Capability Policy

1. Policy Statement

The University has a responsibility to provide high quality services and ensure business continuity, and is committed to ensuring all employees are given every opportunity to deliver and maintain a high level of performance at work. It aims to support employees to work effectively.

All employees should be made fully aware of the performance standards they are expected to deliver. They should have regular meetings with their manager\(^1\) to discuss their work and performance, where clear objectives and standards, and personal development plans will be agreed for the relevant reporting periods.

Where any instances of poor performance are identified, the University will always provide the employee with an opportunity to make improvements, and the appropriate support required to do so.

2. Scope and Purpose

This Policy applies to all employees, except for those in a probationary period and those explicitly employed on non-standard terms and conditions\(^2\). Guidance for managing performance for employees on probation can be found at: [http://www.docs.csg.ed.ac.uk/HumanResources/Policies/Probation_Interim_Guidance_for_Managing.pdf](http://www.docs.csg.ed.ac.uk/HumanResources/Policies/Probation_Interim_Guidance_for_Managing.pdf)

The purpose of the Capability Policy is to:

- Help and encourage employees to achieve the required standards
- Ensure that the required standards of work performance are maintained
- Provide a framework for dealing with issues of poor performance in a fair and consistent manner.

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\(^1\) For the purposes of this policy the term ‘manager’ will be defined so as to include the nominated or line manager or another designated person of suitable seniority and responsibility within the relevant work unit or group

\(^2\) Staff TUPE transferred to the University and remaining on pre-existing terms and conditions; KTP Associates, the Principal, Vice-Principals, Heads of Support Group and comparable level Directors
This document outlines the procedures to follow where an employee is at work, but is not meeting the required standards of performance. It does not apply to instances where:

- An employee is absent from work due to ill health, which should be managed through the University’s Absence Management Policy.
- An employee is negligent, deliberately careless, unwilling to carry out their duties, or undergo the required development to reach necessary standards, which should be managed through the University’s Disciplinary Policy.

3. Principles of the Policy

The University will observe the following principles in all cases involving unsatisfactory standards of performance:

- Employees will be informed at the earliest possible opportunity when there are areas of their performance which are falling short of the required standard, initially through the informal capability procedure (see 6 below)
- Meetings, decisions and confirmation of decisions will be timely and normally be within the timescales outlined in this document
- At all stages managers will discuss the situation with employees, who will have a chance to give their view before any decisions are made
- Managers will investigate to ensure they take all relevant information into consideration to establish the facts
- Managers will give employees the opportunity and support to improve their performance
- Employees have the right to be accompanied by a Trade Union Representative or workplace colleague at all formal meetings which form part of the Capability Policy
- Employees will have the right of appeal against any formal action taken
- Where unsatisfactory performance results from neglect or lack of due care and attention by employees, or failure to follow reasonable instructions, managers may consider the case as one of unsatisfactory conduct under the Disciplinary Policy
- Where health or disability issues may be having an impact on performance, managers will always seek professional medical advice before taking formal action
- The University’s Policy on Dignity & Respect will be observed in relation to all capability related procedures.

4. Responsibilities of those Involved

Managers are responsible for:

- Ensuring employees have a manageable workload
- Setting realistic objectives and standards for performance in consultation with employees
- Giving honest and constructive feedback on performance
• Regularly ensuring the training and development needs of their employees are identified and met so that they can meet their objectives and any targets set
• Making employees aware of and addressing performance issues at the earliest opportunity
• Where an allegation of unsatisfactory performance relates to a student complaint, the manager will refer to the University Complaint Handling Procedure to ensure that all necessary processes are followed.
• Considering whether there are issues in or outside of work which may be impacting on employee’s ability to undertake the work to a satisfactory standard, e.g. health issues, family circumstances
• Notifying the relevant HR Advisor of capability issues as they arise
• Taking ownership of capability procedures being progressed for their employees

Employees are responsible for:

• Ensuring their performance meets the requirements of their role and any targets set
• Advising their manager at the earliest opportunity of any issues, in or out of work, affecting or likely to affect their performance
• Fully engaging with their managers when dealing with issues relating to their own performance
• Keeping their professional knowledge up to date, through work or independently.

5. Methods of Improving Performance

There are many tools employees and their managers can make use of to help prevent poor performance, and aid performance improvement. Some of these are listed below, and should be considered by both parties when deciding how performance improvement can be supported:

• Appropriate adjustments to workload, however, care should be taken by managers to ensure that any adjustments to workload do not considerably impact on another employee’s wellbeing or on service delivery
• On the job training, either provided by a suitably qualified colleague, or self-managed
• Arranging for coaching / mentoring to take place
• Temporary secondment to other areas of work to develop specific skills or knowledge, or to gain an insight into other ways of working
• Providing additional equipment / resources to enable the employees to perform their role more effectively, taking into account what provision is reasonable
• Providing closer supervision and guidance to employees in a structured way, on a temporary basis. Identifying and providing access to training courses or professional development activities which will help employees learn or further develop specific skills. These could be related to technical skills, or more general skills, i.e. customer service or leadership and management
• Considering a referral to the Occupational Health Unit or Staff Counselling Service where health or personal issues may be affecting performance
• Agreeing the use of a Performance Improvement Plan, as outlined below.

6. The Informal Procedure

Managers are ultimately responsible for setting and monitoring objectives and standards of performance for employees, and providing a supportive environment which enables employees to achieve these objectives regularly through one-to-one meetings.

During one to one meetings between the line manager and employee, managers should discuss general performance standards with the employee, and should also raise any issues where performance is not at the level required, exploring ways in which improvements can be made, and any additional support the employee may require.

- Managers will draw an employee’s attention to their unsatisfactory performance immediately, or as soon as is practicable
- Managers will clearly explain to employees where they believe they are failing to reach the necessary standards. Managers will also give employees the opportunity to indicate any reasons or underlying causes for the unsatisfactory performance, including health or disability related issues
- If the employee or their manager considers that a medical condition or disability of which they are aware has contributed to the unsatisfactory performance, even though the employee has been attending work satisfactorily, line managers will take the action set out in Section 11 of this policy before proceeding with any formal stages under the Capability Procedure.
- Managers and employees will jointly identify and discuss clear targets for improvement with timescales and regular review points, and any training or other activities necessary to achieve them, and keep a note of these.

An informal action plan will be used, (a suggested template can be found at http://www.docs.csg.ed.ac.uk/HumanResources/Policies/Performance_Improvement_Plan_and_Guidance.doc) as this will help to provide a structured approach to addressing the performance issue and documenting the support which has been agreed.

Where the measures discussed above have not led to the required improvements within the specified timescales, the line manager should proceed to stage 1 of the formal capability procedure after seeking advice and guidance from their HR Advisor as appropriate.

7. Representation

At all stages of a formal capability procedure, employees have the right to be accompanied by a Trade Union representative / official or workplace colleague. When arrangements for meetings are confirmed, it is the employee’s responsibility to
notify their chosen representative of the arrangements, and to notify the chair of the meeting of the name of the person accompanying them.

8. The Formal Procedure

8.1 Performance Improvement Plans

A Performance Improvement Plan is a tool which managers and employees use to provide structure to achieving improved performance. This allows for the recording and monitoring of agreed objectives within a set timescale. A standard template can be found at: http://www.docs.csg.ed.ac.uk/HumanResources/Policies/Performance_Improvement_Plan_and_Guidance.doc

Where any of the formal stages of the capability procedure lead to a formal warning, the line manager and employee should immediately work together to create a Performance Improvement Plan, covering all relevant information, and taking into account the review period set, and any recommendations made as a consequence of the Capability Hearing. [A Flow Chart outlining the main steps can be found at Appendix 1] Information contained in the Performance Improvement Plan must include:

- The specific performance objectives where improvements are required
- Method of Improving Performance (i.e. how will the improvement be made or supported)
- Success criteria
- Review dates, including how often and by whom performance will be regularly reviewed within the overall period, as well as the overall target date set by the warning (where a warning has been issued as part of the formal capability procedure).

8.2 Sustaining levels of performance

Review periods set for improving performance within the formal procedure can vary, dependent on the level of poor performance, the nature of the work and the amount of support required to help an employee make the required improvements. They should be as short as possible, but always give the opportunity for the employee to improve.

If there is a current warning on file relating to capability, managers should deal with new instances of poor performance through the formal process.

If performance reaches the required standard within the review period as outlined in the Performance Improvement Plan, and the employee maintains this standard within the warning period, the line manager will take no further formal capability action and normal monitoring of performance resumes. In these circumstances, the line manager must confirm to the employee that their performance has reached the required standard.
If the employee’s performance deteriorates during the review period despite further support having been provided, the line manager may move to Stage 3 of the procedure without waiting for the review period to end.

If the employee’s performance has not improved to the required level by the end of the review period, or this required level hasn’t been sustained throughout the warning period, managers will move to the next formal stage of the procedure.

8.3 Stage 1

Where an employee, following the informal stage of the capability procedure, does not meet and sustain the required standards of performance, or is unwilling to recognise their poor performance, a Performance Improvement Plan (PIP) will be developed with their line manager under Stage 1 of the Capability process. Following the relevant period of time allocated for improvement within the PIP, if the performance issues continue, they will be invited in writing to a Capability Hearing with their line manager (who will be accompanied by an HR Advisor) to review their performance under Stage 1 of the Capability Process.

At the hearing, the line manager will review with the employee the targets and actions from the Stage 1 PIP, and explain the reasons why they believe the employee’s performance is not at an acceptable level.

The employee will be asked to explain their own view of their performance, including any mitigating circumstances which should be taken into account.

After the meeting the line manager, in consultation with the HR Advisor, will consider all the information available, and will decide what action is appropriate. The outcomes could include:

- To give further time (under the Stage 1 procedure) for the employee to make improvements if the necessary support had not previously been provided, or there are mitigating circumstances affecting performance levels
- To give the employee a first written warning, which will stay on file for a period of one year, and to move on to a Stage 2 PIP
- In cases where there is a significant deterioration in performance - to give the employee a final written warning, which will stay on file for a period of two years, and to move on to a Stage 3 PIP. (Please refer 8.3.1)

The line manager should confirm the outcome of the hearing to the employee as soon as possible after the hearing, orally and in writing. If a written warning is being given, the line manager will write to the employee normally within one week of the Capability Hearing confirming:

- The areas where the employee’s performance is still below the required standard
- Any actions that have been taken to date to try and address the issues
- The proposed actions needed to secure a satisfactory level of performance, including the need to develop a new or revised Performance Improvement Plan
• A statement of what is considered to be a satisfactory level of performance and the time-scale for the improvement. (This will depend on the circumstances of each case but should normally be no shorter than one week and no longer than 6 months)
• A written warning that, unless the performance issues are resolved within the Stage 2 PIP review period and maintained during the warning period, the matter will be considered at a Stage 2 Capability Hearing.
• The employee’s right of appeal.

8.3.1 Escalation to Stage 3

In some circumstances the outcome of the Stage 1 Capability Hearing may be to escalate the Capability process to Stage 3. This would only be considered where the standards of performance deteriorated significantly during the review period.

For this to apply the line manager will have set out as part of the Stage 1 PIP under what circumstances the employee’s performance will be deemed to have deteriorated sufficiently for this to apply. In addition the line manager must also consider whether there are any mitigating circumstances which could account for this deterioration during the review period e.g. bereavement or family crisis, etc.

Where the outcome of the Stage 1 Capability Hearing is the escalation of the process to Stage 3, the line manager will issue a final written warning and refer the process on to the Stage 3 PIP.

8.4 Stage 2

The line manager will discuss with the employee the development of a Stage 2 PIP. Following the relevant period of time allocated for improvement within the PIP, if the performance issues continue, the employee will be invited in writing to a Capability Hearing with their manager’s manager, or nominated deputy (who will be accompanied by an HR Advisor) to review the employees performance under Stage 2 of the Capability Process.

The employee’s line manager will attend this hearing to present the case relating to the employees performance against the Stage 2 PIP.

The manager’s manager, or their nominated deputy will, in consultation with the HR Advisor, appoint a panel to hear the case, which will include themselves as Chair, and one other independent manager (from outside the management chain) who will be at least at the same grade as the employee’s line manager and will have knowledge of the type of work involved. For academic staff\(^3\), this independent person must also have an academic background.

The Panel Chair will invite the employee to the Capability Hearing, confirming in writing the details of the hearing and panel members. The hearing will normally take place within 2 weeks from receipt of the report from the employee’s line manager.

\(^3\) An ‘Academic’ for the purposes of this policy, is defined as a Professor, Reader, Senior Lecturer or Lecturer or is otherwise engaged in teaching, the provision of learning or research
Prior to the hearing the panel will gather and review all the relevant information, including reports from the line manager, a copy of the Performance Improvement Plan, any other relevant documents and examples of work undertaken by the employee. The employee will also be given a copy of all the information collected at least one week prior to the hearing.

At the hearing, the line manager will present the report and the panel will expect the employee to provide a written and/or oral response to the statement of alleged unsatisfactory performance and any relevant new information.

A formal note will always be made of the hearing and a copy given to the employee. The employee may wish to comment on the notes of the hearing but this will not normally delay any decision being made.

The panel will consider the case and the evidence given at the hearing and decide on one of the following actions:-

- Give a further defined period of time, which must not exceed the period of the written warning issued in Stage 1, where they feel that the employee has not had sufficient opportunity to improve, accompanied by relevant training or support if necessary to enable the employee to reach and maintain the required standards, or
- Give a final written warning to the employee, and refer them on to Stage 3 of the Capability Process.

The panel will confirm their decision to the employee, and their manager, verbally as soon as possible after the hearing. The outcome will also be confirmed in writing, normally within 1 week of the hearing, following relevant input from the line manager. The letter will confirm as appropriate:-

- The nature of the unsatisfactory performance
- The period of time given for improvement and the improvements/standards expected (normally no shorter than one week and no longer than 3 months)
- Any additional training and support to be provided, with relevant timescales
- The frequency of reviews of progress
- The employee’s right to appeal.

If a final written warning is not being given but instead Stage 2 of the procedure is to be extended, then the letter will confirm this, but also the consequences of a failure to improve sufficiently to meet the full requirements of the post within the prescribed timescales (i.e. a further Capability Hearing under Stage 2 of the procedure).

If a final written warning is being given the letter will confirm:

- That the employee is now under a final written warning which will be active for 2 years
- The consequences of a failure to improve sufficiently to meet the full requirements of the post within the prescribed timescales, and maintain the required standard of performance throughout the warning period (i.e. to move to Stage 3 of the procedure, which could result in dismissal).
8.5 Stage 3

Line managers will instigate Stage 3 of the procedure in either of the following circumstances:

- The Employee’s performance has deteriorated within the warning period given in Stage 1 or 2 of the capability procedure, or
- Following a final written warning given in Stage 2, an employee’s performance remains unsatisfactory following the review period

The line manager will discuss with the employee the development of a Stage 3 PIP. Following the relevant period of time allocated for improvement within the PIP, if the performance issues continue, the employee will be invited in writing to a Capability Hearing under Stage 3 of the Capability Process.

The line manager, in consultation with their HR Advisor, will report in writing to the Chair of the most recent Capability Hearing the nature of the alleged unsatisfactory performance, including a copy of the Stage 3 PIP, requesting that the case now be taken forward to a Stage 3 Capability Hearing. The line manager will give the employee a copy of the report.

The case will be referred to the Head of School or Support Department, or their nominated deputy, who, as Stage 3 Panel Chair, will appoint a further panel member to hear the case. This panel member will be from outside the School or Support Department, and will normally be at least at one level above the employee’s line manager. For cases involving academic staff, this independent person must also either be, or have been, an Academic.

The Stage 3 Panel Chair will invite the employee to the Capability Hearing, confirming in writing the details of the hearing and panel members. The hearing will normally take place within 2 weeks from receipt of the report from the employee’s line manager.

Prior to the hearing the panel will gather and review all the relevant information, including reports from the line manager, relevant documents and examples of work undertaken by the employee. The employee will also be given a copy of all the information collected at least one week prior to the hearing.

At the hearing, the line manager will present the report and the panel will expect the employee to provide a written and/or oral response to the statement of alleged unsatisfactory performance and any relevant new information.

A formal note will always be made of the hearing and a copy given to the employee. The employee may wish to comment on the notes of the hearing but this will not normally delay any decision being made.

The panel will consider the case and the evidence given at the hearing and decide on one of the following actions:-

- To recommend that the employee be given a further chance to improve, if it is believed that there has been insufficient time or support provided to make the
required improvements under the Stage 3 PIP, extending the time limit given for improvement within the PIP by no longer than 3 months.

- To dismiss the employee on grounds of capability where sufficient support and time has been given, but the employee has failed to make the required improvements.

If the employee is to be given more time to improve, following relevant input from the line manager. The letter will confirm:-

- The nature of the unsatisfactory performance
- The additional period of time given for improvement and the improvements/standards expected
- That the warning period given in the final written warning has been extended and the date to which/period for which it has been extended
- The training and support to be provided
- The frequency of reviews of progress
- The consequences of a failure to improve sufficiently to meet the full requirements of the post within the prescribed timescales (i.e. potential dismissal).

If a decision is made to dismiss the employee, and following relevant input from the line manager, then the letter will confirm:

- The nature of the unsatisfactory performance
- The process followed before reaching this stage
- The fact that the employee is to be dismissed, outlining the relevant notice period and related contractual matters
- The employee’s right to appeal.

If, after a Stage 3 Capability Hearing, the panel decides to allow the employee extra time to make the required improvement and performance still does not improve by the end of the review period, the same panel should be reconvened to consider the case again.

Regardless of the outcome, the panel will confirm their decision to the employee and their line manager verbally as soon as possible after the hearing. They will also confirm the outcome to the employee in writing, normally within 1 week of the hearing.

9. Retaining Records of Formal Warnings

Written warnings will be retained on the personal files maintained by College / Support Group HR Teams. They will remain as live warnings for the periods of time specified below.

- Stage 1 - Written warning – one year
- Stage 2 - Final written warning – two years.

and will be taken into account during their active period where further formal action is to be taken.
After the warning period has expired, a note of its existence will remain on the employee’s record. This will be used, for example, if confirmation was required that the employee was aware of the standards expected. This expired warning will be kept on file in accordance with the University Data Retention Schedule for HR Records.

10. Appeals

Employees have the right to appeal against any formal action taken against them under the Capability Policy.

The appeal processes are outlined in the document ‘Employment Related Appeals Procedures’.

11. Referrals for Medical Advice

If it is suspected that a health issue is contributing to the poor performance at work, the line manager may refer the case to the University’s Occupational Health Unit (OHU), the employee’s GP, or an appropriate external professional organisation for advice, and will also confirm to the employee the reasons for making this referral. The line manager, in conjunction with the HR Advisor, will normally provide the following information when making the referral (copied to the employee):

- Details of the employee’s performance issues
- A copy of the employee’s job description
- Brief details of the medical condition or disability.

The line manager will seek to establish the employee’s ability to perform their job at the required level bearing in mind their medical condition or disability. Specific questions should always be agreed which will enable the line manager and the HR Advisor to make informed decisions about the employee’s performance and ability, and may include:

- Whether the employee’s medical condition or disability would have an affect on their ability to carry out their duties effectively
- Whether the employee should be physically able to satisfactorily carry out all of the tasks listed in their job description
- If their condition is likely to be likely to be recognised as a disability under employment legislation
- Whether there are any reasonable adjustments that could be made to enable the employee to perform their job to the required level
- How long it might take for the employee to make the necessary improvements once the reasonable adjustments are in place
- What type of work the employee might be able to undertake if their condition prevents them from carrying out some or all of their current duties

12. Action following Medical advice

The line manager and HR Advisor will discuss with the employee the professional advice received and consider any recommended adjustments to individual objectives.
and/or role. The outcome of this meeting will be confirmed to the employee in writing.

Once any reasonable adjustments have been made, it would be expected that performance will improve. If however, performance still does not reach the required standard within a specified period, then giving written warnings as part of the capability process is highly unlikely to result in an improvement and may contribute to further reductions in performance as a result of stress / anxiety.

In such cases a formal review process will be undertaken and depending on the severity of their condition, and following medical advice, appropriate other options may be explored, or the member of staff may decide to apply for early retirement on medical grounds. This may not be an option and ultimately it may be necessary to consider dismissal on the grounds of medical capability. However, in these circumstances, advice must be sought from an HR Advisor before proceeding.

13. Early Retirement on Medical Grounds

Ill health retirement may be considered under the Absence Management Policy at: http://www.docs.csg.ed.ac.uk/HumanResources/Policies/Absence_Management-Policy.pdf

14. Policy History and Review

This policy was approved by CJCNC on 30 March 2011 and took effect from 1 April 2011. It replaces/supersedes the documents ‘Capability Policy for Academic and Related Staff’ and ‘Capability Policy for Technical, Clerical and Manual Staff’, which cease to apply from the same date.

A full review of this Policy was carried out, and amended as noted at Section 14.1, and was approved by CJCNC on 27 September 2013.

In the event of any significant change to the legal position on taking formal action in relation to unsatisfactory performance, any relevant statutory requirements or any other related matter, this policy will be subject to immediate review in consultation with the Trade Unions. In the absence of such a change, the policy will be reviewed by December 2015.

14.1 Change control record

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<th>Approval date:</th>
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| 1.  | 27 Sep. 2013  | Full Review: This Policy was reviewed which resulted in the following amendments being applied:  
Section 4, Bullet 5: Inclusion of a reference to the University Complaint Handling Procedure.  
Section 5, Bullet 1: Inclusion of a statement to ensure adjustments to workloads do not impact on another employee’s wellbeing.  
Section 6: Clarification of note keeping and using | CJCNC. |
| action plans at the informal procedure stage. Sections 8.2, 8.3 and 8.4 amendments made to further clarify the steps of the process, and to improve readability. Section 8.4, Bullet 1: Defining action which can be taken by the panel hearing the case. Sections 8.4 and 8.5: Stipulates there should be relevant input from the manager on the outcomes from Stage 1 and 2, Section 9: Clarification on the periods of live warnings and the retention of records. Section 12: Clarification the options in cases of formal review in relation to medical conditions. Section 13: Referring early retirement on medical grounds to the Absence Management Policy. |

### 15. Alternative Formats

This document can be provided in alternative formats on request by email to [UHRS@ed.ac.uk](mailto:UHRS@ed.ac.uk) or by calling 0131 650 8127.
The Informal Procedure

- Performance issue identified
  - Review Meeting
  - Action Plan with review period
    - Performance targets met
      - No Further Action
    - Performance targets not met
      - Meeting with Manager to create Performance Improvement Plan [PIP], with review period

- Capability Hearing
  - Performance targets met
    - Written Warning issued
      - Possible Appeal
      - No Further Action
      - Continue to monitor
  - Performance targets not met
    - Capability Hearing
      - Possible Appeal
      - No Further Action
      - Continue to monitor

Formal Stage 1

- Meeting with Manager to create PIP
  - Performance targets met
  - No Further Action
  - Refer to Stage 2
  - Performance targets not met
    - Capability Hearing
      - Performance targets met
        - Continue to monitor
      - Performance targets not met
        - Written Warning issued
          - Possible Appeal
          - No Further Action
          - Continue to monitor
        - Final Written Warning & PIP
          - Possible Appeal
          - No Further Action
          - Continue to monitor
  - Possible Appeal
    - Continue to monitor
    - Dismissal

Formal Stage 2

- Meeting with Manager to create PIP
  - Performance targets met
  - No Further Action
  - Continue to monitor
  - Performance targets not met
    - Capability Hearing
      - Performance targets met
        - Continue to monitor
      - Performance targets not met
        - Written Warning issued
          - Possible Appeal
          - No Further Action
          - Continue to monitor
        - Final Written Warning & PIP
          - Possible Appeal
          - No Further Action
          - Continue to monitor

Formal Stage 3

- Meeting with Manager to create PIP
  - Performance targets met
  - Repeat Stage 1
  - Performance targets not met
    - Capability Hearing
      - Performance targets met
        - Continue to monitor
      - Performance targets not met
        - Written Warning issued
          - Possible Appeal
          - No Further Action
          - Continue to monitor
        - Final Written Warning & PIP
          - Possible Appeal
          - No Further Action
          - Continue to monitor

Possible Appeal

* Can decide to provide more time for improvement if performance has improved significantly but is not quite adequate. This extension should not exceed the period of the warning (i.e. 12 months written, 24 months final warning).

** If performance deteriorates during the review period you can move immediately to Stage 3.