meeting the requirements of his/her role;
- obtain commitment from all concerned to assist in resolving the problems; propose an
- action plan which sets out clear targets and timescales for demonstrable improvement. Input should be sought from the member of staff, and the action plan should be agreed by the member of staff, wherever possible; agree a reasonable time-scale for
- the individual's performance to improve;
- set a date for a review meeting to ensure that progress is being made.

8.7 After the meeting, the manager should give the member of staff a written action plan that contains:

- a detailed summary of the improvements required, and the standards to be met details
- of 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
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8.8 All targets should be "SMART", i.e.

Specific
Measurable
Achievable
Realistic
Timebound

8.9 The manager should ensure that any other staff involved in the process are appropriately briefed.

8.10 The nature of the under-performance will determine the type, and range of help to be provided, but it could include:

- monitoring, review, and variance of workload and responsibilities;
- monitoring standards of performance against agreed objectives and the requirements of the job;
- review of the availability of suitable resources or materials;
- training or coaching, specifically aimed at achieving an improvement in performance (in liaison with the Staff Development Unit);
- the identification of a mentor;
- review of the amount of supervision needed;
- referral to the University's Occupational Health service, or the Staff Welfare Officer, (particularly if the meeting establishes that performance problems are related to the individual's personal life);
- opportunities to see good practice elsewhere within the University (or other organisation).

8.11 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.

- give the member of staff an opportunity to respond to the issues raised about his/her performance;
 - seek to establish the cause of poor performance, and any action which can be taken to help to improve the situation;
 - identify any further support services, or investment, which might be required;
 - seek to identify any adjustments to the working environment which could assist the individual, in meeting the requirements of his/her role;
 - obtain commitment from all concerned to assist in resolving the problems;
 - propose a further action plan which sets out clear targets, and timescales, for demonstrable improvement. Input should be sought from the member of staff, and the action plan should be agreed by the member of staff, wherever possible;
 - agree a reasonable time-scale for the individual's performance to improve;
 - set a date for a Stage 2 review meeting, to ensure that progress is being made.

9.4 The manager should write to the member of staff, normally within five working days of the meeting. The letter should detail the standards expected, targets, action plan, and timescale for improvement.

9.5 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. As a guideline, a period of between four and ten working weeks may be normal, but this could be shortened or lengthened, as appropriate. A written record of the monitoring process should be kept by the manager.

Stage 2 review meeting

9.6 At the end of the monitoring period, a further meeting involving all those present at the initial Stage 2 meeting will be held to review progress.

- employment may be terminated, if the required improvement is not achieved;
- ii. Include a copy of the action plan;
- iii. u6dTm

the possibility of redeployment 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 an associated salary. The member of staff should be allowed sufficient time, normally 10 working days, to consider the offer, and should be informed that a refusal will

- 13.1 Appeals against dismissal are heard by an Appeal Panel appointed by the Vice Chancellor (or nominee), consisting of two senior managers (one of whom shall be the Chair), and an independent employment solicitor, appointed by the University, (who shall not be employed by the University nor act for the University other than in their capacity as a member of a panel for appeals against dismissal). In the case of the independent peer (from the staff), independent shall have the meaning of not having had prior involvement in the case. In the case of the independent person external to the University, independent shall have the meaning of having no involvement with the University which might be prejudicial to impartial judgement, (and for the avoidance of doubt, any payment by the University to such external person in respect of their time incurred in respect of the appeal, shall not be deemed to prejudice their impartial judgement). In the case of an appeal of an academic member of