

Capability Procedure

Procedural overview – informal / review period

Stage 1 – Formal hearing with review

Stage 2 – Formal hearing with review

Stage 3 – Formal hearing with optional review (one potential outcome from stage 3 is dismissal)

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Introduction

The Capability Procedure is designed to encourage individuals to improve and maintain satisfactory standards of performance and attendance. If the employee has a disability, or it is thought they may need additional support because of a disability, for example reasonable adjustments, please contact HR for further advice.

Competence-related capability

This is defined as covering situations in which an employee's performance does not appear to meet the requirements of the role to an acceptable standard. All stages of this procedure apply and provide an opportunity for:

- Encouragement, support and assistance;
- A clear structured path for improvement;
- Discussion and consideration of all relevant factors;
- The employee and manager to work together to improve performance.

Sickness absence-related capability

This is defined as situations in which an individual is taking frequent, intermittent or sporadic absence for short periods (normally 8 days or less) attributable to minor ailments that may be unrelated or continuous absence through ill-health covering a period exceeding 4weeks/28 calendar days; or to repeated periods of absence due to an on-going medical procedure.

Short-term sickness-related capability

For cases of frequent short-term absence, all formal stages of this procedure should be followed having exhausted the informal stages of the sickness procedure.

Long-term sickness-related capability

For cases of long term ill-health related capability, the matter can proceed directly to stage 3 of this procedure having exhausted the options set out in the sickness absence procedure.

1. Informal procedure

Competence related capability¹

¹ For managing short-term sickness-related capability informally

- 1.1. In the first instance managers should seek to resolve performance issues informally.
- 1.2. The employee will be invited to an informal discussion with their manager as early as possible and as part of normal day to day management.
- 1.3. The informal discussion should raise and discuss:
 - The shortfall in the employee's performance and the required standard/ expectations.
 - The possible causes and any support, reasonable adjustments required (where appropriate) and the timescales for the individual's performance to improve.
 - The implications of not improving to the required standard within the agreed timescales, e.g. moving to the formal process;
 - Dates for monitoring and review discussions during the informal process.
- 1.4. The manager should be constructive and encourage and motivate the employee by providing staff development, training, mentoring and coaching where appropriate.
- 1.5. If during the meeting it becomes apparent there is a genuine need to review the employee's workload and job description and this could be impacting on their performance, a separate meeting will be arranged to discuss either.
- 1.6. The manager should confirm the outcome of the discussion in writing within 10 clear working days. The performance issue(s):
 - An action plan detailing the improvements required and the standards of performance to be achieved
 - Support / training to be provided
 - The length of the review period and timescales for demonstrable improvement
 - A schedule of review meetings during this time
 - Confirmation that the matter has been dealt with informally, however a failure to make the required improvements may result in formal action being taken.
- 1.7. The outcome will be documented and kept under

please refer to the Sickness procedure

confidential cover for the duration of the required improvements and may be used as supporting evidence should the matter proceed formally.

- 1.8. The manager should meet regularly with the employee during the agreed review period to monitor progress in line with the timescales agreed.
- 1.9. At the end of the specified period the manager should:
 - Examine information gathered during the regular review meetings
 - Consider whether the employee's performance/attendance has improved
 - Assess the support and training the employee has received
- 1.10. The manager will write to the employee to confirm whether:
 - The employee has made the improvements required, and the performance now meets the required standard, and that, no further action will be taken.
 - There has been some improvement but further improvements are still required. The review period will be extended and monitored, and additional support and improvements will be identified.
 - There has been insufficient improvement in the employee's performance during the review period and the matter should proceed to stage 1 of the formal procedure.

2. Formal procedure

- 2.1. The formal procedure applies to both capability and sickness issues and should be invoked only after the informal stage of the capability or sickness absence procedure have been exhausted.
- 2.2. The formal procedure comprises of;
 - **Stage 1** – formal hearing with review
 - **Stage 2** – formal hearing with review
 - **Stage 3** – formal hearing with optional review (one potential outcome from stage 3 is dismissal).

- 2.3. The three stages must be followed sequentially.
- 2.4. For long-term ill-health-related capability, the line manager should proceed directly to stage 3 (having ensured the process outlined in the sickness procedure has been exhausted).

3. Stage 1 Formal hearing

- 3.1. The employee will be invited to attend a formal hearing in writing.
- 3.2. The manager should provide copies of all relevant information/documents from the informal stage to the hearing manager and may be invited to present the case.
- 3.3. The employee has the right to be accompanied by a trade union representative or a workplace colleague to any formal meetings. See Appendix A.
- 3.4. If the employee has submitted information intended to be used at the hearing, the hearing manager must ensure copies are distributed to all parties before the hearing.
- 3.5. Guidance for conducting capability hearings can be found in Appendix C.
- 3.6. The hearing manager should ensure that all the evidence has been considered before reaching an outcome.
- 3.7. The employee will be informed of the outcome in writing within 10 clear working days. If a written warning has been issued refer to Appendix D for details of sanctions following a hearing.
- 3.8. A copy of the outcome should be sent to the manager.

4. Review period

- 4.1. The manager should meet regularly with the employee during the agreed formal review period to monitor progress in line with the timescales agreed.
- 4.2. At the end of the review period the manager should;
 - Review information gathered during the regular review meetings

- Consider whether the employee's performance/attendance has improved
- Review the support and training the employee has received.

4.3. Following an evaluation of the information the manager will confirm whether:

- If the employee meets the required standards, normal managerial supervision will be resumed and the employee will be required to maintain the agreed standard. If the agreed standard is not maintained during the period of the warning, the matter should proceed to stage 2 of the formal procedure
- Further improvements are required in order to satisfy the standards of the role. The review period will be extended and additional support and improvements will be identified. The extension will normally be for a period of 4 weeks
- There has been insufficient improvement in the employee's performance/attendance during the review period and the matter will proceed to stage 2 of the formal procedure.

4.4. The manager will confirm the outcome of the review period in writing to the employee within 10 clear working days.

5. Stage 2 Formal hearing

- 5.1. The employee will be invited to attend a formal hearing. See Appendix C.
- 5.2. The manager should write a brief summary of the issue and action taken to date and provide copies of all relevant information/documents from stage 1 to the hearing manager
- 5.3. The employee has the right to be accompanied by a trade union representative or a workplace colleague. See Appendix A.
- 5.4. If the employee has submitted information to be used at the hearing, the hearing manager must ensure copies are distributed to all parties before the hearing.
- 5.5. Guidance for conducting capability hearings can be

found in Appendix C.

- 5.6. The employee will be informed of the outcome of the hearing within 10 clear working days. For details of sanctions and duration, see Appendix D.
- 5.7. A copy of the outcome should be sent to the manager.

6. Review period (follow stage 1 review period)

- 6.1. Where insufficient improvement in the employee's performance/attendance is made, the matter will proceed to stage 3 of the formal procedure having discussed the matter with HR. The employee will be informed of the outcome of the review period in writing within 10 clear working days.

7. Stage 3 Formal hearing

- 7.1. The decision to proceed to stage 3 by the manager can be made only for the following reasons:
 - **Cases of competence-related capability and short-term sickness absence capability**
An employee's improvement in their performance/attendance has not been achieved to the required standards and stages 1 and 2 have been exhausted.
 - **Cases of long-term sickness absence capability**
It can be demonstrated that all stages of the sickness absence procedure have been exhausted, and the employee is incapable of carrying out their role or any other role to the required standard within the University on ill-health grounds, and/or the employee has not been successfully redeployed within the university.
- 7.2. The manager should refer the matter to HR, confirming the reasons for proceeding to the stage 3 formal hearing by providing a brief summary of the issue, action taken to date and copies of all relevant correspondence from the previous stages.
- 7.3. HR will arrange a panel to hear the case (See Appendix B – Chair of Hearings and Appeals).

The panel will nominate the Chair.

- 7.4.** If a senior post holder is involved, the stage 3 hearing will be managed in accordance with the Articles of Government.
- 7.5.** HR will circulate a copy of the summary of the issue provided by the manager, and relevant information/ correspondence to the panel.
- 7.6.** The employee will be invited to attend a formal hearing (see Appendix C). In addition, the stage 3 invite should inform the employee that the outcome of the hearing may result in a decision to dismiss.
- 7.7.** The employee has the right to be accompanied by a trade union representative or a workplace colleague (see Appendix A)
- 7.8.** If the employee has submitted information to be used at the hearing, the Chair must ensure copies are distributed to all parties before the hearing.
- 7.9.** Guidance for conducting capability hearings can be found in Appendix C.
- 7.10.** In cases of poor performance/attendance, the outcome of the hearing may be:
 - Confirmation that there will be no further action
 - An extension to the final written warning giving consideration to whether additional sanctions should be added, and an agreement on a further review period
 - Dismissal with notice on grounds of capability
- 7.11.** In cases of long-term ill-health, the outcome of the hearing may be:
 - Confirmation that there will be no further action
 - Dismissal on grounds of capability
 - Recommendations made to explore options in line with the sickness absence policy, e.g. ill-health retirement prior to determining the outcome (see Sickness Procedure).
 - Advise the employee that the outcome will be confirmed in writing within 10 clear working days of the hearing.
- 7.12.** The employee will be informed of the outcome of the hearing within 10 clear working days. Also see Appendix D for details of sanctions following a

hearing and the duration.

- 7.13.** Only in exceptional circumstances will a further review period at stage 3 be agreed. If the panel determines a further review period should be granted, they must clearly outline expectations and the length of the review period must be clearly stated in the outcome letter. The line manager should conduct regular reviews in line with the review period in stage 1 and 2.
- 7.14.** At the end of the extended review period, the manager will report back to the panel from the stage 3 hearing and advice on progress. If there has been insufficient improvement the panel will call a further stage 3 hearing.

8. Appeal against formal action

- 8.1.** The employee has the right to appeal against the outcome of any stage of the formal procedure where a warning has been imposed (See appendix F for guidance).